IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA AD 2015

CORAM: WOOD CJ (PRESIDING)

ANIN YEBOAH JSC

BAFFOE BONNIE JSC

GBADEGBE JSC

BENIN JSC

CIVIL APPEAL

NO.J4/30/2014

25TH JUNE 2015

THE REGISTERED TRUSTEES OF THE CATHOLIC CHURCH ACHIMOTA - ACCRA ... PLAINTIFF/ RESPONDENT /RESPONDENT

VRS

1. BUILDAF LTD
2. MR. ABU
3. MOHAMMED ASAMOA - KWANING
... DEFENDANTS/APPELLANTS /APPELLANTS

JUDGMENT

BENIN, JSC:-

The Plaintiffs/Respondents/Respondents, hereinafter called the Respondents, brought an action at the High Court against the 1st and 2nd Defendants/Appellants/Appellants, hereinafter called the 1st and 2nd Appellants respectively. In the course of proceedings the Co-defendant/Appellant/Appellant, hereinafter called the 3rd Appellant was joined to the suit upon application.

The Respondents' case was that in the year 1946 the disputed land which forms part of a larger piece of land described in the schedule annexed to the statement of claim was gifted to them by one Mrs. Naa Oyo Ofosu Quartey who had obtained same from Mrs. Freda Hansen Sackey, whose own deed of conveyance had been registered as 1060/40. It turned out that the said Mrs. Freda Hansen inherited the land through the husband's estate. The said husband obtained it by purchase in 1926 from Ayibonte and Tetteh Quaye who were said to be the Gbese Manche and Korle Wulomo respectively. The said Gbese Manche and Korle Wulomo belonged to the wider Onamrokor family of which the Appellants' grantors, the Onamrokor-Adain family is also a part. And according to Counsel for the Appellants the Onamrokor-Adain family obtained the entire land described as Dome land of which Achimota land is an integral part by customary gift from the same Gbese Manche and Korle Wulomo in the 1860's. The Respondents' case was that in the same year 1946 that the land was gifted to them they registered it at the Deeds Registry as number 274/46. They moved into occupation and exercised various acts of ownership thereon without let or hindrance. Among the acts of possession, the Respondents pleaded that they wire fenced all around the land and erected a chapel on a portion of the land. The Respondents averred they started experiencing encroachment to portions of their land a few years back and they took action against the trespassers with success. The Appellants were also

said to have encroached on a part of the land, hence the claim before the High Court for damages for trespass and perpetual injunction.

The Appellants' case was that they initially obtained the land from one Hansen Sackey on rental basis. Whilst in occupation one Paul Ayitey Tetteh approached the 2nd appellant who is also the alter ego of the 1st Appellant and introduced himself as the head of the Onamrokor-Adain family, the true and rightful owner of the land. The 2ndAppellant was shown land documents as well as a Supreme Court judgment of 1961 which confirmed the title of the Onamrokor-Adain family to the land. The 2nd Appellant became convinced this family was truly the owner of the land so he took a lease from them in the name of the 1st Appellant. Thereafter the 1st and 2nd Appellants transferred ownership of the land to the 3rd Appellant who is the son of the 2nd Appellant. The 3rd Appellant successfully registered title to the land with the Land Title Registry under Land Title Registration Law, 1986, PNDCL 152. They therefore counterclaimed for special and general damages.

The core issue therefore was which of the parties has a better title to the land. The Respondents called a couple of witnesses who testified about the acquisition of the land in 1946 and about various acts of possession they have exercised on the land since 1946 including erecting a wire fence mounted on poles around the plot, holding of numerous church activities and erecting a chapel. Nobody challenged them all these years until a few years back when encroachers began to trespass on the land. They successfully took action against the encroachers and the only cases that are still pending involve the 2nd Appellant and his first landlords Hanson Sackey. Thus the 2nd Appellant was fully aware that title to the land was being contested in court yet he went ahead and transferred the assignment to his son 3rd Appellant herein who is said to live abroad and got the title passed on to him. The Appellants gave evidence by the 2nd Appellant and he recounted the facts they had pleaded. He tendered a number of search results which showed on their face that the land has been adjudged in favour of the Onamrokor-Adain Family since 29 June 1961. The said search reports did not disclose the title of the case and the Appellants did not tender the judgment in evidence. However, Counsel in her written address provided the title of the case

and gave the citation in the Ghana Law Reports. Before proceeding we must take note that where a party relies on a court decision and clearly intends thereby to raise res judicata he must give particulars of that decision in the pleadings to enable the opponent to provide an answer thereto. The Appellants also failed to tender it in evidence. Counsel only gave the particulars in an address to the court. This is clearly contrary to the provisions of Order 11(8) and Order 12(1) of the High Court (Civil Procedure) Rules, 2004 C.I. 47. Nonetheless the Respondents raised no objection and both the trial High Court and the Court of Appeal also did not criticize the procedure adopted by Counsel for the Appellants and dealt with the question of res judicata on its merits. Order 81 of C.I. 47 could be applied in the circumstances.

The trial High Court gave judgment in favour of the Respondents and ordered that the 3rd Appellant's title certificate be cancelled. The Appellants were not satisfied with the judgment and orders of the High Court so they appealed to the Court of Appeal which dismissed the appeal in a reasoned judgment. The Appellants were still not satisfied so they have come here on a second appeal on the following grounds:

a. The judgment is against the weight of the evidence adduced.
b. The said judgment is erroneous on a number of issues which have occasioned miscarriage of justice.
c. The judgment is completely contrary to our customary law on ownership as opposed to long possession.
d. The findings of the court were wrong in fact and law.

Counsel for the Appellants appears to have argued all grounds of appeal together under the first ground. Counsel reached that decision having cited the case of ELIZABETH ASARE v. KWABENA EBOW (2013) 57 GMJ 152 which talks about the respective burden of proof placed on a plaintiff as well as a defendant counter-claimant in a land case, and an appellate court's role to review the case by way of rehearing. She said: "…….the above authority clearly states the duty of the Appellants based on ground of appeal (a) stated against both judgments of the lower Court and Court of Appeal which is an omnibus ground. I indeed believe

that arguing same will encompass all the other stated grounds and therefore may result in no need of my repeating same arguments under the stated particular grounds of appeal."

Counsel for the Appellants referred to a number of decisions by this court which enable it to review the facts and law even where the two courts below have both made concurrent findings of fact. She explained why it is necessary and indeed imperative for this court to embark upon such course in this appeal. Cases cited are: NANA AMUAGYEBI XV v. MONDIAL VENEER (GH) LTD (2011) GMJ 164; ELIZABETH ASARE v. KWABENA EBOW, supra; KOGLEX LTD. v. FIELD (2000) SCGLR 175.

Let us address what appears to be an attack by Counsel for the Appellants on the integrity of the judges who have so far handled this case, which Counsel for the Respondents did not take lightly. We have examined the record critically including the judgments of both the High Court and the Court of Appeal and fail to understand the severe and oftentimes unpalatable and unwarranted attacks mounted by Counsel for the Appellants against all four Judges who have so far presided over this case. Counsel portrays the judges as having decided the case with their minds already made up and therefore refusing to consider what she believes were the relevant pieces of evidence. There is the need to state clearly that when it comes to proof of an issue it is not every piece of evidence that has been introduced into the case that the court is obliged to consider in arriving at a decision; the court is obliged to consider only relevant and material evidence that goes to establish the issue based on what is required by law to prove same. Thus if a party introduces, let us say, twenty documents in evidence it will not mean the court should consider each of them even when it knows full well that ten of them are not helpful, nay relevant, to the determination of the issue on hand. Failure to consider such additional exhibits should not per se become the subject of attack against the judge. Counsel's complaint could legitimately be raised that those exhibits that were not considered disabled the court or judge from reaching a correct conclusion. In this scenario an appellate court will be obliged to take a look at them.

We now proceed to the arguments in this case. Since the Court of Appeal and the High Court both made concurrent findings of fact, it behoves the Appellants to satisfy this court that the courts below drew wrong inferences from the evidence on record; or failed to take into account a relevant exhibit which would have had a bearing on the decision; or failed to make primary findings of fact on an issue. These criteria are by no means exhaustive as can be seen from the other cases cited above. We will examine the points raised by the appellants, bearing in mind that the courts below had upheld the Respondents' claim to ownership by deed of gift dated February 1946, registered at the Deeds Registry as number 274/1946, coupled with consistent acts of possession since then. They rejected the Appellants' counter-claim saying the Land Title Certificate was obtained contrary to law in the sense that there were pending litigations involving the parties over title to the land which were obviously not disclosed to the Land Title Registrar. The courts did not consider any judgment relied upon as creating res judicata against the Respondents. On the contrary they held that these decisions had no legal effect on the Respondents' original grantor's prior acquisition of the land and for that matter the Respondents' own title was protected and secure even against the original owners.

We will examine the Appellants' arguments seriatim. To begin with, Counsel referred to the Judicial Map no X1229/32 which was put in evidence by an officer from the Survey Department, PW3, called by the Respondents. It was marked exhibit L. Another copy of this very exhibit was also tendered by the 2nd Appellant in evidence as exhibit 7. It was Counsel's view that this was a very important exhibit which should have engaged the attention of the courts below. What was the relevance of these exhibits L and 7? And for purposes of this appeal we will describe them as the Judicial Map. In her statement of case Counsel for the Appellants stated as follows:

"……the Respondent's own witness, pw3 tendered the judicial composite map X1229/32 drawn in the case of TETTEH QUARCOO v. TETTEY CUDJOE which was a claim of compensation on acquisition of part of Dome land i.e. Dome part of the Accra-Nsawam railway land and land for the Police Depot and Communication School between the Head of Onamrokor-Adain family and a Caretaker of part of

the Dome land who had hailed from Gbese and the Court ruled in favour of Tetteh Quarcoo, the Head of Onamrokor-Adain family on grounds that the whole Dome land including Achimota and even the place located as Hansen Sackey village on the said Exhibit L like other villages like Akweteman, Achimota village etc were all part of the Dome land which extends from the Odaw river on the south to Kwabenya on the north and not Dome village which also forms part of the whole property of the family". Counsel gave the name of the judge who heard that case as His Lordship Sir George Campbell, and the decision was handed down on 16th April 1932, which date was also confirmed by Counsel for the Respondents in his submissions. Counsel emphasized the fact that the court found as a fact that the wider Onamrokor family headed by the Gbese stool had sold portions of Dome land owned by the smaller Onamrokor-Adain family. The court entered judgment for the plaintiff in that case to recover possession of Dome lands still in the possession of the defendant, who was representation of the Gbese Stool, and was also ordered to render account to the plaintiff of all monies received for lands sold. Counsel continued thus: "My Lords, this(sic) findings explain the surveyor's evidence of pointing out the area at Achimota marked as area purchased by J H SACKEY and also identified as 'Hansen Sackey village' as one of such lands illegally sold out by Ayi Bonte and Tetteh Quaye or their agent……..Respectfully, my Lords, it is the case of the Appellants that had the Court of Appeal done a proper legal assessment of the evidence as above, it could not have come to the decision it came to. In fact the Appellants are convinced that the Court intentionally decided to ignore this clear documentary evidence to have tried to justify their baseless conclusion they came to in the face of the evidence on record."

Counsel referred to section 25(1) of the Evidence Decree, 1975, NRCD 323 to buttress her argument. It provides:

'Except as otherwise provided by law, including a rule of equity, the facts recited in a written document are conclusively presumed to be true as between the parties to the instrument, or their successors in interest.

Counsel's conclusion was that "…….based on this provision of the exhibit L also as exhibit 7 is a documentary evidence between the predecessors grantors of the

parties upon which the ownership of the Dome land was adjudged to be in the Onamrokor-Adain family."

In his statement of case Counsel for the respondent did not pay serious attention to this judgment. He only made a passing reference to it when he was talking about the judicial map- exhibit L but stated that if this 1932 judgment did not deprive respondent's predecessor-in-title of this land, the 1961 judgment could not do so. This is what he wrote: "We wish to urge further that exhibit 'L' tendered through a public official-a map made in 1932 showed an area marked as 'Hansen-Sackey village'; as far back as in 1932. We submit that Hansen-Sackey village could not have been captured in the 1932 map, if it had not been in existence before the date of the preparation of the said exhibit in 1932. The effect of exhibit L or 7 tendered by the respondents and appellants respectively is that the respondent's first predecessor-in-title was on the land before the 1932 transferred case No. 5/1931 of Tetteh Quarcoo v. Tetteh Codjoe was heard, and which judgment was dated 16/4/1932 and therefore we submit that predecessor-in-title's ownership pre-dated the year 1932. We submit that if the 1932 judgment did not divest respondent's predecessors-in-title grantors their title then a 1961 case could not, as the statute of limitation will have barred any action, if even the predecessors had been in adverse possession."

This 1932 judgment was first introduced into this case by the Appellants in paragraph 15 of the statement of defence when they averred that:

'As has been already stated, in response to paragraph 11, the Plaintiff's alleged judgment in suit No. L205/96 cannot precede the judgment of Onamrokor-Adain's of 1961 nor the judgment of the family in the case in which the judicial map of X1229/32 was drawn.'

In his evidence at page 150 of the record Pw3 the officer from the Survey Department who tendered the Judicial map, said the title of the case on the map is Tetteh Quarcoo v. Tettey Cudjoe. The Appellants also tendered a copy of the same map in evidence as exhibit 7. Thus the map as well as the judgment in the case in which it was used were relevant to both parties, thus none of the parties can run away from its consequences at this stage. This court is bound to consider

it even if the courts below did not do so as rightly urged by Counsel for the Appellants. And being a judgment of a court of competent jurisdiction which has been referred to in the pleadings, albeit indirectly, and on which evidence has been adduced through exhibits L and 7, the court could examine it.

These are some details of that case. It is headed: "In the Supreme Court of the Gold Coast Colony, Eastern Province, held at Victoriaborg, Accra, on Saturday, the 16th day of April, 1932; before His Lordship Sir George Campbell Deans, Kt. Chief Justice.

Transferred Case No. 5/1931 TETTEH QUARCOO v. TETTEY CONDJOE"

The court found that both parties variously described the family as "Onomrokor family, or Onomrokor Adang or Korle We family, the different names for one family of which they both claim to be the head." The court found that the various heads of family, past and present, had allowed members of the family, however described to have unbridled access and control over the land. Indeed the court described it as "uncontrolled authority over this land with the acquiescence of the head of the family". The plaintiff who was adjudged to be the head of family only woke up from his slumber when compensation in respect of part of the land was paid to the defendant. The court ordered the defendant to, inter alia, account for the proceeds of every land he sold to the plaintiff. The plaintiff, who belonged to the Onamrokor-Adain family was adjudged to be the rightful person to control the Dome land. The import of that decision was that until 1931 the Onamrokor-Adain family had allowed the wider family to deal with the land by acquiescence. Indeed the decision even recognized all three families as one and the same family. It stands to reason that persons who had acquired the land from the said Onamrokor family and Korle We, as the case may be, prior to 1931 when this action was brought had acquired same innocently, the three families having projected themselves as one even to the court, and would be protected by the law. That explains why no order was made for such lands to be restored to the Onamrokor-Adain family but only an order to refund proceeds from all sales of land. Consequently the Respondents' predecessor in title who had acquired the land in 1926 would not be affected by this decision of 1932. It is observed that

even in the 1932 decision the court only ordered the defendant to account for the proceeds of sale of land to the plaintiff because the latter was adjudged to be the head of the three families, described above and not because the defendant did not belong to the Onamrokor-Adain family.

The foregoing interpretation of the 1932 judgment accords with the principle of law that third party rights acquired before the commencement of proceedings that resulted in the decision against the vendor did not operate to extinguish such rights. The court below did hold on the authority of ATTRAM v. ARYEE (1965) GLR 341 SC that third party rights acquired before a judgment were not affected by that judgment. The court said so in relation to the 1961 judgment, but it is equally and appropriately applicable to the 1932 judgment. The court was saying and rightly so, that the 1961 judgment did not and could not affect the prior rights acquired by the Respondents' predecessors-in-title and by extension the Respondents.

Counsel for the Appellants made no attempt to fault the Court of Appeal for relying on the principle in ATTRAM v. ARYEE, supra, a decision of the Supreme Court which was binding on that court. She only relied on the principle *nemo dat quod non habet* applied in the case of SASU v. AMUA-SEKYI and Another (2003-04) SCGLR 742 without regard to the facts of that case. In the latter case the same lessor purported to grant the same piece of land to two different persons at different points in time. The court naturally held that after the first valid grant, the grantor had no more title to pass on to any other person. It is certainly not a relevant case to apply in this case.

The ATTRAM v. ARYEE case, supra, is apt and relevant to apply. The facts of that case as captured in the headnotes are these: "The plaintiff sued the defendant for a declaration of title to a piece of land situate at North-West Korle Gonno, Accra, damages for trespass and an injunction. By her writ the plaintiff claimed that she derived title to the land from the Sempe stool under and by virtue of a deed of gift dated 7 August 1952 and that she had enjoyed undisputed possession since then. Sometime between 1960-61 the defendant entered upon the land and removed the pillars erected thereon by the plaintiff thus starting off the present

action. The defendant admitted entry upon the land but argued that the land was granted to his ancestors by the Alata stool. Judgment was entered for the plaintiff and the defendant appealed.

While the case was pending, litigation arose between the Sempe and Alata stools over a large portion of James Town lands including the subject-matter of the present case. Judgment in that case was given in favour of the Alata Stool. It was therefore argued on behalf of the appellant that the judgment was binding on the parties to the present case and their privies to the stools."

It was held, inter alia, that a prior purchaser of land cannot be estopped as being privy in estate by a judgment against the vendor commenced after the purchase. Per Ollennu JSC who delivered the unanimous opinion of the court at page 345: *"As regards the second point that the plaintiff who obtained his grant of the land from the Sempe stool as far back as 1952, is bound as privy in estate to the Sempe stool, by the judgment in a suit instituted subsequent to his grant, the court drew attention of learned counsel to the law that on the point as enunciated by Romer L.J. in* ***Mercantile Investment & General Trust Co. v. River Plate Trust, Loan &Agency Co. (1894) 1 Ch. 578*** *at p. 595, C.A., namely that '****A prior purchaser of land cannot be estopped as being privy in estate by a judgment commenced after the purchase.****' See also* ***Abbey v. Ollenu (1954) 14 W.A.C.A. 567*** *where the same principle was applied."*

There can be no dispute that this authority cited fits the facts of this case affirming the position taken already that the 1932 judgment could not erode the title of the Respondents' original predecessor-in-title and so too could the 1961 judgment not erode the Respondents' original grantor's title and for that matter the Respondents' title.

We could have ended this judgment on this note but we would want to address some points of law raised by the Appellants. It is observed that the Appellants largely relied on a 1961 judgment, which as pointed out earlier was pleaded but not particularised. Counsel for the Appellants said she gave the citation of that case in her written address yet the trial Judge did not consider it, but she conceded that the Court of Appeal did consider it. Yet her submission was that

the Court of Appeal did not give full force and effect to that judgment, which is reported as REINDORF and ANKRAH v. AMADU, BRAIMAH and NIKOI O'LAI (1962) 1 GLR 508 SC. The Court of Appeal concluded that it did not create res judicata for the subject-matter of that dispute was not shown to include the land in dispute. Besides, neither the Respondents nor their grantor was a party to that case nor were they said to have stood by while the case was being contested.

Counsel's problem with the position of the Court of Appeal was in regard to the point that the subject-matter did not cover the land in dispute. With the decision that the 1932 judgment had no effect on the Respondents' title to the land there is no way the 1961 decision could decide that the Respondents' land was owned by the successful party in that case. The 1961 judgment should be read to exclude interests that lawfully existed on the land including those created by the Onamrokor-Adain family itself.

Be that as it may, the Supreme Court gave judgment to the plaintiffs in that case based on a court ordered plan which was tendered as Exhibit C. Where is that exhibit C? The court has not been told of its whereabouts even to this day. So what court approved plan is before the Land Title Registry which they are using to approve leases granted by the Onamrokor-Adain family? These are questions which remained unresolved. Without knowing the exact content of exhibit C upon which the 1961 judgment was given, a display of that judgment becomes hollow. The Court cannot therefore be faulted for deciding against res judicata raised by the Appellants.

It is noted that all the search results tendered in this case show that the Onamrokor-Adain family derives title from a judgment dated 29 June 1961. The judgment cited in the law reports, supra, was delivered on 29 June 1962. There is one whole year difference, yet Counsel says it's the same judgment. As lawyers we all know that dates are very important when a court's judgment is delivered. It takes effect from the date it bears, it cannot be backdated. Was there another judgment dated 29 June 1961? If so the court is not aware of it. If the reported case is the correct one, then the date on the records of the Land Title Registry and Lands Commission is incorrect and the information on the search reports will be

inaccurate. Let us not belabour the point in this decision because whatever it is, the reported case of 29 June 1962 does not create res judicata against the respondent for reasons outlined below.

Indeed as rightly admitted by Counsel for the Appellants, even though they did not plead res judicata, the court below did consider it because it was obvious from the pleadings and evidence led. The court relied on cases like NYAN v. AMIHERE and Another (1964) GLR 162; OTU X v. OWUODZI (1987-88) 1 GLR 196; COBBLAH v. OKRAKU (1961) GLR Part II 679 in coming to the conclusion that res judicata did not apply in the case. With all the criticisms leveled against the judgments of the two courts below, Counsel for the Appellants is yet to tell this court where in the reported judgment of 1962 one could find any connexion between that case and the land in dispute. The Judicial map could not be the same as exhibit C utilized in the 1962 case because at page 511 of the report, the Supreme Court, per Korsah CJ, said that "*By the order of the trial court, a plan of the land, subject-matter of the dispute was made by George Hansen, a licensed surveyor and tendered in evidence marked exhibit C on which has been superimposed two plans of portions of the said land made in the previous litigations relating to the respective claims of the parties."*

It is thus clear that exhibit C was an entirely new plan which we have not had the priviledge to see. A key ingredient of res judicata is therefore missing from the 1961 or 1962 judgment and that is the identity of the land in that suit with the land in the present dispute. The decision by the Court of Appeal to dismiss the claim for res judicata is therefore upheld for the reasons: (i) that exhibit C upon which the 1961 or 1962 judgment was given has never been shown to any of the three courts that have handled this matter, so the extent of land covered is unknown; in other words the identity of the land the subject-matter of the 1961 or 1962 judgment has not been established to be the same as the instant; (ii) even if that judgment covers Achimota land and for that matter the disputed land, it does not bind the Respondents for the reason that neither they nor their grantors were party to the case; (iii) There is no evidence they were aware of the pendency of that litigation and yet stood by and allowed others to fight their battle for them.

Contrary to what she had earlier said, Counsel for the Appellants decided to argue grounds (b) and (c). She talked about possession. She made reference to the book titled Ghana Land Law and Conveyancing, by the authors B. J. Da Rocha and Hans K. Lodoh at page 51-52 where they state that possession per se is not enough to justify a claim of title; the occupant must show some form of title. She also cited these cases: BAHIN II v. ANQUANDAH (1946) 12 WACA 284 at p. 286; KUMA v. KUMA (1938) 5 WACA 8 PC. Counsel's position was that the Court of Appeal ignored evidence of title of the Onamrokor-Adain family from the 1932 judgment through the 1961 judgment and relied upon the Respondents' long possession dating back to 1926. Counsel also said that the court ignored the fact that the Respondents were mere squatters.

The High Court as well as the Court of Appeal discussed the evidence and accepted the Respondents' position that their predecessors had title to the land which they passed on. The acts of possession the court referred to were just to buttress their view that the Respondents had discharged the burden placed on them to prove ownership.

Besides, even though the Respondents did not rely on the statute of limitation, yet having been on the land, along with their predecessors-in-title, for that length of time without any challenge from the Onamrokor-Adain family before the 1932 judgment and after, and before the 1961 judgment and after, was it not the reason the said family made no attempt to challenge them? Was it not an acknowledgment of the Respondents' right to be on the land? One only has to look at paragraphs 13 and 14 of the amended statement of defence which provide:

'13. *It is the case of the Defendants and indeed this was confirmed by Paul Ayitey Tetteh that because the family's land is so big the family has always been aware of some people who have built and stayed on the land for so long but their long stay does not make them the owners of the land.*

14. According to him even though the family had no intention of ejecting such residents on Dome land, the family was exercising its legal rights on the vacant

lands and will fight any resident who tries to assert ownership over such vacant lands adjoining the lands they have built on.'

The Appellants were aware the Respondents were on the land and if they had cared to find out they would have known for how long. Thus they knew the Respondents fell into that category of persons whose possession the family could not disturb.

Counsel also took issue with the Court of Appeal's reference to the description of the land in the 1961 case as Dome land by the plaintiffs and Mukose land by the defendants. That point was really unnecessary, as the 1961 judgment accepted the plaintiffs' version of Dome land, so it was settled. It was not one of the core reasons given by the court below in dismissing the appeal.

Next, Counsel faulted the court's assertion that the Appellants failed to define the boundaries of their grantors' land and did not also join them to this action. Counsel's position was that the Respondents equally failed to call their grantors or to join them to the action. However, the Appellants were able to establish their grantor's root of title, whereas the Respondents could not. But both courts below duly weighed the respective case set up by the parties before accepting the Respondents' case and gave judgment in their favour.

Thereafter Counsel took issue with the Court of Appeal's view that a judgment given after third party rights have been acquired cannot affect those third party rights. Under these grounds of appeal Counsel addressed the question of res judicata. However, both these issues have been addressed already.

Counsel further contended that the Court of Appeal wrongfully stated that exhibits 1-8 were not tendered and therefore were disregarded. This appears quite strange for if they were not tendered how did they get the exhibit numbers? Counsel's submission was this: "My Lords, I beg to differ with this alleged finding of the Court. These exhibits where (sic) marked during the giving of evidence of the 2nd Appellant and compiled in the record except exhibit 7 and that of the respondent's exhibit L in the record of appeal. One wonders how the 2nd appellant could have given evidence in the case……..declaration of title without tendering

his indenture. Indeed such alleged findings of the Court, convinces the appellant of the ***fait accompli*** stand of the Court to give judgment to favour the respondent by all means by throwing caution to the wind the heavy burden of the Court to administer justice without fear of (sic) favour based on the recorded evidence before it."

Counsel could have done us a favour by quoting the portion of the Court's judgment wherein it rejected all these exhibits. For nowhere in the judgment of the court do we find it rejected or discarded these exhibits. Counsel surely misread the relevant part of the judgment when it was discussing the omnibus ground of appeal at page 348 to 349 of the record and we quote: "*As part of the argument of counsel for the appellants, she pointed out that there is evidence in certain documents found on pages 88-89 and 93 of the record of appeal that demonstrate that the Onamrokor-Adain family are the owners of the land in dispute but that the trial judge failed to consider these documents. But what is the probative value of the documents complained about? They were filed pursuant to a notice that can be found on page 86 of the record of appeal. The notice itself was entitled 'Additional Documents in support of Defendants' case' and the narrative went as follows: 'Please take notice that the defendant's (sic) herein have deemed it necessary to file these additional documents in support of their case for perusal of Plaintiff.' This notice was filed on 24/2/2009. The trial itself commenced on the 2/3/2010 and evidence of the 2nd defendant, the only witness for the appellants, starts from page 153 of the record of appeal.* ***The exhibits he tendered in all were exhibits 1-8****. Neither the public notice (on page 93) nor the letter (on pages 88-89) was tendered in evidence. And yet counsel refers to them in her written submissions as if they were exhibits. Once they were not tendered and put through the test of admissibility they cannot be treated as exhibits with any probative value. I shall accordingly disregard any references to them and any arguments founded on them." Emphasis supplied*

It is observed the court never discarded the exhibits 1-8. What they rejected was Counsel's reliance on documents that were never tendered at the hearing. The views the court expressed above were all correct both on the facts and law.

Counsel's next line of attack under (i) is flawed as being based on a wrong premise that the court had ruled to disregard exhibits 1-8 and yet in another vein was making reference to exhibit 4 and also exhibit 5. The court below, as stated earlier, did not disregard any exhibits that the Appellants tendered in evidence. Exhibit 5 purports to be a plan of what was described as the land owned by the Onamrokor-Adain family. The court did not place any weight on that piece of evidence, because the 2nd Appellant who tendered it was not in a position to tell the court of the extent of his grantor's land and indeed admitted he did not know. The weight to attach to a piece of evidence is for the court to decide. Like many site plans and area plans people carry around it is a self-serving document with no probative value. They are not saying this was the exhibit C that was used in the 1961 judgment. Exhibits L and 7 were said to have been used in the 1932 case and so were material evidence. What about exhibit 5? The production of a plan and proclaiming it as the land owned by the Onamrokor-Adain family is no proof of that fact, when the case was built around judgments handed down by some courts of competent jurisdiction, hence any such plan must be connected to one of such judgments that they rely upon.

Also counsel regarded as "preposterous" and "strange" the court's consideration of the search reports issued by the Lands Department as not representing the true state of recordings therein. Counsel did not elaborate. A search report is indicative of the situation of the land in question as the Lands Department has it at the date of the search, but its credibility can be impugned in judicial proceedings so when it succeeds the court will be at liberty to reject it. That is how the court's treatment of the search reports should be understood. The court was merely saying and rightly so that they did not provide conclusive proof of title.

The key issue remaining is the one listed as (l) and (m) in the address by Counsel for the Appellants. It is headed 'Co-appellant acquisition of Land Title Certificate as compared to the respondent registration under Act 122' and 'That the co-defendant's land title certificate was obtained by fraud', respectively.

Counsel for the Appellants rejected the charge of fraud which she said did not exist as to warrant the court to order the Land Title Certificate to be cancelled. She reiterated the evidence that ownership of the land was vested in the Onamrokor-Adain family so exhibit 4 which was issued after all due processes were followed was in order and same is good and indefeasible title. On his part Counsel for the Respondents quoted at length the trial court's reasoning leading to the order of cancellation which he stated was justified.

From the reasons advanced herein it is clear the Respondents' title to the land is unquestionable. The Onamrokor-Adain family has no title to pass to the Appellants. First of all the 2nd Appellant testified that the Onamrokor-Adain family gave the 1st Appellant an assignment in 1995 and he tendered the deed of assignment as exhibit 6 in support. But under cross-examination he admitted that the site plan in exhibit 6 bears the date 2nd March 2005. Indeed a look at the exhibit shows that it was executed on that date 2nd March 2005. A deed of assignment of land cannot be complete without the site plan and is legally invalid without due execution. We do not intend to comment on why the 2nd Appellant would want to use 1995 and not the correct date in 2005 which the site plan and signatures on the indenture clearly portray. When the 2nd Appellant who is also the Managing Director of the 1st Appellant obtained exhibit 6 in March 2005, he quickly transferred same to the 3rd Appellant who is said to be his son. By October 2005 they had obtained the Land Title Certificate which empowered them to enter the land during the Christmas holidays in 2006 to commence operations.

Before all the foregoing took place, the 2nd Appellant was fully aware that the Respondents were laying claim to the land; indeed he admitted that in 1992 one of the Respondents' priests came to him to tell him they were the owners of the land. He admitted that in that very year the Respondents took action against him, representing the 1st Appellant, in suit number LS 2178/92 which he is aware is still pending.

Again in 1995 the Respondent, through their representative, PW1 warned the 2nd defendant off the land when they saw that they were constructing a block fence wall on the land. Then 2nd Appellant admitted a second suit number AL 39/2004

involving him, his company and Hansen-Sackey. He said he gave the writ to his grantors, the Hansen-Sackey family. This case he admitted is also pending.

One could see clearly the rash decision to transfer the land to the 3rd Appellant since he was not directly involved in any of those pending matters and also not the subject of any warning over the land. That emboldened Counsel to say the 3rd Appellant had acquired a good and indefeasible title. Certainly the 3rdAppellant in these circumstances did not acquire the property innocently as to be afforded protection by the law. We dare say the transfer to him was done in bad faith to defraud the Respondents to deny them the right to the land.

Section 12(2) of the PNDCL 152 provides that:

'Where at the time of the publication of a notice under section 11 of this Law an action or proceeding concerning any land or interest therein in a registration district referred to in the notice is pending in any Court or before the Stool Lands Boundary Settlement Commission or the Stool Lands Appeal Tribunal, any claim under this Law in respect of the same land or interest shall be noted by the Land Registrar but no further action shall be taken by him on such claim until the matter is determined by the Court, Commission or Tribunal.'

This provision imposes a duty of full and complete disclosure of the pendency of litigation affecting the land that is sought to be registered. The policy decision behind this provision is clear in order to avoid conflicting decisions by two State institutions, a decision to register the land in the name of Mr. X by the Land Title Registry and a contrary decision by the Court that the same land belongs to Mr. Y. Thus every person, including the applicant for registration, with knowledge of the pendency of the suit must disclose this fact to the Land Title Registrar. The 2nd Appellant who stood in for the 3rd Appellant never disclosed the pendency of the two suits to the Land Registrar. And it was clear from his conduct since 1992 that the 2nd Appellant was determined to take hold of this land at any cost.

The Appellants knew only the true owners of the land could grant them a valid lease or sale, hence their decision to abandon their original landlords in favour of the Onamrokor-Adain family. That is the law that only the owner of land can give

away title to a third person. PNDCL 152 recognizes the superiority of such law throughout its tenor including section 136(2). Thus the Law in section 122 enables a court to set aside a certificate obtained by fraud, inter alia. Section 122 of PNDCL 152 provides:

(1) 'Subject to subsection (2) of this section, the Court may in its discretion, order the rectification of the land register by directing that any registration be cancelled or amended where it is satisfied that such registration has been obtained, made or committed by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who has acquired any land or interest in land for valuable consideration unless such proprietor had knowledge of the omission, fraud, or mistake in consequence of which the rectification is sought or had himself caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.'

It was the failure of the Appellants to disclose the pendency of the two actions at the High Court which enabled the certificate to be issued by the Registrar. It was a deliberate act. That was in breach of the law. The land in dispute does not belong to the Appellants' grantors. The Appellants were not in adverse possession too, for their stay has been challenged all the way by the Respondents. The trial court's decision that the certificate-exhibit 4- be cancelled which was endorsed by the Court of Appeal was thus justified.

In sum the Appellants have not succeeded in satisfying this court that the courts below applied any wrong principle of law to the facts, nor that they failed to make any finding of fact which has a bearing on the decision or that they drew wrong inferences from the established facts or that their decisions were perverse. We therefore find there is no merit in the appeal so we dismiss same and affirm the judgments of the courts below.

(SGD) **A. A. BENIN**

JUSTICE OF THE SUPREME COURT

(SGD) **G. T. WOOD (MRS)**

CHIEF JUSTICE

(SGD) **ANIN YEBOAH**

JUSTICE OF THE SUPREME COURT

(SGD) **P. BAFFOE BONNIE**

JUSTICE OF THE SUPREME COURT

(SGD) **N. S. GBADEGBE**

JUSTICE OF THE SUPREME COURT

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