**IN THE SUPERIOR COURT OF JUDICATURE**
**IN THE SUPREME COURT**
**ACCRA, A.D.2017**

**CORAM: ATUGUBA, JSC (PRESIDING)**
**DOTSE, JSC**
**BAFFOE-BONNIE, JSC**
**BENIN, JSC**
**PWAMANG JSC**

**CIVIL APPEAL**
**NO. J4/13/2017**

**22ND NOVEMBER, 2017**

IN THE CONSOLIDATED SUITS OF

1. NENE NARH MATTI
2. NENE SIPIM NARH TEKPERTEY II
3. NENE BERNARD AKUFFO TETTEY …… PLAINTIFFS/RESPONDENTS/ RESPONDENTS

VRS

OSEI GODWIN TEYE ……. DEFENDANT/APPELLANT/APPELLANT

AND

1. SAMUEL LAMM OYORTEY
2. ISHMAEL NARTEY WOODMAN
3. TEYE KOFI TETTEH …… PLAINTIFFS/RESPONDENTS/RESPONDENT

VRS

OSEI GODWIN TEYE ……. DEFENDANT/APPELLANT/APPELLANT

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# JUDGMENT

**DOTSE, JSC:-**

The tenacity of purpose, with which the Defendant/Appellant/Appellant, hereafter referred to as Defendant, has pursued the appeal against the

Plaintiffs/Respondents/Respondents in writs Nos I and 2 respectively in this court after his serial loss of the suits in both the High Court and the Court of Appeal despite the overwhelming evidence on record to the contrary, has led us to commence this judgment with what we call the *"Basic Principles"* stated by Nii Amaa Ollennu, a distinguished Jurist, author and statesman in his pioneering book entitled, " *Customary Land Law in Ghana"* page 1 thereof, where the author states thus:-

> *"The term land as understood in customary law has a wide application. It includes the land itself, i.e. the surface soil, it includes things on the soil which are enjoyed with it as being part of the land by nature, e.g. rivers, streams, lakes, lagoons, creeks, growing trees, like palm trees and dawadawa trees, or as being artificially fixed to it like houses, buildings and structures whatsoever, it also includes any estate, interest or right in to or over the land or over any of the other things which land denotes; e.g. the right to collect snails, herbs or to hunt on land. Therefore any suit, the substance of which is a claim to ownership, possession or occupation of land or a claim to any estate interest or right in, to, or over land or any such thing on land is a land suit. Consequently, a claim to ownership of buildings and structures on land is a land suit, so is a claim to waters, streams, the foreshore, creeks, including the right to fish in such waters…"*

**FACTS**

It must be noted that there were two different sets of writs of summons initiated by persons from two different families against the same defendant as the title of the suits indicate in the High Court and this has culminated through the Court of Appeal to this court.

It must also be noted that, initially the suits were against Peteye Osei Quarshie, and upon his demise, he was then substituted by Osei Godwin Teye, the Defendant herein.

**FIRST WRIT**

On the 7th day of August 2007, the Plaintiffs herein in the 1st writ of summons issued the writ against the Defendant in which they claimed the following reliefs:-

a. "Declaration of title to all that piece or parcel of land lying, situate and being at the foot of the Krobo Mountains measuring **25.51 square miles or 16.325.37 acres** more or less and bounded on the North by a parcel of land belonging to the Manya Kpongunor and Akwenor families; on the East by a parcel of land belonging to the Dormkpati Adjimeh; on the South by the Dorhwe Stream and the Mueyo Hill and on the West by a parcel of land belonging to the Suisui family of Manya Krobo

b. Damages for trespass

c. Recovery of possession

d. An order for perpetual injunction restraining the defendant whether by himself, his servants, agents, heirs and assigns from interfering with the Plaintiffs' family's ownership, occupation or possession of the land described in relief (a) of the writ of summons."

**SECOND WRIT**

On the 27th of September 2007 the Plaintiffs in the second writ of summons also issued a writ of summons claiming the reliefs endorsed therein as follows against the same defendant:-

a. "Declaration of title to all that piece of land lying, situate and being at Kpong covering an approximate area of **11,450.87 acres** more or less and bounded on the North by the Volta River; on the East by a parcel of land belonging to the

Dokutse Peteye family; on the South by the Dorhwe Stream and on the West by a parcel of land belonging to the **Manya Aklomuase family.**

b. Damages for trespass

c. Recovery of possession

d. An order for perpetual injunction restraining the defendant whether by himself, his servants, agents, heirs and assigns from interfering with the Plaintiffs' family's ownership, occupation or possession on the land described in relief (a) of the writ of summons."

The Defendant also filed a counterclaim against the Plaintiffs in the first writ of summons, and claimed against the plaintiffs therein, the following reliefs:-

1. "Seeks a declaration of all that piece or parcel of land popularly known as Akuse lands bounded on the North by Volta River, on the South by Tsoyumutso, on the East by Lomen Streams and on the West by Okwe stream as established by Jackson Report and Gazatted as aforesaid.

2. An order to quit the plaintiffs from the land which they now occupy unlawfully as grantees of Theodore Tetteh Dugbartey and Samuel Nartey Degber, whose case was dismissed in the Supreme Court on 30th January, 2007 in the presence of the 1st Plaintiff or Plaintiffs who came to Supreme Court to make sure that obviously hoping that the Defendant will lose."

What are the proximate causes of the writs against the Defendant by the Plaintiff's in both suits?

**IN RESPECT OF FIRST WRIT/SUIT**

**SUIT NO. EI/113/2007**

The Plaintiffs therein claimed the land endorsed therein in the writ as part of their ancestral family heritage. The capacity of the Plaintiffs in this suit are as follows:-

1st Plaintiff is the head of the Manya Aklomuase family of Agormanya Lomodje, 2nd Plaintiff is the Sipim of the Lomodjie clan of the Aklomuase family and the third Plaintiff is a member of the Lomodje clan/caretaker of the Manya Aklomuase family stool respectively.

The Plaintiff's case is that, the land endorsed in the writ of summons is their ancestral land founded several centuries ago by their ancestors in respect of which they had performed various overt acts of ownership and possession without let or hindrance from anybody or group of persons whatsoever including the Defendants and their predecessors.

However, the quiet enjoyment which the Plaintiffs enjoyed in respect of the land came to an abrupt end shortly before the institution of the present suit in 2007 against the Defendant following acts of trespass committed by the Defendant his privies, agents assigns etc.

These acts of trespass found expression in the following unlawful and wrongful acts of conduct by the Defendant.

i. Defendant entered portions of the Plaintiff's land claiming title therein.

ii. Upon enquires, it emerged that the Defendant was relying on a purported writ of possession issued in the Defendants favour by the Circuit Court, Akropong-Akwapin pursuant to a judgment of the Supreme Court.

It must however be emphasized that neither the Plaintiffs nor their predecessors in title were parties to the said judgment in respect of which the writ of possession had been issued.

iii. The further acts of Defendant lay in his alienating portions of the Plaintiffs' family lands to third parties.

**IN RESPECT OF THE 2ND WRIT**

**SUIT NO E1/6/08**

Barely a month and a half after the Plaintiffs in the 1st writ commenced their writ against the Defendant herein, the Defendant also trespassed unto the Plaintiffs land in the 2nd writs claiming and relying on a writ of possession from the Circuit Court Akropong-Akwapim which was based on a Supreme Court Judgment.

Like the case in the first writ, the Plaintiffs herein and their predecessors in title were not parties to the said suit upon which the Defendant relied for his writ of possession.

The Defendant also brazenly commenced acts of alienation of the Plaintiffs land to third parties as a result of which the Plaintiffs instituted the suit against him in the High Court, Koforidua.

The capacity of the Plaintiffs herein in the second suit are head of the Dormkpati Adjimeh family of Manya Kpongunor, for the 1st Plaintiff therein, whilst the 2nd and 3rd Plaintiffs are elders respectively of the said family.

Like the first set of plaintiffs, the Plaintiffs herein in suit No. E1/6/08 asseverated that the disputed land formed part of their ancestral family land in respect of which they had performed several overt acts of ownership without let or hindrance from anybody including the Defendant and his predecessors until the acts of trespass complained about which led to the institution of the suit.

**DEFENDANTS RESPONSE TO BOTH SUITS**

The Defendant maintained in both suits that the land in dispute belonged to the Dokutse/Peteye/Atta Abla family of which he is a member.

He contended that the land was acquired from time immemorial by Dokutse Peteye who left Osuyomua and settled at Amedeka and later went to settle on Akuse lands before finally going to the Krobo mountains as first settler.

**TRIAL AND DECISION OF THE HIGH COURT**

The case eventually proceeded to trial. The parties gave evidence, called witnesses and relied on a Plethora of exhibits, to wit judgments, Jacksons report and a composite plan that was ordered during the trial of the suit in the High Court.

Eventually, Suurbareh JA, sitting as an additional Judge of the High Court on the 5th day of February 2015, delivered a well reasoned and considered judgment in which he delivered judgment in favour of the Plaintiffs in both suits, whilst dismissing the Defendants counterclaim in the following terms:-

> *"The Plaintiffs in the two suits have persistently contended that the defendant's family expansionist drive began in 2005/2006* ***following their victory in the Supreme Court case of SAS George (supra). This put the burden of proving otherwise on the defendant and which he totally failed to do by his failure to produce documents in respect of these grants showing the time they were made.***
>
> *With regard to the compensation received, the evidence is clear that the two families, especially the Plaintiffs in the second suit, also had their lands flooded by the Kpong Dam project and that the defendant's family only received theirs. The receipts show that the claim is quite recent. From the findings made so far*

*concerning the extent of the defendant's family land, coupled with his failure to show when these grants were made, and their relation to the distinct lands being claimed by the plaintiffs in the two suits, even though it is not in doubt that these grants have been made, if they affect portions of the disputed land at all, they are invalid as the defendant was not entitled to the land affected by these grants. He was therefore a trespasser and gave no valid title.* ***From exhibit "U" "AA" to "CC" it is more probable than not that the defendants' family began their expansionist drive after 2005.*** Also see Exhibit "5" from the University of Ghana."

*"With regard to the additional issues filed on behalf of the defendant, these will be taken together as they all deal with the issue of whether or not the Plaintiffs in the two suits can relitigate title to the disputed land. These issues are:* ***Whether the matter before the court is a legitimate issue for enquiry by the court; Whether the land in dispute has been examined and/ or affected by previous decisions of the Supreme Court, and Whether the plaintiffs are stopped (sic) from relitigating the matter herein in view of the previous Supreme Court decision****.*

*Learned counsel for the defendant referred to Articles 129 (3) and 136 (5) of the Constitution 1992 as well as the case of* ***Sogbaka v Tamaklo [1973 GLR 27*** *on the doctrine of stare decisis, and submitted that the decisions of the Supreme Courts being relied upon here by the defendant were binding on this court and further that this court cannot criticize them. The cases being relied upon here are the* ***SAS George and Richard Fliwoski*** *cases supra. This court has already dealt with these judgment* ***and came to the conclusion that the Plaintiffs in the present suits, not been parties or privies to those suits, are not estopped from bringing their present actions.***

*The Court also referred to the prophetic vision of Wood JSC (as she then was) when she* ***lamented that there would not be finality in the matter by virtue of the fact that the Aklomuase family had not been joined.***

*Now to the issue of whether the Plaintiffs in the two suits are entitled to the land they are claiming in these actions.* ***From the preponderance of the evidence, the court is satisfied that they have discharged the burden about their claims. The defendant after denying that his family's Western boundary in relation to the Volta River is the point where the Okwe enters the Volta River, eventually admitted this fact under intense cross-examination just as his northern boundary is not the whole of the Volta River, but from Okwe to the Lomen, so his Western boundary cannot be the whole of the Okwe or even from the point where it passes under the bridge on the Somanya road, otherwise the exact point of the land in relation to the Okwe would have be(sic) stated in the various judgment and the Jackson Report.***

***The defendant, who is laying claim to the Plaintiffs' lands at Kpong and Okwenya, also eventually admitted that his family land did not include Kpong or Okwenya junction and further that his family did not claim the Krobo Hills. By these eventual admissions he also showed that he was not a truthful witness. He also failed to identify his land.***

*In sum therefore, whilst the plaintiffs are adjudged entitled to the relief they seek in their respective suits,* ***the defendant's counterclaim in respect of both suits fail".*** **Emphasis**

We have had to quote in extenso from the judgment of the High Court to indicate the many concrete findings of fact that had been made and supported by references to cogent historical, documentary evidence as well as legal arguments.

**APPEAL TO COURT OF APPEAL AND ITS DISMISSAL**

Quite surprisingly, the Defendants appealed this decision to the Court of Appeal which in a unanimous decision rendered on the 10th of February 2016 dismissed the said appeal. Still undaunted the Defendant has mounted this appeal to this court on the 31st day of March 2016 with the following as the grounds of appeal:

1. The judgment is against the weight of evidence on record.

2. The Court of Appeal erred when it affirmed that "we are satisfied that the land described by the Jackson Commission as land belonging to the defendant's family does not extend to the disputed land.

3. The Court of Appeal erred in holding that the judgment tendered by the appellant "could not be used as per rem Judicatam".

4. The Court of Appeal erred in holding that from the evidence "the Defendants woefully failed to prove acts and events within living memory that would qualify as undisturbed ownership or possessory rights."

5. The Court of Appeal erred in affirming that "the trial judge did not arbitrarily award the damages and its award did not infringe any law."

6. The Court of Appeal erred in affirming the wrong findings of fact made by the trial judge.

7. Further grounds of appeal will be filed upon receipt of the record of proceedings.

3. The reliefs sought from the Supreme Court are:

    a. The reversal of the judgment of the Court of Appeal and the High Court and the grant to the Appellants of judgment with costs.

Out of the substantive six grounds of appeal filed, ground 5 supra had been withdrawn by learned counsel for the Defendant, Alex Agyei-Agyiri. Since no additional grounds have been filed, we will confine ourselves to the remaining five grounds of appeal.

**STATEMENTS OF CASE OF PARTIES AND REPLY BY DEFENDANT**

We have perused the statements of case filed by learned counsel for the parties in this case, Godfred Yeboah Dame for the Plaintiffs and Alex Agyei-Agyiri for the defendant.

We take note also of the reply filed by learned counsel for the defendant. We have taken note of all the arguments made by the respective counsel in their statements of case. We want to reiterate the fact that we have diligently perused the pleadings, the evidence led in this case, the reliance on the many court judgments and other exhibits of historical importance as well as the many Survey Plans and Site Plans that have been tendered. Even though we are of the view that most of these exhibits and plans, were not germane and relevant to the case, we have taken time to peruse and or study same to enable us arrive at a just conclusion in the matter.

In this respect therefore, we shall proceed to deal with the resolution of the grounds of appeal on the basis that the arguments of both counsel had been considered and applied where necessary.

## 1. GROUND I

Anybody with sound principles of land law would appreciate the fact that, both the learned trial High Court Judge and the learned Judges of the Court of Appeal considered in detail the entire evidence led before the court in addition to all the exhibits referred to therein. Some of these documents relied upon are the following:-

- Exhibit CE1 – Site Plan – This is the composite Plan
- Exhibits A & B are all Survey Plans
- Exhibit C – is the document on the (Krobo Traditional Social and Religious life)
- Exhibit D is the Jacksons Report together with an authentication note from the office of Public Record and Archives Administration Department (PRAAD)
- Exhibits G, H, D, K, L, M and N which are Rulings, Letters, Indentures, Lease Agreement, Minutes etc.
- Exhibit "A" "B" "C" and "E" in the second suit representing, plans, judgment, Letters and Survey Plan respectively.

- Exhibit 2 – Judgment in the case of Maria Maku Ata Abla and Anr. v Josephina Otibo & Ors, High Court, dated 29/4/1975
- Exhibit 3 – Judgment in the case of SAS George v Johnson Hilodjie & Anr – Supreme Court dated 20/4/2005
- Exhibit 7 – Theodore T. Dugbartey and Anr. v Richard Flisowski and 2 Ors just to mention a few.

In considering the submissions of learned counsel for the Defendant on why the appeal should be allowed, learned counsel made really strenuous efforts to convince this court why the two judgments of the lower courts should be set aside

The duty cast on the first appellate court in that, an appeal is by way of rehearing and that a party who alleges that a judgment is against the weight of evidence is asking the appellate court to review the entire evidence on record, that is both oral and documentary and then correct all errors that arose during the evaluation of the evidence and apply them to relevant case laws, statutory provisions etc. has not been lost on the learned Judges of the Court of Appeal in this case.

We have found in the Court of Appeal judgment that they properly evaluated the judgment of the learned trial Judge vis-à-vis the entire evidence, oral and documentary and concluded as follows:-

> *"The Defendant's position is that the Plaintiff's lands form part of his land and the trial Judge made wrong findings of fact when he concluded that Akuse Lands do not include land at Akuse junction and Akuse town is at least five miles away from Akuse junction.* ***According to the Defendant, the above wrong findings of fact which influenced the decision of the trial High Court is not supported by the evidence on record.*** *The trial Judge considered the composite plan Exhibit CW1 (sic) (CE1) and we agree with the trial Judge that it did not disclose any of the area covered by the Judgments obtained by the Defendants in the various suits wherein he pleaded in his statement of defence and tendered in evidence.* ***The important facts depicted from the***

***composite plan are the parties respective boundaries shown on the ground and the site plans, the Defendant's building, some grants made by the Defendant and the disputed area.*** The trial Judge never said in the record that the composite plan was not relevant". Emphasis

We on our part have also taken a look at this Exhibit CE1, which is the correct denotion of the composite plan. We have studied it, and found all the comments made by the learned trial Judge and confirmed by the learned Judges of the Court of Appeal as borne out by the said Exhibit. It must be noted that, since Exhibit "CE1", is the composite Plan, it is a very important document whose bearing on the case must be really incisive. This is because it is the Survey Plan which positions the lands as shown to the Court appointed surveyor by the parties during the survey as well as the superimpositioning of any site plans or land documents that they have in relation to court judgments as well as any overt acts of ownership and of trespass, shown to the surveyor during the survey if at all.

We on our part, having critically studied this Exhibit "CE1" are of the considered view that the Court of Appeal and by necessary implication, that of the High Court were right.

We accordingly dismiss this ground of appeal as lacking in merit and substance.

**GROUND 2**

We would not detain ourselves for any considerable length of time on this ground. This is because, apart from perusing the entire Jackson's Report, we have also put the said report in proper context. Having done just that, we realize that the Court of Appeal quoted relevant portions of the trial court judgment in which they gave reasons why the Jackson Report, upon which the Defendant relied and based his case, did not require the type of advantage they sought from the court.

In concluding this matter, we agree substantially with the Court of Appeal when they stated as follows:-

*"From exhibits "CE1" and "1" the Akuse Lands include Akuse, Amedeka.* ***The disputed land is far away from the stretch of land from Okwe to the lemon creck on the right side of River Volta.*** *There is undisputable evidence that the Krobo's, that is both Manya and Yilo people were the first settlors of the Krobo Hills and they conveyed it to the British.* ***We are satisfied that the land described by Jackson Commission as land belonging to the Defendant Family does not extend to the disputed land."*** **Emphasis**

From the above, we have no hesitation in dismissing this ground of appeal as well.

**GROUND 3**

We are indeed surprised, that learned counsel for the Defendants, with the benefit of the records of appeal formulated the above ground of appeal. What is this judgment? This is the case of SAS George v Johnson Hilodjie and Emmanuel Teteh Kwasie delivered by the Supreme Court on 20th April 2005 and reported as Hilodjie & Anr v George [2005-2006] SCGLR 974. In the first place, the subject matter of the suit therein was 34.6 acres of land lying and being at Okwenya and was described thus:-

*"On the South-east by* ***Akromase people property measuring*** *on that side 1,000 feet more or less, on the North-West by* ***Akosombo-Afienya*** *Motor Road measuring on that side, 1000 feet more or less, and on the* ***North-East by Akromase peoples Land measuring*** *on that side 1,500 feet more or less enclosing an area of 34.65 acres."*

Another judgment relied on by the Defendants is the Supreme Court of the Gold Coast Colony, Eastern Province dated 11/11/1924 intitutled, ***Acting Manche Tetteh Anime v T. K. Otibo,*** tendered by Defendants as exhibit 5.

The third judgment relied upon by the Defendants in the case is that of the Court of Appeal intitutled ***Theodore T. Dugbartey v Flisowski and 2 Ors*** dated 14/10/2002, covering an acreage of 20.6 acres of land at Okwenya.

The trial court made very notable and pronounced comments on the efficacy of the said judgments. But the coup de Grace was delivered by the Court of Appeal, speaking unanimously through Adjei JA as follows:-

> *"The Plaintiffs admitted the descriptions of the defendant's land as contained in the Jackson Commission Report and affirmed by the Supreme Court in Hilodjie v George (supra)* ***but went ahead to describe their land which is entirely different from the Defendant's land. The Defendant failed to rebut this important evidence except relying on the numerous judgments and Jackson's Report in which none of them included the Plaintiffs lands as part of the Defendant's land. From the evidence on record, we affirm the decision by the trial Judge that Okwenya refers to all the lands where River Okwe stretches through and some of the settlements at the banks of River Okwe are also known as Okwenya. It is not true that there is only one town or settlement known as Okwenya****. We are also satisfied that Okwenya means the edge of River Okwe and the Defendant's land is part of the land where River Okwe enters the Volta and not any land on which River Okwe stretches." Emphasis*

At this stage, we wish to reiterate the oft cited principle propounded long ago in a long line of respected authorities and referred to by Abban JA, (as he then was) in the case of **Nyikplokpo v Agbodortor [1987-88] GLR 165 at 171** where the Court of Appeal unanimously spoke through Abban JA (later to become Chief Justice, now of blessed memory) thus:-

> *"To succeed in an action for a declaration of title to land, recovery of possession and for an injunction the Plaintiff must establish by positive evidence the identity and limits of the land which he claims."*

This holds good for the plaintiffs as well as the Defendant.

However in the context in which the Defendant relied on the cases such as ***SAS George v Hilodjie, (supra) and Theodore Dugbartey v Flisowski*** (supra) and then was unable to call any of the human boundary owners such as the Akromase family who were not even called as boundary owners to support the identity of the lands which they claimed. This fact was even commented upon by Wood JA (as she then was) in the said SAS George case supra.

It follows therefore that, in the real terms of the principle stated supra, the defendant's predecessors having failed to establish the identity of the lands in the said cases referred to supra cannot use same as operating as estoppel against the Plaintiffs.

The Court of Appeal, per Adjei JA, then proceeded to make the following pronouncements based on concrete findings of fact.

1. After examining all of the Defendant's judgments against different families and people, none relates to the subject matter of the instant suit.

2. The Defendant failed to make even one copy of a judgment plan available to the Surveyor when he was ordered to make a composite plan. There could have been a superimposition of these plans on the composite if they had been made available.

3. Based on the above, the court concluded that it was because the Defendant knew that none of the lands in the said judgments is referable to the land in dispute.

4. That all the judgments relied on by the Defendant are referable to Akuse land.

5. That the judgments relied upon by the Defendant as well as the Jackson Report cannot be used as judgments per rem judicatam.

6. This is because of failure to meet the following conditions:-

    i. That the parties in the earlier judgments are the same, or their privies, assigns, agents or their successors in title.

ii. The capacities in which the actions had been instituted and contested in the earlier judgments should be the same and must be in reference to the same subject matter.

It must be noted that, a party who relies on estoppel per rem judicatam must prove that the identity of the previous suit in respect of which judgment was given in his favour are the same in the subsequent suit under consideration. See the case of ***Ababio v Kanga (1932) 1 WACA 253 at 254*** where the principle was explained.

We therefore on the basis of the above discussions and analysis, conclude just as the Court of Appeal had done that, *"having concluded that Akuse lands do not extend to the land in dispute, the question of estoppel per rem judicatam does not arise".*

This ground of appeal is also accordingly dismissed.

**GROUNDS 4 & 6 TOGETHER**

The law is settled that where both parties rely on historical evidence and there is no conflict in resolving these rival claims, the best way is to test the traditional evidence by reference to facts in recent years as established by evidence. That is the only way by which it can be established which of the two conflicting pieces of historical evidence is most probable. In this respect, we find as convincing the conclusion reached by the two lower courts on why they preferred the historical evidence of the Plaintiffs as against the Defendant.

We wish to refer to the locus classicus on this legal principle in the case ***of Adjeibi – Kojo v Bonsie (1957) 3 WALR 257 at 260 PC. See also the application of the above principle in the following cases,*** Adjei v Acquah [1991] 1 GLR 13, ***Achoro v Akanfela [1996-97] SCGLR 209***, and ***Adwubeng v Domfeh [1996-97] SCGLR 661.***

In this instant, we observe that the trial court made definite and positive findings of fact and this has been affirmed by the first appellate court. We are also very mindful of the

warnings and danger associated with an appellate court departing from settled findings of fact, unless same are unsupportable and are in any case very perverse. However, after evaluating all the findings of fact made by the trial court and concurred in by the appellate court, we do not see any real, genuine or putative grounds to depart from the said findings of fact. See cases like, ***Obeng v Assemblies of God, [2010] SCGLR 300, Akuffo-Addo v Cathline [1992] 1 GLR 377 Achoro v Akanfela (supra), Fosua & Adu Poku v Dufie (Deceased) & Adu Poku Mensah [2009] SCGLR 310 at 313, and Gregory v Tandoh IV & Hanson [2010] SCGLR 971.*** See also the unreported Supreme Court case of ***Mrs. Christian Aboa v Major Keelson***, consolidated Suit No.J4/11/2010 dated 16th March, 2011

Having reviewed all the above authorities, we are of the opinion that, not finding any justifiable reasons whatsoever to depart from the said findings of fact by the trial court and concurred in by the first appellate court, we are certain that the invitation being made to us by the Defendant to depart from these findings because they were wrong and on the contrary substitute our own findings will not only be arbitrary but also subversive of the settled legal principles referred to supra.

Grounds 4 and 6 are accordingly dismissed.

**EPILOGUE**

We have observed from the record of appeal that, the defendant herein whilst opening his Defence in the 1st writ or suit therein in the High Court, tendered Exhibits "7" and "8" and testified as follows:-

> *There was another judgment in 2002 an Appeal Court judgment titled* ***Theodore T. Dugbartey & Anr v Richard Flisowski & 2 Ors.*** *This is the copy of the judgment and with permission I would like to tender same in evidence.* ***Judgment of the Court of Appeal dated 14th October 2002 being tendered accepted and marked as Exhibit "7".*** "

Continuing, the Defendant testified thus:-

"Apart from the cases that I have mentioned involving Dokutse Peteye Attah Ablah family land, there was another judgment in 1975 titled ***Maria Maku Ata Ablah & Anr v Josephina Otibo and Chief Sackitey*** as the Co-Defendant. This is the document and with permission I would like to tender same in evidence. **Judgment of the High Court, dated 29th April 1975 being tendered and marked as Exhibit "8".**

We believe that, pursuant to the above pieces of evidence, the defendant applied for and obtained an Ex-parte, application for writ of possession from the Circuit Court, Akropong-Akwapim. We have also noted in the record of appeal that there is an exhibit in Volume 3, page 171 with the following entries:-

"In the Circuit Court of Justice

Akropong Akwapim

Suit No. 62/94

Theordore Tetteh Dugbartey and Another – Plaintiffs

vrs

Richard Flisowski and 2 others - Defendants

**Order for writ of possession**

Upon reading the affidavit of Emmanuel Tetteh Kwashie, Co-defendant herein of the Dokutse Peteye Attah Ablah family House No. P. 3/1 of Okwenya filed on the 25th of June 2007, in support of motion Ex-parte for an order for Writ of Possession

And upon hearing Alex Agyei Agyiri Esquire of Counsel for and on behalf of the Defendants/Applicants/Respondents herein,

**It is hereby ordered that the applicants herein go into possession of the land in dispute having won their case at the Higher Courts.**

**It is further ordered that the Police Service at Akuse assist in this exercise**.

Given under the hand and the seal of this court, this 12th day of July 2007. "Emphasis

In order for the matters in controversy to be understood in proper context, we consider it worthwhile to relate what transpired in court on the said 12th July 2007, when the order we have just referred to in detail was drawn up.

It reads as follows:-

"Circuit Court, Eastern Region Akropong-Akwapim, on the 12th July 2007, Before His Honour Yaw Owusu Kwarteng, Circuit Judge

Suit No. 62/94

Theodore Tetteh Dugbartey – Plaintiff/Respondent/Appellant
Per His Lawful Attorney
John Teye Dugbartey
Mawuena chambers
Odumase-Krobo

Samuel Nartey Degbor - Defendants/Appellant/Respondent

Emmanuel Tetteh Kwashie - Co-Defendant
Head of Dokutse-Teteye Attah Ablah Appellant/Respondent
Family, Attah Ablah Memorial
House, No. P. 31, Okwenye

Plaintiffs absent

1st and 2nd Defendants absent

3rd Defendant present

Mr. Alex Agyei Agyiri for T.D. Brodie-Mends for Defendants/Appellants/Respondent present.

Mr. Agyiri: this is an ex-parte application by the defendant for an order, authorizing the defendants to apply for possession. We move in terms of the motion paper and supporting affidavit. The matter originally was against the defendant, but there was an appeal at both Court of Appeal and Supreme Court. At the Supreme Court, the Plaintiff failed to prosecute and their appeal for further enlistment was refused. They had installed several people on the land. But it is the prayers of the Defendant/Applicant that the Court orders them to go into possession. The judgment of the Court of Appeal was on 14/10/02 and Supreme Court on 30th January 2007.

**By Court: I have heard counsel for the defendants/Appellants/Appellant herein, I have also seen the various exhibits, attached to this application supporting this application. The court will hereby order that the applicants herein go into possession of the land in dispute, having won their case at the higher courts.**

Let the Police Service at Akuse assist in this exercise.

Sgd. Y. Owusu Kwarteng
Circuit Judge

It was upon the basis of the above proceedings on the 12th of July 2007 that the orders of the court with even date referred to supra were drawn up. From these proceedings, and orders respectively, the following issues stand out clear.

1. That it was on ex-parte application

2. That the case was not prosecuted at the Supreme Court, since the appeal was struck out and an application to re-list was not successful.

3. In that regard, it is only the Court of Appeal judgment dated 14/10/02 and tendered in the proceedings in the High Court as Exhibit 7, that can validly be referred to.

4. Some documents and exhibits had been attached to this ex-parte application at the circuit court, Akropong Akwapim, but the Circuit Judge did not take the trouble to itemize the said documents and or exhibits.

5. The result is that, we have to turn to the exhibits tendered and find out what documents were infact exhibited to this application.

6. The ex-parte application for the Writ of possession, the affidavit in support and any attaching exhibits have not been exhibited and tendered anywhere in the three volumes of this appeal.

7. The only document of relevance is the judgment of the Court of Appeal dated 14/10/02 which is on record as having been tendered as Exhibit 7. It is to this judgment that we now have to turn to in order to understand what actually happened and the basis for the grant of the Writ of Possession.

We also take note of the following entries in the record of appeal, pages 115 and 116, volume 2 thereof as follows:

> *"There has also been writ of possession and it was granted by the Circuit Court, Eastern Region at Akropong-Akwapim and this writ of possession is in respect of Akuse lands. I have the document with me here and with permission from the Court I would like to tender same in evidence, per Defendant".*

*"A writ of possession from the Circuit Court, Akropong-Akwapim dated 12th July, 2007 being tendered accepted and marked as Exhibit "10".*

The Defendant continued his evidence thus:

*"After the writ of possession was granted to us we were accompanied by the Akropong – Police to demolish some of the structures on the land. It is not true that we have trespassed on the land of the Plaintiff measuring 16,325.27. We don't share boundary with the plaintiffs on any portions of our family land."*

It must also be noted that, the proceedings pursuant to the grant of the writ of possession and the order that was drawn up are those exhibits referred to in the exhibits register as exhibit No 10. This therefore means that the gaps referred to earlier as existing towards an understanding of the writ of possession still exist.

We have decided to focus on the processes towards the grant of this writ of possession because of a phenomenon that has crept into our legal/judicial system, where courts that grant writs of possession do not take their time to peruse the enabling judgments so as to limit the operation of the writs of possession to the extent of the orders made by the courts that delivered the said judgments. A typical example is what has happened in the instant appeal. The exhibit 10 reads

***"The court will hereby order that the applicants herein go into possession of the land in dispute".***

**What is the land in dispute?**

**Where is the land in dispute situate?**

**What are the boundary features and boundaries of the land in dispute?**

These are just some of the questions that can legitimately be asked and interrogated.

This is just one of the laxities that are being exhibited in the quest of judgment creditors in executing their judgments.

In the absence of the Judge setting out the boundaries of the land in dispute either by clearly demarcating the boundaries or by a survey plan or map as we have in this judgment, all that we have is that, the applicants should go into possession. What happens in most cases is that the parties who have applied for the writ of possession are those who direct the Bailiffs and the Police as to the extent of the land in dispute. This practice is clearly unacceptable. We take judicial notice of the fact that many other writs of possession had been poorly executed in the past which has led to the demolition of houses and properties of people who were not parties to the judgments in respect of which the executions had been levied. In this instant, the Defendant conceded that, pursuant to the said orders for possession, several houses had been demolished with the assistance of the police.

It is quite clear that, the Plaintiffs herein and their predecessors in title were not parties to the phlethora of cases relied on by the Defendant. We also take a cue from the decision of the Supreme Court in the case of In Re Ashalley Botwe Lands; Adjetey

Agbosu and Others v Kotey and Others [2003-200] SCGLR 420 at holding 9, where the court held as follows:-

> *"The court would, in the interest of justice, disallow the order of the trial Judge made under Order 20 r 5 of the High Court (Civil Procedure) Rules, 1954 (LN140A) directing the second defendant to take steps to annul all documents which derived their title from the statutory declaration registered by the Lands Commission."*

The rationale for the above decision was further explained by Wood JSC (as she then was) in the following terms:-

> *"I see an order directed at the beneficiaries who were never parties to this action, persons who have acquired lands from the defendant, but who were, however, not heard in these proceedings, contrary to the fundamental and plain rule of natural justice, the audi alteram partem rule. to order an annulment or cancellation of their documents without any notice to them and without having giving them a hearing , is in my view erroneous as the intention clearly is to disposes them of their properties."*

We find the above very relevant to the circumstances of this case. This is because, in the instant case the Plaintiffs lay claim to the lands in dispute as part of their ancestral lands.

In order for the judgments which the Defendant holds and has been parading with, to be applicable to the Plaintiffs, there must be a nexus that the said lands in respect of

the previous suits, i.e. ***SAS George v Hilodjie supra, Dugbartey v Flisowski & Ors supra*** and the others are the same as the land in dispute and that the Plaintiffs or their predecessors were parties therein.

It has been already established that the plaintiffs were not parties to any of these suits, and by parity of reasoning and based on sound principles of law, the said judgments cannot be held applicable to them.

**APPLICATION FOR THE WRIT OF POSSESSION AND EXECUTION**

From exhibit 7, the Court of Appeal judgment of 14/10/02 in respect of which the Co-Defendants applied for and were granted the writ of possession, Wood J.A. (as she then was) whilst dismissing the appeal by the Plaintiffs and Co-Plaintiff, however granted judgment to the Co-Defendant.

The Defendants and Co-Defendant had no counterclaim as that had been withdrawn with the leave of the court dated as far back as 11-12-92.

What this meant was that, whilst the Plaintiff and Co-Plaintiff lost the action; the Defendant and Co-Defendant won, but not having counterclaimed, no writ of possession could have been executed in their favour.

It is therefore clear that the grant and execution of the writ of possession by the Circuit Court, Akropong-Akwapim in respect of the case in exhibit 7 supra, dated 12th July 2007 is null and void and is accordingly set aside.

**As a Practice Direction, this Court directs that henceforth, trial courts to whom writs of possession are applied from must study the judgments upon which the executions are based and clearly delineate the boundaries of the land in respect of which the writ of possession had been applied for and granted**.

**Where however there is a survey map or site plan and the judgment has been based on such a survey map or site plan, then the writ of possession must be referable to the said plans. This practice direction it is hoped will prevent the needless and incompetent writs of possession that have been carried out in the pas**t.

We observe that, since the judgment which was executed by leave of the Circuit Court, Akropong-Akwapim, commenced from the High Court, and terminated with the execution of the Court of Appeal judgment already referred to supra, it is Order 43, rules 3 (1) and (2) and 13 that are applicable. Order 43 r. 3 (1) (a) and (2) of the High Court (Civil Procedure) Rule, 2004 C. I. 47 provides as follows:-

> *"Subject to these Rules, a judgment or order for the recovery of possession of immovable property may be enforced by one or more of the following means:-*
>
> *(a) a writ of possession*
>
> *(b) in a case in which rule 5 applies, an order of committal or a writ of sequestration". – This is not relevant and applicable.*

2. *"A writ of possession to enforce a judgment or order for the recovery of possession of immovable property shall not be issued without leave of the court except where the judgment or order was given or made in a mortgage action to which order 56 applies."*

*Order 43 r. 13 reads as follows:-*

"***Forms applicable to this Order***

*"Forms 18 to 18 K provided in the schedule to these Rules shall be used for the respective purposes provided for in this order."*

We observe from an examination of the forms pursuant to order 43 r. 13 that, Forms 18C and 18D are relevant for our purposes whilst form 18C is titled "Request for writ of Possession " and contains an indication for detailed description of the property or premises in respect of which the Writ has been applied for. It is not surprising that, this request is therefore to be signed by the Lawyer for the party applying.

On the contrary, Form 18 D, is titled, Writ of Possession, and is to be signed by the Registrar of the issuing court. This Form has the following particulars to be indicated as follows:-

a. Insert name of party applying

b. Insert name of party against whom writ is issued

c. Describe the land delivery of which has been adjudged or ordered.

We observe that the examination of the writ of possession in the instant case is contrary to the said provisions and format. Indeed, as provided under the Rules and the relevant forms, if these are complied with, the laxities complained with in most executions of writs of possession will be absent.

For the above reasons, the execution of the Writ of Possession as ordered by the Circuit Court, Akropong-Akwapim is null and void and accordingly set aside.

We will end our epiloque with the caution to all practitioners, magistrates and judges in particular to ensure that in granting writs of possession in respect of disputed title to land where one party claims to have been granted possession, the judgments decreeing title and possession are perused and the exact areas granted are specified in the order as directed by Order 43 r. 13 (supra) by the use of the relevant Forms 18C and 18D.

**CONCLUSION**

From the proceedings which we have perused in this case, what has become very clear is that the parties therein and their predecessors in title have been litigating over various parcels of land for a considerable length of time. All these support the contention of the importance of protecting proprietary rights which is even a constitutional right see Article 18(2).

In this respect, we find this quotation attributed to a U.S. Statesman, John Adams, on Thoughts on Government published on page 284 "in the Quotable Founding Fathers, edited by Buckner F. Melton" appropriate, and it states as follows:

"***Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection, and to give his personal service, or an equivalent, when necessary. But no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people".*** Emphasis.

The parties herein are therefore justified in taking all constitutional and legal steps that are needed to protect their properties. That might well be fine, but this cannot go on unabated. The massive resources that are deployed to pursue such disputes can best be employed in other productive areas of human endeavor like education, health care, shelter etc.

In this respect, we recommend to all the parties herein, to consider the use of Alternative Dispute Resolution (ADR) mechanisms in future in case any dispute erupts.

It is imperative from the quotation from Ollennu's book that, because the uses to which lands are normally put are very extensive, people tend to go all out to protect it. It is in this respect that acts of trespass, which prevents legitimate owners of lands from enjoyment of the resources therein become really burdensome. It is however our hope that families and communities who live together whilst exercising their legitimate rights to protect their properties, will exercise some decorum in the land use and seek to preserve it for their future generations.

The wanton disposition of the lands by the present owners must therefore be regulated.

**FINAL ORDERS**

In the premises, the appeal herein lodged by the Defendant against the court of Appeal judgment dated 10th February, 2016 is accordingly dismissed as woefully lacking in substance and merit. On the contrary, judgment is entered in favour of the Plaintiffs in both suits as per the Court of Appeal judgment of even date. The Judgment of the Court of Appeal in favour of the Plaintiffs herein is thus affirmed, and by necessary implication, that of the High court, dated 5th Day OF February, 2015.

Appeal fails and is thus dismissed.

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

W. A. ATUGUBA
(JUSTICE OF THE SUPREME COURT)

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

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

G. PWAMANG
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