

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE (GENERAL JURISDICTION COURT 5) HELD IN ACCRA ON FRIDAY THE 7TH DAY OF JULY, 2023 BEFORE HIS LORDSHIP JUSTICE WILLIAM BOAMPONG, HIGH COURT JUDGE

SUIT NO. BDMC/209/2016

- 1. **EMMANUEL SACKY (REV)** *member of the Hansen Sackey Family of Accra)*

- 2. **JOSEPH QUARCOOPOME HANSEN SACKY**
Member of the Hansen Sackey family of Accra and Administrator of the Will of the late James Hansen Sackey)

- 3. **JAMES JACOB SACKY (PAA JOE)** *(Head of Family of the Hansen Sackey family of Accra and Administrator of the Will of the late James Hansen Sackey Family of Accra)*

PLAINTIFFS

ALL OF H/NO. B822/18
PRA CLOSE, NORTH KANESHIE
ACCRA

VS

- 1. **YAW**

- 2. **PRINCE**

- 3. **OFOSUHENE**

4. YAA KESEWAA LARBI
5. FRANCIS ACQUAH (ALIAS JOE)

6. KWABENA OFFEI

7. ASARE

DEFENDANTS

8. ROSEMOND AMANKWAH

9. ATTAH

10.KATEY

11.ANTHONY

12.KWAKU GUAZE

13.AMENU

14.AWURA AFUA

15.STEPHEN AGYEMAN

ACCRA

BANK OF GHANA

CLAIMANT

JUDGMENT

INTRODUCTION

In this interpleader proceedings the vexed question is whether a judgment regularly obtained and executed against an Agent/licensee could be set aside by the Principal/Licensor after execution?

This question rides on the back of the dictum of Kotey Jsc. who on behalf of the Supreme Court admonished judges to be loathed in reversing judgments and

post execution Aprocesses. In the case of OPANIN E. K. AGYARKWA VRS JAMES FOLAGIN & OTHERS (Unreported CIVIL APPEAL SUIT NO. J4/58/2019, delivered on the 11TH MARCH, 2020) Kotey, JSC speaking for the apex court expressed the policy rationale in these terms at page 9;

“Policy Rationale

There are also strong policy reasons why courts should be loath to set aside judgments after execution has ended. An efficient legal system is based on certainty and predictability as much as justice and fairness. **Allowing parties and other aggrieved persons to overturn judgments and completed execution processes is a very drastic step which must not be undertaken lightly. ... As a policy Court, we are also not unmindful of the deleterious effects that encouragement of the practice of the setting aside of the judgments after the completion of execution would have on the operation of the legal system” [emphasis mine]**

Per its Affidavit of Interest filed at the Registry of this Court dated 17th February 2022, the Claimant claims against the Plaintiffs/J/Creditors as follows:-

- a) A declaration that the Claimant is the owner in occupation of all that piece and parcel of land situate and lying at New Achimota/Odarteyman bounded on or towards the North by the then proposed Road measuring on that side 781 feet more or less on or towards the South by property of the Roman Catholic Church and Convent, measuring on that side 945 feet more or less on or towards the East by old Nsawam/Accra Road measuring on that side 600 feet more or less and on or towards the West by the then proposed Road measuring on that side 850 feet more or less

and covering an area of 13.34 Acres or thereabout, which said land is for purposes of identification demarcated and edged pink on Plan of Land prepared by W.E.K. Addo Esq. Licensed Surveyor No. 139 attached to the Deed of Conveyance dated 11th June, 1975 bearing No. A 483/1975 and made between James Hanson Sackey and 14 others land is for purposes of identification demarcated and edged pink on Plan of Land prepared by W.E.K. Addo Esq. Licensed Surveyor No. 139 attached to the Deed of Conveyance dated 11th June, 1975 bearing No. A 483/1975 and made between James Hanson Sackey and 14 others as Vendors all being descendants and Family Members of the late James Hansen Sackey and Bank of Ghana as Purchaser.

- b) Recovery of possession of the land in dispute currently being developed by the Plaintiffs AND/OR the said Adusa Krobea AND/OR their Assign/Agent as a result of execution of the said Judgment of the Honourable Court.
- c) Perpetual injunction restraining the Plaintiffs, their Agents, Privies and Assigns and any other person claiming through them or under their authority from entering, trespassing or otherwise laying claims to all or any part of the aforementioned land which the Claimant claims ownership of.
- d) Damages for trespass, damage to walls and interference with the Claimants interest in the aforementioned land.

2.0

CLAIMANTS CASE:

Claimant states that it acquired the disputed land from the Hansen Sackey family. The said family divested itself of all interest in the land in dispute to the Claimant by way of conveyance on or about 11th June, 1975.

The Claimant avers that it acquired the disputed land from the Hansen Sackey family in good faith and without notice of any defect in their title to the land.

It is the case of the Claimant that they have been on the disputed land for over 30 years and as such any claim by the Plaintiff to the disputed land occupied by the Claimant is caught by laches and acquiescence.

According to the Claimant they permitted some Auto Mechanics and other Artisans to carry out their trade on the land.

The claimant were informed by those they permitted to occupy the land that some Court Officials together with some Police officers has sacked them from the land. These occupants of the land later investigated and discovered that the Plaintiffs had issued a Writ of Summons against them and had procured judgment against them and subsequently went into execution after the issuance of a Writ of Possession.

The Claimant contends that the said action brought by the Plaintiffs against those the Claimants permitted to occupy the land as Defendants was fraudulent At paragraph 17 of the Affidavit of Interest, the Claimant particularized the alleged fraud as follows:-

“a) Omission and/or failure by the Plaintiff to name Bank of Ghana as a party to the action when Plaintiff very well knew or ought to have known

of Bank of Ghana's interest in the land in dispute which had existed for over 30 years.

- a) Suppressing the fact that the judgment would be enforced against land owned and occupied by Bank of Ghana from the Honourable Court.
- b) Omission and/or failure of the Plaintiff to inform the Honourable Court that the Hansen Sackey Family has at all material times acknowledged the right of the Claimant over the subject land.
- c) Omission and/or failure by Plaintiff to serve application for leave to issue writ of possession on Bank of Ghana when the Plaintiff knew or ought to have known that execution of the Judgment would be levied on land belonging to Bank of Ghana.
- d) Failure to serve Writ of Possession on Bank of Ghana, when Plaintiffs knew or ought to have known that the Bank of Ghana claims ownership of and has been in possession of the land in dispute for well over 30 years".

Claimant also states that the action which the Plaintiffs instituted against the Defendants was not brought in good faith, Claimant particularized bad faith as follows:-

Particulars of bad faith:

1. Plaintiffs knew or ought to know that the Hansen Sackey Family which the Plaintiff claims to represent, had divested itself of all interest in the land in dispute to Claimant by way of conveyance on or about 11th June, 1975.
2. Plaintiffs knew or ought to have known about Claimants said interest yet failed to name Claimant in the suit.

3. Procuring judgment in respect of land which Plaintiffs known or ought to have known that Claimant had been in occupation for well over 30 years, same been sold to the Claimant by the Hansen Sackey Family which Plaintiff claims they represent.
4. Proceedings to issue a Writ of Possession and enforcing the said judgment against land occupied by the Claimant for well over 30 years without Notice to the Claimant.
5. Actually ceding possession of land the subject matter of dispute to the said Adusa Krobea to develop same when the Plaintiff have always contested his propriety right over same and have always upheld acknowledge the Claimant's interest in same in circumstances when the Plaintiff knew that the Claimant had filed an interpleader against the enforcement of their judgment and that Plaintiff by themselves or through their agents, assigns, privies and all other person claiming through or under their authority have consequently been enjoined by the Honourable Court from developing the land."

Claimant stands on the following legal position

1. That the instant suit on behalf of the Hansen Sackey Family who are the Grantors of the Claimant are estopped by Deed and conduct from denying the title of Claimant to the land which has at all material times been under the Claimant's effective possession for over 30 years.
2. That the Claimant purchased the land from the Hansen Sackey family in good faith and without notice of any defect in their title to the land and having been in occupation of same for over 30 years the Plaintiff claim is caught by laches and acquiescence.
3. That any claim(s) by Plaintiff against Claimant is statute barred under the Limitation Act 1972 (N.R.C.D. 54).

4. That Claimant possession of the said land coupled with its open development of portions thereof in good faith is protected under the Land Development (Protection of Purchasers) Act 1960 Act 2.
5. That since the Claimant was on the land in dispute, it ought to have been given notice of every process filed to recover possession of same, since that was not done same violates its right to be heard.
6. That the Plaintiffs and the said Adusa Krobea were on 15th July 2019 convicted for contempt of Court for developing the subject property in breach of the terms of order of injunction placed on them by the High Court, Accra differently constituted.

THE PLAINTIFFS/J/CREDITORS' CASE:

The Plaintiffs contend that their family (Hansen Sackey family) is the lawful owner of the disputed land located at Achimota, Accra. They therefore instituted the substantive suit under which the Claimant had filed this interpleader application on behalf of the Hansen Sackey Family who are the beneficiaries of the estate of the late James Hansen Sackey. The disputed land thus forms part of the undistributed Estate of the late Hansen Sackey. The Plaintiffs stated that their family inherited the subject land from their grandfather the late James Hansen Sackey (Testator) through a Will dated 23rd January, 1926 and same forms part of the undistributed Estate of the late James Hansen Sackey. In the said Will, late Hansen Sackey devised to the Plaintiffs' Family the disputed property among others. The said Will is attached to the Affidavit of interest filed by Plaintiffs and marked Exhibit 'A' series.

It is the case of the Plaintiffs that by a judgment of the High Court in consolidated Suit No. AL39/2004 (154/92) dated 28th November 2008, the Plaintiffs Family was adjudged and confirmed as the owners of a large parcel of land lying and situate at Achimota – Accra, including the part which is the subject matter of this suit (See Exhibit ‘B’ the said copy of the Judgment). In the said Judgment i.e. Exhibit ‘B’, Her Ladyship Mrs Iris May Brown J.A. sitting as an additional High Court Judge found that the disputed land in that case which is the same as the disputed land in this case forms part of the Estate of the late James Hansen Sackey which has not yet been distributed to the beneficiaries. Her Ladyship Mrs. Iris May Brown in the said Judgment specifically directed the Registrar of Land Title Registry to expunge from their records all registered documents found to have been wrongfully and illegally registered as a result of the fraudulent activities of the Executors of the Will of the Plaintiffs’ grandfather the late Hansen Sackey (See Exhibit ‘F’ which is the said order).

It is a strong case of the Plaintiffs that as a result of the said order in the said judgment, the Claimant and other grantees who received grant from the Executors of the Will unlawfully ceased to have any interest in the disputed land.

Following the said 28th November 2008 Judgment the Court ordered all illegal allocations of Plaintiffs Family land to be expunged from the records of the Land Commission and that plotting of the judgment is being effected at the Lands Commission (See Exhibit ‘H’ being the plan showing the coverage of the area).

The Plaintiffs therefore deny the claim that the Claimant has any interest in the disputed land since the purported allocation of the disputed land made to the Claimant was made without the knowledge, consent or authority of the Plaintiffs’ family who are lawfully entitled to the land. The Plaintiffs state that

the said purported allocation to the Claimant is tainted with fraud and therefore same is null and void and conveyed no interest to the Claimant.

The sole Executor of the Will of the Late James Hansen Sackey, namely James Quao Sackey (deceased) held the land in trust for the benefit of the beneficiaries under the said Will and he could not deal adversely with same without an Order of a Court of competent jurisdiction whether alone or together with some members of the Hansen Sackey Family.

Even in December 1979 the Plaintiffs' Family caused their lawyers to write a letter to the Claimant notifying the Claimant that the purported conveyance made to Claimant dated 11th June 1975 with documents No. AC 4831 made by one James Hansen Sackey alias Papa Nii (not the testator) did not convey any interest in the disputed land to the Claimant, because the grantor granted the land on grounds of fraud (Letters attached as Exhibit 'C').

The Plaintiffs particularized fraud at paragraph 13 of their Affidavit of Interest as follows:-

- “a)That the Executors knew that he had no power to grant a gift or make allocation to Defendant's grantors at the time the said grant is said to have been made.
- b)That Plaintiffs' Family wrote a letter challenging the allocation to Claimant.
- c)That Claimant knew Plaintiff's Family had challenged the purported allocation in Court, but Claimant ignored same.”

According to the Plaintiffs by clause 11 of the Will of the testator, the late James Hansen Sackey, the disputed land which forms part of a larger parcel of land at Achimota, Accra was devised to the Plaintiffs' family.

However, without the knowledge, consent or authority of the other beneficiaries, the surviving Executor, James Quao Sackey purportedly effected a gift of a portion of the Plaintiffs' Family land to his own children who in turn purportedly disposed off the land to the Claimant's Bank to the detriment of the Plaintiffs and other beneficiaries of the Estate. Therefore the purported grantor of the Claimant did not have title to the land to be able to convey same to Claimant because same was against the clear provisions of the Will of the Late Hansen Sackey.

According to the Plaintiffs even in 1950, the Native Court, James Town 2B gave Judgment in respect of the Will of the late Hansen Sackey and declared that the disputed land which forms part of a larger land belongs to the Plaintiffs' Family and even the executors of the Will did not have the right or capacity to grant Achimota Lands mentioned in the Will to anyone who is not named as beneficiary in the said Will (See Exhibit 'D', the said 1950 Judgment. Also in 1951 the Supreme Court of the Gold Coast affirmed the Native Court's Judgment, and 1953 the West Africa Court of Appeal also affirmed the Supreme Court of the Gold Coast Judgment aforesaid in Suit No. WACA CVA 91/52 per Exhibit 'E'.

The Plaintiffs denied the averment made by the Claimant that it went into possession of the land and walled the disputed land and further constructed some dwelling houses on part of the land which had been occupied and used by some of its staff.

The Plaintiffs rather state that the entire land was bare, with only 2 small structures constructed at a corner of the land and the said construction alerted them of the illegal transfer of their land which occasioned the writing of the said letter to the Claimant and the subsequent court action.

According to the Plaintiffs Hansen Sackey Family have obtained 2 recent judgments from the High Court in respect of the land; one in 2008 and the other in 2017 and possession of the land has been recovered by the Court for the Plaintiffs and disputed land has since been fully developed and Plaintiffs are in active possession of the land at the movement. In 1979, Plaintiffs family instituted an action against the Claimants along with other Defendants to challenge the purported grant made to Claimant in Suit No. L 195/80 titled:-

Mrs. Grace Sackey & Anor.

Vrs

James Quao Sackey & Others

(Exhibit 'G' series are copies of processes in respect of that suit).

Even before the commencement of the suit the Claimant was notified by letter from Plaintiffs' lawyer in 1979 of the illegality of the purported grant made to the Claimant and the intention of Plaintiffs' Family to commence action to nullify the alleged grant. The Claimant entered appearance to the said suit and filed a Statement of Defence but the case stalled because the case docket got missing.

The Plaintiffs aver that the Claimant was painfully aware of the suit the Plaintiffs took against the squatters but the Claimant did not apply to join the

suit, only to file an interpleader application when the Plaintiffs obtained judgment against the said squatters.

The Plaintiffs denied ever committing any fraud, Plaintiffs avers that it is rather the Claimant and its grantor who had committed fraud against Plaintiffs family by purporting to grant Plaintiffs' Family land to Claimant without authority.

The Plaintiffs also say that the instant action is not statute barred because the Plaintiffs family have always challenged the purported allocation to Claimant as illegal and without lawful authority. Claimant had at all times been aware of this challenge hence the Claimant cannot raise the question of limitation in this proceedings. Beside the Plaintiffs had already won judgments in respect of the land and had taken possession of same including the disputed land since 2017 hence the question of statute- barred does not arise. Further the Plaintiffs gave notice to all persons in possession of the land before they took possession of the land after the 2017 judgment.

EVALUATION OF THE EVIDENCE LED BY THE PARTIES

Since this trial was conducted on a Summary trial, no issues were set down for trial. However from the respective evidence led by the parties and the respective affidavits of interest filed also by the parties I consider the following issues as issues for trial.

1. *Whether or not the sale of the disputed property to Claimant is valid?*
2. *Whether or not the various judgments obtained by the Plaintiffs declared the Plaintiffs as the owners of the disputed land.*
3. *Whether or not the said judgment obtained by the Plaintiffs covers the land in dispute.*

4. *Whether or not the Plaintiffs action in the substantive suit is statute barred?*

I will determine issues 1 first and then resolve issues 2, 3, 4, thereafter in that sequence.

Determination of Issues:

Issue 1:

By the respective Affidavit evidence filed and the evidence led by the parties in this suit, both Parties admit that the disputed property forms part of the Estate of the late James Hansen Sackey which he devised in a Will made in 1926 to children, grandchildren and their heirs. In the Will he appointed some executors. On the demise of James Hansen Sackey the only surviving executor was James Quao Sackey. The sole surviving executor James Quao Sackey gifted the disputed property to his own children and others leaving out other beneficiaries including the Plaintiffs. The children of James Quao Sackey in turn granted the property in dispute which was gifted to them by James Quao Sackey to the Claimant herein the Bank of Ghana. Did this conduct of James Quao Sackey lawful and did the Claimant acquire any interest in the disputed land?

It bears stressing that when this transaction came to the Notice of the beneficiaries they quickly mounted an action against James Quao Sackey, his son Papa Nii and the Claimant herein, the Bank of Ghana. This could be seen in this answer by the Plaintiffs when they were being cross-examined. They were asked

“Q. At page 6 of the Statement of Claim in Suit No. L195/80, the Plaintiff stated that they became aware of a Deed of Gift dated 1st 4th October 1967 made by the 1st Defendant in the suit James Quao Sackey (the sole executor of the Testator’s Will to the 2nd Defendant after they had made enquires at the Lands Commission Accra, is that correct?

The Plaintiffs representative answered:-

“A. No. The sole surviving Executor, James Quao Sackey gave the land to his son, James Hansen Sackey alias Papa Nii and gave other lands too to his daughters and his sons also. That is why Grace Adwoa Jacobson being the daughter of the Testator took the Executor and his son James Hansen Sackey Papa Nii to Court and Bank of Ghana was added as the 3rd Defendant of the case. So that case was against the Executor and his son and Bank of Ghana. They wanted to know the authority the Executors has to do that. So adding Bank of Ghana to it is a different issue”.

Exhibit “BOG1” and Exhibit “BOG 13, confirm that the daughter of Testator namely Grace Adjoa Jacobson took the sole executor of the Will James Quao Sackey and his son James Hansen Sackey alias Papa Nii to Court and added Bank of Ghana as the 3rd Defendant to question the authority under which the sole executor James Quao Sackey and his son Papa Nii made the said grant of the disputed land to the Bank of Ghana.

The Claimant representative admitted this grant under cross-examination as follows:-

- “Q. You also told the Court that your main grantor was the Executor of the Will of the Testator. Is that correct?**
- A. That is correct. Because the executor granted his interest and benefit to his son, the first grantor.**
- Q. All your other grantors were also people who had been gifted the disputed land by the Executors, is that correct.**
- A. Yes My Lord.”**

It is clear from Exhibit ‘A’ the Will of the Testator was to be executed in its clear terms by the sole executor James Quao Sackey to the beneficiaries of the Will. There is no evidence before me that the Hansen Sackey’s family authorized the sole executor to gift the properties in the Will to his children and other people.

The alleged gift made to the Claimant’s grantor by the sole executor of the Will is therefore wrongful since same was made to the Claimant’s grantors by the sole Executor of the Will, James Quao Sackey without the knowledge, consent or authority of the Hansen Sackey. That conduct was in clear breach of the terms of the Will.

Since the Plaintiffs have adduced sufficient evidence on this issue the evidential burden shall shift to the Claimant to adduce contrary evidence on the validity of the grant, failing which this issue shall be resolved against it.

CONTRARY EVIDENCE LED BY CLAIMANT

On the part of the Claimant, it traces its source of acquisition of the disputed property to a deed of conveyance tendered as Exhibit “BOG 2”. This Exhibit “BOG 2” makes reference to the Will of the late James Hansen Sackey. Part of Exhibit “BOG 2” indicates that the disputed land forms part of the Estates of the late James Hansen Sackey.

The grantors of the Claimant are all people who according to Exhibit "BOG 2" received the disputed property as a gift from the Executor of the Will of late Hansen Sackey.

From Exhibit "BOG 2" all the alleged grantors of Claimant numbering 14 took the land as a gift from the sole Executor Quao Sackey who held the land in trust for the Plaintiffs family. Undoubtedly there is no provision in the said will empowering the sole Executor to gift the said land to his children without the consent, authority and knowledge of the Plaintiffs family. If the Claimant had exercised due diligence it would have discovered that the property was not the self-acquired property of the sole executor and that the grant was in breach of the terms of the Will of the Testator. James Quao Sackey held the properties in the Will in trust for the beneficiaries of the Will. He was under a legal duty to have acted according to the terms of the Will, but not to transfer same to his only biological children. Since the said James Quao Sackey passed the land to his children without the consent and authority of the Hansen Sackey family he committed fraud since he knew that nowhere in the said Will was he authorized to make the said gifts to his own biological children to the detriment of the other beneficiaries mentioned in the Will. As Executor and Trustee that conduct was unlawful and fraudulent.

The gift was therefore null and void and transferred no title to the Claimant. In this case it was void ab initio because the Plaintiffs upon knowledge of the illegal transfer of their property caused their solicitor to notify the claimant and also threatened legal action, which they did sue but for the docket which got missing under unexplained circumstances. The Claimant's grantors therefore had no title to the disputed land, to have passed it on to the Claimant. The position of

the law is that you cannot give what you do not have and this principle finds expression in the Latin words “Nemo dat quod non habet”.

I therefore declare the gift of the land in dispute by the sole executor of the Will (Exhibit A) as unlawful since same sole executor has no right to have gifted same to his biological children and also same was made without the consent and authority of the Hansen Sackey’s family.

Issue 2:

Whether or not the various judgments obtained by the Plaintiffs declared the Plaintiffs as the owners of the disputed land.

Various judgments in respect of the disputed property had been obtained by the Plaintiffs in 1950, the Native Court, James Town 2B gave judgment in respect of the Will of the late Hansen Sackey which judgment was tendered by the Plaintiffs as Exhibit “D”. The said judgment marked as Exhibit “D” declared that the disputed land which forms part of a larger land belongs to the Plaintiffs’ family. The judgment further held that the Executors of the Will of the late James Hensen Sackey did not have any right or capacity to grant Achimota Lands mentioned in the Will to anyone who is not named as a beneficiary in the said Will.

In 1951, the Supreme Court of the Gold Coast affirmed the Native Court Judgment, and in 1953 the West African Court of Appeal also affirmed the judgment of the Supreme Court of the Gold Coast in Suit No. WACA CVA 91/52. These judgments were tendered as Exhibit “E” series. These judgments are clear that the executors had no right to grant any portion of the Achimota lands

mentioned in Exhibit "A" to anyone who was not named as a beneficiary of the said Will.

The Plaintiffs also tendered Exhibit "B" a 28th November 2008 judgment in Suit No. AL 39/2004 (1542/92) entitled:-

E.F.A. & 5 ORS.

Vrs.

- 1. JAMES GEORGE HANSEN SACKKEY DECEASED represented by Glyms O. Sackey.**
- 2. SOCIAL SECURITY & NATIONAL INSURANCE TRUST.**

That judgment was delivered by Justice Iris May Brown (Mrs) J.A sitting as an additional High Court judge. The said judgment also was in respect to the present disputed land which formed part of the Estate of the late James Hansen Sackey, which has not yet been distributed to the beneficiaries.

That judgment also directed the Registrar of Land Title Registry to expunge from their records all registered documents found to have been wrongfully and illegally registered as a result of fraudulent activities of the Executors of the Will of the Plaintiffs grandfather Hansen Sackey.

As a result of the said judgment therefore, the Claimant and other grantees who received grants from the Executors of the Will unlawfully ceased to have any interest in the disputed land.

The said judgment (Exhibit "B") in fact adjudged and confirmed the Plaintiffs family as the owners of a large parcel of land lying and situate at Achimota – Accra including the part which is the subject matter of this suit.

Indeed this judgment delivered by Justice Iris May Brown also declared the Plaintiffs family as the owners of the disputed land.

In the substantive suit which has occasioned the present application the Plaintiffs claimed against the 15 Defendants the following reliefs;

- “a) A declaration that the Plaintiffs are the owners of the land described in the schedule above and occupied by the Defendants.
- b) A declaration that Defendants have no right to occupy the land without the permission of the Plaintiffs.
- c) An order for immediate recovery of possession of the disputed land.
- d) An order for perpetual injunction to restrain the Defendants, their agents, servants, apprentices or whoever described from interfering with the Plaintiffs ownership and quit enjoyment of the subject property.
- e) Damages for trespass.
- f) Cost.
- g) Any other reliefs that may be granted by the Court.”

My late Brother, His Lordship R. B. Badu on the 29th June, 2017 entered judgment against the Defendants and ruled among others as follows:-

“I have no reason to doubt the evidence led by the Plaintiffs. The Plaintiffs have led satisfactory evidence to show that:

1. They are the owners of the land in dispute by reason of being beneficiaries under the 1926 Will of the late James Hansen-Sackey.

2. They have shown that the land in question belonged to the late James Hansen-Sackey as adjudged and confirmed by a judgment of the High Court in Suit No. AL39/2004 (1542/92).
3. The evidence also show that the Defendants have annexed portions of that land to themselves without the permission or consent of the Plaintiff and have refused to vacate the land despite of the demand by the Plaintiff that they vacate the land

It cannot be disputed that the presence of the Defendants on the land and ignoring all entreaties to vacate the land has caused a lot of inconveniences to the Plaintiff. The Plaintiffs are entitled to judgment for all the reliefs sought on the Writ of Summons. Judgment is entered for the Plaintiffs accordingly...”

Indeed all these judgments I have referred to spoke with one voice and it was that the Plaintiffs are owners of the disputed land in this suit.

That suit was commenced against the Defendants who were squatters of the land. The Claimant herein claims it put the said Defendants on the land. When the action was mounted in 2016 against the Defendants there is every possibility that they would have informed the Claimant but the Claimant decided not to join the suit. It waited for the Court to enter judgment for the Plaintiffs only to file a Notice of Claim after the judgment and after execution has been completed. The Plaintiffs cannot be blamed for not joining the Claimant to that suit because the Defendants in the suit did not file any Statement of Defence. The Plaintiffs would not know at the time of the suit that the Defendants were on the disputed land at the instance of the Claimant to enable Plaintiffs join the Claimant to the suit. In the circumstance that judgment and the execution cannot

be impugned. It was a regularly obtained judgment which has long been executed.

The various judgments cited above of which none had been appealed against is clear that the Plaintiffs are the owners of the disputed land.

ISSUE 3:

WHETHER OR NOT THE SAID JUDGMENTS OBTAINED BY THE PLAINTIFF COVERS THE LAND IN DISPUTE?

During the trial, the Claimants tried to create the impression that the Judgment of the High Court delivered on the 28th November, 2008 by Justice Iris May Brown (Mrs) J. A sitting as additional High Court Judge was only in respect of the alienation of land made pursuant to a Statutory Declaration made by the Executor on 6th April, 1977.

However, a closed look at the said trial indicates clearly that the entire Achimota land came into focus during the trial and the orders which were made in that judgment were made in respect of the entire Achimota Lands left by the Testator.

The orders made in Exhibit B (the Iris May Brown 2008 judgment) therefore affected all the Achimota lands which the testator devised in his Will (Exhibit A), the alienation made by James Quao Sackey to the Claimant in 1975 inclusive.

At page 7 and 8 of Justice Iris May Judgment, the court made these clear orders:-

- “1. The director of finance with the assistance of an officer from the Lands Commission and Land Title Registry are to trace and list all sales, grants and alienations made unlawfully out of the estate
- 2 A Statement of accounts is to be made by the above officer of all monies accruing to the estate of the first Defendant and his father as a result of such grants;
3. The Finance Officers are to calculate interest payable on the amount.
4. The total amount is to be deducted from all monies accruing to the monies of the father and the 1st Defendant from the estate
5. An order is directed at the Land Title Registry, the Executive Secretary of Lands Commission and the Registrar of Lands Title Registry to expunge from their records all registered documents found to have been wrongfully illegally registered as a result of the fraudulent activities of the 1st Defendant and his father”.

The 1st Defendant and his father in this order refers to Hansen Sackey alias Papa Nii and his father Quao Sackey. It should be noted that I have earlier ruled that the alienation which was made by James Quao Sackey (the sole executor) to his son James Hansen Sackey alias Papa Nii who in turn made a grant to the Claimant was unlawful and fraudulent since same was made without the authority and consent of the Hansen Sackey family. That alienation is what the 5th order made in the said Justice Iris May Brown Judgment referred to.

By the 5th order the said alienation was expunged from the Registrar of Land Title Registry.

This settles the issue that the said judgment covers the disputed land which was fraudulently granted to the Claimant in 1975.

This fact that the purported registered conveyance made to the Claimant has already been expunged from the records of the Land Commission was confirmed by an officer of the Lands Commission. Mr. Kwesi Essel gave evidence in this court that a certified copy of the alleged Deed of Conveyance (Exhibit 3) made for the Claimant was registered with Registry No. 718.1979. However, upon a search on the file plan contained in Exhibit BOG'13', it was discovered that no registration exist in the records of Land Commission on the registration of the conveyance made to the Claimant.

The Plaintiff tendered 'Exhibit J' which was a search Report from the Lands Commission on the disputed land. Another officer of the Lands Commission gave evidence on the dispute land. This officer is named Mr. Richard Roger Kotey. Under cross examination on 8th February, 2023 and 3rd April, 2023, he testified that at the moment the alleged conveyance made to the Claimant does not exist in the records of Lands Commission. Mr. Kotey further testified that the site plan as exhibit in Exhibit J and that of Exhibit BOG 13 are the same. He stated that the Land Commission superimposed the site plan on their Base map and the result is the search report attached to Exhibit J and that search report does not show any registered interest for the Claimant.

Indeed the alleged conveyance fraudulently made to the Claimant does not exist in the Records of the Lands Commission. This is due to the orders which arose from the suit no. AL/39/2004(1542/92) dated 28th November, 2008 delivered by Justice Iris May Brown Judgment tendered as Exhibit "B". The said Judgment contain certain orders which were made including an order directed at the Lands Title Registry, Executive Secretary of Lands Commission, the Registrar of Lands Registry to expunge from their records all registered documents including that of the disputed land in the name of the Claimant. The judgment

in suit No. AL/39/2004 (1542/92) dated 28th November, 2008 and delivered by Iris May Brown J.A therefore ordered for the Claimant alleged grant to be expunged.

Equally, the 1950 Judgment by the Native Court, James Town 2B was in respect of the Will of that Hanson Sackey also is covered by the disputed land in this present suit. It was declared in that judgment that the disputed land forms part of a larger land belongs to the Plaintiffs' family and even the Executor of the Will of late James Hansen Sackey did not have any right or capacity to grant the Achimota Lands mentioned to anyone who is not named as a beneficiary in the said Will.

The 1950 Judgment was affirmed by the Supreme Court of Gold Coast in 1953. This Supreme Court Judgment was also affirmed by the West African Court of Appeal on appeal in Suit No. WACA CVA 91/52. See Exhibit E Series.

From the forgone, I hold firmly that the various judgments obtained by the Plaintiff covers the disputed land in this suit.

Somewhere along the line, the Claimants tried to put up a case that they were not aware of the judgments in which the court declared the Plaintiffs family the owners of the Achimota lands devised to them by Quao Hanson Sackey and his son James Hansen Sackey alias Papa Nii and others which the Court also declared as fraudulent since same was done without the knowledge and consent of Plaintiffs family.

The claim by the Claimant that it is not aware of the judgment cannot absolve it from the consequences of the judgment, which is that the Executor passed nothing to the Claimants because he lacked the authority to do that. The grant was fraudulent and fraud vitiates all things and equities.

During the cross examination of the Plaintiffs representative, counsel for the claimant tried to create the impression that the plaintiffs did not register the various judgments they obtained in their favour. Counsel for the claimant tried to create the impression that due to the non-registration of the various judgment the plaintiffs exhibited in this trial, the claimant was not aware of these various judgment.

This argument created under the cross examination of the claimant representative cannot suffice because it is not the registration of the judgments that give it validity and potency. The position of the law is that court judgments take effect immediately upon delivery of the judgment.

Even if the claimant was not aware of the judgments, the Executor of the testator who made the grant to the claimant was painfully aware of the judgments, and he knew of the injunction which was placed on him by virtue of the judgments not to grant the Achimota lands, yet he did so. He never passed on any valid title to the claimant.

ISSUE 4

Whether or not the Plaintiffs action in the Substantive Suit is Statute Barred. Claimant contend that the Plaintiff suit is statute barred. In my view the claimant had misconceived this issue of Limitation. This is because from the onset the plaintiff had fought the claimant and challenged the claimant title to the disputed land.

The claimant purported conveyance was made to them in 1975 with document No AC4831 by one James Hansen Sackey alias Papa Nii (the son of Quao Sackey the sole executor).

This James Hansen Sackey alias Papa Nii did not convey any interest in the disputed land to the claimant because the grantor granted the land by fraud.

When the Plaintiffs' family had wind of this fraudulent grant, they cause their lawyer to write a letter to the claimant challenging their said grant.

The said letter was exhibited by Plaintiffs and marked Exhibit 'C'.

Part of Exhibit 'C' is quoted as follows:-

"The land was a property of one James Hansen Sackey who died in Accra. James Quao Sackey, one of his children, was appointed one of the executors and trustees under the will.

By clause 11 of the said will, the deceased, devised his lands at Achimota to his children. My client Mrs Jacobson was one of these children as was Mr. Samuel Sackey, the late father of my client, Mrs Bannerman-Thompson.

Without their knowledge, consent or authority whatsoever, or indeed, the knowledge, consent or authority of any of the other beneficiaries, the surviving executor, James Quao Sackey has purported to effect a gift of the land to his son who has in turn purported to dispose of the land to your Bank.

You will realize in the circumstances your grantor's lack of any title whatsoever.

I am initiating court action on behalf of my clients to set aside the invalid transaction made their land. Inevitably, I will have to make your Bank Co-Defendants in this action and I am writing to let you know in advance of this intended action”.

It would be observed that the claimant’s allege grant was made on the 11th June, 1975.

When the Plaintiffs family had wind of the unlawful transfer of their property, four years after that grant they caused their lawyer to write to the claimants challenging the claimants said grant per Exhibit C. The plaintiff action therefore would not therefore be caught by any statute of Limitation as they acted timeously when the allege grant came to their notice.

Again, the Plaintiff did not sleep on their right on this allege grant of the disputed land to the claimant.

In 1979, the plaintiff family instituted an action against the claimant along with other defendants to challenge and nullify the purported grant made to the claimant in suit No. L/195/80 titled:-

Mrs Grace Sackey & Anor

Vrs

James Quao Sackey & Ors

Exhibit G series are copies of processes in respect of that suit.

The Claimant's entered appearance and filed a statement of defence in that suit. However the said suit got stalled because the case docket got missing. However that suit served as a challenge to the claimant in respect of the disputed property in the present suit. Still the plaintiffs did not rest.

Exhibit 'B' that is suit no AL39/2004 (1542/92) entitled

E.F.A Sackey & 5 ors

Vrs

- 1. James George Hansen Sackey etc.**
- 2. SSNIT**

is another action the Plaintiffs took to assert their ownerships to the present land in dispute. That judgment conclusively declared the Plaintiffs family as the owners of the disputed land. The claimant cannot also deny that it was not aware of the suit the plaintiffs took against the squatters whom the claimants placed on the disputed. That action resulted in suit No. LD/0629/2016

Entitled:-

Emmanuel Sackey (Rev) & 4 ORS

Vrs

Yaw & 14 ORS

That suit also resulted in a judgment for declaration of title and recovery of possession in favour of the Plaintiffs. By that suit which judgment was delivered by the High Court, Accra on the 29th June, 2017, the Plaintiffs have recovered possession of the disputed land. The Plaintiffs after recovering

possession of the disputed land have developed the land together with their partner.

Time cannot therefore be considered to run against the Plaintiff at all due to the series of interventions taken by the plaintiffs to challenge the claimant's title to the disputed land.

The action the plaintiff took in the Substantive suit is not caught by the statute of Limitation and therefore not statute barred.

ANSWERING THE QUESTIONS POSED IN THE INTRODUCTION OF THIS JUDGMENT:

I would at this juncture proceed to answer the question posed in the introduction of this judgment. From the evidence, it is clear that on factual grounds the Claimant has no valid claim to the disputed land due to the defects in the title of its grantors. On legal grounds the present application is also hollow because the judgment was executed without the Claimant intervening. It was brought after execution has been levied and grants made to third parties who have since developed many buildings on the land. The Claimant seeks to reverse the judgment and execution on grounds of fraud but has failed woefully to prove fraud beyond reasonable doubt. The Claimant has been tardy and indolent so far as the facts of this case is concerned. The Claimant did not offer any credible answer for its indolent behavior. Such behaviors have never been tolerated by the law. For instance in the case of **NII STEPHEN MALEY NAI VRS EAST DEDEKOTOPON DEVELOPMENT TRUST [Civil Suit No. J4/61/2018]** the Plaintiff/Appellant/Appellant brought an action against the Defendant/Respondent/Respondent claiming title to a large tract of land behind the Trade Fair. The Plaintiff/ Appellant/Appellant looked on whilst the disputed

land was being litigated over by Defendant/ Appellant/Appellant and another party without joining the action. The action terminated in favour of the Defendant/ Appellant/Appellant. Subsequently the Plaintiff mounted an action against the Defendant/ Appellant/Appellant. Both the High Court and the Court of Appeal dismissed the Plaintiff Appellant/Appellant" s claim on the ground that he is estopped by standing- by and not joining the litigation that resulted in the Judgment in the first suit. Both courts further held that the Plaintiff Appellant/Appellant is estopped by laches and acquiescence for looking on and not taking any action. At page 12 of the judgment the Supreme Court speaking through Kotey JSC said

"The Plaintiff-Family is also estopped by conduct, laches and acquiescence from asserting any interest in the disputed land having stood by as title to the land in dispute was litigated and settled in suit no. L/353/97 and watched on for several years as the defendant, which is a product of the said suit, exercised overt acts of ownership over the land, including the land in dispute. We dismiss the appeal and affirm the decisions of the trial High Court and the Court of Appeal."

When the Claimants Agents or Licensees were sued they who the Claimant they did not join the Claimant or inform the court that the Claimant were their licensor or Principal. When the said Licensees or Agents were being evicted by court officials the Claimant did not appear to save them. One may argue that the Agents were not proper parties so the principle established in **MORKOR V KUMA (East Coast Fisheries case) [1998-99) SCGLR 620** that

"Where, in fact or in law, a person is not a proper party to a suit, then, no matter how actively the person had participated in the suit, the fact would remain that she was never a proper party.." will not apply. If an agent or licensee unlawfully goes onto someone's land and judgment is obtained against

the said agent/licensee, that Principal or Licensor cannot say that, he should have rather been sued and not the agent. It was for the agent or licensee to have joined him to the suit or if the principal or licensor is someone who is vigilant to have had wind of the suit so as to join same on his own. If he does not that judgment would bind the principal or licensor. The position of the law is that anyone in physical possession of a disputed land qualifies to be sued as a Defendant.

Hence the Claimant cannot say he never had notice of the trial. He cannot say among its 15 agents, none of them informed him of the suit. He cannot also claim that none of its 15 agents informed it about the intended execution of the writ of possession, which from the record they resisted, hence same the Police had to aid in the execution of the writ of possession. That exercise without doubt was inimical to the interest of the Claimants 15 Agents and they would have all means informed the Claimant to avert that intended execution, but nothing of the sort happened.

From these facts it is reasonable to infer that the Claimant had notice of the trial and the execution and it just refused to intervene in the proceedings. At the moment, execution has ended and new interests have been acquired in the land. New buildings have been erected on the land.

One may say that this Interpleader application before this court is just an innocuous application seeking to reverse the execution and restore the land to the claimant and not to reverse the judgment delivered in 2017 by my brother Batu (J) of blessed memory .However in substance it is seeking to do just that. In other words it is seeking to set aside a regularly obtained judgment which has been lawfully executed against its agents. The Claimant is not alleging

irregular or wrongful execution. It is in substance attacking the validity of the judgment on grounds of fraud in this interpleader proceedings and has even gone ahead to allege the judgment was obtained by fraud among other allegations. The particulars of fraud supplied by the Claimant would leave no one in doubt that this interpleader action is a smoke screen since the main aim of the Claimant is to set aside a regularly obtained judgment which has already been executed.

The Claimant has intentionally chosen this route because if it causes a fresh writ of summons to be issued it would be difficult to surmount possible defences such as standing-by, laches, acquiescence and other estoppels. Hence it has thought it wise to bring this interpleader application to reclaim the land, which was illegally transferred to it by the children of the sole Executor.

It bears stressing that the Judgment binds the Claimant and should learn to live with it. Its attempt to have a second bite at the cherry by filing this application on grounds of fraud and bad faith will not work. The claim by the Claimant that the judgment was obtained by fraud is just an emotive claim which could not be proven by the Claimant. As I have indicated, since the execution of the judgment many things have gone on. Third parties have acquired interest in same and have constructed buildings on the land. Setting aside the execution and the judgment would have an adverse effect on the Plaintiffs and devastating effect on third parties who have invested heavily on the land. The Claimant has stood by for a long time and the judgment delivered by Justice Batu of blessed memory should be made to rest. Hence I would abide the admonition of the Supreme Court as quoted supra and dismiss the application and same is accordingly dismissed. I award costs of GHC 80,000.00 against the Claimant in favour of the Plaintiffs.

(SGD)

WILLIAM BOAMPONG

(JUSTICE OF THE HIGH COURT)

COUNSEL:

KWASI AMOFA-AGYEMANG FOR THE PLAINTIFFS

**OSMAN GYAN WITH ABDUL HADI KEELSON FOR J.K. AGYEMANG FOR
THE CLAIMANT PRESENT.**

**DOUGLAS OBENG FOR THE SUBPOENAED INSTITUTION (LANDS
COMMISSION)**