

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE LAND DIVISION 10 HELD ON THURSDAY THE 4<sup>TH</sup> DAY MAY 2023 BEFORE HIS LORDSHIP JUSTICE KWAME GYAMFI OSEI 'J'

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SUIT NO. LD/0256/2017

ADOLPH TETTEH ADJEI : PLAINTIFF

VRS

1. ANAS AREMEYAW ANAS : DEFENDANTS  
2. HOLY QUAYE

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## JUDGMENT

### 1.1 THE CASE OF THE PLAINTIFF

The case of the Plaintiff briefly is that in 2013 he took a leasehold for a period of 54 years from his lessor, the La Hillviews Development Limited [shall be referred to as LHDL subsequently]. He got same registered and was issued with Land Title Certificate No. 46455 by the Lands Commission. LHDL took its grant in 2007 from the East Dadekotopon Development Trust [hereinafter shall be referred to as EDDT] who had registered its interest in 2007 and issued with Land Title Certificate No. GA26393. The EDDT had also registered its Trust Land which includes the disputed land and had been issued with Land Title Certificate No. GA 19310 and Land Title Certificate No. GA 25462. The Plaintiff claims the disputed land which he owns is covered by the Title Certificates of his lessor, LHDL and head lessor, EDDT. It is his case that after the acquisition he exercised acts of ownership over the said land until the 1<sup>st</sup> Defendant trespassed unto his land. Despite his open protestations the 1<sup>st</sup> Defendant with the aid of Police and land guards built day and night on his land. Unable to get the police to intervene he has turned to this court praying for the following reliefs;



- “a) Declaration of title to all that piece or parcel of land in extent 2.00 acres (0.81 hectare) more or less and bounded on the North East by land measuring 267.4 feet more or less and on the South East by proposed road measuring 294.6 feet more or less on the South West by land measuring 296.9 feet more or less on the North West by land measuring 298.3 feet more or less and situate at East La Dadekotopon in the Greater Accra Region of the Republic of Ghana.
- b) Damages for trespass to Plaintiffs land described above.
- c) Recovery of possession of the Plaintiff's land aforesaid.
- d) Perpetual injunction against the Defendants, their servants, agents, assigns, workmen and all those claiming through them from entering on to the subject land and carrying out any construction works on same or interfering with the subject land in any manner whatsoever or disturbing the Plaintiff's peaceful occupation and possession of same.
- e) Costs
- f) Any other relief(s) that this Honourable Court may deem fit.”

## 2.1 THE CASE OF THE 1<sup>ST</sup> DEFENDANT

The summary of the 1<sup>st</sup> Defendant's case is that both LHDL and EDDT have no title to the disputed land. The 1<sup>st</sup> Defendant claims that the disputed land rather belongs to Ataa Tawiah Tsinaiatse Family, his grantor's family. It is his defence that a “Terms of Settlement” filed in the case of **NII KPOBI TETTEY TSURU II VRS ATO QUARSHIE & ORS**, which led to a Consent Judgment, which in turn gave birth to EDDT and upon which the Trust acquired its land was void and or tainted with fraud. The 1<sup>st</sup> Defendant therefore counterclaimed for the following reliefs;

- a. A declaration that the Trust Deed of 10<sup>th</sup> April 2002 and Consent Judgment dated 12<sup>th</sup> July 2001 **Suit No. L 353/97 titled Nii Kpobi Tetteh Tsuru III vrs Ato Quarshie & Ors.** with the terms of settlement dated 11<sup>th</sup> July, 2001 which knowingly took over Ataa Tawiah Tsinaiatse land without their knowledge and/or consent, were void, vitiated by and tainted with fraud.
- b. An order setting aside and or cancelling the said judgment(s) or orders or terms of settlement, title documents, deeds, certificates and judgments, rulings or orders founded thereon or affected thereby,
- c. Any other orders just and fair.”

The 2<sup>nd</sup> Defendant, who the Plaintiff claims granted his land to the 1<sup>st</sup> Defendant did not contest the suit even though he was served with the writ. The Plaintiff also did not proceed against him by serving him with the requisite processes, hence this judgment shall be limited to the 1<sup>st</sup> Defendant.

### **3.1 ISSUES SET DOWN FOR RESOLUTION**

Based on these competing or rival claims, the following issues were adopted for determination

- i. Whether or not Plaintiff, and or his grantor, the La Hillview Development Ltd, obtained a valid grant of the disputed land from the East Dadekotopon Development Trust.
- ii. Whether or not Plaintiff has exercised rights of ownership and has been in effective possession of the disputed land over the years.
- iii. Whether or not Defendants have unlawfully entered and occupied Plaintiff's parcel of land registered under Land Title Certificate No. GA 46455.

- iv. Whether or not the Ataa Tawiah Tsinaiatse & Numo Ofoli Kwashie families owned and made a valid grant of the disputed land to Defendant.
- v. Whether or not Plaintiff is entitled to his reliefs.
- vi. Any other issues arising out of the pleadings.”

Having regard to the counterclaim, the 1<sup>st</sup> Defendant has put in issue the validity of the Consent Judgment of 12<sup>th</sup> July 2001 and the Trust Deed dated 10<sup>th</sup> April 2002. He claims the said documents ***“which knowingly took over the Ataa Tawiah Tsinaiatse land without their knowledge and/or consent, were void, vitiated by and tainted with fraud”***, hence there would be the need to raise an issue around it. Taking advantage of issue ***“vi”***, I would add this issue

- “vii. Whether or not the Parties to the Consent Judgment dated 12<sup>th</sup> July 2001 and the Settlers of the Trust dated 10<sup>th</sup> April 2002 took over the land of Ataa Tawiah Tsinaiatse land fraudulently.”

The 1<sup>st</sup> Defendant’s witness also claimed in his evidence that there are judgments which have held the Land Title Certificate of EDDT to be fraudulent. On the 14<sup>th</sup> of December 2022 the 1<sup>st</sup> Defendant’s witness was asked under cross-examination thus;

**“Q: It is true that apart from the Plaintiff, there are so many other people living on the Trust’s land since the Trust acquired the land in 2003. Not so?”**

**A: The Trust has no land. They just took our land and went around getting the Trust Certificate. The family took the Trust to the Justice Ofori Attah’s court and we got judgment. Part of our protest led to a caveat on the Trust’s certificate in 2005/2006 which is still in existence. Some of my family members also sued the Trust again at Justice Abada’s court and they also got judgment after a full trial and these judgments are unanimous in stating that the steps taken by the**

**Trust towards the acquisition of their land certificate were fraudulent.”**

This answer suggests that there are existing judgments which has declared the Land Title Certificate of EDDT fraudulent. If same were so then, there would be the need to raise an issue over it, as same strikes at the heart of the dispute between the parties. This case had previously been determined twice by two High Court Judges on the doctrine of *estoppel per rem judicatam* in favour of the 1<sup>st</sup> Defendant. However same were reversed by the Court of Appeal and the Supreme Court. In the case of the **REPUBLIC VRS THE HIGH COURT, LAND DIV. (7) ACCRA (RESPONDENT) EXPARTE: THE REGISTERED TRUSTEE OF EAST DADEKOTOPON DEVELOPMENT TRUST (APPLICANT) ADOLPH TETTEH ADJEI, ANAS AAREMEYAW ANAS AND HOLY QUAYE (INTERESTED PARTIES) CIVIL MOTION NO. J5/46/2020** (Unreported, delivered 22<sup>nd</sup> July 2020) which was the last ruling, the Supreme Court in a bid to forestall the repetition of the errors which led to the reversal/quashing of the two rulings gave directions pertaining to the legal validity of some rulings and judgments relied upon by the two High Courts. Her Ladyship Torkonoo JSC speaking for the apex court said

“In conclusion, we must state clearly the following positions for the direction of the parties involved in these cases. 1. Following the judgment entered by the Court of Appeal in Edward Mensah Tawiah, Ewormenyo Ofoli Kwashie v The Ag Chief Registrar of Lands and The Trustees, East Dadekotopon Development Trust, the Ofori Atta 2010 judgment ceased to have force of law. It was reversed in its entirety. Following the quashing of the ‘relief e’ in Abada J’s 2019 judgment in Daniel Ofoli Ewormienyo v. Edward Nsiah Akuetteh and numbered BMISC 720/2015, the remainder of that judgment related only to the first four reliefs that were the subject matter of the claims before the court. These two judgments cannot therefore provide a foundation for a finding of estoppel per rem judicatam in favor of the Interested Parties before us in this suit titled Adolph Tetteh Adjei v Anas Aremeyaw Anas, Holy Quaye Suit No. LD/0256.”

The Court further directed that same should be placed before another court differently constituted for the issues settled to be dealt with. Hence that claim by DW1 is a complete falsehood as there is no existing judgment declaring the Land Title Certificate of EDDT fraudulent. Hence there would be no need to formulate any issue around it.

#### **4.1 BURDEN OF PROOF GENERALLY**

As in all civil suits, the onus of proof first rests on the party whose positive assertions have been denied by his opponent. Depending on the admissions made or denied, the party on whom the burden of proof lies is enjoined by the provisions of Sections 10, 11(4), 12 and 14 of the Evidence Act, 1975 (NRCD 323) to lead such credible and admissible evidence such that on the totality of the evidence on record, the court will find that party's version of the rival accounts more probable than its non-existence.

In this case since the Plaintiff and the 1<sup>st</sup> Defendant have sued each other, they all have the responsibility of proving their case on the balance of preponderance of probability stipulated under the said sections. In the case of **NORTEY VRS AFRICAN INSTITUTE OF JOURNALISM & COMMUNICATION AND OTHERS) (J4 47 of 2013) [2014] GHASC 125** (delivered on 26<sup>th</sup> February 2014) Akamba JSC (as he then was) placed the burden on the Defendant who counterclaim as follows;

***“Without any doubt, a defendant who files a counterclaim assumes the same burden as a plaintiff in the substantive action if he/she is to succeed. This is because a counterclaim is a distinct and separate action on its own which must also be proved according to the same standard of proof prescribed by sections 11 and 14 of NRCD 323 the Evidence Act (1975).”***

Indeed, this basic principle of proof in civil suits expounded in **ZAMBRAMA VRS SEGBEDZIE (1991) 2 GLR 221** has been subsequently applied in numerous cases including **TAKORADI CONTINENTAL PLASTICS LTD VRS IMC INDUSTRIES (2009)**

**SCGLR 298** at pages 306 to 307 and **ABBHEY VRS ANTWI (2010) SCGLR 17** at 19 (holding 2);

In **ACKAH VRS PERGAH TRANSPORT LIMITED OTHERS [2010] SCGLR 728** at 736 Adinyira, JSC aptly stated the position thus;

**“It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail... . It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that, on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is the requirement of the law on evidence under Section 10 (1) and (2) and 11 (1) and (4) of the Evidence Act, 1975 (NRCD 323).”**

The 1<sup>st</sup> Defendant has alleged that the root of title of the Plaintiff is void for fraud or tainted with fraud, hence the civil standard of proof would be elevated to the criminal standard of proof, which is proof beyond reasonable doubt in respect of that issue alone, before a decision would be taken as to whose account is more probable than not.

Issues “ii” and “iii” would lose their relevance if issues “i” and “iv” are resolved. Hence I do not consider them relevant having regard to the facts of this case. Issue “v” is no issue at all for the Plaintiff is in court for those reliefs. Same is superfluous and shall be ignored. Settled issues could be ignored and new issues could be considered if it arises from the pleadings and the evidence. See the case of **FATAL VRS WOLLEY (2013-2014) SCGLR 1070**.

### **5.1 EVIDENCE LED BY PLAINTIFF IN A BID TO PROVE ISSUES “I” AND “IV”**

I would discuss Issues “i” and “iv” first for that is the bone of contention between the parties before me. The Plaintiff evidence and that of his witness are captured in

their witness statements. I would reproduce the evidence led by the Plaintiff and summarize that of his witness. His evidence is as follows;

- “1. My name is Adolph Tetteh Adjei. I am a businessman and live at H/No. B164, Tse Addo, Trade Fair, Accra in the Greater Accra Region of the Republic of Ghana. I am the Plaintiff in this suit.
2. By a Deed of Sub-lease dated 4<sup>th</sup> October 2013 made between the La Hillviews Development Limited as the sub-lessors and myself as the sub-lessee for a term of 54 years less one day, I became the legal owner of the land subject matter of this action described as “ALL THAT PIECE OR PARCEL OF LAND in extent 2.00 acres (0.81 hectare) more or less and bounded on the North East by land measuring 267.4 feet more or less and on the South East by proposed road measuring 294.6 feet more or less on the South West by land measuring 296.9 feet more or less on the North West by land measuring 298.3 feet more or less and situate at East La Dadekotopon in the Greater Accra Region of the Republic of Ghana.
3. The said parcel of land is covered by Land Title Certificate No. No. GA. 464555 and dated 26<sup>th</sup> February 2015. Attached and Marked as Exhibit ADOLPH A is a copy of the Title Certificate and the indenture covering the land.
4. Immediately after the acquisition of the land subject matter of this action, I entered into vacant possession of the demised parcel of land and have since exercised overt acts of ownership of same until the 1<sup>st</sup> Defendant began evincing acts of trespass over the land with the connivance and assistance on the 2<sup>nd</sup> Defendant from whom 1<sup>st</sup> Defendant is alleged to have acquired the land.
5. At the time I took possession of the land it was virgin and with no human activity whatsoever. My Sub-lessor has also always been in effective possession of the land and had registered it in 2007 under Land Title Certificate No. GA26393.



6. My Sub-lessor also acquired the disputed land from the East Dadekotopon Development Trust who had also long registered the entire tracts of land owned by it at Tse Addo also known as Opintin or Dadekotopon, including the disputed land under Land Title Certificate No. GA 19310, I have attached and marked as Exhibits ADOLPH B and B1 photocopies of the said Land Title Certificate No. GA 19310 and Land Title Certificate No. GA 25462.
7. I almost every day visited the land as I was preparing to develop it. In fact, the disputed land is close to my warehouse so I could see whatever goes on the land if I am at the warehouse.
8. 1<sup>st</sup> Defendant's claim that he obtained a customary grant of the land is merely a ploy to deceive the court. This would even be an act of negligence on his part. I reported his unlawful claim of ownership to the Ghana Police Service but their inaction compelled me to commence the instant suit.
9. The 1<sup>st</sup> Defendant as part of his acts of trespass entered unto the land subject matter of the suit and began developing it day and night despite several warnings directed at him to desist from the unlawful interference with my land.
10. He also caused a signpost to be erected on the land with the inscription "Tiger Eye Property. Keep off" and also employed the services of land guards to purportedly provide security for his unlawful construction works.
11. When I applied to join the said Tiger Eye PI to this suit it curiously caused to be filed an affidavit in Opposition in which it denied owning the disputed land. I have attached and marked as Exhibit ADOLPH C and C1 respectively photograph of the said sign post on the land and the Affidavit in Opposition filed on behalf of the said Tiger Eye PI.
12. On filing this suit I also filed an application for injunction to restrain Defendants, their agents, assigns, privies whatsoever called from entering or developing the disputed land until the case is disposed of.

13. Interestingly, Defendants took to filing processes to set aside the suit and the motion for interlocutory injunction on the grounds of estoppel and abuse of court process. All these were a ploy to pave way for Defendants to continue their unlawful construction works on my land.
14. The case was consequently set aside by this court but the same was restored by the Court of Appeal who also ordered that the suit should be placed before a differently constituted court.
15. The Court of Appeal also reasoned that the Land Title Certificate of my grantor's predecessor in title has at all times material been valid. I have attached and marked as Exhibit D series a copy of the judgment of the Court of Appeal on the suit and decisions from the Supreme Court on the unsuccessful attempts by Defendants to quash the Court of Appeal judgment.
16. When the case was put before a differently constituted court, Defendant's again filed a similar motion to have the suit set aside and which application again was unfortunately granted.
17. The decision was however quashed by the Supreme Court on the 22<sup>nd</sup> day of July, 2020. Attached and marked as Exhibit E series is a photocopy of the judgment of the Supreme Court and some earlier decisions of the Supreme Court in respect of the Trust lands.
18. Before this Court, differently constituted, set aside the suit the second time, my application for interlocutory injunction was determined against me. On appeal, the Court of Appeal allowed the appeal and granted the application for interlocutory injunction. Attached and marked as Exhibit F is a photocopy of the Court of Appeal decision on the interlocutory injunction application.
19. While the application for interlocutory injunction was pending before this court Defendants had not filed a Defence although they filed an affidavit in opposition. I have attached and marked as Exhibit G photocopy of the Affidavit in Opposition filed by Defendants in opposition to the motion for interlocutory injunction.

20. Defendants, with particular reference to 1<sup>st</sup> Defendant, disregarded the ongoing court processes including the appeals and continued his unlawful construction works on my land until the Court of Appeal decision on the application for interlocutory injunction. Attached and marked as Exhibit H series are photographs of the developments on the land by Defendants before and during the pendency of the suit.
21. My Sub-lessor's predecessor in title, the East Dadekotopon Development Trust has, in several decisions including decisions of the Supreme Court, been adjudged, affirmed and recognized as owners of some parcels of land at Tse Addo, La, portions of which the land subject matter of this suit formed part.
22. The Trust has been in effective occupation, possession and exercised ownership rights over its land including the disputed land since in or about 2002/2003. Attached and marked as Exhibit J series are copies of the said judgments and rulings of the courts in addition to those already mentioned earlier.
23. These decisions have all held against Defendants' alleged grantors, the Atta Tawia Tsinaiatse and Numo Ofoli Quarshie families, that the parcels of land belonging to the Trust including the one in dispute do not belong to the said families.
24. Despite several warnings to Defendants, their agents, privies and assigns to desist from any further dealings with the land subject matter of this action and vacate same, Defendants persistently refused to vacate the said land and continued to bulldoze their way through and commit acts of trespass on the land but for the Court of Appeal ruling on the injunction application.
25. I state that Defendant's acts of trespass on the land are illegal, lawless and unlawful and by their actions they have shown that unless restrained by the Honourable Court, they have evinced no intention to stop their acts of trespass on my land.

26. I will respectfully pray that all my reliefs are granted including an order directed at Defendants to demolish all structures on the land and remove all the debris from the disputed land and restore same to its original state or in the alternative the same is done by Plaintiff and Defendants surcharged with the cost incurred in doing so.”

The Plaintiff called Victor Kujo Ameyibor as PW1. He told the court that the disputed land belongs to the Plaintiff. In 2015/2016 the 1<sup>st</sup> Defendant came there and trespassed onto one Charles Boateng’s land. That land shares boundary with the Plaintiff’s land. Police personnel came and arrested the workers of Charles Boateng who were working there. Subsequently the 1<sup>st</sup> Defendant some sent people to erect a sign post with the inscription “TIGER EYE PROPERTY, KEEP OFF”. He then came to develop the land day and night with the assistance of the police and land guards. He said all their efforts to stop the encroachment proved futile hence the Plaintiff instituted this action. He said the land before the encroachment was bare and they ensured no one encroached till the 1<sup>st</sup> Defendant did.

#### **6.1 EVALUATION OF THE EVIDENCE LED BY PLAINTIFF**

Now, where a judge is called upon to evaluate evidence and he realizes that there is a likelihood of a conclusive presumption based on the evidence adduced, he or she should be quick to address that or else he would be evaluating inadmissible evidence, which would taint his findings and open the judgment up for attack on appeal.

From the evidence before me the grantors of the Plaintiff and the 1<sup>st</sup> Defendant have had some encounters dating back to 2001 and those encounters would impact the resolution of the said issues because the parties are privies of the said grantors. Since the parties herein are successors in interest of the said parties, it would be prudent to relate same now, to avoid evaluating evidence which is inadmissible per se.

The 1<sup>st</sup> Defendant's witness tendered in evidence the case of **EDWARD MENSAH TAWIAH, EWORMENYO OFOLI KWASHIE VRS THE AG CHIEF REGISTRAR OF LANDS AND THE TRUSTEES, EAST DADEKOTOPON DEVELOPMENT TRUST (unreported, CIVIL APPEAL NO. H1/175/2011)** marked as Exhibit "4A" without any objection. This judgment was compromised on appeal by the parties and therefore is non-existent. In its place was a Consent Judgment entered by the Court of Appeal on the 27<sup>th</sup> April of 2015. Before the consent judgment, the parties therein executed Terms of Settlement dated 27<sup>th</sup> March 2015, before the adoption by the Court of Appeal on the 27<sup>th</sup> of April 2015. The Plaintiff herein is the sub-lessor of the 2<sup>nd</sup> Defendant in that case, whilst the 1<sup>st</sup> Defendant herein is the lessee of the Plaintiffs in that case. This Terms of Settlement contain the historical accounts relative to a large tract of land, a portion of which is in dispute before this court.

Exhibit "4B" is the resultant Consent Judgment entered upon the terms of that settlement by the Court of Appeal on the 27<sup>th</sup> of April 2015. This was also tendered by the 1<sup>st</sup> Defendant's witness without objection. Having regard to the importance of these exhibits relative to the issues under discussion and the potential of Exhibit 4A to ground a conclusive presumption as contemplated under Section 25 of the Evidence Act, 1975 (NRCD 323), I find it needful to reproduce the said exhibits in this judgment. Exhibit "4A" states

**"IN THE SUPERIOR COURT OF JUDICATURE  
IN THE COURT OF APPEAL  
ACCRA-A.D. 2013**

**[CIVIL APPEAL NO: H1/175/2011]**

- 1. EDWARD MENSAH TAWIAH**  
(Substituted by David Feefitee Tawiah)
- 2. EWORMIENYO OFOLI KWASHIE**  
(Substituted by Edward Nsiah Akuetteh  
Representatives of Ataa Tawiah Tsiniatse and

} PLAINTIFFS/RESPONDENTS

Numo Ofoli Kwashie Families  
Hse. No. 55, Adjeman, Block (E1)L  
P. O. BOX A43. LA-Accra

VRS

1. THE AG. CHIEF REGISTRAR OF LANDS . . . 1<sup>ST</sup> DEFENDANT  
Accra

2. THE TRUSTEES  
East Dadekotopon Development Trust . . . 2<sup>ND</sup> DEFENDANT/  
Hse. No. 7 Otswe Street, Ako Adjei. La, Accra APPELLANT

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### TERMS OF SETTLEMENT

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#### WHEREAS

1. In 1997, Nii Kpobi Tetteh Tsuru III, the La Mantse, acting on behalf of the La Stool, took legal action against the Lenshie and Nmati Abonase Quarters of La respectively claiming title to a large parcel of land situate behind the Ghana International Trade Fair, La in Suit No. L. 353/97. The High Court dismissed the Suit before evidence could be taken. Being aggrieved by the said decision, Nii Kpobi Tettey Tsuru III appealed to the Court of Appeal.
2. On 13<sup>th</sup> May, 1998 the Court of Appeal set aside the decision of the High Court restrained all the parties from dealing with the land in any way and remitted the case back to the High Court for retrial (Civil Appeal No. 2/98).
3. During the pendency of the suit at the High Court the La Mantse, Nii Kpobi Tettey Tsuru III; the Ataa Tawiah Tsinaiatse Family and the Numo Ofoli Kwashie Families of La executed a Deed of Confirmation and Surrender dated 16<sup>th</sup> February, 1999 by which the La Mantse granted

- 620 acres of the disputed land to the two families without the knowledge of the Lenshie and Nmati Abonase Quarters of La.
4. When this came to the notice of the Lenshie and Nmati Abonase Quarters, they protested and threatened to cite Nii Kpobi Tettey Tsuru III for contempt. The three parties who executed the said Deed then executed a Deed of Revocation on 10<sup>th</sup> July, 2001, thereby revoking the grant of the 620 acres of the disputed land to the two families.
  5. Subsequently, the parties Nii Kpobi Tettey Tsuru III, representing the La Stool; Nii Odoi Tsuru I, representing the Lenshie Quarter and Nii Adjei Boahen II, representing the Nmati Abonase Quarter of La amicably settled the case and filed a consent judgment which was adopted by the High Court on 12<sup>th</sup> July, 2001.
  6. In the said consent judgment, the parties agreed to set up a Trust to take over the control and management of the disputed land for the benefit of the citizens of La. The Parties also recognized the interests of the families of Ataa Tawiah Tsinaiatse, Tse Addo and Kwade We respectively in portions of the said land and authorized the Trustees to agree with the said families on the extent of their interests.
  7. On 10<sup>th</sup> April, 2002 Nii Kpobi Tettey Tsuru III, Nii Odoi Tsuru I and Nii Adjei Boahen II as settlors set up the East Dadekotopon Development Trust pursuant to the consent judgment and registered same under the Trustees (Incorporation) Act, 1962 (Act 106).
  8. The Trust then applied for a Land Certificate from the Land Title Registry. Some persons caveated same including the Ataa Tawiah Tsinaiatse and Numo Ofoli Kwashie families of La, acting per their lawful Attorney; Benjamin Tetteh Quaye. The Trust and all the caveators amicably settled the matter and on July 3, 2003 the Ataa Tawiah Tsinaiatse and Numo Ofoli Kwashie Families wrote to the Land

Title Registry to grant the Land Certificate to the Trust to enable the Trust grant them a parcel of the land as agreed with the Trust.

9. Pursuant to the said agreement, the Land Title Registry issued Land Certificate No. GA 19310 dated 2<sup>nd</sup> October, 2003 to the East Dadekotopon Development Trust.
10. Despite the above Agreement, the Ataa Tawiah Tsinaiatse and Numo Ofoli Kwashie Families of La in 2006 sued the East Dadekotopon Development Trust, in the High Court, Accra claiming title to 808 Acres of the Trust land covered by the Land Certificate No. GA 19310 (Suit No. BL431/2006).
11. On 7<sup>th</sup> December, 2010 the High Court, Accra presided over by Justice K. A. Ofori-Atta gave judgment for the Ataa Tawiah Tsinaiatse and Numo Ofoli Kwashie Families. The Trust being dissatisfied with the said judgment appealed against same.
12. On 1<sup>st</sup> March, 2011 the Court of Appeal stayed execution of the said judgment to enable the Court determine the serious legal issues raised by the Trust in the Notice of Appeal.

NOW THEREFORE the parties, in the spirit of reconciliation, peace and development have agreed to amicably settle the matter once and for all on the following terms:

- a) The Ataa Tawiah Tsinaiatse and Numo Ofoli Kwashie Families of La accept and recognize the title of the East Dadekotopon Development Trust covered by Land Certificate No. GA 19310 dated 2<sup>nd</sup> October, 2003.
- b) Recognising that the Families acting through their then Lawful Attorney Benjamin Tetteh Quaye leased a number of plots of the land granted them by the Trust to various persons pursuant to the earlier settlement In July, 2003 which persons have already developed same, the Trust



shall regularize the said grants to those persons upon verification and proof provided the said grants do not compromise the approved layout of the area nor conflict with grants made by the Trust.

- c) In addition the Trust shall grant Fifteen (15) acres of the land to the Ataa Tawiah Tsinaiatse and Numo Ofoli Kwashie Families in accordance with the approved layout of the area and the development scheme of the Trust in full and final settlement of the case and any claims that the said families may have against the Trust.
- d) This constitutes the entire and final agreement between the East Dadekotopon Development Trust and the Ataa Tawiah Tsinaiatse and Numo Ofoli Kwashie Families of La in respect of the land covered by the Land Certificate No. GA 19310 and the said Families; their privies, agents, servants and persons claiming through them shall have no other or further claims against the Trust in respect of the said land.

DATED AT ACCRA THIS 27<sup>TH</sup> DAY OF MARCH 2015

(SGD)  
EDWARD MENSAH TAWIAH  
Substituted by David Feefitee Tawiah

(SGD)  
EAST DADEKOTOPON DEV. TRUST  
(CHAIRMAN)

(SGD)  
EWORMIENYO OFOLI KWASHIE  
Substituted by Edward Nsiah Akuetteh

(SGD)  
LAWYERS FOR  
DAVID FEEFITEE TAWIAH

(SGD)  
LAWYERS FOR EAST DADEKOTOPON  
DEVELOPMENT TRUST

(SGD)  
LAWYERS FOR  
EDWARD NSIAH AKUETTEH”

As indicated supra Exhibit “4B” is the proceedings of the Court of Appeal dated 27<sup>th</sup> April 2015 which entered the consent judgment upon the terms contained in Exhibit “4A”. On that day this transpired before the Court of Appeal;

“MR. ADDO ATUAH: My Lords, the parties herein have filed terms of settlement after mutual consensus of the parties after the case has been settled on terms as filed on 30/3/2015.

MR. DEKYI: We agree that the matter has been settled on terms as filed on 30/3/2015.

By Court: Let the terms of settlements filed on 30/3/2015 be and is hereby adopted as consent judgment. The appeal is accordingly struck out as settled. No order as to costs.

SGD.”

David Feefitee Tawiah who was substituted for the 1<sup>st</sup> Plaintiff Edward Mensah Tawiah signed the terms of agreement. Edward Nsiah Akuetteh who also was substituted for the 2<sup>nd</sup> Plaintiff also signed. The Trust signed as well as Lawyers for all the parties.

Based on these terms, the Court of Appeal entered consent judgment thereby bringing to an end the appeal filed by the said Plaintiff’s head lessor [EDDT].

The 1<sup>st</sup> Defendant herein did not testify by himself. He rather brought his alleged grantor Benjamin Tetteh Quaye to testify and he testified as DW1. This individual is the one mentioned supra for leasing a number of plots granted to his family by EDDT following the settlement in July 2003. Under cross-examination DW1 admitted the fact that David Feefitee Tawiah their then head of family appointed Edward Nsiah

Akuetteh as the Head of Family of Ewormienyo Ofoli Kwashie Family and also appointed Addo Atuah as their Lawyer. DW1 again admitted the fact that their family consented to the issuance of the said Land Title Certificate to EDDT on the 3<sup>rd</sup> of July 2003 by the Lands Commission. All these admissions are consistent with the contents of Exhibits "4A" and "4B".

## **6.2 CONCLUSIVE PRESUMPTION**

It is trite that facts recited in a written document are conclusively presumed to be true as between the parties to the document, or their successors in interest. Section 25 of the Evidence Act, 1975 (NRCD 323) provides as follows

**"25(1) 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."**

The learned jurist S. A. Brobbey in his invaluable book **"ESSENTIALS OF THE GHANA LAW OF EVIDENCE"** at page 383 had this to say about conclusive presumption

### **"8. 11. 4 CONCLUSIVE PRESUMPTIONS**

**In the terms of section 18(3), presumptions may be conclusive or irrebutable. The effect of the presumption being conclusive or irrebutable is that the presumption is almost same as the rules of substantive law. Conclusive presumption is one that cannot be contradicted and no evidence in rebuttal can be admitted by the trial court. These are common law rules which have been codified in NRCD 323, s 24(1) as follows:**

**"24. (1) Where the basic facts that give rise to a conclusive presumption are found or otherwise established in the action, no evidence contrary to the conclusively presumed fact may be considered by the tribunal of fact."**

The basic condition for the application of section 24(1) is that the court must find the presumed fact to exist before it will prevent the adduction of evidence in rebuttal of the presumed fact. This principle was re-stated as follows in *In re Suhyen Stool; Wiredu & Obenwaa v Agyei & Others* (2005-2006]SCGLR424 (in holding 4):

"The predicate condition stipulated in the first part of section 24(1) of NRCD 323, namely the basic facts that had arguably given rise to a conclusive presumption must first be found or otherwise established before the application of the legal effect or consequences of conclusive presumption, i.e. the disallowance of contrary evidence."

NRCD 323 provides instances of conclusive presumption in section 25 to 29. The list is of course not exhaustive of all that can constitute conclusive presumptions. Prima facie, the sections refer to basic rules of estoppel. The sections may be summed up as follows:

a. Facts in documentary instruments: s 25

People who reduce their transactions into writing usually ensure that all they want to apply to the transaction are stated in the document. After that, they can hardly be tolerated when they turn round to attempt to impugn what they themselves have put on paper. The law therefore seeks to protect the intentions of parties by providing that what they put into writing are to be taken to represent their intentions. This is covered in NRCD 323, s 25(1) which states that:

"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."

This section creates an irrebuttable presumption. By the section, evidence cannot be admitted to contradict the terms of a document which parties have agreed to embody in that document. This principle is akin to estoppel by deed which has been considered in Chapter 8. 6.3 Under Estoppel by

**Deed. African Distributors Co Lid v CEPS [2011] 2 SCGLR 955 applied section 25(1) by its ruling that the plaintiff company was bound by the contents of a written agreement which had raised conclusive presumption against it."**

Here, the basic fact giving rise to this estoppel is the fact that Exhibit "4A" was executed by the head lessor of the Plaintiff herein and the grantor of the 1<sup>st</sup> Defendant herein. Since the parties herein are successors in interest of the parties therein, they are also bound by the facts recited in the said Terms of Settlement. Since this is a conclusive presumption, no contrary evidence would be allowed to contradict the contents of Exhibit "4A". To this extent if any evidence has been smuggled in, without objection, this court shall reject same or same should be deemed rejected under Section 8 of the Evidence Act 1975 [NRC 323] because it is inadmissible per se. [See the case of **EDWARD NASSER VRS MCVROOM [1996-97] SCGLR 468**] Consequently the Plaintiff and the 1<sup>st</sup> Defendant herein being successors-in-interest are so bound by the contents of Terms of Settlement executed by their grantors and filed at the Registry of the Court of Appeal on the 30<sup>th</sup> of March 2015 and no contrary evidence shall be considered, even if same was not objected to.

### **6.3 FINDINGS ARISING FROM THIS CONCLUSIVE PRESUMPTION**

The parties herein being successors in interest are estopped from impugning what their lessors had mutually agreed to be true. Consequently I find as a fact that the said grantors of the 1<sup>st</sup> Defendant i.e. the Ataa Tawiah Tsinaiatse and Numo Ofoli Kwashie Families of La accepted and recognized the title of the EDDT covered by Land Certificate No. GA 19310 dated 2<sup>nd</sup> October, 2003.

I also find as a fact that the said families in July 2003, as part of the settlement consented to the issuance of the Land Title Certificate to EDDT after the said families through DW1 had caveated the application by EDDT. In the settlement, the said families took a number of plots from EDDT and in return wrote to the Lands

Commission to issue a Land Title Certificate to EDDT.[ See paragraph 12 (b) of the Exhibit 4A]

Again I find that DW1, Benjamin Tetteh Quaye following the settlement in July 2003 leased a number of plots granted the said family by the EDDT to various persons who have already developed same by March 2015. This suit was mounted in 2017 when the 1<sup>st</sup> Defendant entered the disputed land and started developing same, which activity was injuncted by the Court of Appeal hence the disputed land was not among the land leased by DW1 following the July 2003 settlement. Secondly per the 1<sup>st</sup> Defendant's indenture marked Exhibit "28" it was rather one Esther Korkoi Quaye who leased the disputed land to the 1<sup>st</sup> Defendant in 2013 hence the disputed land was not among the land leased by DW1, Benjamin Tetteh Quaye pursuant to the July 2003 settlement.

Effectively the dispute between EDDT and the said families was resolved even before the said families mounted the suit which culminated in these terms of settlement. In law there was no legal justification for that suit because same had been settled.

Notwithstanding, this settlement the said family had the second bite of the cherry by the institution of that suit which was subsequently compromised at the Court of Appeal.

From Exhibit "4A" EDDT was to give the said families Fifteen (15) acres of the land in accordance with the approved layout of the area and the development scheme of the EDDT in full and final settlement of the case and any claims that the said families may have against the EDDT.

I find that these terms constituted the entire and final agreement between the EDDT and the said families in respect of the land covered by the Land Certificate No. GA 19310 and the said families and the latter by themselves , their privies, agents, servants and persons claiming through them shall have no other or further claims against the EDDT in respect of the said land. In other words EDDT's cause of action which was to challenge the finding of fraud against it by Justice Ofori Atta was gone

as between the EDDT and the said family. It was as if no finding of fraud has ever been made against EDDT and the said family had no further claims to the said land save the 15 acres. Therefore the consent judgment which was entered on the 27<sup>th</sup> day of April 2015 brought to closure any claim the said families had against EDDT.

#### **6.4 EFFECT OF CONSENT JUDGMENT**

His Lordship Tanko JSC in the case of **MOST REV. DR. ROBERT ABOAGYE MENSAH AND 2 OTHERS AND EDWARD OSEI BOAKYE TRUST FUND VRS YAW BOAKYE (CIVIL MOTION NO. J7/08/2021)** delivered on the 20<sup>th</sup> May, 2021 cited with approval the decision of Atuguba in the case of **In REPUBLIC VRS HIGH COURT, ACCRA, EX-PARTE DEBORAH ATAKORAH (BILLY CUDJOE - INTERESTED PARTY) [2015-2016] 1 SCGLR 298** on the effect of a consent judgment once entered by the court. He delivered himself thus;

**“In REPUBLIC VRS. HIGH COURT, ACCRA, EX-PARTE DEBORAH ATAKORAH (BILLY CUDJOE - INTERESTED PARTY) [2015-2016] 1 SCGLR 298, this court per Atuguba JSC expounded on the nature and effect of terms of settlement on pending disputes and stated thus:**

**“When parties settle an action whether in or out of court simpliciter, the cause of action involved in such settlement is gone and is replaced by such settlement. Upon breach of the settlement the innocent party’s remedy is not to reopen the litigation so settled but to bring an action to enforce the settlement, it being an enforceable contract between the parties involved”.** When parties settle an action whether in or out of court simpliciter, the cause of action involved in such settlement is gone and is replaced by such settlement. Upon breach of the settlement the innocent party’s remedy is not to reopen the litigation so settled but to bring an action to enforce the settlement, it being an enforceable contract between the parties involved”. (8) On the strength of this decision therefore, nothing is in doubt that, when

the parties herein resolved their dispute by endorsing the terms of settlement on 1<sup>st</sup> July 2014, the cause or matter between the parties pending before this court on appeal was replaced by the settlement the same having been filed in the registry of this court. Therefore, at the time the parties appeared before this court on 12<sup>th</sup> November 2014 for the adoption of the terms of settlement on the Applicant's own prayer, there was no longer a cause or matter to be determined by this Court. The adoption of the parties own agreement did not involve the determination of the issues previously raised in the appeal which had been wholly compromised by the parties themselves. (9) The decision to settle the hitherto subsisting appeal was on the parties' own initiative. While the courts may encourage or facilitate settlement as required under Section 72 of the Courts Act, 1993 (Act 459), the actual processes which led to the announcement of the amicable resolution of the issues in court were entirely driven by the parties themselves without the involvement of this court. The parties on their own negotiated and reached a compromise, the terms of which included the placement of the signed terms of settlement before this court for adoption by filing same. The act of adopting the terms of settlement did not involve a resolution of any matter in contention as none existed as of 11<sup>th</sup> September 2014 when the Terms of Settlement was filed in the registry of this court. (10) Consequently, this court, however constituted, could not have added or subtracted from the agreed terms. The order adopting the terms of settlement in line with the application before the court did not determine the cause or matter previously pending for adjudication, as same had been terminated by the compromise reached by the parties. Thus, consistent with this position, this court in *The Republic vs. High Court, Accra Ex Parte; Joseph Danso (NPP, EC and Others - Interested Parties)* [2015 - 2016] 1 SCGLR 760 @ 764, stated as follows: "According to the settled Court practice in such matters, the presiding judge does not interfere with



the agreement and or compromise reached by the litigants and, rather, only sanctions it once it is within the law and does not raise any issue of illegality such as placing an obligation on a party to undertake an act that is prohibited by law". (11) Therefore, reading Article 134 of the 1992 Constitution together the practice and procedure regarding the adoption of terms of settlement as consent judgment are entirely consistent with the role of the court to promote amicable resolution of conflicts under Section 72 of Act 459. The adoption of terms of settlement as consent judgment are intended to symbolize the end of the dispute as agreed by the parties and to enable enforcement of the agreement without the option of re-litigating the issues which have been settled and filed by the disputing parties themselves."

Per this dictum when the Plaintiff mounted the present action against the Defendants in 2017 for the reliefs listed supra, any cause of action or claim that the 1<sup>st</sup> Defendant's grantors had against EDDT or LHDL was gone and the only enforceable claim was the terms of settlement dated 27<sup>th</sup> April 2015.

The issuance of the Land Title Certificate to EDDT **with the express consent of the said families** entitled EDDT to grant the disputed land to LHDL which also assigned its interest to the Plaintiff. From the forgone the Plaintiff has nothing to prove having regard to the position of the law as espoused supra. The Plaintiff has shown that his derivative title is grounded on solid and valid titles of his said grantors. His title is equally supported by Exhibits the 1<sup>st</sup> Defendant's witness brought to this court.

## **7.1 EVIDENCE LED BY 1<sup>ST</sup> DEFENDANT IN HIS DEFENCE AND IN SUPPORT OF HIS COUNTERCLAIM**

The evidential burden or the burden of showing contrary evidence is on the 1<sup>st</sup> Defendant to prove that his grantors had a valid title to the disputed land and that the Consent Judgment dated 12<sup>th</sup> July 2001 and the Trust Deed dated 10<sup>th</sup> April 2002

took over the land of Ataa Tawiah Tsinaiatse Family land fraudulently or same was tainted with fraud.

Once the 1<sup>st</sup> Defendant seeks to collapse the root of title of the Plaintiff by alleging that same are products of fraud, a higher standard of proof is required. Fraud is a serious accusation and anyone who alleges same is required to prove it beyond reasonable doubt as per section 13(1) of the Evidence Act 1975, Act 323. You may also see the case of **GHANA COMMERCIAL BANK LTD VRS COMMISSIONER OF HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE [2003-2004] 1 SCGLR 91.**

The law would not permit anyone to allege fraud without proving same beyond reasonable doubt. One would also not be permitted to win the sympathy of the court by alleging fraud against his adversary without proving same beyond reasonable doubt. In the case of **OSEI ANSHONG VRS GHANA AIRPORTS CO. LIMITED [2013-2014] 1 SCGLR 25,** it was held amongst others that;

***“Fraud is not fraud merely because it has been so stated in a writ to excite the feelings of the courts”***

In the case of **TOPKINGS ENTERPRISE LTD VRS ADRAIN NII ODOI ODDOYE AND OTHERS, SUIT NO. H1/136/2021** (unreported, delivered on the 10<sup>th</sup> day of March 2022 Bright Mensah JA aptly stated the standard of proof where fraud is alleged in a civil case and the consequences of fraud in these words, at page 27 of the judgment as follows;

**“The law relating to fraud and its proof in civil litigation is already overburdened with fine distinctions and we do not intend to reinvent the wheels here. Suffice is to say that on general principle, fraud vitiates everything to the extent that even the solemn judgments of superior courts may be called into question as having been obtained through fraud. It is trite knowledge that fraud vitiates everything including even solemn judgments of superior courts. The Supreme Court speaking through Acquah JSC (as he then was) stated the principle in *Frimpong v Nyarko* [1998-99] 734 @ 743 that fraud vitiates everything and that when a court of law in the course of**

**the proceedings has cause to believe that fraud has been committed, it is duty-bound to quash whatever has been done in the strength of that. By rule of practice and procedure, fraud has to be pleaded, particularized and proved strictly. Where fraud and duress were pleaded, particulars must be given. Consequently, where no particulars were given, it must be taken that either no fraud or duress existed or the averment amounted to a mere denial. See: Darbah v Ampah [1989-90] 1 GLR 598 C/A. On general principle, the court is not to find fraud unless particulars thereof has been distinctly pleaded and proved strictly, for a finding of fraud is not to be made without clear and cogent evidence. See: Thomson v Eastwood [1874-77] 2 AC 215 HL @ p.233 per Lord Cairns L.C. I do endorse the findings of the lower”**

The only witness of the 1<sup>st</sup> Defendant gave this evidence to prove the allegation of fraud

- “1. My name is BENJAMIN TETTEH QUAYE. I live in La, Accra. I am a retired public servant. I am a principal member and the descendant of Edward Mensah Tawiah and was at most material times the lawful attorney for the joint heads and Plaintiffs Edward Mensah Tawiah and Ewormienyo Ofoli Kwashie, during the trial my elder brother also acted as such and thereafter in the Suit No. BL. 431/2006 which was before Justice Ofori Atta. I am now the Head of Family.
2. The 1<sup>st</sup> Defendant is one of our numerous grantees of pieces of land forming part of our larger land known as Opintin lying behind the Ghana International Trade Fair Centre, La- Accra. This land has been known and adjudged in Court to be a bona fide property of our ancestors Ataa Tawiah Tsinaiatse and Numo Ofoli Kwashie, of La
3. I do not know the Plaintiff but we heard about him only when our grantee brought this suit to our attention. He is only one of the many privies and agents of the supposed East Dadekotopon Development Trust (EDDT) and its pretenders of Trustees.

4. I have been shown the case of the Plaintiff including the title documents and supposed judgments he relies on. They are nothing but fraud and falsehood. The Plaintiff is simply seeking to repeat the case of his head grantor - EDDT which has been long shown to be founded on fraud. The Trust was formed for a fraudulent purpose and wrongfully registered our land. Those who formed the Trust themselves did not establish their own title to the land at the time they purported to convey the land to the Trust in 2002. The Trust registered the land through fraud.
5. There are judgments on which I will rely and which I attach hereto my evidence showing that the matters being argued or pursued here have been previously determined, the fraud already determined against the Trust, La Hillsvie and the Plaintiff who are all privies of the Trust, and but for recent decisions of the Supreme Court, which appear to have reopened the issue of validity of some purported compromise judgment of the Court of Appeal, which my family still disputes, the matter would have been res judicata.
6. Here I attach the following:
  - Exhibit 1 - Judgment of the Court of Appeal in Civil Appeal dated 13<sup>th</sup> May, 1998 in Nii Kpobi Tettey Tsuru II vrs Ato Quarshie & Ors. Civil Appeal No.2/98.
  - Exhibit 2 –Consent Judgment/Terms of Settlement Nii Kpobi Tettey Tsuru III v Ato Quarshie & ORS, Suit No. L353/97 dated 12/7/2001.
  - Exhibit 3 - Copy of Judgment 1. Edward Mensah Tawiah 2. Ewormienyo Ofoli Kwashie vrs 1. The Ag. Chief Registrar of Lands 2. The Trustees, East Dadekotopon Development Trust Suit No. BL 431/2006 dated 7<sup>th</sup> December, 2010;

- Exhibit 4<sup>A</sup> and 4<sup>B</sup> Terms of Settlement/Consent Judgment respectively dated 30/3/2015 and 27/4/2015 1. Edward Mensah Tawiah 2. Ewormienyo Ofoli Kwashie (substituted by Edward Nsiah Akuetteh) vrs 1.The Ag. Registrar of Lands 2. The Trustees, East Dadekotopon Development Trust, Civil Appeal No. H1/175/2011;
  - Exhibit 5 - Judgment, Daniel Ofoli Ewormienyo vrs Edward Nsiah Akuetteh, Suit No. BMISC 720/2015, dated 21<sup>st</sup> May, 2019;
  - Exhibit 6 - Supreme Court ruling 19/11/2019 The Republic v The Registrar, High Court (Probate Division) Accra: Ex Parte The Registered Trustees, of East Dadekotopon Development Trust (1. Daniel Ofoli Ewormienyo 2. Edward Nsiah Akuetteh Interested Parties) Suit No. J5/67/2019.
7. My Lord, the above exhibits show that the High Court found and held that the entire title certificate of the Trust/EDDT was void for fraud. The attempts to restore the void and fraudulent title of the Trust was also again found to be fraudulent in the judgment of Justice Abada who set aside the 2015 terms of settlement and consent judgment. The subsequent challenge of Justice Abada's judgment in the Supreme Court did not succeed in any significant way save for part of the orders he had made from Justice Ofori Ataa's judgment which were unnecessary.
8. The purpose of the above named judgments as exhibited is to give a background to the case. Despite the above state of affairs the Supreme Court has in July, 2020 held that the Trust's title remained valid. The Supreme Court also acknowledged that the consent judgment obtained by the Trust could be set aside in a fresh action. Indeed, we have initiated that action since 12<sup>th</sup> December, 2018 in Suit NG. G/444/2019 to set aside the fraudulent consent judgment copy of which suit I attach

as Exhibit 7. The Plaintiff cannot and should not be allowed to be relying on decisions that have reopened the issue of fraud which is pending before another High Court at the same time as this case.

9. I also wish to state that there have not been any legitimate trustees of the Trust since 10<sup>th</sup> April, 2006 to have validly **convey** any land to Plaintiff or his grantor. I hereby attach as Exhibit 8 copy of the Trust Deed, and Exhibit 9 Series rulings showing the Trust had lacked Trustees since 2006 when the first Trustees term ended.
10. My Lord, it is our case also that grantors of the 1<sup>st</sup> Defendant and all our grantees for that matter, is that the instant suit is an attempt to re-litigate the fraudulent title of the Trust through a proxy or privy and the matter has been long settled and should not be re-opened. The suit should be dismissed on the basis of all I have said in my evidence and the judgments or decisions I have attached in support. To avoid endless litigation, the issue of fraud against the judgment Plaintiff and its grantors rely on should be determined once and for all and this could only be done in our Suit No. GJ/444/2019 pursuing since for which the instant case should be delayed.”

In this supplementary witness statement he continued

- “1. My name is BENJAMIN TETTEH QUAYE and make this statement as evidence in support of the 1<sup>st</sup> Defendant's case. This is Supplemental to my witness statement filed on 19<sup>th</sup> July, 2021.
2. It has become necessary to bring to the Court's attention and in response to the claims being made by the Plaintiff and his supposed grantors as regards the validity of their title to Opintin lands, which my family totally rejects despite the obvious official complicity in the fraud relating to our land particularly the various divisions of Lands Commission.

3. I wish to attach and rely on the following additional documents that explain matters better in order that no one will over-simplify things on the basis of judgments or rulings of any Court to which my family and I were not parties.
- i. A stamped copy of the so-called Trust Deed dated 10<sup>th</sup> April, 2002 to substitute my Exhibit 8.
  - ii. Copy of a ruling in Suit No. GJ/444/2019 dated 15<sup>th</sup> November, 2021 as Exhibit 11 to confirm there is a pending suit to set aside the so-called consent judgment of 27<sup>th</sup> April, 2018.
  - iii. Exhibit 12 a Site Plan showing our family land (Opintin) to the extent of 2,300 Acres the subject matter of the suit before Justice K. A. Ofori Atta.
  - iv. A letter dated 30<sup>th</sup> September, 2003 from Ministry of Defence showing our land had not been acquired by Government Exhibit 13.
  - v. Yellow Card/Receipts or Acknowledgement of our documents for registration by Lands Commission as far back as 3<sup>rd</sup> November, 1997 long before the “Trust” was formed - Exhibit 14.
  - vi. Letter from the Ghana Armed Forces Headquarters/Logistics dated 13<sup>th</sup> October, 1999 to Lands Commission acknowledging our ownership of the Opintin Land and their “no objection” to our application for registration, as Exhibit 15.
  - vii. Letter from Lands Commission dated 9<sup>th</sup> September, 1999 clarifying Opintin Land relative to Government Acquisitions Exhibit 16.

- viii. Letter from Lands Commission 16<sup>th</sup> January, 2003 on the illegality of registration of our land by the Trust - Exhibit 17.
- ix. Exhibit 18 - Letter from Lands Commission dated 6<sup>th</sup> November, 2003 on illegal registration of our land by the Trust.
- x. Letter from Lands Commission dated 2<sup>nd</sup> June, 2003 reference lodgment No, 05745/97 as Exhibit 19.
- xi. Exhibit 20 - Notice of Caveat by Lands Commission on Land Title Certificate No. GA19310 of the Trust, and dated 19<sup>th</sup> December, 2005.
- xii. Evidence that the said caveat remains in force, - Exhibit 21 order of Mandamus Suit No. GJ/1150/2016, dated 6<sup>th</sup> August, 2017 and Court Notes 29<sup>th</sup> September, 2017 as Exhibit 22.
- xiii. A letter from the Trust dated 17<sup>th</sup> December, 2003 acknowledging our possession/presence on the land being taking illegally. - Exhibit 23.
- xiv. Exhibit 24 Series - copies of Writ of Summons, Statement of Claim, Statement of Defence and Terms of Settlement in Suit No. L.353/97.
- xv. Two letters from Lands Commission addressed to me dated 7<sup>th</sup> September, 1999 and 9<sup>th</sup> September, 1999 - Exhibits 25 and 26 respectively.
- xvi. Letter from A.M.A dated 10<sup>th</sup> February, 2000, addressed to Lands Commission in response to our request for development/zoning/layout - Exhibit 27.



This is the evidence led by the 1<sup>st</sup> Defendant in an attempt to prove the said fraud against the grantors of the Plaintiff.

## **7.2 EVALUATION OF THE EVIDENCE OF THE 1<sup>ST</sup> DEFENDANT**

There would be the need to define fraud so that we evaluate the impugned Consent Judgment and Trust Deed in that context.

Eric Baah J (as he then was) in the case of **KWAKU BANIBA VRS MOSES WEGBE (SUIT NO. E11/02/2019)**, (Unreported delivered on the 4<sup>th</sup> December, 2019) gave this brilliant exposition of the law regarding what constitutes fraud. He said

### **“i. What is fraud?**

**19. Even the authoritative authors on fraud, Kerr on the Law of Fraud and Mistake, (7 ed., 2009, page 1) concede that, it is not easy to define what constitutes fraud in the realm of civil law. That was because:**

**“Fraud is infinite in variety (a) The fertility of man’s invention in devising new schemes of fraud is so great, that the courts have always declined to define it or to define undue influence, which is of its many varieties, reserving to themselves the liberty to deal with it under whatever form it may present itself”.**

**20. In its attempt, the Black’s Law Dictionary (9 ed, page 731) defines fraud as:**

**“A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment...”**

**In all cases, fraud will exist if one wilfully acted in a manner that is illegal or inequitable so as to deprive another person of what he is entitled to.**

### **ii. Elements of fraud**

**21. The following are generally held to be the elements of fraud (see Kerr on Fraud and Mistake, supra, pages 2-3)**

- i. The means to achieve the fraud must be successful in deceiving the envisaged victim. If the intended victim of the fraud knows the truth and anticipated the dishonest devices triggered to defraud him, he cannot be said to have been defrauded.**
- ii. Where there is no intention to deceive, there is no fraud. Notwithstanding the motive, there cannot be fraud where there is no intention to deceive.**
- iii. The party deceived must suffer some damage before a cause of action to sue for fraud will accrue to him.”**

In the case of **JOANA NYARKO VRS MAXWELL TETTEH & 2 ORS.**[unreported, **CIVIL APPEAL SUIT NO: H1/10/2018** delivered on the 24<sup>th</sup> May, 2018, the Court of Appeal speaking through Ofoe JA gave this excellent exposition of what constitute fraud;

**“Let us be clear what the legal authorities mean when they mention fraud. We can then make a determination whether the acts of the plaintiff and Bediako in the procurement and the registration processes were in any way fraudulent. Kerr on the Law of Fraud and Mistake, 7<sup>th</sup> Edition by Denis Mc Donnel and John Monroe has a lot to offer us in our search for legal understanding on what is fraud. At page one of the book it states that:**

**“Fraud in the contemplation of the civil court of justice may be said to include properly all acts, omission and concealment which involves a breach of legal or equitable duty, trust or confidence, justly reposed and are injurious to another, or by which an undue or unconscientious advantage is taken of another. All surprise, tricks, cunning, dissembling and other unfair way that is used to cheat anyone is considered fraud. Fraud in all cases implies a willful act on the part of any one, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled to”**

On the authority of *Derry vrs Peek (1889) 14 Appeal Cases 337* there appears to be some certainty in the legal position that one of the elements of fraud is the intention to deceive though the motive is immaterial. It is also accepted that negligence is not fraud but may be evidence of fraud if it is so gross as to be incompatible with the idea of honesty. *Tarkey vrs Mc Bain (1912) AC 186* is authority that an intention to deceive being a necessary element or ingredient of fraud, a false representation does not amount to fraud at law unless it be made with a fraudulent intention and there is a fraudulent intention if a man, with the view of misleading another into a course of action which may be injurious to him, makes a representation which he knows to be false, or which he does not believe to be true. At page 18 of the book *Kerr on the Law of Fraud and Mistake (supra)* the authors state:

“There is fraud in law if a man makes a representation which he knows to be false, or does not honestly believe to be true, and makes it with the view to induce another to act on the faith of it, he does so accordingly, and by so doing sustains damage although he may have had no dishonest purpose in making the representation. It is immaterial that there may have been no intention on his part to benefit himself or to injure the person to whom the representation was made. It is enough that it be made willfully and with the view to induce another to act upon it, who does so accordingly to his prejudice... .”

What appears to run through the meaning assigned to fraud by these authorities is that there should be some representation which should be fraudulent, there should be some dishonesty and the third party to whom the representation was made should have acted on it to his detriment or prejudice. *Taylor JSC* had this to say of fraud in the case of *S. A. Turki & Brothers vrs Dahabieh (1987-88) 2 GLR 486*. “In my opinion a charge of fraud in law can be taken to be properly made

against a party who knowingly or recklessly whether by conduct or words, uses unfair, wrongful or unlawful means to obtain a material advantage to the detriment of another party. It is an insidious form of corruption and it is therefore a charge involving moral obloquy. Bluntly put without equivocation, it is a species of dishonest conduct... .”

His Lordship Justice Twum relying on *Derry vrs Peek* and Lord Esher in the case of *Le Lievre vrs Gould* (1893)1QB 491 in our Ghanaian case of *Brown vrs Quashigah* (2003- 2004) SCGLR 930 at 943 said that fraud, in short, is dishonesty.”

From the above authorities the common theme running through them is the element of using dishonest means to gain an advantage over another thereby putting the other party to a disadvantage. It is also clear that there should be an intention to deceive on the part of the perpetrator.

In compliance with the law the 1<sup>st</sup> Defendant pleaded and particularized the fraud he alleged in paragraph 7 of the Statement of Defence and Counterclaim as follows;

**“PARTICULARS OF FRAUD AND ILLEGALITY**

- a. Plaintiff claims to have taken a sublease from a certain La Hillsvie Development Limited on 4<sup>th</sup> October, 2013.
- b. The said La Hillsvie Development Limited itself purported to be a lessee of East Dadekotopon Development Trust (EDDT) by a lease dated 7<sup>th</sup> October, 2007.
- c. At the time of this purported Head Lease the EDDT was in court over the land with 1<sup>st</sup> Defendant's grantors but were doing voluntary conveyance pendent lite so also was the time Plaintiff claimed to have had his sublease and registration hereof.
- d. Lands Commission, who was a party to the said suits, was aware but continued to register such transfers and issued certificates of title.

- e. By the time 7<sup>th</sup> October, 2007, when EDDT purported to grant a lease to La Hillsvie Development Limited (Hereinafter called 'LHDL') the EDDT had become defunct as it had no legally appointed Trustees or Registered Trustees in accordance with their own Trust Deed dated 10<sup>th</sup> April, 2002 and the Trustees(incorporation) Act 1962 (Act 106).
- f. The said EDDT became wholly an empty shell with "**rogue elements**" or persons with dubious status according to its own principal settlor the Late Nii Kpobi Tettey Tsuru III, La Mantse, as far back as 10<sup>th</sup> April, 2006.
- g. The purported Deed of Conveyance/lease of 7<sup>th</sup> October, 2007 to LHDL by EDDT was wholly illegal, fraudulent and void.
- h. The Plaintiff while claiming his grantor took its grant from the EDDT Plaintiff at the same time shows that it was not the EDDT but rather a certain Lenshie Kotopon Nmati Abonase Quarters are their Head Lessors.
- i. This Lenshie Kotopon Nmati Abonase Quarters themselves have not been shown to own or could not have owned any land to grant to Plaintiff's grantor.
- j. Plaintiff's root of title in further contradiction is also traced to a certain consent judgment dated 12<sup>th</sup> July, 2001 by Justice Ofoe in suit no. L353/97 which proposed the creation of a Trust.
- k. The said suit was titled Kpobi Tettey Tsuru III vrs Ato Quarshie & Ors did not have the involvement of the 1<sup>st</sup> Defendant's grantor families or their knowledge, authority even though the parties thereto know and recognized that the Ataa Tawiah Tsinaiatse Family had an interest in the subject land under litigation.
- l. The said consent judgment per its own' content is a product of fraud for which the Court should set it aside as it could not form the root of title by the so-called EDDT, LHDL or the Plaintiff.

- m. Indeed as per the Trust Deed of the EDDT dated 10<sup>th</sup> April, 2002 upon which Plaintiff founds his title the purported settlors and the then Trustees knew, were aware and did mention in the trust deed the facts of the interest of the Tawiah Tsinaiatse Family in the subject land over which they had clandestinely, surreptitiously and illegally created a trust without the real owner's knowledge consent and participation.
- n. The signatories and parties to the said consent judgment in Suit No.L.353/97 did not include the Ataa Tawiah Tsinaiatse Family or member.
- o. Prior to the said consent judgment in Suit No. L.353/97, the Court of Appeal by its judgment dated 13<sup>th</sup> May, 1998, Civil Appeal No. 2/98 in Nii Kpobi Tettey Tsuru III vrs Ato Quarshie & Ors AND Nii Adjei Boahen II & Anor; set aside an interlocutory order of High Court and directed the suit to be remitted to the High Court to be heard.
- p. The main issue, among others directed to be determined by High Court was whether the land being litigated by the Parties was Stool Land or Quarter Land.
- q. To date, that matter has not been determined and all the Plaintiff's grantors and privies flush around are consent judgments, land title certificates etc. over land not owned by them.
- r. The said pending issue of the indeterminate acreage, title etc. being claimed by the EDDT & CO as their land with their actual knowledge and notice of the real owner(s) ie Ataa Tawiah Tsinaiatse Family, remains as found again in the Ruling of His Lordship Justice Anthony Oppon in the **Republic vrs Nii Kpobi Tettey Tsuru li & ORS, Ex Parte East Dadekotopon Development Trust (EDDT)** Suit No, FALM/64/2013 dated 25<sup>th</sup> March, 2015.
- s. The 1<sup>st</sup> Defendant will furnish further and better particulars of the fraud and illegality that have afflicted the entire root of the Plaintiff's claim/title and that of his grantors."

The particulars of fraud as listed from “a” to “l” and from “o” to “s” are not particulars of fraud properly so called. Each allegation should contain facts or information on fraud like particulars of offence in a charge sheet, so that the other party would know exactly what he is being accused of. That aside the said particulars largely contains facts seeking to contradict the contents of Exhibit “4A” and as I have already indicated same ought not to be permitted. Hence the said particulars would not be interrogated any further. Suffice to say that the allegation that as at October 2007 EDDT was defunct and being run by some rogue elements remained a bare allegation. No evidence was led to prove same beyond reasonable doubt. If the said entity was defunct what did the 1<sup>st</sup> Defendant’s grantor do when LHDL applied for registration?

Ordinarily if a person who is not a party to a suit loses his land because the parties in the suit in settling their dispute take over the non-party’s land from him that would be a fraudulent and dishonest behavior. That is the import of the particulars contained in paragraphs “k”, “l”, “m” and “n”. It is these particulars which seek to impute fraud against the said Consent Judgment and Trust Deed. Despite the estoppel alluded to above or the effects of a conclusive presumption, our courts have on grounds of equity held as an exception to the rule/law that extrinsic evidence is permitted to prove that an agreement which has been mutually executed or signed by the parties themselves was void for mistake, illegality, fraud or other vitiating factors. See: **MOUGRAINE VRS YEMOH (1977) 1 GLR 163 C/A**, **MOTOR PARTS TRADING CO VRS NUNOO (1962) 2 GLR 195** and **QUANSAH VRS ADDEIWA (1966) GLR 184**. Since the 1<sup>st</sup> Defendant is alleging fraud he ought to be entertained

## **7.2 DID THE 1<sup>ST</sup> DEFENDANT DISCHARGE THE EVIDENTIAL BURDEN BASED ON THE EVIDENCE LED?**

In this analysis any reference made to Ataa Tawiah Tsinaiatse Family includes Numo Ofoli Kwashie family for they are one family. It is a fact that the Ataa Tawiah Tsinaiatse Family was not a signatory or party in the case of Nii Kpobi Tettey Tsuru

III v Ato Quarshie & ORS, Suit No. L353/97 which terminated when the Consent Judgment was entered. It is also a fact that the land proposed by the settlors of the Trust to be used for same included the land belonging to the said family. Does this make the Consent Judgment and the Trust Deed fraudulent? The answer is no and I would proceed to explain.

In the Terms of Settlement and Trust Deed, the feuding parties in the case Nii Kpobi Tettey Tsuru III case (supra) made specific reference to the said family's land in two specific places . The first is the Terms of Settlement. In paragraphs 8 and 9 it was stated

- “8. The parties hereto recognize the interests of the families of Ataa Tawiah Tsinaiatse, Tse Addo, Kwade We in portions of the said land**
- 9. The extent of the interests of such families shall be agreed upon and clearly mapped out by the parties hereto and the said families before the commencement of developmental constructions on the said land**

The second is the Trust Deed. In Article 2 clause 2 (viii) it was stated;

**“ARTICLE 2**

. . . .

- (viii) To map out the extent of Tawiah Tsinaiatse, Tse Addo and Kwade We Families in the Trust land and agree on modalities for compensation without prejudice to the development scheme for the entire land.”**

These two statements were factual or honest statements. There is absolutely nothing fraudulent about same. In fact I fail to see how these statements could be termed or interpreted to be fraudulent or tainted with fraud. The feuding parties in that case did not seize, annex or expropriate the lands belonging to Ataa Tawiah Tsinaiatse, Tse Addo, Kwade We. They rather recognized the interest of the three families and even declared an intention to pay compensation based on an agreement. At worse these assurances dissuaded the three families from involving themselves in that suit at an early stage. With those assurances no vigilant family



would have applied to join the suit since their interests were not at risk by then, for after all their interest had been recognized by the feuding parties in the said Terms of Settlement and subsequently in the Trust Deed. A case in point is the case of **NII STEPHEN MALEY NAI VRS EAST DEDEKOTOPON DEVELOPMENT TRUST [Civil Suit No. J4/61/2018]** exhibited by the Plaintiff as Exhibit "J".

In that case the Plaintiff/Appellant/Appellant brought an action against the Defendant/Respondent/Respondent [EDDT] claiming title to a large tract of land behind the Trade Fair, (Trust land as in this case). Both the High Court and the Court of Appeal dismissed the Plaintiff's claim on the ground that he is estopped for standing by and not joining the litigation that resulted in the Consent Judgment in Suit No. L 353/1997. Both courts further held that the Plaintiff is estopped by laches and acquiescence for looking on and not taking any action since the Consent Judgment and the formation of the Trust as the Defendant/Respondent/Respondent has exercised various unchallenged acts of ownership in respect of the Trust Lands. At page 12 of the judgment the Supreme Court speaking through Kotey JSC said

***"The Plaintiff-Family is also estopped by conduct, laches and acquiescence from asserting any interest in the disputed land having stood by as title to the land in dispute was litigated and settled in suit no. L/353/97 and watched on for several years as the defendant, which is a product of the said suit, exercised overt acts of ownership over the land, including the land in dispute. We dismiss the appeal and affirm the decisions of the trial High Court and the Court of Appeal."***

In this case (NII STEPHEN MALEY NAI) no such assurances were given unlike the Nii Kpobi Tettey Tsuru III v Ato Quarshie case (supra). The Ataa Tawiah Family cannot be accused of standing by due to the assurances given it by the feuding parties.

That aside none of the numerous exhibits brought to this court by the 1<sup>st</sup> Defendant shows that before the 3<sup>rd</sup> of July 2003, EDDT had taken over or alienated the said

family land. The Ataa Tawiah Tsinaiatse Family was in charge of its land confirming the fact that same had not been expropriated by the Trust.

It however appears from the evidence before me that a semblance of bad faith was only exhibited by EDDT when before July 2003, EDDT applied to the Lands Commission to grant it Land Title Certificate to cover all the land including the Ataa Tawiah Tsinaiatse land without honouring their said assurances or promises. Having given these assurances to the Ataa Tawiah Tsinaiatse that it interests together with others would be catered for, it smacks of bad faith when EDDT applied in 2003 for a Land Title Certificate to be issued to it without discharging its obligations under the Consent Judgment and the Trust Deed. This conduct by EDDT has nothing to do with the validity of the Consent Judgment of 2001 and the Trust Deed of 2002. The two exhibits in my view are not fraudulent or tainted with fraud and definitely not void.

When this came to the notice of the said family, it together with others who were to be affected by that conduct caveated the application by EDDT, which was totally justified. After the caveating the said family should have sued because by then EDDT had not redeemed its assurances. It must be noted that the 620 acres granted to the said family by the said La Mantse was revoked. Indeed the Deed of Revocation was executed by the La Mantse, Nii Kpobi Tettey Tsuru III; the Ataa Tawiah Tsinaiatse and the Numo Ofoli Kwashie Families. The basis for the revocation was that same was without the knowledge of Lenshie and Nmati Abonase Quarters of La. Hence there were enough grounds to have taken EDDT and even the Lenshie and Nmati Abonase Quarters of La to court because the latter engineered the Deed of Revocation but it did not. The said family rather settled the matter with EDDT, took a number of plots from EDDT (see Section 12 (b) of Exhibit 4A supra) and on the 3<sup>rd</sup> of July 2003, the said family formally wrote to the Lands Commission to issue EDDT with a Land Title Certificate covering all the land. This agreement made the said family the grantees of EDDT. By this settlement EDDT was issued with Land Title Certificate. The Land Certificate conferred an indefeasible title on EDDT granting them the power to alienate, manage and control all the land under the Trust including the Ataa Tawiah Tsinaiatse Family land for the benefit of all La subjects.

Land Title Certificate with utmost respect to DW1 is not a trophy meant to be displayed. It confers legal title on the holder.

That settlement in July 2003 also signaled to the whole world that the said family had abandoned their right to sue EDDT to protect their interest recognized under the Consent Judgment of 2001 and the Trust Deed of 2002. The settlement and issuance of the Land Title Certificate also conveyed to the whole world that EDDT is the only authority clothed with the legal right to make grants of land falling under Land Title Certificate No. GA 19310. Hence it was an act of bad faith when the said family subsequently brought an action against the Acting Registrar and EDDT albeit the said judgment is no longer existent in the case of Edward Mensah Tawiah, Ewormenyo Ofoli Kwashie vs. The Ag Chief Registrar of Lands and The Trustees, East Dadekotopon Development Trust (supra).

By consenting to the issuance of the Land Title Certificate to EDDT the said family would not be permitted by law to act contrary to what a holder of a Land Title Certificate is entitled to do with it. People took grants from EDDT after the issuance of the Land Title Certificate for example the Plaintiff herein and his sub lessor (LHDL)Section 26 of the Evidence Act, 1975 (NRCD 323) shall apply in the circumstance. It provides;

***“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 successors in interest in any proceedings between that party or his successors in interest and such relying person or his successors in interest”***

In the case of **CANICROSS VRS LORIMER (1860) 3 L. T. 130** this specie of estoppel was aptly stated as follows;

***“It is a rule of universal law that if a man either by word or conduct has intimated that he consents to an act which has been done and that he will***

*offer no opposition to it, although it could not have been lawfully done without his consent and he thereby induces other to do that from which they otherwise might have abstained, he cannot question the legality of the act he had so sanctioned to the prejudice of those who have given faith to his word, or to the fair inference to be drawn from his conduct. In such cases proof of positive assent or concurrence is unnecessary; it is enough that the party had full notice of what was being done and the position of the other party is altered”*

Hence the said family is estopped from challenging all acts done by the EDDT after the 3<sup>rd</sup> of July 2003 in respect of lands belonging to the said family. All those who dealt with EDDT after the said agreement were justified in doing so and all grants made by EDDT after the said date remained valid. Hence the grant of the disputed land to LHDL in 2007 which it assigned to the Plaintiff in 2013 is valid.

The 1<sup>st</sup> Defendant thereby failed woefully to prove that the parties to the Consent Judgment dated 12<sup>th</sup> July 2001 and the settlors of the Trust dated 10<sup>th</sup> April 2002 took over the land of Ataa Tawiah Tsinaiatse fraudulently. In fact they never did till the 3<sup>rd</sup> of July 2003 whereby the said family itself handed over the land to EDDT based on mutual agreement.

Even granted fraud was committed which is not, a victim of fraud upon knowledge of same could ratify same. In the case of **KWAKU BANIBA VRS MOSES WEGBE** (unreported, SUIT NO. E11/02/2019 delivered on the 4<sup>th</sup> of December 2019 the High Court, coram Eric Baah J (as he then was) aptly stated the position thus;

**“A Plaintiff cannot successfully sue to set aside a transaction on grounds of fraud if he either conducted, acquiesced or ratified the fraud.”**

I entirely agree with his position and adopt same as mine. Hence granted the said families were even defrauded, by virtue of the Settlement in July 2003 the said families were deemed to have ratified the fraud hence they had no business going to court again. They were estopped by their conduct. The issue of fraud in my view is a figment of the 1<sup>st</sup> Defendant’s and DW1’s imagination and it was purposely

raised to avoid the agreement aforesaid. It could be inferred from the evidence that the said family after the agreement saw that it was not in their interest and that explains why they have resorted to use fraud to avoid the agreement. The answers provided by DW1 when he was under cross-examination prove that. On the 4<sup>th</sup> of November 2022 he was asked

“Q: Do you know Mr. David Feefitee Tawiah?

A: I know him. He is my uncle.

Q: Where is he now?

A: He is deceased.

. . . .

Q: Has he ever been the head of the Ataa Tawiah Tsenaiatse Family?

A: Yes.

Q: Do you know when he was the head of family?

A: I cannot remember the actual date but it was after Ewormienyo Ofoli Kwashie died.

. . . .

Q: David Feefitee Tawiah was alive as at 2016?

A: As I said, he may or may not be alive. I cannot remember. If I may add, when he became head of family he took certain decisions and left the case, decision which were not palatable to the family.

Q: I am putting it to you that as at 2016 David Feefitee Tawiah was alive?

A: As I said, when he became head of family, he took some decisions which were not palatable to the family and left the cases in court. So, the family thought it wise to appoint me as the head of family. Since the cases in court and their ramifications were well known to me, all

the documents on the land and everything bears my signature when I was the lawful attorney of the family. So they came back to me to lead since I was the attorney.

Q: Was David Feefitee Tawiah ever removed as the head of family before his death?

A: No. He was not removed but he himself abandoned the family's work and went to sleep.

Q: The unpalatable decisions that you said David Feefitee Tawiah took were before 2016. Is that correct?

A: I do not remember the actual date but to add to what I have just said, he appointed Edward Nsiah Akuetteh who is not from the Ataa Tawiah Tseniatse Family and Numo Ofoli Kwashie Family.

Q: He appointed Edward N. Akuetteh as what?

A: As head of family and also lawyer Addo Atuah as the family lawyer without any recourse to the existing family lawyer, Lawyer Ivan Quansah.

\* \* \*

Q: When you met in respect of this land after several meetings, you concluded on something. Not so?

A: Yes.

Q: What you concluded on was that a Land Certificate be issued to the EDDT. I am putting that to you?

A: Yes, on condition that the EDDT immediately transfer our portion of the land to us.

On the 8<sup>th</sup> of December 2022 the cross-examination continued as follows;

Q: At the last sitting you admitted giving consent for the Trust Certificate to be issued. You remember?

A: Yes.

Q: And this consent was communicated on 3<sup>rd</sup> July 2003. You remember?

A: Yes.”

Clearly the unpalatable decisions included the appointment of Edward Nsiah Akuetteh as head of family and Lawyer Addo Atuah who went and compromised that Ofori Attah’s judgment at the Court of Appeal. The decisions taken by their head of family binds them and they cannot extricate themselves by alleging fraud. You take your head of family as you find him. All his good and bad decisions binds the family. It would therefore be unfair to blame EDDT in the circumstance. Interestingly what DW1 failed to blame was his own letter to the Lands Commission to issue EDDT with the Land Title Certificate following the agreement with EDDT. From the forgone I hold that neither the Consent Judgment dated 12<sup>th</sup> July 2001 nor the Trust Deed dated 10<sup>th</sup> April 2002, nor the settlors of the Trust took over the land of Ataa Tawiah Tsinaiatse Family not to talk of same being fraudulent.

From the evidence led by the 1<sup>st</sup> Defendant through DW1, it is clear that the Ataa Tawiah Tsinaiatse and the Numo Ofoli Kwashie Families have no title to the disputed land. Had the 1<sup>st</sup> Defendant conducted any search at the Land Commission, he would not have gone unto the disputed land because his grantors had no title to same. What is even more intriguing is the fact that DW1 claimed in court that he granted the land to the 1<sup>st</sup> Defendant. However the indenture which was tendered at the tail end of the trial had one Esther Korkoi Quaye as the one who granted the disputed land to the 1<sup>st</sup> Defendant. That aside, contrary to the 1<sup>st</sup> Defendant claim that he acquired the land in 2005, the indenture he tendered in evidence shows that he acquired same in 2013. These contradictions cast further doubt on the claims by the 1<sup>st</sup> Defendant.

## 8.1 WHOSE CASE IS MORE PROBABLE

It goes without saying that the Plaintiffs case is more probable as against the 1<sup>st</sup> Defendant's case. The trespass unto the Plaintiff's is an attempt by the said family to have a third bite at the cherry , The 1<sup>st</sup> Defendant it appears is being used as a proxy in that enterprise and that would not be tolerated. On the totality of the evidence adduced before me I hold that the Plaintiff is entitled to all the reliefs he prayed for.

Plaintiff in relief "a" claims declaration of title to the land which was in issue. The Plaintiff has demonstrated that his head lessor and sub lessor have the legal right to the said land and so same succeeds.

Relief "b" is for damages for trespass. From the evidence the Plaintiff was in possession of the land until the 1<sup>st</sup> Defendant blazingly entered same and started construction day and night with the help of the Police and land guards. The structures he erected on the land is clearly unauthorized. Any prudent purchaser is required to do due diligence before acquisition but in this case the 1<sup>st</sup> Defendant from the evidence did none. He entered the land and erected a sign post on the land with the inscription "TIGER EYE. KEEP OFF". When an application was brought to join "TIGER EYE PI" to this suit, he resisted claiming the said entity has no interest in the land. His claim to the disputed land has no basis in law and in fact. Trespass is an injury against possession, hence the 1<sup>st</sup> Defendant is liable. In trespass damages are at large and there would be the need to award damages to commensurate with the circumstances of this case. See the case of **BIRIM WOOD COMPLEX LTD VRS ANDREAS BSCHOR GMBH & CO. KG [2016-2017] 1 GLR 194**. The Plaintiff in his evidence has intimated that these unauthorized structures ought to be demolished by the 1<sup>st</sup> Defendant and the debris removed or the 1<sup>st</sup> Defendant be made to bear the cost of that exercise. In considering the issue of damages I think this should be factored in. It would be better if the latter prayer is granted. Taking judicial notice of recent hike in goods and services there would be the need for the Plaintiff to be awarded a fair amount to enable him remove the structures on his land. Relief "b" also succeeds.



Reliefs “c” d” and “e” should also succeed on the strength of the evidence led.

### **9.1 CONCLUSION/ORDERS**

1. I declare the Plaintiff as the owner of all that piece or parcel of land in extent 2.00 acres (0.81 hectare) more or less and bounded on the North East by land measuring 267.4 feet more or less and on the South East by proposed road measuring 294.6 feet more or less on the South West by land measuring 296.9 feet more or less on the North West by land measuring 298.3 feet more or less and situate at East La Dadekotopon in the Greater Accra Region of the Republic of Ghana
2. I award GH¢60,000.00 as general damages for trespass against the 1<sup>st</sup> Defendant.
3. I grant the Plaintiff possession of all that piece or parcel of land in extent 2.00 acres (0.81 hectare) more or less and bounded on the North East by land measuring 267.4 feet more or less and on the South East by proposed road measuring 294.6 feet more or less on the South West by land measuring 296.9 feet more or less on the North West by land measuring 298.3 feet more or less and situate at East La Dadekotopon in the Greater Accra Region of the Republic of Ghana
4. I perpetually restrain the 1<sup>st</sup> Defendant, his servants, agents, assigns, workmen and all those claiming through him from entering , carrying out any construction works or interfering with all that piece or parcel of land in extent 2.00 acres (0.81 hectare) more or less and bounded on the North East by land measuring 267.4 feet more or less and on the South East by proposed road measuring 294.6 feet more or less on the South West by land measuring 296.9 feet more or less on the North West by land measuring 298.3 feet more or less and situate at East La Dadekotopon in the Greater Accra Region of the Republic of Ghana in any manner whatsoever or disturbing the Plaintiff's peaceful occupation and possession of same.

5. I award costs of GH¢40,000.00 against the 1<sup>st</sup> Defendant.
6. I dismiss the entire counterclaim of the 1<sup>st</sup> Defendant.

**(SGD)**

**JUSTICE KWAME GYAMFI OSEI  
JUSTICE OF THE HIGH COURT  
LAND DIVISION (10)**



**COUNSEL**

**EMMNAUEL BRIGHT ATOKOH FOR PLAINTIFF  
DAVID AMETEFÉ FOR 1<sup>ST</sup> DEFENDANT**