IN THE HIGH COURT OF JUSTICE, WESTERN REGION, HELD AT SEKONDI ON THE 24TH DAY OF MARCH, 2023, BEFORE HER LADYSHIP AFIA N. ADU-AMANKWA (MRS.) J.

SUIT NO. E1/1/12

NANA EGODZI ESSOUN III **PLAINTIFF**

VRS.

1. FRANCES WILLIAM
(SUB. BY BARBARA BAFFOUR) **1ST DEFENDANT**

2. LANDS COMMISSION **2ND DEFENDANT**

JUDGMENT

By his amended writ of summons filed on 6th January, 2021, the plaintiff, the chief of Kwesimintsim, claims against the defendants for the following reliefs:

"1. Declaration of title to plots nos. 570, 570A, 571, 571A, 572A, 573A and "Open Space" Kwesimintsim Zongo Layout situate at and forming part of Kwesimintsim Stool Lands.

2. Damages for trespass.

3. Recovery of possession of the parts of the said plots of land trespassed on to by the 1st defendant and/or her agents, privies, assigns, etc.

4. An order of perpetual injunction restraining the defendants either by themselves and/or their agents, assigns, workmen, privies etc from howsoever interfering with the subject matter plots of land.

5. An order to compel the 2nd defendant to cancel from its records all transactions or documents made between the 1st defendant and any 3rd

person(s) in respect of the plots of land in issue, and plotted in the records of the Lands Commission, Sekondi".

The plaintiff's case is that the disputed plots form part of the Kwesimintsim Stool Lands and therefore owned by the Kwesimintsim stool. The stool granted leases of the plots in question many decades ago to persons which had been plotted in the Lands Commission's records. The plaintiff averred that it had come to his attention through a search conducted at the Lands Commission, Sekondi, that the 2nd defendant had deleted from its records the leases made by his stool and, in their place, received and plotted leases made recently by the 1st defendant as lessor in favour of some others. It had also come to his attention that the disputed plots had been redemarcated thereby creating more plots out of the original land size even though buildings were already standing on them. Some of the 1st defendant's lessees had entered these plots and intended to develop them. According to the plaintiff, he caused his lawyers to write to the 2nd defendant on these infractions and to request that they be remedied, but it had failed to respond to the letter.

As was expected of the defendants, they denied the plaintiff's allegations against them. By her statement of defence filed on 16th November, 2011, the 1st defendant denied leasing portions of the plaintiff's stool land and contended that any lease by her was in respect of portions of her father's land and not the plaintiff's. According to her, she was the beneficial owner of her father's 34-acre land situate at Essiljokrom, which shared boundaries with the plaintiff's stool land. The 34-acre land was a matter of conveyance between her father, Francis Awoonor Williams and one Kwesi Sebreku, Kobina Johnfia and Potesie of Kwesimintsim. She further contended that her father acquired the said land in 1927, and therefore the plaintiff's action was statute barred coming after eighty years of her father's acquisition of the disputed land.

In its amended statement of defence filed on 25th January, 2021, the 2nd defendant averred that the 1st defendant started granting leases of the land as far back as 2001 based on a conveyance dated 5th October, 1927 and executed between Kwesi Sebreku, Kobina Johnfia and Potosie all of Kwesimintsim representing the family of Mpatadu and Francis Awoonor Williams. Subsequent to the lease, there had been various assignments to other persons. The 2nd defendant denied the deletion of any transaction of the land in dispute prior to plotting the various leases executed by the 1st defendant.

It is to be noted that the plaintiff initially instituted the action with one Ebu. Kofi Yalley as 2nd plaintiff who passed on during the pendency of the suit and was substituted with the plaintiff. The original 1st defendant, Frances Williams, died during the suit and was substituted by Barbara Baffour, who acted through her attorney during the trial. One Ebusuapanyin Yalley was joined to the suit as 3rd defendant. He also died and was substituted by Madam Araba Abokoma. On her application, the court disjoined her from the suit on 20th February, 2019.

The following issues were set down for trial:

i. Whether or not the subject matter lands are owned by the plaintiff's stool.
ii. Whether or not the 1st defendant is estopped by conduct, laches and acquiescence from challenging the title of the plaintiffs' stool to the subject matter lands.
iii. Whether or not the plaintiffs are entitled to their claim.
iv. Any other issue(s) arising from the pleadings.

In an action for declaration of title, the onus of proof lies heavily on the plaintiff. See the case of **Dokutso Tei Kwabla vrs. Lands Commission and Another [2017-2018] 1 SCGLR 497**. The duty placed on the plaintiff is that he must prove his case on a balance of probabilities. As he claims that the disputed lands belong to the Kwesimintsim Stool, he must do so by introducing sufficient evidence to avoid a

ruling against him on the issues set out for trial. Therefore, he has an obligation to persuade the court to a requisite degree of belief by adducing evidence that will convince the court of the facts asserted. This duty is imposed on the plaintiff by sections **10(1), 11(1) and 12(1) of the Evidence Act, 1975 (NRCD 323).** If the plaintiff fails to discharge the onus on him and make a case for the reliefs sought, then he cannot rely on the weakness of the defendants' case to ask for relief. However, if the plaintiff makes a case which would entitle him to a relief if the defendants offer no evidence, if the case offered by the defendant discloses any weakness which supports the plaintiff's claim, then the plaintiff is entitled to rely on the weakness of the defendants' case to strengthen his case. See the case of **Odametey vrs. Clocuh & Another [1989-90] 1 GLR 14**.

The plaintiff testified that the plots, i. e. plots nos. 570, 570A, 571, 571A, 572, 572A, 573A and "Open Space", Kwesimintsim Zongo Layout, the subject matter of the dispute were situate near the Kwesimintsim Old Cemetery and formed part of the Kwesimintsim Stool land. His ancestor, Sheburah, who founded the Kwesimintsim Stool, broke the virgin forest of Kwesimintsim Stool land. His stool granted leases many decades ago of the plots in issue to certain lessees who had constructed houses on their respective plots and had been in occupation for many years. These leases were yet to expire, with many decades more to run. However, the stool had a reversionary interest in the subject matter plots. The leases granted were reduced into writing and plotted in the records of the Lands Commission, Sekondi. The plaintiff further testified that it had recently come to his knowledge by way of a search conducted at the Lands Commission, Sekondi, that the 2nd defendant had deleted from its records the leases previously made by his stool and in place had received and plotted leases made recently by the 1st defendant, as lessor, in favour of some other members of the public. It had also come to his knowledge that the plots in issue had also been redemarcated, thereby creating more plots out of the original land size even though there were buildings of lessees of his stool already on the plots. Some of the lessees of the 1st

defendant of the newly carved out plots had entered the plots and were making attempts at developing them. He tendered photographs of some of the developments by the 1st defendant grantees in evidence as exhibits "A", "A1"-"A3". For this reason, his stool caused its lawyer to write a letter dated 20th August 2010 to the 2nd defendant to point out the infractions and requested that the 2nd defendant remedy it but she had failed to respond to the said letter or remedy the infractions. He tendered the letter as exhibit "B". The plaintiff further testified that his stool land did not share a boundary with any 34-acre land of the 1st defendant at Essiljokrom as alleged.

The 1st defendant's attorney, Peter Eshun, testified that the disputed plots of land, as stated in paragraph 2 of the plaintiff's statement of claim, had never been owned by the Stool and the Stool family of Kwesimintsim as claimed. Instead, the 1st defendant was the beneficial owner of a 34 acre land situate at Essiljokrom near Kwesimintsim, Takoradi. The 34-acre land was acquired by the 1st defendant's late father, Francis Awoonor Williams Esq., a barrister at Law of the Gold Coast, by virtue of a conveyance dated 5th October 1927, registered as No. 646/1927 at the Deeds Registry executed by Kwesi Sebreku, Kobina Johnfia and Potosie of Kwesimintsim representing the Sekyi Akona Obratu Ebiradze Stool family of Mpatado and Essiljokrom who were the original owners of the land and the late Francis Awoonor Williams. He tendered a copy of the conveyance in evidence as exhibit "2". The said 34-acre land was bounded by the Kwesimintsim stool lands and the Sekyi Akona Obratu Ebiradze Stool family lands and did not form part of Kwesimintsim Stool land. The late Francis Awoonor Williams, exercised possession and control of the land following his acquisition over 80 years ago before his passing in 1972 by planting coconuts on portions of the land. He tendered in evidence as exhibit "3", a letter dated 1st August 1984 to that effect. Upon his deathdeath, the 1st defendant also exercised possession and granted portions of the land to some developers.

Solomon Boafo-Aboagye, an assistant geomatic engineer of the Lands Commission, testified on behalf of the 2nd defendant. He testified that the records in the 2nd defendant's office indicated that some plots in dispute ie plots Nos. 570, 571A, 572, 572A, were the subject matter of various leases granted by Odikro Egodzi Essoun II, Chief of Kwesimintsim vide document Nos. SDI 86/73, SDI 136/75, SDI 405/69 and SDI 1013/75, respectively, to 3rd parties. He further testified that there were no transactions recorded on Plots Nos. 570A and 571. A portion of the area described by the plaintiff as "open space" had been rezoned by the Department of Town and Country Planning and numbered 18B, 12A, 7A, 8A,9B, 10B, 11B, 12A, 12B and 13B and presented to the 2nd Defendant's office for plotting. Some of the rezoned portions, that is, plot Nos.18A, 12A, 7A, 8A, 9B, 10B and 11B, were the subject matter of leases executed between Frances Elizabeth Williams (acting for herself and on behalf of the executors of the Will of Francis Awooner Williams) on the one and various 3rd parties.

From the evidence led, the plaintiff's plaint against the 1st defendant is that she has alienated portions of his stool land being the disputed plots to 3rd parties. The role played by the 2nd defendant is its deletion from its records, leases previously made by the stool and, in their place received and plotted leases made recently by the 1st defendant as lessor in favour of some other persons. According to the plaintiff, the disputed plots are occupied by the stool's lessees, who have constructed their houses on their respective plots and have occupied same for years. Again, some of the plots had been redemarcated thereby creating more plots out of the original land size even though there were buildings of the stool's lessees on the plots. None of these lessees spoken of are the plaintiffs in this case. None of them has complained of the deletion of his or her lease from the records of the Lands Commission or trespass unto their plots by some other persons. As a matter of fact, the identities of these lessees are not known. The Kwesimintsim Stool, which has alienated portions of its lands to these lessees, has divested its interest in those lands and no longer has any interest in the land save for the

reversionary interest. As such, the plaintiff has no cause of action against the 1st defendant regarding her reliefs. It is trite that an action in trespass essentially lay in the person in actual possession. See **Sam vrs. Noah [1982-83] GLR 1122**. The plaintiff's stool is not in possession of the disputed plots. Her lessees are in occupation and are the proper persons to sue for trespass and even recovery of the portions of lands trespassed upon. Thus, the stool cannot be entitled to damages for trespass and recovery of possession since it does not occupy the lands in question. In the case of **Madam Randy Lartey & 2 ors vrs. Yaw Aboah Djin and Justiny Company Ltd [2022] DLSC11707**, the Supreme Court per Amegatcher JSC, commented on the propriety of joining or adding grantors of land as parties. In that case, the 1st plaintiff contended that she had assigned her interest in the property to the appellants. The appellants, in turn, alleged that the respondent had encroached on their land. On whether the 1st plaintiff had a cause of action, the court held that:

> *"The 1st plaintiff, after executing a transfer of the property in favour of the appellants, had divested her interest in the land. The legal effect of the transfer is that the transferor no longer retains an interest in the parcel of land save for a reversionary interest, if any. A careful perusal of the reliefs being claimed shows that the crux of the claim is encroachment and fraud. The central question that will arise, is since the 1st plaintiff by her case did not have an interest in the property, what was her cause of action against the defendants? In our opinion, the 1st plaintiff did not have a cause of action because a perusal of the pleadings did not give rise to an enforceable claim which entitled her to a remedy by the court. Indeed, the appellants who claimed ownership and possession over the land had a rightful cause of action against the respondent".*

The same scenario applies to this case. The plaintiff's stool which has divested its title in respect of the disputed plots, would not have a claim against the 1st

defendant. The lessees of the plaintiff's stool are the proper persons to sue for declaration of title, recovery of possession, damages for trespass, and perpetual injunction.

In any case, the representative of the 2nd defendant testified and confirmed that plots Nos 570, 571A, 572, 572A were the subject matter of various leases granted by Odikro Egodzi Essoun II, chief of Kwesimintsim to other third parties. He further testified that no transactions were recorded on plots 570A and 571. Regarding plot 573A, the representative testified under cross-examination that he could not trace the information pertaining to that plot. The plaintiff failed to lead any evidence which showed that the 2nd defendant had deleted from its records the leases in question in favour of 1st defendant's leases to 3rd parties. A party does not satisfy the burden of producing evidence by merely repeating on oath the allegations contained in his pleadings. He proves it by producing other evidence of facts and circumstances from which the court can be satisfied that what he avers is true. See the case of **Klah vrs. Phoenix Insurance Co. Ltd [2012] 2 SCGLR 1139**. Except for plot 573A, which the plaintiff challenged the 2nd defendant on, the evidence of the 2nd defendant regarding the rest of the plots went unchallenged by the plaintiff. In **Tutu vrs Gogo, Civil Appeal No 25/67, dated 28th April, 1969, Court of Appeal, unreported, digested in (1969) CC 76**, Ollenu JA said that:

> *"In law, where evidence is led by a party and that evidence is not challenged by his opponent in cross-examination, and the opponent did not tender evidence to the contrary, the facts deposed to in that evidence are deemed to have been admitted by the party against whom it is led and must be accepted by the court".*

Amid the rival claim by the 2nd defendant that there has been no deletion of leases from the plaintiff's stool from its records, which claim the plaintiff has not denied, the plaintiff is deemed to have admitted that fact. Therefore, his case

goes unproved that there has been a deletion from the 2nd defendant's records of the leases made between the stool and third parties. This would explain why none of the stool's lessees has bothered to sue the defendants over the encroachment of their lands or deletion of their leases from its records.

The plaintiff testified to a redemaraction of the disputed plots. According to him, those plots had been redemarcated, thereby creating more plots out of the original land size. I was not exactly clear with the plaintiff's evidence on this one, given that he did not specify the plots that had been redemarcated as opposed to those whose leases had been deleted from the 2nd defendant's records. He further makes the point that there are buildings of the stool's lessees already on the redemarcated plots. According to him, the 1st defendant's lessees of the newly carved out plots have entered unto those plots and are attempting to develop them. If the plaintiff's stool has alienated the disputed plots to its lessees, then those lessees should be the proper persons suing the lessees of the 1st defendant for trespass unto their lands and recovery of possession of them.

The 2nd defendant's testimony clarified the issue at stake. The representative of the 2nd defendant testified that the portion of the area described by the plaintiff as "open space" had been rezoned by the Department of Town and Country Planning and numbered 18B, 12A, 7A, 8A, 9B, 10B, 11B, 12A, 12B and 13B and presented to the 2nd Defendant's office for plotting. Some of the rezoned portions viz plot Nos.18A, 12A, 7A, 8A, 9B, 10B and 11B were the subject matter of leases executed between Frances Elizabeth Williams (acting for herself and on behalf of the executors of the Will of Francis Awooner Williams) on the one hand and various 3rd parties. Thus, it would appear that the "open space" that the plaintiff alluded to in his evidence is what he describes as the redemarcated plots. As has already been stated, if the stool's lessees are in occupation of the land, they should be the proper persons to sue the lessees of the 1st defendant for trespass and recovery of possession.

Granted that the "open space" has not been carved out to 3rd parties by the plaintiff's stool, the plaintiff would be the proper person to sue to recover the plots. However, he would have failed to lead sufficient evidence for the reliefs he seeks regarding the plots. The plaintiff contends that as far as the disputed plots were concerned, they formed part of the large tract of land measuring approximately six square miles, more or less leased by the Kwesimintsim Stool acting through the then Stool Occupant, Nana Egodzi Essoun I, who was his great grandfather to a company by name Joseph Crosfield & Sons Limited in 1912 and known as Kwesimintsim Concession, Concession Enquiry No. 1254 (Secondee). He tendered a copy of Concession Enquiry No.1254 (Secondee) in evidence as exhibit "C". According to the plaintiff, in 1955, West African Oil Mills surrendered lands it held to the Stool of Kwesimintsim, then occupied by Nana Egodzi Essoun II, who he succeeded. He tendered the Surrender, Concession Enquiry No. 1255 (Secondee), as Exhibit "D".

The 1st defendant makes a rival claim to ownership of the subject matter lands. According to her, she was the beneficial owner of a 34-acre land situate at Essiljokrom near Kwesimintsim, Takoradi. Her late father, Francis Awoonor Williams Esq., a barrister at Law of the Gold Coast, acquired the 34-acre by virtue of a conveyance dated 5th October 1927, registered as No. 646/1927 at the Deeds Registry executed by Kwesi Sebreku Kobina Johnfia and Potosie of Kwesimintsim representing the Sekyi Akona Obratu Ebiradze Stool family of Mpatado and Essiljokrom who are original owners of the land and the late Francis Awoonor Williams. He tendered a copy of the Conveyance in evidence as Exhibits "2".

The plaintiff contended that as of 1927, when the 1st defendant's father allegedly acquired the disputed land, the disputed land, which formed part of the large tract of land measuring six miles, had not yet been surrendered to the stool and, therefore, could not have acquired it and registered same. Unfortunately, a survey was not conducted to determine if the 1st defendant's land falls within the

concession alluded to by the plaintiff. I was tempted to have that done before the delivery of the judgment but realized that it would have been an exercise in futility given the absence of the site plans of the disputed plots, which the plaintiff failed to tender. The determination of whether the 1st defendant's land falls within the Concession would not have resolved the issue of whether the disputed plots, in particular, the "open space", falls within the concession and therefore forms part of the Kwesimintsim lands. If the survey showed that the 1st defendant's 34-acre land fell within the Concession, the question remained whether the disputed plots, particularly the "open space", fell within the concession. The absence of the site plans of the disputed plots rendered the determination of that issue an impossible task.

At the end of the day, the plaintiff has failed to make a case out for the reliefs he seeks. First, he is not the proper person to sue as he has no cause of action against the defendants. Even if he did, he has failed to show that the disputed plots form part of the Kwesimintsim stool land and, for that matter, the trespass of the 1st defendant over the lands. He has also failed to show that the 2nd defendant has deleted from its records leases previously made by his stool to 3rd parties.

In the circumstances, the plaintiff's claims are dismissed.

(SGD.)
H/L AFIA N. ADU-AMANKWA (MRS.)
JUSTICE OF THE HIGH COURT

COUNSELS

John Mercer appears for the Plaintiff.
Amy Bondzie-Hanson(holding Constantine Kudzedzi's brief) appears for the 1st Defendant.
Ivy K. Borden appears for the 2nd Defendant.