IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE (LAND COURT '2') HELD IN ACCRA ON THURSDAY THE 28TH DAY OF MARCH 2024, BEFORE HIS LORDSHIP K. A. GYIMAH, JUSTICE OF THE HIGH COURT

SUIT NO. FAL/950/2014

BENJAMIN AMARTEY MENSAH - PLAINTIFF

VRS.

1. REGIMANUEL-GRAY LTD.
2. LANDS COMMISSION } **- DEFENDANTS**

JUDGMENT

Introduction

This suit was originally pending before another High Court at the Law Court Complex where trial had virtually concluded. Following a petition by the plaintiff to the Chief Justice, the case was transferred to me to conclude. The 1st defendant who had filed only one witness statement and whose witness had duly testified brought an application for leave to call an additional witness. I refused the said application and the 1st defendant lodged an appeal at the Court of Appeal and followed it up with a motion for Stay of Proceedings which I refused. A repeat application in the Court of Appeal was similarly refused in the following terms:

> *"After listening to Counsel on both sides and also looking at the affidavits and other annexures filed, we are of the view that the application be refused. We think the trial judge was right in his ruling that the grant of this application will prejudice the Plaintiff's case. The application we think is an attempt to fill in gaps after the cross-examination of their own witness. The Applicant has not demonstrated any exceptional circumstances that will merit the grant of the application. Application is therefore dismissed."*

Plaintiff's case

The original writ in this suit was issued on 9th September 2014 and it was amended a number of times with the leave of the court with the last amendment on record having been filed on 18th April 2019. Per the said writ of summons, the plaintiff claimed the following reliefs against the defendants:

(a) *A declaration of title to the land enclosing an approximate area of 96.21 acres (38.94 hectares) situate, lying and being at Tesa (East Airport) and shewn edged pink on site plan dated 2nd February 1993.*

(b) *A declaration of title to all that piece and parcel of land totaling 61.46 acres of land described in paragraphs 28 and 29 of the amended statement of claim.*

(c) *An order for recovery of possession of the plaintiff's land as described in relief (a) above OR in the alternative recovery of the market value of land estimated at Eighteen Million, Seven Hundred and Twenty Thousand Ghana Cedis (GH₵18,720,000.00) per valuation report dated 10th September 2012 prepared by J. Bampo Barnafo Consultancy Services together with interest up to the date of final payment or recovery of the market value of land as at the date of judgment.*

(d) *An order for the recovery of possession of the plaintiff's land as described in relief (b) above from the 1st defendant, its assigns and persons claiming through and under it, however described.*

(e) *An order directed at the 2nd defendant to cancel and expunge from its records the Land Title Certificate with registration number GA 12369 issued in the name of the 1st defendant.*

(f) *An order of perpetual injunction restraining the 1st defendant, its assigns, privies, workmen, servants and persons claiming through and under them, howsoever described from entering and conducting any works on plaintiff's land as described in relief (b).*

(g) *General damages for trespass.*

(h) *Cost including litigation expenses.*

(i) *Any other reliefs as this honourable court deems meet.*

The plaintiff describes himself as the present head of the Numo Kofi Anum family of Tesa. It is the case of the plaintiff that sometime in December 1992, the 1st defendant approached the family for a grant of a portion of their family land situate at Tesa (East Airport). The plaintiff asserts that after initial negotiations, the parties entered into a Memorandum of Understanding (MOU) where the plaintiff agreed to lease land measuring 100 acres more or less to the 1st defendant for estate development. This led to the 1st defendant paying an amount of money for development fee for the first 20 plots and the payment of ground rent and professional fees of the plaintiff's solicitor.

The plaintiff asserts that after a series of reviews, the plaintiff's solicitor in August 1993 submitted a revised draft lease for the 1st defendant's attention and in June 1994, copies of the executed lease were sent to the 1st defendant for onward registration but the plaintiff did not receive a copy of the executed lease. Prior to the forwarding of the executed lease to the 1st defendant, in August 1993, the 1st defendant had been given a right of entry onto the land, the subject matter of the lease.

The plaintiff asserts that the Nungua Stool later made adverse claims to the land in dispute and a meeting at the Greater Accra Regional Coordinating Council could not resolve the impasse. The plaintiff had however earlier sued the Nungua Stool and others over the land in dispute to assert his family's title. The plaintiff later wrote through his lawyer to the 1st defendant to withdraw the lease pending the determination of the adverse claims over the land and this was duly responded to by counsel for the 1st defendant thereby ending the relationship between the plaintiff and the 1st defendant.

It is the case of the plaintiff that the family was successful in the suit against the Nungua Stool and others first at the High Court, then at the Court of Appeal and finally at the Supreme Court. The plaintiff duly communicated the outcome of the decisions

to the 1st defendant with copies of the decisions attached for the 1st defendant's necessary action. A copy of a valuation report on the land in dispute was also forwarded to the 1st defendant but apart from the Court of Appeal judgment that the 1st defendant acknowledged receipt, the 1st defendant did not react to the said judgments and valuation report.

The plaintiff asserts that although the 1st defendant is aware of the judgments of the superior courts declaring the plaintiff's family as the owner of the land, the 1st defendant has failed to negotiate with the plaintiff's family to pay the economic value for the land in dispute but has rather gone ahead to fence an additional 61.46 acres of the plaintiff's family land and been issued with land certificate over the said parcels of land belonging to the plaintiff's family.

It is the plaintiff's case that it has a valid land certificate over the land in dispute covering an approximate area of 998.990 acres which comprises 918.24 acres declared in their favour by the Supreme Court and an additional 80.65 acres which was released to the plaintiff's family by the Ghana Armed Forces and subsequently affirmed in a judgment of the High Court in **Suit No. LD/0287/2016; Numo Sanshie Family & 2 Ors. v. Kofi Anum Family of Tesa & Anor.** The plaintiff thus asserts that the 1st defendant has unjustly enriched itself at the plaintiff's expense thus the present action claiming the reliefs endorsed on the writ of summons.

1st defendant's defence

In its amended statement of defence filed on 15th March 2019, the 1st defendant, while generally denying the assertions of the plaintiff in the statement of claim, however made a number of admissions. It is the case of the 1st defendant that by a lease dated 19th January 1993, the plaintiff granted the 1st defendant a lease covering 100 acres of the land in dispute. The 1st defendant made payment for the first 20 plots and also paid ground rent and professional fees to the plaintiff. It went into possession of the land

in dispute after having received a right of entry on 27th August 1993 and has made huge investments on the land.

The 1st defendant asserts that it later submitted its documents to the Lands Commission for registration but it received information from the Lands Commission about some earlier conflicting transactions on the land in dispute all of which it brought to the plaintiff's attention. These earlier conflicting transactions also led to the intervention of the Greater Accra Regional Coordinating Council.

The 1st defendant asserts that it received a letter dated 16th November 1994 from plaintiff's lawyers where they sought to withdraw the lease the parties had executed in 1993 but they rejected the plaintiff's claim in their reply stating that there had not been any breach of the lease that was entered into between them and the plaintiff.

Furthermore, the huge investments they had made on the land did not make withdrawal of the lease an option. The 1st defendant however asserts that they had always been prepared to sit down with the plaintiff to resolve all outstanding issues but this has partly been hampered by the difficulty of who to deal with, as different groups of people have been approaching them claiming to be representing the plaintiff's family. The 1st defendant therefore asserts that the plaintiff is not entitled to his claim before the court.

Issues for trial

After perusing the record, I have identified an application for directions that was filed on 18th March 2015 and additional issues filed on 13th May 2015. The record of the court further reveals that another application for directions was filed on 23rd May 2018 and this was the direction that was adopted by the court, differently constituted, on 6th June 2018. The said directions that were adopted by the court are as follows:

i. *Whether or not the plaintiff is the owner of the land described in reliefs (a & b) of the writ of summons by virtue of the judgment of this court in Suit No. L383/89 and land title certificate with registration number GA 2811.*

ii. *Whether or not the defendant has fenced an additional 61.46 acres of land belonging to the Plaintiff's family.*

iii. *Whether or not the land title certificates numbered GA 12369 and GA 18289 were issued to the defendant in error in view of prior issuance of the plaintiff family land title certificate with registration number GA 2811.*

iv. *Whether or not the plaintiff's family are entitled to their claim.*

v. *Any other issue arising from the pleadings.*

Burden of Proof

It is settled under our jurisprudence that a party who asserts assumes the burden of proving same. The burden of producing evidence as well as the burden of persuasion is cast on such a party and the standard of proof required to discharge the burden of persuasion in civil matters is one of "preponderance of the probabilities". Sections 12(1) and (2) and 11(4) of the Evidence Act, 1975 (NRCD 323) are the statutory provisions that deal with the burden of proof and the standard of proof.

These statutory provisions have been the subject of discussion in a number of decisions in our courts. Some of the cases on this point are ***Takoradi Flour Mills v. Samir Faris [2005-2006] SCGLR 882***, and ***In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420,*** amongst others.

It is also one of the duties of the court to assess all the evidence on record in order to determine in whose favour the balance of probabilities would lie. This duty has been explained in the case of ***In re Presidential Election Petition (No. 4) Akuffo-Addo & Ors. v. Mahama & Ors. [2013] SCGLR (Special Edition) 73,*** where the Supreme Court held at page 322 of the report as follows:

"Our understanding of the rules in the Evidence Decree, 1975 on the burden of proof is that in assessing the balance of probabilities, all the evidence, be it that of the plaintiff, or the defendant, must be considered and the party in whose favour the balance tilts is the person whose case is the more probable of the rival versions and is deserving of a favourable verdict."

Summary of evidence

The plaintiff testified through his lawful attorney Daniel Markwei Marmah who described himself as a principal elder of the Numo Kofi Anum family of Tesa. The plaintiff did not call any additional witness. The plaintiff tendered into evidence the following exhibits:

i. Exhibit A – Power of Attorney dated 27th August 2014 from Benjamin Amartey Mensah to Daniel Markwei Marmah.
ii. Exhibit B – Letter dated 16th December 1992 from William O. Boafo to Mr. E. A. Accam.
iii. Exhibit C – Another Letter dated 16th December 1992 from William O. Boafo to Mr. E. A. Accam.
iv. Exhibit D – Memorandum of Intention to Grant a Lease executed between the Numo Kofi Anum family of Tesa and Teshie of the one part and Regimanuel-Gray Ltd of the other part.
v. Exhibit E – Site plan dated 12th February 1993 covering an approximate area of 96.21 acres in the name of Regimanuel-Gray Ltd.
vi. Exhibit F – Letter dated 23rd April 1993 from Yilo Chambers to W. O. Boafo Esq.
vii. Exhibit G – Letter dated 13th August 1993 from William Ofori Boafo to Mr. E. A. Accam.
viii. Exhibit H – Letter dated 19th August 1993 from the Solicitors of Numo Kofi Anum family to W. O. Boafo Esq.

ix. Exhibit J – Letter dated 20th August 1993 from William Ofori Boafo to Mr. E. A. Accam.

x. Exhibit K – Letter dated 27th August 1993 from Yilo Chambers to W. O. Boafo Esq.

xi. Exhibit L – Letter dated 29th November 1993 from Solicitors of Numo Kofi Anum family to W. O. Boafo Esq. with a final draft of a lease between the Numo Kofi Anum family and Regimanuel-Gray Ltd attached as Exhibit L1.

xii. Exhibit M – Right of Entry granted by the Numo Kofi Anum family to Regimanuel-Gray Ltd.

xiii. Exhibit N – Letter dated 2nd September 1993 from Onimpa Akuoko & Company to Mr. E. A. Accam.

xiv. Exhibit P – Letter dated 24th December 1993 from Regimanuel-Gray Ltd to Mr. E. A. Accam with two cheque request vouchers all dated 23rd December 1993 attached as Exhibits P1 and P2.

xv. Exhibit Q – Letter dated 20th January 1994 from Yilo Chambers to W. O. Boafo Esq.

xvi. Exhibit S – Cheque Request Voucher dated 2nd February 1994.

xvii. Exhibit T – Letter dated 1st November 1994 from the Greater Accra Regional Coordinating Council to some identified personalities and entities.

xviii. Exhibit U – Letter dated 16th November 1994 from Yilo Chambers to Regimanuel-Gray Ltd.

xix. Exhibit V – Letter dated 28th November 1994 from William O. Boafo to Mr. E. A. Accam.

xx. Exhibit W – Letter dated 6th June 1995 from E. A. Accam Esq. to Regimanuel-Gray Ltd.

xxi. Exhibit X – Letter dated 15th February 2010 from Yilo Chambers to Regimanuel-Gray Ltd.

xxii. Exhibit Y – Judgment of Dotse JSC sitting as an additional High Court delivered on 21st December 2009 in Suit No. L383/89 – Nii Mate Tesa & 5 others v. Nuumo Nortey Adjeifio & 6 others with a judgment plan attached as Exhibit Y1.

xxiii. Exhibit Z – Judgment of the Court of Appeal dated 19th April 2012 in Civil Appeal No. H1/9/2012 – Numo Nortey Adjeifio & 2 others v. Nii Mate Tesa & 5 others.

xxiv. Exhibit AA – Letter dated 25th July 2012 from E. A. Accam Esq. to Regimanuel-Gray Ltd.

xxv. Exhibit AB – Letter dated 16th August 2012 from Regimanuel-Gray Ltd. to E. A. Accam Esq.

xxvi. Exhibit AC – Letter dated 23rd June 2014 from E. A. Accam Esq. to Regimanuel-Gray Ltd.

xxvii. Exhibit AD – Valuation Report prepared by J. Bampo Barnafo.

xxviii. Exhibit AE – Judgment of the Supreme Court dated 15th May 2014 in Civil Appeal No. J4/44/2013 – Nii Mate Tesa & 5 others v. Numo Nortey Adjeifio & 6 others.

xxix. Exhibit AF – Land Certificate No. GA 2811 dated 7th August 1992 in the name of Numo Kofi Anum family of Teshie.

xxx. Exhibit AG – Land Certificate No. GA 2811 dated 15th October 2014 in the name of Numo Kofi Anum family of Accra.

xxxi. Exhibit AH – Judgment of Amo Yartey J. dated 6th June 2018 in Suit No. LD/0287/2016 – Numo Sanshie family & 2 others v. Kofi Anum family & another.

xxxii. Exhibit AJ – Letter dated 12th February 1990 from Deputy Director of Legal Services, Armed Forces to the Lands Commission with a site plan attached as Exhibit AJ 1.

xxxiii. Exhibit AK – A document dated 9th January 2018 with the heading 'Schedule of Numo Kofi Anum Family' with a site plan attached.

xxxiv. Exhibit AL – Another document dated 9th January 2018 with the heading 'Schedule of Numo Kofi Anum Family' with a site plan attached.

xxxv. Exhibit AM – A further document dated 9th January 2018 with the heading 'Schedule of Numo Kofi Anum Family' with a site plan attached.

The 1st defendant testified through its Head of Legal and Administration Isaac Achiampong. The 1st defendant did not call any additional witness. The 1st defendant tendered into evidence the following exhibits:

i. Exhibit 1 – Letter dated 27th August 1993 from E. A. Accam to W. O. Boafo Esquire.
ii. Exhibit 2 – Letter dated 19th August 1993 from E. A. Accam to W. O. Boafo Esquire.
iii. Exhibit 3 – Letter dated 13th January 1993 from E. A. Accam to W. O. Boafo Esquire.
iv. Exhibit 4 – Invoice dated 16th June 1993 from M. K Anim Ayeko to Regimanuel-Gray Ltd.
v. Exhibit 5 – Letter dated 11th August 1993 from Regimanuel-Gray Ltd to William Ofori Boafo.
vi. Exhibit 6 – Letter dated 24th December 1993 from Regimanuel-Gray Ltd to Mr. E. A. Accam.
vii. Exhibit 7 – Letter dated 15th August 1994 from the Greater Accra Regional Administration to Regimanuel-Gray Ltd.
viii. Exhibit 8 – Letter dated 28th November 1994 from William O. Boafo to Mr. E. A. Accam.
ix. Exhibit 9 – Judgment of the Court of Appeal dated 19th April 2012 in Civil Appeal No. H1/9/2012 – Numo Nortey Adjeifio & 2 others v. Nii Mate Tesa & 5 others.
x. Exhibit 10 – Acknowledgment slip from the Lands Commission date 9th April 2019 with a receipt attached as Exhibit 10A.
xi. Exhibit 11 – Service Bill from the Lands Commission dated 8th April 2019.
xii. Exhibit 12 – Copy of Entry of Judgment in Suit No. LD/0424/2017 – Ransford Addoquaye Addotey & 2 others v. Falcon Crest Investment Ltd. & 2 others.
xiii. Exhibit 13 – Copy of Proof of Service of Entry of Judgment in the suit in Exhibit 12 on Ransford Addoquaye Addotey.

xiv. Exhibit 14 – Copy of Proof of Service of Entry of Judgment in the suit in Exhibit 12 on Nii Laryea Botwe II.

xv. Exhibit 15 – Copy of Proof of Service of Entry of Judgment in the suit in Exhibit 12 on King Odaifio Welentsi.

xvi. Exhibit 16 – Copy of an order for leave to issue Writ of Possession in the suit in Exhibit 12.

xvii. Exhibit 17 – Copy of an order of variation in the suit in Exhibit 12.

xviii. Exhibit 18 – Copy of Writ of Possession issued in the suit in Exhibit 12.

xix. Exhibit 19 – Copy of Praecipe of Writ of Possession in the suit in Exhibit 12.

xx. Exhibit 20 – Letter dated 20th December 2017 from the Registrar of the High Court, Land Division to the Deputy Judicial Secretary.

xxi. Exhibit 21 – Letter dated 4th January 2018 from the Deputy Judicial Secretary to the Director General, Ghana Police Legal Directorate.

xxii. Exhibit 22 – Letter dated 9th January 2018 from the Ghana Police Director General for Legal and Prosecutions to the Greater Accra Regional Commander of the Ghana Police Service.

xxiii. Exhibit 23 – Certificate of Execution in the suit in Exhibit 12.

xxiv. Exhibit 24 – Judgment of K. A. Ofori-Atta J dated 13th October 2017 in Suit No. FT(IV)8/2005 – Sadac Builders Ltd & another v. Regimanuel-Gray Ltd and 5 others.

xxv. Exhibit 25 – Letter dated 30th June 2016 from Ing. Surv. Samuel Larbi Darko.

xxvi. Exhibit 26 – Letter dated 23rd September 2020 from Numo Kofi Anum Tesa family to Desjoyaux Pools.

I will proceed to address the issues that were set down for trial.

Issue 1 – Whether or not the plaintiff is the owner of the land described in reliefs (a & b) of the writ of summons by virtue of the judgment of this court in Suit No. L383/89 and land title certificate with registration number GA 2811.

Issue 2 – Whether or not the defendant has fenced an additional 61.46 acres of land belonging to the Plaintiff's family.

I will deal with issues 1 and 2 together as I will have to rely on similar facts and analysis to come to my conclusions. The plaintiff's relief (a) has to do with the parcel of land measuring 96.21 acres which the plaintiff initially granted to the defendant and relief (b) has to do with an additional parcel of land measuring 61.46 acres which the plaintiff asserts the 1st defendant has walled without its consent. The said 61.46 acres according to the plaintiff, comprises three different parcels of land measuring 6.15 acres, 23.95 acres and 31.36 acres all aggregating to 61.46 acres.

From the pleadings of the parties, it is not in doubt that the plaintiffs' family has a judgment covering a greater portion of the land in dispute which began from the High Court and ended in the Supreme Court. Per paragraphs 22, 23 and 24 of the statement of claim, counsel for the plaintiff forwarded copies of the said judgments to the 1st defendant. These paragraphs were admitted by the 1st defendant in its statement of defence. The said admission therefore confirms that the plaintiff has a judgment covering portions of the land in dispute. There was no need for the plaintiff to lead evidence in respect of the said judgments but the plaintiff painstakingly did so.

In his evidence in chief before this court, the plaintiff's attorney Daniel Markwei Marmah tendered into evidence copies of the various judgments as exhibits Y, Z and AE. It is of interest to note that the 1st defendant also tendered a copy of the Court of Appeal judgment into evidence as Exhibit 9. From the said judgments, the plaintiff's family was declared the owner or 918.24 acres of land situate in Tesa and this is also confirmed by the judgment plan which was attached to exhibit Y. From the said exhibits therefore, it is not in doubt that the plaintiff's family is the owner of 918.24 acres of land situate in Tesa.

It must be noted however that the present issue does not only deal with the judgments but it also deals with the land certificate of the plaintiff. It should usually be the case

that if the plaintiff has been declared as the owner of 918.24 acres of land, then the land certificate the plaintiff should be relying on should cover the said 918.24 acres. The land certificate the plaintiff is relying on, a copy of which was admitted in evidence as exhibit AG however covers an area of 998.890 acres which is 80.65 acres more or less, larger than the size of land declared in favour of the plaintiff's family in the said judgments.

Per the pleadings of the plaintiff, the said 80.65 acres covers land which was released to the family by the Ministry of Defence and later confirmed in the judgment of this court, differently constituted, in **Suit No. LD/0287/2016**. The said additional 80.65 acres has however been challenged by the 1st defendant through the evidence led in this court and also through the address filed by counsel for the 1st defendant.

I must state that this is not the first time that this issue about the additional 80.65 acres of land has surfaced in proceedings before the court. The plaintiff has referred to the suit in **LD/0287/2016**. The said issue has also reared its head in other suits such as ***Suit No. IRL/73/10 dated 31st July 2015 – Theophilus Teiko Tagoe & Anor. v. Dr. Prempeh & Anor.*** and ***Stephen Adusei-Boateng & Anor v. Kwow Richardson; Suit No. FAL/43/2013 [2017] DLHC 16549***. In ***Theophilus Teiko Tagoe v. Dr. Prempeh,*** Baah J. (as he then was) held on this issue as follows:

> *"Indeed, the 2nd defendant tendered judgments from the High Court to the Supreme Court vindicating the title of the family over Tesa land. The judgments ... indeed held that Tesa lands belong to the Kofi Anum family. That is not a matter for disputation. The judgments are however clear that they affect Tesa lands. They did not extend to Adjirigano lands. ...* ***The Court of Appeal and the Supreme Court did not add to or subtract from the fact that the 2nd defendant's lands are at Tesa and that the total size is 918.24 acres."*** [Emphasis mine.]

When I was faced with a similar issue in the case of ***Stephen Adusei-Boateng v. Kwow Richardson (supra)***, a judgment I delivered on 20th October 2017, after having reviewed some of the decisions on the subject, I held as follows:

> *"Exhibits 2, 4 and M which have been the trump card of the defendant in this court declared a total land area of 918.24 acres in favour of the Numo Kofi Anum family. It is worthy to note that the first Land Certificate of the Numo Kofi Anum family with number GA 2811 issued on 7th August 1992 was cancelled by the Court of Appeal in exhibit M. This certificate was in respect of land measuring 998.890 acres. The Court of Appeal in exhibit M held that the certificate was issued during the pendency of the suit and it was thus improper and the same was thus cancelled. At the end of the trial, the Court only declared an area of 918.24 acres in favour of the Numo Kofi Anum family. This implies that they could not prove title to the whole of the 998.890 acres that was initially stated in the cancelled certificate. After having been adjudged by the court to own a total area of 918.24 acres, one would have thought that in going to register the said judgment, the certificate would have covered the actual area adjudged by the court to have been validly proved by them. Surprisingly however, the family went to the Registration Division of the Lands Commission and succeeded in getting the Division on 15th October 2014 to re-issue the cancelled certificate with the original acreage of 998.890 acres which is in evidence as exhibit 5. It beats the mind of the court how the Numo Kofi Anum family which has been happily waving the said judgments will go and register something more in excess of what the courts rightly held belonged to them. It is this attempt at increasing their land size through clandestine means that in my assessment has led to a multiplicity of suits in this area."*

On the issue of the Ministry of Defence having released part of the land to the plaintiff's family which land comprised the 80.65 acres, I held in the case of ***Stephen Adusei-Boateng v. Kwow Richardson (supra)*** as follows:

"In his evidence in chief before this court, the representative of the Numo Kofi Anum family Daniel Markwei Marmah testified to the effect that the acreage of their land increased as a result of some lands being released by the military to four villages including the Numo Kofi Anum family. ... In any event, the military cannot compulsorily acquire lands and in the same vein any land that has been compulsorily acquired by the government for use by the military can only be released to the original owners by the government usually through a similar Executive Instrument as the one that acquired that land or when a later instrument that is inconsistent with the earlier instrument is enacted. Moreover, compulsorily acquired lands per Article 257 of the Constitution of Ghana, 1992 are public lands and they are managed by the Lands Commission. Any such release of public lands to the original owners must invariably involve the Lands Commission. When the Supreme Court was called upon to deal with a similar issue in ***Nii Nortey Omaboe vs. Attorney-General and Lands Commission [2005-2006] SCGLR 579****, the Court speaking through Professor Ocran J.S.C. had this to say at page 600 of the report:*

> *'The second landholding policy arrangement concerns those lands that were once stool lands, but which had been vested at some point in the President or Government, without any subsequent de-vesting in favour 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****.' [Emphasis mine].*

Although this case had to do with the vesting of stool lands, the ratio applies, mutatis mutandis, to the compulsory acquisition of lands including family lands. No evidence was led before the court on the enactment of an instrument releasing lands to the Numo Kofi Anum family. There was also no evidence

before the court on the involvement of the Lands Commission to the release of lands to the Numo Kofi Anum family."

This is a decision I gave as a High Court judge which I still am, and it is therefore coming from a court of coordinate jurisdiction and by law it is not binding on this court. I must state however that the import of the said decision is very relevant to the determination of the issues before this court that is why I have taken the liberty to quote extensively from that decision. Similarly, in the present case, no evidence has been led with respect to the enactment of any legal instrument releasing the said 80.65 acres to the Numo Kofi Anum family of Tesa. No evidence has also been led before the court as to the involvement of the Lands Commission in any such release if it ever happened.

It must further be noted that in the case of ***Theophilus Teiko Tagoe v. Dr. Prempeh (supra)***, the defendants appealed to the Court of Appeal and later to the Supreme Court. The Supreme Court delivered its judgment in the appeal on 26th April 2023 and the said judgment was referred to by counsel for the 1st defendant in his address. In the judgment, the Supreme Court noted that there is an issue with the said additional 80.65 acres that was added to the acreage of the plaintiff's family land as declared in their favour. The Supreme Court speaking through Asiedu JSC noted as follows:

"In respect of the issue of the identity of land raised by Counsel for the Appellants herein, the learned trial judge found as a fact which was affirmed by the Court of Appeal that, the 2nd Defendant, largely, relied on the judgments in suit no. L383/89 which was entered at the High Court and affirmed by the Court of Appeal and the Supreme Court .... The trial judge found that in suit number L383/89, the 2nd Defendant herein was declared to be the owner of Tesa lands measuring 918.24 acres. The trial judge again found as a fact that the Court of Appeal as well as the Supreme Court affirmed the judgment in L383/89. However, instead of 918.24 acres declared in their favour, the 2nd

Defendant had added more acreage of land to what was declared in their favour. At page 482 volume 1 of the record, the trial judge observed that

> *'instead of the 918.24 acres, the 2nd Defendant's family coerced the Lands Commission to issue them a land certificate covering 998.890 acres. Strangely, the 2nd Defendant's land title certificate has a site plan that does not tally with their judgments acreage wise. Nobody therefore knows which direction the capture of lands was effected. There is clearly something fishy. None of the site plans tendered by the 2nd Defendant date-wise and acreage-wise accords with the acreage granted by the Courts.'*

The Court appointed surveyor confirmed the finding that the acreage of land declared in favour of the 2nd Defendant herein in suit number L383/89 is not what had been captured in the land title certificate tendered by the 2nd Defendant. ... ***Counsel for the Defendants/ Appellants submitted that 'the claim that the 2nd Defendant's family coerced the Lands Commission to issue their land title certificate is not supported by the evidence on record.' We find however that far from Counsel's assertion, the land certificate tendered by the 2nd Defendant/ Appellant herein which can be found on page 93 volume 2 of the record shows that the land which was registered in favour of the 2nd Appellant was 998.980 acres. This confirms the observation by the surveyor as well as the findings made by the learned trial judge and concurred in by the Court of Appeal*** *to the effect that the land declared in favour of the 2nd Defendant/ Appellant had overlapped into the land known as the Adjiringano lands."* [Emphasis mine.]

The plaintiffs are relying on a High Court decision as the basis for the additional 80.65 acres. The said decision is however coming from a court of coordinate jurisdiction which is not binding on this court. There are other conflicting High Court decisions which I have referred to above and the reasoning in the said conflicting High Court decisions is supported by the Supreme Court decision in ***Theophilus Teiko Tagoe v. Dr. Prempeh (supra)***. The said Supreme Court decision casts doubt on the

genuineness of the acquisition of the said 80.65 acres by the Numo Kofi Anum family of Tesa as captured above. That being the case, this court being a court which has to follow decisions of the Supreme Court on the law should tread cautiously with respect to the said additional 80.65 acres which forms part of the land certificate of the plaintiff.

On that score, I will therefore hold that the plaintiff's family is the owner of the parcel of land described in reliefs (a and b) of the writ of summons in so far as they form part of the 918.24 acres of land declared in their favour by the courts. Any part of the land that however falls outside the 918.24 acres as declared in favour of the plaintiff's family, per the discussions above and on a balance of probability, I am unable to make a determination in favour of the plaintiff.

The next question is the size of the parcel of land in reliefs (a and b) that forms part of the 918.24 acres declared in favour of the plaintiff by the courts and which forms part of their judgment plan. From the pleadings, the plaintiff gave land measuring 96.21 acres to the 1st defendant and this parcel of land is clearly edged on the composite plan with the colour brown. From the composite plan, a small portion of that land falls outside the judgment plan of the plaintiff.

In his address, counsel for the 1st defendant asserted that the portion that falls outside the judgment plan covers an approximate area of 5.2556 acres. I do not know how counsel came by that measurement but to take a conservative approach, I will accept the said acreage as the acreage of land forming part of the original grant by the plaintiff to the 1st defendant but which falls outside the judgment plan of the plaintiff. When one subtracts the said 5.2556 acres from the original grant of 96.21 acres, one gets a total of 90.9544 acres of land comprised in the original grant to the 1st defendant which falls within the judgment plan of the plaintiff. Thus, for the land described in relief (a) the plaintiff is the owner of 90.9544 acres that falls within the judgment plan of the plaintiff.

The plaintiff has further asserted that the 1st defendant has fenced additional portions of plaintiff's land covering a total acreage of 61.46 acres which comprises three different parcels of land measuring 6.15 acres, 23.95 acres and 31.36 acres. The evidence on record does not show fencing of any land belonging to the plaintiff by the 1st defendant but the evidence on record, especially the composite plan, reveals that portions of the 61.46 acres of land the plaintiff is claiming 1st defendant has fenced fall within the judgment plan of the plaintiff.

From the composite plan, the land that is covered by the 1st defendant's land certificate covering an approximate area of 262.369 acres is edged green. Portions of the land edged green on the composite plan, though not falling within the original grant made by the plaintiff to the 1st defendant, however fall within the judgment plan of the plaintiff. From the composite plan, the 61.46 acres of land as described by the plaintiff all fall within the 262.369 acres of land that is covered by the 1st defendant's land certificate. Though there is no evidence of fencing before the court, the fact that the 1st defendant's land certificate covers the said 61.46 acres means that the 1st defendant is asserting title over the said 61.46 acres. Thus, if the whole of the 61.46 acres falls within the judgment plan of the plaintiff, it will be an issue as the 1st defendant will be asserting a title contrary to the plaintiff's title over the said parcels of land.

From the composite plan, the 6.15 acres of land which the plaintiff asserts the 1st defendant has walled, falls within the portion edged green as covered by the 1st defendant's certificate plan. The said 6.15 acres which has been noted on the composite plan as A1, A2, A3 and A4 also falls squarely within the judgment plan of the plaintiff.

With respect to the 31.36 acres of land the plaintiff asserts the 1st defendant has walled, the said parcel of land is depicted on the composite plan by the numbers 1 to 21. From the composite plan, a larger portion of the 31.36 acres of land falls within the plaintiff's judgment plan. A careful look at the composite plan will reveal that the portion of the 31.36 acres which falls outside the plaintiff's judgment plan

substantially coincides with the 5.2556 acres of the land that falls outside the plaintiff's judgment plan. To take another conservative approach, I will take it that the portion of the 31.36 acres that falls outside the plaintiff's judgment plan is 5.2556 acres. When you subtract the said 5.2556 acres from the 31.36 acres, you get an acreage of 26.1044. Thus, 26.1044 acres of land out of the 31.36 acres fall squarely within the plaintiff's judgment plan.

The next acreage that makes up the 61.46 acres is the parcel of land measuring 23.95 acres. The said 23.95 acres is depicted on the composite plan as A, B, C, D and E and it falls within the certificate plan of the 1st defendant. A careful look at the composite plan however reveals that the said 23.95 acres fall outside the judgment plan of the plaintiff. Thus, out of the additional 61.46 acres of land that the plaintiff is claiming and over which the plaintiff asserts the 1st defendant has fenced, it is only 6.15 acres and 26.1044 acres, making a total of 32.2544 acres that fall within the judgment plan of the plaintiff. Thus, for the land described in relief (b) the plaintiff is the owner of 32.2544 acres that fall within the judgment plan of the plaintiff and it is the said parcel of land that, from the composite plan, the 1st defendant has asserted a rival title over.

The analysis made above so far has established that the 1st defendant is in possession of land measuring 90.9544 acres and 32.2544 acres which parcels of land fall squarely within the judgment plan of the plaintiff. When one aggregates the said parcels of land, you get a total acreage of 123.2088 of land comprised in the judgment plan of the plaintiff but which is in the possession of the 1st defendant. The conclusion on these issues is that the plaintiff is the owner of land measuring 918.24 acres as determined by the courts and out of that, the defendant is on 123.2088 acres comprising 90.9544 acres out of the original 96.21 acres granted by the plaintiff, 6.15 acres outside the original grant to the north of the grant, and another 26.1044 acres outside the original grant to the east of the grant.

Issue 3 – Whether or not the land title certificates numbered GA 12369 and GA 18289 were issued to the defendant in error in view of prior issuance of the plaintiff family's land title certificate with registration number GA 2811.

From the composite plan, the land title certificate of the 1st defendant covering an approximate area of 262.39 acres is numbered GA 13971 and not the numbers that were attributed to it in the issue under consideration. Counsel for the plaintiff admitted the said error in his address filed on behalf of the plaintiff. I will therefore proceed with the correct number of the land certificate of the 1st defendant as captured above.

Though the plaintiff initially put the 1st defendant on a portion of the land, the 1st defendant's land certificate does not derive its source from any documentation from the plaintiff. It however derives its source from a grant by the Nungua Stool. It has already been held above that the land certificate of the 1st defendant covers part of the plaintiff's land measuring 123.2088 acres. The said 123.2088 acres is land which has been declared by the Supreme Court to belong to the plaintiff's family and over which the plaintiff's family has a judgment plan. As land belonging to the plaintiff's family, it is only the plaintiff's family who can make a valid grant of the land to a third party including the 1st defendant.

From the evidence before the court, though the plaintiff's family initially put the 1st defendant on portions of the land in dispute, the 1st defendant's land certificate is not based on any grant from the plaintiff but it is however based on a grant from the Nungua Stool. Nungua Stool is not the owner of Tesa lands and as such it cannot purport to make valid grants of Tesa lands without recourse to the plaintiff's family. Any grant that was made by the Nungua Stool in respect of the 123.2088 acres of land to the 1st defendant is therefore void. As a void grant, it cannot form the basis of a valid land certificate as a land certificate should be based on a valid grant. In the case of ***Sylvester Nene Noah v. Methodist Church; Suit No. LD/0574/2017; [2020] DLHC 16510***, when a similar issue appeared before me, I held as follows:

"Whenever a document affecting land comes for scrutiny before the court, whether registered or not, the court should firstly enquire whether the document was duly executed in accordance with the law under which it was made. ***If, per the said law the document was not validly executed, the fact of registration will not save that document.*** *If, however, it was validly executed but not registered, the court should not be dismissive of the document because it is not registered as to all intents and purposes, the said document has met the legal requirements for its validity under the relevant legislation."* [Emphasis mine.]

Similarly, in the case of ***Awuku v. Tetteh [2011] SCGLR 366***, the Supreme Court held as follows:

"... for even if the appellant registered his document of title, ***registration per se does not confer title on a person; this is now trite learning. It is the underlying facts that matter.*** *Here in this appeal,* ***the evidence shows that the title of the appellant was null and void and, in that state, no amount of registration would save it and clothe it with validity.***" [Emphasis mine.]

That being the case, to the extent that the 1st defendant's land certificate covering an approximate area of 262.39 acres includes the 123.2088 acres of land which forms part of the plaintiff's judgment plan, the certificate was issued by mistake in respect of the 123.2088 acres.

Per the authorities and also per section 195(1) of Act 1036, the court can call for a rectification of the land register by the cancellation of a land certificate on grounds of fraud, mistake or any other vitiating factor. The plaintiff has called for a cancellation of the 1st defendant's land certificate but I am reluctant to do so. This is because the certificate covers a larger area of land part of which (approximately 139.1812 acres) there is no issue presently before the court. It will therefore be unjust for the court to order the cancellation of the whole certificate in such circumstances. In order to do justice to all parties however, the court **may** order the 2nd defendant to re-issue the 1st

defendant's land certificate by excluding the 123.2088 acres from it and to cover the 139.1812 acres where there is no issue presently before this court.

The re-issuance may even not be necessary because from the pleadings of the parties and the evidence that has been led before this court, all the parties agree that the plaintiff is the owner of 918.24 acres of land situate at Tesa as declared by the courts. The plaintiff initially put the 1st defendant on the land but as a result of some issues on the land, the relationship between the parties suffered a hitch until the plaintiff finally secured judgments over Tesa lands. This then takes me to issue 5 which is the omnibus issue namely any other issue arising from the pleadings.

Issue 5 – Any other issue arising from the pleadings.

i. **Whether the 1st defendant has paid to the plaintiff full valuable consideration for the 123.2088 acres of land which has been held to belong to the plaintiff.**

The first issue I have identified under this heading is whether the 1st defendant has paid to the plaintiff full valuable consideration for the 123.2088 acres of land which has been held to belong to the plaintiff. When the plaintiff put the 1st defendant on the land, some initial payments were made including the payment of an amount of Sixteen Million Old Cedis (now GH₵1,600) as development fees for 20 plots of land. The 1st defendant also paid an amount of Two Million Old Cedis (now GH₵200) as ground rent and a further amount of Four Million Old Cedis (GH₵400) as the plaintiff's solicitor's fees. From the pleadings and the evidence led before the court, none of the said amounts was deemed to be full valuable consideration for the land the plaintiff initially gave to the 1st defendant and it definitely did not cover the additional acres of land which the court has held belongs to the plaintiff.

In exhibit L1, the lease that was initially executed between the plaintiff and the 1st defendant and which was later withdrawn (though contested by the 1st defendant), the parties contemplated that the 1st defendant will make further payments to the plaintiff

for the land. Clause 2 of the lease (exhibit L1) for example provided inter alia as follows:

> *"Provided that as and when the land comprised herein shall be developed the ground rent reserved hereunder will be reviewed* ***in the light of prevailing land values*** *and prior to the assignment of the residual leasehold interest in the land together with the completed dwelling house therein at a rate not exceeding 0.3% of the value of the building thereon."* [Emphasis mine.]

When the relationship between the parties suffered a hitch however, the 1st defendant continued to remain in possession of the land and undertook massive developments on the land till date. The evidence on record therefore reveals that from the time the plaintiff asserted that they had withdrawn the lease, the 1st defendant did not make any further payments to the plaintiff but still remained on the land and it is still on the land as at the date of this judgment.

The evidence on record therefore reveals that the 1st defendant did not pay economic rates to the plaintiff in respect of the 123.2088 acres of land the 1st defendant is in possession of. The 1st defendant has asserted that it attempted to negotiate with the plaintiff to come to an amicable resolution but a number of factors, including the proper person in the plaintiff's family the 1st defendant would have to deal with and rival claims over the land in dispute some of whom had gotten judgments over portions of the land in dispute, hampered the said negotiation. This assertion has however been denied by the plaintiff.

In support of these assertions, the 1st defendant tendered into evidence some documents attesting to the said judgment and execution processes as exhibits 12 to 26. A careful scrutiny of the said exhibits reveal that they span the years 2016 to 2018. The evidence on record reveals that the High Court first gave judgment in favour of the plaintiffs in the year 2009 and the said judgment was duly communicated to the 1st defendant. The Court of Appeal also gave its judgment in 2012 and the judgment

was similarly communicated to the 1st defendant. The Supreme Court gave its judgment in 2014 and same was communicated to the 1st defendant. If the 1st defendant was so minded about negotiating with the plaintiff, they would have taken some positive steps after being notified of the High Court judgment in 2009.

From the pleadings and the evidence led before the court however, it appears to the court that all the parties would not mind finding an amicable resolution that will end in a win, win situation for all parties. The plaintiff is therefore entitled to recover economic rent from the 1st defendant with respect to the 123.2088 acres this court has declared in favour of the plaintiff but which is currently in possession of the 1st defendant. This then leads me to the next issue under this heading and this is 'whether the plaintiff is entitled to recover from the 1st defendant the value of the land as at today or as at the time the 1st defendant was put into possession in August 1993'.

ii. Whether the plaintiff is entitled to recover from the 1st defendant the value of the land as at today or as at the time the 1st defendant was put into possession in August 1993.

One of the reliefs the plaintiff is claiming is recovery of possession or alternatively, recovery of the market value of the land which the plaintiff put at Eighteen Million, Seven Hundred and Twenty Thousand Ghana Cedis (GH₵18,720,000.00) as at 2012 with interest up to the date of final payment or recovery of the market value of land as at the date of judgment. The said amount being claimed by the plaintiff is based on a valuation report prepared by J. Bampo Barnafo Consultancy Services at the instance of the plaintiff (Exhibit AD). The said valuation is also based on the 96.21 acres of land that the plaintiff initially granted to the 1st defendant.

The 1st defendant has raised issues with the said valuation report. One of the issues raised is that the 1st defendant was not consulted with respect to the valuation and as a result, the 1st defendant did not make any input in the putting together of the report. The 1st defendant has a valid point here. On the cover page of the report, it is stated

clearly that the valuation was requested by E. A. Accam Esq. who per the evidence before me was counsel for the plaintiffs and there is no evidence that the 1st defendant was consulted to make an input into the valuation.

They further argue that the valuation was also based on the state of the land as at the date of the valuation. The valuation therefore took into consideration developments that had been made by the 1st defendant on the land including reclaiming an otherwise marshy land into prime residential plots. The 1st defendant asserts that it had to spend a lot of money to bring the land to the state it was at the time of the valuation. The 1st defendant therefore argues that the value of the land as at the time it was given to them in 1993 will be totally different from the value of the land as at the time of the valuation in 2012 as a result of their developments. If I understand the 1st defendant, they are claiming that it will be unfair for the plaintiff to demand the payment of the current value of the land, which current value is mainly because of how the 1st defendant has transformed the land.

If the 1st defendant had paid the plaintiff the economic value of the land at the date of the grant, we would not be where we are now. Since the 1st defendant took a risk to await the outcome of the decisions of the court and rather dealt with the Nungua Stool instead of the plaintiff and even failed to negotiate timeously with the plaintiff after being notified of the judgments, they cannot now be heard to be saying that it will be unfair for the plaintiff to be claiming the current value of the land.

The evidence on record and even from the 1st defendant's own showing reveals that the 1st defendant has been on the land of the plaintiff all this while, constructed buildings on the land which they have sold to their prospective clients and enjoyed the benefits thereof all these years, while the actual owners of the land were not paid any economic rent for the use of the land. It is therefore only fair that if judgment has gone in favour of the plaintiff as being the owner of 123.2088 acres of land which the 1st defendant is in possession of, the 1st defendant should pay to the plaintiff the value of

the land as at the date of judgment and not as at the date they were put in possession in August 1993.

I will therefore direct a valuation of the 123.2088 acres of plaintiff's land which is in the possession of the 1st defendant and the parties should, based on the said valuation, go back to the negotiation table to determine a fair value that the 1st defendant will have to pay to the plaintiff, failing which the plaintiff will be at liberty to recover possession from the 1st defendant as stipulated in the final orders of the court as captured below.

Issue 4 – Whether or not the plaintiff's family are entitled to their claim.

In the light of the Supreme Court's decision in ***Dalex Finance & Leasing Co. Ltd v. Ebenezer Denzel Amanor & 2 ors., Civil Appeal No. J4/02/2020 (14th April 2021)*** where they held that it is wrong for a trial court to set down for trial issues in the nature of the present issue, I will strike out the present issue as not being a proper issue for determination before the court.

Final Orders

The plaintiff's claim succeeds in part and I make these final orders in favour of the plaintiff:

i. I declare title in favour of the plaintiff in respect of land measuring 123.2088 acres more or less which land comprises 90.9544 acres of the original grant of 96.21 acres plaintiff granted to the 1st defendant, 6.15 acres of land as depicted on the composite plan as A1, A2, A3 and A4 and 26.1044 acres of land which comprises part of the 31.36 acres of land depicted on the composite plan with the numbers 1 to 21. For the avoidance of doubt, the said 123.2088 acres more or less encompasses all the land hatched "B" on

the composite plan but excludes the portion which falls beneath the plaintiff's judgment plan depicted yellow on the composite plan.

ii. I direct the Land Valuation Division of the Lands Commission or any valuer agreeable to the parties to undertake a valuation of the 123.2088 acres of plaintiff's land which is in the possession of the 1st defendant and the parties should, based on the said valuation, go back to the negotiation table to determine a fair value that the 1st defendant will have to pay to the plaintiff.

iii. The court anticipates that the valuation exercise should be completed within three months of the date of this judgment and the negotiations should be concluded within twelve months of the date of this judgment.

iv. If after twelve months from the date of this judgment the negotiations have not concluded, barring any extension of time that may be granted to the parties by the court to conclude the negotiation, the plaintiff would be at liberty to recover possession of the 123.2088 acres of his family land which is currently in the possession of the 1st defendant from the 1st defendant.

v. The cost of the valuation should be borne equally by the plaintiff and the 1st defendant.

vi. General damages are assessed at GH₵50,000.00 in favour of the plaintiff against the 1st defendant.

vii. I award cost of GH₵50,000.00 in favour of plaintiff against 1st defendant.

(SGD.)
K. A. GYIMAH J.
(JUSTICE OF THE HIGH COURT)

COUNSEL:

1. **ROSENBERG OWUSU ADOKOH WITH ERNEST KUSI FOR PLAINTIFF.**
2. **PETRINA DEFIA FOR O. K. OSAFO BUABENG FOR 1ST DEFENDANT.**
3. **NO LEGAL REPRESENTATION FOR 2ND DEFENDANT.**

PARTIES:

1. **PEACE-MAKER DJAN REPRESENTS PLAINTIFF.**
2. **1ST DEFENDANT ABSENT.**
3. **2ND DEFENDANT ABSENT.**