IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2016

CORAM: ATUGUBA JSC (PRESIDING)
ADINYIRA (MRS) JSC
YEBOAH JSC
AKAMBA JSC
APPAU JSC

CIVIL APPEAL

No. J4/1/2016

13TH APRIL 2016

1.	**F.K.A. COMPANY LIMITED**	**-**	**PLAINTIFF/APPELLANT/ RESPONDENT**
1.	**NI TEIKO OKINE SUBSTITUTED BY NII TACKIE AMOAH VI**	**-**	**CO-PLAINTIFF/APPELLANT/ RESPONDENT**

VRS.

2.	**NII AYIKAI AKRAMAH II SUBSTITUTED BY NII TETTEY OKORH-ARYEE**	**-**	**1ST DEFENDANT/RESPONDENT/ APPELLANT**
2.	**NII DODOO LOMOTEY**	**-**	**2NDDEFENDANT/RESPONDENT/ APPELLANT**
3.	**KWAKUFIO**	**-**	**3RD DEFENDANT/RESPONDENT/ APPELLANT**
4.	**TOGBUI OKRU**	**-**	**4TH DEFENDANT/RESPONDENT/**

APPELLANT

5. EBENEZER OKRU - 5TH DEFENDANT/RESPONDENT/ APPELLANT

JUDGMENT

AKAMBA, JSC

The Plaintiff/Appellant/Respondent, hereinafter simply referred to as the Plaintiff, by a writ of summons issued in the High Court, Accra, on 14th May 2007 and amended on 12th July 2007, claimed against the defendants/respondents/appellants, hereinafter simply referred to as the defendants, the following reliefs, namely:

"(a) declaration of title to all that piece or parcel of land described in the schedule to the statement of claim; (b) Damages of ¢300,000,000.00 against the defendants jointly and severally for interfering with Plaintiff's right of possession of the land; (c) Perpetual injunction restraining the defendants, their agents, assigns and workmen from interfering or dealing with Plaintiff's land in any manner detrimental to Plaintiff's interest."

The High Court, Accra granted an order on the 10th July 2007, whereby the Co-Plaintiff was joined to the suit.

By their statement of defence filed on 28th March 2008, not only did the defendants discount the claims of the Plaintiff and Co-Plaintiff, they went further and set up a counterclaim against the plaintiffs.

THE PLAINTIFF'S CASE

The Plaintiff is an estate development company. The plaintiff company obtained three respective parcels of land situated at Danchira, near Accra from Nii Teiko Okai, the Co-Plaintiff and head and lawful representative of the Djan Bi Amu family of Accra and Danchira. The transaction was evidenced by a deed of lease

dated 5th June 2001 (exhibits A, B and C). According to the Plaintiff, it went into possession of the leased lands, properly surveyed same, demarcated and set out roads thereon. The Plaintiff then took prospective clients of theirs to the land only to be set upon by the Defendants and prevented from entering thereon amidst threats of violence. Embarrassed and aggrieved by the defendants' conduct, the plaintiff commenced the action in the High Court, Accra claiming the reliefs as per the writ of summons and the amended statement of claim.

The Co-Plaintiff was joined to the suit at the instance of the Plaintiff and being the grantor of the leases to the latter. According to the Co-Plaintiff, the disputed land belongs to his Djan Bi Amu Family since time immemorial and that there are judgments in support of his assertion. The Co-Plaintiff further contends that even though some of the Defendants are members of the Djan Bi Amu family they have no right to alienate Danchira lands, since the lands are not stool lands.

DEFENDANTS' CASE

The Defendants' assert that the Danchira lands belong to the 1st Defendant's family together with three other families which constitute a composite family of four who jointly own the land. Defendants referred to early settlement on the subject land by Nuumo Anyetei Akrama with his brother who hailed from Sawerpramano of the Asere quarter of Accra through whom subsequent heads, said to be warriors and hunters came to found what is today referred to as Danchira. The Defendants claim that from time immemorial the four composite families have enjoyed uninterrupted and undisturbed possession and occupation of the Danchira lands and have exercised exclusive rights of possession and ownership by farming and granting portions to several grantees. They also claim that there are several shrines situate on various portions of the land all of which are worshipped by the Defendants and their grantees as a testimony to their superior right of ownership and possession of the land.

After a full trial, the High Court per Tanko Amadu, J (as he then was) delivered a judgment on 1st February 2010 in favour of the defendants on their counterclaim.

The plaintiffs filed a notice of appeal against the High Court decision on 12th February 2010 seeking a reversal of the decision in their favour.

By its decision given on the 12th February 2015, the Court of Appeal, allowed the appeal, set aside the judgment of the High Court and granted all the reliefs sought by the plaintiff as per the plaintiff's writ of summons and statement of claim. The co-plaintiff did not seek any relief. The Court of Appeal also refused the defendants' contention to vary the judgment of the trial High Court to declare the ownership of the disputed land to be in the 1st defendant's four composite families.

The defendants have per their notice of appeal filed on 25th April 2015 listed the following seventeen issues as their grounds of appeal for determination by this court. These are:

"GROUNDS OF APPEAL IN SUPREME COURT

1. The judgment is against the weight of evidence.
2. The Court of Appeal failed to consider the defendant's case adequately.
3. The Court of Appeal erred in not varying the judgment of the Learned Trial Judge as sought by the Defendants.
4. The Learned Judges of the Court of Appeal erred in finding and holding that tenants of the co-plaintiff were in possession of the land.
5. The Court of Appeal Judges erred in law when they held that possession cannot ripen into ownership no matter how long it had been held or had.
6. The Learned Judges of the Court of Appeal erred in finding and holding that the case of the defendants for recovery of possession was riddled with several pitfalls and or weakness.
7. The Court of Appeal erred in holding that the 1st defendant could not represent the 4 composite families of Danchara.
8. The Learned Judges erred in finding and holding that some of the four families such as AMANFRO were mentioned by the defendants as boundary owners of Danchara lands.
9. The Learned Judges of the Court of Appeal erred in law in holding that because the defendants referred to Kwame Amu's land as a boundary owner Danchara lands are owned by the plaintiff.
10. The Learned Judges of the Court of Appeal erred in holding that the trial Judge erred in linking the 4th and 5th Defendants' land to the 4 families.

11. The Learned Judges erred in holding that the 1st defendant's attorney had no authority to defend the suit on behalf of the 4 composite stools.
12. The learned Judges of the Court of Appeal erred in holding that Exhibit H operates as an estoppel against the defendants.
13. The learned Judges of the Court of Appeal erred in failing to hold that the judgment exhibit H on the face it was given without jurisdiction.
14. The Learned Court of Appeal Judges erred in holding that the finding of the trial Judge and Danchara lands are owned by the four composite families was not only inconsistent with documentary evidence on the record to wit exhibit H but was also not supported by any other evidence on record.
15. The Learned Judges of the Court of Appeal erred in not finding that if the co-plaintiff's family ever had the land their title was statute-barred.
16. The learned Judges of the Court of Appeal erred in not finding that the action against the 4th and 5th defendants was statute-barred.
17. The learned Judges of the Court of Appeal erred in failing to hold that the co-plaintiff in the action for declaration of title to land failed to meet the requisite standard of proof.
18. Further grounds of appeal would be filed on receipt of the record of appeal."

COMPLIANCE WITH COURT RULES

It is important to stress that the adjudication process thrives upon law which defines its scope of operation. It is trite to state for instance that, nobody has an inherent right of appeal. The appeal process is the creature of law. Any initiative within the context of the adjudication process must be guided by the appropriate, relevant provision, be it substantive law or procedural law. As courts, if we fail to enforce compliance with the rules of court, we would by that lapse be enforcing the failure of the adjudication process which we have sworn by our judicial oaths to uphold.

The matter before us presently has been initiated through the appeal process and must therefore be conducted and guided by The Supreme Court Rules, (1996), CI 16. We would reiterate compliance with the rules of this court by juxtaposing the seventeen grounds of appeal (supra) filed by the defendants with the provisions of rule 6 (4) to (8) of The Supreme Court Rules (1996), CI 16, to determine how far

they are compliant and if not, what consequences arise. The relevant provisions provide thus:

> "6 Notice of Grounds of Appeal
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> (4) The grounds of appeal shall set out concisely and under distinct heads the grounds on which the appellant intends to rely at the hearing of the appeal, without an argument or a narrative and shall be numbered seriatim and where a ground of appeal is one of law, the appellant shall indicate the stage of the proceedings at which it was first raised.
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> (5) A ground of appeal which is vague or general in terms or does not disclose a reasonable ground of appeal is not permitted, except the general ground that the judgment is against the weight of evidence and a ground of appeal or a part of it which is not permitted under this rule, may be struck out by the Court on its own motion or on an application by the respondent.
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> (6) The appellant shall not, without the leave of the Court, argue or be heard in support of a ground of appeal that is not specified as a ground of appeal in the notice of appeal.
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> (7) Despite sub rules (1) to (6), the Court,
>
> (a) may grant an appellant leave to amend the ground of appeal on the terms specified by the Court; and
>
> (b) shall not, in deciding the appeal, confine itself to the grounds set forth by the appellant nor shall the Court be precluded from resting its decision on a ground not set forth by the appellant.
>
> (8) Where the Court intends to rest a decision on a ground not set forth by the appellant in the notice of appeal, or on a matter not argued before it, the Court shall afford the parties reasonable opportunity to be heard on that ground or matter without re-opening the whole appeal." [Underlined for emphasis]

Of late the courts are inundated with ill prepared initiatives by counsel whose only motives are to hit newspaper headlines by any means or be seen to be carrying out the mandates of their unsuspecting and/or misinformed clients or

simply for undeserved financial gain. The result is the spate of unwarranted actions, writs, motions, petitions and appeals to cite but a few, which are hardly initiated in strict compliance with the procedure rules. It is now time for the courts to wake up from the slumber of despair and strictly apply the rules that regulate the proper conduct of trials in our court system. As Courts of law we administer justice according to law and equity which are strictly guided by laid down rules fashioned over the centuries to guide our conduct. In Ayikai v Okaidja III (2011) SCGLR 205 this court did stress the fact that non-compliance with the rules of court have very fatal consequences for they not only constitute an irregularity but raise issues that go to jurisdiction.

The first ground of appeal certainly conforms to rule 6 (5) of CI 16 under the omnibus provision. Grounds 2,3,4,6,8,10,11,13,14 and 17 do not conform to the requirements. They however can be dealt with under the omnibus ground raised in ground one. To the extent that they cannot stand on their own they are struck out under rule 6 (5) of CI 16, even though in determining the omnibus ground such of the points touching on factors or areas that the Court of Appeal failed to take into consideration or drew wrong inferences would be covered. Apart from points of law bordering on issues of jurisdiction which are obvious any other that the appellant has not indicated the stage of the proceedings at which such issue of law was first raised, be they procedural or substantive or are simply vague, are equally struck out for non-compliance with rule 6 (5) of CI 16. In the result, this appeal would be determined solely on the omnibus ground of appeal that the judgment is against the weight of evidence.

DECISION OF COURT OF APPEAL

The unanimous decision of the Court of Appeal given on 12th February 2015 allowed the appeal against the judgment of the trial court. All orders made therein were set aside. In its place judgment was entered for the co-plaintiff to the effect that his Djanbi Amu family is the allodial owner of Danchira lands.

The scope of the burden upon this court in determining an appeal on the omnibus ground of 'the judgment is against the weight of evidence' has received several pronouncements from this court. A few examples will suffice.

In Akufo-Addo v Catheline [1992] 1 GLR 377 at 379 holding 3, this court stated that, "When an appellant exercised the right vested in him and appealed on the ground that 'the judgment was against the weight of the evidence' the appellate court had jurisdiction to examine the totality of the evidence before it and come to its own decision on the admitted and undisputed facts." See also Tuakwa v Bosom [2001-2002] SCGLR 65.

Where the appellate court comes to the conclusion that findings of fact by the court below are not supported by the evidence on record or where the findings are perverse, then it may set those findings aside. The appellate court will also set aside findings and conclusions arrived by a lower court where the findings and conclusions are based on a wrong proposition of law. See also Achoro and Anor v Akanfela (1996-1997) SCGLR 209; Koglex Ltd (No 2) v Field (2000) SCGLR 175.

Under this ground of appeal, the whole matter opens up for re-hearing based upon the record of appeal. Thus the entire record of what transpired in the court of trial including testimonies, cross-examinations, re-examinations, exhibits - accepted or rejected, and indeed every or any documentary or other evidence adduced or rejected at the trial before the court arrived at its decision, will be open to the appellate court to examine to satisfy itself that on a preponderance of probabilities, the conclusions of the trial judge are reasonable or amply supported by the evidence. For our part, being the final appellate court, the record for the purposes of the re-hearing before us includes records of what transpired in first appellate court which are borne by the record in order to give us a comprehensive overview of events.

This appeal was initiated by the defendants. They therefore have the burden or onus to demonstrate clearly to this court what lapses they notice in the judgment appealed against to warrant our interference. [See Djin v Musah Baako (2007-2008) 1 SCGLR 686 at 687]

In Republic vs Central Regional House of Chiefs & Ors: Ex Parte Gyan IX (Andoh X-Interested Party) Civil Appeal No J4/11/2013 of 19/07/2013, (unreported) this court stated that the appellant has a duty to clearly show where the Court of Appeal went wrong or where they failed to take into consideration all the

circumstances and the evidence or had drawn wrong inferences without any evidence in support.

ANALYSIS

The Defendants' initial lamentation is about the Court of Appeal's inadequate consideration of their (defendants') case. Did the Court of Appeal adequately consider the defendants' case? The Court of Appeal in its unanimous decision, concluded per Kanyoke, JA as follows:

"*In effect I hold that the finding and conclusion made by the trial judge that Danchira lands are owned by the four composite familiar (sic) of Sawerpremano, Kubeshishie, Amanfo and Juabeng is not only inconsistent with documentary evidence on the record, to wit Exhibit H but it is also not supported by any other evidence on the record. As a hearing court, this court would not under normal circumstances disturb findings of fact by a trial court even if the appellate court would have come to a different conclusion on the matter but the appellate court will interfere where those findings of fact are wholly unsupported by the evidence on the record as in the instant case. See In re Okine (Deceased); Dodoo v Okine [2001-2002] SCGLR, 582. To my mind, the findings of fact made by the trial judge that Danchira lands are owned by the 1st Defendant's four composite families is wholly unsupported by the evidence on the record, I will accordingly disturb the finding and I hereby set it aside.*"

The apparent heavy reliance placed upon exhibit H by the Court of Appeal calls for close scrutiny to determine whether there is any justification for it. Stated differently, what is the significance of Exhibit H in resolving the issues in contention between the parties in this appeal, the same being the rival claims to the same area of land by the Co-Plaintiff's Djanbi Amu's family and the Defendants' four composite families? Without any measure of doubt exhibit H issued out of the Judicial Committee of the Ga Traditional Council which sat at the Ga Mantse's Palace on 20th January 1988 apparently to determine a dispute over land. The relevant legislation governing the Judicial Committee of the Ga Traditional Council which sat on 20th January 1988 was the Chieftaincy Act, 1971, Act 371. Section 12 of the said Act 371 provided for Traditional Councils as follows:

"*There shall be a traditional council for each traditional area and the traditional councils in existence immediately before the commencement of this Act shall continue in existence for the traditional areas in respect of which they existed immediately before the commencement."*

As to their jurisdiction, section 15 thereof enacts as follows:

"15. Jurisdiction in chieftaincy disputes.

(1) Subject to this Act and to an appeal from the traditional council, a traditional council has exclusive jurisdiction to hear and determine a cause or matter affecting chieftaincy which arises within its area, not being one to which the Asantehene or a Paramount Chief is a party."

Section 66 defines "*Cause or matter affecting chieftaincy*" to mean "*a cause, matter, question or dispute relating to*

(a) The nomination, election, appointment or installation of a person as a Chief or the claim of a person to be nominated, elected, appointed or installed as a Chief, or
(b) The destoolment or abdication of a Chief, or
(c) The right of a person to take part in the nomination, election, appointment or installation of a person as a Chief or in the destoolment of a Chief, or
(d) The recovery or delivery of stool property in connection with nomination, an election, appointment, installation, a destoolment or an abdication, or
(e) The constitutional relations under customary law between Chiefs."

The Court of Appeal's heavy reliance upon exhibit H to affirmatively pronounce as it did is devoid of any justifiable jurisdictional basis. This is because the dispute brought before the Judicial Committee of the Ga Traditional Council was a dispute over ownership of land by the two families which did not fall within the definition of a 'cause or matter affecting chieftaincy' provided in s. 66 of Act 371 (supra) so as to clothe the committee with jurisdiction. The resultant wrongful assumption of jurisdiction culminating in the issuance of Exhibit H renders it a void document, a fact that is obvious on the face of the document. It was therefore incumbent upon the trial judge and the Court of Appeal to set it aside. The failure on the part of the courts below to specifically

pronounce upon the void nature of exhibit H despite their attention being drawn thereto appears to give rise to the belief that reliance could be placed on same.

In the celebrated case of Mosi v Bagyina (1963) 1GLR 337, SC, this court held per Akufo-Addo, JSC in holding 4 that:

"*Where a judgment or an order is void either because it is given or made without jurisdiction or because it is not warranted by any or rule or procedure, the party affected is entitled ex debito justitiae to have it set aside, and the court or a judge is under a legal obligation to set it aside, either suo motu or on the application of the party affected. No judicial discretion arises here. The power of the court or a judge to set aside any such judgment or order is derived from the inherent jurisdiction of the court to set aside its own void orders and it is irrespective of any expressed power of review vested in the court or a judge; and the constitution of the court is for this purpose immaterial. Further, there is no time limit in which the party affected by a void order or judgment may apply to have it set aside, Craig v Kanseen [1943] 1 K.B. 256, C.A; Forfie v Seifah[1958] A.C. 59, PC; Amoabimaa v Badu (1957) 2 W.A.L.R. 214, W.A.C.A; Concession Enquiry No. 471 (Ashanti) [1962] 2 G.L.R. 24, SC. And Ghassoub v Dizengoff [1962] 2 G.L.R. 133, S.C. applied."*

We have no hesitation in finding exhibit H void and as such no reliance could have been placed upon same to establish the claim to the disputed land as the Court of Appeal purported to do. With the rejection of exhibit H we find no other evidence led by the plaintiff to make out their claim to the disputed land. We set aside the Court of Appeal's finding to the contrary and uphold the trial judge's conclusion of lack of proof of the plaintiff's claim.

OWNERSHIP OF DANCHIRA LANDS

The Court of Appeal also stated that there was no other evidence in the appeal record which supported the trial judge's conclusion that the Danchira lands are owned by the four composite family. Here again a brief excurses into the record of appeal would resolve the issue. It would be recalled from the evidence on record that the Co-Plaintiff had failed to provide any facts of his own case in his pleadings. He also failed to recite historical facts to support his

claims about his Djan Bi Amu family's ownership of Danchira lands. The court was thereby deprived of an alternative version of traditional evidence of the subject matter upon which to test that which was earlier set out in the judgment. The court was thus left with the recitals in exhibit G to conclude on the Plaintiff and Co-Plaintiff's claims to ownership in support of the Djan Bi Amu's ownership of Danchira lands. One such piece of evidence from the Co-Plaintiff to establish his ownership was the claim that the originator of his family called Kwame Amu was responsible for planting 'weweti' trees which trees are not peculiar to the disputed land but common in the area adjourning as well. This piece of evidence arose from answers during cross examination. The trial court found this to be insufficient evidence to substantiate the claim to ownership of the land by traditional evidence without demonstrating overt acts of possession and recent acts of ownership comparatively stronger than the version of the defendants. We find the trial judge's reasoning on the point well founded. Traditional history and Family history, although hearsay evidence, are by virtue of sections 128 and 129 of the Evidence Act 323, been made exceptions to the hearsay rule. Therefore traditional history is accepted in evidence in proof of a fact in issue. Where there is conflicting traditional evidence on possession, the authorities have resorted to recent acts of ownership to resolve the impasse as summed up in this court's decision in Adjei vs Acquah [1991] 1 GLR 13 as follows:

"*The law was that although traditional evidence had a part to play in actions for declarations of title, a favourable finding on its evidence was not necessarily essential to the case of either of the party seeking the declaration. What the authorities required was that traditional evidence had to be weighed along with recent facts to see which of the two rival stories appeared more probable. Facts established by matters and events within living memory especially evidence of acts of exercise of ownership and possession must take precedence over mere traditional evidence."*

We equally find the plaintiff's reliance on the historical recitals contained in exhibit G without more, insufficient to found his claim to ownership of the disputed area. The Plaintiff and Co-Plaintiff, as initiators of the claim for declaration of title to the disputed land, have the burden under s 11 of Act

323, the Evidence Act, of producing evidence sufficient enough to avoid a ruling against them on the issue, just as the defendants have a similar burden to undertake in respect to their counter-claim. Section 17 of the same Evidence Act 323, defines the burden of producing evidence of a particular fact to be on the party against whom a finding on the fact would be required in the absence of further proof. Equally relevant is s. 14 of Act 323 which states that unless and until 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 he is asserting. The plaintiff and co-plaintiff did not meet the basic evidential burdens placed upon them under the sections of the Evidence Act above referred to hence the trial judge was right in his conclusion that the finding of fact should be entered against the plaintiff and co-plaintiff on the issues. The trial judge did also consider the evidence led in support of the plaintiff and co-plaintiff claims by PWs 3 and 4 in arriving at his conclusions. PW3 is Beatrice Oye Bempong, the Registrar of the Ga Traditional Council who tendered exhibit H in evidence. This witness did not have much to add to the cause of the plaintiff and co-plaintiff beyond tendering the official record of the proceedings of the Judicial Committee of the Ga Traditional Council of 20th January 1988 which was in her official custody. The trial judge's assessment of PW4 did not also hold him out as advancing the Plaintiff's case much. One wonders how the Court of Appeal, in the light of the unfavourable assessments of the Plaintiff and Co-Plaintiff and their witnesses would overturn the findings and conclusions of the trial court. It is instructive to state that it is the trial court that has the exclusive right to make primary findings of fact which would constitute building blocks for the construction of the judgment of the court where such findings of fact are supported by evidence on the record and are based on the credibility of witnesses. It is also the trial tribunal which must have had the opportunity and advantage of seeing and observing the demeanour of witnesses and become satisfied of the truthfulness of their testimonies touching on any particular matter in issue. (See Agyenim Boateng v Ofori & Yeboah (2010) SCGLR 861.

We find no support for the decision to overturn the well founded reasoning and conclusions of the trial judge by the Court of Appeal. We set aside the

Court of Appeal's findings and affirm the decision of the trial judge on the issues.

PERSONS IN POSSESSION OF DISPUTED LAND

The Court of Appeal also found and held that tenants of the co-plaintiffs were in possession of the land. To put it in context this is what the Court of Appeal found:

"*In the instant case, the stark fact is that the so-called tenants of the defendants', namely DW1 –DW5 were in possession of portions of the Danchira lands just as tenants of the co-plaintiff were such as Pw4 Numon Juaben a.k.a Armah Gordon and Abu Mohammed. See the cross examination of 1st defendant's attorney at page 218-219 of the ROA. Another person who is farming on the Danchira lands and who has been granted his farmlands by the co-plaintiff's family is one Joshua Lamptey. See the evidence of the 1st defendant's attorney under cross examination at page 219 of the ROA. Consequently, the trial judge's finding that no contradicting evidence of possession was placed before him by the plaintiff's is not supported by the evidence on record. The trial judge clearly misdirected himself on that point. In my view the stark fact apparent on the evidence on record is that both the plaintiff's tenants as well as the defendant's alleged tenants like DW1-DW6 are farming on the Danchira land and therefore the defendants were in possession of the Danchira lands just as the co-plaintiff was."*

On what basis did the Court of Appeal conclude that PW4 Numon Juaben and Abu Mohammed were tenants, whereas DW1 to DW5 were 'so called tenants' on the disputed land? PW4 Nii Armah Juabeng is a Wulomo (traditional priest) and a peasant farmer living at Danchira. On the other hand Abu Mohammed was only mentioned during the cross examination of Nii Adu Anderson, the 1st Defendant's Attorney and was said to be a peasant farmer. The 1st Defendant's Attorney admitted that he had not granted Abu Mohammed the land on which he farms. The stark difference between the plaintiffs' and the defendants' is that whereas the defendants' actually called some of their tenants such as DW1 to DW5, to testify in the proceedings concerning their holdings or grants and the customary payments or rents they render to their landlord, the 1st

Defendant, the Plaintiffs were merely content to just mention the names of the 'tenants' on their claimed land and even so, emerging out of cross examination. (See Pages 218 to 219 of ROA).

A brief account of the testimonies of some of the defendant's tenants from the record of appeal will illustrate the difference. DW1 testified that his late father acquired the land from Koblah Bosomfo in 1947 whilst DW2's father acquired the land they cultivate in 1936 from his grantors whom he claims comprise families from Asere quarter of Accra just like the DW1. Exhibit 7, the lease document covering the transaction between Dzasetse Nii Amar II (the Asere chief) and Vincent Kofi Ocloo was made on 20th July 1974 and tendered in support of the defendant's claim that they had granted portions of the disputed land to the said Vincent Kofi Ocloo among other tenants. Indeed exhibit 7 covers a grant of 640 acres of land for rearing and farming purposes. Significantly, half of the land covered by the grant evidenced in exhibit 7 is the subject of the subsequent grant by the Co-Plaintiff to the Plaintiff as per exhibit C made on 10th June 2001, which apparently triggered the action in the High Court. (See page 338 of the ROA).

One therefore wonders why the Court of Appeal would set aside the reasoned preference by the trial judge for the defendants' conduct of their claims for the lackadaisical presentation of the plaintiffs. This is also against the background of the advantage of the trial judge to observe these witnesses at close range in order to assess their credibility than the Court of Appeal had which at best was to merely draw inferences from the record of appeal before them. There is merit in the appellant's impeachment of the Court of Appeal's finding concerning the tenants' in possession of the lands. This is because the Court of Appeal's inferences were rather wrong as same are not supported by the evidence on record. We find that the defendants' discharged their burden of producing evidence to substantiate their claim that they had long before, granted portions of their lands to tenants such as DW1 to DW5 who were in possession and paid their customary rents to them.

There is some contention that in so long as exhibit 7 was entered between Dzasetse Nii Amar II and Vincent Kofi Ocloo rather than the 1st Defendant or his stated four composite families, the same does not afford proof of the defendants'

ownership of the disputed land. It is significant that the 1st defendant and the other defendants trace their origin to the Asere stool rather than the Djan Bi Amu family. It is equally significant that the defendant's exhibit 7 was entered between the Asere stool and DW10's deceased father. Thus the 1st defendant's forebear's submission of the exhibit 7 for execution finds meaning in the writings of R.J.H Pogucki (Assistant Commissioner of lands) writing on "Land Tenure in Customary Law of the non-Akan areas of the Gold Coast Colony Part 1 Adangme) of December 1952 at pages 29 to 31 under paragraph 40, as follows:" Although stools may be in existence among the Adangme, there is no evidence to show that there are any direct links between a stool and land, nor is the existence of stool land claimed . But in one or two cases, on the border of the GA Federation, the term 'stool land' is used, though examination shows that it is a colloquial expression……..There were however cases when the political chief i.e. the previous war leader, is regarded as an agent in the matter of making grants of unallocated land, acting for jointly land owning kingship groups. This may be understood if it is noted that such new grants almost invariably concern only strangers and, that the political chief is regarded as the official representative of the group in external dealings. It is in those cases that sometimes the term 'stool' is colloquially used to denote who acts for the joint the joint owners…"

There is considerable support for the practice above recounted in the evidence of the 4th Defendant and recorded at Pages 330 to 334 of the record of appeal. According to the 4th Defendant the land was acquired by his late father Vincent Ocloo who initially came to observe the place in 1965. He eventually came to start operations in 1970. The documents in respect to the land were prepared in 1974. As to the circumstances of the acquisition the witness stated that the land was acquired from Nii Ayitey Boafo and Odartey Lamptey. There was one Oko Teiko who was also involved and the three led Mr Vincent Ocloo to Accra, to a place called Asere where they introduced him to the chief of Asere. The witness testified that Ayitey Boafo hailed from the Juabeng family of Danchira. It was in these circumstances that the Chief of Asere prepared the document exhibit 7.

It is worth noting that PW4 Nii Armah (Juabeng Wulomo) (at page 176 of the record of appeal) admitted knowing the 4th Defendant's father for a long time. He also admitted that the land was granted to the 4th Defendant's father by the

elders of Juabeng which he used to establish his Ocloo farms. It is also significant that this witness being a witness for the plaintiff corroborated the evidence of the defendants as to who granted this piece of land to Vincent Ocloo. In view of the evidence led by DW4 which traces the sequence of steps which led to the three land owners notably Nii Ayitey Boafo, Odartey Lamptey and Oko Teiko all Asere men leading Vincent Ocloo to obtain documents covering the land granted to the latter in Danchira, from their Asere chief, we find nothing irregular about exhibit 7 in the circumstance. It also bears emphasizing that DW4 was not contradicted nor challenged on these facts or issues in cross examination.

We find no merit in the submission that the exhibit 7 derogates from the linkage sought to be established between the 4th and 5th Defendants' lands and the four composite families which are all undoubtedly of Asere lineage. We dismiss the Court of Appeal's conclusion to the contrary as same is not borne by the record.

By the claims of the 1st Defendant and the other defendants in their counterclaim and per the evidence led in support of their claims, the same supports the conclusion arrived by the trial judge that the Danchera lands are owned by a composite of four families of Asere lineage.

We cannot fault the trial judge on the conclusion he arrived at, given the evidence put before him wherefore he stated as follows:

"In my view therefore, the evidence of facts in recent years and recent facts adduced by the defendants is corroborated by the acts of undisputed possession by DW1, DW2, DW3, DW4, DW5, and the 4th and 5th Defendant all of whom are grantees of 1st Defendant whose possession had never been challenged by the Co-Plaintiff's family for a period of at least more than 20 years in the least of situations."

We therefore find no basis for the Court of Appeal's reversion of the trial judge's conclusion quoted supra and accordingly allow the appeal on the issue and thereby restoring the trial judge's finding.

It is to no issue that the defendant raised the claim that the Court of Appeal erred in holding that possession cannot ripen into ownership. The principle of law on possession stated by the Court of Appeal is good law. The Court stated it thus: "*In*

law possession is nine points of the law and a (party) in possession has a good title against the whole world except one with a better title. It is the law that possession is prima facie evidence of the right to possession and it being good against the whole world except the true owner, he cannot be ousted from it…' See Mrs Elizabeth Osei substituted by Portia Gilard v Madam Alice Efua Korang (supra) at page 26 per Ansah, JSC. See also Summey v Yohuno (1962) 1 GLR 60, SC and Baako v Mustapha [1964] GLR 78.).

The Evidence Act, 1975 (NRCD 323) provides in section 48 (2) that: A person who exercises acts of ownership over property is presumed to be the owner of it." However, possession cannot ripen into ownership no matter how long it had been held or had. See Lartey v Hausa [1961] GLR 773 per Ollenu, J (as he then was).

It does appear that it is the last quotation from the 1961 decision of Ollenu J (as he then was) that seems to have unsettled the defendants. But that is the state of the law then as it is now. It is however the application of the facts by the Court of Appeal to the law that is faulty and not the legal principle per se. The defendants have shown from the evidence led in support of their counterclaim that they are not mere possessors of the disputed land but the true or actual owners thereof and not the plaintiffs' as found by the trial judge. The Court of Appeal therefore erred in setting aside the crucial finding of the trial judge on this issue. We set aside the Court of Appeal's finding on this issue and restore the trial judge's conclusion.

CAPACITY

Another issue that comes up for determination relates to the capacity in which the defendants' contested this suit. While it is true that the choice of who is to be a defendant lies with the plaintiff in the suit, it is equally true that as regards a counterclaim, the counter-claimant has the option to designate the capacity in which to pursue same. From all indications from the record of proceedings, the defendants were sued by the plaintiffs individually. The defendants also mounted their counterclaim individually and not in any representative capacity. It is a fundamental requirement to state clearly whether the parties are suing or being sued in a representative capacity on behalf of an identifiable group or class. Under our rules of pleading, particularly order 4 r. 11 of CI 47, (since the writ in

this action was issued out of the High Court) the defendants or any of them were/was required to state clearly if they were counterclaiming in a representative capacity and this must be stated in the title of the writ of summons and statement of claim; the endorsement to the writ of summons; the body of the pleadings.

We recall the case of The Republic v High Court, Accra; Ex Parte Aryeetey (Ankrah Interested Party) (2003-2004) SCGLR 398, wherein Kpegah, JSC delivering the judgment of this court held at page 405, as follows:

"The requirement that a party endorses on the writ the capacity in which he sues, is to ensure that a person suing in a representative capacity is actually invested with that capacity and therefore has the legal right to sue. This includes the submission that the requirement also enables the defendant, if he is so minded, to challenge the capacity the plaintiff claims he has, and such a challenge may be taken as a preliminary issue. This is because if a party brings an action in a capacity he does not have, the writ is a nullity and so are the proceedings and judgment founded on it. Any challenge to capacity therefore puts the validity of the writ in issue. It is a proposition familiar to all lawyers that the question of capacity, like the plea of limitation, is not concerned with the merits so that if the axe falls, then a defendant, who is lucky enough to have the advantage of the unimpeachable defence of lack of capacity in his opponent, is entitled to insist upon his rights: See Akrong v Bulley (1965) GLR 469, SC."

Having failed to issue or endorse the counterclaim in a representative capacity, the 1st Defendant cannot turn round to expect the court to pronounce him as having mounted the counter claim on behalf of the four composite families, a situation that would be in clear violation of Order 4 r.9 of CI 47.

On the principle well laid out in Dam v Addo (1962) 2 GLR 200, a court must not substitute a case *proprio motu*, nor accept a case contrary to, or inconsistent with that which the party himself puts forward, whether he be the plaintiff or the defendant. Both the trial judge and the Court of Appeal rightly held that there was no evidence on record upon which to conclude that the 1st Defendant defended and counterclaimed the suit on behalf of the four composite families.

We find no merit in the defendant's plea to conclude otherwise and dismiss same. We affirm the conclusion arrived by the two lower courts on this issue.

Just a day to the delivery of our judgment our attention was drawn by counsel for the respondents to his so called 'further authority' filed the previous day to an earlier decision of this court in suit No J4/59/2013, involving Nii Tackie Amoah VI vs Nii Armah Okine & Ors and 5 others, delivered on 15th January 2014. By the said document they were apparently raising the issue of res judicata which was essentially not part of his case. It means that when this appeal was heard on 15th December 2015 that judgment had been in existence for about a year. Yet the same was not pleaded nor made a part of the respondent's case, a necessary prerequisite for consideration as to whether or not any issue of estoppel arises therefrom. This practice certainly should be discountenanced. The piece-meal presentation of cases to the courts by litigants leads to utter chaos and confusion in dispute adjudication. The blame for such lapses falls squarely on both counsel and the litigants. It ought to be in the interest of all that litigation should come to an end (interest reipublicae ut sit finis litium) hence parties should assist their counsel to facilitate a quick and comprehensive disposal of cases. It is worth stating that a good bar gives rise to a good bench. A laid back, unprepared and non-committed bar will only get what it deserves – poor outcomes to its work.

Even though we do not intend to comment intently on this last minute development, suffice it say that the suit No J4/59/2013 of 15/01/2014 was resolved as a boundary dispute over the Southern side of the plaintiff there-in's family land as this was in harmony with the pleadings. This is clearly captured at page 6 of the decision thus: "From the nature of the complaint and the area of their disagreement, the issue we can identify between the parties is a boundary dispute on the Southern side of the Plaintiff's family land. Accordingly we hold that the formulation of the issue in controversy as a boundary dispute by the Court of Appeal was in harmony with the pleadings on record and the court should not be held back by mere technicalities."

Apart from the Plaintiff/appellant respondent in the J4/59/2013 Nii Tackie Amoah IV who is the same as the co-plaintiff in this appeal, the rest of the parties in that suit are different from the present defendants.

In the overall, save for the findings affirmed, we allow the appeal against the decision of the Court of Appeal. To that extent we affirm the conclusions and decisions of the trial court.

(SGD) J. B. AKAMBA

JUSTICE OF THE SUPREME COURT

(SGD) W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

(SGD) S. O. A. ADINYIRA (MRS)

JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

(SGD) YAW APPAU

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