

GHANA / JUDGMENT

Dogbe and Another Vrs Djan and Another [2023] GHAHC 8 (26 January 2023)

[2023] GHAHC 8

COURT

High Court

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IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE LAND DIVISION
HELD IN ACCRA ON THURSDAY, THE 26TH DAY OF JANUARY, 2023 BEFORE HIS LORDSHIP
ALEX OWUSU-OFORI (JA) JUSTICE OF THE APPEAL COURT SITTING AS AN ADDITIONAL HIGH
COURT JUDGE SUIT NO.: FAL/851/2013

1. DELALI ABRA DOGBE - PLAINTIFFS 10306 N Wellen Spokane WA 99218 Suing per her Lawful Attorney KAFUI DOGBE H/No. Plot 1 Block 16 Buokrom, Kumasi
2. ALICE OFORI (alias MAMA LEE) Alice Ofori House Musuku, Atomic Accra VRS Page 1 of 29
1. NII TETTEH DJAN DEFENDANTS
2. NAA DEDE KORLE H/No. D447, Area Teshie, Accra - PARTIES: 1ST PLAINTIFF REPRESENTED BY NII ANNANG TETTEH PRESENT 2ND DEFENDANT PRESENT 1ST DEFENDANT'S LAWFUL ATTORNEY (CHRISTIANA ABBEY) PRESENT 2ND DEFENDANT'S LAWFUL ATTORNEY (EMMANUEL AHIA TETTEH) PRESENT

===== J U D G M E N T

1.0 The Plaintiff by her Writ of Summons dated 13th July 2013, which was subsequently amended was asking for the following reliefs against the Defendants:

- a) Declaration of title to all that piece or parcel of land situate and being at Ashongman in the Ga-East District and containing an approximate area of 0.46 acres or 0.18 hectares more or less and bounded on the North by proposed road measuring 100 feet more or less on the East by lessors land measuring 200.3 feet more or less on the south by Page 2 of 29 proposed road measuring 99.1 feet more or less on the west by proposed road measuring 200.3 feet more or less which piece or parcel of land is more particularly delineated on the plan attached hereto and thereon shewn edged pink....” So described in a Deed of lease executed between Nii Aryee Annang, Head and Lawful representative of Odai Ntow family of Ashongman and Delali Abra Dogbe (Plaintiff herein).

- b) Damages of Fifty Three Thousand One Hundred and Thirty Ghana Cedis (GH¢53,130.00) being the cost of destruction of the property of the Plaintiffs who were on the land at the time the Defendants entered the land which damage is particularized in the Statement of Claim.
- c) General damages for trespass.
- d) An order of perpetual injunction restraining the Defendants, their servants, workmen or agents or otherwise whomsoever described from entering the said land and from constructing a building on the land or performing any acts of trespass or other acts that interfere with ownership rights of 1st Plaintiff to the land.
- e) Cost. 2.0 Defendants entered appearance to Plaintiffs' Writ of Summons and filed their Statement of Defence and counterclaim for the following reliefs:- i) Declaration of possessory title in favour of the 1st Defendant in respect of ALL THAT PIECE OR PARCEL OF LAND situate lying Page 3 of 29 and being at East Kwabenya Accra and bounded on the North by a proposed road measuring 152.1 feet more or less on the south by proposed road measuring 204.0 feet more or less on the East by proposed road measuring 222.15 feet more or less on the west by proposed road measuring 222.10 feet more or less and containing an approximate area of 0.98 acre or 0.40 hectares. ii) Perpetual injunction restraining the Plaintiffs, their agents, assigns and servants from disturbing the 1st Defendant from his quiet enjoyment of the land in dispute. iii) Costs inclusive of legal and administrative cost. THE CASE OF THE PLAINTIFF 3.0 The 1st Plaintiff in this case testified through a lawful Attorney one Kafui Dogbe. 4.0 It is 1st Plaintiff's case that by a lease agreement dated 12th December 2003, Nii Aryee Anang, Head and Lawful representative of the Nii Odai Ntow family leased all that piece or parcel of land situate, lying and being at Ashongman in the Ga-East District, the said land as described in the schedule and containing an approximate area of 0.46 acres as 0.18 hectares to the 1st Plaintiff. 5.0 The Lawful Attorney told the Court that the 1st Plaintiff could not register her interest in the said land because when she submitted the Lease Agreement dated 12th December 2003 at the Lands Page 4 of 29 Commission for registration, she was informed that the land purportedly granted to her by Nii Aryee Anang formed part of the land which was compulsorily acquired by the state for Atomic Energy Commission. 6.0 Kafui Dogbe told the Court that the 1st Plaintiff built a fence wall which was destroyed by one Rasta and she later built a five (5) course block wall around the three (3) ends of the land leaving one side which serves as the entrance and also built two (2) separate tanks and deposited two (2) trips each of sand and stone and also constructed a single room on the land. 7.0 The lawful attorney told the Court that the 1st Plaintiff later gave the land to the 2nd Plaintiff who moulded blocks for sale for herself and on behalf of the 1st Plaintiff to live on the land. 8.0 That in October 2012 agents of 2nd Defendant forcibly entered onto the land in dispute by carting away the numerous moulded blocks, sand and gravels from the land. The matter was reported at Atomic Police Station and was later referred to the Property Fraud Unit of the Ghana Police Service. 9.0 That at the station the parties were advised to settle the matter at home. She said at the family meeting Defendants

were advised that the land was genuinely sold to the 1st Plaintiff and for that matter Defendants should not interfere with the works being carried out on the land. Page 5 of 29

10.0 The Plaintiffs called one witness by name Hislord Tetteh Annang. His testimony was that at the time the land in dispute was granted to the 1st Plaintiff, Nii Aryee Annang was the head of the Nii Odai Ntow family. DEFENDANTS CASE

11.0 1st Defendant also gave evidence to the Court through her Lawful Attorney, one Christiana Abbey. She told the Court that by a Lease Agreement dated 28th March 2007 made between Jonathan Tetteh Armah, Head of Anteh family, Theodore Tettey Mensah, Head of Tetteh Afrimie family, Joshua Odai Arma, Head of Ashong Djemawon family and George Ankonu Adjin Tettey, Head of Nii Abbey We, all of whom were lawful representatives of the Odai Ntow family of the one part and Nii Tetteh Djan leased all that piece or parcel of land situate, lying and being at East Kwabenya, the land so described in the schedule containing an approximate area of 0.98 acres and 0.40 hectares to the 1st Defendant.

12.0 1st Defendant's Attorney told the Court that at the time the land was granted to the 1st Defendant by the Nii Odai Ntow family, same was vacant and bushy and unencumbered without any human habitation. The 2nd Defendant acquired the said land on behalf of the 1st Defendant.

13.0 That after the acquisition of the land, 2nd Defendant on behalf of the 1st Defendant went into immediate possession of the land by renting a bulldozer to clear the whole land and deposited two (2) trips of Page 6 of 29 sand and stones on the land and also engaged one Odai who erected corner pillars and constructed two (2) single rooms at the two ends of the land. The 2nd Defendant engaged Odai, Ebo and Rasta as caretakers to secure the land.

14.0 That sometime in the year 2009 Odai came to inform the 2nd Defendant that 2nd Plaintiff has come onto 1st Defendant's land. The 2nd Defendant after being informed of the 2nd Plaintiff's presence on the land confronted her as to what she was doing on the land and she replied she wanted some place to mould blocks.

15.0 That 2nd Defendant had wanted to remove her from the land but upon a plea permitted her to stay on the understanding that she will vacate anytime they are ready to develop the land.

16.0 The Lawful Attorney further told the Court that 2nd Defendant went onto the land and realized that 2nd Plaintiff had used the two (2) trips of sand and stones deposited on the land to start fencing two out of the six plots belonging to the 1st Defendant.

17.0 That the 2nd Plaintiff avoided the 2nd Defendant several times when she tried to find out who gave her the permission and authority to commence fencing of the two plots but all to no avail.

18.0 It is the Defendant's case that somewhere in 2012, 1st Defendant came into the jurisdiction in readiness to develop the land in dispute and therefore called the 2nd Plaintiff to move her blocks and block moulding machine from the land for construction work to begin but she refused.

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19.0 She went to the Kwabenya Police Station to lodge a complaint where upon the advice of the police, she was asked to move the blocks and the block moulding machine to a safer place. She rented a vehicle in the sum of GH¢4,500.00 to cart the blocks from the land in dispute to another area where the 2nd Plaintiff was moulding blocks and also asked the workers of the 2nd Plaintiff to dismantle the block moulding machine.

20.0 That 2nd Plaintiff later went to the Kwabenya Police Station and reported that the Defendants had trespassed on 1st Plaintiff's land. The parties were invited by the police and were asked to bring their grantors. This they did and

when the police at Kwabenya could not resolve the issue, it was transferred to the Property Fraud Unit of the Ghana Police Service at the Police Headquarters. 21.0 At the Headquarters parties were asked to send the matter home for amicable settlement. 22.0 It is the 1st Defendant's case that at the family meeting the elders of the family asked one Allowey from the family who represented the 2nd Plaintiff that the land has already been granted to the 1st Defendant so he should go and look for another land for the Plaintiff. 23.0 The 2nd Defendant also testified through a lawful attorney called Ahia Tetteh. It was his testimony that the 2nd Defendant is also a member of Nii Odai Ntow family and that sometime in 2007 she decided to acquire a parcel of land for her children. Page 8 of 29 24.0 She went to see the elders of the Nii Odai Ntow family and requested for some of the family land, however the elders informed her that she was to pay for the land. She accordingly bought six (6) plots and paid the requisite fees and requested that the Lease Agreement be prepared in the name of the 1st Defendant which was done. 25.0 It is the Lawful Attorney's testimony that after the acquisition of the land, the 2nd Defendant on behalf of the 1st Defendant took immediate possession of the land by renting a bulldozer to clear the whole land and deposited two (2) trips of sand and stones on the land and also engaged one Odai who erected corner pillars and constructed two single rooms at the two ends of the land. The 2nd Defendant subsequently engaged Odai, Ebo and Rasta as caretakers of the land. 26.0 That sometime in the year 2009, 1st Defendant came onto the land and Odai one of the caretakers informed the 2nd Defendant about the presence of 1st Defendant on the land. She was confronted and she pleaded that she only wanted a place to mould blocks. 27.0 She was permitted by 2nd Defendant to stay on the land with the understanding that she will vacate when 1st Defendant is ready to develop the land. 28.0 2nd Defendant later visited the land and realized that the 2nd Plaintiff had used the two trips of sand and stones deposited on the land to fence two plots out of the six plots purchased from the family. 29.0 That all attempts to meet the 2nd Plaintiff proved futile. The 1st Defendant later came into the jurisdiction in readiness to develop his Page 9 of 29 six plots but all attempts made to meet the 2nd Plaintiff to remove her blocks and the block moulding machine proved futile, so 1st Defendant sought the advice of the Kwabenya Police when a complaint was lodged with them who advised her to pack the blocks and the block moulding machine from the site and she did so. 30.0 The 2nd Plaintiff later reported the matter at the Police Station and the case was transferred to the Property Fraud Unit of the Ghana Police Service where the parties were advised to go home and settle the matter. 31.0 The 2nd Defendant's Lawful Attorney told the Court that at the family meeting, Plaintiffs were informed that the six (6) plots of land had already been sold to the 1st Defendant. 32.0 Defendants also called one witness by name Joshua Odai Ama who corroborated the evidence of the Defendants. 33.0 At the close of the parties' case the following issues were formulated for the Court's determination: - i) Whether or not at the time the land in dispute was granted by the Nii Odai Ntow family to the 1st Defendant same was vacant and encumbered. ii) Whether or not Defendants took possession of the land by erecting corner pillars and constructed two (2) single rooms at the two ends of the land in dispute. Page 10 of 29 iii) Whether 2nd Defendant granted 2nd Plaintiff permission to stay on the land in dispute by moulding blocks thereon, thereby

making 2nd Plaintiff a licensee of 2nd Defendant. iv) Whether or not at the time the land was granted to the Plaintiffs same was vacant and encumbered.

- v) Whether or not Plaintiffs have capacity to commence this suit. vi) Whether or not Plaintiffs are entitled to their claim. vii) Whether or not 1st Defendant is entitled to his counterclaim. viii) Any other issue raised by the pleadings. 34.0 Before the Court proceed to address the issues set down for determination, I will briefly discuss the law on the burden of proof.
- APPLICABLE LAW/BURDEN OF PROOF** 35.0 The law is settled under our jurisprudence that a party who makes an assertion assumes the burden of proving same. 36.0 The burden of producing evidence as well as the burden of persuasion is cast on a party aforesaid and the standard of proof require to discharge the burden of persuasion in civil matters is on the preponderance of probabilities. 37.0 The Evidence Act 1975 (NRCD) 323 gives statutory recognition to the principle aforesaid in Section 12(1). The expression preponderance Page 11 of 29 of probabilities is defined in section 12(2) of the NRCD 323 as follows: - "...that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of the fact is more probable than its non-existence. By Section 11(4) of NRCD 323 the burden of producing evidence is discharged when a party produces "... sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence" 38.0 The above legal proposition were succinctly expressed by the Supreme Court in the case of ABABIO V KWASI (1994-95) GBR 774 where at page 777 of the report Aikins JSC stated as follows; "The general principle of law is that it is the duty of a Plaintiff to prove his case that is he must prove what he alleges." In other words it is the party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favor when on a particular issue the Plaintiff leads some evidence to prove his claim. If the Defendant succeeds in doing this he wins if not he losses on that particular issue". 39.0 The well-established position of the law was further endorsed by the Supreme Court in the Case of:- IN RE WA NAJISSAH BUKARI (substituted by MAHAMA BUKARI & ANOR. VRS MAHAMA BAYONG & ORS (2013/14) 2 SCGLR 1590 where Akamba JSC Page 12 of 29 discussing the principle in the judgment of the Court expatiated as follows: - "The burden is not discharged by merely entering the witness box and repeating the claims or averments as by leading admissible and credible evidence from which the facts they assert can be properly and safely inferred or concluded." 40.0 As has been clearly expressed above, the party who asserts bears the burden of adducing evidence to prove same. Where he is able to adduce sufficient evidence in support of his case, it becomes imperative for the other party to adduce sufficient evidence to rebut same otherwise that party risks being ruled against on that issue. Similarly, where a party is relying on a particular defence, then it is the duty of that party to lead sufficient evidence which will convince the Court to make a finding on that issue in his favour. 41.0 In the instant suit before the Court the Plaintiffs claim is for a declaration of title to the disputed land whilst the Defendants in their counterclaim filed is asking for the Court to make a declaration of possessory title in their favour. They all need to lead cogent and

credible evidence to establish their respective claims in order to succeed. 42.0 As it is trite, the Courts are not tied down to issues identified and agreed upon at pre-trial. They can within the scope of the pleadings and evidence on record determine the relevant issues for trial. See: IN RE ASAMOA (dec'd) (2013/14) 2 SCGLR 909 AND FATAL VRS WOLLEY (2013/2014) 2 SCGLR 1070. Page 13 of 29 43.0 Plethora of issues had been set down for the Court's determination in the instant suit, but in my respective view save issues (v), (vi) and (vii) all the issues outlined above do not satisfactorily define the controversy between the parties and to that extent are not helpful in the determination of this action. The reason I will explain in the course of this judgment. 44.0 I will then respectively submit that the issues arising out of the pleadings which are germane to the determination of this action are as follows:-

- a) Whether or not Plaintiffs have capacity to commence this suit?
- b) Whether or not Plaintiffs are entitled to their claim?
- c) Whether or not the 1st Defendant is entitled to his counterclaim. 45.0 Capacity is the life blood of every litigation and when same is raised, the Court cannot just feigned ignorance or gloss over it but has to tackle it headlong. 46.0 Defendants in paragraph 47 of their amended statement of defence filed dated 21st November, 2016 stated as follows:- 47 "Defendant shall at the trial contend that the 1st Plaintiff has no capacity to institute this action" 47.0 THE BLACK'S LAW DICTIONARY 8th Edition defines capacity as follows:-
 1. The role in which one performs an act. Page 14 of 29
 2. The power to create or enter into a legal relation under the same circumstances in which a normal person would be the power to create or enter into such a relation.
 3. The mental ability to understand the nature and effect of one's acts. 48.0 In the Supreme Court case of ASANTE-APPIAH V AMPONSA alias MANSAH (2009) SCGLR 90 the apex Court in holding 2 stated as follows:-
 - (2) "where the capacity of a person to sue is challenged, he has to establish it before his case can be considered on its merit. In the instant case the Defendant challenged the capacity of the Plaintiff right from the inception of the trial. The challenge was explicit in the first paragraph of the statement of Defence and in the cross examination of the person who gave evidence on his behalf as the holder of Power of Attorney which has been declared as invalid and inadmissible. The Plaintiff had to establish his capacity before he could expect the trial Court to have considered his case on its merit. He woefully failed to establish the capacity in which he sued by his reliance on the invalid power of Attorney" 49.0 Also in the Court of Appeal case of MOZAMA DISCO CHRISTO CHURCH V. JEHU APPIAH (2010) MLRG 56 at 71 & 73. The Court of Appeal per Kusi Appiah J. A stated as follows:- "It is trite law that the issue of capacity or locus standi is a point of law which can be raised at any time or stage of the trial and even after judgment ... A plea of locus standi is in the nature of objection in limine. It strikes at the very root of the writ of civil summons. It is like a plea as to Page 15 of 29

jurisdiction. If it is sustained that must be the end of the matter. The plea connotes that the capacity of the Plaintiff to bring this action is challenged ...in such a situation the Plaintiff cannot succeed without proving the relevant capacity to sue.” 50.0 The 1st Plaintiff in seeking to trace his root of title to the acquisition of the disputed land and the difficulties encountered to have the land registered in paragraphs 3 and 4 of the amended Statement of Claim filed on the 3rd of June 2021 stated as follows:- “3) The 1st Plaintiff acquired the said land from Nii Aryee Anang (dec’d) who was the head and lawful representative of Odai Ntow family of Ashongman and this was evidence by a Deed of lease dated 12th December, 2003 for a term of 99 years with an option to renew for a further term not exceeding 45 years.

- 4) “1st Plaintiff said he could not readily register the land because the land formed part of the land acquired by the state for the Atomic Commission and it was purchased upon the assurance of the family that Government of Ghana agreed to release part of the land to them” 51.0 The 1st Plaintiff in his pleading especially of paragraph 4 of the amended Statement of Claim admitted emphatically without mincing words that the land he acquired from the Odai Ntow family through its lawful head of family and representative form part of a vast tract of land the Government of Ghana acquired under an Executive Instrument dated 3rd July 1973 for the Atomic Energy Commission. Page 16 of 29 52.0 The Defendants also whole heartedly confessed to the state acquisition of a vast tract of land in the area of which the disputed land forms part. In paragraph 3 of the amended Statement of Defendants said :- “3) Save that the land in dispute forms part of a large tract of land acquired by the Government of Ghana under Executive Instrument dated 3rd July 1973 for the Atomic Energy Commission paragraph 4 of the Statement of Claim is denied.” 53.0 Paragraph 4 of the amended Statement of Claim of the Plaintiff and paragraph 3 of the amended statement of defence need no further interpretation but to state bluntly that the land they are fighting over is a state acquired land. 54.0 To reinforce the reason of the Court I wish to state verbatim what the Lawful Attorney said in paragraph 4 of the witness statement filed. “Delali Dogbe acquired the land from Nii Aryee Annan who was the Head of Nii Odai Ntow family in the year 2003 and was given an indenture. She could not register the land because she was made known at the Lands Commission that the land was acquired by Government for the Atomic Energy Commission. She earlier purchased the land upon the assurance of the Head of family that Government of Ghana had agreed to release that portion of land to the land owners” 55.0 Plaintiffs filed notice of documents they intend to rely on in proof of their case. Page 17 of 29 56.0 The search dated 31st December 2012. This search was conducted by the Property Fraud Unit of the Ghana Police Service when the case was referred to them. They used the 1st Plaintiff’s site plan in conducting the search. 57.0 The search result shows that the whole land is a state land acquired under Executive Instrument dated 3rd July 1973 for Atomic Energy. 58.0 In my respective view the Defendants having admitted in paragraph 3 of their amended statement of defence that the land in dispute forms part of a large tract of land acquired by the Government of Ghana under Executive Instrument dated 3rd July 1973 for Atomic Energy Commission, no issue is joined as to the ownership of the land the subject matter of this suit. 59.0 See the case of KUSI & KUSI VRS. BONSU (2010) SCGLR 60,

holding 3 where the Court held that:- “Where no issue was joined as between parties on specific question, issue or fact, no duty was cast on the party asserting it to lead evidence in proof of that fact or issue. On the basis of the time honoured principle, the appellant i.e. the Defendant in the instant case were not under any obligation to have tendered all those documents complained of by the Plaintiff/Respondent, documents which bore evidence of registration ex facie, let alone be held accountable for non-compliance with the procedural requirements of Notice under Section 27(2) and (3) of the Land Registry Act, 1962 (Act 122)...” 60.0 Her Ladyship Georgina Wood C. J (as she then was) had this to say at page 78 of the report: “It is an elementary principle of law that in civil Page 18 of 29 litigation, where no issue was joined as between parties on specific question, issue or fact no duty was cast on the party ascertaining it to lead evidence in proof of that fact or issue. Indeed, most of the delays associated with civil trials would be avoided if this simple evidential rule were strictly adhered to...” 61.0 She continued at pg. 79 as follows:- “When a party had made an averment and that averment was not denied no issue was joined and no evidence be led on that averment. Similarly, when a party had given evidence of a material fact and was not cross examined upon it he need not call further evidence of that fact...” 62.0 See also the case of :- WESTERN HARWOOD ENTERPRISE LIMITED & ANOR. VRS WEST AFRICAN ENTERPRISE LIMITED (1998-99), SCGLR 105 AT 117 Holding 3 on the same principle that “where the pleadings of the parties were ad idem that there was a valid lease between the Apowa Stool and TBL the Plaintiff was not bound to lead evidence to emphasize the validity of such lease...” 63.0 This Court having established that the disputed land forms part of a vast land compulsorily acquired by the Government of Ghana under Executive Instrument dated 3rd July 1973 for Atomic Energy Commission and no evidence led by the parties to the contrary of the Government of Ghana divesting itself of the interest acquired what then is the legal effect of the said acquisition. 64.0 Article 257 of the 1992 constitution clauses (1) and (2) provides as follows:- Page 19 of 29 257 (1) “All public lands in Ghana shall be vested in the president on behalf of, and in trust for the people of Ghana. 257 (2) For the purposes of this article and subject to clause (3) of this article, “Public lands” includes any land which, immediately before the coming into force of this constitution, was vested in the Government of Ghana on behalf of and in trust for the people of Ghana for the public service of Ghana and any other land acquired in the public interest, or the purpose of the Government of Ghana before, on or after that date” 65.0 The eminent learned writer B. J. da Rocha and C. H. K Lodoh in their book GHANA LAND LAW AND CONVEYANCING 2nd Edition at page 21 subtitled “By compulsory Acquisition” states as follows: - “The state has statutory power to acquire land compulsorily from any proprietor of land whether community, an individual or a corporate body and whether the title is allodial, a freehold or whatever. The effect of compulsory acquisition by the state pursuant to the State Lands Act, 1962 (Act 123) is to vest the allodial title and all other subordinate titles and interests and that includes the customary freehold, in the state free from all encumbrances” 66.0 In the case of :- OMABOE III VRS ATTORNEY GENERAL AND ANOR. (2005-2006) SCGLR 579 Prof Modibo Ocran delivering the judgment of the Court at pg. 600 of the report has this to say: “The second land holding policy arrangement concerns those lands that were once stool lands, but which

had been vested at some point in time in the president or government, without any subsequent de-vesting in favour Page 20 of 29 of the original stools by a statutory or constitutional provision. Our position is that they continue to be vested in the president or Government of Ghana until the state takes measures by an express statutory language to de-vest itself and re-vest them in the original stool owners. As long as they remain vested, they come under the administration and management of the Lands Commission created under Article 258 of the constitution” 67.0 This Court having made a finding of fact that the disputed land forms part of a vast land compulsorily acquired by the Government and still remain vested in the state, Nii Aryee Anang could not have made a valid grant of the land in dispute to the 1st Plaintiff because the land was vested in the state, and the Nii Odai Ntow family lacked capacity to do so. You cannot give what you do not have. 68.0 To simplify the issue on capacity and the 1st Plaintiff’s prayer for declaration of title to the disputed land, a critical evaluation of the Plaintiff’s own pleadings (paragraph 4 of the amended Statement of Claim) makes it mind boggling and not acceptable in legal remit. 69.0 The 1st Plaintiff’s whole heartedly concede that the land the subject matter of the instant suit is a “Government of Ghana Land” acquired under Executive Instrument for Atomic Energy Commission, yet pray this Court to make a declaration that she has title to the said land. Page 21 of 29 70.0 The purported grant was made when the land Act 2020 (Act 1036) had not been passed but need to state some of the provision for the purpose of this judgment. 71.0 Sections 236 (1), (2) and (3) of the Act states:- 236 (1) Despite the provisions of the Limitation Act 1972 (NRCD 54) and any other law, a person who unlawfully occupies public land does not acquire an interest in or right over that land by reason of the occupation

- (2) A person shall not acquire by prescription or adverse possession an estate or interest in public land.
- (3) A person who unlawfully appropriates, sells or conveys public land commits an offence and is liable on a summary conviction to a fine of not less than Five Thousand penalty units and not more than Ten Thousand penalty units or to a term of imprisonment of not less than Seven years and not more than fifteen years or to both. 72.0 I hold that the 1st Plaintiff lacks capacity to mount the instant action asking for a declaration of title to the disputed land as her grantor do not have that title to pass same on her. 73.0 I proceed to the issue whether or not the Plaintiffs are entitled to their claim. 74.0 The Plaintiffs claim for declaration of title to land, damages of Fifty Three Thousand One Hundred and Thirty Ghana Cedis (GH¢53,130.00) and perpetual injunction. Page 22 of 29 75.0 I need not rehash reasons already given but to state that per the principles as stated on the authority of *Omaboe III v Attorney General & Anor.* (Supra) cited above and Section 236 (1), (2) and (3) of Act 1036 this Court lacks jurisdiction to decree title in respect of state land in favour of the 1st Plaintiff herein. 76.0 The Declaration for title in respect of the land the subject matter of the instant suit is not legally maintainable and will not be available to the 1st Plaintiff because it is impracticable for the 1st Plaintiff to acquire an interest in the said land. 77.0 On the claim for damages, the 2nd Plaintiff testified that she used the land to mould blocks for sale and was in undisturbed possession for several years until the latter part of 2012 when the

Defendants forcefully entered the land and destroyed blocks of the 2nd Plaintiff and also caused damage to her block moulding machine. They also destroyed a single room apartment that the Plaintiffs have built on the land and the fence wall which cost was assessed at Seven Thousand Five Hundred Ghana Cedis (GH¢7,500.00). The damaged block moulding machine was repaired at the cost of Seven Hundred Ghana Cedis (GH¢700.00) while the destroyed single room apartment was assessed at Five Thousand and Five Ghana Cedis (GH¢5005.00). 78.0 It is the testimony of the 2nd Plaintiff that she had the following items destroyed. Page 23 of 29

- a) Twenty Thousand Five Hundred and Seventy (20,570) blocks made up of Seven Thousand Three Hundred and Twenty (7,320) 6" quarry dust blocks at Two Cedis Fifty Pesewas (GH¢2.50) each and Thirteen Thousand Two Hundred and Fifty (13,250) 5" blocks at One Cedi Fifty Pesewas (GH¢1.50) each.
- b) Three (3) trips of sand at Three Hundred and Fifty Ghana Cedis (GH¢350.00) per trip
- c) Two (2) trips of stones at Seven Hundred Ghana Cedis (GH¢700) per trip they also destroyed one (1) water tank and left two (2) others which they used for their benefit when they attempted to build on the disputed land. 79.0 The Plaintiffs in my mind are praying for special damages of Fifty Three Thousand One Hundred and Thirty Ghana Cedis (GH¢53,130). 80.0 It is trite learning that special damages must be pleaded and specifically proved. See the case of:-ROYAL DUTCH AIRLINE (KLM) VRS FARMES (1989/90) 2 GLR 623. 81.0 In MAJOLAGBE VRS LARBI (1959) GLR 190 AT 192 the court held that: - "Proof in law is the establishment of fact by proper legal means, in other words the establishment of an averment by admissible evidence. Where a party makes an averment and his averment is denied, he is likely to be held by the Court to have sufficiently proved that averment by his merely Page 24 of 29 going into the witness box and repeating the averment on oath, if he does not adduce that corroborative evidence which (if his averment be true) is certain to exist". 82.0 The 1st Defendant in his testimony to the Court denied causing any damage to any property on the disputed land. Her testimony was that upon the advice of the police at the Kwabenya Police Station, she rented a vehicle at the cost of Four Thousand Five Hundred Ghana Cedis (GH¢4,500.00) to cart the moulded blocks to another area where 2nd Plaintiff was moulding blocks and also asked the workers of 2nd Plaintiff to dismantle the block moulding machine. 83.0 It is never true that she caused any damage to any property. 84.0 In my humble view the relief sought for being special damages, it was the expectation of the Court for the Plaintiff to specifically prove the alleged special damages by tendering of receipts or at least calling a witness to testify (for example) those who worked on the block moulding machine they claimed was damaged. All these they failed to do. 85.0 The Court accordingly hold that the Plaintiffs are not entitled to any special damages of Fifty -Three Thousand One Hundred and Thirty Ghana Cedis GH¢53,130.00. 86.0 The Plaintiff also asked for general damages for trespass. This Court having made a finding and concluded that the land the subject matter of the instant suit is a state land, the Plaintiffs cannot acquire any interest in the said land as in their evidence before the Court they Page 25 of 29 have not

demonstrated that the state or government has de-vested its interest in the land acquired for the Atomic Energy Commission or had given same back to the Nii Odai Ntow family. 87.0 There is also no evidence on record that the Plaintiffs had a grant from the Lands Commission, the Government institution responsible for managing State land. Their prayer for general damages for trespass is equally dismissed. 88.0 This Court again hold that a relief for perpetual injunction will only be available to a party in whose favour title to the land has been decreed against a trespasser. In this case the Plaintiffs have been held not to be the owners of the land because title to the land is vested in the state by the compulsory acquisition of same. Plaintiffs are therefore not entitled to this relief. 89.0 I will briefly address the last issue raised whether or not 1st Defendant is entitled to his counterclaim. 90.0 The 1st Defendant's counterclaims for a declaration of possessory title, damages for trespass and perpetual injunction against the Plaintiffs. 91.0 In addressing the court the 1st Defendant submitted that the relief for declaration of possessory title stems from the fact that the land the subject matter of this suit is a state land and for that matter the 1st Defendant lacks capacity to pray for a declaration of title to the said land. The Court also lacks jurisdiction to decree title in respect of a state land in favour of the 1st Defendant. Page 26 of 29 92.0 The 1st Defendant further submitted that their statement of defence and their counterclaim was filed in the year 2013 when the Land Act 2020 Act 1036 had not been passed, and their relief for possessory title is based on the legal principle that a person in possession of land can bring an action against the whole world except the true owner with a superior title. 93.0 That with the passage of the Act this legal principle is not applicable to state land having in mind sections 236 (1), (2) and (3) of the Land Act, 2020 (Act 1036). 94.0 The 1st Defendant claim he has a lease agreement dated 28th March 2007 made between Jonathan Tetteh Armah, Head of Anteh family, Theodore Tettey Mensah, Head of Tetteh Afrimie family, Joshua Odai Ama, Head of Ashong Djemawon family and George Ankonu Adjin Tettey, Head of Nii Abbey We all of whom were lawful representatives of the Nii Odai Ntow family. 95.0 I have already ruled that the disputed land is a state land and therefore any purported lease made either by Nii Aryee Anang (dec'd) Head and lawful representatives of the Nii Odai Ntow family to the 1st Plaintiff or that made by the representatives of the four (4) families who claim to have the right to alienate Nii Odai Ntow family land, legally is not maintainable and it is on this reason that I proceed to dismiss both the Plaintiffs claim and counterclaim filed. 96.0 This Court is aware of the decision in *Okantey v Kwadey* (1959) GLR 241 where it was held that as between Plaintiff and Defendant the Page 27 of 29 party who first obtained possession can maintain an action against the intruder: although the government could have maintained an action for recovery of possession and trespass against both Plaintiff and Defendant. 97.0 This Court I will say cannot make any orders asking the 1st Defendant who claim she is in effective occupation of the said land by Plaintiff's own showing to vacate the land as the state through the Lands Commission the government institution responsible for managing state land is not a party to the suit making any such request. 98.0 This is the summary of the judgment and orders made by the Court.

- a) The land the subject matter of the instant suit is a state land compulsorily acquired under Executive Instrument dated 7th March 1973 for Atomic Energy Commission.
- b) No grant has been made by the Lands Commission the government institution responsible for managing state land to any of the parties.
- c) 1st Plaintiff lacks capacity to bring an action for declaration of title in respect of the land in dispute because it is a state land acquired by Executive Instrument dated 7th March 1973 for Atomic Energy Commission.
- d) The 1st Defendant claim for possessory title is also not legally maintainable.
- e) Both Plaintiffs claim and Defendants counterclaim are dismissed as they remained unproven. Page 28 of 29 (SGD) ALEX OWUSU-OFORI (JA) COUNSEL: KWAME YANKYERA FOR THE PLAINTIFFS PRESENT PATIENCE ACKAH HOLDING BRIEF FOR JAMES MENSAH KULLEY FOR THE DEFENDANTS PRESENT Page 29 of 29

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