IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DOTSE JSC (PRESIDING)
LOVELACE-JOHNSON (MS.) JSC
AMADU JSC
PROF. MENSA-BONSU (MRS.) JSC
KULENDI JSC

CIVIL APPEAL
NO. J4/53/2021

27TH JULY, 2022

NII KPOBI TETTEY-TSURU III
LA MANTSE
(SUB. BY NII ADJEI KOFFAH IV) …… PLAINTIFF/APPELLANT/ APPELLANT

VRS

1. GA EAST MUNICIPAL ASSEMBLY
2. DRIVERS AND SQUATTERS ON LAND } DEFENDANTS/RESPONDENTS/RESPONDENTS
3. NII KOTEYFIO NIKOI & NIKOI JONAS
4. VOLTA RIVER AUTHROITY ….. 4TH DEFENDANT/APPELLANT/RESPONDENT
5. THE CHAIRMAN, GPRTU OF TUC
MADINA ESTATES/AMERICAN HSE BRANCH
6. THE CHAIRMAN, GPRTU OF TUC
ASHALEY BOTWE/ABEN WAHA BRANCH
7. THE CHAIRMAN, GPRTU OF TUC } DEFENDANTS/RESPONDENTS/RESPONDENTS
ASHONGMAN, DOME HAATSO BRANCH
8. THE CHAIRMAN, GPRTU OF TUC
ABOKOBI BRANCH
9. THE CHAIRMAN, GPRTU OF TUC

SOMANYA BRANCH

10. THE CHAIRMAN P.R.O.T.O.A, KOFORIDUA
11. BENEDICT KOFITSE
12. MAXWELL OSEI

} DEFENDANTS/RESPONDENTS/RESPONDENTS

JUDGMENT

AMADU JSC:-

(1) This appeal is from the judgment of the Court of Appeal which wholly affirmed the judgment of the Trial High Court and dismissed the appeal of the Plaintiff/Appellant/Appellant in its entirety.

(2) In the High Court, the Plaintiff/Appellant/Appellant *(herein after referred to as the "Appellant")* took out a writ of summons against several Defendants including the 3rd Defendants/Respondents/Respondents *(hereinafter referred to as the "Respondents"),* the only Respondent to the instant appeal. The Appellant had sought the following reliefs.

"1. A declaration of title to a parcel of land located at Madina popularly known as VRA park and particularly described in the writ of summons as all that piece of land bounded on the North by Plaintiff's land measuring 650 feet more or less, on the South by a road measuring 720 feet more or less, on the East by a road measuring 620 feet more or less and on the West by a road containing an approximate Area of 5 acres more or less.

2. An order terminating the license between the Plaintiff and the 4th Defendant for breach of covenant in the conditional license dated 9th September 1968.

3. Perpetual injunction to restrain the Defendants their agents,

assigns, servants and heirs from interfering with the Plaintiff's peaceful possession and ownership of the said land.

4. An order for the 11th and 12th Defendants to deliver up for cancellation indenture with Registration Number LVB 3075/07 together with Land Certificates Numbers GA.23729 and GA.22821.

5. Recovery of possession

6. General Damages.

7. Rent from the 4th Defendant from 9th September 1968 to the date of judgment.

8. Cost ".

(3) The 3rd Defendants/Respondents herein, not only contested the Appellant's action at the trial court, but they set up a counterclaim for the following reliefs:-

"(*i) A declaration that as joint heads and lawful representatives of the Nikoitse We of La Nkwantanang they are absolutely and beneficially entitled to all that track of land described in the Plaintiff's statement of claim.*

(ii) Recovery of possession of the said land.

(iii) Damages for trespass.

(iv) Perpetual injunction restraining the Plaintiff by himself, agents, servants, privies assigns or otherwise howsoever from entering, using or in any manner interfering with the 3rd Defendant family's possession or control of the disputed land.

(4) While the 4th Defendant on record at all material times asserted that, it lawfully acquired its interest from the occupant of the La Stool through the Appellant's predecessor, the other Defendants on record who though not parties to this appeal are grantees of the Respondents' herein and are therefore directly affected by the outcome of the appeal.

(5) After a full trial, the trial High Court found in favour of the 3rd Defendants/Respondents and dismissed the Appellant's claim. The trial court

further granted the counterclaim set up by the 3rd Defendants/Respondents thereby affirming the interests acquired by their grantees with respect to the disputed land.

(6) On appeal to the Court of Appeal, the judgment of the Trial High Court was affirmed while the Appellant's appeal was dismissed in its entirety. In their delivery, the learned justices of the Court of Appeal made a number significant findings and conclusions from their re-evaluation of the evidence on record including the following.

*"(i) Though the recent decisions of the highest court of this land do not put away the holding in the **Owusu case**, that the La Stool holds the allodial title in the La in the La Rural Lands , it has made in roads in to that decision ;such that it is very unsafe to take a stand that the **Owusu case** operates as res judicata against a sub stool (in this case Nkwantanang village)*

*(ii) Case law on the issue of la Stool's exclusive ownership of La Rural lands has taken a stride forward after the decision in the **Owusu Vs. Manche Of Labadi**, a case decided over 80 years ago. The position taken by the Supreme Court in the Nartey and Ago Sai cases does not deny the fact that the La Stool as the head stool holds the allodial title to La Rural lands, however the possibility of losing that title absolutely to a sub stool is not ruled out depending on the circumstances of each case. In both cases the La Stool was found to have acquiesced to acts of ownership exercised by the sub stool of Frafraha and Ogbojo all over the years.*

(iii) . . . in view of the recent development of the law as stated in the Nartey and Ago Sai cases a plea of res judicata would not avail the Plaintiff in this suit".

(v) It is the issue of ownership, possession alienation and control of La

Rural Lands that had ran through the Owusu, Nartey and Ago Sai cases; I therefore do not find the trial judge's holding that the issues in this case are distinct from the issues in the Owusu case accurate. However irrespective of that position taken by the trial court, I do not think a plea of res judicata would avail the Plaintiff in the face of the decisions in the Nartey and Ago Sai cases.

(iv) The Nartey and Ago Sai cases have established that irrespective of the decision in the ***Boi Owusu Manche of Labadi*** *cases that the La Stool holds allodial title in the village lands, such title could be lost. In this case sufficient evidence is on record that La Stool lost the said title by acquiescing in the acts of ownership exercised by the 3rd Defendant family."*

It is on the basis of the above findings and the application of the relevant law that the Court of Appeal dismissed the Appellant's appeal.

(7) By notice of appeal to this court, the Appellant has formulated several grounds of appeal as follows:

"(1) The learned trial judge erred in holding that the decision in the case of ***BOI OWUSU VS. MANCHE OF LABADI [1933] 1 WACA 278*** *could not avail the Applicants a plea of res judicata.*

PARTICULARS OF ERROR

(a) The Learned Justices of the Appeal erred in holding that the development of the law in subsequent or more recent cases can negate a successful plea of res judicata.

(b) The Learned Justices of the Appeal failed to distinguish between the ratio decidendi in the Boi-Owusu decision on the one hand and the res judicata of that decision on the other hand thereby failing into error.

ii. The Learned Justices of Appeal erred in holding that the Plaintiff had acquiesced to the 3rd Defendant's ownership in the absence of any evidence of such ownership or acquiescence.

vii. The Judgment is against the weight of evidence adduced.

viii. The learned Trial judge erred in relying on the

uncorroborated evidence of the 3rd Defendant as against the corroborated evidence of the Plaintiff.

v. The Learned Trial judge erred in relying on the uncorroborated evidence of the Defendant as against the corroborated evidence of the Plaintiff.

ix. The learned Trial judge erred in failing to apply correctly the law on the burden of proof following admissions by an adversary.

ii. The Learned Justices of the Appeal erred in holding that the Appellants failed to adduce any convincing evidence of the Appellants control and possession.

iv. The learned Trial judge erred in holding that the Plaintiff's action is statute barred.

vi. The Learned Justices of the Appeal erred in holding that the Plaintiff is estopped at common law from instituting the action.

vii. The Learned Trial Judge erred in disregarding the defence of adverse possession raised by the Plaintiff 's grantee ,that is the 4th Defendant and by failing to address same.

xii. Additional grounds may be filed upon receipt of the record of appeal."

(8) We notice from the record that while no additional grounds of appeal have been filed nor argued, we cannot gloss our eyes over an obvious error on the part of the Appellant when in several of the grounds the Appellant purported to attack the findings and conclusion of the trial High Court which though forms part of the record is not the subject of the instant appeal. We should expect that since reasons were placed on record by the Court of Appeal for upholding the judgment of the trial court wholly, the instant appeal should and ought to be against the judgment of the Court of Appeal having fully concurred with the judgment of the High Court based on its own findings. We shall therefore deal

with those grounds of appeal formulated against the findings and conclusions of the trial High Court as grounds challenging the affirmation by the Court of Appeal of those findings and conclusions.

CONSIDERATION OF GROUNDS OF APPEAL

GROUND '1'- APPELLANT'S ARGUMENTS

(9) On this ground, the Appellant assails the finding of the Court of Appeal at page 958 (Vol.3) of the record in relation to the authority of the case of **BOI OWUSU VS. MANCHE OF LABADI [1933]1 WACA 278**to the effect that; "***Case law on the issue of La Stool's exclusive ownership of La Rural lands has taken a stride forward after the decision in the OWUSU VS. MANTSE OF LABADI, a case decided over Eighty (80) years ago. The position taken by the Supreme Court in the Nartey and Ago Sai cases does not deny the fact that the La Stool as the head stool holds the allodial title to La Rural lands, however the possibility of losing that title absolutely to a sub stool is not ruled out depending on the circumstances of each case. . ."*** The Court of Appeal then proceeded to deny the Appellant the benefit of the plea of res judicata and estoppel as pleaded against the Respondents.

(10) In the judgment of the trial court, it had found that issues of subject matter and parties regarding the **BOI OWUSU case** (supra) and the instant matter were similar, but not so much on the issues for determination. On this finding, the Court of Appeal disagreed with the trial High Court and found the issues, subject matter and parties in the **BOI OWUSU case** to be the same as those in the instant matter. Contrary therefore to the Appellant's contention that the prevalence of the same issues, subject matter and parties supported the plea of res judicata and the reliance on the decision of this court in the case of **OWORSIKA III VS. AMONTIA IV [2006]1 MLRG 61**, the Court of Appeal did not fault the decision in the **BOI OWUSU case** regarding the issue of

estoppel but stated clearly that, the La Stool stood the chance of losing its title depending on the peculiar circumstances of each case. The Court of Appeal thereby held that the applicability of the **BOI OWUSU case** regarding the plea of res judicata was no different from the requirements for pleas of estoppel but only subject to special circumstances.

(11) The Appellant argued further that the instant appeal is not one which sets out any case of special circumstances against the plea of res judicata. The Appellant thus disagreed with the finding of the Court of Appeal on sameness of issues, parties and subject matter with the **BOI OWUSU case** with those in the instant case. The Appellant relied on the reasoning by Dr. Seth Twum JSC in the case of **OWORSIKA III VS. AMONTIA IV** (supra) where His Lordship held at page 66 as follows; ***"The second specie is "issue estoppel" which is an extension of the same rule of public policy. This will arise where apart from cases in which the same cause of action or the same plea in defence is raised, there may be cases in which a party may be held to be estopped from raising particular issues, if those issues are precisely the same as issues which have been previously raised and have been the subject of adjudication".***

(12) In making a determination on the issue of estoppel in the instant case, the Court of Appeal found at page 959 of Vol.3 of the record, that; ***"It is the issue of ownership, possession alienation and control of La Rural lands that had ran through the OWUSU NARTEY & AGOSAI cases*** Dordzie J.A ***(as she then was) however further proceeded to hold that: "I therefore do not find the trial judges holding that the issues in this case are distinct from the issues in the BOI OWUSU case accurate. However irrespective of that position taken by the trial court I do not think a plea of res judicata would avail the Plaintiff in the face of the decisions in the NARTEY &AGOSAI cases; . . ."It is my opinion that in view of the recent***

development of the law as stated in the NARTEY AND AGO SAI cases a plea of res judicata would not avail the Plaintiff in this suit".

(13) Consequently, the Appellant argued that the reliance on the cases of **AGO SAI & NARTEY** by the two lower courts was in error and sought to distinguish their application in the instant appeal. The Appellant further submitted that the two previous decisions of this court clearly established special circumstances but same could not be said of the instant matter. In an effort to distinguish the cases of **AGO SAI & NARTEY** relied on by the trial court and the Court of Appeal, the Appellant posited that in the **AGO SAI case,** a common principle that run through the judgments of this Court was the findings of fact particularly that his predecessors had acquiesced in the acts of ownership of the Defendant in respect of the Ogbojo lands. It was further contended that in the case of **NARTEY VS. MECHANICAL LLOYD PLANT** (supra) this court found that the La Stool's inaction to and acquiescence of the Frafraha Mantse's alienation of Frafraha lands conclusively raised a statutory estoppel by conduct under Section 26(1) of the Evidence Act 1975 (NRCD 323) against the La Stool and disabled its successor from making any claims inconsistent with the interest held or alienated by the Frafraha Stool.

(14) In furtherance of this submission, the Appellant maintains that the **AGO SAI case** did not represent a declaration that all La village heads could take control of La Rural Lands even if same were being controlled by the La Mantse. On the contrary, a village head claiming ownership needed to show that he had exercised overt acts of ownership with the knowledge, exclusion and/or connivance of the La Stool.

(15) We deduce from the judgment of the Court of Appeal that, in setting grounds for the application of the **BOI OWUSU case,** the judgment cited the majority decision of this court in the **NARTEY case** and held as per the statement of Adade JSC at pages 341 to 342 that; ***"In our customary law the concept of ownership, particularly of land is not the same as in some other***

jurisdictions. For instance ownership does not necessarily carry with it the right of exclusive control. And where land belonging to or attaching to a paramount stool is in the case and possession of a sub-stool, control often becomes a shared responsibility between the paramount stool and the sub-stool. The quality of the responsibility and therefore of the privileges which each enjoys in relation to the land may depend on the local practices". The Court of Appeal thus concluded at page 959 of Vol.3 of the record that; "***With the above decisions which are binding on the trial judge she could not have considered this case differently for, the facts of the instant case are on all fours with the NARTEY & AGO SAI cases".***

(16) In the judgment of the trial court, the learned trial judge found at page 809 of Vol.2 of the record that: ***"In conclusion I find that though the Plaintiff claims to be the absolute owner of the allodial title to the disputed land with exclusive right to administer and manage same, the 3rd Defendants acts of control possession and management of the land in dispute coupled with the position of the law as stated in the NARTEY and AGO SAI cases make it clear that by virtue of customary practices and traditions of the La Rural lands are effectively vested in the individual quarters and families. In this case the 3rdDefendant Niikoitse We family".*** The Court of Appeal agreed with the above reasoning of the learned trial judge and at page 954 to 955 of Vol.3 of the record held that: ***"Though these recent decisions of the highest court of this land do not put away the holding in the OWUSU case, that the La Stool holds the allodial title in the La Rural Lands, it has made inroads into that decision; such that it is very unsafe to take a stand that the OWUSU case operates as res judicata against a sub-stool (in this case Nkwantang village)."***

(17) As aforesaid, the Court of Appeal held further at page 958 of Vol.3 of the record thus: "***Case law on the issue of La Stool's exclusive ownership of La Rural Lands has taken a stride forward after the decision in the OWUSU VS. MANCHE of Labadi, a case decided over eighty (80) years ago. This position taken by the Supreme Court in the NARTEY and AGO SAI cases does not deny the fact that the La Stool as the head stool holds the allodial title to La Rural lands, however the possibility of losing that title absolutely to a sub stool is not ruled out depending on the circumstances of each case. In both cases the La Stool was found to have acquiesced to acts of ownership exercised by the sub stool Frafraha and Ogbojo all over the years. It is my opinion that in view of the recent development of the law as stated in the NARTEY and AGO SAI cases a plea of res judicata would not avail the Plaintiff in this suit".***

(18) At page 798 of Vol.2 of the record, the trial court found that the two essential issues determined in the **BOI OWUSU case;** are **"*(1)Whether or not the acts of possession and control exercised by the claimants over Nkwantanang lands constituted adverse possession capable of outsting the La Stool's overall ownership of Nkwantanang lands and (2) Whether or not the La Mantse is the appropriate person entitled to receive compensation in respect of the said lands and the court held that the claimants acts of possession were not adverse to the La Stool and that this had not changed. The court declined to proceed to consider the further issue whether or not the Claimants/Appellants have acquired a title which the courts will recognize and uphold on equitable principles".*** In the **AGO SAI case**(supra),this court held that: ***"In the course of the Owusu case (supra) one Adjaye Komi a predecessor of Nii Okpoti (the 5th Plaintiff's witness) gave evidence for the La Stool.***

That evidence has been reproduced in full and Exhibited "P341" by the Defendants as Exhibit "5" in these proceedings. That being so this court can go behind the judgment in the BOI OWUSU case (supra), look at the evidence so exhibited and evaluate it for the full force and effect. In doing this the court will not be sitting on appeal in the OWUSU case (supra) which it connot do. But it will merely be looking at a document regularly tendered in evidence in a court proceedings and evaluating it for its weight and significance".

(19) On the basis of what the Appellant has alleged against the findings and conclusion arrived at by the Court of Appeal, he has urged this court to allow the instant appeal and reverse the judgment of the Court of Appeal.

3RD DEFENDANT'/RESPONDENTS' ARGUMENTS

(20) On their part, the Respondents argued in support of the findings of the Court of Appeal that the **BOI OWUSU case** did not lay down any principle of law of general application which operates as estoppel res judicata against any family or sub stool seeking declaration of title of any portion of La Rural Lands against the La Stool. To that extent, the drift of judicial authorities have established that while La Rural lands may belong to the head stool, the rights which a family could hold in such lands would be the absolute title and not the usufructuary title especially the area which the ancestors of the family had already held in their possession over the years.

(21) The Respondents' case is that the Appellant had no power to give out any land belonging to a quarter (Akutso) whether by purchase or gift and that when a chief once did otherwise, he was destooled. As evidenced in Exhibit "7" *(page 511 of Vol.4 of the record)* the council members raised issues with a letter written to the Land Title Registry by the Appellant not to entertain any indenture signed by any (Akutso) Quarter head for registration of any parcel of land

contrary to the laid down procedure for the acquisition and registration of lands and urged the Appellant to abide by decisions of the traditional council.

(22) It is clear from the evidence on record that the finding of acquiescence and laches resulted as a fetter on the general applicability of the **BOI OWUSU case** (supra). As evidenced from the record, the Respondents' grantees had operated on the land for years without any objection from the Appellant. A clear case of laches, acquiescence and adverse possession therefore avails the Respondents. In their pleadings, the Respondents pleaded in paragraphs 15-17 of their statement of defence and counterclaim *(pages 323-325 of Vol.1 of the record)* that, they had been in uninterrupted possession and occupation of the disputed land to the exclusion of the Appellant and other Defendants for years and therefore entitled to the immunity pursuant to the Limitation Act 1972 (NRCD 54).

In their respective findings both lower courts found for the Respondent against the Appellant on the issues of acquiescence and adverse possession which the Court of Appeal thereby affirmed as representing the accurate position of the law.

(23) Thus the Appellant's action having been affected by the statute of limitation as well as the equitable doctrines of laches and acquiescence, the claim of Appellant concerning the applicability of the **BOI OWUSU case** is unsustainable cannot hold. The **AGO SAI & NARTEY cases** set out the requirement of establishing special circumstances the court may consider in refusing to apply the **BOI OWUSU case** as establishing the principle of estoppel per rem res judicata in particular cases. This includes proof and finding of acquiescence, laches and adverse possession. The Court of Appeal having accurately found these as prevailing against the claim of the Appellant, the plea of estoppel could not therefore apply in favour of the Appellant. The ground of appeal and the issues arising therefrom will therefore fail and we accordingly dismiss this ground of appeal.

(24) Grounds (ii), (vii) and (viii):

ii. ***The learned justices of Appeal erred in holding that the Plaintiff had acquiesced to the 3rd Defendant's ownership in the absence of any evidence of such ownership or acquiescence.***

vii. The judgment is against the weight of evidence adduced.

viii. The learned Trial judge erred in disregarding the defence of adverse possession raised by the Plaintiffs grantee that is the 4th Defendant and by failing to address same.

All the above grounds which involve the question whether the Court of Appeal properly re-evaluated the evidence and applied the relevant law with the respect to the burdens of proof on the parties and the ascription of the proper probative value to the evidence will be considered compositely. The Appellant took issues with the Court of Appeal regarding the finding that the Respondents were able to establish that the **BOI OWUSU case** did not operate as estoppel between the Appellant and the Respondents. The Appellant further attacked the findings of the Court of Appeal for affirming the trial court's holding in favour of the Respondent regarding issues of laches, adverse possession and acquiescence. The Court of Appeal summed up its position on the Appellant's claim regarding the 4thDefendant at page 808 of the record as follows:

"(i)There is no doubt that by Exhibit "C" the Plaintiff granted a right of entry to the 4th Defendants. Having found that the Plaintiff did not have exclusive rights to grant All La lands inclusive Nkwantang Lands, I am of the view that the Plaintiff usurped the 3rd Defendant's possession in giving or granting the 4th Defendant the right of entry to the land.

(ii) It is also clear on the evidence that even though the 4th

Defendant was given the purported right to enter the land the process of that acquisition was never completed hence no title to the said land was conferred on it. Neither any compensation has been paid on it.

(iii) From the facts and evidence therefore, I find that the 3rd Defendant has been able to establish that the BOI OWUSU case did not operate as res judicata between the Plaintiff and the 3rdDefendant. I also came to the conclusion that the 3rdDefendant by long settlement, possession and control of Nkwantang lands had acquired title to the lands in dispute though rural land".

(25) At page 962 of Vol.3 of the record, the Court of Appeal arrived at this conclusion in affirming the decision of the trial court: ***The Nartey and Ago Sai cases have established that irrespective of the decision in the Owusu Vs. Manche of Labadi case that the La Stool holds allodial title in the village lands, such title could be lost. In this case sufficient evidence is on record that La Stool has lost the said title by acquiescing in the acts of ownership by the 3rd Defendant family....."The trial court cannot be faulted in coming to the conclusion it came to dismissing the Plaintiff's claims and granting the counterclaims of the 3rd Defendant family and their grantees the 11th and 12th Defendants"***

(26) The Appellant submitted that the finding by the Court of Appeal is against the weight of evidence adduced and contrary to the application of the rules of the law of evidence. The Appellant contends that the 3rdRespondents contrary to the rules of pleading omitted to specifically plead the equitable defences of laches and acquiescence. Further that, the Respondents had failed to adduce evidence in proof of their assertions as required by the law of evidence. In failing to be compliant with the law in the discharge of their statutory burden, the Appellant

argues that the Respondents could not make a claim or be granted reliefs on the basis of res judicata.

(27) In articulating his case, the Appellant put forward elements required to found the plea. He argued firstly that, the Respondents should have entered the land, the subject matter of the suit upon honest belief that it was theirs. Second, they ought to have spent considerable sums in developing the land and known to the true owners of the land and upon the mistaken entry of the Respondents. On the other hand there must be evidence that the Appellant as Plaintiff kept silent or encouraged the Respondents (Defendants)to develop or alienate the land. Given the development in the law decisions of this court have seen a consistent departure from the strict adherence to technicalities or technism. In the case of **ATTORNEY GENERAL VS. SWEATER AND SOCKS FACTORY LIMITED [2013-2014]2 SCGLR 946-975** Wood C.J echoed the sentiments of this court *inter alia* as follows ***"notwithstanding this requirement the failure to so do with specificity employing the well-known legal terminology, estoppel per rem judicatem is not fatal to a party's case. Courts of justice must always stride a proper balance between substantive justice and procedural laws".***

(28) At page 808 of Vol.2 of the record, the Trial Court held as follows: ***"That it is not in doubt that by Exhibit "C" the Plaintiff granted a right of entry to the 4th Defendants. Having found that the Plaintiff did not have exclusive rights to grant all La lands inclusive Nkwantanang lands, I am of the view that the Plaintiff usurped the 3rd Defendant's possession in giving or granting the 4th Defendant the right of entry to the land".*** The Trial Court found also that the process to have confirmed the presence of the 4thDefendant on the disputed land legally, was never completed thereby granting no title to the 4thDefendant neither was any compensation paid for the land they possess.

(29) With respect to the 4th Defendant's interest, the Respondents had counterclaimed that the case put up by the 4th Defendant was not one based on adverse possession. Therefore, having made a claim of rightful possession, the 4th Defendant cannot *volte face* to translate their claim to the land on adverse possession. In sum, the Respondents argued that it would be self-conflicting for the 4th Defendant to claim rightful occupation of the disputed land upon a valid grant from the La Stool following a compulsory acquisition by the state and at the same time argue otherwise. On this issue, the Court of Appeal held at page 961 of Vol.3 of the record thus: "***Evidence has clearly established that the Plaintiff acquiesced to the acts of ownership exercised by the 3rd Defendant family over the Nkwantanang lands close to 50 years, thus the Plaintiff is not only estopped at common law from instituting this action but the action so far as the 3rd Defendants are concerned is statute barred…"***

(30) We notice at page 954 of Vol.3 of the record that, the Court of Appeal held as follows; ***"Having admitted that the 4th Defendant had access to the land because the state intended to acquire it compulsorily and yet this was never done, the 4th Defendant cannot maintain its claim that it acquired the land lawfully***". The 4th Defendant at paragraph 8 of its statement of Defence, had pleaded that the land was lawfully acquired from the then Paramount Chief of La, Nii Anyetei *(Appellant's predecessor)*while in paragraph 9 of the said defence, they averred that they lawfully acquired the land in 1960 and had since been in undisturbed possession of same. The Appellant has disputed the above assertions and contended that the 4th Defendant received a conditional license to be on the land and had remained thereon as licencees.

(31) In the judgment of the Court of Appeal however, the Learned Justices found that the Appellant had acquiesced and stood by, while Respondents exercised acts of ownership and made grants extensively including 158 grants between 1977 and

1978. Further that, the Appellant never called the Respondent to account or to order. We therefore find no basis to depart from the findings and conclusion made by the court below. In the case of **VANDERPUYE VS. GOLIGHTY [1965] GLR 453 SC** Apaloo JSC *(as he then was)* a celebrated jurist, made the following profound statement of the Appellant's circumstance which is analogous to the facts of the instant case. ***". . . For myself, I cannot think of a clearer case of acquiescence by conduct. Accordingly the Plaintiffs were all legally emancipated and cannot claim that they were under any form of parental dominion. Yet fully congnizant of their rights, they chose to go to sleep and for fourteen years made no attempt to assert their rights. In 1960 they apparently awoke from their slumber and thereafter sought to avoid the lease at a time, as they must have known Mr. Vanderpuye was no more and his successor could not be restored to his former position. In my judgment the Plaintiffs were properly met with the defence of estoppel by conduct and this action ought to have failed".***

(32) In the instant case, the Court of Appeal also found that the Appellant never responded to a publication by the chiefs of Ogbojo, Adenta Frafraha, Bawaleshie Amrahia and Nkwantanang dated 19th October 1992 in reaction to the publication by the Appellant and held that the Appellant was estopped at common law from instituting the action. The Court of Appeal found that by usage, long settlement, possession and actual control of Nkwantanang lands, the 3rd Respondents had been able to establish or acquired title to the lands in dispute though they are rural lands.

(33) In its judgment, the Court of Appeal affirmed the finding of the Trial court and found at page 961 Vol.3 of the record as follows: ***"Evidence has clearly established that the Plaintiff acquiesced to the acts of ownership exercised by the 3rd Defendant family over the Nkawantang lands close to fifty (50) years. Thus the Plaintiff is not only estopped at common***

law from instituting this action but the action so far as the 3rd Defendants are concerned is statute barred". The 3rd Respondents tendered Exhibit "C", right of entry issued to the VRA by the former occupant of the Appellant stool Nii Anyetei Kwakwaranya. Per paragraph 12 of the amended statement of claim,*(page 235 of Vol.1 of the record)*, the Appellant pleaded thus: ***"Plaintiff says that the La Stool gave a conditional license to the 4th Defendant on9/9/1968 to use the land for the purpose of executing works in connection with or incidental or ancilary to the Volta River Authority".*** The Trial Court held that the Plaintiff has used the police as a means of coercion to recover the said plot of land from a member of the 3rd Respondent's family before making a grant of same to the 4thDefendant *(page 515 of Vol.2 of the record).*

(34) From the record, the 3rd Respondent testified that Exhibit "C" purported to be authorizing the government to compulsorily acquire the land in dispute and that no such compulsory acquisition took place. They argued that their rebuttal stood unchallenged throughout the trial. The 3rd Respondents argued that their ancestors founded Nkwantanang, Bawaleshie and Oyarifa villages and that, the said villages had been under their control and possession. This assertion was corroborated by findings of National Investigations sub- committee into Labadi Stool Affairs (Exhibit "2"). The report stated at page 8 as follows: ***"The Klanaa people subsequently founded such villages as Nkwantanang and Bawaleshie".*** They further submitted that, at no time relevant and material did the Appellant make a case that he has taken possession of Nkwantanang lands as virgin and or unoccupied land. Further that, the Appellant could not even state the identity of the person who was in possession and control of the 4thDefendant's yard immediately before its purported grant to the 4th Defendant.

(35) On the issue of acts of possession whether actual or constructive the Trial Judge, as affirmed by the Court of Appeal had found that the Appellant did not have exclusive right of grant inclusive of the Nkwantanang lands. The 3rd Respondents

submitted that apart from Exhibit "C" no other document was tendered in proof of the grant. In sum, the acquisition process was never completed. It is Appellant's case however that the Court of Appeal completely disregarded evidence adduced by Plaintiff and that the court erroneously concluded that; ***"Plaintiff did not adduce any convincing evidence that La Stool is in any effective possession and control of the said Nwantanang lands".***

(36) On the totality of the evidence on record, the Court of Appeal held that the site plan Exhibit "B" - Madina township tendered in proof of grants made by the La stool as acts of possession regarding Madina and Nkwantang lands was nothing more than a mere site plan. The Appellant in contesting this finding submitted thatthe plan revealed the names of companies and persons the Appellant made the grants to as well as the whole township of Nkwantanang and Madina. That, this fact was not denied by the Respondents even when the Appellant's representative was cross examined on it. The 3rd Respondents however submitted that, the Appellant did not tender any document in the form of a conveyance to support his case, nor did his testimony corroborate or support the alleged grants. The 3rd Respondents further submitted that, the site plan covering Madina was not a conveyance capable of transferring any interest to any person while the Appellant did not call any grantee to establish that he was in undisturbed possession and occupation of land in Nkwantanang following a grant by the Appellant.

(37) In paragraph 11 of their statement of defence, the 3rd Respondents pleaded that La Customary Law provided that ownership, possession, control and ownership of La Rural lands are effectively vested in the quarters and families to the exclusion of the La Mantse (the Appellant). Based on the mass of evidence on record, we find as accurate the affirmation by the Court of Appeal of the findings that, the 4th Defendant and the Appellant by their own evidence on record have no title to land. In the case of the 4th Defendant in particular we find that, there

was no state acquisition of the land as was contended. The occupation by the 4th Defendant of part of the disputed land for a long period of time while awaiting acquisition will therefore not translate into legal ownership or title to the land.

ATTITUDE OF THIS COURT TO CONCURRENT FINDINGS OF TRIAL AND FIRST APPELLANT COURTS.

(38) In determining this appeal, we are not oblivious of the fact that this whole appeal has been brought against a judgment which substantially affirmed the findings of fact made by the Trial Court. We have therefore cautioned ourselves in the discharge of our duty to be guided by the well-established principles of law in examining the concurrent findings of fact made by two lower courts. In **Mondial Veneer (GH) Ltd. Vs. Amoah Gyebu XV [2011]2 SCGLR 466** this court re articulated the legal proposition, applicable as with held in the case of **Achoro Vs. Akanfela [1996-1997] SCGLR 209 as follows**: ***"In an appeal against findings of fact to a second appellate court like the Supreme Court where the lower appellate court had concurred in the findings of the trial court especially in a dispute, the subject matter of which was peculiarly within the bosom of the two lower courts or tribunals, this court would not interfere with the concurrent findings of the two lower courts unless it was established with absolute clearness that a blunder or error resulting in a miscarriage of justice, was apparent in the way the lower tribunals dealt with the facts. It must be established ,e.g. that the lower courts had clearly erred in the face of a crucial documentary evidence, or that a principle of evidence had not been properly applied ; or, that the finding was so based on erroneous proposition of the law that if that proposition be corrected, the finding would disappear. It must be demonstrated that judgments of the courts below were clearly wrong."***

(39) The above principle had earlier found expression in this Court's decision in the case of **Gregory Vs. Tandoh IV & Hanson [2010] SCGLR 971**.In expounding the proposition, this Court held that a second appellate court could and was entitled to depart from findings of fact made by a trial court and concurred by the first appellate court under the following circumstances:

i. Where from the record of appeal the findings of fact by the trial court were clearly not supported by evidence on record and the reasons in support of the findings are unsatisfactory.

ii. Where the findings of fact by the Trial Court can be seen from the record to be either perverse or inconsistent with the totality of evidence led by the witnesses and the surrounding circumstances of the entire evidence on record.

iii. Where the findings of fact by the trial court are inconsistently inconsistent with important documentary evidence on record.

iv. Where the first appellate court had wrongly applied the principle of law. In all such situation, the second appellate court must feel free to interfere with the said findings of fact in order to ensure that absolute justice is done in the case.

See also the case in **Mensah Vs. Mensah [2012]1 SCGLR 391** where this Court held that: ***"Where findings of fact had been made by a trial court and concurred by the first appellate court, then the second appellate court, like the Supreme Court, must be slow in coming to different conclusions unless it was satisfied that there were strong pieces of such evidence on record."***

(40) As the second and final Appellate court therefore, the law imposes on us a duty to satisfy ourselves that the judgment of the first appellate court was justified and supported by the evidence on record, and if not, to depart from it or hold

otherwise. Before embarking on this exercise, it is the duty of the appellant first of all, to clearly, properly and positively demonstrate to this Court in its statement of case, the lapses in the judgment appealed from, which when corrected, would result in a judgment in his favour.

(41) In summing up their re-evaluation of the evidence on record as perceived and weighed by the trial court before placing on the evidence the necessary probative value, the Learned Justices of the Court of Appeal held at page 962 of Vol.3 of the record as follows: ***"One would have expected that the Supreme Court confirming its position in the Nartey case, in the Ago Sai case on the issue of the La Stool's claim to La Rural Lands one year before issues were closed in this suit; the Plaintiff would have taken care and advised himself. It is an abuse of the process to have turned a deaf ear to these decisions and taken the court through the same circumstances of undeniable acquiescence that led to the stool loosing its title of La Rural Lands to its Sub Stools in the Nartey and Ago Sai Cases".***

We cannot agree more with the Court of Appeal on the position expressed above.

(42) Consequently, upon our review of the entire record of appeal and having duly considered the submissions of both counsel, we are not persuaded that the findings and conclusion reached by the Court of Appeal in its judgment warrant any interference by this Court. On the contrary, we are in agreement with the findings, reasons and conclusion arrived at by the Court of Appeal. We are of the view that both lower courts correctly applied the principles of evaluating the evidence and attached the correct probative value to them. Grounds (ii) to (viii) set out on the notice of appeal are also consequently dismissed.

(43) Having dismissed all the grounds of appeal formulated by the Appellant, this appeal wholly fails, and it is accordingly dismissed. The judgment of the Court of Appeal is hereby affirmed.

I. O. TANKO AMADU
(JUSTICE OF THE SUPREME COURT)

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

A. LOVELACE-JOHNSON (MS.)
(JUSTICE OF THE SUPREME COURT)

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

E.Y. KULENDI
(JUSTICE OF THE SUPREME COURT)

COUSIN

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YAW DARKO ASARE FOR THE 3RD DEFENDANT/APPELLANT/RESPONDENT

SEKYERE DUODU FOR THE DEFENDANTS/RESPONDENTS/RESPONDENTS