IN THE SUPERIOR COURT OF JUDICATURE
SUPREME COURT OF GHANA
ACCRA

CORAM: ATUGUBA, JSC (PRESIDING)
ANSAH, JSC
OWUSU (MS), JSC
DOTSE, JSC
BAFFOE-BONNIE, JSC

CIVIL APPEAL
J4/21/2008
24TH MARCH, 2010

NII AGO SAI (SUBSTITUTED BY JOSEPH NII TORGBOR OBODAI II)	**- - -**	**DEFENDANT / RESPONDENT APPELLANT**
VRS		
NII KPOBI TETTEY TSURU III	**- - -**	**PLAINTIFF /APPELLANT RESPONDENT**
1. TOP CONSTRUCTION CO. LTD. **2. EVANS TEYE** **3. EVANS TEYE ESTATE CO. LTD.**	**- - -**	**CO-DEFENDANTS/ APPELLANTS**

J U D G M E N T

ATUGUBA, JSC:

The sole issue arising in this appeal is who owns the allodial title to Ogbojo lands in Accra? Is it the Labadi Stool or the Anahor and Dzirase families of Ogbojo village?

In approaching this question one must bear in mind the intricacies of customary land tenure in Ghana. The need for caution in these matters is forcefully stated in holding 2 of the headnote to *Bimpong v. Bawuah* (1991)2 GLR 20 C.A, as follows:

> "(2) In this country, *land might for generations be in the occupation of persons who were not owners but who might have rights of occupation* as licensees or customary tenants or under other conditions known to customary law, the reversion nevertheless being in the owner. *And the owners were willing to allow such occupation so long as the occupier did not make any adverse claims to the land. Hence, the mere occupation of land for long periods was not conclusive evidence of ownership; and it was therefore essential that the specific nature and origin of the tenure of occupiers of land should be determined in all cases*. In the instant case, the trial judge should consequently have considered the evidence of occupation with caution and should also have made proper findings of fact as to the nature of the plaintiff's interest in the Asakraka and Ntabaanu portions of the Besease lands, especially in view of the defendant's claim that the land was given to his ancestors, which claim the plaintiff contested. However, *apart from stating that the plaintiff had exercised acts of ownership over the land, the learned trial judge did not make any findings on the nature and origin of the plaintiff's possession even though he made positive findings of fact, supported by the evidence on record, as to the settlement of the defendant's family on the land*. Furthermore, there was no certainty about the plaintiff's title to the land or as to the identity of the portions of the land he claimed. Thus the most that could be said of the nature of the plaintiff's interest in the Asakraka and Ntabaanu lands was that he was entitled to stay on those portions with the leave and licence of the defendant's family, and that they (the plaintiff and his family) were entitled to live there as long as they recognised the title of the defendant."

The appellant claims allodial title to the land by reason of settlement whilst the respondent claims the same by conquest. It is trite law that both modes are legitimate customary means of acquiring such allodial title.

It is notorious that the La stool has acquired certain lands by conquest. See *Owusu v. Manche of Labadi* (1933) I WACA 278. The burden of the appellant's case is that though the La Stool owns certain lands by conquest they do not include Obgojo lands.
It is to be noted that the respondent's claim to the land rests largely on traditional evidence as to the said conquest which dates as far back as 1690. Reliance is also placed on, principally, *Owusu v. Manche of Labadi*, supra.

Certain facts in the case are beyond dispute. One of them is that the first settlers of Obgojo lands are the Anahor and Dzirase families. Accordingly the only question is whether the allodial title was thereby acquired by them. How and in what capacity the land in dispute was acquired is of course a question of fact in the light of the customary law.

There is no doubt that one of the ways of establishing an allodial title of a stool is occupation and user of the land in question by its subjects after its acquisition by the stool. However occupation and user of land by stool subjects is not necessarily proof of the stool's title to the land in question.

This legal position has been clearly conveyed by the celebrated and much vaunted case of *Owusu v. Manche of Labadi*; supra. The facts of the case as summarised in the headnote are as follows:

> "The *appellants, who are subjects of the Labadi Stool, proved that they and their ancestors had been in possession of the land acquired by Government for at least four generations, and that their ancestor who first took possession of the land found it unoccupied*. On these grounds they *contended that the land in question had become their private property.* They also sought *to prove certain acts of ownership on the part of their ancestors and themselves, but failed*.
>
> The respondent, on the other hand, *proved* that the Labadi people had originally acquired a large area of land, including *the land in question, by conquest*, and that *many subjects of the Labadi Stool had settled on the area so acquired*. On these grounds he contended that the appellants were merely enjoying the use of

Stool land in accordance with native custom, and that *their long and uninterrupted user had not ousted the original title of the Stool".*

On these facts Kingdon C.J. Nigeria (Michelin and Webber J.J concurring) at 280-281 held that "*the Nkwantanang people have cultivated patches at their will over an area embracing the plots acquired*, though no definite limits were set to such area. *I think, therefore, that they must be said to be constructively in occupation of the whole area upon which native custom recognises they are entitled to farm, and over which they have been farming for four generations."*

He then immediately continued as follows:

"The second question, then needs to be answered, and the answer of the Court below is clear, viz :- that *if there is occupation it is not adverse to the Labadi Stool but is the occupation by Labadi people of Labadi Stool land*.

With this finding I am in entire agreement, and I may say at once that I concur with all the findings of fact of the Court below upon the point. *The most fundamental is the acceptance of the respondent's story of the acquisition of the lands in question by conquest so that they became Labadi Stool lands.* It was *clearly proved* that Labadi lands extend well beyond Nkwantanang. For instance Frafraha is further north than Nkwantanang, and the first claimant's own evidence is "Frafraha is a Labadi village ....*Nkwantanang is in the middle of all these Labadi villages*"

The overwhelming weight of evidence supports the finding of the Court below "that at the time that Kotei Amli settled at Nkwantanang the land in the neighbourhood which the claimants described as waste land at that time was the property of the Stool of Labadi."

It seems to me that this finding decides the whole case, it *means that from the outset the occupation by Kotei Amli was not adverse to the Labadi Stool and there is nothing to suggest that its nature has changed since*. It is this fact

which distinguishes the present case from that of *Manche Anege Akue v. Manche Kojo Ababio* IV, P.C. 1874-1928, 71.″

What should be noted clearly about the ***ratio decidendi*** of that case is that the appellants failed in their bid to prove certain acts of ownership such as the collection of tolls and a grant of some of the land to the Basel Mission. They however proved acts of possession which were held not to be adverse to the title of the Labadi Stool. It is also of crucial importance that the appellants were undisputable subjects of the Labadi Stool.

The ***ratio decidendi*** in *Owusu v. Manche of Labadi* is to the same effect as the thrust of the powerful reasoning of Taylor JSC in *Nartey v. Mechanical Lloyd Assembly Plant Ltd* (1987-88)2 GLR 314 SIC particularly at 352 as follows:

> "There is no doubt at all that in *Owusu v Manche of Labadi* (supra) there were firm pronouncements made that Frafraha lands are La stool lands. In *Hammond v. Odoi* [1982-83] GLR 1215, SC *we dealt, with approval, quite exhaustively with the holding in the Court of Appeal that Osu rural lands properly belonged to the Osu stool. La and Osu are contiguous and would* seem to have not too divergent customary practices; it is not therefore easy, nor am I prepared to resist the implication in the *Owusu* case (supra) that La rural lands belong to the La stool. *Both cases, however, did not hold that it is impossible for a family to acquire ownership of a rural land and until the facts grounding the ownership of a particular family are tested in* a judicial forum against the claim of a stool said to own a rural land, I confess quite frankly that I am not prepared, nor am I in a position to make a judicial pronouncement on the matter. That problem in my view does not arise in this appeal."

It is plain from the facts of this case that the appellant like his counterpart in the *Nartey v Mechanical Lloyd* case supra has been able to do what his other counterpart in the *Owusu v. Manche* case was unable to do.

The evidence clearly shows that when opportunity to exercise acts of ownership arose, particularly as from the days of La Mantse Nii Anyetei Kwakwaranya II the appellant and his ancestors have made grants of the disputed land to strangers. Even some of

the said grants were instigated by him. He directed the 2nd co-defendant respondent/appellant who is the owner of the 1st and 3rd co-defendants/respondents/ appellants to the appellant's predecessor as the owner of Obgojo lands from whom he obtained leases in 1979 and 1989 respectively which were registered under the Laws of Ghana, see exhibits 1A, 2A and 3A. He and his said companies have been in active occupation and developments of the land granted without any hindrance. The respondent is not only clearly estopped by the assertions and conduct of his predecessor, Nii Anyetei Kwakwaranya II but by all the other grants such as Exhibits II, IIA – IIF. In any event they are active acts of ownership enjoyed by the appellant and his predecessors. The attempts b y the respondent and his elders to fault the appellant's title after Nii Anyetei Kwakwaranya II's reign are clearly belated after thoughts.

It is a worn-out principle that where in a land suit the evidence as to title to land is traditional and conflicting, the surest guide is to test such evidence in the light of recent acts to see which is preferable. See *Adjeibi-Kojo v Bonsie* (1957) 3 WALR 257, and *In re Adjancote Acquisition*; *Klu v Agyemang II* (1983) GLR 852 C.A.

The appellant's case has been clearly supported by documentary evidence, open and physical acts of ownership with regard to the land and some independent witnesses such as the 2nd respondent and DW2 the chief of Ashalley Botwe who shares a boundary with Obgojo village. All these in law strengthen the appellant's case against that of the respondent.

It must be remembered that even where lands are clearly stool lands a different title may nonetheless be carved out of them in law. See *Ofori v Appiah and others* [1987-88] 2 GLR 583 C. A the headnote of which states thus:

> "*Held, dismissing the appeal: the general customary rule permitting the tenure of vacant stool land by a subject of a stool was inapplicable to the Ahafo lands under the Mim stool. The peculiar control of the Mimhene over those lands derived historically from the prowess of the people of Mim in abating threats to* Ashanti from that area and the role of the Mimhene as a scout at an Ashanti

outpost. Consequently, *neither the allodial owner, the Akwaboahene, nor the Asantehene could by-pass the Mim stool in the alienation of Mim stool lands*. Similarly neither the sub-stools of Ayomso nor Goaso could encroach on neighbouring territory or alienate Mim stool lands. Accordingly since the plaintiff obtained his grant of the land in dispute from the Ayomsohene, he acquired no title to that land."

Even if Obgojo land were La Stool land the La stool having acquiesced in the acts of ownership by the appellant and his predecessors would not only be estopped at common law by the facts of this case from claiming allodial title to the land but would, as pleaded by the co-defendants/respondents/appellants lose that title to the appellant by reason of section 10(1) and the incidental 10(6) of the Limitation Decree 1972(NRCD54). See *GIHOC Refrigeration Household Ltd v Hanna Assi* (2005-2008) SC GLR 686, *Djin v. Musah Baako* (2007-2008) SC GLR 686 and *Klu v. Darko* CA J4/15/2007 S.C dated 25/11/2009

It must be stressed here that it is the allodial title that is in issue and therefore on the facts of this case, clearly the position is that either the appellant or the respondent has that title. It will be an inconsistent verdict in a case such as this where the identity and subject-matter of the allodial title are not in dispute and where no competing contrary facts are proved with regard to any other part of the land to hold that the appellant has title to some parts only but not of the whole.

It must also be stressed that it is the respondent's case that apart from grants to La citizens no form of grant of La lands can be made to a stranger except by the La Stool. Quite clearly where the alleged allodial owner as here, sits down and watches grants of virgin land to strangers without timeous objection such a person cannot seriously claim an allodial title to the land in question, see *Adjei v. Grumah* (1982-83) GLR 985 C.A.

For all the foregoing reasons I would allow the appeal and restore the reliefs granted by the trial judge save that she was plainly in error in dismissing the action against the co-

defendants/respondents/appellants for the reasons she gave though her conclusion on it is correct.

W. A. ATUGUBA
JUSTICE OF THE SUPREME COURT

ANSAH, JSC:

This is an appeal from the judgment of the Court of Appeal which had reversed the judgment of the High Court entered in favour of the defendant therein.

Writ of summons and pleadings

In the said action at the High Court, Accra, the plaintiff who described himself as the occupant of the La Stool, sued the defendant a subject of the said stool, described as the 'Onukpa' or 'Headman' of Ogbojo village for, as per his amended writ of summons:

> **"(1) A declaration of title to all Ogbojo lands.**
>
> **(2) An order of perpetual injunction restraining the defendant from disposing of Ogbojo lands or any part thereof without the approval and consent of the plaintiff."**

In the course of proceedings, Topp Construction Company Limited, its Managing Director, Mr. Evans Teye, the Evans Teye Estate Development Company Limited were joined to the action as co-defendants.

The pleadings by the plaintiff

In an amended statement of claim the plaintiff averred that:

"(3) The said Ogbojo village is one of the villages under the La Stool and all Ogbojo lands are part of La Stool rural lands.

(4) The said Ogbojo lands together with all other La Stool Rural lands became the property of the La Stool by conquest many centuries ago.

(5) Following the acquisition of the said Ogbogo village and other La villages by the La Stool, aforesaid, they were settled by subjects of the La Stool to which they owe allegiance and which has always been the allodial owner of such lands.
(6) According to La custom, the Head of any La rural village may make grants of La Stool rural lands to subjects of the La Stool for subsistence farming only and for the construction of dwelling houses for themselves but all other grants of such lands can only be validly made with the prior approval of the La Mantse."

As to the events that triggered off the action, the plaintiff pleaded that:

"(7) recently, the defendant has been asserting a claim to Ogbojo lands and has insisted that such lands belong to him and his family absolutely to the extent that he does not recognise the allodial title of the La Stool to Ogbojo lands."

The plaintiff described the boundaries of Ogbojo village lands title to which he claimed by this action to be as follows:

"(8) . . . on the South by Mpehuasem lands, on the North by the lands of Ashalley Botwe and Sraha, on the East by the Bejin lands and on the West b by Nkwantanang lands."

The pleadings by the defendant

In his statement of defence the defendant admitted his status of being a subject of the La Stool but denied the paragraph 3 as pleaded by the plaintiff and quoted above. He pleaded poignantly that Nii Jonathan Ephraim Sai Obodai was the head of the composite Anahor and Jirase families of Ogbojo; he was also the head or Mantse of Ogbojo Village. The defendant pleaded further that the composite Anahor and Jirase families founded and settled at the village of Ogbojo. These family members originally hailed from La and the lands aforementioned belonged to the composite families absolutely; the defendant denied that the La Stool is the owner thereof.

The pleadings by the co-defendants

The 1st, 2nd and 3rd co-defendants filed a similar statement of defence and pleaded that when the 2nd approached the immediate predecessor of the respondent, Nii Anyetei Kwakwranya II for land, Nii directed him to go to Jonathan Ephraim Sai Obodai for a grant of land at Ogbojo for estate development which grant was made to the 1st co-defendant. By a deed dated 2nd June 1979, between the said Jonathan Obodai as the lawful head and representative of the Anahor and Jirase families of Ogbojo and the 1st co-defendant, and registered as No. 4761/1968, the land described therein was conveyed to the first defendant company. Following this grant the co-defendant went into possession of the land and exercised proprietary rights over it. By these acts the respondent was stopped from challenging 1st co-defendant's action was statute barred having not been commenced within 12 years from the date when the cause of action arose.

Issues settled for trial

At the close of pleadings, the plaintiff filed summons for directions made of 20 issues, followed by several amendments to their pleadings by the parties and the joinder of co-defendants to the action, after which the suit eventually proceeded to full trial.

At the center of the dispute was the issue as to who own the allodial title to the Ogbojo lands, the plaintiff or the defendant?

The evidence of the plaintiff-respondent:

With regard to the acquisition of Ogbojo lands, the plaintiff/respondent's evidence at the trial was given by Nii Sowa Odaifio; it was that:

> **"Ogbojo is a village on La Stool land around Madina. The first person who settled at Ogbojo is Okotse Adjah who hailed from La Anahor. He founded this as a village and settled there. He being the founder of the village and settled there. As a founder, he takes care of the village for the La Stool the successors of Okotse Adjah continued in that vain (sic). The relationship between the elders of Ogbojo and the La Stool in respect of sale of land is that whenever anyone wants to buy from any of the La villages the headman or elder consults the La Stool and then the grant is made. The La chief signs the documents. The Ogbojo lands because (sic) La Stool lands when the La Mantse called Nii Odai Atsen II and his Mankralo Okang Mashie fought the Nunguas and conquered them and took the land. This was in 1690. This story was told me by my grandfather and other elders of La. We were made to understand that at the time of the war only the Nunguas were occupying all the lands. When they were conquered and driven away . . . It was after this other people came to live on the land. It was when they increased in numbers that they formed quarters. The defendant Nii Ago Sai hails from La Anohor. The Anohor quarter was not part of La during the time of the conquest. I cannot say where the Anahor people were during the time of the conquest. They had not come to La then. I understand that the Anahor people joined La in 1730. We were told that it was Nii Akotse Adjah who settled at Ogbojo gave that name to the village..."**

This witness said he was the Otsiame (i.e. the linquist) of La Stool and that Okotse Adjah and his successors settled on Ogbojo lands as caretakers of the La Stool and consulted the stool for alienation of lands which stool prepared documents for the grantee. So if the appellant granted the land to the 2nd co-defendant, then he did for and on behalf of the La stool. If on the other hand the elders of Ogbojo signed documents for the 2nd co-defendant, then they were wrong and the council of quarter heads or 'Akutsei- Atsemei' objected to the grant to the 2nd co-defendant, which was evidenced by a letter dated 10 August 1987 and marked Exhibit A
Under cross-examination, this witness said he knew Ogbojo was inhabited by the Anahor and Dzirase people.

The PW1 was Nii Okine Akko, a member of the La Traditional Council. In that position he got to know of a grant of land at Ogbojo to Evans Teye the 2nd co-defendant, but the elders asked him to vacate the land because they would not give it to him. They informed him of this through a letter written to him in 1987 and tendered in evidence at Exhibit A. the PW1 was emphatic he was not a member of the La Traditional Council that wrote Exhibit A and that the La rural lands were owned by the La Stool.

The PW2, Emmanuel Kwaku Torgbo, repeated the evidence that Nii Okotse Adjah settled at Ogbojo but he did not claim it as family land. He tendered three judgments in Exhibits B, B1 and B2 as well as Exhibits C and C1, the Gold Coast Service list of 1971 and 1921 that showed that the Ogbojo lands are La Stool lands. This witness denied signing any document as a witness for Obodai Sai as the chief of Ogbojo.

Dr. Joseph Paul Okang gave evidence as PW3 and tendered a map of La Stool lands as Exhibit D, which was given him by the plaintiff to copy from an old one.

Evidence of defendant/appellant

The evidence of the defendant/appellant was given through a representative, Joseph Nii Torgbor Obodai III, who described himself as the present chief of Ogbojo. He denied the plaintiff's claim and asserted Ogbojo village was founded by Nii Okotse Adjah also

known as Torgbotse Adja, a hunter, herbalist and farmer who practised his vocation by collecting herbs at a place under an Ogbeje or Ogbojo tree. He also lived under the tree where he was joined by Nii Okangfio.

It was descendants of these two people who became the principal elders of the present day Ogbojo village. With the passage of time the descendants multiplied. Okotse Adjah had as his sons, Torgbor and Sai Adja the latter of whom gave birth to the father of Joseph Nii Torgbor Obodai III the appellants' representative who gave evidence for the appellant. He was the chief of Ogbojo. From this humble beginning the Ogbojo settlement sprung up and later grew into the present day Ogbojo now in dispute.

The appellant supported his evidence with documentary evidence in the form of Exhibits 1 (minutes of meeting), 1A (indenture), 2 (letters), 2A (deed of variation), 3 (letter on the ownership of Ogbojo lands by La Anahor Nii Mankralo to Nii Kote Amli III), 3A (Land Certificate for Evans Teye Estate Development Limited), 4 (indenture dated 4/4/98 between Numo Adjah family of Ogbojo as lessors and Richard K. Asiamah as lessee), 5 (Receipts for the payment of land) 5A (Plan of land of Ogbojo), 5B (Receipt for …) and 6 (letter for …), Exhibit 11-11 F (Indentures for Adofo Kissi by Nii Jonathan Ephraim Obodai the Ogbojo Mantse).
Evidence by the DW2 under cross-examination was that Ogbojo was for the La Mantse.

The parties gave evidence both oral and documentary and called witnesses in support of their respective cases. In a nutshell, the plaintiff/respondent claimed absolute ownership of Ogbojo lands through conquest of the Nungua's several centuries ago; whereas the defendant/appellant traced their ownership of the same land through being founded by Okotse Adjah from Anahor and Okaifio of Djirase the forbearers of the composite Anahor and Jirase families of Ogbojo who originally hailed from La. Furthermore, Nii Jonathan Ephraim Sai Obodai was the head of the said composite family. The Ogbojo village with its surrounding lands is exclusively owned by the composite families of Ogbojo since time immemorial.

The judgment by the trial court

The trial judge, Mrs. Agnes Dordzie J. summarized the respective cases of the parties and held that the plaintiff's (respondent's) case could not hold; she dismissed it and entered judgment for the appellants. She also awarded costs of ¢8million to the appellant and ¢6million for the co-defendants.

The respondent appealed to the Court of Appeal against the judgment on several grounds. The Court of Appeal allowed the appeal, set aside the judgment of the trial court and granted perpetual injunction to restrain the defendant from disposing of Ogbojo lands without the approval of the plaintiff.

The defendant/respondent appealed against the whole judgment of the Court of Appeal, on the original ground that:

> **"(i) the judgment is against the weight of the evidence on the record".**

No other ground(s) has or have been added upon the receipt of the record so that remains the only ground of appeal before us. However, the sold ground of appeal was broken into sub-heads, namely that:

> **"(a) The Court of Appeal's acceptance of the Respondent's historical account on Ogbojo land is against the account of the Appellants when the onus of proof rest on the Respondent is unsupportable by the evidence.**
>
> **(b) The Court of Appeal's holding that the Respondent is not bound by the unchallenged evidence on record that the Respondent's predecessor, the former La Mantse, had asserted that Ogbojo lands belong to the appellant's family is erroneous.**

(c) The Court of Appeal erred in refusing the unchallenged evidence on record that the Appellant's family had settled and lived on Ogbojo land for over 200 years and dealt with as well as disposed of portions of the land without the consent of the La Stool and hence barred from claiming title to the whole Ogbojo lands by reason of the statute of Limitation.

(d) The Court of Appeal misconstrued the ratio decidendi of the decision in *Owusu v Mantse of Labadi* and *Nartey v Mechanical Lloyd* and misapplied them against the unchallenged evidence in this case that land first settled on by individual and families are differently owned from lands acquired by stools and given to subjects of the stool to cultivate".

Counsel for the respondent cast serious aspersions on how the grounds of appeal were couched for after appealing on the omnibus ground, the appellant was limited to argue on the facts only but by the sub groupings the appellant was arguing on points of law, something deprecated in Brown v Quashiga […]. In my opinion, I do not think Brown v Quashiga supra was wrongly decided, but the principle does not apply in this case for, the so-called sub groupings were matters dealing with the facts and not law as submitted by the respondent.

I shall in this opinion refer to the plaintiff in the High Court action as the appellant in the Court of Appeal and the respondent herein, the defendant in the High Court, as the appellant herein.

It was trite learning that an appeal to this court against a judgment of the Court of Appeal is by way of rehearing and this court was bound to consider comprehensively the entire evidence before coming to a conclusion on the matter. This being an action for a declaration of title to land, the burden of proof and persuasion remained on the plaintiffs to prove conclusively, on a balance of probabilities; they were entitled to their claim of title. This they could do by proving on the balance of probabilities the

essentials of their root of title and method of acquiring title to the area in dispute, the Ogbojo lands.

Several judgments

The respondent pleaded several judgments in their favor which will refer to presently, in his effort to discharge the burden of proof on them. This case is founded on and embedded in Labadi customary land law as expressed in cases like

(1) *Adoaku v Nyamalor [1963] 1 GLR 279, SC*, which decided that:

> **"(2) The customary law in Labadi in respect of alienation of quarter land was obviously similar to that obtaining in Osu, a neighboring state or division".**

At page 280 it was contended by the appellant in that case that Labadi was divided into seven quarters and each quarter had its 'quarter lands', as well as 'outskirts lands adjoining the quarter and that it is the head of the quarter who has the right to deal with the outskirt lands of the quarter and that the custom at Labadi is that the head of the quarters gives out land to people requiring portions. The Labadi Mantse never gives out land as the lands belong to various quarters.

At page 281 the evidence of Asafoatse Tutuani II on the custom in Labadi in respect of alienation of quarter lands and outskirts lands was that the Labadi Mantse had no authority to alienate land in dispute for it was attached to the quarters.

In a very recent case of *Agyei Osae v Adjeifio [2007-08] SCGLR 499*, the illustrious Brobbey JSC said at page 508 that though *Akwei v Awuletey* (supra), dealt with Osu lands, the principles enunciated therein applied to lands in Labadi and Teshie. I affirm him on this.

2. Another Labadi case worth mentioning was *Nii Adjei Onano v Okoi Noi and Nii Andamafio (DC Land) '48-'51, 97:* It dealt with issues pertaining to grants of stool lands to subjects by head stool and quarters-grants to subjects can be done by the quarter stool with the rider that the head stool has the right to be informed. (Civ. App. No. 22/49 dated 30th May, 1950, the La Mantse is the only person entitled to La custom to grant lands to subjects of the Stool, and which he does with the consent of his Divisional Council); the La Mantse was the owner of La Stool lands and exercised rights over Stool lands: see *Boi Owusu and Dsani v La Mantse, unrep. Div. Court;* upheld by the WACA in 1 WACA 278.

3 In yet another Labadi case, W. W. Saleeby v O. M. Nortey D.C. (Land) '48-'51, 404 a judgment by Jackson J, given on 21st December 1951, on grant of lands to subjects by the La Mantse, the court held according to the head note to the report that
: (1) The La Mantse was the only person entitled to grant the lands to subjects of the stool. He did this with the consent of his Divisional Council."
……

Ollennu wrote at page 17 on the ***"Acquisition of Absolute or Paramount Ownership"*** in his "***Principles of Customary Land Law in Ghana",*** that the 4 methods for the acquisition of the absolute ownership of land by a stool are stated in *Ohimen v Adjei 1957 2 WALR 279* to be as follows: *conquest and subsequent settlement thereon and cultivation by subjects of the stool;* discovery by hunters or pioneers of the stool of *unoccupied land and subsequent settlement thereof and use thereof by the stool and its subjects; gift to the stool; purchase by the stool.*

The authorities are agreed that the customary land law in Labadi is similar to what pertains in Osu and it is that customary land law that we shift our focus to now. Our first port of call is *Akwei v Awuletey [1960] GLR 231 SC.* That case stated there were three categories of lands known as follows:

"1. Quarter land which, is land within the quarter of the town.

2. Outskirts land which is land immediately adjacent to or continuous to a quarter

3. Rural land which is all other stool lands which are neither quarter or outskirts lands"

It was further held in the *Akwei v Awuletey (supra),* at 236 that:

"**the Osu Mantse … as occupant of the Osu Stool is the proper person entitled to sue and be sued in respect of lands title to which is vested in Osu Stool … (238). To this general principle however is the qualified exception in respect of quarter lands and outskirt lands attached to these quarters in respect of which he cannot make a valid grant without prior consultation with the head and elders of the quarter concerned".**

At page 239 of the report the Supreme Court in *Akwei v Awuletey (supra),* purported to give a resume of the judgments of the West African Court of Appeal and the Ghana Court of Appeal enunciating the principles relating to alienation of Osu stool lands including portions thereof known as quarter outskirt and rural lands and concluded at page 241 that:

"This can be gathered from the evidence of witnesses that Osu subjects to whom grants a land within a quarter may have been made by the quarter headman cannot alienate such lands to strangers (i.e. non-Osu people) except by deed executed by the Osu Mantse."

This had never been the case of the parties in this appeal at all, that a quarter headman or even the Mantse had granted any stool land to the appellant who in turn alienated it to a stranger so defined. Therefore the respondent could not complain that the appellant lacked the authority to alienate the land to the co-defendants without the La Mantse validly.

A general statement of customary land law is that for a piece of land to belong to a head stool, it must first of all belong to or be attached to a sub-stool or quarter under the head-stool or head-skin. Therefore to say that any land, particularly land in the occupation of members of a quarter or sub-stool, belongs to a head-stool, and in the same breath say that that very land is not attached or does not belong to a sub-stool or quarter is to fall into a grievous error; it is a contradiction in terms. Such a view is against all principles of customary land tenure. A head stool can never have the absolute title in any land vested in it, unless it can show first all that that land is attached to sub-stool or quarter under that head-stool, or head-skin. Thus speaking, *Christian Boi Owusu & anor v The Manche of Labadi (1933) 1 W*ACA *278*, is authority for the legal principle that to say because of a stool's absolute ownership of land no individual or sub-stool or quarter can claim against the head-stool a right to administer a piece of stool land, is a grievous error. That case decided as far back as in 1933 by WACA that Nkwatanang village is part of La rural lands owned by the La Mantse.

I am in entire agreement with the comments by Atiguba and Dotse JJSC on this case in their judgments which I had the privilege to read beforehand.

The trial court also referred to *Nartey v Mechanical Lloyd Assembly Plant [1987-88] 2 GLR 314* in her judgment as binding on her it being a judgment of the Supreme Court. She said whether La Rural Lands are La Stool Lands and whether grants of such lands could be made without the consent of the La Stool were some of the issues decided in that case. She said further the Supreme Court made in roads in the case law as regards the position of the La Stool and its relation to La rural lands and grants made by the sub-stools of such lands. She further delivered herself as follows:

> **" As regards the question whether a family can own any of the La rural lands this what the Supreme Court has to say per Taylor JSC at page 352 ` I am not prepared to resist the implication in the Owusu case that La rural lands belong to the La Stool. *Both cases however did not hold that it is impossible for a family to acquire ownership of a rural land until the facts grounding the***

ownership are tested in a judicial forum against the claim of a stool said to own the land." *(e.s.)*

It ought to be appreciated that Taylor JSC happened to be in the majority in the Nartey case which majority judgment was affirmed on review and reported sub nom *Mechanical Lloyd Assembly Plant Limited v Nartey [1987-88] 2 GLR 598 SC.*

This appeal provided the opportunity to probe or test and providing an answer to the issue raised by Taylor JSC.

The previous judgments in *Christian Boi Owusu v Mantse of Labadi* (supra), dealt with '**Nkwatanang'** lands, *Nartey v Mechanical Lloyd Assembly Plant Limited* (supra), with '**Frafraha'** lands and said these lands were La rural lands owned by the La Mantse.

The third case tendered in evidence by the respondent Exhibit B2, was:

"In the Re Public Lands (Leasehold) Ordinance CAP (138)
And in the matter of Land acquired for the Service by the Colony and Ashanti at Mile 9 on the Accra-Dodowa Road for Presbyterian Secondary School."

1. La Mantse.
2. The Teshie Mantse
3. The Nungua Mantse --- Claimants", unreported High Court, Accra dated 13th February, 1963, coram, Acolatse J.

As the title suggested, there were three stools including the stool of Labadi each claiming title to the area intended for acquisition for the intended Presbyterian Secondary School, to wit, 'Mile 9 on the Accra-Dodowa road'. After taking evidence from each claimant stool, Acolatse J held at page 15 of his judgment that:

"For the reasons I have given above on the merit of each claimant herein, I hold the La Mantse has established his claim to the land in dispute as the owner thereof as against the Stools of Teshie and Nungua.

Judgment accordingly for the La Mantse with cost".

The picture painted by the respondent was that these previous judgments established that Nkwatanang, Frafraha and Mile 9 on the Accra-Dodowa Road and their environs were declared to be owned by the La Stool. The question is did it mean the Ogbojo village in this dispute was also covered by these judgments in the first place and if it was, could a family nevertheless own the allodia title on the stool land?

I have stated the facts in dispute as between the parties each claiming Ogbojo lands to be his. To recap, whereas the respondent claimed the land for the La Stool through an acquisition by conquest of the Nunguas in 1690, the appellants traced its acquisition by Nii Okotse Adjah the hunter, herbalist and farmer who founded the settlement under an Ogbojo tree. The respondent did not deny that Nii Okotse founded Ogbojo village. In a very recent case of *Agyei Osae v Adjeifio* [2007-08] SCGLR 499, the illustrious Brobbey JSC said at page 508 that though Akwei v Awuletey (supra), dealt with Osu lands, the principles enunciated therein applied to lands in Labadi and Teshie. I affirm him on this for he was amply supported by Aduako v Nyamalor (supra).

In Agyei Osae v Adjeifio (supra) this court speaking unanimously through Brobbey JSC said that:

"It is established by the evidence on record that the founder of Otinshie Village was from the Krobo Quarter. The right, which the Osae Family will hold in Otinshie Village lands, will however be an absolute title not a usufructuary title as held by the Court of Appeal. In this connection, the Otinshie Village should only be the area which the plaintiff's ancestors had effectively reduced

into their possession, i.e. their building, farm lands, cemetery, etc", see page 508.

The plaintiff in *Agyei Osae* failed in his action because he had claimed title to the 'vast land' of Teshie without specifying the boundaries of what he claimed to be for his family. Even though Agyei Osae was a Teshie land case dealing with Otinshie village it has some close relation with Ogbojo village and La land case for, as noted, the governing principles are the same.

It was to be appreciated that these lines of cases dealt with the customary land law appertaining to the Osu, Teshie and the people of Labadi. Therefore substituting Osu for Labadi, or vice versa, a statement can be made that from the weight of judicial authorities though rural lands may belong to a head stool, the rights which a family can hold in such lands will be the absolute title and not the usufructuary title, especially of the area which the ancestors had effectively reduced into their possession. But whatever it is, everything depends on facts peculiar to a particular case and proved in evidence. In this case, the evidence was that Ogbojo village was founded by Okotse Adjah and Nii Okaifio, who on the evidence hailed from La; their descendants comprised the Anahor Jirase family, the occupants of Ogbojo village.

The parties in this case relied on events that were alleged to have taken place several centuries ago to support their claims, for example, the appellant relied on first settlement by Nii Okotse Adjah of La Anahor and Nii Ankamafio under the Ogbeje or Ogbojo tree whereas the respondent relied on a conquest of the Nunguas in a war in 1690. The onus was on the respondent to prove his method of acquisition of the area in dispute conclusively and that he confirmed the settlement under the tree by Okotse Adjah in the evidence by the PW 1, Nii Sowa Odaifio, the Otsiame (linquist) of La and a representative of the La Mantse himself and who from all probabilities was presumed to know the history of the land claimed by his principal and customary overlord, supported the case of the appellant on such a vital point like the first settlement by Nii Okotse Adjah on the land in dispute. The law is settled that:

"Where the evidence of one party on an issue in a suit is corroborated by witnesses of his opponent, whilst that of his opponent on the same issue stands uncorroborated even by his own witnesses, a Court ought not to accept the uncorroborated version in preference to the uncorroborated one, unless for some good reason (which must appear on the face of the judgment) the Court finds the uncorroborated version incredible or impossible", per Ollennu J. in *Tsrifo v Duah VIII [1959] G. L. R. 63* at 64.

The result was that there was evidence that Okotse Adjah of the Anahor family was the first to settle on Ogbojo and gave that village its name. After the settlement, the village grew in size and population into the present day Ogbojo township**.**

It was not disputed that the root of title of the parties was founded on traditional history, events dating as far back as a conquest in 1960 by the Labadis of Nunguas or settlement under an Ogbojo tree in 1730 or thereabouts. Those were the days when writing of dates was unknown in these parts and history of tradition was transmitted from generation to generation via word of mouth and as ones memory could serve any purpose. In those circumstances the law was that:

"The most satisfactory method of testing traditional history is by examining it in the light of much more *recent facts* as can be established by evidence in order to establish which of two conflicting statements of tradition is more probably correct. Where there is a conflict of traditional history one side or other must be mistaken, yet both may be honest in their beliefs, for honest mistakes may occur in the course of transmission of the traditions down the generations. In such circumstances, and particularly where (Native) Courts below have differed, an Appeal Court must review the evidence and draw their own

> **inferences from the established facts: the demeanour of the witnesses before the trial court is of little guide to the truth**," per *Lord Denning in Adjeibi-Kojo v Bosie and Another* (3 *W.A.L.R.)* 257 at 260 (e.s.)"

The respondent herein, plaintiff in the trial court, tendered a map in Exhibit D through a surveyor to show the boundaries of La rural lands. The surveyor was the PW3, Dr. Paul Okang, a retired teacher of KNUST and a member of the La Stool Lands Committee. The trial judge in assessing this witness said he scored zero or very low marks for she did not think she could attach much weight to the map he produced in court. Her reasons were that he admitted he did not take part in demarcating the land, he was only given an old map by the plaintiff respondent to copy and he did just that. He wrought much damage to his cause when he admitted he would not know whether if the old map was genuine or not. Moreover, the map was a recent preparation made in 2001. When it was considered that the writ initiating the action was issued on 18/1/94, it became plain the map was prepared for the purpose of this litigation. That act by the PW3, copying an old map of an area in dispute on the instructions of a plaintiff in a suit, are self-serving and the law was that it did not permit a party to prove his case by previous acts in his favour. The principle is succinctly stated in *Nii Abossey Okai II v Nii Ayikai II 12 W.A.C.A*. at page 36 by Beoku Betts, J., that:

> "**It is recognized law that a person cannot by his acts prove anything in his favour, and these dealings with the property are therefore not of same value as admissions against interest."** See Civil Appeal No. 86/62, G.A.K. Glala & or. v Anku Ayihoe Dzaha & ors *(unreported), CA, 26th June 1967, Written Judgment, January-December 1967*.

The appellants tendered exhibits 11, 11A-F, to support their claim of ownership of Ogbojo. These documents testified of grants of portions of Ogbojo lands by the Anahor and Dzirase families from 1978. They also tendered the arbitration proceedings before the La Mankralo between the PW2 Emmanuel Kwaku Torgbofio and Nai-Nye Ama over

claims of ownership of Ogbojo lands, which arbitration published an award that the lands were for the Ogbojo chief and his people.

There was further evidence for the appellant that Nii Anyetei Kwakwranya II, an immediate past chief of Labadi, acknowledged the appellant and his people as the owners of Ogbojo lands when the co-defendants approached him for land for estate development, for the land belonged to them. Nii Kwakwranya II directed the co-defendant to the chief of Ogbojo who granted the land to them in 1979. All documents evidencing the grant of land were executed on behalf of Sai Obodai and Numo Okan Adjetey families of Anahor and Dzirase. The La Mantse was neither a party nor a signatory to the documents. The Court of Appeal did not agree with the trial court that the acts of Nii Kwakwaranya bound the La Stool. That court did not dispute it that the evidence by the appellant on what Nii Kwakwaranya II did; but only said the stool was not bound by them. With the greatest respect to the Court, it erred egregiously for the law was that:

"Further, a reigning chief is the agent of the stool he occupies while he remains on the stool: *see Ababio v Tutu (1962) GLR 489*, S.C. which held that stool is a corporation sole a legal entity which is represented by a reigning chief. See also *Quarm v Yankah II (1930) 1 WACA 80* at 83, which was cited in *Ababio v Tutu* (supra), and wherein Deane CJ at p83, had this to say:' Since the conception of the stool has always been accepted in the courts of this colony is that it is an entity which never dies a corporation sole like the crown and that while the occupant of the Stool may come and go, the stool goes on forever. When therefore the respondent is sued as representing the stool since he is the present occupant he is not sued as the successor of the present holder, but only as the person for the time being representing something that has never changed, he is the agent through whom the stool acts as at present while the former chief was
If Nii Adjah Kwao II was agent for the stool in 1959 and acted on behalf of the stool, then, he had capacity to act for the stool at the time Exhibit A was made in 1973 and his acts would bind the Stool", per Bamford Addo JSC in

Republic v Lands Commission [1998-99] SCGLR 677 at 685, cited by the appellant in his statement of case.

The respondent did not challenge this evidence by the appellant and even if they did it was bound to fail fro the respondents evidence was that it was for these acts by Nii Kwakwaranya II that he was destooled as the La Mantse. Those acts bound the stool just like the present occupant the La Mantse, the respondent.

The inference must be obvious that truly Nii Anyatei Kwakwaranya II did direct the co-defendants to the Ogbojo chief and his elders fro land for they owned it. The respondents did not agree with what their overlord did and they claimed they destooled him for having done so. This court is not called upon to make a determination as to whether or not he was properly destooled. Until a court of competent jurisdiction declared the acts of Nii Kwakwaranya II null and void it was valid and had a binding effect not only on himself but his successors, assigns, privies and those tracing through him.

The respondent tendered the Gold Coast Civil Service List in Exhibit C and C1 which mentioned Ogbojo as a village under La division, but this was countered by the appellant that not all towns and villages mentioned in the list were necessarily for Labadi and cited the village of Maalejon as example. Lawyers D. O. Lamptey and Adjei Adjetey wrote exhibits 9 and 8 respectively to state that the land of Maalejon was not for Labadi.

The evidence of the appellant was buoyed by acts of ownership like grants of lands to strangers covered by Exhibits 11, 11A-F. Whilst these per se would not confer ownership or title on the grantors, they would go a long way to buttress a claim of title to the land granted. Evidence of recent acts of ownership by the respondent was nil or if any at all significant and not of any weight.

I have read the record of appeal, several times over and the conclusion I came to was that the appeal be allowed for the judgment of the Court of Appeal was against the

weight of the evidence and the law, except to say that the High Court erred in setting aside the joinder of the co-defendants to the suit. The judgment of the Court of Appeal to restore them was right and affirmed. Save that, I agree that the appeal be allowed, set aside the judgment of the Court of Appeal and restore the judgment of the trial High Court.

J. ANSAH
JUSTICE OF THE SUPREME COURT

OWUSU (MS), JSC:

I have had the opportunity to read the Judgment of my respected brother and I wholly agree that the appeal be allowed. However, I have a few observations to make.
The plaintiff claimed the reliefs endorsed on his writ as follows:

> **"Declaration of title to all Ogbojo lands."**
>
> **2. "Order of perpetual injunction restraining the Defendant from disposing of Ogbojo lands or any part thereof without the approval and consent of the plaintiff."**

The facts have been sufficiently set down by my brother Dotse J.S. C. in his judgment and I do not find it necessary to repeat them. The main contention between the parties is who owns the allodial title to Ogbojo lands. In the summons for directions in the trial court among the many issues filed are issues (f) and (g) i.e.

> **"(f) whether or not Ogbojo village is one of the village under the La Stool and**
>
> **"(g) whether or not all Ogbojo lands are part of La Stool rural lands".**

The plaintiff, in his capacity as occupant of La Stool, claims that Ogbojo is part of La Stool rural lands acquired by the La Stool by conquest.

The Defendant disputed the plaintiff's claim that Ogbojo lands are La Stool lands or village. According to him, Ogbojo lands are family lands belonging to the ANAHOR and DZIRASE families of Ogbojo and that the lands were founded by settlement.

At the end of the trial, Judgment was entered in favour of the Defendant and thus the plaintiff's claim was dismissed. The trial court was of the view that the Defendant led sufficient evidence in support of his claim and found as a fact that Ogbojo lands are properties of Anahor and Dzirase Families. This is what the learned Judge said:

> **"when these sets of facts are put on scale, the facts supporting the defendant's assertions far outweigh that of the plaintiff. I am inclined to believe that the plaintiff is now putting up this claim of ownership of the Ogbojo lands because of the commercial value those lands have in recent times acquired.**
>
> **With the evidence of the defendant supported by the acknowledgement of the former occupant of the La Stool and the La Mankralo, coupled with plaintiff's own witness p.w. 2 Emmanuel Torgborfio Kwaku's signatures on indentures executed by the chief and elders of Ogbojo admitting that they are the owners of the land, I have no cause to reject the fact that the Ogbojo lands are family lands belonging to the Anahor and Dzirase families of Ogbojo. I do hereby declare the land in dispute in this case described as Ogbojo lands the property of the Anahor and Dzirase families of Ogbojo. The property being family property the consent of the La Stool is not needed in making grants of the said land."**

The learned trial Judge, arrived at this conclusion, after ably evaluating the evidence led before her by the parties.

Dissatisfied with her decision, the plaintiff appealed to the court of appeal on the following grounds among others

> **"(1) The Judgment is manifestly against the weight of evidence adduced at the trial."**

"(2) The learned trial judge erred in law when she dismissed the case against the co-defendants on the ground that the pleadings did not disclose any cause of action against them."

"(3) The learned trial Judge erred in law when she misconstrued the Judgment in NARTEY VRS MECHANICAL LLOYD and erroneously relied on the misconstruction to give Judgment to the defendant."

"(4) The learned trial Judge erred in law when she held that the plaintiff is stopped by conduct from laying to the land in dispute in the action."

"(7) The learned trial Judge erred in law when she relied on Exhibits II, IIA-IIF to give Judgment to the defendant when the basis of the said exhibits is defective."

The court of Appeal per Douse J. A. unanimously allowed the appeal and set aside the Judgment of the trial court.

Dissatisfied with that Judgment, the Defendant/Respondent and Appellant in this case on the very day that the judgment was delivered filed an appeal against it on the omnibus ground that:

"(i) The judgment is against the weight of the evidence on the record."

No additional grounds were however filed as indicated in the Notice of Appeal. He is asking for reversal of the Judgment of the Court of Appeal.

In arguing the appeal, the Appellant sought to demonstrate why the Judgment is against the weight of evidence under four subheads as follows:

"(a) The Court of Appeal's acceptance of the Respondent's Historical account on Ogbojo lands as against the account of the Appellant's when the Onus of proof rest on the Respondent is unsupportable by the evidence."

"(b) The court of Appeal's holding that the Respondent is not bound by the unchallenged evidence on record that the Respondent's predecessor the former La Mantse had asserted that Ogbojo Lands belong to the Appellant family is erroneous."

"(c) The court of Appeal erred in refusing unchallenged evidence on record that the Appellant's family had settled and lived on Ogbojo Land for over 200 years and dealt with it as well as deposed (sic) of portions of the land without the consent of the La Stool and hence barred the La Stool from claiming title to the whole Ogbojo lands by reason of the statute of Limitation."

"(d) The court of Appeal misconstrued the ratio decidendi of the decision in OWUSU VRS MANCHE OF LABADI and NARTEY VRS MECHANICAL LLOYD and misapplied them against the unchallenged evidence in this case that land first settled on by individual and families are differently owned from lands acquired by stools and given to subjects of the stool to cultivate."

An Appellant who appeals on a ground that the Judgment is against the weight of evidence has a burden to satisfy the appellate court that indeed the Judgment is unreasonable having regard to the evidence on record. See the case of AMPOMAH VRS VOLTA RIVER AUTHORITY [1989-90] 2 GLR 28.

In TUAKWA VRS BOSOM [2001-2002] SCGLR 61, the court per Sophia Akuffo, JSC held that:

"an appeal is by way of re-hearing particularly where the Appellant alleges in his notice of appeal that the decision of the trial court is against the weight of the evidence. In such a case, - - - it is incumbent upon an appellate court, in a civil case, to analyse the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial before arriving at its decision, so as to satisfy itself that on a balance of probabilities, the conclusions of the trial Judge are reasonably or amply supported by the evidence . . . "

See also the case of AKUFFO-ADDO VRS CATHELINE [1992] 1 GLR 372

What evidence did the Plaintiff/Respondent herein lead in support of his claim for declaration of title? It is his case that the Ogbojo village and its surrounding lands form part of La rural lands and that these lands belong to the Stool, same having been conquered from the people of Nungua in 1690. These lands according to him, stretch

from the foot of the Akwapim hills to the place where the La Township is presently situate.

In prove of this, the plaintiff tendered a map marked Exhibit D through p.w.3 his surveyor to show the boundaries of La rural lands. He also tendered the Judgment in the C. B. OWUSU & ANOTHER VRS MANCHE of LABADI 1 [W.A.C.A] 278 and two other Judgments, exhibits "B" and "B2" which according to him, establish the same principle that La rural lands are Stool Lands.

Ex "**C1**", a copy of the Gold Coast civil service list from the National Archives was also tendered to show that Ogbojo was classified as a village under the Labadi Division of Accra in the colonial administration. In short this is the evidence led by the plaintiff in support of his claim.

Against this evidence is that of the Defendant/Appellant herein. According to him Ogbojo lands are family lands belonging to the Anahor and Dzirase families of Ogbojo. He narrated the history of how the land in dispute was founded. That one Okotse Adjah of La Anahor founded the land and later Okangfio of La Dzirase went and settled with him. Together they established Ogbojo village. Descendants of these two men are the principal elders of the Ogbojo village. They inherited the Ogbojo lands and were responsible for alienating the lands without any reference to the La Stool for many years without any objection from any quarter. In support of this, documents of various grants of Ogbojo lands made by Anahor and Dzirase families since 1978 were tendered as Exs "**II, IIA-IIF**".

The Appellant further testified to evidence given by the chief of Ogbojo and his elders before a special National Investigation Committee on Labadi Stool Land affairs before which the chief laid claim to Ogbojo lands for himself and his people. In a dispute between another group of people among whom was Emmanuel Torgbofio Kwaku p. w. 2 in the trial, who claimed to be true descendants of Okatse Adjah and therefore true owners of Ogbojo lands, the Mankralo of La in an arbitration declared the Ogbojo Chief and his people the true owners of the lands. This decision was tendered as Ex "**3**".

To crown it all, the Appellant gave evidence of acknowledgement of the title of the Ogbojo Chief and his people to Ogbojo lands by the Respondent's predecessor Nii Anyetei Kwakwaranya II. The evidence is that the 1st co-defendant approached the then chief of La, Nii Anyetei Kwakwaranya for a land he had found along the road to

Pantang Hospital. He advised him against going for that land because there was litigation over that piece of land. He told him he will consult the chief and elders of Ogbojo to see if they could help him. The chief directed him to the Appellant and requested him to sell part of the land to them. The Appellant made grants to them in 1979 and executed documents on behalf of Numo Sai Obodai and Numo Okpan Adjetey families of Anahor and Dzirase. The La Mantse was never part of the signatories to the documents. He therefore claims that the Respondent is estopped from laying any claims to the Ogbojo lands.

Before the Court of Appeal were these conflicting claims and the evidence led by each of the parties.

> **"An appellate court must not disturb findings of fact made by a trial court, even if the appellate court would have come to a different conclusion, unless the findings of fact made by the trial Judge were wholly unsupportable by the evidence. Therefore, where the evidence was conflicting, the decision of the trial court as to which version of the facts to accept was to be preferred, and the appellate court might substitute its own view only in the most glaring of cases. That was primarily because the trial Judge had the advantage of listening to the entire evidence and watching the reactions and demeanor of the parties and their witnesses."** See the case of In Re OKINE (DECEASED; DODOO and Another VRS OKINE and Others [2003 – 2004] 582

In the instant case, was there any justification for the court of Appeal to have set aside the positive finding by the trial court that Ogbojo lands/village are family properties of Anahor and Dzirase families as opposed to the claim of the Respondent that they form part of La-Stool lands?

On the record, that finding is amply supported by the evidence.

On the authority of TUAKWA VRS BOSOM already referred to, before the court of Appeal it was incumbent upon the court to analyse the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial before arriving at its decision, so as to satisfy itself that on a balance of probabilities the conclusions of the trial Judge are reasonable or amply supported by the evidence . . .

Under section11(1) of the Evidence Decree now Act, (N. R. C. D.) 323 of 1975, "for the purpose of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party".
11 (4) states that:

> **"In other circumstances, the burden of producing evidence requires a party to produce sufficient evidence which on the totality of the evidence, leads a reasonable mind to conclude that the existence of the fact was more probable than its non-existence**".

The plaintiff in the trial court failed to discharge the burden of proof and for that reason that ground of appeal that the Judgment was manifestly against the weight of evidence should have been dismissed.
In the case of C. B. Owusu, there was sufficient evidence before the court that the land in dispute i.e. Nkwantanang formed part of a large area of land originally acquired by the Labadi people by conquest.
I am afraid that is not the case in the instant case.
Again in Ex "**B2**", in RE PUBLIC LANDS (leasehold) Ordinance CAP 138
AND IN THE MATTER OF LAND ACQUIRED FOR THE SERVICE BY THECOLONY AND ASHANTI SITUATE AT MILE POST 9 ON ACCRA –DODOWA ROAD FOR PRESBYTERIAN SECONDARY SCHOOL,

1. THE LA MANTSE }
2. THE TESHIE MANTSE } CLAIMANTS
3. THE NUNGUA MANTSE }

the three claimants laid claim to the land involved and after the trial this was the decision of Acolatse J.

> **"for the reasons I have given above on the merit of each claimant herein I hold that the La Mantse has established his claim in title to the land in dispute as the owner thereof as against the stools**

of Teshie and Nungua. Judgment accordingly for the La Mantse with cost."

In NARTEY VRS MECHANICAL LLOYD ASSEMBLY PLANT LIMITED [1987-88] 2 GLR, it was also established that the land, subject matter of the dispute forms part of La Stool lands.

In all three cases with which the plaintiff supported his claim, Ogboja Lands did not form part of the subject matter of the disputes and the plaintiff's reliance on them was misplaced.

On the issue of the conduct of the plaintiff's predecessor, Nii Anyetei Kwakwaranya, by which the trial court held that the plaintiff is estopped from laying claim to Ogbojo lands as La stool lands, this is what the court of Appeal said:

"Grounds 4 and 5 are in pari materia. This concern the issue of estoppel by the conduct of the predecessor of the plaintiff. The finding of the trial court on laches and acquiescence arise from the evidence of the defendant and co-defendant to the effect that Nii Anytei Kwakwaranya informed co-defendant that Ogbojo lands belong to the people of Ogbojo and therefore the co-defendant was sent to Ogbojo to acquire land from the defendant. It is our considered view that the way that piece of event was rendered turns customary law on its head. The custom known all over this country is that where a sub-chief or headman is in charge, the paramount chief would not personally or directly allocate land. The proper thing to do is to send the person looking for land to the person in charge who would act and "*report*" for consent and or concurrence - - -

Did the Court of Appeal find from the record especially the Deeds of conveyance and variation that the then La Chief, Nii Anyetei Kwakwaranya gave his consent or concurrence for the alienation of the land to the co-defendants? Significantly, the La-

Stool represented by the chief was not a party to the Deeds of conveyance and variation.

The co-defendants' evidence as given by the 1st co-defendant is clear on the issue as stated on p.149 of the record as follows"

"He told me he will consult the chief and elders of Ogbojo to see if they can help me - -

I went back to see him. He told me the chief and elders of Ogbojo have agreed to help me and grant me land. - - -

We went and saw the chief and elders of Ogbojo and informed them of the purpose of our visit which was to acquire land from them. They agreed to grant me land - - - From this evidence, did the chief of Ogbojo deal with the co-defendants as a caretaker chief? I do not think so and indeed subsequent events do not indicate that he dealt with them as such.

I agree with the trial Judge that the La-stool is estopped by Nii Anyetei Kwakwaranya's conduct from laying claim of title to Ogbojo lands.

As the trial court held, even if Ogbojo lands are La-stool lands, it stood by and allowed the chief and elders of Ogbojo to deal with the lands as their owners.

The evidence is that they had enjoyed quiet an interrupted possession for well over 200 years. In recent times, exercised overt acts of ownership over the lands by the various grants of parts of the land to strangers without any reference to the La-stool. See exhibits **"4", 11, 11A-11F".**

Counsel for the Appellant took the court through what possession in Law means. In this regard he dealt with the various kinds of possession among which are actual, constructive and adverse which Black's Law Dictionary defines as "the use and enjoyment of real property with a claim of right when that use or enjoyment is

continuous, exclusive, hostile, open and notorious. In the instant case both the trial court and the court of Appeal agree that the Defendant made out a case of adverse possession. Where as the trial court limited the claim to the whole of Ogbojo lands, the Court of Appeal limited the claim to grants that fall within the limitation period. This is what the court per Douse J. A. said referring to section 10 of the Limitation Decree (N. R. C. D.) 54:

This section 10 (1) of the Limitation Decree provide:

> **"A person shall not bring an action to recover a land after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to a person through whom the first mentioned claims to that person.**
>
> **Some of Exhibits 4, 11, 11A to 11F were made as early as in 1978 and others as late as 1994. This suit commenced in 1994. Obviously some are caught by the Limitation."**

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 trial Judge that the stool is caught by laches/acquiescence and is therefore estopped by conduct from laying any claim to the whole of, but not only some grants, Ogbojo lands.

Section 26 of the Evidence Decree provides that:

> **"Except as otherwise provided by law, including a rule of equity when a party has, by his own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon such belief, the truth**

of that thing shall be conclusively presumed against that party or his successor in interest in any proceedings between that party or his successors in interest and such relying person or his successor in interest."

For the reasons herein assigned, I am of the view that the Appellant has succeeded in satisfying the court that the Judgment of the court below is indeed unreasonable having regard to the totality of the evidence on record. It is for this reason that I also allowed the appeal. The Judgment of the Court of Appeal regarding the Appellant is hereby set aside.

The co-Defendants who also claim to be dissatisfied with the decision of the Court of Appeal appealed against it on the grounds that :

"(i) Their Lordship erred when they set aside the trial Judge's order striking out the appellants' from the suit on grounds that the pleadings did not disclose any cause of action against the appellants."

"(ii) Their Lordships erred when they held that the trial Judge was in error when she held that the respondent was stopped by conduct from claiming that the Ogbojo lands belonged to the appellant's granter, the Ogbojo Mantse.

"(iii) There was no evidence upon which their Lordships could find the appellants' documents of title were registered clandestinely."

Of these three grounds, it is only ground (i) that needs consideration in view of the conclusion that I have arrived at with regard to the Defendant's appeal.

On an application ex-parte by the plaintiff in the court below, the 1st and 2nd Co-Defendants were joined as parties to the suit by Apaloo J. (as he then was).

By another application, this time on notice, the third co-Defendant was also joined by the same judge.

The trial Judge, Dordzie J. in her Judgment upon submission of their counsel that joining the co-Defendants was a misjoinder because the plaintiff had not made any claims against them and the statement of claim does not disclose any cause of action against them, dismissed the action against them as according to her, she found them to be unnecessary parties to the suit.

She did this under Order 15 rule 6 (2) (a) of the High Court (civil Procedure) Amendment (NO. 2) Rules of 1977, L. I. 11229.

The said rule reads as follows:

> **"At any stage of the proceedings, the court may on such terms as it thinks just and either of its own motion or an application order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party."**

The Court of Appeal found this wrong because the court was of the view that as third party beneficiaries they are necessary parties.

The court therefore re-instated the suit against them. It is this order of the court that they are dissatisfied with.

Who are these co-Defendants? The 1st and 3rd are corporate legal entities of which the 2nd co-Defendant is the Managing Director and chairman respectively. The 1st co-Defendant is the original lessee of the indenture tendered at the trial as Ex "1A" and the 3rd co-Defendant had to be made the lessee because their Bankers objected to the same company being the contractor and Developer. The 2nd co-Defendant was sued as Managing Director of the 1st co-Defendant in an Ex-parte application.

The record indicated that the co-Defendants had in their statement of Defence raised the issue of the joinder and asked that the action against them be dismissed.

A company has its own distinct legal identity. It can sue and be sued and is different from its members.

This court per Sophia Akuffo J.S.C. in the case of MORKOR VRS KUMA [1998-99] SCGLR held that:

> **"since the Appellant had been jointly sued with the 1st Defendant, a limited liability Company, for the only reason that she was the Chief Executive, main shareholder and a director of the company, she would be a proper party to the suit only if a specific personal liability were established against her or - - - - - -**

In the instant case it is clear from the record that no act of misfeasance was established against the 2nd co-Defendant except that he is the Managing Director of the 1st co-Defendant. He was not a proper person to be sued and the trial court rightly dismissed the suit against him. The 1st and 3rd co-Defendant had been sued because according to the plaintiff they wrongly entered the land in dispute.

Even though the main issues before the court were between the plaintiff and the Defendant, the 1st and 3rd co-Defendants as grantees of the land stood to be affected by the final decision of the court and to that extent, the court of Appeal rightly re-instated them as parties to the suit.

For this reason, I affirm the decision of the Court of appeal in that regard.

R. C. OWUSU (MS)
JUSTICE OF THE SUPREME COURT

DOTSE, JSC:

INTRODUCTION

I have had the advantage and privilege of knowing beforehand the detailed accounts of the judgment of my learned and distinguished brother, Atuguba JSC and I wish to say that I agree with the decision contained in the said judgment, which he has just read. That is to say that the appeal of the appellants succeeds, and that means the judgment of the Court of Appeal which reversed the decision of the High Court should be set aside in its entirety and is hereby set aside.

On my part, I regret to say that, having applied my mind to the best of my ability to the decision of the Court of Appeal, I am with respect unable to appreciate the ratio decidendi that informed their decision, and having regard to the undisputed facts which were established during the trial before the High Court, the decision of the High Court, is in my view unassailable and is in full accord with the evidence on record and in tune with sound principles of law.

Even though the facts of this case have been ably stated by the President of this Court, Atuguba JSC, let me on my own state the facts that will give some meaning and understanding to reasons I now give in support of the decisions I have reached that the appeal herein succeeds.

FACTS

On the 18th of January 1994, the Plaintiff/Appellant/Respondent, (hereinafter known as the Plaintiff) who is the La Mantse issued a writ of summons and a statement of claim against the Defendant/Respondent/Appellant (hereinafter Defendant) and Co-Defendants/Respondents/Appellants.(hereinafter Co-Defendants).

The reliefs as endorsed on the writ read as follows:

1. A declaration of title to all Ogbojo lands

2. An order of perpetual injunction restraining the Defendant from disposing of Ogbojo lands or any part thereof without the approval and consent of the Plaintiff.

After a series of amendments, Plaintiff's case as made out in his amended statement of claim is seemingly a rather straightforward one.

According to him, Ogbojo village, the subject matter of the dispute is one of the villages under La Stool and forms part of La Stool Rural lands. The La Stool lays claim to these lands by reason of conquest many years ago.

Subjects of the La Stool settled on these lands but owed allegiance to the Stool, who has always been the allodial owner of these lands.

It is the Plaintiff's case that these La rural villages which the citizens of La were allowed to found and occupy number about thirty-three (33), Ogbojo inclusive as is evidenced in the Gold Coast Civil Service List and other official publications. Reference Exhibit C on pg. 322 of the record.

Plaintiff further avers that there are copious number of judgments supporting the claim of the La Stool to the allodial ownership of all La Rural lands and cites a couple of them in support of his claim as ***C. Boi Owusu & Anor v Manche of Labadi 1 WACA 278*** and ***In the matter of the Public Lands (Leasehold) Ordinance (Cap 138) and in the Matter of Land Acquired for the Service of the Colony and Ashanti situate at Mile Post 9 on the Accra-Dodowa Road for Presbyterian Secondary School: 1. The La Mantse 2. The Teshie Mantse and 3. The Nungua Mantse: Claimants.***

The Plaintiff, in further support of his case states that the Head of any La Rural village may make grants of La Stool lands to subjects of La for subsistence farming only, or for the construction of dwelling houses only, but all other grants of land (e.g. made to strangers) can only be validly made with the prior approval of the La Mantse. This he claims is the custom in La. According to him, in recent times, the Defendant who is an Onukpa or Headman of the village of Ogbojo had been asserting a claim to Ogbojo lands as belonging to him and his family absolutely and refuses to recognise the allodial title of the La Stool to Ogbojo lands.

The Defendants case.

The Defendant strongly resisted the Plaintiff's claims. The Defendant admitted they are subjects of the La Stool but principally subjects of Ogbojo. Ogbojo according to the Defendant consists of two families, namely the Anahor and Dzrase families, and further that, it was the Head and lawful representative of these composite families who had the absolute right to make grants of Ogbojo land for any purpose whatsoever. The Defendant further asserted that the La Stool had no proprietary title, right or interest whatsoever in Ogbojo village or Ogbojo lands.

The Defendant further averred that the Head and lawful representative of the families and their predecessors have consistently made absolute grants of Ogbojo lands without let or hindrance from any quarter and more importantly, without reference to the La Stool. In addition to this, the Head and his predecessors have also lawfully defended Ogbojo lands against several adverse claims without reference to the La Stool. The Defendant further pleaded that initially, when Top Construction Company Ltd made known its intention of acquiring land at Ogbojo, the Managing director approached the then La Mantse, Nii Anyetei Kwakwranya. The La Mantse informed the Managing Director to approach the Ogbojo Mantse because the Ogbojo people were the rightful people to alienate the land as it belonged to them. This alleged acknowledgement of the Chief of Ogbojo as the rightful owner of the disputed lands has been seized by Defendant as an estoppel by conduct against the Plaintiff.

In consequence of this representation, Defendant alleges that the MD redirected his request for land to the Ogbojo Mantse and was subsequently granted a lease for a term of twenty five (25) years.

According to the Defendant, the families of Anahor and Dzrase had been in peaceful uninterrupted possession of the land long before 1865, without let or hindrance from the La Stool and denied that the La Stool is entitled to its claims.

In the course of the suit, a series of applications were brought to join the first to third co-defendants. The co-defendants unsuccessfully resisted the application for joinder on

the basis that they were not the proper parties, and further that the Plaintiff's writ disclosed no cause of action against them.

Having been unsuccessful in resisting the order for joinder, the Co-Defendants were compelled to file appearance and enter a defence. Their defence was materially the same and they repeated that they had approached the then La Mantse, Nii Anyetei who sent them back to the Head of Ogbojo to make the alienation. They also pleaded estoppel against the Plaintiff and further pleaded that the case against them be dismissed as the Plaintiff did not make any claims against them. 2nd Co-Defendant also pleaded that he be struck out as a party as having no interest whatsoever in the suit.

At the close of pleadings, the learned trial Judge found the following issues relevant for determination of the case

1. Whether Ogbojo lands are La Stool lands acquired through conquest.
2. Whether or not grants of Ogbojo lands could only be made with the approval of the La Mantse
3. Whether the Plaintiff is estopped from laying claims to Ogbojo lands as La stool lands.
4. Whether Ogbojo lands are owned by the Anahor and Dzrase families and whether they had been in long uninterrupted possession without any let or hindrance from the La Stool.

For a resolution of the 2nd and 3rd issues as set down by the trial judge, she relied on the case of NARTEY V MECHANICAL LLOYD ASSEMBLY PLANT [1987-88] 1 GLR 314.

I will reproduce in extenso the analysis and conclusion of the trial judge in the resolution of the above-mentioned issues as set out at pages 261 and 262 of the record.

DECISION OF TRIAL COURT

"As regards the question whether a family can own any of the La rural lands, this is what the Supreme Court has to say per Taylor JSC at page 325

"I am not prepared to resist the implication in the Owusu case that La rural lands belong to the La Stool. Both cases however did not hold that it is impossible for a family to acquire

ownership of a rural land until the facts grounding the ownership of a particular family are tested in a judicial forum against the claim of a stool said to own the land."

The implication I gather from this is that irrespective of the decision in the C.B Owusu case, if the Dzrase and Anahor families of Ogbojo are able to prove their ownership of the Ogbojo lands effectively, this court can pronounce them owners of the land. What are the facts the defendant is grounding this claim on as against the claim of the Plaintiff?

These facts are as follows: a) their ancestor Okotse Adjah or Torgbortse Adjah found the land through hunting and searching for herbs.

b) Nii Okangfio later joined Okotse Adjah and together they established the Ogbojo village, the descendants of these two men have exercised acts of ownership over the Ogbojo lands over the years without any objection from the La Stool.

c) The Plaintiff's predecessor Nii Anyetei Kwakranya, a former occupant of the La Stool acknowledged the Ogbojo people's ownership of the land.

d) The La Mankralo in a ruling, exhibit 3 publicly declared the descendants of Okotse Adjah are (sic) the owners of the Ogbojo lands. Notice of the declaration dated 9th March 1990; exhibit 2 was served on the Plaintiff.

e) The grantees of the Ogbojo lands have had their documents registered for over 20 years without any objection from the La Stool.

On the part of the Plaintiff I have the following facts

a) Lands stretching from the foot of the Akwapim Hills to the present position of La at the Coast are La lands acquired by conquest. (The validity of this fact had been destabilized by i) DW 2's evidence which was not challenged that part of the land lying below the foot of the Akwapim Hills belong to the people of Teshie.

ii) Exhibits 8 & 9 which show that Malejon and Manhia which are villages at the foot of the Akwapim hills and are described as La villages have some of their lands owned by Families.

b) Evidence adduced by the Plaintiff to specifically define the boundaries of the La Stool lands cannot be relied upon for reasons I have already given.

c) The Plaintiff predecessor acknowledged the fact that the Ogbojo lands are family lands and acted in respect of that fact without any objection from his elders.

The Defendant's evidence before me is that their ancestors had occupied the land as their property long before 1865. The Plaintiff has not led any evidence to show that between that time and 1987, the La stool at any point in time demonstrated in any way that the disputed lands are not family land but stool land and that the La Stool took any steps to assert its title to the land.

When these set of facts are put on the scale, the facts supporting the Defendant's assertion far outweigh that of the Plaintiff. I am inclined to believe that the Plaintiff is now putting up this claim of ownership of the Ogbojo lands because of the commercial value those lands have in recent times acquired.

With the evidence of the Defendant supported by the acknowledgement of the former occupant of the La Stool and the La Mankralo, coupled with Plaintiff's own witness, PW2 Emmanuel Torgborfio Kwaku's signatures on indentures executed by the chief and elders of Ogbojo admitting that they are the owners of the land, I have no cause to reject the fact that the Ogbojo lands are family lands belonging to the Anahor and Dzirase families of Ogbojo. I do hereby declare the land in dispute in this case described as Ogbojo lands the property of the Anahor and Dzrase families of Ogbojo. The property being family property the consent of the La Stool is not needed in making grants of the said land."

Based on the above findings, the learned trial judge entered judgment for the Defendant and dismissed Plaintiff's case. Earlier on in her judgment, the trial judge had dismissed the case against the co-defendant as having been unnecessarily joined to the suit. (See page 259-260 of the record)

Obviously aggrieved by the decision at the trial, Plaintiff filed an appeal in the court of appeal on the following grounds:

GROUNDS OF APPEAL

1. The judgment is manifestly against the weight of evidence adduced at the trial.
2. The learned trial judge erred in law when she dismissed the case against the co-defendants on the ground that the pleadings did not disclose any cause of action against them.

3. The learned trial judge erred in law when she misconstrued the judgment in Nartey v Mechanical Lloyd and erroneously relied on the misconstruction to give judgment to the Defendant.
4. The learned trial judge erred in law when she held that the Plaintiff is estopped by conduct from laying claims to the land in dispute in the action.
5. The learned trial judge erred in law when she relied on statements allegedly made by the Plaintiff's deceased predecessor that the land in dispute in the action belongs to the Defendant and on the basis of that held the Plaintiff to be bound by them.
6. The learned trial judge erred when she relied on evidence not related to the determination of the suit to give judgment to the Defendant.
7. The learned trial judge erred in law when she relied on Exhibits 11, 11A-11F to give judgment to the Defendant when the basis of the said Exhibits were defective.
8. The costs awarded by the learned trial judge were unreasonable and excessive.

On the 17th of January 2008, the Court of Appeal set aside the judgment of the trial court. The learned judges of the Court of Appeal were of the view that the Supreme Court nearly failed to provide a clear decision in the Nartey v Mechanical Lloyd case already referred to as to lead the lower courts. They therefore made a finding that the Ogbojo lands were La Rural lands belonging to the La Stool and accordingly declared title in the stool. The Court also reinstated the suit against the Co-Defendants, the reasoning being that they are third party beneficiaries of the wrongful alienation of La Stool lands and therefore stand to gain or lose at the end of the process.

APPEAL TO SUPREME COURT

As is to be expected, the losing parties in the Court of Appeal, being aggrieved appealed to the Supreme Court.

The Defendant filed the omnibus ground of appeal that the judgment was against the weight of the evidence on the record.

The Co- Defendants, listed three grounds of appeal as follows

i. Their Lordships erred when they set aside the trial judge's order striking out the appellants from the suit on the grounds that the pleadings did not disclose any cause of action against the appellants.

ii. Their Lordships erred when they held that the trial judge was in error when she held that the respondent was estopped by conduct from claiming that the Ogbojo lands belonged to the appellant's grantor, the Ogbojo Mantse.

iii. There was no evidence upon which their Lordships could find that the appellants documents of title were registered clandestinely.

I will proceed to deal first with the issues raised by the Co-Defendants grounds of appeal.

What are the circumstances which make it proper to join a party to an action? The test was laid out by the Supreme Court in the case of **SAM (No. 1) v ATTORNEY-GENERAL [2000] SCGLR 102** where the majority of the Supreme Court (per Ampiah JSC Atuguba dissenting) held as follows:

> **"generally speaking, the court will make all such changes in respect of parties as may be necessary to enable an effectual adjudication to be made concerning all the matters in dispute. In other words, the court may add all persons whose presence before the court is necessary in order to enable it effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter before it. The purpose of the joinder therefore is to enable all matters in controversy to be completely and effectually determined once and for all. But this would depend upon the issue before the court, i.e. the nature of the claim."**

Applying the facts in the instant case to the ratio above, what was the nature of the Plaintiff's claim? The Plaintiff was asking for a declaration of title to all Ogbojo lands and an order of perpetual injunction restraining the Defendant from disposing of Ogbojo lands or any part thereof without the approval and consent of the Plaintiff. From a reading of Plaintiff's reliefs, it is difficult to appreciate how Co-Defendants addition to the suit will help in resolving the question of who has a better title to Ogbojo lands. It is clear that their presence will in no way facilitate the effectual determination of the

matters in issue, and with due deference to their Lordships in the Court of appeal, they were wrong in overturning the decision of the trial court in dismissing the suit against the Co-Defendants.

Further, 2nd Co-Defendant protested that he had no interest at all in the suit and was not a proper party to the suit. It can be glimpsed from the record that the only reason for him being joined was as a result of his position as Managing Director of 1st and 3rd Co-Defendants. Indeed, it is a worn-out principle of law that a limited liability company is distinct from its members. See case of **Salomon & Co v Salomon [1897] AC 22 H.L.** This means that a company which has its own distinct legal identity, can sue and be sued, is different from persons employed by it. In the unanimous decision of this court in the case of **Morkor v Kuma [1998-99] SCGLR 620**, Sophia Akuffo JSC delivering the lead judgment stated as follows:

> "Since the Appellant had been jointly sued with the 1st Defendant, a limited liability company, for the only reason that she was the chief executive, main shareholder and a director of the company, she would be a proper party to the suit only if a specific personal liability were established against her…"

The fact of joinder in this instant case fits squarely into that of Morkor v Kuma supra and it is manifest that no claim of specific personal liability has been established against the 2nd Co-Defendant. In the interest of justice, the order of their Lordships in the Court of Appeal against the Co-Defendants generally would be reversed and the one made by the trial judge affirmed only to the effect that 2nd Co-Defendant be struck out as a party. This is because; it is only the distinct legal and corporate entities that will be maintained as parties to the suit. What must be noted is that, any decision in the matter one way or the other will affect the interests of the 1st and 3rd Co-Defendants as they stand to benefit from a judgment in favour of the Defendant who is their grantor. I will therefore maintain the 1st and 3rd Co-Defendants as parties in the case.
Having resolved the issue of joinder, I find it unnecessary to deal with the other grounds of appeal filed by the Co-Defendants.

The Defendant's sole ground of appeal was that the judgment was against the weight of evidence. This court has stated time without number that an appeal was by way of a

rehearing. In **Tuakwa v Bosom [2001-2002] SCGLR 61, Sophia Akuffo, JSC** delivering the unanimous judgment of the court held thus:

> "an appeal is by way of re-hearing, particularly where the Appellant alleges in his notice of appeal that the decision of the trial court is against the weight of the evidence… In such a case, it is incumbent upon an appellate court, in a civil case, to analyse the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial before arriving at its decision, so as to satisfy itself that on a balance of probabilities, the conclusions of the trial judge are reasonably or amply supported by the evidence".

In reviewing the entire record, I have set out earlier the findings of fact which informed the decision of the trial judge in arriving at her findings. Again, thanks to this court, the principle has been firmly laid on when an appellate court would be entitled to interfere with the findings of a lower court. I will cite some of these cases in support.

In Re Okine (decd); Dodoo & Anor. v Okine & Ors [2003-2004] SCGLR 582 laid down the principle as follows

> "An appellate Court must not disturb findings of fact made by a trial Court, even if the appellate court would have come to a different conclusion, unless the findings of fact made by the trial judge were wholly unsupportable by the evidence. Therefore, where the evidence was conflicting, the decision of the trial court as to which version of the facts to accept was to be preferred, and the appellate court might substitute its own view only in the most glaring of cases. That was primarily because the trial judge had the advantage of listening to the entire evidence and watching the reactions and demeanour of the parties and their witnesses…"

In Re Krobo Stool (No.1); Nyamekye (No.1) v Opoku [2000] SCGLR 347 basically re-echoes the point made above.

As per Atuguba JSC, " it is a worn-out principle of law that findings of fact made by a trial court are presumed to be right…"

Akuffo JSC also made the point that "if the totality of the evidence on record sufficiently supports the conclusion…, it is not our function as an appellate Court to substitute our evaluation of the evidence in place of Nananom merely on the basis that, from our perspective, particular pieces of evidence ought to have been assigned more or less weight…"

It was further held by Atuguba and Akuffo JJSC that since the parties had proffered conflicting traditional evidence in support of their respective claims, the law required that recent events supporting the claim of either party should sway the determination of the dispute. Thus the evidence of traditional history tested against recent events, relied upon by both the Kumasi Traditional Council and the National House of Chiefs in preferring the defendant's version of the founding of the Krobo Stool was amply supported by the totality of the evidence on record"

The above dictum admits of no ambiguity in applying it to the present case. The trial judge had laid out the findings of fact as could be gleaned from the record and indeed gave reasons why she preferred the account of the Defendant to the Plaintiff. In fairness to the trial judge her conclusion was amply supported by the evidence on the record. With all due respect to their Lordships in the Court of Appeal, even if they disagreed with her conclusions, they were bound by the decisions supra of the Supreme Court and should have adverted their minds to it before over turning the decision of the learned trial judge, especially on the facts.

The Supreme Court speaking with one voice through Dotse JSC, in the unreported case of ASSEMBLIES OF GOD CHURCH, GHANA vs RANSFORD OBENG & ORS C.A. J4/7/2009, 3rd February, 2010 CORAM: Date-Bah JSC, Presiding, Adinyira, Owusu, Dotse and Anin-Yeboah JJSC reiterated the same principles of law on findings of fact by a trial court and referred to the following cases as well.

1. **ACHORO v AKANFELA [1996-97] SCGLR 209, Holding 2**
2. **THOMAS v THOMAS [1947] All ER 582**
3. **AKUFO-ADDO v CATHLINE [1992] 1 GLR 377**, per Osei-Hwere JSC, just to mention a few.

In the Assemblies of God v Ransford Obeng case referred to supra, Dotse JSC stated that, unless an appellate Court, such as this Court and the Court of Appeal for that matter, are satisfied that there are strong pieces of evidence on record which are manifestly clear that the findings of fact by the trial court are perverse and therefore unreliable, the appellate Court must be slow in interfering with the said findings of fact.

The rationale for this is based on the principle that it is the trial court that had the advantage of observing the demeanour of the witnesses that testified before it. The said court is therefore best placed in a position to make definite findings of fact, using the credibility and demeanour to assess the probative value of the said witnesses.

In the instant appeal, just as was held in the Assemblies of God case, I find no compelling reason to disturb the findings of fact so ably formed by the trial court and accordingly hold that the Court of Appeal was wrong to disturb those findings, and they are accordingly set aside.

Further, on the question of law, the issue of estoppel by conduct was raised and resolved by the trial judge, relying on the ratio in **Nartey v Mechanical Lloyd** supra. The judge held that even if Plaintiff succeeded in laying claim to the land, they were estopped by conduct from so doing. The Supreme Court had earlier on held in the Mechanical Lloyd case that the La Stool was estopped by conduct from asserting any claim to the land. Per Adade, Taylor and Wuaku JJ.S.C it was held that

> ***"by the mandatory provisions of section 25 (1) of the Land Registry Act, 1962 (Act 122) the registration of a deed of sale constituted actual notice of the fact of registration to the whole world. Consequently, on the assumption that the La Mantse was the true owner of Frafraha lands, he had intentionally for very many years and certainly since 28 September 1969 led the general public by his deliberate omission or failure to assert his ownership to believe that the Agbawe family of Frafraha were the owners of Frafraha lands. At any rate the stool had by its inaction permitted the general public including the appellant and***

even the government to believe that it had no objection to the conveyances made by the Agbawe family. In the circumstances the stool could not now assert any title against an innocent purchaser who had dealt with the Agbawe family following the La stool's inaction and acquiescence. Consequently, as against the appellant, the La stool were estopped by conduct from impugning the appellant's title which had been perfected by registration and his possessory acts."

The facts which informed the above decision in the Nartey case are basically the same in the instant case. There is no evidence on the record that the La stool ever raised any objection to the alienation of the Ogbojo lands or had ever given its consent or made any grants on its own. If indeed it owned the lands, then the trial judge was right in making the finding that it had stood by and allowed the people of Ogbojo to believe that they indeed had absolute ownership of the land. The learned trial judge was therefore right in the observation made that the La Stool was making claims to the land because it had appreciated in value, and this was supported by the record and in holding that they were caught by the equitable doctrine of estoppel by conduct in applying the law to the facts as on the record. I am inclined to agree with Counsel for the Defendant that the learned Justices of the Court of Appeal took a very blasé view of the appeal especially on the law and in consequence came up with the wrong findings, not supported by the record.

This is what the Appeal Court had to say with regard to the issue of estoppel;

"Grounds 4 and 5 are in pari material. This concern the issue of estoppel by the conduct of the predecessor of the Plaintiff. The finding of the trial Court on laches and acquiescence arise from the evidence of the Defendant and Co-Defendant to the effect that Nii Anyetei Kwakranya informed Co-Defendant that Ogbojo lands belong to the people of Ogbojo and therefore the co-defendant was sent to Ogbojo to acquire land from the Defendant. It is our considered view that the way that piece of event was rendered turns customary law on its head. The custom known all over this country is that where a sub-chief or

headman is in charge, the paramount chief would not personally or directly allocate land. The proper thing to do is to send the person looking for land to the person in charge and "report" for consent or concurrence..."

With all due respect to the learned justices, this cannot be a true statement of the law. The Constitution, 1992 defines customary law to mean the rules of law, which by custom are applicable to particular communities in Ghana. Reference Article 11(3) . There cannot be a general application of customary law to all communities in Ghana as they vary from community to community. The conclusion reached by the judges in the Court of Appeal is too sweeping and general and not supported by the record. Accordingly, it cannot be allowed to stand.

The assertion by the Court of Appeal on the reception of the estoppel by conduct evidence in relation to the conduct of Nii Anyetei Kwakwranya, the predecessor of the respondent herein is full of flaws that there is the urgent need to correct that proposition of law.

1. In the first place, there is this case of WIAPA & ANOR. v SOLOMON & ANOR [1905] Ren. 410 which established the principle that "ownership of land by a Head Stool necessarily implies ownership of it by sub-stools, quarters or families under the Head Stool and that the immediate control of lands is vested in the sub-stools, quarters or families."

This principle of law has over the years been gradually transformed into situations where the sub-stools or families hold land in their own right by virtue of their long and undisturbed period of possession or by virtue of the different incidents of ownership as occurs in different parts of the country.

2. Secondly, the Courts have taken judicial notice of the fact that Quarter lands exist not only in Osu and Labadi, but in Teshie as well. This therefore means that the Quarter lands are a distinct type of land ownership, unique and applicable to lands and communities in the eastern coastal Ga communities of Osu, La, Nungua and Teshie, See cases of T.A Osae & Ors vrs Numo Nortey Adjeifio & Ors [2007-2008] SCGLR 499, Akwei v Awuletey & Ors [1960] GLR 231 @ 236 S.C and
Nii Bonney III v Hammond & Ors 14 (WACA) 492.

These cases illustrate the existence of a unique system of land holding applicable to separate and distinct communities. This is then not a customary rule of practice which is of wide application throughout the country.

In the case of Seraphim v Amua-Sakyi [1962] 1 GLR 328, Ollenu J, (as he then was) stated the principle that a paramount stool cannot alienate land which has already been granted by the sub-stool, implying that the sub-stool might have alienated without reference to the paramount stool and therefore without its knowledge. Even though the Amua-Sakyi case supra was reversed on appeal, it was on grounds other than the customary law position stated by Ollenu J, and referred to supra. This customary law position was approved by Azu-Crabbe J.A (as he then was) in Odoi v Hammond [1971] 1 GLR 375. C.A.

The above cases are just a few referred to, to illustrate the fact that the case law position is exactly what the Constitution 1992, states in Article 11(3) that customary laws are the rules of law, which by custom are applicable to particular communities in Ghana. Thus for instance, in the Ewe speaking areas of the Volta Region, where Stool lands are basically non-existent, it will be a travesty of justice to apply the principle of customary law usage propounded by the Court of Appeal, since the Stools do not own land in those parts of the country.

Another compelling and good reason why the position stated by the Court of Appeal cannot be allowed to stand is the opinion stated by Adade JSC, which I agree with in the case of **NARTEY V MECHANICAL LLOYD ASSEMBLY PLANT [1987-88] 2GLR 314** holding (a) where he stated as follows:

> "In our customary law the concept of ownership, particularly of land, is not the same as in 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 care and possession of a sub-stool, control often becomes a shared responsibility between the paramount stool and the sub-stool."

For the above reasons, the judgment of the Court of Appeal with respect is flawed and it should not be allowed to stand. This is because basically, the Court of Appeal decision is at variance with the evidence on record in the trial court and secondly, had been based on wrong principles of law.

SCOPE OF THE DECISION IN THE CASE OF C. BOI OWUSU and A.A DSANE-Appellants vrs MANCHE OF LABADI-Respondent 1[WACA] 278, dated 15th May, 1933.

The undisputed facts in the above case are that, the appellants who are subjects of the La (badi) Stool proved that they and their ancestors had been in possession of the land acquired by Government for at least four generations and that their original ancestor found the land unoccupied. They therefore contended that the land had become their private property and unsuccessfully proved their acts of ownership.
The respondent on the other hand proved that the La people originally acquired a large area of land, including the area of land in question by conquest and that many subjects of the La Stool had settled on the land so acquired. The Court held on appeal that ***"long and uninterrupted user of land by subjects of Stool is not in itself sufficient to oust the title of the Stool"***

In the case of **NARTEY V MECHANICAL LLOYD ASSEMBLY PLANT**, the majority of the Supreme Court held as follows:

> "The fact that the La Mantse was the proper authority to alienate or grant portions of La stool lands could not be disputed ***save that the general proposition was qualified."***

What then can be said to be the qualifications which will derogate from the basic principle so stated supra?
In the first place, the proposition of law is premised upon the fact that the land in dispute belongs to the La Stool or to the Head Stool. However, as in the instant case, where the trial court made definite findings of fact, based upon evidence that had been led before it, that, the Ogbojo Stool, and not the La Stool owned the allodial title, this fact is incontrovertible and is accepted as a correct finding of fact.

In the circumstances, the premise upon which the Owusu v Manche of Labadi case had been decided is inapplicable in the instant case and therefore cannot hold. For example, in the majority opinions of Adade and Taylor JJSC, they took pains to explain the inapplicability on a wholesale basis the principle of law in the Owusu case referred to supra. After reviewing the Owusu v Manche of Labadi case and a long line of cases including Baddoo v Ayorkor (1949) DC Lands 48-51, 149 @ 151, which seems to suggest that a sub-stool has no right to make grants to a stranger without the consent of the Head Stool, in contra distinction to Aryee v Adofoley (1951) 13 WACA, 161, which held that the Head Stool may not make any grants of such land without consulting the sub-stool, to cases like Akwei v Awuletey [1960] GLR 231 and applying those principles to the Nartey case, Adade JSC observed as follows:

"Applying these principles:

(a) The grant by the Frafraha Mantse to the plaintiff (exhibit B) with concurrence, be it constructive, of the Atofotse is valid.

(b) The grant by the La Mantse to R.A. Darko (exhibit R1/CA1) is invalid in so far as it purports to grant any portion of the land comprised in exhibit B, which to the knowledge of the La Mantse had already been given to the plaintiff by the caretaker sub-stool.

(c) In any case the grant exhibit R1/CA1 is invalid, as it was made without reference to the sub-stool of Frafraha.

All the above is on the footing that the land is La stool land and that the defendants can validly plead the title of R.A. Darko."

From the above, it is clear that Adade JSC did not feel any inhibition to make the deductions he made irrespective of the decision in the Owusu case referred to supra. Clearly therefore, a sub-stool such as the Frafraha Stool, in an action where it had been established that the land is even La Stool land went further to hold that grants by the

La Stool in respect of land already granted by the sub-stool to the Plaintiff would be declared invalid and were so held.

It is not surprising therefore that, Adade JSC continued with the following statement in the Nartey case. Ref page 343 of the report:

> "Apart from the defendants' admissions, the La Mantse's claim to ownership is further weakened by the conduct of the La stool subsequent to the decision in Owusu (supra), as shown in the instant proceedings. Not only did the La stool fail to prove any acts of ownership over any of these lands, e.g. by grants made by it, or by calling the sub-stools to account to it, but which the La stool sought on one singular occasion to lay any claim to the land at Frafraha, the Agbawe family readily repelled the claim and caused their lawyer to issue a public notice (exhibit V) to the effect that the La stool has no land in Frafraha; the land belongs to the Agbawe family and all persons who want land should go to that family. The notice was public, and widely published in September 1967. It came to the notice of the La Mantse, and he simply recoiled into his shell, in all probability on the advice of his elders who knew better. In these proceedings he had every opportunity to explain his position in relation to the notice, but he did nothing, implying that he had none to offer. Following upon this notice the Frafraha Mantse continued to make grants to several people. So also did the Mantsemei of Adentan, Mpehoasem, etc all without reference to the La Mantse, ***It would seem to me that on the evidence the La Mantse's claim to own those lands is, to say the least, tenuous, Owusu (supra) notwithstanding."***

The death knell of the effect of the decision in Owusu appear to have been loudly sang in the words of Adade JSC which clearly asserted the rights of the sub-stools to make grants of the stool lands.

Taylor JSC of blessed memory, on his part went straight to the point and sought to limit the scope of the operation of the principle established by the West African Court of Appeal (WACA) in the Owusu case in 1933.

Per Taylor JSC:

> "One very relevant fact which no doubt influenced and apparently dominated the reasoning of the Court of Appeal in this case, is part of proceedings in a 1932 suit which was tendered in evidence and in which the predecessor in title of the appellant's grantor, one Adjaye Komi, had clearly given evidence that Frafraha lands belonged to the La Stool. It would seem that this was evidence given in the case which ultimately went on appeal to the West African Court of Appeal and is reported as Owusu v. Manche of Labadi (1933) 1 W.A.C.A. 278… There is no doubt at all that in Owusu v Manche of Labadi (supra) were firm pronouncements made that Frafraha lands are La Stool lands.
>
> In **Hammond vrs Odoi [1982-83] GLR 1215, SC** we dealt with approval, quite exhaustively with the holding in the Court of Appeal that Osu rural lands properly belonged to the Osu Stool. La and Osu are contiguous and would seem to have not too divergent customary practices, it is not therefore easy, nor am I prepared to resist the implication in the Owusu case (supra) that La rural lands belong to the La stool. **Both cases however, did not hold that it is impossible for a family to acquire ownership of a rural land and until the facts grounding the ownership of a particular family are tested in a judicial forum against the claim of a stool said to own a rural land, I confess quite frankly that I am not prepared, nor am I in a position to make a judicial pronouncement on the matter. That problem in my view does not arise in this appeal"**

In view of the doubts operating on the mind of Taylor JSC in this Owusu case and its general application, Taylor JSC stated quite clearly that, in the interest of justice, and having regard to the Owusu case, and for the purpose of this case, only he was prepared to accept the evidence led by the La Manste that "the Mantsemei of Adentan, Oyarifa and Frafraha holds the lands in their respective villages as caretakers for the La Stool".

With this caveat, and taking the antecedents of the instant case into consideration, is it not clearly established by the evidence led by the Mantse of Ogbojo in respect of the long period of uninterrupted usage, control and alienation of the lands in dispute without any reference to the La Stool had crystallised into rights of ownership which the La Stool can no longer contest and plead the Owusu case as an estoppel per rem judicatam?
It would appear therefore that, the Owusu case had been put into a scenario capable of different applications depending upon the circumstances of each case.

It was this window of hope and expansion that has been made in the Owusu case over the years that emboldened the learned trial judge not to apply it. In any case, as observed by both Adade and Taylor JJSC, it was not of general application.
As recent as 7th May 2008, the Supreme Court in the case of **T. A. Osae and others vrs Numo Nortey Adjeifio and others** (supra) held that the Otinshie family, represented by the plaintiffs therein, had absolute title to the area of land their ancestors had reduced into their possession, that is the building, farms lands and cemetery.
The decision of the Supreme Court was premised upon the fact that, the Otinshie village of the plaintiffs therein, a Teshie family was in existence and occupied by the plaintiffs family before the creation of quarter lands out of the Teshie stool lands.
In the T. A. Osae and others case, the Supreme Court identified 1927 as the year in which the Quarter lands were shared among the five Quarters of Teshie. That being the case, it presupposes that, the Otinshie family must have settled and occupied this Otinshie village, long before 1927.
Long and uninterrupted possession, occupation, coupled with the incidents of ownership and occupation together with the overt acts of ownership are crucial in any determination between rival claimants of allodial title especially as in the instant case, where one of the claimants is a Head Stool and the other a sub-stool.

My opinion on this matter is that, the Owusu case (supra) in view of recent developments in the case law of Ghana cannot be said to be of general application.

In any case, the appellant has in my view been able to lead satisfactory evidence that will convince any court that the La Stool did not have any rights of ownership which will divest the appellants of title.
Ogbojo lands, are certainly not La rural lands over which the La stool has ownership rights. The appeal succeeds on this ground as well.

CONCLUSION

From the analysis made supra, and on the totality of the evidence both on the facts and the law, it is clear that, the learned trial Judge came to the right conclusions based on the record of evidence led before her.
In the circumstances, the appeal herein succeeds and the judgment of the Court of Appeal dated 17th day of January, 2008 is accordingly set aside together with all the orders made by them save the order re-instating the case in respect of the 1st and 3rd co-defendants.

In the result, the judgment of the learned trial High Court Judge, dated 17th day of February, 2004 is affirmed in its entirety that the Ogbojo lands are not La rural lands belonging to the La stool or the respondent herein, but belong to the Anahor and Dzrase families of Ogbojo who own these lands in dispute.

The only exception I wish to make is that, since from the record, the land in dispute was conveyed by the appellant to the 1st and 3rd Co-defendants/appellants herein, it goes without saying that as corporate entities capable of suing and being sued, the action is maintainable against them. This is because the purpose of Joinder of parties is to ensure that all necessary parties whose presence will help effectually determine all issues in controversy are necessary parties. Accordingly, I will strike out the 2nd co-defendant/appellant and state that his presence is not necessary in the case.

Save as stated above, the appeal filed by the appellant against the judgment of the Court of Appeal of 17/1/2008, succeeds and is accordingly set aside, whilst the judgment of the High Court, dated 17/2/2004 is affirmed.

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

BAFFOE-BONNIE, JSC:

I also agree that the appeal be allowed, the court of appeal be reversed and the judgment of the trial high court judge be reinstated.

Since the facts giving rise to this case have been ably recounted by my brother **Dotse JSC,** I will in large measure skip same unless it is for purposes of emphasis.

The substantive issue for determination in this case is very much settled and not in doubt at all. It is that "who is the allodial title owner of the Ogbojo lands in Accra?"

Whist the plaintiff/appellant/respondent (hereinafter referred to as the plaintiff), claims allodial ownership of the said lands on behalf of the La Stool, by virtue of conquest, the defendant/respondent/appellant(defendant) claims allodial ownership on behalf the Anahor and Dzirase families of Ogbojo village, on account of first settlement of the place.

The evidence of their respective claims as established by evidence adduced at the trial, will be set out presently, but before then certain facts of no divergence were established at the trial.

1. *It was established at the trial that the first occupiers or settlers of the Ogbojo lands are the Anahor and Dzirase families.*
2. *That the members of the Anahor and Dzirase families are originally from La.*

In traditional customary law allodial title to land can be acquired through

1. *a long period of settlement of a vacant or an otherwise unoccupied lands or,*
2. *conquest, through war, of the original occupiers of a land.*

By their very nature, these two modes of acquisition of allodial ownership must predate the formation of nation states. It must also be noted that settlement on, or long occupation and user of, an otherwise vacant land by the subjects of a particular stool may or may not confer allodial ownership of the land in the stool whose subjects first settled on the land. Conversely the user of land by subjects, the allodial title of which is vested in a stool, no matter how long, does not divest the stool of such allodial title. Each case has to be treated on its merits.

These were the issues for determination in the case of **Owusu v Manche of Labadi (1933)1 WACA 278**.The facts of that case were that;

The appellant, who are subjects of the La(Labadi), proved that they and their ancestors had been in possession of the land acquired by Government for at least four generations, and that their ancestor who first took possession of the land found it unoccupied. On these grounds they contended that the land in question had become their private property. They also sought to prove certain acts of ownership on the part of their ancestors, but failed.

The respondent, on the other hand, proved that the Labadi people had originally acquired a large area of land including the land in question by conquest, and that many subjects of the Labadi stool had settled on the area so acquired. On these grounds he contended that the appellants were merely enjoying the use of stool land in accordance with native custom, and that their long and uninterrupted user had not ousted the original title of the stool.

Held, **long and uninterrupted user of land by sujects of stool land is not, in itself, sufficient to oust the title of the stool**"

In her judgment, the Learned Trial Judge had painstakingly sifted through the morass of evidence and set out the issues and undisputed facts. She said,

"Though the issues set down for trial in the summons for directions numbered about 20, the salient ones that stood out for determination at the close of evidence are set out in the address of plaintiff counsel and I will summarize them as follows:

1. Whether Ogbojo lands are La stool lands acquired by conquest
2. Whether or not grants of Ogbjo lands could only be made with the approval of the La Manche
3. Whether the Plaintiffs are estopped from laying claims to Ogbojo lands

4/ Whether Ogbojo lands are owned by the Anahor Dzirase families and whether they had been in long uninterrupted possession without any let or hindrance from the La stool.

In the case of **Nartey v. Mechanical Lloyd (1987-88)2 GLR 315 Justice Taylor** said,

"I am not prepared to resist the implication in the Owusu case that La rural land belong to la stool. Both cases however did not hold that it is impossible for a family to acquire ownership of a rural land until the facts grounding the ownership of a particular family are tested in a judicial forum against the claim of a stool said to own the land"

Referring to this statement made by **Taylor JSC** and juxtaposing same with the reasoning behind the decision in the case of **C.B. Owusu v. Manche**(supra) (which had been copiously cited by both counsel, the learned trial judge set the tone for her judgment with this poignant statement,

"The implication I gather from this is that irrespective of the decision in the C.B. Owusu case, if the Dzirase and Anahor families of Ogbojo are able to prove their ownership of the Ogbojo lands effectively, this court can pronounce them owners of the land."(emphasis added)

Summarising the evidence adduced before her the Learned Trial judge noted the following facts as grounding the claim of the parties. On the defendants she said

"a. their ancestor Okotse Adjah or Torgbotse Adjah found the land through hunting and searching for herbs

b. Nii Okangfio later joined Okotse Adjah and together they established the Ogbojo village, the descendants of these two men have exercised acts of ownership over the years without any objection from the La stool.

c. the plaintiff's predecessor Nii Anyetei Kwakranya a former occupant of the La stool acknowledged the Ogbojo people's ownership of the land.

d. the La Mankralo, in a ruling, exhibit 3, publicly declared the descendants of Okotse Adjah as the owners of the Ogbojo lands. Notice of this declaration dated 9th March 1990; exhibit 22 was served on the plaintiff .

e. the grantees of the Ogbojo Lands have had their documents registered for over 20 years without any objection from the La stool.

"On the part of the plaintiff, I have the following facts:

a. Lands stretching from the foot of the Akwapim hills to the present position of La at the coast are La Stool lands acquired by conquest . (The validity of this fact had been destabilized by

i. DW2's evidence which was not challenged that part of the land lying below the foot of the Akwapim Hills belong to the people of Teshie.

ii. Exhibits 8&9 , which show that Malejon and Manhia which are villages at the foot of the Akwapim hills and are described as La villages have some of their lands, owned by families.)

b. Evidence adduced by the plaintiff to specifically define the boundaries of the La stool lands cannot be relied upon for reasons I have already given.

c. The plaintiff's predecessor acknowledged the fact that the Ogbojo lands are family lands and acted in respect of that fact without any objection from his elders.

The defendant's evidence before me is that their ancestors had occupied the land as to their property long before 1865. the plaintiff has not led any evidence to show that between that time and 1987 the La stool at any point in time demonstrated in any way that the disputed lands are not family land but stool land and that the La stool took any steps to assert its title to the land.

When these set of facts are put on scale, the facts supporting the defendant's assertions far out weigh that of the plaintiff. I am inclined to believe that the plaintiff is now putting up this claim of ownership of the Ogbojo lands because of the commercial value those lands have in recent times acquired.

With the evidence of the defendant supported by the acknowledgements of the former occupant of the La stool and the La Mankralo, coupled with Plaintiff's own witness PW2 Emmanuel Torgborfio Kwaku's signatures on indentures executed by the the chief and elders of Ogbojo admitting that they are the owners of the land , I have no cause to reject the fact that the Ogbojo lands are family lands belonging to the Anahor and Drase families of Ogbojo . The property being family property the consent of the La Stool is not needed in making grants of the said land." (emphasis added**)**

I dare say that the conclusion arrived at by the Learned Trial Judgse is very much in tune with the evidence before her. I believe that if the learned Justices of the Court of Appeal had exercised a little bit more care this decision would not have been disturbed. But they allowed themselves to be swayed unnecessarily by what they felt was the import of the C.B.Owusu case earlier referred to.

In the **Nartey v Mechanical Lloyd case(supra**) both **Adade JSC and Taylor JSC** commented on the limitations of the **CB Owusu case**. At pg 343 of the report ADADE JSC said,

"*Apart from the defendant's admission, the La Mantse's claim to ownership is further weakened by the conduct of the La stool subsequent to the decision in Owusu(supra), as shown in the instant proceedings. Not only did the La stool fail to prove ownership over any of these lands, e.g. by grants made by it, or by calling the sub-stools to account to it , but when the La stool sought on one singular occasion to lay claim to the land at Frafraha, the Agbawe family readily repelled the claim and caused their lawyer to issue a public notice (exhibit V) to the effect that the stool has no land in Frafraha; the land belongs to the Agbawe family and all persons who want land should go to that family. The notice was public, and widely published in September1967. It came to the notice of the Mantse, and he simply recoiled into his shell, in all probability on the advice of his elders who knew better. In these proceeding she had every opportunity to explain his position in relation to the notice, but he did nothing, implying that he had none to offer. Following upon this notice the Frafraha Mantse continued to make grants to several people. So also did the Mantsemei of Adentan,* Mpehuasem etc, *all without reference to the La Mantse. It would seem to me that on the evidence the La Mantse's claim to own those lands is to say the least, tenous, Owusu(supra) notwithstanding*."

Taylor JSC on his part expressed his doubts of the universal applicability of the Owusu case in the following words

"In **Hammond v.Odoi 1982-83 GLR 1215 SC**, we dealt, with approval , quite exhaustively, with the holding in the court of appeal that Osu rural lands properly belonged to the Osu stool. La and Osu are contiguous and would seem to have not too divergent customary practices. It is not therefore easy, nor am I prepared to resist the

implication in the Owusu case (supra), that La rural lands belong to the La Stool. **Both cases however, did not hold that it is impossible for a family to acquire ownership of a rural land** and until the facts grounding the ownership of a particular family are tested in a judicial forum against the claim of a stool said to own a rural land, I confess quite frankly that I am not prepared, nor am I in a position to make a judicial pronouncement on the matter. That problem in my view does not arise in this appeal."(emphasis added)

That problem referred to by Taylor JSC arose in the recent case of **T.A Osae and others v. Numo Nortey Adjeifio and others (unreported) suit no J4/22/2007 dated 7th May 2008**

In that case the Otinshie family had laid claims to certain vast lands around Adjiringano. This was resisted by the Teshie stool. The Supreme Court, per Brobbey JSC, said that the Otinshie family had absolute title to the area of land that their ancestors had reduced into their possession, including their buildings farmlands and cemetery. The court came to this conclusion notwithstanding the fact that the Otinshie family is actually a Teshie family. The court's decision was premised on the fact of long and uninterrupted possession and occupation, plus the exercise of overt acts of ownership by the Otinshie family to the exclusion of the Teshie stool.

It is the same problem that the trial high court judge was confronted with in this case. Was the land owned by the Ogbojo people to the exclusion of the La stool or it was owned by the la stool with the Anahor and Dzirase families as mere caretakers?

At the High Court the traditional history led by the defendants as to how Ogbojo lands were acquired by their ancestors as far back the 19th century, was not challenged. The plaintiff on the other hand did not lead any evidence to show that between the 1860's and 1987 the la stool at any point in time demonstrated in any way that the disputed lands are not family land but stool land and that the La stool took any steps to assert its title to the land in dispute.

In the case of **Adjei-bi Kojo V Bonsie (1957) 3 WALR 257,** it was stated that where in a land suit the evidence as to title to land is traditional and conflicting, the surest guide is to test such evidence in the light of recent acts to see which is preferable. Not only did the defendants fail to lead any traditional evidence, be it conflicting or confirmatory of that of the defendants, evidence of recent acts in relation

to the land went against them. Evidence of recent acts established by the trial judge on record can be summarised as follows;

(i) The plaintiff's predecessor Nii Anyetei Kwakranya, a former occupant of the La stool acknowledged the Ogbojo people's ownership of the land when he personally directed the 2nd co-defendant to go and see the Ogbojo chief for land for his estate development.

(ii) The La Mankralo, in a ruling, exhibit 3, publicly declared the descendants of Okotse Adjah as the owners of the Ogbojo lands. Notice of this declaration dated 9th March 1990, exhibit 22 was served on the plaintiff.

(iii) Grantees of the Ogbojo Lands have had their documents registered for over 20 years without any objection from the La stool. Exhibits 4, 11,11a-11f are registered instruments made by Ogbojo chief and his elders of the land in dispute without seeking the consent of the la stool.

Quite frankly with this overwhelming evidence, traditional and recent, as well as documentary, the plaintiffs had a tall order convincing any court that, as against the Anahor and Dzirase families, the La stool had allodial title over Ogbojo lands. The trial High Court judge's conclusion that the allodial titled was vested in Ogbojo people to the exclusion of the La Mantse is supported by evidence, is unassailable and I will not disturb same.

The issue of the wrongfulness or otherwise of the joinder of the co defendant to the action has been adequately dealt with by my brother Dotse, JSC and I support the conclusion he reached thereon.

To conclude therefore, I will allow the appeal, set aside the decision of the court of appeal and reinstate the decision of the Trial High Court on the substantive issue of who owns the allodial title to the Ogbojo lands.

P. BAFFOE-BONNIE
JUSTICE OF THE SUPREME COURT

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KIZITO BEYUO FOR THE CO-DEFENDANTS/APPELLANTS