IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2017

CORAM: YEBOAH, JSC (PRESIDING)
BAFFOE-BONNIE, JSC
AKOTO-BAMFO (MRS), JSC
BENIN, JSC
APPAU, JSC

CIVIL APPEAL
NO: J4/21/2016

26TH JULY, 2017

NENE DOKUTSO TEI KWABLA
(HEAD OF TEI KWABLA FAMILY
SUING FOR HIMSELF AND ON
BEHALF OF TEI KWABLA FAMILY) …. PLAINTIFF/APPELLANT/APPELLANT

VRS

1. LANDS COMMISSION
2. VOLTA (GH.) INVESTMENT CO. LTD. …. 2ND DEFENDANT/RESPONDENT/ RESPONDENT

J U D G M E N T

APPAU, JSC:-

This is a second appeal by the Appellant who was Plaintiff in the trial High Court. He sued the Respondent herein and the Lands Commission as 2nd and 1st Defendants respectively, in respect of lands he described as 'Bundase lands'. The 1st Defendant (Lands Commission) only entered appearance to the writ but did not contest the action. It was only the Respondent (a limited liability company) that contested the action. The Appellant lost the action. He appealed against the judgment of the trial court to the Court of Appeal. He lost there too. He has now come before us on a

second appeal. He will be referred to in this judgment as Appellant whilst the Respondent would maintain the title 'Respondent'.

Appellant's case in the trial High Court

Appellant claimed six (6) reliefs against the Lands Commission and the Respondent jointly and severally. They were as follows: -

1. *A declaration of title to all that piece of land situate and lying at Bundase containing an approximate area of 33,000 acres bounded on the North-East by Shai Hills, on the South-East by Bundase lands, on the South-West by Dawhenya and on the North-West by Prampram lands;*
2. *A declaration that the vesting of the piece or parcel of land known as Bundase lands in the 2nd Defendant situate at Bundase aforesaid and described in the schedule to the 1968 Instrument aforesaid is null and void;*
3. *Recovery of possession;*
4. *Order requesting the 2nd Defendant to refund to Plaintiff all rent, revenue or any valuable consideration that have accrued to the 2nd Defendant as a result of the Administration of the land;*
5. *A declaration that under the Limitation Decree the fact of Plaintiff's adverse possession of the land for more than 30 years extinguishes the title of the State; and*
6. *Perpetual Injunction…*

The appellant's case in an epitome, gleaned from paragraphs 3–9 of his statement of claim that accompanied the writ filed on 13th February 2009, was quite simple and straightforward. He admitted that the disputed land, which he called 'Bundase lands', had been taken over by the State since the year 1968 and therefore vested in the State as at the time he instituted the action. His contention was that his family was the original owner of the land before the acquisition or vesting of same in the Government or State. However, the State abandoned the land for over thirty (30) years and his family had been in adverse possession since that time. By the provisions of the Limitation Act, 1972 [Act 54], the State's interest in the land by virtue of the 1968 Instrument, had been extinguished. It was therefore wrong for the 1st Respondent to vest the land in the 2nd Respondent without his family's consent when the State's interest in same had long been extinguished. The vesting was therefore null and void and must be declared as such. The Respondent denied these claims.

The central issues that emerged from the two cases put across by the parties in their pleadings were:

i. *Whether or not the land vested in the State by the 1968 Instrument part of which was leased to the Respondent in 1998, was called Bundase lands as described by the Appellant in his writ of summons;*
ii. *Whether or not Appellant's family originally owned that land;*
iii. *Whether or not the State abandoned the said land for over thirty (30) years; and*
iv. *Whether or not the Appellant's family had been in adverse possession of the land for thirty (30) years prior to the institution of the action.*

The trial High Court dismissed Appellant's claim for his inability to prove his family's title to the land. The Appellant's appeal to the Court of Appeal was anchored on two major grounds, which were as argumentative as the ones filed before us in this appeal. The thrust of the first ground, which has been repeated before us in this appeal, was that; ***the standard of proof with regard to civil suits, which is one on the preponderance of probabilities, did not apply to the Appellant because no other family or group from Ningo came to court to challenge his family's claim to Bundase lands. The trial court should therefore have accepted Appellant's case that Bundase lands belonged to his family on the strength of the site plan tendered since that testimony stood unchallenged***.

The second ground was that; ***the trial court misdirected itself when it failed to realise that by the coming into force of the 1969 Constitution, the 1968 Instrument had ceased to have any legal effect. The lease of the land to the Respondent by the Lands Commission in November 1998 was therefore wrongful, illegal and null and void, having been made after the coming into force of the 1969 Constitution.***

The Court of Appeal did not find it necessary to delve into the constitutional issue raised by the Appellant in his second ground of appeal as re-called above, having affirmed the decision of the trial High court that the Appellant did not establish on the preponderance of probabilities that the land covered by the 1968 Instrument belonged to his family. The first appellate court therefore dismissed the appeal on that ground only. The Court of Appeal's conclusion, which appears at pages 317-320 of the record (RoA) was as follows:

"In an attempt to prove his family's ownership of the disputed land, the plaintiff relied on Exhibit A. Hear the plaintiff under cross-examination on the issue: -

Q. The land in dispute, how did you come by it?

A. My Lord, it is our father's family land.

Q. Do you have anything to show that this land that you are talking about is really your family land?

A. Yes my Lord. I have a site plan…

In the instant case, the site plan Exhibit A, is the only document that the plaintiff relied on to establish that the subject property belongs to his family. The plaintiff, in his evidence in-chief, denied knowledge that the disputed land was vested in the Government of Ghana. He also denied that the Bank of Ghana had a cattle ranch on the land. These material facts were not only inconsistent but also contradictory to the plaintiff's pleadings. Worse still, the plaintiff and his witnesses led no evidence, be it documentary (in the form of pictures) or otherwise of any settlement on the land as alleged for the consideration of the court.

Suffice it to say, counsel for the plaintiff's address is a clear admission that Exhibit A is self-serving and thus has no probative value. The question is: If Exhibit A (the site plan) is self-serving and has no probative value, how can the same document serve as a recent act of ownership and possession exercised by the plaintiff's family in 2006? I think it is certainly not.

One can appreciate the predicament of counsel for the plaintiff/appellant in the light of the fact that the plaintiff in his evidence in-chief relied on Exhibit A as his root of title to the disputed land, which was of no evidential or probative value. In this appeal, the plaintiff/appellant carried the burden of proving his title to the land. However, he woefully failed to discharge that burden when he relied solely on Exhibit A which has been found to be invalid and of no evidential or probative value…

From the foregoing, it is obvious that the plaintiff was not able to lead any credible evidence about his family's root of title and possession of the disputed land. I would not describe the plaintiff's bare assertion of his family's long possession and occupation of the land as sufficient in law to prove his claim of ownership of the disputed land. See ***Zabrama vrs. Segbedzi [1991] 2 GLR 221 CA.*** *In effect, the plaintiff did not lead sufficient and credible evidence on the subject property to warrant the trial court to decree title of the disputed land on plaintiff's family. Ground one of the appeal fails.*

Having come to this conclusion, it is unnecessary to discuss the other interesting matters raised in Ground 2 of the appeal, which is; whether the Lands Commission had authority to grant the lease to the 2nd defendant. In the result, the judgment of the High Court, Tema dated 13th March 2012, is affirmed and the appeal of the plaintiff is accordingly dismissed."

Appeal to the Supreme Court

Appellant's grounds of appeal in this Court (as amended), were five in all. They are so verbose and argumentative that they infringe rule 6 (4) & (5) of C.I. 16/96. However the gravamen of those five grounds was twofold:

i. *That the standard of proof in civil suits; i.e. proof on the preponderance of probabilities, did not apply in his case since his evidence that Bundase lands belonged to his family (the Tei Kwabla family) stood unchallenged by any other rival family or group from Ningo. The Court of Appeal therefore erred in holding otherwise; and*

ii. *That the 1968 Instrument that vested the disputed land in the Government as trustees for the owners infringed the Administration of Lands Act, 1962 [Act 123] and therefore null and void since the said lands are not stool lands but family lands.*

Being a second appeal, the appellant bears the task of establishing the wrongness of the two concurrent judgments of the trial High Court and the Court of Appeal. It is only when this task has been legally performed by the appellant that this Court could be invited to interfere with the said concurrent findings or judgments. The question is; did the Appellant accomplish this feat?

It appears that at each stage on the appeal ladder, Appellant tried to shift the issue central to his original action, which was that; he had assumed title to the disputed land by long adverse possession after the State had abandoned same. Whilst in the Court of Appeal, the Appellant's contention was that the 1968 Instrument ceased to have any legal effect upon the coming into force of the 1969 Constitution, his argument in his statement of case in support of his appeal before us was that, the central issue that arose in the case was; whether or not the land granted to the Respondent belonged to the Tei Kwabla family of Ningo or the Ningo Stool. He went on to state that since the Ningo Stool had no proprietary interest in Ningo lands, same being family or quarter lands by virtue of the Court of Appeal decision in **AMEODA v PORDIER [1967] GLR 479**, the Stool Lands (Accra Plains-Vesting) Instrument, 1968, which purported to vest in the NLC (i.e. the then Government) in trust for the Ningo Stool part of the Bundase lands belonging to the Tei Kwabla family, was ultra vires the Administration of Lands Act, 1962, [Act 123] and therefore void. Accordingly, the lease granted to the Respondent was null and void.

If what the Appellant canvassed in his statement of case as summed above was indeed the central issue before the trial court, then the Respondent herein and the Lands Commission were not the proper parties to be called upon to answer that question. Ironically, this new issue raised by the Appellant in his amended grounds of appeal filed on 08/12/2015 was not part of his case before the trial court. His case, as disclosed in his pleadings was that the Lands Commission could not have

leased the property to the Respondent because the Government's interest in the property had been extinguished by long adverse possession by the Appellant's family after the Government had abandoned same. However, he could not establish by evidence that the State's interest in the disputed land had been extinguished by operation of law (i.e. Act 54) due to abandonment and adverse possession by the Appellant for a period of thirty (30) years as pleaded. That was why the two lower courts dismissed his claim. His case was not that the land was not a Stool land so the Government could not have vested it in itself as trustees for the owners. If the central issue was in respect of the propriety of the 1968 Instrument as the Appellant is now contending, then the Attorney-General would have been the proper party to be sued for the determination of that issue but not the Lands Commission and the Respondent. This is so because the Lands Commission is a mere caretaker and manager of all public lands (including vested lands) for and on behalf of the State and must not be the one to contest the legality or propriety of the Instrument that acquired same. **Article 88 (5)** of the 1992 Constitution provides: ***"The Attorney-General shall be responsible for the institution and conduct of all civil cases on behalf of the State; and all civil proceedings against the State shall be instituted against the Attorney-General as defendant".***

Instead of the Appellant indicating clearly where the two lower courts went wrong in their concurrent decisions or findings in dismissing his claim, he has raised a completely new issue altogether, which had no nexus whatsoever with his original claim before the trial court as pleaded. It is interesting to note that the Instrument in question dated Friday 26th April 1968 was passed about a year after the decision in Ameoda v Pordier (supra), which appears to be the sword of the Appellant in this legal battle. The schedule to the Instrument named five distinct areas that the Instrument covered. These areas were numbered A, B, C, D and E and the names of the villages or communities involved were clearly stated in the Instrument. The Instrument did not mention Bundase as one of the villages or areas covered by it. The land over which the Respondent is a lessee of the government of Ghana for which it has been sued by the Appellant measures 13,230.703 acres in size and not 33,000 acres as claimed by the Appellant. The lease in question described the land as lying at Afienya but not Bundase.

Again, there is nothing on record to suggest that the Appellant's family disagreed with the description of the various lands vested in the Government by the Instrument in 1968. The basic issue that the trial court should have resolved in the disposal of this matter had to do with the identity of the land over which the Appellant sued the Lands Commission and the Respondent. The question is; was it the land that the Appellant described in his writ of summons as 'Bundase lands', which was vested in the Government under the 1968 Instrument? The Appellant did not lead any evidence to prove that. The question posed by the Appellant in his

submissions in this appeal with regard to the status of Ningo lands as being either Stool lands or family/quarter lands, does not therefore arise at all.

Again, the argument by the Appellant that the standard of proof required in civil suits did not apply to him because his claim stood unchallenged as no other family or group from Ningo came to court to dispute his family's claim to Bundase lands, is untenable. The authorities are firm on the principle that where a plaintiff has claimed a declaration of title, he still had to lead evidence in proof of his title notwithstanding the failure on the part of the defendant to even enter appearance. Such evidence must satisfy the only standard of proof required in civil suits which is; proof on the preponderance of probabilities. There is no exception to that standard – Reference – (1) **IN RE NUNGUA CHIEFTAINCY AFFAIRS; ODAI AYIKU IV v ATTORNEY-GENERAL (BORKETEY LAWEH XIV - APPLICANT) [2010] SCGLR 413 @ 416;** (2) **ADWUBENG v DOMFEH [1996-97] SCGLR 660 @ 662 – holding (3)** and **Sections 11 (4) and 12 of the Evidence Act, 1975 [NRCD 323].**

The appellant did not sue any family or group from Ningo for declaration of title to Bundase lands. The Respondent also has neither laid claim to Bundase lands nor to the land it occupies through any Ningo family or group. The Respondent's case was that it took a lease from the Government of Ghana in respect of a piece of land described as 'SHAI HILLS CATTLE RANCH – AFIENYA', originally owned by the Bank of Ghana. The Appellant did not dispel that fact. So why did the Appellant expect the Respondent to invite any family or group from Ningo to challenge his lame claim to Bundase lands?

It was rather the Appellant who should have proved on the preponderance of probabilities that the lands covered by the Instrument includes what he called 'Bundase lands' as described in his writ of summons and that those lands belonged to his family. He should also have proved that the State did abandon the said land and as a result, he had been in adverse possession long enough to oust the State's interest in same. However, he failed to do that. The Court of Appeal therefore committed no error when it affirmed the trial court's judgment. Having failed to satisfy us that the two lower courts erred in their concurrent findings, we have no reason to interfere in the judgment of the Court of Appeal. The appeal is accordingly dismissed as it has no merits whatsoever.

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

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

V. AKOTO-BAMFO (MRS)
(JUSTICE OF THE SUPREME COURT)

CONCURRING OPINION

BENIN, JSC:-

I have had the priviledge of reading in advance the opinion rendered by my brother Appau, JSC. I am in entire agreement with him on the conclusion and the reasoning therefor. However, before I received the said opinion, I had read the appeal record. I had realised that there was one question which was raised as a triable issue at the High Court, and was a ground of appeal at the Court of Appeal as well as in this court, which I firmly believe should be addressed by this court, especially in view of the fact that the Court of Appeal ignored it. This is far from saying that the decision by the Court of Appeal is unsupportable. No; the appeal could be determined on the facts alone in respect of the plaintiff's title to the disputed land as the Court of Appeal did, that is on the issue of fact which is being affirmed by this court. The point I am talking about is purely a question of law, which has constitutional dimensions. Thus for the sake of developing the law I considered it important to discuss it.

The facts of the case have been set out in the judgment of my brother Appau, JSC so I will not repeat them, except where it becomes necessary for purposes of advancing the arguments in respect of ground 1 of the notice of appeal that I am going to talk about.

The Government of Ghana (the National Liberation Council) acquired a large tract of land by virtue of the Accra Stool Lands (Accra Plains Vesting) Instrument published same on 26th April 1968 in the Land and Concessions Bulletin. This Instrument vested the land in the then Head of State in trust for the owners of the said land.

The land was, prior to being leased to the Respondent, leased to the Bank of Ghana which operated a cattle ranch on it. The Bank of Ghana operated a subsidiary company on the land called the Shai Cattle Ranch Company Limited. The said Bank of Ghana subsidiary was duly liquidated sometime in 1997 and the Volta Investment Company (the Respondent herein) acquired its assets. Under the grant, the Respondent is enjoined to use the land for agricultural and commercial purposes only. The Respondent has since gotten its interest registered under the Land Title Registration Law, 1986 PNDC L 152.

The plaintiff/appellant/appellant, called the Appellant, instituted a writ on behalf of himself and on behalf of the Tei Kwabla family of Ningo jointly and severally against the Lands Commission as the 1st defendant and the respondent herein as the 2nd Defendant in the High Court claiming the reliefs set out in the lead judgment.

APPELLANT'S CASE

The Appellant claimed that the disputed land belongs to his family and same has been so over the years. They submitted that the disputed land was acquired by the Government in the public interest or for a public purpose thus any deviation from that purpose would render the said acquisition null and void. The appellant argued that having regard to the manner by which the 1st defendant disposed of the disputed land, the land had been re-vested in the appellant as owners of the said land. Additionally, appellant claims that the disputed land has ceased to be held under the trusteeship of the President since the coming into force of the 1969 Constitution and returned to the persons in whom it was originally vested as owners. Consequently, the grant of the land to the Respondent without consent by the Appellant rendered the lease to the Respondent invalid.

RESPONDENT'S CASE

The Respondent denied all the appellant's claims and contended that it is in possession of 13,230,703 acres of land granted to it by the Republic of Ghana over which it has a Land Certificate after it had gone through the registration process under the Land Title Registration Law, 1986, PNDCL 152. According to the Respondent, the disputed land had been vested in the State and as such the appellant had no title to the said land. The respondent contended that article 267(1) of the 1992 Constitution did not have the effect of retroactively re-vesting all lands vested in the President, before the 1992 Constitution in the original owning stools. The respondent argued that the claim of the appellant that the lands have become re-vested in the original owners is not the proper view of the law and must not be countenanced by the Court.

The trial Court, based on the evidence before it, held that the Appellant had not adequately discharged the burden of proof of ownership of the land.

Additionally, the trial court held that the land in question was vested in the Head of State and as such, according to the Supreme Court decision in *Kpobi Tettey Tsuru III v Attorney General 2010 SCGLR* and *Omaboe III &Ors v Attorney General & Lands Commission [2005-2006] SCGLR 579* the provisions of the 1992 Constitution did not divest the President of land already vested in him prior to the 1992 Constitution. Consequently, the lease granted to the respondent was valid.

The appellant appealed to the Court of Appeal, on grounds, inter alia, that: "2. *The trial judge misdirected herself in failing to appreciate that by the time the Lands Commission purported to make the grant to the 2nd defendant the land comprised in the grant had ceased to be held under the trusteeship of the President since the coming into force of 1969 Constitution and returned to persons in whom it was originally vested as owners before it became vested in the President"*

The Court of Appeal, on 17th October 2013, dismissed the appellant's appeal against the judgement of the trial High Court and held that the appellant did not lead sufficient and credible evidence on the subject property to warrant the trial court to decree title of the disputed land in the appellant's family. Having come to this conclusion, the Court of Appeal stated that it was unnecessary to discuss the other interesting matters raised in the other grounds of appeal.

The appellant has lodged a further appeal to the Supreme Court based on the following grounds:-

i. Since the 2nd defendant raised an affirmative legal defence that the land granted to it by the Lands Commission was at the time still vested under the system of the presidential trusteeship of stool lands, the Court of Appeal erred in not appreciating that unless the legal issue thereby raised had been resolved, the factual issue of whether that land belongs to the Tei Kwabla family would become a hypothetical one incapable of being properly and objectively determined.
ii. The Court of Appeal misdirected itself in failing to appreciate that in as much as there was only the plaintiff's evidence tending to establish the ownership of the Bundase land by his family that was uncontradicted and unchallenged by evidence of a claim by a rival family or group from Ningo, the standard of proof in civil cases by preponderance of evidence was not applicable to the Plaintiff's evidence.
iii. The Court of Appeal completely misdirected itself on the evidential significance of the site plan which was tendered by the plaintiff to establish his family's ownership of the Bundase land in the absence of an adverse claim being made by the 2nd defendant through any other family or group at Ningo to ownership of the Bundase land.

iv. The judgment on the issue of the plaintiff's family's claim of ownership the Bundase land as its ancestral property is against the weight of evidence.
v. Having regards to the decision of the Court of Appeal in the case of *Amoeda v. Portier (1967) GLR 479* that, under Ningo customary law, the Ningo Stool has no proprietary interest in Ningo lands, the Stool Lands (Accra Plains-Vesting) Instrument 1968, which purported to vest in the NLC in trust for the Ningo Stool part of the Bundase land belonging to the Tei Kwabla family was ultra vires the Administration of Lands Act, 1962 (Act 123), and therefore void; accordingly, the lease granted to Volta (Gh) Investment Co. Ltd is null and void.

OPINION

This opinion relates to only ground (i) of the grounds of appeal, supra, since all the other grounds have been covered in the lead opinion. As regards this issue, the Appellant submits that this was a question that needed to be considered by the Court of Appeal before it could objectively determine whether the evidence the appellant adduced at the trial did establish that the lands belong to the Tei Kwabla family of Ningo. This is because according to the Appellant, if the land was not still vested in the President in trust for the Ningo stool as the owner, then there was no way the court could properly and objectively conclude that the evidence adduced by the appellant at the trial had established that the land belongs to the Tei Kwabla family. With regard to whether the land was still vested in the President, the Appellants submit that the Stool Lands Accra Plains Instrument must be deemed to have lapsed by virtue of Article 267(1) of the 1992 Constitution. Thus if the Court of Appeal had made that holding in law, there is no way it would have declared that the lands did not belong to the appellants. Consequently, the Court of Appeal erred by considering this issue as unnecessary to be discussed and by not determining the question of law before determining the question of fact.

The respondent contends that the vesting of the land in the government is clear and as such that should not be the issue before the court. Rather respondent contends that the fundamental issue that the court needs to address in this appeal is whether the appellant led sufficient and credible evidence of title regarding the land that is vested in the government and for which the respondent is a valid lessee, to warrant the trial court to decree title of the disputed land in his favour.

It is necessary to go back to the trial court where, among others, the following issues were set down for hearing:

(a) Whether by virtue of the 1992 Constitution the disputed land has been vested in the plaintiff.
(b) Whether the disputed land is still being held in trust.

These were clear issues that the parties had agreed upon as relevant to the determination of all matters in controversy. The trial court judge held that the land had not reverted to the original owners, following this court's decisions in Kpobi Tetteh Tsuru v. Attorney-General, supra and Omaboe III v. Attorney-General, supra. That decision by the trial court was the subject of ground 2 of the grounds of appeal, quoted above, which was filed at the Court of Appeal against the decision of the High Court. The Court of Appeal, as earlier mentioned, did not address it at all. The issue has been raised again before us and it is just fair and just that we do not also gloss over it especially given its legal importance.

Before delving into the relevant provisions of the 1992 Constitution and some statutes, it is pertinent to examine the material provisions of the previous Constitutions of 1969 and 1979, in order to find out whether at any point in time the land, the subject-matter of this litigation, ceased to be under the trusteeship of the President of the Republic. This land was acquired in 1968 prior to the coming into force of the 1969 Constitution, so that should be the starting point of any discussion. Section 11(1) of the Transitional Provisions of the 1969 Constitution provided that:

Subject to the provisions of article 162 of this Constitution, all property and all assets which immediately before the coming into force of this Constitution were vested in any authority or person for the purposes of, or in right of, the Government of Ghana or in the Government of Ghana shall, on the coming into force of this Constitution, without further assurance than this section, vest in the Lands Commission or the Government of Ghana under this Constitution as the case may be.

The said article 162 of the 1969 Constitution also provided that:

> ***(1)*** *All public lands in Ghana shall be vested in the President on behalf of and in trust for the people of Ghana.*
>
> ***(2)*** *For the purposes of this article, the expression "public land" includes any land which, immediately before the coming into force of this Constitution was vested in the National Liberation Council in trust for, and on behalf of, the people of Ghana for the Public Service of Ghana, and any other land acquired in the public interest or for the purposes of the Government of Ghana before, on or after that date.*

These two provisions are clear and unambiguous; they preserved all lands vested in the President in trust prior to the coming into force of the 1969 Constitution, including the present one covered by the 1968 Instrument. Notwithstanding the suspension and subsequent abrogation of the 1969 Constitution as a result of the military take-over on 13th January 1972, no law was passed that had the effect of restoring this land to its original owners, it remained vested in the Head of State in trust for the people of Ghana. This state of affairs continued until the 1979

Constitution was promulgated and it also maintained the status quo. Section 13(1) of the 1979 Constitution provided thus:

Subject to the provisions of articles 188 and 189 of this Constitution, all property and all assets which immediately before the coming into force of this Constitution were vested in any authority or person for the purposes of, or in right of, the Government of Ghana or in the Government of Ghana shall, on the coming into force of this Constitution without further assurance than this section, vest in the Lands Commission or the Government of Ghana under this Constitution as the case may be.

This saving provision meant what it said that all lands, including the one in question, that were vested in the Head of State in trust for the people of Ghana continued to be so vested. The 1979 Constitution was also suspended and subsequently abrogated following the military take-over on 31st December 1981. Once again no law was passed transferring title in this land back to the original owners. This state of affairs continued until the coming into force of the 1992 Constitution on 7th January 1993.

Article 267(1) of the 1992 Constitution states that:-

(1) All stool lands in Ghana shall vest in the appropriate stool on behalf of and in trust for the subjects of the stool in accordance with customary law and usage.

In view of this provision, section 7 of the Administration of Lands Act,1962, Act 123 was omitted pursuant to the *Laws of Ghana (Revised Edition) Act, 1998 (Act 562)*. This section allowed the President by Executive Instrument to declare any stool land to be vested in the President in trust. Consequently, after the coming into force of the 1992 Constitution, section 7 was rightly omitted from Act 123 to bring the provisions of the Act in conformity with the 1992 Constitution. Accordingly, all stool lands are vested in the stool in trust for the subjects of the stool since 7th January 1993 by virtue of article 267(1). However, the State can acquire such lands by compulsory acquisition under section 1(1) of the State Lands Act, 1962 (Act 125) and article 20 of the 1992 Constitution, or through leaseholds, grants etc under the Act 123. In effect, any stool land which is declared as vested in the President in trust, after the coming into force of the 1992 Constitution, would be regarded as unconstitutional.

However, this unconstitutionality will not apply to lands which were vested in the President in trust before the coming into force of the 1992 Constitution. Section 32(1) of the Transitional Provisions of the 1992 Constitution still gives the President title to lands which were vested in the President before the coming into

force of the 1992 Constitution. Consequently, such lands would continue to be vested in the President in trust for the people instead of in the stools.

Section 32(1) of the Transitional Provisions of the 1992 Constitution states that:

> *Subject to the provisions of articles 257 and 258 of this Constitution, all properties and assets which immediately before the coming into force of this Constitution were vested in any authority or person for the purposes of, or in right of, the Government of Ghana or in the Government of Ghana, shall, on the coming into force of this Constitution, without further assurance than this section, vest in the President.*

Thus, article 267(1) does not automatically de-vest the President of lands that were vested in him before the coming into force of the 1992 Constitution and automatically re-vest same in the previous owners of those lands.

This position was the same under both the 1969 and the 1979 Constitutions, and it finds support in the cases of *Omaboe III v Attorney General & Lands Commission, supra and Kpobi Tettey Tsuru case, supra.* In the Omaboe case the court unanimously held that the provisions of article 267(1) of the 1992 Constitution do not automatically de-vest the President or the Government of Ghana of all the lands which were once stool lands nor does the said article 267(1) have the effect of retroactively re-vesting all those lands in the original owning stool/s.

In applying this reasoning to the facts of this case, by virtue of section 32(1) of the Transitional Provisions as well as the Supreme Court's decisions cited above, the land in dispute is still vested in the President pursuant to the Stool Lands (Accra Plains Vesting) Instrument made on 16th April 1968. Accordingly, the State has title to the land with beneficial interest and a right of reversion in the original owners. Thus, any lease granted by the State in respect of such lands would be valid. Consequently, the lease granted to the respondent for agricultural and commercial use of the land is valid and as such the Appellant has no title to the disputed land which gives him a cause of action.

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

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JUSTIN AMENUVOR FOR THE 2ND DEFENDANT/RESPONDENT/ RESPONDENT.