

GHANA / JUDGMENT

Klu Vrs Asiamah and 2 Others

[2023] GHAHC 2 (23 January 2023)

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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 MONDAY, THE 23RD 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.: LD/0849/2019

- PLAINTIFF
- DEFENDANTS NELSON SOWAH KLU Teshie Nungua, Accra VRS
- 1. KOJO ASIAMAH
- 2. MADAM ALICE House No. Unknown Accra
- 3. MADAM RUCKY QUAYE No. 7 Malt Street, Dansoman Accra PARTIES: PLAINTIFF ABSENT
1ST & 3RD DEFENDANTS PRESENT 2ND DEFENDANT ABSENT

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

1.0 By his amended Writ of Summons dated 3rd March 2020 the Plaintiff claim against the Defendants for the following reliefs:- Page 1 of 20 i) Declaration that the land situate and lying at Okpoi Gonno North East Teshie Batsonaa which has been described in paragraph 3 of the Plaintiff's Statement of Claim is Plaintiff's land. ii) Damages for trespass iii) A perpetual injunction restraining 1st, 2nd and 3rd Defendants from trespassing unto the land or claiming ownership of same. iv) Costs. 2.0 Gleaning from the pleading and witness statement subsequently filed, this briefly was the Plaintiff's case. CASE OF PLAINTIFF 3.0 The Plaintiff aver that in or about the year 2004 he acquired the land subject matter of the instant suit from John Nii Nmashie Adjete, Daniel Adzete and Eric Akpor Sowah. 4.0 The Plaintiffs claim that his grantors were the joint owners and customary ssuccessors to the late Joseph Okaing Adjete, Late Akpor Sowah and late Azana Adjei Klu. He further claims that the said grantors were the original owners of a vast portion of land which includes the land in dispute. 5.0 He further stated that the land which is in dispute is situate and lying at Okpoi Gonno North East Teshie Batsonaa measures approximately 0.34 acres and same is bounded on the North East by lessors land measuring 140 feet more or less on the South West by

lessors land measuring 100 feet more or less on the North West by lessors land measuring 140 feet more or less. Page 2 of 20 6.0 The Plaintiff states that upon acquisition of the said land he erected four (4) corner pillars and deposited a trip of sand and a trip of stones on it. The Plaintiff further states that an indenture was executed in his favour and he subsequently registered same with the Lands Commission. 7.0 It is Plaintiff's case that he had applied for Land Title Certificate which is still in progress when the Defendant from nowhere trespassed unto the land. 8.0 The Plaintiff says that a search conducted at the Lands Commission in the year 2010 shows that the land he bought which forms part of a vast land still remains in the name of his grantors according to a judgment dated 13th June 2006. 9.0 It is Plaintiff's case that the 1st, 2nd and 3rd Defendants without any colour of right in or around 2009 entered the land and erected a fence wall on same using his building materials deposited on the land. Plaintiff says he subsequently reported the Defendants to the police at the Nungua Police Station. 10.0 The Plaintiff contend that the 1st Defendant occupies one plot of the land while the 3rd Defendant also occupies another plot. 11.0 According to the Plaintiff he genuinely acquired the land from his grantors and the Defendants herein has no right both at law and equity to remain on the disputed land and praying the Court to make a declaration to that effect. THE CASE OF THE 1ST DEFENDANT 12.0 It is the case of the 1st Defendant that he acquired the said portion of land in dispute from the Anagotse Borquaye family on or about 1st January 2004. 13.0 That upon acquisition of the said land he has been in quiet and undisturbed possession of that portion of land for over fifteen (15) years. Page 3 of 20 14.0 It is the case of the 1st Defendant that at the time the said grant was made to him, the land was vacant. 1st Defendant further says that his grant as described in the schedule was evidenced by a Deed of Lease stamped as IRS/60A/2004. 15.0 The 1st Defendant says that he went into immediate possession of the said grant and secured the boundaries of same by erecting corner pillars on it. 16.0 He engaged the services of the 2nd Defendant to protect same for him. The 1st Defendant further says that he has been on the said portion of the land without any let or hindrance from any quarters since 2004 till date, until he was served with a writ by the Plaintiff commencing the instant action. 17.0 It is the case of the 1st Defendant that the Plaintiff has no cause of action against him and that even if he had, it is statute barred since he has been in possession of the land from 2004 till date. THE CASE OF THE 2ND DEFENDANT 18.0 The 2nd Defendant says that the land in dispute belongs to the 1st Defendant who acquired same from the Anagotse Borquaye family on or about 1st January, 2004. 19.0 The 2nd Defendant says further that the 1st Defendant went into immediate possession of the land upon acquisition and she assisted the 1st Defendant to secure the boundaries of same. 20.0 It is the 2nd Defendant's case that the 1st Defendant constructed a building on the land in dispute and put her in possession as a care taker in or about 2004. 21.0 The 2nd Defendant states that the 1st Defendant is the owner of the land in dispute and this is evidenced by an indenture dated 1st January 2004 and stamped as IRS/60/2004. Page 4 of 20 THE CASE OF THE 3RD DEFENDANT 22.0 The 3rd Defendant states that she acquired the portion of the land in dispute in her possession from the Anagotse Borquaye family on or about 1st January 2000. 23.0 It is her case that the grant of the portion of land was made to her when the land was vacant. 24.0 The 3rd Defendant says that her

grant was evidenced by a Deed of Lease dated 5th January 2000 and stamped as IRS/140/2005. 25.0 The 3rd Defendant says that she went into immediate possession of the said land after the grant and secured the boundaries by erecting a fence wall around same. She subsequently constructed a house on the land in dispute in or about 2009. 26.0 The 3rd Defendant aver that after the construction of the said house, she placed in the house a caretaker. 27.0 That she had been in quite possession of the said land without any let or hindrance until 2015 when her caretaker informed her that her wall had been demolished by some miscreants. 28.0 The 3rd Defendant says that she made a report of the incident at the Accra Regional Police Station. After investigations had been conducted by the police she was informed that the demolition was done by some people from Teshie who claimed they had judgment against the people of Nungua in respect of the land in dispute. Page 5 of 20 29.0 The 3rd Defendant says that the new claimants of the land in dispute offered to resell the land to her at a price of GH¢10,000.00 but they finally agreed on the sum of GH¢5,000.00 as the price of the land. 30.0 The 3rd Defendant states that she paid the said sum of GH¢5,000.00 to one Magnus Ocquaye a representative of the chief of Teshie. It is the case of the 3rd Defendant that after she paid the said sum her new grantors executed an indenture dated 14th January 2016 in her favour. 31.0 The 3rd Defendant says that she has been in physical possession and occupation of the land since 2000 and that during the period, has constructed a fence wall and put up a single room on same. These were done in 2009. 32.0 The 3rd Defendant says that she applied for a building permit at the Ledzokuku Municipal Assembly and was issued with same in 2013. It is the case of 3rd Defendant that the action of the Plaintiff is caught by the Statute of Limitation 1972. 33.0 The 3rd Defendant states that in furtherance of her ownership of the said land she has been issued with a Land Certificate. 34.0 That the Plaintiff has no cause of action against her, pray that the suit brought against her by the Plaintiff be dismissed as it is without any merit. After the close of pleadings at the Application for Directions stage the following issues were set down for the Court's consideration.

- a) Whether or not the disputed land is the property of the 1st and 3rd Defendants;
- b) Whether or not 1st and 3rd Defendants grantors have the right to sell the land the subject matter of this suit; Page 6 of 20
- c) Whether or not the land in dispute is registered in Plaintiff's or 1st and 3rd Defendants name;
- d) Whether or not the land in dispute the subject matter of this suit is affected by a judgment dated 13th June 2006;
- e) Whether or not 1st Defendant has legally been in occupation of a portion of the land in dispute since 2004;
- f) Whether or not the indenture executed in favour of the 3rd Defendant by her grantors is valid;

- g) Whether or not the instant action of the Plaintiff is caught by the Statue of Limitation Act, 1972;
- h) Whether or not the 2nd Defendant is a proper party to be sued in this action having erected a structure and plies her trade from the land;
- i) Whether or not the Plaintiff is entitled to his reliefs;
- j) Any other issues arising out of the pleadings. 35.0 The Plaintiff herein at the Application for Directions stage set down a plethora of issues for the Court's consideration. The issues raised by the Plaintiff were nine (9) in all and the Court considering any other issue (s) arising out of the pleadings. 36.0 It is trite learning that the Courts are not tied down to issues identified and agreed upon at Pre-trial. 37.0 The Court wields inherent power within the scope of the pleading and evidence adduced by the parties which is on record determine the relevant issues for trial. See the case of: IN RE ASAMOA (DECEASED) (2013/2014) 2 SCGLR 909. Page 7 of 20 38.0 In my humble view save issues (d), (g) and (i) worth considering all the other issues would resolve itself upon proper evaluation of the evidence adduced by the parties. 39.0 The germane issues that arises out of the pleading and the evidence adduced before the Court are as follows:-
- a) Whether or not the Plaintiff has title to the land in dispute;
- b) Whether or not the instant action of the Plaintiff is caught by Statute of Limitation Act, 1972;
- c) Whether or not Plaintiff is entitled to the reliefs sought. 40.0 The 1st and 3rd Defendants who claim they own portions of the disputed land and are in effective occupation of their respective lands did not file any counterclaim to the Plaintiff's action. 41.0 Before the Court will proceed to determine the germane issues raised I find it prudent to state briefly the applicable law or burden of proof and the evidential burden which the parties carry in proving their respective cases relative to the land in dispute. APPLICABLE LAW/BURDEN OF PROOF 42.0 In Civil cases the general rule is that the party who in his pleadings or his writ raised issues essential to the success of his case assumes the onus of proof see the cases of FAIBI VRS STATE HOTELS CORPORATION (1968) GLR 471 and BANK OF WEST AFRICA LTD. V ACKUN (1963) 1 GLR 176 SC. 43.0 The legal proposition were succinctly expressed by the Supreme Court in the case of ABABIO V KWASI (1994/95) GBR 774 at 777 where 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." Page 8 of 20 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." 44.0 Sophia Adinyira JSC also in the case of ACKAH VRS PERGA TRANSPORT & OTHERS (2010) SCGLR 728 AT 738 delivered herself thus:- "It is the basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of fact in issue that has the quality of credibility short of which his claim may fail... It is trite

law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable than its non-existence.” 45.0 The Evidence Act, 1975 (NRCD 323) also gives statutory recognition to the principles in the decided Court cases stated above. 46.0 Section 14 states: - “Except as otherwise provided by law, unless it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting” 47.0 Section 12(1) “Except as otherwise provided by law, the burden of persuasion requires proof by preponderance of probabilities” 48.0 Section 12(2) “Preponderance of probabilities” means that degree of certainty of belief in the mind of the Tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence.” 49.0 I need not stretch the discussion on this known cardinal principle of law or the burden of proof except to say that Sections 10, 11 and 12 all of the Evidence Act 1975 (NRCD 323) hinges on this known principle that a party who bears the Page 9 of 20 burden of proof is to produce the required evidence of the fact in issue that has the quality of credibility short of which his claim may fail. I proceed to answer the 1st issue raised whether or not the Plaintiff has title to the land in dispute. 50.0 Among the reliefs sought for by the Plaintiff against the Defendants is for a declaration of title to the land situate and lying at Okpoi Gonno, North East Teshie Batsonaa. The Supreme Court in a plethora of cases has stated that to successfully maintain an action for declaration of title to land, it requires the person asserting title to the land and on whom the burden of persuasion falls to prove the title of his root of title, mode of acquisition and various acts of possession exercised over the land in dispute. In the Supreme Court case of: - MODIAL VENEER (GH) LTD. V AMUAH GYEBU XV (2011) SCGLR 446. The Supreme Court speaking through Georgina Wood CJ said: - “In land litigation ...the law requires the person asserting title and on whom the burden of persuasion falls...to prove the root of title, mode of acquisition and various acts of possession exercised over the subject matter of litigation. It is only where the party has succeeded in establishing these facts on a balance of probabilities that the party would be entitled to the claim” 51.0 There is no difficulty at all in saying that in the instant action it is the Plaintiff who mounted the action asking for a declaration of title to the land in dispute and therefore is saddled with the burden of proving his title to the disputed land. 52.0 It is Plaintiff’s case that he bought the land in dispute from John Nii Nmashie Adjetey, Daniel Adzete and Eric Akpor Sowah. The Plaintiff in leading evidence to establish his root of title to the disputed land, tendered in evidence an indenture marked as Exhibit “A”. In the lease dated 1st day of January 2004, Page 10 of 20 it mentioned the names aforementioned as joint owners and customary successors to the late Joseph Okang Adjetey, late Enock Akpor Sowah and late Azaria Adjei Klu original joint owners of the land. 53.0 The Plaintiff also tendered in evidence an application for Land Title Certificate which was marked as Exhibit “B”. The instrument dated 25th day of January 2004 was lodged at the Land Title Registry on the 6th day of January 2010. 54.0 The Plaintiff desirous of proving his title to the land in dispute in his testimony tendered in evidence Exhibit “C” a copy of a search conducted at the Lands Commission in the year 2010 which shows the registration of his grantors documents. 55.0 The result of the search for the purposes says:

- d) “Lease dated 1st January 2004 from John Nmashie Adjete y and others to Nelson Sowah Klu.”
- e) “Judgment dated 13th day of June 2006 in favour of Kle Mu Sum Quarter and Tsie We family (Suit No. L398/2001)” 56.0 PW1 also tendered an indenture marked Exhibit “D” which he claims covers a large tract of land of which the land the subject matter of the instant suit form part. 57.0 This indenture was executed in 1959 between Nii Okang Nmashie III Mankralo of Teshie and his principal elders on one part and the said John Nmashie Adjete y and the two (2) other donating the land so described in Exhibit to them and their successors. And it is from this John Nmashie Adjete y and others that the Plaintiff alleged he purchased or obtained the lease from. 58.0 PW1 again tendered in evidence Exhibit “E” and “F”. Exhibit “E” is a newspaper publication of the Daily Graphic dated 16th November 2001. It is a Public Notice relating to a land situate at Batchonaa (North Teshie) property of J. O. Adjete y, E. A. Sowah and A. A Klu (all deceased) warning any persons or Page 11 of 20 group of persons claiming any interest in the said land and without a valid grant from the present owners to treat himself/ themselves as trespassers and should within 21 days from the date of publication submit in writing particulars of alleged interest and particulars of title deeds. 59.0 Exhibit “F” is a judgment of the Circuit Court dated 28th day of November 2002 presided over by his Honour M. H Logoh. The suit is titled John Nii Nmashie Adjete y & Ors. vrs. Dr. Botchway. Counsel for the Defendants in his written address filed before the Court submitted that “the said Exhibit “E” is a self-serving publication of the Plaintiff’s grantor declaring themselves owners of a parcel of land. It is pertinent to note that publication of a Notice in a Daily Graphic does not confer legal ownership of land. The publication aforesaid has no relation to the land in dispute” 60.0 He also had this to say on Exhibit “F”. “Exhibit “F” is a judgment of a Circuit Court dated 28th November 2002, which said judgment they claim declared Plaintiff’s grantors as owners of the land in dispute. It is instructive to note that the said judgment has no relation to the parties in dispute nor was it against the grantors of either the Plaintiff or the Defendant. The said parties in the said judgment were John Nii Nmashie Akwetey & Anor. Vrs. Dr. Tonway. The evidence given by the Plaintiff aforesaid does not in any way prove his title of ownership to the land in dispute” 61.0 The Plaintiff also in proving his title to the disputed land testified that he holds a valid title to the land through an indenture granted to him by his grantors which he successfully registered at the Lands Commission. It is his contention that his grantors have registered a vast portion of land which includes the land in dispute. 62.0 I must state that registration of land under the Land Registry Act, Act 127 does not confirm a party’s title to land. Section 25 (2) of the Land Registry Act, Act 122 states: “The registration of an instrument constitutes actual notice of the instrument and of the fact of registration of all persons and for all purposes as from the date of registration unless otherwise provided in an enactment.” Page 12 of 20 63.0 In my humble view the registered deed of the Plaintiff serves as actual notice of registration of their instrument and does not by itself confer title on the Plaintiff or his grantor. 64.0 In the Supreme Court case of: - AMUZU V OKLIKAH (1998/99) SCGLR 141 in holding (1) the Court held that the Land Registry Act, 1962 (Act 122) did not abolish the equitable doctrine of notice and fraud neither did it confer on a registered instrument a state guaranteed title.

65.0 The Plaintiff in his testimony to the Court and a witness called by him confirmed that the Plaintiff initiated the process of obtaining title after the registration of the instrument but is yet to be granted title to the land. 66.0 When PW1 on the 23rd day of June 2021 mounted the witness box and was being cross examined by counsel on this issue, this is an excerpt of what transpired. “Q: Are you aware that in 2010 the plaintiff initiated the process of obtaining a land certificate in respect of the land he is claiming in this matter? A: Yes my lord. Q: Are you aware that till date he has not been granted a Land Title Certificate in respect thereof? A: Yes he has not been granted the land title certificate. When the land was plotted for the plaintiff he submitted his documents to Land Title Registry. They wrote back to him to bring his grantors document to Land Title and he did so. Later I got to know that they went far, I do not know what happened and they stopped the process. What happened was that they verified from Lands Commission and they found out that the document has been plotted at Lands Commission. Q: I am suggesting to you that the plaintiff has not been granted a Land Title Certificate over the land in dispute because his grantors do not have title to that land. Page 13 of 20 A: That is absolutely untrue. They have title and it has been plotted with land property no. B2313 at Lands Commission. Q: Are you aware the 3rd defendant has a Land Title Certificate in respect of the portion she occupies on the land in dispute? A: I am not aware but if it is true, due process were not followed because in all land cases the Land Title works closely with Lands Commission so that when you submit your document to Land Title they have to liaise with Lands Commission to find out whether the land you have brought for registration is true. In that if you do not do that and you have the land plotted at Lands Title then it means that you did not follow the due process. When you cross check you will find out that the land has been plotted for somebody already so you will not get Land Title Certificate.” 67.0 On the other hand Rucky Quaye the 3rd Defendant in her testimony told the Court that on or about 1st January 2000 she acquired the land in dispute from the Anagotse Borquaye family and the grant made to her was evidenced by a Deed of lease dated 5th January 2000 and stamped as IRS/140/2005. This deed of lease was marked as Exhibit “4” and tendered in support of her case. 68.0 It is the 3rd Defendant’s testimony that she acquired the land after performing the necessary due diligence which culminated in the grant of the Land Title in her favour. 69.0 That the land was vacant when it was granted to her. 70.0 By Section 119(1) of the Lands Act 2020 Act 1036 states:- “119(1) subject to subsection (2), (3) and (4) and to Section 118, the rights of a registered proprietor of a parcel of land whether acquired on first registration or subsequently or by an order of a Court, are indefeasible and shall be held by the proprietor together with the rights and privileges attaching to the parcel of land free from all other interest and claims. Page 14 of 20 71.0 The question I need to ask is whether the Plaintiff succeeded in leading any credible evidence to discredit or impugn exhibit “5” tendered in evidence by the 3rd Defendant? No shred of evidence was led by the Plaintiff challenging Exhibit “5” tendered. 72.0 This Court was referred to the unreported case of SAANBAYE BASILDE VRS ALHAJI SEIDU MOHAMMED (J4/44/2012) dated 4th day of July 2012 the Court speaking through Dotse JSC held that: “The contention here is that, by the mere fact that Plaintiff has been able to produce a valid Land Title Certificate, and this constitutes prima facie evidence of good title, the Defendant need

to produce very cogent evidence to rebut this presumption. It is interesting to observe that learned counsel for the Defendant in the face of all the proven facts and statutory provisions in PNDCL 152 still contends that the title of the Plaintiff as provided under Sections 43(1) subsection C1, 2, 3 and 4 of PNDCL 152 is not sacrosanct and conclusive and that it can be impugned on grounds of mistake, fraud and some obvious misrepresentation. One should not be making general comments in this case, but specific facts on record and referable to particular instances of mistake, fraud or misrepresentation that can impugn the validity of the Land Title Certificate of the Plaintiff. We have carefully studied the entire record and has not seen any such evidence. The Defendant woefully failed to produce any shred of evidence to establish any such contrary evidence” 73.0 Likewise I was also looking for specific facts on record or instances of mistake, fraud or misrepresentation that can impugn the validity of the land Title Certificate Exhibit “5” tendered in evidence by the 3rd Defendant in support of her case for occupying her portion of the disputed land but I find none. 74.0 It is instructive to note that Plaintiff claim he applied for a Land Certificate in the year 2010 but almost twelve years on line he has not been able to obtain the land certificate with no reason assigned. Page 15 of 20 The Court now pose the question who is in effective possession of the land in dispute? 75.0 The Plaintiff in his evidence to the Court stated that upon the acquisition of the land in dispute he erected four (4) corner pillars and deposited a trip of sand and a trip of stones thereon. 76.0 The 1st Defendant in his testimony also said, after the acquisition of the disputed land from his grantors he went into immediate possession and secured the boundaries by erecting corner pillars on it. He engaged the services of the 2nd Defendant to protect same for him. 77.0 That he has been on the said portion of the land without any let or hindrance from any quarters till the Plaintiff commenced this action. 78.0 In corroborating the testimony of the 1st Defendant on his stay on the disputed land, the 2nd Defendant testified that 1st Defendant went into immediate possession upon the acquisition of the land. And that she assisted the 1st Defendant to secure the boundaries. 79.0 It was her testimony that 1st Defendant constructed a building on the land in dispute and put her in possession as a caretaker in or about 2004. The Evidence Act, 1975 (NRCD 323) gives statutory recognition to possession as a mark of ownership. 80.0 By Section 48(1) of the Act it states:-

- 1) “The things which a person possesses are presumed to be owned by that person.
 - 2) “A person who exercises acts of ownership over property is presumed to be the owner of it”
- 81.0 It is the case of the Plaintiff that the 1st Defendant on or about 2009 forcefully entered a portion of the land in dispute and erected a fence wall on same. Page 16 of 20 82.0 Aside the bare assertion of the Plaintiff that upon the acquisition of the disputed land he erected a corner pillar and put a trip of sand and a trip of stones to secure the land, which assertion the Defendants denied, saying they acquired the land when it was vacant, the Plaintiff did not lead any cogent evidence to prove that in fact he was in possession of the disputed land. 83.0 I have earlier made reference to Section 119 (1) of the Land Act 2020, Act 1036 and SAANBAYE BASILDE KANGBEREE’S CASE (SUPRA) and in the instant case the Court will hold that the production of the Land Title Certificate by the 1st and 3rd Defendants grantor

and the 3rd Defendant raised a presumption of ownership. 84.0 It is also a fact which was not also discredited that the 1st Defendant put up a structure on his portion of the disputed land occupied by the 2nd Defendant which according to the Plaintiff's own testimony 2nd Defendant plies her business and also as caretaker. 85.0 Exhibits 4, 5, 6 and 7 being pictures tendered by the 1st Defendant gives credence to the fact that he is in effective possession of the land. 86.0 The 3rd Defendant in her testimony before the Court proved her possession over the portion of the disputed land by tendering in evidence Exhibit "6" which is a house she had constructed on the land in dispute on or about 2009. 87.0 The testimony of the Plaintiff even confirmed that when he went unto the land there were some people already on the land. 88.0 On the 27th day of April, 2021 this was what ensued when the Plaintiff was being cross examined by counsel for the Defendant. "Q: You are aware the 3rd Defendant claims to have acquired the land in the year 2000 are you not? A: That is not correct. Page 17 of 20 Q: You mean you do not know the case of the 3rd Defendant that she acquired the land in the year 2000? A: What I am aware is that when I got the land, I deposited a trip of sand and stones on the land, I saw that there are some people on the land so I erected "Keep Off Notice" on the land that was the time I saw that they were the occupants on the land. So I took them to Nungua Police Station. By Court: What were they doing? A: They were erecting a fence wall so I reported to the Nungua Police Station." 89.0 The law is settled that a person in possession of land has good title against the whole world except one with a superior title. 90.0 The Plaintiff having failed to adduce credible and cogent evidence to rebut the presumption of ownership in favour of the Defendants that is 1st and 3rd Defendants to the disputed land, this Court cannot make any declaration for him as being the owner of the disputed land. 91.0 The only issue left relevant of consideration is whether or not the Plaintiffs action is statute barred. 92.0 It is the evidence of the Defendants that they have been on the land in dispute for over fifteen (15) years without let or hindrance until the Plaintiff brought the instant action. 93.0 That the evidence on record attest to this fact that they had been in possession of the land well over fifteen (15) years and if at all the Plaintiff has any interest at law or equity that interest is statute barred. 94.0 By Section 10 sub-section (1) and (6) it states:-

- (1) "A person shall not bring an action to recover a land after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or Page 18 of 20 if it first accrued to a person through whom the first mentioned claims to that person."
- (6) "On the expiration of the period fixed by this Act for a person to bring an action to recover land the title of that person to the land is extinguished" 95.0 Counsel for the Defendant made references to two decided cases of the Supreme Court on this issue:-
 - 1) DJIN V MUSAH BAAKO (2007-2008) 1 SCGLR 686 at 699 and
 - 2) ADJETEY ADJEI V NMAI BOI (2013-2014) 2 SCGLR 1474. 96.0 He submitted that the unlikely event that the Plaintiff is able to prove a superior title to that of the Defendants, the Defendants have acquired a right derived from their adverse possession of the land in dispute. The term "adverse possession" was explained by Atuguba JSC in the DJIN'S case as

follows: “The law as we understand it...is that if a squatter takes possession of land belonging to another and remains in possession for 12 years to the exclusion of the owner, that represent adverse possession and accordingly at that end of 12 years the title of the owner is extinguished. That is the plain meaning of the statutory provisions, which I have quoted and no authority has been cited to us. The simple question is; did the squatter acquire and remain in exclusive possession? 97.0 In the ADJETEY ADJEI’S case Sophia Adinyira JSC in explaining adverse possession had this to say:- “Adverse possession must be open, visible and unchallenged so that it gives notice to the legal/paper owner that someone was asserting a claim adverse to his. And Section 10 of the Limitation Act, 1972(NRCD 54) has reflected substantially the provisions of the English statute of Limitation and the Common Law. Under the present law, the person claiming to be in possession must show either (i) discontinuance by the paper owner followed by possession; or (ii) dispossession or as it was sometimes was called “ouster” of the paper owner clearly possession concurrent with the paper owner was Page 19 of 20 sufficient. If a squatter took possession of land belonging to another and remained in possession for 12 years to the exclusion of the owner that will represent adverse possession and accordingly at the end of twelve (12) years the title of the owner would be extinguished. In the circumstances, assuming the Defendants title was bad, their adverse possession of the land for a period of twelve (12) years and over, had conferred on them possessory rights by virtue of Section 10 of the Limitation Act 1972 (NRCD 54). The interest acquired by prescription or under the Limitation Act 1972 (NRCD

- 54) was an overriding interest, which was further protected under the land Title Registration Act 1986 (PNDCL 152)” 98.0 The Defendants in the Court’s view have led credible evidence which establishes their title to the land in dispute. They have also proffered evidence to show that they have been in possession of the land in dispute for over 15 years without any let or hindrance from any Quarter. The Plaintiff in his testimony indeed confirms their adverse possession by referring to it as “illegal possession”. It is my humble view that assuming without admitting the Plaintiff has title to the land in dispute, which from the evidence on record he did not have, his action against the Defendant would have been statute barred. 99.0 On the reasons assigned above I proceed to dismiss all the reliefs sought for by the Plaintiff as they remained unproven. Costs of GH¢30,000.00 is awarded in favour of the 1st and 3rd Defendants. Cost, if paid should be shared equally between them. COUNSEL: (SGD) ALEX OWUSU-OFORI (JA) LONGINUS CHINEDU NWAEHIE FOR THE PLAINTIFF- PRESENT ALFRED BANNERMAN-WILLIAMS JNR. WITH JANE OPOKU FOR THE DEFENDANTS PRESENT Page 20 of 20

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