

GHANA / JUDGMENT

ASSIBEY VRS LANDS COMMISSION (J4/66/2019) [2024] GHASC 34 (10 July 2024)

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IN THE SUPERIOR COURT OF JUDICATURE IN THE SUPREME COURT ACCRA – A.D. 2024
CORAM: LOVELACE-JOHNSON (MS.) JSC (PRESIDING) AMADU JSC KULENDI JSC ACKAH-YENSU
(MS.) JSC ADJEI-FRIMPONG JSC CIVIL APPEAL NO. J4/66/2019 10TH JULY, 2024 PETER OSEI
ASSIBEY (TRADING UNDER THE NAME AND PLAINTIFF/APPELLANT/APPELLANT STYLE OF
ADEHYEMAN FOUNDATION) VRS LANDS COMMISSION DEFENDANT/RESPONDENT/
RESPONDENT (KUMASI-ASHANTI)

JUDGMENT

ADJEI-FRIMPONG JSC: The extent to which a judgment constitutes a bar to further litigation involving the same cause of action or the same issues continues to give rise to vexed questions in common law jurisdictions. The perennial conundrum gave cause to a statement attributed to Somervell L.J which is cited by Sir Raymond Evershed M.R. in the case of REMNANT V SAVOY ESTATE LTD (1949) 2 ALL ER 286 at 289 thus: “...res judicata may work in mysterious ways and that may be the effect of the application of the doctrine.” Such is Page 1 of 45 the mystery that has emerged from the facts of this case which is now on a second appeal before us. The issue which is not of any wide compass turns on whether the hallowed principle of estoppel per rem judicatam in its species and variants, operated against the Plaintiff/Appellant/Appellant (herein ‘the Plaintiff’) such as to bar him from pursuing the remedies he sought in the instant suit against the Defendant/Respondent/Respondent (herein ‘the Defendant’). The bone of contention of the litigation is a parcel of land commonly referred to as the ‘Kejetia Playground (property No. A-1657) situate in Kumasi. It is said of this land that, it originally formed part of the Kumasi Town Lands (Part 1 Lands) held by the colonial administration which later became vested in the Governor of the Gold Coast pursuant to the Kumasi Lands Ordinance, Chapter 145 of 1943. At independence, the land was initially designated as a cemetery site/ground under the management of the Kumasi Municipal Council. It was later to be reserved as an open space under its popular name Kejetia Playground and vested in the Kumasi Municipal Council pursuant to the Kumasi Town Ordinance No. 18 of 1943. The current Kumasi Metropolitan Assembly (KMA) as successor to the Council continued to manage and control the land. According to the Plaintiff, it was whilst the land was in the control and management of the KMA that, in 1989, an advertisement was placed in “The Pioneer” Newspaper inviting a prospective developer to take

over and develop it into a modern recreational center or grounds for public use. In response to the invitation, he successfully negotiated with the KMA and took over the land which it developed into a modern recreational center. The business was on a joint-venture arrangement between him and the KMA. In the events that followed, the Plaintiff's possession of the land was not without challenges. It began with a misunderstanding between him and the KMA itself which resulted in a suit in the High Court, Kumasi. The dispute was however settled between them, and the terms of settlement were adopted and entered as consent judgment by Page 2 of 45 the court. The consent judgment was also plotted as an encumbrance at the Lands Commission. Thereafter, he resumed his operation on the land from July, 2007. Then came another challenge. This time, the Lands Commission granted a 50-years lease of the land to the Golden Stool. The Golden Stool in turn granted subleases to other persons including an entity called Acheamfour Limited and one Nana Osei Tutu @ Obideaba. The Plaintiff alleged acts of trespass against the said Acheamfour and Nana Osei Tutu @ Obideaba claiming they caused damage to his buildings on the land. He therefore commenced an action against them in the High Court, Kumasi in a suit intituled; PETER OSEI ASSIBEY V ACHEAMFOUR LIMITED and NANA OSEI TUTU @ OBIDEABA (C1/77/13). The reliefs the Plaintiff sought, shortly put, included declaration of title to the land, general damages for trespass and perpetual injunction against those Defendants. The Defendants, of course, resisted his claim and counterclaimed essentially for title to be declared in them on the basis of the sublease granted by the Golden Stool. Whilst the said suit was pending, the Plaintiff turned his wrath on the Lands Commission. Apparently unhappy with the lease to the Golden Stool and the sublease to the Defendants in Suit No. C1/77/13, he, on 11th July 2014, mounted the instant action against the Lands Commission as the only Defendant for the following reliefs:

- a. A judicial determination and declaration that all that parcel or piece of land more particularly described and or designated as property No. A-1657 forming part of Kumasi Town Lands (KTL) commonly known as Part 1 Lands which was vested in the Governor of the Gold Coast under the Kumasi Lands Ordinance (Chapter 145), which was originally as cemetery site/ground was placed under the management and control of the Kumasi Municipal Council as part of sanitary and open space under the Kumasi Town Ordinance No. 18 of 1943.
- b. A judicial determination and declaration that there has not been any termination by the Defendant of the management and control of Property No. A-1657 aforesaid by the KMA since it came under the management and control of KMC [now Kumasi Metropolitan Assembly (KMA)]. Page 3 of 45
- c. A declaration that the Kumasi Metropolitan Assembly in the exercise of its management, control and use powers thereof legitimately and validly delivered property No. A-1657 aforesaid to the Plaintiff on the 4th day of April, 1991 into a joint venture for developing same as playground for the consumption of the public.

- d. A declaration that consequent upon the development of property A-1657 by the Plaintiff and pursuant to the consent judgement in suit. No. E1/276/04 between the Plaintiff herein and the KMA, constitutes and encumbrance which was created in the subject land.
- e. A judicial determination and declaration that the purported grant/transfer of property No. 1657 by the Lands Commission to the Golden Stool on the 11th of April 2014 without compensation to the Plaintiff who had developed the whole land, having constructed buildings thereon and had been in possession of the land since 1992 in pursuance of legitimate joint venture with KMA amounted to compulsory acquisition in violation of the property rights of the Plaintiff as enshrined in Article 20 of the 1992 Constitution.
- f. An order for the payment of general and consequential damages
- g. Perpetual injunction OR in the alternative, the recovery of a liquidated claim of GHC 10,000,000.00 being the total value of developments on the whole parcel of land including all the giant buildings and structures thereon plus interest on the GHC 10,000,000.00 from March 2013 till date of final payment. It is not clear when the trial of Suit No. C1/77/13 which was first in time ended in the High Court. It is however known that the Plaintiff lost in the first instance and appealed in the Court of Appeal as Suit No. H1/61/2016. The Court of Appeal delivered its judgment on 17th January 2017. At the time, the instant suit was yet to end in the High Court. The record shows that evidence had been concluded and the learned trial judge, Francis Obiri J, had adjourned the matter for judgement. At that stage, the Court of Appeal delivered its judgment in Suit No H1/61/2016. Then the fortunes of the suit pending delivery of judgment before Francis Obiri J was struck to change. The 'Somervell mystery' appeared. The Lands Commission as Defendant in the suit but a non-party to the Judgment of the Page 4 of 45 Court of Appeal, procured for itself a copy and by that, launched a challenge to the Plaintiff's claim against the Defendant in the instant suit. It did so by filing a motion invoking the inherent jurisdiction of the High Court. The kernel of the defendant's argument before Francis Obiri J was that, the Court of Appeal in its unanimous decision authored by Torkornoo J.A (as she then was) had determined the issues in the pending suit. It was contended that, further pursuit of the pending suit constituted an abuse of the court's process, as the issues therein were res judicata by virtue of the Court of Appeal's decision. The jurisdiction of the trial High Court, it was argued, was therefore torpedoed. The Plaintiff strongly contested the application, arguing that the claim he was pursuing was not the same as what had come before the Court of Appeal in Suit No H1/61/16 and that his claim was still maintainable. Francis Obiri J allowed the application, re-opened the trial, and received the judgement of the Court of Appeal in evidence as Exhibit LC3 through the Registrar of the Court of Appeal. At last, he bought into the argument of the Defendant and ruled that the issues before him were res judicata and the Plaintiff's action, an abuse of the court's process. He dismissed the Plaintiff's claim on the basis that his jurisdiction had been blown off by the binding decision of the Court of Appeal. The Plaintiff appealed this position to the Court of Appeal which dismissed same as being without merit. He is now before us on a second appeal on eight (8) separate grounds contained in his

amended Notice of Appeal filed on 8th December 2021 which we shall fully set out in due course. My Lords would notice from the trajectory of this litigation that the determination of this appeal largely turns within the compass of three lower Court judgments. The first is the unanimous judgment of the Court of Appeal authored by Torkornoo J.A (as she then was) in suit No. H1/61/2016 intituled Peter Osei Assibey v Acheamfour Limited and Nana Osei Tutu@ Obideaba. Henceforth, let us call it the “Obideaba case” to ease identification. The other two are the judgments of the trial High Court coram Francis Obiri J which was Page 5 of 45 affirmed by the unanimous judgment of the Court of Appeal authored by Mariama J.A (as she then was) which is now on appeal before us. Let us for the same reason, call this case the Lands Commission case. For a good appreciation of the issues emanating from the instant appeal and the arguments laid before us, we indulge ourselves, a summary of the Obideaba case. Certainly, that case is the instigator of the ‘estoppel controversy’ that runs through this appeal. It will only take a good grasp of what was obtained therein to appreciate what the instant appeal entails. We need to remind ourselves that where a party alleges estoppel on the basis of an existing judgment it is necessary to establish that the court in the first case did in fact determine the matters giving rise to the plea. It is right to state that a judgment that can support a plea of res judicata must be one in which an affirmative answer can be found for the question as to the final determination of the rights and liabilities of the parties in the subject matter. Whenever before a court a plea of estoppel is made, it becomes the bounden duty of the court to examine the judgment on which the plea is based to determine whether it decided the matter of the plea. The court must indulge in a textual analysis of the judgment in order to work out what was decided. The inquiry will also lead to the ascertainment of the fundamental basis of the decision and how it was made. The Obideaba Case Like the instant case, the Obideaba case had originated in the High Court differently constituted where the Plaintiff claimed the following reliefs against Acheamfour Ltd and Obideaba:

1. A declaration that title to all that parcel of land known as Kejetia Playground—a portion of which is in dispute the 1st and 2nd Defendants herein have trespassed upon and are feverishly engaged in the construction of a building structure or stores thereat, is vested exclusively in the Plaintiff. Page 6 of 45
2. A declaration that the 1st and 2nd Defendants’ entry upon, and the construction of a building structure or stores thereon, by the 1st and 2nd Defendants are unlawful, trespassory and without any legal justification whatsoever.
3. Damages for trespass to the Plaintiff’s said land.
4. Any further or other reliefs as shall be just in the circumstances of this case, and in particular an order of perpetual injunction restraining the 1st and 2nd Defendants, either by themselves, their workmen, servants, assigns, agents or any other person acting or for and on their behalf or under their auspices or direction from entering upon, remaining thereat, carrying out any construction or development activities whatsoever, or any other way interfering with the Plaintiff’s exclusive title to or possession of the said land or otherwise

dealing with the said land in any other way contrary to or adverse to the plaintiff's exclusive title and possession thereof. We glean from the Judgment tendered in that case that the background to the Plaintiff's case was not any different from what is before us. The Plaintiff, in 1991 won the bid from the KMA to develop the land into a modern recreational center which he did on a joint-venture basis with the KMA. Pursuant to that, he constructed two restaurants, a swimming pool, children's playground, a conference center, cocktail bar, video center, ICT center and parking lot on the site. Whilst running the facility, KMA disrupted his operation resulting in a litigation between them. The dispute was however settled out of court. The terms were agreed, adopted by the court, and later filed with the Lands Commission as an encumbrance in his favour. He resumed operating the business at the place from 2007 only to be disrupted again in 2013, this time by the Defendants therein who laid claim to the land. The two destroyed his structures on the land by pulling them down. He therefore brought that suit against them. [See page 279—280 ROA]. From the Judgment, the Plaintiff had advanced the following arguments both at the trial and on appeal:

1. That his presence on the land coupled with the consent judgment entered between himself and the KMA which had been registered with the Lands Commission Page 7 of 45 constituted sufficient evidence of exclusive possession to warrant title being decreed in his favour.
2. That the consent judgment itself constituted effective title to the land which ought to have been given priority over the leases granted by the Lands Commission.
3. That the Defendants were trespassors who caused damage to his property on the Land and were liable to pay him damages. The Defendants in resisting the Plaintiff's claim had alleged that the land the Plaintiff was claiming was part of a larger tract originally leased to their predecessor called Chief Kwaku Duah. The original lease which was for 7 years was extended to 90 years. Their family had consented to the KMA (previously KCC) carrying on beautification projects on portions of the land. Thus, if the KMA ever purported to grant title with respect to any part of their family land, that would amount to concealed fraud. As far as they were concerned, the KMA never granted any title to the Plaintiff. What they knew of was an agreement between KMA and a certain Adehyeman Gardens Limited and not the Plaintiff trading as Adehyeman Foundation. Consequently, the terms of settlement reached between the Plaintiff and the KMA and registered with the Lands Commission contained material misrepresentations that were fraudulent. As to how they became sublessees, they alleged that in March 2014, the Lands Commission indicated to their family that their entire land had been zoned as a site for commercial purposes and the lease thereon granted to the Golden Stool. They decided to approach the Golden Stool for a sublease which was granted. According to them, it was the agents of the Golden Stool who cleared the land of what they termed "illegal structures and squatters". They thus, counterclaimed against the Plaintiff as follows:

- a. A declaration that the land in dispute falls under the parcel of land by the lease dated 9th April made between the Government of the Republic of Ghana and the Kumasi State and the Golden Stool.
- b. A further declaration that the 1st and 2nd Defendants are in possession of the land they occupy by virtue of the sublease granted to them by the Golden Stool. Page 8 of 45
- c. A further declaration that the consent judgment dated 17th May, 2006 as pleaded in paragraph 2 of the statement of claim did not relate to an interest in land and could not operate to confer any right, title or interest in the land in dispute to the Plaintiff.
- d. A declaration that the application for a formal lease dated 12th March, 2009 and submitted to the Lands Commission, Kumasi by the Plaintiff for processing was fraudulent and same should be expunged from the records of the Land Registry. [Page 282 ROA]. The Plaintiff's claim at the trial was entirely unsuccessful. The High Court dismissed all his reliefs and granted the Defendants their counterclaim. His appeal however succeeded in part. The Court of Appeal resolved the appeal under three (3) main issues as follows:
 1. Whether the judgment [of the trial court] was against the weight of evidence regarding the decision of the court that the consent judgment registered by the Plaintiff in 2007 did not confer any right in the property identified as the Kejetia Playground in the Plaintiff.
 2. Whether the lease issued by the Lands Commission to the Golden Stool in 2014 and the subsequent subleases to the Defendants were null and void in view of the Plaintiff's prior contract to develop the land and possession of it granted by the KMA and his subsequent registration of the consent judgment and the fact that the land had been zoned for commercial purposes.
 3. Whether the Plaintiff proved an entitlement to damages against the Defendants and or the parties proved their various claims in the suit to warrant a reversal of the judgment. [Page 283 ROA] The learned justices resolved all the issues, allowed the appeal in part and made award of damages of GH¢200,000 in favour of the Plaintiff against the 2nd Defendant, Obideaba, who was found to have caused the destruction to the Plaintiff's property on the land. We shall defer reference to further details of the findings and conclusions of the learned justices of the Court to a later moment in this delivery. Page 9 of 45 As noted previously, it was on the strength of the findings, conclusions and awards of the Court of Appeal in the Obideaba case that the trial High Court Coram Francis Obiri J in the case before us, concluded that the matters pending judgment before him were res judicata for which his jurisdiction was aborted. A summary of how he reached that conclusion is worth stating here. Summary of the Trial court judgment in the Lands Commission Case. The learned trial judge first determined the effect of the judgment in the Obideaba case (tendered as Exhibit LC3) on his jurisdiction to determine the suit if it prevailed as estoppel per rem judicata. He expressed the legal position thus: "The legal effect of the defendant's objection through Exhibit LC3 is that if it is upheld, this court would not have jurisdiction to determine the merits of the case. It would also mean that the Plaintiff is estopped from

bringing this action. In that case, the court cannot proceed to determine the merits of the case for want of jurisdiction. Jurisdiction connotes the authority which the court possess [sic] to determine matters which are been [sic] litigated before it...Yeboah vrs. Mensah (1998-99)2 GLR 245, Edusei (No.2) vrs. Attorney General (No.2) (1998-99) SCGLR 753.”

Proceeding further, the learned judge set out the principles of estoppel per rem judicata citing in the main, the case of Re Sekyedumasi Stool; Nyame vrs Kese alias Kontoh (1998-

- 99) SCGLR 476. The culmination of his view went this way: “I have critically examined exhibit LC3 and the supplementary submissions filed by both parties. It is not in dispute that the Plaintiff had a tenancy at will with the KMA. The Court of Appeal held that the Plaintiff had no lease or exclusive title over the land. The Plaintiff’s was only restricted to been [sic] a tenant at will. See page 7 of exhibit LC3. It is the law that, if you are a tenant at will, then the tenancy can be terminated at anytime, but with reasonable notice. The Court of Appeal made a finding of this fact and held that the Plaintiff was not given a reasonable notice. This notice was not to have been given by the defendant but if anything at all by Page 10 of 45 the KMA or at worse the Golden Stool. The Court of Appeal also held at page 18 that, nothing prevented the Defendant from settling a lease in the land the Plaintiff was in occupation during the pendency of the suit. There is no evidence that, it was the defendant [Lands Commission] who caused damage to the Plaintiff’s properties on the land in dispute. From Exhibit LC3, it was one Nana Osei Tutu alias Obideaba who caused damage to the Plaintiff’s properties on the land. And he was ordered to pay the Plaintiff GHC200,000 by the Court of Appeal. See page 21 of LC3. I do not understand why the Plaintiff did not sue the Golden Stool or KMA in this case but rather chose to sue the Defendant. Indeed, the Court of Appeal has discussed all the issues raised in this case in different ways in exhibit LC3. From the examination of Exhibit LC3, I do not see any cause of action by the Plaintiff against the defendant in this case.” [page 228—129 ROA] The learned judge defined what in law, was a cause of action and concluded his judgment as follows: “In conclusion, from the examination of Exhibit ‘LC3’, I am of the view that the plaintiff is estopped by bringing this action since the issues have been resolved by the Court of Appeal. The court therefore had no jurisdiction to pronounce on the merits of the case. I therefore proceed to dismiss the entire suit. No order as to cost.” The appeal in the Lands Commission case before the Court of appeal. The Plaintiff appealed to the Court of Appeal initially on the omnibus ground that the judgment was against the weight of evidence. He later added the following grounds:

1. The learned trial Judge erred in law when he held that the cause of action in the first suit No. C1/77/2013 entitled Peter Osei Assibey V Acheamfour Ltd & Osei Tutu @ Obideaba was/is the same as the cause of action in the instant suit No. IRL 60/2014 entitled Peter Osei Assibey Trading under the name and style of Adehyeman Foundation V Lands Commission Kumasi. Page 11 of 45

2. The learned trial Judge erred in law when he held that the issues determined in the said suit No. C1/77/2013 are the same as those raised for determination in the instant suit or second suit No. IRL 60/2014 entitled Peter Osei Assibey Trading under the name and Style of Adehyeman Foundation V Lands Commission, Kumasi.
3. The learned trial judge erred in law when he held that the decision or judgment delivered in the said first suit No. C1/77/2013 operates as res judicata against the issues raised for determination in the said second or instant suit No. IRL 60/2014.
4. The learned trial judge therefore erred in law when he held that the trial court had no jurisdiction to entertain the said second or instant suit No. IRL 60/2014.
5. The trial judge erred in law when he failed in his duty to consider or deal with the merits of the case from the pleadings and evidence given by the Plaintiff and the Defendant on record and to give appropriate judgment in the suit.
6. The learned trial judge erred in law when he failed to give judgment for the Plaintiff/Appellant and grant him all the reliefs he sought for in the instant suit.
7. The Plaintiff/Appellant therefore respectively urges and invites the Court of Appeal to allow his appeal and to grant him the relief sought by him therein. None of these grounds found favour with the Court of Appeal as it wholly affirmed the decision of the trial court. By way of highlights, the Court of Appeal found untenable the Plaintiff's submission that the Obideaba suit and the Lands Commission suit were different because the parties were different. *AKUSE-- AMEDEKA CITIZENS ASSOCIATION (NO.3) V ATTORNEY GENERAL & ELECTORAL COMMISSION* [2015—2016]1 SCGLR 372 holding 1 cited. Further, the Court of Appeal determined that whereas the reliefs (a) (b) and (c) on the Plaintiff's writ [in the Lands Commission case] were mere factual narrations about the disputed land and had nothing to do with the Lands Commission, the Court of Appeal in the Obideaba case substantially resolved the Plaintiff reliefs (d) and (e). It held therefore that the trial judge was right when it concluded that the issues in the Lands Commission suit had been resolved by the Court of Appeal in the Obideaba case. Page 12 of 45 The Court of Appeal also agreed with the trial judge that he had no jurisdiction to entertain the suit. It raised the question as to whether the cause of action in the two suits were the same which it, in agreement with the trial Judge, answered in the affirmative. It then proceeded to uphold the principle that it was in the public interest that litigation must end and that since on the evidence Plaintiff had been compensated in the Obideaba case, the appeal was without merit. The Appeal in the Supreme Court. The appeal before this Court is on the following grounds:
 1. The judgment is against the weight of evidence adduced.
 2. The Court erred when it completely ignored the cogent evidence contained in Exhibits POA1—9 which showed clearly that the subject-matter in Suit No. 1RL 60/2014 is totally different from the subject-matter contained in Suit No. C1/77/2013.

3. The Court of Appeal erred in law when it held that the payment of compensation for the destruction of some of the properties of the Plaintiff/Appellant/Appellant in Suit No. H1/61/2016 also covered the compensation payable for the Plaintiff/Appellant/Appellant's properties in Suit No. H1/69/2018.
4. The Court of Appeal erred when it held that the Plaintiff/Appellant/Appellant is estopped from bringing the second action, i.e. Suit No. H1/69/2018.
5. The Court of Appeal erred when it held that the requisite notice to terminate the Plaintiff/Appellant/Appellant's tenant at will or encumbrance ought to have been given by the KMA and not by the Lands Commission.
6. The Court of Appeal in the instant Suit No. H1/69/2018 erred in law when it purported to depart from the earlier or previous decision of the Court of Appeal in Suit No. H1/61/2016 which had held that the two (2) Government institutions, namely the KMA and the Lands Commission could not brush aside the Plaintiff/Appellant/Appellant when the Lands Commission was ready to grant a lease on the land to persons other than the Plaintiff/Appellant/Appellant (Article 136 clause 5 of the 1992 Constitution of the Republic of Ghana. Page 13 of 45
7. The Court of Appeal erred in law when it failed to rule in its judgment that the Defendant/Respondent/Respondent had not given the requisite fair notice to the Plaintiff/Appellant/Appellant before it purported to grant the lease and sub-leases to persons other than the Plaintiff/Appellant/Appellant (Article 136 Clause 5 of the 1992 Constitution of the Republic of Ghana).
8. The Court of Appeal erred in law when it completely failed to consider and act upon the Reply filed by the Plaintiff/Appellant/Appellant on the 21st day of November, 2018. [See amended Notice of Appeal filed on 8/12/2021 attached to the Plaintiff's Further Amended Statement of Case]. Ground 1 is the omnibus ground of appeal. Our duty as an appellate Court when such ground is raised is to search deep into all matters of facts and law undergirding the findings and conclusions of the court below to determine whether they were supportable. We are entitled where we deem necessary, to resolve issues anew and in doing so, our engagement is at large. Ground 4 captures the question of estoppel which is the epitome of this appeal. Ground 2 puts up the Plaintiff's long held claim that the subject matter of the two suits were distinct. It is therefore a mere elaboration of Ground 4. Ground 3 complains about the finding that the Plaintiff was fully compensated by the judgment in the Obideaba case. It will therefore follow from the determination of Ground 4. From the above short analysis, Grounds 1, 2, 3 and 4 can be resolved at a go. We note that in their statements of case, Counsel on both sides approached their arguments the same way, save arguing Ground 3 separately. We shall proceed to first resolve Grounds 1, 2, 3 and 4 before attending to the remaining ones as we shall deem appropriate. But first, a summary of the arguments of the parties. Plaintiff's arguments on Ground 1, 2, 3 and 4. Beginning his arguments, Learned Counsel for the Plaintiff makes reference to general legal principles of

estoppel per rem judicatam and cites a number of cases which prescribe the conditions for a successful plea of estoppel per rem judicatam. KWABENA DANKWA Page 14 of 45 & ORS v ANGLOGOLD ASHANTI LTD (2019) 137 G.M.J. 1; ESSUON v BOHAM (2015) 82 G.M.J 46; LARBI v KWABENA 14 WACA 298 and SATTA v AMMISSAH 1970 C.C 73 cited. Counsel then points out that the judgment of the Court of Appeal in the Obideaba case centered on destruction of the Plaintiff's property as at January 2013. The present suit was commenced whilst that suit was pending. The two actions were not for the same reliefs and not against the same parties or their privies. To demonstrate this position, Counsel lists the reliefs sought in both suits and identifies the parties in each. He submits that both the trial High Court and the Court below erred in holding that the causes of action in both suits were the same. He further submits the Plaintiff was therefore not barred from prosecuting the instant suit. Further, Counsel points out that the damages in the Obideaba case was for GH¢200,000 which was damages for trespass onto a portion of the playground. The items destroyed were as contained in the testimony of PW1 [from Page 298–299 ROA] namely, the demolition of fishpond, children's Playground, heaps of sand stones and quarry dust. In the instant case however, the relief sought was against the grant of the whole Playground (not a portion) and the items destroyed were as listed at page 83 of the ROA. Those were a multi-purpose conference hall, swimming pool, two restaurants, a cocktail bar, an outside bar, a video center, a pavilion for indoor games, stores among others. Reference is made to Exhibit POA9 series which are pictures showing the developments on the land. According to Counsel, a look at the pictures shows that they were taken in

2014. The destruction of those structures could not be part of the properties destroyed as at, 2013 for which the award of GH¢200,000 was made in the Obideaba case. On the subject of the conduct of the Defendant (Lands Commission) in granting the lease to the Golden Stool, Counsel indicates the Plaintiff's position based on the reliefs and the pleadings that, the Defendant's conduct amounted to a compulsory acquisition for which the Plaintiff was entitled to seek redress in terms of articles 20 of the 1992 Constitution. For this reason, it was erroneous to hold that the jurisdiction of the High Court was aborted. Page 15 of 45 He argues that nowhere was the Plaintiff claiming that the Defendant caused the physical damage. Rather, the Plaintiff's claim was that the Defendant acted in breach of the constitution. He submits that the grant of the lease to the Golden Stool without fair notice to the Plaintiff amounted to expropriation of his proprietary interest which rendered the Defendant liable as a state entity to adequately compensate the Plaintiff. He contends that the Defendant had plotted the consent judgment between the Plaintiff and the KMA and was therefore not unaware of the encumbrance. Council makes reference to various passages from the judgment in the Obideaba case which according him, showed that, the Court of Appeal itself recognized the unfair conduct of the Defendant which had to be addressed. It was further argued that by the conduct of the Defendant in granting the lease without fair notice to the Plaintiff, the Plaintiff lost the use of the land together with his investment which amounted to the GH¢10 million which he was claiming in the instant action. This amount he says could not be covered by the GH¢200,000 awarded. He contends

that from the record, there were two stages of destruction caused to his property indicating that the Defendants in the Obideaba case had themselves conceded that there was a destruction caused by agents of the Golden Stool. And since the Defendant made the grant to the Golden Stool in 2014, the destruction occurred post 2013 outside the award made by the Court of Appeal. Counsel makes reference to the reliefs 1 and 3 of the Plaintiff in the Obideaba case and the manner the award of GH¢200,000 was made which showed that it was to cater for the damage as at 2013. Defendant's Response Learned Counsel for the Defendant makes similar allusions to general principles of estoppel per rem judicatam, making reference in addition to *DANKWA v ANGLOGOLD* (supra), *ESSUON v BOHAM* (supra) to quotations from *DARKEH XII v MORDEY VI* [2017— 2020] 2 SCGLR 415; *ATTORNEY GENERAL v SWEATER AND SOCKS FACTORY LIMITED*

- (2014) 74 G.M.J 1. Page 16 of 45 In specific responses however, he finds the position of his colleague that the subject matter and causes of action of the two suits were different, a complete misconception. Counsel specifies that the subject matter in the instant case has been described as the "Kejetia Playground and developments thereon". That was the same subject matter in the dispute between the Plaintiff and KMA that resulted in the consent judgment. The same subject matter had been described in the judgment in the Obideaba case in terms of; "This appeal centers on the import of the interests acquired at different times over a piece of land described as Kejetia Playground or recreational center..." According to Counsel, from the three sources, the subject matter of the dispute has been the entire Kejetia Playground and not a portion of it. About the properties that were destroyed, Counsel posits that the Court of Appeal in the Obideaba case had indicated the properties destroyed by the Defendants in that suit at page 280 of ROA as: "He thereafter constructed two restaurants, a swimming pool, children's playground, a conference center, cocktail bar, a video center, ICT center and parking lot on the site." At the same page, the Court same court continued: "In 2013, his business was again disrupted by the Defendants/Respondents who laid claim to the land. The Appellant allege that the Respondents brought down the built up facilities." Counsel explains that it was for the destruction of those facilities that the award of GH¢200,000 was made by the Court of Appeal in the Obideaba case. Indeed, argues Counsel, the award was made on account of the evidence of PW1 who among other things stated in his evidence that "everything was destroyed". For the Defendant therefore, Counsel contends, the Plaintiff is already compensated. He makes further reference to portions of the judgment of the Court of Appeal in the Obideaba case indicating that in all the statements, the Court of Appeal used the phrase Page 17 of 45 "the land" which refers to the Kejetia Playground and not a part of it. In the words of Counsel: "Besides the above, the destruction of the facilities by the Defendants/Respondents in Suit No. C1/77/2013 and Civil Appeal No. H1/61/2016 are the same facilities the Appellant is claiming in the instant case. This is what the Court of Appeal in Civil Appeal No. H1/61/2016 between Peter Osei Assibey V Acheamfour Limited & Nana Osei Tutu @ obideaba said at page 280 in paragraph 2 of the ROA: "In 2013' his business was again disrupted by the Defendants/Respondents who laid claim to the land.

The Appellant allege that the Respondents brought down the build up facilities.” It is Counsel’s further contention that all the issues in the instant case had been completely and effectually resolved by the Court of Appeal in the Obideaba case. Consequently, the Plaintiff was estopped from relitigating the matter. Arguing that the cause of action in both suits were the same, Counsel cites *IN RE MENSAH (DECD); MENSAH & SEY v INTERCONTINENTAL BANK (GH) LTD* [2010] SCGLR 118 where cause of action has been defined by this court referring to a passage from Halsbury’s Laws of England (4th ed), vol 37, para 20 at page 27 essentially as “... as a factual situation the existence of which entitles one person to obtain from a court a remedy against another person...” Based on the same case and such other cases as *GHANA MUSLIM REPRESENTATIVE COUNCIL v SALIFU* (1975)2 GLR 246, CA and *SPOKESMAN (PUBLICATIONS) LIMITED v ATTORNEY GENERAL* (1974) GLR 88, Counsel urged upon us to scrutinize the record of both suits, contending that, what will come out in the end is that the causes of action in both suits were the same. Counsel however concedes that the reliefs in both suits are not exactly the same. Nonetheless, he argues that that does not detract from the fact that the issues that arise in them have been determined. Responding to his colleague’s attack (relying on passages from the judgment in the Obideaba case) on the Defendant’s failure to give fair notice to the Plaintiff before the Page 18 of 45 lease to the Golden Stool, Counsel contends that his colleague’s position was not supportable by the record. He refers to passages which according to him pointed to the responsibility of the headlessee and sublessee (the Golden Stool and the Defendants in that case) to have discharged the interest of the Plaintiff which the court determined as tenancy at will. For further support, Counsel referred to the statement by the court in the Obideaba case to the effect that no hindrance existed against the exercise of the Defendant’s statutory authority to grant the leases at the time it did. *SARHENE v EDWARD NASSER & CO LIMITED & ORS* [2017–2020]1 SCGLR 714 cited. Counsel therefore submits that the Court below was right when it held that the Defendant did no wrong when it leased the land to the Golden Stool. The Court below was also right when relying on the judgment in the Obideaba case, it determined the issue of estoppel per rem judicatam in favour of the Defendant. He prayed this Court to dismiss the grounds under consideration. Legal analysis and determination of Grounds 1, 2, 3 and 4 Estoppel per rem judicatam My Lords, from a public interest perspective, duplication of proceedings is a burden on justice delivery. Apart from wasting the ever-constrained time and resources of the courts, there is the risk of churning our conflicting decisions which may expose the administration of justice to opprobrium. From a private interest perspective, litigation must not be vexatious and oppressive to suitors. This is the *raison d’être* of estoppel per rem judicatam, encased in two latin maxims, *interest reipublicae ut sit finis litium*, and *nemo debet bis vexari pro una et eadem causa*. The doctrine, put in plain words means, when a matter has been fully adjudicated upon by a court of competent authority and a final decision delivered between a Claimant and a Defendant, the parties and their privies are precluded from relitigating the same matter over again in any subsequent proceeding. Then again, where one or more issues have been raised in a cause of action and distinctly determined or resolved between the same parties by a court

of competent jurisdiction, then, as a general rule, neither party nor his privy is allowed to relitigate that or those Page 19 of 45 issues all over again in another action between the parties or the privies. As is often said, it is permissible for a party to swallow two separate cherries in successive gulps but not so to take two bites at the same cherry. There comes a time in the life of a dispute where the courts must be sick and tired of the contest and boldly tell the protagonists to go and rest. The doctrine is indeed, a universal one and the distinguished editors of Halsbury's Laws of England have explained it this way: "974. Meaning of 'res judicata'. The doctrine of res judicata is not a technical doctrine applicable only to records; it is a fundamental doctrine of all courts that there must be an end of litigation...Where res judicata is pleaded, by way of estoppel to an entire rather than to a single matter in issue, it amounts to an allegation that the whole legal rights and obligations of the parties are concluded by the earlier judgment which may have involved the determination of questions of law as well as findings of fact." They continue to write of issue estoppel as follows: "977. Issue estoppel. An estoppel which has come to be known as 'issue estoppel' may arise where a plea of re judicata could not be established because the causes of action are not the same. A party is precluded from contending the contrary of any precise point which having once been distinctly put in issue, has been solemnly and with certainty determined against him. Even if the objects of the first and second actions are different, the finding on a matter which came directly (not collaterally or incidentally) in issue in the first action, provided is it embodied in a judicial decision that is final, is conclusive in a second action between the same parties and their privies. The principle applies whether the point involved in the earlier decision and as to which the parties are estopped, is one of fact or one of law or one of mixed fact and law." See Vol 16, 4th ed., paras 974, 977, pages 858—861. Page 20 of 45 In assorted circumstances, the doctrine has been explained and followed in several cases in this court. In the case of IN RE ASERE STOOL [2005—2006] SCGLR 637 this Court decided (per holding 3 of the report): "Estoppel per rem judicatam is a generic term which, in modern law, includes two species. The first is called "cause of action estoppel"; which prevents a party from asserting or denying, as against the other party, the non-existence or existence of particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties. If the cause of action was determined to exist, ie judgment given on it, it is said to be merged in the judgment, the Latin phrase being transit in rem judicatam. If it was determined not to exist, the unsuccessful party can no longer assert that it does; he is estopped per rem judicatam. This is simply an application of public policy expressed in the Latin maxim nemo debet bis vexari pro uno et eadem causa, meaning literally, that no man ought to be twice put in trouble, if it appears to the court that it is for one and the same cause. The second species is called "issue estoppel" which is an extension of the same rule of public policy. This will arise where apart from cases in which the same cause of action or the same plea in defence is raised, there may be cases in which a party may be held to be estopped from raising particular issues, if those issues are precisely the same as the issues which have been previously raised and have been the subject of adjudication." Again, in ATTORNEY

GENERAL v SWEATER AND SOCKS FACTORY (2014) 74 G.M.J. 1 Wood C.J. delivered at pages 32-33 as follows: “Again, the full scope of the *res judicata* principle has been extensively discussed in a host of decisions of this Court. (See for example; In re Sekyedumasi Stool; Nyame v Kese alias Konto [1998-99] SCGLR 476, Lartey and Ors v Otoo [2001- 2002] SCGLR 80, Dhabieh v S.A Turqui & Bros [2001-2002] SCGLR 498, Gyimah & Brown v Ntiri (Williams Claimant) [2005-2006] 247, In re Asere Stool Nikoi Olai Amontia IV (substituted by Tafo Amon II) v Akotia Oworsika III (substituted by Page 21 of 45 Laryea Ayiku III [2005-2006] 637 at 651-652) Ampiah JSC, in the case of In re Kwabeng Stool; Karikari v Ababio II [2001-2002] SCGLR 525, lucidly set it out in these terms, at page 530: “The doctrine or principle of estoppel is founded on the maxim *interest reipublicae ut sit finis litium* meaning “it concerns the state that lawsuits be protected”. Also “no man ought to be twice vexed, if it be found to the court that it be for one and the same cause” (*nemo debet bis vexari, si constat verie quod sit pro una et eadem causa*). If an action is brought, and the merits of the question are determined between the parties, and the final judgment is obtained, either of the parties are precluded, and cannot canvas the same question again in another action, although, perhaps some objection or argument might have been urged upon the first trial which would have led to a different judgment.” Finally, Acquah JSC (as he then was) in NYAME V KESE (*supra*) at page 478-479 highlighted the various types of the rule thus: “The plea of *res judicate* really encompasses three types of estoppel: cause of action estoppel, issue estoppel in the strict sense and issue estoppel in the wider sense. In summary, cause of action estoppel should properly be confined to cases where the cause of action and the parties (or their privies) are the same in both current and previous proceedings. In contrast, issue estoppel arises where such as defence is not available because the causes of action are not the same in both proceedings. Instead, it operates where issues, whether factual or legal, have either already been determined in previous proceedings between the parties (issue estoppel in the strict sense) or where issues should have been litigated in previous proceedings but, owing to “negligence, inadvertence, or even accident,” they were not brought before the court (issue estoppel in the wider sense), otherwise known as the principle in *Henderson v Henderson* (1843)3 Hare 100: see also In re Yendi Skin Affairs; Andani v Abdulai (1981) GLR 866, C.A. The rationale underlying this last estoppel is to encourage parties to bring forward their whole case so as to avoid a succession of related action.” Page 22 of 45 In the much-belaboured principle in *HENDERSON v HENDERSON* Sir James Wigram V-C had opined: “In trying this question, I believe I state the rule correctly when I say that, where a given matter becomes the subject of litigation in , and of adjudication by, a court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (excepts under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to

every point which properly belonged to the subject of litigation, and which the parties exercising reasonable diligence, might have brought forward at the time.” The rule against abuse of process is widely applied. In *YAT TUNG INVESTMENT CO. LTD v DAO HENG BANK LTD* (1975) A.C. 581, abuse was found where a claimant who had unsuccessfully sued a bank on one ground brought a further action against the same bank and another party on a different ground shortly thereafter. Lord Kilbradon giving advice of the Judicial Committee of the Privy Council said at page 589 of the report: “The second question depends on the application of a doctrine of estoppel, namely *res judicata*. Their Lordships agree with the view expressed by McMullin J that the true doctrine in its narrower sense cannot be discerned in the present series of actions, since there has not been, in the decision no. 969, any formal repudiation of the pleas raised by the appellant in no. 534. Nor was Choi Kee, a party to 534, a party to no. 969. But there is a wider sense in which the doctrine may be appealed to, so that it becomes an abuse of process to raise in subsequent proceedings matters which could and therefore should have been litigated in earlier proceedings.” Page 23 of 45 Also, in *BRAGG V OCEANUS MUTUAL UNDERWRITING ASSOCIATION (BERMUDA) LTD* (1982) 1 LLOYDS REP. 132 KERR L.J at page 137 delivered: “To take the authorities first, it is clear that an attempt to relitigate in another action issues which have been fully investigated and decided in a former action may constitute an abuse of process, quite apart from any question of *res judicata* or issue estoppel on the ground that the parties or their privies are the same. It would be wrong to attempt to categorize the situations in which such a conclusion would be appropriate.” We note and significantly so, that this area of abuse of process as obtained from the rule in *Henderson v Henderson* has not ceased evolving. The need to economize judicial time and prevent abuse of process continues to drive a new trend of stretching the traditional bounds of the known species of the *res judicata*. The rule of law is so much dependent on judicial time and resource and a respected judicial machinery that, the urgency to prevent abuse of process is a ceaseless venture. In the words of the learned editors of *PHIPSON ON EVIDENCE* touching on the new approach to the subject: “The values which justify the recognition of the *res judicata* estoppels are encapsulated most neatly in the two latin maxims *interest reipublicae ut sit finis litium*, and *nemo debet bis vexari pro una et eadem causa*; which are separate and distinct policies to which the law lends its aid. The two policies have potentially wide application and have encouraged the development of doctrines beyond the boundaries of the traditional *res judicata* estoppels. To some extent such developments can be accommodated under the label “wider (or extended) doctrine of *res judicata*”, but some of the developments, furthest beyond the boundaries of the traditional estoppels have been recognized as separable forms of abuse of process. The lines between the traditional *res judicata* estoppels, the wider (or extended) doctrine and these related forms abuse of process are often indistinct, and, in practice, it is not always necessary with any clarity which doctrine is being Page 24 of 45 invoked. It is common to find cases being argued, and almost as often decided on the basis that if one doctrine does not apply then another certainly should. Indeed, because well-established forms of abuse of process will in many situations prevent re litigation even where the conditions for invoking a

traditional *res judicata* estoppel are not satisfied, it is difficult to deny that some of the old learning about the technical conditions is fast becoming redundant.” (19th ed., Sweet & Maxwell, para 43-03, page 1535-1536). The new approach has support of case law. In *HUNTER V CHIEF CONSTABLE OF THE WEST MIDLANDS POLICE* (1982) A.C. 529 at 536 Lord Diplock espoused: “inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedure rules, would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal must surely be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds and circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power.” The Hunter’s case now epitomizes what has become known as the Hunter doctrine which has developed a form of abuse of process which in some circumstances prevents a person who lost in the previous case from mounting a collateral attack on that previous judgment even in a subsequent case against a stranger. See also *ARTHUR JS HALL & CO v SIMONS* [2002]1 A.C 615; *SECRETARY OF STATE FOR TRADE & INDUSTRY v BAIRSTOW* (No.1)

[2004] CH 1. It is against the background of these broad perspectives and nuances of the doctrine of estoppel per rem judicatam, that we proceed to analyze the arguments of the parties. The overarching question we propose to answer is whether on all the facts and the applicable law, the judgment in the Obideaba case operated as *res judicata* (cause of Page 25 of 45 action or issue estoppel and abuse of process) to bar the Plaintiff from pursuing the instant case. We shall answer the question under various constituent points.

- (i) Sameness of the parties in both suits. Apart from a few exceptional cases, a judgment pronounced by a court of competent jurisdiction can only be conclusive as to causes and issues thereby decided as between parties and their privies. The few exceptions include when the judgment operates in rem or in the area of abuse of process where for instance a party may be prevented from suing even strangers to launch a collateral attack against the previous judgment. (The Hunter’s doctrine). A judgment in rem is conclusive for and against all persons. It is defined in the words of the editors of Halsbury’s laws of England as “the judgment of a court of competent jurisdiction determining the status of thing or person or the disposition of a thing as distinct from the particular interest in it of a party to the litigation”. By way of examples, the following are listed in the text as judgments in rem: “the judgment of a prize court condemning a vessel as prize; the judgment of an admiralty court establishing a lien, or condemning a vessel in an action (for example for the supply of goods) where there was no lien before the commencement of proceedings, or disposing of the proceeds of a sale in enforcement of a lien; the judgment of a probate court establishing a will or creating the status of administrator; the judgment of a divorce court of competent jurisdiction dissolving or establishing a marriage, or declaring the nullity of marriage or affirming its existence; the judgment on a parliamentary election petition; a conviction for non-repair of a highway; the determination of justices that a street was a highway repairable

by the inhabitants at large; establishing the status of the highway and the liability to repair; a determination by quarter sessions that a path was subject to a public right of way; an order revoking a patent; a sentence or order for the removal of a poor person, establishing both his status and place of his settlement.(See para 969, page 854--855). Page 26 of 45 In the trial court, the issue of whether the parties were the same or privies was not considered at all. The learned trial judge thought that his finding that the issues in the case before him had been determined by the Court in the Obideaba case was sufficient to bar the Plaintiff. This is seen in his final words where he said: "In conclusion, from the examination of Exhibit 'LC3', I am of the view that the plaintiff is estopped by bringing this action since the issues have been resolved by the Court of Appeal. The court therefore had no jurisdiction to pronounce on the merits of the case. I therefore proceed to dismiss the entire suit. No order as to cost." Obviously, that was erroneous. It mattered for the determination of res judicata to establish sameness or privity of the parties in the two suits. Little wonder the point was taken before the court below where the learned justices of the court decided the point by the following pronouncement: "The submission by counsel for the plaintiff that suit No. C1/77/2013 and the instant suit are different because the parties are different is not tenable. This is because the Supreme Court had held that: "Judgments in rem are binding on all persons situate within the jurisdiction of the court that pronounced upon the states [sic] of persons or property or their disposition and the likes and that, it does not matter if the parties in this case are not the same as those in the Matekole case or their privies. We think the nature of the judgment in the Matekole case (supra) enabled this court to apply the decision in that matter to subsequent case of Obronni vs. Attorney- General...See the case of Akuse-Amedeka Citizens Association (No.3) V Attorney General & Electoral Commission [2015-2016]1 SCGLR 372 holding (1) especially at page 379" However, with due respect to the learned justices of the Court of Appeal, they also erred on the point. The judgment in the Obideaba case was not in rem. The court in the Obideaba case determined the interest the Plaintiff had in the disputed property (which Page 27 of 45 it found to be tenancy at will property) and the liability of the Defendants therein. It was a judgment inter-partes and therefore bound only the parties and their privies. The case of AKUSE-AMEDEKA CITIZENS ASSOCIATION upon which the Court below wholly relied for its viewpoint, turned on the declaration of the 'status' of the townships of Akuse and Amedeka together with their electoral areas namely Sabon Zongo New Town, Akutue, Osudoku Amedeka and Bungalow as being within the area of authority of the erstwhile Osudoku Local Council and therefore forming part of the Greater Accra Region. Indeed, that was the issue this Court was addressing when at page 378 of the report, it observed: "A careful examination of the reliefs in the two cases reveals that the main issue that confronted the Supreme Court in both actions is the status and extent of PNDCL 26 as amended by PNDCL 28 in so far as the location of Akuse and its environs are concerned. The same question was previously decided by this court in Matekole & Azago Kwesitsu I v Electoral Commission & Attorney General (Teye Titriku & Akuse Amedeka Citizens Association) (No. 2) [2012]1 SCGLR 244. Indeed, in the Obronni case (supra), following a preliminary objection taken to the action on grounds of res judicata on the basis of the previous judgment of the court in Matekorle case, the Supreme Court unanimously

upheld the plea and dismissed the action.” Having examined the cases upon which the issue of res judicata was anchored, this Court in the said case decided at page 380 of the report thus: “In our view, notwithstanding the different formulations by which the reliefs in the action herein are expressed in relation to the two previous cases, it does raise for our determination substantially the same relief concerning the extent of Greater Region as created by PNDCL 26 and its subsequent amendment PNDCL 28 in so far as Akuse and its environs are concerned. Clearly, such a claim requires us to decide the same question that was pronounced upon by this court in the previous cases to which reference has been made in this ruling.” Page 28 of 45 In effect, to the extent that the decision in the Akuse-Amedeka case was in rem having determined status, and the decision in the Obideaba case having decided rights and liabilities in the disputed property inter partes, the Akuse-Amedeka case could not have formed the legal basis for the decision of the court below that the parties in both cases were the same. Therefore, whilst the court below would ordinarily be bound to follow Akuse-Amedeka in terms of article 129 clause 3 of the Constitution, the factual distinction of the binding authority excused its binding force. The question then and still remains whether the parties were the same for purposes of determining the question of res judicata. It is a question thrown back to us to answer as an appellate court vested with the power of rehearing. To start with, it is plainly true that the Defendant herein (Lands Commission) was not a named party in the Obideaba case. But for what we shall soon point out, the Defendant had a substantial interest in the subject of the case and its outcome. The question is about privity which for purposes of res judicata comes in different forms. PHIPSON ON EVIDENCE at paragraph 43-27, page 1558 identifies them in these terms: “Res judicata estoppels may be relied on by or against privies. Privies may be privy to the parties by blood, title, or identity of interest and indeed also by the principle qui scentit commodum, sentire debet et onus [simply meaning he who receives advantage ought to suffer the burden and vice versa]. When deciding whether a person is privy, it is valuable to remember the maxim “estoppels must be mutual; it being a well-established principle that no one can take advantage of a judgment unless he would also have been bound had it gone against him.” Of the various types, privity by identity of interest attracts our immediate consideration for the issue before us. But privity of interest appears an elusive one. It is not a demarcated turf, and the authorities well recognize that. Halsbury for instance expresses the difficulty this way: “It is not easy to detect from the authorities what amounts to a sufficient interest. The question seems to be determined by an examination of the factual identity of Page 29 of 45 interests of the parties and the fairness of binding them by a decision in which they were not represented.” (para 990, page 875). The case the learned editors cite in the footnote for the difficulty is HOUSE OF SPRING GARDENS v WAITE (1990)2 ALL ER 990 where Stuart Smith L.J at page 998 discerns: “Mr Macleod was not a party to the action; but an estoppel will bind those who are privy to the parties bound...The requisite privity is said to be a privity either by blood, of title or of interest...The only relevant one is privity of interest. It is not easy to detect from the authorities what amounts to sufficient interest. It has been held that judgment against a defendant in one capacity does not bind him in another capacity... though I wish to reserve my opinion as to whether on the facts of

that case the plaintiff's representative claim might not have been struck out as an abuse of the process. A mere interest in the outcome of the litigation is not sufficient." In *GLEESON v WILPPEL* [1977] 3 ALL ER 54 at 59–60 Megarry V-C lamented: "This is a difficult territory: but I have to do the best I can in the absence of any clear statement of principle. First, I do not think that in the phrase 'privity of interest' the word interest can be used in the sense of mere curiosity or concern. Many matters that are litigated are of concern to many other persons than parties to the litigation, in that the result of a case will at least suggest that the position of others in like case is as good or as bad as, or worse than, they believed it to be... Second, it seems the substratum of the doctrine is that a man ought not to be allowed to litigate a second time what has already been decided between himself and the other party to the litigation. This is in the interest of both of the successful party and of the public. But I cannot see that this provides any basis for a successful defendant to say that the successful defence is a bar to the plaintiff suing some third party, or for that third party to say that the successful defence prevents the plaintiff from suing him, unless there is sufficient degree of identity between the successful defendant and the third party. I do not say that one must Page 30 of 45 be alter ego of the other; but it does seem to me that, having due regard to the subject matter of the dispute, there must be a sufficient degree of identification between the two to make it just to hold that the decision to which one was party should be binding in proceedings the other is a party. It is in that sense that I would regard the phrase 'privity of interest'..." [Emphasis added] See also *CARL-ZEISS STIFTUNG v RAYNER & KEELR LTD* (No.2) [1967] A.C. 853 H.L where Lord Reid was ready to suggest that a person who was employed by a former litigant to perform some act calculated to provoke litigation which would re-open a matter previously adjudicated on against the employer might be treated as a privy of his employer. To get out of the difficulty some guidance has been offered by the English Court of Appeal in *RESOLUTION CHEMICALS LTD v H LUNBECK A/S* [2013] EWCA Civ 924 where it was prescribed that a court which has to decide whether there is privity of interest between a new party and a party in previous proceedings had to consider three things: (i) the extent to which the new party had an interest in the subject matter of the previous action, (ii) the extent to which the new party can be said to be, in reality, a party to the previous proceedings by reason of his relationship with that party, and (c) against this background to ask whether it is just that the new party should be bound by the outcome of the previous litigation. The above test is in clear tune with the prescription from Halsbury that the "question seems to be determined by an examination of the factual identity of interests of the parties and the fairness of binding them by a decision in which they were not represented". We are therefore persuaded to apply the test to the facts before us to determine whether the Defendant (Lands Commission) can be said to have privity of interest with the Defendants in the Obideaba case to entitle it to plead that judgment in estoppel against the Plaintiff. The facts on record show how deep the Defendant's involvement was in the Obideaba case. Indeed, the whole litigation started because the Defendant albeit in the exercise of Page 31 of 45 their statutory mandate, had granted a lease over the land to the Golden stool which is the headlessor of Obideaba and the other party who were Defendants in the case. In fact, the counterclaim of the said Defendants was mounted on the basis of the

grant the Defendant (Lands Commission) made to the Golden Stool out of which they obtained their sublease. Again, in the Obideaba case, the Plaintiff herein (as Plaintiff therein) had accused the Defendant (Lands Commission) for ignoring their registered consent judgment with KMA to grant the lease in favour of the Golden Stool. More importantly, in the Obideaba case, the Defendant (Lands Commission) gave evidence on the side of the Defendants therein (as DW1) against the Plaintiff where the witness testified to the effect that the Lands Commission had not made any grant to the Plaintiff or KMA. (See page 282., ROA). Above all, the Court of Appeal in the Obideaba case had made far reaching findings against the Defendant (Lands Commission) regarding the manner in which the grant was made to the Golden Stool without “fair notice” to the Plaintiff. Truly speaking, it is an ample factual situation for one to describe the Defendant (Lands Commission) as a virtual Defendant in the Obideaba case. On the facts, we are fully satisfied that such a close relationship existed between the Defendant herein (Lands Commission) and the Defendants in the Obideaba case (Obideaba and the other) concerning the subject matter that it will be just to treat them as privies of interest in the case. This treatment will also be in accord with the principle of mutuality. Had the Court of Appeal in the Obideaba case made a monetary award against the Defendant (Lands Commission), the Plaintiff would have enforced such award against it. If it stood potentially liable by it, then it must not be deprived of any benefit of it. We shall therefore find that there was privity of interest between the Defendant herein and the Defendants in the Obideaba case for purposes of res judicata. We substitute this finding in place of the finding of the lower court which, as we have already demonstrated, was erroneously made on the basis of the Akuse-Amedeka case. Sameness of Cause of Action in both suits. Page 32 of 45 At first blush, the question of sameness of cause of action appeared worth considering. On a deeper consideration however, we find it a distraction. The reason is this. When the application was made to the trial High Court, it was on the basis that the matter was res judicata because the issues in the case had been determined by the Court of Appeal in the Obideaba case. It was further argued that it was an abuse of process to allow the claim to pursue. (See page 168 ROA). It was never the argument that the cause of action in both cases were the same. Indeed, it could not have been because at the time the judgment was given which prompted the application, the instant suit was pending just like the Obideaba case. Implicit in the concurrent pendency of the two cases was the fact that the causes of action in them were separate, exercisable and maintainable. If they were not, the Defendant would not wait for the Court of Appeal in the Obideaba case to deliver its judgment before mounting its application. Such remedy as asking the trial court to strike out the pleadings in the instant case under Order 11 rule 18 of the High Court (Civil Procedure) Rules C.I 47 would have availed the Defendant. In any event, the trial Court ought to have noticed that it received the judgment in the Obideaba case in evidence on the basis that the issues in the instant case had been resolved in that judgment and that to allow the claim to proceed was an abuse of process. It was therefore completely out of place when in the judgment of the trial court the learned judge purported to ground his decision, partly though, on the basis that the causes of action in both suits were the same. It is most regrettable that the Court below which wholly affirmed the position allowed itself to be so

misled. The issue before the Court below of whether or not the causes of action of the two cases were different was a non sequitur. In effect, the Court below erred, to the extent that it purported to hold that the Obideaba judgment was res judicata on the basis of sameness of causes of action. That said, we proceed to examine the arguments in the context of issue estoppel and abuse of process. Issue Estoppel and abuse of process Page 33 of 45 The conditions for proper invocation of issue estoppel are well settled. It must be shown that the same issue(s) arose directly (not collaterally or accidentally) in both cases between the same parties or their privies and that the issue(s) were conclusively determined in the first case by a court of competent jurisdiction. In this case, the Court below agreed with the Defendant, the proponent of the issue estoppel that the main issues in the case had been determined by the Court of Appeal in the Obideaba case. The Court below thought so because reliefs (d) and (e) on the Plaintiff's writ (reliefs a, b and c, being only antecedent matters) which dealt with the Plaintiff's interest and the Defendant's liability had been settled by the Court in the Obideaba case. The learned Justices of the Court below thus held: "From the above quotation, the Court of Appeal in Suit No. H1/61/2016 settled relief 'd' of the Plaintiff's suit when it held in its judgment dated 17/1/2017 that, the interest the Plaintiff's joint venture with KMA and the consent judgment created in the disputed property is tenancy at will. The Court also determined relief 'e' on the Plaintiff's writ of summons when it held that: "There was no legal hindrance to prevent the Lands Commission from exercising its statutory mandate to settle leases on that stretch of government land to any third persons during the pendency of the suit. The Court of Appeal was specific when it held that "the giving of the lease could also not constitute contempt of court especially when neither the Lands Commission nor the Golden Stool were parties to the suit". From the above, quotations, it follows that, the defendant, (Lands Commission) was well within its mandate to grant a lease to the Golden Stool on the 11th of April, 2014 as there was no legal hindrance to prevent it from exercising its statutory mandate as held by this Court differently constituted in Suit No. H1/61/2017. If the defendant was exercising its statutory mandate rightly, then it follows that it did no wrong when it granted the lease to the Golden Stool for it to be penalized in damages." [page 363—364 ROA]. Before us, the Plaintiff's contention, stripped of all the arguments about difference in causes of action (which we have cleared) is that the issues in the Obideaba case were Page 34 of 45 not the same as those in the one before us and that that Court did not completely resolve his reliefs. His contention revolves around the subject matter of the instant suit. His main grief is about the extent of destructions caused to his property which connects to the quantum of award of damages awarded by the Court in the Obideaba case. His claim about the extent of destruction and quantum of damages is essentially that there were two stages of destruction caused to his property; the pre 2013 destruction and the post 2014 destruction allegedly caused after the grant to the Golden Stool in 2014. He claims the pre--2013 destruction was the demolition of fishpond, children's Playground, heaps of sand stones and quarry dust. The post--2014 destruction affected a multi-purpose conference hall, swimming pool, two restaurants, a cocktail bar, an outside bar, a video center, a pavilion for indoor games, stores among others. (Reference made to Exhibit POA9 series which are pictures showing the developments on the land). He argues

that the sum of GH¢200,000 awarded as damages in the Obideaba case did not cover the post 2014 destruction. His other grievance is that in the instant case, he makes a specific claim against the Defendant (Lands Commission) for the manner it granted the lease to the Golden Stool without fair notice to him which he says amounted to a compulsory acquisition for which he was entitled to seek redress in terms of articles 20 of the Constitution. He claims he is entitled to monetary compensation which in his view, the award the Court of Appeal in the Obideaba case made did not address. The questions we address are; were there real difference in the issues in the two cases and if there were not, were the common issues not determined by the Court of Appeal in the Obideaba case such that to relitigate them amounts to abuse of process? In the instant case, the issues the trial court set down for trial were as follows: “a. Whether or not the registration of interest granted to Plaintiff by KMA and the consent judgment contained in Suit No E1/276/04 at the Lands Commission under the Land Registry Act, 1962 (Act 122) as ASH 39/10/06 and ASH 56/09/07 Page 35 of 45 respectively referencing property No. A-1657 created an encumbrance on the property?

- b. Whether or not the purported leasehold Defendant granted subsequent to the Plaintiff’s possession and occupation was subject to the encumbrance of the Plaintiff’s possession?
- c. Whether or not the developments Plaintiff undertook on the land in issue was done recklessly or without authority?
- d. Whether or not the Plaintiff is entitled to his claims.” (See page 72 ROA and page 74 where they were actually set down). The issues the Court of Appeal in the Obideaba case resolved have previously been referred to in the speech. But here they are again:
 1. “Whether the judgment [of the trial court] was against the weight of evidence regarding the decision of the court that the consent judgment registered by the Plaintiff in 2007 did not confer any right in the property identified as the Kejetia Playground in the Plaintiff.
 2. Whether the lease issued by the Lands Commission to the Golden Stool in 2014 and the subsequent subleases to the Defendants were null and void in view of the Plaintiff’s prior contract to develop the land and possession of it granted by the KMA and his subsequent registration of the consent judgment and the fact that the land had been zoned for commercial purposes.
 3. Whether the Plaintiff proved an entitlement to damages against the Defendants and or the parties proved their various claims in the suit to warrant a reversal of the judgment.” The words in the two sets of issues are not the same. Of course, they could not be the same because the pleadings in the two cases were not exactly the same and the parties were also not the same although as we have resolved supra, the privity of interest Page 36 of 45 rule applies. But here is where we find the words of Coussey J.A in *OJO v ABADIE* 15 WACA 55 most invaluable. When it called for, he said: “...when once it is made clear that the self-same question is substantially in issue in two suits, the precise form in which either suit is brought, or the fact that the Plaintiff in one case is the defendant in the other is immaterial, the estoppel subsists between the parties.” [Emphasis added] In *BELL v HOLMES* [1956] 449

McNair J at page 454—455 addressed a similar issue in the following terms: “A further point was taken of this nature. It was said that the issues in the county court action and the issues in the present action were not the same because in the county court action the matter in issue between Miss Elsworth and the two defendants to the action was whether or not there had been a breach of their respective duties towards her whereas in the present action the question was whether there had been a breach of the duties (i) owed by the defendant to the plaintiff, and (ii) owed by the defendant to the plaintiff. Those are different legal issues of course, in a sense, but I do not feel that the fact that they are technically different should prevent effect being given to the plea of estoppel in the case, where having examined the pleadings in the county court action and compared them with the pleadings in the present action I am satisfied that the issues of fact, and the evidence to support them in respect of liability would be identically the same.” See also *ORD v ORD* [1923] 2 K.K 443 Upon examining the two sets of issues together with a thorough consideration of the underlying facts of the two cases, what we find running through them are, issues of what the Plaintiff’s interest was in the property, the loss he must have suffered consequent upon the grant by the Defendant of the lease to the Golden Stool in spite of his presence on the land, the liability that arose and where it lay. We hold that the issues in the two cases were substantially the same. Page 37 of 45 We also find that the issues were substantially and conclusively resolved by Court in the Obideaba case. This is demonstrable as follows: To its first issue, the Court reasoned that the judgment of the trial court (in the Obideaba case) was against the weight of evidence to the extent that it determined that the Plaintiff had no interest at all in the property. It found evidence to establish that the Plaintiff’s presence on the land constituted a tenancy at will which was recognized in law. It held: “And when one examines the entirety of the evidence and the law, the only conclusion that must be reached is that while Appellant [Plaintiff] did not prove that he had a lease on the land or other ‘exclusive title’, he proved an interest in the land which ought to have been upheld by the court. That interest was a tenancy at will which constituted an encumbrance on the Kejetia playground. This encumbrance travelled with the land until properly terminated, and ought to have been acknowledged and protected by the Lands Commission, KMA, the Golden Stool and the Respondents [Defendants] in their dealings with the land. Any disruption of his possession without proper notice constituted trespass.” [Page 285 ROA]. The learned Justices added: “In the present case, even though the Appellant [Plaintiff] was urging ‘exclusive title’ to the land, including the testimony that he had applied for a lease to the land in 1989 when KMA invited a venture to develop the land into recreational facilities, an examination of the evidence clarifies that the interest the Appellant [Plaintiff] acquired from 1991 was a tenancy at will. The tenancy at will occurred when he took possession of the land from KMA to develop into recreational center with valuable consideration and to manage the facilities for an undefined period” [Page 287 ROA]. Page 38 of 45 Moreover, the learned justices found that apart from putting in a valuable consideration in the form of developing the land, the Plaintiff was given the right to possession and use of the land without an end date. These elements coupled with the fact that there was no written conferment of any form of title to the land, placed the arrangement of the Plaintiff and KMA within the context of a tenancy at

will. Furthermore, although in agreement with the trial court the Court of Appeal rejected the Plaintiff's claim that the terms of settlement with KMA constituted evidence of 'exclusive title', it nonetheless held on to its view that the Plaintiff had made investment on the land at the invitation of the KMA with the acquiescence of the Lands Commission and that the Plaintiff could not be removed without notice and fair evaluation of the time and real value of his investment. On the issue about the lease to the Golden Stool which we find addressing the potential liability of the Lands Commission (the defendant herein), the Justices agreed that the Lands Commission had a clear constitutional mandate to make the grant. Having made reference to article 258(1)(a) of the 1992 Constitution which provides for the mandate of the Lands Commission, they opined: "The learned trial judge resolved Appellant's contentions against the validity of this headlease on the last page of the judgment... We totally agree with the learned judge. Having settled that the Appellant never proved exclusive title to the stretch of land known as Kejetia playground but a tenancy at will, given by KMA through the commercial venture, it is also my humble evaluation that there was no legal hindrance to prevent the Lands Commission from exercising its statutory mandate to settle leases on that stretch of government land to any third persons during the pendency of the suit. There is no law that compels a landlord to grant title in land to his sitting tenants when there exists no evidence of prior agreement to do so. The principle of *nemo dat quod non habet* does not apply in this case. The giving of the lease could not also constitute contempt of court especially when neither the Land Commission nor the Golden Stool were parties to the suit." [295—296 ROA] Page 39 of 45 Now, to the rights and liabilities of the Defendants, the Justices ruled: "This would seem to explain why by the end of the dispute, the Respondents [Defendants] could not show any interest legal or equitable in the land in dispute prior to 2014. In these circumstances, it is clear that the Respondents [Defendants] had no lawful business on or with the land prior to 2014. Neither did their grantors of the Golden Stool have any right to interfere with the Appellant's lawful business as at the date the Appellant issued the writ on 19th March 2013. Until 2014 when the lease was given to the Golden Stool, the administrator of the land, KMA had given the Appellant exclusive user to the land and that right could only be ended with fair notice. Thus, whoever among them pulled down the Appellant's structures as contended by the Appellant, had no right to take that ruinous path." [298 ROA] In favour of the Plaintiff, they pronounced: "With the above, the Appellant is entitled to a declaration of its interest as tenant, if not title owner, to all that parcel of land known as Kejetia Playground. He is also entitled to damages for the trespass on the land given him for development and use as playground. Indeed, I must say loud and clear that the Respondents [Defendants] to the extent that they did not deny being on the lands covered by their sublease in 2014 as at January 2013 when they had no interest thereon, were trespassers on any part of that land including the Kejetia Playground, at the time that the writ was issued in 2013." [298 ROA] Finally, to address the damage the Plaintiff had suffered the learned justices made the following award: "... But the records show that the Respondents made no serious effort—especially the 2nd Respondent whose name was specifically mentioned as the sponsor of the destruction—to challenge or dislodge the testimony. Thus, we find that the Page 40 of 45 Appellant proved the damage to his

investment in the park, and we accept his testimony that it was valued at GH¢200,000 and we also accept from the preponderance of probabilities and from sufficiency of evidence that the damage was caused by the 2nd Respondent. We award general damages in the sum of GH¢200,000 against the second Respondent for the acts of trespass and as per the Appellants third relief. This is the loss that should reinstate the Appellant regarding his physical infrastructure lost in that January 2013.” [299 ROA] The Plaintiff’s argument that there were two stages of destruction to his property and that the GH¢200,000 did not cover the alleged post 2014 destruction is untenable. In the judgment of the Court of Appeal in the Obideaba case, this is how the Court summed up the Plaintiff’s case: “The Plaintiff/Appellant case is that the Kumasi Metropolitan Assembly (KMA) advertised to the public a project for the development of the disputed land into a modern recreational center. He applied for the project, won it and entered into a contract with the Kumasi Metropolitan Assembly to develop the disputed piece of land into recreational ground in April 1991. He thereafter constructed two restaurants, a swimming pool, children’s playground, a conference center, cocktail bar, video center, ICT center and parking lot on the site. He managed this multi- purpose site from 1992 to 2004 when the business was briefly disrupted by KMA closing it down. After the litigation, the Appellant and KMA resolved the dispute, filed terms of settlement, and the Appellant continued with his operations from July 2007. In 2013, his business was again disrupted by the Defendants/Respondents who laid claim to the land. The Appellant alleged that the Respondents brought down the built-up facilities. He commenced this suit for the following claims...” If this narration by the Court of Appeal is anything to go by then as at 2004, the following facilities had been constructed; two restaurants, a swimming pool, children’s playground, a conference center, cocktail bar, video center, ICT center and parking lot. It also means that when in 2013 the Defendants in that case disrupted the business, what they brought Page 41 of 45 down were the built-up facilities. The Court of Appeal could not be referring to; “the demolition of fishpond, children’s Playground, heaps of sand stones and quarry dust” in that passage. The Plaintiff’s argument before us that Defendant’s conduct amounted to a compulsory acquisition under article 20 of the 1992 Constitution is a smokescreen. Going back to the issues in the instant case as agreed by the parties and set down by the trial Court, no issue arose about any such claim. Whilst this Court, the chief warden of the Constitution must be promptly disposed to resolving constitutional controversies, even those arising for the first time in an appeal before it, it must be adept at seeing through artful designs to dress a money claim in a constitutional garb. We detect the Plaintiff’s attempt to do so in this appeal. The Plaintiff’s argument may not have appeared in the cloak of constitutional interpretation of article 20 of the Constitution. However, the established principle in this Court that our interpretative jurisdiction can be invoked only in genuine cases of interpretation should guide us to turn down the advances in the pose the Plaintiff is making to us. By this, we are guided. Examining the generality of the Plaintiff’s reliefs and the arguments laid out before us, his whole case synthesizes into wanting something more than what the Court in the Obideaba case awarded. He finds the GH¢200,000 awarded him insufficient and wants more. But, if one thing is so clear from the judgment in the Obideaba case, it is that, the court set itself to

address the loss the Plaintiff had suffered consequent upon the grant of the lease without fair notice to him. That Court saw the injustice the Plaintiff had suffered and strived to make what was a reasonable award to, as it put it, reinstate the Appellant regarding his physical infrastructure lost in that January 2013. The court was also clear as to who was liable for the loss and deprivation the Plaintiff suffered. If the GH¢200,000 was not sufficient to him, he had a remedy. He could appeal for more. But he could not relitigate the issue afresh. To do so would be a clear abuse of process. From our standpoint, all the issues in the instant case including, more importantly, the liability of the Defendant were substantially resolved in the Obideaba case and for that, we think the Court below was right. Page 42 of 45 Before resting from this discourse, we shall address one point. The Plaintiff urges upon us the position that, the issues in this case could be relitigated because at the time the judgment in the Obideaba case was delivered he had already commenced the instant action. The blow in this argument is however not strong enough. For purposes of invoking issue estoppel so as to prevent abuse of process, the timing of the judgment from which the estoppel arises does not matter. Whether it was delivered before the commencement of the second action or in the course of it, will not change its legal implication on the second action. What matters is a conclusive resolution of the similar issues by the competent court in the first action. The courts, sensitive to the prevention of abuse of process have generally closed their eyes to such vain timelines. When a similar argument was made in *MORRISON ROSE & PARTNERS V HILLMAN* [1961]2 Q.B. 266 Holroyed Pearce L.J at page 277 reacted: “I can find no ground for creating an artificial exception from the general rule of estoppel per res judicata that follow the issue of a writ from those which precede it. The principles which make the latter desirable have no less application to the former, and should be applied to both alike.” See also *ODUKA v KASUMU* (1968) N.M.L.R. 28 at 31. To sum it all up in conclusion, we hold that even though the Defendant herein was not a named party in the Obideaba case, he was in law, a privy in interest and could on that basis, invoke issue estoppel against the Plaintiff. We hold further that the issues in both cases were substantially the same and also that the Court of Appeal in the Obideaba case conclusively resolved all of them. The Court below was therefore right on its conclusion that the Plaintiff was estopped from relitigating the issues. For all that has been said we think grounds 1, 2, 3, and 4 must fail. The dismissal of those grounds effectively disposes of this appeal. For the remaining grounds, 6, 7 and 8 were not argued. They are deemed abandoned and struck out. Ground 5 raised the question who was to give notice to the Plaintiff. The point about it is subsumable under the question of the Defendant’s liability which we have sufficiently addressed in this discourse. Accordingly, that ground also fails. Page 43 of 45 Reaching this decision, we fully have in mind the fact that this is an appeal against concurrent findings of two lower courts. We must find sound factual and legal basis to depart from their concurrent findings. See *SYLVIA GREGORRY V NANA KWASI TANDOH 1V* [2010] SGLR 971; *FRABINA LTD V SHELL GHANA LTD* [2011]1 429. Save the few errors in the judgment of the court below which we have pointed out and sufficiently addressed, we find no sound legal or factual basis to come to a reversal of the final conclusion of the court below. In the result, the appeal wholly fails and is dismissed. (SGD) R. ADJEI-FRIMPONG (JUSTICE OF THE SUPREME COURT) (SGD) A. LOVELACE-

JOHNSON (MS.) (JUSTICE OF THE SUPREME COURT) (SGD) I.O. TANKO AMADU (JUSTICE OF THE SUPREME COURT) (SGD) E. YONNY KULENDI (JUSTICE OF THE SUPREME COURT) (SGD) B. F. ACKAH-YENSU (MS.) (JUSTICE OF THE SUPREME COURT) Page 44 of 45
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