

**IN THE SUPERIOR COURT OF JUDICATURE**  
**IN THE HIGH COURT OF JUSTICE LAND DIVISION**  
**HELD IN ACCRA ON THURSDAY, THE 2<sup>ND</sup> DAY OF FEBRUARY, 2023**  
**BEFORE HIS LORDSHIP ALEX OWUSU-OFORI (JA) JUSTICE OF THE COURT OF**  
**APPEAL SITTING AS AN ADDITIONAL HIGH COURT JUDGE**

**SUIT NO.: FAL/766/2012**

1. BEATRICE KORKOR CODJOE - PLAINTIFFS  
2. MARTHA KWATIAH  
Plot No. B.8  
Teshie-Nungua Estate

VRS

FRANCIS OSEI ADUTWUM - DEFENDANT  
Apenkwa, Accra

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**PARTIES: PLAINTIFFS REPRESENTED BY VICTOR KWATIAH PRESENT**  
**DEFENDANT PRESENT**

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**J U D G M E N T**

- 1.0. The Plaintiff herein caused a Writ of Summons to be issued at the Court's Registry against the Defendant claiming for the following reliefs:
- a) A declaration that the Plaintiffs are the beneficial owners of All that piece or parcel of land situate, lying and being at Apenkwa and bounded on the North/West by a proposed road measuring a distance of 80 feet more or less on the South/East by a proposed road measuring a distance of 80 feet more or less on the North/East by the lessor's property measuring a distance of 115 feet more or less on the South/West by the lessors property measuring a distance of 115 feet

more or less containing the whole an area of 0.20 of an acre and which land is properly delineated on a site plan number 3959/1984;

- b) An order for recovery of possession
- c) An order of perpetual injunction restraining the Defendant whether by himself, his agent, servants, privies and assigns from interfering with the Plaintiffs possession of the land the subject matter of this suit;
- d) Cost.

2.0. The Defendant entered appearance to the Plaintiffs' writ and on the 8<sup>th</sup> June 2013 filed a defence to the writ but did not set out any counterclaim.

#### **THE PLAINTIFFS' CASE**

3.0. The Plaintiffs are the widow and the daughter of the late Michael Frank Kwatiah and claim they are the beneficial owners of the land the subject matter of the instant suit.

4.0. It is the case of the Plaintiffs that the Apenkwa Branch of the Presbyterian Church of Ghana granted the land the subject matter of the instant suit to the late Michael Frank Kwatiah for his use and the transaction was evidenced in a Lease Agreement executed between the Apenkwa branch of the church and the late Michael Frank Kwatiah dated 17<sup>th</sup> August 1984.

5.0. It is Plaintiffs case that the Defendant is a mechanic to whom the Apenkwa Branch of the Presbyterian church let out a piece of land measuring 110 feet by 80 feet, for and on behalf of the late Michael Frank Kwatiah and which tenancy was evidenced in an agreement between the session of the Apenkwa Branch of the Presbyterian Church and the Defendant herein, and dated 11<sup>th</sup> June 1984.

- 6.0. That the land let out to the Defendant was to be used as a mechanic shop for a period of Ten (10) years.
- 7.0. The Plaintiffs say that the Defendant had ignored the purpose for which the land was given to him by the church and had rather put up a residential property where he resides at the moment.
- 8.0. That before the expiration of the Tenancy Agreement in 1994, Mr. Michael Frank Kwatiah died and upon his demise, the Apenkwa Branch of the Presbyterian Church, the grantors of Mr. Michael Frank Kwatiah wrote a letter dated 7<sup>th</sup> of November 1994 reminding him of the expiration of the tenancy and was granted a grace period of six (6) months to vacate the land and deliver same to the Plaintiffs on or before 10<sup>th</sup> March 1995.
- 9.0. It is Plaintiffs case that the Defendant did not leave the land as directed by the Apenkwa Branch of the Presbyterian Church of Ghana even though the six (6) months given the Defendant had elapsed.
- 10.0 The Plaintiffs say that the Apenkwa Branch of the Presbyterian Church in another letter dated 29<sup>th</sup> March 1995 after he failed to leave the land further extended the grace period by three (3) months to leave the land and give vacant possession to the Plaintiff by 30<sup>th</sup> June 1995, this directive from the Church also fell into deaf ears.
- 11.0 It is Plaintiffs case that another letter dated 3<sup>rd</sup> March, 1996 asked them to take possession of the land, this letter was in response to an earlier letter written by the 2<sup>nd</sup> Plaintiff to the church about the presence of the Defendant

on the land thereby creating problem as beneficiaries of the late Michael Frank Kwatiah to take possession.

- 12.0 The Plaintiffs it is their case, that the Defendant wrote back to the 2<sup>nd</sup> Plaintiff in a letter dated 12<sup>th</sup> December 1994 and asked that he be given more time so that he could look for an alternative land.
- 13.0 The Plaintiffs say that by the Defendant's letter dated 12<sup>th</sup> December 1994 asking that he be given more time to vacate had acknowledged the Plaintiffs as the beneficial owners of the land the subject matter of the instant suit.
- 14.0 The Plaintiffs states that about One Million Nine Hundred block (1.9m) one (1) trip of sand and one (1) trip of stones they deposited on the land for construction were unlawfully used by the Defendant.
- 15.0 It is the case of the Plaintiffs that the Defendant cannot plead the principle of *jus tertii*, in that the Onamorkor Adain family has not laid any claim to the land the subject matter of the instant suit.
- 16.0 That though the Defendant's tenancy commenced in the year 1984, it was to subsist for Ten (10) years until the year 1994.
- 17.0 The Plaintiff further contended that, prior to the expiration of the tenancy in 1994 Michael Frank Kwatiah on whose behalf the Apenkwa Branch of the Presbyterian Church executed the tenancy agreement in favour of the Defendant died and that the church wrote to the Defendant that his tenancy was to run out in 1994.
- 18.0 The Plaintiffs say that they did not immediately take legal action against the Defendant for recovery of possession after expiration of the tenancy in 1994

because in a letter dated 12<sup>th</sup> December 1994 the Defendant pleaded for more time to enable him look for an alternative land.

- 19.0 The Plaintiffs say that after refusing to yield to demands by both the church and the Plaintiffs to give vacant possession of the land after the year 1994, the Kwatiah family acting through one of the children issued a writ of summons against the Defendant sometime in the year 1996 or thereabout in Suit No. CBC 28/97, entitled Miss Martha Kwatiah vrs Francis Adutwum and that proceedings in the said suit were discontinued in a notice of discontinuance filed on 2<sup>nd</sup> January, 2001 by one Lawyer Konny Esq.
- 20.0 The Plaintiffs say that they again issued a writ of summons in suit No. BL/9/2005 entitled **BEATRICE KORKOR KUDJOE, MARTHA KWATIAH AND THEOPHILUS KWATIAH VRS FRANCIS OSEI ADUTWUM**, sometime in the year 2004.
- 20.0 It is the case of the Plaintiff that the High Court in that case granted an order for interlocutory injunction on 20<sup>th</sup> December 2004 restraining both parties in the said suit from carrying out any development on the land.
- 21.0 That the proceedings in the suit continued until the year 2005 when it was virtually abandoned because of the demised of their lawyer Akuettey Yoyowah who was representing them in the suit.
- 22.0 That given the circumstances of the instant suit, action for the recovery of the land after the expiration of the Tenancy agreement in 1994 and that the Defendant has never been in adverse possession of the land the subject matter of the instant suit continuously for a period of twelve (12) years.

23.0 That there had been two (2) separate writs of summons issued against the Defendant after the expiration of the Tenancy Agreement in the year 1994, the instant action therefore filed is not statute barred.

#### **THE CASE OF THE DEFENDANT**

24.0 It is the case of the Defendant that he is a member of the Apenkwa Branch of the Presbyterian Church of Ghana and he initially acquired the land in dispute from the church in 1984.

25.0 The Defendant say that the transaction between the Apenkwa Presbyterian Church and himself was evidenced in writing.

26.0 That he immediately took possession and started building a wall in the year 1984. The Defendant states that in building the wall he met a fierce protest from the Onamorkor Adain family which claimed to be the allodial owners of the land.

27.0 Under the circumstances he was compelled to settle the matter with the family and built a house instead of a wall in 1984 to the knowledge of the Apenkwa Presby Church.

28.0 The Defendant contend that the Apenkwa Presbyterian Church did not protest and that he has lived in the house since he built same.

29.0 That he has been in adverse possession of the land since the year 1984 and that the instant suit is statute barred.

30.0 According to the Defendant the Okaikoi Sub-metro District Council later also claimed ownership of the land.

31.0 The Defendant states that a recent search at the Lands Commission confirmed the claim made by the Onamorkor Adain family, several years ago that the land

belong to them, the Plaintiff therefore are estopped from laying claim to the disputed land.

32.0 At the application for directions stage the following issues were set down for determination by the court.

- a) Whether the Plaintiffs are the beneficial owners of All that piece or parcel of land situate, lying and being at Apenkwa and bounded on the North-West by a proposed road measuring a distance of 80 feet more or less on the South/East by a proposed road measuring a distance of 80 feet more or less on the North-East by the lessor's property measuring a distance of 115 feet more or less on the South-West by the lessor's property measuring a distance of 115feet more or less containing the whole area of 0.20 of an acre, and which land is properly delineated on a site plan No. 3959/1984;
- b) Whether the Defendant is lawfully on the land, the subject matter of the suit;
- c) Any other issue (s) arising out of the pleadings.

33.0 Before the Court proceed to resolve the issues raised or set out from the pleadings filed by the parties I will briefly spell out the applicable law and among the parties who carries the evidential burden in proving that he owns the land the subject matter of the instant suit.

#### **APPLICABLE LAW/BURDEN OF PROOF**

34.0 In civil cases the general rule is that the party who in his pleadings or his writ raises issues essential to the success of his case assumes the onus of proof.

See the cases of **FAIBI VRS STATE HOTELS CORPORATION (1968) GLR 471** and **BANK OF WEST AFRICA LTD V ACKUN (1968) 1 GLR pg. 176**

35.0 In **ACKAH VS PERGAH TRANSPORT & OTHERS (2010) SCGLR 728 AT 738** Sophia Adinyira JSC delivered herself thus:

*“It is the basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of fact in issue that has the quality of credibility short of which his claim may fail... It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable than its non-existence.”*

36.0 This general position of the burden of proof has also been highlighted on by Kpegah J.A (as he then was) in the case of **ZABRAMA V SEGBEDZI (1991) 2 GLR at Pg. 1139** it was held as follows:

*“...A person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of that burden...”*

37.0 The Supreme Court case of: **KLAH VRS PHOENIX INSURANCE CO. LTD. (2012) SCGLR 1139** is also worth mentioning on this principle. The Court held that *“where a party makes an averment capable of proof in some positive way e.g.: producing document, description of things, reference to other facts, instances and his averment is denied, he does not prove it by merely going into the witness box and repeating the averment on oath by his witnesses. He proves it by producing other evidence of facts and circumstances from which the Court can satisfy that what he avers is true”*.



38.0 In our jurisprudence the law on proof has also received legislative backing as the maxim has always been that *“he who alleges or asserts must prove”*.

39.0 Section 14 of the Evidence Act 1975 (NRCD 323) provides that:

*“Except as otherwise provide by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting.”*

40.0 On the standard of proof the Supreme Court in the case of **ADWUBENG V DOMFEH (1996-1997) SCGLR 660** emphasized that by the combine effects of Sections 11 (a) and 12 of the Evidence Act the standard of proof in civil cases is proof by preponderance of probabilities.

41.0 Also in the case of **TAKORADI FLOUR MILLS V SAMIR FARIS (2005-2006) SCGLR at pg. 900**, the Supreme Court held as follows *“it is sufficient to state that this suit being a civil suit the rules of evidence require that the Plaintiff produce sufficient evidence to make out his claim on the preponderance of probability...in assessing the balance of probabilities, all the evidence be it that of the Plaintiff or the Defendant, must be considered and the party in whose favour the balance tilts is the person whose case is more probable of the viral versions and is deserving of a favorable verdict...”*

42.0 The evidence before the Court clearly shows that the Plaintiffs late husband and father Michael Frank Kwatiah whilst he was alive and the Defendant belonged to the same church, thus they worshipped at the same congregation. The Presbyterian Church of Ghana, Apenkwa Branch.

43.0 On the first issue raised whether Plaintiffs are the beneficial owners of the land in dispute, the 1<sup>st</sup> Plaintiff who testified for herself and on behalf of the 2<sup>nd</sup> Plaintiff stated that she knows the Defendant as someone who was granted a lease of a

piece of land which land originally belonged to the Presbyterian Church of Ghana, Apenkwa Branch and the said land earmarked for lease to her late husband who died on the 29<sup>th</sup> November 1984.

- 44.0 Tracing its root of title to the disputed land the 1<sup>st</sup> Plaintiff tendered in evidence Exhibits "A1" being an ancient document, an indenture executed in 1890 between the Onamrokor family on one side represented by the principal members Ashong Katai and Ama Kodjo and the Basel Mission on the other side represented by H.L. Rotmann, the mission's treasurer.
- 45.0 A consideration of forty shillings was paid by the missionaries and they were granted a parcel of land described in the schedule.
- 46.0 The land granted the missionaries was near a village known and called Abelenkpe and this land granted the missionaries to propagate the word of God presently is known and called Apenkwa.
- 47.0 The 1<sup>st</sup> Plaintiff also tendered in evidence Exhibit "A1" being a newspaper publication of the Ghanaian Times dated March 2, 1991. It was an advertiser's announcement on Onamrokor family lands.
- 48.0 The family acknowledged in the said publication that as far back as 1<sup>st</sup> June 1889 the family made a documentary grant to the Basel Mission for the establishment of a Christian village at Apenkwa on the Accra-Achimota road.
- 49.0 The 1<sup>st</sup> Plaintiff stated that the land is measured 110 feet by 80 feet and shared boundary with Sue's Inn restaurant at Apenkwa.
- 50.0 It is the testimony of the 1<sup>st</sup> Plaintiff that upon the death of her husband, Letters of Administration was granted to her and the 2<sup>nd</sup> Plaintiff to administer the estate of her (dec'd) husband. This Letters of Administration she tendered as Exhibit "A".

- 51.0 It was 1<sup>st</sup> Plaintiff's evidence that the Apenkwa Branch of the Presbyterian Church of Ghana owns some of the Apenkwa lands and it was the policy of the church that prominent members of the church are granted portions of the said land and her husband being an elder/clerk of the church thus qualified to be given the land by the church.
- 52.0 The 1<sup>st</sup> Plaintiff avers that a lease agreement dated 17<sup>th</sup> August 1984 was executed in favour of her late husband by the Registered Trustees of the church.
- 53.0 To show mark of possession the 1<sup>st</sup> Plaintiff told the Court that her late husband took possession of the land by putting a caretaker in the place who cultivated tomatoes on same. The Lease Agreement was tendered as Exhibit "B".
- 54.0 It is Plaintiff's further evidence that the Defendant was led by one Mr. Yeboah an elder of the church, to the Catechist R.O Anim (dec'd) who in turn called Mr. E.K Dorman, who went and saw her husband to lease the land to the Defendant for Ten (10) years.
- 55.0 According to the 1<sup>st</sup> Plaintiff the Presbyterian Church had earlier executed a tenancy agreement dated 11<sup>th</sup> June 1984 with the Defendant which agreement she tendered in evidence as Exhibit "C"
- 56.0 The 1<sup>st</sup> Plaintiff contended that the land was given to the Defendant for use as a fitting workshop, but the Defendant has since put up a residential building on same.
- 57.0 In support of their claim to the land as beneficiaries to the late Michael Frank Kwatiah, the 1<sup>st</sup> Plaintiff tendered in evidence Exhibit "D" being a letter written to the Defendant to vacate the land. This letter is dated 10<sup>th</sup> October 1994, after the expiration of the Ten (10) years given to the Defendant to stay on the land.

58.0 In support of their case the 1<sup>st</sup> Plaintiff again tendered in evidence a letter dated 12<sup>th</sup> December 1994 addressed to the 2<sup>nd</sup> Plaintiff by the Defendant pleading for more time to leave the land. The letter is marked Exhibit "E". That even though the family acceded to the request of the Defendant for extension of time, the Defendant failed to vacate.

59.0 I find it very necessary to reproduce verbatim the content of Exhibit "E" in this judgment. It states:-

*"Osei Adutwum Motors  
P.O. Box 6470  
Accra North*

*12<sup>th</sup> December, 1994*

*Miss Martha Kwatiah  
C/O Beatrice K. Kodjoe  
P&T Exchange, Accra*

*Dear Sir/Madam,*

***EXTENSION OF TIME***

*I write to acknowledge receipt of your letter dated 10<sup>th</sup> October, 1994 and also to thank you so much for your loving assistance to me.*

*I shall be grateful if you could kindly extend the period to enable me acquire another place in due course.*

*Counting on your usual co-operation and assistance.*

*Yours Sincerely,*

*Signed*

***Mr. Francis Adutwum"***

60.0 It is the evidence of the 1<sup>st</sup> Plaintiff for the claim of the disputed land that when it became manifested that the Defendant will not vacate the land as earlier promised he went back to the session of the church i.e. the Administrative body of the Presby Church) and complained. They wrote a letter dated 29<sup>th</sup> March 1995 to the Defendant asking him to vacate the land. This letter was tendered as exhibit "F".

61.0 A portion of this letter from Session reads "*As you are aware, your tenancy agreement with the late Mr. M.F. Kwatiah expired in 1994*".

*Later after meeting with session on 1<sup>st</sup> November 1995, it was decided to give you a grace period of Six (6) months after which you must leave the place; your attitude also shows that you are not prepared to leave the place.*

*Session views your attitude with much concern and have decided to give you another grace period of three (3) months with effect from the date of this letter to 30<sup>th</sup> June 1995 after which you must vacate the place entirely and yield the property to the rightful owners who are the late Mr. Kwatiah's children.*

*Your failure to comply with this final notice would compel session to use any means possible to get you out of the place.*

*We hope you would comply with this directive to avoid any embarrassment."*

62.0 This letter was signed by the secretary to the Session, Nii Sai Torgbor and as expected the Defendant was adamant, he did not vacate the land but pleaded for another six (6) months extension to leave the land. The said letter dated 23<sup>rd</sup> May, 1995 was also tendered in evidence as Exhibit "G".

63.0 In the said letter Exhibit "G" the Defendant was remorseful confirming that he is aware that the Tenancy Agreement with the late M. F. Kwatiah expired in 1994 and is also aware that the Session's grace period given him has expired but he

misunderstood a sketch drawn and a demarcation made by Mr. E. K. Dormon the Senior Presbyter of the church to mean that he can put up a permanent building on that part of the plot.

- 64.0 That the church should accept him as a "*prodigal son*" and consider him as he has heard Session is giving out plots for mechanical workshops.
- 65.0 The 1<sup>st</sup> Plaintiff did not rest and like the biblical text of a widow who kept on knocking at the door of a wicked judge for justice went back to the Session who on the 3<sup>rd</sup> March 1996 wrote a letter to the family of the late M. F. Kwatiah asking them to take possession of the land. The Defendant was given a copy of this letter tendered in evidence and marked as Exhibit "H".
- 66.0 The Kwatiah family after receiving the letter issued two writ of summons against the Defendant for a declaration of title to the land and recovery of possession as beneficiaries to the estate and their inability to prosecute those cases to the end had earlier been spelt out in this judgment. Notice of discontinuance in the first suit mentioned was tendered in evidence as Exhibit "J" and interlocutory injunction obtained in the second Suit restraining both parties from developing the land before the demise of their lawyer handling the case was also tendered in evidence as Exhibit "K".
- 67.0 It is the evidence of the 1<sup>st</sup> Plaintiff that the Defendant cannot claim to be in adverse possession of the land, the subject matter of this suit for a continuous period of twelve (12) years since the expiration of his tenancy in the year 1994 due to series of correspondence between the church and the Defendant as well as the parties to the suit, coupled with the earlier suits brought against the Defendant for recovery of the said land.

- 68.0 It is also the evidence of the 1<sup>st</sup> Plaintiff that they have capacity to mount the instant action against the Defendant as beneficial owners of the estate of Michael Frank Kwatiah because Letters or Administration obtained at the Circuit Court, Asamankese which was tendered in evidence gave them the mandate to administer his estate.
- 69.0 The Plaintiffs called one witness Rev. Samuel Adjah (PW1) a Reverend Minister of the Presbyterian church of Ghana in charge of the Apenkwa Branch who testified on the authority and consent of the Registered Trustees of the Church on a Power of Attorney donated by the church which was tendered in evidence.
- 70.0 Briefly he told the Court that the Plaintiffs are wife and child of the late Michael Frank Kwatiah who was a clerk of the church. He also stated that the Defendant is also a member of the congregation of the Apenkwa Branch of the Presbyterian Church.
- 71.0 It is his testimony that the Apenkwa Branch of the church dealt with the late Michael Frank Kwatiah in respect of a piece of land situated at Apenkwa and that the land is close to a restaurant known as Sue's Inn.
- 72.0 It is the evidence of PW1 that the whole of Apenkwa lands belongs to the Presbyterian church of Ghana and that the church lease portions of the land to its members and that it was through that arrangement that the late Michael Frank Kwatiah was granted that portion of the land, the subject matter of the instant suit.
- 73.0 It is PW1 testimony that an indenture dated 17<sup>th</sup> August 1984 was executed in favour of the late Kwatiah by the Registered Trustees of the Church and the duration of the lease was for fifty (50) years subject to renewal after expiration.

- 74.0 That when Kwatiah was granted the lease he immediately took possession of same by erecting corner pillars on it and also put on the land a caretaker who cultivated tomatoes on the land.
- 75.0 PW1 told the Court that when the late Michael Frank Kwatiah became sick, the church needed money to take care of him and therefore rented the land out to the Defendant for 10 years adding that he was to use the land for a fitting workshop for 10 years. A tenancy agreement was executed with the Defendant who was to surrender the land to the church after the expiration of the ten (10) years and the church in executing the document factored in the existing lease with the late Kwatiah. Mr. Kwatiah himself witnessed the renting of the land to the Defendant.
- 76.0 That upon the expiration of the tenancy agreement the church wrote about five (5) letters to the Defendant to vacate the land and give possession to the family of the late Kwatiah but the Defendant consistently asked for more time to find an alternative place which never materialized.
- 77.0 The witness told the Court that Session by a letter, asked the family of the late Kwatiah to take possession of the land and is aware that they issued a writ in 1996 which was not pursued to its logical conclusion because of the death of their lawyer.
- 78.0 That as far as he is aware, the land in dispute was lawfully leased to the late Michael Frank Kwatiah.
- 79.0 The Defendant in disputing the Plaintiffs claim though did not file a counterclaim called one witness, a member of the Onamrokor family to testify on his behalf.
- 80.0 The Defendant in his evidence told the Court that he initially acquired the land in dispute from the Apenkwa Presbyterian church in 1984 and that clause (2) of the



Tenancy Agreement required that he built a wall around the land, Tenancy Agreement tendered as Exhibit "1". That when he started building the wall in 1984 there was a protest from the Onamrokor Adain family who claimed to be the allodial owners of the land. He therefore settled the matter with the family and instead of building a wall built a house to the knowledge of the church. He tendered in evidence pictures showing the building on the land as Exhibit "2".

81.0 It is Defendant's evidence that Apenkwa Presbyterian Church did not raise any protest so also are the Plaintiffs and has been in adverse possession of the land since 1984.

82.0 It is Defendant's testimony that the Okaikoi Sub-metro District later also claimed ownership of the land. Defendant tendered in evidence as Exhibit "3".

83.0 Defendant claim a search he conducted recently dated 18<sup>th</sup> February, 2016 showed that the land belonged to the Onamrokor Adain family. He tendered the search report as Exhibit "4".

84.0 The transaction between the Defendant and the Onamrokor family which was in writing was tendered in evidence as Exhibit "5".

85.0 DW1 Nii Martey Oblie testified for himself and on behalf of the family in support of Plaintiffs case.

86.0 Briefly, it is his testimony that he is a Principal member of the Onamrokor Adain family and that the family confronted the Defendant when he entered the land in 1984.

87.0 The witness told the Court that the Defendant settled the matter with the family and he was allowed to build on the land.

- 88.0 DW1 stated that the Defendant is on part of the land generally known as Dome Lands and which lands belong to the Onamrokor Adain family.
- 89.0 The witness testified that the Dome lands include the land at Tesano, Apenkwa, part of Abeka, Achimota, Taifa, Tantra Hills, Dome, Kwabenya, Alogboshie among others.
90. DW1 also said that the Onamrokor Adain's ownership of the land has been upheld in several Court cases and that neither the Plaintiff nor the Presbyterian Church has any interest in the land in dispute.
- 91.0 It is a fact which is at all not denied by any of the parties that the Onamrokor Adain family was the alodial title owners of the land in dispute.
- 92.0 But Exhibit "A" which was tendered in evidence without any objection explicitly spelt out that as far back as 1889 the land in dispute was granted to the Basel Missionaries to live on and propagate the gospel when they were in the country during the colonial era more than a century ago.
- 93.0 The Basel Mission were known as Salem and when the Missionaries were living the shores of the then Gold Coast they left their properties acquired to their converts and the Presbyterian Church. "Apenkwa" which literally translated means "*seeking for salvation*" land virtually was inherited by the Presby Church.
- 94.0 Defendant in this suit a member of the Apenkwa Branch of the Presbyterian Church at all material times had recognized the church as the owner of the Apenkwa lands.
- 95.0 It is also apparent from the records available before the Court that at all material times the Defendant has recognized the late Michael Frank Kwatiah as the owner of the disputed land and was always on his knees from the correspondence

tendered in evidence pleading for an extension of time to vacate whenever the issue of giving vacant possession of the disputed land comes up.

96.0 The question this Court need to ask is at what point in time did it come to the notice of the family that the Defendant is developing the land.

97.0 Was it at the inception when he occupied the land or only when the tenancy agreement entered into with the church expired?

98.0 This Court hold the view that Defendant was remorseful, always begging for an extension of time to vacate within which to leave the land.

99.0 When the Defendant realized that he has been pinned to the wall and they were not going to rescind the decision of having him vacate the disputed land.

100.0 The Defendant in the Courts view designed this plan of obtaining a lease from the Onamrokor family, when the lifespan of his Tenancy Agreement with the church had expired or completely exhausted.

101.0 I must state that any document obtained by the Defendant from the Onamrokor family was simply a cover up by the Defendant to perpetuate or prolong his stay on the disputed land when in fact he knew that the property belongs to the late Michael Frank Kwatiah and by extension his wife and children who are beneficiaries to his estate.

102.0 This Court will ask the question whether the conduct of the Defendant in particularly amounts to denying the title of the church to the land.

103.0 The Defendant is aware it was the church who granted the lease to the late Kwatia out of which the Tenancy Agreement was made permitting him to stay on the disputed land.

104.0 This Court hold the view that for the Defendant denying the title of his landlord the Apenkwa Branch of the Presbyterian Church of Ghana to the land the subject matter of this suit saying it belongs to the Onamrokor Adain family is most unfortunate.

105.0 Sections 27 and 28 of the evidence Act 1975 (NRCD 323) frowns over such conduct  
Section 27 states “Except as otherwise provided by law, including a rule of equity, against a claim by a tenant, the title of a landlord at the time of the commencement of their relation is conclusively presumed to be valid.

Section 28 “Except as otherwise provided by law, including the rule of equity against a claim by a licensee of immovable property the licensor is conclusively presumed to have a valid right to possession of the immovable property.

106.0 In the case of **ANTIE & ADJUWAK VRS OGBO (2005-2006) SCGLR AT 292** the Supreme Court held that:

*“The common law rule as to the forfeiture by a licensee or tenant who challenges the title of his licensor or landlord has received statutory recognition under Section 27 and 28 of the evidence Decree, 1975 (NRCD 323). The law is that a licensee or tenant who denies the title of his or her licensor or landlord, either by claiming that title to the subject matter is vested in himself or someone else forfeits his or her interest. In view of the Plaintiff’s direct challenge to the Defendant’s lawful claim to the ownership, he has forfeited his right to remain in the promises”*

107.0 The Principle as stated in the case cited above is exactly the dangerous path the Defendant embarked on when he realized that the church in which he is a member will not agree to his endemic excuses crafted only to remain on the disputed land the property of the late Michael Frank Kwatiah.

- 108.0 The Defendant in this case did not ask for any counterclaim, but in effect the defence put up by him is tailored to the fact that the land in dispute belongs to the Onamroko Adain family whom he obtained the grant from when it dawn upon him that they own the disputed land upon a search conducted.
- 109.0 This is his defence which the Court with reasons has ruled out.
- 110.0 The Plaintiffs among the relief sought for is for a declaration that they are beneficial owners of all that piece or parcel of land so described in the endorsement to their writ of summons.
- 111.0 As rightly pointed out in the case of **AKOTO II V KEVAGE [1984-86] 2 GLR 365**. The Court of Appeal held at pages 371-372 that: *"... the claim being one of declaration of title the Plaintiff can only succeed upon the strength of their case and not upon the weakness of that of the Defendants. The counterclaim of the Defendant for a declaration of title did not in anyway lighten the might upon the Plaintiffs to prove their title by preponderance of admissible evidence."*
- 112.0 The Plaintiffs have led a very credible evidence to prove that their late husband and father was the owner of the disputed land.
- 113.0 They have also led cogent evidence which leaves no doubt in the Court's mind that they are beneficial owners of the property by they obtaining Letters of Administration from the Circuit Court upon the demise of Michael Frank Kwatiah to administer his estate and therefore wield the capacity to mount the instant action.
- 114.0 The Plaintiffs also led credible evidence to establish without any doubt that they did not slept on their rights but mounted an incessant crusade to vindicate their right culminating in a number of letters written by the church and the 2<sup>nd</sup> Plaintiff

to the Defendant upon the expiration of the tenancy agreement in 1994. The Defendant claim that the Plaintiffs action is statute barred also is untenable.

115.0 It is on these reasons that the Plaintiffs succeeded on all the reliefs sought for in the endorsement to their writ of summons and the accompanying Statement of Claim.

## **ORDERS**

116.0 The Court proceeds to makes the following orders

- a) A declaration that Plaintiffs are the beneficial owners of all that piece or parcel of land situate, lying and being at Apenkwa and bounded on the North-West by a proposed road measuring a distance of 80 feet more or less on the South-East by a proposed road measuring a distance of 80 feet more or less on the North-East by the lessors property measuring a distance of 115 feet more or less on the South-West by the lessors property measuring a distance of 115 feet more or less containing the whole area of 0.20 of an acre and which land is properly delineated on a site plan number 3959/ 1984.;
- b) The Plaintiffs are ordered to recover possession of the property the subject matter of the instant suit.
- c) The Defendant whether by himself, his agents, servants, privies, assigns and all those claiming through him are hereby restrained from having any dealings with the land the subject matter of the instant suit.
- d) Cost of GH¢30,000.00 awarded in favour of the Plaintiffs against the Defendant.

**(SGD)**  
**ALEX OWUSU-OFORI (JA)**

**COUNSEL:**

**C. A. CHAMBERS FOR THE PLAINTIFFS ABSENT**

**THERESA ABENA BOADU HOLDING BRIEF FOR A. G.  
BOADU FOR THE DEFENDANT PRESENT**