

THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE LAND COURT
SITTING IN ACCRA ON TUESDAY THE 20TH DAY OF DECEMBER
2022
BEFORE JUSTICE EMMANUEL AMO YARTEY (J)

SUIT NO. LD/0344/16

EBENEZER MANLY-SPAIN PLAINTIFF

VS.

IBRAHIM SIBIE & 2 ORS DEFENDANTS

PARTIES: ABSENT

J U D G M E N T

- 1.0 At the Application for Directions the parties joined issues as follows:
- (a) Whether or not the land in dispute belongs to the Plaintiff.
 - (b) Whether or not the Plaintiff's grantor after allocating the land to Plaintiff also allocated the same land to the 1st Defendant.

- (c) Whether or not the 1st Defendant acquired a valid title to Plaintiff's land to dispose of same to any other person.
- (d) Whether or not Land Title Certificate No. GA 47450 was properly obtained.
- (e) Whether or not 1st Defendant has acquired title to the land because it has reached the current stage of Development.
- (f) Whether or not committing Contempt of this Court and avoiding service of the Contempt of Court processes on 1st Defendant justifies the contribution of construction works carried on, on the land in dispute.

- 2.0 The facts of this case are that Plaintiff acquired a piece of land at East Legon, Accra through the instrumentality of his father Mr. Henry Manly-Spain from the Nikoitse We Family of La Klanaa in 2002.
- 3.0 According to the Plaintiff the Head of Family of the Nikoitse Family of La Klanaa, Ni Kotey Amli issued an indenture dated 24th June, 2002 to confer title to the land on Plaintiff.
- 4.0 Plaintiff took possession of the land and erected a sandcrete wall of approximately 5 feet thereon.
- 5.0 Plaintiff took steps to register the land and began the process for a Land Title Certificate. The Director of the Land Title Registration Division of the Lands Commission published Plaintiff's Application for a Land Title Certificate on the 30 April, 2015 Edition of the Ghanaian Times Newspaper and there has been no caveat on it.

- 6.0 On or about the second week of January, 2016 Defendants encroached on the land and began constructing a foundation for a building on the land. When accosted and queried about their presence on the land 1st Defendant replied that he had a Land Title Certificate on the land.
- 7.0 Plaintiff interfered with the on-going construction works on the land but Defendants were adamant and have continued to carry out their unlawful construction works thereon. Plaintiff therefore reported the matter to the Police at the Property Fraud Unit at the Police Headquarters.
- 8.0 It is the case of the Plaintiff that this action has been necessitated by the fact that in spite of the intervention of the Police, Defendants are continuing their construction works on the land.
- 9.0 Plaintiff therefore brought the instant action claiming against the Defendants jointly and severally the following reliefs:
- (a) An order declaring Plaintiff as the bona fide owner of the land.
 - (b) An order declaring Defendants as trespassers on the land.
 - (c) An order for recovery of possession of the land.
 - (d) Any further or other orders including an order for Perpetual Injunction restraining the Defendants their agents, privies, assigns, workers, servants howsoever or otherwise, whomsoever from interfering with the land in any way.

10.0 SCHEDULE

ALL THAT PIECE or PARCEL of land situate, lying and being at East Legon bounded on the North-West by a proposed road measuring 140.0 feet more or less on the North-East by Lessor's land measuring 100.0 feet more or less on the South-East by Lessors land measuring 100.0 feet more or less and on the South-East by Lessors land measuring 100.0 feet more or less and on the South-West by Lessor's land measuring 100.0 feet more or less containing an approximate area of 0.31 acre or 0.13 Hectares.

11.0 The 1st Defendant resisted Plaintiff's action by causing his lawyers to enter an appearance and also filed a defence.

12.0 Per his Statement of Defence the 1st Defendant pleaded:

- "1. Save as in hereinafter expressly admitted the Defendant denies each and every allegation of fact as if the same were set out in extensor and denied seriatim.
2. Save that the Plaintiff brings this action on his own behalf in respect of land situate and being at East Legon and described in the schedule 1st Defendant is not in a position to deny or admit paragraph 1 of the Statement of Claim.
3. 1st Defendant admits paragraphs 3 and 4 of the Statement of Claim.

4. 1st Defendant denies paragraph 5 of the Statement of Claim and say that the land on which he is could not have been sold to him or leased to him.
5. In further answer to paragraph 5 of the Statement of Claim Defendant says by a lease made on 20th August, 2000, between NII KOTEY AMLI KLANAA MANTSE of Accra and the 1st Defendant all that piece or parcel of land lying, situate and being at LA BAWLESHIE containing an approximate area of 0.29 acre or 0.12 hectare was leased to the 1st Defendant for a period of 50 years commencing 20th day of August, 2000 at a yearly rent of ₵600,000 per annum which land is more particularly described in the schedule hereto.
6. Pursuant to the said lease by the 1st Defendant took possession of the land and constructed two (2) single rooms there and put caretakers on the land and also constructed a wall around the land 1st Defendant also put up another building up to roofing level.
7. The 1st Defendant subsequently applied to the Land Title Registry to register the land document given to it by its lessors

which land was registered after publication in the papers and the land has a Land Title Certificate N0. GA 47450.

8. In answer to paragraph 6 of the Statement of Claim NII KOTÉY AMLI could not have given an indenture on the 24th day of June, 2002 to cover the 1st Defendant's land as the 1st Defendant had already been granted a lease over the land it occupies on the 20th day of August, 2000.
9. In further answer to paragraph 6 of the Statement of Claim 1st Defendant says that the land on which it is different from the alleged Plaintiff's land.
10. 1st Defendant denies paragraph 7 of the Statement of Claim and say that the Plaintiff has never constructed any wall or at all.
11. In further answer to paragraph 7 of the Statement of Claim 1st Defendant says that a neighbour Yaw Osei without its knowledge and consent put building materials on its land saying that it had no space on his land and when the 1st Defendant became aware, he asked the said neighbour to remove the said building materials and when he refused the 1st Defendant reported the neighbour to the East Legon Police.

12. In further answer to the said paragraph 7 the 1st Defendant says that the Plaintiff upon hearing that the 1st Defendant had reported the said neighbour came to the East Legon Police Station and claimed to have interest in the land and at the Police Station the Plaintiff threatened to demolish the 1st Defendant's wall it had constructed around its plot of land.
13. In further answer to paragraph 7 of the Statement of Claim the 1st Defendant says that true to his threats of demolishing the 1st Defendant demolished its wall and a report has been made to the East Legon Police who are looking to arrest the Plaintiff but has been dodging the Police.
14. 1st Defendant denies paragraph 8 of the Statement of Claim and says that it took a lease on the land its developing from NII KOTEY AMLI KLANAA MANTSE, with concurrent and consent of the principal elders of the Klanaa Quarter for a term of 50 years on the 20th day of August, 2000 and has registered the said land at the Land Title Certificate N0. GA 47450.
15. 1st Defendant denies paragraph 9 of the Statement of Claim save that he replied that he had Land Title Certificate in respect of the land on which it was working.

16. In further answer to paragraph 9 of the Statement of Claim 1st Defendant says that upon the lease to him for 50 years in 2000 it took possession of the land and constructed two (2) single rooms and put up its caretakers 1st Defendant put up another storey building up to roofing level on the land.
17. The 1st Defendant is continuing work on the land and has presently on the land 3000 bags of cement, stones, sand, blocks and iron rods.
18. In answer to paragraph 10 of the Statement of Claim as stated earlier the Plaintiff threatened to demolish the 1st Defendant's wall and which thread he carried out and a report was been made to the East Legon Police Station but the Plaintiff evading arrest.
- 19 In answer to paragraph 11 of the Statement of Claim at the Property Fraud Unit the parties were asked to produce their documents and the 1st Defendant was able to produce its land Title Certificate but the Plaintiff could produce no document. The Police therefore asked the 1st Defendant to continue with its work on the land.
19. In answer to paragraph 12 of the Statement of Claim the 1st Defendant says that it is rather the Plaintiff who is trying to use

force to take over 1st Defendant's land and the Court must stop him.

13.0 WHEREFORE the Defendant says that the Plaintiff is not entitled to its claim or at all

14.0 COUNTERCLAIM

1st Defendant repeats paragraph 1-20 of the Statement of Defence and Counterclaims as follows:

- a. A declaration that the 1st Defendant is a lessee of the land on which it is in possession for a period of 50 years from the KLANAA Quarter represented by NII KOTEY AMLI III, KLANAA MANTSE with the consent and concurrence of the principal elders of the said KLANAA QUARTER.
- b. Declaration that having leased the said land for a period of 50 years the said KLANAA QUARTER cannot deal with any other person in respect of land until after the expiration of 50 years while the 1st Defendant is paying the rent reserved and performing the covenants and conditions contained in the said lease.
- c. An order of perpetual injunction to restrain the Plaintiff by himself, assigns, workmen, servants, agents or otherwise howsoever from entering unto the land devised to the 1st

Defendant or in any other way to disturb the 1st Defendant interest and possession of the land.

15.0 On the 28th July, 2020 the Plaintiff filed his Reply same reads:

1. Plaintiff joins issue generally with the Defendant on his Defence.
2. Paragraph 5 is denied and in further reaction thereto Plaintiff states that the contents of the averments therein contained cannot be justified.
3. Paragraph 6 is denied and in further reaction thereto Plaintiff asserts that on taking possession of the land he constructed a small wooden structure for two (2) caretaker and left for the USA.
4. Plaintiff states further that on his return from USA he found that 1st Defendant had demolished the wooden structures thereon and had commenced construction works thereon, hence this suit
5. In further reaction to paragraph 6, Plaintiff states that the land belongs to him and therefore 1st Defendant whose job has been to forcibly take over people's vacant lands and

sell them to unsuspecting grantees made Plaintiff a victim of his diabolical plans.

6. Paragraph 7 represents one of the methods 1st Defendant uses to unjustly and unjustifiably deprive people of the lands in the belief that once one has a Land Title Certificate he automatically becomes an undisputed owner of the land in dispute.
7. In yet further reaction to paragraph 8, Plaintiff states that the Land Title Certificate N0. GA 47450 would be revoked because it was obtained by fraud.

16.0 PARTICULARS OF FRAUD

- (i) Knowingly and falsely registering Plaintiff's land in a name that does not belong to Plaintiff.
 - (ii) Falsely obtaining a Land Title Certificate in the name of another person when the land belongs to the Plaintiff.
8. In reaction to paragraph 8, Plaintiff states that any claim 1st Defendant makes about Nii Kotey Amlil giving him an indenture in 2000 is false because it is part of 1st

Defendant schemes to take a grantee's indenture with the connivance of officers of the Lands Commission of the same ilk and tampers with the documents to make them his own.

9. Paragraph 9 is denied.
10. Paragraph 10 is denied and in further reaction thereto Plaintiff states that 1st Defendant will be put to strict proof of the averments therein contained.
11. Plaintiff states that paragraph 11 is of no relevance to this case.
12. Paragraphs 12, 13 and 18 are denied and in further reaction thereto Plaintiff will put 1st Defendant to strict proof of the averments therein contained.
13. Plaintiff denies paragraphs 14, 15 and 16 and states in further reaction thereto that 1st Defendant is in the habit of conniving with some faceless persons in the Lands Commission and all they do is use already registered title documents and tampers with the documents by scanning the signatures of grantors to create new documents with fake particulars for their benefit and quickly sell the lands so treated to unsuspecting grantees as has been done in this case.

14. Plaintiff reacts to paragraph 17 and states that 1st Defendant sells his "stolen" lands to persons who are ready to build and this scheme is one of such examples to deprive land owners of their lands.
15. Paragraph 19 is denied and Plaintiff states in further reaction thereto that he has never met 1st Defendant who has evaded been served with any process including the processes Tor contempt of court which he committed by continuing with the construction works on the land during the pendency of this case before this Court.
16. Plaintiff states in reply to paragraph 20 that he is waiting for 1st Defendant to show up in Court and to accept responsibility for the fraud committed in respect of documents on the case in Court.
17. Plaintiff states further that 1st Defendant's Statement of Defence contains no defence or at all.

17.0 REPLY TO COUNTER-CLAIM

18. Plaintiff repeats paragraphs 1 - 17 of his Reply and states in defence of the 1st Defendant's Counter-Claim that:
 - (i) 1st Defendant is a fraudster in land acquisition matters and managed to lays hands on Plaintiffs documents in the Lands Commission and has scanned the signature of

Plaintiff's grantor to create a fraudulent indenture for himself.

(ii) 1st Defendant is not entitled to any of the reliefs in his Counter-claim.

18.0 In the case under consideration the case of the Plaintiff was articulated by his Attorney, one Henry Manly-Spain.

19.0 Per his Witness State ment he testified as follows:

I, HENRY MANLY-SPAIN of East Legon Accra, in the Greater Accra Region of the Republic of Ghana having the Power of Attorney of the Plaintiff herein, make this Witness Statement and say as follows:

1. Plaintiff is my son who lives in the United States of America where he was born and bred.
2. In or about 2002, Plaintiff instructed me that he will be interested in acquiring land in Ghana
3. I went to see Nii Kotey Amli III who was then a Mantse in La, who allocated a plot of land at East Legon to me. I attach my indenture and mark it as **Exhibit "A"**.
4. The Family of Nii Kotey Amli III the Klanaa Quarter are the owners of the land at East Legon.
5. After I was given the land which is near the A&C Mall, I put a caretaker on the land, who lived in a wooden structure on the land with his Family.

6. I also walled the land as it was positioned between two other plots and proceeded to register the land at the Lands Commission.
7. I have paid ground rent to the Klanaa Quarter of the La Stool from 2002 till now. I attach my receipts for ground rent payments and mark them as **Exhibit "B"** and **"B1"**.
8. There was quite enjoyment in occupation of the land I purchased from 2002 until 2016 when I was informed that my caretakers were being evicted from the land by unidentified persons.
9. I quickly went there and saw that the caretaker had indeed fled and his personal belongings scattered all over the land. All attempts to get him have proved unsuccessful.
10. I tried to find out who had come unto the land but I did not get any information from those around and I proceeded to report the matter to the Police.
11. The Police accompanied me to the site but there was still no sign of those who had interfered with my property. The Police then informed me to alert them when the disturbance on the land occurred again.
12. A few weeks after, I got informed that there was activity on the land and someone was depositing sand and stone on the land.

13. I went there and saw the sand and the stone but saw no one.
14. I decided I would frequently visit the land in the hope that I will meet a person to find out who the trespasser is.
15. I reported the matter to the Police and they came onto the land with me and this time there were workers on the land, who the Police rounded up and brought to the Station.
16. The workmen then mentioned the Defendant as their employer and the owner.
17. The Defendant was invited by the Police to come to the Station to explain.
18. Defendant came to the Police Station and stated that the land was his and that if I had a problem I was at liberty to take him to Court.
19. In 2002 when I got the land, and my Indenture signed by Nii Kotey Amli, I submitted the documents to the Lands Commission for the registration process.
20. I also caused a publication to be done in the National Daily Newspaper. I attach the newspaper and mark as **Exhibit "C"**
21. There was no contest to the title to the land and I was not informed by the Lands Commission that it was owned by any other person.

22. After a while when I was not getting any feedback from the Lands Commission, I made an enquiry and was told that my documents had been taken for certification and will be ready soon.
23. I was still not getting any feedback on progress and upon continuous enquiry the Lands Commission informed me that around that same period, that I was in the process of registering my land, the same land had been registered for the Defendants.
24. This information was horrifying to me as I had been in possession of this land for 14 years and even published it with no interference or contest.
25. I also believe that even if my documents did not exist and I was a mere squatter, I had definitely acquired rights after being on the land for this long.
26. The Defendants, who suddenly appeared, had not exercised any occupation and control over the land for the 14 years that I was there, neither did he have any publications in his name.
27. I believe that the ease with which the Defendant suggested that I take him to Court if I say the land is mine showed that he knew that he was not the owner and will be challenged but was ready for it.
28. This information gave me a lot of disappointment in the registration system.
29. I continued to visit the land and tell the workmen that they should stop working but to no avail.

30. My Lawyer then issued a Writ and applied for an Injunction on the 22nd of March, 2016 which was granted. I attach the Application and the Order for Injunction and mark as **Exhibit "D" and "D1"**.
31. The Defendant continued to develop my land in spite of the Injunction I posted on the walls of his structure. (I attach a photograph of the posting on the structure and mark as **Exhibit "E"**.)
32. The Defendant continued to recklessly flout the Court Order and my Lawyer filed an Application for Contempt of Court and combed Accra with the Police to assist in serving him with the Contempt of Court process.
33. The Defendant cleverly evaded arrest and was never present on the land whenever the Police went to arrest him but somehow the illegal building on my land progressed.
34. I believe strongly that the Defendant used illegal means to acquire his land title documents which documents he believes gives him the right to unlawfully interfere with the property I bought for my son.
35. I feel very frustrated by events so far and believe that the Courts will restore my faith in the system.
36. My son would want to settle home in Ghana some day and would have liked to be building his house by now.
37. My son is unable to do so because the 1st Defendant has unlawfully taken over the land and has built on it.

38. I wish to state that I have not been indolent but have at all times since the 1st Defendant encroached, sought to stop him through the right means.

39. I believe that unless ordered by the Court the Defendant who has speedily built on my land, will not cease with the encroachment.

40. I humbly and pray that the Court grant me all my reliefs.

I, **Henry Manly-Spain** make this Statement voluntarily and confirm that the contents are true to the best of my knowledge”.

20.0 The 1st Defendant also testified as follows:

1. My name is **IBRAHIM SIBIE**.

I live at H/NO. D73 Dome Accra.

I am a businessman and the Managing Director of the Defendant Company.

2. I know the land, the subject matter of dispute. It is located at La Bawaleshie and it is all that piece or parcel of land in extent 0.19 hectares (0.47 of an area) more or less being Parcel N0. 7098, Block 8, Section 114 and is situate at La Bawaleshie Area.

3. By a lease dated the 20th day of August, 2000, made between NII KOTey AMLI III, Mantse of Klanaa Division with the consent and concurrence of his principal elders and the 1st Defendant the land in dispute was

leased to the 1st Defendant for period of 50 years commencing from the 20th day of August, 2000.

4. After the said lease the 1st Defendant took possession of the land immediately it was leased to it.
5. After the Defendant took possession of the land by putting corner pillars around the land it registered the lease at the Land Title Registry and was granted Land Certificate with Registration N0. 47450. I wish to tender the said Land Certificate marked as **Exhibit "1"**.
6. In further acts of possession the 1st Defendant put up two (2) rooms on the land and put caretakers on the land who are presently living on the land.
7. The Defendant also constructed a storey building up to roofing level on a portion of the land. I wish to tender a photocopy of the picture of the building marked as **Exhibit "2"**.
8. The Defendant in further possession of the land continued with construction on the land leased to it and had on the land 3000 cement, sand and stones, blocks and iron rods. I wish to tender photocopies of the pictures showing the building materials on the land marked as **Exhibit "3 series"**.
9. Plaintiff himself came to East Legon Police Station when he heard that the Defendant had reported a neighbour Yaw Osei who deposited building materials on the land and who failed to remove the said building materials on the land despite repeated demands.

10. At the Police Station the Plaintiff threatened to break down the Defendant's fence wall.
11. And through to his threat the Plaintiff and not his father who destroyed the Defendant's wall and a report has been made to the East Legon Police who are looking for the Plaintiff to arrest him but the Plaintiff is evading arrest.
12. The Plaintiff reported the matter to the Fraud Squad but when he was asked to produce his document on the land he could not produce any but the 1st Defendant was able to produce its Land Title Certificate and the Police asked him to continue with its work on the land.
13. I say that any document in respect of the land in dispute in the hands of the Plaintiff is a false document, made especially for this case.
14. The Plaintiff has no land for which he has sued and the Defendant is on the land legally.
15. Defendant denies paragraph 5 of the Statement of Claim and says that Plaintiff could not have been given a lease of the land the subject matter of dispute on the 24th day of June, 2000 by NII KOTey AMLI III, Mantse of Klanaa Division when the same NII KOTey AMLI III, Mantse of Klanaa Division with the consent and concurrence of his principal elders had leased the said land to the 1st Defendant for a period of 50 years Commencing 20th day of August, 2000. I wish to tender the said lease as **Exhibit "4"**.

16. Defendant denies paragraph 7 of the Statement of Claim and says that Plaintiff could not have taken possession of the land in 2002 when the Defendant had been on the land since 2000 and had put structures on the land and the Plaintiff never constructed any wall around the land it was the Defendant who constructed a wall which was demolished by the Plaintiff 1st Defendant says that he did not encroach on the land in 2016 as he had been lawfully on the land since 2000 and had put up an uncompleted storey building on the land and had constructed two separate single rooms where his caretakers were living.

21.0 18. The Defendant is therefore seeking the reliefs contained in its Statement of Defence and Counterclaim as follows: -

- a. A declaration that the Defendant is a lessee of the land on which it is in possession for a period of 50 years from KLANAA Quarters represented by NII KOTEY AMLI III, KLANAA MANTSE with the consent and concurrence of the principal elders of the said KLANAA QUARTER.
- b. Declaration that having leased the land for period of 50 years to the Defendant the said KLANAA Quarter cannot deal with any other person in respect of the land until after the expiration of 50 years while the Defendant is paying the rent reserved and performing the covenants and conditions continued in the said lease.

- c. An order of perpetual injunction to restrain the Plaintiff by himself assigns, workmen, servants, agents or otherwise howsoever from entering unto the land demised to the Defendant or in any other way to disturb the Defendant's interest and possession of the land".

22.0 A casual look at the 1st Defendant's Amended Statement of Defence and the case put forward by the 1st Defendant would reveal that the 1st Defendant in the instant case counterclaimed by virtue of the fact that he asserted that he is the owner in possession of the subject land. Since he the 1st Defendant counterclaimed for declaration of title to the disputed land, he also assumes burden of proof. See **MALM V. LUTTERODT [1963] 1 GLR** particularly Part 1 of holding 1 where the Supreme Court held:

"1) The Defendant in an action for declaration of title assumes a legal burden of proof only when he counterclaims for declaration of title in his favour."

23.0 In **MALM V. LUTTERODI** (supra) the Supreme Court speaking with one voice through Crabbe J.S.C. at pages 4 and 5 held:

"The Courts of this country have repeated *ad nauseum*, and it now common learning, that in an action for declaration of title, the onus of proof is upon the plaintiff to show clear title. The principles were stated clearly and forcefully by Webber C.J. in *Kodilinye v. Odu*, in these words:

"The onus lies on the plaintiff to satisfy the Court that he is entitled on the evidence brought by him to a declaration of title. The plaintiff in this case must rely on the strength of his own case and not on the weakness of the defendant's case. If this onus is not discharged, the weakness of the defendant's case will not help him and the proper judgment is for the defendant. Such a judgment decrees no title to the defendant, he not having sought the declaration. So if the whole evidence in the case be conflicting and somewhat confused, and there is little to choose between the rival traditional stories the plaintiff fails in the decree he seeks, and judgment must be entered for the defendant."

24.0 SEE also the case of OGBARMEY TETTEH V OGBARMEY-TETTEH [1992-93] G.B.R 86 at pages 136 to 137 where the Supreme Court speaking with one voice through Bamford Addo J.S.C. held:

"It is settled law that when the burden of proof is cast upon a plaintiff he must prove his case and win on the strength of the case presented, not on the weakness of the defendant's case, as established by *Kodilinye v Odu* (1935) 2 WACA 336. In the case of *Asare v Appau II* (1984-86) 1 GLR 599, 603 it was held that:

"The common run of land suits in our courts has as the plaintiff, a person who claims title to land, suing, as the defendant, a person in possession of the land. Such a defendant need not, and usually does not, seek any relief in the proceedings, being content with

things as they are ... [In] that event the plaintiff must rely on the strength of his case, i.e. prove his title and not rely on the weakness of his opponent's i.e. lack of title in the defendant; so that if the plaintiff failed to prove that he is entitled to have a declaration made of his title to the land, the action ought to be dismissed, leaving the defendant in possession of the land."

25.0 Thus, it is abundantly clear from the above holding in **Malm v. Lutterodt** that the 1st Defendant in the instant suit also assumes the same burden of proof.

26.0 It is salient to note that the Plaintiff discontinued his action against the 2nd and 3rd Defendants.

27.0 In the case under consideration the case of the Plaintiff was articulated by his Attorney, Henry Manly Spain.

28.0 In **SANTE-APPIAH V. AMPONSAH ALIAS MANSA [2009] SCGLR 90** at 94-95 the Supreme Court held at page 94 as follows:

"That power of attorney was fatally flawed for two reasons: First, it was provided in Act 549, S 1(2) that: "Where the instrument is signed by the donor of the power one witness shall be present and shall attest to the instrument."

29.0 It is patent on the power of attorney signed by the donor that no-one signed it as a witness. The Court of Appeal rightly rejected the argument of counsel for the plaintiff that the commissioner for oaths doubled as both the witness and the person before whom the power

was executed. There is no legal or statutory basis for that argument. It would be observed that the provision is couched in imperative terms. In so far as the power of attorney in question was not signed by any witness, it was not valid. Besides the instant power of attorney does not show on its face as having been issued from the UK to be used in Ghana [page 95] courts. The signature on it seems to have been covered by the Evidence Act, 1975 (NRCD 323), S 160(c). Having been locally produced, it did not have to be notarised."

30.0 Also in **FRIMPONG AND ANOR V ROME [2013] 58 GMJ 131 at 155** the Court of Appeal held:

"In the instant appeal, the power of attorney Exhibit A on page 120 of the record has not been attested to by any witness as required by statute. It is fatal to the Plaintiff's capacity to properly maintain the action in the trial court. It follows therefore from the position of the law expounded in the ASANTE - APPIAH vs. AMPONSAH case, (supra) that the trial court ought to have rejected Exhibit 'A as inadmissible."

31.0 It is of essence to note that though the said Henry Manly-Spain testified as an Attorney or the Plaintiff he failed to tender the Power of Attorney authorizing him to testify on behalf of the Plaintiff.

32.0 In the circumstance I hold that his testimony was not sanctioned by the Plaintiff for which reason I shall not put any weight on same.

33.0 This therefore leaves the testimony of the Plaintiff's only witness, PW1 against that of the 1st Defendant.

- 34.0 In prove of his claim to the disputed subject land, the 1st Defendant relied on **Exhibit 1**, a land certificate.
- 35.0 A look at Exhibit 1, the Land Certificate depicts it is coming from the Land Title Registry. The Land Certificate no doubt was procured under the Land Title Registration Law PNDCL 152 as repealed by the Land Act, Act 1086.
- 36.0 By Section 119 of the Land Act (Act 1086) the right of a registered proprietor of land acquired for valuable consideration shall be indefeasible.
- 37.0 An indefeasible title means a complete assurance to all adverse claims on mere production of the certificate.
- 38.0 Her Ladyship, Mrs. Georgina Wood in the case of **Amegshie v Okine [1992] 2 GLR, 319** held that the certificate raises a rebuttable presumption and not a conclusive presumption of the holder's title.
- 39.0 The certificate can therefore be challenged provided evidence is led in proof of its irregularity.
- 40.0 By Section 20 of the Evidence Act (NRCD 323) a rebuttable presumption imposes upon the party against whom it operates the burden of producing evidence and the burden of persuasion as to the non-existence of the presumed fact. The duty of producing evidence to question the validity of the certificate lies on the party challenging it.

41.0 The Supreme Court in the case of **Awuku v Tetteh [2011] 1 SCGLR @, 366** held:

“Even if the appellant has registered his document of title, the registration perse would not confer title on a person, what matters was the underlying facts. In the instant case the evidence showed that the title of the appellant was null and void and that state no amount of registration would save it and clothe it with validity”.

42.0 Anin Yeboah JSC put the issue to rest in the case of **Yawson v Mensah [2012] 38 MLRG 21** when he said *“a Land Title Certificate is prima facie evidence of title to property, its foundation or root must be shown to be in no doubt at all.”*

43.0 However in the case under consideration the Plaintiff contends the 1st Defendant fraudulently procured the land Certificate. Paragraphs 7 and 8 of the Reply read:

“7. In yet further reaction to paragraph 8, Plaintiff states that the Land Title Certificate N0. GA 47450 should be revoked because it was obtained by fraud.

44.0 PARTICULARS OF FRAUD

- (i) Knowingly and falsely registering Plaintiff’s land in a name that does not belong to Plaintiff.

- (ii) Falsely obtaining a Land Certificate in the name of another person when the land belongs to the Plaintiff.

8. *Plaintiff states that any claim 1st Defendant makes about Nii Kotey Amli giving him an indenture in 2000 is false because it is part of 1st Defendant's schemes to take a grantee's indenture with the connivance of officers of the Lands Commission of the same ilk and tempers with the documents to make them his own."*

45.0 The Supreme Court in the case of **Mass Project Ltd (No.2) v Standard Chartered Bank & Yoo Mart Ltd. (No.2) [2013/14] 1SCGLR 309** held:

"Fraud vitiates every conduct, an allegation of fraud if proven and sustained will wipe and sweep away everything in its trail as if the thing had never existed ...fraud was an extrinsic collateral act which vitiate the most solemn proceedings of Court of Justice."

46.0 In the case under consideration it is the duty of the Plaintiff to prove the alleged fraud.

47.0 In this regard PW1, testified that he is the son of the late Nii Kotey Amli III, the former Klanaa Mantse of La.

48.0 PW1 told the Court he is a principal elder of the La Klanaa Quarter and

has the authority of the family to testify in this case.

- 49.0 According to him he was the lawful Attorney of his late father during his lifetime, which made him privy to a lot of activities he carried out.
- 50.0 PW1, told the Court the subject land forms part of their family land and
- that the father granted same to the Plaintiff and not the 1st Defendant.
- 51.0 And that all such transactions were recorded.
- 52.0 He tendered **Exhibit F** and **F1** as copies of the said Record Book.
- 53.0 It is his testimony that the documents of the 1st Defendant were illegally acquired and there is no record of it in the records of the Klanaa Quarter.
- 54.0 Both Plaintiff and the 1st Defendant trace their root of title to the same grantor, the Klanaa Quarter.
- 55.0 Each claim the subject land was granted to him by one, Nii Kotey Amili. There is evidence before me that he is deceased.
- 56.0 This clearly shows that the evidence adduced by the parties against the deceased must seriously be scrutinized.
- 57.0 In this case the Plaintiff is alleging fraud against the 1st Defendant on grounds that he procured his Land Title fraudulently.

Fraud involves an illegality and is therefore a crime. It is a quasi-criminal offence. Fraud is the only criminal offence in our jurisdiction not defined by statute. As a crime, proof of it must be beyond

reasonable doubt. In **Fenuku v John Teve [2001-2002] SCGLR 985**, it was held;

"The law regarding proof of forgery or any allegation of a criminal act in a civil trial was governed by section 13 (1) of the Evidence Decree, 1975 NRCD 323) which provided that the burden of persuasion required proof beyond reasonable doubt"

- 58.0 The question is was **Exhibit 1**, the Land Certificate fraudulently procured.
- 59.0 It is very noteworthy that **Exhibit 1** was not issued on the blind side of the Plaintiff or the Klanaa Quarter.
- 60.0 I have taken judicial notice of the fact that before the issuance of Exhibit 1, the 1st Defendant would have applied for its issuance.
- 61.0 Before the issuance there would have been publication.
- 62.0 There is no evidence before me that the Klanaa Quarter or the Plaintiff raised any objection to the publication.
- 63.0 The Land Title Registry therefore proceeded to register the subject land in the name of the 1st Defendant.
- 64.0 The detailed account of the proceedings in **Exhibit 1** shows that all the steps required to be taken prior to issuing a land certificate were taken in this case.
- 65.0 Section 37 (1) of the Evidence Act was recently applied by the Supreme Court in **Justice Edward Boateng v Judicial Secretary and**

2 Ors Civil Appeal No. J6/3/2017. The legal maxim *Omnia praesumuntur regularis rutrum* which in English means that “*all official acts are presumed to be regular*” is applicable to the registration of the land by the Land Title Registry for the Plaintiff.

66.0 Counsel argued that the Defendants were not able to fault the process of registration of the land for the Plaintiff. And that the land was duly and lawfully registered for the Plaintiff and that the Plaintiff's title to it is also, by operation of law, indefeasible.

67.0 In the case of **Owusu and Others v Agyei and Others [1991] 2 GLR 493-517 holding 1a**, the Supreme Court held as follows:

“...the rule was that no principle of justice, convenience or logic should permit procedural law to encroach upon substantive rights. That statement of the law which was supported, inter alia, by the maxim “that which ought to have been done was presumed to have been done”, had been restated in the Evidence Decree, 1975 NRCD 323), S 37(1) under which it was presumed that official duty had been regularly performed...”

68.0 This clearly depicts that **Exhibit 1** was validly granted to the 1st Defendant.

69.0 However, PW1 contends the late father never granted the subject land to the 1st Defendant but rather the Plaintiff.

70.0 He tendered a Record Book of his family as **Exhibit J**. **Exhibit J** is not dated.

71.0 There is nothing on it showing that it is coming from the Klanaa family.

72.0 There is nothing on same depicting who authored it.

73.0 There is nothing to show that it covers the land in dispute.

74.0 I therefore take same as a self-serving document for which reason I shall not attach any weight to same.

75.0 Per my analysis as above discussed I hold that the Plaintiff failed to prove his claim for which reason I dismiss same accordingly.

76.0 In contrast I enter Judgment for the 1st Defendant per his Counterclaim since he was able to prove he is entitled to same.

Cost of GH¢10,000 against Plaintiff.

(SGD)

EMMANUEL AMO YARTEY (J)

COUNSEL: BRIGHT AKWETHEY FOR PLAINTIFF

**TETTEH JOSIAH FOR OPOKU ADJAYE FOR 1ST
DEFENDANT**