IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DOTSE JSC (PRESIDING)

AMEGATCHER JSC

PROF. KOTEY JSC

TORKORNOO (MRS.) JSC

KULENDI JSC

CIVIL APPEAL
NO. J4/56/2022

14TH DECEMBER, 2022

IN THE CONSOLIDATED SUITS OF

AKONA FAMILY OF KWAHINKROM
(PER EBUSUAPANYIN KWAMINA ACKON SUBST.
BY OPANYIN KWESI ESSUON) ….. PLAINTIFF/APPELLANT/RESPONDENT

VRS

MAJOR (RTD.) KORSAH ….. DEFENDANT/RESPONDENT/RESPONDENT

AND

EBUSUAPAYIN KWAW ESSUON
(SUBST. BY KWAW ARHIN) ….. PLAINTIFF/RESPONDENT/APPELLANT

VRS

EBUSUAPAYIN KWAMINA ACKON .. DEFENDANT/APPELANT/RESPONDENT
(SUBST. BY OPANYIN KWESI ESSOUN)

JUDGMENT

TORKORNOO (MRS.) JSC:-

The appeal before us has arisen from two cases that were consolidated and tried together. The first case was commenced on 20th December 2010 and numbered

E1/22/11. In this first suit, the Akona family of Kwahinkrom acting by Ebusuapayin Kwamina Ackon, who was later substituted by Kwesi Essuon (Plaintiff/Appellant/Respondent to this appeal and hereafter referred to as Respondent) sued a man called Major (Rtd) Korsah (Defendant/Respondent/Appellant, herein referred to as 1st Appellant). His claims were for:

i. Special and General Damages against the defendant for winning literite on part of the Abrobeano lands, which belongs to the plaintiff's family without any lawful authority.
ii. Perpetual Injunction restraining the defendant, his agents, assigns and all who claim through the defendant from interfering with the plaintiff family's ownership and possession of the Abrobeano lands which is bounded by the stool lands of Dominase stool, Aburansa stool and the Nsona family of Komenda.

In their Statement of Claim, the Respondent averred that the ownership of Abrobeano lands by the Akona family had been confirmed by both the Circuit Court, Cape Coast and the Court of Appeal, Accra in two separate judgments. The Circuit Court case was titled **Akona family of Kwahinkrom v Kwame Mmonyi and 4 others (Defendants) and Nana Okrakow 111 (Co-defendant)** with suit number LS/15/92.

It was their case that during the pendency of suit no LS 15/92 the 1st Appellant was resident in Abrobeano but took no steps to protect and vindicate any possible interest in the land. He had been served with copies of the judgments for his compliance. He also averred that the 1st Appellant was privy to the defendants in LS/15/92 in that Nana Okrakow 111 had testified that he was the one who put the 1st Appellant and persons associated with him on the Abrobeano lands. However the 1st Appellant had, without any lawful authority, started winning laterite on Abrobeano lands, permitted others to do so, and had also permitted others to do so. These activities formed the basis for the action against the 1st Appellant.

Defence of Major Korsah (1st Appellant)

His defence was that he is the chief of Abrobeano and the Abrobeano lands belong to the Nsona family of Abrobeano, and are not stool lands. He therefore cannot grant any portion of land to any person. He also averred that from 1995 to 2009, he had been suspended from the Traditional Council by the Omanhene of Komenda. He admitted to being entitled to customary drink from the mining of laterite regardless of who owns the land, by reason of his being chief of Abrobeano. He described the action as misplaced because the Respondent knows the real owners of the land but had chosen to chase shadows by not suing the owners of the land.

Suit number E1/26/11

Then on 12th January 2011, Ebusuapayin Kwaw Essuon of Abrobeano who was later substituted by Ebusuapayin Kwa Arhin (Plaintiff/Respondent/Appellant to this appeal and hereafter referred to as 2nd Appellant) sued Ebusuapayin Kwamina Ackon of Kwahinkrom in suit number E1/26/11. His claims were for

a. A declaration of title of all that land known at Abrobeano in the Komenda District of Central Region of Ghana which land shares boundary with Kafodzedze Township, the head of the Nsona family of Dominase, the land of the Nsona family of Komenda Antado Township and the sea (Gulf of Guinea).
b. And Order of Perpetual Injunction restraining the Defendant whether by himself, his family, agents, assigns, privies, servants and the like at howsoever from entering the town of Abrobeano, giving out any portion of the land of Abrobeano to any person(s) and/or occupation of the land of Abrobeano.

It is to be noted that both Major Korsah and the Nsona family spelt the town name as 'Abrobiano' in their pleadings and claim while the Akona family spelt the name as 'Abrobeano'. The spelling adopted in this judgment will be 'Abrobeano' on account of it being the one used in the official records on the town found within the Record of Appeal, - including the Gold Coast Chiefs List of 1941.

In his statement of claim, the Ebusuapayin Kwaw Essuon averred that he is the head of the Nsona family of Abrobeano and that all land known as Abrobeano belongs to his family. His version of how the land came to be owned by the Nsona family was that his ancestors came from Ekumfi and settled around the river called Abrobe and broke the virgin forest in the surrounding area, and called same Abrobeano. These ancestors were on the land when an Akona elder called Kobina Anoma, and also known as Egya Mpintsin, arrived in Abrobeano and requested for land to farm and also started mining salt. Egya Mpintsin left the area after some time.

Thus, the Nsona family has exerted possession and control in the area to the exclusion of the Akona family since Egya Mpintsin left the area. It was the case of Ebusuapayin Kwaw Essuon that the land is not Komenda stool land, though it falls within the traditional authority of the Omanhene of Komenda. He averred that the publication of the Statutory Declaration by the Akona family in the national dailies was very recently brought to his attention and he instructed his solicitor to raise a caveat against the processing of the Statutory Declaration by the Lands Commission. Again, since the land in issue did not belong to the Omanhene of Komenda, the judgment obtained by the Akona family in suit number LS/15/92 could not bind him.

Akona family's defence

In his statement of defence to suit no E1/26/11, Ebusuapayin Kwamina Ackon denied all assertions made, and reiterated the determination of the ownership of Abrobeano lands for the Akona family of Kwahinkrom in suit number LS 15/92 and the subsequent affirmation of this judgment by the Court of Appeal. He alleged that the Nsona family of Abrobeano had been aware of the law suit from inception to end, had failed to assert any adverse interest to the litigants in that suit, and were therefore estopped by the judgments. Their alleged interest was also a matter subject to res judicata because the Nsona family were privies of Nana Okrakow 11 who had claimed that all settlers in Abrobeano were there on the license of the Komenda stool. Further, the Nsona family was one of the groups from which the Omanhene of Komenda chose caretakers for Abrobeano during the litigation with Shama and thereafter.

He also averred that following the resolution of LS 15/92, a judgment plan had been made and some boundary owners with the Akona family had raised protests which had been resolved. The Nsona family had not raised any objection to the claims on the judgment plan.

Again, following the judgments, the Akona family had taken steps to assert control and possession of Abrobeano lands and all occupants of the land accepted their title and started attorning tenancy to them. As defendants in this suit, the Respondent counterclaimed for

i. The eviction of the plaintiff's family from the Abrobeano lands and the payment of compensation for wrongful occupation of part of defendant's family land at Abrobeano.
ii. Any equitable relief(s) as this Honourable Court may deem fit.

Reply of Nsona family

The 2nd Appellant filed a Reply and urged that he was not aware of any judgment declaring the Akona family as owners of Abrobeano lands, and that they could not be bound by any such judgment since the judgment was not against their family.

Trial and judgment

The ten issues set down for resolution included the question of '*who has been in possession of Abrobiano lands for the past 100 years'* and whether the earlier judgment obtained by the Respondent binds the Appellants.

After trial, and on 7th July 2015 the high court entered judgment in favor of the Appellants herein. On page 9 of his judgement, the trial judge stated this evaluation from the positions of the parties: '*It was clear from the evidence as a whole that the claims and counterclaims of the parties are for a winner-takes-all situation as opposed to a sharing of rights of ownership. None of the contesting parties mentioned the other as a boundary neighbour in respect of the land in dispute. Each claimed ownership of the entire land*.'

Then on page 16, the Judge went on to make this statement of law from his evaluation of the evidence '*I find therefore as a fact that the Nsona family of Abrobiano have in living memory lived and organized their affairs on the land in dispute independent of presumption of ownership at least usufructuary, in their favour. The Akona family against whose assertion the presumption operated was required therefore to produce evidence to establish the contrary, which they failed to do.*

See (1) Sections 20 and 48 (2) of the Evidence Act, 1975 (NRCD 323)'

(*III) Amankwa v Nsiah 1994-95 GBR Pt 11 758 @ 772*

(III) Bank of West Africa v Ackun (1963) 1 GLR 176 @181'

On whether or not the earlier judgments obtained by the Akona family '*adequately rebutted the presumption of owner of the land raised by the exclusive possession of the land by the Nsona family*', his view was that the Akona family's acts of possession of the land '*strongly suggested a subservient or subordinate status of the Nsona family to the Akona family in relation to the title or ownership of the land in dispute*'. He concluded that *'the title of the Akona family to the land could therefore be safely and validly presumed conclusively as against the Nsona family from the circumstances*.'

On the nature of the interest of the Nsona family, he found it to be '*one of an interest acquired by long unchallenged possession by occupation and development through residence and farming including fishing, that is the usufructuary or determinable title now referred to as the customary freehold under the Land Title Registration Law, 1986 (PNDC L 152)*'.

It was his legal evaluation that the Akona family held the inextinguishable allodial title to the land in dispute and the Nsona family and Major Korsah held the determinable usufructuary interest.

From this position, the trial judge held that the Appellant was entitled to develop, farm, build on and protect any part of the land and could exercise all rights to the exclusion of the whole world, including the Akona family who are allodial owners,

subject to reversion of ownership to the Akona family. These were the terms of his judgment and orders:

1. The action of the Akona Family of Kwahinkrom per Op. Kwesi Essoun against Major Korsah (Rtd) in Suit No. E1/22/2011 fails in its totality and same is hereby dismissed.
2. The Nsona family of Abrobiano per Ebusuapanyin Kwa Essoun as plaintiff in Suit No. E1/26/2011 succeed in part and in varied terms only against the Akona family of Kwahinkrom per Op. Kwesi Essoun as defendants.
    a. I declare that the Nsona family of Abrobiano have and hold the customary freehold title in all that land known as Abrobiano in the Komeda District of the Central Region of Ghana which shares boundaries with the Kafodzidzi Township, the land of the Nsona family of Dominase, the of the Nsona family of Komenda, the Antaado Township, the sea of Gulf of Guinea, subject to the allodial title of the Akona family of Kwahinkrom.
    b. The Akona family whether by its head or members or anybody claiming through them are hereby restrained from in anyway interfering with the exercise and enjoyment of the rights of possession and occupation of the said Abrobiano land by the said Nsona Family of Abrobiano, and or having any dealings with or the touching on the said land that conflicts with the interest of the said Nsona family and its members and persons lawfully claiming through the family.
    c. Subject to the restraint hereby imposed on the said Akona family against acts of interference and in conflict with the rights and interests of the said Nsona family on the said land the Akona family as allodial title holders over the land shall be free to enter the land and township of Abrobiano at all reasonable times for all lawful and reasonable purposes and activities.
3. As an equitable relief upon the evidence particularly of the recent expenses incurred by the Akona family of Kwahinkrom in the action to reclaim and preserve the land in dispute. I decree that all existing transactions and agreements made and executed by the said family affecting or touching on

particular portions of the land be maintained and preserved as the status quo without more.

Having regards to the findings and declarations made I order that each part bears his/its cost

In summary, the trial judge therefore dismissed the action of the Respondent, held the Nsona family to be entitled to the customary freehold title to all the land they claimed in their endorsement, and restrained the Respondent from interfering with the exercise and enjoyment of the rights of possession and occupation of the land by the Nsona family, or having ay dealings that conflict with the interest of the Nsona family. As an '*equitable relief*', he also decreed that all existing transactions and agreements executed by the Nsona family be maintained and preserved

Court of Appeal

The Respondent appealed to the court of appeal which reversed the decision and orders of the high court. The court of appeal was of the opinion that the dismissal of the Respondent's case was not supported by the evidence.

Further, it drew attention to the fact that the Respondent herein had pleaded that the Appellants were estopped in making claims on the land in issue. Both Appellants being the Nsona family and Major Korsah, had associated themselves with the paramount chief of Komenda who lost in suit number LS/15/92 against the Akona family, in the Circuit court and in the court of appeal and so the issue of who owned Abrobeano lands was res judicata.

The court of appeal agreed with both of these legal positions. On the applicability of the doctrine of res judicata, the court of appeal drew attention to the fact that in the trial at the high court, the Appellants' witness numbered DW5, who described himself as an elder of Major Korsah in his capacity as chief of Abrobeano, and witness of the Nsona family, had admitted that the Abrobi Salt Factory had been given land in Abrobeano by the Omanhene of Komenda, and this act was authorised by the Appellant Nsona family. Major Korsah had presented the same testimony. The court of appeal concluded that on this premise, the issue of ownership of Abrobeano

lands as pleaded by the Akona family, after judgment had been given against the Omanhene of Komenda was res judicata and could not be relitigated by the Nsona family. They cited the case of **Amoah v Poku [1965] GLR 155** as a decision supporting the position just set out.

The court of appeal also opined that the Appellants are estopped by the conduct of standing by and allowing the litigation in LS/15/92 without taking any step to protect the interest they claimed in Abrobeano lands. The court of appeal pointed out that under cross examination, Major Korsah had admitted to knowing all the defendants in suit number LS/15/92. After the litigation in the circuit court, a letter was written to the 1st Appellant, as headman and chief in Abrobeano, followed by a meeting in the town hall. There was also a redemarcation of the boundaries of the disputed land in full glare of the Nsona family without their raising a protest.

The court reversed the finding and holding that the Nsona family had proved a claim to usufructuary interest, since, according to the court of appeal, they had not made such a claim in their pleadings. In this wise, the court of appeal agreed with counsel for the Respondent that contrary to the principle articulated in **Dam v Addo [1962] GLR 200**, the high court had substituted a case proprio motu with the case made out by the Appellants herein in the high court, and given them a relief contrary to, and inconsistent with the evidence before the court. It cited **Grumah v Iddrissu [2013] 1 SCGLR 413** and **Nyamaah v Ampnsah [2009] SCGLR 361**.

The court of appeal reversed the judgment given in favor of the Nsona family save for the holding that they cannot be evicted from the land as claimed by the Respondent, and granted perpetual injunction to restrain the Nsona family and their privies, assigns, workmen, agents from interfering in any way with the control and ownership of the Nkona family over the Abrobeano lands

The Appellants appealed on the following grounds of appeal:

a. **The court of appeal erred in coming to the conclusion that the appellants were caught by the doctrine of res judicata**

b. There was no legal basis for the court of appeal to overturn findings of fact arrived at by the trial judge

Preliminary legal point

Notwithstanding having failed to raise any contentions regarding the validity of the judgment that Appellants had appealed against, counsel for the Appellants took a very strange first step in his submissions to this court. He began by urging that there was a 'procedural misstep' in the hearing of the appeal before the court of appeal which was so fatal that this court should order the case to be returned to the court of appeal for consideration of the appeal that was filed in that court, and for a new judgment to be entered.

He submits on page 2 of his submissions that that '*the full bench of the Court of Appeal made an order directing the appellant i.e. Akona family to amend the title of the appeal so the appeal could proceed – see order of the full bench of the Court of appeal at pages 404-405 of the record. At that point in time, the appellants therein had already filed their written statement. The respondents therein could not file any written statement until such time that the amended title had been filed so the record would be up to date.*

The appellants therein did not comply with the order of the court of appeal and did not file any amended title. The court of appeal differently constituted totally disregarded the earlier order of the court ***and merely decided to fix a date for judgement*** *– see page 406 of the record, thereby* ***denying the respondent therein the opportunity to file any written submission****. It is therefore our contention that* ***procedurally the appeal was not ripe for judgment*** *to have been delivered* (emphasis mine)

In essence, counsel is submitting to us that first, the appeal was not ripe for hearing before a date for judgement was fixed, and second, the appeal was not heard before judgment was given, and third, the Appellants were not heard before judgment was given.

Consideration of preliminary legal point

On the Law

First, we must point out that the duty and time to file a party's Statement of Case in the court of appeal is not dictated by the court, but by **Rule 20** of the **Court of Appeal Rules 1997 CI 19** as amended by the **Court of Appeal (Amendment) Rules 1998 CI 21**. CI 21 amends Rule 20 (1) and (4) of CI 19 to read as follows:

20 (1) Written submission

(1) An appellant **shall within 21 days** of being notified in Form 6 set out in Part 1 of the Schedule that the record is ready, or within such time as the Court may upon terms direct, file with the Registrar a written submission of his case based on the grounds of appeal as set out in the notice of appeal

(4) A party upon whom an appellant's written submission is served shall, if he wishes to contest the appeal, file the written submission of his case in answer to the appellant's written submission within 21 days of the service, or within such time as the court may upon terms direct

Rule 20 (5) of CI 19 also reads:

(5) The appellant may, within fourteen days of the service on him of the respondent's written submission, file with the Registrar a reply to the respondent's written submission

By the operation of CI 19 therefore, unless parties obtain an alternative direction from the court, an appellant is under an obligation to file the written submissions on his case within 21 days of being served with the Form 6. In the same way, a respondent **who wishes to contest an appeal** (emphasis ours) is mandatorily required to file his submissions in answer within 21 days of being served with the appellant's submission, unless he obtains an alternate direction from the court. But what requires critical note, especially in the light of the current submissions of counsel for appellant, is that it is the prerogative of a respondent to answer the appellant's submissions. The law does not impose nor recognize any duty to. However, if they choose to answer the written submission the appellant's case, the

CI 21 give them 21 days to do so, unless an alternate direction is sought from, and given by the court.

The record before us shows that counsel for the Respondent, who was the appellant in the court of appeal, filed his written submissions on his case. This would mean that the statutorily set twenty-one-day period for filing an answer started to ran from the date of service of these written submissions on his case. This position has nothing whatsoever to do with the subsequent application for substitution that was filed on 2nd August 2016. That application did not remove the burden placed on the Appellant herein to file written submissions of his answer by the 21st day of service of the appellant's written submissions on his case.

Without a showing that the Appellant got a dispensation to file his written submissions of his answer out of time or in a manner tied to the re-filing of the Notice of Appeal to reflect the substitution of the appellant before the court of appeal, we are satisfied that current Appellant's submissions to us on this alleged 'procedural misstep' completely misconceives the law on how time is managed in the hearing of appeals under CI 19.

On the Facts

We have also examined the record and find that the submissions of counsel regarding a date being fixed for judgment without a hearing of the appeal is not at all borne out by the records.

First, on 24th July 2017, with all parties present or represented, and counsel for Respondent before us present in the court of appeal, and counsel for Appellant absent from the court of appeal, the court of appeal entered the following significant words that can be found on page 405 of the Record of Appeal (ROA) before us.

*By Court: Counsel for the Appellants in both suits is to put his house in order by amending the title of the appeal in accordance with the order of substitution dated 25th October 2016**. Appeal adjourned to 30/10/17.*** (emphasis ours)

On the very face of this record, the court of appeal did not annex the hearing of the appeal to the filing of the amended title of the appeal. The court noted that an order

for substitution had been granted on 25th October 2016, and the court directed counsel for the party who obtained the order for substitution, to take the step of amending the title of the appeal in accordance with the order of substitution. And without assigning any conditions to this direction, the court of appeal went on to immediately fix a definite date for the hearing of the appeal. This record therefore confirms that contrary to the submissions of counsel for appellant before us, the court of appeal fixed a date for the hearing of the appeal.

The next proceedings within the ROA before us occurred on the 6th November 2017. Every party in the appeal was present or represented. The current 2nd Appellant was represented by Albert Owusu Ansah, who was recorded as being a 'family member'. Every party was also represented by counsel. The counsel for the current 1st Appellant was recorded as Samuel Atta-Payin Yalley. And the court recorded these crisp and self-explanatory words:

'*The appeal is ripe for hearing. The respondent were (sic) served the written submissions of appellant on 10th May 2016 but has failed to file written submission.*

Appeal adjourned to 5th December 2017 for judgment'.

What other records can be clearer than this? As an officer of this court, I think that counsel for Appellants has done a great disservice to the court by presenting us with these preliminary misconceptions and misrepresentations.

The preliminary submissions against the hearing of this appeal are dismissed.

Consideration of grounds of appeal

a. *The court of appeal erred in concluding that the appellants were caught by the doctrine of res judicata*

The background to this appeal shows that the Respondent family has been declaring its interest as owner and battling for control of the disputed land in court since 1992

Suit Number LS/15/92

Before the current cycle of litigation in suit numbers E1/22/11 and E1/26/11, the Respondent **Akona family of Kwahinkrom,** sued five defendants called **Kwame**

Mmonyi , Kweku Nyarko, Kofi Eyee Korsah, Kwabena Nyan and Kwasi Bronya in suit numbered **LS 15/92**. The suit was joined by a co-defendant, Nana Akofo 11, later substituted by Nana Okrakow 11, who was the then Omanhene of Komenda. The co-defendant in LS/15/92 urged that Abrobeano lands belonged to his Komeh Ebiradze Ebusua family, which is the royal family of Komenda

The claim of the plaintiff was identified in the judgment that ensued from the trial as being for

a. **5,000,000 cedis damages for trespass to the Plaintiffs stool land kbown and called Aborebeano village bounded by the stool lands of Dominase, Aboransa and Nsona family of Komenda**
b. **Recovery of 1,800,000 being monies collected by the defendants from persons to whom the defendants had made grants of the plaintiff's land unlawfully**
c. **Perpetual injunction restraining the defendants, their agents, assigns or servants from further future interference with the plaintiff's stool land**

At the end of that suit, the high court judged the case in favor of the Akona family in 2005. The defendants in suit number LS/15/92 appealed the high court judgment. The appeal was dismissed in 2009 and the court of appeal upheld the judgment of the high court.

The significant findings and holdings of the circuit court and the court of appeal in the judgment on suit number LS/15/92 were that:

a. There had been litigation between Komenda and Shama paramountcies from 1958 and various families under the Komenda paramountcy, including the Akona family, ceded their lands to the Komenda paramount stool to raise money for the litigation. This fact in issue had been asserted by the Akona family and denied by the Omanhene of Komenda
b. Following the litigation, other families had received control of their lands. The Komenda paramountcy had failed to return control over Abrobeano lands to

the Akona family even though the family had gone to the Komenda stool to reclaim control over their lands

c. Respondent had tried to settle this claim before then Central Regional Secretary but this did not assist with the paramountcy relinquishing control over Abrobeano lands. The Omanhene at the time of meeting with the Central Regional Secretary was Nana Okofo 11 and the Komenda Omanhene at the time Respondent commenced LS/15/92 was Nana Akofo 11.

d. The defendants **Kwame Mmonyi , Kweku Nyarko, Kofi Eyee Korsah, Kwabena Nyan and Kwasi Bronya** had also pleaded that the Komenda stool owns Abrobeano lands and they occupied the land on the authority of the Komenda stool

e. In his defence as co-defendant, the Komenda Omanhene Nana pleaded that the Akona family and the other occupants of the land lived there on the license of the Komenda stool

f. However the testimony of Nana Okrakow 11 who was substituted for Nana Akofo 11 was in contradiction of the pleading of Nana Akofo 11. He testified that it was the ancestors of the five defendants who gave the Respondent's ancestors permission to settle on Abrobiano land, and not his own ancestors.

g. Other testimony before the court was that the Komenda Omanhene's family being the Komeh Ebiradze Ebusua had its own land different from Abrobeano. That land was separate from Abrobeano by a lagoon.

h. By claiming perpetual injunction against the defendants, the Respondent had put his title in issue as per the direction of the court of appeal in **Mensah v Peniana [1972] 1 GLR 337**

i. Following the creation of a survey map on the areas in dispute, the area of land being claimed by Akona family encompassed the area of land being claimed by the co-defendant for his Komeh Ebiradze family, with the northern part of the land claimed by the co-defendant jutting out of the lands claimed by Respondent as Abrobeano lands

j. The Respondent's claims to the boundaries of the Akona family land were corroborated by the Nsona family of Komenda, and Dominase, who admitted to sharing boundaries with the Respondent

k. The court was satisfied that the Respondents ancestors settled on the land before the ancestors of the five defendants. Witnesses corroborated the testimony that before the Komenda/Shama litigation, the settlers on the land knew the Respondent's family as owners of the land, and the five defendants were paying tolls to the plaintiffs family.

l. Following the judgment in LS/15/1992, the Respondent family caused a statutory declaration regarding the ownership of the mapped land to be prepared, and advertised, thereby allowing other boundary owners to harmonize issues regarding the respective boundaries. The Respondent family also undertook other acts of assertion of their title and interest in the land that had been recognized by the circuit court - such as leasing land, leading the commissioning of businesses on the land, and demanding tolls from occupants of the land.

From the above, the court of appeal found every reason to uphold the circuit court judgment.

Current appeal before the Supreme Court

The submission of counsel for Appellants before us regarding the evaluation of the court of appeal regarding the claims in E1/22/11 and E1/26/11 being subject to res judicata, is that defendants in LS/15/92 '*were not members of the Nsona family of Abrobiano. The Nsona family were not tracing their title to the land through those persons and the land the Akona family obtained judgment for was clearly not the same land in dispute in the instant case*'. They further urged that because of this, the said judgment could not bind the Nsona family. According to him, from the evidence adduced in the consolidated suits on appeal, it was the Nsona family of Abrobeano which had been in unfettered control and possession over this land.

He also urged that it appears that the only reason why the court of appeal held that the Nsona family was bound by the earlier judgments was because DW5 had identified the Nsona family with the Omanhene of Komenda, who by their testimony, sought permission from the Nsona family before leasing Abrobeano land to the Abrobi salt company. According to counsel, giving permission to the Omanhene to make a grant of land to the company did not mean that the Nsona family traced its title to the Omanhene.

Citing the following words of Sir George Deanne CJ in **Yode Kwao v Kwesi Coker 1931 1 WACA 162 at 168** on the law's position regarding a non-party who is bound by an earlier judgment - '*A person may be bound by a judgment though not a party to it, if he is in the same interest as a party thereto and might if he had chosen necessary steps had been admitted as a party*,' Counsel for Appellant urged that '*it is only too clear that the Nsona family and the Omanhene are not in the same interes*t'

We have read the submissions of counsel for Appellant and find them nothing short of disingenuous and difficult. The doctrine of estoppel per rem judicatam comes with firm contours. The position of the law on whether an earlier judgment renders the cause or matter or issue res judicatam for a third party is that a judgment involving the same parties on the same subject matter shall be binding on the parties and their privies, assigns and successors in title.

This court in **Agbeshie and Another v Amorkor and Another [2009] SCGLR 594** intoned the operation of the doctrine thus:

'*The law on the subject ought to be stated here in brief. It is that*

'it is well settled under the rule of estoppel, that if a court of competent jurisdiction has tried and disposed of a case, the parties themselves and their privies cannot thereafter bring an action on the same claim or issue'.

Citing inter alia **Dahabieh v SA Turqui & Bros [2001-2002] SCGLR 498 at 507**, this court in **Agbeshie v Amorkor** also quoted Azu Crabbe CJ in **Asare v Dzeny [1976] 1 GLR 473 at 478**:

'*By the doctrine of estoppel per rem judicatam a final decision of a concrete issue between parties by any court having jurisdiction to determine that issue, will forever preclude either party from raising the same issue against the other party to the decision, whether the trial is before the same court, or before any of higher or lower jurisdiction*'.

What is critical when the application of res judicata is raised is for a court to examine the full record of the earlier proceedings alleged to bind the parties before it and be satisfied that the subject matter, interests and capacities of the parties alleged to be bound by an earlier judgment are the same as in the contemporary dispute in which the defence is raised. If it is, then the parties and their privies in interest are bound by the earlier decision.

In **Appeah and Another v Asamoah 2003-2004 SCGLR 226 at 233 to 234** this court delineated the need for a court to have the full record of the earlier proceedings to assist with the determination of the kind of estoppel raised by the judgment – whether it is a cause of action estoppel or issue estoppel. The burden of proving the nature of estoppel created by a judgment lies on the party urging it.

In relation to the matter before us, the Respondent sued Kwame Mmonyi, and four others, who pleaded agency to the Omanhene of Komenda, and the Omanhene of Komenda joined in settling this ownership interest of either the Akona family or those from which the Omanhene of Komenda derived his claim to ownership. His assertion was that the ownership rights he was exercising in giving grants of the land directly and through the five defendants was derived from the Komeh Ebiradze family of the Komenda stool over Abrobiano lands. Although the Respondent did not seek for a declaration of title but damages for trespass, and injunction to restrain the defendants he sued for injunction to restrain future interference with their land, this put an obligation on them to prove by positive evidence, the ownership interest of the Akona family.

And the circuit court found and held that on the quality and sufficiency of evidence presented, spanning evidence on ancient and traditional activities, and modern acts of possession – save for the period of litigation between Komenda stool and Shama

stools when lands were ceded to the Komenda stool - that ownership, possession and control had been exercised by the Respondents as against the Komenda stool or any other person, to merit a grant of their claim of injunction to halt trespass.

This matter went up to the court of appeal. The court of appeal rightly evaluated that by claiming damages for trespass and perpetual injunction to restrain future interference, the Respondent had put its title in issue before the circuit court. This is the state of the law supported by decisions from cases cited by the court of appeal such as **Mensah v Peniana [1972] 1 GLR 337** where the court tried to state the pure form of this proposition of law from its early days of enunciation in **Kponuglo v Kodadja [1933] 2 WACA 24** (PC) and **Summey v Yohuno 1962 1 GLR 160 (SC)**. The clarified position of the law in **Mensah v Peniana** is as follows

`*where a plaintiff sues not only for trespass but also for an injunction, and his claim is denied, he is deemed to have put his title in issue; he cannot succeed unless he is able to establish his title. (page 342)*

'*..the conditions necessary for the application of the principle in Kponuglo v Kodadja (supra) are:*

(1) That the plaintiff's claim is for:

a. *Damages for trespass*

b. *An injunction restraining the defendant or his agents or servants from entering the land or area in dispute or in any way interfering with the plaintiff's possession of it*

2. That the defendant claims ownership of the land or area in dispute.

The injunction in (1) (b) above must be a permanent injunction against the defendant or his agents or servants, and not merely an application by the plaintiff for an order for interim injunction. (page 343)

From this premise, the court of appeal conducted a rehearing and upheld the decision of the circuit court that from the evidence available, the Respondent had established its ownership over the land in issue with positive evidence from both

recent acts of possession and testimonies from traditional evidence as required for a party claiming root ownership in land. Evidence required to be proved, from the law distilled in **Akoto v Kavege [1984-86] 2 GLR 365** at page 371 include disclosure of root of title, the divulging of the tradition of acquisition of an inherited estate nor the incidents of purchase, if acquired by sale, clear and positive acts of unchallenged and sustained possession or of substantial, establishment of the boundaries of the land, calling of boundary neighbors to testify to the ownership of the adjoining lands. The court held such evidence to be '*invariably essential*.'

Having satisfied the evidence required to avoid a ruling refusing the claim for damages for trespass and perpetual injunction to restrain the continuation of trespass, the Respondent's title to the boundaries of land claimed in Abrobeano had been properly entered after the trial of suit number LS/15/92 and this remained the decision of a court of competent jurisdiction.

In the present suit, the Respondent was plaintiff and the 1st Appellant was defendant in E1/22/11. Again the Respondent was seeking damages for trespass and injunction to restrain future trespass. This capacity is no different from the capacity in which the Respondent sued the other defendants in LS/15/92. It is in suit numbered E1/26/11 that the 2nd Appellant was seeking declaration of title to Abrobeano lands, and he sued the Respondent who had already commenced action against the 2nd Appellant's kinsman – the 1st Appellant. Thus, both the title of Respondents and Appellants were in issue before the high court in the high court.

Significantly, during this trial, the Appellants recognized that the Respondent had battled title to the disputed land with the Omanhene of Komenda, and exerted possessory acts over persons that the Omanhene had given interest to before the dispute. When confronted with this evidence, the Appellants claimed that the Omanhene of Komenda had exercised the earlier ownership right because they had permitted him to deal with interests in the land in issue.

The legal deduction from this 'permission' is that the Omanhene was their privy in the estate or the property in issue, when he purported to grant interests on Abrobeano lands. A privy is a person deriving legal interest, or obligation on account

of another. A privy in estate or property, from **Black's Law Dictionary 11th Edition, Thomson Reuters 2019**, is a person with a mutual or successive relationship to the same right in property, as between grantor and grantee or landlord and tenant. This court articulated it this way on page 599 in **Agbeshie v Amorkor** '…*their privies, which term include anyone who has a legal interest of privity in any action, matter, or property by blood, representation, such as an executor or an administrator of an intestate person, etc'.*

If the Appellants are to be believed, they had authorised the activities of the Omanhene of Komenda that led to his being sued in LS/15/92, and were the principals behind the grants of land he gave, even if the Omanhene misrepresented this position to the court. That being so, the case of the Appellants is that the Omanhene of Komenda was their privy in interest in landed property in his actions regarding Abrobeano lands.

We are satisfied that the capacities in which the parties in suit number LS/15/92 litigated did not in any way differ from the capacities in which the current consolidated actions were conducted. In LS/15/92, the Omanhene of Komenda and the other defendants had asserted that everyone on the Abrobeano lands identified before the court was there as a licensee of his Komeh Ebiradze family of Komenda that owned the land. In the present suit, the Appellants asserted that everyone exercising any form of right or interest on Abrobeano land, including the Omanhene of Komenda, derived that license from the Nsona family of Abrobeano, and that the Omanhene of Komenda had at all times been a privy in property with the Nsona family of Abrobeano.

And the issues have not changed or deviated. The Respondent family is adamant that the lands described by them as Abrobeano lands were theirs as allodial interest holders. They are adamant that the Kwame Mmonyi group, the Omanhene of Komenda, the Nsona family or Major Korsah did not have any interest and right that allowed them the right to grant interests in the Abrobeano lands. This is the critical issue that was litigated in LS/15/92, and it is this same critical issue that was litigated in the E1/22/11 consolidated with E1/26/11. Having determined that the

Respondent is the allodial interest owner in LS/15/92 vis a vis the claims of the Omanhene of Komenda, it is clear to us that with the testimonies from the Appellants that the Omanhene of Komenda was supposed to be their privy in property whenever he granted the Abrobeano lands, this testimony should have compelled a finding that the doctrine of res judicata should have applied in the resolution of the suits on appeal.

In this case, the Omanhene was challenged for his activities on Abrobeano land from 1992 to 2005, and 2005 to 2009 on appeal, and yet the alleged principal/licensor of the Omanhene failed or refused to profer any testimony to support their alleged interest behind the activities being implemented by the Omanhene. As his principals, the Appellants are bound by the determination of the court on the basis of the evidence available to that court.

In **Ababio v Kanga [1932] 1 WACA 253**, the court clarified that a decision by a count of competent jurisdiction cannot be contradicted by any of the parties who litigated in the earlier suit and their privies in relation to the subject matter and the parties are estopped from questioning the rights and the status determined by the earlier suit in a subsequent one except where it is being impugned on grounds of fraud.

Both the cause or matter, and issues before the court in LS/15/92 – to the extent that they related to the Respondents and their privies, and the Omanhene of Komenda and his privies, were determined by a court of competent jurisdiction, and confirmed by the court of appeal, and should have been found to be binding on the high court in the determination of E1/22/11 and E1/26/11.

ESTOPPEL

The court of appeal had evaluated that apart from the high court being subject to the operation of res judicata in relation to the Respondent's interest in Abrobeano lands, the Appellants are also estopped by the conduct of standing by and allowing the litigation of LS/15/92 without taking any step to protect the interest they claimed in Abrobeano lands. While the doctrine of res judicata or estoppel per rem judicatam operates against a court and prohibits it from reopening an issue that has been

determined to a conclusion between parties and their privies, the equitable doctrine of estoppel operates against any person who exhibits conduct on which others will rely to change their positions to their detriment.

The Supreme Court in **Amoah v Poku 1965 GLR 155** sets out the operation of the principle very simply. In an earlier decision, the Respondent before the Supreme Court had been one of the two parties to a suit in which the claim of the Appellant was dismissed. That earlier suit was titled **Amoah v Manu**. The Appellant had appealed against the decision in **Amoah v Manu** without making the Respondent a party to the appeal. The Supreme Court had overturned the earlier decision of the high court in the reported decision of **Amoah v Manu [1962] 1 GLR 218** .

The Respondent commenced a new action against the Appellant on the premise that he was not a party to the appeal that had resulted in the decision in **Amoah v Manu [1962] 1 GLR 218,** that had overturned the earlier high court decision. This position of the Respondent was upheld by the high court. On appeal to the Supreme Court, reported in **Amoah v Poku [1965] 155** the court had this to say on pages 164 to 165:

`*the learned trial judge completely overlooked the most important fact that in the first suit, the plaintiff identified himself in every respect with Kwaku Manu, that one and only one set of issues was joined between the defendant on the one hand, and the plaintiff and Kwaku Manu on the other. There are cases in which judgment between the two parties can operate as an estoppel against a person who was not party to the proceedings in which the judgment was delivered. The principle in such a case is a combination of an estoppel by record and an estoppel by conduct. This principle is formulated in a judgment of this court in* ***Egyin v Aye 1962 2 GLR 187 at 192*** *as follows: 'If A identifies himself with B in a suit against C on specific issues and B loses to C, then A is estopped by conduct from re-litigating the same issues against the successful party C*'

The court clarified that on account of the earlier decision of the high court on each of the issues, having been vacated in **Amoah v Manu 1962 1 GLR 218**, `*no res judicata can be founded upon that judgment which is non est*'. What operated

against the respondent in that suit was the principle of subject matter estoppel by reason of existing record.

In the present case, the judgment in LS/15/92 remained efficacious and binding, having been affirmed by the court of appeal, with no further appeals against it. So the doctrine of res judicata definitely operated against the high court in its determination of E1/22/11 and E1/26/11.

This does not however preclude the application of the principle of estoppel by conduct against the Appellants. In this context, while claiming that the Omanhene of Komenda was their privy in estate, and with full knowledge of all the different defendants, the Appellants had sat by while the Omanhene had asserted an interest contrary to what the Appellant was now asserting before a court of competent jurisdiction. They had maintained this silence when the issue of ownership of Abrobeano lands went on appeal. We say this because on a sober review of the evidence, there is no way that the Appellants did not know of this litigation, especially after judgment was entered by the circuit court.

After the litigation in the circuit court, a letter was written to Major Korsah, as headman and chief in Abrobano, and a leader in the Nsona family, followed by a meeting in the town hall. There was also a demarcation exercise of the boundaries of the disputed land for those who took issue with the boundaries claimed by the Akona family, and this was done in full glare of the Nsona family without their taking steps to ensure that their interests in Abrobeano lands were recognized and protected.

Clearly if the Appellants believed that they had the right of ownership to Abrobeano lands, they owed a duty to the courts of this land, to investors in Abrobeano lands, including the Abrobi Salt Company, which relied on the judgment to attorn tenancy to the Respondent, and to the Lands Commission as the registry of lands, to assert their claims to Abrobeano lands. From 1992 to 2010, a period of eighteen years, the Appellant ostensibly hid behind the Omanhene of Komenda for him to give lands without disclosing their alleged identity as his privy in estate. The Appellants are estopped from challenging the judgment in LS15/92 by the record of admission of

that privity, and their conduct in standing by to watch the earlier actions undertaken to perfect the Respondent's interest in Abrobeano lands, following that judgment.

We are satisfied that the court of appeal did not commit an error in determining that the Appellants were estopped by their conduct of failing to express their alleged interest in Abrobeano lands, from litigating same in E1/22/11 and E1/26/11.

Orders made in favour of Appellants by the high court

We believe that our judgment must straighten the legal premise from which the high court entered judgment in favour of the Appellants, instead of affirming the standing judgment between the privies of the Appellants and the Respondent in LS/15/92. The notice of appeal to the court of appeal had included these two grounds:

i. The holding by the trial court that the Plaintiff/Respondent and his family and Major Korsah Rtd in Suit No E1/26/2011 have acquired usufructuary title in the Abrobeano lands was made in error

iv.The decision of the trial court in Suit No E1/22/2011 is against the weight of evidence adduced at the trial

However, when the court of appeal considered this first ground of appeal in the light of the fourth ground of appeal, they simply focused on the submission that the trial judge had substituted a new case for the Appellants on this point, agreed with that submission and concluded that '*the order of the learned trial judge that the Akona family Appellant be restrained from the disputed land, flies against common-sense and against the very findings of the learned judge himself*'.

When a party complains that a judgment is against the weight of evidence, it should be appreciated that legal issues are within the purview of that ground of appeal, and the court is called on to consider the applicable law in the light of the evidence adduced because '*in essence what it means, inter alia is that, having regard to the facts available, the conclusion reached which invariably is the legal result drawn from the concluded facts, is incorrect*'. See the opinion of Wood JSC as she then was in **Attorney General v Faroe Atlantic Co Ltd [2005-2006] 271 at page 308.**

This position was built on in **Owusu Domena v Amoah [2015-2016] 1 SCGLR 790**

This is why, on account of the sensitivity of this case in relation to the peace and stability of the area in dispute, we deem it prudent for the benefit of all courts, to address the high court's legal reasoning that the court of appeal failed to address. Ghana has reached a critical stage in its development where the money economy has become the burden bearer of national security, stability and peace. And no one can divorce the money economy from land holding. Land forms a large part of collateral given for money, and the location for the conduct of business. Title to land holding therefore, when perverted or wrongly designated, can become a source of instability for the entire community and nation. It is therefore critical that when identifying or allocating rights, interests and entitlements, courts do not evaluate entitlement to such rights and interest without sober assurance of what they mean for the peace and stability of the entire community.

Allodial v Customary freehold interests in land

It has always been understood under common law that the proprietary interest in land described as usufructuary interest is by its very nature, a derived interest. As described by Lord Haldane in **Tijani v Secretary, Southern Nigeria (1921) AC 399 at 403**, `*the usufructuary right was a mere qualification of or burden on the radical or final title of the sovereign*' .

The learned author S K B **Asante, in Property Law and Social Goals In Ghana 1844-1966, Ghana Universities Press 1975 put it this way -** *'this right of beneficial user in no way derogated from the allodial title of the stool'*.

The usufructuary interest or the determinable customary freehold interest is derived from the holder of the usufruct being in direct relationship with the sovereign that has the allodial title. This relationship may be derived from family, clan or subject and sovereign. It seems that it is in this context that the trial judge articulated this reasoning on page 17 of his judgment prior to the distribution of rights in his final conclusions: `*The failure of the Nsona family in possession of the land to join the action for a claim of title to the land fought for 17 good years between the Akona*

family and the Omanhene of Komenda and his said agents at Abrobiano, and their (Nsona family) indifference to the terms of tenancy and proceeds of the said Abrobi Salt project on the land <u>further confirmed that subservient status</u> in relation to the Akona family'. (emphasis ours)

The problem with this reasoning however, is that the trial judge had earlier clearly found and articulated a total lack of acknowledgement of vertical relationship between the parties on page 9 of his judgement,: '*It was clear from the evidence as a whole that the claims and counterclaims of the parties are for a winner-takes-all situation as opposed to a sharing of rights of ownership. None of the contesting parties mentioned the other as a boundary neighbour in respect of the land in dispute. Each claimed ownership of the entire land*.'

The traditional history testimonies given by the representatives of both the Nsona and Akona families was that they were owners of the land in their own rights and they were the ones who exerted control and tribute rights over the land from the ancestors of the other. Since, according to the trial judge, neither of them could substantiate these positions, the trial judge had relied on recent acts of possession and control to determine the establishment of Akona ownership of the land– in accordance with the directions of this court from cases such as **Adwubeng v Domfeh 1996-97 SCGLR 660**

Thus if the conclusion of the court was that the Akona family were holders of the allodial interest holders, then that conclusion required a direction to the Nsona family to acknowledge that allodial interest, and be subject to its administration, without which only chaos would flow from the judgment.

It is this disconnect between how the Nsona could have obtained the usufructuary or determinable customary freehold interest without any acknowledgement of an overlord status in the Akona, and directions to ensure the thread of derivation of interests in the final conclusion and orders that makes the judgment fundamentally erroneous and against the weight of evidence – as asserted on the notice of appeal to the court of appeal.

This high court judgment was entered in July 2015, when the **Land Title Registration Act, 1986 PNDC Law 152** was the prevailing statute on recognized interests in land. PNDC Law 152 has now been repealed by section 282 (1) (m) of the Land Act 2020 Act 1036. In 2015, PNDC Law 152 recognized the 'customary law freehold' and not 'usufructuary interest', a necessary distinction that should have freed the judgment from attempting to use the two expressions interchangeably.

In his helpful book, **Contemporary Trends In the Law of Immovable Property In Ghana, Black Mask Ltd 2019**, the learned author Yaw Oppong, scans relevant cases that define the customary law freehold interest such as **Ago Sai and Others v Kpobi Tettey Tsuru 111 [2010-2012] 1 GLR 231**, **Ohimen v Adjei [1957] 2 WALR at p279**, **Tawiah v Gyampo [1957] 3 WALR 293,** and describes the proprietary interest in these words on page 134; '*the customary freehold has over the years been known as an interest in land which, for example, a member of a community, which holds the allodial title to land, may acquire in vacant virgin communal land by exercising his inherent right to develop such vacant virgin communal land by either farming on it or building on it*.' (emphasis provided)

Section 19 (1) (b) of PNDC Law 152, the relevant provision upon which the high court anchored the rights conferred on the Appellants provided:

19. **Proprietor of land and registrable interests**

(1) A person shall be registered as proprietor of land, if in relation to that land, that person

a. is the allodial owner, that is to say, that person holds it under customary law where that person is not under a restriction on the rights of user or obligations in consequence of that holding other than restriction or an obligation imposed by the law of the Republic generally; or

b. holds a customary law freehold, that is to say, that person holds right of user subject only to the restrictions or obligations imposed on a subject of Stool or a member of a family who has taken possession of land of which the Stool or family is

<u>the allodial owner</u> without consideration or on payment of a nominal consideration in the exercise of a right under customary law to the free use of that land; or

(emphasis ours)

The above statutory regime was therefore clear and unequivocal. The customary law freeholder is necessarily the subject of a stool or member of a family which owns the allodial title and must acknowledge that head title holder. Thus where as in the case under consideration, one party asserts ownership in their own right as against the other party, any long presence on the land by those alleging long occupation, cannot ripen into usufructuary or customary law freehold interest unless their connection to the allodial interest owner is traceable and acknowledged. There must be a derivative relationship between the person urging a customary law freehold interest and the person that actually holds the allodial root interest. This was not the situation in this case and the high court judgment on that misstatement of law was absolutely against the weight of evidence.

Again, within the statutory context of allodial and customary freehold interests that prevailed at the time of the high court judgment, there can be no continued and sustained failure of acknowledgment of the allodial title from which the subservient usufruct is traced, and certainly no judgment should confer that purported right. And yet this was the burdensome import of the judgment and orders of the high court that the two grounds of appeal being addressed spoke to.

To close this consideration of the error of law in the judgment that was over turned on appeal, it is important to point out that under the current **Land Act 2020 Act 1036,** Ghana law has gone on to define the Customary Law Freehold under Section 3 as distinct from the Usufructuary interest as an interest in land under Section 5. This was not the situation under PNDC Law 152

Section 3(1) reads;

Customary law freehold

3(1) *Customary law freehold is an interest which arises from a transaction under customary law, and it is*

a. *An absolute interest in land which is not subject to any proprietary obligations <u>but is subject to the jurisdictional and cultural rights of the stool or skin, or clan or family which holds the allodial title</u>*

b. *Acquired when a person or group of persons, where the law permits, purchase land outright from the stool or skin, or clan or family which holds the allodial title or acquired by gift or inheritance*; (emphasis ours)

Section 5, defining the **Usufructuary** interest reads:

5(1) *Usufruct is an interest in land, which is*

a. *Acquired in the exercise of an inherent right by a subject or a member of a stool or skin, or family or clan which holds the allodial title through the development of an unappropriated portion of the land of the stool or skin, or family or clan or by virtue of an express grant; or*

b. *Acquired through settlement for a period of not less than fifty years, with the permission of the holder of an allodial title by a non-indegene or group of non-indegenes, except where the settlement is on agreed terms; and*

c. *Inheritable and alienable*

And even in this current distinguished statutory form, neither the usufruct interest, nor the customary law freehold interest, can be obtained without an acknowledgement and tracing of its source to the allodial interest owner. This has always been the position of the law.

The legal premise upon which the trial judge purported to find a usufructuary interest and or customary law freehold interest in the Nsona family was wholly unsupported and unsupportable, and should have been straightened out by the court of appeal.

Ground 2 - There was no legal basis for the court of appeal to overturn findings of fact arrived at by the trial judge

This ground of appeal sins against **Rule 6 (5)** of the **Supreme Court Rules 1996 CI 16** which directs that:

6(5) *No ground of appeal which is vague or general in terms or discloses no reasonable ground of appeal shall be permitted, except the general ground that the judgment is against the weight of evidence; and any ground of appeal or any part of it which is not permitted under this rule may be struck out by the court on its own motion or on application by the respondent*

The ground of appeal is vague and provides no indication of the actual and proper complaint of the Appellants. It is struck out.

Conclusion

We have considered the overwhelming evidence on record that supports the holding that it is the Akona family that had exercised ownership rights over Abrobeano in recent history, and their case that their historic acts of ownership were interrupted by the Shama-Komenda conflict, which gave the Omanhene of Komenda rights over their land through agreement and for a limited season which ended in the 1970s. Since the judgment from LS/15/92 remains the prevailing judgment for and against the parties herein, their privies and assigns, it provides absolute clarity on the ownership of the Abrobeano lands in dispute by the Akona family to ensure stability in the administration of those lands.

With the court of appeal having overturned all the orders of the high court, granted a perpetual injunction to restrain the Appellants, their privies, assigns, agents and workmen from in any way interfering with the Respondent's control and ownership over Abrobiano lands as allodial owners of the land, and after awarding damages of 8000 Gh as general damages for the winning of sand on Abrobiano lands against Major Korsah, we are satisfied that there are no vestiges of the high court judgment for us to make further orders in relation to. It is directed that a copy of this judgment be sent by the Registrar of this court to the Lands Commission for the proper administration of lands in the Abrobeano area.

The appeal against the judgment of the court of appeal dated 5th December 2017 which overturned the judgment of the high court dated 7th July 2015 is dismissed in its entirety.

G. TORKORNOO (MRS.)
(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

N. A. AMEGATCHER
(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY
(JUSTICE OF THE SUPREME COURT)

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