IN THE HIGH COURT OF JUSTICE, GHANA LAND DIVISION (COURT 11), LAW COURT COMPLEX HELD IN ACCRA ON TUESDAY, THE 2ND DAY OF MAY, 2023 BEFORE HIS LORDSHIP JUSTICE AMOS WUNTAH WUNI

SUIT NO. LD/0413/2020

ABDUL RAHUF ... ... … PLAINTIFF/RESPONDENT

VRS

MICHAEL AMPONSAH ... ... … DEFENDANT/APPLICANT

RULING

This is an application filed by the Defendant/Applicant (hereafter referred to as the "Applicant") to strike out the Writ of Summons of the Plaintiff/Respondent (hereafter referred to as the "Respondent") for want of capacity. The material facts undergirding the application are as follows:

The Respondent instituted the instant action against the Applicant on 28th January 2020. Subsequently, the writ of summons was amended on 17th March 2021 with the Respondent seeking a declaration of title to a piece or parcel of land situate, lying and being at New Weija, Accra containing an approximate area of 0.16 acre (or 0.07 ha); Recovery of possession; Damages for trespass; Perpetual injunction; An order for the demolition of the Defendant's structures on the Plaintiff's land and Costs.

According to the Respondent, he acquired the said land from one James Kumah of Nii Boi Town, Accra on 11th September 2013. His grantor had earlier acquired the said land from Nii Boafo Danyina-Nse I, the Weija Dzasetse and Acting Weija Mantse on 25th April 2009.

Upon acquisition of the land (with the necessary documentation), the Respondent constructed a building on a portion of the land and put one Gifty Agyiri in occupation. Respondent then entrusted the building to his father Alhaji Fuba Abubakar of Tantra Hills Accra, to act as a caretaker and to ward off all trespassers.

The Respondent further avers that sometime in the year 2014, the Applicant started laying claim to the land thereby compelling Respondent's father to report the matter to the Accra Regional Police Command which invited the Applicant to assist with investigations.

It is instructive to state that the Applicant filed a defence and counterclaimed for: Declaration of title to the land in dispute; Recovery of possession; Perpetual injunction; Damages against the Respondent for trespass; Costs including legal fees and any other Order(s) that the Honourable Court may deem fit to make. Subsequently, on 16th May 2021, the Respondent filed a reply. Pleadings have closed; Directions have been taken and the parties have filed their Witness Statements and Pretrial Checklists.

On 30th November 2021, both parties, their agents, servants, privies and assigns were restrained from dealing or interfering with the land in dispute in any way until the final determination of the suit.

The Applicant subsequently filed the instant application to strike out the Respondent's writ of summons and statement of claim for lack of capacity to

commence the suit. The gravamen of the said application being that, the land in dispute is land previously acquired by the Government of Ghana; and as such, the Respondent lacks capacity to institute the instant action.

On 8th July 2022, the Respondent filed his affidavit in opposition deposing to the fact that he was in possession of the land in dispute and that he had been advised and believed same to be true that the issue of want of capacity cannot arise as he is in possession and his title holds good against any person who cannot show a better title.

Counsel for the Respondent contends that, the learned authors BJ da Rocha and CHK Lodoh have stated at page 97 of their **GHANA LAND LAW AND CONVEYANCING** (2nd Edition) that:

> *"Possession is of great importance in land law. The rule of the English common law, which has been assimilated into the common law of Ghana, is that possession by itself gives a good title to land against the whole world except someone having a better legal right to possession".*

The learned Counsel also refers to the following authorities to fortify his stance –

1. **WUTA-OFEI v. DANQUAH** [1961] GLR 487, where the Privy Council held *inter alia* that:

"... the Possession which the respondent sought to maintain was against the appellant who never had any title to the land. Hence the slightest amount of possession would be sufficient; since there was no evidence that the respondent ever abandoned her possession which she obtained by virtue of the 1939 grant, and the only reasonable inference from the evidence is of an intention to retain possession, she had satisfied the test and was entitled to maintain an action for trespass."

2. **MAJOLAGBE v. LARBI** [1959] GLR 190 at page 191, where the court held that:

"the plaintiff's proof of his mere possession of land is sufficient for him to maintain trespass against anyone who cannot show a better title".

3. **OSEI (substituted by) GILARD v. KORANG** [2013-2014] 1 SCGLR 221, where it was held that:

"Now in law, possession is nine points of the law and a plaintiff in possession has a good title against the whole world except one with a better title. It is the law that possession is prima facie evidence of the right to possession and it being good against the whole world except the true owner, he cannot be ousted from it".

4. **BRISTOW v. CORMICAN** (1878) 3 App Cas 641 at 657, where Lord Hatherley stated:

"There can be no doubt whether that mere possession is sufficient against a person invading that possession without himself having any title whatever – as a mere stranger; that is to say, it is sufficient against a wrongdoer. The slightest amount of possession would be sufficient to entitle the person who is so in possession or claims under those who have been or are in such possession, to recover as against a mere trespasser".

5. **TWIFO OIL PLANTATION PROJECT LIMITED v. AYISI AND OTHERS** [1982-83] GLR 881 (CA) where the Court held that:

(1) Possession in law meant two things: (a) effective physical control or occupation evidenced by some outward act sometimes called defacto possession or detention and was always a question of fact and (b) legal possession, i.e. possession recognised and protected by law and which was characterised by animus possidendi together with that amount of occupation or control of the entire subject matter of which it was practically capable and which was ordinarily sufficient for practical purposes to exclude strangers from interference.

6. **SERAPHIM v. AMUA-SAKYI** [1962] 1 GLR 328 where it was held that –

"it is a well-established principle of law that a person in possession of land can successfully maintain an action in trespass against the while world except the true owner. But possession in this context means effective possession. A person who enters upon land which is apparently already in possession of another person cannot be said to have that possession which in law entitled him to maintain an action in trespass."

The situation where both parties do not have a valid grant has also been discussed in the case of **AMATEI v. HAMMOND AND ANOTHER** [1981] GLR 300 where it was held as follows:

"As between the plaintiff and the defendant none of them had a valid grant of the disputed land and they both lacked title. But the plaintiff on the facts of the case was in actual physical occupation of the land against the intruding defendant. The plaintiff's protection should therefore be protected".

Finally, in the case of **MENSAH v. PENIANA** [1972] 1 GLR 337, it was held that:

"(1) Proof of possession by a plaintiff is sufficient to maintain an action for trespass against a defendant who cannot prove a better title. Therefore, a claim of absolute ownership by a defendant does not automatically put the plaintiff to proof of his title. He must however fail if the defendant is able to establish his title to ownership or that he went on the land with the permission of the real owner".

Counsel for the Respondent submits that, from the foregoing, the Applicant who had also counterclaimed for the same land having realised that he does not have a proper claim to the land had to resort to technicalities with a view to dislodging the Respondent from the land in dispute.

Whilst admitting that the land was originally acquired by the Government of Ghana on 7th October 1959 for a Government farm, the purpose for which the land was acquired had been defeated as the whole area is now developed. The respondent therefore prays that the motion be dismissed as being frivolous and vexatious for the suit to take its normal course.

On the contrary, it is the contention of the Applicant that the land in dispute belongs to the Government of Ghana, and therefore the Respondent, not being a member of Government nor an authorized agent of Government, lacks the requisite capacity to institute the action in respect of the subject land.

The learned Counsel for the Applicant submits that the issue of capacity is fundamental and goes to the root of every case. Consequently, where a person's capacity to initiate an action is put in issue, that person is required to establish his capacity by cogent evidence, else his suit will suffer an untimely demise.

The learned Counsel further submits that the formulation of the law was espoused by the then full bench of the Court of Appeal in **SARKODEE I v BOATENG II** [1977] 2 GLR 343 at 346 as follows:

> ***"it is now trite learning that where the capacity of a plaintiff or complainant or petitioner is put in issue, he must, if he is to succeed, first establish his capacity by the clearest evidence."***

Therefore, a party who intends to institute an action in a Court of Law, must ensure that his capacity to sue is present and valid at the time of the issuance of his writ of summons; else the writ will be deemed to be a nullity.

It is further submitted that, in **NAOS HOLDING INC v GHANA COMMERCIAL BANK** [2005-2006] SCGLR 407 the Supreme Court held that**:**

> ***"A person's capacity to sue, whether under a statute or rule of practice, must be found to be present and valid before the issuance of the writ of summons, else the writ will be declared a nullity."***

Therefore, when a Court is called upon to determine an issue or question of capacity, that Court is not permitted to concern itself with the merits of the substantive suit before it.

In **ASANTE-APPIAH v AMPONSA ALIAS MANSAH** [2009] SCGLR 90 the Supreme Court further held at page 95 of the report that:

> ***"where the capacity of a person to sue is challenged, he has to establish it before his case can be considered on its merits."***

Counsel for the Applicant therefore submits that, it is no answer to a challenge of one's capacity for one to claim or assert that one has a solid or cast-iron case against the party raising the issue of capacity. Counsel cited the case of **YORKWA v DUAH** [1992-93] GBR 217 where the Court of Appeal speaking through Brobbey JA (as he was then) held thus: ***"Where a person's capacity to initiate proceedings was in issue, it was no answer to give that person a hearing on the merits even if he has a cast-iron case."***

For one to be deemed to be clothed with capacity to initiate an action in respect of a piece or parcel of land, there must be a nexus between the party initiating the action and the land in question. Put differently, the party seeking to initiate the action in respect of the subject land must be able to demonstrate some sufficient interest in the said land for the party to be deemed to have acquired the requisite capacity to take an action in respect of the land.

This view of the law is supported by the Supreme Court in the case of **Sappor and others (substituted by) Atteh Sappor v. Sappor (substituted by) Ebenezer Tekpetey**

[2021] GHASC 10. In that case, Prof Mensah-Bonsu (Mrs) JSC speaking on behalf of the Court stated as follows:

> ***"one's ability to appear in court to make a claim hinges on whether one is recognized in law as having sufficient interest in any matter to seek a hearing on any particular issue. This "sufficient interest" must remain throughout the life of the case, or one's legal ability to stay connected with a case making its way through the courts would be lost".***

The Respondent in paragraph 3 of his Amended Statement of Claim avers that he acquired the land in dispute from one James Kuma of Nii Boi Town on 11th September 2013. He further alleges in paragraph 4 of his Amended Statement of Claim, that his grantor, James Kuma, also acquired the land in dispute from Nii Boafo Danyina-Nse I, the Weija Dzasetse and acting Weija Mantse on 25th April 2009.

However, **Exhibit MA 2** clearly shows that the land in dispute was acquired by the Government of Ghana under a Certificate of Title on 7th October, 1959. From **Exhibit MA 2** the land in dispute was acquired by the Government of Ghana fifty (50) years before the Respondent's grantor purportedly acquired same from the Weija Dzasetse (and acting Weija Mantse). This means that on 25th April 2009 when the Respondent's grantor purportedly acquired the land in dispute from the Weija Dzasetse, the said Weija Dzasetse had no interest whatsoever in the land in dispute to convey to the Respondent's grantor.

By operation of the *nemo dat quod non habet* principle**,** the Respondent's grantor acquired no title or interest whatsoever in the land in dispute when the Weija Dzasetse purportedly conveyed the said land to the Respondent's grantor. Consequently, the purported grant of the land in dispute by the Respondent's grantor, James Kuma, to the Respondent on 11th September 2013 was a nullity and passed no interest to the Respondent.

The Courts have in cases such as **BRUCE V QUAYNOR & OTHERS** [1959] GLR 292; **SASU v AMUA SAKYI** [1987-88] 2 GLR 227 and **SAANBAYE BASILDE KANGBEREE V ALHAJI SEIDU MOHAMED** (2012) JELR 66777 (SC) expounded on the nature and effect of the *nemo dat quod non habet* principle.

In **SAANBAYE BASILDE KANGBEREE V ALHAJI SEIDU MOHAMED**, the Supreme Court speaking through Dotse JSC stated as follows:

> ***"this principle of nemo dat quod non habet operates ruthlessly and by it an owner of land can only convey title that he owns at the material time of the conveyance…"***

It is therefore the case of the Applicant that the Respondent has no title or interest whatsoever in the land in dispute to clothe him with capacity to institute an action in respect of same. Per **Exhibits MA1 and MA2,** only the Government of Ghana or its duly authorized agent(s) can alienate (or convey) title in respect of the land in dispute. Accordingly, the proper person who can institute an action in respect of the subject land is the Government of Ghana or its duly authorized Agent(s). The Respondent has not shown and/or demonstrated that he is a member of the Government of Ghana or a duly authorized Agent of Government. The Respondent has also not shown and/or demonstrated that he acquired an interest or was granted title to the land in dispute by the Government of Ghana.

It is therefore the submission of the Applicant that the Respondent has no capacity whatsoever to institute this action. It is also submitted that because the Respondent has no capacity to commence this present suit, the proper parties to this suit are not before this Honourable Court.

The Applicant is fortified in this view by the Supreme Court decision of **ALFA MUSA v DR. FRANCIS ASANTE APPEAGYEI** (2018) JELR 92118 (SC) in which the Court held that:

> ***"If a suitor lacks capacity, it should be construed that the proper parties are not before the court for their rights to be determined."***

In the light of the foregoing, the Applicant humbly prays that the Court strikes out the Respondent's Writ of Summons for want of capacity.

From the consolidated Search of the Lands Commission captured in Exhibit MA2 attached to the supplementary affidavit in support of the instant application, the land in dispute is recorded at the –

- Public and Vested Land Management Division (PVLMD) of the Lands Commission as ***"State land acquired under Certificate of Title dated 07/10/1959 for Government Farms"***;

- Land Registration Division (LRD) of the Lands Commission as ***"Not affected by any Land Certificate"***; and

- Survey and Mapping Division (SMD) of the Lands Commission as ***"The parcel falls within a plotted activity for Government farms".***

It is therefore beyond dispute that the land in dispute is clearly public land and could not have been the subject matter of a grant to the parties by their grantors. Until a Certificate of Title held by the Government of Ghana is revoked, the Certificate of Title remains an impenetrable bulwark against any grants of the lands so acquired by all except the Lands Commission or its authorised agent(s).

Indeed, the Land Act, 2020 (Act 1036) contains extensive and far-reaching provisions on **UNLAWFUL OCCUPATION OR SALE OF PUBLIC LANDS** in Section 236 where it provides inter alia that:

> ***"236.*** *(1) Despite the provisions of the Limitation Act, 1972 (NRCD 54) and any other law, a person who unlawfully occupies public land does not acquire an interest in or right over that land by reason of the occupation.*
>
> *(2) A person shall not acquire by prescription or adverse possession an estate or interest in public land.*
>
> *(3) A person who unlawfully appropriates, sells or conveys public land commits an offence and is liable on summary conviction to ...*
>
> *(14) In this section, "appropriate agency" means the Lands Commission, a District Assembly of the area in which the land is situated, or an organ or agency of the State or a statutory public corporation in which the public land is vested and allocated."*

In the circumstances, this Court has no doubts whatsoever that the instant action is of no moment. Accordingly, the Writ of Summons and the Applicant's Counterclaim are dismissed for want of capacity as the land in dispute is Public Land.

(SGD.)

AMOS WUNTAH WUNI (J)

JUSTICE OF THE HIGH COURT

COUNSEL:

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