IN THE SUPERIOR COURT OF JUDICATURE

IN THE HIGH COURT OF JUSTICE HELD AT ASSIN FOSO ON TUESDAY THE 15TH DAY OF NOVEMBER, 2022 BEFORE HIS LORDSHIP JUSTICE JOHN BOSCO NABARESE

SUIT № E1/30/2019

NANA ESUMAN KWASAMA II -- PLAINTIFF
CHIEF OF KWASAMA STOOL
DENKYIRA FOSO

VERSUS

ENOCK OPOKU -- DEFENDANT

JUDGEMENT

The plaintiff sued the defendant in this Court claiming the following reliefs:

a. *A declaration that the cocoa farmlands of the Defendant situate, lying and being at a place called "One Pound" measuring approximately 120 acres square, which shares boundary with the cocoa farmlands of Opanyin Kramo in the South-West, Maame Adwoa Okra in the North, OPanyin Appiah Kubi's in the East are part and parcel of the Kwasama Stool lands.*
b. *An order directed at the Defendant to pay to the plaintiff an amount of GH₵ 54,000.00 being the total of one-third portion of all proceeds from the Defendant's*

farmland on abusa tenancy agreement at GH₵ 50.00 per acre of the Defendant's cocoa farm for the past 9 years.

c. *An order directed at the defendant to pay his one-third portion of all proceeds from his cocoa farmlands on the Kwasama Stool Lands per the abusa tenancy agreement to the plaintiff forthwith.*
d. *An order of perpetual injunction restraining the Defendant, his agents, servants, workers, assigns, privies and all those claiming through him from instigating other tenant farmers on Kwasama Stool Lands from paying their one-third portion of the abusa tenancy to the plaintiff.*
e. *Any order of costs including legal fees.*

In support of the reliefs being sought against the defendant, the plaintiff contended in his statement of claim that he is the gazetted chief of Kwasama Stool in the Central Region of the Republic of Ghana. According to him, his predecessor, Nana Antwi Kwasama II granted a portion of the Kwasama Stool lands to some persons, including the father of the defendant by name Opanyin Kwame Opoku, for the purpose of cocoa plantation farming on the basis of "Abusa Tenancy" agreement. The plaintiff said the said land measuring approximately 120 acres square, shares boundary with the cocoa farmlands of Opanyin Kramo in the South-West, Maame Adwoa Okra in the North and Opanyin Appiah Kubi in the East. The plaintiff maintained that as a result of the Abusa tenancy agreement, the tenant farmers on the Kwasama Stool lands were to pay one-third of the proceeds of their harvest of the cocoa farms to the custodian of the stool. He stated that the defendant's father complied with the terms of the tenancy agreement and paid the one-third of all proceeds from his cocoa plantation to his predecessor until the death of defendant's father.

The plaintiff pleaded that, after the death of defendant's father, Opanyin Kwame Opoku, the defendant inherited his father's cocoa farms on the Kwasama stool lands,

and was therefore bound by the tenancy agreement. The plaintiff said when he ascended the Kwasama stool in 2009, he invited all tenant farmers on Kwasama stool lands and reviewed the abusa tenancy agreement with them, for each tenant farmer to pay fifty Ghana Cedis (GH₵ 50.00) per acre of cocoa farmland owned by each farmer, effective from 1st January, 2010. The plaintiff however said the defendant failed or refused to honor the invitation to the review of the terms of abusa tenancy agreement. The plaintiff indicated that the defendant never paid the yearly amount per acre, and is now laying adverse claim to the land he inherited after the death of his father. The plaintiff stated that the defendant did not only refuse to pay the annual amount, but has gone ahead to instigate other tenant farmers through information centers in towns and villages, not to pay the annual amount to him as the custodian of Kwasama stool lands.

It is therefore the case of the plaintiff that the defendant will not pay his annual amount per acre, stop laying adverse claim to the land and also instigating other tenant farmers not to abide by the terms of the tenancy agreement unless the defendant is ordered by this Court. Hence this action.

In his statement of defence, the defendant asserted that his late father Opanyin Kwame Opoku was the one who first reduced the vacant virgin forest into his possession after a customary grant by Nana Boadu about 60 years ago, who was the chief of Kwasama. The defendant stated that his late father was in effective occupation, control and possession of the land in dispute without any hindrance or interference from anybody and never shared proceeds with the predecessors of the plaintiff until he passed away in 2012. The defendant denies that the land is measured 150 acres and shares boundary with Opanyin James, Appiah Kubi, Opanyin Kwadwo Anofi, Maame Akua Dufie, Opanyin Kwame Saahene and Kofi Nsiah. It is also the contention of the defendant that his deceased father was a customary freeholder and upon his death the same interest in the land devolved to him and his sibling but not as a tenant farmer. He also maintained

that his deceased father never shared the proceeds of his cocoa farm with any predecessor of the plaintiff on the basis of customary abusa. The defendant however indicated that as a customary freeholder, he is to render customary service to the stool but not to share the proceeds. It is the view of the defendant that the plaintiff has been harassing farmers and conducting illegal activities, which particulars he listed as follows:

(a) Collecting various sums of monies from farmers under the pretext of stool rent without issuing receipts to cover same.

(b) Collecting stool rent when he has not been mandated by the Office of the Administrator of Stool Lands to collect same.

(c) Refusing to account to the Office of the Administrator of Stool Lands and the Oman of monies collected by him; and

(d) Seizing of cocoa farms and farm produce.

The defendant stated that assuming he is to pay rent to the stool, it is the Office of the Administrator of Stool Lands which is mandated by law to collect rent accruing from stool land, but not the plaintiff. The defendant pleaded that the plaintiff has no capacity to maintain the present action. He also pleaded the Statute of Limitation as well, having been in possession of the land for about 60 years. As such, the defendant said the plaintiff is not entitled to the reliefs he is seeking from this court.

The plaintiff's reply to the defendant's statement of defence is to the effect that the defendant's father is not a member of the plaintiff's royal family nor a subject of the stool and therefore cannot be granted a customary freehold interest in Kwasama stool lands. He said that all farmers including the defendant's father on Kwasama stool lands are tenant farmers and the land was let out to them on abusa tenancy basis; and that the occupation, possession and control of the farm land by the defendant's father was

subject to the recognition of the plaintiff's stool as the allodial owners of Kwasama stool lands and adherence to the terms of the grant. He maintained that the defendant's father, who was not granted customary freehold interest in the land, but was a tenant farmer on abusa tenancy basis did pay one-third portion of the farm proceeds to the chief of Kwasama. The plaintiff denied acting illegally and all the particulars of illegality and said he acted within the confines of the law as landlord and allodial owner of Kwasama stool land when he demanded that all tenant farmers continue with their obligations to pay one-third portion of their farm produce to the Kwasama stool.

The following issues were set down for determination when pleadings closed:

a. ***Whether or not the defendant's father acquired a customary freehold interest in the disputed land or the land was granted to him on abusa tenancy basis by the plaintiff's predecessor.***
b. ***Whether or not the plaintiff has capacity to maintain the present action.***
c. ***Whether or not the plaintiff has committed any illegalities as alleged by the defendant.***
d. ***Whether or not the plaintiff is entitled to his claims.***
e. ***Any other issues arising out of the pleadings.***

On the basis of the pleadings, it is discerning, that the main issue for the consideration of this court is whether or not the defendant's deceased father was granted a customary freehold interest in the disputed land, or that the transaction between the defendant's father and the plaintiff's predecessor was that of abusa tenancy.

I shall however quickly deal with the minor issues, from my point of view raised in the pleadings before proceeding to consider the main issue as noted above.

One of the issues raised by the defendant was that the plaintiff lacks the requisite capacity to institute this action. The defendant made this lame assertion without any evidence to buttress it. Indeed, the same assertion was repeated in his evidence in chief. The defendant however, admitted that the plaintiff is the gazetted chief of the Kwasama Stool in the Central Region, and even went ahead to adduce evidence that the plaintiff was enstooled in 2010, though per Exhibit "A" the enstoolment of the plaintiff took place on 28th December, 2009, after the death of his predecessor in 1996. He also admitted that Kwasama Stool lands comprises lands at Denkyira Foso, Assema Camp, Sima Wonoo, Nsiakrom, One Pound and other villages. Under article 295 (1) of the 1992 Constitution, the interpretation section defines stool land thus:

> *"Stool land includes any land or interest in or right over, any land controlled by a stool or skin, the head of particular community or the captain of a company, for the benefit of the subjects of that stool or the members of that community or company."*

It is a principle of law in civil litigation that where an adversary has admitted a fact advantageous to the cause of a party, the party does not need any better evidence to establish that fact than by relying on such admission, which is an example of estoppel by conduct.

See: In re ASERE STOOL; NIKOI OLAI AMONTIA IV (SUBSTITUTED BY TAFO AMON II) V. AKOTIA OWORSIKA III (SUBSTITUTED BY) LARYEA AYIKU III [2005-2006] SCGLR 637

In the instant case, the defendant having admitted that the plaintiff is the chief of Kwasama and the disputed land is part of Kwasama stool lands, and in accordance with

one of the tenets of Order 4 rule 9 (1) of the High Court (Civil Procedure) Rules, 2004, (C.I 47), the proper person to represent a stool in litigation is the occupant of the stool. The broad provision of Order 4 rule 9 (1) of C.I 47 is as follows:

> *"The occupant of a stool or skin or, where the stool or skin is vacant, the regent or caretaker of that stool or skin may sue and be sued on behalf of or as representing the stool."*

Being the occupant of the Kwasama stool, the plaintiff therefore is clothed with capacity to sue the defendant on behalf of or as representing the Kwasama stool. Thus, from the foregoing, as at the date of the issuance of the writ of summons herein, the plaintiff did possess the requisite capacity in which he claims to have issued the writ. He provided sufficient evidence to substantiate that fact. On that basis, that claim by the defendant is hereby dismissed.

Another issue raised in his pleadings, but which was unsubstantiated by the defendant in his evidence was that his predecessor in title had been in possession of the land in dispute for about 60 years and as a result the plaintiff is estopped from challenging his title to the land in dispute. The defendant sought to rely on the Limitation Act, 1972, (NRCD 54), without specifying which particular section he sought to rely on in the Act.

For the purposes of argument, it may be said that the defendant is relying on section 10 (1) and (6) of the Limitation Act, 1972, (NRCD 54).

Sections 10 (1) and (6) of NRCD 54 provide:

> *"10 (1) No action shall be brought to recover any land after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to some person through whom he claims, to that person.*
>
> *(6) On the expiration of the period fixed by this Decree, for any person to bring an action to recover land, the title of that person to the land shall be extinguished."*

I am at a loss as to the reason behind the defendant's pleading of the Limitation Act, NRCD 54. Is the defendant saying that his late father was a squatter and his initial entry on the Kwasama stool land was by way of trespass or adverse possession, and by the length of time, of about 60 years, that his late father had been on the land as he claims, the Limitation Act had confirmed his title to the land, and thus ousted or extinguished the original owner's right, being the Kwasama stool? When asked under cross-examination by counsel for the plaintiff that the defendant's father was not a customary freeholder of the land, the defendant answered as follows:

> *"A: There are terms attached to the grant of the land. Nana Boadi the then chief of Kwasama stool lands granted the land to my father to cultivate and he was to pay annual tribute on it. This was in the 1960s…"*

Learned counsel for the plaintiff also suggested to the defendant in cross-examination that his late father was a tenant farmer on Kwasama stool lands, and this was the defendant's answer;

"A: I agree. He was paying the annual tribute to the Kwasama stool lands but it was not on terms of Abusa tenancy agreement. He was paying annually based on the directives of the Administrator of stool lands and when payment is done we are issued with receipts."

There is no doubt that the receipts mentioned in the defendant's answer are some of those he tendered in Evidence as Exhibits 1A, 1B, 1C, 1D and 1E. it is also worth noting that Exhibits 2 and 3 talk about a review of annual rates of tributes dated 13th September, 1982, and collection of annual cocoa tributes, dated 20th September, 1982, respectively.

Based on the defendant's own evidence, and as long as the defendant's father remained a "loyal" abusa tenant of the Kwasama stool by paying his annual tribute to the stool, he continued to possess and occupy the land without any hindrance from any quarters until his death in 2012. That means that no time runs in that regard. It cannot therefore be the case that the Kwasama stool, on the evidence did nothing and allowed the defendant's late father to have possession of the land for 12 years and 60 years.

In ODONKOR & OTHERS V. BOTCHWAY [1991] 2 GLR 1, it was held that;

"the mere fact that a grantor does not collect tolls from the grantee for his land would not make the grantee an absolute owner of the land, if in fact that grant was only for possession."

It may turn out to be otherwise however, if the grantee exercises ownership rights adverse to the grantors rights for a long time without the grantor raising objection or taking steps to protect his rights.

See: 1. KLU V. KOFI KONADU APRAKU [2009] SCGLR 741

2. GIHOC REFRIGERATION & HOUSEHOLD PRODUCTS LTD (№ 1) V. HANNA ASSI (№ 1) [2005-2006] SCGLR 458

3. ADJETEY ADJEI & OTHERS V. NMAI BOI & OTHERS [2013-2014] 2 SCGLR 147

It is the case that the law provides under sub rule (2) of rule 8 of Order 11 of C.I 47 that:

> *"Without prejudice to sub rule (1), a defendant of an action for possession of immovable property shall plead specifically every grounds of defence on which the defendant relies, and a plea that the defendant is in possession of immovable property in person or by a tenant shall not be sufficient."*

In the instant case, it is clear on the pleadings that the plaintiff did not put in a claim for recovery of possession as part of his reliefs sought, for the defendant to specifically plead the Statute of Limitation as a defence or shield against the action. There being no claim for recovery of possession, the requirement of the Statute of Limitation is not applicable in this matter.

One other issue raised by the defendant is that it is the Office of the Administrator of Stool Lands which is mandated by law to collect rent accruing from stool land but not the plaintiff. The defendant was cross-examined on this issue and this was his response: The question was;

> *Q: I am further putting it to you that it was when a law was enacted providing for payments of other stool revenues to the then Stool Lands Division then your father paid*

the statutory fees being the tribute in addition to the Abusa proceeds he paid to the plaintiff's predecessor."

And the defendant answered as follows:

A: That is not true. When you pay the annual tribute you do not pay any other tribute to the Kwasama stool and after the death of Nana Boadi two chiefs succeeded the stool before the plaintiff and during their time we were not paying any Abusa proceeds to the stool.

There is clear evidence that no two chiefs succeeded Nana Boadi before the plaintiff.

What the defendant appears to be saying in his answer is that, once payment had been effected to the Administrator of Stool lands, no further obligation rests on a tenant farmer like him, to pay anything to the Kwasama stool, the allodial owner of Kwasama Stool Lands. In line with article 267 (2) of the 1992 Constitution; and as rightly referred to by counsel for the plaintiff, which provided for the establishment of the Office of the Administrator of Stool Lands, there has been an enactment for that office, being the Office of the Administrator of Stool Lands Act, 1994 (Act 481), and the provisions under section 2 of Act 481 are similar to those contained in article 267 (2) of the 1992 Constitution. The functions of the Office of the Administrator of Stool Lands under Section 2 of Act 481 are as follows;

"a) the establishment of a stool land account for each stool into which shall be paid rents, dues, royalties, revenue or other payments whether in the nature of income or capital from the stool lands;

b) the collection of all such rents, dues, royalties, revenues or other payments whether in the nature of income or capital and to account for them to beneficiaries specified in section 9 of this Act, and

c) the disbursement of such revenues as may be determined in accordance with section 9 of this Act."

Under section 9 or Act 481 it is stated that:

"9 The Administrator of Stool Lands and the Regional Lands Commission shall consult with the stools and other traditional authorities on matters relating to the administration and development of stool land and shall make available to them the relevant information and data."

Thus, following the review of a new rate of GH₵ 50.00 per acre on tenant farmers on Kwasama Stool Lands and the plaintiff subsequently being reported by the defendant to the Administrator of Stool Lands, Cape Coast, in the light of the provision of Section 9 or Act 481, the Administrator of Stool Lands, Cape Coast went to the Church of Pentecost, Asmah Camp, to explain issues to tenant farmers on Kwasama Stool Lands on 18th October, 2018. But unfortunately the said meeting was not successful because, according to the plaintiff the defendant organized some persons to disrupt the meeting.

In Exhibit "F", reference to which has been made to by counsel for the plaintiff, he quoted paragraph (3), of Exhibit "F", which statement gave a clear distinction between farm rents payable to the Office of the Administrator of Stool Lands and contractual obligations on the part of a tenant farmer. It states that;

"In the case of FARM RENTS, payments are made on the acreage basis after the Tenant/Settler Farmer has fulfilled the contractual obligations on Abunu/Abusa system to the stool landowner as an equity shareholder."

Thus, farm rents, known as "Nto" or Tributes are paid by tenant/settler farmers who have acquired farmlands based on customary tenancies, such as that of the defendant's late father and other persons stated in Exhibits "B", "C" series and "D", and ground

rents which are revenues yearly paid by owners of residential, commercial, industrial, agricultural and civic and cultural plots on leasehold basis, etc. It may have been as a result of the misunderstanding between the two systems of payment, tribute or "Nto" and ground rents that may have accounted for the meeting that was scheduled for the 18th October, 2018, for a resolution of the matter, which was disrupted by an organized group of the defendant, and therefore was unsuccessful.

What must be understood or noted is that the landowner being the Kwasama stool must be paid what is fair and right because it is the stool that granted the land to the defendant's predecessor and others, and the Office of the Administrator of Stool Lands must also mobilize stool land revenues for apportionment to the beneficiaries. If the plaintiff, in consultation with the Office of the Administrator of Stool Lands, Cape Coast and some tenant farmers, and has reviewed the contractual obligations under the abusa tenancy agreement with the Kwasama Stool to pay an amount of GH₵ 50.00, then I see no illegality has been occasioned by the plaintiff's conduct. There is no evidence adduced by any tenant farmer to suggest that the plaintiff embarked on any illegality by collecting various sums of monies from farmers or collecting stool rent and refusing to account to the Office of the Administrator of Stool Lands, or seizing their farms. On the evidence, the defendant has never paid any money to the plaintiff since he ascended the Kwasama Stool, for which he demanded a receipt and had not been issued with one.

"He who comes into equity must come with clean hands", so says the equitable maxim. The defendant who is a tenant farmer who has failed or refused to perform his contractual obligations, as was done by his late father, cannot be awarded for breaching the contractual agreement entered into by his late father. In that regard, that claim against the plaintiff is hereby dismissed.

This brings me to the issue of whether or not the defendant's late father was granted a customary freehold interest in the Kwasama stool land on abusa tenancy basis.

The Land Act, 2020 (Act 1036), section 7, states the various interests and rights in land under customary tenancy. It provides that:

> *"7. A customary tenancy*
>
> *(a) Is an interest in land which is credited by contract;*
>
> *(b) Arises where a stool or skin, or clan or family which holds the allodial title or a person who holds a customary law freehold or usufructuary interest enters into an agreement with another person to grant that other person an interest in land upon agreed terms and conditions; and*
>
> (c) *May involve the payment of rent, the sharing of the produce of a farm or the physical partition or severance of the farm or land."*

The defendant stated that his late father acquired a customary freehold interest in the Kwasama stool land by paying a sum of money being an amount of £ 36 as indicated in Exhibit "B". This assertion was however denied by the plaintiff, saying the defendant's father was on abusa tenancy agreement. The heading of Exhibit "B" is LAND ACQUISITION – KWASAMA (FIRST BAND OF TENANT FARMERS). Other farmers who formed the first band or batch of tenant farmers and paid various sums of money, which were even higher amounts than the defendant's father, included other five persons. Indeed, the evidence of DW2 only showed that his late uncle M.K Nsiah was one of those first band of tenant farmers who acquired land from the Kwasama stool. As to whether M.K Nsiah fulfilled his obligations under the contractual agreement is not an issue before me currently. But suffice it to say that in Exhibit "C" series, there is an indication that the defendant's father Kwame Poku hailed from Jachie in the Ashanti Region, which the defendant admitted in cross-examination. In Exhibit C series also, the

said Kwame Poku paid ₵12.00 as Annual Occupation rent in November 1969 to the Kwasama stool, and continued to abide by the terms of the tenancy agreement as the evidence portrayed, until his death.

In their book titled, **GHANA LAND LAW AND CONVEYANCING, 1995,** Anansesem publications, the two learned authors, B.J da Rocha and C.H. K Lodoh, both of blessed memory, explained at page 6 of their book that the customary freehold…"*is acquired by a person by reason of his being the subject of a stool or the member of a family or a clan. Such a subject of a stool or member of a family or clan has a customary right to freely use part of the stool's or family's land as is not occupied by another person."* The learned authors further stated clearly that the *"customary freehold (at page 10) arises wherever a subject of a stool or member of a family exercises his inherent customary right to occupy vacant stool or family land."*

On the evidence, the defendant's father was neither from Kwasama, a member of the royal family of the plaintiff nor a subject of the plaintiff's stool, that would have enabled him under customary law to have acquired a customary freehold interest in Kwasama stool land. The defendant's father, at best was a stranger who became a tenant farmer as admitted by the defendant in cross-examination, on Kwasama stool land and was paying annual tribute to the Kwasama stool.

The defendant having admitted that his late father was a tenant farmer and paid annual tribute to the Kwasama stool, cannot now deny that his late father paid the tribute on terms of Abusa tenancy agreement with the Kwasama stool.

At page 43 of their book, referred to supra, the learned authors discussed the nature and types of customary tenancies in Ghana. The types of customary tenancies relevant in this case are abusa and abunu tenancies. There are distinctive characteristics of the two forms of customary tenancy. With the abusa tenancy system, an owner of uncultivated

virgin forest land is granted to another person (usually a stranger) to cultivate and share the produce of the farm with the owner in the ratio of two-thirds (⅔) to tenant farmer and one third (⅓) to the landowner. It is the case that the tenant farmer clears and cultivates the virgin land allocated to him by his landlord for his beneficial use, at his own expense, in consideration of a third share of the produce of the land to the landlord.

See: AKOFI V. WIRESI & ANOTHER (1957) W.A.L.R 257

The abunu system, on the other hand is one under which a landowner either cultivates a farm on his own land and thereafter hands it over to another person to maintain or provides that other person with money and/or labour to cultivate the farm, where the proceeds of the farm are shared equally between the landowner and the tenant farmer, in either case.

There is no doubt that on the evidence, the activities of the defendant's father, Kwame Poku, fit squarely into the abusa tenancy system whereby he acquired a virgin land from the Kwasama Stool and, cultivated cocoa and fulfilled his obligations to the Kwasama stool in the ratio of two thirds to one third until his death. This was confirmed by the evidence of PW1, and PW2, who both testified that, as tenant farmers on portions of Kwasama stool land, they made annual payments to the Kwasama stool representing one third portion of their farm proceeds. In fact, PW1 who is said to be about 77 years old testified that, his father who hailed from Abonse, Akwapim, approached the plaintiff's predecessor for land to cultivate and he cultivated about 20 acres of cocoa on abusa tenancy basis. After the death of his father, he succeeded him and took over the management of the cocoa farms his father cultivated. PW2 also testified that his mother who hailed from Mafi-Kumasi in the Volta Region was also

granted about 7 acres of land to cultivate cocoa on abusa tenancy basis by the late Nana Antwi Kwasama Ababio a.k.a Nana Boadi.

It appears to me that the evidence is clear that each tenant farmer was to pay a specific amount annually representing the one third portion of the proceeds of the cocoa farm to the plaintiff's predecessor, and it is this amount that has been reviewed by the plaintiff to GH₵ 50.00 which the defendant has refused to pay, with the excuse that he is not the customary successor of his late father, though he manages the cocoa farm and continues to harvest the cocoa on the said farms. I am therefore convinced in my mind, that the defendant is an abusa tenant, just like PW1 and PW2, and this is very clear on the evidence. The evidence of DW1, the biological sister of the defendant leaves much to be desired. She denied that the defendant was the person who is managing the cocoa farms currently. She even testified that some portions of the cocoa farms were gifted to the three wives of their late father, Kwame Poku, which fact is not borne out of the pleadings, and the defendant never even mentioned such claim in his evidence.

In this regard, DW1's evidence will be taken with a pinch of salt, for it is not credible enough to be believed.

Now, as to whether the defendant is the customary successor of his late father or not is of little consequence. When the defendant was sued and served with the writ of summons by the plaintiff, the defendant never raised the issue of not being the appropriate person to be sued in his pleadings, not even did he mention such a thing in his evidence for consideration. What the defendant must be aware of is that he is known by the plaintiff and other tenant farmers, such as PW1 and PW2, to have succeeded his late father and he is managing or being the caretaker of the cocoa farms on Kwasama stool land, left behind by his late father. And by customary law, being the caretaker of the said cocoa farms, he is in occupation and possession of the land granted by the

Kwasama stool to his late father, and he is acquainted with its boundaries which he described in his pleadings. He is also responsible for harvesting the produce from the cocoa farms and realizing the proceeds thereof. Indeed, there is no evidence that the defendant accounts to anybody, apart from a lame assertion, which was denied anyway, that some other person he calls the customary successor, receives the proceeds from the cocoa farms, before he is given his share. Such piece of evidence is obviously untrue and lacks probative value for any consideration. It is hereby rejected.

On the totality of the evidence before me, since 2009 that the plaintiff ascended the Kwasama stool, the defendant, as an abusa tenant farmer on Kwasama stool land, having inherited cocoa farms from his late father as a tenant farmer (abusa tenancy), the defendant failed or refused to fulfill his contractual obligations to the plaintiff in line with the abusa tenancy agreement, as was being performed by the late Kwame Opoku.

What the defendant failed to realize it that, it is because his late father observed the original terms of the abusa tenancy arrangement that has enabled him to still be in occupation and possession of the cocoa farms till date, without any hindrance from the Kwasama stool. If the defendant and his agents, assigns, servants, and like-minded persons are proving recalcitrant or rebellious on Kwasama stool land, and trying to deny the allodial owner being the Kwasama stool from realizing the benefits of the grant, nothing stops the plaintiff from initiating steps to recover his stool land from the defendant and his cohorts.

Thus, I am of the conviction that, as required by sections 11 (1) (4), 12 and 14 of the Evidence Act, 1975, (NRCD 323), the plaintiff, on the "preponderance of the probabilities", has been able to produce sufficient evidence for a ruling to be made in his favour. The defendant, on the other hand has woefully failed to establish the requisite degree of doubt concerning a fact in issue in his entire defence. In the result,

judgment is entered for the plaintiff for his reliefs (a), (b), (c) and (d) on his amended writ of summons, with some variations regarding reliefs (b) and (c), which I consider to be similar in nature, save the specific amount being claimed in relief (b). Therefore the defendant is to pay the abusa tenancy proceeds of GH₵ 50.00 per acre discussed and agreed to between the plaintiff, some tenant farmers, and the Office of the Administrator of Stool Lands, Cape Coast, to the plaintiff with effect from January 2018, and "mutatis mutandis" same should apply to relief (c). I will also order that the defendant, his assigns, servants, workers etc are perpetually restrained from instigating anybody, including other abusa tenant farmers on Kwasama stool not to pay their one-third portion (share) of produce/proceeds to the plaintiff.

Finally learned counsel for the plaintiff, is urging me, under the authorities of HANNA ASSI (№ 2) V. GIHOC REFRIGERATION & HOUSEHOLD PRODUCTS LTD (№ 2) [2007-2008] SCGLR 16, and APEAGYEI GYAMFI V. BANDOH [2013-2015] 2 GLR, 344, to order the defendant to pay his farm rents (tributes, "Nto") to the Administrator of Stool Lands, Cape Coast.

In those authorities referred to supra, they stated clearly the sole object of pleadings, which is to give notice of one's case to the other party, so as to curb any surprise. It must be observed that during the course of the trial, the plaintiff's counsel brought an application for leave to amend his reliefs for the court to compel the defendant to pay all statutory annual farm tributes payable to the Office of the Administrator of Stool Lands as a tenant farmer from the years 2013 to 2022. This application was subsequently withdrawn. I am not too sure whether counsel for the plaintiff is also acting as the lawyer for the Office of the Administrator of Stool Lands to canvass this point on his behalf, having regard to the fact that the Office of the Administrator of Stool Lands is a Statutory body that can take or institute measures to claim any rents or monies owed it. I may be wrong anyway.

Be that as it may, upon perusing the said authorities, where there is a breach of a jurisdictional issue the ratio in those authorities is inapplicable, save for reliefs that are equitable and borne out of the evidence before the court. In any event, there is evidence on record that the defendant has also not paid any farm rent to the Office of the Administrator of Stool Lands since he took over the management of the cocoa farms of his late father after his death in 2012. I will accept the view of counsel for the plaintiff to some extent and postulate generally on this issue as follows;

> ***"Render therefore to Caesar the things that are Caesar's and to God the things that are God's."***
>
> ***(Matthew 22 verse 21, The Holy Bible, New King James Version).***

In other words, the defendant is obligated, as an abusa tenant, to abide by the terms of the abusa tenancy agreement with the plaintiff's stool, and at the same time pay his farm rents to the Office of the Administrator of Stool Lands, Cape Coast, as stated in Exhibit "F".

To conclude, it must be noted that the court has not got the benefit of a written address by counsel for the defendant, though the defendant and his counsel are much aware of the date they were to file their address.

It appears to me that the defendant has no written address to file, and as such it is only the written address of counsel for the plaintiff that has been considered in this judgment.

In sum, judgment is entered for the plaintiff for his reliefs as indicated supra. I will award costs of GH₵ 15,000.00 against the defendant.

(SGD)

JOHN BOSCO NABARESE

(JUSTICE OF THE HIGH COURT)

1. DAVID K. BREFO - FOR THE DEFENDANT
2. PHILIP YOUNG - FOR THE PLAINTIFF