IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: DOTSE JSC (PRESIDING)

PROF. KOTEY JSC

OWUSU (MS.) JSC

PROF. MENSA-BONSU (MRS.) JSC

KULENDI JSC

CIVIL APPEAL

NO. J8/96/2020

5TH JUNE, 2023

OGYEEDOM OBRANU KWESI ATTA VI .... PLAINTIFF/RESPONDENT/ RESPONDENT

VS

1. **GHANA TELECOMMUNICATIONS CO. LTD. .... 1ST DEFENDANT/APPELLANT/ APPELLANT**
2. **LANDS COMMISSION .... 2ND DEFENDANT**

J U D G M E N T

OWUSU (MS.) JSC:-

On 29th May, 2019, the Court of Appeal dismissed the appeal of the 1st Defendant/Appellant/Appellant and affirmed the judgment of the High Court, dated 10th May, 2017.

Dissatisfied with the decision of the Court of Appeal, the 1st Defendant/Appellant/Appellant mounted this appeal on the following grounds:

a. *That the Court of Appeal erred in concluding that the erstwhile Post and Telecommunication Corporation (P & T) did not have legal title in the land to pass it to the Defendant.*

b. *That the Court of Appeal erred in concluding that the P & T could be described as a Statutory Licencee.*

c. *That the Court of Appeal erred in concluding that the use of the land by P & T cannot be adverse to the rights of the Customary Land Owners.*

d. *That the Court of Appeal erred in affirming the trial Judge's judgment on admission regarding the scope and validity of the Lands (Efutu and Gomoa Adjumako) Instrument.*

e. *That the Court of Appeal erred in concluding that the Defendant converted its status to a trespasser with effect from 1995/96 when it was converted to a Limited Liability Company pursuant to the statutory (conversion to Companies) Corporation Act, 1994 (Act 461).*

f. *That the Court of Appeal erred in affirming the damages awarded by the trial Judge based on US$4.00 per square meter rate.*

g. *That the cost of GH¢40,000.00 awarded against the Defendant is excessive.*

h. That the judgment is against the weight of evidence.

In this appeal, the parties would maintain their designations at the High Court. Consequently, the Plaintiff/Respondent/Respondent will be referred to simply as Plaintiff. The 1st Defendant/Appellant/ Appellant will be referred to simply as Defendant and the 2nd Defendant as 2nd Defendant.

Before dealing with the arguments advanced in support and against this appeal, we will give the background of this case.

The subject matter in dispute in this appeal is a parcel of land situated at Gomoa Afransi near Agona Swedru, within the Efutu and Gomoa Adjumako Traditional Area in the Central Region. The parties have laid rival claims to the subject matter. At the trial court, it was the case of the Plaintiff that by a letter dated 22nd July, 2015, the Twidan Royal Family through its lawyers wrote to the Defendant enquiring why it had erected telecommunication mast/towers on its land. In response to the letter, the Defendant stated that it had obtained a fifty-year lease dated October 11, 2008 but effective 1st May, 2007 from the Lands Commission. The Plaintiff challenged the validity of the grant. Upon the failure to resolve their differences, the Plaintiff instituted an action on behalf of the Twidan Royal Family at the High Court on the 13th of November, 2015. Per his amended statement of claim filed on 4th February, 2016, the Plaintiff claimed the following reliefs against the Defendants:

1. *A declaration that all that piece or parcel of the central town lands described and containing an approximate area of 8.242 acres (3.345m^2) is not a State land.*

2. *A declaration of title/ownership to all that piece or parcel of central town lands.*

3. *A declaration that the lease dated 18th October, 2008 purporting to convey all that central town lands forming part of the Twidan Royal Family lands granted by the 2nd Defendant to the 1st Defendant is a nullity.*

4. *An Order setting aside the said lease dated 18th of October, 2008 and executed by 2nd Defendant in favour of the 1st Defendant.*

5. *An Order directed at 2nd Defendant to expunge from the records any registration carried out in the name of the 1st Defendant in respect of the encroached land.*

6. *An Order for the recovery of possession from the Defendants, all that piece and parcel of land encroached upon by 1st Defendant.*

7. *A declaration that the 1st Defendant's presence on Plaintiff's land is an infringement on Plaintiff's property rights and constitutes a trespass.*

8. *An Order for 1st Defendant to remove its structures and installations from the encroached land.*

9. *An Order of perpetual injunction restraining the Defendants, their successors, personal representatives, assigns, servants and all persons of whatever description and whatsoever acting by them or claiming through or under them from interfering with Plaintiff's land as described in this claim or any portion thereof.*

10. *Special damages for trespass and unlawful possession assessed at the cedi equivalent of US$4.00 per square meter of land occupied per month from May, 2007 to date of ejection.*

11. *Interest on special damages awarded from date of first accrual to date of final payment.*

12. *Cost including legal cost assessed at 10% of special damages awarded*

The Defendant in its statement of defence initially was that it obtained a lease granted to it by the Lands Commission for a term of 50 years which lease has been registered with the Lands Commission as Deed No. 3758 on 22nd May, 2008.

The 2nd Defendant on its Statement of Defence filed on 24th March, 2016 agreed with the Defendant as to the substance of its defence. The 2nd Defendant averred that the subject matter land was by virtue of the Stool Lands (Efutu and Gomoa Adjumako) Instrument, 1961 (E. I. 206) vested in the State. The 2nd Defendant continued that, it thus granted a valid lease to the Defendant.

Before the trial was to commence, the 2nd Defendant filed an application to amend its Statement of Defence. The amendment was to the effect that the subject matter land did not form part of the land vested in the State by E. I. 206. This dramatically changed the course of the whole trial. The Defendant sought leave of the court to amend its Statement of Defence. The import of the amendment was that, the Plaintiff suit was statute barred as the latter's right of action accrued in the early 1970's when the Defendant went into possession of the disputed land and erected structures thereon. Consequently, by virtue of the Defendant's 40-year dealing with the land, the Plaintiff is estopped by acquiescence from claiming the land.

Not surprisingly, the Plaintiff applied for judgment on admission against the 2nd Defendant in an application that neither the Defendant nor the 2nd Defendant opposed. Judgment was thus given in favour of the Plaintiff against the 2nd Defendant for reliefs '1', '3', '4' and '5' and interlocutory judgment on relief '2'.

Eventually, judgment was given in favour of the Plaintiff at the High Court. Aggrieved by the decision of the High Court, Agona Swedru Defendant appealed to the Court of Appeal, Cape Coast on 28th May, 2019. The Court of Appeal dismissed the Defendant's appeal and affirmed the trial cost's judgment. Defendant being dissatisfied with the judgment of the Court of Appeal, appealed to this court by his Notice of Appeal filed on 11th June, 2019 on the sole ground that the Court of Appeal's judgment is against the weight of evidence.

On 17th June, 2020, the Defendant applied for leave to adduce new evidence which application was granted on 30/7/2020. Thereafter, the Defendant filed an amended Notice of Appeal on 6th November, 2020 pursuant to leave granted by this court on 29th October, 2020. The new evidence of the Defendant on appeal was to introduce large volumes of documentary evidence in support of the acquisition of the disputed land by the State and the payment of compensation to the predecessor of the Plaintiff.

The Plaintiff also applied for leave to adduce new evidence in response to the new evidence adduced by the Defendant. The nature of the new evidence was to allege that his predecessor's signature evidencing the payment of compensation to him was a forgery. This court on 31st March, 2021 granted the Plaintiff leave to adduce fresh evidence on appeal to respond to the new evidence introduced by the Defendant.

On 8th June, 2021, the Defendant applied for directions on how to adduce its new evidence. On 6th July, 2021, the parties were ordered to file their witness statements.

Before the Supreme Court, the essence of the Defendant's case was that the Government of Ghana acquired the subject matter land for the then Post and Telecommunications Corporation (P & T) by the State Lands (Swedru – Microwave Station) Instrument, 1969 (E. I. 86) under the then *State Land Act, 1962 (Act 125)* and agreed on compensation with the Plaintiff's predecessor, Nana Obranu Gura II. The Defendant further states that, P & T took possession of the land between 1969 and 1971 and remained in undisturbed possession and developed part of the land as a telecommunication base station. The Telecommunication Division of P & T was by the Statutory (Conversion to Companies) ***Corporation Act, 1994 (Act 461)*** converted into the Defendant as the *"successor company"*. It is the Defendant's case that the disputed land was vested in the Defendant in 1995. In 2008, the Government sold 70% of the Shares in the Defendant to Vodafone. The Lands Commission (2nd Defendant) acting on behalf of the Government, subsequently executed a 50-year lease in favour of the Defendant.

The Defendant filed a Witness Statement of Mr. Mohammed Abibu-Alhassan, DW1-SC to be used as his testimony before the court. On 27th January, 2022, the Witness Statement of DW1-SC was adopted as his evidence-in-chief. He was extensively cross-examined by Plaintiff's counsel. DW1-SC testified that he is an employee of the Lands Commission (2nd Defendant) and is currently the Regional Lands Officer for the Bono Region. He further testified that in the initial Statement of Defence filed on behalf of the 2nd Defendant, it was averred that the disputed land forms part of a larger area vested in the Government under E. I. 206. He continued that the lawyer of the 2nd Defendant who was based in the Central Regional Office, contrary to the express instructions of the 2nd Defendant filed an amended Statement of Defence in which he claimed that the land leased to the Defendant was done in error. This was because according to him the subject matter land was not part of the area covered by E. I. 206. DW1-SC stated that the Defendant wrote to 2nd Defendant regarding the new assertion that the subject matter

land falling outside the boundaries of E. I. 206 and produced a copy of the letter marked Exhibit GT- SC 2. DW1 – SC led evidence that there were express instructions given to counsel with the conduct of the case not to concede the point but instead put in a full defence to the suit. But this was not heeded by the counsel for 2nd Defendant. According to DW1 – SC, due to the dire effect of counsel for 2nd Defendant's action, the Executive Secretary of 2nd Defendant requested for the full archive records regarding the disputed land which records were made available to the Defendant on 16th October, 2019. DW1 – SC stated emphatically that from the review of the records, contrary to the averments made by the 2nd Defendant regarding the boundaries of the disputed land, the land in dispute actually fell within the Gomoa Adjumako Traditional Area and was indeed covered by E. I. 206 as the land was vested in the Government as far back as 1961.

The investigation unearthed several documents that revealed correspondence, discussions and transactions that showed that the Government commenced arrangements to acquire the land for P & T to use as a microwave station. DW1 – SC testified that, in 1969 and 1972, the Government paid compensation, first into the Stool Lands Account and then to one Nana Obranu Gura II, for both the land and crops on the land. The witness tendered into evidence large volumes of documents that evidence the process of the acquisition of the land by the Government and the subsequent payment of compensation. The documents further revealed that the disputed land was required for the public interest. In accordance with Act 125, E. I. 86 was passed and the Registrar, Cape Coast, was also directed to ensure that copies of E. I. 86 were posted on the land and served on all persons with interest in the land.

On 4th September, 1969, after E. I. 86 was published, Nana Obranu Gura II wrote to the Chief Lands Officer claiming ownership of the land. DW1 – SC tendered in evidence a copy of Nana Obranu Gura II's letter as ***Exhibit 'GT–SC8'***. Several correspondences between Nana Obranu Gura II and/or his counsel and the Chief Lands Officer were also

tendered in evidence for the payment of compensation. DW1 – SC stated that the Government agreed on compensation with Nana Obranu Gura II and on 6th October, 1969, the latter accepted a sum of ¢850.00 as compensation for and in full discharge of all claims against the Government regarding the land. He was also paid ¢61.10 as compensation for his crops that were on the land.

Furthermore, DW1–SC added that the archival documents particularly ***Exhibit 'GT–SC10'*** series revealed that a Certificate of Allocation was issued to P & T in respect of the disputed land. Therefore, the execution of the lease in 2008 between Defendant and the Government was unnecessary and of no effect as the land had already been acquired by the Government and vested in the Defendant's predecessor.

On the allegation that, Nana Obranu Gura II's signature on ***Exhibit 'GT–SC 9 (j)', Exhibit 'GT–SC 9 (m)', Exhibit 'GT- SC 9 (p)', Exhibit GT –SC 9 (g)' and Exhibit 'GT – SC 9 (r)'*** were forged. He stated that the allegation was false and an afterthought. He added that the evidence shows several signed documents from Nana Obranu Gura II leading to the payment made to him; ***Exhibit 'GT–SC 6(d)', Exhibit 'GT –SC 6(x)', Exhibit 'GT–SC 6(q)', Exhibit 'GT–SC 9(m)', Exhibit 'GT–SC 9(p)', Exhibit 'GT–SC 9(q)' and Exhibit 'GT–SC 9(r)'.***

The Plaintiff's case avers that the signatures on the documents evidencing payment of compensation were forgeries. The Plaintiff called two forensic experts as witnesses and also testified himself. The Witness Statement of PW1–SC Alhaji Bukari Yakubu was adopted as evidence-in-chief on 31st March, 2022. PW1–SC was a Police Officer for 43 years. He had also worked as a document examiner since 1972 at the Forensic Department of the Ghana Police Service and had since retired from the Ghana Police Service.

PW2–SC, Mr. John Albert Owusu tendered his Witness Statement and same was adopted on 9th June, 2022 as his evidence-in-chief. PW2–SC is the Chief Executive Officer of Primus Forensic Limited. He worked with the Ghana Police Service from September, 1970 till his retirement in 1979. He also worked as a document examiner during his time with the Police Service and had also served as an expert witness in a number of cases before the courts in Ghana. The Plaintiff's case is that the expert witnesses analyzed ***Exhibit MAS* 14 *(120), (124), (126), (128) and (130).*** These Exhibits were relabeled and tendered in evidence as follows:

1. ***Exhibit MAS 14 (120) – A receipt dated 28th February, 1969 – tendered in evidence as Exhibit 17 A***

2. ***Exhibit MAS 14 (124) – A receipt of payment of compensation dated 6th October, 1969 – tendered in evidence as Exhibit 17 B***

3. ***Exhibit MAS 14 (126) – A letter by Nana Obranu Gura II dated September, 1969 – tendered in evidence as Exhibit 17 C***

4. ***Exhibit MAS 14 (128) – A letter by Nana Obranu Gura II dated October, 1969 – tendered in evidence as Exhibit 17 D***

5. ***Exhibit MAS 14 (130) – A receipt dated 6th October, 1969 attached to a payment voucher – tendered in evidence as Exhibit 17 E***

PW1–SC and PW2–SC were to compare the signatures on the above Exhibits to the signature of Nana Obranu Gura II on documents procured from the Public Records and

Archives Administration Department (PRAAD) in Cape Coast tendered in evidence and labeled as follows:

i. ***A resolution of no confidence in the Gomoa Ajumako Local Council by the Chiefs and Elders of Gomoa Afransi and Gomoa Obuasi 1953 – Exhibit 18A.***

ii. ***A letter dated 3rd July, 1953, by the Chiefs and Elders of Afransi and Obuasi in the Gomoa Ajumako State, addressed to the Clerk of Council and others, including the Minister of Local Government and Hon. Kojo Botsio – "Exhibit 18 B"***

iii. ***Resolution of no confidence in the Gomoa Ajumako Local Council by the Chiefs and Elders of the Gomoa Afransi and Gomoa Obuasi dated 21st July, 1953 – "Exhibit 18 C"***

Upon the examination of the signatures on the documents, PW1 – SC concluded that it was *"highly probable"* that the signature alleged representing Nana Obranu Gura II on ***Exhibits '17A'*** to ***Exhibit '17E'*** are not authentic. PW2–SC also concluded that the author of the signature contained in the documents from PRAAD could not have signed the documents tendered as ***Exhibits '17A'*** to ***Exhibit '17E'.***

The evidence of the Plaintiff himself before this court is that when the Defendant was granted leave to adduce new evidence on appeal, he discovered that the alleged signature of his predecessor Nana Obranu Gura II was different from signatures on some other documents. He thus caused his lawyers to request certified true copies of documents in the custody of PRAAD bearing the signature of Nana Obranu Gura II to be compared to documents produced by the Defendant.

We have given extensive background of the case, just to put the issues in perspective.

In arguing the appeal, counsel for the Defendant argued Grounds 'A' & 'B' together. He then submitted that P. & T. entered the disputed land before 1975 when the ***Post and Telecommunications Corporation Decree 1975 (NRCD 311)*** was enacted. He continued that by *Section 65 of NRCD 311*, the Defendant took over the disputed land and the right or interest of any owner of the land was therefore the payment of compensation and not the land. Counsel argued that, from the new evidence adduced at the Supreme Court it was clear that the predecessors of the Plaintiff were aware of the takeover of the land. This is by reason of several correspondence/documents in which they claimed compensation for the land. Furthermore, by ***Section 4 (1) of the Limitation Act, NRCD 54,*** the Plaintiff's action to claim compensation is statute barred. Secondly, by ***Section 10 of the Limitation Act, NRCD 54,*** since the Defendant has been in adverse possession of the land for over 12 years, the current action is equally statute barred. Counsel for the Defendant referred to the following cases to buttress his submission:

1. ***Susan Bandoh vs. Dr. Mrs. Maxwell Appeagyei-Gyamfi & Anor. (Unreported) Civil Appeal No. J4/16/2016 dated 6th June, 2019***

2. ***Adjetey Adjei & Others vs. Nmai Boi [2013-2014] 2 SCGLR 1474***

3. ***Klu vs. Konadu Apraku [2009] SCGLR 741***

Counsel pointed out that, by reason of ***Exhibits 'A1' and 'A3'*** as well as paragraph 7 and 8 of the amended Statement of Defence, the Defendant has been on the disputed land since the 1970's. Counsel submitted that, the admission of adverse possession made by the Plaintiff's lawyer when he stated that the Defendant has been on the land *"for the past 50 years"* in ***Exhibits 'A1' and 'A3'*** is clear evidence of the long undisturbed possession of the Defendant. From the foregoing, counsel for the Defendant submitted that, the Court of Appeal erred when it held at page 14 of its judgment that P & T did not have any legal

title to pass on to the Defendant. Again, counsel submitted that, the Court of Appeal erred when it held at page 14 of its judgment that P & T did not have any legal title to pass on to the Defendant. Counsel submitted that, the Court of Appeal erred when it held in its judgment that the Defendant was a Licensee when there was no evidence to that effect. This is because the Defendant through P & T took possession of the land by virtue of NRCD 311, as such the claim of the Plaintiff could only be in respect of compensation since the key element of a licence is the agreement with the land owner to be on the land.

In response to the above submissions, counsel for the Plaintiff contended that no evidence was led at the trial in respect of the acquisition of any legal title by P & T. The only title was the lease granted the Defendant by the Lands Commission in 2007. Secondly, the Court of Appeal found as a fact that because the occupation on the land by P & T was pursuant to NRCD 311, then the law gave the Defendant a Statutory Licence to be on the land. Thirdly, the fact of the licence was also raised by the Plaintiff's lawyer in Exhibit A1. Counsel for the Plaintiff concluded his arguments on Grounds A and B by stating that, the Defendant's reliance on Section 8 of CA 6 which required an affected party to take legal action within five years to enforce the contract or lose its right to enforce its right to enforce any sum due from acquisition of land, was since 1962 no longer good law as the law has been repealed. Consequently, that defence was not available to the Defendant.

Grounds 'A' & 'B' of the appeal state that:

a. *"That the Court of Appeal erred in concluding that the erstwhile Post and Telecommunication Corporation (P & T) did not have legal title in the land to pass it to Defendant.*

b. *That the Court of Appeal erred in concluding that the P & T could be described as a Statutory Licencee"*

We will deal with these grounds together. From the evidence before the court, especially the evidence adduced at the Supreme Court, it was clear that the predecessors of the Plaintiff were aware of the takeover of the land by the Defendants. ***Exhibits 'A1' and 'A3'*** as well as paragraph 7 and 8 of the amended Statement of Defence of the Defendant, the Defendant has been on the disputed land since the 1970's. Plaintiff's lawyer admitted the adverse possession of the Defendant on the land in dispute when he stated in ***Exhibits 'A1' and 'A3'*** that the Defendant has been on the land *"for the past 50 years", when* confronted with this fact, the Plaintiff's answer was to deny knowledge of the facts contained in ***Exhibit 'A1'***.

However, what is not in dispute is the fact that Plaintiff instructed lawyers to act on their behalf and that knowledge of the family as to the adverse possession of the Defendant is what is relevant and not the personal knowledge of the Plaintiff. The reason being that a Stool is a legal entity or a corporate sole and as such acts done by predecessors will bind successors. Secondly, by virtue of Act 461, all assets of P & T including the disputed land had become vested in the Defendant. On the finding by the Court of Appeal that Defendant was a Licencee. Our reaction is that, from the evidence on record, there was no evidence to that effect. If the Defendant through P & T took possession of the land by virtue of NRCD 311, that situation did not create a license arrangement, for the simple reason that a key element of a license is the agreement with the land owner to be on the land. From the evidence on record, there is no such agreement.

In its judgment, the Court of Appeal found that because the occupation of the land by P & T was pursuant to NRCD 311, then the law gave the Defendant a Statutory Licence to be on the land. This finding is clearly not supported by the evidence on record. At the

point of sounding repetitive. If the Defendant by virtue of NRCD 311 took over the dispute land, that situation did not create a licence arrangement. But more importantly, by ***Section 4 (1) (f) of the Limitation Act, NRCD 54*** which provides that:

> ***"A person shall not bring an action after the expiration of six years from the date on which the cause of action accrued, in the case "(f) an action to recover a sum of money recoverable by virtue of an enactment, other than an action to which Sections 2 and 5 apply".***

The Plaintiff's action to recover compensation is statute barred. Similarly, by *Section 10 of the Limitation Act, NRCD 54*, since the Defendant has been in adverse possession of the land over 12 years, Plaintiff's action is equally statute barred: see the case of *Bandoh vs. Appeagyei-Gyamfi & Anor,* supra. See also the case of ***Adjetey Adjei & Others vs. Nmai Boi & Others [2013-2014] 2 SCGLR 1474, 1477 holding (2) of the headnotes*** where this court held that:

> ***"Adverse possession must be open, visible and unchallenged so as to give notice to the legal/paper owner that someone was asserting a claim adverse to his. And Section 10 of the Limitation Act, 1972 (NRCD 54) has reflected substantially the provisions of English Statutes of Limitation and the Common Law…<u>If a squatter took possession of land belonging to another and remained in possession for twelve years to the exclusion of the owner, that would represent adverse possession and, accordingly at the end of twelve years, the title of the owner would be extinguished</u>.*** *(our emphasis)*

In the case of ***Klu vs. Konadu Apraku [2009] SCGLR*** held earlier before the ***Adjetey Adjei vs. Nmai Boi & Others*** supra, this court expressed itself in similar manner when it held in holding (1) among other things that:

> ***"…The adverse possession of the said land by the Plaintiff for up to and even over twelve years conferred on him possessory title by reason of the provisions in Section 10 of the Limitation Act, 1972 (NRCD 54). Such acquisition of title would prevail even against a registered proprietor of land under Section 8 (1) and (2) of the Land Title Registration Act, 1986 (PNDCL 152)".***

Relating the case cited supra to the case under consideration, since counsel for Plaintiff stated in ***Exhibits 'A1' and 'A3'*** that the Defendant has been on the land for the past 50 years, the Defendant acquired possessory title by reason of Section 10 of NRCD 54. Ground A and B of the appeal succeed and they are upheld.

This brings us to Ground 'C' of the appeal:

> *That the Court of Appeal erred in concluding that the use of the land by P & T cannot be adverse to the rights of the customary landowner.*

On this ground, counsel for Defendant submitted that the Court of Appeal erred when it held that the use of the land by P & T cannot be adverse to the rights of the customary land owners and that once a licensee pleads adverse possession he is liable to eviction. This is because by reason of NRCD 311, P & T had taken the land and the land owners ceased to own the land in dispute. Consequently, there cannot be a claim of a licence.

The Plaintiff in his response to submission of Defendant on Ground 'C' contended that, the latter failed to establish his claim of adverse possession as well as estoppel by acquiescence in that the Defendant's predecessors cannot claim that, they had been in adverse possession by reason of their statutory permission under NRCD 311 to be on the land. The Defendant only came unto the disputed land in 2008 when it obtained the lease from 2nd Defendant that time begun to run against the Twidan Royal Family. Since the action commenced on 13th November, 2015, the twelve years had not elapsed. But more

importantly, the Defendant cannot in one breath claim through E. I. 206 and E. I. 86 and in another breath claim to be in adverse possession. Counsel for the Plaintiff referred to an Indian case of ***Narasamma & Others vs. A. Krishnappa (Dead) Lrs, Civil Appeal No. 2710 of 2010.***

Our simple answer to the above submission by the Plaintiff is that, E. I. 83 and E. I. 206 have not been revoked. Until that is done, its scope and validity should be accepted by all. In the face of the E. I. 83 and E. I. 206, the trial court should not have entered judgment on admission as there were serious points of law to be determined. These serious points of law came to the fore by the new evidence adduced before the Supreme Court. Grounds 'C' and 'D' of the appeal are therefore upheld.

The next ground of appeal is Ground 'E' which states that:

> *That the Court of Appeal erred in concluding that the Defendant converted its status to a trespasser with effect from 1995/96 when it was converted to a Limited Liability Company pursuant to the Statutory (Conversion of Companies) Corporation Act, 1994 (Act 461)*

On this ground, the Defendant simply submitted that since it has already established that it was never a licensee, then there can be no claim of converting to become a trespasser after becoming a Limited Liability Company.

In response to the Defendant's submission on Ground E, Plaintiff stated that this ground of appeal does not advance the Defendant's case in any substantive manner. Secondly, there is no dispute as to the corporate personality of the Defendant and that, the Defendant can only have what its predecessor had. Since P & T Corporation, before its conversion was only defined as a Statutory Licensee and did not have any proprietary rights in the disputed land, it could not have transferred any interest to Ghana Telecommunication Limited after the conversion.

In this appeal, based on the trial before the Supreme Court, there is no dispute that the Government acquired the disputed land for P & T to use as a microwave station. E. I. 206 Stool lands (Efutu and Gomoa Ajumako) Instrument, 1961 was passed. Therefore, once the Instrument compulsorily acquiring the land was published the land automatically vested in the President with no encumbrances. Thus, existing interest was also automatically extinguished and converted into a claim for compensation. See the case of ***Sagoe & Others v. Social Security and National Insurance Trust (SSNIT) [2012] 2 SCGLR 1093, 1095, holding (2) of the Headnotes*** where their Lordships held that:

> ***"Compulsory acquisition by the State would operate to extinguish only title and/or interests that a person might have had at the date of the publication of the Instrument of Acquisition, it would not matter whether the acquisition was previous to the interest held in the land by an individual or subsequent thereto".***

Their Lordships in coming to this conclusion relied on their previous decision in the case of ***Memuna Moudy & Others vs. Antwi [2003-2004] SCGLR 967.*** Besides, ***Article 20 (1) (a) of the 1992 Constitution***, provides that:

> ***"1. No property of any description, or interest in or right of over any property shall be compulsorily taken possession of or acquired by the State unless the following conditions are satisfied.***
>
> ***a. The taking of possession or acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, Town and Country Planning <u>or the development or utilization of property in such a manner as to promote the public benefit</u>*** (our emphasis)

See also the recent case of ***Dakpem Zobogu-Naa Henry A. Kaleem vs. Lands Commission (unreported) Civil Appeal No. J4/17/2020 dated 13/5/2020*** where this court stated that:

"Every land compulsorily acquired by the State whether vested in itself or assigned to a particular Public Service Institution remains State land".

Secondly, by **Exhibit 'GT–SC 4 (zzz**)' there was a Certificate of Allocation to P & T and the cost of the acquisition of the disputed land assessed at ¢1,114.00. Thirdly, ***Exhibit 'GT–SC 7(a)'*** is the Instrument issued to cover the acquisition as published and gazetted in accordance with the provisions of Act 125. The Plaintiff conceded that the disputed land was compulsorily acquired but denies the payment of compensation.

This is what counsel for the Plaintiff stated in his written submissions paragraphs 223, 224 and 225 of page 84:

"223 …My Lords, we first acknowledge that E. I. 86 was formally passed, declaring the acquisition of the disputed land by Government for public purposes under the State Lands Act, 1962 (Act 125). Its legality in the long term, we submit was, however, premised on the payment of adequate compensation. As well known, Act 125 clearly contemplates and requires the due payment of adequate compensation and is premised on same. The history of this case and the evidence adduced however, show that for some forty-eight (48) years, the Defendant, Ghana Telecommunications Limited and its predecessors, with the support of the Lands Commission, had been on the land, benefitting from their occupation of the land, without payment of compensation all these years. More so, in recent times, when telecommunications have become very big business in our economy and times.

224. The facts and our analysis above, however, clearly show that the agreed sum of ¢850 was never paid to the Twidan Royal Family of Afransi. All these years, no compensation was paid to the family. Rather, compensation was

paid on two occasions for what appears to have been the same parcel of land; the first ¢1,114 was paid into the State Lands Account (see Exhibit GT – SC5 (g) even though the evidence clearly shows that, the disputed land was not Stool Land (see Exhibit GT – SC4 (uu)

225. *The second was to an unknown person (presumably A. G. Sam) who impersonated Nana Obranu Gura II (with the mysterious and ubiquitous witness A. G. Sam of P & T, Nsawam). In the meantime, the true owners of the land were completely by-passed and ignored. As can be seen from the evidence adduced, the process of payment has been completely vitiated by fraud."*

For the avoidance of doubt, we will quote E. I. 206 for emphasis. It provides as follows:

"E. I. 206

Stool Lands (Efutu and Gomoa Ajumako Instrument 1961)

In exercise of the powers conferred on the President by Section 1 of the Stool Lands Act, 1960 (Act 27) this Instrument is made this 21st day of November, 1961.

All Stool lands within the boundaries of Efutu and Gomoa Ajumako Traditional Area respectively are hereby declared to be vested in the President

By command of the President

A. E. A. Ofori Atta
Minister of Justice"

From the above Executive Instrument, it is clear the land in dispute was vested in the President. It must be stated that the lands within the specified area are in fact family lands and not Stool lands. This fact was put to DW1 – SC and in response he stated as follows:

> ***"My Lords, in vesting instrument, the history was that there was a dispute between Efutu and Gomoa. So in 1961, all lands were vested without taking out family lands if there were any at all. So we presumed as we work that all lands there are Stool lands, vested. It is only in recent times that families are rising up and claiming portions of those lands. But strictly speaking, all lands there are Stool lands between Efutu and the Gomoa Ajumako states"***

Subsequent to this, ample documentary evidence was adduced to prove on the balance of probabilities that the Government further, proceeded to compulsorily acquire the disputed land under the state Lands Act, 1962, (Act 125) and by E. I. 86. The Instrument was published and gazetted in accordance with the provisions of Act 125. The Executive Instrument provides as follows:

> ***"E. I. 86 Executive Instrument***
>
> ***State Lands (Swedru – Microwave Station Instrument 1969)***
>
> ***Whereas it appears to the National Liberation Council that the land specified in the schedule to this Instrument is land required in the public interest;***
>
> ***Now, therefore, in exercise of the powers conferred on the National Liberation Council by Subsection (1) of Section (1) of the State Lands Act 1962 (Act 125), this Instrument is made this 7th day of June, 1969.***

The land specified in the schedule to this Instrument is hereby declared to be land required in the public interest

SCHEDULE

All that piece of land containing an approximate area of 7.12 acres situate at Afransi in Agona District in the Central Region of the Republic of Ghana lying to the North-East of the Local Council Building and about 150 feet North of the Afransi-Swedru motor road and bounded on the North and East by open space and measuring on those sides 554.4 feet and 650.3 feet respectively on the South by open space separating it from the said Afransi-Swedru motor road measuring on that side 554.4 feet and on the West by the cemetery and open space and measuring on that side 650.3 feet which piece of land is delineated on plan No. 7239/39711 and thereon shown edged.

By command of the National Liberation Council

D. Andoh

Commissioner for the Ministry of Lands and Mineral Resources"

The above Instrument meant that be it Family lands or Stool lands all lands that fell within the Schedule were compulsorily acquired. Besides, the numerous documentary evidence about the steps taken in the acquisition of the disputed land cannot be disputed. Additionally, there is also the presumption of regularity which stipulates that official acts are deemed to have been regularly performed. Consequently, upon the publishing of E. I. 86 all necessary procedures that are required before its publishing as well as the subject-matter which it affects are deemed to be regularly done.

Also, the admissions made by the counsel for the Plaintiff in his written submissions are binding on a client once such acts fall within the authority given to the lawyer to act on behalf of his client. Where a lawyer who has received instructions to act on behalf of his client makes statements before the court be it orally or through processes filed before the court, such admissions would be binding on the client, unless it is proved that the lawyers acted fraudulently or without the instructions of the client. See the case of ***Baiden vs. Solomon [1963] 1 GLR 488-499*** where their Lordships held that:

> ***"The Defendant was bound by the admission of his counsel and the trial Judge was justified in precluding him from adducing evidence on the issue of negligence. A decision of counsel on the issue of negligence falls within the scope of his authority to conduct a case and to do everything which in the exercise of his discretion he may think best for the interest of his client. Counsel does not need the consent of his client for a matter which ordinarily falls within the ambit of his authority. Counsel has an implied authority to make admissions against his client during the actual progress of the case in court for the purpose of dispensing with proof on any issue in the case, and once this has been done the court will not hear any evidence."***

The effect of counsel for Plaintiff's admission in his written submission at paragraph 223 of page 84 that; *"My Lords, we first acknowledge that E. I. 86 was formally passed, declaring the acquisition of the disputed land by the Government for public purposes under the State Lands Act 1962 (Act 125)"*, is that, the Plaintiff would be deemed to have admitted that the disputed land was acquired by the State pursuant to Act 125. Therefore, this admission relieves the Defendant of proving that assertion. Consequently, it can be safely concluded that the disputed property was compulsorily acquired by the Government by the publishing of E. I. 86. This finding by reason of the new evidence radically changes the resolution of most of the grounds of appeal and resolves that the Plaintiff after the publication of E. I.

86 lost all interest or right in the subject matter land. Their claim would simply be for the payment of compensation.

Furthermore, we have already found as a fact that P & T took possession of the disputed land sometime between 1969 and 1971 and remained in undisturbed possession and development part of the land as a Telecommunication base station. The Telecommunication Division of P & T was by the Statutory (conversion of companies) *Corporation Act, 1994 (Act 461)* converted into the Defendant, who may be described as the "Successor company." The Defendant has since been in undisturbed possession of the land. Exhibits A1 and A3 were letters written by Plaintiff's lawyers, where they admit that the Defendant has been in possession of the subject matter land for close to 40 to 50 years.

With the issue of compulsory acquisition having been settled without much dispute, the Plaintiff strongly contends the legality of the said compulsory acquisition without the payment of adequate compensation.

So the question is whether or not the Government of Ghana paid compensation to Nana Obranu Gura II for the land and his crops on the land? A resolution of this question would dispose of Ground F of the appeal.

The Defendant contended that as far back as October, 1969, the Government compensated Nana Obranu Gura II for the disputed land and the crops thereon. The statutory requirement for the payment of compensation at the time was ***Section 4 of Act 125.*** From the provisions of Act 125 it was the person who acquires that land that pays the compensation.

Counsel for the Defendant thus submitted that since it was the Government of Ghana that acquired the land and then transferred it to P & T, It was the Government that was required to pay the compensation.

Counsel for Defendant cited the case of ***Republic vs. Ghana Gas Company; Ex Parte Kings City Development Company & Lands Commission [unreported] Civil Appeal No. J4/61/2021 dated 15th December, 2021*** where Dotse JSC in his concurring opinion stated that compensation was to be paid by the party acquiring the land; that most cases were referable to the Government, but where an application is made to the President to acquire land on behalf of an applicant, then it is the applicant who is tasked with the payment of the assessed compensation.

In response to the submission on who ought to pay compensation when land is compulsorily acquired by Government, the Plaintiff's case, the new evidence before the Supreme Court is that the alleged signatures of the Plaintiff's predecessor was forged. The Defendant first analyzed the documentary evidence, indicating proof of payment and proceeded to focus on the inconsistencies in the evidence of the expert witnesses in respect of the signatures and submitted that the evidence of the experts was unreliable and should be disregarded.

Counsel for the Defendant referred to the case of ***International Rom Ltd. (No. 1) vs. VODAFONE Ghana Limited & Fidelity Bank Ltd. (No. 1) [2015-2016] 2 SCGLR 1383*** where this court held that internal conflicting and inconsistent evidence of a party and the party's witnesses renders the issue the evidence relates unproven. Counsel further referred to ***Fenuku vs. John Teye [2001-2002] SCGLR 985*** and ***In Re Agyekum (deceased) Agyekum & Ors. vs. Tackie & Ors. [2005-2006] SCGLR 851*** and urged us to reject the expert evidence.

Counsel for Defendant further sought to discredit Plaintiff as regards his testimony as to whether or not his predecessor Nana Obranu Gura II was an illiterate. Counsel confronted the Plaintiff with an earlier Affidavit in Opposition Exhibit SC-B1 where Plaintiff had deposed on oath that Nana Obranu Gura II was an illiterate. Yet, under cross-examination on 16th June, 2022, the Plaintiff had testified that Nana Obranu Gura II was literate.

Secondly, counsel for Defendant submitted that per ***Section 4 (1) of Act 125,*** a claim for compensation had to be made within six months from the date of the publication of the Instrument made under ***Section 1 of Act 125.*** Failure to make a claim within that period meant that a claimant had lost the right to claim compensation. He referred to ***Amartei vs. State Insurance Corporation [1992] 2 GLR 86.***

Counsel concluded his submissions on this issue of compensation by referring to ***Article 20 (5) and (6) of the 1992 Constitution*** as well as the case of ***Nii Kpobi Tetteh Tsuru II vs. Attorney-General [2010] SCGLR 90*** and submitted that, the fact that a land owner might not have been compensated for a land that was compulsorily acquired by Government prior to the 1992 Constitution does not make the acquisition wrongful. Such a person according to counsel for Defendant may sue for the recovery of compensation within the limitation period for such statutory claims:

In response to the Defendant's submissions on the payment of compensation, the Plaintiff tackled this issue in two parts that is forgery of the documents evidencing the payment of compensation and the payment of compensation as a prerequisite for compulsory acquisition.

On the issue of forgery, the Plaintiff's case on the evidence before the Supreme Court is firmly hinged on the allegation of forgery. By ***Section 13 (1) of the Evidence Act (NRCD 323)*** forgery must be proved beyond reasonable doubt.

On the evidence of the expert witnesses, the Plaintiff submitted that the signatures in ***Exhibit '17A to 17E'*** were not the signatures of Nana Obranu Gura II. This is because the two expert witnesses PW1–SC and PW2–SC had concluded after their independent forensic examination of the two sets of signatures that there were significant differences between the two sets of signatures. Secondly, these two expert witnesses have long experience in the Ghana Police Service as trained documents examiners. Thirdly, these two expert witnesses during cross-examination by counsel for the Defendant appeared to have considerable difficulty in appreciating the dichotomy between *"difference"* and *"variation"* in signatures. This is because counsel for Defendant attempted to make a mountain out of molehill in respect of what is meant by a *"variation"* and what is meant by a *"difference*".

After referring to an Article titled *"Difference and Variation"* posted online, dated November 16, 2017 where the author drew the distinction between the two words. Counsel for the Plaintiff concluded that per the testimony of both expert witnesses, *"the signatures on* **Exhibit '17A', '17B', '17C', '17D'** *and '17E' were different from Nana Obranu Gura II, who executed the signatures on the three PRAAD documents, namely that the five signatures were a poor attempt at forging Nana Obranu Gura's signature."*

Counsel for Plaintiff also took issue with a certain A. G. Sam and his role as a witness in respect of some of the receipts. For instance, in ***Exhibit 'GT–SC 9(a)',*** the said A. G. Sam signed for Nana Obranu Gura II. This would mean that, Nana Obranu Gura II himself was not present on the occasion A. G. Sam was signing the document. The irresistible and logical deduction and conclusion would be that A. G. Sam was the one who authored the name of Nana Obranu Gura II.

On the other leg of counsel for Plaintiff's submissions on the payment of compensation as a pre-requisite for compulsory acquisition, counsel submitted that acquisition whether

under Act 125 or under Constitution, is conditioned on payment of prompt and adequate compensation. There are therefore two stages in light of constitutional provisions guaranteeing the protection of property and placing on the State the two-pronged obligation of;

1. *Compulsory acquisition in the public interest and*
2. *Payment of prompt and adequate compensation*

Based on the above according to counsel for the Plaintiff, leads to the conclusion that compulsory acquisition is only lawful when it has been vindicated by the payment of prompt and adequate compensation. In simple terms the State should not be able to use its wide powers of compulsory acquisition to acquire land from defenceless individuals, families and Stools then refuse to pay compensation by raising a defence of limitation or estoppel by laches and acquiescence. Counsel then referred to ***Article 20 and 18 of the 1992 Constitution of Ghana*** and ***Section 238 of the new Lands Act 2020, Act 1036.***

We would resolve the issue of compensation under three legal positions namely:

a. *Compulsory acquisition without the payment of compensation*
b. *Forgery of payment documents*
c. *Whether a claim for compensation is statute barred*

ON COMPULSORY ACQUISITION WITHOUT THE PAYMENT OF COMPENSATION

According to Halsbury's Law of England 4th Edition Vol. 8 (1) ***"where land or an interest in land is purchased or taken under statutory powers without the agreement of the owner it is said to have been compulsorily acquired".*** The effect of this process is that it extinguishes any title and/or interest that a person might have had in the land at the date of the publication of the Instrument of Acquisition.

See the case of ***Sagoe vs. Social Security and National Insurance Trust*** (referred to supra). In ***Memuna Moudy vs. Antwi [2003-2004] 2 SCGLR 967*** where it was held in holding (1) of the report as follows:

> ***"Land compulsorily acquired by Government under the Public Lands Ordinance Cap 134 (1951 REV) vested automatically in the Government upon publication in the gazette; and further that, by virtue of Section 11 of the Ordinance, the acquisition operates to ban and destroy "all other estates, rights, titles, reminders, reversions, limitations, trust and interests whatsoever of and in lands acquired."***

We had already made reference to *Section 2 (3) of Act 125* which serves as a foundation of *E. I. 86 and Section 4* which deals with the payment of compensation. ***'Exhibit GT–SC 7(d)'*** reveals that a letter dated 11th June, 1969 from the Lands Secretariat, signed for the Chief Lands Officer to the General Manager of the State Publishing Corporation requested the publishing of E. I. 86 in the next gazette. Upon receiving notice of the acquisition Nana Obranu Gura II by a letter dated September, 4, 1969 wrote to the Chief Lands Officer laying claim to the disputed land. See ***Exhibit 'GT-SC-8'.*** This piece of evidence serves as proof of the fact that the predecessor of the Plaintiff was aware that compulsory acquisition of the disputed land had taken place. He therefore began the process of claiming compensation by first asserting his interest in the land. By a letter dated 6th September, 1968, the lawyer for Nana Obranu Gura II, one J. K. Agyemang wrote to the Chief Lands Officer regarding the payment of compensation and also to bring to the attention of the Chief Lands Officer, that the services of a previous one Mr. Casely Hayford had been withdrawn. See ***Exhibit 'GT-SC-9(a)'.***

This piece of evidence shows a clear request for compensation and ***Exhibits 'GT-SC-9(a)'*** to ***'GT-SC-9(u)'*** series are documentary evidence adduced by the Defendant as proof of the payment of compensation. It is alleged that on 28th February, 1969, Nana Obranu

Gura II was paid ¢61.10 and he signed a payment voucher (see ***Exhibit 'GT-SC 9 (1).*** There was also a document tendered in evidence as **Exhibit '3A'** that shows Nana Obranu Gura II acknowledging receipt of payment. The Defendant emphasized that the payment voucher signed by Nana Obranu Gura II was not a subject of challenge as it was not part of the documents sent for forensic examination.

Furthermore, the Defendant led evidence to show that on 6th October, 1969, Nana Obranu Gura II received an amount of ¢850.00 as compensation and in full satisfaction of his claim against the State for compulsory acquisition. ***Exhibit 'GT-SC-9(r)'*** is the document covering the payment which was signed by Nana Obranu Gura II on 6th October, 1969. The Defendant finally argued that after 6th October, 1969 until 1972 when Nana Obranu Gura II was destooled, there was no claim for compensation and that if compensation had not been paid at the time, there would have been several documents from the successors of the Stool or families demanding for compensation.

The main crux of the Plaintiff's case before the Supreme Court is that the payment of compensation has been completely vitiated by fraud, as the agreed sum of ¢850.00 was never paid to the Twidan Royal family of Afransi.

FORGERY OF PAYMENT DOCUMENTS:

Section 13 (1) of the Evidence Act, NRCD 323 provides that:-

> ***"In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt."***

See also the case of ***Fenuku vs. John Teye [2001-2002] SCGLR 985.***

Based on the statute and the case referred to supra, the Plaintiff was required to prove the accusation of fraud beyond reasonable doubt. In their quest to discharge this burden, the Plaintiff called the two expert witnesses to testify as to whether the signature on some of the payment documents adduced in evidence by the Defendant are in actual fact the signature of Nana Obranu Gura II. The evidence of the experts is considered as expert opinion within the meaning of ***Section 112 of NRCD 323*** where two conditions must be met. First the evidence must be beyond common experience which means that the ordinary man not acquainted with that particular subject will not be able to accurately analyze and make the necessary deductions from the fact or evidence presented. Secondly, the evidence must as of necessity assist the trier of fact. Where the evidence would rather confuse the issues, such evidence must be rejected.

In evaluating handwriting experts the case of ***Conney vs. Bentum-Williams [1984-86] 2 GLR*** is a useful guide. In that case it was held that:-

> ***"A handwriting expert is not required to state definitely that a particular writing is by a particular person. His function is to point out similarities or differences in two or more specimens of handwriting submitted to him and leave the court to draw its own conclusions.***

See also the case of ***Wakeford vs. Lincoln (Bishop) [1921] 90 LJ 174, 179 PC*** where the Privy Council had this to say:-

> ***"Their Lordships now turn to the examination of the words themselves. 'It is not possible', he says, to say definitely that anybody wrote a particular thing: All you can do is to point out similarities and draw conclusions from them".***
>
> ***This is the manner in which expert evidence on matters of this kind ought to be presented to the court, who have to make up their minds, with such assistance as***

can be furnished to them by those who have made a study of these matters, whether a particular writing is to be assigned to a particular person.

In other words, an expert in handwriting having examined, deciphered and compared the disputed writing with any other writing, the genuineness of which is not in dispute, is only obliged to point out the similarities or otherwise in the handwriting; and it is for the court to determine whether the writing is to be assigned to a particular person. So in the case herein, the report was supposed merely to assist the court in deciding the vital issue of whether or not the conveyance, Exhibit 'C' was a forgery and it would therefore have been an undue and unwarranted interference if it had gone further to pronounce on the very issue which the court was called upon to determine."

From the above authority, the handwriting experts were required to simply point out similarities or differences in the signatures and leave the conclusion to the court.

Furthermore, in the *Fenuku vs. John Teye* case referred to supra it was held at page 1004 that:

"With regard to handwriting expert evidence, the principle of law is that the Judge need not accept any of the evidence offered. The Judge is only to be assisted by such evidence to come to a conclusion of his own after examining the whole of the evidence before him. The role of a Judge in considering an issue whether or not a signature or writing is forged is clearly set out in the case of Commey vs. Bentum-Williams [1984-86] 2 GLR 303 on which both the lower courts had heavily relied"

The case of Fenuku supra established the principle that the court is not bound by the opinion of the expert. A trier of fact is required to arrive at his own conclusion after the

evaluation of the evidence. However, before choosing to reject an expert opinion a Judge must give good reason for rejecting that opinion.

In the case of ***Tetteh vs. Hayford [2012] 1 SCGLR 417*** their Lordships held that:

> ***"It is generally understood that a court is not bound by the evidence given by an expert such as the Surveyor in this case. See the case of Sasu vs. White Cross Insurance Co. Ltd. [1960] 1 GLR 4 and Darbah & Another vs. Ampah [1989-90] 1 GLR 598 (CA) at 606 where Wuaku JA (as he then was) speaking for the court also reiterated the point that a trial Judge need not accept evidence given by an expert. But the law is equally clear that a trial court must give good reasons why an expert evidence is to be rejected."***

Relating the cases referred to supra, the testimonies of the two expert witnesses were of assistance in the appreciation of the evidence before the court. The experts gave a clear distinction of what amounts to a variation and what amounts to a difference. A variation is not a difference but a deviation made by the same author while a difference on the other hand refers to a different writer. The proceedings on 31st March, 2022 at page 25 reveals that the panel took particular interest in the meaning of the two words. This is what transpired between the panel and PW1 – SC:

"Panel: If they may vary, what will be the effect of the variation?

A: My Lords, difference has a meaning in document examination and variation also has a meaning in document examination. Difference means dissimilarity, but when you use variation, variation comes from the same person as a result of some of the influences we talked about like mood, your happiness and whatever it is physical and mental condition so they vary. When we talk of difference, it means they are from two or three different people, but variation is from one person."

The witnesses also through their testimonies gave an indication of some factors that may bring about variations in a person's signature. The factors which may cause a variation in a signature may include, the mood of the person, the age of person, whether the person was literate or illiterate, body position, the surface on which the signature was made, different writing materials such as pens and pencils, the purpose for which the signature is intended, environmental facts, as well as the number of years between when the signatures were signed. These factors will be of enormous help in the analysis of ***Exhibit '17A', Exhibit '17B', Exhibit '17C', Exhibit '17D',*** and ***Exhibit '17E', or Exhibits '11A', '11B', '11C', '11D',*** and '***11E',*** in comparison to ***Exhibit '18A', Exhibit '18B'*** and ***Exhibit '18C'*** or ***Exhibit 'C'*** or ***Exhibit '12A', 12B*** and ***'12C'.***

One major factor that cannot be discounted is that the three documents from PRAAD that is ***Exhibit '18A', Exhibit '18B'*** and ***Exhibit '18C'*** were all signed between June and July 1953 while the other five signatures ***Exhibit '17A' to '17E'*** were signed some 16 years after. From the evidence on record, Nana Obranu Gura II died in the year 1978 when he was 74 years old. A mathematical calculation would reveal that in 1969 when the disputed signatures were alleged to have been signed, he would have been 65 years old. Also, at the time he is alleged to have signed the three PRAAD documents, he was about 49 years old.

The Plaintiff argued that Nana Obranu Gura II cannot be said to be too old so as to cause a major difference in the signatures. See page 69 and 71 of the written submissions of counsel for Plaintiff.

We respectfully hold a different view; the lapse of 16 years may bring about variations in a person's signature. Over a 16-year period, a person who was 49 years may not have same strength as 65 years. Secondly, the documents were submitted to the experts so as to give them an indication as to which documents the Plaintiff believed to be that of Nana

Obranu Gura II and those there were not his signatures. The experts therefore in the evaluation of the signatures labelled them as *"known"* and *"questioned"* or *"genuine"* and *"suspected"*. That meant that from the start, the experts' minds were in some way prejudiced to identify differences in the signatures described as known from those described as questioned. This point is crucial because the court sitting as the trier of facts holds the final say on the determination of the issue of forgery. A fair and impartial examination of all the signatures without discrimination will reveal some slight variations in all of them. This is because no one can reproduce a signature with such mathematical accuracy so as to be perfectly identical. Even with the three PRAAD documents, a critical look at the *"r"* will reveal that some of the signatures do not have the same consistent concave.

Also, the purpose for which the signatures may be required may impact the care and attention that may be ascribed by the author. A person signing an attendance book may not accord the same care and precision as if he were signing a cheque for a bank. While the three signatures in the PRAAD documents were executed in the course of normal administrative correspondence between the Chief and Elders of Gomoa Afransi and Gomoa Obuase and Government officials. The five disputed documents were most likely signed in a relatively less formal setting.

After a careful consideration of the above factors and an independent examination of the signatures, it is our humble opinion that the so called *"differences"* are in actual fact *"variations"* of the same signature of the same person and we so hold. The variations in our opinion was as a result of the long lapse of time between the signing of the two sets of signatures.

It is on the basis of the above that we hold that the Plaintiff has not discharged his burden to prove the allegation of forgery beyond a reasonable doubt. The Plaintiff's predecessor

Nana Obranu Gura II on the evidence led clearly received compensation for the disputed land.

From the above, even under the Limitation Act, since the Plaintiff would have been claiming compensation under Act 125, they were required to bring the suit within 6 years. From the publication of E. I. 86 in 1969 till the institution of the action in 2015, more than six years have elapsed for the Plaintiff and the Royal Twidan Family to sue to claim compensation.

Ground 'F' succeeds and it is accordingly upheld.

On Ground H:

The judgment is against the weight of evidence

We have already evaluated the pieces of evidence on record especially the copious documentary evidence, tendered by the Defendant before the Supreme Court and we have come to the conclusion that, the judgment of the High Court which was affirmed by the Court of Appeal is clearly not supported by the evidence on record.

Ground 'H' succeeds and it is upheld.

The appeal of the Defendant succeeds and it is hereby allowed. The decision of the Court of Appeal dated 29th May, 2019 which affirmed the decision of the High Court is hereby set aside together with the consequential Orders.

M. OWUSU (MS.)

(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY

(JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS.)

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