

IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE (LANDS DIVISION) HELD ON WEDNESDAY THE 26<sup>TH</sup> DAY OF OCTOBER, 2022 BEFORE HER LADYSHIP JUSTICE JENNIFER ANNE MYERS AHMED (MRS.)

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SUIT NO: LD/0516/2017

MADAM AGNES ANNAN : PLAINTIFF

Suing Per Lawful Attorney

PATRICK ADOTEY BROWN

VRS

1. THE REGISTERED TRUSTEES OF  
METHODIST CHURCH OF GHANA : DEFENDANTS
  2. PACK PLUS INTERNATIONAL LTD.
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## J U D G M E N T

The Plaintiff by her amended writ of summons filed on the 12<sup>th</sup> March, 2018 sought the following reliefs:

- a. Declaration of title to all that piece of land described in the schedule to the Statement of Claim.
- b. Declaration that the grant of the Plaintiff's land by the 3<sup>rd</sup> Defendant to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is void.
- c. Recovery of possession

d. Damages for trespass

IN THE ALTERNATIVE

e. An order for the payment of the current value of the land to the Plaintiff.

f. Any other reliefs this court may deem fit

The land in dispute was described in the schedule in the statement of claim as *'all that piece of land lying and being at Ako-Adjei, West Labadi, Accra containing an approximate area of 0.459 acre and bounded on the North by proposed road measuring 200 feet more or less on the East by proposed road measuring 100 feet more or less on the South by property of Elizabeth A. Glover measuring 200 feet more or less and on the West by proposed road measuring 100 feet more or less as the same is more particularly delineated on the Plan attached hereto and thereon shewn edged pink.'*

The plaintiff pleaded fraud in her statement of claim which she particularized as paragraph 12(i) as,

*'Certificate of Title dated 20<sup>th</sup> August 1951 does not relate to plaintiff's land and same known to 3<sup>rd</sup> defendant.'*

The 1<sup>st</sup> defendant entered conditional appearance on the 16<sup>th</sup> of May 2017 and filed an amended statement of defence on the 25<sup>th</sup> of July 2017 denying the claims of the defendant and also pleading that the plaintiff's claim of title to the land is fraudulent. It particularized the plaintiff's fraud as follows at paragraph 12 thus;

*'a. The plaintiff knows or ought to have known that the allodial owner of the land in dispute is the government of Ghana.*

*b. The plaintiff has hurriedly and mischievously applied for letters of administration and purportedly included the land in dispute as part of the estate of the late Dr, Daniel Nee Annan when she knows or ought to have known that the land in dispute does not constitute a portion of the estate of the deceased.'*

By a motion dated the 13<sup>th</sup> of February 2018 the 2<sup>nd</sup> defendant applied to be joined to the suit as 2<sup>nd</sup> defendant in the stead of Daikin Company Limited which was the 2<sup>nd</sup> defendant originally sued by the plaintiff. Pursuant to this order of joinder the 2<sup>nd</sup> defendant entered appearance through its counsel on the 30<sup>th</sup> of May 2018 and filed a statement of defence on the 16<sup>th</sup> of July 2018 denying the claims of the plaintiff.

The issues set down for trial were:

1. *Whether or not the subject matter is Government land acquired by the State*
2. *Whether or not the Plaintiff's late father Dr. Daniel Nee Annan is the beneficial owner of the land.*
3. *Whether or not the 1<sup>st</sup> Defendant has any valid grant of the land in dispute*
4. *Whether or not Plaintiff's action is defeated by laches and acquiescence.*

#### The Plaintiff's Case

The case of the plaintiff from the totality of her pleadings, the testimony of her lawful attorney as per his witness statement and the exhibits attached is that the land, the subject matter of this suit which is located at Ako Adjei was obtained by her father, the late Dr. Daniel Nee Annan through a deed of gift on the 3<sup>rd</sup> of February 1950 made by the Abafum Quarter of La acting per Nii Ankamafio as the head of family. The deed of gift was tendered into evidence as exhibit B. After the grant to the late Dr. Daniel Nee Annan, the deed of gift was registered in the Deed Registry as deed no. 230/1950 and was duly stamped and recorded in the Gold Coast Gazette no. 46 of 6<sup>th</sup> May 1960 as property no. 230. Same was tendered into evidence as exhibit C. Following the death of her father Dr. Annan in 1978, the Plaintiff obtained letters of administration in respect of the estate of her late father on the 22<sup>nd</sup> of April 2015 and vested the land in dispute to herself on 31<sup>st</sup> March 2017. The letters of administration obtained by the plaintiff as well as the vesting assent executed by her were also tendered into evidence as exhibits D and E.

The plaintiff claims to have had undisputed possession of the land until 2015 when she noticed some unlawful encroachment on the land by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and a letter dated the 16<sup>th</sup> of June 2015 warning them to desist from their acts of encroachment was issued to them. This letter was tendered into evidence as exhibit F. When the unlawful acts of trespass continued the plaintiff then wrote to the Lands Commission but the response of the Lands Commission was that the land was acquired by the government per a certificate of title dated the 20<sup>th</sup> of August 1951. This certificate of title was tendered into evidence as exhibit J. According to the plaintiff's lawful attorney, this certificate of title is fraudulent because it does not relate to the plaintiff's land, a fact the third defendant was very much aware of. To the plaintiff, the government of Ghana is not an allodial owner of any land in the country and that the 1<sup>st</sup> defendant having encroached on the plaintiff's land in the year 2015 when the plaintiff was in possession, any grant by the government to the 1<sup>st</sup> defendant was unlawful.

#### The 1<sup>st</sup> Defendant's Case

It is the 1<sup>st</sup> defendant's case as also gleaned from its pleadings, the witness statements of its witness George Abanyie and the exhibits tendered is that it acquired a leasehold interest from the Lands Commission after being satisfied that the land belonged to the state in the year 1999. The 1<sup>st</sup> Defendant's witness who was the lawful attorney of the 1<sup>st</sup> defendant deposed that the Rev. Peter Kwei Dagadu Memorial Methodist church, a branch of the Methodist church directly affected by the instant suit, upon compliance with the conditions stipulated in an offer letter dated the 12<sup>th</sup> of January 1999 from the Lands Commission, subsequently executed a lease agreement between itself and the Lands Commission for land measuring 0.55 acres. The offer letter was tendered into evidence as exhibit 2 and a copy of the lease agreement was also tendered as exhibit 3. After the requisite publication in the newspapers a land title certificate was issued to the 1<sup>st</sup> defendant in 2005. The church had been responsible for

the payment of ground rent and exhibit 4 series, showing payments made at various times by the 1<sup>st</sup> defendant to the Lands Commission was tendered in proof of this. The 1<sup>st</sup> defendant after acquiring the land from the lands commission proceeded to register their interest and after the requisite publication obtained a land title certificate. Exhibit 5 series included this land title certificate as well as the publication in the August 25<sup>th</sup> 2004 edition of the Spectator.

The 1<sup>st</sup> Defendant entered into possession and occupation of the land in 1999 and embarked on construction activities on the land which they had to suspend at the behest of the Accra Metropolitan Assembly(AMA) over its intended use of the land. The stop order issued to the 1<sup>st</sup> defendant by the AMA was tendered into evidence as exhibit 6. After resolving issues with the AMA, the 1<sup>st</sup> defendant averred that it was re-issued with a building permit by the AMA to continue with the construction works on the land. This building permit was tendered into evidence as exhibit 7. After the issue with the AMA was resolved the 1<sup>st</sup> defendant continued with the construction in 2015 and completed the ground floor of the building.

The 1<sup>st</sup> defendant claims to have been in quiet possession since 1999 until 2015 when they were approached by a group of persons(which did not include the plaintiff) laying claim to the land. After giving a copy of its deed of title to the said group of persons, nothing was heard from them again until the commencement of the instant suit.

### The 2nd Defendant's Case

It is the case of the 2<sup>nd</sup> Defendant as garnered from the pleadings, witness statement and exhibits attached that it acquired the land from the Administrators of the estate of the late Salatial Francis Adja Torgbor through an executed Deed of Assignment in 2010. The 2<sup>nd</sup> defendant presented its case through the testimony of Selorm Dzomeku, the managing director of Packplus International Ltd and his evidence was that the

land in dispute was assigned to the 2<sup>nd</sup> defendant in 2010 from the children and administrators of the estate of the late Salatial Francis Adja Torgbor who died intestate on the 21<sup>st</sup> of September 2006 after the 2<sup>nd</sup> defendant expressed an interest in the property after the demise of Salatial Francis Adja Torgbor. The 2<sup>nd</sup> defendant by virtue of the assignment took possession of the land in dispute and erected an office space on the land where it had been operating its business without any interference from its grantors until it was served with the instant writ of summons and statement of claim.

The 2<sup>nd</sup> defendant presented one witness in the person of Fred Nii Sai Torgbor, one of the children of the late Salatial Francis Adja Torgbor and also an administrator of his estate. He stated that his late father Salatial Francis Adja Torgbor obtained the land measuring 0.46 acres from the Lands Commission in 1966 for a period of 99 years. A copy of the lease executed between his late father and the lands commission was tendered into evidence as exhibit FT1. Also tendered as exhibit FT2 was a copy of the letters of administration taken out by his children in 2010 granting them the authority to deal with the property of Salatial Francis Adja Torgbor.

Salatial Francis Adja Torgbor who had been in possession of the land since 1966 until his demise had in the year 2006 entered into a contract of assignment with the 2<sup>nd</sup> defendant through its managing director which contract was however not fully executed before he passed away. His children being aware that the contract had not been fully executed, with the consent and concurrence of the family members of the deceased, gave effect to the contract by having it drafted and signed, assigning the remainder of the lease granted to their late father by the lands commission to the 2<sup>nd</sup> defendant company.

In arriving at a determination the court will resolve issues 2 and 1 together. Issue 2 is whether or not the Plaintiff's late father Dr. Daniel Nee Annan is the beneficial owner

of the land whilst issue 1 is whether or not the subject matter is Government land acquired by the State.

The Plaintiff's case is that the land in dispute belonged to her father the late Dr. Daniel Nee Annan who obtained the land through a Deed of Gift from the Abafun quarter of La. This deed of gift executed between her father and the Abafum Quarter of La on the 3<sup>rd</sup> of February 1950 was tendered by the plaintiff's lawful attorney into evidence as exhibit B. Exhibit B had been accordingly registered and stamped and further recorded in the Gold Coast Gazette No. 46 of 6<sup>th</sup> May 1950 as property No. 230 and marked as Exhibit C.

Indeed, it can be therefore be stated that the plaintiff's late father was the beneficial owner as he validly obtained the land indeed in 1950. However, subsequent legal events which transpired after his acquisition of the land makes it impossible for the court to hold that the plaintiff is now the beneficial owner of the disputed land. The major event in question is the compulsory acquisition of land inclusive of the land in dispute made by government in 1951 which compulsory acquisition the plaintiff has not been able to assail or to disprove its validity.

The defendants who dispute the claims of the plaintiff have their defence hinged on their claim that the land as granted to them is government land with the 1<sup>st</sup> defendant having acquired its grant from the Lands Commissions directly whilst the 2<sup>nd</sup> defendant acquired his from a grantor who acquired his grant directly from the lands commission as well. In support the defendants tendered their deeds of lease which in the case of the 1<sup>st</sup> defendant shows that the land was granted to it by the Lands Commission whilst in the case of the 2<sup>nd</sup> defendant, the grant to their grantor was by the Lands Commission as well. A judgment tendered by the 2<sup>nd</sup> defendant confirmed that indeed the 2<sup>nd</sup> defendant's land formed part of land compulsorily acquired by the government as far back as 1951 and thus accordingly their grantor has the legal right

to validly pass title to them. Exhibit K which was tendered by the plaintiff's subpoenaed witness, Maxwell Adu-Nsafoa a representative of the Regional Lands Officer from the Greater Accra Regional Lands Commission was the Certificate of Title from the Deeds Registry marked as No. 1078/1951 dated the 20<sup>th</sup> of August 1951 which showed that pursuant to the Public Lands Ordinance four parcels of land in varying acreages of 146.3 acres, 5.73 acres, 3.6 acres and 4.03 acres which were lying near the Christianborg-Labadi road as well as lying to the east and north of Christianborg were vested in the State.

There was no evidence adduced casting doubt on the authenticity of this Certificate of Title of 1951 and by section 37 of the Evidence Act 1975, NRCD 323, it is presumed that the compulsory acquisition, being an official act was regularly done and thus the required gazetting and compensation duly paid under the Public Lands Ordinance, Cap 134 (1951 Rev). It is trite that compulsory acquisition operates to extinguish all the interests in land including the allodial interest, vesting same in the state or any other body on whose behalf the state exercises its power. In **Sagoe & Others v Social Security and National Insurance Trust (SSNIT)**[2012] 2 SCGLR 1093 Gbadegbe JSC stated thus:

*'In the case of Memuna Moudy v Antwi [2003-2004] SCGLR 967 in considering the burden that a party whose claim to title was in respect of compulsorily acquired land, Wood JSC (as she then was) observed at page 974 as follows:*

*"Since the evidence led to the inescapable conclusion that the land in dispute had been compulsorily acquired by the government, in their bid to prove title, the plaintiffs unavoidably had to prove the extent or identity of the land owned by them as well as the mode of acquisition...."*

*Although the nature of claim by the plaintiffs in the above case is in some respect different from the case of the plaintiffs herein, I think the observation of the learned judge in so far*



*as it relates to proof by a party of portions of land that had been compulsorily acquired by the state is of much value to us in these proceedings. Authority aside, the observation to which reference has been made is in accord with principle and common sense as the title to compulsorily acquired lands cannot be impeached or called in question in any action. Therefore, since the plaintiffs through their grantors were aware of the acquisition they were required to show positively that the plots, which they had acquired individually fell outside the area of the acquisition. Since an acquisition by the state operates to extinguish any title and or interests that a person might have had at the date of the publication of the instrument of acquisition, it does not matter whether the acquisition was previous to the interest held in the land by an individual or subsequent thereto.'*

Relating this to the instant suit, the court finds that based on the evidence tendered by the Plaintiff's witness PW1, whatever interest in the land held by the plaintiff's late father was extinguished in 1951 when the government compulsorily acquired the land. So although the late father of the Plaintiff might have been the beneficial owner as at 1950, he lost all interest in the land in 1951 as a result of the compulsory acquisition. Accordingly, the letters of administration and the subsequent vesting assent is of no use as in actuality, the land in dispute is incapable of forming part of the estate of the deceased. And interestingly, the letters of administration was obtained in the year 2015, some 37 years after his demise in 1978, as a prelude to the plaintiff instituting the instant action. As a matter of fact, he even lost all his interest many years before he died and the disputed land ought not have been added as part of his estate. Thus if the plaintiff's father had any interest in the land prior to the compulsory acquisition by the government, same was extinguished once the land was compulsorily acquired. Flowing from the above, it would be improper to hold that the Plaintiff is the beneficial owner of the disputed land.

The 1<sup>st</sup> Defendant tendered documents which includes Exhibit 2, which is an offer letter dated 12<sup>th</sup> January 1999 made to them by the Lands Commission. The 2<sup>nd</sup> Defendant which says that it obtained its land from the Administrators of the estate

of the late Salatial Francis Adja Torgbor who died in 1978 and who during his lifetime obtained his grant from the Lands commission directly, also tendered as exhibit PP2 Series, a judgment of the High Court in suit no. L 491/2001 which was affirmed on appeal by the Court of Appeal in H1/149/05 titled Salatial Francis Adja Torgbor V V Samuel Arthur Odoi-Sykes & Edith Amorkor Sykes which judgment confirmed that the portion of the land occupied by the 2<sup>nd</sup> Defendant is indeed part of the estate of the late Salatial Francis Adja Torgbor. The judgment also confirmed that the land in dispute was compulsorily acquired by the government in 1951 and further that the government in 1966 had legally granted a lease of the land to Salatial Francis Adja Torgbor.

The defendants thus having adduced sufficient evidence in support of their contention that the land in dispute formed part of land owned by the State, it behoove on the plaintiff to also adduce evidence to rebut the claims of the defendants to prove that land in dispute was acquired by government.

Section 11 (1) of the Evidence Act states that *“For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.”*

The plaintiff’s lawful attorney tendered a memo, labelled as Exhibit H which memo states clearly that the land in dispute had been acquired by the government as far back as 1951. The memo also stated that the nephews of the plaintiff’s late father by inference admitted that the land in dispute had been acquired by the Plaintiff but no compensation has been paid by the government. Very clearly, exhibit H rather corroborates the case of the Defendants that the land in dispute was acquired by government. In Agyeiwa v P&T Corporation [2007-2008]2SCGLR, the Court held that;

*“ where the evidence of an opponent corroborates the evidence of the opposite party, and that opponents remain uncorroborated, the court is bound to accept the corroborated evidence unless there are compelling reasons to the contrary”*

See also the case of Kwadwo Anning v Kwasi Darkwa (Civil Appeal number H1/12/2015)

The plaintiff who bore the onus of proof in this regard was unable to, throughout the trial, tender any evidence to suggest that the land in dispute does not form part of the larger parcel of land acquired by the government. PW1, the witness subpoenaed by the court at the insistence of the plaintiff never gave evidence to deny that the land in dispute is state land and even though he stated that a composite site plan had been prepared by him for the plaintiff, it emerged under cross-examination that he never visited the land in dispute and used only the title deed and site plan given him by the plaintiff to prepare the composite site plan he presented.

Mention must be made of the fact that in Salatial Francis Adja Torgbor V V Samuel Arthur Odoi-Sykes & Edith Amorkor Sykes (supra) the Court of Appeal affirmed the findings of the trial judge that the land acquired by Salatial Francis Adjei Torgbor formed part of government land compulsorily acquired by the government in 1951. How can this court now find otherwise especially when offered nothing to disprove that the land is State acquired land?

There being no evidence to the contrary, the court finds that the overwhelming evidence is that the land in dispute forms part of government land which was compulsorily acquired by the State in 1951 and further finds as a fact that whatever interest the plaintiff's father had in the land was extinguished in 1951 when the land was compulsorily acquired.

The next issue for resolution is the third one which is whether or not the 1<sup>st</sup> Defendant has any valid grant of the land in dispute.

From the evidence on record and having found that whatever interest the plaintiff's late father had in the land in dispute was extinguished once the land had been compulsorily acquired by the State, this issue is one that is easily resolved. In the main, it has been held time without number that a person who asserts ownership of a land must prove that his grantor had a good title. As stated in the case of Agyeman (Substituted By) Banahene v. Anane [2013-2014]1SCGLR 241 a party whose title is derivative must show that his predecessor had good title.

Both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants trace their grantors ultimately to the Lands Commission which is the entity that has authority to alienate government land. It can be concluded, having already held that the land in dispute forms part of land that was compulsorily acquired by government in 1951 that same has validly been alienated by the government to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

In addition the 1<sup>st</sup> Defendant has provided enough evidence which includes a valid land title certificate certifying its legal right to the land. It is important to state that the new Land's Act provides for the conclusiveness of the Lands register. Section 111 of the Lands Act 2020 states as follows

*"1. An entry in the land register shall be conclusive evidence of title of the holder of the interest specified in the land register."*

The registration of the interest of the 1<sup>st</sup> Defendant accordingly is conclusive evidence of his interest and the circumstances under which a court can declare the registration invalid can only be made under section 195 of the Land's Act, Act 2020.

Section 195 of the Lands Act 2020 states that

*"(1) Subject to subsection (2), the Court may order the rectification of the land register by directing that a registration be cancelled or amended where the Court is satisfied that the registration has been obtained or made by fraud, mistake or other vitiating factors."*

*(2) A court shall not order a rectification of the land register, so as to affect the title of a proprietor who has acquired land or an interest in land for valuable consideration unless*

*(a) the omission, mistake, fraud or other vitiating factor was caused by the Lands Commission;*

*(b) the proprietor had knowledge of the omission, mistake, fraud or other vitiating factor in consequence of which the rectification is sought;*

*(c) or the proprietor had caused the omission, mistake, fraud or vitiating factor or substantially contributed to the omission, fraud, mistake or vitiating factor."*

None of these circumstances has arisen in the present case except for fraud alluded to by the plaintiff whose allegation is that the alienation of the land to the Defendants was obtained by fraud. It is important to state that the allegation of fraud has criminal implication and accordingly per section 13 of the Evidence Act, NRCD 323, one who has the burden of proof ought to prove it beyond reasonable doubt. However the plaintiff did not adduce any evidence to even suggest in the slightest that the alienation of the land was fraudulent except for mere averments. In **Amoako v Osei** Civil Appeal No J43/2016 or [2016] GHASC 61 delivered on 1/06/2016 the Supreme Court held that;

*'It is trite learning that a bare assertion by a party of his pleadings in the witness box without more is no proof. Proof in law has been authoritatively defined as the establishment of facts by proper legal means.'*

Plaintiff accordingly has not discharged the burden of proof beyond reasonable doubt with reference to allegation of fraud made against the Defendants. Accordingly, it can be concluded that, the alienation as well as the registration of the land in dispute in favour of the 1<sup>st</sup> Defendant is valid.

The 2<sup>nd</sup> Defendant also by exhibits FT1, FT2 and FT3, obtained its grant derivatively from the lands commission and thus having previously held that the land in dispute

is a government land, the alienation is valid. This fact was confirmed by the plaintiff's witness during cross-examination when he was asked;

*'Q: So by virtue of Exhibit FT1, FT2 and FT3, the 2<sup>nd</sup> Defendant legitimately derives title from the Lands Commission by virtue of whatever relationship existed between the lessee and the Lands commission.'*

His answer was,

*'A: Yes I agree with you....'*

Consequently, the alienation made to the 2<sup>nd</sup> Defendant is also valid owing to the fact that the Lands Commission on behalf of the government of Ghana alienated the land to the 2<sup>nd</sup> Defendant's grantor who successfully mounted an action for declaration of title when others encroached on his grant.

The third issue of whether or not Plaintiff's action is defeated by laches and acquiescence, in the view of this court becomes a non-issue, this court having found as a fact that the land in dispute being part of land acquired compulsorily by the government which extinguished the title of the plaintiff's father in the land. The elements of laches and acquiescence do not factor here. In **Korley v Bruce [1962] 1GLR 7**, the court the court stated thus;

*"The elements necessary to establish acquiescence are: (1) the person who enters upon the other person's land did so upon the honest, though erroneous belief that he had right to it; (2) he must have expended some considerable sum of money on or in respect of the land upon the faith of his mistaken belief; (3) the owner of the land must know all the time that he had right in the land which is inconsistent with the erroneous right claimed by the other; (4) the owner must know of the mistaken belief of the other person of his right; and (5) the owner must by his [p.12] silence or otherwise have fraudulently encouraged the other party to spend his money to develop the land, and had not called his attention to his error. See *Mercantile Investment and General Trust Co. v. River Plate Trust, Loan and Agency Co.*<sup>6</sup>*

*If any one of these five essentials is proved not to exist, there is no acquiescence and an order for recovery would be made."*

Clearly, that is not the case in this situation since whatever interest the plaintiff's father had in the land was extinguished in 1951.

In the course of reviewing the pleadings this court realized that it appears that the plaintiff does not actually know the identity of the land that she is litigating over. Why do I say so? Her claim is for title to land measuring 0.459 acre whilst the land in the possession of the 1<sup>st</sup> defendant measures 0.55 acre and that of the 2<sup>nd</sup> defendant measures 0.46 acre. Very clearly, the plaintiff's land cannot cover these two parcels of land which in total measure 1.01 of an acre. So exactly which land is the plaintiff litigating over? And this is even made more glaring by the fact that the plaintiff is here claiming the 2<sup>nd</sup> defendant's land which per the deed of assignment to her father in 1950 rather bounded her father's land. To succeed in an action for declaration of title to land a party on whom the burden of persuasion falls must be able to adduce evidence to prove among other things, the identity of the land he is litigating over and I find that the plaintiff has failed in this endeavor. In **Nii Tackie Amoah VI v Nii Armah Okaine & Others**; Civil Appeal No. J4/59/2013 dated the 15<sup>th</sup> of January 2014, the supreme court stated that the established principles of law requires the plaintiff to lead clear evidence as to the identity of the land claimed with the land the subject matter of his suit. Similarly in **Nortey(No.2) v African Institute of Journalism and Communications & Others(No.2)** [2013-2014] 1SCGLR 703, the court held thus;

*'In an action for declaration of title to land, recovery of possession and injunction, a plaintiff must establish by positive evidence the identity and limits of the land he claims. (See Agyei Osae & Ors vs Adjeifio & Ors (2007-2008) SCGLR 499).*

*In any case since the plaintiff is seeking a declaration of title to land and other reliefs, he will succeed only if he is able to establish the identity of the land in question satisfactorily according to law so as to entitle him to the reliefs. The onus of proof required by law as regards the identity*

*of land would be discharged by meeting the conditions clearly stated in this court's decision in Tetteh v Hayford (2012) SCGLR 417 citing the case of Kwabena v Atuahene (1981) GLR 136 thus: (i) the plaintiff has to establish positively the identity of the land to which he claimed title subject matter of the suit.*

*(ii) Plaintiff also has to establish all his boundaries...'*

Thus even if the land had not been compulsorily acquired by the State which effectively extinguished any interest the plaintiff's late father had in the land in dispute, the fact is that she does not know exactly which land she is litigating over.

Again another observation is that neither the plaintiff nor her father were ever in possession of the land she seeks to claim. In **Yehans International Ltd v Martey Tsuru Family & Anor**(2018) 127 GMJ 212-239, Adinyirah JSC stated that that in every action for declaration of title to land, a party claiming title must be able

*'... to prove: i) his root of title, ii) mode of acquisition and iii) various acts of possession exercised over the disputed land...this can be proved either by traditional evidence or by overt acts of ownership in respect of the land in dispute. A party who relies on a derivatory title must prove the title of his grantor, Awuku v Tetteh [2011] 1 SCGLR 366. Further, to prove ownership through possession, the possession must be long, peaceful and uninterrupted. See the case of Akoto v Kavege [1984-86] 2 GLR 365'*

There is no evidence whatsoever that the plaintiff or her late father had ever been in possession of the land in dispute. During cross-examination of the plaintiff's lawful attorney by the counsel for the 1<sup>st</sup> defendant, the following question and answer session took place on the 26<sup>th</sup> of March 2019.

*"Q: So as at 2015 when the plaintiff and her family contacted the 1<sup>st</sup> defendant on the land, the 1<sup>st</sup> defendant had been in possession of the land for over 17 years and developed same.*



*A: I don't know about that.*

*Q: You live at Osu. Is that correct?*

*A: That is where I come from but I do not live there.*

*Q: But the plaintiff lives at Osu.*

*A: Yes my lord.*

*Q: Can you tell the court from 1951 to date, any activity the plaintiff ever conducted on the land?*

*A: My lord, the subject matter belongs to our grandfather and we know the land is there. We had done nothing on the land.*

*Q: I suggest to you that till the year 2015, the plaintiff and her family had no idea that the late Dr, Annan had ever had interest in the land in 1950 before same was acquired in 1951 by the State.*

*A: That is not correct. He acquired the land from the Abafum quarter of La and there are documents to show his acquisition before he died."*

From this admission and from the evidence adduced by the plaintiff's lawful attorney, no acts of possession was ever done by the plaintiff's late father after he was 'gifted' the land in dispute in 1950. Neither the plaintiff nor her late father had from 1950 exercised any rights of possession over the land or had ever even been in occupation of it so it would be rather late in the day for her to appear before this court brandishing a deed of gift for land which has been compulsorily acquired by the State. And considering that the 1<sup>st</sup> defendant was assigned the land by the Lands Commission in 1999 with a land title certificate having been obtained by them after the requisite publication in the media (as per exhibit 5 series) it was rather late in the day, some 16 years later for the plaintiff to come claiming ownership of land which belongs to the

State. From the evidence on record the 1<sup>st</sup> defendant commenced building on the land in 2002 which was halted by the AMA for a period of time due to zoning issues. Likewise Salatiel Torgbor acquired his interest in 1966 and from the evidence adduced in suit no. L 491/2001, the land he acquired from the government had been a vacant land being used as a public refuse dump which he had come across during his days as a sanitary inspector. Likewise the defendants in that suit traced their root of title to the Abafum stool through one Elizabeth Glover. From the description of the plaintiff's land, this Elizabeth Glover had shared boundary on the South with the plaintiff's land therefore how could the plaintiff now even lay claim to the 2<sup>nd</sup> defendant's land when at the time of the alleged gift to the plaintiff's late father this Elizabeth Glover had been described as someone whose land abounded his? And per the evidence adduced in that suit, the government during the compulsory acquisition acknowledged the presence, title, claim or interest of 6 persons and compensation had been duly paid to the La Mantse on behalf of Abafum Quarter of La. This had been during the period when Nii Adjei Onano V had been the paramount chief.

It took 37 years after the demise of her father for the plaintiff to even apply for letters of administration in respect of the estate of her late father which she finally did in 2015. It also took her 16 years to make a claim for title to land she is not even sure of contrary to section 10 of the Limitations Act NRCD 54. It is also interesting that the plaintiff who lives in Osu which is a stone throw away from the land in dispute at Ako Adjei had since 1966 until 2015 not noticed the presence of Salatiel Torgbor or the 1<sup>st</sup> defendant on the land they each acquired from the State. As stated previously, what acts of possession had even been exercised by her or her late father during this period? They had neither been in possession nor occupied the land nor even at best walled it or even paid any ground rent for the land. This all points to the fact that in the view of this court, the plaintiff has not made out any case warranting a determination in her favour in any way.

In conclusion, Plaintiff is not entitled to any of her reliefs as the disputed land belongs to the state. Per the plaintiff's exhibit H, the remedy available to her is to make a claim for compensation from the State if any.

**LEGAL REPRESENTATIONS:**

**COUNSEL FOR PLAINTIFF:                   MR. FELIX OSEI H/B OF FELIX  
QUARTEY-PRESENT**

**COUNSEL FOR 1<sup>ST</sup> DEFENDANT:       MR. OPOKU AMPONSAH- ABSENT**

**COUNSEL FOR 2<sup>ND</sup> DEFENDANT:       MS. MAVIS SERWAH ASIEMOAH  
ABSENT**

**JENNIFER ANNE MYERS AHMED  
(MRS)  
JUSTICE OF THE HIGH COURT**