IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA, AD. 2016

CORAM: **ANSAH, JSC. [PRESIDING]**
ANIN YEBOAH JSC
BAFFOE - BONNIE, JSC.
BENIN, JSC.
PWAMANG , JSC.

CIVIL APPEAL
NO.J4/4/2016

29TH JUNE 2016

MRS VIVIAN AKU-BROWN DANQUAH - **PLAINTIFF/APPELLANT /RESPONDENT**

VRS

SAMUEL LANQUAYE ODARTEY - **DEFENDANT/RESPONDENT /APPELLANT**

JUDGMENT

PWAMANG, JSC.

This case was commenced in May, 2006 in the High Court, Accra whereby the two parties claimed ownership of land near Abokobi in the names of their respective families. The parties pleaded two

contrasting stories of how each of them acquired the land. The case of plaintiff/appellant/respondent, hereafter referred to as "plaintiff", is that the land, containing approximately 569 acres, was acquired through settlement in 1854 by her ancestor called Ayi Blaflatsi who established a village on the land which was named "Krobiwoho". She said her family, the Adutso Family of Osu, exercised rights of ownership over the land from that time to the time of the litigation. Defendant/respondent/appellant, to be referred to as "defendant", on his part said his family land, which is about 593 acres, was first settled upon by his ancestor called Nii Odartey Sro over 200 years ago and that he established a village on the land and named it Adanse. He too said his family exercised rights of ownership on the land for over 200 years.

After a full trial, the High Court, in a terse two paragraph judgment dated 4 December, 2010, held that the plaintiff failed to lead evidence to positively identify the land she claimed and that her star witness was not credible. The court therefore dismissed the case of the plaintiff and granted the counterclaim of the defendant. The judge promised to give full reason for his decision but he never did.

The plaintiff appealed against the judgment to the Court of Appeal. Whilst criticising the trial judge for failing to give full reasons in which he would have stated his findings on the primary facts in dispute in the case, the court determined the appeal on the evidence on record and the submissions of the parties since an appeal is a rehearing. In its judgment the Court of Appeal allowed

the appeal, entered judgment for the plaintiff and dismissed the counterclaim of the defendant.

Being dissatisfied with the decision of the Court of Appeal, defendant has appealed to this court as the final appellate court on the following grounds;

a. The court of Appeal erred when it considered the evidence of Plaintiff/Appellant/Respondent star witness PW2 as reliable contrary to the specific finding of the trial judge that PW2 is unreliable.

b. The Court of Appeal erred by ignoring the Defendant/Respondent plea of statute of limitation and awarded judgment in favour of Plaintiff/Appellant thereby occasioning a miscarriage of justice.

c. The Court of Appeal erred when it gave judgment to Plaintiff/Appellant contrary to the evidence on record.

d. The Court of Appeal erred when confronted with competing traditional evidence, it ignored the recent acts of ownership exercised by Defendant/Respondent and awarded judgment in favour of Plaintiff/Appellant.

e. The Court of Appeal erred when it ascribed meaning to answer given by PW2 under cross-examination in the absence of any ambiguity on the record thereby adorning PW2's evidence with cloak of credibility.

f. The Court of Appeal's interference with the findings of fact by the trial judge is unjustified in law.

g. The Court of Appeal erred when it ignored the onus on the Plaintiff/Appellant/Respondent to establish the identity of land she claimed in a declaration of title and concluded that the issue of identity is one of agreed fact.

In his statement of case in this court the defendant made reference to two issues he filed as additional issues for determination at the application for directions and contended that both the High Court and the Court of Appeal did not resolve them in their judgments. The issues are as follows:

"2. Whether or not the portion of the land which had (sic) allegedly been trespassed by defendant family is the subject matter of dispute.

3. Whether or not the portion of the plaintiff land is (sic) identifiable."

As a result, when this appeal came on for hearing the court drew the attention of the parties to the issue of the extent of land trespassed upon by defendant and wondered whether the court was properly placed to determine the appeal. The court adjourned hearing of the appeal and requested the two lawyers of the parties to study the record and address it on the issue. When the hearing of this appeal resumed on the adjourned date both lawyers were of the view that the appeal could be determined on the basis of the record before the court. In any event, upon a closer reading of the

pleadings it has become clear to us that the plaintiff did not limit her allegations of trespass against defendant to only a portion of the land she claimed which she described. Plaintiff pleaded as follows in her latest amended statement of claim filed on 26/8/2010 (p.261);

3. Plaintiff avers that her ancestor Ayi Blafasi acquired a parcel of land through settlement and a portion of the land which shares boundary with Ablor Adjei through purchase a long time ago and same is situate at Abokobi and stretches between Boi and Ablor Adjei villages and is bounded on the North-West by Dr. Graham's land, Akporman land and Akoble family land measuring a total distance of 5119.88ft more or less, on the North-West by Obedeka family land measuring a total distance of 828.75 more or less, on the North-East by Obedeka family land measuring a total distance of 2648.75ft more or less, on the North by Aboman village land, Nyamekrom and Akokome village land measuring a total distance of 9495.19ft more or less, on the south-East by Nii Dua family land measuring a total distance of 2096.64ft more or less on the South-West by Ablorh Adjei family land measuring a total distance of 3513.2ft more or less, on the south-west by Deikpei family land measuring a total distance of 1405.86ft more or less.

10. Without leave and licence from the plaintiff and elders of Adutso family, the defendant and members of Odartey Sro family recently trespassed on plaintiff's family land the subject

matter of this suit commenced building projects and also indiscriminately alienating it to developers.

11. Notwithstanding several repeated warnings by the plaintiff to the defendants and members of his family to desist from their unlawful acts of trespass they still continue with same."

From the above pleadings, the additional issues filed by defendant do not arise since plaintiff's case of trespass is in respect of her whole land. In any case the Court of Appeal did not make an award of damages for trespass in its judgment on appeal before us. One of the grounds on which defendant has impeached the judgment of the Court of Appeal is the alleged failure by plaintiff to identify the land she claimed and we shall deal with it in our judgment.

As has already been stated, an appeal is by way of rehearing and the appellate court is required to peruse the whole record and come to its own conclusions on the evidence and the law applicable to the case and determine if the judgment appealed against was justified. If the findings and conclusions of the court are supported by the evidence on record the appellate court would not disturb those findings and conclusions. However, if this court as a final appellate court comes to the conclusion that the findings are not supported by the evidence on record or that the court below based its judgment on a wrong proposition of law, it will set aside the findings and reverse the judgment.

Though defendant himself placed Ground G, the ground of appeal dealing with the issue of identity of the land being claimed, as the last issue we deemed it appropriate to start our judgment with a discussion of that ground. It is settled law that a party who claims for declaration of title to land, injunction and possession must clearly identify the land. The rationale for this rule has been explained by Ollenu JSC in the case of **Anane v Donkor [1965] GLR 188.** At page 192 of the report the eminent jurist said as follows:

> "Where a court grants declaration of title to land or makes an order for injunction in respect of land, the land the subject of that declaration should be clearly identified so that an order for possession can be executed without difficulty and also if the order for injunction is violated the person in contempt can be punished. If the boundaries of such land are not clearly established, a judgment or order of the court will be in vain. Again, a judgment for declaration of title to land should operate as *res judicata* to prevent the parties relitigating the same issue in respect of the identical subject matter but it cannot so operate unless the subject matter thereof is clearly identified."

From the decision in **Anane v Donkor** supra, the relevant question to be answered in this case is whether the plaintiff adduced evidence to establish clearly the identity of the land she claimed such that if declaration of title, injunction and possession were granted her, the reliefs will refer to an identifiable land? The answer

is in the affirmative. Plaintiff tendered a plan as Exhibit "B" which is signed by a licensed surveyor and the Regional Surveyor for Greater Accra Region. The plan clearly identified the land claimed by plaintiff and can easily be identified for purposes of contempt for breach of injunction, recovery of possession and res judicata. Using plans to identify subject-matter land for purposes of declaration of title and associated reliefs has been approved by the courts in the cases of **Laryea v Oforiwah [1984-86] 2 GLR 410** CA and **Agbosu v Kotey [2003-2004] SCGLR 420** SC. In times past identity of land claimed in litigation was established by reference to physical features such as streams, prominent trees, mountains and lands of established boundary owners. Those features cannot be more accurate than plans prepared with the use of modern scientific instruments and capable of being transposed unto the ground with ease. A plan tendered in evidence or otherwise accepted by parties in proceedings in court which clearly delimits land claimed constitutes sufficient proof of identity of the land for purposes of the reliefs of declaration of title, injunction, and possession.

The defendant who is holding unto the trial court's finding that plaintiff did not positively prove the exact identity of the land she was claiming is himself relying on the site plan contained in the statutory declaration he tendered to establish the identity of the land claimed in his counterclaim and granted by the High Court. Exhibit "D" is the report of a search conducted in the records of the Lands Commission which showed transactions by both parties in respect of the land under litigation in this case. Furthermore, both

parties in their pleadings identified Dr Graham as a common boundary owner to the North-West of the land each of them claimed and led evidence of ownership in respect of that land. Whereas plaintiff's evidence was that the original Krobiwoho settlement was on Adutso land, defendant in cross examination of PW2 contended that it was on Nii Odartey Sro land. In the circumstances, the land claimed by the parties is sufficiently identified and depending on which party proved a better title, the reliefs endorsed in the claim or counterclaim can be effectively granted by the court. Ground G of the appeal has no merit and same is dismissed.

Apart from Ground B of the grounds of appeal which deals with the plea of the statute of limitation, all the other grounds involve an evaluation of the evidence led at the trial and they will be considered together. To begin with, we shall state the principle in the case of **Adjeibi-Kojo v Bonsie 1957 3 WALR 257;** which is applicable in this case and has been relied upon by both parties in their statements of case. In that case it was held at page 260 that:

> "Where there is a conflict of traditional history one side or the other must be mistaken, yet both may be honest in their belief… The best way is to test the traditional history by reference to the facts in recent years as established by evidence and by seeing which of the two competing histories is the most probable."

So where the traditional history conflicts, the court is required to examine the evidence and consider acts of ownership and possession of the disputed land by each of the parties and their

grantees within living memory in the form of farming, building and other activities which are consistent with title to the land. We shall therefore review the evidence led at the trial and consider the acts of possession and ownership by each of the parties.

In this case, both parties live at Osu in Accra where they hail from. Plaintiff adduced evidence through her sister and lawful attorney; Margaret Adorkor Akuffo, who, after narrating the history of the acquisition of the land as pleaded, tendered a site plan made in 1955 by a surveyor called Geo D. Plange, in the name of Nitaku Holding Industries. She stated that it was a lease made by plaintiff's predecessor in respect of the land being claimed by plaintiff in this case. She however did not tender the lease itself but tendered a Search Report from Lands Commission which was made in respect of the land and the report showed a registered grant from Naa Shormey to Nitaku Holding Ltd in 1973. Plaintiff's representative testified that it was a renewal of the 1955 lease by the then head of the plaintiff's family.

What these documents show, particularly Exhibit "D"; the Search Report, is that the plaintiff's family have been dealing with the land as owners at least since 1973. However, Exhibit "D" also shows that the defendant's family made a Statutory Declaration in 1974 claiming to be owners of the land. What is therefore required are acts of possession by the parties in line with the principle in **Adjeibi-Kojo v Bonsie** .

PW1, Emma Lamiokor Borley, a daughter of Shormey Dowuona who was head of the plaintiff's family in the 1970s, testified on oath and corroborated the evidence of the plaintiff's representative. She confirmed that the family had tenant farmers on the land who regularly delivered foodstuff to them at Osu. One of the tenant farmers who settled on the land was Dzebu Xenyo also known as Amega Dzebu. His son called Edoe Dzebu who was aged 80 years testified as PW2. Part of his evidence was follows:

> "It was he Blaflatsi who founded the village Krobiwoho. After he died my father took over the said village. My father cultivated the land with olive pepper, cassava etc on the land. The land in dispute now is the land my father cultivated. I together with my siblings were born in the said town of Krobiwoho… I know Shormey Dawuona. She was an old lady. She is dead now. During her life time, after we harvested the crops she was the one who received the crops we harvested…..Apart from farming activities my late father had Voodoo on the land. The Voodoo is called Nana Atongo. That is the god I worship."

Under cross examination the witness stated that the defendant's family members visited him during the pendency of this case with drinks and money and requested him to testify for them against Adutso family in respect of ownership of the land in dispute. He said he told them that if he did so he would be putting a rope around his neck. He said he refused defendant's request as the truth was that Adutso family were owners of the land and used to

come and celebrate Homowo at the village and he would drive them in his father's Morris vehicle back to Osu. He pointed out the old Morris vehicle to members of defendant family who came to get him to testify in support of their claim. He said he poured libation to his deceased father and told him enemies had visited him.

Counsel for defendant did not deny this piece of evidence about the visit to PW2 by his client and the interaction they had. This means that what PW2 said concerning the attempt to suborn him did happen. PW2 was firm and consistent throughout his evidence and cross examination.

Strangely, the trial High Court in its brief judgment criticized PW2 in the following words:

> "The evidence of the star witness Doe Dzebu is most unreliable since he moved from saying that he and his siblings are living on plaintiffs land to end by saying, he lives on Graham's land and that Dr. Graham is his Landlord."

We shall set out the evidence of PW2 on this matter which was elicited through cross examination.

Q. Do you know Rev. Graham?

A. Yes, I do.

Q. How do you know him?

A. Rev Graham is the father of Dr. Graham and their land is around the area we are.

Q. In your evidence you also stated that Graham is not your landlord but it is rather the Adutso family who are your landlords.

A. I said Krobiwoho was established on Adutso family land but it has expanded onto Graham's now.

Q. Currently, where are you leaving? Are you on Adutso land or

Graham's land?

A. Currently I am on Graham's land"

As the Court of Appeal observed in its judgment, there is no inconsistency in this evidence. PW2 is saying his father lived with them on Adutso family land about 80 years ago but with the expansion of the town they have moved to live at the part of the town which falls in Graham's land. His detailed evidence of the possession of the land by his late father and they his children who were placed there by Adutso family was not impeached. If defendant thought that it would be beneficial to get PW2 on their side, then it could only mean that he was indeed knowledgeable about the land. The Court of Appeal was therefore right in accepting the evidence of PW2 as proof of possession and ownership of the land by plaintiff.

In further proof of acts of ownership and possession, plaintiff led evidence through PW3, Jacob Adjetey Adjei, 73 years old. He testified positively as to his family's farming activities on the land

with the leave and licence of Adutso family. He also talked of an old soldier called Papa Adanse who was settled on the land by plaintiff's family. Another person settled on the land by plaintiff family was Ataa Laryea alias Masha Alahu who established a settlement and still lived there in the company of some moslems. Part of his evidence was as follows:

> "I said my father as well as myself farmed on the Adutso family land. I grew up on the land. I am still farming on the land up to now. While farming on the land around 1973 one Quaye Ada from Ada who settled at Osu, came with some people from Benin, one of them is called Adzaho who told us to pay tribute to the landowners to Quaye Ada after the harvest. We refused to do so. Because of this misunderstanding our farm hamlets were all burnt down by Adzaho and his people. Adzaho is now deceased I know some of his children whom I can identify when I see them. We informed the Adutso family of the burnt down of our farm huts."

The cross examination of PW3 was brief and included the following:

Q. Are you aware that the man Adzaho has established a village presently called Adzaho village?

A. After they burnt my place before Adzaho went to settle there.

Q. Where is Adzaho village located?

A. It is between the boundary between Adutso land and Abokobi.

In the cross examination of PW3, lawyer for defendant did not challenge his testimony that he is farming on the land as a tenant of Adutso family and his testimony about Papa Adanse and Ataa Laryea. These pieces of evidence are deemed admitted by defendant. However, defendant in his statement of case has relied on the evidence of PW3 concerning Quaye Ada and Adzaho to argue that defendant was in possession of the land in dispute since 1974 to the knowledge of plaintiff who did not take any step to challenge the possession. PW3 never said Adzaho village is on Adutso family land. His evidence is clear that Adzaho village is between Adutso land and Abokobi and we shall discuss this issue in greater detail when we deal with the plea of the statute of limitations.

We shall now consider the evidence defendant led in proof of his case that the land is owned by his family. Evidence on behalf of Defendant family was given on oath by Nii Odartey Sro III who described himself as Atofotse and one of the three joint heads of Nii Odartey Sro family of Osu. After narrating their version of the history of the land he tendered a registered Statutory Declaration made by representatives of his family in 1974. He said that the family made grants of the land to third parties. He tendered grants made to Frapsa Farms Ltd dated 30th May, 1979, Parakuo Estates Ltd dated 6th December, 1993, and Desmond Patrick Kotey Tay dated 20th May 1980. A Deed of Gift dated 3rd March, 1983 made to Madam Vida Arku Brown for one plot of land was also tendered.

After tendering these documents defendant ended his evidence-in-chief.

Interestingly, the following question and answer ensued in cross examination of defendant's representation by counsel for plaintiff.

> "Q. I put to you that it was only after 1974 that your family got to know of the fictitious statutory declaration.
>
> A. It is not true. It is not the declaration (Exhibit 3) which makes us the owners of the land. We own it over 200 years ago."

This answer of defendant is in tune with the requirement of the law that; in an action for declaration of title to land a statutory declaration by itself does not confer title on the declarant. A party relying on a statutory declaration in an action for title to land is required to lead credible and admissible evidence to prove the acts of ownership and possession referred to in the declaration. See the cases of: **Agbosu v Kotey [2003 -2004] SCGLR 420**.

Unfortunately the defendant's testimony did not refer to any acts of possession by his family in living memory. He did not even allege that the grantees he testified about ever took possession of the land on account of the documents he tendered neither did he call any of them to testify on his behalf. If this case were to be resolved only on the question of who first made documentary grants of the land to third parties, then the plaintiff is better placed than defendant. Exhibit "D" shows a recorded documentary grant by plaintiff family in 1973 even before defendant's Statutory Declaration made in

1974. From the evidence on record it was only Parakuo Estates Ltd who tried to take possession during the pendency of this case and plaintiffs applied and joined them to the suit. They subsequently withdrew from the case and undertook to atone tenancy to whoever is declared owner of the land by the court.

Defendant called Dr. Eric Engman Amonoo Graham as his only witness. He testified that he had land in the area and the defendant family is his Eastern boundary owner. Apart from his bare statement, DW1 did not mention any activity by defendant on the land he claimed they owned. He said he did not know Adutso family. However, he said there is a one-family village on his land called Krobiwoho inhabited by Doe Dzebu, PW2 and his siblings and that they witnessed his Statutory Declaration of title made in 1986 by thumb printing it. He tendered his Statutory Declaration as Exhibited '8'. Under cross examination of DW1 by lawyer for plaintiff the following transpired:

Q. Do you know Amega Dzebu alias Dzebu Xenyo?

A. I never met him but I know he is the father of Doe Dzebu and Yao Dzebu.

Q. Do you know that he established a village on the subject land known as Krobiwoho?

A. From the history of our land the Dzebu family was brought from an adjoining land known as Krobiwoho to our land.

Q. That adjoining land also known as Krobiwoho is the land which shares boundary with your land.

A. I don't know. I have a short boundary with Odartey Sro family land. But their land goes further up i.e. Odartey Sro family land.

Further cross examination was as follows;

Q. Have you ever heard of the name Adanse village?

A. I have never heard.

These answers given by DW1 tend to corroborate the evidence of PW2 that there is Old Krobiwoho and New Krobiwoho which adjoin each other. That Xenyo Dzebu first settled at Old Krobiwoho which does not belong to Dr Graham, but they are now on adjoining New Krobiwoho which is on Dr Graham's land. Whereas PW2 was clear in his evidence that Old Krobiwoho is on Adutso land, Dr Graham said "I don't know." He did not positively say that Old Krobiwoho is on Odartey Sro family land. So though DW1 says Odartey Sro is his boundary owner in one breath, he was unable to say that positively in respect of ownership of Old Krobiwoho land which he admitted under cross examination forms a boundary with his land. He vacillated when he was confronted with the obvious factual conclusion arising from his answers in cross examination.

In this situation, the testimony of PW2 is preferable to that of Dr Graham and the proper finding to make is that Old Krobiwoho is on Adutso land. Defendant did not mention Krobiwoho in their pleadings and evidence. He pleaded Adanse but his witness has identified the settlement as Krobiwoho and denied any knowledge of a settlement called Adanse. This is a case where the evidence of defendant's witness tended to corroborate the case of his opponent while leaving his own case uncorroborated. In such situations a court ought to accept the corroborated case of the opponent and reject the uncorroborated case of the party that called the witness unless there are compelling reasons to the contrary.

In that regard the defendant in his statement of case has referred to certain parts of Exhibit '8' which was allegedly thumb printed by PW2 and his siblings to say that they contradicted his testimony on oath that there was ever Old Krobiwoho which was on Adutso land. Paragraphs 15 and 16 of Exhibit '8' state as follows:

> "15. To the best of our recollection knowledge and belief we (Pw2 and siblings) grew on a farm situate at East of Boi village and known as Krobiwoho, the said farm being a portion of Awula Dede's Land.
>
> 16. We are informed by our deceased father that Awula Dede's land which shares common boundary on the North East where Krobiwoho is situate with Nii Akpor family land is the property of Rev. Graham and our

deceased father and mother always recognised and accepted Rev Graham as owner of the said land that it was by his said leave and license that they our parents were on the said land and we have also recognised, accepted and acknowledged the ownership and license to live on and to farm that part of Awura Dede's land aforementioned."

Defendant then argued as follows in his statement of case.

"In exhibit "8" PW2 and his late brother solemnly declared that Krobiwoho is part of Awula Dede's land. The question is if Krobiwoho is part of Awula Dede's land then where is plaintiff's land as established by her ancestor Ayi Blaflasi?"

In the first place, PW2 was not confronted with these paragraphs in Exhibit "8" when he was testifying so as to attack his credibility. Defendant's counsel asked him in cross-examination if he and his father signed a declaration with Dr. Graham and he said no. That was all he asked him on that issue and, true to his word, PW2's father was not on this earth in 1986 when exhibit "8" was allegedly thumb printed.

Section 76 of the Evidence Act, 1975 (NRCD 323) provides as follows:

"76. Unless the court in its discretion determines otherwise, extrinsic evidence of a statement made by a witness that

is inconsistent with any part of his testimony at the trial shall be excluded unless

(a) The witness was so examined while testifying as to give him

an opportunity to explain or deny the statement; or

(b) The witness has not been excused from giving further

testimony"

So an earlier inconsistent statement is not by itself evidence of the truth of its contents but may only be used to confront the witness and attack his credibility as to the veracity of his testimony. In the case of **Adwubeng v Domfeh [1996-97] SCGLR 660** Acquah JSC (as he then was) said as follows at page 669 of the report:

> "…The earlier testimony or statement used to contradict him is not admissible evidence of the truth of the fact stated therein and is not evidence upon which the court should act to make findings of fact."

What this means is that since PW2 was not confronted with Exhibit "8" in respect of the portion relating to him, it does not constitute admissible evidence that may be used by the court in making findings of fact and they are to be excluded by virtue of Section 76 of NRCD 323. That apart, it is not only PW2 who said that Krobiwoho stretches from an adjoining land to Awula Dede's land. DW1 also said so.

Yet defendant has objected to the judgment of the Court of Appeal on a ground of law based on limitation of actions which he pleaded in the High Court. The effect of this Ground of Appeal is that even if plaintiff were declared owner of the land the court cannot grant her the reliefs she seeks as same will be contrary to the provisions of the statute of limitations.

The Limitations Act 1972 (NRCD54) provides as follows:

"Section 10

(1) No action shall be brought to recover 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) A right of action to recover land does not accrue unless the land is in the possession of a person in whose favour the period of limitation can run "

A party who seeks to rely on the statute of limitation as a defence in an action to recover land must prove that he had been in adverse possession of the land subject-matter of the action and that such adverse possession has been continuous for more than twelve years to the knowledge of the true owner. See the case of **Mmra v Donkor [1992-93] Part 4 GBR 1632**.

In the instant case defendant did not lead evidence of adverse possession of the land. The only evidence his counsel referred to in his statement of case is the answers given by PW3 in cross

examination to the effect that Quaye Ada and Adzaho burnt down farms of tenants of Adutso's family on the land around 1973. That might have happened but did it end with defendant taking possession of the land? At the time PW3 testified he and other tenant farmers were still on the land farming and had been there since 1973 meaning the burning of their farms did not dislodge them from the land.

Besides, there is no evidence on record that these persons were acting on behalf of defendant family. Defendant's testimony makes no mention of that and it must be pointed out that suggestions put to a witness by counsel in cross examination which are denied by the witness do not constitute evidence of proof of the matters suggested by the cross examiner. When it was suggested to PW3 that Quaye Ada was from Nii Odartey Sro family of Osu he flatly denied it and stated that he was from Ada. As for Adzaho, the evidence on record is that he was a Beninois.

Defendant's counsel further referred to the cross examination of PW3 where he mentioned the establishment of Adzaho village and argues that it was as an act of adverse possession. However PW3's evidence is that Adzaho village is outside Adutso land so defendant cannot rely on that testimony to found adverse possession of plaintiff's land. Defendant pleaded the statute of limitations in his defence but failed to lead a scintilla of evidence of possession which could then be said to have been adverse to plaintiff's ownership. That ground of appeal also fails and is dismissed.

In sum the plaintiff led evidence of overt acts of possession and ownership of the land for about 100 years through the activities of her tenant farmers. These activities were within living memory as PW2 and PW3 gave first hand testimonies of their personal activities on the land at the license of Adutso family of the Plaintiff. Defendant tried to induce PW2 to testify in their favour but he refused.

Defendant's testimony on the other hand did not refer to any acts of possession in recent memory. Though during cross examination of PW3 the defendant lawyer stated that Adzaho was a representative of the defendants on the land, he never pleaded any such material fact and defendant did not mention any such caretaker in his testimony. Dr Graham who defendant called as his boundary owner in his testimony ended up corroborating the case of plaintiff to a large measure. DW1 stated that his family acquired its land in 1854 which coincides with the very year plaintiff family said their ancestor settled on the land. That was the year of the bombing of Osu by the colonialists when, the natives in resistance of colonial domination, refused to pay tax to them. PW1, a retired teacher, stated in her evidence that Osu was bombed on 13th and 14th September, 1854. The totality of the evidence strongly supported the case of the plaintiff family and against defendant's.

It would appear that when PW2 testified and exposed defendant as trying to suborn him, defendant lost all hope in his case hence his representative's testimony was porous and he was evasive throughout his cross examination. On all the evidence adduced at

the trial, we hold that the Court of Appeal was right in preferring plaintiff's case to that of defendant. Accordingly defendant's appeal fails in its entirety and same is dismissed. The judgment of the Court of Appeal dated 20th November, 2014 is hereby affirmed.

(SGD) G. PWAMANG
JUSTICE OF THE SUPREME COURT

ANSAH JSC:-

I agree.

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

ANIN YEBOAH JSC:-

I agree.

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

BAFFOE-BONNIE JSC:-

I agree

(SGD) P. BAFFOE - BONNIE
JUSTICE OF THE SUPREME COURT

BENIN JSC:-

I agree

(SGD) A. A. BENIN
JUSTICE OF THE SUPREME COURT

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