

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE
WINNEBA, HELD ON TUESDAY THE 7TH DAY OF MARCH, 2023, BEFORE HIS
LORDSHIP, JUSTICE ABOAGYE TANDO, HIGH COURT JUDGE.

SUIT NO. EI/079/2020

1. NANA KOFI ADUAH ---- PLAINTIFFS

2. MRS COMFORT ASSAN ADUAH

ALL OF UNNUMBERED HOUSE OPPOSITE

J.A BINNEY COMPANY LTD, TIPPER JUNCTION

GOMOAH FETTEH, CENTRAL REGION ...

VS

1. HON. MAVIS HAWA KOOMSON ---- DEFENDANTS

2. BEN ACQUAH

3. ELIZABETH ACQUAH

4. RANSFORD ACQUAH

ALL OF KASOA CENTRAL REGION

5. LANDS COMMISSION, CAPE COAST

J U D G M E N T

The Plaintiffs on the 26TH day of February, 2020 caused a Writ of Summons to be issued against the Defendants herein and claimed for the following reliefs:

- a. Declaration of the title to all the piece or parcel of lands situate, lying and being at Gomoa Fetteh Stool lands in the Gomoa District in the Central Region of the Republic of Ghana containing and appropriate area of 0.4 acres bounded on the North East by road measuring 89 feet on the bearing $066^{\circ}-51'$ on the South East by Lessor's land measuring 305 feet on bearing $155^{\circ}-22'$ on the South West by lessor's land measuring 85 feet on the bearing $245^{\circ}-16'$ on the North west by lessor's land measuring 308 feet on bearing $334^{\circ}-51'$ and a piece and parcel of land is more particularly delineated on the site plan attached hereto and thereon shewn edged pink.
- b. Recovery of possession of land describe in relief "a" above.
- c. Damages for trespass.
- d. Perpetual injunction restraining the 1st and 4th defendants, their agents, servants, assigns, privies or anybody claiming through them from further developing the disputed land or interfering in any way whatsoever with the plaintiff's land.
- e. An order of the court directed at the lands commission to expunge or delete the names of the 2nd and 3rd defendants from its records as the owners of the disputed land and replace same with the names of the plaintiffs.
- f. Order of court directed at the 1st defendant to demolish the offensive structures she has put on the land through the 4th or the plaintiffs demolish them at her expense.
- g. Cost including Lawyer fees.

I. THE CASE OF THE PLAINTIFFS

It is the case of the Plaintiffs that they are husband and wife. According to the Plaintiffs, the 1st Plaintiff is businessman dealing in wood products whilst the 2nd Plaintiff operates a “Chop Bar” with both of them operating their respective business on the disputed land.

The Plaintiffs further say that the 1st Defendant is the member of Parliament for the Awutu Senya East Constituency, Minister of state in charge of Government’s Special Development Initiative and a trespasser on their land. The Plaintiffs aver that, the 2nd, 3rd and 4th Defendants are the trespassers on their land. The Plaintiffs added that the 5th Defendant is the Central Regional branch of the statutory body that manages the states lands and keeps public records on lands within Ghana.

Plaintiffs say that they are the joint legal owners of the disputed land comprising two plots of lands measuring 0.48 acre located at Kasoa-Winneba road, opposite J.A Binney Company Ltd at a place popularly called Tipper Junction at Gomoa Fetteh in the Central Region described in the following schedule:

ALL PIECE AND PARCEL PF LAND situate, lying and being at Gomoa Fetteh Stool lands in the Gomoa District in the Central Region of the Republic of Ghana containing and appropriate area of 0.48 acres bounded on the North East by road measuring 89 feet on the bearing 066°- 51’ on the South East by Lessor’s land measuring 305 feet on bearing 155°-22’ on the South West by lessor’s land measuring 85 feet on the bearing 245°-16’ on the North west by lessor’s land measuring 308 feet on bearing 334°-51’ and a piece and parcel of land is more particularly delineated on the site plan attached hereto and thereon shewn edged pink.

The Plaintiffs aver that they became the owners of the land through a lease granted them in the year 2002 by the Gomoa Fetteh Stool acting through its chiefs Nana Abor Yamoah, the Twafohene of the Gomoa Akyempim Traditional Area the Chief of Gomoa Fetteh with the consent and concurrence of the principal elders of the stool.

The Plaintiffs further contends that after paying the necessary consideration their grantor gave them documents covering the land. The Plaintiffs state that they immediately entered the land and built two single rooms self-contained, two-bedroom self-contained house and a temporary structure for his building materials which has now been converted into a hencoop, among other structures.

The Plaintiffs say that, they further dumped two trips of sand, planted trees including oranges, coconut, mango and other fruits on the land and established shops in the frontage where they sell woods, tiles, set up a chop bar and rented some of the shops to members of the public who sell various kinds of wares.

According to the Plaintiffs, for the period of about 18years that they have been on the land no person or body of persons has ever disturbed their quiet enjoyment of the land with a rival claim of ownership of the land.

The Plaintiffs further contends that, somewhere in 2011 they took steps to register the disputed land in their name and before commencing the registration they decided to conduct a search at the lands commission which search confirmed that the land is not a state land and also not affected by any recorded transaction. The Plaintiffs say that officials of the commission then advised them to conduct another search using the area plan that the town and country Planning Department use and when the search was conducted based on the area plan, officials of the commission now told the plaintiffs to their shock and dismay that their land is affected by a grant for Nai Awushie Tetteh II, the chief of Odupong Ofaakor to Mr. Ben Acquah and Mrs. Elizabeth Acquah (the 2nd and 3rd Defendants respectively).

According to the Plaintiffs, they reported the matter to their grantor who denied having granted the disputed land to the 2nd and 3rd Defendants and requested their documents so that they could write a letter to the commission to instruct them to delete the names of the 2nd and 3rd Defendants and replace same with that of the Plaintiffs. This was after

their grantor, Nana Abor Yamoah, assured them that the Odupong Ofaakor Stool has no interest whatsoever in the Plaintiffs' land and therefore the Plaintiff should ignore the 2nd and 3rd Defendants and continue to occupy their land.

The Plaintiffs say that, while waiting to receive their letter and indentures back from the Chief, the Chief's brother who was in possession of the documents died and they could not trace the documents again till 2018 when a member of the palace found them and brought them to the Plaintiffs.

According to the Plaintiffs, around July 2019, that is about 17 years since they first occupied the disputed land, the 1st Defendant came to lay claim to their land claiming to have purchased same from the 2nd and 3rd Defendants.

The Plaintiffs contends that, when they resisted the 1st Defendant claim to their land, the 1st Defendant decided to show them where power lies by using might and force to partition Plaintiffs land from the open space in front of the house with a fence wall in a manner that would have permanently prevented 1st Plaintiff from moving his car out of the compound.

The Plaintiffs say that the 1st Defendant appeared to want to deprive the Plaintiffs of the open space between Plaintiffs' house and Plaintiffs' shops in the frontage of the land. When the Defendants succeeded in taking possession of the area of the land and develop same, the 1st Defendant would be in the middle of the land and effectively cut of the Plaintiffs from their shops in the frontage of the land along the main road and block their access to and from their house.

Also, the Plaintiffs aver that, they were left with no option than to break the wall in front of their house in order to be able to come out of their house and return there. The Plaintiffs further contends that, the 1st Plaintiff then went to lodge a complaint at the

police about the trespassing acts of the 1st Defendant but the police ignored his complaint apparently out of fear of power and influence of the 1st Defendant.

The Plaintiffs say that the 4th Defendant, who at all material time is the agent of the 1st Defendant, later went to the police to lodge a complaint to the effect that the 1st Plaintiff has unlawfully demolished his fence wall. This time the police promptly arrested the 1st Plaintiff, detained him at the police station and subsequently prosecuted him before Kasoa Central District Court on a charge of unlawfully causing damage to 4th Defendant's property. The trial of the 1st plaintiff is ongoing.

The Plaintiffs say while the 1st Plaintiff is undergoing trial at the District Court, the 4th Defendant acting under the direct instructions of the 1st Defendants is determined to carry on with development activities on Plaintiffs' land. The 4th Defendant has continued to dump building materials on the land in apparent readiness to resume construction activities on the land and has been harassing the Plaintiffs and the family on the land.

The Plaintiffs further aver that, the 1st Defendant with all the resources, power and influence at her disposal appears determined to deprive the Plaintiffs of their land.

According to the Plaintiffs, the purported registration of the Plaintiffs' land by 2nd and 3rd Defendants in their names is fraudulent and particularized thus:

PARTICULARS OF FRAUD

- a. 2nd and 3rd Defendants were aware of the obvious physical occupation and possession of the disputed land by the Plaintiffs.
- b. 2nd and 3rd Defendants, despite being aware of the Plaintiff's interest in the disputed land as can be shown by their obvious physical occupation and possession of same, applied to the Lands Commission, using area plan instead of

a cadastral plan, to register the land in their names on the blind side of the Plaintiffs

- c. 2nd and 3rd Defendants by so doing have misrepresented to the lands commission that to them knowing very well that it does not belong to them but the Plaintiffs.
- d. 2nd and 3rd Defendants caused official at the lands commission to the believe and rely on their misrepresentation and or deception to register the land for them using area plan instead a cadastral plan when they knew that the land does not belong to them but rather belongs to the Plaintiffs.

Alternatively, officials of the Lands Commission registered the land for the 2nd and 3rd Defendants by mistake.

PARTICULARS OF MISTAKE

- a. Officials of the Lands Commission believing that the disputed land belongs to the 2nd and 3rd Defendants registered same in their names when disputed land does not belong to them but Plaintiffs.
- b. Officials use an area plan which does not affect the disputed land instead of using 2nd and 3rd Defendants' cadastral plan which would have shown that the 2nd and 3rd Defendants cadastral plan attached to their indenture does not affect Plaintiffs' land.

According to the Plaintiffs, the 1st to 4th Defendants have no interest at all in the disputed land and if they did have any at all, such interest or right to recover the land from the Plaintiffs is extinguished by the limitation Act considering that the Plaintiffs have been on the land for more than 17 years without challenging the Plaintiffs' occupation and possession of the land.

The Plaintiffs state further that 1st to 4th Defendants are estopped by laches, standing by, conduct and acquiescence from now laying claim to the Plaintiffs' land considering that they are aware or ought to have been aware of the Plaintiffs' presence on the land for about 17 years without challenging the Plaintiffs occupation and possession of the land.

According to the Plaintiffs, the Defendants would not stop trespassing on their land unless stopped by the Honourable court and the 5th Defendant would not on their own correct their mistake of registering the 2nd and 3rd Defendants land in their records correct as owners of the Plaintiffs' land without the court ordering them to do so.

II. THE CASE FOR THE DEFENDANTS

The 1st, 2nd, 3rd, 4th and 5th Defendants were all duly served with all the processes including the Writ, Statement of Claim and several hearing notices to enable them partake in all the proceedings yet they failed to file appearance neither did they file any defence to the suit.

Even though the 1st, 2nd 3rd and 4th Defendants filed a conditional appearance to the suit on the 23rd day of March 2020, they did not file any further process including defence to the suit.

In the case of **Republic v High Court (Human Rights Division) Accra Ex –Parte Akita [2010 SCGLR 374 and 384** the Supreme Court speaking through **Brobbey JSC** stated that "A person who has been given the opportunity to be heard but deliberately ignored that opportunity to satisfy his or her own decisions to boycott the proceedings of the court cannot later complain that he or she was not heard" (Emphasis mine).

ISSUES FOR TRIAL:

1. Whether or not the Plaintiffs have any title to the land in dispute.

2. Whether or not the 2rd and 3rd Defendants obtained the registration of their interest in the disputed land by Fraud or Mistake.

2. Whether or not the Limitation Act will avail the Plaintiffs

THE BURDEN OF PROOF IN A CIVIL ACTION

The law of proof in Ghana is regulated by the Evidence Act 1975 NRCD 323 and the common law established by sound legal opinions of the Superior Courts in Ghana and in other jurisdictions. The general position is captured in the principle 'who alleges must prove'. This position of the law has been affirmed by **Kpegah J. A.** (as he then was) in the case of **ZABRAMA VRS. SEGBEDZI (1991) 2 GLR 221 at 224** as follows:

".....a person who makes an averment or assertion, which is denied by his opponent, has the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of the burden".

This position is also provided under **Section 14 of the Evidence Act 1975 NRCD 323** which provides that;

"Except as otherwise provided by law, unless and until it is shifted, a party has the burden of persuasion as to each fact the existence or non – existence of which is essential to the claim or defence he is asserting".

Also, **Sections 10, 11, 12, and 14 of the Evidence Act 1975**, sets out the standard of proof in any civil discourse. Section **10 (1) and (2) of the EVIDENCE ACT, 1975**¹ defines the burden of persuasion thus:

- (1) *For the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.*
- (2) *The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.*

Also, **Section 11(1)(4) of NRCD 323** deals with the burden of producing evidence and defines same thus:

- (1) *For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.*
- (4) *In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.*

Again, **Section 12(1)(2) NRCD 323** provides for the Proof by a Preponderance of the Probabilities thus,

- (1) *Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.*

¹ (NRCD 323)

(2) *"Preponderance of the probabilities" means that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence.*

SEE ZABRAMA V. SEGBEDZI² and MAJOLAGBE V LARBI AND ORS³

THE EVIDENCE, THE ANALYSIS AND THE APPLICABLE LAW

The main issue for determination in this matter is whether or not the Plaintiff has any title to the land in dispute. The next issue to consider gleaned from pleading as filed is whether or not the 2nd and 3rd Defendants obtained the registration of their interest in the disputed land by Fraud or Mistake. The last but not the least issue is whether or not the Limitation Act will avail the Plaintiff.

I will examine the first two issues together and thereafter proceed to examine the third or last issue and make the appropriate determination.

In his evidence before this court, the 1st Plaintiff Nana Kofi Aduah speaking for and on behalf of the Plaintiffs narrated virtually all that they had said in their statement of claim. The 1st Plaintiff stated that he owns the land in dispute together with the 2nd Plaintiff having acquired two plots of land located at Kasoa-Winneba Road, Opposite J.A Binney Company Ltd at a place called Tipper Junction at Gomoa Fetteh in the Central Region properly described the land in the schedule stated in the writ of summons and the statement claim.

The 1st Plaintiff further stated that they became owners of the disputed land through a lease granted to them in the year 2002 by the Gomoa Fetteh Stool acting through its

² [1991] 2 GLR 223

³ [1959] GLR 190 – 195

chiefs Nana Abor Yamoah, the Twafohene of the Gomoa Akyempim Traditional Area the Chief of Gomoa Fetteh with the consent and concurrence of the principal elders of the stool. The 1st Plaintiff then tendered in evidence **Exhibit A** being the land documents covering the land.

According to the 1st Plaintiff they immediately entered the land and built on the same two single rooms self-contained, two-bedroom self-contained house and a temporary structure for his building materials which has now been converted into a hencoop, among other structures and tendered in evidence a photo depicting his house per **Exhibit B**. The 1st Plaintiff also tendered in evidence **Exhibit C and D** being the two trips of sands, planted trees, including oranges and other fruits and also established shops on the frontage where people sell woods, tiles, operating chop bars.

The 1st Plaintiff further stated that for the period of about 20 years that they have been on the land no person or body of persons have ever disturbed their quiet enjoyment of the land with a rival claim of ownership of the land.

The 1st Plaintiff also stated that somewhere in 2011, he and his wife took steps to register the disputed land in their name and before commencing the registration they decided to conduct a search at the Lands Commission. The search results confirmed that the land is not a state land and also not affected by any recorded transaction per **Exhibit E** a further search on the advice of the Lands Commission, using the area plan in use by the Town and Country Plan and shockingly officials of the commission now told the plaintiffs that their land is affected by a grant for Nai Awushie Tetteh II, the Chief of Odupong Ofaakor to Mr. Ben Acquah and Mrs. Elizabeth Acquah (the 2nd and 3rd Defendants respectively) and refused to register their land per Exhibits F, F1 and F2.

The 1st Plaintiff said they reported the matter to their grantors who denied having granted the disputed land to the 2nd and 3rd Defendants and requested for their documents so that they could write a letter to the Lands Commission to instruct them to

delete the names of the 2nd and 3rd Defendants and replace same with that of the Plaintiffs. This, according to the 1st Plaintiff, was after their grantor, Nana Abor Yamoah, assured them that Odupong Ofaakor Stool has no interest whatsoever in the Plaintiffs' land and therefore the Plaintiffs should ignore the 2nd and 3rd Defendants and continue to occupy their land.

The Plaintiffs said they then submitted their documents to the Chief of Gomoah Fetteh to assist him write the letter to the Lands Commission. While waiting to receive the letter and their indentures back from the Chief after writing the letter to the Lands Commission, the 1st Plaintiff said the Chief's brother who was in possession of the documents died and they could not trace the documents again until sometime in 2018 when a member of the palace found them and brought them back to them.

Sometime in July 2019, according to the 1st Plaintiff, about 17 years ago since they first acquired and occupied the disputed land, the 1st Defendant came to the land to lay claim to the undeveloped portion of the land along the highway claiming to have purchased it from the 2nd and 3rd Defendants herein but same was resisted. However, the 1st Defendant according to the 1st Plaintiff partitioned their house from the open space with a fence wall with force, preventing him from moving his car parked in the compound per **Exhibit G**. The 1st Plaintiff stated that they had no option than to demolish the fence wall erected by the 1st Defendant in order to enter to and from the house per **Exhibit H**. As a result, the 1st Plaintiff informed the court that the 1st Defendant reported them to the police per **Exhibits J, K** and his was promptly arrested even though his earlier complaint to the police about the trespassory conduct of the 1st Defendant was ignored. Also the conduct of the 1st Defendant including the demolished structures and the fence she erected are evidenced by **Exhibits L – Q**.

It is also the case of the Plaintiffs that if 1st to 4th defendants have any interest in the disputed land at all they are estopped by laches, standing by, conduct and acquiescence

from now laying claim to the Plaintiffs' land considering that they are aware or ought to have been aware of the Plaintiffs' presence on the land for about 20 years without challenging the plaintiffs' occupation and possession of the land.

Therefore the Plaintiffs are urging on the court to order the 5th Defendant (Lands Commission) to correct the mistake that made them register the disputed land in the name of the 2nd and 3rd Defendants with the Plaintiffs as owners.

In the case of **ASARE AND OTHERS v. APPAU II** [1984-86] 1 GLR 599-605

Court Appeal per ABBAN, OSEI-HWERE AND AMUA-SEKYI JJ.A. at holding 1 held;

“(1) the common run of land suits in the courts had, as the plaintiff, a person who claimed title to land, suing as the defendant, a person in possession of the land. Such a defendant needed not, and usually did not, seek any relief in the proceedings, being content with things as they were. In that event, the plaintiff must rely on the strength of his own 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 was 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”

See:

1. Edmund Danso v Moses Adjei [2013] 58 GMJ 71 @ 91 – 92

2. Kwabena v Atuahene [1981] GLR 136 CA

3. Nyikplorkpo v Agbodotor [1987 – 88] GLR 165

In the instant case before this court, the Plaintiffs, the Plaintiffs who bought the land on 8th May 2002 did not conduct any search to ascertain whether or not the land in dispute

indeed belongs to their grantor which grantor they even failed to produce in court and waited until 19th January 2011 before the search which search report revealed that the land in dispute has been registered in the name of the 2nd and 3rd Defendants by the 5th Defendant being the statutory body charged so to do per **Exhibit F 2** . **See also: Boateng v Dwinfour [1979] GLR 360 @ 366-337**

Indeed the 1st Plaintiff tendered in evidence an exhibit to the effect that a search report conduct in 2011 revealed that the land was not a state land nor affected by recorded transaction. Critically examining **Exhibit E**, **I find that** the Plan of Land or site plan attached to the search report, the size of land 0.48 seemed doctored to fall in line somehow with **Exhibit A** and paragraph six of the Plaintiffs statement of claim. This piece of finding was strengthened when the Plaintiffs' indenture **Exhibit A** had two plan of land , one with land size of 0.48 and the other 0.45 all belonging to the Plaintiffs and affecting the same land in dispute.

It is trite that for an action for declaration of land, the burden of proof remains on the Plaintiff to establish his case by the balance of the probabilities which includes the boundaries of his land and its identity, especially where trespass is in issue though not to the point of certainty.

SEE:

1. **JASS CO. LTD & ANOR v APPAU &ANOR [2009] SCGLR 265 AND 272 – 273**

In the instant case before this court, the identity of the land is in doubt **especially when 0.48 and 0.45 were noted in two site plan cited and one with erasures giving a clear indication that it was doctored.**

From the foregoing and the balance of the preponderance of the probabilities, I find that **Exhibit A and E** was a creation of the Plaintiffs with the intention to throw dust in the

eyes of this court to believe in the authenticity of **Exhibits A and E** when they knew that was not true. I further find that the Plaintiffs doctored **Exhibits A and E** with the sole of deceiving the court and to strengthen their case but were exposed by their own Exhibit with a document they were not smart enough to have removed.

Also the Plaintiffs failed to establish that their occupation is also be renting portions of the disputed land to business people. This is because the Plaintiffs could have tendered a rent agreement and electricity bills to indicate clearly that other such activities were ongoing on the disputed land.

The Plaintiffs therefore failed to establish issue one on the balanced of the preponderance of the probabilities

I will now proceed to determine the issue of whether or not the joint registration of the land in dispute by the 2nd and 3rd Defendants was by fraud..

In the case of the **STATE INSURANCE COMPANY LTD v IVORY FINANCE CO LTD & OTHERS** J4/48/2017 dated the 21st of February, 2018 (unreported and unedited), a matter that had travelled from the High Court through the Court of Appeal on an allegation of fraud dismissed by the High Court and affirmed by the Court of Appeal. The Supreme Court speaking through Anin Yeboah JSC (As he then was) now CJ stated at page 7 thus:

“In these proceedings, the plaintiff had expressly pleaded fraud with sufficient particulars which the defendants strongly denied which in our respectful opinion was treated lightly by the two lower courts. Fraud qua fraud is such a serious vitiating factor that in judicial proceedings care must be taken not to suppress it when legitimately raised in the course of any proceedings”.

See also the case of **NII OKWEI DOWUONA VI v UTC ESTATES GHANA LTD & Others suit No. H1/186/2020 unreported dated 26th November 2020 per WELBOURNE J. A. (PRESIDING), Agbevor J.A, Baffour J.A.**

In deed the Plaintiff rightly raised the issue of fraud but the question worth considering is whether or not the Plaintiff led sufficient evidence beyond reasonable doubt to establish same?

I have critically examined the evidence on record and found that short of the allegation, the Plaintiff failed to lead sufficient evidence to establish the criminal conduct leveled against the 2nd and 3rd Defendants. Granted without admitting that, there were errors or omissions in the application and registration process as alleged, that in itself is not sufficient to sustain an allegation of fraud if not proven beyond reasonable doubt.

In fact the fraud allegation did not pass the Mojolabge principle of proof neither was it anywhere beyond reasonable doubt. which I find as a fact and hold same. **SEE STATE INSURANCE COMPANY LTD v IVORY FINANCE CO LTD & OTHERS (supra) and also MOJOLAGBE VRS. LARBI (1959) GLR 190**

Also the Supreme Court speaking **Adinyira JSC** in the case of **OSEI ANSONG & PASSION AIR LTD v GHANA AIRPORT LTD J4/24/12 dated 23rd January, 2013** in a case when fraud was alleged stated that fraud is not fraud simply because it has been alleged. The pleadings as to fraud must demonstrate on its own the cause of action as the conduct of a Plaintiff or Defendant being fraudulent. **See also NII OKWEI DOWUONA VI v UTC ESTATES GHANA LTD & Others .**

It is trite that he who comes to equity must come with clean hands. However, the Plaintiffs did not come with clean hands when they doctored their Indenture Exhibit A in order to mislead the court to rule in their favour when they knew beyond reasonable

doubt that their indenture was not authentic. Fraud on the part of the Defendants was not proven and same will not avail the Plaintiffs.

From the foregoing, I find and hold that fraud as alleged by Plaintiffs against the Defendants was merely alleged without any legal basis, and so being mere or bare allegations will not avail the Plaintiff. **See T. K Serbeh & Co ltd v Mensah 2005 – 2006) SCGLR 347 @ 360 – 361.** I further find and hold that there was no evidence to show that the registration of the land in the name of the 2nd and 3rd Defendants was by mistake and same will not avail the Plaintiffs.

The third and final issue to determine is whether or not Section 10 of the Limitation Act will avail the Plaintiffs.

Also, **Section 10(1) of the Limitation Act, 1972** states;

(1) "A person shall not bring an action to recover a 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 a person through whom the first mentioned claims to that person."

Section 10 (7) of the Limitation Act also reads;

(7) "For the purpose of this section, "adverse possession" means possession of a person in whose favour the period of limitation can run".

The combined effect of sections **10(1) and 10(7)** is that the period of limitation runs in favour of the person in adverse possession. In the instance case before this court, the Plaintiffs clearly told the court that they bought the land from The Plaintiffs aver that they became the owners of the land through the Gomoa Fetteh Stool acting through its chiefs Nana Abor Yamoah, the Twafohene of the Gomoa Akyempim Traditional Area the Chief of Gomoa Fetteh with the consent and concurrence of the principal elders of the stool. From the foregoing, the manner the Plaintiffs entered the disputed land was not by adverse possession but by formal purchase.

Indeed adverse possession is devoid of formalities and same is only applicable after the limitation relief is grounded in favour of the person claiming same.

From the foregoing, I find and hold that there was no adverse possession in the alleged possession of the land in dispute for the Limitation Act to avail the Plaintiffs.

See:

1. Klu v Konadu Apraku [2009] SCGLR 741 @ 746 – 747

2. Djin v Musah Baako [2007- 2008] SC GLR 686

3. Ago Sai & Others v Kpobi Tetteh Tsuru III [2010] SCGLR 762 @ 772.

In the case of **BARIMA GYAMFI AND ANOTHER V AMA BADU**⁴ the Supreme per Sakodee- Addo, Ollennu and Blay JJ.S.C stated among others that:

“In a civil case, the decision must be upon the balance of probabilities established by preponderance of the evidence. Where the preponderance of the evidence is in favour of the plaintiff, a judge is fully justified in granting the plaintiff’s relief sought”

From the foregoing and in the instant case, the Plaintiffs failed to lead evidence on the balance of the preponderance of the probabilities to establish their claims.

Upon consideration the totality of the evidence adduced, the authorities cited, the applicable law the Plaintiffs failed to establish their case by the preponderance of probabilities neither could the Limitation Act avail them for want of adverse possession.

The action is accordingly dismissed.

⁴ (1963) 2GLR at 597

There will be no order as to cost as the defendant did not play any sufficient in the proceedings to warrant same.

(SGD)

JUSTICE ABOAGYE TANDOH

HIGH COURT JUDGE.

COUNSEL

ABDUL-AZIZ MOHAMMED ESQ, FOR THE PLAINTIFFS.

NO LEGAL REPRESENTATION FOR THE 1ST TO 4TH DEFENDANTS.