

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE (LAND DIVISION) ACCRA HELD ON THURSDAY THE 9TH DAY OF FEBRUARY, 2023 BEFORE HER LADYSHIP JUSTICE JENNIFER MYERS AHMED (MRS), JUSTICE OF THE HIGH COURT.

SUIT NO: LD/1208/2019

1. KWAME AMAADI ACQUAH : PLAINTIFFS
2. ODARTEI LAMPTEY
3. MARY ADOLEY AWULEY
4. OBODAI TORGBOR
5. GIFTY OKAILEY AWULEY

VRS

1. MR. ASSUMING : DEFENDANTS
2. ALBERT HOFFMAN
3. ASANTE
4. THE ESTATE OF MR. ADU

The plaintiffs by their further amended writ of summons and statement of claim filed on the 17th of February 2021 sought the following reliefs:

- i. A declaration that all that piece or parcel of land mentioned in paragraph 3 of the statement of claim is for the plaintiffs.
- ii. Recovery of possession of the land described in paragraph 3 of the statement of claim.
- iii. Perpetual injunction restraining the defendants, their agents, privies, from interfering with the land until final determination of the suit.

- iv. Damages for trespass.
- v. Legal fees.
- vi. Costs of this action.

The plaintiffs initially commenced the instant suit on the 17th of September 2019 against the 1st to 3rd defendants who entered appearance on the 10th of October 2019 and also on that date filed an application seeking to dismiss the suit on the ground that they were tenants on the property in dispute which belonged to one Kofi Adu who had passed away. The court did not grant the prayer of the 1st to 3rd defendants but joined the estate of the late Kofi Adu to the action on the 16th of December 2019. The estate of the late Kofi Adu entered appearance through its counsel on the 4th of February 2020 and filed its statement of defence and counterclaim on the 11th of February 2020. Subsequently, in response to the plaintiff's further amended writ of summons and statement of claim, the defendants also filed an amended statement of defence and counterclaim on the 26th of February 2021 also seeking the following reliefs:

- a. Declaration of title to ALL THAT PIECE OR PARCEL OF LAND situate, lying and being at Ablekuma-Accra and bounded on the North-East by a proposed road measuring 60 feet more or less bounded on the South-East by proposed road measuring 100 feet more or less bounded on the South-West by Lessors land measuring 60 feet more or less bounded on the North-West by lessors land measuring 100 feet more or less and containing an approximate area of 0.13 acre or 0.05 hectares more or less which piece or parcel of land is more particularly delineated on the plan attached hereto and thereon shown edged pink which shows any relevant measurements.
- b. Recovery of possession of any part of the said land trespassed or encroached upon by the plaintiffs and all persons claiming interest and or title through the plaintiffs.

- c. Perpetual injunction restraining the plaintiffs, their agents, privies, assigns, servants, workmen and all persons claiming through them from entering and dealing with the 4th defendant's land the subject matter of this suit.
- d. An order of demolition at the plaintiffs' expense of all illegal structures erected on the 4th defendant's land by the plaintiffs.
- e. Costs including legal fees.

At the close of pleadings the issues that were set down for resolution were the following:

1. Whether or not the plaintiffs are the joint owners of all that piece or parcel of land lying and being at Ablekuma, Accra?
2. Whether or not the defendants have encroached on the plaintiffs' land.
3. Whether or not the plaintiffs are entitled to the reliefs endorsed on the writ of summons and statement of claim.
4. Whether or not the 1st to 3rd defendants are tenants of the late Mr. Adu and are proper parties to be joined to this suit or action.
5. Whether or not the late Mr. Adu acquired the land in dispute in or about 2000.
6. Whether or not the late Mr. Adu took immediate possession of the land in dispute after acquiring same by exercising acts of control and ownership over the land in dispute.
7. Whether or not the structures on the land were put up by the late Mr. Adu before his demise.
8. Whether or not the late Mr. Adu has been in uninterrupted possession of the land in dispute since acquiring same in or about 2000.
9. Whether or not the plaintiffs' action or suit is statute barred considering the fact that the 4th defendant has been in uninterrupted possession of the land in dispute for more than nineteen(19) years.
10. Any further issue arising from the pleadings in this suit.

The Plaintiffs' Case

The case of the plaintiffs is that on or before the 1st of December 1999 they acquired plots of land at Ablekuma from the Sempe Mensah family through Nii Ebenezer Tetteh Annan Nettey the then head and lawful representative of the Nii Sempe Mensah family and registered same at the Lands Commission. They had been in uninterrupted possession of the land until one Larbi Mensah IV claiming to be the chief of Ablekuma sold it to one Mr. Adu.

The plaintiffs presented their case through the 4th and 5th defendants and a witness in the person of one Okyeame Amoo Dodoo who actually testified first. In his witness statement he deposed that he was the linguist of Nii Kwaku Fosu III, the Ablekuma Mantse and the Ablekuma family. The plaintiffs were given the land by Nii Kwaku Fosu II, the predecessor of Nii Kwaku Fosu III. Nii Larbi Mensah was a self-styled chief who with the support of land guards was threatening and taking people's lands away from them and had an action pending against him at the Ga Traditional Council.

The late Nii Kwaku Fosu II had together with one Ataa Nakai Onukpa and Onukpa Neley made the grant of land to the plaintiffs and one Naa Nsakina also known as Ode Awuley ensured that the land was given to the plaintiffs by the chief of Ablekuma. Any purported land document executed by the Nii Larbi Mensah was not properly obtained since the late Nii Larbi Mensah had not been authorized by the Ablekuma Family to carry out any land transaction.

Under cross-examination he stated that the elder brother of Nii Kwaku Fosu II whose name was Atamkpa Nakai and one Amkpa Meley granted the land to the plaintiffs. When it was pointed out to him that this was contrary to what he stated in paragraph 3 of his witness statement that the land was given to the plaintiffs by Nii Kwaku Fosu II he answered that he thought there was a mistake in the writing of the statement because what he had said was different from what was in paragraph 3. His answer to

the question whether Nii Kwaku Fosu II was alive when the land was purportedly granted to the plaintiffs was a no. The land he stated was family land. With regard to the matter he had stated was pending at the Ga Traditional Council over the status of Nii Larbi Mensah, he stated in answer to a question from the defendants' counsel whether the Traditional Council had recognized Nii Kwaku Fosu II as the chief of Ablekuma that, the council had asked the parties to *'come back and resolve the matter'*. He denied the assertion that the Ga Traditional Council had found as a fact that there has never been a stool name called Kwaku Fosu at Ablekuma but then admitted that he had not seen the judgment of the Ga Traditional council dated the 7th of April 2021 but knew that the family had been asked to resolve the matter. Nii Larbi Mensah and Nii Sempe Mensah were according to PW1 not the same family.

Mary Adoley Awuley the 5th defendant in her evidence deposed that she and the other plaintiffs acquired the land on or before the 1st of December 1999 from Nii Ebenzer Tetteh Annan Nettey, head and lawful representative of the Nii Sempe Mensah family with the consent and concurrence of the principal members of the family. The indenture executed for them was tendered into evidence as exhibit A. This parcel of land granted them contained an approximate area of 0.86 acre and a copy of their site plan was also tendered into evidence as exhibit B. They then proceeded to register their interest at the Lands Commission. Tendered into evidence as exhibit C was the result of a search conducted by them in January of 2019.

She stated that she and the other plaintiffs had been in undisturbed possession of the land since acquiring same and it had buildings on it which included a fuel station and shops. Their quiet possession had been interrupted by Larbi Mensah who claiming to be the chief of Ablekuma, had sold same to Mr. Adu who about five years prior to her witness statement which was filed on the 23rd of January 2020 had begun constructing houses on the land without the consent of the plaintiffs. They thus confronted him about his encroachment on their land but he refused to stop his acts of trespass and *'went to the extent of bringing in land guards to terrorize' them*. They also issued verbal

and physical threats to them and dared them to trespass on the land or risk losing their lives. The defendants had taken over the land after the demise of Mr. Adu and all attempts by them to recover the land had proved futile. They had also lodged a complaint with the property fraud unit of the Ghana police but no action had been taken.

The defendants had put up structures on the land which they had rented out to tenants. On the advice of a lawyer, they had engaged a surveyor to undertake a survey of the land but the 2nd defendant had attacked the surveyor with a machete though he had been restrained by other persons present at the scene. The 1st and 3rd defendants after hearing that the 2nd defendant had pulled a machete called for a meeting which meeting took place on the 24th of February 2019. The defendants at the meeting admitted that they were family members of the late Mr. Adu and asked for two weeks to consult with their head of family and get back to the plaintiffs but they failed to do so.

The 5th defendant tendered into evidence as exhibit D a judgment of the high court dated the 31st of May 2017 in which she said it was adjudged that Nii Larbi Mensah IV was not the chief of Ablekuma and not entitled to lease or sell or dispose of any land in Ablekuma and thus any purported sale, lease or conveyance to the 4th defendant by Nii Larbi Mensah IV was null and void.

The 5th plaintiff under cross-examination stated that the portion of land on which the fuel filling station is situate was hers and that she had lived there for about two years before it turned into a filling station. Construction of the filling station commenced in 2012 and was completed in 2014. She had seen the 2nd defendant on the land in dispute the day he pulled out a machete threatening to kill them but she did not know him. She had not reported his threat to the police as some members of the 2nd defendant's family had pleaded with them not to do so and that they would call other members of their family to settle the issue but they had never been back after that. When she was asked whether it was her practice to wait for the family of a person unknown to her

who had threatened her with machete to resolve matters amicably she answered in the affirmative and said the reason was *'because we wanted peace'*. She denied the assertion that the alleged attack with the machete had been concocted and that her response did not make sense. The 5th defendant stated in response to a question from the defendants' counsel that she had not visited the land in dispute in about a year as at the 8th of December 2021 and had only known that a building had been constructed on Kofi Adu's land around that time.

She knew the Nii Larbi Mensah family of Ablekuma and denied that the Nii Sempe Mensah family and the Nii Larbi Mensah family were one and the same. When it was pointed out to her that the last paragraph of the third page of the judgment in suit no. FAL197/11 dated the 31st of May 2017 titled **Nii Ahinquarsoo Baddoo & 3 Others v Nii Tettey Okpe II & 5 Others** in which the plaintiff was suing as the head of family of Nii Larbi We Sempe and which she had attached as exhibit D stated that *'the Sempe family is also known as Nii Larbi We family'* she answered that the Larbi the defendants' counsel was referring to is not the same as the Larbi in her exhibit D. She later acknowledged that she did not see the name of Nii Larbi Mensah IV aka Adjin Tettey in the judgment attached as exhibit D.

The 5th plaintiff also denied that the court in the 4th defendant's exhibit 4 which is a judgment of E.K.Mensah J dated the 24th of February 2015 in suit number L77/2003 titled **Emmanuel Kwartey Quartey-Papafio (substituted by) Ishmael Walter Allotey v 1. The Lands Commission and 2. Nii Larbi Mensah IV(aka Adjin Tetteh) Head of Nii Larbi Mensah family**, had found that her grantor's predecessor was not even a member of the Nii Sempe Mensah family and stated that they had documents which showed that Nii Larbi Mensah's lineage was the *'rightful person'* to be head of the Larbi Mensah family. She also insisted that their grantor was the head of family of the Nii Sempe and had made his grant together with the entire family.

The 5th plaintiff also stated that the land was initially encroached on by Larbi Mensah IV but she was able to recover it and use it for a filling station. Nii Larbi Mensah then

moved onto her aunt's land which was now the subject of dispute. In answer to a question from the defendants' counsel she stated that she was given a site plan and shown the boundaries of the land as well. The land was not demarcated and so she and the other plaintiffs shared it among themselves but the late Mr. Adu occupied the portion belonging to her aunt. It would be untrue she said to claim that if Mr. Adu's land was included to their land, the entire land given to them would be more than they are claiming in this court per their site plan. She alleged that her aunt had deposited sand, stones and blocks on her portion and denied the suggestion that the late Mr. Adu had commenced with the construction of his house a few years after taking possession of his land in the year 2000 or that he had partly completed the house in 2008 and one Auntie Serwaa occupied one of the rooms. When shown pictures of Adu's house she said that she could not determine if that was his house and that the picture looked *'like some other houses in the neighborhood'*. They had attached a site plan to their search request at the Lands Commission but when it was pointed out to her that their exhibit C which was their search result lacked a site plan so it was impossible to know which land they purportedly conducted the search on, she said, *'the site plan has been attached but it is wrongly filed at where it is supposed to be'*. The following then ensued exchange then ensued;

' Q: Go to your exhibit B the site plan. At the site plan you are looking at, is there any portion marked A on the site plan?

A: No my lord.

Q: So when you told this court that the site plan you used in conducting the search is part of your witness statement you were misleading this honorable court.

A: There was a mistake with the filing of the exhibits because the site plan that was used for the search was not attached to it and that is what has been marked A.'

Her answer, when it was put to her that if indeed the site plan she (and the other plaintiffs) used in conducting the search included the late Adu's land the search result

would have indicated so, was, *'My lord it is not the same. The search does not belong to the one that gave us our land. This is because this is not our site plan'*. She acknowledged that indeed they had on the advice of their lawyer engaged the services of a surveyor to survey the land in dispute in February 2019. The following question was then posed to her, *'You will agree with me, would you not that having known the size and boundaries of the land as far back as 1999, there would not be the need to survey the land again, especially when you are in occupation of same'*. Her answer was that it was important to engage a surveyor. The next question then posed to her was, *'What is the importance of survey work?'* and her answer was, *'It is important. This is because when Larbi Mensah took the land and gave it to Adu, he said that portion is not part of our land so we employed the services of a surveyor to survey the land to determine whether the land that was apportioned to Adu is part of our land'*. She did not know when Adu died as she was out of town and denied that the instant suit had been dreamt up because it was thought that Adu's land could be taken because he had passed away. When she was asked if she could point to any evidence that she had made any claim to the land prior to Adu's demise she stated thus, *'I do not have documents to back my claim, but I have witnesses. Whiles Adu was alive, my brother, my auntie and one cousin of mine went to Adu to discuss the issue with him. So Larbi Mensah told Adu to take possession of the land. So we made several efforts to confront him'*. None of these witnesses were however produced.

The 5th plaintiff confirmed that there was a fence wall separating her land from the land in dispute but it had not been constructed by them so she could not tell when it had been constructed but she had seen it for the first time almost a year before her testimony and the last time she had visited the land was also almost two years prior to the 16th of December 2021. There was a dwarf wall on the land at the time she last visited there. The land on which her aunt lives shared a boundary with the land in dispute and the fence had been erected when her aunt settled on the land about 5 or 6 years prior to her testimony. She did not know the identity of the person who had constructed the fence wall. She also stated that the portion of land given to her sibling

Gifty Awuley was what was taken over by Kojo Adu. Counsel for the defendant asked her the following question, '*Are you aware that the surveyor who was instructed by this honorable court to visit the land and do a composite plan of same has told this court that your site plan does not even fall on the land in dispute?*' and her answer was that the defendant's land rather lies on the road. She denied that the action is a failed attempt to take a deceased person's land.

The evidence of the 4th plaintiff Gifty Okailey Awuley as per her witness statement did not differ much from that of the 5th plaintiff and was basically a repetition of what the 5th plaintiff had deposed to. Under cross-examination, she admitted that she did not live on the land in dispute and had never lived on it before. She had last visited the land about a year prior to her testimony on the 16th of December 2021. Even though she admitted that she had met the late Kojo Adu, she could not recall the first time she met him or if it had been more than 10 years when she did so. She also did not recall when the late Adu first went onto his land but she admitted lodging a complaint against him to the police when in the course of constructing her foundation land guards had come onto the land and prevented them from working on the land. She could not tell when this event had taken place as '*...the time the incident happened I knew the land belonged to me so I did not take note of the date*'. She was unaware that Kojo Adu had constructed a house and completed same before he died but she had not seen it until she went to her sister's engagement and saw the house. She did not know the state of Kojo Adu's building which had a fence wall around it but only saw its roof. She could not tell what the color of the gate was and alleged that anytime she set eyes on the house her blood pressure would spike as she did not want to see the house. She did not know when the fence wall around Adu's land had been built but could not agree with the assertion by the defendants' counsel that the fence wall was constructed in 2012. She did not know anything with respect to the year that Kojo Adu started constructing his house because she was indisposed and was not going to the land.

According to the 4th plaintiff she had met the 2nd defendant on one occasion when he came to their house with Kojo Adu but could not remember when this visit took place. The late Kojo Adu had constructed his building on her land and had also encroached on her sister's land. The following exchange then ensued;

' Q: So you allowed a person to purportedly build on your land ,rent it out to tenants, die more than three years ago and you only got to know last year. Is that what you are telling this court?

A: My lord, at the time Mr. Adu was constructing his house on my land, somebody hinted me but I was indisposed and my daughter who could assist me claim this land had also travelled.

Q: But you are in court with four other plaintiffs. Are you saying that apart from your daughter who had travelled, nobody could intervene for you?

A: My lord, even though they were living in Accra, they were staying in their respective places and due to financial challenges they couldn't intervene.'

She had not met the 2nd defendant anywhere since the Kojo Adu died. She denied the assertion that the whole action was a failed attempt to try to deprive the late Kojo Adu's family the land that he legally acquired and stated that it belonged to her and she had constructed a two chamber and hall structure with a loan she took but the defendant, and she did not specify which defendant it was, had taken her sand, stones and blocks to construct his building.

The Defendants' Case

The case of the defendants was that the land in dispute forms part of the estate of the late Kojo Adu which he acquired in his lifetime somewhere in the year 2000. The 2nd defendant who testified on his own behalf and on behalf of the 3rd defendant deposed in his witness statement that he got to know the late Kojo Adu in the year 2006. He (the 2nd defendant) had acquired a parcel of land at Ablekuma for a building project but same was affected by the construction of the Awoshie-Pokuase road. Kojo Adu

had also been affected by the road construction. Sometime in 2009 he told Kojo Adu that he was searching for a place to live and Kojo Adu had informed him that he had an uncompleted building at Ablekuma- Pentecost junction so he could inspect it and decide if he was interested in moving into one of the rooms. The late Adu took him to his house, he expressed interest in finishing up one room and moving in which he did sometime in November 2009. A tenancy agreement he executed with Kojo Adu was tendered into evidence as exhibit 5 and the tenancy agreement of the 3rd defendant who moved into the house in 2017 was also tendered as exhibit 5A. At the time he the 2nd defendant moved in there was already a woman known as Aunty Serwaa in occupation of one room and she told him that she had moved into occupation in 2008. The plaintiffs were also at the time living on their land which is separate and distinct from the late Kojo Adu's land and there is a fence wall demarcating their land from Kojo Adu's land.

They had lived as tenants without any hindrance from any person and the late Kojo Adu during his lifetime had visited the land on a regular basis and at no point had they ever been confronted by the plaintiffs about ownership of the land in dispute. The plaintiffs had not made any adverse claim to the land until after the demise of Kojo Adu in 2018 and it was after his death that they started laying adverse claims to the land, alleging that the late Kojo Adu had trespassed 20 feet into their land and so they were claiming the 20 feet and a part of the house that supposedly fell into the 20 feet. The plaintiffs after their initial claim then claimed that the land on which Kojo Adu built his dwelling house was part of their land and alleged that the late Kojo Adu did not have title to the land in dispute and that he had stolen their land. His response to the plaintiffs was that he was only a tenant and would relay their message to the family of Kojo Adu. Later on that day, he was cutting down some weathered plantain trees on a portion of the land when he saw a surveyor on the late Kojo Adu's land attempting to pick the coordinates of the land. The surveyor took off when he noticed the cutlass he was holding in his hand and reported to the plaintiffs that he(the 2nd

defendant) had chased him with a cutlass. He denied threatening the surveyor in any way with the cutlass and said that the surveyor took off as he was approaching him to enquire about his mission or business on the late Kojo Adu's land.....DID 4TH PLF SAY THAT THE 2ND DEFENDANT THREATENED HER OR A SURVEYOR WITH THE MACHETE???

The 2nd defendant under cross-examination denied the assertion that the late Adu during his lifetime admitted to the plaintiffs on numerous occasions that he was not the rightful owner of the land but he did admit that as a tenant he would not know what transpired between the plaintiffs and the late Adu. He was also not a part of the meeting that was held after he was accused of threatening the surveyor with a cutlass and was unaware that at the meeting tenants informed the plaintiffs that they are not the family of Kojo Adu and that they were going to consult his family over the ownership of the land.

The next witness for the defendants was the representative of the 4th defendant in the person of Peter Kofi Adu whose evidence was that he had accompanied the late Kojo Adu sometime in the year 2000 to Nii Larbi Mensah when the late Adu had expressed interest in acquiring the land in dispute. After obtaining the grant of land from Nii Larbi Mensah the late Kojo Adu had taken immediate possession of the land and dumped a trip each of sand and stones on the land and had also dug trenches to begin construction works thereon. Even though he was put into immediate possession he was not given an indenture until in the year 2006 when Nii Larbi Mensah IV executed one for him on the 28th of December 2006. A copy of this lease was tendered into evidence as exhibit 1. He had personally taken the indenture to the lands commission for it to be stamped and registered.

The late Kojo Adu built a dwelling house on the land which has been occupied by caretakers and tenants. It took some time before the late Kojo Adu completed the house but at no point did the plaintiffs make any adverse claim to the land in dispute and only started laying claim to the land after the death of Kojo Adu and had waited

for 19 years before mounting this action in September of 2019. Following the adverse claim by the plaintiffs, he said that they conducted a search at the lands commission in April 2019 which confirmed that the land in dispute was leased from Nii Larbi Mensah IV the then head and lawful representative of the Nii Larbi Mensah/Nii Sempe Mensah family of Ablekuma acting with the consent and concurrence of the principal members of the family to Kojo Adu. A copy of the search results was tendered into evidence as exhibit 3. Also tendered into evidence as exhibit 4 was a judgment of the high court dated the 24th of February 2015 in suit number L77/2003 entitled Emmanuel Quartey-Papafio(substituted by Ishmael Walter Allotey) vrs Lands Commission and Nii Larbie Mensah IV(a.k.a Adjin Tetteh).

Under cross-examination DW1 said that he was not a relative of the deceased Kojo Adu but had been mandated by his estate to testify in this suit due to the fact that they had been very close and he knew almost everything about Kojo Adu's properties during his lifetime. He admitted that exhibit 1, the indenture was presented to the land valuation division of the lands commission after the commencement of this suit but stated that exhibit 1 had already been registered at the lands commission. He insisted that the land had been purchased by Kojo Adu in the year 2000 but the indenture was issued after 6 years. He was unable to explain why the site plan accompanying the indenture was dated the 24th of January 2007 and said that it was probably an error. He also insisted that the site plan of the plaintiffs was different from Kojo Adu's site plan and the search conducted by the plaintiffs differed from theirs as their site plans were different.

The court ordered parties to file their survey instructions pursuant to which a composite site plan was prepared and tendered to the court by a surveyor from the Survey and Mapping division of the regional lands commission who testified as Court Witness 1(CW1). This composite site plan was tendered by him into evidence as exhibit CE2.

Under cross-examination by the plaintiff's counsel the surveyor stated that representatives from the parties were present when he went to the land in dispute to take measurements. He acknowledged that a portion of the land on the site plan of the late Kojo Adu which was edged violet on the composite site plan was within the highway and that the area shown to him by the representatives of the 4th defendant on the ground and edged red as belonging to the estate of the late Kojo Adu did not fall within the plaintiffs' land. The portion edged red was also the area in dispute on the ground.

The following question and answer exchange took place when he was cross-examined by the defendants' counsel:

'Q: The plaintiffs' land, the area marked magenta, falls completely outside vis-à-vis the land they showed on the ground.

A: Yes

Q: In fact it is a complete shift and doesn't even overlap at all. Is that the case?

A: That is so.

Q: So the land as shown to you on the ground by the 4th defendant is partly captured in their site plan as well. Is that correct?

A: Yes my lord.'

The house of the late Kojo Adu which was pointed out to him during the survey work was separated from the plaintiffs' land by a wall.

A look at exhibit C2, the composite site plan shows that indeed, there is a shift of the late Kojo Adu's land backwards from the N1 highway and though the surveyor did not inform the court of the distance the land had been shifted on the ground as compared to the site plan, a portion of the land on the ground is within the correct position as per the composite site plan. It also shows that the buildings of the plaintiffs are not within the portion of the 4th defendant's land though the late Kojo Adu's

building is close to two buildings belonging to the 3rd plaintiff. The plaintiffs and the 4th defendants are within the same large portion of land which was pointed out the plaintiffs as belonging to them on the ground. However the composite site plan depicts clearly the fact that the land being claimed by the plaintiffs per their site plan and edged magenta in exhibit CE2, does not correspond with the land they are laying claim to on the ground. Their land as per their own site plan lies completely outside of the land in dispute and shows clearly that whatever land was carved out to them by their alleged grantor as per the site plan issued them is different from the land they occupy and are laying claim to. Their land per their site plan rather shares a boundary with the land they now occupy and overlaps a little bit into the land of Kojo Adu. Essentially the plaintiffs' land per their site plan differs from the land they occupy and unlike the 4th defendant's land, is quite a substantial shift which distance was unfortunately not provided by the witness.

Very clearly then it can be stated that the plaintiffs were unable to adduce any evidence to contradict that of the expert witness in the person of the surveyor, that the land in dispute is exclusive of the plaintiffs' land and does not belong to them. In **Musah(No.2) v Sackey(No. 2)** civil appeal no. J4/3/2015 delivered on 14th March 2017, Dotse JSC held that;

'We have warned ourselves that we need not necessarily endorse the expert opinion of the Surveyor if there are indeed any legal reasons why we should not. However, there are no compelling reasons why we should not accept the opinion in this case. We therefore endorse the survey plan and its report tendered into evidence before the Circuit Court as authentic and one that has brought closure to the real identity of the land in dispute.'

I find as a fact that the land being claimed by the plaintiffs is not the same as that being claimed by the 4th defendant as very clearly, the plaintiffs are, on the ground not within the confines of the land granted to them by their grantor as per their site plan their land does not 'touch' the disputed land- reference here to Sackey v Musah Civil appeal no. J4/25/ 2014 delivered on 21/10/2015. The authorities are clear that to

succeed in an action for declaration of title to land and recovery of possession, a plaintiff must establish positively the identity of the land he is claiming- **Gawu & Another v Ponuku**[1960] GLR 101 for as was held in **Yawson(substituted by) Tulasi & Another v Mensah & Mensah**[2011] 1 SCGLR 568, *'Failure to identify the boundaries of the land with accuracy would be fatal to a claim for declaration of title'*.

It is trite that in any claim of title to land, the onus lies heavily on a plaintiff to prove his case on the balance of the probabilities as per sections 10,11 and 12 of the Evidence Act 1975, NRCD 323 and he cannot rely on the weakness of the defendant's case to establish his own. Cases such as **Fosua & Adu-Poku v Dufie(deceased) & Adu Poku-Mensah**[2009] SCGLR 310 and **Odoi v Hammond**(1971) 2 GLR 375 are instructive in this regard. However, where a defendant also files a counterclaim as in the instant case, then the same standard of proof used in evaluating the case of the plaintiff will also be used in evaluating and assessing the case of the defendant. Thus in **Osei v Korang** [2013] 58 GMJ 1, Ansah JSC at page 22 stated that;

'Where in an action the parties claim and counterclaim for declaration of title to the same piece of land, each party bears the onus of proof as to which side has a better claim of title against his or her adversary for a counter claimant is as good as a plaintiff in respect of a property which he assays to make his/her own.'

In the instant case, the plaintiffs are seeking declaration of title to land containing an approximate area of 0.86 acres whilst the 4th defendant is seeking a declaration of title to land measuring 0.13 acre. The case of the 4th defendant is that the late Kojo Adu's land does not belong to the plaintiffs and further that the late Kojo Adu did not encroach on any part of the plaintiffs' land. It is rather interesting that the plaintiffs never made any claim of title to the land during the lifetime of the late Kojo Adu especially in light of their allegations that not only did he encroach on their land but he brought in land guards to terrorize them and stole building materials to belonging to the 4th plaintiff to build his house. Furthermore, from the evidence adduced, it appears that Kojo Adu passed away in 2018 so why did it take so long for the plaintiffs

to commence this action? The tenancy agreements tendered by the defendants show a tenancy agreement dated the 1st of February 2010 between the late Kojo Adu and the 1st defendant which confirms that the late Kojo Adu had already constructed his building by the year 2010 and not 2015 as inferred by the 5th plaintiff when she claimed that the late Kojo Adu commenced building his house some 5 years prior to her witness statement. But her answers elicited during cross-examination prove that she had not even been present within the confines of Ablekuma when Adu was constructing his house and it was her aunt who had told her about it so in essence she was parroting a narrative she had not been a witness to.

In light of the claims by the plaintiffs that not only did Nii Larbi Mensah IV and Kojo Adu terrorize them with land guards but that Kojo Adu '*stole*' the 3rd defendant's materials to construct his building, why did they not make any report about all this to the police and why did they not challenge Kojo Adu in court as to the ownership of the land? If indeed as claimed by them the Kojo Adu during his lifetime had admitted that he had taken possession of their land, why had they kept quiet about it and for years chosen not to do anything or file a suit but wait until a year after his demise to commence this action? Perhaps the inference by the defendants that this is an orchestrated attempt to take over the late Adu's land due to his demise will be a plausible deduction to make here.

It must also be pointed out that the evidence of the 4th and 5th plaintiffs contradicted that of their own witness in respect of their acquisition of the land for while their claim is that they obtained their grant from Ebenezer Tetteh Annan Nartey, the head and lawful representative of the Nii Sempe family of Ablekuma their witness in his witness statement stated that they were granted the land by Nii Kwaku Fosu the III who was the Ablekuma Mantse. However he denied this deposition and stated that it was rather one Atankpa Nakai, the elder brother of Nii Kwaku Fosu II and one Amkpa Meley who gave the land to the plaintiffs. Undoubtedly it is apparent that he knew nothing about the land in dispute or how the plaintiffs acquired same as his account

of who made the grant of land to the plaintiffs differed from their account. Basically it can be inferred that he had no knowledge about the land in dispute or how the plaintiffs came by it. He also could not tell the court whether the land was a stool land or a family land. Thus this court finds that it cannot give much weight to his evidence, in the light of the fact that he contradicted himself in his evidence and had no knowledge about the land in dispute.

With regard to the claims of the 4th plaintiff that per exhibit D, the judgment dated the 31st of May 2017 titled **Nii Ahinquarsoo Baddoo & 3 Others v Nii Tettey Okpe II & 5 Others** Nii Larbi Mensah IV had been declared not to be the chief of Ablekuma and not entitled to lease or sell or dispose of any land in Ablekuma and thus any purported sale, lease or conveyance to the 4th defendant by Nii Larbi Mensah IV was null and void, the court finds that the court made no such declaration. What is incredible about this claim is the fact that the plaintiffs in that suit were members of the Nii Larbi We Sempe and the 1st defendant was Nii Tettey Okpe II, the chief of Amamole Mantse whilst the other defendants were elders of Amamole. The said Nii Larbi Mensah IV was not a party to the suit and no declarations were made about him by the court. In the defendants' exhibit 4, the judgment of E.K.Mensah J in in suit number L77/2003 titled **Emmanuel Kwartey Quartey-Papafio (substituted by) Ishmael Walter Allotey v 1. The Lands Commission and 2. Nii Larbi Mensah IV(aka Adjin Tetteh) Head of Nii Larbi Mensah family**, the court held that the plaintiff lacked the capacity to have instituted the action and was not a member of the Nii Larbi Mensah/Nii Sempe Mensah family. The court also declared the 2nd defendant to be the lawful and competent authority to initiate and make grants of Ablekuma lands. The evidence in that suit established that E.T Nettey the grantor of the plaintiffs was not a member of the Nii Larbi Mensah/Nii Sempe Mensah family. Thus this contradicts the narrative of the plaintiffs since their root of title is traced to a person who was neither a member of the Nii Larbi Mensah/ Nii Sempe Mensah family nor lacked the requisite capacity to make any grant of land to them. I therefore find their grant of land by E.T Nettey

who was neither the head of family of the Nii Larbi Mensah/ Nii Sempe Mensah family of Ablekuma as null and void.

In conclusion, the plaintiffs' claims fail and the counterclaims of the 4th defendant rather succeed. The 1st to 3rd defendants who were tenants of the late Kojo Adu are not necessary parties and their names are hereby struck out.

Judgment is thus granted in the 4th defendant's favour for all the reliefs endorsed on its counterclaim.

Cost of GH¢12,000.00 in favour of the defendants.

COUNSEL FOR PLAINTIFF:

MR. PETER ANTONIO – PRESENT

COUNSEL FOR 2ND – 4TH DEFENDANTS: MR. KWADWO OSEI ODAME –

PRESENT

SGD

JENNIFER ANNE MYERS AHMED (MRS)

JUSTICE OF THE HIGH COURT