IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE HELD AT CAPE COAST IN THE CENTRAL REGION ON MONDAY THE 17TH DAY OF APRIL 2023 BEFORE HIS LORDSHIP JUSTICE KWASI BOAKYE, HIGH COURT JUDGE.

SUIT NO: E1/56/2010

1. OP. TIMOTHY KWAME BOTCHWEY

2. MAD. MEDICA AMA ABAM

3. CHRISTOPHER MAGARBA KWAKU

4. PROPHET KWEKU SEIDU

5. TRUSTEES OF NYAMESOMPA HEALING CHURCH

VS

1. KOW AMOASI

2. KOW BEDIAKO

3. BUCKAY

4. ALHASSAN MOHAMMED

5. AHOMKA

6. KOW ENYINDA

JUDGMENT

Op. Timothy Kwame Botchwey and others, plaintiffs herein, commenced the instant action against Kow Amoasi and others, defendants herein claiming the following reliefs:

"1. A declaration that the plaintiffs are the owners of the land described in the Statement f Claim.

2. Another declaration that the defendants are trespassers.

3. An order evicting or ejecting the defendants from the said land.

4. An order upon the defendants to pay damages for trespass.

5. An order of perpetual injunction restraining the defendants, their agents, servants, assigns, and all persons of whatsoever description claiming through or under them from conducting construction works thereon".

In the accompanying statement of claim, plaintiffs set down their case in the manner following. 1st and 2nd plaintiffs are a brother and head of family and widow of Prophet Kobena Ekwam [deceased]. He was the founder of Nyamesompa Healing Church [the Church]. 3rd plaintiff is a son of the deceased Prophet. 4th plaintiff is the present head of the Church whereas 5th plaintiffs are the Trustees of the Church. They are also the legal representatives thereof at Gomoa District of the Central Region.

According to them, their land is bounded on the North by Gomoa Fetteh Stool Land measuring 1989 feet more or less, on the East by Agricultural Settlement Farm [Ghana Prisons Farm] measuring 4902 feet more or less and Kwame Botchwey village land measuring 4185 feet more or less, on the South by Gomoa Fetteh Stool Land measuring 2500 feet more or less and on the West by Gomoa Fetteh Stool Land measuring 3668 feet more or less.

It is their case that in a Suit titled Prophet Kobena Ekwam vs Abor Ewusie XIX [Land Suit No. 63/78], the High Court of Justice presided over by H/L Justice Osei-Hwere J, declared Prophet Kobena Ekam as the owner of the said land.

The plaintiffs say that the Church developed a portion of the land into a settlement for the Church and its members. The land is now used as a Refugee Camp by the Ghana Government and the United Nations High Commission on Refugees [UNHCR].

According to plaintiffs, without any just cause, defendants, have entered parts of the land without their. So defendants are trespassers.

It is to be noted that upon service thereof on defendants, the latter duly caused an appearance to be entered on their behalf. Notably, 3rd defendant filed his statement of defence differently from the others as follows.

It is his case that the Church has ceased to exist by operation of law when some its members attempted to murder a member of the Provisional National Defence Council [PNDC] in the person of W.O. 1 Adjei Boadi. As a result, he contends that plaintiffs have no capacity to institute the present action.

He states that the land which plaintiffs are claiming are within Fetteh Stool Lands and that where defendants are occupying also fall within portions of Fetteh Stool Lands which they have occupied for not less than twenty-five [25] years without any let or

hindrance from any quarter. Therefore, the area plaintiffs are claiming does not form part of Budumbra township which was in existence before the Church.

According to him, the land presently used as refugees camp reverted to the Fetteh Stool after the then Government disbanded the Church. Following that the natives of Fetteh have since occupied portions thereof as far back as 1987. Intrinsically, he avers that plaintiffs' action is statute-barred by virtue of the Limitation Decree, 1972 [NRCD 54].

1st, 2nd, 4th, 5th and 6th defendants on the other hand, filed a joint statement of defence. It is their case that the area originally occupied by the Church is the area presently being used as the Budumbra Refugee Camp. Also, they maintain that the Church ceased to operate in the disputed area sometime in 1984 when the in-mates attempted to murder W.O. 1, Adjei Boadi at the healing camp.

Again, they contend that plaintiffs do not have capacity to institute the action. 2nd and 5th defendants who are members of the Royal Ewusie Twidan family of Gomoa Fetteh state that Kwame Botcwey indicated as a boundary owner to the disputed land has no land within the Stool Lands of Gomoa Fetteh in view of the fact that in an earlier development he forged some land documents touching Gomoa Fetteh Stool Land measuring about 6000 acres which matter ended up at Agona Swedru Circuit Court. Kwame Botchwey was accordingly convicted but on appeal to the Cape Coast High Court, portions of the record of appeal could not be traced. For that matter, it was adjourned 'sine die'.

2nd defendant says that before the healing camp was established by Ekwam Botchwey around 1979, his family members had farms and landed properties thereon. He shared boundary with the healing camp. After the healing camp had left the area by virtue of the events mentioned above, 2nd defendant's family had portions of the land occupied by his family granted to some of the refugees from Liberia.

1st and 6th defendants who are members of Kona Family of 1st plaintiff were put on the Budumburam lands by Essel Amquandoh Twidan Family of Gomoa Fetteh Kakraba by virtue of the marriage relationship between their female ancestress and Essel Amanquandoh Twidan Family of Gomoa Fetteh Kakraba, owners of the disputed land.

1st, 5th and 6th defendants contend that they had not done anything on the disputed land contrary to the allegation of plaintiffs. 4th defendant states that sometime in 1994, the Royal Abor Ewusie Twidan Family was visited with a chieftaincy dispute by their adversary before the Judicial Committee of Gomoa Akyempim Traditional Council. The family needed money to prosecute the matter. The family approached 4th defendant for money and in consideration for the moneys advanced the family was a customary grant of eight [8] plots of land to 4th defendant. Again, he states that the family demarcated the land granted to him and he affixed pillars thereon. He describes the land as all that piece of land lying at Budumburam, in the Gomoa East District in the central Region of the Republic of Ghana commencing from a survey beacon marked SGC B191/12/9 on a bearing 264.22 which bearing together with all further bearings hereinafter mentioned is referred to the Meridian 1 West longitude measuring 820.12 to SGC pillar 3, thence on a bearing of 357.47 measuring 200.10 to SGC pillar 4, thence on a bearing of 84.58 measuring 280.12 to SGC pillar 1, thence on a bearing of 176.47 measuring 200.10 to SGC B191/12/10, THERBY ENCLOSING AN APPROXIMATE AREA OF 1.27 [0.51 HECTARE] of an acre.

4th defendant states that no sooner after the grant to him, than he entered the land. He says that he erected a building on two [2] plots of the land. However, sometime in 2005, 1st plaintiff entered portions of the land granted him and demarcated portions for the benefit of Agbeve Balm Company. He had no choice than to confront 1st plaintiff and his grantee. It was agreed that 1st plaintiff in conjunction with 1st defendant would find

an alternative plot of land for Agbeve Company Limited. Also, he states that 1st plaintiff is estopped by conduct from challenging his title to the land.

At the close of pleadings, the following were set down as issues for trial. They are whether or not:

1. the Church is the owner in possession of 518.8 acres of land situate at Gomoa Ekwamkrom near Gomoa Budunburam.
2. the Cape Coast High Court in the Suit titled Prophet Kobena Ekwam vs Nana Abor Ewusie XIX [Land Suit No. 63/78] declared Prophet Kobena Ekam owner of the said land.
3. the Church developed a part of the said land into a settlement for its members.
4. the said settlement is now used by the Government of Ghana and the UNHCR as a refugee camp.
5. the land presently occupied as refugee camp reverted to the Gomoa Fetteh Stool.
6. defendants have occupied parts of the said land for 25 years without let or hindrance.
7. defendants are trespassers.
8. plaintiffs' action is statute-barred.
9. plaintiffs warned defendants off the said land.

The additional issues set down were whether or not:

1. plaintiffs have capacity to institute the present action.
2. 1st plaintiff has any land within Gomoa Fetteh Stool Lands.
3. 1st plaintiff is stopped by conduct from challenging 4th defendant's title to the plots of land granted him by the Gomoa Fetteh Stool.
4. 2nd defendant and his family members were carrying out their farming activities on lands abuting the healing camp and made grants to strangers.
5. plaintiffs are stopped by the Limitation Decree.
6. the 4th defendant's land is within the lands claimed by plaintiffs.

Upon application for further directions, the following issues were also set down for hearing. They are whether or not:

1. the area occupied by the Church and declared as beneficially owned by the late Prophet Kobena Ekwam is bigger or larger than the area occupied by the Budumburam refugee camp.
2. the Church was illegally prevented from operating on the land acquired by the late Prophet Kobena Ekwam.
3. the Church ever gave up demanding for its rights on to the Budumburam refugee camp.

4. plaintiffs warned off trespassers from the lands in dispute.

5. 1st plaintiff is an occupant of land sharing boundary with the land in dispute.

6. the grant made to 4th defendant was illegal and finally

7. 4th defendant was warned off when he commenced building on part of the land in dispute.

I must admit that this matter has a chequered history in material particular in the manner in which proceedings were conducted. Obviously, it is an inherited docket. All the same, upon assumption of duty in this Court, as a part-heard suit, I had no option than to adopt proceedings for purposes of continuation, hence, this judgment today, under the authority of Adomako Anane vs Nana Owusu Agyemang and 7 Others, Civil Appeal No. J4/42/2013, judgment dated 26th February 2014, Supreme Court, per Wood [MRS] CJ, presiding, as she then was.

Right from the onset, as I have stated earlier in this judgment, this docket is an inherited one. At the time the issues, additional issues and further issues were set down for trial, the Court was differently constituted. Having taken over the proceedings and having carefully looked at all the issues filed, I wish to indicate that, in my respectful view, the issue germane in the matter therefore becomes whether or not plaintiffs have capacity to mount the instant action. Simply put, whether or not plaintiffs' action is statute-barred and that plaintiffs are stopped from litigating the matter. With the greatest respect, I find a greater number of the issues set down for trial to be repetitive, unnecessary and irrelevant. Indeed, some do not arise at all.

At this point, let me passionately appeal that at directions stage, all the stakeholders must take keen interest in the exercise so as to narrow the issues down to promote their healthy discussion and resolution in the judgment. Because, this is the 'engine room' of the whole trial. Otherwise, this kind of wholesale adoption of issues and additional issues proposed for consideration would not help

For instance, the issue as to whether or not plaintiffs are entitled to the reliefs sought, whether or not the Church developed a portion of the land into a settlement for its members and as a church premises, whether or not the settlement is now used by the Government of Ghana and the UNHCR as a refugee camp and the like are, with due respect irrelevant and do not arise at all. Who does not know that the area commonly referred to as Budumbura where the disputed land is located is not being used as Refugee Camp by the Ghana Government and the UNHCR? 1st, 2nd, 4th, 5th and 6th defendants admit this fact in their pleadings. This is common knowledge. For this reason, let me reproduce the concerns of Pwamang JSC in Dalex Finance and Leasing Company Limited vs Ebenezer Denzel Amanor and 2 Others [2021] 172 GMJ 256 at 304, SC as follows:

> "We take this opportunity to deprecate the emerging wrong practice where in setting down issues for trial in a civil case, '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".

The Courts are advised to concentrate on addressing relevant issues only, notwithstanding the fact that they might have been set down for trial at the direction stage. This was the decision of the Supreme Court, per Wood, CJ, as she then was in Fatal vs Wolley [2013-2014] 2 SCGLR 1070. Her Ladyship held thus;

> "It is sound learning that courts are not tied down to only issues identified and agreed upon by the parties at pre-trial. Thus, if in the course of the hearing, an agreed issue is clearly found to be irrelevant, moot or even not germane to the court to receive evidence and adjudicate on it. The converse is equally true. If a crucial issue is left out, but emanates from either pleadings or the evidence, the court cannot refuse to address it on ground that it is not included in the agreed issues'.

Similarly, in Mrs. Vicentia Mensah and Another vs Numo Adjei Kwanko II [2017] DLSC, 2601, Yeboah, JSC, as he then was, re-iterated the same point when he said:

> "It must, however, be made clear that a court of law is not bound to consider every conceivable issue arising from the pleadings and the evidence if in its opinion few of the issues could legally dispose of the case in accordance with the law".

See also William Ashitey vs Hydrafoam Estate [Gh] Ltd [2014] DLSC 3000, and In Re Asamoah [Dec'd] Agyeiwaa and Others vs Manu [2013-2014] 2 SCGLR 906 at holding 4, per Akamba, JSC, as he then was.

Having taken the liberty to go through the pleadings of the parties herein, there is no argument about the following and I make a finding of fact to their effect. They are that:

a. Prophet Kobena Ekwam [deceased] was the founder of Nyamesompa Healing Church.

b. 1st, 2nd, 4th, 5th and 6th defendants admit that the area originally occupied by the Church is the area presently being used as the Budumbra Refugee Camp.

c. the disputed land falls within Fetteh Stool Land.

d. the lands occupied by defendants also form part of Fetteh Stool Lands.

e. defendants and their grantees are in possession of the disputed land following the disbandment of the Church and after the Refugee Camp had been closed down.

Now, defendants' argument is that they have occupied the land for not less than twenty-five [25] years without any let or hindrance from any quarter. Therefore, they contend that plaintiffs' action is statute-barred by virtue of the Limitation Decree, 1972 [NRCD 54. As a result, they challenge plaintiffs' capacity to institute the present action.

With the argument on plaintiffs' capacity to institute this suit, I proceed to state the well-known proposition of law that when the suitor's capacity is challenged he must prove it before he can succeed on the merits. The oft-quoted cases of Sarkodie I vs Boateng [1982-83] GLR 715 and Asante Appiah vs Amponsah alias Mansah [2009]

SCGLR 715 are examples. Another case worth citing is Sokpui II vs Tay Abgozo III [1951] 13 WACA 241.

Now, it is instructive to note that Order 33 rule 3 of the High Court [Civil Procedure] Rules, 2004 [CI 47] permits trial courts [including this Court], to dispose of such issue [s] raised in the pleadings. It states:

> "The Court may order any question or issue arising in any cause or matter whether of fact or law, or partly of fact and partly of law, and raised by the pleadings to be tried before, at or after the trial of the cause or matter and may give directions as to the manner in which the question or issue shall be tried'.

See the case of Alfa Musah vs Dr. Francis Asante Appeagyei, Civil Appeal No. J4/32/2017, SC, judgment dated 2nd May 2018, per Yeboah, JSC, as he then was. In Alfa Musa's case, which discussed trial courts' jurisdiction to dispose of such issues, the Supreme Court, speaking Yeboah, JSC, as he then was, had this to say:

> "……. but there is a procedural point which trial courts usually ignore in determination of cases of this nature in which the issue capacity, statute of limitation, estoppels per rem judicata are raised. Order 11 rule 2 [1] of CI 47, the High Court [Civil Procedure] Rules, permits a party to raise any point of law in his pleadings. Order 33 rule 3 permits a trial court to dispose of such issues raised in the pleading".

Proceeding further, the Supreme Court said:

> "In these proceedings, if the learned trial judge had exercised his discretion to hear or determine the issue of capacity, the costs of litigation, time, etc would have reduced significantly. Even though the rule above imposes a discretion on trial courts, it should in appropriate cases be exercised to fulfill the main objective of the drafters of the rules under Order 1 rule 2 of CI 47 to achieve expeditious and less expensive mode of adjudication of causes or matters before the Circuit Courts and the High Courts. Even though the two lower courts put in a lot of industry to discuss all the other issues and should be praised for their efforts, the matter should not have been decided on the merits".

I deem the above to serve as enough guidance to help adjudicate the instant matter before me by disposing off the preliminary issues raised by the pleadings in the matter.

I think the law is that, when a party lacks the capacity to prosecute an action the merits of the case should not be considered. That is where it is proved that the suitor lacks capacity it should be construed that the proper parties are not before the Court for their rights to be determined. A judgment, in law, seeks to establish the rights of parties and declaration of existing liabilities of parties. In the case of Akrong and Another vs Bulley [1965] GLR 469, the then Supreme Court after holding that the plaintiff lacked capacity

to prosecute the action as an administrator of the deceased, did not proceed to discuss the merits. For proceeding to discuss the merits when the proper parties are not before the Court is not permitted in law.

It is to be noted that even though the Court may take evidence on all the issues raised by the pleadings, the Court must always consider the issue of capacity first. In Akrong's case, when the issue of capacity was successfully raised on appeal before the Supreme Court, Apaloo JSC, as he then was said at page 476 thus:

> "But the question of capacity, like the plea of limitations is not concerned with the merits and as Lord Greene MR said in Hilton vs Suitton Steam Laundry, once the axe falls, and a defendant who is fortunate enough to have acquired the benefit of the statute of limitations [and I would myself add, or unanswerable defence of capacity to sue] is entitled of course, to insist upon his strict right".

See also the case of Musa vs Appiagyei, Civil Appeal No. J4/32/2017, judgment dated 2nd May 2018, SC.

So the question I ask is what is plaintiffs' answer to defendants' challenge to their capacity to mount the instant action? It is to be noted from the pleadings that when defendants raised this matter, plaintiffs joined issue with them. As the available judicial dicta suggest, plaintiffs owe it a legal duty to satisfy the Court, on the balance of the probabilities that they have the requisite capacity to institute the instant action.

In this direction, I refer to the relevant portion of Op. Timothy Kwame Botchwey [1st plaintiff's] evidence in-chief on the issue as follows:

"Q. In his lifetime where was this church located?

A. It was located at Ekwam-krom.

Q. Tell the Court where you can find Ekwam-krom.

A. It is at the Liberia Camp.

Q. Is your land part of Ekwam-krom?

A. Mine is different, it is Nyameadom.

Q. Can you tell the extent of the use of the land example the kind of structures?

A. He built houses, for the wife, children, relatives and church members.

Q. Apart from just living on the land, did they do any other thing on the land?

A. They were using it for a church.

Q. Then what happened?

A. After the Rawlings coup, Agyei Boadi was a member of the church and there was a dispute between him and the church members. They sacked them from the land. After Ekwam was taken to Usher Fort, but the church members and other family members were not taken anywhere …….

Q. At the time they were sacked, were they given any paper showing the property had been confiscated by the Government?

A. No. I never saw any paper.

Q. Later what was part of the land used for? The land owned by Prophet Ekwan?

A. The Liberia Refugees occupied that land.

Q. When the members of the church, family and his wife and children of Prophet Ekwan were forced out of the land do you know whether these persons did anything about the problem?

A. They wrote petitions to the Government and since we were in the Military Government/rule there was no response.

Q. Did you ever give up your interest in the land or your family-Did you accept it or you fought back/

A. I being the Head of Family we did not give up. I persisted pursuing it so that those sacked from the land would come back".

Now, the question is if from the above, it was highly impossible or difficult for plaintiffs to claim back their land because of the exigencies at the time, what happened immediately thereafter when the country returned to constitutional democratic rule? It is of common knowledge that the military rule the witness spoke about ended on 7th January 1993 with the coming into force of the 1992 Republic Constitution the country

adopted for itself. Consequently, I ask, if time could not run during the military era, which I concur, because it was the rule of the juntas, values of good governance and protection of fundamental human rights and freedoms were completely absent, what about the return of the country to constitutional rule? If 1st plaintiff, as head of family did not give up and that he persisted as he claims, what steps did he take?

The available evidence is that plaintiffs mounted the present action on 11th February 2010 a period of eighteen [18] good years after the return to constitutional rule. What does the law say in the circumstances bearing in mind that defendants have raised the issue of the action being time-barred? It is important to note that whilst under cross-examination, the witness agreed that the military Government did not officially acquire the land in dispute. See page 18 of the record of proceedings.

Now, let us listen to Mr. George Eshun who testified for plaintiffs as PW1 in his evidence in-chief on 3rd December 2013:

"Q. You know why the Plaintiffs have brought the Defendants to court?

A. We have come to court because after PNDC unlawfully confiscated our farms and land in 1989 without issuing any military decree. The PNDC in 1989 brought Liberia Refugees to occupy our land.

Q. Have you ever received document that your property has been confiscated?

A. No.

Q. Do you know whether any such document was made?

A. I went to the Divesture Implementation Board and they made me understand that there was no document covering the confiscation and so we should go and take our property.

Q. So in regard to the part occupied by the Government what have you done as a church?

A. We reported to the CHRAJ and A-G's office.

Q. You have demanded from the Government compensation?

A. Yes.

Q. What is your-In regard to the compensation-what is it you have written to A-G, National Refugees Board and Confiscation Board? What is the response?

A. It is on going?"

Unfortunately, I have combed through the records available and could not identify any evidence of any correspondence by the plaintiffs in that regard.

For purposes of emphasis, let me state that if defendants succeed on the claim that plaintiffs' action is statute-barred, then plaintiffs' action would automatically fail even if plaintiffs have led evidence on the other issues set down for the trial and had even addressed the Court on them. Eventually, they become otiose. Dotse, JSC, has reiterated the above proposition in the Supreme Court unreported case of Jean Hanna Assi vs Attorney-General, Civil Appeal No. J4/17/2016 as follows:

"If indeed it is [statute-barred], then there is no need to look at the merits of the case since the statute of limitation is a venerable shield that can be used to ward off indolent and piecemeal litigators".

In the circumstances, I proceed to evaluate defendants' contention of limitation and adverse possession. Section 10 of the Limitation Act, 1972 [Act 54] provides as follows:

"10. Recovery of Land

[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 the person through whom the first mentioned claims to that person.

[2] A right of action to recover land does not accrue unless the land is in the possession of a person in whose favour the period of limitation can run.

[3] Where a right of action to recover land has accrued, and the right of action is barred, the land ceased to be in adverse possession, the right of action does accrue until the land is again taken into adverse possession.

[4] For the purposes of this Act, a person is in possession of a land by reason only of having made a formal entry in the land.

[5] For the purposes of this Act, a continual or any other claim on or near a land does not preserve a right of action to recover the land.

[6] On the expiration of the period fixed by this Act for a person to bring an action to recover land, the title of that person to the land is extinguished.

[7] For the purpose of this section 'adverse possession' means possession of a person in whose favour the period of limitation can run".

It is in evidence that Prophet Kobina Ekwan acquired the land in issue some years ago. Thereafter, he established a church on a portion thereof whereas he built structures to accommodate himself and his family including other church members. It is also in evidence that owing to some reasons, Prophet Kobina Ekwan and his family together with the church members on the land before his death vacated same. This was during the PNDC military era. As soon as the Prophet and others left the land, defendants including others went and occupied the land. In fact, the Government of Ghana and UNHCR used part of the land as Refugees Camp for the Liberian refugees who ran away from the civil war in that country some years back. It is important to note from the evidence produced at the trial that to date, defendants and their grantees are in possession of the disputed land.

Assuming that the right of the plaintiffs who claim to be successors-in-title to the Prophet to recover the land accrued immediately after the coming into force of the 1992 Constitution of Ghana which ushered in the 4th Republic, is their present action mounted in 2010 against defendants maintainable? Between 1992 and 2010 spans a period of eighteen [18] solid years. I find that at the trial, apart from merely asserting that they did not give up and persisted in pursuing to recover the land, they could not support their assertion with the relevant evidence. Not even PW1 who claims that their pursuit was on going. Therefore, defendants, having been in possession for purposes of this delivery eighteen [18] years and still continue to be in possession thereof, it is my ruling that defendants have been in adverse possession of the land and this gives defendants a better title to the land than plaintiffs.

It is trite learning that for defendants to succeed on their plea of limitation, they must demonstrate that, by law, they are in adverse possession of the land. The term 'adverse possession' as found in section 7 of Act 54, was explained by Atugubah, JSC, as he then was, in Djin vs Musah Baako [2007-2008] 1SCGLR 686 at 699 when he stated that:

> "The law as we understand it ….. is that if a squatter takes possession of land belonging to another and remains in possession for 12 years to the exclusion of the owner, that represents adverse possession and accordingly at the end of 12 years the title of the owner is extinguished. That is the plain meaning of the statutory provisions, which I have quoted and no authority has been cited to us. The simple question is: did the squatter acquire and remain in exclusive possession?'

Also, in Adjetey Adjei vs Nmai Boi [2013-2014] 2 SCGLR 1474, Sophia Adinyira, JSC, as she then was, explaining adverse possession, had this to say:

> "Adverse possession must be open, visible and unchallenged so that it gives notice to the legal owner that someone was asserting a claim adverse to his. And section 10 of the Limitation Act 1972 [NRCD 54] has reflected substantially the provisions of the English Statute of Limitation and the common law. ……..".

See also Amidu and Another vs Alawiye and Others [unreported] Suit No. J4/54/2018, judgment dated 24th July 2019, SC, per Pwamang, JSC.

In the instant proceedings, it is regrettable that plaintiffs could not demonstrate to the satisfaction of the Court and on the balance of the probabilities that they persisted and fought back in time in their bid to recover the land in issue from defendants who have been in adverse possession thereof over the years. Indeed, plaintiffs failed to join the Attorney-General for example, whom, they claim they petitioned over the land. Equally important is their failure to join and or call the Ghana Refugees Board which was in-charge of the Liberian refugees put on the land as refugees when the Refugees Camp was established thereon. The nature of adverse possessory title in land is such that, once the Court upholds it, it prevails over all other interests including plaintiffs' interests in the land.

Thus in GIHOC vs Hanna Asi [2005-2006] SCGLR 458, Dr. Date-Bah, JSC, as he then was, elegantly stated the legal nature of an adverse possessory title as follows:

"The combination of the extinguishing of the original owner's rights under section 10 [6] of the Limitation Decree, 1972 [NRCD 54] , with the barring of action against the adverse possessor under section 10 [1], must in logic result in the adverse possessor being construed to have gained a right that is enforceable by action. Otherwise, there would be the risk of 'ownerless lands' resulting from a contrary interpretation of section 10 [6] of the Limitation Decree. Indeed, there is authority in support of the view that an adverse possessor of land in relation to which the original owner's rights have been extinguished has rights in relation to which he can sue. The adverse possessor gains a new estate of his or her own, which is not by transfer from the original owner whose rights have been extinguished by the limitation statute".

In the end, I find that defendants have been able to show that plaintiffs' instant action is statute-barred. Consequently, I hold that the instant action plaintiffs mounted against defendants claiming the land bounded on the North by Gomoa Fetteh Stool Land measuring 1989 feet more or less, on the East by Agricultural Settlement Farm [Ghana Prisons Farm] measuring 4902 feet more or less and Kwame Botchwey village land

measuring 4185 feet more or less, on the South by Gomoa Fetteh Stool Land measuring 2500 feet more or less and on the West by Gomoa Fetteh Stool Land measuring 3668 feet more or less fails as same is statute-barred. Plaintiffs' interest in the said I is therefore extinguished in the circumstances. Having found that the action is statute-barred, I dismiss plaintiffs' action with cost of twenty thousand Ghana Cedis [GHC20,000.00] to defendants and against plaintiffs.

KWASI BOAKYE J.

[HIGH COURT JUDGE].

GEORGE ESHUN FOR PLAINTIFFS

EUGENE LARBI APPIAH FOR DEFENDANTS

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE HELD AT CAPE COAST IN THE CENTRAL REGION ON MONDAY THE 17TH DAY

OF APRIL 2023 BEFORE HIS LORDSHIP JUSTICE KWASI BOAKYE, HIGH COURT JUDGE.

SUIT NO: E1/56/2010

1. OP. TIMOTHY KWAME BOTCHWEY

2. MAD. MEDICA AMA ABAM

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VS

1. KOW AMOASI

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3. BUCKAY

4. ALHASSAN MOHAMMED

5. AHOMKA

6. KOW ENYINDA

JUDGMENT IN BRIEF

I dismiss plaintiffs' action against defendants as statute-barred with cost of twenty thousand Ghana Cedis [GHC20,000.00] in favour of defendants and against plaintiffs.

KWASI BAOKYE J.

[HIGH COURT JUDGE].