

iv. Perpetual injunction restraining the Defendant, his agents, servant, privies from having anything to do with the house, the subject matter of this dispute.

BACKGROUND:

The Plaintiff's predecessor, Brebu Atumeku Dadzie (hereafter called Dadzie) and Ahmed Hallab and Yaya Hallab on 28/8/1958 entered into an agreement for the Development of plot

number 21 and 28/8 of Old John Sarbah Road, Takoradi by the Hallab family. (Hereafter called the Property)

After several rulings and judgments in suits between the parties as above described and who happened to be the predecessors of both the Plaintiff and the Defendants, the Court ORDERED that Fatima Hallab should be granted a sublease of the subject matter (property) as set out in the schedule to the agreement of 28/8/1958 for forty (40) years effective 1/1/1973 at a rent of £60.00 per annum.

The sublease has expired but the estate of Fatima Hallab has refused or failed to give up possession of the premises to the Plaintiff's family and has equally also failed to pay the agreed rent as per the sublease. The Defendants' contention though is that the Estate of Fatima Hallab, which the Defendants are the Administrators, are even ready to atone tenancy to any rightful beneficiary in law of the Estate of Brebu Atumeku Dadzie.

At the close of pleadings and at the directions stage, the following were set down as the issues for determination:

- a) Whether or not the Plaintiff has the capacity to mount this action*
- b) Whether or not the sublease granted to Fatima Hallab has expired.*
- c) Whether or not the Plaintiff is entitled to his claims.*

d) *Any other issues arising out of the pleadings.*

ADDITIONAL ISSUES:

iii. *Whether or not the lease is renewable by the rightful beneficiaries by the Estate of Brebu Atumeku Dadzie upon its expiry.*

iv. *Whether or not the Estate of Fatima Hallab are statutory lessee until renewable of the expired lease.*

Issues (1) and (2), being additional issues filed on 27/8/19 were on 18/9/2019, expunged from the issues and accordingly struck out.

THE CASE OF THE PLAINTIFF:

Relying on his witness statement filed on 20/3/2020, the Plaintiff stated that he is the Krontihene and Akwamuhene of Gomoa Manford in the Central Region and a member of the Essamoah Edu Asona Family of Gomoa Manford and brings this action on behalf of the said family.

He testified that his predecessor, Brebu Atumeku Dadzie, also a member of his family, acquired the plots on which the property in dispute is situate in his life time and entered into an agreement on 28/8/1958 with Ahamed Hallab and Yaya Hallab, the predecessors of the Defendants, who are now the administrators of the Estate of Fatima Hallab, (deceased) who had earlier become, by virtue of succession/administration, the developer of the said property, wherein it was agreed between the original parties to develop portions of the properties on the plots aforementioned (Plot Nos. 21 and 28/8 Old John Sarbah Road, Takoradi.

The witness testified that upon the death of Brebu Atumeku Dadzie intestate in 1969, the property (Plot Nos. 21 and 28/8 supra) devolved in the family aforesaid of Gomoa Manford.

The witness testified that there were series of court actions resulting in court ruling and judgment between the successors of Brebu Atumeka Dadzie and the Defendants' predecessors.

The Plaintiff testified that by a judgment dated 29/5/69 and tendered in evidence as Exhibit "B", the Court ordered that Fatima Hallab, who by the death of her predecessors (Ahmed Hallab and Yaya Hallab), had become the caretaker/"Owner", be granted a sublease of Plots Nos 21 and 23/8 (supra) for a period of forty (40) years commencing 1(1/1973 at a yearly rent of £60.00.

The witness testified that the sublease expired but the Defendants failed to give up possession of the premises to the family of Brebu Atumeka Dadzie and also failed to pay the agreed rent since 2007.

The witness testified that even though the tenancy has expired the Defendants have rented out portions of the premise to tenants and taking rent from the tenants without accounting to the Plaintiff and his family.

The witness testified that, since 9/6/2005, he has been dealing with Fatima Hallab and later with the Defendants on the subject matter in dispute, as a result of the power/authority of the Brebu Atumeku Dadzie's family of which he is a member entrusting the said property to him, by a Statutory Declaration (Exhibit "C"), and has accordingly had various correspondence between the lawyers for the parties (Exhibits "D, D1, D2, D3 AND D4").

The witness tendered in evidence, Exhibits "A, B, C and D" series which are the agreement of 28/8/58 between Brebu Atumeka Dadzie and Ahmed Hallab and Yaya

Hallab, a judgment of Court dated 29/5/1969, statutory Declaration and various correspondence between the lawyers for the parties respectively in support of his case against the Defendants.

The Plaintiff called one witness, PW1, Richmond Ernest Donkor, a principal member of the Essamoah Edu Asona family of Gomoa Manford whose evidence generally touched on the family of Brebu Atumeka Dadzie of which he was a principal member, the capacity/mandate of the Plaintiff as a result of the execution of statutory declaration on the properties left behind by Brebu Atumeku Dadzie which handed the subject-matter of this litigation and the action taken by the Plaintiff on such matters by managing all the properties left behind by Brebu Atumeku Dadzie on behalf of the family.

THE CASE OF THE DEFENDANTS:

The 1st Defendant testified for himself and on behalf of the 2nd Defendant and challenged the capacity of the Plaintiff to institute the instant action aside generally denying the evidence of the Plaintiff.

The witness testified that the 2nd Defendant is not an Administrator of the Estate of Fatima Hallab (deceased) but stated that he (1st Defendant) is one of the Executors of the Estate of Fatima Hallab with the other Executor being Welslk Hallab (deceased) (Exhibit 1 being a copy of the probate).

The witness testified in admission that on 28/8/1958, there was an agreement between Brebu Atumeku Dadzie of one part and Ahmed Hallab and Yaya Hallab for the second part to develop plot Nos. 21 and 23/8, Old John Sarbah Road, Takoradi.

The witness testified that Fatima Hallab was granted a lease in respect of the property (now being a house) and which lease is renewable upon its expiry; and that if even the original lease has expired pending its renewal, the estate of Fatima Hallab have the

right to stay and exercise control over the property and are willing to attorn tenancy upon the renewal by the rightful beneficiaries of the estate of Brebu Atumeku Dadzie.

The witness testified that the Defendants have on several occasions demanded to know the basis of the Plaintiff's authority and claim as successors to the late Brebu Atumeku Dadzie but the Plaintiff has failed to do so and rather opted to institute the instant action (see Exhibits "2, 2A and 2B").

The witness testified that should the Plaintiff show his authority to the Defendant, they shall duly renew the tenancy or relinquish the property upon being given enough notice to so.

The Defendants in support of the case tendered in evidence. Exhibits "1, 2, 2A, and 2B" same being probate in the Estate of Fatima Hallab, letters respectively.

The Defendants did not call any witness.

ON 10/3/2023, the Defendants formally closed their defence. Counsel were directed to file their respective addresses by deadlines agreed upon and set with the help of Counsel.

Counsel on several occasions from 3/05/2023, pleaded for an extension of time to file their respective addresses and yet both failed to do so.

On 18/7/2023 when the case had been adjourned to ascertain if Counsel had complied with the Court's orders for the filing of the addresses, both failed to comply with same yet again.

In the circumstances, the matter was adjourned to 09/10/2023 for judgment. On 9/10/2023, just when the judgment was about to be delivered and whilst the court was sitting still, Counsel for the Defence filed his written submission at 9.00 a.m.

CONSIDERATION OF ARGUMENTS OF COUNSEL FOR THE DEFENDANTS:

The summary of the address of Counsel for the Defendant is that the instant action ought to be dismissed for lack of capacity and being unmeritorious under the circumstances. Counsel submitted that the Defendants do not deny the expiry of the sublease but that the Defendants can only atone tenancy to the rightful beneficiaries in law of the estate of Brebu Atumeku Dadzie, the original owner of the property in dispute, as they have insisted to know the rightful person and also demanded the authority of the Plaintiff and which the Plaintiff has not provided.

Counsel submitted that it ought to have been the head of the family to have sued and not the Plaintiff. Counsel also submitted that the Statutory declaration was defective for lacking relevant information. Counsel submitted that the Plaintiff ought to have also obtained letters of Administration in respect of the estate of B. A Dadzie for the beneficiaries and so for not obtaining Letters of Administration, the action is improper and must fail.

CONSIDERATION OF ARGUMENTS OF COUNSEL FOR THE PLAINTIFF:

Counsel submitted that Exhibit "C" supported the capacity of the Plaintiff when challenged by the Defendants. Counsel submitted that the claim by the Defendants by the children of B. A Dadzie should be rejected by the court as same was not proved in court. Counsel submitted that Fatima Hallab through the action recognized J. K Botwe as the successor in title to the property. Counsel therefore prayed the court to grant the relief sought by the Plaintiff.

ISSUE A: WHETHER OR NOT THE PLAINTIFF HAS THE CAPACITY TO MOUNT HIS ACTION:

It seems to me, at least, from the generality of the Defence that the main stay of the Defence is on the Rightful person to inherit the Estate of Brebu Atumeku Dadzie.

From the evidence of the Defendants and indeed from their exhibits, 2, 2A, 2B, the only concern about the matter is the rightful person to deal with in so far as the properties in dispute are concerned.

This is the reason why the Defendants have been challenging the capacity of the Plaintiff.

It is indeed settled that a Plaintiff whose capacity is challenged actually bears the burden to establish his capacity by leading cogent evidence to that effect. It will therefore not be enough for such a party whose capacity has been challenged to plead that he should be given the opportunity to be heard on the merits of the case as he has a cast-iron case against his adversary. The cases in point which support the above are:

- (1) **Asante – Appiah vs. Amponsah [2009] SCGLR 90**
- (2) **SARKODIE 1 vs. BOATENG II [1982-83] GLR 715**
- (3) **Yorkwa vs. Duah [1992 – 93] 1 GLR 278.**
- (4) **Akrong vs. Bulley [1965] GLR 469**

Capacity is a question of law. And also, it can be a question of fact. Most often it is also a question of a mixture of law a fact. (See: **Frimpong v. Romeo [2013] 58 GMJ 131, C.A.**)

It is also the position that a party may challenge the capacity of a party at anytime, even for the first time, on appeal. (See: A-G (Nos) vs. Tsatsa-Tsikata [No2] [2001-2002] SCGLR 610.)

Thus, capacity being a question of law can be raised and discussed at any time and stage of the proceedings (see: **Prempeh & another vs. Theophilus Teiko and another [2019] 139 GMJ 146.**)

The gravamen of the Defendant's case is that they have been waiting for the rightful person for Brebu Atumeku Dadzie to deal with in respect of the property in issue. And that the Plaintiff is not the rightful person from B. A Dadzie to deal with and to mount the instant action but the Head of family.

As part of the defence, the 1st Defendant's evidence in paragraphs 3, 8, 9 and 10 thereof, and whilst challenging the capacity of the Plaintiff, the 1st Defendant equally testified that they are willing to atone tenancy upon renewal by THE RIGHTFUL BENEFICIARIES OF THE ESTATE OF BREBU ATUMEKU DADZIE.

The Defendants as part of the evidence, testified further that they have on several occasions DEMANDED TO KNOW THE BASIS OF THE PLAINTIFF'S AUTHORITY AND CLAIM AS SUCESSOR TO THE LATE BREBU ATUMEKU DADZIE. BUT THE PLAINTIFF HAS FAILED TO DO SO AND HAS BROUGHT THE INSTANT ACTION.

Exhibit "2" , tendered and admitted in evidence by the Defendants, is a letter dated 13/4/2005, from the Defendants' Solicitors to KEDDEY BODZA-LUMOR, ASEMPAH AND CO. (the Solicitors for the Defendants) in respect of the property in dispute.

Paragraph 2(1) of the said letter reads thus:

"Your letter of 1st March, 2005, addressed to Mr. Gassan Hallab has been referred to us with instruction that we reply hereto as follows:

"(i) Our Clients, who is one of the executors of the Estate of Madam Fatima Hallab, would wish to have some documentary proof that your client is indeed the successor to John Kweku Botwe".

In paragraph 5 of Exhibit 2, it reads as follows:-

"Finally, our client would wish us to say that they are not in a position to litigate with your client if indeed he is the successor to the said J.K. Botwe, and has been so authorized by the family to oversee the said house".

Exhibit 2A, from the Defendants' Solicitors dated 22/4/2014 to Keddey Bodza and CO. (the Plaintiff's Solicitor's) on the expiry of the sublease of H/No. 14-15/8, Old John Sarbah Road, Takoradi, paragraphs 3 and 4 thereof read thus:

“Our client duly acknowledges that the lease has expired but requires documentary or satisfactory proof that Nana Okumtmi Brebo Essamoah Edu VII is the successor in title to the late John Kweku Botwe who succeeded the late A. E. Paitoo”.

“Our client as executor of Fatima Hallab (deceased) is duly bound to ensure that the property is delivered in accordance with clause C(10) of the sublease to the appropriate person and the tenants informed accordingly as your letter is silent on the status of the said Nana Okuntwi Brebo Esamoah Edu VII in relation to the property”.

Exhibit 2B, from Cann Quashie and CO. to Keddey, Counsel for the parties and dated 6/8/2014 on the expiry of the sublease of the subject matter in dispute read in part thus:-

“We have had thorough discussions with our client on the issue on 6/08/14 and THEY INSIST THAT THEY ARE EVER READY TO HAND OVER THE PROPERTY TO THE RIGHTFUL PERSON”.

HOWEVER, TO them the STATUS OF NANA OKUMTWI BREBO ESAMOA H EDU VII as Krontihene of Gomoa Manford has no bearing whatsoever on whether he is the rightful person to be handed over the property.

Our clients therefore still INSIST AND REQUEST CONVINCING AND SATISFACTORY proof of his authority to deal with the property for same to be handed to him.

Once that is established the other issues of rents arrears, accounts of rent as well as other expenditures by way of rates and outgoings and expenditures on improvements on the properties would be reconciled and dealt with accordingly.

All the above cumulatively formed the basis of the challenge to the capacity of the Plaintiff

Indeed, the Defendants, were not obliged to have provided all the above details of challenge to the Plaintiff's capacity. Simpliciter, the Defendants could just have ended with the sole paragraph of the challenge to the capacity of the Plaintiff as by the authorities, the very moment the challenge is thrown at the Plaintiff, the onus and burden will be on the Plaintiff and he shall carry such legal burden until discharged by Legal and cogent evidence proving his capacity.

Thus, from the moment the Plaintiff was challenged in his capacity as the successor to John Kweku Botwe and A. E. Paitoo, the Plaintiff was thus duty bound to prove same.

In sum, and in my candid view, the challenge by the Defendant was quite legitimate as it is true that when the original Brebu Atumeku Dadzie died, since then, there have been successors including John Kweku Botwe and A. E. Paitoo, both of whom the Defendants dealt with until the surface of the Plaintiff whose capacity has been seriously challenged.

During the cross examination of the Plaintiff after testifying the following ensued between the Plaintiff and lawyer for the Defendants thus:

Q. At all material times you wrote to the Defendants, they kept on demanding your authority.

A. It is true.

Q. You never provided anything to the Defendants and mounted this action.

A. I did produce documents that I had the authority to deal with the matter.

Q. I am putting it to you that you are not the successor to the owner.

A. As I have explained earlier, it has passed through a number of successors and I succeeded the last successor.

Q. Exhibit C does not clothe you with the authority to mount this action.

A. The property belongs to the family and has made a declaration to lead and redeem the property for the family.

Q. Your Uncles never took Letters of Administration.

A. My last Uncle was able to take care of the property and I am also following his steps.

Having put up such spirited challenge to the Plaintiff's capacity, the question then that follows is:

Was the Plaintiff able to discharge this legal burden on such challenge?

Below are such of the pieces of evidence which the Plaintiff used to attempt the discharge such burden on him.

The Plaintiff relied on Exhibit "C" being a Statutory Declaration dated 9/6/2005 executed by some of the family members of the family and led by the then Head of family, Kwame Yaw and other principal members Kweku Komety and Kojo Ninsin of Manford declaring that the Plaintiff being a customary successor in line to Brebu Atumeku Dadzie, John Kweku Botwe, had been appointed to take over and administer the properties left by Brebu Atumeku Dadzie.

Further, PW1 testified to corroborate the evidence of the Plaintiff including particularly on the Plaintiff's capacity as a family member of the Essamoah Edu Asona family of Gomoa Manford, the current Krontihene and Akwamuhene of Gomoa Manford, a position once held by Brebu Atumeku Dadzie in such, capacities in his lifetime, the execution of the Statutory Declaration (exhibit "C") dated 9/6/2005 by the Declarants in respect of the properties left behind by Brebu Atumeku Dadzie on behalf of the family and also the fact that the Plaintiff has the capacity to bring this action on behalf of the family against the Defendants.

The Plaintiff also sought to discharge the said burden through exhibits A, B, D, D1, D2, D3 and D4. Indeed, all the said exhibits were tendered and admitted into evidence without objection.

Upon being challenged on his membership in the Plaintiff's family, PW1 maintained quite confidently that he was a principal member of the family, and actually joined other family members to go to execute exhibit "C".

The following cross-examination of PW1 supports his membership in the Plaintiff's family thus:

Q. I put it to you that no authority whatsoever has been given to the Plaintiff to mount the present action involving the disputed house.

A. The family gave him the authority to do so.

In the testimony of the 1st Defendant the following was what transpired.

Q. **Has the sublease been renewed?**

A. **No! still we have not got the right owners to deal with.**

Q. Your contention that the Plaintiff has no capacity is in correct.

A. No. The Plaintiff has no authority to bring this action.

In spite of the pleadings, exhibits and evidence, the Defendants maintained consistently that the Plaintiff has no capacity to mount the instant action against them. In that regard, the Defendants maintained consistently through the Plaintiff and his Solicitors that once the **Rightful** person from Brebu Atumeku Dadzie emerged, they would recognize the person as such and deal with him as the owners of the subject matter in dispute, atone tenancy to such a person and/or even hand over the property to the said rightful person (see Exhibit 2, 2A and 2B and this evidence). This challenge, from the records PREDATES 2005 when the Plaintiff sought to assert the family's interest in the property wherein he was met with this challenge to his capacity.

In proving his capacity, the Plaintiff, aside the exhibits attached to his case (Exhibit C, D, D1, D2, D3 and D4), his own evidence and that of PW1, further in his own cross-

examination and the cross-examination of the Defendant sought to discharge the said burden on him.

CROSS-EXAMINATION OF PLAINTIFF BY DEFENCE COUNSEL:

Q. At all material times, you wrote to the Defendants, they kept on demanding your authority.

A. It is true.

Q. You never produced anything to the Defendants and mounted this action.

A. I did produce documents that I had the authority to deal with the matter.

Q. Your uncles never took Letters of Administration

A. My last uncle was able to take care of the property and I am also following his steps.

Q. So, did your last uncle take Letters of Administration.

A. No, but because it is a family property the family swore affidavit and gave him Power of Attorney.

Q. Exhibit C does not cloth you with the authority to mount this action.

A. The property belongs to the family and has made a declaration to lead and redeem the property for the family.

Exhibit "C" is one of the trump cards of the Plaintiff in proving his capacity. That explains why, in the just answered question in cross-examination, the Plaintiff maintained on Exhibit "C" that the property in dispute is a family property and the family has made a declaration (Exhibit C) to lead them to redeem the property (subject-matter in dispute).

The position of the law is that statutory declaration (including even affidavits) are generally used for different purposes; including its use as evidence of title/interest in property.

Statutory Declarations which are regulated by the Statutory Declaration Act, 1971, (Act 389) are to be used in cases, which when sworn are particularly considered as evidence.

I do sincerely concede that statutory declaration is not a conveyance under the Conveyancing Act and so does not pass title; but I understand that Statutory Declaration can be used as evidence of a sort in land transactions.

In as much as Statutory Declarations do not create property rights in its holder, it can be used as evidence to prove title. (See **AGBOSU & ORS. vs. KOTEY & ORS [2003 – 2005] 1 GLR 685.**

Exhibit "C" is a photocopy of the original. Exhibit "C" is fading, some of the thumbprints are fading together with some other features on the face of it. Some other features, like the officers before whom the document was executed were not visible on Exhibit "C". I understand that this might have been due to the photocopy which was not effected well thus missing some information.

In spite of the above, the document was admitted in evidence when same was tendered without objection.

Moreover, Counsel for the Defendant as a result of his skills, as an as astute Lawyer, opted not to subject the Plaintiff to any extensive cross-examination but rather deferred all questions on Exhibit "C" to PW1 and who with innocence, in my view, and dexterity answered all questions pertaining to same. Even though he was not a declarant, he claimed to have been present in the preparation and execution of Exhibit "C".

PW1 indeed demystified all concerns on the preparation and execution of Exhibit "C" even though he seems to be illiterate.

Again, from the evidence, Exhibit "C" was executed on 9/6/2005. This date to me and for this case and for this judgment is quite significant.

Exhibit "C", from the evidence seems to be the product/result and consequence of Exhibit "D" (dated 1/3/2005), Exhibit 2 is dated 13/4/2005 on the Plaintiff and the subject-matter in dispute.

Exhibit "D" dated 1/3/2005, was authored by the Plaintiff's Solicitors and addressed to the 1st Defendant on the subject-matter in dispute, the introduction of the Plaintiff to the Defendants and as a new Representative of the Family in so far as the subject-matter in dispute is concerned.

Exhibit "2" is a direct response to Exhibit "D" by the Defendant's Solicitors. From Exhibit 2 and in particular, paragraph 3 thereof, the Defendant requested for **some documentary proof that the Plaintiff is indeed the successor to John Kweku Botwe.**

In the last paragraph of Exhibit "2", the Defendant wanted to be double sure that if indeed the Plaintiff was the successor to John Kweku Botwe, and has been so authorized by the family to oversee the said house, they (Defendants) would not litigate with him.

Exhibit "D" is dated 1/3/2005. Exhibit 2 is dated 13/4/2005; and Exhibit "C" is dated 9/6/2005.

I am inclined to conclude that Exhibit "C" was prepared and executed solely for the purpose of meeting the strict demands of the Defendants as captured in the response to the Plaintiff via Exhibit 2.

Prior to all the above, and from the records and evidence, upon the demise of the owner Brebu Atumeku Dadzie, the Defendants dealt with earlier representatives of the Plaintiff's family in the persons of John Kweku Botwe and A. E. G Paitoo.

(see Exhibit 2, paragraph 2(i) paragraph 3).

The following cross-examination of the Defendants is quite relevant to the resolution of the issue thus:

- Q. Since 1970, there has been series of communication between the Hallabs and the Asamoah Edu Asona Family of Gomoa Manford over the disputed properties.
- A. No, my mother was still alive and she dealt with the case between the Dadzie and the family. So, **I do not know about the correspondence between them.**
- Q. You are aware that at all mutual times in respect of this property, the Hallab had been represented by Canns Quashie & Co.
- A. No. At first the Hallabs were represented by the late Blay, then the late Abban and then later by Ebo Quashie.
- Q. Sometime ago, the Asomoah Edu family and their lawyers and Hallabs and their lawyers sat down and went into accounts over rent that had accrued over the years.
- A. No. It was my late mother and the lawyers who handled the matter then. **I was not part.**
- Q. I put it to you that at that meeting, the Asamoah Edu Nsona family of Manford was represented by the Plaintiff in this case.
- A. **No. I do not know.**
- Q. **Are you also aware that in 1992, your mother sued one John Kweku Botwe in respect of the disputed property.**
- A. **Yes, my Lord.**
- Q. **The said John Kweku Botwe was sued as a successor to Archibold Effrim.**
- A. **I do not know.**

- Q. But you are aware that Botwe was sued as somebody who had inherited the disputed property.
- A. There were various cases going on in these case, which is 14-15-8, house at Old John Sarbah Road, Takoradi.
- Q. The 14 – 15/8 is the house number?
- A. Yes, my Lord.
- Q. On 1/3/2005, the Plaintiff has caused his lawyer E. K. Keddy to write a letter to you in respect of the property.
- A. The letter did not come to us but rather went to our lawyers.
- Q. But you were informed about the content of the letter.
- A. Yes, I was informed by the lawyers..... deal with.
- Q. You are aware that between 2005 and 2014, there were series of exchange of letters between your lawyers and the Plaintiff's lawyers.
- A. Yes. But we still do not know the right people to deal with to negotiate with either the children of the late Dadzie or those who wrote the letter. I cannot remember the name.
- Q. In one of the letters from your lawyers, they demanded to know the authority of the plaintiff.
- A. Yes. But nothing was proven to be the rightful owners to my lawyers as to who the real owner was.
- Q. On 14/8/2014, the Plaintiff's lawyers wrote to your lawyers stating how the Plaintiff obtained his authority to deal with the disputed property.

A. All the letters that came from their lawyers of the Plaintiff to my lawyers were all in the same form but different wording. In all the letters, there was no Letters of Administration OR Power of attorney to verify the true owner of the property and to deal with.

Q. **Your mother did not challenge the authority of John Kweku Botwe.**

A. **They were going to court. They had to follow the court orders.**
Lawyers Blay, Abban and Qurshie were dealing with the cases.

I have very unfortunately had to state quite copiously the above cross-examination of the parties to fortify my decision on this issue of capacity. I ask for forgiveness for my verbosity, but it is necessary to do so here in this judgment due fundamentally to the protracted nature of this issue of capacity since the death of Brebu Atumeku Dadzie around 1969/70.

I say this because, from the pleading, records and evidence and particularly, from the evidence of the parties, especially the Defendants, as per the last cross-examination of the 1st Defendant, they seem to understand and appreciate no discussion, no decision except court orders.

From my understanding of the case, not until a court of law pronounces on a position, the Defendants will not be ready to make any compromises with B. A Dadzie family in any way. This clearly was a matter that could easily have been resolved by the parties. Even their Counsel could easily have resolved this issue having regard to the correspondence between the parties. (Exhibits A, B, C, D, D1, D2, D3, D4, 2, 2A and 2B). I do sincerely appreciate that Counsel for the Defendants were just being extra careful with their clients.

From the records, the differences between the two parties commenced **during the lifetime of Brebu Atumeku Dadzie**, the original owner against the predecessors of the Defendants and **it was only a court of law that resolved same.**

Later, there were disputes on the very subject-matter in dispute between the mother of the Defendants and the representative of the Brebu Atumeku Dadzie which was settled by a court of law, according to the evidence of the 1st Defendant and in his cross-examination above.

Per Exhibit 2, the Defendant wanted a proof of the capacity of the Plaintiff. Obediently, the Plaintiff yielded to the demand of the Defendants and so on 9/6/2005, Exhibit "C" was executed in answer to the said demands. This was still challenged by the Defendants.

PW1 corroborated the evidence of the Plaintiff on his capacity to maintain this action and specifically on the property in dispute.

In effect, in my view, upon the presentation of Exhibit D to the Defendants, the Defendant demanded a proof, in the form of Exhibit "C" and when same was procured and presented, the Defendants seemed adamant to change their position on the capacity of the Plaintiff.

Meantime, there is evidence that Brebu Atumeku Dadzie died around 1969/70. There is also evidence that J.K. Botwe, upon the death of Brebu Atumeku Dadzie represented the family on the property in dispute.

This was admitted by the Defendant that indeed, the Defendants' mother dealt with John Kweku Botwe. Fatima Hallab sued J. K Botwe. J. K Botwe never had letters of Administration nor Power of Attorney granted.

Aside John Kweku Botwe, the family of the Plaintiff was represented by Archibald who the Defendants' mother dealt with in his lifetime including even a court action. Here too, there was no letter of Administration nor Power of Attorney granted to him.

The position is that before the coming into fore PNDCL111 (Interstate Succession Law, 1981), upon the death of a person interstate, his self-acquired property devolved to his family.

Thus, the position is that upon Brebu Atumeku Dadzie, dying around 1970, the property in dispute devolved to his maternal family.

In such circumstances, the said property being a family property, there was no need, legally, for the family to apply for Letters of Administration.

I therefore do not share in the position of the Learned counsel for the Defendant, that the Plaintiff ought to have obtained Letters of Administration before asserting any right in so far as the property in dispute is concerned, same being a family property.

That said, I continue my position on the issue of capacity that the Defendants and their predecessors having dealt with Brebu Atumeku Dadzie (in his lifetime), having dealt with John Kweku Botwe, Archibald and having insisted on the Plaintiff since 2005 to provide a proof of his due representation of the Brebu Atumeku Dadzie's family, and the Plaintiff having proceeded to procure a duly executed Exhibit "C" with Exhibit "C" having met the requirement as required under the Statutory Declaration Act (Act 389), the Plaintiff has on that basis alone proven his capacity to the mount and maintain the instant action.

Aside, Exhibit "C", the evidence is clear that upon the death of Brebu Atumeku Dadzie, John Kweku Botwe represented Brebu Atumeku Dadzie's family in every respect in so far as the property in dispute is concerned. This capacity was never challenged as the above cross-examination of the Defendants confirms.

The fact that both John Kweku Botwe and Archibald both of whom the Hallabs knew and dealt with are dead is no news to the parties. The fact that the property in dispute, as it stands now, is a family property is no news to the defendants.

Therefore, it appeals to reason for the Defendants to be expecting a representative from the family.

This is also admitted by the Defendants, through their correspondence (Exhibit 2, 2A ad 2B) the pleadings, evidence and cross-examination).

The capacity of the Plaintiff I find was corroborated by PW1 as requested for by the Defendants (See: **Majolagbe vs. Larbi & ors. [1959] GLR 190 per Ollennu J/as he then was**).

Brebu Atumeku Dadzie, from the challenged evidence, in his lifetime was also a Krontihene and the Akwamuhene of Gomoa Manford. That is the position the Plaintiff is holding and this was not challenged.

Moreover, in cross-examination of the Defendant, he seemed not to know much about the mother's dealings with the Dadzie family and the various correspondence between the Dadzies and the Hallabs, as most of his answers in the cross-examination were "I do not know". Sometimes too, he deferred his ultimate answers, from the above cross-examination to simple but factual and material questions to his lawyers. This I find is quite unhelpful. Most of the 1st Defendant's answers in the cross-examination were quite evasive too.

To a question that the Plaintiff's family has been dealing with the Hallab's through the 1st Defendant's mother and the lawyer through the plaintiff since John Kweku Botwe's "exit was a simple: **I do not know**". (See: **Ashanti Goldfields Co. Ltd. vs. Westchester Resources Ltd. [2013] 56 GMJ 84, LA per Korhieh, J.A.**

Indeed, I am quite baffled on the position taken by the Defendants on the issue of capacity in spite of the family's representations with the Defendants through John Kweku Botwe, Archibald and the Plaintiff herein.

I indeed find that aside Exhibit "C", there are more than enough evidence to convince even a by stander to know, appreciate and understand that as consistently and persistently since 2005 requested by the Defendants on the authority of the Plaintiff to represent Brebu Atumeku Dadzie's family, the Plaintiff from the totality of the records and evidence has been able to discharge the burden placed on him on the challenge to his capacity.

It is trite that the challenge to capacity can be a question of law; sometimes, it can be a question of fact. And sometimes too it can be a question of both mixed law and fact (see: **FRIMPONG VS. ROME [2012] 58 GMJ 131, CA.**

In the Supreme Court case of **EVELYN ASIEDU OFEI VS. YAW ASAMOAH & ANOR. [2018]122 GMJ 186**, the court held thus:

“Whether or not a party has capacity to institute an action is a question of law that could be determined *after a factual evaluation* of the evidence on record. As a legal question, it could be raised at any time at all by any of the parties in litigation or even by the court suo motu when the circumstances call for its invocation...”

The above authority fortifies my position that aside Exhibit “C” being the Statutory Declaration, there is enough evidence on record to support my finding and holding that the Plaintiff has indeed discharged the burden on him to produce the required burden which he was able to do.

In furtherance of the above, and considering the standard of proof in our civil procedure, sections 11(4) and 12 (1) of NRCD 323 (1975) and a Plettona of decided authorities easily come to mind on this:

- See: (1) **Nana Addo vs. J. D. Mahama [2013] SCGLR 1**
- (2) **Aryee vs. Shell Ghana Ltd. And Fraga Oil Ltd. [2017-2018] SCGLR 721**
- (3) **Sagoe & ors. vs. Social Security and National Ins. Trust [SSNIT] [2012] 2 SCGLR 1093.**
- (4) **GIHOC Regeneration & Household Products Ltd. vs. Hanna Asi [2005-2006] SCGLR 453.**

In the GIHOC vs. HANNA ASSI [supra], the court held amongst others thus:

“Since the enactment of NRCD 323, therefore, except otherwise specified by statute, the standards of proof (the burden of persuasion) in all civil matters is

by a preponderance of the probabilities posed on a determination of whether or not the party with the burden of producing evidence on the issue has, on all the evidence, satisfied the judge of the probable existence of the fact in issue. (See: **Odametey vs. Clocuh [1989-90] 1 GLR 14; Odonkor vs. Amartei [1992-93] GBR 59; Tuakwa vs. Bosom [2001-2002] SCGLR 61**). Hence, by virtue of the provisions of NRCDC 323, in all civil cases, judgment might be given in favour of a party on the preponderance of the probabilities rather than on an archaic principle which might not accord with reasons or common sense”.

Similarly, the apex court in **KLAH vs. PHONEX INSURANCE CO. LTD [2012] 2 SCGLR 1139** confirming that a party does not satisfy the burden of producing evidence by merely repeating on oath the allegation contained in his pleadings, held thus:

“Where a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of things, references to other facts, instances and his averments 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”.

The above is what, from my appreciation of the evidence before the court, has fortified me to hold that indeed the Plaintiff has the capacity to mount this action against the Defendants.

Aside John Kweku Botwe, a representative of the Plaintiff’s family dealing with the Hallab family on the subject-matter in dispute, Exhibit D, dated 1/3/2005, in paragraph 3 thereof, it was stated thus:

“Our client informs us that there is a long standing matter involving house Nos 14-1518, John Sarbah Road, Takoradi and in land suit No. 15/66 titled Archibold Effrim Paitoo vs. Ahmed Hallab of Accra and Fatima Hallab of Sekordi, it was

ordered that Fatima Hallab should be granted a sub-lease of the said House for a period of forty (40) years from 1/1/1973 at a rent of £60.00”.

The above was positively responded to and same confirms the position of the Plaintiff that aside John Kweku Botwe, Archibold Effrim Paitoo also dealt with the Hallab’s. It therefore lies ill in the mouth of the 1st Defendant to maintain consistently that he does not know the rightful person to deal with; as the above represented the Plaintiff’s family to the extent of mounting a civil action against the Hallab’s just as the instant one.

It is interesting to note also that the action of 15/66 and culminating in the judgment in Exhibit “B” was initiated personally by the original owner Brebu Atumeku Dadzie. There is no record before this court on how it ended up being Archibold Effrim Paitoo vs. Ahmed Hallab & anor. With the same Suit No. The ordinary and normal inference is that Brebu Atumeku Dadzie might have died and then substituted by Archibold Effrim Paitoo since the title no is the same- 15/66 (see Exhibit “D” paragraph 3 thereof). Yet in paragraph 2 of Exhibit “D1” (dated 23/11/2007), it was stated thus:

“It is significant to point out that following the judgment of Amugah J in land suit No. 23/79, titled FATIMA HALLAB VS. JOHN KWEKU BOTWE, *your client’s predecessor in title was ordered to file* account for monies wrongly and erroneously collected as rent from the tenants”.

The above, once again goes to support my holding that aside Exhibit “C”, there is enough evidence to support the capacity as same has been abundantly proven by the Plaintiff.

Indeed Exhibit “D1” emanates from the Defendants’ Solicitors wherein they by their implication admit that the Plaintiff is a successor to John Kweku Botwe, who was sued by the 1st Defendant’s mother in suit No. 23/79.

Thus, at one part in time and the other, Brebu Atumeku Dadzie and his family, represented by Archibold Effrim Paitoo and John Kweku Botwe, have been litigating over the same subject-matter time and again.

If indeed the Defendant have been candid and fair not only to themselves but the Plaintiff family, and have litigated with the original owner, Brebu Atumeka Dadzie, John Kweku Botwe, then Archibold Effrim Paitoo, why do they still want any minute difference result in a court action before yielding to what is, after all in their best interest? The above cases commenced at different times either by the original owner himself or by his representatives, to me, support the Plaintiff's case against the Defendants in so far as the issue of capacity is in issue.

On further proof of representative capacity to sue, what the decided cases decide is that the person who sues in a representative capacity must endorse such representative capacity in the writ and go ahead to prove that he is clothed with such capacity either before or at the time the writ was issued. A power of attorney is not under the circumstances a sine qua non...Does a Head of family or occupant of a stool who sues in respect of family/stool property for and on behalf of the family or stool, need a power of attorney to be able to institute the action? The answer is clearly, no. See: **MADINA SHOPPING MALL ASSOCIATION VS. ROSEHILL GH LTD [2012] 39 MLRG 81 (SC)**.

It has also been held that it is an elementary principle of law that where the Plaintiff's right to bring an action in his representative capacity is being questioned the onus lies on the Plaintiff to establish to the SATISFACTION OF THE COURT that he had been duly authorised – See: **ESSIAW & ORS vs. ANAMAN, 2ND JUNE, 1970, DIGESTED IN [1970] CC 117**.

It has also been held that Plaintiffs on whose behalf an action is brought should have a common interest must in its nature, be beneficial to all whom the Plaintiffs purport to represent. See: **BANAHENE & ORS VS. HIMA & ORS [1963] 1 GLR 323**.

Atuguba JSC in the case of **FOSUA & ADU-POKU vs. DUFIE (D'D) & ADU POKU-MENSAH [2009] SCGLR 310 @ 336** stated thus:

“In Nyamekye vs. Ansaah (supra), the court of Appeal held further that:

*“As a general rule the head of family as representative of the family is the proper person to institute suits for the recovery of family land: See: **Kwan vs. Nyieni [1959] GLR 67 @ 72, C.A.** And where the authority of a person to sue in representative capacity is challenged, the onus is on him to prove that he has been duly authorised. He cannot succeed on the merits without first satisfying the court on that important preliminary issue: **Chapman vs. Ocoo [1957] 3 WALR 84”**.*

In the instant case the Plaintiffs/Appellants sued as the “CUSTOMARY SUCCESSOR of the late Kwaku Poku for themselves and on behalf of the family of the late Kwaku Poku” for relief/itemized above. They sought declarations that the properties were for the family, pleaded facts and led evidence in support. In those circumstances the exception in the provision to the principle in **Kwan vs. Nyieni (supra)**, does apply as the Plaintiff’s acted to claim and protect the family character of the properties in dispute.

This court holds in this judgment that the subject matter of this dispute is now not the self acquired property of B. A Dadzie since his death as the original owner, B. A Dadzie, it devolved to his family for which reason, the Defendants know far too well, by the evidence that J. K Botwe and Paitoo Achabold at some points in time took over as representing the family and also succeeding B. A Dadzie in that regard.

And from the above, and as a general principle of law, an action to protect a family property such as land must be instituted on behalf of or as representing the family by the Head of family. It is the law also that the head of the wider family may bring an action against the head of the branch family to protect the property they had in the branch family as succeeded to from a family member in exceptional circumstances. See **ANDREWS vs. HAYFORD [1982 – 83] GLR 214**.

I have had to delve furthermore in this section because Counsel for the Defendants had submitted on one ground that the Plaintiff is not the head of B. A Dadzie family and so cannot have capacity so to represent the family. And the position of the law is that in some cases, and as part of my disagreement with Counsel on this position, the head of family may sit unconcerned for other people to dissipate family property and

it would be unconscionable for the family members to stand aloof under the pretext that apart from the head of family no other person can maintain an action to protect family property which is in danger.

It had been held that in some case, the head of family may collude with other person to dispossess the family of its property and would not maintain an action to protect it. To avoid collusion or inaction of head of families as above stated, exceptions were made to the general rule on the head of family's representative as stated in **Kwan vs. Nyieni**.

Thus, for now, the law on the capacity by an ordinary member of a family to sue has developed to the extent that special circumstances principle should be used to avoid terminating actions on grounds of capacity except where the person fails to provide evidence connoting special circumstances.

Thus, the law now is that the rule in *Kwan vs. Nyieni* (supra) is not an intractable rule and therefore the facts come within the necessity rule, no duty should be imposed on the ordinary family member who sues on behalf of his family to prove that there was a head of family who has refused to sue. (See: **ASHALLEY BOTWE LANDS; ADJETEY AGBOSHIE & ORS VS. KOTEY & ORS [2003 – 2004] 1 SCGLR 420**).

Further to the above, Order 4 r 9 of the High Court (Civil Procedure) Rules, 2004 (C.I 47) has summed up the above. Indeed, r (3) thereof provides that any member of the family MAY subject to this rule sue on behalf of the family.

To conclude on this, the position of the law is that now any member of a family can now sue over a family property; and the only requirement is that he shall serve a copy of the writ on the head of family. The evidence is that the head of family and other principal members of the family agreed and executed a statutory declaration (Exhibit C) in that regard, which, according to PW1 included Kwame Yaw (the head of family). The said evidence clearly shows that indeed the whole family represented by the head and other principal members authorised the Plaintiff to redeem the property in issue.

I wish to conclude on this issue of capacity with reference to Exhibit "D" dated 14/8/2014 from the lawyers of the Plaintiff to the lawyer of the Defendants and I wish to refer to same thus:

"EXPIRY OF THE SUBLEASE OF H/NO. 14-15/18, OLD JOHN SARBAH ROAD, TAKORADI".

We refer to your letter reference CQCO/NC/EB/702/14 dated 6th August, 2014 on the above subject.

We note that even though we have been acting on behalf of Nana Okuntwi Brebo Essamoah Edu VII, Krontihene of Gomoa Manford as the immediate successor to Mr. John Kweku Botwe for nearly ten (1) years on the above subject-matter you still doubt "WHETHER HE IS THE RIGHTFUL PERSON TO BE HANDED OVER THE PROPERTY. Well, we hold the view that if you know of the rightfully person to be handed the property or if you are aware of any other person who claims to be a lawful successor to Mr. John Kweku Botwe; you could kindly give us the information and we will certainly advise ourselves. **On the other hand, if you think we have to take the most unnecessary step of referring the matter to the court, you can also advise us"**.

Our client, Nana Okuntwi Brebo Essamoah Edu VII, known in private life as Kenneth Panti Abban is the immediate successor to Mr. John Kweku Botwe as clearly stated above.

The fact are as follows:

The original owner of the property in question was Nana Brebo Atu Merku Dadzie who was the Krontihene and Akwamuhene of Manford, and was succeeded by Archibold Effrim Paitoo who also succeeded by John Kwaku Botwe sued by Fatima Hallab (the Administrator) of Yahaya Hallab in the case titled Fatima Hallab vs. Archibold Effrim, LS/NO. 23/79 High Court, Sekondi.

Later, John Kweku Botwe was by a motion dated 18th October, 1983 sworn to by Fatima Hallab as the "successor of the deceased (Archibold Effrim Paitoo)" according to customary law". The motion was granted on 9/12/83 by Justice K. A. Ansah Twum.

The action brought by John Kweku Botwe ended by the decision of the court that a sublease for forty (40) years should be granted to Fatima Hallab.

As repeatedly stated above, our client Okumtwi Brebo Essamoah Edu VII, the current Krontihene and Akwamuhene of Manford is the IMMEDIATE AND DIRECT successor to John Kweku Botwe.

Indeed, our client is not claiming the property for himself. He is claiming it for and on behalf of the family of John Kweku Botwe, his uncle and predecessor of the Akwmgang Stool.

We have already submitted a copy of the gazette notification of the enstoolment of our client for your personal. We do not think you need any further information about his credentials immediately for our client to advise himself".

The above from Exhibit "D4" sums up my holding that indeed the Plaintiff has the capacity to mount the instant action irrespective of Exhibit "C" which has its own shortcomings.

I hold that in the circumstances of this case, as per the customary laws of Ghana, it is not the duty of an outsider, a non family member and in this case, the Defendants to decide any rightful person to succeed a deceased family member. This is the sole preserve of the family.

And it behoves on the said outsider, and in this case the Defendants, to accept whosoever the family presents to any such outsider without poking noses into the intricacies of the family's dealings.

ISSUE B: WHETHER OR NOT THE SUBLEASE GRANTED TO FATIMA HALLAB HAS EXPIRED:

The Plaintiff as part of his evidence tendered in evidence and same was admitted in evidence without objection, exhibit "A" being an agreement between Brebu Atumeka Dadzie (the lessor) of the one part and Ahmad Hallab and Yahaya Hallab of the part part and dated 28/8/1958, the parties entered into an agreement in respect of plot Nos.

21-23 John Sarbah Road, Takoradi per forty (40) years at a rent of £60.00 per annum and payable half yearly in advance on the 1/5/and 1/11 every year from 1/5/1958.

Later, differences between the parties arose resulting in a court action between the parties resulting in a judgment dated 27/5/1969, (Exhibit "B"). In the last paragraph of Exhibit "B" the court held as follows:

"I therefore grant the Plaintiff's alternative claim for an order of specific performance and order the Defendants to complete the building and take a sub-lease of it within nine (9) months from today. Failing that, the Plaintiff is to recover possession of his plots together with any structure thereon".

The above, as found in Exhibit 'B' in also referred in Exhibit A, D, D1 and D2. Exhibit 2A.

In all of the above Exhibits, they make references to a sublease between the Plaintiff's predecessors and Fatima Hallab. As part of the submissions of Counsel for the Defendants, he conceded that the lease has expired.

I therefore hold that per a judgment of the court, although there is no copy of a sublease in court, there was an order to that effect and equally a sublease was accordingly granted to Fatima Hallab, the contents of which are presently not before this court.

Indeed paragraph 4 of Exhibit 2A makes reference to clause (10) of the sublease.

I must state that this case commenced in 2018 with Justice Bright Mensah (as he then was), and I inherited the docket then being a partly heard case. None of the Exhibits tendered and admitted in evidence has been tendered and admitted in evidence has been identified as a sublease to enable the court ascertain and determine whether the sublease has expired or not.

However, the pleadings, evidence and exhibits point to the fact that the sublease has expired. (See exhibit D4 2A and 2B).

In paragraph 3 of Exhibit 2A dated 22/4/2014, the Defendants admitted thus:

“Our client duly acknowledges that the lease has expired but requires documentary or satisfactory proof that Nana.....”.

“Our client as executor by Fatima Hallab (deceased) is duty bound to ensure that the property is delivered in accordance with clause C (10) of the sublease to the appropriate person.....”.

Even though the court has been disadvantaged about the actual details of the sublease to Fatima Hallab as there is no copy before the Court. The Defendants do admit though that there is sublease which has expired and the Defendants are ready to handover the property to the rightful person or renew same (see Exhibit 2, 2A and 2B).

In **DANIELLI CONSTRUCTION LTD. vs. MABEY & JOHNSON LTD. [2008] 15 MLRG 54, S.C. [2007-208] 1 SCGLR 60**, the Supreme Court held thus:

“Where the adversary of a party has admitted a fact advantageous to the cause of that party what better evidence does the party need to establish that fact than by relying on the admission of his opponent. This is estoppel by conduct. It is a rule whereby a party is precluded from denying the existence of some state of facts which he had formerly asserted”.

See also (1) **IN RE ASERE STOOL, NIKOI OLAI AMONTIA IV VS. AKORTIA OWORSIKA III, etc. [2005-2006] SCGLR 637 @ 656.** (where a party has made an averment and it is not denied no issue is joined on the averment and no evidence need to be led on that averment.

(5) **FOLI VS. AYIREBI [1966] GLR 627 SC.**

The 1st Defendant in cross-examination had the following to say:

Q. You agreed with me that as we stand here the Hallab’s 40 years sublease has expired?

A. Yes, my Lord.

Q. Has the sublease been renewed?

A. No. still we have not got the right owners to deal with.

Q. By the judgment of the court, the Hallab's were granted a sublease of the property for a period of forty (4) years commencing 1/1/73.

A. Yes, my Lord.

Thus, upon the above, even though the court has no opportunity to have a look at a copy of the sublease, as none is on record, the fact that the parties are ad idem on the existence of such document, and the fact also that the parties are ad idem on the expiry of the said sublease, this court will be right to hold that the sublease has expired.

Therefore, the issue as to the expiry of the sublease is not in doubt, by the evidence and the above authority. But, this court is bereft with the authority and power to speak to the content of same.

ISSUE C: WHETHER OR NOT THE PLAINTIFF IS ENTITLED TO HIS CLAIMS:

By the authority of DALEX FINANCE & LEASING VS. EBENEZER DENZEL AMANOR [2021] 172 GMJ 256 @ 304. Per Pwamang JSC, Issue C ought not be discussed in this judgment as I am bound by the decision of the apex court of the country.

ISSUE III: WHETHER OR NOT THE LEASE IS RENEWABLE BY THE RIGHTFUL BENEFICIARIES BY THE ESTATE OF BREBU ATUMEKU DADZIE UPON ITS EXPIRY.

I must state that the above is quite ambiguous. The issue deals with a "Lease".

And the records before the court clearly show that the lease is a lease for ninety-nine (99) years between the Governor of the Gold Coast and Brebu Atumeku Dadzie dated 3/3/1938 of ninety-nine years in respect of the plots in dispute.

However, the content or copy of the said lease is not in evidence.

Also, there is an agreement between Brebu Atumeku Dadzie nad Yahaya Hallab and anor dated 28/8/1958 (Exhibit "A"). Exhibit "A", per the content therein at various places has been described as the agreement but the features have been designated at "Lessor" and "Lessee" respectively. There is no mention of a renewal by the rightful beneficiaries by the Estate of Brebu Atumeku Dadzie.

Candidly, from the nature of the issue, this court wonders if indeed the Defendants who raised this issue as an additional issue is referring to Exhibit "A".

If indeed the Defendants are referring to the "Sublease" which the parties failed to attach/support to their respective cases with copies thereof, this court is incapacitated as it cannot speak to the content thereof as the document is not before the court.

I therefore am unable to make any positive findings on this issue as a result of the above.

ISSUE IV: WHETHER OR NOT THE ESTATE OF FATIMAH HALLAB ARE STATUTORY LESSEE UNTIL RENEWABLE OF THE EXPIRED LEASE:

I was thrown aback by the expression "Statutory Lessees".

I have indeed known that the law recognizes "Statutory Tenants" captured under the Rent Act of 1996 (Act 220).

Statutory tenancy generally concerns situations where a Tenancy comes to an end the tenant shall remain in possession of the property so rented out to him as a statutory tenant. Statutory Tenants hold the premises as a tenant from month to month until the tenancy is determined in accordance with Law.

Statutory Tenants, as far as I know, are protected by law and not by any agreement between the parties (landlord and tenant). Thus, the obligations of statutory tenants are captured in S. 29 of the Rent Act. One aspect of statutory tenancy is that a statutory tenant cannot sublet the premises without the knowledge and consent of the landlord.

I am quite sure that the Defendants never meant this type of tenancy (statutory tenancy) when he set out this issue as a “Statutory Lessee”.

I know that the Lands Act does not mention **statutory lessee**. What I understand is that parties are bound by the terms, conditions and covenants contained in the lease, or sublease. And upon its expiry, the same conditions ought to determine the interest of the affected parties. At worst, it is the Lands Acts which ought to come in to determine the interests of the parties after the expiry of the lease or sublease as the case may be.

In this instance, being a court of law, equity and in the interest of justice, and considering the substance of the issue and the interest of the Defendant, I understand, from Exhibits “A” and particularly “B” and per the evidence that there is a rent payable by Fatima Hallab, as per the judgment (Exhibit “B”).

I have not in my career come across the expression “Statutory Lessee” in land transactions. I have however come across “Statutory Tenant in Rent matters and tenancy issues which related to Tenancies under the Rent Act, (Act 220).

Considering the relationship between the parties, the issues of “Statutory Tenancy” cannot be considered in this case as the subject matter does not in any way relate to Tenancy matter strictly speaking under the Rent Act.

Much as it has been held elsewhere in this judgment that the sublease between the parties has expired, this court cannot speak to the content of the same as it has no opportunity to see a copy of such document.

My understanding in Land Law and on leases and the likes is that, once the lease, sublease expires and same is not renewed, the parties stick to the terms existing until varied/determined and this has been the practice whether legal or otherwise in the circumstances.

ANY OTHER ISSUES:

The Plaintiff, as part of his reliefs prayed for the recovery of possession of the disputed property.

The Plaintiff supported the said claim through the pleadings, evidence and the exhibits – particularly Exhibits D4, 2A and 2B thereof.

In paragraph 2 of Exhibit 2B it states thus:

“We have had thorough discussions with our clients on the issue on 6/08/14 and they INSIST that they are ever ready to HAND OVER the property to the rightful person”.

“However, to them the status of Nana Okuntwi Brebo Essamoah Edu VII, as Krontihene of Gomoa Manford has no bearing whatsoever on whether he is the rightful person to be HANDED OVER the property”.

“Our client therefore still insist and request convincing and satisfactory proof of his authority to deal with the property for SAME TO BE HANDED TO HIM”.

Exhibit 2B is dated 2/8/2014. It predated the institution of the instant action by at least four years.

My understanding is that since the expiry of the sublease which both parties admitted to same, and so held by this court, the Defendants have been ready to hand over the said property to the family of Brebu Atumeku Dadzie through the rightful person, as claimed also by the Plaintiff for many years.

Thus, it will not therefore be wrong for this court to conclude that both parties are ad idem on the need for the recovery of possession of the disputed property from the Defendants.

Further to the above, the following cross-examination of the 1st Defendants supports the court’s position thus:

- Q. Between 1993 and 2014, it was the Plaintiff who has been communicating with the Hallabs in respect of the disputed property.
- A. No. the children of the late Brebu Atumeku Dadzie who were a lady and a man came to me to COLLECT THE HOUSE and I told them to GO THROUGH THE PROPER CHANNEL TO COLLECT IT. They came to me twice.
- Q. No child of the late Brebu Atumeku Dadzie has ever come to you to COLLECT THE PROPERTY from you.
- A. They did.
- Q. I suggest to you that you are using this excuse to perpetuate your stay in the disputed house.
- A. No. In the first agreement between Brebu Atumeku Dadzie and my father and my Uncle, in the last part of the agreement, there is a clause on the renewal of the Lease which bothered on the right of renewal. **And, me, the family of the Fatima Hallab, after so many years over 50 years, she has been going to court for the past 50 years. We decided to see the rightful owners to give up the property or renewal of the lease. This is because I am now 70 years and we do not want our children to continue to go to court because of the property.**

In my view, the above coming from the 1st Defendant as far back as 2005 to 2014 and 2023 provides the clearest indication of the ever readiness of the Defendants to give up vacant possession of the property to the rightful person from the Brebu Atumeku Dadzie family.

Upon the above therefore, I hold that the Plaintiff as the successor and in the capacity as used to mount the instant action against the Defendants, is entitled to recover possession of the disputed property from the Defendants.

IN CONCLUSION therefore upon my critical analysis of the law and the evidence before this court, I hold that the Plaintiff has the capacity to mount the instant action against the Defendants jointly and severally. The Plaintiff has indeed proven on the preponderance of probabilities that he has the capacity to represent the Asamoah Edu Nsona Family of Gomoa Manford in so far as this property in issue has been concerned just as Archibold Effrim Paitoo and John Kweku Botwe, the predecessors of the Plaintiff, represented the family in respect of the property in dispute originally acquired by Brebu Atumeku Dadzie.

Also, this court holds that the sublease in respect of the disputed property has expired and particularly so as both parties admitted same.

I also hold that the Plaintiff as the successor in title to Brebu Atumeku Dadzie is the beneficial owner of House No. 21/23/18, Old John Sarbah Road, Takoradi (after refund to on 14-15/18, John Sarbah Road, Takoradi).

This court has not been privy to the content of the sublease granted to Fatima Hallab even though the court has held that the same has expired; and so in that regard, this court is unable make any finding and directions regarding the reliefs for an order for account for all rent from the said house from 2007 to date of judgment.

Regarding the relief for recovery of possession, I grant the relief sought by the Plaintiff. I therefore order the Defendants and their agents now in possession of the property in dispute to hand over vacant possession of same to the Plaintiff.

Indeed, the Defendants asked for time/notice to hand over the property to rightful owner. Based upon the above, I, for the avoidance of any doubt, **direct** that the Defendants have up to the 31-12-2023, by way of the requested notice by themselves to give vacant possession of the property to the Plaintiff's family represented by the Plaintiff which the Plaintiff now redeem and recover possession of the property from the Defendants for and on behalf of the Plaintiffs' said family.

I award costs of **Gh¢10.000.00** to the Plaintiff against the Defendants.

I also grant perpetual injunction against the Defendants, their agents, assigns, etc. from in any way interfering with the Plaintiff's possession and quite enjoyment of the property described in this suit and which is the subject matter.

SGD

**G. K GYAN-KOTOH
(JUSTICE OF THE HIGH COURT)**

COUNSEL:

- 1. PHILIP NKRUMAH FOR THE PLAINTIFF.**
- 2. CONSTANTINE KUDZEDZI FOR THE DEFENDANTS.**