IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2016

CORAM: DOTSE JSC (PRESIDING)
YEBOAH JSC
AKOTO-BAMFO (MRS) JSC
BENIN JSC
PWAMANG JSC

CIVIL APPEAL

NO. J4/17/2016

9TH NOVEMBER 2016

JEAN HANNA ASSI	**-**	**PLAINTIFF/RESPONDENT/ APPELLANT**
VRS.		
ATTORNEY GENERAL	**-**	**1ST DEFENDANT/RESPONDENT**
THE EXECUTIVE SECRETARY DIVESTITURE IMPLEMENTATION-COMMITTEE		**2ND DEFENDANT/RESPONDENT**
THE EXECUTIVE SECRETARY CONFISCATED ASSETS COMMITTEE THE EXECUTIVE SECRETARY	**-**	**3RD DEFENDANT/RESPONDENT**
LANDS COMMISSION	**-**	**4TH DEFENDANT/RESPONDENT**
POLY PRODUCTS LIMITED	**-**	**5TH DEFENDANT/APPELLANT/ RESPONDENT**

JUDGMENT

DOTSE JSC:-

On the 9th day of November 2016 this court unanimously dismissed the appeal lodged by the Plaintiff/Respondent/Appellant, hereafter, referred to as "the Plaintiff", against the decision of the Court of Appeal dated 6th February, 2014 which was in favour of the 5th Defendant/Appellant/Respondent, hereafter to be called, "the 5th Defendant". We accordingly affirmed the decision of the Court of Appeal wherein Plot No. 2, North Industrial Area, Kaneshie, Accra, (Plot 2) was adjudged to belong to the 5th Defendants.

As we reserved our reasons for the said decision on the 9th of November 2016, we proceed now to give the said reasons.

The determination of this appeal turns squarely on whether the Plaintiff's action against the Defendants in the trial High Court was statute barred.

FACTS:-

The Plaintiff averred that he is the owner and title holder of Plot No. 2, North Industrial Area, Kaneshie, Accra (Plot No. 2). According to the facts from the appeal record, the Plaintiff acquired the land by purchase in 1976 from Gabco Metals and subsequently built a factory, a warehouse and a two-floor storey building on it. Later, the Plaintiff permitted A and B Industries, of which he was reputed to be a shareholder, to use the warehouse, and occupy the offices he had built. It appears that, the Plaintiff remained the owner of the said properties until the passage of the

Transfer of Shares and Other Proprietary Interests Decree 1979 (AFRD 31) which confiscated the Plaintiff's interest in his company A and B Industries Limited.

Then in 1982, things turned very bad for the Plaintiff. This was as a result of the forceful change of government in Ghana by the Provisional National Defence Council (PNDC). Following the coup d'etat the Plaintiff was arrested and detained for several months up to about eleven (11) and upon his release he was deported.

The Plaintiff did not return to Ghana until 1986 when, according to the evidence, he found that some other persons were occupying his land. He has averred that, the Government of Ghana, passed another Law, PNDC Law 30 to confirm the confiscation of the assets of A and B Industries and in the process erroneously confiscated his plot No. 2.

After the confiscations the Government of Ghana assigned Plot No. 2, to GIHOC Motors and Machine Shop, and later sold it, through the 3rd Defendant, the Divestiture Implementation Committee (DIC) to Gold Coast Motors from whom the 5th Defendant herein acquired the said Plot No. 2.

The Plaintiff later petitioned the 4th Defendant, (Lands Commission) as well as the President of the Republic of Ghana in 1997 for the return of the land and properties to him. That, failing the Plaintiff waited till 2006 when he instituted action in the High Court, Accra, claiming the following reliefs as per the amended writ of summons.

RELIEFS PLAINTIFF CLAIMED IN THE HIGH COURT

PLAINTIFF'S AMENDED WRIT OF SUMMONS

1. Declaration of title to all that piece or parcel of industrial property known as Plot No. 2 North Industrial Area, Accra.

2. Declaration that the Transfer of shares and other proprietary interests (A and B Industries Limited) A.F.R.C.D 31 1979 and Transfer of Shares etc. to The State (Removal of Doubts) Law 1982, PNDCL30 did not confiscate Plot 2 North Industrial Area, Accra to the State of Ghana.

3. Declaration that the purported confiscation of Plot 2, North Industrial Area, Accra to the State of Ghana by the Defendants relying on AFRCD 31, 1979 and PNDCL Law 30, 1982 was null and void and of no legal effect.

4. Special and general damages for trespass.

5. Possession of Plot No. 2 North Industrial Area, Accra.

6. An order to compel the Defendants to return Plot No. 2 North Industrial Area, Accra to the Plaintiff.

7. Mesne profits

8. An injunction to restrain the defendants whether by themselves or by their agents and servants or otherwise from processing or registering any documents in respect of Plot No. 2 North industrial Area, Accra in the name and in favour of the 5th Defendant and any other persons, individuals or legal persons.

9. Perpetual injunction to restrain the defendants whether by themselves or by their servants agents or otherwise howsoever from entering Plot No. 2 to do any business or anything which is adverse to or inconsistent with the title of the Plaintiff to Plot No. 2 North Industrial Area, Accra or to make any disposition in respect of Plot No. 2 North Industrial Area, Accra.

After pleadings had closed, the following issues and additional issues were set down for hearing at the Application for Directions stage.

ISSUES AND ADDITIONAL ISSUES SETTLED BY THE HIGH COURT FOR HEARING

a. "Whether or not AFRCD 31, 1979 and PNDCL 30 1982 confiscated plot No. 2 North Industrial Area, Accra to the state.

b. Whether or not the Plaintiff's claim herein is statute barred.

c. Any further or other issues raised by the pleadings in the suit herein.

The 2nd defendant, filed the following additional issues.

1. Whether or not the 2nd Defendant divested Plot No. 2 Ring Road North Industrial Area to Gold Coast Motors Limited in 1991.

2. Whether or not the 2nd Defendant put Gold Coast Motors Limited in possession of Plot No. 2, Ring Road, North Industrial Area in September 1991." Emphasis

JUDGMENT OF THE HIGH COURT

Thereafter, the case proceeded to trial and on the 28th day of February 2012, the High Court, Accra, presided over by E. K.Mensah J, delivered judgment in favour of the Plaintiff in the following terms:-

> *"I will therefore be right to conclude that the plaintiff is entitled to his claim. It is my considered view that the purpose of AFRCD 31 of 1979 and PNDCL 30 is to confiscate whatever interest, legal or otherwise that A and B Industries had in its own assets and those of others. It is however clear that at the time that the two legislations were passed the interest that A and B industries had in the disputed property was a licensee status from Jean Hanna Assi. So what the*

then Government took away from A and B industries by the said legislation was not the legal interest of the Plaintiff herein as there is no evidence on record that Jean Hanna Assi ever transferred or conveyed his legal interest in plot No. 2 North Industrial area, Accra to A and B Industries. I therefore hold the view that to the extent that AFRCD 31 of 1979 and PNDCL 30 of 1982 are applied to adversely affect the legal right and any other interest thereof of Jean Hanna Assi in plot No. 2 North Industrial Area, Accra that legislation, I submit with respect is null and void and of no legal effect per the evidence on record therefore I am of the view that the Plaintiff has persuaded me on the principle or basis of preponderance of probability to believe that his side of the case is more probable than not. He is entitled to judgment and I accordingly enter judgment for him on the reliefs sought against all the defendants."

APPEAL TO COURT OF APPEAL AND IT'S JUDGMENT

Feeling aggrieved and dissatisfied with the decision of the High Court, the 5th Defendants successfully appealed that decision in the Court of Appeal. In a unanimous decision of the Court of Appeal, coram, Henrietta Abban JA, presiding, Acquaye and Margaret Welbourne JJA, the Court of Appeal per Welbourne JA, set aside the High Court judgment in a well considered judgment which we feel must be referred to in extenso for the correct statement of the facts and law that relate to the Statute of Limitation,

particularly sections 10 (1) and 10 (6) of the Limitation Act, 1972 (NRCD) 54. This is how the judgment of the Court of Appeal put the matter to rest.

> *"A perusal of the record reveals that the respondents was aware that Plot No. 2 had been confiscated. He also stated that he came to Ghana in the 1990s and commenced action against the Government for another property of his which said property is situate in the same area as the present property. The said property is the subject matter which is reported in 2005-2006 SCGLR at 458* ***Hanna Assi v GIHOC Refrigeration and Household Products Ltd.*** *and* ***Hanna Assi (No.1) v GIHOC Refrigeration and Household Products Ltd.*** *at page 1 and* ***Hanna Assi (2) v GIHOC Refrigeration*** *at page 16.*
>
> *In the said Hanna* ***Assi v GIHOC Refrigeration & Household Product Ltd****. case, the Supreme Court in the 2005-2006 report extensively stated the law on limitations of actions and when one would qualify as an adverse possessor. Date-Bah JSC quoted with approval Adinyira JA (as she then was) ruling in the Court of Appeal as follows: - (see page 473 of* ***Hanna Assi v GIHOC*** *2005-2006 SCGLR at page 473.*
>
> *"My view on this point is simple. The company by name General Cold Industry Limited was confiscated to the state. The majority shareholder in this company was defendant. This company carried on its business in a premises, which incidentally was situate on this Plot No. 19, which belonged to its majority shareholder, the defendant herein. There was no evidence as to the terms under which the*

Ghana Cold Industries Ltd. was operating on Plot No. 19 at the time that the company was owned by the defendant. So at best it can be said that the company's right to the occupation of the land was derived from the owner, the defendant herein in the form of permission, as by no stretch of imagination could it be described as a trespasser or a squatter on the said land. So that in effect the company was operating on the defendant's land as a licensee. See the case of Hughes v Griffin (1969) 1 ALL ER 460 at 464 and dictum of Romer L.J in Moses v Lovegrove (1952) 1 AER 1279 at 1285.

> *"I do not subscribe to the submission by counsel for the Plaintiff that after the compulsory acquisition the company's occupation on the land became adverse. My reasoning is that the Government having acquired the proprietary rights in the company is deemed to continue to enjoy all the rights that the company had, as the company was distinct from the defendant who lost his shareholding as a result of the confiscation of the shares in the company to the State. See the celebrated case of* ***Salomon v Salomon 2002 1 WRN II (1897) AC 22. As such it is my considered opinion that the company, the plaintiff herein continued to be a licensee on Plot No. 19 until such time that the license is revoked. So for the whole period of time that the plaintiff was on the land as a mere licensee, he cannot be said to be in adverse possession to defeat the defendant's title to the land****."*

On page 475, Date-Bah JSC further held as follows:-

Accordingly in my view, prior to the institution of the defendant's action in 1997, the Plaintiff was a licensee of the defendant. In my view, the statement of the facts and law per Adinyira JA, in delivering the judgment of the Court of Appeal in the passage quoted above is unexceptionable and well within the Court's jurisdiction."

In the instant case before me, the DIC, who according to the above mentioned suit (i.e. GRHP v Assi) ***do not have any title to the land, sold the land to Gold Coast Motors ("Gold Coast") in 1991 for a valuable consideration of one hundred and ten million cedis). The said Gold Coast Motors exercised absolute ownership of the land from 1991 without any opposition and or complaints from any person including the respondent herein. The Respondent herein has stated that he did not go there at all and therefore did not challenge the occupation of the land by Gold Coast Motors and later by appellant."*** *Emphasis*

The Court of Appeal, per Welbourne JA, continued their delivery in the following terms:-

We have carefully and painstakingly perused the entire record and read the submissions of both counsel and we are of the view that indeed, the action is caught by the Statute of Limitation particularly sections 10 (1) and 10 (6).

Limitation Act, 1972 (NRCD) 54 Section 10 (1), (6) and (7)

"(1) ***A person shall not bring an action to recover a land after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or if it first accrued to a person through whom the first mentioned claim to that person."***

(6) On the expiration of the period fixed by this Act for a person to bring an action to recover land, the title of that person to the land is extinguished.

(7) For the purpose of this section "adverse possession means possession of a person in whose favour the period of limitation can run."

We are of the view that the sale was regularly done in 1991 from which time the time of limitation began to run. Assuming without prejudice that the transfer of the shares did not include his personal properties, the respondent would still be caught by the Statute of Limitation.

It therefore renders any petitions that he sent to the Government as otiose. In the first place, the Government had divested itself of the property and therefore was in no position to take any meaningful action. Secondly, he had been caught by acquiescence." Emphasis

It must be observed from the above quotations from the Court of Appeal judgment that, the decision of the High Court was reversed principally because of the fact that the Plaintiff's case was caught by Section 10 (1)

and (6) of the Limitation Act, 1972, NRCD 54, in that, the Plaintiff had acquiesced in the 5th Defendant's occupation of the land.

It must also be emphasized that the Court held that the 5th Defendant had acquired title to the land by adverse possession. It is from this Court of Appeal judgment that the instant appeal has been lodged by the Plaintiff.

GROUNDS OF APPEAL TO THE SUPREME COURT

Grounds of Appeal filed on 10/7/2014 pursuant to leave granted by Court of Appeal on 9/7/2014.

a. The judgment is against the weight of the evidence.

b. The Honourable Court of Appeal erred in law in finding that the sale of the land, the subject matter of the writ was "regularly done in 1991" and that the Plaintiff/Respondent/Appellant was "caught by the Statute of Limitations", the Limitation Act 1972 Sections 10 (1) and 10 (6).

c. The Honourable Court of Appeal erred in law in finding that the Plaintiff/Respondent/Appellant is "caught by acquiescence".

d. The Honourable Court of Appeal erred in law in finding that it is precluded from looking into the merits of the case due to the provisions of the Limitation Act 1972.

PARTICULARS OF ERRORS OF LAW

1. The Honourable Court of Appeal failed to give due weight to the evidence that DIC in purporting to sell the plot of land to the Gold Coast Motors Limited acted in breach of S. 22 of the Conveyancing Decree 1973 rendering the purported conveyance invalid.

2. The Honourable Court of Appeal failed to give due weight to the evidence that the 5th Defendant/Appellant/Respondent did not conduct due diligence before purporting to purchase the plot and consequently had actual notice that the Plaintiff/Respondent/Appellant had title to the land.

3. The Honourable Court of Appeal failed to give due weight to the evidence that adverse possession could not have arisen during the period of "armed invasion" under the unconstitutional military regime of the Armed Forces Revolutionary Council.

4. The Honourable Court of Appeal failed to give due weight to the evidence that the Plaintiff/Respondent/Appellant should be entitled to relief from the provisions of the Limitation Act 1972 on the grounds of mistake.

5. Further grounds of appeal will be filed upon receipt of the Records of Appeal.

LEGAL ARGUMENTS BY COUNSEL

We have painstakingly analysed the legal arguments of learned counsel for the plaintiff, Jacinta Gayle and for the 5th Defendant, Samuel Codjoe in their respective statements of case.

PLAINTIFF'S ARGUMENTS

Before we deal with the points of substance, learned counsel for the Plaintiff, commenced her legal arguments thus:

> *"The Court of Appeal erred in failing to exercise its judicial discretion properly when it ruled without explanation at pages 727 and 729 of the appeal record to the effect that, we are of the view that the sale was regularly done in 1991 from which time the time of limitation began to run. Assuming without prejudice that the transfer of shares did not include his personal property, the respondent would still be caught by the statute of Limitation and also when it stated again as follows:- "…because it took its interest in the land independent from the original confiscation by the Government."*

Learned counsel for the Plaintiff then concluded that the Court of Appeal failed to give due weight, in the exercise of its judicial discretion, to the provisions of the Conveyancing Decree 1973, NRCD 175 and the evidence on record that the Plaintiff, (Appellant therein) was under a disability until 1997. Learned Counsel then referred to the cases of ***Kyenkyenhene v Adu*** [2003-2004] 1 SCGLR 142 which relied on a statement of Viscount Simon LC in the case of ***Charles Osenton & Co. v Johnson*** [1942] AC

130 and also the cases of ***Ballmoos v Mensah*** [1984-86] 1 GLR 725 and ***Sappor v Wigatap*** [2007-2008] SCGLR 676 at 679 respectively.

We have duly considered the effect of the principles of law stated in the said cases and are of the view that the statements of the Court of Appeal referred to above were a correct application of the relevant principles to the facts of this case. Where a trial court in its judgment makes erroneous and perverse findings based upon a wrong appreciation of the facts established in a case an appellate court is entitled to reverse those findings. We endorse the conclusion reached by the Court of Appeal because we find that the trial Judge did not properly apply the principles of the statute of limitations to the facts in this case.

Accordingly, the statement of law in the following cases which permits an appellate court to depart and reverse findings of fact made by a trial court on perverse and erroneous grounds would be applied. See ***Achoro v Akanfela*** [1996-97] SCGLR 209, ***Gregory v Tandoh & Anr [2010] 971 and Obeng v Assemblies of God, Church Ghana*** [2010] SCGLR, 300.

On the basis of the above authorities, and others too numerous to recount here, we are of the view that the exercise of discretion by the Court of Appeal, to depart from the findings made by the trial court was properly exercised and that the Court acted under a proper appreciation and application of the facts which were wrongly applied by the learned trial Judge.

THE POINTS OF SUBSTANCE OF LEGAL ARGUMENTS

Learned counsel for the Plaintiff, argued very strenuously that title to (Plot No. 2) was never transferred to the state. She therefore argued that the Plaintiff remained the owner of the land and that the Government could therefore not transfer title to the land to any other person based on the principle of "nemo dat quod non habet" which literally means, a person cannot transfer what he does not have. In this respect, learned counsel referred and relied on sections 13 (2) and (3) of the Conveyancing Decree, 1973, NRCD 175 which are to the effect that ***title or right is not conveyed unless the transferor has the power to make such a conveyance.***

Secondly, learned counsel for the plaintiff, also argued that, had the 5th Defendant undertaken due diligence they would have discovered that the root of title declared by Gold Coast Motors Limited was defective. The argument of learned counsel for the Plaintiff is based on the submission that as at 2002, a search at the Lands Commission would have confirmed that the legal title in Plot No. 2 had been transferred to the Plaintiff in 1978 and had remained with him since then.

Learned Counsel for the Plaintiff finally submitted that, it was erroneous to have concluded that the Plaintiff acquiesced in the dealings such as would have resulted into his loss of title.

Learned Counsel for the Plaintiff argued in her statement of case that if the disability that the Plaintiff was under had been properly appreciated, (i.e. the fact that the plaintiff was imprisoned in 1979 and thereafter deported from Ghana) it would have been reasonable for the plaintiff to have had

apprehension of fear that returning to Ghana would be unsafe, and even though he eventually returned, there was this apprehension that he had lost his *"civil rights and liberties"*. It was further contended on behalf of the plaintiff that it was the Statute Law Revision Act of 1997 Act 543 which repealed both PNDC Law 30 and AFRCD 31 the laws that had confiscated Plaintiff's properties as well as the laws that had deported him. Learned counsel then argued that, even though Ghana had returned to a constitutional democracy on 7th January 1993, the provisions of section 35 (1) of the Transitional Provisions of the Constitution 1992 were in force. Those provisions are as follows:-

> ***"Subject to the subsection (2) of this section, any confiscation of any property and any other penalties imposed by or under the authority of the Armed Forces Revolutionary Council and the Provisional National Defence Council shall not be reversed by any authority under the Constitution."***

This meant that, until the enactment of Act 543, the Plaintiff still suffered the disability that was attached to his person despite the return to constitutional rule in 1993.

Learned counsel for the Plaintiff therefore sought to distinguish his case from the principles of law enunciated in cases like ***Adji and Company v Kumaning*** [1982-83] GLR 1382 CA and ***Quagraine v Adams*** [1981] GLR 599.

Plaintiff concluded his legal arguments by asserting that, even though on the facts he returned to Ghana, he was nonetheless living therein with a

disability and he did not have the rights of an ordinary citizen as envisaged under the Constitution. He argued further that, he did not have the opportunities and confidence to assert his legal rights in respect of his Plot No. 2. The plaintiff therefore argued that he was not caught by the Statute of Limitation.

It will be prudent to set out the legal arguments of the 5th Defendants as well and deal holistically with the central issue of the Statute of Limitation. This is because in our considered view, that was the central and core legal issue which influenced our decision of 9th November 2016, as all the other arguments of law have been subsumed under this very heading.

5TH DEFENDANT'S LEGAL ARGUMENTS AS PER THE STATEMENT OF CASE

In response to the Plaintiff's legal arguments, learned counsel for the 5th Defendant, Samuel Codjoe argued as follows:-

1. The crux of the case of the 5th Defendant is that, the Plaintiff's action is statute barred. This according to the 5th Defendant was because, upon a diligent search carried out before purchasing Plot No. 2, (the property) it discovered contrary to the assertions of the Plaintiff that there was in existence a lease agreement executed between the Government of Ghana and Gold Coast Motors, (the previous owners). The 5th Defendant further argued that after purchasing the property, he was issued with a receipt and a certificate of sale by the High Court.

2. Secondly, the 5th Defendant sought to distinguish this case from the case of ***Hanna Assi v GIHOC SCGLR [2005-2006]458,*** it was held by the Supreme Court in the said case that after the Government confiscated the plaintiff's company, the government became licensees of the Plaintiff in respect of the land on which the company was situated and was not in adverse possession. However, in the instant case, the 5th Defendant argued that, the Divestiture Implementation Committee, the 2nd Defendants therein, did not have title to Plot No. 2. In selling Plot No. 2 to Gold Coast Motors, the Divestiture Implementation Committee (2nd Defendants) was exercising a possession quite inconsistent with the right of ownership of the Plaintiff. **They submitted further that, Gold Coast Motors therefore became an adverse possessor as it took it's interest independent from the original confiscation by the Government.** They argued that, Gold Coast Motors never recognised the Plaintiff's title. **The continued possession of the property by the 5th Defendant, continued this adverse possession of the Plaintiff's property.**

3. Finally, learned counsel for the 5th Defendant, submitted that the Plaintiff was very much aware upon his return to Ghana that the property Plot No. 2 had been occupied. As a matter of fact, this evidence is on record during cross-examination of the Plaintiff wherein he admitted that he knew the property was occupied but did not challenge it because he was faced with another legal problem which he wanted to deal with first. It was therefore argued on behalf

of the 5th Defendant that since the plaintiff did not contest the title of Gold Coast Motors (it must be noted that they were those who purchased Plot No. 2 in 1991) and subsequently of the 5th Defendant thereafter after they became the new owners after Gold Coast Motors, the action of the Plaintiff in 2006 is statute barred. Their argument was that, the period of limitation begun to run in 1991 and as the Plaintiff commenced the action in 2006, some fifteen (15) years after 1991, the action was statute barred with the effluxion of time.

DETERMINATION BY THE COURT

A perusal of the grounds of appeal and the various particulars of errors of law set out in the notice of appeal, show quite clearly that, all the said grounds and particulars can be subsumed under the general ground of **whether or not the Plaintiff's action which he commenced against the five defendants in 2006 is statute barred.**

If indeed it is, then there is no need to look at the merits of the case since the statute of limitation is a venerable shield that can be used to ward of indolent and piece meal litigators.

THE EVIDENCE

There is uncontroverted evidence on record that the Plot No. 2 had been conveyed by sale to Gold Coast Motors by DIC. CW2, Timothy Anyidoho, the official from Lands Commission who testified during the trial of the case

at the High Court was emphatic that the property had been conveyed and transferred to Gold Coast Motors in 1991.

It therefore appeared that the period of limitation started running from 1991, and the Plaintiff admitted during cross-examination that he was aware that the property had been divested by DIC to Gold Coast Motors, the vendors of the 5th Defendants herein.

The Plaintiff answered as follows during the cross examination:-

Q. "I put it to you that you were aware that the property had been divested by DIC?

A. Yes"

Furthermore, there is evidence to support the fact that even though plaintiff was aware of the adverse claim to his property, plot No. 2 since 1991, and that he even took action in the High Court to claim another property of his that was confiscated in similar circumstances in the same Kaneshie, North Industrial Area, yet he failed or refused to take any action until much later when he was out of time. This is how the cross-examination was captured in the appeal record.

Q. Even though you were aware that the disputed property had been taken by DIC and given to GIHOC and sold to Gold Coast Motors you never complained or went to Court?

A. I had to finish one case before moving on to the other property which is the current suit.

Q. You were aware that Lands Commission had given a lease to Gold Coast Motors?

A. That was done behind me because I had the original lease.

Q. At the time you came or returned to Ghana in 1990's, Ghana was in a constitutional era?

A. Yes

Q. You were so free that you commenced action against GIHOC for one of the properties?

A. Yes " emphasis

From the above, what is clear is that the Plaintiff even though was aware of the adverse possession and claims to his property Plot No. 2 by Gold Coast Motors and thereafter by the 5th defendants since 1991 or thereabout, he never made any enquiries and or challenged the said adverse claims.

Secondly, it should be noted that, the defence of the Plaintiff that he was under a disability because he had previously been detained and deported by the AFRC and PNDC regimes, the fact remains that he returned peacefully to Ghana and successfully instituted a suit against the Government of Ghana for the unconstitutional take over or confiscation of another property of his, now known as the celebrated ***Hanna Assi v GIHOC*** cases, which travelled along all courts in Ghana up to the Supreme Court. It is a locus classicus.

The lesson to be drawn from the above is that, if the Plaintiff was really minded to challenge the presence of the 5th Defendants on the land or that of Gold Coast Motors before them, he could have done so.

The following evidence again on record and elicited during cross-examination of the Plaintiff by counsel for the 5th Defendant puts the claim of the Plaintiff that he was under a disability into shreds and rather strengthens the defence of the 5th Defendants on the Statute of Limitation.

Q. Since Poly Products became owners you have never been to the property? (Note that Poly Products are the 5th defendants)

A. No please

Q. Have you had contacts with Poly Products since they became owners of the property?

A. No please

Q. Don't you think you were careless and reckless in not looking for your property?

A. No please

A. I do pass in front of the property but has never contacted anybody to know who is the owner

Q. If you pass there you will see that there are a lot of renovations on the property

A. Yes, I see it but do not know exactly what

Q. Don't you think you should have gone to Poly Products to tell them you are the owner of the property?

A. No, because it is not under my control." Emphasis

We have considered the effect of the pieces of evidence of the Plaintiff referred to supra alongside his legal arguments that because the 5th Defendant's interest originates from the Government of Ghana which were at all times his licensees, the 5th Defendants cannot be in adverse possession. In this respect, Plaintiff relied on his own case of ***Hanna Assi v GIHOC Refrigeration and Household Products Ltd***. [2005-2006] at 456 and the other related cases ***Hanna Assi No. 1 and No. 2*** respectively. In that case, the Supreme Court held that upon confiscation of the respondent's, (Plaintiff herein) property, the Government of Ghana became licensees of the Respondent. The Government could not therefore become adverse possessors.

The position in this appeal is therefore as follows:-

Gold Coast Motors, from whom the 5th Defendants purchased Plot No. 2 were in adverse possession of the land since 1991. The 5th Defendants therefore continued that adverse possession when they purchased the Plot No. 2 from Gold Coast Motors. However, as was contended by the 5th Defendants herein, the Plaintiff is statute barred from bringing the action as the statutory time limit for bringing the action had elapsed, in 2003, three years before the Plaintiff commenced the action in the trial court in 2006.

WHAT ARE THE LEGAL POSITIONS OF THE VARIOUS STAKEHOLDERS IN THIS CASE

In our view, the Government of Ghana remained licensees of Plot No. 2 even after the confiscation of A and B Industries. The critical and core issue to consider is whether or not Gold Coast Motors and the 5th Defendants subsequently also remained licensees or exercised a possession inconsistent with the right of ownership of the Plaintiff.

If we find that Gold Coast Motors remained licensees, then their occupation of Plot No. 2 cannot be adverse possession. However, as we have stated elsewhere in this judgment, both Gold Coast Motors and the 5th Defendants herein were adverse possessors.

What is the justification for this position?

In the case of **Antwi v Abbey,** [2010] SCGLR 17, the Supreme Court stated the essential characteristics of an adverse possession as follows:-

> *"A claim of an adverse possession cannot be based on clandestine payments of tribute alone. They must be open, visible, unchallenged and apparent so that it gives notice to the legal owner that someone may assert claim; for such payments as were met with opposition and were made irregularly but were done only a few times, could hardly support a claim of adverse possession. Acts amounting to establishing adverse possession are many and may be in the nature of fencing the property, posting sign posts, planting crops, building or*

raising animals in a manner that a diligent owner could be expected to know about them. The list may be taller still."

See also **Odonkor and Others v Botchway** [1991] 2 GLR1, where, it was held that, *"the mere fact that a grantor does not collect tolls from the grantee for his land would not make the grantee an absolute owner of the land, if infact that grant was only for possession."*

It would be otherwise, however, if the grantee exercises ownership rights adverse to the grantor's rights for a long time without the grantor raising objection or taking steps to protect his rights." Emphasis

See also the cases of **Klu v Kofi Konadu Apraku** [2009] SCGLR 741 and **Fairweather v St. Marylebone Property** Co. Ltd [1963] AC 510 at page 543 where Lord Denning stated the law as follows:-

"If a person wrongfully gets possession of the land of another he becomes wrongfully entitled to an estate in fee simple, and to no less in that land, thus, if a squatter wrongfully encloses a bit of wasteland and builds a hut on it and lives there, he acquires an estate in fee simple by his wrong in the land which he has enclosed. He is seised, and the owner of the waste is disseised. It is true that, until by length of time the statute of limitations shall have confirmed his title, he may be turned out by legal process. But as long as he remains he is not a mere tenant at will, nor for years, nor for life, nor in tail, but he has an estate in fee simple. He has seisin of the freehold to him and his heirs. ***The rightful owner in the meantime has but a***

right of entry, a right in many respects equivalent to seisin, but he is not actually seised, for if one person is seised another person cannot be so." Emphasis

See also the following cases, ***GIHOC Refrigeration & Household Products Ltd. (No 1) v Hanna Assi (No. 1)*** [2007-2008] SCGLR and ***Adjetey Adjei and Others v Nmai Boi & Others*** [2013-2014] 2 SCGLR, 147, where the court stated as follows

"*Adverse possession must be open, visible and unchallenged so as to give notice to the legal/paper owner that someone was asserting a claim adverse to his. And section 10 of the Limitation Act, 1972 (NRCD 54) has reflected substantially the provisions of the English Statutes of Limitation and the Common law. Under the present law, the person claiming to be in possession must show either (i) discontinuance of the paper owner followed by possession, or (ii) dispossession or as it was sometimes called "ouster" of the paper owner. Clearly possession concurrent with paper owner was insufficient. If a squatter took possession of land belonging to another and remained in possession for twelve years to the exclusion of the owner, that would represent adverse possession, and accordingly, at the end of twelve years the title of the owner would be extinguished. In the circumstances, assuming the Defendant's title was bad, their adverse possession of the land for a period of twelve years and over, had conferred on them possessory rights by virtue of section 10 of the Limitation Act 1972 (NRCD 54)."*

From the above authorities, it is certain that the adverse claim must be inconsistent with the legal owner's right of ownership.

The question which we then have to ask and answer is whether Gold Coast Motors exercised a claim which was inconsistent with the Plaintiff's title and whether that claim was open, visible, unchallenged and apparent? From the record, it is clear that, by selling Plot No. 2 to Gold Coast Motors, the Government of Ghana acted contrary to the interest of the Plaintiff. It must however be noted that, Gold Coast Motors acquired an interest that was independent of the licensor-licensee relationship that existed between the Government of Ghana and the Plaintiff.

Gold Coast Motors started exercising rights that were clearly inconsistent with the ownership rights of the Plaintiff. Note must be taken of the fact that, Gold Coast Motors started exercising these inconsistent rights of possession over the property, Plot No. 2 in 1991 when the lease agreement (exhibit 2) between the DIC and Gold Coast Motors was executed. It was after this that Plot No. 2 was subsequently sold to the 5th Defendants, who on record carried out extensive renovations to the property in the open and in the full view and knowledge of the Plaintiff who acknowledged same during cross examination. Factually and legally, Gold Coast Motors and the 5th Defendants became adverse possessors from 1991 and have never recognized the title of the plaintiff since then, who sat by for over twelve years and did nothing contrary to section 10 (1) and (6) of the Limitation Act, 1972 (NRCD 54).

It must be noted that, this chain of adverse possession was continued by the 5th Defendants when they bought the property, Plot No. 2 from Gold Coast Motors. The statutory limit of 12 years in section 10 (1) of the Limitation Act, NRCD 54 therefore begun to run against the Plaintiff in 1991 and effectively ended in 2003. Having commenced the instant action against the 5th Defendants, in 2006, that is three years after the period allowed under the statute of limitation had lapsed, the plaintiff must be deemed to be statute barred in commencing any action in respect of Plot No. 2 against them.

By now, it must be apparent that the Plaintiff's reason of being under a disability explaining why he did not commence the action against the 5th Defendant cannot hold water. It is therefore our considered view that the 5th Respondents have acquired title to Plot No. 2 and the interest of the Plaintiff is thereby extinguished.

It was for the above reasons, that we unanimously on 9th November 2016 dismissed the Plaintiff's appeal against the decision of the Court of Appeal dated 6th February 2014. The Court of Appeal decision of even date is hereby affirmed.

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

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO – BAMFO (MRS)
JUSTICE OF THE SUPREME COURT

(SGD) A. A. BENIN
JUSTICE OF THE SUPREME COURT

(SGD) G. PWAMANG
JUSTICE OF THE SUPREME COURT

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