IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: BAFFOE-BONNIE JSC (PRESIDING)
AMEGATCHER JSC
PROF. KOTEY JSC
OWUSU (MS.) JSC
PROF. MENSA-BONSU (MRS.) JSC

CIVIL APPEAL
NO. J4/23/2021

26TH JANUARY, 2022

JAMES DAWDA ..... PLAINTIFF/APPELLANT/APPELLANT

VRS

1. **THE EXECUTIVE SECRETARY LANDS COMMISSION, ACCRA ..... 1ST DEFENDANT**
2. **THE REGIONAL LANDS OFFICER WESTERN REGION, SEKONDI ..... 2ND DEFENDANT**
3. **NANA AKOSUA MFRASIE II ..... 3RD DEFENDANT/RESPONDENT/RESPONDENT**

JUDGMENT

OWUSU (MS.) JSC:-

On 21st October, 2020, the Court of Appeal, Cape Coast, in the Central Region dismissed the Plaintiff's appeal against the 3rd Defendant. The Court held among other things as follows:

"For all of the above reasons, we hold that the resolution of this issue of res judicata has substantially disposed of this suit as envisaged under Order 33 rule 5 of the High Court (Civil Procedure) Rules, CI 47 and endorsed by Gbadegbe JSC in the case of ***Ofei Kwaku Mante v Mike Similao & 2 Others Civil Appeal No. j4/10/2016 dated 11th May 2017.*** *By so holding, we also endorse the conclusions of the learned trial judge at page 230 of the record that the determination of the issue of res judicata effectively eroded the substratum of the Plaintiff's entire suit thereby rendering a pursuit of the other reliefs endorsed on the writ of summons wholly otiose.*

In our view, the learned trial judge applied the law correctly to the facts on record before her and we therefore find no occasion to impeach her conclusions reached in the case.

We therefore affirm the decision of the trial court and dismiss the appeal in its entirety as lacking merit."

Dissatisfied with the decision of the Court of Appeal, the Plaintiff filed an appeal to the Supreme Court on the following grounds:

a) That the judgment is against the weight of affidavit evidence adduced at the High Court.
b) That the learned Justices of the Court of Appeal erred when it held that the action of the plaintiff/Appellant/Appellant was caught by Estoppel by Res Judicata.
c) Additional grounds will be filed pursuant to leave granted upon receipt of the Record of Appeal.

THE RELIEFS SOUGHT FROM THE SUPREME COURT

That the decision of the Court of Appeal, Cape Coast, affirming the decision of the High Court, Sekondi, be set aside and the suit remitted back to the High Court, Sekondi to be tried.

Before going into the arguments advanced in support and against this appeal, we would like to give a brief background of the case.

The designation of the parties in this appeal would be maintained as they bore in the trial court. Accordingly, the Plaintiff/Appellant/Appellant would be referred to simply as Plaintiff and 3rd Defendant/Respondent/Respondent as 3rd Defendant.

It is also noted for the record that, the Plaintiff did not file additional ground/s of appeal as indicated in his notice of appeal.

The plaintiff herein issued a writ of summons against the 1st and 2nd Defendants at the High Court, for an order to restrain the 2nd Defendant from registering any lands located within the Lower Inchaban area. A further order directed at the Defendants for the plotting and registration of the Plaintiff's family land per a Statutory Declaration executed by Plaintiff's predecessor Kwesi Apataim and a further Order to expunge from the Defendants' records any transaction of land not granted by Plaintiff or his predecessor. In the 20-paragraph statement of claim that accompanied the Plaintiff's writ of summons, he averred that, his ancestors acquired the Lower Inchaban lands measuring approximately 1667.23 acres or 667.13 hectares by first settlement and reduced same into their possession as Eguafo Nsona Family Lands. The Plaintiff continued that, sometime in 2006, his predecessor Kwesi Apataim executed a Statutory Declaration evidencing the Family's ownership of the said lands and submitted same along with a site plan to the office of 2nd Defendant for plotting and registration. It is the case of the Plaintiff that, as a result of a challenge against the Plaintiff's ownership of the said Lower Inchaban lands by one Nana Akosua Mfransie II, the 2nd Defendant has failed, refused and or neglected to register Plaintiff's ownership interests as endorsed in the Statutory Declaration. Instead, the 2nd Defendant has been registering grants made to third parties by the said Nana Akosua Mfransie II. Plaintiff concluded that, the 1st Defendant has also shirked his official responsibilities to compel the 2nd Defendant to register the Plaintiff's interest in the said lands hence this action.

Nana Akosua Mfransie II applied and was joined to the suit as 3rd Defendant by an Order of the High Court dated the 12th of October, 2018. Upon service on her of Plaintiff's amended writ of summons, the 3rd Defendant filed her Statement of Defence and Counter-claim denying Plaintiff's claim to the allodial ownership of Lower Inchaban

Lands. In particular, the 3rd Defendant contended that, the disputed lands rather belong to the Lower Inchaban Stool whose ancestors acquired same by first settlement. The 3rd Defendant continued that, the Stool's allodial interests have subsequently been acknowledged in a Statutory Declaration executed by all the relevant Family Heads in the area, including the then Head of Plaintiff's Family, Ebusuapanyin Kwesi Badu. It is the case of the 3rd Defendant that, the issue of ownership of Lower Inchaban Lands is res judicata. This is because sometime in 1998, 3rd Defendant's predecessor in the person of Nana Tuful Asamoah sued the Plaintiff's predecessor by name Kweku Smith before the Circuit Court, Takoradi, over a piece of land situate at Amonado, Lower Inchaban. The 3rd Defendant concluded that, at the end of the trial, the Court found and held that the allodial title to the Lower Inchaban Lands is vested in the Lower Inchaban Stool. This finding and holding has not been set aside and therefore operates as issue estoppel against the Plaintiff and his family. The 3rd Defendant therefore Counter-claimed for an Order of perpetual injunction to restrain the Plaintiff, his family members, workmen and others claiming through him from interfering with any grants of Lower Inchaban Stool Lands by 3rd Defendants in exercise of her allodial title to the said lands.

In Reply and Defence to 3rd Defendant's Statement of Defence and Counter-claim, the Plaintiff raised the issue of fraud and maintained that, the contents of 3rd Defendant's said Statutory Declaration are false and was procured by fraud.

After close of pleadings a number of issues and additional issues were set down for trial.

On 17th October, 2019, the trial judge in a Ruling set down Additional issues "a" and "b" down as preliminary issues for determination. The said issues are:

a) *Whether or not the issue of the allodial ownership of Lower Inchaban Lands was determined by the Circuit Court, Takoradi in the case titled:*
NANA TUFUL ASAMOSH (SUBSTITUTED BY NANA AKOSUA MFRANSIE II) v KWEKU SMITH.

b) *Whether or not the said judgment of the Circuit Court, Takoradi operates as estoppel res judicata against Plaintiff's family from claiming allodial ownership of the Lower Inchaban Lands.*

After hearing counsel for the parties, the trial court on 21st January, 2020, ruled that:

"the plaintiff is estopped from canvassing grounds or new grounds to re-litigate the issue of who owns the allodial title to the Lower Inchaban Lands as same has been pronounced upon by the Circuit Court, Takoradi on 20th October, 2011. Even if parties herein were not parties to the suit, they are privies to the parties and are equally bound by the Circuit Court judgment. With the plaintiff estopped to re-litigate the issue of ownership of the allodial title to Lower Inchaban Lands, the substratum of his case per relief "d" is removed. Consequently, there is no basis to pursue the other reliefs found under reliefs 'a', 'b' and 'c' as they are incidental reliefs premised on relief 'd'. The plaintiff's suit is accordingly dismissed."

The plaintiff appealed to the Court of Appeal against the High Court decision which appeal was also dismissed hence the appeal before the Supreme Court.

In arguing the appeal, counsel for the plaintiff argued the two grounds together. He then reminded us of our duty as an appellate court when an appellant appeals on the ground that the judgment is against the weight of evidence adduced at the trial. He referred to a plethora of cases on the subject including cases like **KOGLEX (NO. 2) v FIELD [2002] SCGLR 175 and ACKAH v PERGAH TRANSPORT LTD & ORS [2010] SCGLR 728.**He urged us to peruse the entire record and review the evidence to ascertain if the findings and conclusions in the judgment appealed against are justified having regard to the evidence and the applicable law before coming to our own conclusion. Counsel for the Plaintiff referred to portions of the judgment in contention and submitted that, the Plaintiff pleaded fraud and particularized same and that the plaintiff was going to lead evidence on the allegation of fraud. Therefore, the summary disposal of the allegation of fraud was procedurally inappropriate without

adducing evidence at a plenary trial. Consequently, the refusal to set aside the issue of fraud for determination at a plenary trial led to a miscarriage of justice and a fair determination of the case in favour of the Plaintiff. Counsel for the Plaintiff referred us to this Court's decisions in the following cases:

1. **SIC v IVORY FINANCE & OTHERS[2018-2019] 1 GLR 563**
2. **OKOFO ESTATES LTD v MODERN SIGNS LTD & OTHERS [1996-97] SCGLR 224**
3. **OSEI ANSONG v GHANA AIRPORTS CO. [2013-2014] 1 SCGLR 25**, where the courts have been admonished not to dispose of allegation of fraud summarily.

Counsel for the Plaintiff then submitted that, this Court must proceed to indict the Court below and order the case to be determined on the merits at full trial. Counsel further referred to a portion of the judgment of the Court of Appeal, where the Court held that, the Plaintiff did not particularize his allegation of fraud and submitted that, the Plaintiff did particularize the fraud in his pleadings and debunk the finding by the Court of Appeal that, Plaintiff's allegation of fraud did not impact in any way on the issue of res judicata set down for determination as a preliminary point. On the contrary, counsel for the Plaintiff submitted that, the trial court erred in setting down the two issues for determination as a preliminary point. Thereby, ignored the determination of the fraud at a full trial as it suppressed the issue of fraud as pleaded. Additionally, counsel for the Plaintiff submitted that, the Circuit Court case never discussed the plea of fraud. But more importantly, counsel argued, the Circuit Court case was primarily confined to ownership of the Amonado lands and not the Lower Inchaban Land.

On the issue whether or not the trial judge erred when she determined that the Plaintiff's cause of action was caught by estoppel per res judicata, counsel for the Plaintiff maintained that the conclusions reached by the Court below were wrong as it did not deal adequately with how the Circuit Court established the issue of the allodial title or the emergence of the 3rd Defendant and by implications her

predecessor Nana Tuful Asamoah II. Thus, the weighty issues in the pleadings in the High Court case were not determined in the Circuit Court case which in any case is on appeal. Counsel concluded on this point that, the Circuit Court arrived at a wrong conclusion on the issue of who owns allodial title to the Lower Inchaban Lands and since the judgment is on appeal, it is not final to find res judicata. He referred us to some cases like:

a. **IN RE SEKYEDUMASI STOOL; NYAME v KESS @ KONTO [1998-1999] SCGLR 478,**
b. **IN RE ASERE STOOL, NIKOI OLAI AMONTIA IV (Subst. by TAFO AMON II] v AKOTIA OWOARSIKA III (Subst. by LARYEA AYIKU II) [2005-2006] SCGLR 637-657 and**
c. **POKU v FRIMPONG [1972] GLR 230,** on the principle of res judicata and its application in law.

He then concluded that, the issues enumerated and pleaded before the High Court, Sekondi, are issues which defy Estoppel by res judicata by conduct, standing by, acquiescence and other derivatives including issue estoppel. In other words, the issues before the Circuit Court and especially the shutting down of the 1st and 2nd Defendants who are not even Respondents in this appeal. The legal implications are that, they are not opposed to the Appeal in this matter by acquiescence. He invited us to allow the appeal.

In response to Counsel for the Plaintiff's submissions, counsel for the 3rd Defendant referred to paragraphs 11-14 of the latter's Statement of Defence and the Reply to those paragraphs by the Plaintiff in paragraphs 14, 15, 19, 20 and 21. In paragraph 21 of the Plaintiff's Reply, the latter averred that:

21. In response to paragraph 14, the Plaintiff says the Finding of the Circuit Court is on appeal and in any case cannot stand as estoppel stricto senso in the trial.

Counsel for the 3rd Defendant argued that, that pleading is significant in that, the Plaintiff admitted the judgment of the Circuit Court, Takoradi and the Findings

made, except to say that, the judgment is on appeal and cannot stand as estoppel. So, in effect, the Plaintiff did not contest the fact that his predecessor in title and 3rd Defendant had previously litigated at the Circuit Court, over title to the land at Lower Inchaban. Counsel continued that; the principal claim of the Plaintiff as endorsed on the amended writ of summons was one of title to the entire Lower Inchaban lands. The other reliefs according to counsel were incidental to this principal relief. Therefore, the issue to be determined was whether or not the Circuit Court, Takoradi, in its judgment determined title to the Lower Inchaban lands. He then submitted that, even though the case before the Circuit Court, Takoradi, was principally about title to the Amonado lands, the parties joined issues on title to the allodial ownership of the entire Lower Inchaban Stool lands and so the Circuit Court was enjoined to determine that issue. After referring to a portion of the Circuit Court judgment, counsel for the 3rd Defendant then submitted that, both the trial court and the Court of Appeal properly took into account the findings by the Circuit Court, Takoradi. He continued that, the rational for the principle of res judicata is to prevent parties from re-litigating matters that have already been determined by a court of competent jurisdiction or to prevent parties from litigating matters which ought to have been determined in previous litigations. Counsel for the 3rd Defendant referred to the cases both the trial court and the Court of Appeal referred to on the issue of estoppel and submitted that, those cases were very apt in the determination of the case under consideration. He quoted copiously from the case of **In Re: SEKYEDUMASE STOOL, NYAME v KESE @KONTO [1998-1999] SCGLR 478, 479,** the Supreme Court speaking through ACQUAH JSC(as he then was). He then submitted that, from the evidence before the trial court and the Court of Appeal, Cape Coast, the Plaintiff was caught by the principle of issue estoppel from trying to re-litigate title to the Lower Inchaban Lands which had already been determined by the Circuit Court, Takoradi. Therefore, the Court of Appeal, Cape Coast, rightly affirmed the ruling of the trial court.

On the issue of fraud, counsel quoted extensively from the judgment of the Court of Appeal and the cases the court referred to and submitted that, the conclusion of the Court of Appeal, Cape Coast, was sacrosanct and flawless and should not be disturbed. This is because the allegation of fraud was not against the judgment of the Circuit Court but against the Statutory Declaration dated the 22nd June, 2015. According to counsel for 3rd Defendant, the said Statutory Declaration as rightly observed by the Court of Appeal, came into being four (4) years after the delivery of the judgment of the Circuit Court, Takoradi. Therefore, the allegation of fraud raised against the Statutory Declaration did not in any way affect the judgment of the Circuit Court, Takoradi. Consequently, the trial judge did not err in adopting a summary procedure and applying the right principles of law in disposing of the Plaintiff's case. Equally, the Court of Appeal, Cape Coast, rightly affirmed the ruling of the trial court. He invited us to dismiss the appeal and affirm the Judgment of the Court of Appeal as the latter correctly identified the issues in controversy, applied the relevant laws and authorities and came to the right conclusion.

The main issues for determination in this appeal are:

1. ***Whether or not the trial court was right in dismissing the issue of fraud raised in the Plaintiff's Reply summarily.***
2. ***Whether or not the Plaintiff's case was caught by res judicata.***

Whilst counsel for the Plaintiff answered these two issues in the negative. Counsel for the 3rd Defendant answered the two questions in the affirmative. It is true that, fraud is a serious allegation that is not generally amenable to summary processes of the court. Indeed, this Court in the case of **SIC INSURANCE CO. LTD v IVORY FINANCE CO LTD & OTHERS [2018-2019] 1 GLR 563** rebuked the Court of Appeal for disregarding an allegation of fraud and proceeding to dispose the case before it summarily without a plenary trial. Both counsel for the Plaintiff and the 3rd Defendant appreciated this position of the law and referred to the caution of His Lordship Anin-Yeboah JSC (as he then was) in the case referred to supra, when he explained the position of the law as follows:

"Fraud qua fraud is such a serious vitiating factor that in judicial proceedings, care must be taken not to suppress it when legitimately raised in the course of any proceedings."

It is equally true that not every case where an allegation of fraud is pleaded that the trial court must necessarily investigate such allegation at the plenary trial. In the case of **OSEI ANSONG & PASSION INTERNATIONAL SCHOOL v GHANA AIRPORTS CO LTD [2013-2014] 1 SCGLR 25, holding (2)** their Lordships speaking through Sophia Adinyira JSC held that:

"[The Supreme Court must stress that fraud is not fraud merely because it has been so stated in a writ to excite the feelings of the courts. Francios JSC in his dissenting opinion in Dzotepe v Hahormene II [1987-88] 2 GLR681 at 701 aptly put it as follows:"There is no denying the fact that a judgment obtained by fraud is in the eyes of the court no judgment, as it is not founded on the intrinsic merits of the case, but it is borne of an attempt to overreach the courts by deceit and falsehood: see Duchess of Kingston's case(1776)20 St Tr 355 and Lazarus Estates Ltd v Beasley [1956] 1 All ER 341. But the fact that the courts abhor fraud should not make them insensitive to the just claims of victorious parties. The judicial edifice was not constructed to lend a ready ear to every cry of fraud from suitors who had lost on the merits...."

In the judgment in contention, the Court of Appeal after referring to the relevant cases on the need to be cautious when an allegation of fraud is pleaded in a party's pleadings posed this question, whether the learned trial judge was justified in brushing aside the allegation of fraud pleaded in the Plaintiff's Reply and Defence to the 3rd Defendant's Counter-claim and proceeded to set down the issue of res judicata as a preliminary point without investigating the said allegation of fraud at a plenary trial. The Court held that:

"The critical question which arises for consideration in this instant appeal is whether or not the Plaintiff's allegation of fraud directly impacts in any way on the issue of res judicata set down for determination as a preliminary point."

The Court of Appeal answered this question in the negative and made the following findings:

1. The statutory Declaration which also happened to be one of the documents upon which the 3rd Defendant based her claim for declaration of title to the disputed Lower Inchaban Stool Lands did not form part of the proceedings, based on which the Circuit Court, Takoradi in Suit No. 141/98 delivered its judgment dated 20th October, 2011.
2. The Statutory Declaration is dated 22nd June, 2015, was executed after the delivery of the Circuit Court Judgment dated 20th October, 2011.

Based on the above findings, the Court of Appeal came to the conclusion that, the Plaintiff's allegation of fraud cannot by itself negatively impact on the determination of the issue of res judicata arising upon the Circuit Court judgment dated 20th October, 2011. In other words, the Statutory Declaration dated 22nd June, 2015 had no relationship whatsoever with the Circuit Court judgment upon which the plea of estoppel per res judicata was founded. That being the case, there was no compelling reasons to have postponed the preliminary determination of the issue of res judicata in favour of a plenary trial by reason alone of Plaintiff's allegations that, the 3rd Defendant's Statutory Declaration was procured by fraud.

We agree with the Court of Appeal on the above findings as they are clearly supported by the evidence on record. That being the case, the procedure adopted by the trial judge in setting the issue of res judicata down for preliminary determination did not suffer any procedural lapses to warrant the Court of Appeal's intervention. The submissions on the allegation of fraud are without merit and they are rejected.

This bring us to the crucial issue, ***whether or not the Plaintiff's claim involving ownership of Lower Inchaban Lands has been already determined by the Circuit Court in Suit No. 141/98.***

The policy rationale behind the doctrine of estoppel per resjudicata is founded on the rule that, litigation must end and a party must not be allowed to file multiplicity of actions or a party must not be permitted to present his case piecemeal. In the words of Dr Date-Bah JSC:

"In addition to the cause of action and issue estoppel... there is the related doctrine of abuse of process, commonly referred to as the rule in Henderson v Henderson (1843) 3 Hare 100... whose essence was set out by the English Court of Appeal in Barrow v Bankside Agency Ltd [1996] 1 WLR 257 at 260 as follows:

"The rule in Henderson v Henderson... requires the parties, when a matter becomes the subject of litigation between them in a court of competent jurisdiction, to bring their whole case before the court so that all aspects of it may be finally decided (subject of course, to any appeal) once and for all. In the absence of special circumstances, the parties cannot return to the court to advance arguments, claims or defences which they could have put forward for decision on the first occasion but failed to raise. The rule is not based on the doctrine of res judicata in a narrow sense, or even on any strict doctrine of issue or cause of action estoppel. It is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on forever and that a defendant should not be oppressed by successive suits when one would do. That is the abuse at which the rule is directed."

See the case of **SASU v AMUA-SEKYI and Another [2003-2004] SCGLR 742, 769**.In the case **of IN RE: SEKYEDUMASI STOOL; NYAME v KESE @ KONTO**

[1998-99] SCGLR 476 the Supreme Court stated the types of estoppels per rem judicatam in holding (1) as follows:

"Furthermore, the plea of res judicata encompasses three types of estoppels; cause of action estoppel, and issue estoppel in the wider sense. Cause of action estoppel should be properly confined to cases where the cause of action and the parties (or their privies) are the same in both current and previous proceedings. In contrast, issue estoppel arises where a defence is not available because the causes of action are not the same in both proceedings. Instead, it operates where issues whether factual or legal, have either already been determined in previous proceedings between the parties (issue estoppel in the strict sense); or where issues should have been litigated in previous proceedings but owing to negligence, inadvertence or even accident they were not brought before the court (issue estoppel in the wider sense.)".

In the High Court Ruling which has culminated in the appeal before us, the trial court in determining whether the plaintiff's case was caught by estoppel per res judicata, referred to the case that went before the Circuit Court, Takoradi, in Suit No. 141/98; the parties to the suit; the pleadings; the issues set down for trial; the traditional evidence led by the parties as well as the findings made by the Circuit Court and the judgment and came to the following conclusion:

"One of the issues set down for trial at the close of pleadings by the Circuit Court is whether or not the plaintiff is the allodial owner of all lands attached to the Lower Inchaban stool. (See page 4 of the judgment)

After the evaluation of the evidence, the Circuit Court at page 14 of the judgment made the following findings.

"Flowing from the above analysis, the court hereby finds and hold that the plaintiff's ancestors acquired the Lower Inchaban stool lands including the Amonado land and ranted(sic) a portion thereof to the defendant's

ancestors to occupy same and to use it to serve the lower Inchaban stool. Therefore, the Lower Inchaban stool has the allodial title to the Lower Inchaban stool land including the Amonado land*….*" She continued;

"From the findings and conclusions reached by the Circuit Court, a determination was made on the issue of ownership of title to Lower Inchaban Lands. This was a final determination on the issue of who owns the allodial title as between the parties therein".

The Court of Appeal in dismissing the Plaintiff's appeal held at page 458 of the Record of Appeal as follows:

"From the said judgment, it is not disputed that one of the major issues set down for determination at the directions stage was the issue whether or not:

"The Plaintiff is the allodial owner of all lands attached to the Lower Inchaban Stool"

See page 151 of the record of appeal.

"On this issue the Circuit Court Takoradi, after an evaluation of all the evidence adduce in that suit, came to the emphatic conclusion that allodial title in Lower Inchaban lands vested exclusively and absolutely in the Lower Inchaban Stool, represented by the 3rd Defendant herein who also appeared as Plaintiff in the Circuit Court Suit No. 141/98."

After quoting a portion of the Circuit Court judgment in Suit No. 141/98, their Lordships at the Court of Appeal continued as follows:

"Significantly, the said judgment has not been overturned on appeal, even though Plaintiff claims that the said decision is currently on appeal." They continued at page 459 as follows:

"It therefore appears that Plaintiff's trenchant postulations notwithstanding, it cannot be correct that the Circuit Court, Takoradi in Suit No. 141/98 only determined an issue turning solely on a question as to whether or not Lower Inchaban Stool lands was stool or family property and also whether it was appropriate for the sub-chief of Amonado to alienate a parcel of land without the consent of the Occupant of the Lower Inchaban Stool.

On the contrary the record well bears out the undisputed fact that the Circuit Court, Takoradi in suit no. 141/98, did set out for itself the determination of the issue of allodial ownership of Lower Inchaban Stool lands and indeed did make positive, categorical determinations relative to that issue.

Seen in this light therefore, it becomes very difficult to contest the positive findings of fact made by the learned trial judge at page 225 of the record as follows…

Under the circumstances, we find as clearly unassailable, the 3rd Defendant's contention that the previous Circuit Court Suit No. 141/98, duly considered on the merits, the issue of allodial ownership of all Lower Inchaban lands including Amonado lands. The judgment in that case being a final judgment of a court of competent jurisdiction, which has not been overturned on appeal, confirms these facts in every essential detail."

We cannot but agree with the Court of Appeal on the above rendition. We have thoroughly read the Circuit Court, Takoradi judgment in Suit No. 141/98, the findings and conclusion reached by the Court of Appeal clearly support the evidence on record.

In the unreported case of this court in **CIVIL APPEALNO. J4/22/2018, titled KWADWO DANKWA& 3 ORS. v ANGLOGOLD AHANTI LTD dated 14TH FEBRUARY,2019, AKOTO-BAMFO (MRS), JSC** held that:

"...Res Judicata has been defined as a doctrine barring the same parties from litigating a second suit on the same transaction or any other claim

arising from the same transaction or series of transactions or that could have been raised but was not raised in the first suit. For the proper invocation of the doctrine, these elements must exist:

1) ***There must be an earlier decision on the issue;***
2) ***A final judgment on the merits; and***
3) ***The involvement of the same parties or parties in privity with the original parties."***

Relating the above three elements to the case under consideration, there is no doubt that there is an earlier decision on the issue. That is the ownership of the allodial title to Lower Inchaban Lands that was determined on the 20th October, 2011. Secondly, the judgment was final on the merits as the parties testified and gave their traditional evidence on how they came onto the disputed land and lastly, the parties and indeed Plaintiff's predecessor was the defendant in the Circuit Court, Takoradi, case whilst the 3rd Defendant was substituted for the Plaintiff in the Circuit Court case. Thus, the parties are the same and or privy to the parties in the Circuit Court case in Suit No. 141/98. Consequently, the Plaintiff's case is caught by estoppel per res judicata. The Court of Appeal was therefore right in affirming the judgment of the High Court.

We find no merit in this appeal and it is accordingly dismissed.

M. OWUSU (MS.)
(JUSTICE OF THE SUPREME COURT)

P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

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

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

PROF. H. J. A. N. MENSA-BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)

COUNSEL

K. AMPONSA-DADZIE ESQ. FOR THE PLAINTIFF/APPELLANT/APPELLANT.

BAFFOUR DWUMAH ESQ. FOR THE 3RD DEFENDANT/RESPONDENT/ RESPONDENT.