**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT**

**ACCRA - A.D. 2023**

**CORAM: BAFFOE-BONNIE JSC (PRESIDING)**

**OWUSU (MS.) JSC**

**PROF. MENSA-BONSU (MRS.) JSC**

**ACKAH-YENSU (MS.) JSC**

**ASIEDU JSC**

**CONSOLIDATED CIVIL APPEAL**

**NO. J4/62/2021**

**19TH JULY, 2023**

NII OKWEI KINKA DOWUONA VI ……. PLAINTIFF/RESPONDENT/ RESPONDENT

(SUBSTITUTED BY NII AKO NORTEI IV)

(SUBSTITUTED BY NUMO NOI OSEKAN III

OSU KLOTTEY WULOMO)

VS

1. BARCLAYS BANK OF GHANA LTD. …1ST DEFENDANT/APPELLANT/APPELLANT

2. THE ATTORNEY-GENERAL ……. 2ND DEFENDANT

3. LANDS COMMISSION ……. 3RD DEFENDANT/APPELLANT/APPELLANT

**JUDGMENT**

**ACKAH-YENSU (MS.) JSC:-**

**INTRODUCTION**

On the 2nd of June 1930, the then Colonial Government executed a Deed of Exchange with the Osu Stool and its elders in respect of certain parcels of land in Accra, notably, Ridge, Dzorwulu, and Osu. The lands were described in the first, second, and third Schedules of the Deed of Exchange. By the Deed of Exchange, the Osu Stool was acknowledged and recognized as the only Stool to deal with or grant the said lands which included the two (2) plots, subject matter of the present appeal (Plot Nos. 53 and 54, 5th Avenue, Osu Mantse's Layout, European Residential Area).

Following this, the Osu Stool effected various grants to persons including Barclays Bank (Dominion Colonial or Overseas), 1st Defendant/Appellant/Appellant's predecessor-in-title. Subsequently, on the 18th of September 1964, the President of the Republic of Ghana vested certain lands in the Osu Mantse's Layout in himself in trust for the Osu Stool pursuant to the Accra-Tema City Stool Lands (Vesting) Instrument (1964) E.I. 108.

Truly, the present matter is not the first that has put in controversy E.I. 108 of 1964. See cases such as **Wiredu v Kobia-Amanfi [1991] 1 GLR 517; In Re Osu Stool; Nii Ako Nortei II (Mankralo of Osu) v Nortey Owuoo III (Intervener) [2005-2006] SCGLR 628; Omaboe III v The Attorney-General & Lands Commission [2005-2006] SCGLR 579; Kpobi Tettey Tsuru III v Attorney-General [2010] SCGLR 904.**

In this appeal, the simple yet fundamental issue that confronts us is whether The Accra-Tema City Stool Lands (Vesting) Instrument, E.I. 108 of 1964 affected lands that were already occupied. Put differently, could the Osu Stool still exercise its rights over occupied lands within the Osu Mantse Layout (including the disputed plots) following the coming into force of E.I. 108?

The parties will maintain their designations as at the trial court in this delivery. Consequently, the Plaintiff/Respondent/Respondent will be referred to simply as the **"Plaintiff"**, the 1st Defendant/Appellant/Appellant, as the **"1st Defendant"**, the 2nd Defendant as the "**2nd** Defendant", and the 3rd Defendant/Appellant/Appellant as the **"3rd Defendant"**.

**BACKGROUND**

By its amended Writ of Summons dated 7th July 2017, the Plaintiff claimed for the following reliefs against the Defendants:

*"a. A declaration that the lease dated 20th day of May 1939 on plots 53 & 54, 5th Avenue, Osu Mantse's Layout, European Residential Area, Osu, Accra, between Plaintiff Stool and Barclays Bank (Dominion Colonial & Overseas) has expired and the plots together with the buildings thereon automatically and absolutely vested in Plaintiff Stool in accordance with Clause 9 of the said lease.*

*b. An order for recovery of possession and ejectment of 1st Defendant herein, its workers, agents, servants, assigns or any person(s) claiming through them on Plot Nos. 53 and 54, 5th Avenue, Osu Mantse's Layout, European Residential Area, Osu, Accra less the portion granted by Plaintiff Stool to Samuel Sey.*

*c. Perpetual injunction restraining the Defendants herein, their assigns, servants, workers, or any person(s) claiming through them from granting, entering, occupying or interfering in any manner with the plots nos. 53 and 54, 5th Avenue, Osu Mantse's Layout, European Residential Area, Osu, Accra with the buildings thereon and any*

*other plots within the third (III) Schedule of the Deed of Exchange and in accordance with the provisions therein.*

d. *A declaration that it is unlawful and unconstitutional and void to selectively and discriminately apply the E.I. 108 of 1964 to only Plaintiff Stool's properties.*

e. *An order to defendant to pay all rent arrears being equivalent to current rental value due under the expired lease with interest till date of final payment.*

f. *Mesne profit*

g. *Cost".*

The 1st Defendant subsequently applied to the court to dismiss the suit. The trial court, however, directed that the suit be set down for trial by legal arguments with the consent of all parties. The trial court thought it proper to join the Attorney-General as 2nd Defendant, and the Lands Commission as the 3rd Defendant to the action. Although the 2nd Defendant filed a defence, it did not participate any further in the proceedings at the trial court.

**THE PLAINTIFF'S CASE**

According to the Plaintiff, the Osu Stool owns a large tract of land which includes Osu, Dzorwulu, Ridge, Mamobi and Kotobabi. By a Deed of Exchange between the Plaintiff Stool and the then Colonial Government, it was agreed that the entire land within the Osu Mantse' Layout, European Residential Area, as contained in the Third Schedule to the Deed of Exchange, could be granted only by the Plaintiff Stool. The said Deed of Exchange was dated 2nd June 1930 and same registered in the Deeds Registry as No. 540/1930. It is this Deed of Exchange with Plaintiff contends, led to the creation of the Osu Mantse Layout or the European Residential Area Scheme.

On the 26th of May 1993, the Plaintiff Stool, pursuant to the Deed of Exchange, granted the 1st Defendant a lease over Plot Nos 53 and 54, 5th Avenue, Osu Mantse's Layout, European Residential Area for a period of fifty (50) years. It needs to be mentioned that at the time, the

1st Defendant was known as Barclays Bank (Dominion Colonial & Overseas) but by the time of the trial, the 1st Defendant had become known as Barclays Bank Ghana Ltd. Recently, the 1st Defendant has adopted a new name, ABSA Bank.

The fifty (50) year lease granted by the Plaintiff to the 1st Defendant was registered in the Gold Coast Lands Registry as No. 84/1940. The lease stipulated under clause "2" thereof that the 1st Defendant was to build on the two plots within two (2) years upon grant. Further, under clause "9", upon the expiration of the lease, the 1st Defendant was to quietly yield possession of the plots and the buildings thereon. Plaintiff contends that despite the clear terms of the lease, the 1st Defendant has refused to yield up the 2 plots, contending that those lands were vested in the President under E.I. 108 and hence the Plaintiff has no control over them. Plaintiff's response is that E.I. 108 did not affect already occupied lands, and same did not operate retrospectively.

**THE 1ST & 2ND DEFENDANTS' CASE**

At the trial court, the Defendants admitted the existence of the Deed of Exchange. The main contention of the Defendants was that on the 18th of September 1964, the disputed plots, together with others, became vested in the President of the Republic of Ghana in trust for the Osu Stool, pursuant to the aforementioned Accra-Tema City Stool Lands (Vesting) Instrument 1964, E.I. 108. It is the case of the Defendants therefore that the plots could be dealt with only by the 3rd Defendant, Lands Commission, and not the Plaintiff. The Defendants grounded their contentions on the decision of the Supreme Court in **Omaboe II v The Attorney-General & Lands Commission [2005-2006] SCGLR 576**. It is the further case of the Defendants that the Plaintiff is estopped by the Statute of Limitation as well as the equitable doctrines of laches and acquiescence.

**THE JUDGMENT OF THE TRIAL COURT**

On the 11th of July 2018, the trial court delivered judgment in favour of the Plaintiff, but granted the reliefs sought in part. The trial court held in conclusion as follows:

> *"Plaintiff Stool's action ought to succeed in part. Judgment is accordingly entered in favour of Plaintiff Stool.*
>
> *It is declared that the lease dated 26th day of May 1939 on plots Nos. 53 and 54, 5th Avenue, Osu Mantse's Layout, European Residential Area, Osu, Accra, between Plaintiff Stool and Barclays Bank (Dominion Colonial & Overseas) has expired and the plots together with the buildings thereon vest in Plaintiff Stool in accordance with clause 9 of the said lease.*
>
> *The prayer for an order of ejectment of 1st Defendant, its workers, agents, servants, assigns from the said plots is refused as …… 1st Defendant's conduct arising from misconception of the law and the confusion it has been thrown into following the intervention of the State through the Lands Commission. I therefore in the interest of substantial justice direct 1st Defendant to recognize Plaintiff Stool as its legitimate landlord or lessor and attorn tenant to the Plaintiff Stool failure of which Plaintiff Stool reserves the right to recover possession from them.*
>
> *I restrain the 2nd and 3rd Defendants from interfering with Plaintiff Stool's interest as the owner of the occupied portions of the European Residential Area. In particular, 3rd Defendant is ordered to continue to process and register instruments affecting the Osu Mantse's Layout land signed by occupant of Osu Stool in the way as they have already been doing as evidenced in Exhibit "N" series.*
>
> *As there is no evidence as to what amount by way of rents paid or not paid as this case was determined on legal arguments by agreement of the lawyers, I am unable to grant the relief of mesne profit. And here I will recommend that the Plaintiff Stool and 1st Defendant must go back to the drawing board where they have the template of their contract to follow through negotiations in good faith. 1st Defendant's Counterclaim is dismissed".*

The findings of fact made by the trial court as is also captured in the judgment of the Court of Appeal are reproduced hereunder:

a. **The Accra-Tema City Stool Lands (Vesting) Instrument, 1964, E.I. 108 is not a compulsory acquisition instrument.**
b. **E.I. 108 did not operate retrospectively.**
c. **E.I. 108 did not affect crystalized rights and obligations that had accrued at the time of passing the statute.**
d. **The accrued rights and obligations of both the lessor and the lessee crystalized under the lease especially where under the lease, the lessee had developed permanent structure on the land and upon the expiration of the lease the developed property was to go to the Osu Stool. So in the instant case, where the accrued rights and obligations of Osu Stool crystalized under the lease in respect of the developed property which had been held by the Court of Appeal as not affected by E.I. 108, the State purportedly exercising the renewal rights or fresh alienations over the affected developed land through the Lands Commission under the auspices of E.I. 108 flies in the face of the law. In effect, the accrued rights of the Plaintiff Stool under the Third Schedule of the Deed of Exchange (the Mantse's Layout) and all rights accrued under the leases granted by the Osu Stool, including the plots in dispute, could not be denied the Plaintiff Stool on the basis of E.I. 108 of 1964.**
e. **Even after the promulgation of E.I. 108, the 3rd Defendant has been registering, processing and more importantly, granting consent and concurrence on these grants by the Osu Stool within the Osu Mantse's Layout.**
f. **E.I. 108 did not affect any occupied land in Osu before it came into effect but affected unoccupied or undeveloped stool lands.**
g. **The OMABOE case was no authority as to the question whether or not E.I. 108 legally devised all previous owners of their title to plots they acquired before the coming into force of E.I. 108 of 1964. It was a referral case which issue had to do with whether or not by virtue of Article 267(1) of the 1992 Constitution, the**

**Vesting Power of E.I. 108 of 1964 has lapsed and which the Supreme Court has not lapsed. The Supreme Court in the OMABOE's case did not overrule the WIREDU's case.**

**h. The Plaintiff's action is not statute barred as the 1st Defendant has not been in adverse possession of the property.**

**APPEAL TO THE COURT OF APPEAL**

Dissatisfied with the judgment of the trial court, the 1st Defendant appealed to the Court of Appeal by a Notice of Appeal dated 13th August 2018. The 3rd Defendant also appealed to the Court of Appeal on the 27th of July 2018. On the 11th of June 2019, the Court of Appeal consolidated the two (2) appeals. In a judgment delivered on the 30th of November 2020, the Court of Appeal dismissed the appeals of the Defendants. The Court of Appeal affirmed the findings of fact, and the conclusions of the trial court as follows:

*"After our evaluation of the entire record of appeal and the application of the relevant law, we find no merit in the appeals filed by the Appellants. We accordingly dismiss them and consequently affirm the judgment of the Trial Court".*

**APPEAL TO THE SUPREME COURT**

On the 8th of December 2020, the 1st Defendant appealed to this Court on two (2) grounds, namely:

*"a. The judgment is against the weight of evidence placed before the court.*

*b. That on a proper consideration of the admitted facts in the appeal and the application of the relevant law, the dismissal of the Appellant's appeal was wrong and perverted in law.*

*c. Additional grounds to be filed upon receipt of the certified true copy of the judgment".*

The 3rd Defendant also, on the 24th of February 2020, filed a Notice of Appeal on the following grounds:

*"i) The judgment is against the weight of evidence.*

*ii) The Learned Justices committed an error of law when they maintained that Executive Instrument 108 of 1964 did not affect Osu Stool land granted and developed prior to its passage despite the stool's intention of its reversionary interest.*

*iii) The Learned Justices erred in holding that an application of E.I. 108 to the subject matter of the dispute constitutes a retrospective application of the law even though E.I. 108 affects only the lessors' reversion and not the lessee's accrued rights.*

*iv) The Learned Justices erred in holding that 3rd Defendant/Appellant/Appellant is statutorily estopped by conduct on the basis of the Exhibits "N" series notwithstanding the said exhibit constituting a negligible fraction of the land comprised in the Osu Mantse Layout.*

*v) The Learned Justices committed an error of law by holding that all the grounds of appeal set out by the 3rd Defendant/ Appellant/Appellant were in contravention of Rule 8(4)(5) of the Court of Appeal Rules C.I. 19 (as amended)".*

Despite raising ground "v" of the Grounds of Appeal, Counsel for the 3rd Defendant, in his Statement of Case to this Court, submitted that "*I do not intend to argue ground (v) of the grounds of appeal since its outcome, I respectfully believe, will have a negligible practicable impact on the appeal".* The said ground (v) is therefore deemed to have been abandoned even though in our view there appears to be some merit in the said ground.

The Court of Appeal appeared to have looked at Rule 8(4), (5) of C.I. 19 (as amended) absolutely without taking cognizance of the fact that in doing substantial justice, the court may save grounds from being struck out as inadmissible and unarguable even when particulars of the error of law have not been provided if an examination of the said grounds of appeal reveal that the error or misdirection alleged are actually embedded in the grounds. Consequently, even though the 3rd Defendant did not provide particulars of the error of law

alleged in its ground (ii), we find that the particulars are embedded in the formulation of the said ground. We will thus consider it even though it may not have fully satisfied the requirement of the rule.

**CONSIDERATION**

The well-established rule of law is that an appeal is by way of rehearing, and an appellate court is therefore entitled to look at the entire evidence on record and come to the conclusions on both the facts and the law. This position has been stated in a long line of decisions of this Court such as **Tuakwa v Bosom [2001-2002] SCGLR 61; Oppong v Anarfi [2011] 1 SCGLR 556; Dexter Johnson v The Republic, Opare Yeboah & Others v Barclays Bank Ghana Ltd. [2011] 1 SCGLR 330; and, Agyewaa v P & T Corporation [2007-2008] SCGLR 985.**

It is also settled law that in an appeal against findings of fact, a second appellate court such as this Court would not interfere in concurrent findings of the two lower courts unless it was established that in dealing with the facts of the case the lower courts committed a blunder or an error resulting in a miscarriage of justice. Thus, in the case of **Obeng v Assemblies of God Church, Ghana [2000] SCGLR 300,** the Supreme Court unanimously held as follows:

> *"Where findings of fact had been made by the trial court and concurred in by the first appellate court (as in the instant case), the second appellate court must be slow in coming to different conclusions unless it was satisfied that there were strong pieces of evidence on record which were manifestly clear that the findings of the trial court and the first appellate court were perverse. It was only in such cases that the findings of fact could be altered thereby disregarding the advantages enjoyed by the trial court in assessing the credibility and demeanor of witnesses. In the instant appeal, the court found no such compelling reason to disturb the findings of fact so ably formed by the trial court and concurred in by the Appeal Court".*

All the parties in this appeal are *ad idem* regarding the existence of the Deed of Exchange between the Colonial Government and the Osu Stool. Thus E.I. 108 is subsequent to the Deed of Exchange. The parties also do not dispute the fact that the 1st Defendant did obtain a 50 year lease from the Plaintiff Stool over Plot Nos. 53 and 54, 5th Avenue, Osu Mantse's Layout on the 26th of May 1939, pursuant to the Deed of Exchange dated 2nd July 1930. It is again not disputed that in accordance with paragraph 2 of the said Deed of Exchange, the 1st Defendant's predecessor-in-title put up a structure on the lands for purposes of its banking business. The crucial provision under the Deed of Exchange which has come under scrutiny in the trial is paragraph 9. That paragraph provides as follows:

> *"And also, will at the expiration or sooner determination of the said tenancy quietly yield u the said demised premises together with any buildings which may at any time during the said tenancy have been erected thereon in good and tenantable state of repair and condition without any claim for compensation whatsoever".*

Thus, the 1st Defendant undertook, as per the lease contracted from the Plaintiff that upon the determination of the fifty (50) years lease, it was going to quietly handover the demised premises together with the buildings thereon in a tenantable state to the Plaintiff. Therefore, in simple observation, 1st Defendant's lease had expired since 1989 and ought to have yielded the premises to the Plaintiff. 1st Defendant, and indeed 3rd Defendant, however, contend that the Plaintiff's right over same is non-existent following the vesting of the Osu Mantse Layout lands in the President, by virtue of E.I. 108.

Counsel for the Plaintiff has argued in his Statement of Case that by the time the implied twenty-five (25) years renewal of the lease after the 50 year expiration expired in January 2014, the 1992 Constitution of Ghana was in operation, and the Constitution vested all Stool lands in the appropriate stool; see Article 267 (1) of the 1992 Constitution. He argued further that thus, even if E.I. 108 of 1964 was applicable to vest the reversion of the lease in the

President of the Republic of Ghana, same would give way to the superior constitutional provision in Article 267(1) which vested all stool lands in Ghana in the appropriate stools in trust for their subjects in accordance with customary law and usage. See **Boateng v Attorney-General & 2 Ors. [2017-2018] 1 SCGLR 648 at 672.** We are in agreement with Counsel's contention.

The fact that by Exhibit "N" series in the record show that after the enactment of E.I. 108 of 1964, all stools within the Accra-Tema area, including the Plaintiff's stool continued to grant their various stool lands which grants the 3rd Defendant granted consent and concurrence to and registered same, is not lost on us.

It is also not in dispute that since the enactment of E.I. 108 all stools within Accra-Tema area have been maintaining actions in court and protecting their lands as can be gleaned from a plethora of cases including; **Akwei v Awuletey [1960] GLR 23; Hammond v Odo [1982] GLR 1215; Awuku v Tetteh [2011] SCGLR 366; In Re Osu Stool, Nu Ako Wortei II (Mankralo of Osu) v Nortey Owuoo III (Intervenor) [2005-2006] SCGLR 628; Committee of Enquiry unto Nungua Traditional Affairs, Ex Parte; Odai VI & Ors. [1996-1997] SCGLR 401, and; Kpobi Tettey Tsuru III v Attorney-General [2010] SCGLR 914.**

At this juncture, it is important to clarify, but in affirmation of the correct position of the law articulated by the trial and 1st appellate courts, that vesting is not acquisition. Whereas when the state compulsorily exercises its right of imminent domain over any property, the interest, right and/or title of the original owners in same stands extinguished, the situation differs from vesting which places the stool's interest side by side that of the state. In a loose sense, it can be described as only putting ultimate control in abeyance but not denouncing their interest in the land. We cite with approval the meaning of vesting as explained by Justice Twumasi in the case of **Nana Hyeaman II v Osei & Others [1982-83] GLR 495,** holding 1 thereof, that:

*"The meaning of the words "Vested in the President in trust for the stools concerned" should be construed univocally in both the Concession Act, 1962) (Act 124) and the Administration of Lands Act, 1962 (Act 123). The provisions were in pari materia and ought to bear the same construction. An incisive study of the provisions of the two Acts, however, disclosed nothing, open or ……, in the two statutes which suggested even faintly, that the legislature by enacting that stool lands including those subject to existing or future concessions should be vested in the President for the stools concerned, intend that the stools should be denuded of their inherent rights to ownership of stool lands. The statutory powers of the President ought to be construed as running side by side with the powers of the stools as the allodial owners of stool lands".*

See also the case of **Poku v Akyereko [1963] 2 SCGLR 285.** Also, in the OMABOE case (supra) it was held that the vesting of stool lands is not tantamount to a compulsory acquisition. We thus affirm the conclusions of the two lower courts that the interest of the Osu Stool in any of their lands covered by E.I. 108 could never have been extinguished.

Be that as it may, the principal issue is, did the Plots in question fall within the lands covered by E.I. 108? Both the 1st and 3rd Defendants made a monument of the OMABOE case to contend that the disputed plots and all others within the Osu Mantse Layout were vested in the President by virtue of E.I. 108. Like both the trial court and the Court of Appeal found, the OMABOE case did not pronounce that the plots that had already been encumbered within the Osu Mantse's Layout fell within the lands covered by E.I. 108. Without sounding repetitive, the OMABOE case, which was a referral from the High Court, had to deal with the issue of whether or not by virtue of Article 267 of the 1992 Constitution, the vesting power of E.I. 108 of 1964 has lapsed. Based on this issue, and after a careful analysis of the relevant law, this Court, speaking through Prof. T.M. Ocran JSC stated the response to the issue in the following terms: *"Upon a true and proper construction of Article 267(1) of the Constitution, the*

*vesting power embodied in E.I. 108, the Accra-Tema City Stool Lands (Vesting) Instrument, 1964 has not lapsed".*

There is a direct authority on the issue at stake which is the case of **Wiredu v Kobi-Amanfi [1991] 1 GLR 517,** albeit of persuasive authority to this Court, but rightly decided in our view, that:

1. **The Accra-Tema City Stool Lands (Vesting) Instruments, 1964 (E.I. 108) could not be regarded as one for the compulsory acquisition of land. That instrument merely vested certain stool lands in the President as trustee for the stool where he was satisfied that that should be done. Accordingly, it did not take away the land from the chiefs who continued to be the customary custodians of their lands for their people.**
2. **The fundamental rule applicable to all statues and statutory instruments was that prima facie they were prospective and unless by their specific terms or by necessary implication they had retrospective operation, they did not affect rights and obligations which had already crystalized at the time they became law. E.I. 108 of 1964 therefore could not only affect vacant land of the stools concerned. In the instant case, since the 1st Defendant's predecessor-in-title obtained its title in 1961 (Exhibit "9"), its title had already vested and the land so acquired no longer formed part of the land envisaged under E.I. 108 of 1964.**

This Court has also recently decided in the case of **Mrs. Margaret Mary Adjei v The Attorney-General & Ors., Civil Appeal No. J4/49/2014** dated 10th December 2017, that E.I. 108 did not take retrospective effect. In fact, E.I. 108 cannot be operationalized to cover all lands within the Osu Mantse's Layout because some of those lands had already been encumbered, and the very institution that was to see to the management of vested lands, the 3rd Defendant herein, was itself endorsing and giving effect to these encumbrances. For instance, at the trial court,

Exhibit "N" series showed that all the stools in the Accra-Tema areas, including the Plaintiff's Stool, continued to grant lands that received the consent and concurrence of the 3rd Defendant, the coming into force of E.I. 108 notwithstanding. The 3rd Defendant is clearly estopped, per its own conduct from seeking to resile from its previous conduct. In any event, as has already been decided, E.I. 108 did not cover occupied/already encumbered lands such as the disputed plots.

We are not enticed in the least with the arguments anchored on limitation, laches and acquiescence against the Plaintiff. The 1st Defendant will be deemed to be in continuous possession at the sanction and pleasure of the Plaintiff and cannot be heard to turn around to claim that the Plaintiff is estopped from claiming its land. The conduct of the 1st Defendant in this respect, is dishonorable and the Court will not lend its hands to such acts.

Having arrived at these findings, the crucial issue for resolution in the complete and effectual resolution of the dispute by this Court of last resort is whether or not by the conduct of the 1st Defendant, they are entitled to remain in possession of the plots in question, or that the Plaintiff is entitled to the relief of possession per paragraph (b) of the endorsement of reliefs? In a recent decision of this Court, in the unreported case of **Royal Investment Company v Madam Ruth Quarcopome & Anor. Civil Appeal No. J4/66/2021** dated 1st December 2021, Amegatcher JSC, in articulating the unanimous decision of this Court posited the position of the law as follows:

> *"It is clear that relief against forfeiture prescribed in NRCD 175 did not anticipate relief where a lease had run its course and expired. The position is buttressed by Section 30(3) of the Act which restricts relief in the case of a sublease to the term he had under this original lease. This section is expressed thus … but in no case shall any such sublease be entitled to require a lease to be granted to him any longer term than he had under his original lease".*

His Lordship proceeded to state that:

*"Even though the nature of a lease is to create an interest in land for a fixed period of time, it is also a contractual agreement between a lessor and a lessee and, therefore, must be determined in accordance with its terms. Thus, once a lease expires, a lease would be expected to give up vacant possession to the lessor".*

In the peculiar circumstances of this case, not only has the term of years granted to the 1st Defendant's predecessor completely expired, the 1st Defendant has directly challenged and contradicted the title and interest of the Plaintiff contrary to the provisions of Section 27 of the Evidence Act 1975 (NRCD 323) which provides that: *"Except as otherwise provided by law, including a rule of equity, against a claim by a tenant, the title of a landlord at the time of the commencement of their relation is conclusively presumed to be valid".*

Under these circumstances, it is difficult to comprehend the refusal by the two lower courts to grant the Plaintiff relief (b) for possession by merely allowing the 1st Defendant to attorn tenancy, which was not sought as a relief by the Plaintiff. We shall therefore vary the part of the trial court's judgment which was affirmed by the Court of Appeal, that the 1st Defendant shall attorn tenancy to the Plaintiff and in its stead grant in favour of the Plaintiff the relief of recovery of possession sought in terms of relief (b) endorsed in the Plaintiff's claim.

We have also taken note of the fact that Plaintiff sought a relief for mesne profit at the trial court. Neither the trial court nor the Court of Appeal made any findings or order regarding the claim for mesne profit. But since an appeal is by way of rehearing we deem it proper to consider the issue. It is trite learning that mesne profit is an amount payable by a person in possession or occupation of land in circumstances when that person has not right to be in possession or occupation. Mesne profits are the monies payable by the person in possession or occupation to the person who has a better right to possess or occupy.

The learned trial judge posited thus:

> *"As there is no evidence as to what amount by way of rents paid or not paid as this case was determined on legal arguments by agreement of the lawyers, I am unable to grant the relief of mesne profit. And here I will recommend that the plaintiff stool and 1st defendant must go back to the drawing board where they have the template of their contract to following through negotiations in good faith".*

The order for the determination of the case on legal arguments was made by the trial court differently constituted. From the records, we can glean from various documents including the *"Legal Submissions of Plaintiff Pursuant to the Order of the Court Dated The 24th Day of April, 2017*", that the trial court after taking the application for Directions, set down the issues for Legal Argument and ordered the parties to file the documents they intended to rely on for the legal argument.

With all due respect to the learned trial Judge, Order 33 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) was not properly complied with when making the order for legal argument. If it had been properly done, the question of mesne profit would not have stood undetermined. See **Infitco v Frigo [2017-2020] 2 SCGLR 335, Manye v Similao [2017-2020] 2 SCGLR 119.** It is provided by Order 33 Rules 3, 4 and 5 as follows:

> *"3. Time of Trial of questions or issues*
>
> *The Court may order any question or issue arising in any cause or matter whether of fact or law, or partly of fact and partly of law, and raised by the pleadings to be tried before, at, or after the trial of the cause or matter and my give directions as to the manner in which the question or issue shall be stated.*
>
> *4. Determining the place and mode of trial*

(1) *In every action, an order made on an application for directions shall, subject to any law, determine the place and mode of trial, and any order and may be varied by a subsequent order of the Court mode at or before the trial.*

(2) *In an action different questions or issues may be ordered to be tried at different places or by different modes of trial and one or more questions or issues may be ordered to be tried before the others.*

(3) *The references in this Order to an application for directions include references to any application to which, under any of these Rules, Order 13 rules 4 to 9 are to apply with or without modifications.*

5. *Dismissal of action after determination of preliminary issue.*

*Where it appears to the Court that the decision of any question or issue arising in any cause or matter and trial separately from the main cause or matter substantially disposes of the cause or matter or renders trial of the main cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such other order or give such judgment as may be just".*

In our view, the trial Judge in making the Order for legal arguments ought to have been mindful of the fact that the question of mesne profit is not amenable to legal arguments and should have made an order for evidence to be taken subsequently for determination of the question of mesne profit. In the circumstances, we shall order that the matter be sent back to the High Court for determination of mesne profit.

**CONCLUSION**

Save the above variation, and for all the reasons set forth, we find no cause to disturb the judgment of the Court of Appeal. That judgment was based on sound analysis of the facts, evidence, and the application of the relevant law. In consequence, the appeal against the judgment of the Court of Appeal fails in its entirety and is accordingly dismissed.

**B. F. ACKAH-YENSU (MS.)**

**(JUSTICE OF THE SUPREME COURT)**

**P. BAFFOE-BONNIE**

**(JUSTICE OF THE SUPREME COURT)**

**M. OWUSU (MS.)**

**(JUSTICE OF THE SUPREME COURT)**

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

**(JUSTICE OF THE SUPREME COURT)**

**S. K. A. ASIEDU**

**(JUSTICE OF THE SUPREME COURT)**

**COUNSEL**

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**MAXWELL LOGAN ESQ. FOR THE 1ST DEFENDANT/APPELLANT/APPELLANT.**

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