

IN THE HIGH COURT OF JUSTICE, HELD IN SOGAKOPE ON TUESDAY THE 21ST
DAY OF MARCH, 2023 BEFORE HER LADYSHIP JUSTICE DOREEN G. BOAKYE
AGYEI (MRS.) HIGH COURT JUDGE

SUIT NO: E13/76/2021

1. JOHN GAVEH-AHIABLE	}	PLAINTIFFS
2. WILLIAM KOFI ATROR(DECEASED)		
3. JUBILATE SENANU AHIABLE		
4. EDITH EYI AHIABLE		
5. WILLIAM AHIABLE		

VS

1. MAKAFUI SEGBAWU	}	DEFENDANTS
2. MOSES KOFI SEGBAWU		
3. MARY SEGBAWU		
4. SAMUEL KWABLA SEGBAWU		

PARTIES: PLAINTIFFS LAWFUL ATTORNEY PRESENT.
2ND DEFENDANT PRESENT AND REPRESENTS OTHERS.

COUNSEL:

MR. PAUL SELORM KPODOVIA, ESQ., HOLDING BRIEF FOR MODESTO KPODOVIA, ESQ., COUNSEL FOR DEFENDANTS	-	PRESENT
NO LEGAL REPRESENTATION FOR PLAINTIFFS		

JUDGMENT

INTRODUCTION

The Plaintiffs through their lawful Attorney instituted the present suit against the

Defendants on the 14th day of June, 2021. The Defendants accordingly entered Appearance to the suit on the 22nd day of June, 2021 and later filed their Statement of Defence and Counterclaim on 2nd day of July, 2021. Plaintiffs then filed a Reply to the Statement of Defence and Counterclaim on the 16th day of August, 2021 and further filed Application for Directions on the same date containing Nine (9) issues to be set down for trial and moved on the 2nd day of September, 2021.

By their Writ of Summons and Statement of Claim, the Plaintiffs sought against the Defendants the following reliefs:

- a. An order compelling the Defendants to render accounts of their renting of the two (2) stores no. B. 109, Anloga with its boundaries as clearly stated in paragraph 7 of the statement of claim which had been in possession of their late father E. W. K. Segbawu and thereafter to the Defendants for over seventy (70) good years now and to ascertain whether or not they have recovered the monies borrowed from Mr. E. W. K. Segbawu in settling U.A.C at the time or in the alternative;
- b. A declaration that the continued occupation and use of the Estate property of the Ahiable family by the Defendants and their tenants amount to intermeddling in the Estate and subject to sanction under the law.
- c. A declaration that the Defendants apart from the legal sanction for intermeddling in the Estate, the Defendants must account to the Plaintiffs for the rents collected for the said period referred to supra.
- d. An order on the Defendants and their Tenants or occupants, residing on the premises to vacate forthwith and handover vacant possession to the Plaintiffs for lawful occupation by the Plaintiffs and other members of the Ahiable family.
- e. Recovery of possession of the said stores complained of.

- f. An order of perpetual injunction against the Defendants, their agents, servants, workmen, successors, privies and assigns restraining them from having anything to do with the said land and stores thereon or any portion(s) thereof and particularly from continuing with their illegal and unlawful acts of thereon and from interfering with their ownership, possession, control, cultivation, development, enjoyment or alienation of the said piece of land or stores thereon or any portions thereof by the Plaintiffs and other members of the Ahiabile family, their agents, servants, workmen, successors, privies and assigns.

Defendants as part of their defence also counterclaimed against the Plaintiffs as follows;

- i. Declaration that all that piece and parcel of land with building thereon situate, lying and being at Anloga containing an approximate area of 0.048 Acre bounded on the North by the main road to Keta measuring 63 feet more or less on the south by Seho Doe's premises measuring 63 feet more or less on the East by Madam Mariam Kuboto's premises measuring 33 feet more or less on the West by Seho Doe's property measuring 33 feet more or less which said piece or parcel of land with building thereon bounded, known, described or distinguished and is delineated on the plan hereunder drawn and edged Red is the property of the late Egbert William Kwasi Segbawu.
- ii. Perpetual injunction to restrain the Plaintiffs, their agents, servants, workmen, assigns and all persons claiming through them.
- iii. Damages for trespass.
- iv. An order of possession.
- v. Cost including legal fees.
- vi. Further or any other relief(s) as this court may deem fit.

Per the records, Plaintiffs on the 16th day of August, 2021 filed Application for Directions where they raised **Nine (9) different issues to be set down for trial** which were as follows;

- a. Whether or not the land on which the stores were built by the U.A.C at Anloga originally belonged to the Agbowodzo Anyame?
- b. Whether or not the stores with registration no. B-109, Anloga is the property of Doh Seho Ahiable or Egbert W. K. Segbawu?
- c. Whether or not the U.A.C sold the stores or land to Egbert W. K. Segbawu during his life time?
- d. Whether or not Doh Seho Ahiable sought financial assistance from Yeableanor Fiagbeto as well as from Egbert W. K. Segbawu to defray the debt being demanded by U.A.C at that time?
- e. Whether or not stool land exist in the Volta Region?
- f. Whether or not it is proper for Fia Sri Il to alienate the property of the Ahiable family to Egbert W. K. Segbawu without its consent and authority
- g. Whether or not the Defendants continue occupying the said premises is unlawful?
- h. Whether or not the Plaintiff is entitled to his claim?
- i. Whether or not the Defendants are entitled to their counter claim?

SUMMARY OF PLAINTIFF'S CASE

Before the Plaintiff's case is delved into, the Court notes that Plaintiffs Lawful Attorney filed the case Pro Se and attached a Power of Attorney number C/LVD/VR926/2021 made on the 15th day of April, 2021. In that Power of Attorney, the purpose was specific, for the Attorney to apply and join a pending Circuit Court case at Keta between Makafui

Segbawu (per his Lawful Attorney Moses Hope Segbawu) vrs. Philip Gawuga. The suit number was not provided however and in paragraph 2 of the Statement of Claim, the Attorney quoted the Power of Attorney as number C/LVB/VR.962/2021, claiming to have marked that document as Exhibit "WYA1".

The case of the Plaintiffs which can be gleaned from their Statement of Claim, Reply and Witness Statement is that some time ago when the their old town got burnt, their great grandfather Agbowodzo Anyame gave Seho and the sister Kuboto a land at Lagbati Tagba in Anloga. The two siblings as open overt acts of ownership got up and put up a swish structure which was thereafter renovated to become a Sandcrete building. Plaintiffs claimed that in those days trading was going on well in Anloga so U.A.C (Union of African Congress) came to Anloga.

Their great grandfather was approached by the officials of U.A.C to offer them a place to build a store and based on that, their great grandfather gave the land in front of his house for construction of the stores. In so doing one big store was built and the first occupant of the store was Mr. Tsikata who traded over time after which he left and was taken over by Mr. Buenuadi. The store being referred to was thereafter registered and numbered B -109, Anloga. Plaintiffs claimed that at a stage, U.A.C agreed with their great grandfather to pay some money in respect of the property and their grandfather approached the wife Yeableanor Fiagbeto and collected some money from her and went to his nephew Mr. E. W. K. Segbawu to collect some money from him also and paid to the U.A.C thus.

Plaintiffs further claim that their grandfather then told his nephew to be collecting the rent to cover his money. Based on that Mr. E W. K. Segbawu now took over the store and divided the store into three (3), rented out one to Mr. Braimah who came to Anloga

in **the year** 1969, and maintained one as a drug store. Plaintiffs contended that Mr. E W. K. Segbawu at a stage sold all his properties except where he lived before he died and that in the 1980's he quit the drug store and rented out the remaining two (2) stores to Mr. Gawugah for which he used one as a drug store and one as a supermarket. That Mr. E W. K. Segbawu's children are still holding onto that property to their (Plaintiffs) detriment and disadvantage and that if the stores were the property of Mr. E W. K. Segbawu, he would have sold them long ago at a time he was selling his properties.

Plaintiffs also claimed in paragraph 20 of their statement of claim that in the early 1970's, Mr. C. K. Ahiable, Sam Seho and Atsupi Ahiable Grunitszky summoned Mr. E W. K. Segbawu before Torgbui Adeladza in respect of the stores for an arbitration and it came to light that Mr. E W. K. Segbawu had purchased roofing nails and other building materials to renovate his house at Anloga Lagbati so it was resolved that he should keep on taking the rents so as to defray the debt, the actual amount which the Defendants herein woefully failed to disclose and also failed to disclose the actual debt outstanding, unconsumed or recovered. In a further claim, the Plaintiffs stated that the situation made it that Mr. E W. K. Segbawu and the Defendants who are his survivors had since been taking rents in respect of the stores for over seventy (70) years without going into accounts with the Plaintiffs to ascertain whether or not they have recovered the entire debt or not.

The Plaintiffs in the Reply repeated the claims made in the Statement of Claim in response to the Defendants Statement of Defence and proceeded to allege fraud against the Defendants after facts stated in the Statement of Defence to the effect the land/stores being claimed had been duly registered with the Lands Department at Ho and that the stores form part of the Estate of the late Mr. E. W. K. Segbawu for which Letters of Administration was granted by the Denu High Court.

SUMMARY OF DEFENDANTS' CASE OR DEFENCE

The Defendants generally denied the averments of the Plaintiffs through their Statement of Defence where they counterclaimed against the Plaintiffs and averred that their father by an Indenture dated the 20th day of April, 1964 between the Central Property Company (Ghana) Limited (formerly known as Gold Coast Properties Company Ltd) acting by Frederick William Wilson of the United Africa Company (U.A.C) of Ghana Limited in the City of Accra, Ghana as the Liquidator of the Company (known as the Liquidator) of the first part and the Liquidator of the second part The United Africa Company of Ghana Limited a company incorporated under the laws of Ghana and having its registered office at "Swanmill" Kwame Nkrumah Avenue in the City of Accra Ghana (known as the confirming party) and Egbert William Kwasi Segbawu of Anloga in the Volta Region of Ghana as the Purchaser of the property in dispute.

The Defendants per their pleadings stated or aver that the purchase of the disputed land made by Egbert William Kwasi Segbawu the father of the 1st and 2nd Defendants on the 20th day of April, 1964 was duly registered at the Lands Registry with **Registration No. 1705/1970**. The 1st and 2nd Defendants further stated that when their father, the late Egbert William Kwasi Segbawu bought the said property in dispute in the year 1964, the land had only one (1) store on same and he divided it into two (2) and rented out one (1) to one Mr. Mamah Koffie Braimah per a Tenancy agreement dated the 31st day of July, 1970 and currently being occupied by one Joshua Kuebunya Papavi who still atones tenancy to the Defendants.

Defendants again in their Pleadings averred that the late Egbert William Kwasi Segbawu rented out only one (1) store to one Mr. Albert Yao Demor per agreement dated the 26th day of January, 1993 and that the son of Mr. Albert Yao Demor, one Mr.

Philip Gawugah who currently occupies the said Store divided same into two (2) without the consent of the Defendants for which his wife occupies the other, selling stationaries and other items. Defendants as part of their pleading specifically in paragraph 22 of their Statement of Defence stated that the property in dispute was part of the late Egbert William Kwasi Segbawu's properties located at Anloga for which Letters of Administrations was granted in the Denu High Court in **Suit No. E6/26/2018**.

Defendants also stated that Mr. C.K. Ahiable who the Plaintiffs claim to have summoned their father the late Egbert William Kwasi Segbawu before Torgbui Adeladza the then Awomefia of Anlo Arbitrational Court and his elders in respect of the Stores (property in dispute) was the same person who made a Declaration as the then Head of Family deposing and attesting to the request for the grant. The Court notes that in the written submissions, Counsel for Defendants stated that said C. K Ahiable deposed to the fact that the land and stores on same was part of the properties of the late Egbert William Kwasi Segbawu's **at** the time of the application of letters of Administration at the High Court Denu and same was granted since the year 2018. The Court notes however that there was no such deposition by C. K. Ahiable who merely confirmed the death of the said E. W. K. Segbawu as per the heading which reads "Declaration of Head of Family confirming the date of death of deceased Egbert W. K. Segbawu". In any case in the said Declaration, he prayed the Court to use his declaration in place of a death certificate.

Defendants also averred that the property in dispute has always been the bonafide property of their father the late Egbert William Kwasi Segbawu as he purchased same since the year 1964 and that the Plaintiffs are only on a property fishing expedition as they know the property in dispute does not and has never been their family property but a property belonging to the late Egbert William Kwasi Segbawu. The Defendants

averred that the Plaintiffs are not entitled to the claims endorsed on their Writ of Summons and asked the Court to dismiss same and grant their counterclaim as endorsed in their Statement of Defence.

EVIDENCE OF THE PLAINTIFFS ATTORNEY

The evidence of the Plaintiffs' Attorney is basically a reproduction of the pleadings as stated in the Statement of Claim and Reply to the Statement of Defence after which a Power of Attorney re-marked as Exhibit "A", Anloga District Assembly receipt marked as Exhibit "A1", Notice of property rate in respect of properties at Alagbati marked as Exhibit "A2" and undated Anloga District Assembly receipt in respect of Dumega Seho House marked as Exhibit "A3" were attached to the Witness Statement.

SUMMARY OF EVIDENCE OF PW1

Plaintiff's first witness named Freda Korfogbe Togobo-Asase testified in support of Plaintiff's case where a nine (9) paragraph Witness Statement was filed and same tendered in as her evidence in chief without any attachments by way of exhibits. PW1 in her Witness Statement claimed Seho Doh Ahiable and Maria stayed with their mother Korfogbe on the land given to them by their grandfather and part of the land was developed and the undeveloped portion which the frontage was given to U.A.C by Seho Doh Ahiable to be developed into store. The said witness in paragraph 8 of her Witness Statement testified that at a stage, the U.A.C became bankrupt and the building was leased to Mr. E.W. K. Segbawu for a period of Fifty (50) years and that Mr. E. W. K. Segbawu signed the lease agreement and promised to give the building back after the expiration of the agreed period. The witness further stated that she is a direct granddaughter of Abotsi who was the daughter of Maria Kuboto Ahiable of Anloga

and she stayed in this very house throughout her childhood and attended primary to secondary school from there.

SUMMARY OF EVIDENCE OF PW2

Plaintiffs' second witness named Philip Gawuga testified in support of Plaintiffs' case where a Ten (10) paragraph Witness Statement was filed and same tendered in as his evidence in chief with exhibit marked as Exhibit "B", an Authority note (agreement) between Mr. E. W. K. Segbawu and the father of the witness named Mr. Albert Yao Demor dated the 26th day of January, 1993 in respect of the property in dispute (Store no. B-109). It is his evidence that somewhere in April, 1992 he accompanied his father Mr. Albert Yao Demor Gawuga to Mr. E.W. K. Segbawu being his landlord, as his father was using one of the stores as his Pharmacy store as he was a Pharmacist.

He further stated as part of his evidence that at Mr. E. W. K. Segbawu's residence he then called Dumega Agornuga and gave the keys to him who in turn opened the doors to the store rooms for them and Mr. E W. K. Segbawu asked them to renovate the entire stores stressing that the place does not belong to him but rather it belongs to the children of Ahiabile. That the renovation works were carried out as instructed after which Mr. E. W. K. Segbawu would take one store while they also take the other store and the rents therefrom would be used as part of the rent, so the store Mr. E. W. K. Segbawu took, he rented out same to them and they were using both stores which were renovated.

That on the strength of that, Mr. E. W. K. Segbawu gave the original copy of the agreement in respect of the said stores to them with the explanation that when the Ahiabile family members come, then they would show it to them and the original copy of the agreement has since been in their possession. He further testified that they have since the year 1992 been in possession and operating the said stores before the demise

of Mr. E. W. K. Segbawu and thereafter, Dumega Agornuga who had been taking the rent from them passed on and Mr. E W. K. Segbawu's children took over the collection of the rent from them in respect of the stores.

EVIDENCE OF THE 2ND DEFENDANT FOR AND ON BEHALF OF THE OTHER DEFENDANTS

The evidence in chief of the Defendants is practically the same as the averments in his Statement of Defence and Counterclaim to the Writ of the Plaintiffs except that there were few elaborations in respect of various processes Mr. E.W. K. Segbawu went through to perfect the purchase of the property in dispute and the fact that as far back as the year 2018, the High Court, Denu granted letters of Administration which includes the property in dispute being three (3) described as B-109 at Anloga.

As part of the Defendants' evidence in proving their case (Counterclaim), the Defendants attached the various documents which came into their possession in respect of the property in dispute ranging from an Indenture dated the 27th day of October, 1922 between one Jackson Ocloo and Fia Sri II of Anloga marked as **Exhibit "1"**, Indenture dated 30th day of October, 1922 between Jackson Ocloo and Messieurs John Walkden & Company Limited marked as **Exhibit "2"**, Several correspondence between United African Company (U.A.C) and Mr. E W. K. Segbawu in respect of the property in dispute marked as **Exhibit "3 series"**, an Indenture dated the 20th day of April, 1964 between the Central Property Company (Ghana) acting by Frederick William Wilson of U.A.C as the liquidator and Mr. E W. K. Segbawu as the purchaser marked as **Exhibit "4"**, registration of the property in dispute at the Lands Department at Ho marked as **Exhibit "5"**, Rent agreement between Mr. E. W. K. Segbawu and Mr. Mamah Koffie Braimah dated the 31st day of July, 1970 marked as **Exhibit "6"**, An agreement between Mr. E. W. K. Segbawu and Mr. Albert Yao Demor dated the 26th day of January, 1993

marked as **Exhibit "7"**, a letter from Philip Gawugah (DW2) dated the 26th day of June, 2015 to the Defendants in respect of the property in dispute as a tenant marked as **Exhibit "8"**, **and** the application and grant of Letters of Administration covering the property in dispute marked as **Exhibit "9"** and **Exhibit "10"**. **BURDEN AND STANDARD OF PROOF**

It is now an established principle of law that where a party makes an averment and that averment is denied by his adversary, he must lead evidence to prove such averment or else the court will rule against him on that issue. This is expressed in the Latin maxim ***Ei incumbit probatio qui affirmat, non qui negat***. Therefore, for the Plaintiffs to succeed in this case they must establish their claims which have been vehemently denied by the Defendants. It is provided in section 11(1) of the Evidence Act, 1975 (NRCD 323) that: **"(1) For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party."**

Again, it is stated in section 14 of NRCD 323 that:

"Except as otherwise provided by law, unless 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 that party is asserting."

Section 17 of NRCD 323 also states:

"Allocation of burden of producing evidence

Except as otherwise provided by law,

(a) the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof; (b) the burden of producing evidence of a particular fact is initially on the party with the

burden of persuasion as to that fact."

The overall effect of sections 11, 14 and 17 of NRCD 323 is that the Plaintiff must adduce sufficient evidence to support its claims against the Defendant in order for it to succeed. Again the Defendant in this case who are Plaintiff to their counterclaim has the same burden. It is only when the Plaintiff is able to establish that that the burden will shift to the Defendant as stipulated in Sections 14 and 17(a).

In the case of **ACKAH V. PERGAH TRANSPORT LIMITED & OTHERS [2010] SCGLR 728**, the Supreme Court speaking through Sophia Adinyira JSC at page 736 noted:

"It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail... It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that, on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is the requirement of the law on evidence under sections 10(1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD 323)."

This being a civil matter, the Plaintiffs are required to prove their case on the preponderance of the probabilities and where the Plaintiffs are unable to meet this standard, Plaintiffs' case must fail. What amounts to a preponderance of the probabilities is stated in Section 12 of NRCD 323 in the following terms:

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

(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".

These provisions were repeated in the case of **IN RE PRESIDENTIAL ELECTION PETITION; AKUFO-ADDO, BAWUMIA & OBETSEBI LAMPTEY (NO. 4) V MAHAMA, ELECTORAL COMMISSION & NATIONAL DEMOCRATIC CONGRESS (NO. 4) (2013) SCGLR (SPECIAL EDITION)**, on the required standard of proof in civil matter.

The learned Appau JSC, in delivering the decision of the Supreme Court held in **EBUSUAPANYIN JAMES BOYE FERGUSON (SUBSTITUTED BY AFUA AMERLEY) V. I. K. MBEAH & 2 OTHERS, CIVIL APPEAL NO. J4/61/2017, DATED 11TH JULY 2018, S.C. (Unreported)** as follows: "The standard of proof in civil cases, including land, is one on *the preponderance* of probabilities - {See **sections 11 (4) and 12 of the Evidence Act, 1975, Act 323** and the decision of *this* Court in **ADWUBENG V. DOMFEH [1996-97] SCGLR 660 at p. 662**".

It was also held in **the** case of **ELIZABETH ASARE VRS. KWABENA EBOW [2013] 57 GMJ 152**; that both Plaintiff and Defendants/Counterclaimants *have* respective burden of proof in a *land case*.

RELEVANT ISSUES

WHETHER OR NOT THE LAND ON WHICH THE STORES WERE BUILT BY U.A.C AT ANLOGA ORIGINALLY BELONGED TO AGBOWODZA?

The Plaintiffs having made a claim and the Defendants not only denying same but making a counterclaim, both parties had the duty to produce credible evidence that would convince the Court, on a balance of probabilities of the existence of their claims.

In the case of **OP. KWASI ASAMOAH V. KWADWO APPEA (2003-04) SC GLR 226**, the Apex Court held at page 246 as follows: "The position with regards to proof of the defendant's case was that since they made a counterclaim, they assumed the same onus of proof as lay on the plaintiff".

The Defendants by their counterclaim, "assumed the same onus of proof as laid on the plaintiff". See the cases of **MESSRS VAN KIRKSEY & ASSOCIATES V. ADJESO & OTHERS [2013-2015] 1 GLR 24; IN RE WILL OF BREMANU; AKONU BAFFOE & OTHERS, BUAKU V. VANDYKE (SUBSTITUTED BY) BREMANU (2012) 2 SC GLR 1313** at holding 1.

The crux of Plaintiffs' evidence in respect of the ownership of the land on which the stores being the subject matter of this instant suit was built, is the claim that their great grandfather was approached by the officials of U.A.C to offer them a place to build a store and based on that, their great grandfather gave the land in front of his house for construction of the stores. In so doing, one big store was built and the first occupant of the store was Mr. Tsikata who traded over time after which he left and was taken over by Mr. Buenuadi. The store being referred to was thereafter registered and numbered B -109, Anloga. From this piece of evidence by the Plaintiffs as deduced from their pleadings and evidence, there was no single mention of the occupation of the said stores by the said U.A.C who the Plaintiffs claim their great-grandfather gave the land in dispute to for the construction of the stores. Again the Plaintiffs failed to mention when exactly or the period within which their great grandfather gave the land in dispute out to the U.A.C to build one store on same and how long the store was occupied after it was built.

When the Plaintiffs' Attorney was under cross examination by Defendants' Counsel in attempt to establish that the great grandfather of the Plaintiffs granted the land in

dispute to the United African Company (U.A.C) and when same was done on the 8th day of June, 2022 at page 4 of the Record of Proceedings, this is what ensued:

Q. Your evidence before this court, are they information that came from Plaintiffs or you have personal knowledge of the property?

A. My Lady, it is from the Plaintiffs

Q. So can you kindly confirm to this Court when the United African Company (U.A.C) arrived at Anloga per paragraph 12 of your witness statement?

A. My Lady, I was not born when they came

Q. So you also do not know the time they approached your alleged great grandfather?

A. I also do not know the time they approached my great grandfather because I was not born

Q. You can also confirm to this court that you Mr. William Yaw Ahiabile do not know how much the United African Company (U.A.C) paid to your alleged great grandfather?

A. My Lady, I cannot tell

Q. Do you know how long the U.A.C stayed in occupation?

A. My Lady, I cannot tell because I was not born by then.

The Plaintiffs could not establish its claim of the land on which the store was built and the subject matter of the dispute belonging to their great grandfather which the Plaintiffs claim was given to the United African Company (U.A.C) when they arrived at Anloga. In any case, both sides from the evidence are related and at a point shared a Head of Family.

The Defendants on the other hand in proving their claim of their late father, E. W. K. Segbawu having purchased the three (3) stores in dispute tendered in evidence a Deed

(Indenture) dated the 20th day of April, 1964 between the Central Property Company (Ghana) acting by Frederick William Wilson of U.A.C as the liquidator and Mr. E W. K. Segbawu as the purchaser marked as **Exhibit "4"** which established their ownership of the property in dispute and they had been in undisturbed and uninterrupted possession of same by exercising overt acts of possession over the said property for over seventy (70) years as confirmed by the Plaintiffs in their own pleadings and evidence before this Honourable Court as can be seen in paragraph 21 of Plaintiffs' statement of claim. Again, the Defendants tendered in evidence an Indenture dating as far back as 30th day of October, 1922 between Jackson Ocloo and Messieurs John Walkden & Company Limited marked as **Exhibit "2"** which was several years of possession and occupation of the property in dispute by the U.A.C until it went bankrupt and sold same to the late E. W. K. Segbawu who was the father of the 1st and 2nd Defendants in this matter.

That U.A.C was once in occupation is thus not in dispute even though Plaintiffs Lawful Attorney did not provide any documentary evidence of how U.A.C came to be in the said occupation, who put them there and on what terms whether it was a sale or lease to them. What is clear is that U.A.C in liquidation, per the paper trail or documentation, sold the store to late E.W.K Segbawu.

Brobbey JA (as he then was) in the case of **DUAH V YORKWA** [1993-94] 1 GLR 217 AT **PAGE 224** stated thus:

"In our jurisprudence, if two parties go to court to seek redress to a dispute, it is the plaintiff who initiates the litigation and literally drags the defendant into court. If both parties decide to lead no evidence, the order which will be given will necessarily go against the plaintiff. Therefore it is the plaintiff who will lose first, who has the duty or obligation to lead evidence in order to forestall a ruling being made against him. This is clearly amplified in section 11 (1) of NRCD 323 which provides that: "11. (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."

As was stated in **OKUDZETO ABLAKWA (NO. 2) VS. ATTORNEY GENERAL & ANOTHER** [2012] 2 SCGLR 845 at 867 that;

"If a person goes to court to make an allegation, the onus is on him to lead evidence to prove that allegation, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in court if the case is based on an allegation which he fails to prove or establish. This rule is further buttressed by section 17 (b) which, emphasizes on the party on whom lies the duty to start leading evidence..."

As this is a claim and the counterclaim is for declaration of title, the parties must as enunciated in the case of **YEHANS INTERNATIONAL LTD. V. MARTEY TSURU FAMILY AND 1 OTHER** [2018] DLSC 2488 per Adinyira JSC who states that: "*It is settled that a person claiming title has to prove: i) his root of title, ii) mode of acquisition and iii) various acts of possession exercised over the land ... This can be proved by either traditional evidence or by overt acts of ownership in respect of the land in dispute. See also the case of THOMAS COBBINAH YAW ASIEDU V. ISAAC KWOFIE* [2018] DLCA 4916, per Agyemang J.A.

The requirements of what would constitute cogent and credible evidence that would meet the test of a balance of probabilities is succinctly contained in the case of **EMMANUEL OSEI AMOAKO V. STANDFORD EDWARD OSEI** [2016] DLSC 2830. Here again, Appau JSC speaking for the Supreme Court held: "It is trite learning that a bare assertion by a party of his pleadings in the witness box without more is no proof. Proof in law has been authoritatively defined as the establishment of facts by proper

legal means. As the celebrated Ollenu, J (as he then was) stated in his judgment in the case of **KHOURY AND ANOTHER V RICHTER**, which he delivered on 8th December 1958 (**Unreported**), on the question of proof, which he repeated in the case of **MAJOLAGBE V. LARBI & ANOR [1959] GLR 190 at 192**; "where a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of things, reference to other facts, instances or circumstances and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the court can be satisfied that what he avers is true ..." See also the cases of **INTERNATIONAL ROM LTD. V. VODAFONE GHANA LTD. & ANOTHER [2016] DLSC 2791**.

On the above issue it is difficult for the Court to find that the land on which the stores were built has at any time been the property of Agbowodzo as there is no evidence to support the said claim by the Plaintiffs before the Honourable Court.

2. WHETHER OR NOT THE STORES WITH REGISTRATION NUMBER B-109, ANLOGA IS THE PROPERTY OF DOH SEHO AHIABLE OR EGBERT W. K. SEGBAWU?

3. WHETHER OR NOT THE U.A.C SOLD THE STORES OR LAND TO EGBERT W. K. SEGBAWU DURING HIS LIFE TIME?

The two (2) issues have the same import and therefore can be discussed together.

One of the long held and accepted principles in land law is that a person in possession is entitled to judgment against the whole world except the true owner. The Supreme Court held in the case of **OSEI (SUBSTITUTED BY GILARD) V. KORANG [2013-2014] 1 SCGLR 221** as follows: "Now in law, possession is nine-tenths 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 ownership and it being good against the whole world, except the true owner, he cannot be ousted from it."

In respect of the two (2) issues above, the Defendants led cogent evidence in proving the fact that both the store and the land upon which same was built was purchased by the late E. W.K. Segbawu of blessed memory at the time when the United African Company became bankrupt for which the Defendants exhibited documents in proof of same. Defendants in their pleadings, specifically paragraph 16 of their Statement of Defence deposed to the fact that when their father, the late Egbert William Kwasi Segbawu bought the said property in dispute in the year 1964, the land had only one (1) store on same and he divided it into two (2) and rented out one (1) to one Mr. Mamah Koffie Braimah per a Tenancy agreement dated the 31st day of July, 1970 and currently being occupied by one Joshua Kuebunya Papavi who still atones tenancy to the 1st and 2nd Defendants.

The Plaintiffs in paragraph 21 of their own statement of claim deposed to the fact that, Mr. E W. K. Segbawu and the Defendants who are his survivors have been in possession of the store on the land and have been taking rents in respect of the stores for over seventy (70) years. Even though Plaintiff wanted to assert this as adverse possession in that Defendants late father was supposedly to have occupied the store and taken rent for a time until whatever money he lent to Plaintiffs forbear was exhausted. This however they were unable to prove on a balance of probabilities.

The Defendants also in proof of their counterclaim tendered in evidence registration of the property in dispute at the Lands Department at Ho marked as **Exhibit "5"** which is

evidence of the perfection of title in the property in dispute as same was duly registered at the Lands Registry Department Ho with Registration **No. 1705/1970**. The Defendants in further proof of ownership of the property in dispute stated in their pleadings specifically paragraph 22 of their Statement of Defence that the property in dispute was part of the late Egbert William Kwasi Segbawu's properties located at Anloga for which Letters of Administrations was granted for in Denu High Court in **Suit No. E6/26/2018**. Exhibits 9 and 10 being the application and grant of letters of administration by the High Court, Denu, was tendered in evidence to support their case against the Plaintiffs who led no single evidence in support of their claim on these issues as stated above. Plaintiffs Lawful Attorney alluded to the fact that the grant of the application for Letters of Administration was not posted on the property for same to be brought to their attention to enable them react and that C. K. Ahiabile's signature was forged but they did not put any such evidence before the Court save for stating so in their Reply.

The Plaintiffs attached to their evidence in chief, three (3) exhibits namely Anloga District Assembly receipt marked as Exhibit "A1", Notice of property rate in respect of properties at Alagbati marked as Exhibit "A2" and undated Anloga District Assembly receipt in respect of Dumega Seho House marked as Exhibit "A3". When the Plaintiffs' Attorney was under cross examination by Defendants' Counsel in an attempt to establish that the said exhibits have any relevance to the property in dispute on the 20th day of October, 2022 at pages 11 and 12 of the Record of Proceedings, this is what ensued:

Q. Mr. Ahiabile, per your paragraph 12 of your witness statement, you described the store in dispute as E/109. Is that correct?

A. Yes My Lady

Q. And as part of your exhibits, Exhibits "A1, A2 and A3" you claim in paragraph 24 of your

witness statement that you paid property rates in respect of the property in dispute. Is that correct?

A. Yes, My Lady, that is correct

Q. Can you kindly show us per your exhibit, which of them that the alleged property rates paid are in respect of the property in dispute?

A. My Lady, Exhibit "A1" shows that we are paying property rate in respect of the properties in dispute

Q. I am suggesting to you that none of the Exhibits you attached had anything to do with the properties in this case?

A. My Lady, Exhibit "A" what is written on it covered all the receipts of the house.

Q. Can you kindly take a look at your Exhibit "A3" Anloga District Assembly unassessed property rate receipt (undated), can you tell us the name of the property for which this receipt was issued?

A. My Lady, before we were issued with the receipt, we were given property rate notice demand in 2015, since then we started paying property rate covering all the houses. Yes all the houses.

Q. I am suggesting to you that your exhibits are in respect of a property named Dumega Seho house?

A. Yes My Lady, it is true and Dumega Seho is our grandfather

Q. I am suggesting to you that your Exhibits A1 and A3 are self-serving documents you procured after the Defendants filed their Defence to your suit?

A. My Lady, it is true but the notice is there for a long time and still we are having the notice so we are still paying.

Plaintiffs' Attorney again on the 8th day June, 2022 while under cross examination by Counsel for Defendants in respect of the ownership of the property on page 5 of the record of proceedings had this to say;

Q. You will agree with me when I say you Mr. William Yao Ahiable know absolutely nothing about the property in dispute?

*A. My Lady, what I want to tell this Court is that I personally did not grow up in my hometown so those who gave me the Power of Attorney, they educated me or they gave me this information. My grandfather's descendants are all occupying the house and some even built in the forecourt of the same house, so the stores are not far from the same house. The stores in the house will be about seven (7) stores, **three (3) out of the seven (7) stores belong to Segbawu which we are litigating over in this Court.***

On the same subject of the ownership of the property in dispute, Plaintiffs' own witness by name Freda Korfogbe Togobo-Asase who testified as PW1 and was cross examined by Defendants' Counsel in respect of the ownership of the property in dispute on the 9th day of November, 2022 at pages 16 and 17 of the Record of Proceedings, had this to:

Q. Kindly take a look at paragraph 7 of your witness statement, in which year did Seho Doh Ahiable give the undeveloped portion of the land to U.A.C?

A. I do not know the exact year. I have not written any year

Q. How long did the U.A.C occupy the store it built?

A. It was long time and I cannot remember the years they spent

Q. Can you now read paragraph 8 of your witness statement to the hearing of the court (read)?

A. At a stage, the U.A.C became bankrupt and the building was leased to Mr. E. W. K.

Segbawu for a period of Fifty (50) years. Mr. E. W. K. Segbawu signed the lease agreement and promised to give the building back at the expiration of the agreed period.

Q. Can you confirm to this court in which year the alleged lease was made to Mr. E. W. K. Segbawu?

A. It was around the period of 1964/1965

Q. You never attached any such lease to your witness statement. That is correct?

A. No, My Lady

Q. Have you seen the lease you are talking about?

A. I have not seen it but the lease agreement is in existence

Q. I am putting it to you that no such lease exists?

A. My Lady it exists.

Q. I am further suggesting to you that the property in dispute was sold to Mr. E. W. K. Segbawu by the U.A.C in the year 1964.

A. It was a lease not sold.

When PW2 who from the record, has been a tenant of the Defendants for several years and his father before then, prior to his death was under cross examination by Defendants' Counsel in respect of the ownership of the property in dispute on the 18th day of November, 2022 at pages 20 and 21 of the Record of Proceedings, this is what ensued:

Q. Can you kindly read paragraph 5 of your witness statement?

A. My Lady, what I know about this case is that, somewhere in April, 1992 I accompanied my father Mr. Albert Demor Gawuga to Mr. Egbert William Kwesi Segbawu being his landlord as

my father was using one of his stores as his pharmacy store. He had been a pharmacist himself (read)

Q. Do you still rely on paragraph 5 of your witness statement?

A. Yes, My Lady

Q. So you agree with me that by referring to the late E. W. K. Segbawu as a landlord to your father, it certainly means Mr. Segbawu owned that property. That is correct?

A. My Lady, not really correct, since a landlord may not be the owner of the property.

Q. Can you now confirm to this Honourable Court the year your father Albert Demor Gawuga rented the property in dispute from the late E. W. K. Segbawu?

A. My Lady, we started the renovation in 2002 and in 2003 we occupied it and started paying rent.

The Plaintiffs' Attorney again on the 27th day of July, 2022 while under cross examination by Counsel for the Defendants on page 8 of the record of proceedings stated the following;

Q. Are you also aware that the said sale to the father of the 1st and 2nd Defendants Emmanuel Segbawu (E. W. K. Segbawu) was after the exchange of several correspondence between the U.A.C and Emmanuel Segbawu per Exhibit "3" series as attached to the Defendants' witness statement?

A. My Lady, what I have said is that the 1st and 2nd Defendants' father did not buy any land but only a store that I know he took.

Q. Who did he take the said store from?

A. My Lady, according to what they had written, it appears that it was U.A.C that gave the 1st and 2nd Defendants' father the store and the store was on our grandfather's land.

Baffoe- Bonnie JSC speaking for the Apex Court in the case of **KWAME OFEI V. MRS. JANET DARKO & 2 OTHERS** [2018] DLSC 140 decided: "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 the cases of **ABDUL RAHMAN GIWA & 2 OTHERS V. BABA LADI** (2012) 43 GMJ 1 at page 8; **AGNES TUFFOUR ALIAS SERWAA V. AKWASI ADU & YAA KONADU** [2018] DLCA 4432 and **DANIELLE CONSTRUCTION V. JOHNSON** (2006) 4 MLRG 101 at page 106.

Generally, ownership of land is proved by either document or clear evidence of possession. In **DELIMAN CO. LTD. V. HFC BANK GHANA LTD.** [2016] 92 GMJ 1 @ 25, **BARBARA ACKAH-YENSU J.A. (as she then was)** decided: "A person's title indicates by what means he claims to be owner of land. Title to land may take the form of possession or it may *take* the form of document or a series of documents. See also **F. K. A. LTD. V. ADJEI BOADI** [2012] 43 G.M.J. 47, C. A., per **ABBAN J.A.**

The law is settled that "where the evidence of one party on an issue was corroborated by a witness of his opponent whilst that of his opponent on the same issue stood uncorroborated even by his own witness, a court ought not to accept the uncorroborated version in preference to the corroborated one unless for some good reason (which must appear on the face of the judgment) the court found the corroborated version incredible or impossible" **FKA COMPANY LTD V SARKODIE** [2009] 7 GMJ 185 at 190 per **Wood JSC**. Please see also **TONADO ENTERPRISE & OTHERS V CHOU SEN LIN** [2007-08] SCGLR 135 at holding 2.

The same principle was espoused by the Court of Appeal in the case of **YAKUBU V YAKUBU** [2013] 55 GMJ 97 C.A where the Court per **Korbieh J.A** stated thus "The law

is that when the evidence of a party is corroborated by the evidence of his opponent, then the Court ought to accept the evidence"

As the evidence adduced shows that the father of the 1st and 2nd Defendant, the late E. W. K. Segbawu owned and he was occupying the stores as the owner and exercised acts of ownership over same, **SECTION 48 (2) OF THE EVIDENCE ACT, (1975) N.R.C.D 323** would avail him. The said section provides that "A person who exercises acts of ownership over property is presumed to be the owner of it".

The evidence as to Defendants' long possession of the disputed property was not challenged by the Plaintiffs at all and in fact the Plaintiffs' Attorney and the two (2) witnesses PW1 and PW2 confirmed the long and undisturbed possession and occupation of the property in dispute. In the case of **IN RE PRESIDENTIAL ELECTION PETITION: AKUFO-ADDO & 2 ORS. (NO. 4) V. MAHAMA & 2 ORS. (NO. 4) [2013] SCGLR (SPECIAL EDITION) 73 @ 425**, Anin Yeboah JSC (as he then was) decided: "I accept the *proposition of law that when evidence led against a party is unchallenged under cross-examination, the court is bound to accept that evidence*. See also holding 3 in the case of **GPHA V. NOVA COMPLEX LTD. [2007- 2008] SCGLR 806**.

Thus on the above issues as per the abundance of evidence adduced and the legal authorities in support of the evidence, the Court finds and holds that the stores being the property in dispute with registration number B-109 at all material times since the year 1964 has been the property of Mr. E. W. K. Segbawu and the said property was sold *together with the land on which the stores were built* per the record and documents to the late Mr. E. W. K. Segbawu especially as the Plaintiffs who are claiming ownership of this property have not adduced any single evidence in support of theirs and their family's ownership of the property in dispute.

4. WHETHER OR NOT DOH SEHO AHIABLE SOUGHT FINANCIAL ASSISTANCE FROM YEABLEANOR FIAGBETO AS WELL AS FROM EGBERT W. K. SEGBAWU TO DEFRAY THE DEBT BEING DEMANDED BY U.A.C AT THAT TIME?

It is the case of the Plaintiffs as can be gleaned from paragraph 14 of the Statement of Claim that, at a stage the U.A.C agreed with their grandfather Doh Seho Ahiable to pay some money in respect of the property and that their grandfather approached the wife Yeableanor and collected some money from her and then went to his nephew being the late father of the 1st and 2nd Defendants in this case, the late E. W. K. Segbawu and also collected some money from him. The Plaintiffs in paragraph 15 of their Statement of Claim further stated that their grandfather then told the nephew, the late E. W. K. Segbawu to be collecting the rent to cover their money, so based on that E. W. K. Segbawu now takes over the store and divided the store into three (3), rented out one to Mr. Braimah and maintained one as a drug store and concluded that the said Mr. Braimah came to Anloga in the year 1969.

It is noteworthy that, the Plaintiffs throughout their pleadings and evidence before this Honourable Court did not adduce a single evidence as to why the U.A.C approached their grandfather for money in respect of the property in dispute and in which particular year the said approach was made. It is difficult to fathom why the Plaintiffs who claim their grandfather gave a land to U.A.C to build the property in dispute will then be approached by the U.A.C for money in respect of the same property. The deduction in this claim is the fact that at the time the U.A.C went bankrupt, the said property was sold to the late E. W. K. Segbawu.

In resolving this issue and for the fact that no documentary evidence was produced or tendered in evidence in support of the claim of seeking financial assistance in respect of

the property in dispute as claimed by the Plaintiffs in the matter, the Plaintiffs' Attorney while under cross examination by Defendants' Counsel on the 8th day of June, 2022 at page 5 of the Record of Proceedings, this is what transpired:

Q. Per paragraph 14 of your witness statement, you stated that your grandfather collected some money from his nephew Mr. E. W. K. Segbawu. That is correct?

A. Yes My Lady.

Q. Can you kindly confirm to this Court how much was collected from the said E. W. K. Segbawu?

A. I cannot confirm to the court because I was born in 1962 and I was young then.

Q. You will agree with me when I say you Mr. William Yao Ahiable know absolutely nothing about the property in dispute?

*A. My Lady, what I want to tell this Court is that I personally did not grow up in my hometown so those who gave me the Power of Attorney, they educated me or they gave me this information. My grandfather's descendants are all occupying the house and some even built in the forecourt of the same house, so the stores are not far from the same house. The stores in the house will be about seven (7) stores, **three (3) out of the seven (7) stores belong to Segbawu which we are litigating over in this Court.***

The burden of proof falls squarely on the Plaintiffs to produce sufficient evidence in respect of this issue as it was the claim of the Plaintiffs that their grandfather sought for financial assistance from the late E. W. K. Segbawu which resulted in the stores being possessed by him for over seventy (70) as being claimed in this Court. The case in perspective is **ACKAH V. PERGAH TRANSPORT LIMITED & OTHERS [2010] SCGLR 728**, where the Supreme Court speaking through **Sophia Adinyira JSC at page**

736 noted: "It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail... It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that, on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non- existence. This is the requirement of the law on evidence under sections 10 (1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD 323)."

Again, the evidence proffered by the Plaintiffs' Attorney on the above issue, financial assistance which was not substantiated can best be described as a traditional evidence. The true position of the law on evaluating traditional evidence as held in the off cited case of **ADJEI BI KODJO V. BONSIÉ, [1957] WALR 257**, where it was held that "the dispute was all as to the traditional history which has been handed down by word of mouth from their forefathers. In this regard it must be recognized that in the course of transmission from generation to generation, mistakes may occur without any dishonest motives. Witnesses of the utmost veracity may speak honestly but erroneously as to what took place a hundred or more years ago. Where there is a conflict of traditional history one side or the other must be mistaken yet both may be honest in their beliefs. In such a case, demeanour is little guide to the truth. The best way is to test the traditional history by reference to the facts in recent years as established by evidence and by seeing which of the two competing histories is the most probable".

Barbara Ackah-Yensu J.A. (as she then was) in the case of **MENSAH V. KOMFO [2015] 91 GMJ 39** held at page 75 thus: "...What raises a presumption of ownership in favour of a party is not the coherence of his traditional evidence but acts of possession and ownership that he exercises over the subject-matter". See also the case of **IN RE TAAHYEN AND ASAAGO STOOL (1998-99) SCGLR 399**.

The Plaintiffs failed to establish their claim on a balance of probabilities that Doh Seho their grandfather sought financial assistance from the late E. W. K. Segbawu to defray debt allegedly being demanded by the U.A.C especially as no single ground was established by the Plaintiffs for the Court to know what exactly resulted in the alleged debt being demanded by the U.A.C. All facts and evidence however, showed that the said property in dispute was sold to the late E. W. K. Segbawu, the father of the 1st and 2nd Defendants in this instant case. The Court finds so and holds thus accordingly.

5. WHETHER OR NOT STOOL LAND EXIST IN THE VOLTA REGION?

6. WHETHER OR NOT IT IS PROPER FOR FIA SRI II TO ALIENATE THE PROPERTY OF THE AHIABLE FAMILY TO EGBERT W. K. SEGBAWU WITHOUT ITS CONSENT AND AUTHORITY

7. WHETHER OR NOT THE DEFENDANTS' CONTINUE OCCUPYING THE SAID PREMISES IS UNLAWFUL?

In the candid and considered opinion of this Court, the resolution of Issues 5 and 6 has no bearing at all on the legal and factual matters being determined in the instant case. Issue 7 has also been answered by issue 4 supra. Indeed, whether or not there is a stool land in the Volta Region, the property in dispute has no relation to the said subject at all especially as there are no issues as to who actually built the property in dispute. The Plaintiffs in this trial have not adduced or tendered in any evidence that supports their claim that their grandfather actually owned the land and the three (3) stores on same. There is also no claim or evidence on record before this Honourable Court to suggest that anyone chief or stool by name Fia Sri II actually granted or sold any land or property to the late E. W. K. Segbawu and as such the said issue does not arise at all.

In respect of the issue of whether or not the Defendants' continuous occupation of the premises is unlawful or illegal was a matter of fact and law that required to be determined only after the Court establishes the issue of whether or not the property in dispute belongs to the Defendants or the Plaintiffs' family and as such this cannot qualify and should not qualify to be an independent issue to be determined as its determination dovetails into the determination of issue 4. It is important to point to the fact that the Plaintiffs in their claims and reliefs in this Court did not seek for declaration of title in respect of the subject matter but are rather seeking for a recovery of possession to the property in dispute but failed to lead cogent or credible evidence to convince the Court to hold as such. The Defendants on the other hand, have tendered in evidence several documentary evidence in support of their counterclaim in respect of the property in dispute. Their occupation of the subject matter cannot therefore be illegal or unlawful.

In the case of **OFORI AGYEKUM V. MADAM AKUA BIO (DEC'D) SUBSTITUTED BY AGARTHA AMOAH, CIVIL APPEAL NO. J4/59/2014**, dated 13th April, 2016, (Unreported), Benin JSC speaking for the apex Court explained the principle when he held: "...Where no evidence is adduced on a fact that has been pleaded, it is treated as having been abandoned by the pleader, the court does not call it into question in its judgment. **The** court's only duty is to consider the evidence the party has proffered in determining whether or not he has met the right standard of proof"

8. WHETHER OR NOT THE PLAINTIFFS ARE ENTITLED TO THEIR CLAIMS?

9. WHETHER OR NOT THE DEFENDANTS ARE ENTITLED TO THEIR COUNTER CLAIM?

On these issues, the Supreme Court recently had the opportunity to correct the wrong

practice of framing issues for the determination in the manner above. Speaking through Pwamang JSC at pages 12 to 13 of the judgment in the **CIVIL APPEAL NO. J4/02/2020** titled **DALEX FINANCE AND LEASING COMPANY LTD VRS. EBENEZER DENZEL AMANOR, L.G.G COMPANY LTD & HUAWEI TECHNOLOGIES (GH) SA LTD DELIVERED** on **14TH APRIL, 2021**, the Court stated that; "We take this opportunity to deprecate the emerging wrong practice where in setting down issues for trial in civil cases "whether or not the Plaintiff is entitled to her claim" is put down as an issue for trial. The whole trial is aimed at determining whether or not the Plaintiff is entitled to the reliefs claimed so how can that be a distinct issue? This practice is a product of lazy work and a stop must be put to it. This case also serves as a reminder to all lawyers of the first principle we learn in civil procedure to always ascertain the causes of action that arises on the facts of a case before drafting our claim. The cause of action determines the relevant evidence to lead and the law applicable in the case thereby saving resources and time expended in adducing unnecessary evidence and ending up confusing and embarrassing the trial. This is not the first time this reminder is being given by this court".

As was stated in **OKUDZETO ABLAKWA (NO. 2) VS. ATTORNEY GENERAL & ANOTHER [2012] 2 SCGLR 845 AT 867**;

"If a person goes to court to make an allegation, the onus is on him to lead evidence to prove that allegation, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in court if the case is based on an allegation which he fails to prove or establish. This rule is further buttressed by section 17 (b) which, emphasizes on the party on whom lies the duty to start leading evidence..."

On 27th day of July, 2022, per page 2 of the proceedings, when Plaintiffs' Lawful Attorney

was under cross examination, in answer to the question 'I am suggesting to you that you know nothing about the subject matter in this case', he answered as follows: My Lady, I still rely on the truth. My grandfather's house I paid every bill or money related to the house but they (1st and 2nd Defendants) only come to take money from those who own stores and leave, they do not pay property rates **but the stores that the UAC sold to 1st and 2nd Defendants' father**, 2nd Defendant used to come and collect money from those who are operating in the stores".

I took due cognizance of the Locus Report and video submitted to the Court and undertaken by the Court officials on the prayer of Plaintiffs Lawful Attorney. The Court notes that that did not add any benefit to Plaintiffs case. Again as noted earlier, the Power of Attorney given to Plaintiffs Lawful Attorney was specific to the case at the Keta Circuit Court. It was not a general power which allowed Plaintiffs Lawful Attorney to have instituted the instant case in the first place. Be that as it may, the Plaintiffs woefully failed to discharge their evidentiary burden and obligation as required by law and on that basis the Court will have to dismiss the Plaintiffs' case in its entirety and grant the Counterclaims of the Defendants as follows.

- i. Declaration that all that piece and parcel of land with building thereon situate, lying and being at Anloga containing an approximate area of 0.048 Acre bounded on the North by the main road to Keta measuring 63 feet more or less on the south by Seho Doe's premises measuring 63 feet more or less on the East by Madam Mariam Kuboto's premises measuring 33 feet more or less on the West by Seho Doe's property measuring 33 feet more or less which said piece or parcel of land with building thereon bounded, known, described or distinguished and is delineated on the plan hereunder drawn and edged Red is the property of the late Egbert William Kwasi Segbawu.

- ii. Perpetual injunction to restrain the Plaintiffs, their agents, servants, workmen, assigns and all persons claiming through them
- iii. An order of possession.

Defendants are not entitled to damages for trespass as they did not establish or prove that. Cost is assessed at GHC10,000.00.

[SGD]

H/L DOREEN G. BOAKYE-AGYEI (MRS). J. ESQ.

JUSTICE OF THE HIGH COURT

CASES CITED

ACKAH V. PERGAH *TRANSPORT LIMITED & OTHERS* [2010] SCGLR 728
 IN RE PRESIDENTIAL ELECTION PETITION; AKUFO-ADDO, BAWUMIA &
 OBETSEBI *LAMPTEY* (NO. 4) V MAHAMA, ELECTORAL COMMISSION &
 NATIONAL DEMOCRATIC CONGRESS (NO. 4) (2013) SCGLR (SPECIAL EDITION
 EBUSUAPANYIN JAMES BOYE FERGUSON (*SUBSTITUTED BY AFUA AMERLEY*)
 V. I. K. MBEAH & 2 *OTHERS*, CIVIL APPEAL NO. J4/61/2017, DATED 11TH JULY
 2018, S.C. (Unreported) ADWUBENG V. DOMFEH
 [1996-97] SCGLR 660 ELIZABETH ASARE VRS. KWABENA EBOW
 [2013] 57 GMJ 152 OP. KWASI ASAMOAH V. KWADWO APPEA (2003-
 04) SCGLR 226 MESSRS VAN KIRKSEY & ASSOCIATES V. ADJESO & OTHERS
 [2013-2015] GLR 24 IN
 RE WILL OF BREMAN SU; AKONU BAFFOE & OTHERS, BUAKU V. VANDYKE
 (SUBSTITUTED BY) BREMAN SU (2012) 2 SCGLR 1313 OKUDZETO ABLAKWA

(NO. 2) VS. ATTORNEY GENERAL & ANOTHER [2012] 2 SCGLR 845
YEHANS INTERNATIONAL LTD. V. MARTEY TSURU FAMILY AND 1 OTHER
[2018] DLSC 2488

THOMAS COBBINAH YAW ASIEDU V. ISAAC KWOFIE [2018] DLCA 4916

EMMANUEL OSEI AMOAKO V. STANDFORD EDWARD OSEI [2016] DLSC 2830.
KHOURY AND ANOTHER V RICHTER, delivered on 8th December 1958
(Unreported),

MAJOLAGBE V. LARBI & ANOR [1959] GLR 190 at 192 INTERNATIONAL ROM
LTD. V. VODAFONE GHANA LTD. & ANOTHER [2016] DLSC 2791.
OSEI (SUBSTITUTED BY GILARD) V. KORANG [2013-2014] 1 SCGLR 221 KWAME
OFEI V. MRS. JANET DARKO & 2 OTHERS [2018] DLSC 140 ABDUL RAHMAN
GIWA & 2 OTHERS V. BABA LADI (2012) 43 GMJ 1 at page 8
AGNES TUFFOUR ALIAS SERWAA V. AKWASI ADU & YAA KONADU [2018]
DLCA 4432

DANIELLE
CONSTRUCTION V. JOHNSON (2006) 4 MLRG 101 DELIMAN CO. LTD. V. HFC
BANK GHANA LTD. [2016] 92 GMJ 1 @ 25, F. K. A. LTD. V. ADJEI BOADI [2012] 43
G.M.J. 47, C. A., per ABBAN J.A. FKA COMPANY LTD V SARKODIE [2009] 7 GMJ
185 at 190. TONADO ENTERPRISE & OTHERS V CHOU SEN LIN [2007-08]
SCGLR 135 at holding 2.

YAKUBU
V YAKUBU [2013] 55 GMJ 97 C.A

GPHA V. NOVA
COMPLEX LTD. [2007- 2008] SCGLR 806.

ADJEI BI KODJO V.
BONSIE, [1957] WALR 257

MENSAH V. KOMFO [2015]
91 GMJ 39

IN RE TAAHYEN AND
ASAAGO STOOL (1998-99) SCGLR 399.

OFORI AGYEKUM V. MADAM
AKUA BIO (DEC'D) SUBSTITUTED BY AGARTHA AMOAH, CIVIL APPEAL NO.

J4/59/2014, dated 13th April, 2016, (Unreported),

CIVIL APPEAL NO. J4/02/2020 titled DALEX FINANCE AND LEASING COMPANY LTD VRS. EBENEZER DENZEL AMANOR, L.G.G COMPANY LTD & HUAWEI TECHNOLOGIES (GH) SA LTD DELIVERED on 14TH APRIL, 2021, OKUDZETO ABLAKWA (NO. 2) VS. ATTORNEY GENERAL & ANOTHER [2012] 2 SCGLR 845 AT 867;