

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
LAND DIVISION- COURT 4
ACCRA-A.D.2019**

SUIT NO. SOL/79/2015

NUMO OKAI (I), KORLE WULOMO
SUIING FOR HIMSELF AND ON BEHALF OF
GA, GBESE AND KORLE STOOLS
HOUSE NO. D 408/2, SALAGA MARKET
KORLE WE, ACCRA

:::

PLAINTIFF

VRS

1. MOSES TAWIA
2. EVANS ANTEH
3. GEORGE ANKONU ADJIN TETTEY
4. JOSHUA ODAI AMA
5. LANDS COMMISSION

:::

DEFENDANTS

WRITTEN ADDRESS ON BEHALF OF 1ST, 3RD and 4TH DEFENDANTS

My Lord,

By a Writ of Summons and Statement of Claim, Plaintiffs claims the following against the Defendants:-

- i. A declaration that the Statutory Declaration made by Ernest Armah Anteh dated the 19th day of May, 1975 and registered as No. 2551/77 and AC 3114/75 was fraudulently made and same is null and void and did not confer title to the land which was the subject matter of the said statutory declaration in the Odai Ntow family or any member of the said family.
- ii. A declaration that any other statutory declaration made by the Odai Ntow family in respect of the land which is the subject matter of dispute is void and confers no title on the Odai Ntow family.
- iii. An order directed at the 5

- th Defendant to expunge from its records the said statutory declaration No. 2551/77 and AC 3114/75 and other statutory declaration in respect of the land which is the subject matter of the dispute in this suit which has also been registered by the Defendant.
- iv. Declaration of title to the land in the Ga, Gbese and Korle Stools
 - v. Recovery of possession
 - vi. Perpetual injunction restraining the Defendants and the Odai Ntow family or any other member of the family from making any grants or alienation of the land which is the subject matter of dispute in this suit.
 - vii. Damages for trespass
 - viii. Costs.

The brief facts of the case per the pleadings of the parties are as follows:-

FACTS

Plaintiff on behalf of the Ga, Gbese and Korle Stools is laying claim to lands stretching from Ga Mashie in the South, from the Gulf of Guinea to the foot of the Akwapim Hill near Berekuso to the North and includes villages and communities such as Kpehe, Kwabenya, Abofu, Accra New New Town, Avenor, Tesano, Alajo, Ablenkpe, Legon, Apenkwa, Oko, Ashongman, Dome among others containing an approximate area of 19,007.90 acres.

The Nii Odai Ntow family are owners of lands situate lying and being at Ashongman, Kwabenya, Agboogba, Dome, Haatso and others as per judgment of His Honour Sir Brandford Griffith Knight, Chief Justice of the Supreme Court of the Gold Coast in 1904 in suit entitled A. Bosumpim and Others vrs Martei and Others as well as judgment in suit entitled Peter Mensah Anteh versus Simeon Aryeetey G.S. Okine and Another in Suit No. L 554/1978. Judgment was delivered in Suit No. L 554/1978 on the 30th day of January, 1980 by His Lordship Justice K.A. Agyepong J. The Nii Odai Ntow family's land is approximately 12,587.64 acres.

The Odai Ntow family has exercised acts of ownership over its land by granting portions of the family land to third parties who have successfully registered their interest in the said land obtained Land Certificates without any opposition from the Ga, Gbese and Korle Stool.

The Odai Ntow family is made up of four (4) quarters namely; Nii Abbey We, Ashong Dzemanwon, Tetteh Afrimie and Anteh Kwakonam.

Kwabenya Township was founded by Nii Abbey and he founded the village around a well, known as Abbey Bu meaning Well of Nii Abbey or Nii Abbey's well. The Abbey Bu is still in existence and it is close to the land which the State sought to compulsorily acquire as a landfill site.

At the close of pleadings the following issues were set down for determination by this Honourable Court.

- i. Whether the decision of His Honour Sir W. Bradford Griffith, Knight, Chief Justice dated 3rd April, 1904 in the case of Bosompim & another VRS Martei & Others conferred any title in the land in dispute on the Odai Ntow family to which the Defendants belong?
- ii. Whether the Statutory Declaration made by members of Defendants (Odai Ntow) family at various times and registered with the 5th Defendant conferred any title on the land which is the subject of dispute of this suit in the Defendants' (Odai Ntow) family?
- iii. Whether the Plaintiff is entitled to his claim indorsed on the Writ?
- iv. Any other issue arising from the pleadings.

PLAINTIFF'S EVIDENCE

Plaintiff gave evidence in person on told the court that he is the principal caretaker of lands belonging to the Ga, Gbese and Korle Stools. He said the land which is the subject matter of this suit was acquired by conquest and that the Ga, Gbese and Korle Stools have been in possession of the said land since time immemorial and that portions of the said land have been granted to various individuals and families including the Nii Kwao Blenya

family.

He said in his capacity as Korle Wulomo I, he takes part in the installation of Headman of the villages on the land in dispute. Plaintiff said the land in dispute has never been granted to the Nii Odai Ntow family.

Plaintiff also told the court that the declaration and registration of the Statutory Declaration No. 255/77 and AC3114/75 by Ernest Armah Anteh, a member of the Odai Ntow family is fraudulent and void.

Nii Teiko Akosoku IV gave evidence on behalf of the Plaintiff as PW1. He told the court that the land in dispute is the property of the Ga, Gbese and Korle Stools since time immemorial acquired through conquest.

PW1 told the court that in 1974 some members of the Odai Ntow family sued Numo Ashalley, then head man of Kwabenya, who hailed from Nii Kwao Blenya family and the then Korle Wulomo named Numo Ayitey Cobblah II joined the suit as Co-Defendant and obtained an injunction restraining both parties from dealing with the Stool lands at Kwabenya in 1978. He said despite the pendency of the suit the Odai Ntow family by Evans Armah Anteh purportedly made a statutory declaration falsely and fraudulently claiming allodial title to about 12690 acres of land including land belonging to the three stools without the knowledge or consent of the stools.

PW1 also told the court that the case of Bosumpim and Others VRS Martei and Others never decreed title in the land the subject matter of the said suit in the Nii Odai Ntow family.

PW1 further led evidence to the effect that on 18th August, 1973 the Ga Mantse and his elders determined the ownership of Kwabenya lands in favour of Nii Kwao Blenya family in the case of Abbey We Bii and Odai Ntow family VRS Ashely and Others.

EVIDENCE OF 1ST, 3RD and 4TH DEFENDANTS

1st Defendant gave evidence in person. He told the court that the Odai Ntow family have been declared as owners of lands situate lying and being at Ashongman, Kwabenya, Agboogba, Dome, Haatso and others as per judgment of His Honour Sir Brandford Griffith Knight, Chief Justice of the Supreme Court of the Gold Coast in 1904 in suit entitled A. Bosumpim and Others vrs Martei and Others.

He said the ownership of Odai Ntow family land has also been confirmed in Suit No. L 554/1978, entitled Peter Mensah Anteh versus Simeon Aryeetey G. S. Okine and Another.

The Odai Ntow family has exercised ownership over its lands from the 1900 centuries without any let or hindrance and has granted several portions of its land to third parties who have registered their interest in the said lands at the Land Title Registration Division of the Lands Commission without any resistance from any quarter.

The third parties who have been granted lands by the Nii Odai Ntow family have developed their lands without any interference whatsoever. **In fact Ashongman, Kwabenya, Haatso and Agboogba are townships and not virgin lands.**

1st Defendant told the court that the Government of Ghana acting under the State Land Act, 1962 compulsorily acquired a site at Kwabenya for the establishment of the Ghana Atomic Energy Commission. The Odai Ntow family, Ga, Gbese and Korle Stools, Nii Owoo family and Nathaniel A. Quarcoo and R.A. Quarcoo all put in claims for compensation however in June 1975, the Nii Odai Ntow family was adjudged winners of the claim and the Government of Ghana duly paid compensation to their lawyer the late E.D. Kom.

1st Defendant led evidence to the effect that somewhere May 1989 there were series of meetings in respect of Kwabenya land and Chieftaincy affairs before the Gbese Mantse and after deliberations there was a declaration on Kwabenya Affairs dated 25th June, 1989 and Stamped as No. LVB 2529/89. The declaration was signed by Nii Okai Kasablofo III, Dzesetse of Gbese Stool, Nii Ayi Kukrudu II, Akwashongtse of Gbese Stool, Nii Ayi Kingina II, Shippi of Gbese Stool among others.

In the said declaration it was held that Kwao Obuabasa was not the founder of Kwabenya and that Kwabenya was founded by Nii Abbey. It was also stated in the said declaration that Gbese Stool has traditional or jurisdictional interest over Kwabenya, Ashongman, Haatso and Agbogba lands but not ownership or allodial title or interest over the said lands.

He said Ga, Gbese or Korle Stools do not have lands in Kwabenya, Ashongman, Haatso and Agbogba and that Plaintiff's action is statute barred and same is caught by laches and acquiescence and for that reason Plaintiff is not entitled to the reliefs which he seeks against the Defendants.

4th Defendant gave evidence as attorney for the 3rd Defendant. He told the court that an action in respect of Ga Stool lands must be brought by the occupant/caretaker/Reagent of the Ga Stool and an action in respect of Gbese Stool lands must be brought by the occupant/caretaker/Reagent of the Gbese Stool and also an action in respect of Korle We family lands must be brought by the Head of Korle We/family.

He said the Plaintiff, Numo Okai I has no capacity to bring this instant action on behalf of the Ga Stool, Gbese Stool and Korle Stools.

3rd Defendant's attorney told the court that in the Kokomlemle consolidated suits which comprises of twenty-five different suits, the learned trial judge amended the proceedings in the said consolidated suits thereby giving rise to the title occupants of the Ga, Gbese and Korle Stools. In the said suit all the three Stools were represented by different lawyers.

The title occupants of the Ga, Gbese and Korle Stools was for the purposes of the kokomlemle consolidated suits and does not mean that the Ga, Gbese and Korle Stools is one entity which must sue in that capacity.

3rd Defendant's attorney told the court that the Odai Ntow family are owners of lands situate lying and being at Ashongman, Kwabenya, Agboogba, Dome, Haatso and others as per judgment of His Honour Sir Brandford Griffith Knight, Chief Justice of the Supreme Court of the Gold Coast in 1904 in suit entitled Bosumpim and Others VRS Martei and Others.

The Suit entitled Bosumpim and Others VRS Martei and Others was as a result of a grant of a parcel of land given to Martei by Ashong Dzemawon for farming purposes. After the grant, Martei was farming on the land when Bosumpim approached him and asked him to pay tolls to him and Martei refused. This resulted in a court action by Bosumpim against Martei. Osabu and Mensah Appleh were later joined to the case as Defendants.

Mensah Appleh was a son of Ashong Dzemawon and Osabu was a step son of Ashong Dzemawon. Ashong Dzemawon was the 7th son of Nii Odai Ntow.

Tettey Kwao, headman of Haatso and a farmer gave evidence on behalf of Martei and Others. Kofi Mensah, Afutu, John Acquaye and Akita Mama all gave evidence on behalf of Martei and Others in the Bosumpim VRS Martei and Others case.

The Nii Odai Ntow family was also declared the owners of land situate, lying and being at Ashongman, Kwabenya, Agboogba, Dome, Haatso and others in a suit entitled Peter Mensah Anteh versus Simeon Aryeetey G.S. Okine and Another in Suit No. L 554/1978. Judgment was delivered in Suit No. L 554/1978 on the 30th day of January, 1980 by His Lordship Justice K.A. Agyepong J.

He told the court that the land on which the Ashongman Estates which is also known as the Atomic Hill Estate is situate was originally granted by the Nii Odai Ntow family to Tenmote Akakpo and Winfred Otuafo Aryee for farming purpose and later varied for residential purpose. Tenmote Akakpo and Winfred Otuafo Aryee later registered a company by name AR & AK PROPERTIES and transferred part of the said land to the Company which later built the Ashongman Estates.

My Lord, I wish to address the issues set down for determination in chronological order.

Burden of Proof

The Plaintiff who asserts usually has the burden of proving same on the preponderance of probabilities. Preponderance of Probabilities, according to section 12(2) of NRCD 323 means:-

“that burden 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”.

Where the Plaintiff has been able to lead sufficient evidence in support of his, then it behoves upon the Defendant to lead sufficient evidence in rebuttal otherwise the Defendant risks being ruled against on that issue or issues

Sections 10(1), (2) and 11(1), (4) of the EVIDENCE ACT 1975, NRCD 323 provides as follows

Section 10—Burden of Persuasion Defined.

(1) For the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.

(2) The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

Section 11—Burden of Producing Evidence Defined.

(1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.

(4) In other circumstances the burden of producing evidence requires a party to produce 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.

i. Whether the decision of His Honour Sir W. Bradford Griffith, Knight, Chief Justice, dated 3rd April, 1904 in the case of Bosumpim & another VRS Martei & Others conferred any title in the land in dispute on the Odai Ntow family to which the Defendants belong?

1st, 3rd and 4th Defendants gave evidence to the effect that the Odai Ntow family are owners of lands situate lying and being at Ashongman, Kwabenya, Agboogba, Dome, Haatso and others as per judgment of His Honour Sir Brandford Griffith Knight, Chief Justice of the Supreme Court of the Gold Coast in 1904 in suit entitled Bosumpim and Others VRS Martei and Others. The said judgment was tendered in evidence as exhibit '2'.

The Suit entitled Bosumpim and Others VRS Martei and Others was as a result of a grant of a parcel of land given to Martei by Ashong Dzemanwon for farming purposes. After the grant, Martei was farming on the land when Bosumpim approached him and asked him to pay tolls to him and Martei refused. This resulted in a court action by Bosumpim against Martei. Osabu and Mensah Appleh were later joined to the case as Defendants.

Mensah Appleh was a son of Ashong Dzemawon and Osabu was a step son of Ashong Dzemawon. Ashong Dzemawon was the 7th son of Nii Odai Ntow.

Tetty Kwao, headman of Haatso and a farmer gave evidence on behalf of

Martei and Others

Kofi Mensah, Afutu, John Acquaye and Akita Mama all gave evidence on behalf of Martei and Others in the Bosumpim VRS Martei and Others case.

My Lord, at page 426, from paragraph 30 of exhibit 2 (record of proceedings in Suit entitled Bosumpim and Others VRS Martei and Others) it is provided as follows:

Mills opens-land descended to Plaintiff from Latapia-some Teschi people were allowed onto land- Defendants are there by permission of Plaintiff's ancestors-that they paid the yearly toll till lately. Defendant went and cut palm trees belonging to Martei on the land **then asserted rights or ownership over the land.**

Paragraph 40-Defendant state that the land is theirs and that they have not paid toll to anybody

MARTEI KOFI gave evidence in the Bosumpim VRS Martei case. His evidence can be found at page 435 of the record of proceedings, paragraph 40-45 He gave evidence as follows:-

Q. And was it older than your father's?

A. I can't say. It was stated in days gone by that the Ashongman people came from Chrismang and founded Ashongman and Korley's father's village.

Q. Did the people from these villages go and work on Bosumpim land?

A. We all worked there.

Q. Were tolls paid

A. In my father's time I don't know but after the Akwamu war tolls were paid to Martei Doku- a relative of Bosumpim.

The following transpired under cross examination of Martei Kofi which appears at page 436, of the record, paragraphs 20 -50.

Q. Are you not related to Defendants through your mother?

A. Through my father, not my mother.

Q. Was not Mensa Apple's father the Korley priest of Accra?

A. Yes. Odai Nti I have heard of-Opoku Sisi is far from where we are talking about. Onyeasi a continuation of Obunuku.

Q. Was Onyeasi founded by Ashamo Okai?

A. I don't know.

Q. Was not Chirimang founded about 12 years before Katamanso war (1876)

A. I don't know. (Obusum is Techii equivalent of Jamawon fetish) Ashong first founded Chirimang and then Ashongman. My father asked Obeng's permission to live on the land.

Q. Amongst farmers you either pay your landlord tolls or go and work for him?

A. Yes.

Q. Did not your father work for Ashong?

A. No. After my father's death I only went to where he worked to use the palm trees.

Q. At Ashongman, those who only worked palm trees only paid 3d a year?

A. No.

Q. Did you not pay the last toll to Defendant Osabu

A. No. The first time I was even asked for the toll was when they cut down my palm trees.

Q. Is not Agbogba partly on Korley land and partly on Boi Ding's land?

A. It is all Akwapim land. Boi Ding and Ablage are relatives. Boi Ding is related to Mensa Akple. Boi Ding is now at Techii

Q. Is not Mensa Akple in charge of the land for Boi Ding

A. **No. Ablage and Laryea Marma are in charge of his land. Defendant Osabu's father was Korle, the founder of Korley's father village**

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Osabu gave evidence in the Bosumpim VRS Martei case and his evidence appears at page 438 of the record of proceedings, paragraphs 35-50 and page 439, paragraph 1-50.

OSABU sworn a.r.b. in Ga.

I live at Ashong town. I am one of the Defendants. I lived in Ashong town all my life. I know the land on which the town stands.

Q. Who does all the land about there belong?

A. Ashong

Q. Who is he

A. An Accra

Q. How did he get there?

A. **I don't know. I know Nanso village. Odai Ntow founded that village. He was father of Ashong. Akraama village I know. Odai Ntow founded that village. This I have been told.**

Q. **Are you connected with Odai Ntow?**

A. Ashong, his son, married my aunt Awele. Chief of Ashong town is Mensa Akple. I know the boundaries of Ashong town land. The boundaries begin at Onya tree (their silk cotton tree) on my way from Techii to Ashongman. It then goes along Techii road to Ashongman. There we have boundary with Ablage marked by an Ntome tree. Then the boundary is marked by Ntome trees to Akpor's land. Then the boundary goes to Awula Dede's land. From there I formed boundary with Tete Kuma-the boundary being marked by Ntome and

Akobeng and Asontobia trees up to a Yoitru tree. From that place, the road from Ashong town to Akosem is the boundary between us and Sakumo. You go along that road for some time and climb the hill and come to an Onye tree distinct from the Yoitru tree from here to Lutterodt's village-When you get to the Onye tree you turn to the left and go along the boundary marked with stones first and then Ntome sticks up to the plains- Kwabenya is inside our land. The Kwabenya people worked on our land. They pay no tolls to anybody. They all work with us. I know Agbogba. This people pay toll to Mensa Akple. I know Plaintiff Martei. He is a Techiman. His father I know-Boi Kweku. His father had no palm trees within the boundaries I have given. Martei's father was allowed to have a bit of land, and he cleared it- palm trees grew there and he cleared the palm trees as his. He paid tolls to Ashong-by cultivating for him-he was his brother in law. After he died the palm trees went to his brother Doku. Doku paid no toll to anybody. Doku only went on the land lately. Martei went on the land after his father's death. Martei paid toll to Mensah Akple. We used to collect from all when we perform the fetish ceremony at Onyinasi. We pay 3d each to Mensah Akple to enable him to defray expenses of fetish custom.

Q. How do you know that Martei paid.

A. I used to assist Mensa Akple in the ceremonies and I saw Martei pay. He has paid not once but 6 or 7 times. I have collected from him myself. I have never paid toll to Plaintiff, Bosumpim or to his brother Manu Kwao. Bosumpim has never sent to me for toll or Manu Kwao either. Bosumpim lives far away at Berekuso. I don't know of any person from Ashongman who has paid toll to Bosumpim or his brother.

Re-Examination- The fetish is for Onyan

Q. It is not that Bosumpim's father's fetish ?

A. No. It is Korley fetish. Ayanupa was fetish priest formally-now Odai is fetish priest-he lives at Ashongman. We perform the ceremonies when we get no rain. Martei has only paid for the fetish ceremonies Martei paid the 1

st 3d to Marma who was sent for it. I heard that Martei had paid when the Agbogba Chief called the names who had paid-this was 6 times-this was at Ashongman. The Agbogba Chief collected and sent it to us. I myself got the 3d once from Martei about 3 years ago.

It was Okotpoka who told me that Martei's father had land where the palm tree grew. These palm trees are in the middle of this land. Where Ashong got the land from, I don't know. My mother was Kale, a Labadi woman, Owale was not related to Kale. Owiale was my aunt who married Ashong, Owiale came from Teshie.

Re –examination

I recalled the last Awuna war (1868). Ashong was dead before that. I am older than Martei

Mensa Apple gave evidence in the Bosumpim VRS Martei case. His evidence appears at page 440 of the record of proceedings, paragraph 40-45.

MENSA APPLE. Sworn a.r.b. in Ga

I am Chief of Ashong town. I have no stool but I would be a Chief at Accra. I heard boundaries given by the last witness of the Ashong town land-they are correct. I succeeded Okotroka-who Ayanukpa. Ayamkpa's father Ashong went to Accra and left Ayanukpa in charge. **Ashong's father was Odai Ntow-who was before Odai Ntow, I don't know. Onyinas is the name of the land. Odai Ntow founded the village called Nanso where he killed elephants. Nanso was in existence before the Katamanso war (1876). Opokushishi village (or Akramana) was next founded. After that my grandfather died and left my father. My father founded Chiramin with his brother-in-law Meeti. There was a dispute between them because Meeti had my father's sister as wife. Then Ashongman was founded. Ashong was my father.** It is not true that my father got permission from Obeng to go on this land-he never told me this. I never heard of Obeng. I have never paid any toll for the land. Bosumpim (Plaintiff) has never had toll from me.

Tetty Kwao gave evidence in the Bosumpim VRS Martei case. His evidence appears at page 441 of the record of proceedings, paragraph 35-40.

TETTEY KWAO

I live at Hatcho. I am a farmer. I am headman of Hatcho. There are about 5 houses in the village now. There used to be more. This land stands on Ashong Jamawon –Ashong Obosum. My grandfather asked his permission to live there and he collected toll from us 3/-per year for each person. Nowadays we pay Mensah Akple as his representative.

Kofi Mensa gave evidence in the Bosumpim VRS Martei case. His evidence appears at page 442 of the record of proceedings, paragraph 10-15.

KOFI MENSA. Sworn a.r.b in Ga

I live at Agbogba. I am head of Agbogba. I was born there. I succeeded my father who was called Agbogba. Agbogba is on the land of Ashong Jamawon. Mansa Apple is now in his place. My father told me that the land belonged to Ashong. Ashong has a fetish at Onyiasi where ceremonies are performed yearly and every year he collects from the whole village 6/-. I collect it and sent it to Mensa Apple. I don't know Bosumpim.

Cross-Examination

Q. Do you know the land claimed in this case?

A. It is Korley land. They also call it Onyiase. There are 6 villages on this land viz, Harcho, Ablage, Ochiigo, Ashongman, Agbogba, Kwabenya. These are Accra villages.

Afutu gave evidence in the Bosumpim VRS Martei case. His evidence appears at page 442 of the record of proceedings, paragraph 30-40

AFUTU sworn a.r.b in Ga

I am here today for Ashale. He has a bad foot and sent me here. I am his brother. I am from Kwabenya. The headman of Kwabenya is old Ashale. I am the next. Kwabenya is on Korley land. Korley land is under Ashong Jamawon, separated by Mensa Apple. Kwabenya pays tolls to Mensa Apple because it is his land. I do not know Bosumpim. I only saw him when going from this court the other day. Tolls have been paid to no one else.

Cross examination

Q. How did this land become Korley land?

A. It is ancient history but all I know is that it is the land of Ashong Jamawon.

Abraham Christian Lamptey gave evidence in the case of Bosumpim VRS Martei. His evidence appears at page 443 of the record of proceedings, paragraph 35-40.

ABRAHAM CHRISTIAN LAMPTEY

I live at Accra. I have experience in making plans of land. I went to Ashongman and there went over the land. The people of Ashongman showed me the land. I marked down what I saw. To the best of my knowledge and ability, the plan is correct. The ntome trees are myself. (map put in and marked as 'A')

The judgment of the court in the case of Bosumpim VRS Martei appears at page 444 of the record of proceedings, paragraph 10-25, which reads as follows

The land in dispute is on the border land between Akwapim and Accra. There probably never has been a fixed boundary between the people of these two tribes and the land of each tribe probably extends as far as its members have farmed. Occupation is the great test in cases of this sort. It is clear that the Defendants are in occupation of this land and have been so for many years. The Plaintiffs allege that the ancestors of Bosumpim permitted the Defendants to come on the land but there is little but the base statement of the Plaintiff to support their contention. The Plaintiffs also allege that the Defendants used to pay tolls for many years. The one clear strong fact that comes out in the evidence is that the Defendants have been in undisturbed beneficial possession for many years. Plaintiffs have failed to prove that the land is theirs. Judgment for Defendant with costs.

My Lord, the case of the Plaintiff is that the Ga, Gbese and Korley Stools acquired the land the subject matter of this suit through conquest and that they have been in possession of the said land since time immemorial.

On 22nd March, 2017, Plaintiff gave the following answers to questions asked under cross-examination.

Q. I am suggesting to you that it is not correct that the land you have described in paragraphs 2, 3 and 3 of your statement of Claim were acquired by the Ga, Gbese and Korley Stools through conquest.

A. Ga, Gbese and Korle Stools got those lands through conquest.

Q. Can you tell the court the war that was fought by the Ga, Gbese and Korle Stools which led to Kwabenya lands becoming the property of Ga, Gbese and Korle Stools.

A. They fought the Anlo war, Ashanti war and Katamanso war.

Q. I am suggesting to you that the Anlo war, the Ashanti war and Katamanso war were never fought on Kwabenya lands.

A. These wars were the wars that they fought which led to the acquisition of those lands.

Q. Can you tell the court the year in which those wars were fought.

A. No.

Q. I am suggesting to you that you do not know the year in which these wars were fought because you know nothing about those wars.

A. I do not know the year but I got to know that it was through these wars that they got those lands.

My Lord, from the evidence adduced in the 1904 case of A. Bosumpim and Others VRS Martei and Others, especially the evidence of Mensa Kofi, Osabu and Mensa Apple, it is abundantly clear that Kwabenya, Haatso, Agbogba and Ashongman lands were not acquired through conquest as Plaintiff wants this Honourable Court to believe. (See the extract of the evidence of Mensa Kofi, Osabu and Mensa Apple, quoted supra).

Osabu in his evidence to the court told the court that Odai Ntow was the father of Ashong. He also told the court that Odai Ntow founded Nanso village and also founded Akraama village. Osabu gave a vivid description of the boundary/schedule of the land in dispute in that case.

Mensa Apple in his evidence also told the court that Odai Ntow was the

father of Ashong. He corroborated the description of the boundary/schedule of the land in dispute in that case. He told the court that the land of the land in dispute is Onyinasi. His evidence was to the effect that Odai Ntow founded the village called Nanso where he killed elephants. Nanso was in existence before the Katamanso war (1876). Opokushishi village (or Akramana) was next founded by Odai Ntow and that Ashongman was founded by Ashong, the son of Odai Ntow. There was no mention of acquisition through conquest. There was no mention of Ga, Gbese and Korley Stools. None of the witnesses who testified gave evidence to the effect that the land in dispute belonged to the Ga, Gbese and Korley Stools through conquest.

Kofi Mensa also gave evidence in the Bosumpim VRS Martei case and told the court that he is the Chief of Agbogba and that Agbogba was founded by Ashong. His evidence under cross examination is very instructive as far as the determination of the issue before this Honourable Court is concern. He told the court that the land, the subject matter of the Bosumpim VRS Martei case is Korley land. They also called it Onyiase. He said there are 6 villages on the said land namely; Harcho, Ablage, Ochiigo, Ashongman, Agbogba, Kwabenya.

Afutu also gave evidence in the Bosumpim case and told the court that Kwabenya is on Korley land and Korley land is under Ashong Jamawon.

My Lord, there is Incontrovertible evidence from the record of proceeding in the Bosumpim VRS Martei case to the effect that Odai Ntow founded Nanso, Akraama and Opokusisi villages.

There is also incontrovertible evidence that Ashong founded Agbogba village, Ashongman village, Haatso village.

There is no record/evidence from the record of proceedings in the Bosumpim VRS Martei case that the Ga, Gbese and Korley Stools made Ashong Jamawon caretaker of Kwabenya, Ashongman, Agbogba and Haatso lands on behalf of the Ga, Gbese and Korley Stools.

Kofi Mensa under cross examination which appears at page 442 of the record of proceedings in the Bosumpim VRS Martei case told the court that the land being claimed in the said suit is Korley land, which is also referred to as Onyiase land and that there are 6 villages on the Korley land. These villages were founded by Ashong, a son of Odai Ntow. The said

villages/lands therefore becomes the properties of the ODAI NTOW FAMILY.

My Lord, an answer given by Osabu under re- examination in the Bosumpim case is very instructive in helping this Honourable Court determine the issue set down by this court. He stated as follows:-

"I recalled the last Awuna war (1868). Ashong was dead before that".

This means that Ashongman, Agbogba, Haatso Kwabenya were all founded before the Awuna war in 1868.

The allegation by the Plaintiff that the Ga, Gbese and Korley Stools became owners of Ashongman, Agbogba, Haatso and Kwabenya lands through conquest in the Awuna war **CAN NEVER** be true because Ashong founded those villages and died before the Awuna war in 1868.

Mensa Apple also told the court that **Nanso village which was founded by Odai Ntow was in existence before the Katamanso war (1876).**

This also means that the allegation by the Plaintiff that the Ga, Gbese and Korley Stools became owners of Ashongman, Agbogba, Haatso and Kwabenya lands through conquest in the Katamanso war can never be true because Odai Ntow founded Nanso village and the said village was in existence before the Katamanso war.

My Lord, the case of Bosumpin VRS Martei is not about boundary dispute between the people of Berekusu and the people of Accra. The case is about declaration of title to land described in the said suit by the parties. Osabu described the land being claimed by the Defendant and this description was corroborated by the Mensa Apple, chief of Ashongman.

At page 444 of the record of proceedings in the Bosumpim VRS Martei case, the court entered judgment for the Defendants with cost and the judgment is based on the description of the land being claimed by the Defendants in the said case. A plan was tendered in the said suit as exhibit 'A' and that became the judgment plan in the said suit.

It is respectfully submitted that judgment having been entered in favour of the Defendants who traced their root of title to Ashong Jamawon, a son of Odai Ntow and Odai Ntow himself, it flows from that judgment that the NII ODAI NTOW FAMILY was adjudged as owners of the land described by

Osabu in his evidence in chief and supported by exhibit 'A'

Plaintiff in this instant suit avers in paragraph 5 of his Statement of Claim as follows:-

5. The 1st to 4th Defendants are principal members of the Odai Ntow family and the 1st to 4th Defendants are sued in that capacity, whilst the 5th Defendant is a statutory body responsible for the management of public lands.

By this paragraph the Plaintiff admits that the 1st to 4th Defendants are members of the Nii Odai Ntow family.

Flowing from the analysis above it is respectfully submitted that the decision of His Honour Sir W. Bradford Griffith, Knight, Chief Justice, dated 3rd April, 1904 in the case of Bosompim & another VRS Martei & Others conferred title in the land in dispute on the Odai Ntow family to which the Defendants belong?

- ii. **Whether the Statutory Declaration made by members of Defendants (Odai Ntow) family at various times and registered with the 5th Defendant conferred any title on the land which is the subject of dispute of this suit in the Defendants' (Odai Ntow) family?**

On 2nd day of April, 1975 Simeon Aryetey Gator Small Okine Alias Ntim Jakari and Emmanuel Odenkey Abbey made a Statutory Declaration declaring themselves as the owners of all those land situate lying and being at Ashongman, Kwabenya, Agboogba, Dome, Haatso and its surrounding villages.

Peter Mensah Anteh challenged Simeon Aryetey Gator Small Okine and Emmanue Odenkey Abbey in a suit entitled Peter Mensah Anteh versus Simeon Aryetey G.S. Okine and Another in Suit No. L 554/1978. Judgment was delivered in Suit No. L 554/1978 on the 30th day of January, 1980 by His Lordship Justice K.A. Agyepong J. The learned trial judge declared the Statutory Declaration dated 2nd April, 1975 and made by Simeon Aryetey Gator Small Okine alias Ntim Jakari and Emmanuel Odenkey Abbey as invalid because same was not made by all the principal elders of the Nii Odai Ntow family.

It is important to place on record that the Nii Odai Ntow family claim to ownership of lands in Ashongman, Kwabenya, Agbogba and the surrounding villages **is not** based on the Statutory Declaration dated 2nd April, 1975 or any other Statutory Declaration.

The Odai Ntow family claim to ownership of lands in Ashongman, Kwabenya, Agbogba and its surrounding villages is based on the decision of His Honour Sir W. Bradford Griffith, Knight, Chief Justice, dated 3rd April, 1904 in the case of Bosompim & another VRS Martei & Others and the judgment dated 31st January, 1980 by His Lordship Justice K.A. Agyepong in Suit No. L 554/1978, entitled Peter Mensah Anteh versus Simeon Aryeetey G. S. Okine and Another.

In Suit No. L554/1978, the Statutory Declaration dated 2nd April, 1975 was tendered as exhibit B. At page 2, paragraph 2 of the judgment in Suit No. L554/1978, the learned judge delivered himself of the following:-

“It is to be noted that the plan attached to the Statement of Claim is almost exactly the same as the plan attached to exhibit B. On both exhibits is written: this is to certify that this plan has been carefully and correctly modernized from the 1904 plan Martei and Others...”

The learned judge in Suit No. L554/1978 stated at page 6 paragraph 1 of the judgment dated 31st January, 1980 as follows:-

..... On the other hand the evidence of Mensah Apple, Chief of Ashongtown and son of Ashong Dzemanwon, at page 13 of the record of proceedings is admissible against the first defendant. There, Mensah Apple said the land claimed by Bosompim and Martei was called Onyasie; Odai Ntow, father of Ashong Dzemanwong, founded Nanso village, where he killed elephants, and Opoku shisi village (or Akraman); Odai Ntow died and left Ashong Dzemanwong there; the latter with his brother in law Meeti founded Chirim. There were later a dispute between the 2; then Ashongman was founded. He continued at page 14.

“Awula Dede has land adjoining us.
Ablajei has land adjoining our land
Haacho village is in the middle of my land
I don't know how my ancestors got the land originally”

There is a clear admission that Odai Ntow died and left Ashong Dzemanwong at Onyasie. There after Ashong Dzemanwong founded

Ashongman. That admission is binding on the 1st Defendant who is privy to Mmensah Apple. Clearly, Ashong Dzemanwong followed his father Odai Ntow to Onyasia. Ashong Dzemanwong could not have founded Onyasia.

The learned judge in Suit No. L554/1978 stated at page 8 paragraph 3 of the judgment dated 31st January, 1980 as follows:-

“On the totality of the evidence, and having regard especially to exhibit A and E and the evidence of E.D. Kom, I find that the land covered by the Statutory Declaration which appeared to be edged pink in exhibit C are the property of the Odai Ntow family.

I find however that the 3 paternal lines or branches of the said family, the families of Tetteh Afrimie, Ashong Dzemanwong and Anteh, as well as the family of the nephews of Odai Ntow, have all an interest in the said lands, it follows therefore that the Plaintiff, a descendant of Anteh, the 1st Defendant, a descendant of Ashong Dzemanwong, and the 2nd Defendant, a descendant of Nii Abbey, nephew of Odai Ntow, each has an interest in the land.....”

My Lord, it is respectfully submitted that His Lordship Justice K.A Agyepong J, arrived at the conclusion that the land, the subject matter of the said suit is the property of the Nii Odai Ntow family after having analyzed the record of proceedings and judgment in the Bosumpim VRS Martei case (EXHIBIT 2) and after having listen to the evidence by lawyer E.D. Kom.

His Lordship Justice K.A Agyepong never decreed title in the lands situate at Kwabenya, Haatso, Ashong, Agbogba and its surrounding villages based on any Statutory Declaration because in his own words the said Statutory Declaration was invalid, because same was not executed by all the principal elders of the Nii Odai Ntow family but rather he decreed title to the land in the Nii Odai Ntow family because he made a finding of fact that the said lands had been declared as belonging to the Nii Odai Ntow family in the Bosumpim VRS Martei case. He only re-echoed the finding of fact in the 1904 case of Bosumpim VRS Martei.

iii. Whether the Plaintiff is entitled to his claim indorsed on the Writ?

One of the reliefs endorsed on Plaintiff’s Writ of Summons is Declaration of title to the land in the Ga, Gbese and Korle Stools.

The land Plaintiff is laying claim to stretches from Ga Mashie in the South, from the Gulf of Guinea to the foot of the Akwapim Hill near Berekuso to the North and includes villages and communities such as Kpehe, Kwabenya, Abofu, Accra New New Town, Avenor, Tesano, Alajo, Ablenkpe, Legon, Apenkwa, Oko, Ashongman, Dome among others containing an approximate area of 19,007.90 acres.

Nii Teiko Akosoku IV, PW 1 gave evidence on behalf of the Plaintiff. In support of Plaintiff's case, he tendered exhibit 1, which is a site plan showing the description of the land being claim by the Plaintiff and the boundaries thereof.

PW1 gave the following answers to question he was asked under cross examination on 8th November, 2016:-

Q. Have a look at exhibit 'A'. Can you tell the court when exhibit 'A' was prepared.

A. My Lord, I don't know the exact date it was prepared because it is an old document.

Q. So you will agree with me that on the face of exhibit A there is no indication as to when it was prepared.

A. Yes, I don't know the exact date because it is an old document.

Q. From exhibit A, Atomic Energy Commission is located within the land you are claiming as belonging to Ga, Gbese and Korley Stools, not so?

A. Yes, my lord.

Q. Are you aware that the land on which the Atomic Energy Commission is situate was compulsorily acquired by the Government ?

A. Yes, my lord.

Q. Are you aware that compensation was paid in respect of this compulsory acquisition

A. Yes, my lord, but not full compensation. Part of it has been paid

upon which the Ga, Gbese and Korle Stools petitioned the Lands Commission. My lord, I had the letters tendered in evidence to that effect.

Q. Are you aware that the Ga, Gbese and Korle Stools put in a claim for compensation.

A. Yes, my lord, the three stools put in a claim for compensation.

Q. And you are also aware that the Nii Odai Ntow family also put in a claim for compensation in respect of the land which was compulsorily acquired for the Atomic Energy Commission.

A. Yes my lord, I am aware

Q. And compensation was paid to the Nii Odai Ntow family for the compulsory acquisition of the Atomic Energy Commission land

A. Yes, part compensation was paid to the Nii Odai Ntow family. My lord, upon which the three stools wrote a letter to Lands Commission to ask the Odai Ntow family to refund the money which have been tendered as an exhibit.

Q. From exhibit A, you have indicated that the University of Ghana, Legon is situate within the land being claimed by the Ga, Gbese and Korle stools, not so?

A. Yes, my lord. Legon is within exhibit A.

Q. Are you aware that the land on which the University of Ghana is situate is land **LA STOOL LAND**

Q. You have also indicated that Dome is situate within the land being claimed by the Ga, Gbese and Korle stools as shown in exhibit A. Not so.

A. Yes, my lord, Dome is within

Q. Are you aware of the consolidated cases of Carl Josiah Reindorf and Others VRS The Attorney General, Gihoc Pharmaceuticals, the Occupants of the Ga, Gbese, Korle Stools VRS Gihoc Pharmaceuticals and Others [Suit No. L444/99, L247/2002 and L102/2003]

A. Yes my lord, I am aware

Q. And you are aware judgment was given on the 16/12/2005

A. Yes, my lord.

Q. And you are also aware that in the said judgment, Dome lands was declared to be owned by the Onarmrokor Adain family, not so.

A. Yes, my lord in that judgment it was stated but before then in 1961/62 there was a case involving Amadu Braimah, Dr. C.E. Reindorf, Nuumo Ayitey Cobblah II (Korle Wulumo) VRS Nii Koi Olai Stool of Asere Djorshie Stool in respect of Dome lands. A judgment was given in favour of Onarmrokor Adain and the three stools (Ga, Gbese and Korle Stools)

Q. I am suggesting to you that the judgment dated 16/12/2005 in respect of the consolidated cases mentioned earlier, took into consideration all the judgments in respect of Dome lands and came to the conclusion that the Dome lands belongs to the Onarmrokor Adain family.

It is respectfully submitted that a litigant who fails to identify the limit of the land he/she claims is not entitled to judgment.

To succeed in an action for declaration of title and recovery of possession, a party must establish by positive evidence the identity and limit of the land which he/she claims. See the case of NYIKPLORKPO VRS AGBODOTOR [1987-88] GLR 165 at 171 holding 3

“To succeed in an action for declaration of title to land, recovery of possession and for an injunction the plaintiff must establish by positive evidence the identity and the limits of the land which he claimed. In the instant case, there was no evidence which established in any manner the line of demarcation marking the boundary between that "small portion" which had been the subject matter of dispute and the land which the plaintiff's ancestor retained. In such a situation, no court of justice could be expected to give a declaration of title or recovery of possession to a plaintiff in respect of an area whose boundaries were so

uncertain. Thus whichever way one looked at the plaintiff's case, he should not have been granted recovery of possession of either the small portion or the whole land.

In the case of **TACKIE VRS LAMPTEY [2001-2002] 2 GLR 186**, CA, holding 1 the Court of Appeal stated as follows:-

“In an action for declaration of title to land where each party claimed a declaration, the Plaintiff or the Defendant who counterclaimed had to prove

satisfactorily the identity of the land.

See the case of **GAWU III VRS PONUKU [1960] 101 holding 1**

See also the case of the Supreme Court case of **ANANE & OTHERS VRS DONKOR & ANOTHER (Consolidated) [1965] GLR 188 at 192, holding 1**

(1) a claim for declaration of title or an order for injunction must always fail, if the plaintiff fails to establish positively the identity of the land claimed with the land the subject-matter of his suit. On the evidence, the plaintiff and co-plaintiff had failed to prove the identity of the farms the subject-matter of their mortgage with the farms the subject matter of the present suits.

By Plaintiff's exhibit 'A', Plaintiff is laying claim to the land on which University of Ghana is situate and it's surrounding lands. PW1 under cross examination admits that the University of Ghana lands is a La Stool land. This is a clear admission that Plaintiff does not know the boundary and limits of his land.

By exhibit 'A'. Plaintiff is also laying claim to Dome lands. PW1 again under cross examination admitted that Dome lands has been declared as belonging to the Onarmrokor Adain family in the consolidated cases of Carl Josiah Reindorf and Others VRS The Attorney General, Gihoc Pharmaceuticals, the Occupants of the Ga, Gbese, Korle Stools VRS Gihoc Pharmaceuticals and Others [Suit No. L444/99, L247/2002 and L102/2003].

PW1 was however dishonest with the court when he told the court that in 1961/62 there was a case involving Amadu Braimah, Dr. C.E. Reindorf, Nuumo Ayitey Cobblah II (Korle Wulumo) VRS Nii Koi Olai Stool of Asere Djorshie Stool in respect of Dome lands. A judgment was given in favour of

Onamrokor Adain and the three stools (Ga, Gbese and Korle Stools).

In the Supreme Court case of REINDORF and ANOTHER VRS AMADU, BRAIMAH & NIKOI O'LAI [1962] 1 GLR 508, the Supreme Court declared that the Onamrokor Adain family is the owner of Dome lands and not Ga, Gbese Korle Stools.

Again in the consolidated suits of CARL JOSIAH REINDORF & OTHERS VRS ATTORNEY GENERAL, PHYTO-RIKER (GIHOC) PHARMACEUTICALS and ARTHUR HAMMOND TETTEH QUARCOO, SUIT NO. L 444/99, THE OCCUPANTS OF GA, GBESE & KORLE STOOLS VRS GIHOC PHARMACEUTICALS LIMITED, SUIT NO. L 247/2002 and PHYTO-RKER(GIHOC) PHARMACEUTICALS LIMITED VRS GA DISTRICT ASSMEBLY AND OTHERS, SUIT NO. L 102/2003, it was held by His Lordship Samuel Marfu-Sau J (as he then was) in a judgment dated 16th December, 2005 that the Onamrokor Adain family is the owner of Dome Lands **and not** the occupants of Ga, Gbese and Korle Stools are not the owners of Dome lands. The said judgment was tendered in evidence and admitted as exhibit 16.

At page 15 of exhibit 16, last paragraph, His Lordship Samuel Marfu-Sau J (as he then was) stated as follows:-

"On this issue I made a finding and hold that the Plaintiff in L247/2002 (occupants of Ga, Gbese & Korle Stools) being aware of the judgments of Sir Walter Harragin C.J and E.D. Gwira which judgments declared the Co-Defendant in L444/99 (Onamrokor Adain family) owners of Dome land, the Commissioner Gwira's judgment having been affirmed by the Supreme Court all to the knowledge of the Plaintiffs in L247/2002, the said Plaintiffs cannot challenge the title of the Co-Defendant in L444/99 over the Dome land, part of which is the subject of E.I. 84. I hold therefore that before the acquisition of the land, the subject of this suit through E.I. 84, the Onamrokor-Adain family was the owner of the said land that that the said family was right in collecting the compensation for the acquisition as the record shows. I therefore dismiss the claim that the Plaintiff in L247/2002 are the allodial owners of the land in dispute.

His Lordship Justice Samuel Marfu-Sau J (as he then was) ended his judgment at page 33 in the following words:-

"The principle echoed above end the dispute between the three stools and the Onamrokor-Adain family over the ownership of Dome land. The reason

simply is that the matter as to ownership was firstly resolved by Justice Hall in 1930 when he adjudged that compensation for land acquired by the Government at Dome be paid to the Onamrokor-Adain family. This was followed by the decision of Sir Walter Harragin C.J in 1945 who adjudged that Onamrokor-Adain family was entitled to compensation for land acquired at Dome. Then there was the 1962 Supreme Court decision, which affirmed that Dome land was owned by the Onamrokor Adain family.

The dispute over ownership of Dome land ought to end with this judgment else the three stools would be seen as abusing the court process”.

In spite of the admonition by His Lordship Justice Marfu-Sau above, the three stools are before this Honourable Court praying this Court to adjudge them as owners of Dome land.

It is respectfully submitted that this is a clear case of a Plaintiff who does not know the boundary and limits of his land.

On this ground alone, Plaintiff’s action must fail.

My Lord, Plaintiff is also laying claim to lands situate at Kwabenya, Haatso, Agbogba, Ashongman and its surrounding villages. Plaintiff’s claim to ownership of the said lands is based on an alleged conquest in the Anlo war, Ashanti war, Katamanso war and Awuna war. Plaintiff under cross examination said he has no idea as to when those wars were fought. Knows nothing about the Anlo war, the Ashanti war, the Katamanso war and the Awuna war, he wants this Honourable Court to believe that the Ga, Gbese and Korle stools became owners of the land in dispute through conquest.

The Katamanso war was fought in the year 1876 and the Awuna war was fought in the year 1866.

On 20th December, 2016, PW1 under cross examination told the court that Kwabenya is over 400 hundred years old. (see page 2 of the record of proceedings of 20th December, 2016). So the question is which war did the Ga, Gbese Korle Stools fought over 400 years ago for them to become owners of Kwabenya lands.

The record of proceedings in the Bosumpim VRS Martei case shows that Ashongman, Agbogba, Haatso Kwabenya were all founded before the Awuna war in 1868 and also before the Katamanso war in 1876.

Ashong Dzemanwong who founded Ashongman, Agbogba, Haatso and Kwabenya died before the Awuna war of 1866. (See the evidence of OSABU at page 438 of the record of proceedings in the Bosumpim VRS Martei case and the evidence of Mensa Apple at page 440 of the said record or proceedings).

My lord, Plaintiff claim to be in effective possession and occupation of lands situate at Kwabenya, Agbogba, Haatso and Ashongman since time immemorial and also exercised acts of ownership by granting portions of the said lands to third parties who also pay tolls to the three stools. Plaintiff said Kwabenya South was granted to Neefu family and Kwabenya West including the Kwabenya village was granted to Nii Kwao Blenya family.

There is no evidence on record that Plaintiff has granted Kwabenya South to Neefu family.

Plaintiff however tendered in evidence exhibit 'Q' which is a purported lease agreement dated 13th November, 1970 in favour of Nii Kwao Blenya family of Kwabenya and Atuopai, Accra.

My lord, the high court differently constituted had the opportunity of considering the effect of Plaintiff's exhibit 'Q' in suit entitled AUGUSTINE KOBLA AMENYO VRS SAMUEL ANKAMAH ARYEE & NII KWAO OBUOBISA II. The High Court presided over by her Ladyship Mrs. Patience Mills Tetteh J, gave judgment in favour of the Plaintiff, a grantee of the Nii Odai Ntow family against the Defendants and decreed title in the land the subject matter of dispute which is situate at Kwabenya in favour of the Plaintiff. The said judgment was admitted into evidence and marked as exhibit 17.

Plaintiff again talks about people paying tolls to him without leading any evidence to that effect.

All that Plaintiff did was to mount the witness box and to repeat on oath his averment as contained in his Statement of Claim and Reply without more.

My Lord, in **MAJOLAGBE VRS LARBIE [1959] GLR 190** holding 4 states that

(4) that where corroborative evidence must exist, the Court expects a party who makes an averment (which the other side denies) to call such corroborative evidence in support of his own.

My lord, Proof in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of things, reference to other facts, instances, or circumstances, and his averment is denied, he does not prove it by merely going into the witness-box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true."

My lord, the authorities have held that where there is conflict of traditional history, one side or the other must be mistaken, yet both may be honest in their belief. In such a case demeanour of the witnesses who gave evidence in court may be of little guide to the truth. The best way to test the traditional history is by reference to the facts in recent years established by evidence and by seeing which of the two competing histories is most probable. See the case of ADJEIBI-KOJO VRS BONSIÉ (1957) 3 W.A.L.R. 257

In the case of ADJEI VRS ACQUAH AND OTHERS [1991] GLR 13-31, the Supreme Court held as follows

Held, allowing the appeal: the law was that although traditional evidence had a part to play in actions for declaration of title, a favourable finding on its evidence was not necessarily essential to the case of the party seeking the declaration. What the authorities required was that traditional evidence had to be weighed along with recent facts to see which of the two rival stories appeared more probable. Facts established by matters and events within living memory, especially evidence of acts of exercise of ownership and possession must take precedence over mere traditional evidence. Accordingly, since the traditional evidence relied upon by both parties was inconclusive but the plaintiff satisfactorily proved long occupation and the exercise of rights over the land in dispute, the Court of Appeal erred in reversing the declaration of title made in the plaintiff's favour by the High Court solely on the ground that the plaintiff's family failed to prove its traditional story.

See the case of IN RE KODIE STOOL; ADOWAA VRS OSEI [1998-99] SCGLR 23-83, holding one:-

"Under the principle in the Adjeibi-Kojo case, the best way of resolving conflict of traditional history was to test the traditional history by acts of

recent ownership established by the evidence with a view to determining which of the competing history was more probable. In the instant case, recent acts established on the evidence (such as strong evidence offered by the Defendant, the Agona family of recent acts of ownership of Kodie lands) gave support to their traditional history relating to ownership of the Kodie stool...”

See also the case of *IN RE TAAHYEN AND SAAGO STOOLS; KUMANIN II* (substituted by) *OPPON VRS ANIN* [1998-99] SCGLR 399-426, at page 417 where the Supreme Court held as follows:-

“In assessing rival traditional evidence, the court must not allow itself to be carried away solely by the impressive manner in which one party narrated his version, and how coherent that version is, it must rather examine the events and acts within living memory established by the evidence paying particular attention to undisputed acts of ownership and possession on record; and then see which version of the traditional evidence, whether coherent or incoherent is rendered more probable by the established acts or events. The party whose traditional evidence such established acts and events supports or render more probable must succeed unless there exist on the record of proceedings, a very cogent reason to the contrary. Ant the presumption of title raised by acts of possession and ownership appears now at section 48 of the Evidence Act 1975 (NRCD 323). It follows from that provision that a party can succeed in his title even if his traditional evidence is rejected.

See also the cases of *ACHORO & ANOTHER VRS AKANFELA & ANOTHER* [1996] SCGLR 209 and *ADWUBENG VRS DOMFEH* [1996-97] SCGLR 661.

On the evidence, aside of the fact that the 1st, 3rd and 4th Defendants (representing the Nii Odai Ntow family) have been able to prove title to all that piece or parcel of lands situate at Kwabenya, Haatso, Ashongman, Agbogba and its surrounding villages based on judgments in suit entitled *A. Bosumpim and Others vrs Martei and Others* (Exhibit 2) and suit entitled *Peter Mensah Anteh versus Simeon Aryeetey G.S. Okine and Another* in Suit No. L 554/1978, (Exhibit 4) they have also been able to prove recent acts of possession. See exhibits 10, 11, 12, 13, 14 and 15; which are grants made by the Nii Odai Ntow family. Plaintiff under cross examination admitted that the land on which Ashongman estate is situate which is also known as the Atomic Hill estate was granted by the Nii Odai Ntow family.

The Plaintiff on the other hand has not been able to lead any evidence in support of recent acts of possession. Plaintiff's allegation of having granted part of Kwabenya lands to the Nii Kwao Blenya family of Kwabenya by purported lease agreement dated 13th November, 1970 has been shot down by the High Court presided over by her Ladyship Mrs. Patience Mills Tetteh J, (General Jurisdiction 4) in a judgment in suit entitled AUGUSTINE KOBLA AMENYO VRS SAMUEL ANKAMAH ARYEE & NII KWAO OBUOBISA II. See exhibit 17.

The recent acts of possession on the part of the Nii Odai Ntow family is further confirmed by the payment of compensation to the said family in respect of the compulsory acquisition of Kwabenya lands for the establishment of the Atomic Energy Commission. The Government of Ghana acting under the State Land Act, 1962 compulsorily acquired a site at Kwabenya for the establishment of the Ghana Atomic Energy Commission.

The Odai Ntow family, Ga, Gbese and Korle Stools, Nii Owoo family and Nathaniel A. Quarcoo and R.A. Quarcoo all put in claims for compensation however in June 1975, the Nii Odai Ntow family was adjudged winners of the claim and the Government of Ghana duly paid compensation to their lawyer the late E.D. Kom. See exhibits 7 and 8 which are letters dated June 10, 1975 from E.D. KOM lawyer for the Odai Ntow family and letter dated 11th June, 1975 from Lands Department to the Ministry of Finance for the payment of compensation in the sum of ₵141,000.00 to the Nii Odai Ntow family.

The Plaintiff has tried without success to allege that the Nii Odai Ntow family received the said compensation fraudulently.

My lord, careful look at Plaintiff's exhibit 'A' reveals that it is without a date and it is also not approved by the Director of Survey. Exhibit 'A' is in clear breach of L.I. 1444 and therefore has no probative value.

Section 3(1) of the Survey (Supervision and Approval of Plans) Regulations 1988, L.I. 1444 which provides as follows:-

(1) No plan of any parcel of land attached to any instrument for the registration of such instrument shall be accepted by the Chief Registrar of Lands or the Registrar appointed pursuant to the provisions of the Land Registry Act, 1962 (Act 122) unless the plan has been approved by the Director of Surveys or any official surveyor authorized in that behalf in

accordance with regulation 2 of these Regulations.

Section 4(1)(2) of L.I. 1444 provides as follows:

Regulation 4—Manner of Preparing Plans.

(1) Every plan submitted for approval under these Regulations shall be accurately plotted and the scale chosen shall be as specified by the Director of Surveys from time to time or shall be such as will show clearly all the details and specifications required under these Regulations.

(2) Every plan shall have a title which shall include the scale, the designation of all the parcels of land shown therein, the region, city, municipality and town in which the land is situated at the time of the survey.

An examination of Defendants site plans (Exhibits 'F3' and 'F4') shows that the region where the land is located has been given as Greater Accra, the District/Municipality has been given as ADMA (Adenta Municipal Assembly) and the locality has been given as Frafraha in compliance with section 4(2) of L.I.1444.

Under Cross examination, Plaintiff admitted that exhibits 'F3' and 'F4' have been signed by the Director of Survey and that the locality where the land is situate is Frafraha.

My Lord, the effect of a site plan not approved by the Director of Survey or a Surveyor duly authorized by him was decided in the Supreme Court case of **NORTEY (2) VRS AFRICAN INSTITUTE OF JOURNALISM AND COMMUNICATION [2013-2014] 1 SCGLR 703-726, at page 717.** **See holding 4**

“The Court of Appeal had rightly held that exhibit A (a site plan), tendered in evidence by the Plaintiff in apparent proof of his claim of title to the dispute land, ie as his root of title, had no probative value because it was not signed by the Director of Survey or his representative, contrary to regulation (3)(1) of the Survey (Supervision and Approval of Plans) Regulations, 1989 (LI

1444). The said regulation 3(1) made it mandatory for plans of any parcel of land attached to any instrument for the registration of such instrument to be approved by the Director of Surveys or any official surveyor authorized in that behalf. Notwithstanding that exhibit A had been accepted

in evidence without any objection, it could not constitute evidence for the purpose for which it had been tendered. The Court had a duty to ensure compliance with statutes including subsidiary legislation like LI 1444”.

It was stated at page 717 of the report as follows:

“The Plaintiff tendered exhibit A, a site plan which bears the same endorsement as in the Writ of Summons in apparent proof of his claim to the dispute land, i.e his root of title. Exhibit A, is however not dated. It is also not signed by the Director of Surveys or his representative. This is contrary to regulation 3(1) of the Survey (Supervision and Approval of Plans) Regulations, 1989 (LI 1444), which makes it mandatory for plans of any parcel of land attached to any instrument for registration of such instruments to be approved by the Director of Surveys or any official surveyor authorized in that behalf. This stark infringement of the statutory requirement renders the exhibit A of no probative value as rightly determined by the Court of Appeal. Notwithstanding that exhibit A was accepted in evidence without any objection, it could not constitute evidence for the purpose for which was tendered since it infringed LI 1444. This is so because our courts have a duty to ensure compliance with statutes including subsidiary legislation like LI 1444”

I invite this Honourable Court not to attach any value to Plaintiff’s exhibit ‘A’.

My lord, the evidence on record is that the Odai Ntow family is in possession of the lands situate at Kwabenya, Ashongman, Haatso, Agbogba and its surrounding villages. This is admitted by the Plaintiff and PW1. It is because the Odai Ntow family is in possession of the said lands that is why the Plaintiff is asking for recovery of possession, damages for trespass and perpetual injunction.

It is a well-known principle of law that possession of a Defendant will prevail against the whole world except the true owner, and therefore a Plaintiff who claims title and a recovery of possession against the Defendant in possession must prove that his title is better than that of the Defendant. No matter how defective the title of the Defendant is, his possession is good against all but the true owner. See the cases of **FRANCE VRS GOLIGHTLY, FRANCE VRS ADDY (CONSOLIDATED) [1991] 1 GLR 74-88 and MENSAH VRS AHODJO [1961] GLR 296-301**

My Lords, in **MAJOLAGBE VRS LARBI [1959] GLR 190 at 192** it is stated that:-

The law as to trespass is that if a person proves merely that he is in possession of land, that is sufficient to enable him to maintain trespass against anyone who cannot show a better title. Upon that [p.192] principle, granting for the moment that the case is trespass and nothing more, the onus is upon the plaintiff to prove that he was in possession of the land at the date when he alleged the defendants entered thereon.

See also In re Adjancote Acquisition; Klu vrs Agyemang II [1982-83]2 GLR 852....."

The evidence on record points to the fact that the Nii Odai Ntow family has been in effective possession of lands situate at Ashongman, Kwabenya, Agbogba, Haatso and its surrounding villages for more than 200 years. PW1 said Kwabenya has been in existence for more than 400 years. And the evidence on record (record of proceedings in Bosumpim VRS Martei case) shows that Kwabenya belongs to the Nii Odai Ntow family.

Not only are the Nii Odai Ntow family in possession of lands situate at Ashongman, Kwabenya, Agbogba, Haatso and its surrounding villages but the said family has two judgments declaring them as owners of the said lands, namely the decision of His Honour Sir W. Bradford Griffith, Knight, Chief Justice dated 3rd April, 1904 in the case of Bosompim & another VRS Martei & Others and the judgment dated 31st January, 1980 by Justice K.A Agyepong in suit entitled Peter Mensah Anteh versus Simeon Aryeetey G.S. Okine and Another, Suit No. L 554/1978.

The Nii Odai Ntow family has exercised acts of ownership over the lands at Kwabenya, Ashongman, Haatso, Agbogba, etc by granting portions of its lands to third parties who have registered their interest in the said lands and obtained Land Certificates without any opposition from the Ga, Gbese and Korle Stools. Exhibits 10, 11, 12 and 13 are land certificates in respect of lands granted by the Nii Odai Ntow family to third parties.

The land on which the Ashongman Estates which is also known as the Atomic Hill Estate is situate was originally granted by the Nii Odai Ntow family to Tenmote Akakpo and Winfred Otuafro Aryee for farming purpose and later varied for residential purpose. Tenmote Akakpo and Winfred

Otuafro Aryee later registered a company by name AR & AK PROPERTIES and transferred part of the said land to the Company which later built the Ashongman Estates. Exhibits 14 and 15, is the Lease Agreement and the Land Certificate in respect of the said grant.

Plaintiff has also endorsed on his Writ of Summons the following reliefs

- i. A declaration that the Statutory Declaration made by Ernest Armah Anteh dated the 19th day of May, 1975 and registered as No. 2551/77 and AC 3114/75 was fraudulently made and same is null and void and did not confer title to the land which was the subject matter of the said statutory declaration in the Odai Ntow family or any member of the said family.
- ii. A declaration that any other statutory declaration made by the Odai Ntow family in respect of the land which is the subject matter of dispute is void and confers no title on the Odai Ntow family.

My lord, in suit entitled Peter Mensah Anteh versus Simeon Aryeetey G.S. Okine and Another, Suit No. L 554/1978, his Lordship Justice K.A. Agyepong J, stated at page 8 paragraph 3 of the judgment dated 31st January, 1980 as follows:-

“On the totality of the evidence, and having regard especially to exhibit A and E and the evidence of E.D. Kom, I find that the land covered by the Statutory Declaration which appeared to be edged pink in exhibit C are the property of the Odai Ntow family.

I find however that the 3 paternal lines or branches of the said family, the families of Tetteh Afrimie, Ashong Dzemanwong and Anteh, as well as the family of the nephews of Odai Ntow, have all an interest in the said lands, it follows therefore that the Plaintiff, a descendant of Anteh, the 1st Defendant, a descendant of Ashong Dzemanwong, and the 2nd Defendant, a descendant of Nii Abbey, nephew of Odai Ntow, each has an interest in the land.....”

The lands, the subject matter of the Statutory Declaration made by Ernest Armah Anteh dated the 19

th day of May, 1975 and registered as No. 2551/77 and AC 3114/75 and other Statutory Declaration made by members of the Nii Odai Ntow family relates to lands situate, lying and being at Kwabenya, Ashongman, Agbogba, Haatso and its surrounding villages. In in the case of Bosompim & another VRS Martei & Others and the judgment dated 31st January, 1980 by Justice K.A Agyepong in suit entitled Peter Mensah Anteh versus Simeon Aryeetey G.S. Okine and Another, Suit No. L 554/1978 their lordships held in both cases that the Nii Odai Ntow family are owners of the said lands.

The only basis for which Plaintiff can say that the said Statutory Declarations are fraudulent is if they can prove that the lands, the subject matter of the Statutory Declaration is not the property of the Nii Odai Ntow family. Plaintiff has however failed to prove this allegation.

Plaintiff cannot pray this this Honourable Court to declare the said Statutory Declaration as fraudulent when Plaintiff is not the owner of lands situate at Kwabenya, Ashongman, Agbogba, Haatso and its surrounding villages.

It is respectfully submitted that court do not make orders in isolation. Plaintiff ought so show that the said Declaration infringes on his right to the lands the subject matter of the statutory declaration.

It is further submitted for purposes of emphasis that the Nii Odai Ntow family does not derive title to its lands based on the said Statutory Declaration but based on judgments in the case of Bosompim & another VRS Martei & Others and the judgment dated 31st January, 1980 by Justice K.A Agyepong in suit entitled Peter Mensah Anteh versus Simeon Aryeetey G.S. Okine and Another, Suit No. L 554/1978.

Whether or not Plaintiff is guilty of laches and acquiescence.

There is overwhelming evidence on record to form the basis of dismissing all the reliefs of the Plaintiffs because he has been able to prove his case on the preponderance of probability. Aside of the failure by the Plaintiff to prove his case, the Ga, Gbese and Korle Stools are also guilty of laches and acquiescence.

To establish acquiescence the following elements must be proved:-

- i. The person who enters upon the other person's land did so upon

- the honest, though erroneous belief that he had right to it,
- ii. He must have expended some considerable sum of money on or in respect of the land upon the faith of his mistaken belief,
 - iii. The owner of the land must know all the time that he had right in the land which is inconsistent with the erroneous right claimed by the other
 - iv. The owner must know of the mistaken belief of the other person of his right
 - v. The owner must by his silence or otherwise have fraudulently encouraged the other person to spend his money to develop the land, and had not called his attention to his error.

See the case of **MERCANTILE INVESTMENT AND GENERAL TRUST CO- VRS RIVER PLATE TRUST, LOAN AND AGENCY CO [1894] 1 CH 578.**

Undisturbed possession of land for a long time whether by a trespasser or by some person with limited interest in the land, cannot ripen into absolute ownership. But an owner who sits by and allows a stranger to occupy his land and to expend money and energy in improving it, in honest belief that it belongs to him (stranger), will be barred by his laches from recovering possession. **See the case of OHIMEN VRS ADJEI [1957]2 WALR 275**

SASU AND ANOTHER VRS AMUA SEKYI AND ANOTHER [1987-88] 1 GLR 294

DUAGBOR AND OTHERS VRS AKYEA-DJAMSON [1984-86] 1 GLR 697

st, 3rd and 4th Defendants' ancestors (NII ODAI NTOW FAMILY) have been in undisturbed possession of lands situate at Kwabenya, Ashongman, Agbogba, Haatso and its surrounding villages prior to the Awuna and Katamanso wars. The evidence on record shows that those villages were founded before 1866 and third parties have paid tolls to the Nii Odai Ntow family since that time. The recent acts of ownership exercised by the Nii Odai Ntow family is captured by exhibits 10, 11, 12, 13, 14 and 15 which are grants made by the family to third parties. The construction of the Ashongman Estate is a recent acts of ownership exercised by the Nii Odai Ntow family. The payment of compensation in respect of the compulsory acquisition of the land for the Atomic Energy Commission is another recent acts of ownership. It is too late in the day for Plaintiff to be laying claim to the land in dispute. They are guilty of laches and acquiescence and their actions smacks of fraud and this Honourable Court should not aid them.

Plaintiff talks about an injunction having been granted in the case of Emmanuel Odenkkey Abbey and Nii Ahia Tetteh VRS Nii Numo Ashalley II, Suit No.L137/1974, forgetting that the ownership of Kwabenya, Ashongman, Agbogba and its surrounding areas was determined by His Honour Sir W. Bradford Griffith, Knight, Chief Justice, in a judgment dated 3rd April, 1904 in the case of Bosompim & another VRS Martei & Others.

The injunction granted against Emmanuel Odenkey and Nii Ahia Tetteh in Suit No. L137/1974 never made the Ga, Gbese and Korley Stools, the owners of Kwabenya lands because the court never determined the issues in the said case. Moreso, Numo Ayithey Cobblah II never counterclaim for the land the subject matter of Suit No. L137/1974.

It is however instructive to note that in Suit entitled AUGUSTINE KOBLA AMENYO VRS SAMUEL ANKAMAH ARYEE & NII KWAO OBUOBISA II, the High Court presided over by her Ladyship Mrs. Patience Mills Tetteh J, gave judgment in favour of the Plaintiff, a grantee of the Nii Odai Ntow family against the Defendants and decreed title in the land the subject matter of dispute which is situate at Kwabenya in favour of the Plaintiff.

The Defendant in Suit No. L137/1974, (NII KWAO BLENYA) is the same 2nd Defendant in Suit entitled Augustine Kobla Amenyo VRS Samuel Ankamah Aryee & Nii Kwao Obuobisa II.

Whether or not Plaintiff is caught by Limitation Decree 1974 NRCO 54 and his action is statute barred

Section 10(1) and (2) of Limitation Decree 1972 [NRCD 54] provides

10(1) No action shall be brought to recover any land after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to some person through whom he claims, to that person.

(2) No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (in this section referred to as "adverse possession").

The Nii Odai Ntow family have been in undisturbed possession and occupation of the Kwabenya, Ashongman, Agbogba, and its surrounding villages prior to the Awuna war in 1866 and the Katamanso war in 1876 and this is confirmed by the decision of His Honour Sir W. Bradford Griffith, Knight, Chief Justice, in a judgment dated 3rd April, 1904 in the case of Bosompim & another VRS Martei & Others.

The Nii Odai Ntow family have been on the land and exercised acts of ownership over the land for more than the statutory period of twelve (12) years.

I wish to submit that Plaintiff is caught by Limitation Decree 1972 (NRCD 54) and their counterclaim is statute barred.

See the case of CRENSTIL VRS KWEINUA [1979] GLR 348-354, holding 3

Somewhere May 1989 there were series of meetings in respect of Kwabenya land and Chieftaincy affairs before the Gbese Mantse and after deliberations there was a declaration on Kwabenya Affairs dated 25th June, 1989 and Stamped as No. LVB 2529/89

The declaration was signed by Nii Okai Kasablofo III, Dzesetse of Gbese Stool, Nii Ayi Kukrudu II, Akwashongtse of Gbese Stool, Nii Ayi Kingina II, Shippi of Gbese Stool among others. Attached and marked as exhibit 9 is a copy of the said Declaration on Kwabenya affairs from the Office of the Gbese Mantse.

In the said declaration it was held that Kwao Obuabasa was not the founder of Kwabenya and that Kwabenya was founded by Nii Abbey.

It was also stated in the said declaration that Gbese Stool has traditional or jurisdictional interest over Kwabenya, Ashongman, Haatso and Agbogba lands but not ownership or allodial title or interest over the said lands.

Ga, Gbese or Korle Stools do not have lands in Kwabenya, Ashongman, Haatso and Agbogba.

Whether Plaintiff has capacity to maintain this action.

My lord, the Ga Stool and the Gbese Stool both have different occupants/Chiefs and they are distinct, separate and autonomous from each other. An action in respect of Ga Stool lands must be brought by the occupant/caretaker/Reagent of the Ga Stool and an action in respect of Gbese Stool lands must be brought by the occupant/caretaker/Reagent of the Gbese Stool.

An action in respect of Korle We family lands must be brought by the Head of Korle We/family.

Plaintiff, Numo Okai I has no capacity to bring this instant action on behalf of the Ga Stool, Gbese Stool and Korle Stools. There is nothing on record to show that Plaintiff has the authority and consent of the Ga and Gbese Chiefs/caretakers/reagent to bring this action.

See the case of FIANKLU VRS ADJIANI & ANOTHER [1972] 2 GLR 209

In the Kokomlemle consolidated suits which comprises of twenty-five different suits, the learned trial judge amended the proceedings in the said consolidated suits thereby giving rise to the title occupants of the Ga, Gbese and Korle Stools. In the said suit all the three Stools were represented by lawyers.

The title occupants of the Ga, Gbese and Korle Stools was for the purposes of the kokomlemle consolidated suits and does not mean that the Ga, Gbese and Korle Stools is one entity which must sue in that capacity.

Conclusion

My Lord, in **Majolagbe vrs Larbi [1959] GLR 190 at 192** it is stated that;

'proof in law is the establishment of an averment by admissible evidence...'

The evidence adduced together with the authorities cited above supports the case of the 1st, 3rd and 4th Defendant. It is submitted that Plaintiff's case is weak, unreliable and not having been proved on the preponderance of probability and for that matter Plaintiff is not entitled to any of the reliefs as endorsed on the Writ of Summons and Statement of Claim.

I pray accordingly.

DATED AT LAW TRUST COMPANY, # 27 CASTLE ROAD, ADJACENT HOLY SPIRIT CATHEDRAL AND OPPOSITE NATIONAL ARCHIVES, ADABRAKA ACCRA, THIS 18th DAY OF FEBRUARY, 2019

**LAWYER FOR 1st, 3rd and 4th DEFENDANTS
PRACTISING LICENCE NO. GAR 21105/19**

**THE REGISTRAR
HIGH COURT
LAND DIVISION
ACCRA**

**AND FOR SERVICE ON THE PLAINTIFF OR HIS LAWYER ALBERT ADAARE
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