IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE HELD AT KIBI ON 3RD DAY OF DECEMBER 2024 BEFORE HER LADYSHIP RUBY NAA ADJELEY QUAISON (MRS) HIGH COURT JUDGE.

SUIT NO: C1/02/2022

CYRIL YEBOAH) …. PLAINTIFF

VRS:

AWUDU YAKUBU & ANOR) …. DEFENDANTS

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Plaintiff absent represented by Winston Yeboah Danso

1ST Defendant absent represented by Ayuba Sulemana

2nd Defendant present

Kofi Bosompem for Plaintiff present

Louis Okyere Anopong holding brief for Leonard Sedzro for Defendants present

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JUDGMENT

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The Plaintiff, on the 18th day of March 2022 caused a Writ of Summons and Statement of Claim to issue claiming the following reliefs against the Defendants:

a. Declaration of title to the land described in the Statement of Claim.
b. Recovery of possession
c. Perpetual injunction
d. Damages for trespass
e. Costs

The 2nd defendant on his behalf and that of the 1st defendant entered appearance on 25th April 2022. Subsequently the 1st and 2nd defendants engaged the services of the same

lawyer who entered appearance on 29th April 2022 on their behalf respectively. A statement of defence and counterclaim was filed for the defendants on the 16/5/2022. The plaintiff then filed a defence to the counterclaim of the defendants on the 9/6/2022 and application for directions on the 18/7/2022. The defendants then on 15/11/2024 filed for change of legal representation and amended their statement of defence upon leave of the court. In the amended statement of defence the defendants did not file any counterclaim thus abandoning their initial counterclaim. The plaintiff on 27/3/2023 then filed a reply to the amended statement of defence. At the close of pleadings, issues set out in an application for directions filed on 18/7/2022 on behalf of the plaintiff and additional issue filed on 15/3/2023 by defendants were set down for trial as follows:

1. Whether or not the Plaintiff has a valid grant of the disputed parcels of land from his grantor.
2. Whether or not the Plaintiff has been in possession of the disputed parcels of land for the past 20years.
3. Whether or not the 1st Defendant has a valid grant of his part of the disputed parcel of land from his grantor.
4. Whether or not the 1st Defendant's grantor was at all times material in possession of that of the disputed parcel of land he is alleged to have encroached upon.
5. Whether or not the part of the disputed parcel of land 2nd Defendant is alleged to have encroached upon belongs to the estate of his late parents.
6. Whether or not the various trees and crops Plaintiff is alleged to have destroyed or unlawfully harvested were planted by the Plaintiff or the 2nd Defendant?
7. Whether or not the disputed parcel of land falls within State land.

The background to this suit are succinctly set out by the plaintiff. The land in dispute lies on the Accra – Kumasi highway situated by the roadside at Nsutam.

The disputed parcel of land is all that piece or parcel of land situate and lying at Nsutam containing an approximate area of 0.19 acre (0.07 hectare) more or less and bounded on the North by property belonging to Nana Bunsohene measuring 80.71 feet more or less; on the East by the Accra-Kumasi road measuring 214.7 feet more or less; on the South by open space measuring 80.4 feet more or less; and on the West by properties belonging to the Defendants which piece or parcel of land is more particularly delineated on a site plan dated 21st June 2009.

The Plaintiff avers that he obtained the land, which at the material time had an uncompleted structure on it from one Alfred Kudjo Mensah (deceased) on 3rd December 2002. The Plaintiff after acquiring the land went into immediate and effective possession of same for the past 20 years during which period Plaintiff demolished the (unwanted) uncompleted structure; erected a dwarf fence-wall and concrete pillars to demarcate his boundaries; deposited several sandcrete blocks on the land; planted some food crops such as cassava and plantain on part of the land; and landscaped the remainder with beautiful green-grass. The Plaintiff currently shares boundary with the Defendants at the Western side. At the material time of Plaintiff's acquisition of the land, the predecessor owners of the parcel of land 1st Defendant currently possesses were Madam Akosua Addai who was succeeded by her daughter Akosua Boatenmaa with whom Plaintiff never had any issue with respect to their shared boundary. It is Plaintiff's case that the 1st Defendant however has recently encroached about 47ft x 100ft more or less of Plaintiff's land by bulldozing the dwarf fence-wall and thereafter pushed the sandcrete blocks to a corner of the land, after which the 1st Defendant started construction of a block of stores at the western part of the land, he shares boundary with Plaintiff.

Regarding the 2nd Defendant, it is the Plaintiff's case that the 2nd Defendant has encroached the Plaintiff's land at the other part of the western side by breaking down the concrete pillars that had demarcated their boundary for the past 20 years and thereafter extended the boundary of his land about 23ft x 100ft more or less into that of the Plaintiff.

The Plaintiff contends that the Defendants are trespassers who have no legitimate interest in the disputed parcel of land but they refused to desist from their acts of trespass. That the disputed parcel of land is his lawfully acquired property.

Per the *Amended Statement of Defence* filed on the 22nd day of February 2023, the defendants denied in material terms the charge of trespass levelled against them by the Plaintiff. The 1st Defendant avers that in November 2020, he acquired a parcel of land measuring 120ft by 90ft from one Esther Akosua Boatemaa who inherited the said parcel of land from her parents. The 1st Defendant stated that his land shares boundaries with the properties of Nana Bunsohene on the East; on the South by reserved for temporary structures; on the West by the property of 2nd Defendant; and on the North by property of one Opanin Kwame Asuo. The 2nd Defendants for his part pleaded that his side of the disputed parcel of land originally belonged to his parents who acquired one plot of land upon which an estate house was constructed. That his property is one of the estate houses constructed by the Busia Regime pursuant to floods that affected Old Nsutam sometime in 1968.
The crux of the Defendants defence in the instant case is that in 2020, they conducted a search at the Lands Commission, Koforidua and the report indicated that their lands, inclusive of the disputed parcel is State land, acquired under a Certificate of Title No. 894/59 dated 8th October 1959 for a Bauxite and Water Right. The Defendants therefore claim to be licensees of the Government of Ghana pending a lease from the Lands Commission. Thus, they contend that title cannot be declared in favour of the Plaintiff in respect of the disputed parcel of land.

EVIDENCE:

The plaintiff Cyril Yeboah commenced his case by testifying for himself and called three (3) witnesses.

Excerpts of cross-examination of plaintiff by counsel for defendants

…

Q: When you were growing up you saw that there were Estate houses around the vicinity of the disputed land, not so

A: Yes

Q: These Estate houses were constructed by the State not so.

A: Yes, as far as I know.

Q: The land you are purportedly claiming lies within the Estate houses not so.

A: That is not true.

Q: Does the disputed land share boundary with the disputed houses.

A: It shares boundary with just one estate house.

Q: That is Estate house of the defendant's parents not so.

A: Yes. On the western side.

Q: And it is your case in this court that your land you constructed a fence wall around it not so.

A: No, I did not construct a fence wall around it, it was demarcation pillars and not a fence wall.

…

Q: Take a look at Exhibit C1 and point the dwarf wall you are talking of.

A: That is the fence wall of my house and nothing to do with the disputed land.

Q: So why did you put Exhibit C1 in Evidence.

A: To show the sand Crete blocks which has been pushed away from the disputed land by the 1st defendant when he decided to construct a building he wanted to build on the land and also to show plantains I had planted on the disputed land prior to the 1st defendant's starting the construction of the structure on my land.

Q: I put it to you that – the dwarf fence wall marking the end of your land.

A: That fence wall demarcated my house from my vacant land which 1st defendant has encroached upon.

Q: I put it to you- that the land after the dwarf fence wall is a state land.

A: No, it has never been a state land.

Q: Have you conducted a search concerning the land in dispute.

A: I have never had any need to conduct any search, I have been in possession of the land for the past 20-30 years, in any event nobody in those villages ever conduct a search on the village land.

Q: I am suggesting to you that the state acquired these lands to put up Estate houses since 1959 when you were 3 years old.

A: I acquired the land from a previous owner by name Kodwo Mensah.

Q: So, from Kwadwo Mensah when did he die.

A: About 2014-2015 thereabout.

Q: Did Kwadwo Mensah give you an indenture covering the land.

A: I have never sighted any indenture from all of us in that area.

Q: I put it to you precisely because the land is for the State, nobody can issue indenture apart from the Lands Commission.

A: From what I understand there was a town lands committee which demarcated the lands to citizens when paid for the land at the time and Kwadwo Mensah together with other witnesses got that portion of the land from the Lands Committee which he later sold to me with the appropriate site plan which I have in my Exhibit.

PW1 is Samuel Gbefo. He lives at Bonsu and is a farmer. Pw1 relied on his witness statement filed on 7/9/2022 as his evidence-in - chief. He largely corroborated the evidence of the plaintiff.

Excerpts of cross-examination of pw1 by counsel for defendants

…

Q: Do you know the reason why the plaintiff brought the defendants who you do not know to this court.

A: Yes, I know.

Q: Do you know the size of the land in dispute

A: I know its size.

Q: Can you tell the court the size of the land.

A: It is 3 plots.

PW2: is Osabarima Abream Brakutu Ofori-Aninkrah, the chief of Bonsu. Pw2 identified all the parties to the suit as he stated that he knew them. He relied on his witness statement filed on the 7/9/2022 as his evidence in this case.

Excerpts of cross-examination of pw2 by counsel for defendants

…

Q: You are aware that the 2nd defendant parents have an estate house on the land in dispute not so.

A: No, I do not know.

Q: But you are aware that there are estate houses on part of these lands not so.

A: It is not true. There is the street between the Estate Houses and the land in dispute, if there has been any encroachment I cannot tell.

Q: As the chief the 2nd defendant reported this matter to the police, is that correct.

A: Yes.

Q: And you as a Chief you went to the police station to withdrawn the matter for settlement is that correct.

A: That is so.

…

Q: But you are in the court to support the case of the plaintiff not so.

A: That is not so. Because of the two of them statement that is why I am before this court.

Q: I put it to you – That your evidence in this court is to the effect that the disputed land purportedly belongs to the plaintiff and not the defendants, that is your evidence.

A: That is not so, since the case is pending before the court, I cannot determine who is the owner what I know is that the original owner of the land when he was about to sell the land contacted me as by then I was working with him but I told him I am not interested in road side land so I told him to inform my late uncle who is the father of plaintiff and he told the plaintiff about the sale of the land. Plaintiff had interest in it and bought same. At the time there was an uncompleted building at lintel level on the land. Plaintiff after purchase of the land demolished the uncompleted building on the land. The owner of the land later told me he had sold the land to the plaintiff.

Q: Are you aware that the estate houses and the continue/adjourning lands belongs to the Government of Ghana.

A: No, that is not so, some years back the place was flooded and Busia came to our aid by putting up estates for Nsutem Community, it was the then Bonsu Chief who allocated the land to Busia to put up the Estates. So later the place became the property of the Chiefs. During the course of developing the land the Acheampong overthrown Busia. At the time 23 houses were completed. The 23 houses were shared to 23 individuals the adjourning lands was sold by the chiefs to individual.

Q: These Estates houses was meant to house the affected flood victims not so.

A: Yes

Q: I put it to you – That, the Government of Ghana acquired these lands under the Certificate of Title No. 894/59 dated 8th October 1959

A: It was not 1959 it was somewhere 1968-69, I was present by then I was in elementary Form 2, and I used to accompany the then Bonsu Odikro by name Dankwah who was also my grandfather so I accompany him wherever he goes whilst I carry his stool. I went with my grandfather the Odikro of Bonsu called Dankwah together with some members of the Progress Party, one of them called Nana Benchie, to the Omanhene. The Omanhene said they should find a time to come over (that is the Works and Housing Minister called A. A. Munufie and Dr. Jones Ofori Atta who was the then Deputy finance Minister and

their entourage to see him so that he the Omanhene can hand over the land to them. Initially the Omanhene gave them ½ a mile square to build the Estate houses and if they are able to complete the Estate an additional land would be handed over to them. In the cause of the ongoing project, Busia was overthrown and Acheampong came to power. They were able to complete 23 Estates houses.

Q: I put it to you – There is evidence at the Lands Commission in Koforidua and which the defendants have put before this court. The Government of Ghana indeed acquired these lands before constructing the estate houses on it.

A: I cannot tell. What I know it was 1968-69 they were given the land to build the Estates.

Q: The State has interest in the disputed land it is not for the plaintiff.

A: I cannot tell. It was the chiefs who sold the remaining lands left.

Q: The fact that the chiefs sold the land does not mean it belongs to them as there is evidence the land belongs to the State.

A: I cannot tell. Because this Bonsu and Nsutem land dispute has gone before the Okyehene who has ruled in favour of Bonsu in April 1971. That it was Bonsu Stool land. And quite recently in May 2023 it went again before the Okyehene and he ruled in favour of Bonsu Stool.

Q: Do you have any evidence that the ruling went in favour of Bonsu Stool.

A: Yes, I have it.

Q: On the disputed land it is solely for the government of Ghana and it is only the government of Ghana through Lands Commission who can alienate these lands.

A: That is not so. I do not see it that way since Osagyefo Amoatia Ofori Panin has made it known to the chiefs that he is the custodian owner of the land and if the State need land they have to come to Okyehene and the chief of the town for approval. Sometimes, people bring a lease agreement over land he alienated a portion of land to them and there are numerous cases pending at the court over such issues.

Q: Lands Commission issued leases to people because lands are vested in Lands Commission on behalf of the government of Ghana.

A: In respect of Bonsu land is not so. It was later government put execution instrument on part of Bonsu land.

Q: I put it to you – Finally, defendants are on these disputed lands as licensees of Government of Ghana through the Lands Commission.

A: It is not true. For the Estate Houses that has been given out and not the remaining lands.

Q: Recent attempts to declare lands which has been vested in the State by Chiefs to declare them as Stool lands cannot be successful including this disputed land.

A: I cannot tell.

The defendants opened their defence by calling 2nd defendant.

The **2ND DEFENDANT** is Kweku Temeng. He relied on his witness statement filed on 30/5/2023 as his evidence in this matter.

Excerpts of cross-examination of 2nd Defendant by counsel for plaintiff

Q: Mr. Kweku Temeng, it is your case that your estate house which you inherited from your parents is part of 27 estate houses that was built by Government somewhere in 1968, is that so.

A: Yes

Q: Even though these houses was built by Government it is your case that the said house which you inherited was bought from Nsutam Town Development Committee is that so.

…

A: Yes, my parents bought it from the government.

Q: Your parents bought the house from government; what agency of government did your parents buy it from.

A: My parents were staying at Nsutam Old Town when flood affected them so the government decided to build the houses for those affected so then my parents bought it.

Q: Mr. Kweku Temeng, you claim your parents bought from government yet in your witness statement you stated that you conducted the search and found the land is for government so you are taking steps to buy the land from government.

A: What I am saying is, 1968 where flood affected old Nsutam, where the people affected, the government built the Estate houses and gave it to those affected.

Q: I am suggesting to you that your portion of the Estate house is part of 27, so Estate house that were constructed by government for the Nsutam Township but all of them were allocated to the respective subsequent owners by Nsutam Town Development Committee.

A: The house was built by the government and those affected were given that house by government, so as a result when this case came up my lawyer instructed me to do search of the land. So, after the search it came up that, that area is government land.

Q: Do you as part of your inheritance have possession of any document given your parents when they purchased the said land.

A: My father was head of family so after the death of my father the family came for his belongings so the document covering the land was part of the paper in the trunk they took away. All the people in the area know that the Estate house belongs to my parents and they bought I t from government.

Q: Mr. Temeng, I am suggesting to you that because you do not have document in respect of the acquisition you do not know the exact boundaries of the land acquired by your parents.

A: It is never true. Our estate house the measurement is 110 feet by 90 feet.

Q: I am not talking about the size of the land I am talking of the demarcation of the land because you do not have the site plan of the land acquired by y our parents from government.

A: It is never true. Our Estate house No. A3, is measured 110 feet by 90 feet.

Q: I am suggesting to you, you do not know the demarcation that is why you have extended your boundary into that of plaintiff land.

A: It is never true. Early February 2022 I went to the plaintiff father's funeral where I saw that he has erected new pillars and the pillars has entered our boundary. So, I removed the pillars and placed it at the buffer. After that I informed the plaintiff family that he has extend his pillar into our parent's land.

Q: I am suggesting to you that because you do not know the boundary of your land that I s why you have encroached about 23 feet by 100 feet into the plaintiff's land.

A: It is totally false.

Q: You know Nana Bonsuhene property, is that not so.

A: Yes, Nana Bonsuhene house is A4.

Q: Now the next property to Nana Bonsuhene house is the property belonging to Frempomaa.

A: I know the land you are referring to. It was a plot of land.

Q: I am suggesting to you the property following that of Frempomaa to the North East is one belonging to Kweku Koranchie.

A: After the 27 Estate house built at New Nsutam, the rest of the land was plots of land where the Nsutam Community was selling it to individuals.

Q: I am suggesting to you that these 3 properties I have mentioned, that is Nana Bonsuhene property, that of Frempomaa and Kweku Koranchie consists of 2 plots each. All of them.

A: I do not know.

Q: Now these three properties I mentioned fall in a straight line to the South East with the 1st defendant plot of land and then your portion of your parent estate house.

A: The Estate house which was built including the Nsutam secondary school, the rest of the land the Nsutam Community sold it to the town people.

Q: I am suggesting to you that your land and that of the defendant is one (1) plot each.

A: My parents Estate house is measured 110 feet by 90 feet.

Q: I am suggesting to you that to the East of your joint respective lands lies the plaintiff 2 plots of land.

A: It is a buffer.

Q: I am suggesting to you that if you had known the Exact demarcation of your land you would have realized that all these plots of land, I have mentioned all fall in the near demarcation line.

A: What I am saying is after my parents Estate house the rest of the land was sold by Nsutam Community.

…

Q: You yourself you have said that as we speak you are licensee of **s**quatter or the land is that not so.

A: When the plaintiff destroyed our items, he used bulldozer to destroy out items which my parents planted on the side of our building measuring 110 by 90 feet.

Q: In the beginning of your testimony, you did mention that your parents document to the land were in trunk carried away by that of your father's family. Do you still stand by that.

A: Yes.

…

Q: Look at paragraph 21 of your witness statement. Can you read.

A: Read to the court "with this finding … since my parents did not leave any land covering document covering the land with Estate house for me **….**

Q: So, with emphasis of the last part of that statement and I quote "…. Since my late parents did not leave any document covering the land with the Estate house for me …" against your earlier testimony that there were document but were carried away by your father's family which should we believe, which is the truth.

A: As earlier I told you that the Estate house was built by Government. My father was the family Head after the death of my father the family came for the trunk containing the papers covering the land so as a result the plaintiff used the bulldozer to destroy our things on my parents' land. So, I went to Lands in Koforidua to do search and they told me Government acquired the land in 1959, October.

DW1: is Ayuba Sulemana He relied on his witness statement filed on 30/5/2023 as his evidence of the court.

Excerpts of cross – examination of Dw1 by counsel for plaintiff

..

Q: You are also saying that 1st defendant purchased this part of the land in dispute in November 2020 from Madam Esther Akosua Boatemaa.

A: Yes

…

Q: It is also part of your story that Akosua Boatemaa at the time of transaction over the land with her she was ill and therefore could not issue a receipt for the land is that it.

A: Yes, that is so.

Q: So, it stands to reason that somebody who was ill she could not even give you document even a site plan for the land.

A: Yes, but she invited the man who demarcated the whole neighborhood to come and demarcate our portion for us.

Q: Who is this person you are referring to was instructed by Esther Akosua Boatemaa to come to demarcate the land for your vendor.

A: His name is Kwame Asuo who is a committee member.

Q: Is Kwame Asuo the same person as William Baah Mamfe.

A: Yes

Q: 1ST Defendant claims he bought one (1) plot of land from his vendor, am I correct on that.

A: Yes

Q: When you say one (1) plot what is the exact measurement.

A: 110 by 90 feet.

Q: the 1st defendant grantor at the time she was selling to you did she have any documentation herself. That shows she have document covering the land purportedly sold to you measuring 110 by 90 feet.

A: No, the one the vendor brought who is Kwame Asuo claimed he demarcated the land for the Esther's mother. But the document covering it Esther said it is missing.

Q: I am suggesting to you that whatever land Esther sold to 1st defendant is far less than what 1st defendant went ahead to occupy or take possession of.

A: No, when the land was demarcated, it was in conformity with other people's land. So, it was a straight line throughout.

Q: I am suggesting to you that the 1st defendant has encroached about 47 by 100 feet into the plaintiff's land.

A: It is not so.

Q: And I am suggesting to you that because of this size of encroached by 47 feet by 100 feet, the straight line of original demarcation which you just spoke about has been distorted.

A: No. During President Kufour's term of office the State took the land in front of us as a buffer for road construction.

…

Q: According to your statement the 1st defendant land is bounded on the East by the property of Nana Bonsuhene do you still stand by that.

A: Yes, the former Bonsu Chief.

Q: I am suggesting to you that it is only half of the 1st defendant's land to the East that shares boundary with the former Nana Bonsuhene's property.

A: Yes, that is true.

Q: You made mention of Kwame Asuo as the one who came to do the demarcation on behalf of the 1st defendant grantor is that correct.

A: Yes, that is so.

Q: Kwame Asuo is a former member of the Nsutam Town development Committee is that correct.

A: Yes

Q: And it is that Committee that allocated those plots of land that were not used for the estate houses in that correct.

A: Yes

Q: I am suggesting to you that in 1991 there about this same Kwame Asuo was the one who led the Committee to allocate the disputed parcel of land initially to Major Darteh Baah.

A: I do not know anything about that.

Q: I am suggesting further to you the Committee led by Kwame Asuo subsequently reallocated the same parcel of land to one Alfred Kodjo when according to the Committee Major Darteh Baah did not develop the land.

A: I do not know anything about that. At the time of our purchase there was no structure on the land.

DW2: is William Baah Mamfe also known as Kwame Asuo. He filed a witness statement on 3/5/2023which he relied on as his evidence in chief in this matter.

Excerpts of cross-examination of DW2 by counsel for Plaintiff

Q: Mr. Kwame Asuo it is your testimony that between 1983 and 1998 you were selected to be part of the Nsutam Town Development Committee which was tasked to supervise Communal Labour and allocate plots of land in Nsutam Township. Do you still stand by that.

A: That is so. Any land at Nsutam that the chief is custodian of, he asks us to allocate.

Q: So, I take it that by virtue of the work you did by that committee you have a fair idea about the land in dispute as well as adjourning lands. Am I correct.

A: That is so.

Q: You have also stated that prior to the work you undertook as part of the committee some Estate houses about 27 of them were or had been constructed on portions of land that adjourn the land in dispute and that those land actually acquired by Busia Regime from the chiefs of Nsutam and Asiakwa.

A: That is so. During Busia time there was a flood, after the flood lands were acquired from Nsutam chiefs and Asiakwa chiefs totaling about one-mile square (1) mile square that to form one new town.

Q: You have a fair idea of the demarcations of adjourning properties to the disputed land.

A: Yes.

…

Q: I am suggesting to you not only are they 2 plots of land each but they all follow in a straight line of demarcation, no distortion.

A: Bonsuhene's wife land at that time was 1 plot it is however true that the said plots of these 3 people stand in a straight line.

…

Q: I am suggesting to you those 2 parcels of land belonging to 1st & 2nd defendants respectively they constitute one (1) plot each.

A: Yes, I agree

Q: And I am suggesting to you that the 2 plots belonging to 1st and 2nd defendant falls in a straight line of demarcation, no distortion.

A: It is true, it is straight line. We took the measurement from Kweku Temeng (2nd defendant) to demarcate Awudu Yakubu's land (1st defendant).

Q: So would you be surprised that when you go to the land now or present (2nd defendant) Mr. Awudu Yakubu parcel of land is bigger than that of Kweku Temeng's land.

A: I would be surprised because over 30 years ago when we demarcated the land for Bonsuhene's wife, Kweku Temeng and Akosua Adae all their lands formed a straight line.

Q: You know the late Alfred Kojo Mensah.

A: I know one Kojo but cannot tell if he is the same as this person Counsel is referring to.

Q: You know Major Darteh

A: I know him very well.

Q: Do you recall that the Committee that you were part off ones upon a time allocated two plots to Major Darkeh.

A: I remember very clearly. We demarcated 2 plots of land to Major Darkeh which is directly in front of both 1st & 2nd defendants land and it faces the road that is the Accra – Kumasi Road at that time.

Q: It is true that this parcel of land initially allocated to Major Darteh is the same land that was reallocated to Alfred Kojo Mensah.

A: Am not aware of Major Darteh land being given to Alfred Kojo Mensah during the period of work of the Committee I was part of up till our work ended the said lands were still owned by the original owners.

Q: I am suggesting to you that those 2 plots of land initially allocated to Major Darteh which he in turn lost to Alfred Kojo Mensah is the same parcel of land before this court sold by Alfred Kojo Mensah to the plaintiff.

A: I cannot tell. When our work ended the said, disputed plots was still belonging to Major Darteh.

Q: Am suggesting to that it is because Awudu Yakubu and Kweku Temeng had stepped unto land originally issued to Major Darteh that we are before this court.

A: I have no idea.

Q: Those parcels of land we have talked about so far, all the people who have constructed building on them one way or the other has been on the land for a l east over 20 years.

A: That is so.

Q: The whole parcel of land originally belonged to the Nsutam and Asiakwa Stool.

A: That is so.

Q: Are you aware of any claim by government or any other person that those lands initially allocated by the Committee you were part of belongs to Government or any other person aside Nsutam and Asiakwa.

A: I know nothing about that. We had our mandate from the chiefs to allocate as a committee.

DW3 is George Okwaning. He relied on his witness statement filed on 30/5/2023as his evidence in chief.

Excerpts of cross-examination of dw3 by counsel for plaintiff

…

Q: So, you actually share boundary with Kweku Temeng (2nd defendant) at the Eastern side.

A: I share boundary with 2nd defendant on the left side but I cannot confirm if that is the Eastern side or not.

Q: And the land size of 2nd defendant property is also 110 feet by 90 feet are you aware.

A: Yes, I know.

Q: Going again towards the Eastern side is the property that used to be for Madam Esther Akosua Boatemaa (the grantor of 1st defendant).

A: The 1st defendant land. From my house you go to 2nd defendant house before you get to 1st defendant house which was currently owned by Madam Esther.

Q: So, the 1st defendant property also covers a land size of 110 feet by 90 feet are aware.

A: Respectfully, for 1st defendant land size I cannot tell because he bought it from someone.

Q: I am suggesting to you that because your property and the property of Kweku Temeng as well as the property of Awudu Yakubu all have the same size and measurement, they all fall in a straight line or demarcation at the Eastern side.

A: We are not all on a straight line. Myself and 1st defendant share a straight line but 1st defendant land projects about outside the line because they got their land from plot allocation and not State Housing so their land demarcation was different.

Q: I am suggesting to you that there is no distortion on the demarcation of lands that were done by the Nsutam town development Committee as against the earlier plots of land that were allocated for the Estate houses.

A: We are not on a straight line.

Q: I am suggesting to you that when you go to the ground now the 2nd defendant land (Kweku Temeng) is no longer in alignment with your property 2nd defendant land has projected towards the main road by at least 23 feet by 100 feet.

A: It is not true. We are on the same line.

Q: I am suggesting to you that whatever crops including palm trees and oranges that you claim to have been graded off Kweku Temeng land (2nd defendant) were actually crops planted outside the boundary of his land.

A: It is not true. We have boundaries with pillars erected. And the said palm tree and oranges were within 2nd defendant land since in front of the land Government has demarcated to serve as road so we should not use.

Q: I am suggesting to you that apart from those Estate House that were earlier built and allocated by State Housing as you say, all other lands including the plaintiff land, including Nana Bonsuhene's property were all given out by the Nsutam town development Committee.

A: I do not know anything about it.

Q: I am suggesting to you that the plaintiff acquired his land from one Alfred Kojo Mensah wo was allocated the land by the Nsutam Town Development Committee.

A: I do not know the said Alfred Kojo Mensah.

Q: And I am suggesting to you that all those parcels of land in the vicinity are well cut out plots of land with no distortions in their demarcations.

A: It is well cut of which we have no problem but I cannot speak to the rest.

…

First Court witness (CW1): is Ernest Nyarko. During his testimony he stated that he works at Lands Commission Survey and Mapping division Eastern Region. Hetestified that he knew all the parties in this case. He gave evidence in respect of a dispute: Cyril Yeboah vrs Awudu Yakubu & Anor. with the reference with order dated 22nd September 2023 regarding suit no. C1/02/2022. A Composite was done as the court instructed. Colours were used to identify parties, boundaries or ground shown by site plan. The yellow indicates the plaintiff land as shown on ground. CYAN indicating plaintiff boundary as shown by site plan. Green as 1st defendant boundary as shown on ground. The 1st defendant Awudu Yakubu did not bring a site plan but showed adjourning plot the 2nd defendant site plan which is I n the name of Akosua Adae as 1st defendant Awudu Yakubu grantor. The green indicates the 2nd defendant boundary shown on ground. And

the Blue indicates 2nd defendant boundary shown by site plan. The red shows 1st defendant boundary shown on ground. The Magnate shows the property of Nana Bonsuhene, Frempomaa and Kweku Korankye as shown on ground. The Brown indicates the property of Akosua Adae and Nana Mensah as shown by site plan. Broken indicating property of Nana Bonsuhene, Frempomaa and Kweku Korankye as shown by site plan. BF 1st defendant building foundation as shown on ground. NM shows property of NM as shown on ground. LN shows the green grass landscape as shown on ground. P C is planted crops shown on the ground. Hatched area is the Area in dispute. He then tendered the said survey Map/composite plan as CW1.

…

Excerpts of cross-examination of cw1 by counsel for plaintiff

Q: So, Mr. Nyarko can you confirm that 2nd defendant (Kofi Temeng) submitted a site plan for the drawing up of the composite plan. Exhibit CW1.

A: Yes, there was a site plan dated 24th August 2022 from the court with the name Kweku Temeng to our office.

Q: Can you also confirm that the said site plan contains the boundary for the properties of Akosua Adai, the property of the 2nd defendant and that of Nana Mensah.

A: In this site plan the 2nd defendant shares boundary with Akosua Adai and Nana Mensah.

Q: Can you also confirm that in the report you have submitted to this court particularly the composite plan (exhibit CW1) that those boundaries are the ones shaded brown and blue.

A: Yes, the 2nd defendant site plan shows blue colour which shares boundary with property of Akosua Adai and property of Nana Mensah also with the colour brown.

Q: From this composite site plan am I correct to observe that the boundaries of 2nd defendant land as well as the boundaries of Akosua Adai and Nana Mensah are nowhere near the boundaries of the land as shown on the ground.

A: Comparing the site plan and the ground situation there is a far difference between the ground situation and the site plan provided.

Q: Can you give us an approximate distance between the boundaries on ground and that of the boundaries shown on site plan for the 2nd defendant.

A: The ground location of the 2nd defendant and that of the site plan of the 2nd defendant, the difference is about 6000 feet roughly.

Q: Per the 2nd defendant site plan, he has indicated that his land is about **0.22** acres whereas on exhibit CW1 per the area shaded blue the size of the 2nd defendant land is **0.09** acre.

A: Yes, the explanation being that the co-ordinate on the site plan was used to calculate the acreage of the site plan provided.

Q: When we look again at the composite site plan you realise that the boundaries of 2nd defendant land as shown on the ground that is the area marked green is 0.26 acres. Are you able to tell us the approximate measurement as captured on the site plan.

A: No. Because we normally deal with average unless I use scale to check it.

Q: But from the composite site plan am I correct to observe that the 2nd defendant land as shown on the ground overlaps that of the boundaries of the plaintiff land as shown both on the plaintiff's site plan and on the ground as shown by plaintiff.

A: Yes.

Q: And that goes for the 1st defendant as well that is the area shaded red.

A: Yes

Q: The building foundation marked BF is also located within the boundaries of the land as shown in the plaintiff's site plan is that so.

A: Yes.

…

Excerpts of cross-examination of cw1 by counsel for defendants

Q: How long have you been working at the Land Commission.

A: Almost 8 years.

Q: Are you aware that there are State lands in the Estate Region.

A: Yes.

Q: Would you therefore be surprised if you discover that the land under dispute is a State land.

A: Per the site plan provided a state land acquired under Lands Commission and in connection with the assembly would provide a site plan signed by the assembly. Based on the site plan in front of me I do not see it to be a State land based on the site plan provided.

Q: I put it to you. Unless you conduct a search on a parcel of land you cannot determine the status of that land.

A: Status of a land is different from asking whether it is a state land or not. And state lands are known by the assembly and Lands Commission. Indeed, all government state lands.

Q: I put it to you. There is evidence before this court which shows the land in dispute is a state land.

A: Per the site plan given to me there was no such search conducted to tell me whether it is a state land or not.

Q: You agree with me the 1st defendant never provided a site plan for this work.

A: Yes

Q: You therefore have no basis to tell this court that the 1st defendant pointed to the 2nd defendant site plan to show the boundary of his land on the site plan.

A: As I said, when we went to the site, the 1st defendant, Mr. Awudu pointed to me that Akosua Adai is the grantor of his land. So, I only draw the site plan based on what the 1st defendant Mr. Awudu said.

Q: Were you given written instructions or you were given verbal instructions to work

A: We take written but sometimes due to the purpose of the composite plan on site we ask questions of the parties if there is any featuring that we need to bring on the composite plan for the court to be able to identify the ground situation. So, if you go on the composite plan drawn on ground, we asked of Nana Mensah property on ground and was also surveyed as accordingly. Basically, we asked 1t defendant his site plan and he showed it on 2nd defendant site plan that is the reason we included it on the map.

Q: You were given written instructions and you gleefully ignored the written instructions and an unpointed extraneous thing unto the composite plan. I put it to you.

A; It is not true.

Q: Does the land shown by the plaintiff on the ground tally with the land contained in the plaintiff's site plan.

A: The plaintiff site plan and ground situation roughly fall withing the same area if you compare the yellow colour and the CYAN colour.

Q: You are not being truthful to this court.

A: I am being truthful to the court.

Q: Per the survey work you have done as captured in the report plaintiff is claiming more land on the ground as compared to his site plan.

A: Per the site plan given the acreage is 0.40 acres and what they showed on ground is 0.49 acres.

Q: So, you agree with me that 0.49 acres on the ground is different from 0.40 acres on the site plan not so

A: Yes.

Q: The issue before the court is that plaintiff claims defendants encroached on his land are you aware

A: There was no letter from the court telling me the defendants have taken his land. I was given a dispute work to do for the court. So, I cannot determine if plaintiff or defendants is claiming someone has taken their land.

Q: You agree with me that plaintiff claiming 0.09 acres more on the ground than on the site plan.

A: Per the report the site plan and ground situation on survey there is a difference of 0.09 acres.

LAW

Section 10 – 12, 14 of NRCD 323 defines the Burden of Persuasion as:

10 "(1) For the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.

(2) The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establishes the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

11*(1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.*

(2) In a criminal action the burden of producing evidence, when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt.

(3) In a criminal action the burden of producing evidence, when it is on the accused as to any fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on all the evidence a reasonable mind could have a reasonable doubt as to guilt.

(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.

***12** (1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.*

(2) "Preponderance of the probabilities" means that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence.

14 Allocation of burden of persuasion

Except as otherwise provided by law, unless 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 person is asserting."

The law relating to standard of proof in civil matters without exception is proof by preponderance of probabilities having regard to sections 10, 11 and 12 of Evidence Act, 1975 (NRCD 323). Section 11 states among other things that, for the purposes of the Act the burden of producing evidence mean the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue. Section 12 instructs that unless otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities which means the degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence. **See: ADWWUBENG v DOMFEH (1996-97) SCGLR 660. See also: AVADZINU vrs. NYOONA (2010) 27 GMJ 132CA.** The Supreme Court in the case entitled **DON ACKAH VRS PERGAH TRANSPORT LTD (CIVIL APPEAL NO. J4/51/2009) 21st April 2020, [2010] SCGLR 728** at 736 **held** as follows:

"It is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail.

The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay documentary and things (often described as real evidence) without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the Court or Tribunal of fact such as a Jury"

It is trite learning 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."

Suffice to say that a defendant, who did not counterclaim, is also required by law to lead evidence to prove facts he asserted and or alleged that would inure to the benefit of his defence. This is because under **Section 17(1) of NRCD 323,** and as was stated by the Supreme court in **ENEKWA & ORS VS KNUST [2009] SCGLR 242** Per Anin Yeboah JSC (as he then was) at page 248, *"…The burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof…"***.**

In **AMIDU ALHASSAN AMIDU & ANOR VS MUTIU ALAWIYE & 6 ORS (2020) 155 GMJ 120,** the Supreme court per Pwamang JSC at page 159 stated the principle on the allocation of persuasion as follow: *"…The settled position of the law is that it is the party who stands to lose on an issue if no evidence is led on it that bears the burden of proof as far as that issue is concerned. This principle is stated in Section 14 and 17 of NRCD 323..."*

The expression burden of persuasion can therefore be interpreted to mean the quality, quantum, amount, degree or extent of evidence the litigant is obliged to adduce in order to satisfy the requirement of proving a situation or a fact. See: **AGO SAI & OTHERS v KPOBI TETTEH TSURU III [2010] SCGLR 762 at 779. See also: Fred Obikyere in his**

Book, <u>Legal Resource Book: The Law as Decided by The Superior Courts In Ghana</u> pages 150,151, 164

The duty cast on the parties before the law Courts to ***lead credible evidence*** on issues raised in their claims or cases for which they have assumed the burden of proof has never been in doubt. It therefore means that in assessing the balance of probabilities, all the evidence of both the plaintiff and defendant must be considered and the party in whose favour it tilts is the person whose case is more probable of rival version and is deserving of a favourable verdict. **See: TAKORADI FLOOR MILLS VRS SAMIRA FARIS (2005-2006) SCGLR 682 @ 900.**

In law, all issues of fact in dispute are proved by evidence. It is a fundamental principle in the law of evidence that he who asserts or claims an entitlement has the onus of proving the basis of that claim. In the oft-cited case of ***Majolagbe v Larbi*** [1959] GLR 190, a party on who the burden of proof lies proves an averment in his pleadings, capable of proof in a positive way, not by merely mounting the witness box and repeating it on oath but by producing corroborative evidence that must necessarily exist if his averment were to be true. The corroborative evidence may be documents, like one on the terms of a contract, otherwise called the terms or conditions of service.

The counsel for defendants raised in his written address filed on 4th day of July, 2024, two preliminary legal point of law issues; (i) the capacity of the Plaintiff and (ii) whether or not the land in dispute is State land before addressing the additional issue filed by defendants as he considered them the only matters worth addressing the court on. He opined thus:

(i) *The capacity of the Plaintiff to institute this action:* It is the contention of the defendants that the land in dispute belongs to the Government of Ghana per compulsory acquisition under a Certificate of Title dated 8th October 1959. By extension, the plaintiff therefore,

not being a grantee or an authorized agent of the Government, lacks the requisite capacity to institute the action in respect of the subject land. The defendant opines that the issue of capacity is fundamental and goes to the root of every case and it can be raised at any time. It is trite that where a person's capacity to initiate an action is put into issue, that person is required to establish his capacity by cogent evidence, if not his suit will suffer a premature and untimely death. In **SARKODEE I v BOATENG II [1977]2 GLR 343 at 346** as follows: *"It is now trite learning that where the capacity of a plaintiff or complainant or petitioner is put in issue. He must, if he is to succeed, first establish his capacity by the clearest evidence;.."* The defendant reiterates that a party who intends to institute an action in a Court of Law must ensure that his capacity to sue is present and valid at the time of the issuance of his writ of summon**;** otherwise, the writ will be deemed to be nullity. We are of considered view that the writ issued by the plaintiff is a complete nullity because we have evidence before this court that shows that the disputed parcel of land is a state land. Also in **NAOS HOLDING INC v GHANA COMMERCIAL BANK [2005-2006] SCGLR 407** the Supreme Court held that: *"A person's capacity to sue, whether under a statute or rule of practice, must be found to be present and valid before the issuance of the writ of summons, else the writ will be declared a nullity.".*

Counsel further contends that when a Court is called upon to determine an issue or question of capacity at any point in time in the course of the cause or matter, that Court is not permitted to concern itself with the merits of the substantive suit before it. We strongly urge this court to ignore the merits of the case of the plaintiff and determine the issue or question of capacity raised herein. Thus in **ASANTE-APPIAH v AMPONSA ALIAS MANSAH [20009] SCGLR 90** the Supreme Court Further held on page 95 of the report that: *"Where the capacity of a person to sue is challenged, he has to establish it before his case can be considered on its merits."*

That the honourable court may suo moto raise and determined the issue of capacity since it borders on the jurisdiction of the court. It is no answer to a challenge of one's capacity for one to claim or assert that one has a solid or cast-iron case against the party raising the issue of capacity. In **YORKWA v DUAH [1992-93] GBR 217** CA per Brobbey JA (as he was then) held thus:*"Where a person's capacity to initiate proceedings was in issue, it was no answer to give that person a hearing on the merits even if he has a cast-iron case."* To be clothed with a capacity to initiate an action in respect of a piece or parcel of land, there must be a nexus between the party initiating the action and the land in question. view of the law is supported by the Supreme Court in the case of **SAPPOR AND OTHERS (SUBSTITUTED BY) ATTEH SAPPOR V. SAPPOR (SUBSTITUTED BY) EBENEZER TEKPETEY [2021] GHASC 10** per Prof. Mensah-Bonsu (Mrs) JSC stated thus: *"One's ability to appear in court to make a claim hinges on whether one is recognized in law as having sufficient interest in any matter to seek a hearing on any particular issue. This "sufficient interest" must remain throughout the life of the case, or one's legal ability to stay connected with a case making its way through the courts would be lost".*

The plaintiff in a reply dated 27/03/03 to the amended statement of defence in paragraph 3 avers that he is not in a position to admit or deny the so-called newly found revelation that the disputed parcel of land is a state land and thus puts the defendants to strict proof. The Supreme Court held in the case of **Evelyn Asiedu Offei v Yaw Asamoah & Anor. [2018] 122 G.M.J. 186 at 226** *"The law is certain must do so specifically and that a pleading to the effect that one neither admit nor deny an averment is no denial".* In essence, it amounts to an admission. The Plaintiff further alleges in paragraph 4 of his reply to the Amended Statement of Defence <u>that his land is not State land and says assuming without admitting that the State ever had an interest in his land, that interest has long been extinguished by virtue of the statute of limitation</u>**. T**he **Land Act, 2020 (Act 1036) in Section 236 (2)**

provides inter alia that: *"236. (2) A person shall not acquire by prescription or adverse possession an estate or interest in public land".*

Per this provisions of the law under the Land Act stated above, the plaintiff, cannot claim adverse possession of state land. In **Network Computers Systems Ltd. v Intelsat Global Sales & Marketing Ltd [2012] 1 SCGLR 218**, the Supreme Court per Atuguba JSC in a unanimous decision stated that "A court cannot shut its eyes to the violation of a statute as that would be very contrary to its **raison d'etre.** If a court can **suo motu** take up the question of illegality even on mere public policy grounds, I do not see how it can fail to take up illegality arising from a statutory infraction which has duly come to its notice. The matter has been fully treated **in Republic v High Court (Fast Track Division) Accra; Ex parte. National Lottery Authority (Ghana Lotto Operators Association & Others Interested Parties) 2009 SCGLR 390**. At 397 Atuguba JSC said;

"It is communis opinion among lawyers that the courts are servants of the legislature. Consequently, any act of a court that is contrary to a statute is, unless expressly or impliedly provided, a nullity." Also @ 402 Date-Bah JSC also stoutly said; *"No judge has authority to grant immunity to a party from consequences of breaching an Act of Parliament."*

It is also worth emphasizing the dictum of Archer JA (as he then was) in **ASARE V. BROBBEY [1971] 2 GLR 331 P. 338,** where relying on **PHILIPS V COPPING [1935] 1 KB 15 p. 21**, said thus; it is the duty of the Court when asked to give a judgment which is contrary to a statute to take the point [of law] although the litigants may not like it. The plaintiff claims that he acquired his land from his grantor, Alfred Kudjo Mensah (deceased) and it was a 0.40 acre in 2009. However, exhibit **3** clearly shows that the land in dispute was acquired by the Government of Ghana under a **Certificate of Title on 8th October 1959.** From Exhibit **3** the land in dispute was acquired by the Government of Ghana fifty (50) years before the plaintiff grantor purportedly alienated the land to him. This means that in June 2009 when the plaintiff's grantor purportedly granted the land

in dispute to the plaintiff, his alleged grantor had no interest whatsoever in the land in dispute to convey to the plaintiff. By operation of the **Nemo dat quod non habet** principle, the plaintiff's grantor acquired no title or interest whatsoever in the land in dispute from whomever he acquired the disputed land. Consequently, the purported grant of the land in dispute by the plaintiff's grantor, Alfred Kudjo Mensah, to the plaintiff in 2009 was a nullity and passed no interest to the plaintiff. The Courts have in cases such a **BRUCE V QUAYNOR & OTHERS [1959] GLR 292; SASU V AMUA SAKYI [1987-88] 2 GLR 227 and SAANBAYE BASILDE KANGBEREE V ALHAJI SEIDU MOHAMED (2012) JELR 66777 (SC)** expounded on the nature and effect of the Nemo dat quod non habet principle, In **SAANBAYE BASILDE KANGBEREE V ALHAJI SEIDU MOHAMED [2012] DLSC 6442,** the Supreme Court speaking through Dotse JSC stated as follows;

"This principle of nemo dat quod non habet operates ruthlessly and by it, an owner of land can only convey title that he owns at the material time of the conveyance…"

It is therefore the case of the defendants that the plaintiff has not title or interest whatsoever in the land in dispute to clothe him with requisite capacity to institute an action in respect of same. Per Exhibits 2 and 3, only the Government of Ghana or its duly authorized agent(s) can alienate (or convey) title in respect of the land in dispute. Accordingly, the defendants submit that the proper person who can institute an action in respect of the subject land is the Government of Ghana or its duly authorized Agent(s). The plaintiff has not shown and/or demonstrated that he is a member of the Government of Ghana or a duly authorized Agent of Government. The plaintiff has also not shown and /or demonstrated that he acquired an interest or was granted title to the land in dispute by the Government of Ghana. the defendants that the plaintiff has no capacity whatsoever to institute this action. In the light of the foregoing, the defendants humbly

pray that the Court dismiss the plaintiff's Writ of Summons for want of capacity as same is a nullity.

From the Search Reports of the Lands Commission captured in **Exhibit 2** attached to the Evidence of the 2nd defendant and **Exhibit 3** attached to the Evidence of DW1, Ayuba Sulemana, the land in dispute is recorded at the;

I. The Lands Commission as "The site falls within a State land for Bauxite and Water Right which was acquired under Certificate of Title (C of T 894/59) date 8th October, 1959" and

II. The Lands Commission as "The wholes site falls within a State land for Bauxite and Water Right which was acquired under Certificate of Title No. 894/59 dated 8th October, 1959".

In the case of **SEIDU MOHAMMED VS. SAAN BAYE KANGBEREE [2012] SCGLR 1182 at 1185,** the Supreme Court on the issue of presumption ofregularity as per dicta of His Lordship Justice Dotse JSC as follows:

"There is a presumption of regularity in law which had been given statutory recognition in section 37 of the Evidence Act, 1975 (Act 323),providing that: "It is presumed that an official duty has been regularly performed". That meant that institutions of state like the Lands Commission, Survey Department, and the Land Title Registry were presumed to conduct their affairs with a fair degree of regularity in line with statutes that had established them. Thus, unless there was strong evidence to the contrary, such a presumption would be upheld."

It is defendants' respectful submission that on the authorities quoted above, there being no challenge to the authenticity of **Exhibits 2 and 3** tendered in evidence by the defendants, it is presumed to have been regularly issued by the Lands Commission as captured above, the 1st defendant witness DW1 **used the site plan of the plaintiff herein.**

This clearly shows that the land for which the plaintiff sued the defendants for declaration of title is public land. It is therefore beyond dispute that the land in dispute is public land and could not have been the subject matter of a grant to the plaintiff by his purported grantor via exhibit B in US$ contrary to the Foreign Exchange Act. Until the **Certificate of Title No. 894/59 dated 8th October 1959** held by the Government of Ghana is revoked, the Certificate of Title remains an impenetrable bulwark against any grants of the lands so acquired by all except the Lands Commission or its authorized agent(s). Without going into the merit of the case at hand because the plaintiff's writ is a nullity. It is instructive however to state that the plaintiff claims that the defendants have encroached on his land and that is the reason why he is in court However, the evidence from the court expert clearly shows that the plaintiff was claiming more land on the ground compared to what is contained in his site plan before this court which he is using to seek a declaration of title.

From the above cross-examination of CW1. It is clear that it is the plaintiff who is rather encroaching on the lands of the defendants and not that the defendants are encroaching on his purported land as he states in paragraphs 8 and 9 of his Statement of Claim. If the plaintiff could even mount this action which we have shown that he does not have the capacity to mount, this piece of evidence that he is claiming more land on the ground than his site plan alone could have defeated his claim of encroachment and trespass. The 0.09 acres the plaintiff is claiming on the ground more than his site plan is equivalent to half a plot of land.

The only evidence the plaintiff put before this court for a declaration of title is 2 site plans and a purported receipt of the purchase of land from Alfred Kudjo Mensah. The plaintiff's 2 site plans are contrary to statutes and that alone the court cannot grant him a declaration of title. The 2 site plans are not approved and checked by the Director of

Survey which is a mandatory requirement under *LI 1444 (1989), Survey (Supervision and Approval of plans) registration.*

In the case of **NORTEY V. AFRICAN INSTITUTE OF JOURNALISM AND COMMUNICATION & ORS [2014] 77 GMJ or [2013-2014] SCGLR 703 at 707 (Holding 4),** where it was held that LI 1444 (1989), Survey (Supervision and Approval of plans) registration, makes it mandatory for plans of any parcel of land attached to any instrument to be approved by the Director of Survey or any official surveyor authorized by him. On the face of plaintiff exhibits "A" and "A1", this basic mandatory requirement of the law is absent. Hence it cannot even be admitted in the evidence thoughtless of constituting evidence strong enough to ground a declaration of title to state land in favour of the plaintiff.

The plaintiff Exhibit "B" is a so-called receipt of his purported purchase of the disputed land. Exhibit B is an instrument affecting land and ought to be stamped per the Stamp Duty Act, 2005 (Act 689). The non-stamping of Exhibit B makes it inadmissible in evidence to prove the plaintiff's claim to a declaration of title. See: **LIZORI LTD V. MRS ELIZABETH BOYE AND 1OR [2013-2014] 2 SCGLR 889.**

Section 8 of the Evidence Act, 1975 (Act 323), provide as follows**: …** Exclusion of evidence that would be inadmissible if objected to by a party may be excluded by the Court on its own motion. the court is duty-bound to exclude inadmissible evidence whether objected to by a party or not. We, therefore, called on the honorable court to exclude the plaintiff's exhibits "A", "A1", "B", "B1", and "D" in view of the statutory violations

The Issue Whether or not the disputed parcel of lands falls within state land, which is the only issue set down by the defendants has been proven in the affirmative. In the

circumstances, this Court should have no doubts whatsoever that the instant action is of no moment as the plaintiff cannot bring this action for want of capacity.

Secondly, we have demonstrated that the plaintiff has violated statutory provisions under LI 1444 and the Stamp Duty Act, 2005(Act 689) and as such this court cannot grant his claim. **TO QUOTE DATE-BAH JSC AT 402 IN REPUBLIC V. HIGH COURT (FAST TRACK DIVISIONS) ACCRA; EX PARTE NATIONAL LOTTERY AUTHORITY (GHANA LOTTO OPERATORS ASSOCIATION & OTHERS INTERESTED PARTIES) 2009 SCGLR 390**: *"No. judge has authority to grant immunity to a party from consequences of breaching an Act of Parliament."*

Accordingly, the defendants pray that the plaintiff's Writ of Summons and the Statement of Claim should be dismissed for want of capacity as the land in dispute is a state/Public Land, and the various statutory breaches of Acts of Parliament by the plaintiff in presenting his evidence.

The plaintiff in his written address sought to respond to the preliminary point of law raised by the defendants being as they are fundamental to this action before proceeding to the other issues adopted for trial. The plaintiff discussed as follows:

i. Plaintiff's capacity:

According to the Defendants, they "*...contend that the land in dispute belongs to the Government of Ghana and therefore the Plaintiff, not being a grantee or an authorized agent of the Government, lacks the requisite capacity to institute the action in respect of the subject land. We submit that the issue of capacity is fundamental and goes to the root of every case and it can be raised at any time*".

In plaintiff's response to the points of law he stated that they did not purport to initiate this action as a grantee or authorized agent of the Government. The Plaintiff sued in his own right to vindicate his interest in the disputed parcel of land. Black's Law Dictionary (9th ed) among others defines capacity as ***"The role in which one performs an act"***. Thus, capacity has to do with the power in a natural person or artificial person (juristic entity created and recognized by statute) to enter into a legal relation, including the power to invoke the jurisdiction of the court to sue or be sued in respect of a subject matter under contention.

The Supreme Court, in the case **of NAOS HOLDINGS INC. VRS. GHANA COMMERCIAL BANK [2005-2006] SCGL 407,** speaking through Sophia Akuffo, JSC (as she then was) held as follows; *"… Once its legal status was challenged and its corporate capacity placed in issue, it was incumbent upon the appellant to produce more cogent evidence of its existence (such as registered office address or a copy of its certificate of incorporation) to satisfy the trial court that* ***it has the requisite legal capacity to sue.*** *Since it failed to do so, the trial court was justified in arriving at the conclusion that the appellant did not exist. Furthermore, having dismally failed to satisfy the trial court in regard to such a fundamental issue as capacity to sue, it would have been pointless for the trial court to order the matter to proceed to trial…".*

It appears Counsel for the Defendants has erroneously mixed-up the concept of capacity to sue against that of *locus standi* which has to do with whether or not one has an interest in a subject matter of determination before a court. In the Supreme Court case of **FLORINI LUCA AND FLORINI ALESANDRO VS MR. SAMIR DIVESTITURE IMPLEMENTATION COMMITTEE AND ATTORNEY GENERAL [2021] DLSC 10155 @ PAGE 4,** Pwamang, JSC opined as follows; *"… It is pertinent to recognize that though capacity and locus standi are closely related and in many instances arise together in cases in court they are separate legal concepts. Capacity properly so called relates to the juristic persona and competence to sue in court of law and it becomes an issue where an individual sues not in her own*

personal right but states a certain capacity on account of which she is proceeding in court. But locus standi relates to the legal interest that a party claims in the subject matter of a suit in court. This may be dependent on the provisions of the statue that confers the right to sue such as the Fatal Accidents Act in Akrong v. Bulley. Otherwise, generally, locus standi depends on whether the party has a legal or equitable right that she seeks to enforce or protect by suing in court. In Akrong v. Bulley, the statute conferred locus standing on only executors, administrators and dependents but the plaintiff stated that she was suing as "successor and next-of-kin" so the court held that she had no locus standi as she did not take letters of administration before commencing the action which would have clothed her with capacity as administrator…".

ii. *State land/Statute of Limitation*

The Plaintiff's case has always been that he acquired the disputed parcel of land from one Alfred Kudjo Mensah on 3rd December 2002. The undisputable evidence on record indicates that the Plaintiff's grantor, like the Defendants and/or their respective grantors, all acquired their properties from the Nsutam Stool through the Nsutam Town Development Committee.

In denial of the Defendant's Amended Statement of Defence to the effect that they conducted as search which revealed that the land is for the State, the Plaintiff averred in paragraph 4 of his Reply that "his land is not State land says assuming with admitting that the State ever had an interest in his land, that interest has long been extinguished by virtue of the Statute of Limitations". The evidence on record indicates that whereas the Plaintiff and 1st Defendant took grants whose roots of title are traceable to the Nsutam Stool, the 2nd Defendant's property is part of estate houses that was constructed by the Government of the 2nd Republic and thus he may still be a licensee of the Government if the Government still maintains an interest in those estate houses.

On the other hand, the evidence on record indicates the other parcels of land beyond the estate houses were all granted to their respective owners by the Nsutam Stool acting through the Nsutam Town Development Committee for valuable consideration.

Now, assuming without admitting that those entire swathes of land (including the Plaintiff's) was part of the land acquired by virtue of Certificate of Title 894/59 (per Exhibit 2), it is our respectful contention that in view of fact that those lands were alienated by the Nsutam Stool to grantees who went to possession of same and constructed visible properties on the said lands for years spanning over 12 years, the Government's interest in those lands, inclusive of the Plaintiff's land, has been extinguished by virtue of section 10(1)&(2) of the Limitation Act, 1972 (NRCD 54) which provides as follows: *Section 10:*

(1) No action shall be brought to recover any land after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to some person through whom he claims, to that person.

(2) No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (in this section referred to as "adverse possession").

The unchallenged evidence of the Plaintiff is to the effect that he acquired the parcel of land from Alfred Kudjo Mensah on **3rd December 2002** (per exhibit "B"). Additionally, the said grantor of the Plaintiff had constructed an uncompleted structure on the land up to lintel level before selling same to the Plaintiff. Thus cumulatively, the Plaintiff and his grantor were in adverse possession of the disputed parcel of land for well over 12 years. If the land is for the State as the Defendants want us to believe, the State's interest would have been extinguished long ago.

In their response to the above contention, Counsel for the Defendants submitted in his written address that under ***section 236(2) of the Land Act, 2020 (Act 1036),*** *it is provided that "A person shall not acquire by prescription or adverse possession an estate or interest in public land".* Their humble submission to that response is that the **Land Act, 2020 (Act 1036)** was passed in 2020 and assented to on 23rd December 2020. It is trite that all statutes are prospective and not retrospective as has been provided for under **Article 107(b) of the 1992 Constitution.** The plaintiff therefore submit that prior to the enactment **of Act 1036, the Limitation Act, 1972 (NRCD 54)** applied to all persons, including the State. Section 236 is a novel provision that now seeks to exclude the State from the provisions of section 10 of NRCD 54.

In view of the fact that the Plaintiff's evidence, which was not challenged, is that he acquired the land on 3rd December 2002, from his grantor Alfred Kudjo Mensah, who prior to the alienation of his interest has constructed and uncompleted building thereon, plaintiff submit that by the time Act 1036 was passed and assented to, the Government's right (if any) to the disputed parcel of land had long extinguished by virtue of the adverse possession of the Plaintiff and his grantor having accrued. In the Supreme Court case of **DJIN V. MUSAH BAAKO [2007-2008] 1 SCGLR, 686 @ 6999**, Atuguba, JSC explained the term adverse possession as follows: *"…The law as we understand it...is that if a squatter takes possession of land belonging to another and remains in possession for 12years to the exclusion of the owner, that represents adverse possession and accordingly at the end of 12 years the title of the owner is extinguished. From the above [Section 10(2), (3) & (7)], the 12-year limitation period does not run unless the person against who the suit is instituted for the recovery of the land is in adverse possession of same…"*

BY COURT:

<u>On the preliminary objections raised by the defendants</u>,: This court has read the written submissions of the parties and taken into consideration the entire record of proceedings. it is the view of this court that the plaintiff does have the legal or equitable right to take steps to protect whatever right, title or interest claimed and is indeed clothed with capacity to protect same upon the purchase of his lands until proven otherwise by a court of competent jurisdiction. Secondly it is trite that laws are not to be applied retrospectively. Rightly stated by the plaintiff, the **Land Act, 2020 (Act 1036)** was passed in 2020 and assented to on 23rd December 2020. Generally, Statutes are prospective and not retrospective.

Per **Article 107(b) of the 1992 Constitution,** *"Parliament shall have no power to pass any law which operates retrospectively to impose any limitations on o to adversely affect the personal rights and liberties of any person or to impose a burden, obligation or liability on any person except in the case of law enacted under articles 178 to 182 of this Constitution"*. Prior to the enactment of Act 1036, the Limitation Act, 1972 (NRCD 54) applied to all persons, including the State. Section 236 is a novel provision that now seeks to exclude the State from the provisions of section 10 of NRCD 54.

It hereby held by the court that the plaintiff is clothed with capacity to commence this suit to protect what legal or equitable rights he deems to have accrued to him upon purchase of same.

On the issue *of whether the lands are state lands or not*, the defendants tendered the Search Reports of the Lands Commission captured in **Exhibit 2** attached to the Evidence of the 2nd defendant and **Exhibit 3** attached to the Evidence of DW1, Ayuba Sulemana. They however did not lead any further evidence to that. The Court witness from lands commission could not tell whether indeed the disputed area was state lands as the site plan of parties did not indicate so. It is also not in doubt the chiefs of Nsutam did the allocation of the disputed area to the plaintiff and defendants who trace their root of title

to the Nsutam Stool acting per the Nsutam Town Development Committee and have not been issued with indentures for their respective lands. With the exception of the 2nd Defendant estate house which he inherited from his parents as part of 27 estate houses that was built by Government somewhere in 1968. Again from the evidence led by the plaintiff and corroborated by all the parties and their witnesses the purpose of the land released to Busia regime was to aid put up estates for the flood victims in the Nsutem Community. After the overthrow of the regime the chiefs took custody of their lands which they had immemorially been its custodian and continued the distribution of the land to assist its people who still required accommodation. The certificates of compulsory acquisituin exh 2 and exhibit 3 are not for accommodation but for other purposes. It is trite that when property or land is compulsorily acquired for a purpose it should be used for that purpose and same should not be issued out for other purposes without the allodial owners having a first right to claim back. The land cannot be issued for residential purposes of a community only for the government to alledgedly by compulsory acquisition take over same for other uses without reference to the community. The then Bonsu Chief in the interest and welfare of its people had allocated the land to Busia to put up the Estates for its flood victims and nothing else..

I would now address issue 1 and 2 together.

ISSUE 1 & 2

1. Whether or not the Plaintiff has a valid grant of the disputed parcels of land from his grantor.
2. Whether or not the Plaintiff has been in possession of the disputed parcels of land for the past 20years.

It is not in issue the plaintiff has a valid grant of the parcel of land he occupies from his grantor and has been in possession for over 20 years prior to mounting the instant action. What is in issue is the boundary dispute between plaintiff and the defendants

The Supreme Court in several decisions has emphasized the ingredients of proof the law requires from a party who asserts title to a landed property. In the case of **MONDIAL VENEER (GH) LTD VS AMUAH GYEBU XV [2011] SCGL 466**, the Supreme Court, per Georgina Wood, CJ held as follows: *"…In land litigation even where living witness who were directly involved in the transaction under reference are produced in court as witness, the law requires the person asserting, and on whom the burden of persuasion falls...to prove the root of title, mode of acquisition and various acts of possession exercised over the subject matter of litigation..."*

The evidence of the Plaintiff as contained in his Witness Statement is to the effect that he purchased two plots of land extent of 0.04 acre from one Alfred Kudjo Mensah on 3rd December 2002 for valuable consideration per exhibit "B". The said grantor of the Plaintiff also acquired the land from the Nsutam Stool acting per the Nsutam Town Development Committee. This evidence on record, indicating that the Plaintiff traced his root of title to the Nsutam Stool was not challenged during his cross-examination on 4th July 2023.

The Plaintiff however indicated during cross-examination that he and the other land owners, inclusive of the Defendants who trace their root of title to the Nsutam Stool acting per the Nsutam Town Development Committee have not been issued with indentures for their respective lands. Indeed, none of the parties in this Suit has produced an indenture from their common grantor, the Nsutam Stool acting through Nsutam Town Development Committee. Nonetheless, the fact that the Plaintiff acquired two plots of land from his immediate grantor, which corresponds with the size of his land on his site-plan was largely corroborated by the Defendants' witness 2 (DW2), Mr. William Baah

Mamfe a.k.a Kwame Asuo, a former member of the Nsutam Town Development Committee.

The evidence on record corroborates the fact that the parcel of land initially allocated to Major Darteh is the same land that was reallocated to Alfred Kudjo Mensah. The settled rule, as stated in the Supreme Court case of **MANU V. NSIAH [2005-2006] SCGL 25** is that: *"...where the evidence of a party on a point in a suit is corroborated by witnesses of his opponent, whilst that of his opponent on the same issue stands uncorroborated even by his own witnesses, a court ought not accept the uncorroborated version in preference to the corroborated one unless for some good apparent reason the court finds the corroborated version incredible, impossible or unacceptable."*

The Plaintiff has always maintained that he acquired the disputed parcel of land from his immediate grantor on the 3rd day of December 2002. Thus, he had been in possession of the land close to 20 years prior to mounting the action against the Defendants. The evidence was not challenged during the trial. That is irrespective of the fact that his grantor prepared a site-plan for him dated 21st June 2009, which Counsel for the Defendants, in his written address, belatedly tried to infer as the date when the Plaintiff took possession of the land.

It is hereby held that the plaintiff has been in possession for over twenty years and thus has a valid right to the land until another is capable of producing a higher or better title than his.

ISSUES 3 – 5:

3. Whether or not the 1st Defendant has a valid grant of his part of the disputed parcel of land from his grantor.

4. Whether or not the 1st Defendant's grantor was at all times material in possession of that of the disputed parcel of land he is alleged to have encroached upon.
5. Whether or not the part of the disputed parcel of land 2nd Defendant is alleged to have encroached upon belongs to the estate of his late parents.

These issues relate to the claims of the Defendants that they acquired and/or inherited the disputed parcel of land from the earlier owners of their land. Whereas the 1st Defendant claims to have acquired his land, inclusive of the disputed parcel of land from Madam Akosua Boatemaa, the 2nd Defendant says he inherited an estate house from his parents, inclusive of the disputed portion. Incidentally, they all claim that their respective parcels of land is one plot each measuring 110ft by 90ft. However, when the composite site-plan was tendered by the Surveyor from Lands Commission, it came to light that the 1st Defendant's land, as shown by him on the ground contains a size of 0.31 acre, whilst that of the 2nd Defendant contains a size of 0.26 acre. A site-plan which the 2nd Defendant procured for use during the survey exercise indicated that the land purported to be his on that site-plan was lying about 6000ft away from where his estate house is physically located. It is clear that the Defendants and/or their respective grantor had enlarged either deliberately or mistakenly, the boundaries of the land allocated to them by the Nsutam Town Development Committee; thus, the encroachment into the Plaintiff's land.

Again, this evidence is largely corroborated by Dw2 who admits the demarcated parcels of land should all be in a straight line. Also Pw2 the chief of Bonsu whose evidence was quite insightful and gave vivid historical account on the land acquisition in the said disputed area and its environs. The court expert witness from lands commission nailed the evidence by further corroborating the evidence of plaintiff with exhibit CW1.

The court hereby holds that it can be inferred per the totality of the evidence adduced, inclusive the testimonies of parties and also per Exhibit CW1 that the disputed portion of land falls within the boundaries of plaintiff's land.

ISSUE 6:

Whether or not the various trees and crops Plaintiff is alleged to have destroyed or unlawfully harvested were planted by the Plaintiff or the 2nd Defendant?

This issue is moot as the defendants when they amended their statement of defence upon the leave of the court abandoned all their counterclaim including their claim in respect of destroyed or unlawfully harvested crops by the Plaintiff. Indeed there is evidence on record and this has not been disputed. It is part of the record of proceedings that indeed the plaintiff after acquiring the land went into immediate and effective possession of same for the past 20 years. During the said period Plaintiff erected concrete pillars to demarcate his boundaries; deposited several sandcrete blocks on the land; planted some food crops such as cassava and plantain on part of the land; and landscaped the remainder with beautiful green-grass. This was during the lifetime of the respective grantors of the defendants who did not challenge plaintiff's grantor or the plaintiff of his possession.

In FATTAL V WOLLEY [2013 – 2014] 2 SCGLR 1070 @ 1076 the Court held that

> *" … Admittedly, it is, Indeed sound basic Learning that courts are not tied down to only the issues identified and agreed upon by the parties at pretrial. Thus, if in the course of the Hearing, an agreed issue is clearly found to be irrelevant, moot or even nor germane to the action under trial, there is no duty cast upon the Court to receive evidence and adjudicate upon it. The converse is equally true. If a crucial issue is left out, but emanates at the trial from the pleadings or the evidence, the court cannot refuse to address it on the ground that it is not included in the agreed issues..."*

See also: Republic V High Court Koforidua; Ex – Parte Bediako II [1989 – 90] SC GLR 91 @ 102.

The court hereby holds that this issue is moot as it is longer in contention and as such would not be expedient for the court to address and/or adjudicate on same.

In conclusion, the court grants all the reliefs prayed for by plaintiff as follows:

a. Declaration of title to the land described in the Statement of Claim to the plaintiff.
b. Recovery of possession of the disputed land by the plaintiff
c. Perpetual injunction in favour of plaintiff and against defendants
d. Damages for trespass of GHc 30,000.00

Cost of GH₵10,000.00 is hereby awarded in favour of plaintiff and against the defendants.

H/L RUBY NAA ADJELEY QUAISON [MRS.]

JUSTICE OF THE HIGH COURT