IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: LOVELACE-JOHNSON (MS.) JSC (PRESIDING)

PROF. MENSA-BONSU (MRS.) JSC

KULENDI JSC

ACKAH-YENSU (MS.) JSC

ASIEDU JSC

CIVIL APPEAL

NO. J4/53/2022

5TH JULY, 2023

IN THE CONSOLIDATED SUITS BETWEEN

NANA KWATA YAMOAH …… PLAINTIFF/RESPONDENT/APPELLANT

(SUBSTITUTED BY NANA KOJO ENYAN)

VS

EBUSUAPANYIN K. YEBOAH ……. DEFENDANT/APPELLANT/RESPONDENT

(SUBSTITUTED BY EBUSUAPANYIN YAW ANSAH)

AND

NANA KWATA YAMOAH ……. PLAINTIFF/RESPONDENT/APPELLANT

(SUBSTITUTED BY NANA KOJO ENYAN)

VS

EBUSUAPANYIN K. YEBOAH ……. DEFENDANT/APPELLANT/RESPONDENT

(SUBSTITUTED BY EBUSUAPANYIN YAW ANSAH)

JUDGMENT

KULENDI JSC:-

INTRODUCTION

This is an appeal against the judgment of the Court of Appeal dated 21st April, 2021 by which the Court of Appeal, unanimously overturned a judgment of the High Court of 29th March, 2018. Aggrieved by the said decision, the Plaintiff/Respondent/Appellant (hereinafter called "the Appellant") has filed a notice of appeal dated 15th October, 2021 upon the grounds contained therein, seeking to set aside the judgment of the Court of Appeal and to restore the said judgment of the High Court.

BACKGROUND

The instant matter arises from two different suits in the High Court, namely, Suit No.: LS.50/02 entitled Nana Kwata Yamoah vrs. Ebusuapanyin K. Yeboah and Suit No.: LS.1/03 entitled Nana Kwata Yamoah vrs. Ebusuapanyin K. Yamoah, which were consolidated.

By a writ of summons filed on the 3rd of December, 2002, which was subsequently amended on 19th July 2010, the Appellant, in his capacity as Odikro of Gomoa Nsuaem commenced an action against the Defendant/Appellant/Respondent (hereinafter called "the Respondent") for the following reliefs:

1. A declaration of title to and recovery of possession of all that piece or parcel of land situate, lying and being at Nsuaem popularly known and called Otopaako (Otuparky) and bounded on the side by the property of Kweku Wurodu's, on another by the property of Opanyin Amponsah, on another side by the property of Obaa Kwaa Village, on another side by property of Archenfie, on another side by the River Ayensu;

2. Damages for trespass and

3. Perpetual injunction restraining the Defendant by himself, his agents, privies, family members, servants, labourers, assigns, personal representatives, workmen, executors or howsoever from dealing with or having anything to do with the land in dispute.

For some reason that we are unable to glean from the record, the same Appellant, on or about the 13th of January, 2003 issued another writ in the said Suit No.: LS.1/03 against the Respondent and endorsed for the same reliefs as sought per the amended writ of summons in Suit No.: LS.50/02.

Subsequently, by an order of the High Court dated 23rd January 2007, Suit Nos.: LS.50/02 and LS.1/03 were consolidated for trial.

The contentions upon which the above reliefs sought by the Appellants were anchored are that the land in dispute, variously known as Otopaako and Kwakwatsia, was first acquired by his ancestors, through conquest by the original settler, Kwasi Bondam. According to the Appellant, after the conquest and subsequent settlement, his predecessor Kwasi Bondam, following a successful expedition in Akwamu, brought down the Respondent's predecessors as slaves and they were made to settle on the said land. Appellant stated that whilst his predecessors have consistently occupied the stool at Nsuaem (Kwakwatsia) till date, the Respondent's predecessors were, in the course of time appointed to the position of Safohene ie. Captain of the Asafo company. The Appellant alleges that his ancestors have at all material times exercised acts of possession and control over the land in dispute from time immemorial to the total exclusion of the Respondent and his ancestors.

The above notwithstanding the Respondent and members of his family have recently been asserting title adverse to and inconsistent with that of the Appellant, which necessitated the suits against the Respondent.

On the 20th day of January, 2003, the Respondent who is Head of the Agona Family of Gomoa Nsuaem, filed a Statement of Defence and essentially disputed the Appellant's claims. It was contended that the disputed land was acquired by the Respondent's ancestor called Kwaku Ano,

through purchase from the Appellant's ancestor by the name of Opanyin Kwaku in the year 1835. Further, the Respondent alleges that the land in dispute has been the subject of a series of litigations in seven different suits, with ownership being determined in favour of the Respondent's ancestors in each of these suits. The Respondent therefore raised a plea of *res judicata* against the Appellant in their defence.

The High Court in its judgment of 29th March, 2018, upheld the Appellant's claim and granted the reliefs sought in both writs. On appeal to the Court of Appeal, the judgment of the High Court was set aside by a unanimous decision of 21st April, 2021.

In the said judgment, the Court of Appeal held in part as follows:

> "*In the final analysis, upon our review of the entire record of appeal and having closely attended the Written Submissions of both Parties, it is our judgment that the earlier suits relied upon by the Respondent as creating an estoppel in his favour, related to the same subject-matter in the juridical sense, as the present suit.*
>
> *This means that the said previous judgments, some of which were centuries old, settled once for all the status of the disputed land in this consolidated suit, which thereby subsists as being conclusive of the rights of the Parties and their privies in respect of allodial ownership of Kwakwatsia Nsuaem or Otopaako Lands and a complete bar to the institution of any subsequent action involving the same claim, demand' or cause of action. …*
>
> *This really is the pivotal and central issue upon which these proceedings essentially turn, and on which we would therefore proceed to rest the ultimate outcome of this instant appeal.*
>
> *Having thus rested our decision essentially on the central and fundamental ground that the Plaintiff's claims in both consolidated suits are caught by estoppel rem judicatam, we are constrained by settled authority from proceeding any further to consider the merits of the other grounds of appeal."*

Aggrieved by the judgment of the Court of Appeal, the Appellant invoked the appellate jurisdiction of this Court by the filing of the Notice of Appeal to this Court on 15th July, 2021 upon the grounds set out therein.

GROUNDS OF APPEAL

The grounds upon which this appeal is mounted are as follows:

a. The judgment is against the weight of evidence.

b. The Court of Appeal was wrong in relying on the doctrine under *res judicata* to give judgment for the Defendant when there was no evidence of extinguishment of Appellant's title to the land in dispute.

c. That on the facts the judgment of the Court of Appeal cannot be justified having proceeded on the view that a decision on a part of the land in favour of privies of Defendant is synonymous with a decision involving the whole land, even though and in spite of the fact that, Plaintiff's Royal Twidan Family of Gomoa Nsuaem has consistently been in possession of the land in dispute.

d. The Court of Appeal, properly instructing itself, ought to have come to the conclusion that where there is a state of uncertainty as to the boundaries of the land in dispute, the only safe guide is possession; consequently, the complete reliance on the doctrine under *res judicata* was erroneous.

RESOLUTION OF GROUNDS OF APPEAL

The grounds of appeal are intertwined as they all call out the question of whether or not the Court of Appeal's decision that the suit of the Appellant was caught by the doctrine of *res judicata,* was right, having regard to the evidence on record. Thus, the discussion of Ground "a", the omnibus

ground of appeal will dispense with the necessity of separately discussing Grounds "b", "c", and "d" in order to avoid a repetitive evaluation of the law and evidence.

In resolving this omnibus ground of appeal, we note that this Court is not bound by the findings of facts and conclusions of either the Trial or Appellate Court. We may, in our analysis of this appeal, affirm either of the findings of the two lower courts or come up with new findings altogether. This is especially so where the two lower courts are not concurring in their evaluations and conclusions. This position of the law is affirmed by the case of **Continental Plastics Ltd v IMC Industries [2009] SCGLR, 298** , in which this Court per Georgina Wood CJ (as she then was) stated at page 307 as follows;

> "An appeal being by way of rehearing, the 2nd appellate court is bound to choose the finding which is consistent with the evidence on record. In effect the court may affirm either of the 2 findings or make an altogether different finding based on the record".

However, in so doing, this Court and for that matter any appellate Court exercising a rehearing jurisdiction, must analyse the entire record of appeal, particularly the pleadings, evidence adduced at the trial and the respective judgments of the lower courts to determine which of the analysis, reasoning and conclusions of lower courts is demonstrably supported by the evidence on record and based on law.

Also, since a plaint that a judgment is against the weight of evidence invariably implies that some piece of evidence on record has been misapplied against the Appellant, the Appellant is equally under a duty to point out those pieces of evidence as well as demonstrate by clear, concise and comprehensible arguments how those pieces of evidence have been misapplied against him.

This court in its judgment of 2nd December 2020 in **Civil Appeal No.: J4/62/2019 entitled: National Labour Commision vrs. First Atlantic Bank**, which judgment I had the privilege of authoring, reasoned as follows:

"The burden on the Appellant in this case to properly set out, particularize, detail, specify and demonstrate the lapses, omissions, failures, misdirection, wrongful evaluations, irrelevant matters and considerations of the evidence complained about in the judgment cannot be overemphasised."

The aforesaid notwithstanding, the duty of an Appellant to demonstrate the lapses in the judgment does not absolve this Court, and for that matter any appellant exercising a rehearing jurisdiction, of its equally important duty to examine the entire record of appeal to satisfy itself that the judgment can be supported having regard to the evidence on record and the law.

In arguing the omnibus ground of appeal, the Appellant makes reference to the earlier judgments that the Respondent pleaded in their Defence and relied on at the trial as having determined the ownership of the land. The Appellant contends that the said judgments sought to be relied on by the Respondent failed to properly describe the identity of the land in those judgments and therefore cannot be said to relate to the land in dispute and consequently, to ground a plea of *res judicata* in favor of the Respondent.

As a result of the contentions between the parties, issue was joined on whether or not a plea of *res judicata* would lie against the Appellant in respect of the land in dispute. Specifically, the Respondent in his amended defence filed on 7th May, 2008, pleaded as follows:

"16. Defendant further contends that the land became a subject of litigation in the following suits which all went in favour of the Defendant's family against Plaintiff's family:

1. *QUABINA AYERN VRS. QUAMIN ASIAKON KING GHARTEY'S COURT – 1894;*
2. *QUABINA AYERN VRS. QUAMIN ANAKOR KING KONO NKUM OF GOMOA -1894;*
3. *KOFI LADI VRS KOBINA ANYAN, SUPREME COURT- ACCRA - 1896 1912;*

4. *KOBINA ENTSEY VRS; KWAO ASAR SUPREME COURT 1912;*
5. *KOBINA ANYAN VRS. ASOAKO ARHIN NANA KOJO NKUM'S COURTS - 1895;*
6. *BONDAN ENTSEY VRS. KOBINA SEIFO PARAMOUNT CHIEF'S TRIBUNAL, GOMOA ASSIN STATE – 1936 and*
7. *NANA BODAM ENTSEY VRS. KOBINA SEIFO, PARAMOUNT CHIEFF'S TRIBUNAL, GOMOA ASSIN STATE 1943.*

17. The Plaintiff is estopped by estopped per rem judicatem to bring this action." [see page 106 of record of appeal]

The doctrine of *res judicata* is to prevent the relitigation of a matter that has been determined by a court of competent jurisdiction, tribunal or arbitration among the same parties or their privies.

In the case of **In Re Sekyedumase Stool; Nyame vrs. Kese 'Alias' Konto [1998-99] SCGLR 478,** particularly at page 479, it was held by this Court per Acquah JSC (as he then was) that:

> "The plea of Res Judicata can be invoked in respect of any final judgment delivered on the merits by a judicial tribunal of a competent jurisdiction. Such a judgment is conclusive as to the rights of the parties and their privies and as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action " .

Similarly, this Court in the case of **In Re Kwabeng Stool; Karikari vrs. Ababio 11 [2001-2002] SCGLR 515 at page 530**, held concerning the plea of *res judicata* as follows:-:

> "The doctrine or principle of estoppel is founded on the maxim *interest reipublicae ut sit finis litium,* meaning "it concerns the State that lawsuits be not protracted". Also, "no man ought to be twice vexed, if it be found to the court that it be for one and the same cause" (*nemo debet bis vexari, si constat veriae quod sit pro una et eadem causa*). If an action is brought, and

the merits of the question are determined between the parties, and a final judgment is obtained by either, the parties are precluded, and cannot canvass the same question again in another action, although, perhaps, some objection or argument might have been urged upon the first trial which would have led to a different judgment."

See also the cases of **Conca Engineering (Gh) Ltd vrs. Moses [1984-86] 2 GLR 319**; **Sasu vrs. Amuasakyi & Anor [2003-2004] 2 SCGLR 742**, **Boakye vrs. Appollo Cinemas & Estates (Gh) Ltd [2007-2008] SCGLR 458**; **Assafuah vrs. Arhin Davies [2013-2014] SCGLR 1459.**

From the case law, a party relying on the plea of *res judica* must prove that:

1. The parties in the instant case are the same parties in the earlier case or their privies;
2. The subject matter in the instant case is the same as the subject matter in the earlier case;
3. The issue in the instant case has been decided in the earlier case;
4. The decision or judgment in the earlier case was final and not interlocutory in nature.

In the instant case, it is not in contention that the judgments relied on in proof of the operation of the plea of *res judicata* were final. Also, it is not in dispute that the parties in the instant case are the privies of the parties in the earlier judgments. What is in contention is whether or not the subject matter of the judgments in the earlier cases is the same as the subject-matter in this instant suit. In other words, whether the identity of the land adjudicated in the earlier judgments is the same as the land in dispute in the instant case. It has been argued in this appeal that the Respondent failed to prove that the land that the above judgments related to is the same as the land in dispute.

Proof in civil matters does not require absolute certainty. In civil matters, the standard is on the balance of probabilities. This implies that a party must demonstrate that his claim is more probable than that of the other in order to succeed. In evaluating whether or not a case is more probable that its rival version, all the evidence, be it that of the Plaintiff or the Defendant must be considered and the party in whose favour the balance tilts is the person whose case is more

probable than the rival version and is therefore deserving of a favourable verdict. See **Tarkoradi Flour Mills Ltd vrs. Samir Faris (2005-2006) SCGLR 882 @ page 900.**

Section 14 of the Evidence Act, 1975 (NRCD 323) provides that:

> "*except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which it is essential to the claim or defence he is asserting*"

The standard of proof required in Civil Cases has found judicial expression in a plethora of cases of this Court including the case of **Bisi vrs. Tabiri alias Asare [1987-1988] 1 GLR 360** at page 361 where this Court held as follows;

> "*the standard of proof required of a Plaintiff in a Civil action was to lead such evidence as would tilt in his favour the balance of probabilities on the particular issue. The demand for strict proof of pleadings had however never been taken to a call for an inflexible proof either beyond reasonable doubt or with mathematical exactitude or with such precision as would fit a jig-saw puzzle. Preponderance of evidence became the trier's belief in the preponderance of probability. But "probability" denoted an element of doubt or uncertainty and recognised that where there were two choices it was sufficient if the choice selected was more probable than the choice rejected*..."

We wish to emphasize that the requirement of proof of identity of land is one which cannot be ignored in land disputes. However, this requirement of proof of identity of land does not impose a greater burden of proof on a party. The identity of land need not be proven to mathematical precision or absolute certainty. Proof of identity of land does not require proof to perfection but that which will enable the court, the parties and third parties to know the very land which is being adjudicated on. Authorities abound for the legal proposition that identity of a land is a *sine qua non* for the grant of an order for declaration of title. The judicial policy for this rule was explained by Ollenu JSC in the case of **Anane vrs. Donkor (1965) GLR 188**, which was cited by this Court in

a judgment dated 29th June, 2016 in Suit No. J4/4/2016 entitled **Aku-Brown vrs. Lanquaye** per Pwamang JSC, as follows:

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

Similary, in **Sah v. Darku [1987-88] I GLR 123 CA**, it was held as follows:

> "Admittedly, the courts have consistently refused to declare title in any claim for land when the land cannot or has not been clearly identified. But as a matter of fact, the contention that a party must prove the identity of the land in a land suit with certainty to enable a court decree title does not mean mathematical identity or precision. "

In proving the identity of the land, the law does not lend itself to a one-way, straight jacketed approach. In some instances, the mere tendering of a site plan or an indenture may be enough. In other instances, the mere statement of a house number could be considered adequate description or identity of land. Also, the recitation of boundary owners or other forms of identity may be enough so far as it aids in identifying the specific land to achieve the judicial policy reasons for the rule.

In the instant case, whilst the High Court found that the Respondent failed to prove the identity of his land and to demonstrate that the judgments obtained in the earlier suits related to the land in dispute, the Court of Appeal held that the Respondent proved the identity of the land and that the land had been the subject matter of earlier suits in which the Courts had ruled in favour of the Respondent.

We note from our perusal of the Record of Appeal that the Appellant admitted that the land in dispute was litigated over by his ancestor and that his ancestor lost the case to the ancestor of the Respondent. During cross examination, the Appellant testified at page 418 and 419 of the Record of Appeal as follows

> ***"Q: Nana Bondam Entsey was your ancestor?***
>
> ***A: Yes***
>
> *Q: What about Otenyi Kwaku?*
>
> *A: Yes, he was my ancestor.*
>
> *Q: Are you aware that your ancestor Otenyi Kweku sold this land in dispute to the ancestor of Defendant Kweku Annor?*
>
> *A: No, I do not agree*
>
> ***Q: Are you aware that Nana Bondam sued Kobina Seifo in 1944 over this land in dispute?***
>
> ***A: Yes, I am aware***
>
> ***Q: And his main claim was that the Defendant in that case was to produce a document to show that Otenyi Kweku sold the land to Kweku Annor?***
>
> ***A: Yes***
>
> ***Q: Are you aware that Kobina Seifo was the ancestor of the Defendant.***
>
> ***A: Yes***
>
> ***Q**: And Nana Bondam Entsey lost that case?*
>
> ***A: Yes***

Whilst the above testimony is contrary to the evidence in chief of the Appellant and his pleadings in Court, its importance cannot be downplayed. It constitutes an admission that corroborates the case of the Respondent. Having admitted under cross-examination that the land in dispute was the subject matter of an earlier judgment of the Court given against his "ancestor", the issue of whether the land which was the subject matter of the earlier judgment is one and same as the land in dispute, required no further proof.

Also, the 1944 judgment which the Appellant admitted under cross examination as relating to the land in dispute and in which the Court held the predecessors of the Respondent to be owners was tendered in evidence at trial as Exhibit 8. The said Exhibit 8 can be found at page 788-852 of the Record of Appeal. The judgment states in part as follows:

> ***"Judgment of the Tribunal was given for defendant on the grounds that the subject matter of the claim is res judicata. This finding is amply borne out by the admissions of the Plaintiff Appellant in cross examination in the Tribunal, and the Tribunal need not have called on the defence at all. However irregularly the defence was heard, by the Plaintiff's own admissions, his case must fail. Whether or not there was a document evidencing purchase, Plaintiff has no right to ask for an order for its production. There is no dispute, the matter has been decided years ago."***

Thus, even in the 1944 judgment which was tendered as Exhibit 8, the Court in the said judgment relied on the doctrine of *res judicata* to dispose of the case.

It is also worthy of note that in the 1944 judgment (Exhibit 8) supra, The Appellant's predecessor's endorsement of the land therein is similar to the land description in the instant suit and it states as follows:

> ***"The Plaintiff claims from the Defendant the declaration of Right, Title or any other Document in connection with Kwakotsia-Nsuaim land which Defendant said to have been sold to Defendant by Plaintiff's predecessor by***

> ***name Otenyi Kweku which said land is <u>commonly known as the Plaintiff's Ancestral Land</u>"***

[see exhibit 8, Bondam Entsey (Plaintiff's predecessor) v Aguna Family per Kobina Seifu (Defendant's predecessor)]

In Exhibit 8, the land that was the subject-matter of the dispute was described as the "Plaintiff's ancestral land". It was also described as "Kwakotsia Nsuaim land". Nowhere was it said that the land in dispute related to a portion of the land in Kwakotsia Nsuaem. Therefore, it cannot be the case that the land that was the subject matter of the 1944 judgment or earlier cases related to only a small portion of land at Adumadum and not the entire "Kwakotsia-Nsuaem land".

The Appellant in this suit agrees, and/or admitted in his evidence in chief that the land in dispute is the same land variously referred to as "Kwakotsia, Nsuaem and Otopaku". This evidence can be found at page 400 of the Record of Appeal as follows:

> ***<u>I said Kwakotia later became known as Nsuaem</u>**. The boundaries of Nsuaem are Abaasa on one side, Takyiam Panfokrom Akyerefikuma, Opanyin Amponsah, Obaakwa, Ayensuadzi. These (sic) boundaries cover the entire land of Bondam. **<u>The actual name of this entire land for which Nsuaem was carved out is called Kwakotsia. Nsuaem, Kwakotsia and Otopaku are all the same land</u>**. **<u>This entire land is divided by the Ayensu River.</u>** The defendant lives at Nsuaem where there is human occupation now.*

From the foregoing, it is evident that the identity of the Respondent's land was proven to be the one that was the subject matter of the earlier suits. In any case, the Appellant, having admitted under oath that the land in dispute was the subject matter of an earlier judgment, the Respondent was absolved of any requirement of further proof. For a party need not lead further evidence on admitted facts.

Apart from the admissions made by the Appellant in the trial High Court, a composite plan was drawn on the orders of the Court which showed that the Appellant's claim of ownership is in respect of 2,991.6 acres of land whilst the Respondent's land was 2,301.6 acres. The composite

plan was drawn pursuant to survey instructions filed by both parties. In fact, the Respondent's survey instructions which were filed on 11th February, 2004, listed the boundary owners of the Respondent's land and instructed that "the Court appointed surveyor indicate the boundary owners and land features on his land."

The Surveyor testified on 1st February, 2006 at page 394 of the record of appeal as follows:

> "…***We were guided by the defendant's survey instructions as we went along the boundaries, all the salient point on the instructions were indicated on the drawing. Those that the defendant had common boundaries with were present at the time of the survey***. On completion on defendant's land we tackled that of the plaintiff. We had a second survey instruction from plaintiffs' counsel which we also incorporated in the plan. A composite plan was prepared. On the Register side, Area claimed by plaintiff comprises Nsuayem and Otapakrom lands - green with an acreage of 2, 991. 6 acres. Area claimed by the defendant, edged yellow with an acreage of 2,301.6 acres. Information given by Plaintiff is under green and that of Defendant yellow. Disputed area is edged red. Farmland given Mr. Arthur by Defendant edges blue and another land given Bentil by Defendant - violet "

From the foregoing, on the totality of the evidence led at the trial, we find the identity of the land sufficiently proven. Consequently, the subject matter of the land in dispute was the same as the subject matter in the earlier judgments, particularly the 1944 judgment entitled: Bondam Entsey (Plaintiff's predecessor) vrs. Aguna Family per Kobina Seifu, which said judgment was tendered in evidence at trial as Exhibit 8.

We also find evidence on record that for each parcel of the land that the Appellant sells, he gives a part of the money to the Respondent. The Appellant attempted to explain this during cross examination when he testified that, the reason he gives a portion of the proceeds of the sale of land to the Respondent is because the Respondent's family are his guests (tenants) on the land.

During cross examination of Appellant on 10th March 2011 and at page 424 of the record of appeal, Appellant testified as follows:

> Q: Did you say that whenever any land is given at Nsuaem, part of the proceeds is given to the Defendants family?
>
> A: Whenever someone wants to build that is what happens.
>
> Q: And why is a portion given to the defendant's family?
>
> A: They are my guest I am obliged to feed them.

The above testimony to us is implausible. There cannot be any obligation on the part of a true owner of a land to co-share proceeds from the sale of the land with another whom he describes as his "guests". The fact that there are judgments which undisputedly date back to the nineteenth century all of which maintains the Respondent as the owner of the land in dispute presupposes that the Respondent's entitlement to proceeds of sale would be as of right.

The Appellant has contended in his second ground of appeal that the Court of Appeal was wrong in relying on the doctrine of res judicata to give judgment for the Respondent when there was no evidence of extinguishment of Appellant's title to the land in dispute.

The evidence shows that the subject-matter of this suit is caught by the doctrine of res judicata. Irrespective of acts of possession exercised by the Appellant after the sale, the fact still remains that the sale of the land legitimately extinguished any right of ownership the Appellant had in the land in dispute. If at all, a seller who retains possession of a property that he has disposed of by way of sale does so on the basis of a resulting trust for the purchaser. Therefore, the Appellant in this case cannot legally mount up a claim that acts of possession exercised by him on portions of the land despite the sale should mean that his rights to the land is not extinguished and he is therefore entitled to a declaration of title to land.

The Appellant contends in his third ground of appeal that a decision on a part of land in favour of the Respondent does not entitle them to the whole of the land in the face of acts of possession exercised by Appellant on the land.

It is to be noted that long possession of land does not ripen into ownership and he who is in possession has good title against the whole world other than the true owner. In this case, the evidence on record shows that Nsuaem lands were acquired by the Respondent's predecessors through sale. Acts of possession per se will not negate the documentary evidence of ownership by the Respondent. We wish to again point out that the evidence on record, at least from prior judgments, shows that Nsuaem lands were acquired by the Respondent. Therefore, as far as ownership of Nsuaem lands are concerned, it will be presumptive to say that although prior judgments mentioned Respondent as owners of Nsuaem land, in fact it is only a portion of Nsuaem land that is owned by the Respondent.

We are unable to accept the Appellant's position that the earlier judgments declared the Respondent owners of only a portion of the land in dispute. This position is contrary to the claims, pleadings and the evidence of the Appellant himself who admits that the Respondent lives on the said land and is entitled to proceeds of sale from the said land.

The fourth and final issue has to do with an issue of uncertainty of the boundaries of the land in dispute and the applicability or inapplicability of the doctrine of *res judicata.* This issue becomes moot as we have already resolved that the doctrine of *res judicata* was properly applied in the instant case and that the boundaries of the land was sufficiently proven.

CONCLUSION

Upon a careful consideration of the grounds of appeal and the submissions filed by both Counsel, we find the judgment of the Court of Appeal to be consistent with the evidence on

record and the law. It is for these reasons that by a unanimous decision on the 5th of July 2023, we ordered that this Appeal fails in its entirety and the judgment of the Court of Appeal dated 21st April 2020, is affirmed with cost of Twenty Thousand Ghana Cedis (GHS 20,000.00) against the Appellant and in favor of the Respondent.

E. YONNY KULENDI

(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS.)

(JUSTICE OF THE SUPREME COURT)

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

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