

GHANA / JUDGMENT

NYAMEKYE vs F.K.A. COMPANY (J4/29/2024) [2024] GHASC 44 (23 October 2024)

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IN THE SUPERIOR COURT OF JUDICATURE IN THE SUPREME COURT ACCRA – AD.2024 CORAM: SACEY TORKORNOO, CJ (PRESIDING) OWUSU JSC ASIEDU JSC DARKO ASARE JSC ADJEI-FRIMPONG JSC CIVIL APPEAL NO: J4/29/2024 23RD OCTOBER, 2024 FREDERICK NYAMEKYE DEFENDANT/APPELLANT/APPELLANT VRS F.K.A. COMPANY PLAINTIFF/RESPONDENT/RESPONDENT J U D G M E N T ADJEI-FRIMPONG, JSC: On July 6, 2023, the Court of Appeal delivered judgment in this land suit in favour of the Plaintiff/Respondent/Respondent (herein “Plaintiff”). By that, the learned Justices wholly affirmed an earlier decision of the trial High Court which had upheld the Plaintiff’s case 1 and dismissed the counterclaim of the Defendant/Appellant/Appellant (herein “Defendant”). Still unperturbed, the Defendant appeals in this Court. My Lords would have noticed from the record that but for an argument lately urged upon this Court to depart from its previous decision in another suit affecting the same subject matter, the issues in this appeal would not be unusual. Indeed, if one thing is clear from the record, it is that, this same subject matter has been many times, battled over in our courts over the years. We shall later deal with the issue about this Court’s departure from its previous decision which is of critical importance here, and determine its effect on the fortunes of this appeal. In the meantime, we set out the rival cases and arguments of the parties and how they have fared in the trajectory of this litigation. According to the Plaintiff, its Managing Director, Frederick Kofi Asare in 1980, took a customary grant of a 95.194-acre land from the Weija Stool whose occupant then was Nii Anto Nyame II. To put the land into real estate development, he went into possession, constructed road layouts, laid pipes for water supply and also erected electricity poles on it. In 1998, he incorporated the Plaintiff Company and made the land its main asset. He requested the Stool to issue a deed of indenture in the name of the incorporated company which was done and dated 16th May 1998. Whilst occupying the land, the Plaintiff took legal actions against various encroachers and won the cases against them. A list of the cases the Plaintiff has won in the courts is pleaded to demonstrate its ownership of the land. It was a portion of this land the Defendant was alleged to have trespassed onto for which the Company took the instant action against him. According to the Plaintiff, the Defendant purportedly acquired the said portion from the self-same Weija Stool then acting through Nii Kojo Kwame II, as Mankralo and one Nii Acquah Sackey

as Stool Secretary in 2002 long after its grant of same. It pleads that the 2 purported grant to the Defendant was a nullity since the Weija Stool had no title in the land to make the subsequent grant to the Defendant. Besides, the said Nii Kojo Kwame and Nii Acquah Sackey were signatories to the deed of indenture issued to the Plaintiff and could have only acted fraudulently in the purported subsequent grant of a portion of the same land to the Defendant. The Plaintiff's writ which was amended close to the end of the trial was for the following reliefs:

- a. A declaration that the activities of the Defendant on Plaintiff's land amounts to trespass.
- b. Recovery of possession of the said four (4) plots of land measuring 140 feet by 100 feet (0.64 acre) and further order to demolish any offending structures Defendant had erected on Plaintiff's land at cost to the Defendant.
- c. Perpetual injunction restraining the Defendant, his agents, assigns and workmen from dealing with the land subject matter in dispute in any manner inconsistent with Plaintiff's interest.
- d. General damages for trespass. The Defendant's amended statement of defence narrates that he acquired the land from the Weija Stool in 2002 and his indenture was signed by Nii Kojo Kwame (Manklaro) and Nii Acquah Sackey (Stool Secretary and elder). He took immediate possession, erected cadastral pillars and graded the place for construction. He commenced and completed one residential property and started a new one. In the course of time, he realized that the whole area of land which the Weija Stool was alienating had previously been acquired by the Government and the area had not been returned to the Stool. He therefore applied to the "appropriate government institutions" for regularization of his grant. 3 Whilst in possession, the Plaintiff Company instituted Suit No. BL514/2005 intituled F.K.A. Company Limited v. Frederick Nyamekye against him to claim four of the six plots of land he was in possession of. The claim was however dismissed by the High Court Coram Aduamah Osei J.A (sitting as additional High Court Judge). The Plaintiff was therefore estopped per rem judicatam from relitigating the matter. The Plaintiff had also taken more land than was granted to it by the Weija Stool and had fraudulently falsified his original site plan to cover the extra land wrongfully taken. He counterclaims against the Plaintiff as follows:
 - a. A declaration that the Defendant is owner in possession of all that land situate lying and being at new Weija, Accra and covering an appropriate [sic] area of 0.96 acre more or less and bounded on the north by proposed road measuring 210 feet more or less, on the east by proposed road measuring 200 feet more or less, on the east by lessor's land measuring 200 feet more or less and the west by proposed road measuring 200 feet more or less.
 - b. Perpetual injunction restraining the Plaintiff her agents, assigns, workmen and all privies from entering the land in dispute. By way of response to the Defendant's plea of res judicata, the Plaintiff admits suing the Defendant for four (4) plots of land (Suit No. BL514/2005 intituled F.K.A. Company Limited

- v. Frederick Nyamekye) which matter was determined by Aduamah Osei JA. The Plaintiff lost the action because Aduamah Osei J.A had found that the Plaintiff had earlier alienated those plots to a certain Madam Ewuntomah and therefore the Plaintiff was bereft of capacity to bring the said action. Whilst admitting that its claim in the said suit was dismissed, the Plaintiff contended that the dismissal was for want of capacity and not on the merits of the case, hence no res judicata applied. 4 It was also contended that the name Ewuntomah was a mistake and that the person the Plaintiff granted the land to was called Madam Mary Ntummy. Indeed, the Plaintiff, this time on the power of attorney of the said Mary Ntummy had commenced a fresh action to claim four (4) plots. The issues arising from these matters were part of those the learned trial judge was confronted with. Let us however clarify one point here. In this suit, the Plaintiff's initial claim related to two plots of land. From the original writ of summons, which was subsequently amended, the two plots it claimed measured 0.32 acres (140 ft by 100 ft) (Page 2 Vol.1 ROA). The Plaintiff's amendment to claim four plots (0.64 acre) was consequent upon the testimony of the Surveyor appointed by the trial Court to prepare a composite plan to inter alia depict the land in dispute. It appeared that, contrary to the Defendant's claim that the land he acquired measured 0.92 acres constituting 6 plots, the Surveyor determined that he rather occupied 1.12. By the Plaintiff's own calculation as we understand it, the 1.12 acres gave 8 plots and not 6 plots as claimed by the Defendant. And since Four (4) out of supposed eight (8) plots had been the subject matter of the suit that went before Aduamah Osei J.A, then the Plaintiff became entitled to claim the remaining four (4) plots hence the amendment. The Plaintiff's prayer was captured in its affidavit in support of the motion for leave to amend as follows: "7. That a perusal of the site plan of the Plaintiff will indicate that the defendant has encroached on eight (8) plots of land with the Plaintiff's 95.194 acres of land.
8. That four plots out of the eight plots encroached on by the defendants has been sold to Madam Florence Ntummy by the Plaintiff which is also a suit pending before the High Court (Land Division 7). 5
9. The said suit is entitled Florence Ntummy (Suing Per Her Lawful Attorney Frederick Kofi Asare) v Frederick Nyamekye [Suit No. SOL/41/14]
10. That implicitly, it is evident that based on the Component [sic] plan and Report to the Court tendered S Exhibit CE1 and CE2 it has become imperative to amend it reliefs to read as follows: "Recovery of Possession of the 4 plots measuring 140 ft by 200 ft (0.64 Acre) and further order to demolish any offending structures placed and erected on Plaintiff's land by Defendant at cost to Defendant." From the record, even though the learned trial judge granted the Plaintiff's amendment, she in the end determined that the land the Defendant occupied was seven (7) plots and not eight (8) plots as computed by the Plaintiff. The judgment she gave therefore related to three (3) plots and not four (4) as contained in the amended writ. The learned judge also drew the following findings and conclusions:

- (1) The Plaintiff provided sufficient evidence to prove that it was granted 95.114 acres of land by the Weija Stool. This position she also found supportable by the list of judgments the Plaintiff had obtained in the previous suits.
- (2) The seven (7) plots the Defendant occupied were all located within the Plaintiff's 95.114 acres of land.
- (3) The Defendant was unable to prove that the Plaintiff wrongfully took more land than was granted to it and that no fraud was committed by the Plaintiff on the preparation of its plan.
- (4) Given the earlier grant to the Plaintiff by the Weija Stool to the Plaintiff, the *nemo dat quod non habet* rule operated to prevent any subsequent grant to the Defendant by the same Stool.
- (5) The suit before Aduamah Osei J.A was not determined on the merits and therefore did not operate as *res judicata*. 6 On the important issue of the compulsory acquisition by the State of the whole area of land for which reason the Defendant said he sought to regularize his title from the appropriate state institutions, the learned trial judge went short of making a definite determination. This is what she observed: "That the land in dispute is the subject of a government acquisition is not in doubt. The land was acquired under Executive Instrument 60 and 61 of 1979. Plaintiff attached Exhibit D a petition from the Chiefs of Weija, Bortianor, Amanfrom, Kokrobite, Ashyie and Amanfrom praying government to revoke the E.I.s and release part of their compulsorily acquired back to them for lack of compensation. This led to a series of meetings involving the Ministry of Lands, Forestry and Mines, Ministry of Agriculture, Cabinet and District Assemblies. Exhibit E is a policy document on government's intention to release some compulsory acquired lands back to the original owners including the land subject matter in dispute. Exhibit F series are all documents in support of the revocation and release of the lands compulsorily acquired. As part of the intention of government to release the lands back to its original owners the government embarked on a boundary demarcation of the various Stools and families in the Weija catchment area. Exhibits D series are letters of acceptance on the various Stools on the boundary plans prepared. The Exhibit D series are dated in year 2000." The foregoing does not answer the question whether by virtue of the prior compulsory acquisition, the Weija Stool had title to grant the land to the Plaintiff (or even the Defendant) at the time it did. Nonetheless, from the final decision of the Court, it is inferable that it took the position that by the events narrated in the passage quoted above and on account of the evidence adduced including the various judgments in favour of the Plaintiff, the Weija Stool held title to the land which it could vest in the Plaintiff. The 7 Court's final orders about the three (3) plots after declaring the Defendant a trespasser were: "I order that Defendant pay Plaintiff the current market price for the three (3) remaining plots being occupied illegally by Defendant within six (6) months after the approval of the valuation report on the value of the 3 plots of land, failing which I grant Plaintiff an order of recovery of possession of the said three (3) plots of land covering (0.48 acre) and further grant Plaintiff an order to demolish any offending structures Defendant has erected on Plaintiff's land at cost to the Defendant. It

is hereby ordered that Director of Surveys demarcates and surveys the three (3) plots of land. I order that same be valued by the Land Valuation Division of the Lands Commission to ascertain the value to be paid by the Defendant. Cost of the demarcation and valuation must be borne by Plaintiff and surcharged against defendant.” The court further awarded in favour of the Plaintiff, GHC10,000 as General Damages, GHC20,000 as costs and granted also an order of perpetual injunction. Appeal to the Court of Appeal The Defendant’s appeal to the Court of Appeal were on the following grounds:

- a. The judgment is against the weight of evidence adduced at the trial
- b. The trial High Court Judge woefully failed to adequately consider the totality of the evidence of the Plaintiff/Appellant thereby occasioning substantial miscarriage of justice.
- c. The learned trial judge woefully failed to consider the totality of the reasoning given by Aduamah Osei J.A (sitting as an additional High Court Judge) in his judgment dated 18th November, 2011 in suit number BL 524/2005 between the same parties on the same parcel of land. 8
- d. Having observed that the same piece or parcel of land was a subject matter of litigation between the same parties, the learned High Court Judge erred on an elementary rule of law and procedure when she assumed jurisdiction and substantially constituted her court to sit on appeal over the judgment of a court of co-ordinate jurisdiction.
- e. Having failed to establish on the evidence that the Plaintiff was in possession of the disputed parcel of land, the learned Judge erred when she granted the Plaintiff’s prayer that “the activities of the defendant on plaintiff’s land amounted to trespass.”
- f. Having previously ruled that Florence Ntummy and Elizabeth Ewuntoma were two separate and distinct individuals to whom plaintiff had alienated the disputed parcel of land, the learned judge should have realized that there was nothing more to litigate on. She therefore erred in ordering the defendant to pay for a non-existent three plots of land.” None of the grounds of appeal found favour with the learned Justices of the Court of Appeal. Below are the highlights of the decision of the Court as we glean from their judgment. (843—870 Vol 3 ROA) First, the learned justices found that the trial judge was right on her assessment of the effect of the judgment of Aduamah Osei J.A. They were satisfied on a cursory look at that case that it was disposed of on the prefatory issue of capacity. They therefore did not find estoppel per rem judicatam availing the Defendant as the matter was not determined on the merits. For the same reason, they found no basis for the Defendant’s contention that Aduamah Osei JA in the Ewuntomah case pronounced ownership of the subject land in his favour. Consequently, the argument advanced by the Defendant that the Plaintiff had no capacity to initiate the instant action was found untenable. 9 Also rejected by the Court below was the Defendant’s position that that Court had no jurisdiction to determine the instant suit. Put shortly, the Court was not satisfied that the Courts in the Ewuntomah and Ntummy cases initiated by the Plaintiff had determined the rights of the parties over the disputed land. Again, the Court also approved of the trial judge’s decision that she was

bound by the previous six or so judgments the Plaintiff had obtained in respect of its 95.114-acre land which included the decision of this Court in FKA Company Ltd v. Effah Sarkodie (Exhibit I). It also determined that the allegation by the Defendant that the Plaintiff took more land than it was granted and falsified its plan to cover up same was baseless. Additionally, upon its satisfaction that the Plaintiff properly acquired the said 95.114 acres from the Weija Stool and given the testimony of the CW1 that the land the Defendant occupied fell within the said 95.114 acres, the Court below was inclined to uphold the application of the Nemo dat rule against the Defendant as the trial judge had determined. Finally, it was determined that the Defendant, right from the beginning, was building on the land in the teeth of the adverse claim of the Plaintiff, hence he could not be properly declared owner in possession of the land as counterclaimed. The Court also thought that the final orders of the trial court were reasonable and opted not to disturb them. Appeal to the Supreme Court The Defendant's appeal in this Court stands on the sole ground that the judgment of the Court of Appeal was against the weight of evidence. He was benevolent not to file 10 additional grounds of appeal contrary to his indication in the notice of appeal. Now, what arguments undergird his omnibus ground of appeal? Summary of the Defendant's argument. A summary of the initial arguments of the Defendant is amply captured in the following conclusion contained in his statement of case filed on 4/4/2024: "My Lords, the courts below wrongly applied the nemo dat quod non habet principle to reach a conclusion that the Weija Stool could not make a second grant of the land to the appellant. There was ample evidence on record that the land was a government land. The Court of Appeal and the trial court were bound by the previous decision of the Court of Appeal that the land was a government land and for that matter, the Weija Stool lacked capacity to grant the land. Equally, there was ample evidence that at the time respondent brought the action, the respondent had already granted the land, in possession of appellant to third parties. Respondent therefore lacked capacity in bringing the action against appellant in respect of the land. Therefore, the decisions of the courts below occasioned a substantial miscarriage of justice and same ought to be reversed." We shall make a more comprehensive reference to the Defendant's argument as we may find necessary in discussing the issues in this appeal. It is however apposite to indicate here, that the decision of the Court of Appeal which is referred to under the (2) above is the case of FKA LIMITED v. ADJEI BOADI (Suit No. H1/170/2010) which the Plaintiff tendered as Exhibit I. (Page 338 Vol. 2 ROA). The subject matter of the Plaintiff's claim in that suit, the same as we have here is the 95.144-acre land it acquired from the Weija Stool. The Defendant in that suit claimed to have acquired his land initially from the Amanfrom Stool but later went to re-acquire same from the Weija Stool when he got to know that 11 the latter was the true owner. In further pleading however, the Defendant raised the issue of government acquisition of the land in the area and contended for that reason that the Weija Stool had no authority to make a grant to any person including himself. The trial judge in that case appeared to have relied on the evidence of various events preparatory to a return of the land to the Weija and other affected Stools by the government to uphold the grant to the Plaintiff. The Plaintiff therefore won against the Defendant. On appeal however, the Court of Appeal rejected the trial judge's

position that the Weija Stool was entitled to the land. Per contra, it determined that in the absence of a formal instrument of revocation by the government which would inter alia define explicitly the area of land to be returned to the affected Stools, the events preparatory to the return of the land did not amount to vesting the land in the affected Stools and therefore the Weija Stool could not have vested title in any of the parties. The Defendant's contention of a binding decision of the Court of Appeal was based on this part of the judgment in the ADJEI BOADI case even though a further reading of the judgment shows that the Court upheld the Plaintiff's title by a separate consideration which we shall soon refer to. Summary of the Plaintiff's argument Before touching on the Plaintiff's argument, it is right to make the following observations. For unknown reasons, the Plaintiff's statement of case addresses grounds of appeal constituted differently from that of the Defendant. Counsel for the Plaintiff appears to have reproduced the Defendant's grounds of appeal that were put before the Court of Appeal and addressed them before us. (See page 11–12 of the Statement of Case filed on 23/4/24). Those are not the grounds of the instant appeal. The Defendant's ground of 12 appeal here is that the judgment is against the weight of evidence. The Plaintiff lists a number of grounds. The situation is clearly unwarranted. Absent a cross appeal or request for a variation, it is inconceivable to have a respondent's statement of case address grounds of appeal different from what were contained in an appellant's statement of case. It is trite learning that grounds of appeal are the pillars upon which an appeal stands. As a general rule parties to an appeal are bound by the grounds of appeal. That is the reason why an appellant is not permitted, without the leave of the court, to argue or be heard in support of a ground of appeal that is not mentioned in the notice of appeal. Even where the rules allow the court to rest its decision on a ground not set forth in the appellant's notice of appeal, it is mandated upon the court to afford the parties reasonable opportunity to be heard on the ground. See Rule 6 subrules 6 of C.I 16 (as amended) All these provisions are meant to ensure that as much as possible, the appeal is determined within the confines of the grounds of appeal set forth in the notice of appeal. See REPUBLIC v. JUDICIAL COMMITTEE OF THE CENTRAL REGIONAL HOUSE OF CHIEFS; EX PARTE AABA [2001-2002] SCGLR 545. Certainly, the rules of this Court do not comprehend a respondent addressing grounds of appeal not set out by the appellant in the notice of appeal. Rule 15 subrule 4 of C.I 16 (as amended) states: "A party upon whom an appellant's statement of case is served shall, if he wishes to contest the appeal file the statement of his case in answer to the appellant's statement of case within three weeks of the service, or within such time as the Court may upon such terms as it may determine direct." Implicit in this provision in our view, is the requirement that a respondent's statement of case must answer to the grounds of appeal as addressed in an appellant's statement of 13 case. We shall admonish appellate practitioners to do well to appreciate the general binding effect of grounds of appeal and not to go off the tangent of what are specifically set out in the originating process of notice of appeal. The above said however, we note that despite the unwarranted route adopted by the Plaintiff to address the grounds of appeal, the generality of its submissions addresses the points of substance of the Defendant's arguments as contained in the omnibus ground of appeal. Accordingly, to do substantial justice especially given the seeming unending

controversy over the same parcel of land and the need to bring finality to all claims affecting same and again this being the final appellate Court, we shall vote substance against form and consider the submissions made in so far as they constitute decipherable responses to the Defendant's arguments contained in his statement of case. First, addressing the applicability of the *nemo dat quod non habet* rule, the Plaintiff contended that there was abundance of evidence that the Weija Stool made a customary grant of the land to the Managing Director of the Plaintiff as far back as in 1980. Later in 1998, the grant was reduced into writing in favour of the Plaintiff. Thus, the customary grant and the subsequent documentation preceded the purported grant of plots falling within the same land (as established by the Surveyor's evidence) by the same stool to the Defendant. There was therefore nothing left out there for the Weija Stool to grant to the Defendant. The cases cited in support of this contention were *RAPHAEL AFARTEI BROWN v. KOMIGAH QUARSHIE*, Civil Appeal No. 27/2001 dated 11th April 2002 (Per Twumasi J.A); *BROWN v. QUASHIGAH* (2003-2004) SCGLR 930; *AWUA v. ADU TUTU* (1987/88)2 GLR 201; *BOATENG v. DWUMFOUR* (1979) GLR 360; *AMEFINU v. ODAMETHEY & ORS* (1977)2 GLR 135; *HOCHMAN v. ARKHURST* (1920) FC 20-21. Also cited for particular emphasis is this Court's decision in the previous case of *SARKODIE*

- v. FKA Limited (2009) SCGLR 65. 14 Concerning the question of want of capacity on the part of the Plaintiff to mount the action as argued by the Defendant on the basis of the previous *Ewuntomah* and *Ntummy* cases, the Plaintiff submits that the Courts below were right on their finding that the judgment of *Aduama Osei J.A* did not determine the matter on the merit and that there was no judgment decreeing title to the land in favour of the Defendant. To the Defendant's argument that the Courts below were bound by the Court of Appeal decision in the *ADJEI BOADI* case which determined that the Weija Stool had no title to the land by reason of the compulsory acquisition by the government, the Plaintiff referred to the following part of the same decision of the Court of Appeal that upheld his claim to the land: "There is sufficient evidence that it was the Plaintiff who was and is still in possession of the disputed land. The hackneyed legal principle is that possession by itself gives good title against the whole world except someone having a better title. Where, as in this case both parties bought from the Weija Stool, who I have found has no title to make a grant to any of them, the one in possession i.e., the Plaintiff has better title to dislodge him. The defendant cannot rely on his own strength in the circumstances of this case to challenge the plaintiff's possession over the land in dispute. There is no principle that will support the defendant, also a squatter, challenging the claim to ownership of the land by the Plaintiff on the ground that the land does not belong to the Plaintiff but to somebody else, in this case the government, since he is not claiming to derive title from the government. He has no business therefore questioning the documentation of the plaintiff no matter how erroneous." 15 The Plaintiff contends therefore that its title was established by the *ADJEI BOADI* case in spite of the view expressed by the Court of Appeal concerning the compulsory acquisition. Further to the above, the Plaintiff makes reference to another suit filed by the Lands Commission to challenge the Plaintiff's title to the land after the Supreme

Court decision in the EFFA SARKODIE case. That suit, LANDS COMMISSION v. FKA CO. LTD, Suit No. SOL/13/11 per the ruling of Agnes Dordzie JA (sitting as additional High Court Judge) dated 3rd February 2011 also determined in favour of the Plaintiff against the Lands Commission. Further reference is made to the contempt suit, THE REPUBLIC v NII DAA NYINAA-NSE & 4 ORS, EX PARTE FKACOMPANY LTD, Suit No. H1/91/2014 in which copious reference was made by the Court of Appeal per Agyemang J.A. to the EFFAH SARKODIE case to vindicate the title of the Plaintiff to the same parcel of land. The Defendant's Departure Argument Apparently having been confronted with the aspect of the ADJEI BOADI judgment that upheld the title of the Plaintiff to the land albeit on a different ground, and obviously haunted by the ghost of this Court's decision in EFFA SARKODIE (which had been applied in a number of cases) the Defendant in a reply filed to the Plaintiff's statement of case launched a fresh argument urging upon us to depart from this Court's previous decision in EFFA SARKODIE. The Defendant points to certain unique facts and circumstances that justify the departure. These may be summarized as follows: That the land was acquired by the state under the State Lands Act making it a state land; that the Lands Commission had dealt with the Defendant about the land; that both the Defendant and Lands Commission were not parties to the earlier suit; and that the issue of 16 the land being a state land was question of law being raised for the first time in this appeal before the Supreme Court. Concluding on his point, Counsel submitted: "...Thus, the issues of the land being a state land and the Lands Commission having dealt with the appellant concerning the land have been raised for the first time on this appeal before the Supreme Court. These are peculiar facts and circumstances of this appeal for this final appellate court to examine in that specific context of this appeal. These unique facts and circumstances of this appeal are sufficient justification for this court to invoke article 133 of the Constitution to depart from its previous decision referred to by counsel for respondent." [Page 5 of Reply to Statement of Case of Plaintiff/Respondent/Respondent filed on 7/5/24] It appears that reference by Counsel to article 133 in this context was a slip. Article 133 of the Constitution regulates the Review Jurisdiction of this Court. Needless to indicate that the Review Jurisdiction of this Court is different from the Court's power to depart from its previous decision as provided for in article 129(3). The two may have the same juridical effect but are cast in different constitutional and procedural nuances. Article 129(3) provides: "(3) The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears to it right to do so; and all other courts shall be bound to follow the decisions of the Supreme Court on questions of law." Observably, this power to depart from its previous decision is one this Court has scarcely exercised particularly in matters outside constitutional law. It is however clear that in the few instances it has exercised the power, it truly appeared to the Court right to do so. For instance, in KOR v. ATTORNEY GENERAL & JUSTICE DOUSE [2015-2016]¹ SCGLR 114 17 at 126, this Court in departing from its previous decision in OSEI-BOATENG v. NATIONAL MEDIA COMMISSION [2012]² SCGLR 1038 on the question of whether the original enforcement jurisdiction of a provision of the Constitution could be invoked separately and distinctly from its interpretative jurisdiction spoke through ATUGUBAH JSC thus: "Though this court held in Yeboah v Mensah (JH) [1998-99] SCGLR 492

that the action in that case was rather cognizable by the High Court and not the Supreme Court, the reasoning therein concerning the occasion for the invocation of the enforcement jurisdiction of this court holds good. And Apaloo CJ, delivering the judgment of the Supreme Court in *Yiadom I v Amaniampong* [1981] GLR 3 at 8 said, inter alia: "To enforce a provision of the Constitution is to compel its observance." Certainly, it cannot be said that this court cannot compel the observance of a provision of the Constitution unless it first acquires the murkiness of ambiguity and is processed in the interpretative refinery of the court. For the forgoing reasons, we would on this issue adopt the well-reasoned Editorial Comment to the decision of this court on *Osei-Boateng v National Media Commission & Apenteng* [2012]2 SCGLR 1033 at 1044-1046 and depart from that decision. We would therefore hold that the plaintiff has properly invoked the enforcement jurisdiction of this court and, as will presently appear, also the interpretative jurisdiction of this court since the wording of article 71(1) of the 1992 Constitution is not free from ambiguity contrary to the defendant's contention." My Lords, the provision in article 139(3) is clear that the Court should normally treat its decisions as binding and may depart from a previous decision when it appears to it right to do so. In my well-considered view, this provision creates a discretionary power in the court which may be exercised in truly deserving situations. It is therefore a power to be exercised on case-by-case basis, hence every authority is to be considered a guide. And 18 we can easily notice that the jurisprudence of this Court in this area of the law especially in 'non-constitutional law cases' is not well-trodden. This therefore calls for a consideration of the practice in other jurisdictions. The English practice follows the common law doctrine of precedent. It was in 1765 when William Blackstone, the English renowned jurist described the doctrine of English common law precedent as establishing a strong presumption that judges would "abide by former precedents, where the same points come again in litigation" unless such precedents were "flatly absurd or unjust". This approach was to ensure stability of the law. In line with the above, the Practice Note in the (1966) ALL ER 77 which had guided the practice in the House of Lords contained the following direction the language of which is in pari materia with the provision in article 129(3): "Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for the orderly development of legal rules. Their Lordships nevertheless recognize that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose therefore to modify their present practice by treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so." In deciding whether it appears right to depart from a previous decision as prescribed by the direction, the House of Lords have considered different reasons including material changes in circumstances after the decision. Interestingly doubts about the correctness of 19 the earlier decision, and the fact that an earlier decision was not unanimous has not by itself, been recognized as justifying a departure from it. In *FITZLEET ESTATES v CHERRY* (1977)3 ALL ER 996, a tax case in which the House had been prevailed upon to depart from its previous decision in the case of

CHANCERY LANE SAFE DEPOSIT & OFFICES CO LTD v. INLAND REVENUE
COMMISSIONERS

[1966] AC 85, the House held: “The procedure whereby the House of Lords could review and depart from an earlier decision of the House did not permit an appellant to argue that an earlier decision of the House should not be followed merely because it was wrong. It was immaterial that the earlier decision had been by a narrow majority. Before the House would depart from an earlier decision, some other ground, such as material change in circumstances, had to be shown which would justify the House adopting such a course.” In the words of Lord Wilberforce at page 999 of the report: “My Lords, in my firm opinion, the 1966 direction was never intended to allow and should not be considered to allow such a course. Nothing could be more undesirable, in fact, than to permit litigants, after a decision has been given by this House with all appearance of finality, to return to this House in the hope that a differently constituted committee might be persuaded to take the view which its predecessors rejected. True that the earlier decision was by the majority: I say nothing as to its correctness or as to the validity of the reasoning by which it was supported... It requires much more than doubts as to the correctness of such opinion to justify departing from it.” [Emphasis here] Viscount Dilhorne when he took his turn noted at page 1000 of the report: 20 “I need not however consider the facts of this case further for counsel for the taxpayer frankly admitted his inability to put forward any argument not advanced on behalf of the taxpayer in the Chancery Lane case. He sought to persuade this House not to follow that decision. Even if I thought that the decision in that case was wrong, which I do not, I would not think it right now to depart from it. The Practice Statement of this House of July 1966...stresses the importance of the use of precedent as providing a degree of certainty on which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules. That certainty would in my view be impaired if, where there had been a decision by a majority, the House permitted the matter to be re-opened and re- argued before a differently constituted House with the possibility that a majority in that House preferred the view of the minority in the decided case. If this House acceded to such an application, it would open the door to a similar application in years to come to restore the view of the majority in the first decision...” Earlier in the case of *MILIANGOS v. GEORGE FRANK (TEXTILES) LTD* [1975]3 ALL ER 801 a case involving a commercial transaction which had been affected by a fall in the value of the Pound sterling, the House had relied on material changes in circumstances after the earlier decision as justification to depart from its decision in *RE UNITED RAILWAYS OF THE HAVANA AND REGLA WAREHOUSES LTD* [1960]2 ALL ER 332. The same Wilberforce L.J at page 812 of the report espoused: “This brings me to the declaration made by this House in 1966. Under it the House affirmed its power to depart from a previous decision when it appears right to do so, recognizing that too rigid adherence to precedent might lead to injustice in a particular case and unduly restrict the proper development of the law. My Lords, on the assumption that to depart from the Havana Railways case would not involve undue practical difficulties, that a new and more

satisfactory rule is capable of being stated, I am of opinion 21 that the present case falls within the terms of the declaration. To change the rule would, for the reasons already explained avoid injustice in the present case. To change it would enable the law to keep in step with commercial needs and with the majority of other countries facing similar problems.” We desire to add one more decision of the House in *KNULLER V DPP* [1972]2 ALL ER 898 which may be even more interesting. It was in that case, prevailed upon the House to depart from its previous decision in *SHAW v. DIRECTOR OF PUBLIC PROSECUTIONS* [1961]2 ALL ER 446. Lord Reid had dissented in the *SHAW* case because he thought the majority was wrong. Strangely, in *KNULLER*, he declined a departure from *SHAW*, a decision he had thought was wrong. He said the following at page 903 of the report: “I dissented in Shaw’s case. On reconsideration I still think that the decision was wrong and I see no reason to alter anything I said in my speech. But it does not follow that I should now support a motion to reconsider the decision. I have said more than once in recent cases that our change of practice in no longer regarding previous decisions of this House as absolutely binding does not mean that whenever we think that a previous decision was wrong, we should reverse it. In the general interest of certainty in the law, we must be sure that there is some very good reason before we so act.” What needs to be quickly added here is that, the English practice has not seen any significant changes even upon the transition from Judicial Committee of the House of Lords to the now United Kingdom Supreme Court. See *AUSTIN V MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWALK* [2010] UKSC 28. The revised direction incorporates the practice. This is clearly spelt out in the editorial 22 commentary of Volume 2 of the 2019 edition of the Civil Procedure (The White Book) at paragraph 4A-0.5 at page 2002 as follows: “In Practice Statement (Judicial Precedent) [1966]1 WLR 1234, the House of Lords announced that it would treat former decisions of the House as normally binding, but would depart from a previous decision when it appeared right to do so. The Supreme Court has thought it necessary to reissue that Statement afresh, as it was part of the established jurisprudence relating to the conduct of appeals in the House of Lords which was transferred to the Court by the Constitutional Reform Act 2005 Act 2005 s. 40.” Elsewhere, the practice in the United States Supreme Court has not been any different from the English practice as is also influenced by the English common law doctrine of stare decisis and would follow previous decisions unless there is a ‘special justification’ or ‘strong grounds’ to overrule precedent. The 2018 landmark decision of the Court in *JANUS V AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL EMPLOYEES’ COUNCIL* 138 S. Ct 2448 adequately captures the court’s approach which considers the principle of stare decisis to be discretionary “principle of policy’ to be weighed and balanced along with its views about the merits of the prior decision and several other pragmatic considerations. In the decision where the Court decided to depart from its previous decision in *ABOOD V DETROIT BD. OF ED.*, 431 U.S 209 (1977) Justice ALITO delivering the opinion of the court stated: “Stare decisis is the preferred course because it promotes the evenhanded, predictable and consistent development of legal principles, fosters reliance on judicial decisions and contributes to the actual and perceived integrity of the judicial

process.” *Payne v Tennessee*, 501 U.S 808, 827 (1991). We will not overturn a past decision unless there are strong grounds for doing so. *United States v International Business Machines Corp.*, 517 U.S., 843, 855—856 (1996)...But as we have often recognized, *stare decisis* is “not and inexorable command.” *Peason v Callahan*, 555 U.S., 223 (2009); see also *Lawrence v Texas*, 538 U.S 558, 557 (2003); *State Oil Co. v Khan*, 522 U.S 3, 20 (1997); *Agostini v Felton*, 521 U.S 203, 235 (1997) *Seminole Tribe of Fla v Florida*, 517 U.S 44, 63 (1996); *Payne*, *supra* at 828... Our cases identify factors that should be taken into account in deciding whether to overrule a past decision. Five of these are most important here: the quality of Abood’s reasoning, the workability of the rule it established, its consistency with other related decisions, development since the decision was handed down and reliance on the decision. After analyzing these factors, we conclude that *stare decisis* does not require us to retain Abood.” From the authorities in the two major jurisdictions, we gather the matters that may guide a court in deciding whether to depart from a previous decision to include the following:

1. The Court must stick to a previous decision and must not depart from it unless there are strong grounds to do so. What grounds are strong depend on the circumstances of each case;
2. Are there material changes in circumstances after the earlier decision which favour a departure or otherwise?
3. To what extent have the public relied on the earlier decision to conduct their affairs.
4. The consistency of the earlier decision with other related decisions.
5. Doubts about the correctness of the previous decision and whether or not it was a split decision will by themselves, not justify a departure from the previous decision. 24 Whilst we think that the list is by no means exhaustive, given the weight of authority of the cases referred to from those two prominent jurisdictions of the common law block, the fact that the provision in article 129(3) bears a language *im pari materia* with the English Practice Statement and indeed the apparent paucity of judicial authorities in the jurisprudence of this Court particularly in ‘non-constitutional law disputes’ we feel persuaded to be guided by those principles in deciding whether it appears to us right to depart from the EFFA SARKODIE case. THE EFFAH SARKODIE CASE The case started in the High Court where the current Plaintiff as Plaintiff therein sought a declaration of title to the self-same 95.194-acre acquired from the Weija Stool. Other reliefs sought were recovery of possession, damages for trespass and perpetual injunction. The case the Plaintiff pleaded was also not any different from what is pleaded in this case. I repeat them to make the present analysis clear. According to the Plaintiff, its Managing Director, Frederick Kofi Asare in 1980, took a customary grant of a 95.194-acre land from the Weija Stool whose occupant then was Nii Anto Nyame II. To put the land into real estate development, he went into possession, constructed road layouts, laid pipes for water supply and also erected electricity poles on it. In 1998, he incorporated the Plaintiff Company and made the land its main asset. He

requested the Stool to issue a deed of indenture in the name of the incorporated company which was done and dated 16th May

1998. This was tendered and marked at the trial as Exhibit B. The Plaintiff granted portions of the land to a number of persons who developed them. Also, whilst occupying the land, the Plaintiff took legal actions against various encroachers and won the cases against them. 25 The Defendant in the case, Effah Sarkodie pleaded that he acquired his land measuring about 74 plots/11.85 acres from the Ngleshie Amanfro Stool but was later led to the Chief of Weija to make further payments for the land as the land actually was under the Weija Stool. The Trial Judge Kofi Akwaah J upheld the Plaintiff's claim and granted all the reliefs sought. He had found for the Plaintiff as follows:

1. That the Weija Stool was the competent authority to grant the land and not the Amanfrom Stool.
2. The Plaintiff registered the land in accordance with Section 24 of the Land Registry Act (Act 122)
3. The Weija Stool divested itself of any interest in the land and could not have purported to make a subsequent grant to the Defendant. The *demo dat quod non habet* rule applied.
4. The Defendant's land fell within the plan of the Plaintiff's land.
5. Weija Stool by Exhibit "O" granted consent to the Plaintiff to assign portions of the land to others. The Defendant appealed the decision at the Court of Appeal. The judgment of the Court of Appeal is not part of the record before us. However, we note from the judgment of this Court where the matter ended on a final appeal, that the Court of appeal wholly affirmed the decision of the High Court. Before the Supreme Court whose unanimous decision is reported in the 2009 Supreme Court of Ghana Law Report at page 65, the appeal was on the sole ground that the judgment of the Court of Appeal was against the weight of evidence. The Court in the 26 end affirmed the judgment of the two lower Courts deciding that, on the whole, the findings and conclusions of the trial judge and the Court of Appeal were supportable. Ansah JSC in his opinion observed: "The Court of Appeal could not have erred when it affirmed the judgment of the trial court based on these findings of fact by the trial judge for they were supported by the evidence on record that the Weija Stool had made a customary grant of the land in dispute to the Managing Director of the Plaintiff Company in 1980. Therefore, when the same stool purported to grant title to the same land to the defendant in 1999 it divested itself of the title to the land and had nothing to pass to the defendant according to the Rule in *Nemo Dat Quod Non Habet* principle. Consequently, the defendant took nothing from the stool." It is this decision the Defendant wants us to depart from. And the main reason is that there is a legal issue being raised for the first time before us in this appeal which is that the land at the material was state land which had not been released to the Weija Stool and therefore the Stool had no authority to grant to the Plaintiff. It is also said that neither the Defendant nor the Lands Commission who later sued the Defendant over the land and lost was a party to the EFFA SARKODIE suit. First of all, it is not

entirely correct to say that the issue of the land being a state land is being raised for the first time in this appeal. It was part of the issues that were set before the trial court in *EFFA SARKODIE*. The issues before the trial court are contained in the judgment of *Ansah JSC* at page 73 of the report as follows: “The following issues were settled for determination at the trial, namely:

- (1) Whether or not the Weija Stool granted the company the extent of land described in the statement of claim; 27
 - (2) Whether or not the Weija Stool could grant the area of land already granted to the Plaintiff company;
 - (3) Whether or not the Plaintiff company was in effective possession of the land; and
 - (4) Whether or not the Plaintiff company’s action was incompetent and misconceived by reason of the fact that the government has yet not officially released the land to the Weija Stool”
- These were the issues that were resolved leading to the judgment in favour of the Plaintiff which the Court of Appeal affirmed and which the Supreme Court likewise, eventually affirmed. If the point did not appear in any distinct form, it was probably because the sole ground of appeal before the Supreme Court was that the judgment was against the weight of evidence. Apart from that, it will be seen from the speech of Wood CJ that the Supreme Court was seised with the point. The learned Chief Justice in recounting the facts at page 68 of the report stated: “The defendant further contends that even though the Weija Stool was adjudged owner of the lands, the government has nonetheless not released the land to the stool and therefore the plaintiff-company cannot claim the land as the land is still plotted in the name of the government.” From the above, it cannot be said that the point is coming up for the first time in this appeal. Assuming *arguendo*, that this is the case, we are of the view that the essence of the whole argument urged upon us by the Defendant to depart from the decision in *EFFA SARKODIE* is that, it was wrongly decided by this Court. However, upon our deeper consideration of the decision, we are not satisfied that this was a wrongly decided matter. 28 But even if it was, that fact alone will not justify a departure. We emphasize the position that the mere fact that a decision is perceived to have been wrongly decided is not by itself a justification for departure. Without doubt, the use of precedent in accord with the principle of *stare decisis* has been the mainstay of our legal system. It has been over the years, remained our preferred system and practice. It has largely ensured predictability and consistency in the development of legal principles. It has contributed to stability in judicial decisions and by that improved upon the integrity of the judicial process. It is a system we must always strive to uphold, in step with international best traditions and practices. In keeping with the jurisprudence of this Court, and in fidelity to article 129(3) of the Constitution, we shall stick to previous decisions of this Court unless it appears to us truly right to do so. In the instant case, it does not appear to us right to depart from *EFFA SARKODIE*. Other reasons we find, already unconvinced as we are that the case was wrongly decided, include the following: First, it is clear from the record that the decision has been followed and applied in a number of cases. We shall refer to a couple of them. In *NII BOAFO*

DANYINA-NSE V FKA & ANOR Suit No. SOL.2/10 [Page 360—367, vol 2 ROA] the Plaintiff as Dzasetse and acting Mantse of Weijsa challenged the title of the Defendants over the land seeking to set aside its customary grant and the subsequent deed of conveyance. The defendants pleaded estoppel on the basis of the EFFA SARKODIE decision. The issue of estoppel was set down for a preliminary trial. Kwasi Dapaah J in a ruling upheld the plea and dismissed the suit. 29 Another case was FKA CO LTD V SONITRA CO LTD & ORS decided by the Circuit Court. [page 368—376, Vol 2 ROA] The facts of the case show that during the construction of the Mallam-Cape Coast road, Sonitra wonned sand from portions of the land. The Plaintiff alleged trespass against Sonitra and joined the Ghana Highway Authority in the action. In the course of the trial, Sonitra deposited money into court to be paid as compensation to the landowner. Meanwhile, five persons had joined the suit, challenging the Plaintiff's title on the basis that the land was a state land. The trial Circuit judge relied on the decision IN EFFA SARKODIE to dismiss the claim of the Co-defendants and order the release of the money to the Plaintiffs. See also STEPHEN BRENDA V FREDERICK K ASARE & ANOR Sit No. BMISC 921/21010 [Page 350 Vol.2 ROA] Following from these cases and the clear evidence on record that the Plaintiff in this case has put several persons in possession of portions of the land it can safely be stated that several persons including unsuspecting members of the general public have conducted their affairs relying on the EFFA SARKODIE decision. To depart from the decision some sixteen years down the line will occasion hardship to those persons and cause confusion in the area. Additionally, on a thorough examination of the facts, we are unable to find a scintilla of evidence that points to material changes in the circumstances of the land after the decision in EFFAH SARKODIE that must favour a departure. On the contrary the evidence on record points to considerable developments on the land including those undertaken by the present defendant (which by the decision of the trial court he is entitled to hold subject to terms) that rather favour our decision to stick to the previous judgment. 30 In the final analysis, we hold that the defendant has not satisfied this court that sufficient case has been made to make it appear to us right to depart from EFAA SARKDIE. We shall roundly reject the Defendant's departure argument. My Lords, where does this lead us in this appeal? It is clear from article 129(3) that we are to treat our previous decisions normally as binding and may only depart from them if it appears to us right to do so. Having determined that it does not appear to us right to depart from EFFAH SARKODIE, we, in accordance with article 129(3) of the 1992 Constitution treat the decision as normally binding. The effect is that by the previous decision in EEFA SARKODIE, in which the land in dispute was adjudged to belong to the Plaintiff who validly acquired it from the Weijsa Stool, that Stool being the proper authority to make the grant, the appeal determines on this point. By operation of law, no other ground argued before us stands in the way. In the event, the appeal fails in its entirety. For the avoidance of doubt, we affirm the conclusions and final orders of the two lower courts. (SGD.) R. ADJEI-FRIMPONG (JUSTICE OF THE SUPREME COURT) (SGD.) G. SACKEY TORKORNOO (MRS.) (CHIEF JUSTICE) (SGD.) M. OWUSU (MS.) (JUSTICE OF THE SUPREME COURT) 31 (SGD.) Y. DARKO ASARE (JUSTICE OF THE SUPREME COURT) CONCURRING OPINION ASIEDU, JSC. [1]. INTRODUCTION: My lords, by a judgment delivered on the 12th

February, 2021, the High Court granted the reliefs of the Plaintiff/Respondent/Respondent, F.K.A Company Ltd. (hereinafter referred to as the Respondent) for a declaration that the activities of the Defendant/Appellant/Appellant, Frederick Nyamekye (hereinafter referred to as the Appellant) on the Respondent's land amounted to trespass, an order of perpetual injunction to restrain the Appellant, his agents and assigns from dealing with the disputed land in a manner inconsistent with Respondent's interest. The Appellant's counterclaim for declaration of title to the disputed land and an order of perpetual injunction against the Respondent, was dismissed. Dissatisfied with the judgment of the trial High Court, the Appellant appealed to the Court of Appeal, praying the Court of Appeal to reverse the judgment of the trial High Court. The Court of Appeal delivered its judgment on the 6th July, 2023, and affirmed the judgment of the trial High Court. It is against the judgment of the Court of Appeal that the Appellant has lodged the instant appeal to this Court. [2]. GROUNDS OF APPEAL: 32 The grounds of appeal contained in the notice of appeal filed on the 14th September, 2023 are that: "a. The judgment is against the weight of evidence

- b. Further grounds of Appeal would be filed upon receipt of Records of Proceedings." There is no indication that further grounds of appeal were filed by the Appellant. This appeal, therefore, is premised on the sole ground that the judgment of the Court of Appeal is against the weight or evidence on record. In accordance with Rule 15 of the Supreme Court Rules, 1996 (C.I. 16) (as amended), the Appellant filed his statement of case, with leave of court, on the 4th April, 2024. The Respondent filed their statement of case in answer on the 23rd April, 2024. On the 7th May, 2024, the Appellant filed a reply to Respondent's statement of case in answer.

- [3] FACTS: The uncontested facts of this case are that, the Appellant obtained a lease covering some plots of land from the Weija Stool in December, 2002. The Respondent had obtained a lease, also covering some plots of land, from the same Weija Stool in May, 1998. Thus, both parties trace their respective title to a common grantor. In 2014, the Respondent issued a writ in the High Court, Accra, against the Appellant alleging that Appellant was a trespasser on Respondent's plots of land. The writ and Statement of Claim were amended subsequently in 2018. The Appellant resisted the Respondent's claims by a Statement of Defence, and counterclaimed for a declaration of title to the plots of land in dispute. At the end of trial, the High Court found that the Appellant had wrongfully occupied the disputed land which formed part of Respondent's large plots of land. The trial High 33 Court held that the Weija Stool, having leased the land in dispute to the Respondent in 1998, could not have subsequently leased the same land to the Appellant in 2002 during the subsistence of Respondent's lease. Consequently, the Weija Stool was caught by the principle of *Nemo Dat Quod Non Habet*. On appeal by the Appellant herein, the Court of Appeal affirmed the judgment of the High Court in favour of the Respondent. [4]. ARGUMENT OF APPELLANT IN THIS COURT: In his statement of case and reply to Respondent's statement of case in answer, Counsel for the Appellant prays this Honourable Court to reverse the judgment of the Court of Appeal and enter judgment for the Appellant. Counsel's argument is that the land in dispute is a state-acquired land and is, therefore, owned by the Government of

Ghana. That after the Appellant took a lease from the Weija Stool and later realized that the land in dispute was owned by the Government and not the Weija Stool, Appellant applied to the relevant Government institutions to have Appellant's grant from the Weija Stool regularized by the Government. Counsel argues further that being Government land, the purported grants to the Appellant and the Respondent by the Weija Stool were invalid. According to Counsel, it is the Government of Ghana who could make a valid grant of the disputed land, and so, the Appellant, having taken steps with the relevant Government institutions to regularize his grant, and having made his presence on the land known to the true owner thereof, holds a better grant against the Respondent. That there is a subsisting judgment of the Court of Appeal intitled F.K.A. Limited vs Adjei Boadi, H1/170/2010 which found and held that the land in dispute is a Government owned land, and that the Weija Stool has no capacity to 34 alienate or make a grant of the land. The said judgment of the Court of Appeal, Counsel argues, binds the Court of Appeal and the High Court in terms of Article 136(5) of the Constitution and, therefore, the two courts below should have followed the judgment in H1/170/2010. Counsel submits that, if the two courts below had paid heed to the Court of Appeal decision as required by Article 136(5) of the Constitution, 1992, the learned Justices of the courts below would have discounted the grants made by the Weija Stool, and not proceeded to apply the principle of Nemo Dat Quod Non Habet, relying on the grants to the parties by the Weija Stool. It has been argued further by Counsel that, Appellant has been in possession of the disputed land and as a result, was entitled to the benefit of that possession against the Respondent. That if the courts below "had concluded that the land is a Government acquired land and for that matter the Weija Stool grants were invalid, the courts would certainly have reached a different conclusion that appellant ought to prevail by virtue of being in possession of the land with tacit approval of the Lands Commission and its allied bodies." (Paragraph 29 of Appellant's statement of case). The failure by the courts below to follow the earlier decision of the Court of Appeal in H1/170/2010, according to Counsel, led the courts to erroneously apply the principle of Nemo Dat Quod Non Habet, thereby occasioning the Appellant a grave miscarriage of justice. Counsel submits, also, that; at the time Respondent instituted the action which has culminated in the instant appeal, Respondent had granted all the disputed six plots of land herein to third parties, one Ntummy and another Ewuntoma. That having divested themselves of these plots of land, the resultant effect was that Respondent was stripped of capacity to institute the action in respect of these alienated plots of land. Counsel 35 further argues that the courts below overlooked material contradictions in the testimony of the Managing Director of Respondent. That while Respondent pleaded that the Managing Director of Respondent first took a customary grant from the Weija Stool in 1980 which allegation of fact is affirmed by the Managing Director in the Managing Director's Witness Statement, the Managing Director, in cross examination, stated that it was his father who took the customary grant from the Weija Stool in 1980. That the Managing Director of Respondent could not have taken a customary grant for Respondent which was incorporated in 1998, several years after the Managing Director's father died in 1989. [5]. ARGUMENT OF RESPONDENT: It has been submitted by Counsel for Respondent that; Counsel for Appellant

has resorted to arguing grounds not set out in the Notice of Appeal filed by Appellant. Counsel for Respondent argues that Counsel for Appellant could not argue that the court below erred in applying the principle of *Nemo Dat Quod Non Habet* under the omnibus ground of appeal that the judgment is against the weight of evidence. Additionally, the Appellant did not raise the issue of purported earlier grants to third parties by Respondent as a ground of appeal, and therefore, could not properly argue those grounds in his statement of case. Counsel for Respondent has also submitted that there are several judgments of our courts which have declared Respondent's ownership of the land in dispute. These judgments include a judgment of this Honourable Court in a case intituled *F.K.A Co. Ltd vrs. Effah Sarkodie* (Suit No. J4/33/2007) declaring title in Respondent over 95.194 acres of the disputed land lying and situate at Weija. Respondent submits further, that after the judgment in *F.K.A Co. Ltd vrs Effah Sarkodie* above, the Lands Commission sued the 36 Respondent herein in a case intituled *Lands Commission vrs F.K.A Co. Ltd* (Suit No. SOL/13/11) challenging Respondent's ownership of the land in dispute. That the High Court, making reference to the Supreme Court decision in *Effah Sarkodie*, dismissed the action by the Lands Commission. Counsel submits, also, that evidence on record in the instant appeal support the finding that the plots of land encroached upon by the Appellant, form part of the Respondent's large tract of land. Counsel, therefore, submits that even if the Weija Stool were not the true owner of the land as against the Government of Ghana, the proper institution to have asserted the right of the Government in the land in dispute was the Lands Commission. The Lands Commission, having itself failed in its quest to challenge the title of the Weija Stool, Respondent's grantor, Appellant cannot be heard to argue that the land in dispute belongs to the Government, and that it is only the Government that could make a valid grant of the disputed land. [6]. ISSUES RAISED BY THE ARGUMENTS: It is my humble view that the arguments advanced by Counsel for both parties raise three

- (3) main issues for determination by this Honourable Court.
 1. Whether or not the Respondent is clothed with capacity (*locus standi*) to maintain the suit.
 2. Whether or not the Appellant could be heard on a point of law under the omnibus ground of appeal.
 3. Whether or not the Court of Appeal is justified, in law and in fact, in affirming the judgment of the trial High Court. [7]. CAPACITY OF RESPONDENT: 37 The Rules of this Court require an appellant to set out the grounds of appeal in the appellant's notice of appeal. Consequently, an appellant cannot argue a ground of appeal that is not mentioned in the notice of appeal save with leave of the Court. Rule 6 of the Supreme Court Rules, 1996 (C.I. 16) (as amended) provides as follows: "6 (1) Any appeal to the Court in a civil cause or matter shall be brought by notice of appeal in the Form 1 set out in Part I of the Schedule to these Rules...."
- (6) The appellant shall not, without the leave of the Court, argue or be heard in support of any ground of appeal that is not mentioned in the notice of appeal....

- (8) Where the Court intends to rest a decision on a ground not set forth by the appellant in his notice of appeal or on any matter not argued before it, the Court shall afford the parties reasonable opportunity to be heard on the ground or matter without re-opening the whole appeal.” The instant appeal is based on the sole ground that the judgment of the Court of Appeal is against the weight of evidence. Yet, Counsel for Appellant submitted in their statement of case, that the Respondent was not clothed with capacity to initiate the action which has precipitated the instant appeal. The question of capacity is very key in civil proceedings. It is such that when a party’s capacity is put in issue, the Court is enjoined to resolve that issue as a preliminary one. Where a party’s capacity in an action is successfully challenged, the action falls off and is dismissed without going into the merits of the case. In the case of *ALFA MUSAH v FRANCIS APPEAGYEI* [2019-2020] 1 SCLRG 606, it was stated that: 38 “It is trite learning, that when a person’s capacity to sue is challenged, he must prove it before he can succeed in the action on the merits.” It was further stated by the Court at page 613 that, “even though the court may resort to taking evidence on all the issues raised by the pleadings, the court must always consider the issue of capacity first.” It has been held by this Court in several cases that an objection to capacity could be taken at any time during proceedings, including for the first time on appeal. In the case of *ATTORNEY GENERAL v FAROE ATLANTIC* [2005-2006] SCGLR 271, the law was expressed to the effect that: “Generally, where a point of law had not been raised in the trial court and the intermediate Court of Appeal, it might not be raised in the Supreme Court as the final appellate court. However, there were exceptions to the general rule, namely:
- (i) a jurisdictional issue could be taken or raised at any time, even for the first time; ... (iii) and where the legal question sought to be raised for the first time was substantial and could be disposed of without the need for further evidence....In any case, the Supreme Court had been empowered under rule 6(7)(b) of the Supreme Court Rules, 1996 (CI 16), to consider matters not raised specifically as a ground of appeal.” The point was further elucidated by this Court in the more recent case of *TAMAKLOE & PARTNERS UNLTD v GIHOC DISTILLERIES CO LTD* [2017-2020] 2 SCGLR 549 at 559, as follows: “It is trite that the issue of capacity can be raised at any stage of the proceedings and even for the first time in the second appellate court. However, in *Fatal v Wolley* [2013-2014] SCGLR 1070 this court highlighted certain conditions precedent that would enable this court to resolve 39 an issue of capacity that is belatedly raised. Georgina Wood CJ, delivering the judgment of the court stated per holding (1) that: “The legal question of capacity, like other legal questions, such as jurisdiction may be raised even on appeal. But it is trite learning that the principle is circumscribed by law. The right to raise legal issues even at such a late stage is legally permissible only if the facts, if any, upon which the legal question is premised, are either undisputed; or if disputed, the requisite evidence had been led in proof or disproof of those relevant facts, leading to their resolution by the trier of facts; failing which the facts could, and based purely on the evidence on the record, and without any further evidence, decidedly be resolved by the appellate court.” Having regard to the importance of capacity in every civil judicial proceeding as the instant one, the issue of capacity would be resolved

on the strength of the evidence on record. [7.1]. The Appellant has submitted that, in a suit intituled F.K.A Company Limited vrs Frederick Nyamekye & Anor, Suit No. BL514/2005, instituted by the Respondent against the Appellant in the High Court, the Respondent's claim therein was that the Appellant was a trespasser on six (6) plots of land belonging to the Respondent. That however, the court found that the Respondent had granted four (4) out of the six (6) plots to one Madam Ewuntoma and therefore dismissed the Respondent's action in respect of all six

- (6) plots of land on the basis that Respondent was not the proper person to sue over the six (6) plots of land. Thus, Respondent had divested themselves of four (4) plots to the said Madam Ewuntoma. This, Appellant has argued, explains why in the subsequent writ issued by the Respondent which has resulted in the instant appeal, the Respondent claimed against the Appellant recovery of possession of two (2) plots of land, being the remaining plots retained by the Respondent after Respondent had disposed of the four 40
- (4) plots to Madam Ewuntoma. That the Respondent had also granted four (4) plots of land, including the two plots retained by Respondent after the grant to Madam Ewuntoma, to one Florence Ntummy. The crux of Appellant's argument, therefore, is that at the time the Respondent commenced the action which has resulted in the instant appeal, the Respondent had parted with possession of all six (6) plots of land which Respondent now claims from Appellant. As a result, Respondent lacked standing to sue in respect of the plots of land which Respondent had granted to third parties, Madam Ewuntoma and Florence Ntummy. It appears that the Appellant's argument would constitute an admission of Respondent's possessory title to the six (6) plots of land referred to, and which the Appellant says he is in possession of, except that Appellant argues that any challenge to his said possession of the plots of land could only properly be mounted by the Respondent's grantees. In paragraphs 38 and 39 of the Appellant's statement of case, it is submitted as follows: "38. In effect, at the time respondent brought the present action in the registry of the trial court against the appellant, respondent had granted all the six (6) plots in possession of appellant-Madam Ewuntoma's four (4) plots as found by Aduamah Osei JA in the Suit No: BL514/2005 and the two (2) out of the four (4) plots respondent granted Florence Ntummy.
- 39. Respondent would therefore lack capacity to bring the present suit after respondent had granted the six (6) plots of land to third parties." The Appellant rests his conclusion on a statement by the trial High Court that Ewuntoma and Ntummy, grantees of Respondent, were different persons and not the same person as Respondent wanted the Court to believe in that case. 41 Having raised these material allegations, the Appellant bears the burden of proof in terms of sections 10,11(1) and 12 of the Evidence Act, 1975 (N.R.C.D. 323). The relevant provisions state: "10(1) The burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.

- (2) The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establishes the existence or non-existence of a fact or that he establishes the existence or non- existence of a fact by a preponderance of the probabilities or by proof beyond reasonable doubt. 11.(1) The burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue. 12(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of probabilities. (2)“Preponderance of the probabilities” means that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence.” [7.2]. Has the Appellant discharged the burden of producing evidence and the burden of persuasion on the allegation of Respondent’s want of capacity? It is my respectful view that the Appellant has not provided sufficient basis for his conclusion that Respondent’s grant to Ntummy included all the remaining plots of land less the four (4) plots granted to Ewuntoma. The Appellant has led no sufficient evidence 42 on record to support this claim. A copy of the judgment in the Ntummy case or a composite site plan of the area occupied by the Appellant, as well as those of Ewuntoma and Ntummy would have been a helpful starting point for the Appellant’s argument. It is noteworthy that following the testimony of the court appointed surveyor at the trial High Court that the Appellant was on approximately six (6) plots within the Respondent’s tract of land, Respondent amended their original writ which claimed, among others, recovery of possession of two plots of land measuring 140ft by 100ft (0.32 acre) to now claim against the Appellant recovery of possession of four (4) plots of land measuring 140ft by 1200ft (0.64 acre). Also, the finding by the courts below that the Respondent led credible evidence to show that Respondent took a grant of 95.194 acres of land from the Weiija Stool, has not been challenged in any material form by the Appellant. In the absence of sufficient evidence to back the positive allegation of Appellant that the entire subject matter of Respondent’s suit had been alienated by the Respondent to Ewuntoma and Ntummy, the evidence on record that the area occupied by Appellant forms part of the larger tract of land within the Respondent’s site plan, weighs in favour of the Respondent on the preponderance of probabilities. The Appellant’s argument challenging Respondent’s capacity accordingly fails, and is hereby dismissed. [8]. At any rate, there is the contentious issue of the propriety of the argument by the Appellant in respect of the capacity of the Respondent in the appeal before this court in the face of the provision in rule 6 subrule 6 and 7 of the Supreme Court Rules, 1996, CI.16, which has been quoted above, taking into consideration recent decisions of this court regarding the need for Appellants to formulate credible and legally cognizable grounds of appeal. [8.1]. To start with, the main and only ground of appeal set out in the Notice of Appeal filed by the Appellant herein is the omnibus ground that the judgment is against the 43 weight of evidence. This ground of appeal has been recognised as enabling the court to evaluate the factual evidence adduced by the parties before the trial court and assess whether or not in the face of the evidence produced by the parties, the conclusions reached by the trial court and the first appellate court were correct within the parameters of the applicable law. This ground of appeal is not a sword under which counsel could throw into the argument legal grounds which could be raised

distinctively and separately for the consideration of this court. For this reason, rule 6 subrule 6 of CI.16 enjoins this court not to allow an appellant to argue or be heard in support of a ground of appeal that is not specified as a ground of appeal in the notice of appeal, except with the leave of the court. This rule dovetails perfectly into the principle of natural justice expressed as the *audi alteram partem* rule to the extent that a party is entitled to know beforehand the accusation which his opponent has against him to enable him prepare adequately to answer the said accusation. A party shall not be taken by surprise by way of an ambush litigation. Thus, except the legal ground is one that arises as a matter of course in arguing the factual matters contained in the omnibus ground of appeal, a party who wishes to be heard on a distinctive legal matter, such as an allegation of the lack of capacity to sue, is enjoined to raise that legal issue as a separate ground of appeal. This principle was clarified by this court in *Owusu-Domena vs. Amoah* [2015-2016] 1 SCGLR 790 where it was held that: “Where the appeal was based on the omnibus ground that the judgment was against the weight of evidence, both factual and legal arguments could be made where the legal arguments would help advance or facilitate a determination of the factual matters” 44 The principle, thus, expressed, does not give an open licence to counsel to throw into the statement of case any argument regardless of the grounds of appeal formulated in the notice of appeal. The omnibus ground of appeal is not a substitute for the formulation of specific grounds of appeal where need be. A party has no right to hide behind the omnibus ground of appeal and throw into the argument foray all sorts of legal arguments which could be raised separately and argued independently. Thus, in *Atuguba & Associates vs. Scipion Capital (UK) Ltd & Holman Fenwick Willan LLP* [2018-2019] 1 GLR 1, the point was made that: “The Supreme Court Rules, 1996, CI.16 provided in rule 6(6) that an appellant should not without the leave of the court, argue or be heard in support of a ground of appeal that was not mentioned in the notice of appeal. Consequently, where the only ground of appeal filed was that the judgment was against the weight of evidence, parties would not be permitted to argue legal issues if the factual issues did not admit of any. However, if the weight of evidence was substantially influenced by points of law, such as, the rules of evidence and practice or the discharge of the burden of persuasion or of producing evidence, then points of law might be advanced to help facilitate a determination of the factual matters.” It follows therefore that as long as the issue of capacity is a legal issue which ought to be raised separately in the notice of appeal but which the appellant failed to do so, he cannot be permitted, under rule 6(6) of CI.16 to advance argument in respect of the capacity of the Respondent to institute the action, under the omnibus ground of appeal that the judgment is against the weight of evidence. [9]. JUDGMENT IS AGAINST THE WEIGHT OF EVIDENCE: 45 Where an appeal is premised on the ground that the judgment appealed is against the weight of evidence, it implies that there were relevant pieces of evidence before the court below which evidence were either wrongly applied against the appellant or were not accorded proper attention thereby occasioning the appellant a grave miscarriage of justice. It is, therefore, the duty of an appellant who advances this ground of appeal to clearly demonstrate to the appellate court how the court below wrongly applied or failed to apply the evidence in a manner that would have otherwise led to a judgment or finding in

favour of the appellant. This ground of appeal is also an invitation to the appellate court to review the entirety of the evidence on record in order to ascertain whether or not on the balance of probabilities, the judgment being appealed against is amply supported by the evidence on record. In *DJIN v MUSAH BAAKO* [2007-2008] SCGLR 686 at 691, the position was stated as follows: “It has been held in several decided cases that where an (as in the instant case) appellant complains that a judgment is against the weight of evidence, he is implying that there were certain pieces of evidence on the record which, if applied in his favour, could have changed the decision in his favour, or certain pieces of evidence have been wrongly applied against him. The onus is on such an appellant to properly demonstrate to the appellate court the lapses in the judgment being appealed against.” The Appellant has submitted that if the Court of Appeal had properly considered the evidence adduced by Appellant to show that the land in dispute was a state acquired land, the Court of Appeal would not have affirmed the trial High Court on the principle that the Weija Stool could not transfer the land in dispute to the Appellant in 2002 when the Stool had transferred the same land to Respondent in 1998. The Appellant refers to the Court of Appeal judgment in *F.K.A. Limited vs Adjei Boadi*, H1/170/2010 and argues that if the High Court and the Court of Appeal had complied with Article 136(5) of the 46 Constitution, the courts would have certainly followed the decision in H1/170/2010. Consequently, the courts below would not have erroneously applied the principle of *Nemo dat quod non habet* in the circumstance. The Appellant bears the duty to demonstrate how the alleged non-compliance with or misapplication of the legal principles have influenced factual conclusions against him which otherwise would have inured to his favour. Article 136(5) of the Constitution, 1992, provides: “(5) Subject to clause (3) of article 129 of this Constitution, the Court of Appeal shall be bound by its own previous decisions; and all courts lower than the Court of Appeal shall follow the decisions of the Court of Appeal on questions of law.” (Emphasis). It is not clear from the argument of Appellant’s Counsel the question of law settled in H1/170/2010 which the High Court and Court of Appeal have failed to follow. Respondent, on the other hand, relies on, among others, the judgment of the Supreme Court in *F.K.A Co. Ltd vrs. Effah Sarkodie* (Suit No. J4/33/2007) (Pages 317 to 329 of Volume 2 of the Record of Appeal) which affirmed that the Respondent acquired 94.195 acres of land customarily in 1980 from the Weija Stool. Even though it was argued against Respondent in the *Effah Sarkodie* case that the Government had not released the land in dispute to the Respondent and thus Respondent could not claim the said land, the Supreme Court held that the Respondent was better entitled to the disputed land as against their contender. Similarly, in the case of *F.K.A Limited vs Adjei Boadi* (H1/170/2010) (Pages 338 to 349 of Volume 2 of the Record of Appeal), which is heavily relied on by the Appellant herein, the Court of Appeal dealt with the issue of Government acquisition and ownership of the land in dispute. The Court of Appeal found that the 47 land in dispute is a Government acquired land and had not been released to the Weija Stool. The Court, however, observed as follows: “There is sufficient evidence that it was the plaintiff [Respondent herein] who was and is still in possession of the disputed land. The hackneyed legal principle is that possession by itself gives good title against the whole world except someone having better legal right. Where, as in this case, both parties bought

from the Weija Stool, who I have found has no title to make a grant to any of them, the one in possession i.e. the plaintiff [Respondent herein] has better title to the land awaiting anybody who claims to have better title to dislodge him. The defendant cannot rely on his own strength in the circumstances of this case to challenge the plaintiff's possession over the land in dispute. There is no principle that will support the defendant, also a squatter, challenging the claim to ownership of the land by the plaintiff [Respondent herein] on the ground that the land does not belong to the plaintiff but to somebody else, in this case the Government, since he is not claiming to derive title from the Government. He has no business therefore questioning the documentation of the plaintiff no matter how erroneous." (At Pages 348 to 349 of Volume 2 of the Record of Appeal). The above decisions, in my humble view, rather confirm the possessory title which the Weija Stool has wielded over the disputed land for several years. The Appellant herein does not claim title through the Government. Appellant relies on letters and correspondences with State Institutions to argue that the State/Government has evinced an intention to regularize Appellant's title to and presence on the disputed land. These letters, however good and promising they may seem, do not, in my humble view, constitute a conveyance to the Appellant by the Government. 48 [9.1]. Appellant has argued also that he was in possession of the disputed land and should be presumed to have a good title against the Respondent herein. Indeed, section 48 of the Evidence Act, 1975 (N.R.C.D 323) provides that: "48 (1) The things which a person possesses are presumed to be owned by him.

- (2) A person who exercises acts of ownership over property is presumed to be the owner of it." In proving ownership of land through acts of possession, the possession of the land must be long, peaceful and uninterrupted. In *Brown vs. Quarshigah* [2003-2004] SCGLR 930, Professor Kludze, JSC observed at page 950 of the report that: "It cannot be said that the trial Judge was wrong in accepting these acts of presence as evidence of possession. Possession after all means occupation and control in a manner commensurate with the nature of the property. It includes the right or power to exclude others from the property, and also includes the enjoyment of the land.... Possession is a matter of law but is established by physical acts. Possession is generally regarded as exercising physical control; but physical control cannot mature into possession in law unless accompanied by other facts.... As a prerequisite, there must be an effective physical control which is commensurate with the nature of the property over which the right is asserted. For instance, in the case of land, as in this case, presence on the land may constitute enough physical control. The physical control is usually actual control and includes the right to exclude others from the property. It may, however, also be potential control, such as when there is an unlawful but de facto impediment by a trespasser. Secondly, there must be the animus possidendi or intention to possess which must be concurrent with the requisite physical control. In other words, where there is physical control that is fortuitous or unrelated to the intention to possess, it will not constitute possession in law. Finally, the intention to possess must be manifested by external or visible signs appropriate to the property being taken into possession. The external manifestation 49 is necessary to serve as notice to the rest of the world of the right claimed,

even if unknown to the whole world.” From the evidence on record, the courts below preferred the Respondent’s version that Respondent took possession of the disputed land in 1980, constructed roads and erected electric poles thereon. It is also on record that the Respondents reported the Appellant to the Police, except that the proceeding commenced by the Police against the Appellant in court was subsequently struck out for want of prosecution. This piece of evidence is demonstrative of the fact that the Appellant was resisted by the Respondent when the Appellant entered the disputed land. It would appear that the Appellant hinges his concept of possession to the erection of a physical structure by Appellant which Appellant says is a complete building. However, it has been settled that possession in land law is not restricted to the presence of physical structures only. In the case of *ARYEE v SHELL GHANA LTD & FRAGA OIL LTD* [2017-2020] 1 SCGLR 721 at 729, it was held that: “It would be plainly unjust for the court to accept that a person is in possession only when he has a permanent structure erected on the land.... Possession in this case was complete when the plaintiff took the plots and erected the temporary structure on it and carried on her block-making business thereon.” In *YEHANS INTERNATIONAL LTD v MARTEY TSURU FAMILY & ANOR.* [2019- 2020] 1 SCLRG 838, it was held in holding (2) that: “A person who seeks a declaration of title to land must prove; (i) his root of title; (ii) the mode of acquisition of the land and (iii) the various acts of possession exercised over the disputed land.... In order to prove ownership through possession of the land, the possession must be long, peaceful and uninterrupted.” 50 The Appellants herein have conceded Respondent’s exercise of ownership over the disputed land by the dispositions thereof to Ewuntoma and, allegedly, Ntummy. These relevant pieces of evidence tilt the scale of justice in favour of Respondent as having, at least, possessory title, and do not warrant an interference by this Honourable Court with the concurrent findings of the courts below. [10]. In *GREGORY v TANDOH IV AND HANSON* [2010] SCGLR 971 at 985, the Supreme Court held as follows: “We have noted that the Court of Appeal in its judgment concurred in the findings of fact made by the learned trial judge. There is this general principle of law which has been stated and re-stated in several decisions of this court, namely: that where findings of fact (such as in this instant case) have been made by a trial court and concurred in by the first appellate court, in this case the Court of Appeal, then the second appellate court such as this Supreme Court must be slow in coming to different conclusions unless it is satisfied that there are strong pieces of evidence on record of appeal which make it manifestly clear that the findings of the trial court and the first appellate court are perverse.” It is, therefore, my humble opinion that the Appellant has not demonstrated that the findings by the Court of Appeal were made contrary to the evidence placed before it or that a principle of law has been wrongly applied which if corrected would dislodge the conclusions reached. [11].

CONTRADICTIONS IN WITNESS’ TESTIMONY: Counsel for the Appellant has argued that the courts below overlooked material contradictions in the testimony of the Managing Director of the Respondent company. 51 That while Respondent pleaded that the Managing Director of Respondent first took a customary grant from the Weija Stool in 1980 which allegation of fact is affirmed by the Managing Director in the Managing Director’s Witness Statement, the Managing Director, in cross examination, stated that it was his father who took the

customary grant from the Weija Stool in 1980. It is noteworthy that minor inconsistencies in a party's testimony were not fatal to the party's case, especially where the totality of the evidence adduced supported the party's version. In *YEHANS INTERNATIONAL LTD v MARTEY TSURU FAMILY & ANOTHER (SUPRA)*, it was held that: "A court ought to gloss over any inconsistencies in the evidence of a party, where the inconsistencies or conflicts are clearly reconcilable and there is a critical mass of evidence or corroborative evidence on crucial or vital matters." See also *EFFISAH v ANSAH* [2005-2006] SCGLR 943. The totality of the evidence on record weigh in favour of Respondent's acquisition and possession of the disputed land since 1980. [11]. **CONCLUSION:** On the facts and available evidence on record, the legal principles applicable to the issues emanating from the instant appeal do not seem to warrant an interference with the findings and conclusions of the Court of Appeal. This appeal, therefore, fails in its entirety, and is hereby dismissed. The judgment of the Court of Appeal delivered on the 6th July, 2023 in this matter, is hereby affirmed. 52 (SGD.) S. K. A. ASIEDU (JUSTICE OF THE SUPREME COURT) COUNSEL RAPHAEL ALIJINA ESQ. FOR THE DEFENDANT/APPELLANT/APPELLANT WITH EVELYN DZIGBORDI ANKU IRENE MARIA ALLOTEY-ANNAN FOR PLAINTIFF/RESPONDENT/RESPONDENT 53

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