IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD 2024

CORAM: **PWAMANG, JSC (PRESIDING)**

KULENDI, JSC

GAEWU, JSC

DARKO ASARE, JSC

ADJEI-FRIMPONG, JSC

CIVIL APPEAL
NO: J4/15/2022

18TH DECEMBER, 2024

NUMO ALFRED QUAYE (SUBSTITUTED BY NUMO KINGSLEY ALEX NEE GBERBEI QUAYE)	**….**	**PLAINTIFF/APPELLANT/ RESPONDENT**
VRS.		
EDUSEI POKU (SUBSTITUTED BY VERONICA EDUSEI POKU)	**….**	**DEFENDANT/RESPONDENT/ APPELLANT**

J U D G M E N T

GAEWU, JSC

INTRODUCTION

This is an appeal against the judgment of the Court of Appeal dated 29th April 2020 (Coram: B. F. Ackah-Yensu, presiding, (JA - as she then was) I. O. Tanko-Amadu (J. A. as he then was) and A. Gaisie, (Mrs), JA. Being dissatisfied with the judgment, the Defendant/Respondent/Appellant (hereinafter referred to as the "Defendant") has brought this appeal to this Court by a Notice of Appeal filed on the 12th of May 2020.

The Plaintiff/Appellant/Respondent (hereinafter referred to as the "Plaintiff") in the capacity of head and lawful representative of the Ayiku Gberbi Family of Larkpleh, Prampram, commenced an action in the High Court, Tema against the Defendant and sought the following reliefs:

A. A declaration of title to all that piece or parcel of land situate, lying and being at Afienya, Mataheko in the Greater Accra Region of the Republic of Ghana and bounded on the south-east by Tema-Ho motor road, measuring 10,717.7 feet more or less, on the south-west by 9,725.1 feet more or less, on the north by a distance of 551.6 feet more or less, on the north-east by a distance of 3,439.4 feet more or less, on the north-west by the lessor's property measuring 3,058..9 feet more or less, on the north-east by the lessor's property measuring 2,107.8 feet more or less and contained an approximate area of 1,112.09 acres or 450.0 hectares more or less.

B. Damages for trespass.

C. An order for the recovery of vacant possession of the portion of the land measuring 5.66 acres trespassed onto by the Defendant.

D. Perpetual injunction to restrain the defendant by himself, agents, workmen, and all claiming through him from interfering with plaintiff's ownership, possession and/or enjoyment of the land.

E. Any other reliefs found due.

PLAINTIFF'S CASE

It is the case of the Plaintiff that their ancestor, Numo Lartey Agbokpanya, after the Katamanso war, acquired the land by breaking the virgin forest and settling there on all that piece or parcel of land described supra. The Plaintiff contends that this large tract of land is covered by a registered and stamped vesting assent in the name of one Numo James Lartey Gberbi, a descendant of their ancestor, Numo Lartey Agbokpanya and at all material times descendants of Numo Lartey Agbokpanya have settled on the said land, exercising rights and acts of ownership on the land without any hindrance from anyone. It is the Plaintiff's case that the Defendant who is a legal practitioner and a farmer, has trespassed on a portion of their family land measuring about 5.66 acres claiming ownership thereof and keeping poultry and premises for workers thereon. The Plaintiff maintain strongly that the Appellant is a trespasser on his ancestral land and the Defendant alleged grantor does not have any title whatsoever to grant to the Defendant and that his family had always asserted its right over the said land since time immemorial.

The Defendant denied the Plaintiff's claim and counterclaimed as follows:

1. A declaration of title to all that piece or parcel of land situate, lying or being at Mataheko bounded on the north by Tetteh Osabutey's land measuring 360 feet more or less, on the south by the lessor's land measuring 360 feet more or less, on the east by Lawei Aggmedi's land measuring 500 feet more or less, on the west by the main road from Tema Afienya measuring 500 feet more or less and covering an approximate area of 5.8 acres.

2. Recovery of possession

3. Damages for trespass

4. Perpetual injunction restraining the Plaintiff, servants, workmen, agents, and anybody claiming through the Plaintiff from having anything to do with the said property.

Defendant claims to have acquired the land from Nene Larbi Agbo III, Paramount Chief of the Prampram Traditional Area, and lawful occupant of the Prampram Stool with the consent and concurrence of the principal members of the Prampram Stool. It is the case of the defendant that the land he acquired and that the Prampram Traditional Council acting by its Paramount Chief and the principal members of the Prampram Stool, executed a lease in respect of the transaction on the 21st day of September 1987 which lease of conveyance had been registered at the Lands Commission, Koforidua, as KD36/2142.

At the direction stage, the following issues were settled and adopted by the trial court for determination:

1. Whether or not the land in dispute is the property of Ayiku Gberbi Family of Larkple, Prampram
2. Whether or not the land in dispute is the property of the Prampram Traditional Council
3. Whether or not the Defendant has trespassed onto the Plaintiff's land.
4. Whether or not the Plaintiff is entitled to his claim
5. Whether or not the Defendant is entitled to his counterclaim
6. Any other issues arising out of the pleadings but not specifically set out

At the end of the trial, the trial court made several significant finding or fact and conclusions from the evidence and concluded its judgment as follows:

1. Plaintiff's action is dismissed in limine
2. Declaration that the Defendant is the owner of all that 5.80 acre land at Mataheko near Afienya or more particularly described at paragraph 9 of the Statement of Defence (bounded on the north by Tetteh Osabutey's land measuring 360 feet more or less, on the south by the lessor's land measuring 360 feet more or less, on the east by Lawei Aggmedi's land measuring 500 feet more or less, on the west by the main road from Tema Afienya measuring 500 feet more or less and covering an approximate area of 5.8 acres.
3. The Plaintiff, servants, workmen, agents, or anybody claiming through the Plaintiff are restrained from having anything to do with the property.
4. Costs of GHc5,000.00 in favour of the defendant.

The Plaintiff being dissatisfied with the decision of the trial court dated 20th October 2016, appealed against the decision to the Court of Appeal on the following grounds:

A. The judgment is against the weight of evidence
B. The learned trial judge erred and misdirected himself when he made a finding that the Plaintiff did not have a testimony standing in his name simply because of the difference in his name on the Writ of Summons and other court processes and the name of the Power of Attorney donated to his lawful attorney when in fact and in truth, the so-called difference is inconsequential.
C. The learned trial judge, with respect, grossly misdirected himself when he found that the Ayiku-Wem Family of Larkple, Prampram and Ayiku Gberbi

Family of Larkple, Prampram, are two different families when in fact, there was no evidence on record to that effect before him.

D. The learned trial judge erred in holding that the land in dispute does not belong to the Ayiku Gberbi Family of Larkple, Prampram, mainly because the vesting assent and the Power of Attorney on which the Plaintiff relied failed.

E. The learned trial judge misdirected himself on the issue of whether the land in dispute the property of the Prampram Traditional Council by holding that "whereas the Prampram Traditional Council is now (emphasis mine), not the owner of Prampram lands including the disputed land, its purchasers before the court's declaration and judgment on the other hand, do have title to the lands they acquired.

F. The learned trial judge erred in law by invoking the defence of limitation suo moto, for the Defendant, though same has not been specifically pleaded by the Defendant and this is seriously at variance with the cardinal principles governing the defence of limitation and therefore bad in law.

The Court of Appeal, after having a second look at the facts and the evidence adduced by both parties, unanimously set aside the whole judgment of the trial court and entered judgment in favour of Plaintiff and his family on all the reliefs endorsed on the Writ of Summons except relief (2) for damages which was dismissed.

It is against this judgment of the Court of Appeal that the Defendant has appealed to this court seeking to reverse the decision of the Court of Appeal dated 29th April 2020 and to restore the judgment of the trial court which was in his favour. The grounds on which the Defendant seek to rely on are as follows:

a. The judgment is against the weight of evidence

b. The learned judges of the Court of Appeal erred in law that the plea of limitation could not avail the Defendant in the absence of pleading same in his Statement of Defence.

PARTICULARS OF ERROR

i. The plea of limitation cannot avail the defendant because he failed to expressly plead same in his Statement of Defence

ii. Further grounds will be filed on receipt of the record.

CONSIDERATION OF GROUNDS OF APPEAL

The Judgment is Against the Weight of Evidence

It is now settled law that an appellant who attacks a judgment of a lower court on appeal on the general ground that the judgment is against the weight of evidence, constitutes it to be by way of re-hearing. The words "*by way of re-hearing*" do not mean that the appellate court hears all the witnesses afresh. Instead, re-hearing is "on the documents" and other piece of evidence given the appellate court to draw any inferences of fact and law and to give any judgment or make any order which it thinks ought to have been made when the matter was heard in the lower courts. The appellate court has wide powers in this regard, and is not even limited to consideration of matters raised in the Notice of Appeal. **See Nortey (II) v. African Institute of Journalism and Communication & Ors. (II) [2013-2014] 1 SCGLR 703 @ 711** where Akamba, JSC (as he then was), opined that:

"*This court stated in numerous cases such as* ***Tuakwa v. Bosom [2001-2002] SCGLR 61 @ 65; Kwakupome v. Sanyo Electric Trading Co. Ltd [2009] SCGLR 213 @ 229; Oppong v. Anafi [2011] 2 SCGLR 556,*** *that an appeal is by way of re-hearing, particularly where the appellant alleges as in the omnibus ground that the decision of the trial court is against the weight of evidence. In such a case, it is incumbent on the appellate court such as this, in a civil case, to analyse the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial before arriving at its decision so as to satisfy itself that, on a preponderance of probabilities, that the conclusions of the trial judge are reasonably or amply supported by the evidence".*

In Owusu-Domena v. Amoah [2015-2016] 1 SCGLR 790 @ 792, the Supreme Court delivered itself, thus:

"Where the appeal was based on the omnibus ground that the judgment was against the weight of evidence, both factual and legal arguments could be made where the legal arguments would help advance or facilitate a determination of the factual matters".

In the statement of case filed on behalf of the defendant, Counsel submits that after a careful perusal of all the evidence adduced at the trial, he disagrees with the findings and conclusions in favour of the Plaintiff by the Court of Appeal and that after the trial at the High Court, the Respondent failed to discharge both the evidential and persuasive burden placed on him as plaintiff in the matter. Learned Counsel then refers to the dictum of Adinyira, JSC (as she then was), in the oft quoted case of **Don Ackah v. Pergah Transport Ltd [2010] SCGLR 728 that:**

"it is a basic principle of evidence that a party who bears the burden of proof is to produce the required evidence of facts in issue that has the quality of credibility, short of which his

claim may fail, it is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence, a reasonable mind could conclude that the existence of a fact is more probably reasonable than its non-existence of a fact is more probably reasonable than its non-existence. This is the requirement of the law".

Relying on the above piece of Adinyira, JSC, Counsel proceeds to raise as the first issue the capacity of the Plaintiff, Numo Alfred Quaye. Counsel submits that, the Plaintiff in his pleadings and testimony to the trial court stated that he was the lawful head and representative of the Ayiku-Gberbie Family of Larkple, Prampram and that he brought the suit for himself and on behalf of the said family. And that the Defendant denied this assertion at paragraph 1 of the Statement of Defence filed. Learned Counsel for Defendant then refers the court to the case of **Republic v. High Court, Accra., Ex-parte: Aryeetey (Ankrah - Interested Party) [2003-2004] SCGLR 39,** and submits that having sufficiently set up a denial in the Statement of Defence of the Defendant, the capacity of the Plaintiff to bring the action had obviously been put in issue and for that matter, it was incumbent on the Plaintiff to clear any doubts in the mind of the trial court on who he actually was and whether he had the requisite authority to commence the action in the first place.

On the other hand, Counsel for the Plaintiff submits that the Defendant at the trial, never raised any issue in respect of the Plaintiff's capacity anywhere in the pleadings and that the issue only came up in the testimony of DW 1 who claimed he had no knowledge of the Plaintiff as the head of the Ayiku-Gbermi Family and that the issue of capacity was not one of the issues set out in the Application for Directions for determination at the trial High Court nor even the court suo moto.

Indeed, the Plaintiff pleaded at paragraph 1 of the Statement of Claim filed on 3rd June 2013 (see page 2 of the ROA) as follows:

"1. *The Plaintiff is the Head and Lawful Representative of the Ayiku-Gberbi Family of Larkple, Prampram and brings action for himself and on behalf of the said family".*

The Defendant in his Statement of Defence and Counterclaim filed on 5th July 2013 pleaded at paragraph 1 as follows:

"1. Defendant denies paragraph 1 of the Statement of Claim".

As noted earlier in this judgment, the issue of the capacity of the Plaintiff was not one of the issues set out in the Application for Directions filed on 20th September 2013 (See pages 10 and 11 of the ROA). The issues that were filed for determination were:

1. *Whether or not the land in dispute is the property of Ayiku Gberbi Family of Larkple, Prampram*
2. *Whether or not the land in dispute is the property of the Prampram Traditional Council*
3. *Whether or not the Defendant has trespassed onto the Plaintiff's land.*
4. *Whether or not the Plaintiff is entitled to his claim.*
5. *Whether or not the Defendant is entitled to his counterclaim.*
6. *Any other issues arising out of the pleadings but not specifically set out.*

Indeed, the trial court on the 10th of December 2013, ordered as follows:

"Let the issues set down (sic) in the Application for Directions be the issues set for determination by the Court …".

Clearly, from the issues set out in the Application for Directions, capacity was not one of the issues raised and so was not set down for determination at the trial. If it were raised, the trial court ought to have determined it as preliminary issue before any further proceedings on the merits of the case would have been determined. It is thus settled that the only occasion that the Plaintiff would be relieved of the duty of establishing his/her capacity was where his/her capacity had not been put into issue - See **Amisah-Abadoo v. Abadoo [1974] GLR 110.**

That is not to say that the issue of capacity which is very fundamental and goes to the root of a suit cannot be raised at any time in the proceedings. The issue of capacity can be raised at any time in the proceedings, even after judgment or on appeal. **See Nii Kpobi Tetteh Tsuru III (substituted by Nii Obodai Adai IV) & 2 ors v. Agric Cattle & 4 ors. [2019-2020] 2 SCGLR 109.**

The Defendant has raised issue with Exhibit A, the Power of Attorney donated by the Plaintiff as the principal to one Joseph Moses Nee Tetteh as the Attorney to act, conduct and manage his affairs particularly to represent him in the case. Counsel for the Plaintiff submits that even though the Plaintiff endorsed his name on the Writ as "Numo Alfred Quaye", the Exhibit A has the donor of the Power of Attorney as "Alfred Afedi Quaye" and that the attorney at the trial, never led any evidence to suggest that the Plaintiff was also known in another capacity as the "Alfred Afedi Quaye". Counsel argues further that the Plaintiff had created further doubt in the mind of the court when both the writ and his pleadings he sued as the Head of the Ayiku Gberbi Family of Larkple, Prampram, but on Exhibit A, the donor of the power of attorney described himself as the Head of the Ayiku Wem Family of Larkple, Prampram. According to Counsel for the Defendant, the doubt as to the Plaintiff's status was further highlighted by DW 1 who testified that he was the son-in-law of the Plaintiff and that according to records available to him, "he

purports to be known as the Head of the Ayiku Wem not Ayiku Gberbi Wem as suggested".

We note from the record of appeal that the learned trial judge who was confronted with the apparent discrepancy with respect to the names on the Power of Attorney, Exhibit A, and the names of the Plaintiff endorsed on the Writ initiating the action that, in determining the issue, actually relied on the evidence of DW 1 (Nene Mgnai Abbey I, otherwise known as David Justice Abbey), who claimed to be the stool father to the Paramount Chief of Prampram, Nene Labi Agbo III. This same DW 1 was also one of the signatories to the document, Exhibit 2, the Deed of Lease granting the land in dispute to the Defendant. DW 1 was therefore an interested party and an adversary to the interest of the Plaintiff. The learned trial judge held as follows:

> "*My doubt about the Plaintiff's Power of Attorney on the other hand, is further heightened when I compare the title of the Plaintiff on the Writ and the claim on one side to the title of the said Alfred Afedi Quaye in the Power of Attorney on the other hand. In the case of the former, Numo Alfred Quaye is described as the Head of Family and the lawful representative of the Ayiku Gberbi Family of LArkple in Prampram. In the Power of Attorney however, the Afred Afedi Quaye is allegedly the Head of Ayiku Wem Family of Larkple, Prampram. Again, there is nothing on record to indicate that Ayiku Wem Family is the same as the Ayiku Gberbi Family. The implication is that the two families are different. If so, which of the two families will be entitled to the land, should the court proceed to grant the reliefs sought by the plaintiff? My careful consideration of the documents in the Exhibits, particularly, the Vesting Assent shows that the Ayiku Gberbi Family is within the broader Ayiku Wem Family. That being the case, it stands to reason that it is not the entire Ayiku Wem Family which is litigating in court but only the Ayiku Gberbi Family. Why then would authority be given to the attorney by the Ayiku Gberbi*

Family who are not litigating in this matter instead of the Ayiku Gberbi Family? Plaintiff is not being consistent with the particular family he is suing for. ***Although, I am not from the area and may not be conversant with the traditional structures of the parties, I take judicial notice of the fact that DW 1 who is also from Prampram and a stool elder finds the dual position of the Plaintiff as odd.*** *At page 34 of the proceedings, when the Defendant's counsel was leading him in evidence, this is what transpired:*

Deft/Cl: The Plaintiff is saying he is the head of Gberbi Ayiku of Prampram, what do you say to that?

DW 1: According to record I have; he purports to be known as the head of Ayiku Wem not Ayiku Gberbi Wem as suggested?

One would have thought that Plaintiff's counsel would have taken a clue and made efforts to have the two statuses of the plaintiff clarified. But that was not the case.

The Court of Appeal as we noted and rightly so, did not find proper, the learned trial judge's application of the law of evidence on judicial notice in giving weight to the origin of DW 1 as an indigene of Prampram and a stool elder and that per se should place his testimony to the level of matters of which the trial court could take judicial notice of.

Judicial notice is an acceptance by a judicial tribunal of the truth of a fact without proof, on ground that it is within the tribunal's own knowledge: "this is the meaning to the term in an introduction to the evidence by G.D Nokes (4th edition) at page 54.

In our courts, there is a statutory provision on judicial notice. Section 9 of the Evidence Act, 1975 (NRCD 323) provides and regulates the law on judicial notice as follows:

"(1) This Section governs the taking of judicial notice of facts in an issue or facts which are relevant to the facts in issue.

(2) Judicial notice can be taken only of facts which are either

a) so generally known either:

a) so generally known with the territorial jurisdiction of the court, or

b) so capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned that the fact is not subject to reasonable dispute.

(3) Judicial notice may be taken whether requested or not.

(4) Judicial notice may be taken if requested by a party and the requesting party:

a) gives each adverse party fair notice of the request, through the pleadings or otherwise; and

b) supplies the necessary sources and information to the court.

5) A party shall be entitled upon timely request, to an opportunity to present to the court information relevant to the propriety of taking judicial notice and the meaning of the fact to be notices.

6) Judicial notice may be taken at any stage of the action.

7) In an action tried by jury, the court may, and upon request, instruct the jury to accept as conclusion any fact which have been judicially notice".

S. A. Brobbey, former Justice of the Supreme Court, Ghana, former Chief Justice of the Republic of the Gambia, and a former Senior Lecturer, Ghana School of Law, in his book "Essentials of the Ghana Law of Evidence", identified and stated at page 106, four basic

conditions under which judicial notice may be taken as follows: the matter of which judicial notice may be taken should be:

i. *Relevant to the facts in issues*

ii. *So generally known within the territorial jurisdiction of the court.*

iii *Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned; and*

iv. *Facts which are not subject to reasonable challenge, question, or contest.*

In **Nyarko v. The Republic, [1974] 1 GLR 206,** the Court added another condition to the effect that where a fact was so notorious that judicial notice could be taken of it, evidence to the contrary could be treated as perjury or palpably false.

In **Gregory v. Tandoh & Anor. [2010] SCGLR 971,** this court, stated the circumstances under which an appellate court, may depart from findings of fact by a trial court. The court stated at p. 975 of the report as follows:

"Where from the record of appeal:

i. *The findings of fact by the trial court were clearly not supported by the evidence on record*
ii. *Where the findings of fact by the trial court could be seen from the record of appeal to be either perverse or inconsistent with the totality of evidence led by the witnesses and surrounding circumstances of the entire evidence on record.*
iii. *Where the findings of fact are consistently inconsistent with important documentary evidence on record.*
iv. *Where the trial court wrongly applied a principle of law.*

Clearly, from our reading and analysis of the record of appeal, the learned trial judge wrongly applied the law of evidence in respect of matters of which judicial notice could be taken by a court of competent jurisdiction.

This is what the Court of Appeal said in their unanimous judgment about the application of the law by the trial High Court Judge:

> *"By the statutory provisions on matters for which judicial notice could be taken of by a court of competent jurisdiction and the conditions under which it will apply, the said testimony by DW 1 which the Trial Court purported to take judicial notice of, was not only a prejudicial statement from an adversary which did not qualify to be treated with such probative value as to testify to it conclusiveness. The Trial Court having taken judicial notice of the testimony of an adversary under the circumstance, was clearly in error of law for misapplying the statutory provision insulating the testimony of an adversary to a status of certainty conclusiveness without more. The error aforesaid is unlawful and prejudicial and having occasioned a substantial miscarriage of justice to the Appellant, we reject the said finding and the conclusions drawn from them in depriving the Appellant the requisite locus on which he stood to commence the action. We find on the contrary that Exhibit A having satisfied all the statutory requirement as to form and contents, contains no such material inconsistency with the capacity in which the original Plaintiff's writ was endorsed as being the head and lawful representative of the Ayiku Gberbi Family of Prampram and we so hold".*

We are in full agreement with the Court of Appeal on the above quoted statement and the conclusion they came to and we affirm same. Consequently, we dismiss ground A of the Grounds of Appeal of the Defendant.

The other ground of appeal, that is *Ground B*, is that the learned judges of the Court of Appeal erred in law in holding that the plea of limitation could not avail the Defendant in the absence of pleading same in his statement of defence.

This ground of appeal does not pose any difficulty in being disposed of.

To begin with, Order 11 of the High Court (Civil Procedure) Rules 2004, (C.I. 47) on Pleadings provides at Rule 8 on matters to be specifically pleaded in subrule (1) as follows:

> *"A party shall in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, **any limitation provision**, fraud or any fact showing any illegality".*

The Limitation Act, 1972 (NRCD 54) is a statute of limitation which procedurally bars remedy by action or a set off.

In **Dolphine v. Speedline Stevedoring Co. Ltd [1997-1998] 1 GLR 786,** the Supreme Court held on to a similar provision to the old Order 19 rule 16 of LN 140A to Order 11 rule 8(1) of CI 47 as follows:

> *"The Limitation Decree, 1972 (NRCD 54) was essentially a special plea which was provided by Order 19, r 16 of the High Court (Civil Procedure) Rules, 1954 (LN 140A) had to be pleaded. Thus, if it was not pleaded, it would not be adverted to in submissions to the court. Furthermore, the court could not on its own motion take notice that the action was out of time".*

In **Bassil v. Kabbara [1966] GLR 102**, it was held that:

> *"a person entitled to rely on a statute of limitation may waive it or not just as he pleases. But if he intends to rely on it, he is obliged by the mandatory provisions of Order 19, r. 16 either to plead it specifically or to plead such facts as would evince an intention to rely on it".*

Therefore, where a person entitled to the benefit of a limitation statute waives its benefits by not pleading it in his defence, the court will enforce the claim (**Bassil v. Kabbara supra).**

S. Kwame Tetteh in his *Civil Procedure and Practical Approach page 277* noted:

> *"That the court will take no cognisance of the statute because the party to whose benefit it was passed had declined to invoke it.* ***See Dolphine v. Speedline Stevedoring Co. Ltd supra.*** *The rational is simply that the plea is not raised, and the adversary is not required to answer it; the issue of limitation is thus closed".*

Clearly, from Rule 8(1) of Order 11 of CI 47, it is mandatory that any pleading subsequent to a statement of claim must specifically plead among others any limitation provision.

In his submission, Counsel for the Defendant makes the following admission:

"I concede that the previous counsel for the appellant for some inexplicable reasons, did not plead the Limitation Act, 1972 (NRCD 54) in his statement of defence as required by the rules of procedure during the trial".

Counsel for the Defendant is however of the view that the issue which forms the basis of this ground of appeal is that considering the background and circumstances of the case, the trial judge did not err when he applied the provisions of the Limitation Act in determining that the plaintiff's claim against the appellant in respect of the land the Defendant acquired in 1987 was statute barred.

Counsel referred to the cases of **Benjamin Johnson v. Fati Williams [2012] 43 GMJ 154; GIHOC v. Hannah Assi [2005-2006] SCGLR 458**; and **Klu v. Konadu [2009] SCGLR 741**. The Honourable Court of Appeal Judges in their judgment however distinguished these cases from the instant one. They stated as follows:

"While we dare not be critical nor refuse to apply a decision of the Supreme Court on questions of law by virtue of Article 129(3) of the 1992 Constitution, it is also true that each case ought to be treated based on its peculiar facts. The Hannah Assi case and the Klu v. Konadu cases have peculiar facts of their own. Indeed, in the Klu case, the respondent like the instant respondent, refused several warnings from the appellant to regularise his interest with the appellant. The plea of limitation is a special defence in law available to a defendant but is not invoked unless it is specifically pleaded and sometimes particularized. Since it does not operate automatically as a defence unless pleaded, it is erroneous for any court to raise it suo moto. In the English of ***Leceister Fruit Market Ltd v. Grundy [1990] 1 AllER 442,*** *the duty of the Defendant who seeks to rely on limitation as a defence was stated thus: 'The defendant has a duty to prove that the cause of action is unarguably time*

barred'. In the context of Order 11 Rule 8, where limitation statute is not pleaded, it cannot be presumed nor relied upon. In the result, Ground V on the issue of whether or not the trial court was in error in unilaterally invoking Limitation Statute in favour of the respondent is resolved in favour of the appellant. The said ground is hereby upheld.

We entirely agree with the above analysis by the Court of Appeal.

In the circumstances, we find no merit in ground B of the appeal, same is also dismissed.

From all the foregoing, the appeal fails, and it is hereby accordingly dismissed. The judgment of the Court of Appeal dated 29th April 2020 is hereby affirmed.

(SGD.) **E. Y. GAEWU**
JUSTICE OF THE SUPREME COURT

(SGD.) **G. PWAMANG**
JUSTICE OF THE SUPREME COURT

(SGD.) **E. YONNY KULENDI**
JUSTICE OF THE SUPREME COURT

CONCURRING OPINION

ADJEI-FRIMPONG, JSC:

My Lords, I agree that the present appeal be dismissed. I desire only to add a few observations on the limitation argument.

Order 11 rule 8 of the High Court (Civil Procedure) Rules, 2004 (C.I) provides as follows:

"8. Matters to be specifically pleaded.

(1) A party shall, in any pleading subsequent to a statement of claim, plead specifically any matter, for example, performance, release, any limitation provision, fraud or any fact showing illegality

(a) which the party alleges makes any claim or defence of the opposite party not maintainable; or

(b) Which, if not specifically pleaded, might take the opposite party by surprise; or

(c) Which raises issues of fact not arising out of the preceding pleading.

(2) *Without prejudice to subrule (1), a defendant of an action for possession of immovable property shall plead specifically every ground of defence on which the defendant relies, and a plea that the defendant is in possession of the immovable property in person or by a tenant shall not be sufficient."*

The provision is a re-enactment of the old Order 19 r 16 of the Supreme [High] Court Civil Procedure Rules, 1954 LN 140A which provided:

"16. The defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either or voidable in point of law and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise

issues of fact not arising out of the preceding pleadings, as for instance, fraud, Statute of Limitations, release, payment, performance, facts showing illegality either by statute or common law, or Statues of Fraud."

It remains the law that a party who desires to rely on the plea of limitation must specifically plead it or plead facts which would evince an intention to rely on it. See BASSIL VRS KABBARA [1966] GLR 102.

On this issue of limitation, Counsel for the Defendant/Appellant/Appellant (Defendant) makes a two-prong argument to urge upon us to reverse the decision of the learned Justices of the Court below.

The first is an invitation to this Court to do substantial justice by not dwelling on the failure on the part of the Defendant to specifically plead limitation but take a more liberal and flexible approach of looking at the limitation course taken by the trial judge. In this line of argument, Counsel for the Defendant refers to such decisions as SAMASINGHE VRS SBAITI [1977]2 GLR 442 CA; ATTORNEY-GENERAL VRS SWEATER AND SOCKS FACTORY LTD [2013-1014] 2 GLR 946 and AMUZU VRS OKLIKA [1998-99] SCGLR 89. The SWEATER AND SOCKS FACTORY case is cited to show a situation where failure to specifically plead estoppel per rem judicatam was not treated as fatal to the case of the party in whose favour it was raised. AMUZU VRS OKLIKA was also cited to show why failure to specifically plead fraud was not taken as fatal to the case of the party where there was clear evidence of fraud. Counsel wants the Court to extend the same flexibility to the limitation situation and hence submits:

"My Lords, it is respectfully submitted for and on behalf of the Appellant that the current thinking by the Honourable Court should prevail in this instant matter in respect of an application of the defence of limitation on time."

The Defendant's second point which is closely connected to the first is to argue that there was ample evidence that the Defendant had been in an undisturbed possession of the land since 1987 and therefore the learned trial judge was right in relying on one of the exceptions in the case of OPANIN YAW BOAKYE VRS OPANING KWAME MARFO [2011]35 GMJ 103 which would permit him (the judge) to raise the limitation *suo motu* because it arose *"from the effect of pleadings".*

I shall proceed to demonstrate why both arguments do not avail the Defendant. For two functional reasons I am of the view that failure to specifically plead limitation or plead facts which evince an intention to rely on it cannot be treated the same way as failure to plead estoppel or fraud as the Defendant wants us to proceed.

The first reason is the *waiver effect* of failure to plead limitation. Limitation is procedural. It does not create any legal right in the Defendant. It rather imposes a time limit on the Plaintiff. So, if a Defendant wants to rely on it, he must specifically plead it or plead matters which evince an intention to rely on it. If not, it must be deemed waived. Once it is so waived, it does not, in my well-considered opinion, rest with a Court to raise the point *suo motu*. Doing so, I strongly suppose, may amount to the Court substituting a case *proprio motu* for the party which is not permissible by the settled practice and principles of our courts. See IDDRISU VRS GRUMAH [2013]44 MLRG 60; KWAKU VRS SERWAA & ORS [1993-94]1 GLR 429; ALLOTTEY & ORS VRS QUARCOO [1981] GLR 208; DAM VRS ADDO [1962]2 GLR 200.

My second reason is that the plea of limitation engenders a reply from the Plaintiff who then assumes the burden of proving that the action was commenced within time. Such matters as disability, acknowledgment, fraud, mistake etc. may be pleaded in reply to justify the commencement of the action. When any such matter is pleaded in reply, it becomes a matter of evidence for the court to make a determination. Raising the defence *suo motu* especially at the end of the trial as happened in this case, could deny a plaintiff such right to plead any of those matters in reply.

Writing on the burden which a Plaintiff assumes when a plea of limitation is pleaded, the learned author's of Halsbury's Laws of England note:

> *"Pleading the Statute--A defence of limitation must be specifically pleaded. Where the defendant has pleaded that the action is time-barred under the statute, the burden of proving that the cause of action arose within the statutory period lies on the Plaintiff. A denial that the action is time-barred only puts in issue the time at which the cause of action accrued. Therefore, if the Plaintiff relies on the existence of any disability as taking the case out of the statute, he must reply alleging such disability specially, and the reply should aver the existence of the disability at the time of the accrual of the cause of action…"* See Vol. 28, 4th edn., para 851, p. 440.

It is important to note that disability, acknowledgement, fraud and mistake are all specifically provided for by the Limitation Act. See Sections 16—24 of the Act. These are matters a Plaintiff may want to plead if the defence of limitation was pleaded by a Defendant and it seems to me the list may not be exhaustive.

I come to the second limb of the Defendant's argument. It is true that the Defendant though did not specifically plead limitation, nonetheless, pleaded facts which evinced an

intention to rely on the plea. It was on this footing that the learned trial judge raised the defence of limitation *suo motu*.

The judge observed that the Defendant had pleaded that he had been in undisturbed possession of the land from 1987. Thus, the suit having been filed in 2013, the limitation operated against the Plaintiff. This is what the trial judge said:

> *"…The law generally is that limitation defence has to be pleaded before it can be relied upon…By not pleading it, I expected counsel for the plaintiff to have reacted to the submission of limitation by counsel for the defendant when he managed to sneak it in his written address but Mr C.K. Coka was mute on it. Be that as it may, the evidence of the defendant's possession from 1987 is so notorious a fact that it cannot be glossed over or wished away. It was the case of the plaintiff that when he discovered that the defendant was occupying the land from 1987, he invited him for a meeting with the family, but he failed to honour the invitation. What prevented the plaintiff from taking legal steps to recover the land all this while? There is no iota of doubt in my mind that the defendant, by declining the plaintiff's family's invitation, was demonstrating conducts of adverse possession."*

The above observation by the learned trial judge based on which he *suo motu* raised the plea of limitation in favour of the Defendant is not a fair and balanced reflection of the state of the pleadings which was the proper starting point to consider the issue of limitation. The plaintiff had pleaded in paragraph 7, 8 and 9 of the statement of claim as follows:

> *"7. The plaintiff says that the defendant has trespassed onto a portion of the said land measuring about 5.66 acres more or less claiming ownership thereof and keeping poultry thereon.*

8. The Plaintiff says that the acts of the defendant constitute an actionable trespass and that the defendant intends to, unless retrained by this Honourable Court to continue with the said acts of trespass on a portion measuring about 5.66 acres of plaintiff's family land.
9. The plaintiff avers that the family had notified the defendant herein and others per a letter through their solicitors as far back as the year 2004 about their acts of trespass and invited them to come and regularize their occupation of the land with the Gberbie Family but to no avail."

Pleading later in reply, the Plaintiff averred:

"2. In reply to paragraph 7 of the statement defence the plaintiff reiterates all the averments contained in paragraphs 3, 4, 5 and 6 of the statement of claim and maintains rather strongly that the Defendant is a trespasser on plaintiff's ancestral land and that plaintiff's family has always asserted its right over the said land since time immemorial."

Now, in the statement of defence, the Defendant denied paragraphs 7 and 8 of the statement of claim but strangely did not deny paragraph 9 of the statement of claim which cited the event of 2004. The Defendant is deemed to have admitted the averment in paragraph 9 which, read together with paragraph 2 of the reply, makes the year 2004 significant for purposes of determining when adverse possession started. Let me quickly signal that between 2004 and 2013 when the suit was commenced is nine years obviously less than the twelve-year time bar.

The Defendant however pleaded the following:

"5. Defendant in further answer to paragraph 4 of the statement of claim says that defendant has been in possession and physical occupation of the land in his possession

measuring 5.8 acres more or less since 1987 and has constructed dwelling places and other structures on his land where the plaintiff operates his business.

7. Defendant denies paragraph 6 of the statement of claim. In answer, defendant says he has been in physical occupation and possession of this land measuring 5.8 acres since 1987 without any let or hindrance."

From the state of the pleadings the time when adverse possession and for that matter, when time began to run was put in issue. Whilst it is true that the defendant pleaded facts that showed that he intended to rely on the limitation, the Plaintiff also pleaded matters which called for adduction of evidence to determine when time actually started running given that the Defendant did not deny paragraph 9 of the statement of claim which together with paragraph 2 of the reply not only raised challenges to the Defendant's so-called undisturbed possession (adverse possession) but also that time could have started running from 2004 or some other time than the 1987 which the trial judge presumptively fixed. I believe there must be a clear distinction between when the Defendant went onto the land and when time started running against the Plaintiff for purposes of limitation.

By law, time begins to run when the right of action accrues. This need not coincide with the time the person entered upon the land. Besides, an adverse possession which gives rise to a cause of action can be disrupted before the action is barred and unless the land is taken in adverse possession again, time will not run. This is what Section 10(3) says when it provides:

"3. Where a right of action to recover land has accrued and before the right of action is barred, the land ceases to be in adverse possession, the right of action does not accrue until the land is again taken into adverse possession."

In this case on the state of the pleadings, particularly the averment that the Plaintiff's family has always asserted its right over the said land since time immemorial coupled with the undenied averment of the event of 2004, there was cause to make the determination as to when time began to run by affording the Plaintiff a hearing to meet the defence of limitation which the learned trial judge was raising *suo motu*.

It is worth-stating that, in proceeding to raise limitation *suo motu,* a court first has to look at the pleadings to determine whether limitation has been specifically pleaded or facts have been pleaded which evince an intention to rely on it. At the same time, the Court is also required to look at the pleadings of the Plaintiff to determine whether there are not facts that put in issue the reckoning of time so that the Plaintiff who assumes the burden of showing that he filed the suit within time is afforded a hearing on the issue. Judges, especially those of the trial courts are to consider this as a useful inquiry in order not to endanger the fortunes of the cases the parties have made. See again BASSIL VRS KABBARA (supra).

In this case, the state of the pleadings called for a hearing of the Plaintiff on the question of when adverse possession actually started and when time started running against the Plaintiff. The learned trial judge himself appears to have acknowledged this position when in the last sentence of his statement I quoted supra, he said; "…*There is no iota of doubt in my mind that the defendant, by declining the plaintiff's family's invitation, was demonstrating conducts of adverse possession."* By his own showing, the adverse possession did not start in 1987. He could therefore not be right on his conclusion that the suit was time-barred.

In any event, based on what I have said, the learned trial judge having failed in his duty to afford the Plaintiff a hearing based on the state of the pleadings, his decision to invoke the limitation *suo motu* was questionable and owed a lot to support. The learned justices of the Court of Appeal could not be faulted for reversing his decision on that point and I think this appeal before us ought to be appropriately dismissed.

(SGD.) R. ADJEI-FRIMPONG
JUSTICE OF THE SUPREME COURT

CONCURRING OPINION

DARKO ASARE JSC;

I have read the lead judgment and the concurring opinion by my worthy brothers Gaewu and Adjei-Frimpong, JJSC respectively and I am in complete agreement that the appeal should fail. I however desire to comment very briefly on an aspect of the trial court's decision which I believe warrant some judicial attention and requires clarification.

From the facts on record in this appeal, perhaps the most primary issue that fell for determination by the trial court was whether the disputed land belonged to the Plaintiff's ancestral family, the Ayiku-Gberbie Family of Larkple Prampram or the Defendant's grantor, the Prampram Traditional Council.

To refute the Defendant's claim that the disputed land was the property of the Prampram Traditional Council, the Plaintiff introduced into evidence, Exhibit "C", a decision by the Court of Appeal in a suit titled ***Prampram Stool v Central University College Suit No.***

Hl/18/2011 dated 31/03/2011, (the ***Prampram Stool*** case) which held that lands in Prampram are owned by families and not Stools.

From a close examination of the record of appeal, it is easy to understand why the Plaintiff invoked the decision in the ***Prampram Stool*** case to shore up his claim of allodial title to the disputed land. First, the ***Prampram Stool*** decision amplified a principle of customary land law exemplified in a rich line of judicial decisions, including of course, the celebrated case of ***Ameodar v Podier***, which establish that within the Ga Adangbe area, where the disputed land is sited, Stools do not own land but rather it is families and clans that own land. The ***Prampram Stool*** case was therefore invoked to support the Plaintiff's claim that title in the disputed land vested in his family and not in the Prampram Stool, the Defendant's grantor in this case.

Secondly, the Plaintiff's root of title, was essentially founded on traditional evidence with the Plaintiff averring in his Statement of Claim that the large tract of land, of which the disputed land formed a part thereof, was acquired by his ancestors by first settlement. Now, it is trite that the current weight of judicial thinking clearly sways in favour of the fact that the best approach at evaluating traditional evidence is by reference to recent acts in living memory, including judicial decisions. In the case of ***Hilodjie v. George [2005-2006] SCGLR 974***, the Supreme Court clarified this position when it stated at page 983 thus: -

> ***"Therefore, findings and decisions of courts of competent jurisdiction may appropriately qualify as evidence of facts in living or recent memory"***

By all accounts therefore the ***Prampram Stool*** case was a potent piece of evidence relied on by the Plaintiff not only to prove a customary land law position of long-standing

historical pedigree, but also to prove recent acts in living memory to establish his family's root of title to the disputed land.

The Plaintiff's bid to support his claim of title to the disputed land on the strength of the ***Prampram Stool*** case was however rebuffed by the trial judge with the proposition of the law, that a prior purchaser of land cannot be estopped by a judgment obtained against the vendor commenced after the purchase. This is the principle of law exemplified in such cases as ***Attram v Aryee (1965) GLR 341,***

The trial judge reasoned that on the evidence on record, prior to the delivery of the judgment in the ***Prampram Stool*** **case** in the year 2011, it was the Prampram Traditional Council which was administering lands within the disputed area for and on behalf of the various clans and families. Accordingly, the acquisition of the disputed land from the Prampram Stool by the Defendant could not be vitiated by the subsequent decision in th***e Prampram Stool*** **case** having regard to the legal proposition that a purchaser of land is not estopped or affected by a judgment adverse to his vendors in proceedings commenced subsequent to the acquisition of his title.

This is how the trial judge stated the above legal proposition: -

> *"We need to remind ourselves that a court's subsequent declaration of title in a person, does not affect prior purchasers of the land."*

He cited various authorities in support of the above proposition of the law including ***Republic v. Court of Appeal; Ex parte Lands Commission; Vanderpuye Orgle-Interested Party [1999-2000] 1 GLR 75,*** SC at holding 2; ***Abbey v. Ollenu (1954) 14 WACA 567***; ***Attram v. Aryee [1965] GLR 341,*** SC; ***Kwame Adu v. Angelina Boakye-Ansah [2015] 85***

G.M.J. 164 @ 188-189, 199, C.A. and ***The Registered Trustees of the Catholic Church, Achimota Accra v. Buildaf & 2 Others, Civil Appeal No. J4/30/2014, dated 25th June, 2015***.

The learned trial Judge then expressed himself in the following conclusion: -

> *"In drawing the curtains down on this issue, it is my view that whereas the Prampram Traditional Council is now not the owner of Prampram lands including the disputed land, its purchasers before the Court's declaration and judgment on the other hand do have title to the lands they acquired."*

Was the learned trial Judge justified in applying the proposition of the law traced to the line of cases exemplified by the decision in the ***Attram v Aryee*** case to facts on record in this case? I think not and I proceed to set out my reasons.

To begin with, the learned trial Judge appeared to have proceeded from a faulty legal premise when he based his decision on the statement that *"…. a court's subsequent declaration of title in a person, does not affect prior purchasers of the land."* This statement assumes that the Plaintiff's root of title to the disputed land was derived from the ***Prampram Stool*** **case** (supra), which purportedly declared title in favor of the Plaintiff's family. However, a thorough examination of the record reveals that this assumption is entirely unfounded. The Plaintiff's claim of title is, in fact, rooted in the ancestral possession of a larger tract of land, of which the disputed land forms only a part. The Plaintiff's family's root of title is traced to first settlement by their ancestors, as evident from the record. In light of this, the trial Judge's application of the ***Attram v Aryee*** principle to the facts of this case was clearly misguided, as the ***Prampram Stool*** **case** did

not confer title on the Plaintiff's family, and thus did not trigger the protection afforded to prior purchasers under the ***Attram v Aryee*** rule.

Secondly, it appears that the approach adopted by the learned trial Judge is reflective of a growing tendency to overly extend the ***Attram v Aryee*** principle, as a blanket rule, to insulate parties from the consequences of adverse judgments against their vendors, without engaging in a thoughtful and contextualized assessment of the relevance and weight of such judgments in determining the legitimacy of competing claims to the disputed land in question.

The principle in the ***Attram v Aryeee***, case which also relied on the English case of ***Mercantile Investment & General Trust Co. v. River Plate Trust, Loan & Agency Co. [1894] 1 Ch. 578,*** was articulated by the Supreme Court at page 345 in the following words: -

> ***"As regards the second point that the plaintiff who obtained his grant of the land from the Sempe stool as far back as 1952, is bound as privy in estate to the Sempe stool, by the judgment in a suit instituted subsequent to his grant, the court drew the attention of learned counsel to the law on the point as enunciated by Romer L.J. in Mercantile Investment & General Trust Co. v. River Plate Trust, Loan & Agency Co.,3 namely that, "A prior purchaser of land cannot be estopped as being privy in estate by a judgment against the vendor commenced after the purchase."***

The ***Attram v Aryee*** case concerned a situation where judgment had been entered against a defendant and whilst he had appealed against the said judgment, a subsequent judgment was entered against the plaintiff's vendor in another suit. The defendant therefore sought to raise the subsequent judgment as res judicata to estop the plaintiff

from further challenges of his title during the pendency of the appeal. The Supreme Court refused that invitation and held that the subsequent judgment could not operate as estoppel per res judicata. It is important to note that the judgment relied upon by the defendant in the ***Attram v Aryee*** case was obtained after the trial in that case had been completed and the case was on appeal. Consequently, the subsequent judgment against the Plaintiff's vendor was not available during the course of the trial in that suit, and therefore could not have formed part of the evidence evaluated by the trial judge in reaching his conclusions. It was within the context of the above facts that the Supreme Court pronounced that the subsequent judgment against the plaintiff's vendor obtained after the purchase of the disputed land, could not estop him on account of being privy in estate to the said vendor.

In the case of ***Tamakloe v. Nunoo [1960] GLR 115,*** the Plaintiff who had obtained a previous judgment against one Modua Abrahams, the Defendant's vendor on 10th December 1957, sued the Defendant for recovery of possession. The Defendant claimed to have purchased the disputed land from the said Modua Abrahams in the year 1955. On these facts, it was held as follows: -

> ***"As it was uncertain on the evidence whether the sale to the defendant was made before the commencement of the earlier of the two consolidated suits referred to in the headnote, the defendant was not estopped by the judgment therein from disputing the title of the plaintiff."***

At pages 116-117 of the Report, Ollenu J (as he then was) in characteristic perceptive fashion, explained the scope of the principle in the following words: -

> ***"On the issue of title, the plaintiff relies upon the Sempe Stool as his root of title, while the defendant relies upon Modua Abrahams as her root of title. The plaintiff***

tendered in evidence a judgment of this court delivered in consolidated suits Allotey v. Abrahams; Tamakloe v. Abrahams (3 W.A.L.R. 280) in which he obtained declaration of his title against Modua Abrahams, the vendor of the defendant. The judgment was admitted and marked Exhibit "B". That judgment is not binding upon the defendant as a privy of the said Modua Abrahams, unless it could be shown that the sale to her by Modua Abrahams was made after commencement of the earlier in date of the consolidated suits; see Mercantile Investment and General Trust Company v. River Plate Trust, Loan and [p.117] Agency Company [1894] 1 Ch. 578). <u>But it is binding on her in so far as it is a judgment in rem as to the status of the land, as to the person in whom the right to alienate it is vested.</u>" (emphasis)

A careful analysis of the scope of the principle indicates that it is confined to cases where a previous judgment against a Party's vendor is raised as estoppel per res judicata and intended as a bar against that Party who purchased the disputed land from disputing his opponent's title, based on his alleged privity of estate with his vendor. As a consequence, the rule merely signifies that a judgment obtained against a party's vendor, subsequent to the Party's purchase of the land, cannot operate as estoppel against that Party. Nevertheless, it may be tendered as proof of ownership of land in any subsequent proceedings. The ***<u>Attram v Aryee</u>*** principle must be understood to operate in the case where an earlier judgment is relied on in a later case as estoppel per res judicata.

There is nothing in the line of cases represented by the ***<u>Attram v Aryee</u>*** decision which suggests that a previous decision against a vendor cannot be relied upon as evidence of the fact that the disputed land is not owned by a Party who derives his title from that vendor. The ***<u>Attram v Aryee</u>*** principle does not preclude the use of previous judgments

as evidence of title in land litigation. Indeed, as pointed out by Ollenu J (as he then was) in the case of ***Tamakloe v. Nunoo***. (supra) which is endorsed, such a judgment may well be admitted ***"…as a judgment in rem as to the status of the land, as to the person in whom the right to alienate it is vested."***

At page 236 of the record of appeal, the learned Justices of Appeal referred to learned Counsel for the Defendant's reliance on the ***Attram v Aryee*** principle as reiterated in the case of ***Anim v Sandi [2015] 83 GMJ 44*** at 75, and responded as follows: -

> *"Consequently, all the judicial authorities cited by the Respondent in support of a situation of prior acquisition earlier in time, are not relevant in the determination of the issue of true ownership of the land in dispute"*

This discerning observation by the Court of Appeal is particularly incisive, as it sheds light on the narrow application of the ***Attram v Aryee*** principle, especially in circumstances where the parties' roots of title are subject to scrutiny, and where, as in this instant case, the previous judgment becomes relevant for purposes of determining the proper "…… ***person in whom the right to alienate (the disputed land) is vested."***. See again the views of Ollenu J (as he then was) in the case of ***Tamakloe v. Nunoo***. (supra)

Based on the preceding analysis, I hold the respectful view that the trial court's decision to preemptively dismiss the probative value of the ***Prampram Stool*** case denied it the opportunity to evaluate the evidentiary significance of that judgment and to scrutinize its potential impact on the Plaintiff's claim. This was an error of law by the trial judge which was rightfully corrected by the lower court.

In conclusion, the ***Attram v Aryee*** principle is not a blanket shield to insulate parties from the consequences of adverse judgments against their vendors. Its application is limited to specific circumstances where an earlier judgment is being used as estoppel only. The Court of Appeal was right in disaffirming the conclusions reached by the trial court and I also vote for the dismissal of the appeal.

(SGD.) Y. DARKO ASARE
JUSTICE OF THE SUPREME COURT

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