IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2019

CORAM: ADINYIRA (MRS.), JSC (PRESIDING)

BAFFOE-BONNIE, JSC

MARFUL-SAU, JSC

AMEGATCHER, JSC

KOTEY, JSC

CIVIL APPEAL
NO. J4/61/2018

8TH MAY, 2019

NII STEPHEN MALEY NAI …… PLAINTIFF/APPELLANT/APPELLANT

(SUING AS HEAD OF NUMO KWASHIE MENSAH DADE NSUROJA FAMILY)

VRS

EAST DADEKOTOPON DEVELOPMENT TRUST …… DEFENDANT/RESPONDENT/ RESPONDENT

JUDGMENT

KOTEY, JSC:-

This appeal brings into sharp focus the problems and challenges of land ownership and management as land values soar on the back of urbanization and land use

change as what was previously farming land becomes very valuable, prime, residential land.

The land in dispute is situate at La (behind the Trade Fair). Over the years citizens and families of La have farmed and/or settled on the land. With time, population growth, migration and urbanization, the demand for the land exploded exponentially and so did the price. An avalanche of litigation was soon unleashed in respect of these lands. In all these cases, the primary issues have been who is the proper authority to make valid grants of land behind the Trade Fair. Is it the family that has farmed and/ or settled on the land, a quarter (a quarter to which a family belongs) or the La Paramount Stool?

Prominent and relevant among these cases, for the determination of this appeal are;

I. Suit No. L353/97
Nii Kpobi Tettey Tsuru III (La Mantse) v **Ato Quarshie & Ors** (HC, 12th July 2001 unreported)

II. Suit No. BL 238/2008
Nii Manley Osokrono IV v **Attorney General and Lands Commission** (HC, 7th December 2010, unreported)

III. Suit No. IRL/133/2009
Nii Manley Osokrono IV v **East Dadekotopon Development Trust** (HC, 22nd June 2011, unreported)

In **Nii Kpobi Tettey Tsuru III** v **Ato Quarshie & Ors** (supra), the La Mantse sued claiming title to a large tract of land behind the Trade Fair which includes the land in this dispute. Two La Quarters, Lenshie and Nmati-Abonase challenged the La Stool's claim and joined the suit as co-defendants. (There are seven quarters in La. A quarter is a division of La, headed by a divisional Chief. It is made up of several houses (`*We'*) and families who settled at a section of La at about the same time, usually under one leader.) The two quarters contended that the land in dispute, being outskirt land, they, not the La Stool, were the owners of the land and the proper authority to make grants of the land. The suit ended in a consent judgment.

Pursuant to the consent judgment in suit No. L353/97(supra) the East Dadekotopon Development Trust (defendant-trust) was established by the La Stool, Lenshie quarter and Nmati-Abonase quarter in 2002 to hold and manage a large tract behind the Trade Fair, La. In 2003 the defendant-trust obtained a Land Title Certificate in respect of 874.434 hectares (2154.7871 acres). The land, the subject matter of this appeal which is claimed by the plaintiff is part of the land in respect of which the defendant obtained a Land Title Certificate in 2003.

In suit No. B.L.238/2008 (supra), Nii Manley Osokrono IV, acting as head and lawful representative of the Numo Kwashie Mensah Dade Nsrojah family of La (the plaintiff family) brought action against the Attorney General and the Lands Commission in respect of land in the area of the subject matter of this dispute which had been

granted by the defendant to the military for use as a military training ground. The plaintiff discontinued the action when the defendant applied to join the suit.

In suit No. IRL/133/2009 (supra), Nii Manley Osokrono IV sued the defendant in the High Court claiming title to land the subject matter of this suit. Nii Manley Osokrono IV appointed Anyetei Nunoo as his lawful attorney who led evidence on his behalf and prosecuted the action against the defendant. The case was dismissed on grounds of lack of capacity and estoppel in 2011.

In this case, the Plaintiff/Appellant/Appellant (hereinafter the Plaintiff), acting for the Numo Kwashi Mensah Dade Nsrojah family of La (the plaintiff-family)sued the East Dadekotopon Development Trust (hereinafter the Defendant Trust) claiming title to a large tract of land behind the Trade Fair, La.

Both the trial High Court and the Court of Appeal held, *inter alia,* that the plaintiff-family is estopped by res judicata by the decision in suit No. IRL/133/2009 (supra) from relitigating the issue of title to the land in dispute.

The trial High Court and the Court of Appeal also held that the plaintiff-family is estopped by standing by and not joining in the litigation that resulted in the consent judgment in suit no. L353/1997 (supra). Both courts further held that the plaintiff-family is estopped by laches and acquiescence for looking on and not taking any action since the consent judgment and the formation of the defendant trust as the

defendant has exercised various unchallenged acts of ownership over and in respect of the land in dispute.

Grounds of Appeal

This appeal is from a decision of the Court of Appeal which affirmed the decision of the trial High Court. The Notice of Appeal raised ten grounds of appeal. They are:

a. The court erred when it ignored the vital evidence which established the land of the appellant as not part of the land in dispute in suit No. L353/97.

b. The court erred when it concluded that the plaintiff/appellant/appellant did not lead sufficient evidence of their title to the land in dispute contrary to the evidence on record.

c. The court erred when it concluded that by virtue of section 24 and 25 of Land Registry Act (Act 122) and (ii) Land Title Registration Law 1986 (PNDCL) 152, no title can be conferred on anyone if title is not registered hence customary grant of plaintiff/appellant/appellant is not valid.

d. The court erred when it adjudged a land certificate of defendant/respondent/respondent which had been declared invalid by a court of competent jurisdiction on the rounds of fraud as proof of registration of title.

e. The court erred when it relied on other suits produced by the defendant/respondent/respondent in order to award judgment whilst ignoring suits produced by plaintiff/appellant/appellant which adjudged the land certificate relied on by defendant/respondent/respondent invalid and fraudulent.

f. The court erred when it dismissed plaintiff/appellant/appellant's claims to title on the ground that it lacked ingredients of customary grant such as publicity and *aseda* without adverting its mind to lack of uniformity of formalities underlying customary grant in the country.

g. The court erred when it concluded the defendant/respondent/respondent has demonstrated ownership by giving out lands for the construction of 300 houses when plaintiff/appellant/appellant claims its lands were not part of the lands contested in the consent judgment.

h. The court fell into error by proceeding to evaluate evidence to award judgment on the basis of title to defendant/respondent/respondent after adjudging the suit on the grounds of estoppel.

i. The court shed of cloak of neutrality by proceeding to adjudge the case on the other grounds after dismissing Plaintiff/Appellant/Appellant's claim on the grounds of estoppel.

j. The court erred when it placed more premium on registration of title as against customary grant which required no writing.

We have thoroughly read the Record of Appeal and the statements of case filed on behalf of the plaintiff-family and the defendant. After very careful consideration of the facts and the law, it is our opinion that the major issues raised in this appeal are those of estoppel per rem judicatem and estoppel by conduct, acquiescence and laches as found in grounds "g", "h" and "i" in the notice of appeal. It is our considered opinion that an examination and determination of these two issues would enable us to arrive at a decision and dispose of this appeal.

We will therefore limit our decision to a determination of the issues of res judicata and estoppel by conduct, acquiescence and laches as raised in this appeal.

Estoppel by Res Judicata

Both the trial High Court and the Court of Appeal found that the issue of title to the land in question was litigated in Suit No. IRL/133/2009 and that the determination of the issue in that case operated as res judicata. Both courts therefore held that the plaintiff-family was estopped from relitigating its claim of title to the land in dispute in the present action.

In this appeal, the plaintiff-family challenges these findings on the same basis as it did in the courts below. The plaintiff-family contends that the plaintiff in suit No.

IRL/133/2009 (supra) was Nii Maley Osokrono IV whilst the plaintiff in the present case is Nii Stephen Maley Nai and that since the plaintiff in that case is different from the plaintiff in the present case, the decision in suit No. IRL/133/2009 (supra) is not res judicata in the present case.

This argument was rejected by both the trial High Court and the Court of Appeal. We have reviewed the record and the submissions by the parties on this issue. Though, on the face of it, the plaintiffs in the two cases are different, the title they each put in issue in the two suits is the same. It is that of Numo Kwashie Mensah Dade Nsrojah, who is their common ancestor and through whom they claim title. They both sued for the same family, the Numo Kwashie Mensah Dade Nsrojah family. Accordingly we reject the submissions of the Plaintiff on this issue. The plaintiff in the two cases therefore had privity of interest. The court in suit No. IRL/133/2009 (supra) determined that the defendant had a far better title than the plaintiff-family and as such the plaintiff-family is estopped from relitigating that issue. We find no reason from the facts and the law to depart from the findings of the two courts.

In **Dzidzienyo** v. **Tsaku & Ors** [2007-2008] SCGLR 531, this Court reiterated the long-established position of the law that a decision of the court of competent jurisdiction is binding not just on the parties but also their privies. This court applied **Dzidzienyo** v. **Tsaku & Ors** in **Agbeshie & Anor** v. **Amorkor & Anor** [2009] SCGLR 549. At page 598 Ansah, JSC stated the position as follows:

> "the doctrine of estoppel does not operate against only the actual parties involved in the previous suit, as the appellants in the instant case seem to indicate, it goes beyond that to include anyone who has a legal interest of privity in any action, matter or property by blood in representation, such as an executor or an administrator of an intestate person."

The plaintiff-family further contends that suit No. IRL/133/2009 (supra) cannot operate as res judicata as the case was not decided on its merits but on the plaintiff's lack of capacity. Both the trial High Court and the Court of Appeal rejected this contention. We have carefully read the judgment of Anthony Oppong J. in suit No. IRL/133/2009 (supra) and agree with the trial High Court that the case was determined on its merits and not merely on the lack of capacity of the plaintiff. In fact, Anthony Oppong J. held after trial and a review of the evidence that the plaintiff family is estopped by conduct, standing by and acquiescence from asserting any interest in the disputed land and we affirm this finding.

Lastly, the plaintiff-family contends that Anthony Oppong, J erred when it proceeded to consider and determine the case on its merits after having found that the plaintiff in that case lacked capacity. Like the trial High Court and the Court of Appeal, we consider this argument to be wholly misconceived. The question of capacity was not considered in Suit No. IRL/133/2009 (supra) as a preliminary legal point. The issue of capacity was one of several issues set down for trial at Applications for Directions stage. In the circumstances, Anthony Oppong, J was well within his rights and did

not err when after the trial he proceeded to determine all the issues set down for trial, including those of capacity and estoppel.

Having after careful consideration rejected all the argument of the plaintiff- family, we affirm the determination of the trial High Court and that of the Court of Appeal that a court of competent jurisdiction having decided in suit No. IRL/133/2009 (supra) that the defendant had a far better title to the land in dispute than the plaintiff-family, that decision is res judicata as between the parties in this action and the plaintiff-family is estopped from relitigating the issue.

Estoppel by Conduct, Standing By and Acquiescence

Both the trial High Court and the Court of Appeal found that the plaintiff was or ought to have been aware of suit No. L353/97. Both courts therefore held that by standing by and watching and not joining as the La Stool and the Lenshie and Nmati-Abonase quarters litigated their titles and authority to alienate in respect of the land in dispute, the plaintiff-family is estopped from claiming title to the land. In **Akuse-Amedeka Citizens Association (No.3)** v. **Attorney General & Electoral Commission** [2013-2016] / SCGLR 372 this Court held that a judgment *in rem* in binding not only on the parties and their privies but also on all other persons.

The trial High Court and the Court of Appeal also found that the plaintiff-family were or ought to have been aware of the establishment of the Defendant Trust. Both

courts further found that the plaintiff-family stood by and watched and took no steps to assert any interest in the land as the defendant registered and obtained a Land Title Certificate in respect of land that included the land in dispute in 2003, and proceeded to exercise overt acts of ownership by taking possession and alienating portion of the land on which three hundred houses have been built and other developments have taken place since 2003.

Both courts therefore held that the plaintiff-family is estopped by standing by and acquiescence from challenging the defendants title to the land in dispute.

The Plaintiff's answer in this appeal is that, there is no development on the land in dispute. This is disingenuous. We have carefully examined the evidence and are in no doubt that the land in dispute is contained in the land in respect of which the defendant holds a Land Title Certificate. There is also no doubt that since 2003 the defendant has taken possession of and exercised overt acts of ownership over the entire land including making grants to the military, the police, a real estate developer and private individuals for residential and commercial purposes. The evidence further showed that the land in dispute on which there was no apparent development is land earmarked and reserved for La citizens in the diaspora.

We therefore affirm the determination of both the trial High Court and the Court of Appeal that the plaintiff-family is estopped by their conduct from asserting an interest in the land in dispute. In **Ago Sai & Ors** v **Nii Kpobi Tettey Tsuru III**

[2010] SCGLR 762, a case involving ownership of and authority to alienate land at Ogbojo, this court upheld the principle of estoppel by conduct, laches and acquiescence. The court, per Rose Owusu, JSC at page 797 held as follows;

> "The Chief of Ogbojo started dealing with Ogbojo lands as owner in possession when they started alienating parts of it. They continued until 1994 when the action was instituted. If the La Stool stood by and did not challenge the acts of the Ogbojo Chief who was dealing with the land as owner, even if the lands did not belong to him and his people then I agree with the trail judge that the stool is caught by laches and acquiescence and is therefore estoppel by conduct from laying any claim to the whole of, but not only some of the Ogbojo lands."

Conclusion

On the totality of the evidence before us from the record, it is our conceded opinion that the plaintiff family is estopped per rem judicatem from relitigating the issue of ownership of the land in dispute since that matter had been determined against them and in favour of the defendant in suit No. IRL/39/2009.

The plaintiff-family is also estopped by conduct, laches and acquiescence from asserting any interest in the disputed land having stood by as tittle to the land in dispute was litigated and settled in suit No. L/353/97 and watched on for several years as the defendant, which is a product of the said suit, exercised overt acts of ownership over the land, including the land in dispute.

We accordingly dismiss the appeal and affirm the decisions of the trial High Court and the Court of Appeal.

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

ADINYIRA (MRS.), JSC:-

I agree with the conclusion and reasoning of my brother Kotey, JSC.

S. O. A. ADINYIRA (MRS.)
(JUSTICE OF THE SUPREME COURT)

BAFFOE-BONNIE, JSC:-

I agree with the conclusion and reasoning of my brother Kotey, JSC.

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

MARFUL-SAU, JSC:-

I agree with the conclusion and reasoning of my brother Kotey, JSC.

S. K. MARFUL-SAU
(JUSTICE OF THE SUPREME COURT)

AMEGATCHER, JSC:-

I agree with the conclusion and reasoning of my brother Kotey, JSC.

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

COUNSEL

KENNETH KUDUADZI FOR THE PLAINTIFF/APPELLANT/APPELLANT.
N. S. AKUETTEH WITH HIM JACOB NOI FOR THE DEFENDANT/RESPONDENT/RESPONDENT.