**ALHAJI BRAIMA ADAMS**

*(PLAINTIFF)*

**vs.**

**MADAM JANET ATTAA DEFOUR &**

**MR. KWADWO ANDREWS**

*(RESPONDENTS)*

[COURT OF APPEAL, KUMASI]

CIVIL APPEAL NO: HI/078/2024 DATE: 28TH NOVEMBER 2024

**COUNSEL**

KWABENA ASARE ATUAH, ESQ., FOR DEFENDANTS/APPELLANTS.

ROMEO ASANTE NIMO ESQ., FOR PLAINTIFF/RESPONDENT.

**CORAM**

MENSAH-HOMIAH, J.A ( PRESIDING)

BAAH, J.A

OWUSU-OFORI, J.A

**JUDGMENT**

**BAAH, J.A**

1. **BACKGROU**
   1. **ND**On 22 July 2015, the plaintiff/respondent (hereafter respondent) formally approached the Circuit Court, Berekum, Bono Region, to seek redress. He sought from the citadel of justice:
      1. an order that he has title to Plot No.119, New Town, also known as Plot No.122, Sampa.
      2. general damages for trespass, and
      3. an order of injunction restraining the defendants/appellants (hereafter appellants), their agents, servants, workmen, assigns etc from dealing with the subject plot of land until the final determination of the suit.
   2. In a statement of defence lodged with the court on 29 July 2015, the appellants denied the claims of the respondent. They raised the defences of (a) *estoppel* (b) *laches* and *acquiescence* (c) statute of limitation, and (d) an arbitration award.
   3. In the ensuing plenary trial, the respondent testified and called one witness, namely: Alhassan Kamate (PW1). The appellant(s) testified through the 1st appellant and called two witnesses, namely: Nana Takyi Poku (DW1) and Emmanuel Amoah (DW2). The trial court delivered its judgment on 13 October 2022, by which the claims of the respondent were affirmed and the defences of the appellants rejected. The judgment precipitated the filing of this appeal on the 18th of October 2022, with the sole ground being that: “*The judgment is against the weight of evidence.*”
2. **CASE OF THE APPELLANT**
3. The case of the respondent is that he purchased the subject piece of land, named Plot No. 119, New Town, Sampa, from one Alhaji Braima Amadu. The plot was originally acquired by one Mr Bediako in or around 1972 from the Town Development Committee of Sampa. The said Mr Bediako enjoyed quiet and peaceful possession of the land, including paying property and sanitation rates to the Jaman District Local Council/Assembly, until selling same to one Alhaji Bamba in 1992. The respondent’s case is that even though the purchase price was paid by Alhaji Bamba, Mr Bediako prepared the transfer documents in the name of Alhassan Kamate at the request of Alhaji Bamba.
4. Upon the acquisition by Alhaji Bamba in 1992, he exercised overt acts of ownership including, through Alhassan Kamate, depositing several trips of sand and gravels on the land. In 2008, Alhaji Bamba moulded 2000 concrete blocks which are on the land, with the exception of a few stolen ones.
5. It is the case of the respondent that in 2011, he had the permission of Alhassan Kamate, brother of Alhaji Bamba, to erect an iron container on a portion of the plot. He has since been selling provisions and other items without the payment of rent to anyone.

Another person was also permitted by Alhassan Kamate to erect a container on a portion of the plot.

In July 2014, he negotiated with Alhaji Bamba through Alhassan Kamate to purchase the plot of land. The transfer document was executed by the lawful attorney of Alhaji Bamba, called Bamba Muntala Tafsiru, with Alhassan Kamate as witness.

1. The case of the respondent continued that the plot of land, which was numbered 119, was numbered 122 after the area had been re- zoned by officials of the Sampa Traditional Council and New Town District Assembly. The said plot shares boundary with Plot Nos.122(a) and 121. A fresh and revised site plan was prepared for him by the Town and Country Planning Department of Jaman North Assembly. His plot was labelled Plot No. 122 Block “D”, Sampa. The said revised site plan was endorsed by the Sampa Traditional Council per its Registrar.
2. According to the respondent, the appellants occupy Plot No. 122(a), which shares boundary with the disputed Plot N.122. He disputed the appellants’ claim that their plot extents to the current Plot No. 122, which was originally Plot 119.
3. **CASE OF THE APPELLANTS**
4. The case of the appellants is that the subject piece of land, being Plot No. 122, Block D, Sampa, was acquired by their father who built on the land a house over 20 years ago to the knowledge of the respondent. After the construction, part of the house was rented out to tenants including the respondent. In addition to the house, the appellants have put up a two-storeroom structure in the frontage of the (main) building.
5. The appellants’ claim continued that they have been in undisputed possession of the subject land since its acquisition. They claim to have challenged the adverse claim of the respondent to the subject plot. That resulted in an arbitration by a three-panel chiefs of Sampa which made an award against the respondent and awarded against him costs of GH¢520.00.
6. The appellants raised in their defence, the arbitration award, the statute of limitations, *estoppel*, *laches* and *acquiescence,* on account of which they disputed the right or capacity of the respondent to institute the action.
7. **JUDGMENT OF THE TRIAL CIRCUIT COURT**
8. Summated, the judgment of the trial Circuit Court, Berekum, dated 13 October 2022, appearing at pages 154-171, is as follows:
   1. That the respondent was able to prove that he validly acquired Plot No. 119, Sampa New Town, from Alhaji Braima Amadu, who had acquired it from the original owner called Mr P. Y. Bediako, for a consideration of GH¢25,000.00.
   2. That the respondent’s grantor remained in possession of the subject plot, and exercised act of ownership, including moulding 2000 blocks, in addition to the payment of property rates. That the respondent continued with the overt acts of possession over the subject land including moulding over 4000 blocks which were placed on the subject land with trips of sand and gravels, which were never challenged by the father of 1st appellant in his lifetime.
   3. That the subject area was re-zoned, and respondent’s Plot No. 119, Block D, Sampa, became Plot No.122, Block D, Sampa. There was therefore no basis for the revocation of the documents of the respondent in respect of Plot No. 122, Block D, Sampa.
   4. That even though the parties went through an arbitration with the award going against the respondent, the said award could not operate as *estoppel* because:
9. There was no prior agreement by the parties to submit to the arbitration.
10. The arbitral panel was unfair to and biased against the respondent, by reason of 1st appellant’s relationship with the palace.
11. The 1st appellant colluded with the Town and Country Planning office to fictitiously and fraudulently change documents covering the disputed plot of land.
12. **GROUND OF APPEAL AND RELIEF SOUGHT**
13. The sole ground of appeal communicated by the notice of appeal appearing at page 172 of the record is: “*That the judgment is against the weight of evidence*.”

The relief sought is an order “*To set aside the entire judgment of the Circuit Court, Berekum*.”

1. **SUBMISSIONS OF COUNSEL FOR THE PARTIES**

We shall hereunder summate the submissions of counsel of the parties on the relevant issues raised by the sole (*omnibus*) ground of appeal.

# Submission of counsel for the appellant

1. Counsel for the appellant first took us through the evidential standards for proof in civil cases, citing relevant statutory provisions and precedents. He secondly summed up the case for each side before addressing the ground of appeal on following topics.

# Arbitration

1. According to counsel, since the respondent claimed that what went before the arbitration panel was about the numbering of the plot in dispute and not ownership as claimed by the appellants, the respondent was obligated to prove what he asserted, that is, that the arbitration was about the numbering of the plot(s) and not its ownership. According to him, the respondent failed to produce any evidence, by calling any panel member or producing any document to support his claim.
2. According to him, the appellants who equally had the duty to prove that the issue before the arbitrators bothered on ownership of the land in dispute discharged that duty by calling a panel member and tendering documents to prove their assertions. According to him, exhibits 4,5,6,7,8,9 and 10, tendered by the appellants indicate that there were several letters written by the Sampa Traditional Council inviting the parties herein to appear before the panel members. In his view, the award made by the arbiters satisfied all the requirements of a valid customary law arbitration, as elucidated in **Budu II v Caesar [1959] GLR 410**, and was therefore not subject to appeal. He relied on **Budu II v Caesar** (supra) and the authorial views of S.A. Brobbey*,* ***Law on Chieftaincy in Ghana*** (page 446).
3. According to him, the trial judge conceded that the evidence proved that there was an arbitration proceeding resulting in an award but impugned the award on grounds of bias against the respondent. That was based on respondent’s claim that the arbitral panel was biased because the 1st appellant was married to the ex-paramount chief of Sampa. He found no basis for the trial judge’s decision to accept respondent’s allegation of bias against the arbitral panel. And in any case, assuming there was bias, the published award could not be set aside if the panel of arbitrators had functioned within their terms of reference and the respondent, fully aware of the alleged relationship between the 1st appellant and the palace had voluntarily and fully participated in the arbitration proceedings without raising an objection. He relied on **Kofi Otopia v Amankwaa Otopabia [2022] 177 GMJ 212**.
4. Counsel contended that the respondent could not re-litigate the case after the award by the arbitral panel. He submitted that if the respondent was dissatisfied with the award, his remedy was to have applied to the court within three months of the award, and on notice to the other side, to have it set aside under section 12 of the **Alternative Dispute Resolution Act, 2010 (Act 798)**. He contended that none of the reliefs of the respondent sought the setting aside of the customary award, and assuming the action of the respondent is taken as intending to set aside the award, same was not initiated within three months, as Act 798 requires. He relied on **Nana Ampaa-Andoh VII v Paramount Stool of Breman Essian [2018] 123 GMJ 208**. And assuming the action at the court below was to set aside the award, same should have been by an application, and not a writ of summons. He relied on **Kwabena Obeng, Eric Akwasi v KMA & Anor [2017] 115 GMJ**.

# II. Identity of land claimed.

1. According to counsel, the respondent failed to prove that a re-zoning resulted in his Plot No. 199 being re-numbered Plot No. 122, and appellants’ Plot No. 122 being renumbered Plot No. 122A. Rather, it was the appellants who called the Town and Country Planning Department of the Jaman North District Assembly, who testified that there was no plot numbered Plot No. 122A, Block D, Sampa, and that the only relevant plot shown on revised plan (exhibit 13) is Plot No. 122, Block D, which is claimed by the appellants.
2. He referred to the evidence of the Town Planning officer (DW2) that despite the claims of the respondent, Plot No. 119, which the respondent claims was allocated to him, still existed on the revised plan, whiles the alleged Plot No. 122A does not reflect on the revised plan.

# Submission of counsel for respondent

1. Counsel for the respondent equally treated us to feast of the facts of the case, the rules on evidential burden of proof and legal standards for consideration of an appeal, in particular reference to the omnibus ground of appeal, before addressing specific issues raised by the ground of appeal as below.

# Rezoning

According to counsel, the respondent was proved, as corroborated by DW2 and the new site plan issued by the Registrar of the Traditional Council, that he acquired Plot No. 119, which bounded the appellant’s Plot No 122, and was in possession of same until a re-zoning was carried out in the affected area by the Sampa Traditional Council, in collaboration with the Jaman North District Assembly in 2014, resulting in respondent’s Plot No 199 being renamed Plot No 122, and appellants’ plot as Plot No. 122A. He accordingly backed the trial judge’s affirmation of respondent’s claim of the re-zoning and prayed us to equally reject the appellants’ claim that no re- zoning was carried out in the affected area.

# Identity of the land claimed

According to counsel, the appellants admit that the respondent’s grantor’s Plot No. 119 existed in the area, their denial only being about where that plot is exactly located now. Counsel posed the following question: if respondent’s grantor’s Plot No.119 existed in the area, then where is it now, or what happened to it after the re-zoning?

According to him, the respondent adduced documentary evidence in the form of exhibits A,B,C and D, *inter alia*, emanating from the original owner, P.Y.Bediako and others who had interest in or dealt with the subject land.

He contended that exhibits 1,2 and 3 tendered by the appellants were not credible documents on which the court could rely to uphold the claims of the appellants. For example, he saw no explanation for exhibit 1 (site plan) which is in the name of Issah Ibrahim Dienga in relation to a land allegedly acquired by the father of appellants. A similar issue affected exhibit 2, which is an application for a plot in the name of one Sah Yaw. He backed the trial judge’s decision that the appellants colluded with the Town and Country Planning Department to fraudulently change documents covering the disputed plot of land.

# Acts of possession

It was the contention of the respondent’s counsel that his client and his predecessor in title exercised acts of possession from 1972 to the exclusion of the appellants or their predecessor(s) in title. The respondents’ alleged acts of possession included:

1. payment of property rates, evinced by exhibits D and D1.
2. exhibit F, indicating a fine by the District Court, Sampa, for a sanitation offence committed by Amadu Bamba.
3. 1000 blocks moulded by Amadu Bamba in 1998 and the deposit of several trips of sand and gravels.
4. In or around 2013, the respondent was permitted to place a metal container on a portion of the land on which he sells provisions up to date.
5. Deposit by the respondent of blocks on the land in dispute. He claimed that in the converse, the appellants were not able to prove any significant acts of possession of the subject plot, beside the fact that appellants father has a house on the revised Plot No 122A, which bounds the subject land. According to him, the land on which the appellants’ father’s house stands is distinct from the land in dispute. On account of the above, he prayed the court to uphold the conclusions of the trial court.

# Arbitration

It was his contention that what transpired between the parties at the Sampa palace did not amount to a valid customary arbitration. For the essential features of a valid customary arbitration, he reverted to **Budu v Caesar** (*supra*), as counsel for the appellant before him. It was his submission that the purported arbitration at the Sampa palace did not meet the requirements of Budu v Caesar, for the following reasons:

1. The method of invitation was indicative of a “*negotiated settlement*” and not “*an arbitration in the strict sense*.” That was because, the letters of invitation did not indicate that the parties were being invited for an arbitration to have enabled them to decide as to whether to submit to it or not. He relied on the tone or tenor of exhibits 4, 5,6,7,8 and 9.
2. No written award was published indicating that the respondent had been found liable consequent to an arbitration proceedings between the parties herein.
3. There are no proceedings from the arbitration from the palace indicating the panel members and the evidence led by the parties.
4. That the sum of money paid by the respondent at the close of the deliberations, the respondent was not aware that it was to be given to the appellants as costs of the deliberations.
5. That the respondent who had accused the chiefs of bias could not have been expected to call them as witnesses to the issue as to whether what transpired at the palace was an arbitration or not.
6. That in the absence of an arbitration, there could not be a valid award the respondent was obliged to apply to the court to set aside.
7. **ANALYSIS AND DECISIONS**
8. We shall hereunder skeletally lay out our task in this appeal generally, but especially in the context of the sole ground of appeal being the omnibus ground. We shall summarise the legal standards for the review of the judgment and the evidence thereunder and come forth with our decisions on the sole ground of appeal.

# Appeal as a re-hearing.

1. The well-known rule of law is in appellate practice is that an appeal amounts to a re-hearing. In **Tuakwa v Bosom [2001-2002] SCGLR 61**, the Supreme Court per Sophia Akuffo JSC (as she then was), held (at p 61):

*“An appeal is by way of re-hearing, particularly where the appellant alleges in his notice of appeal that the decision of the trial court is against the weight of evidence. In such a case, although it is not the function of the appellate court to evaluate the veracity or otherwise of any witness, it is incumbent upon an appellate court, in a civil case, to analyse the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial before arriving at its decision, so as to satisfy itself that, on a preponderance of probabilities, the conclusions of the trial judge are reasonably or amply supported by the evidence…’’*

In **Koglex Ltd (No.2) v Field [2000] SCGLR 175, SC**, Acquah JSC (as he then was), stated the principles upon which a second appellate court may set aside concurrent findings of a first appellate court, of the findings of a trial court. These principles, which are equally good for consideration of a trial court’s findings by a first appellate court such as yours, are:

*“i. Where the said findings of the trial court are clearly unsupported by evidence on record; or where the reasons in support of the findings are unsatisfactory…*

1. *Improper application of a principle of evidence… or, where the trial court has failed to draw an irresistible conclusion from the evidence…*
2. *Where the findings are based on a wrong proposition of law; where the finding is so based on an erroneous proposition of law, that if that proposition is corrected, the finding disappears; and*

*v. Where the finding is inconsistent with crucial documentary evidence on record…’’*

The above principles shall guide us in the review of the appealed judgment.

# Burden to produce evidence.

1. A claimant in a suit who makes an averment, proof of which is necessary to secure a favourable ruling of the court, has a two- legged duty of (a) adducing primary evidence in support of the averment , and (b) to the requisite degree of believe as set by the rules of evidence.

The primary burden of proof, which is the duty of producing evidence in support of averments relevant to the court’s decision on a particular issue, is cast on the party who made the averment. That was the duty the respondent carried at the trial. The appellants herein who did not counterclaim were not similarly obliged to prove as the respondent, see: **Birimpong v Bawuah [1994-95] GBR 837.**That duty is a demand of sections 11(1) and 14 of the **Evidence Act, 1975 (N.R.C.D 323).**

1. To begin with, the burden may be discharged by the production of evidence by the plaintiff himself and or his witnesses. Alternatively, the burden of producing evidence may be discharged if the averment made by the plaintiff or defendant-counterclaimant is admitted by the opponent**. In West African Enterprise Ltd v Western Hardwood Enterprise Ltd [1995-96] 1 GLR .CA**, it was held (in holding 3):

“...*no principle of law required a party to prove an admitted fact.”*

In other instances, the burden of proof may be discharged by evidence from one’s opponent or his witness, as occurred in **Nyamekye v Tawiah & Anor [1979] GLR 265, C.A** (Full Bench), where it was held:

1. ‘*’A party could prove his case by admissions from the mouth of his opponent or his adversary’s witness and in holding otherwise the house offended both principle and authority.’’*

# See also: Tsrifo v Duah VIII [1959] GLR 63; Ameoda v Pordier [1967] GLR 479

**Standard for judging the evidence produced**.

1. The second leg of the claimant’s duty is to ensure that the evidence meets the standard set by the law. The evidence must be sufficiently persuasive to the court as required under section10 (1), Act 323. The standard of proof applied by the court under section 12 of Act 323, is ‘*proof by a preponderance of probabilities’*

# See: Majolagbe v Larbi [1959] 2 GLR 190; Owusu v Tabiri & Anor [1987-88] 1GLR 287.

1. Where the plaintiff adduces sufficient evidence in discharge of his primary burden, the burden to produce evidence shifts onto the defendant under section 14 of Act 323. The shift of the onus to produce occurs under section 10 (2) of Act 323, by which the defendant is required to adduce sufficient evidence in rebuttal, in order to avoid a ruling against him on the particular issue, see: **Faibi v State Hotels Corporation [1968] GLR 471.**
2. The review to be conducted under this appeal shall determine if the appealed judgment swam with the tide of the evidence. The respondent sought the reliefs of (a) declaration of title to the subject Plot No. 119/122, Sampa (b) damages for trespass and (c) an order injunction against the appellants, their agents, servants, workmen, assigns etc from dealing with the disputed piece of land pending the final determination of the suit. By the nature of the reliefs, the respondent was required to prove his (a) *acquisition/root of title* (b) *identity of land, and* (c) *possession or right to possession*, see **Conca Engineering (Ghana) Ltd v Moses [1984-86] 2 GLR 319** (holding 4); **Ayiku IV v A-G [2010] SCGLR 413**.

In **Asante-Appiah v Amponsah [2009] SCGLR 90**, the Supreme Court elucidated the rule thus (holding 5):

“*The law is well established that where a party’s claims are for possession and perpetual injunction, he puts his tittle in issue. He therefore assumes the onus of proving his title by a preponderance of probabilities, like a party who claims declaration of title to land. Consequently…”*

Before coming to a review of the judgment, we shall briefly lay out the rules on: (a) *the claimant’s acquisition (root of title), (b) identity of the land claimed and (c) evidence of possession/right to possession.*

# Acquisition

1. A claimant in a suit for declaration of title to land must forst establish his acquisition or root of title. In **Mondial Veneer (Gh) Ltd v Amissah Gyebi XV [2011] 1 SCGLR 466**, it was elucidated: (holding 4):

“*In land litigation, even where living witnesses, directly involved in the transaction had been produced in court as witnesses, the law would require the person asserting title and on whom bear the burden of persuasion…to prove the root of title, mode of acquisition and various acts of possession exercised over the disputed land. It was where the party had succeeded in establishing those facts, on the balance of probabilities that the party would be entitled to the claim.”*

# Identity

1. The second requirement is for the claimant to prove the identity or boundaries of the land claimed and further prove that the land claimed has the same identity/boundaries as the subject land. In **Anane v Donkor [1965] GLR 188**, it was expatiated (holding 1):

“*A claim for declaration of title or an order for injunction must always fail, if the plaintiff fails to establish positively the identity of the land claimed with the land the subject matter the suit.”*

# Possession

1. The third requirement is for the claimant to prove that he has been in possession of the land since its acquisition or has had the right to possession of same. Possession of the subject land is another main indicia of ownership thereof. To that end, section 48 (1) and (2) of the **Evidence Act, 1975 (NRCD 323),** provides:

“*48 (1): The things a person possesses are presumed to be owned by that person.*

*48 (2): A person who exercises acts of ownership over property is presumed to be the owner”.*

In the case of **Aidoo v Adjei [1976] 1 GLR 431, CA**, it was held (holding 2):

*“A person in possession of land was presumed to be the absolute owner…”*

See also: **Amankwaa v Nsiah [1994-95] 2 GBR 758 and Majolagbe v Larbi.** In **Nartey v Mechanical Lloyd Assembly Plant Ltd [1987-88] 2 GLR 314, SC**. the Supreme Court explained that possession that could amount to ownership is adverse possession is to the actual or constructive notice of the other party, and not possession which is being resisted by the *bona fide* owner. We now proceed to the determination of issues raised by the ground of appeal.

**G. ACQUISITION**

1. The case of the respondent as already stated *supra* is that Plot No. 119, New Town, Sampa, was originally acquired by one Mr P. Y. Bediako in or around 1972 from the Town Development Committee of Sampa. Mr Bediako eventually sold the land to Alhaji Braima Amadu around year 1992. Alhaji Braima Amadu also sold it to him (respondent) around July 2014 for a sum of GH¢25,000.00. To back his claims, the respondent tendered the following documents:
   1. Application by P.Y. Bediako for acquisition of plot No. N.T. 55- Exhibit A.
   2. Letter of allocation of (plot No. N.T. 55) to P.Y. Bediako-Exhibit B.
   3. Receipt for allocation of plot No. N.T. 119-Exhibit C.
   4. Receipts for payment of property and sanitation fees-Exhibits D and D1.
   5. Application by P.Y Bediako to the Sampa Traditional Council for change of ownership into the name of Alhassan Kamete- Exhibit E.
   6. Receipt issued to Amadu Bamba by the District Court, Sampa, in respect of a fine-Exhibit F.
   7. Statutory declaration by Alhaji Amadu Bamba per his Lawful Attorney (Bamba Mutala Tafsiru) transferring plot No. 119, Sampa New Town, to Alhaji Braima Adams.
   8. An indenture/conveyance of plot No. 119, Sampa New Town by Alhaji Bamba Amadu to Alhaji Braima Adams, and two site plan to the indenture-Exhibits K1 and K2.
2. It can easily be deduced from the above that the respondent produced *prima facie* evidence to prove that he acquired a piece of land numbered plot No. 119, New Town, Sampa. At that point, the respondent had done enough in terms of the requirement of acquisition/root of title to secure a ruling in his favour. As a result, the appellants; despite not filing a counterclaim, were required to make out a case sufficient to avoid a ruling being made against them on the issue of acquisition. Ollenu J.A (as he then was) captured the nature of the evidential construct at this stage in **Faibi v State Hotels Corporation [1968] GLR 471,HC** (holding 1) as follows:

“*Onus in law lay upon the party who would lose if no evidence was led in the case and where some evidence had been led it lay on the party who would lose if no further evidence was led*…”

1. The appellants never disputed the fact that the original owner of respondent’s land, P.Y. Bediako, acquired plot No. 119, which is located in the area of the dispute. Their contention at the *court a quo* and in this court, is that the respondent’s plot No.119 did not morph or mutate into plot No.122 as a result of the rezoning, as claimed by the respondent during the trial and in this appeal.
2. As stated hereinbefore, the case of the appellants is that it was their late father who acquired plot No. 122 and built a house on it. Even though they admitted that the area was rezoned, they disputed respondent’s claim that the re-zoning resulted in plot No. 199 mutating to plot No.122, as their original plot No. 122 changed to plot No.122A.

They tendered the following documents:

i. A site plan for Ibrahim Dienga in respect of plot No. 199, Block D- Exhibit 1.

ii. . Document titled “Application for plot of land”-Exhibit 2. Iii. Receipt for property rate-Exhibit 3.

1. Letters from the Sampa Traditional Council-Exhibits 4,5,6,7. 8,9.
2. Receipt from the Sampa Traditional Council-Exhibit 10.
3. Report of the Sampa Traditional Council-exhibit 11.
4. Writ of subpoena-Exhibit 12.
5. Revised planning scheme of Sampa-Exhibit 13.
6. Whereas the respondent concedes that the appellants father has a land in the area originally numbered plot No. 122, the appellants equally admit that respondent’s original grantor has/had a land in the area numbered plot No. 199. The dispute revolves around what happened to the two plots of land after the rezoning. Whereas the respondent claims that his plot became plot No.122 as the appellants plot 122 became plot No. 122A, the appellants insist that the numbers of the plots never changed. In the context of the pleadings and the facts, we concluded that the evidence on acquisition or root of title alone could not determine as to who holds title to the subject land. As a consequence, we proceed to the requirement of identity of the land claimed by the respondent and its correlation with the subject land.

**H. IDENTITY OF LAND**

1. The most contentious issue at the trial and in this appeal is as to whether the land claimed by the respondent as his original plot No. 199, is the same as the subject land in this suit, that is plot No. 122.

As laid out above, the law require a claimant in an action for declaration of title to land, recovery of possession or perpetual injunction to firstly prove that he properly acquired the land from a grantor with title to dispose of same to him, and secondly prove that the land he properly acquired is the same as the land the subject matter of the suit. That was because, you cannot use land documents on plot A to claim plot B, or use documents on a land situate in Pokuase, Accra, to claim a land situate in Nungua, Accra, even if the document was inked with diamonds and on a plate of gold.

1. It was therefore incumbent on the respondent as the claimant to prove that plot 199 which he claimed, and the documents thereof of which he possessed and duly tendered as exhibits, is the same as plot 122 which is in dispute in this case. To begin with, the respondent gave uncontested evidence of his acquisition of plot No. 199, New Town, Sampa. The appellants never challenged the respondent’s acquisition of the said plot 199.
2. The respondent tendered exhibit A, which is an application by P.Y. Bediako dated 25 September 1972, to the secretary of the Town Development Committee for the allocation of a piece of land, namely, plot No. N.T. 55. The said committee responded by a letter dated October 1972, allocating plot No. N.T. 55 to Mr Bediako, which he had specifically applied for. By some strange occurrence, the Jaman Local State Council issued a receipt, exhibit C, to Mr Bediako on 29 January 1973, not in respect of plot No. N.T.55 which he applied for and was duly allocated to him, but in respect of plot No. 199/2. No explanation was given by the respondent as to the above inconsistency. That appear to be at least part of the genesis of the conundrum faced by the respondent and his predecessors in title.
3. Plot No. N.T 55 disappeared from the radar of Mr Bediako since the entry of the receipt for plot allocation fee-exhibit C. He thereafter dealt with plot No. 199, which reflects on the receipts-exhibits D (series) and exhibit F, the application for change of ownership-exhibit E, and the conveyance from Alhaji Bamba Amadu to Alhaji Braima Adams-exhibit K (series).
4. It is instructive to note that the letter allocating plot No.199/2 to Mr Bediako did not come with a site plan. The original location and dimensions of plot No.199/2 is therefore unknown. It was also not clear as to whether it was plot No. N.T. 55 that was renumbered plot No. 199. Annexed to the indenture between Alhaji Bamba Amadu and Alhaji Braima Adams (respondent) are two site plans, labelled exhibit K1 and K2 respectively. At the bottom left side of exhibit K1 are plot Nos.119, 122 and another 119. However, at the same location on exhibit K2, the second plot No.119 has mutated to plot No.122.`
5. We begin our enquiry with exhibit K1.
   1. The first question is, how did it happen that there were two plots numbered plot No. 119 on exhibit K1?
   2. If indeed there were two plot numbered 119, which of the said two plots was originally allocated to Mr Bediako? Knowing well the confusion and disputes involving land in Ghana, which authority will take the risk of giving two different plots the same number of 119?
   3. If there were indeed two plots numbered plot 119, why was there no differentiation such as 119A, 119B, or 119/1 and 119/2?
   4. How did it happen that a plot numbered 119, was nestled beyond plot Nos 120,121 and 122, in the context where another plot No. 119 which appears to be the genuine plot. No.119, is located below them in a proper sequence?

Etc.

1. Next is exhibit K2. On exhibit K2, the second plot No.119 has changed to plot No.122. If the revision of the Sampa planning scheme resulted in that change, same should have reflected on the revised scheme, that is exhibit 13. However, exhibit 13 only has a plot No.122. It does not have a plot No.122A as claimed by the respondent. Since Alhaji Bamba sold plot No. 119 and not plot No. 122 to the respondent, and since the revision of the planning scheme did not result in the creation of a plot No. 122A as claimed by the appellants and corroborated by the evidence of DW2 and exhibit 13, the legal basis for the existence of exhibit K2 could not be establish. The Registrar of the Sampa Traditional Council had no legal right to subdivide an encumbered plot and rename it as he wished. Exhibit K2 and all that it purported to create were acts in futility.
2. The appellant’s on their part claimed without a rebuttal that their father has constructed a house on part of the land, numbered plot No. 122, which they have been in possession of, 20 years to the year of the dispute. They have also constructed a two-room storehouse at the frontage of their plot. They named the respondent as one of the tenants of the house constructed by their father.
3. The appellants tendered exhibit 1, which is a statutory declaration by which Alhaji Bamba, alias Life Man, transferred his interest in plot No.119 to Alhaji Braima Adams (respondent). The declaration was made in Kumasi on 3 July 2015. That statutory declaration substantially matches the one tendered by the respondent as exhibit G, save that the date of declaration on exhibit G is 14 July 2015. Instructively, the number of the plot granted the respondent by Alhaji Bamba in 2015 was plot No. 119. As a consequence, the site plan of Alhaji Bamba, upon which he sold the plot to the respondent in 2015, that is exhibit K1, identifies the plot as No.119. The appellants tendered a site plan which was numbered exhibit 1. That was erroneous since an earlier exhibit had been numbered exhibit 1. For the sake of this judgment, the second exhibit 1 is renumbered exhibit 1B. The name on exhibit 1B is Issa Ibrahim Dienga. The name of appellants father was Sah Yaw, so exhibit 1B was obviously not tendered to support the acquisition note of Sah Yaw, which was tendered as exhibit 2. On exhibit 1B can be found plot No.122. There is no plot No. 122A. The obvious effect of that document is that the revised scheme did not result in the creation of plot Nos. 122 and 122A as claimed by the respondent.
4. The appellants *subpoenaed* the Physical Planning Department of the Jaman North District Assembly. An officer named Emmanuel Amoah testified on behalf of the Department and for the appellants as DW2. He tendered a copy of the Revised Planning Scheme of Sampa as exhibit 13. He claimed under cross-examination without a rebuttal from the respondent’s counsel that the Sampa Planning Scheme was revised in 1984. He testified that despite the revision, plot Nos 119 and 122 still exist on the scheme. He disputed the mutation of plot No. 119 to 122, and 122 to 122A.
5. It is obvious that the trial judge failed to properly scrutinize the evidence put forth by the respondent in support of his claim. The respondent used the revision of the planning scheme to push through evidence which upon scrutiny had no credibility. To begin with, the revision of the planning scheme occurred in 1984. Meanwhile, the statutory declaration by which Alhaji Amadu Bamba transferred the land to the respondent was executed either on 14 July 2015 (exhibit G) or 3 July 2015 (exhibit1). The site plan of Alhaji Bamba identifies the plot as No.119. If the 1984 revision of the scheme had changed plot No 119 to 122, why did the respondent’s grantor not state it in either the statutory declaration (exhibit G) or the conveyance (exhibit K)?
6. Since the revised planning scheme from the statutory body does not reflect the change in the plot numbers, and the respondent’s grantor does not indicate anywhere that the plot he was granting the respondent has been renumbered, from whence did the respondent procure the new plot numbers of 122 and 122A? It is not difficult to detect that exhibit K2 which reflects the new plot Nos. of 122 and 122A is fictitious. From the conveyance, exhibit K, the plot Alhaji Bamba transferred to the respondent was plot No.119. The site plan accompanying the conveyance therefore has plot No.119. If exhibit K2 which has plot Nos. 122 and 122A existed at the time Alhaji Bamba transferred the land to the respondent, the new numbers will have reflected in the conveyance (exhibit K). If however, exhibit K2 was procured by the respondent after acquisition of the land, why was it not issued in his name (respondent), but in the name of Alhaji Bamba who had transferred his interest therein to the respondent?
7. Since the respondent’s claim is for plot No. 119, and he tendered evidence (exhibits K1 and K2) indicating that the said plot No. 119 is still in existence and nestled between plot Nos. 117,118 and 122, the respondent was required to justify why he does not claim the first plot No.119 that is existing in its logical place on his own exhibits K1 and K2, but a second plot No. 119 which clearly was curved out of another plot, specifically plot No.122. In the context of the ambiguity of two plot Nos 119 as per the respondent’s own evidence, and the lack of explanation as to how the respondent is abandoning a clearly marked plot No.119 located logically within the other numbered plots and which matched the land claimed by him, the one and only conclusion we could make was that the respondent failed to prove that plot No. 199 claimed by him is the same as the subject land, which has been named (a second) plot No.119 in exhibit K1, but plot No.122 in his exhibit K2.
8. The trial judge was at pains to justify his conclusion that the plot originally owned by P.Y.Bediako is currently numbered plot No. 122. His logic was that Mr Bediako’s plot could not just disappear from the map of Sampa. That good thought was shrouded in emotions. To begin with, conspicuously sitting on all the site plans tendered by the respondent and the appellants is plot No. 119, which is nestled between plot Nos. 117 and 122. Since the plot allocated to Mr Bediako and the one claimed by the respondent is plot No. 119, why should the court assist the respondent to gloss over the existing plot No.119 to lay a claim to another plot of land? If Mr Bediako allowed someone to appropriate plot No 119 which was granted to him, could he or the respondent be allowed to fish in the environs for another piece of land to be named as a second plot No.119 or 122? Our answer is resounding No!
9. On the other hand, the appellants’ claim that their father was granted plot No. 122, was supported by the allocation note issued to their father, that is exhibit 2. The statutory body being the Physical Planning Division of Jaman District Assembly that carried out a revision of the planning scheme in 1984, per DW2, confirmed that plot No. 122 still exist on their scheme. DW2 testified that plot No 199 also still exists. Exhibit 1B tendered by the appellants indicates that plot No. 122 straddles the entire land space subdivided into plot Nos. 122 and 119 on exhibit K1, and plot Nos. 122A and 122 on exhibit K2. Clearly, the appellants’ father’s plot No 122 occupies the space on which the building of appellants father stands, in addition to the space the respondent labels as plot No. 119 or 122.

On account of the above, we hold that the trial judge misconceived his duty and took into account irrelevant matters as he glossed over relevant matters, resulting in a judgment that swam against the tide of the evidence.

**I. POSSESSION**

1. The evidence on possession was a mixed bag of admissions and denials. The respondent admitted that the appellant’s father had a building on a part of the land, part of which he rented some time ago. The respondent however restricted the possession of the appellants family to only a portion of the land he labelled as No. 122A. He testified to placing blocks, sand and gravels on the land, in addition to the ones placed there by his predecessor in title, Alhaji Bamba.
2. The appellants admitted respondent’s claim that he has placed containers on the land in which he has been selling goods. They further admitted that the respondent in 2015 deposited blocks on the portion of land in dispute. The 1st appellant claimed that it was this act of the respondent that resulted in the complaint made against him at the Sampa palace. She admitted that prior to respondent depositing the blocks on the land, a certain man had been moulding blocks on the land for sale. According to her, their father could not contest respondent’s presence on the land due sickness which eventually resulted in his death in 2014.
3. The enquiry under the head of “possession”, is not as to whether the respondent was or is in possession of part of the land which he has labelled plot No. 119 or plot No. 122. The real issue is as to the nature of his possession. To begin with, since respondent failed to prove that the area in dispute is the land granted him by Alhaji Bamba, the legal anchor of his possession could not hold.

Secondly, the possession was resisted by the appellants within a reasonable time. If we even take the conveyance (exhibit K) which is earlier in time, the land was transferred to respondent on 14 July 2014. The first letter of invitation from the Sampa Traditional Council based on the complaint of the appellants is dated 16 December 2014. That means the appellants challenged the respondent just a few months after he had purportedly purchased the disputed land.

1. In this jurisdiction where a lot of businesses are carried out in containers, the mere placing of a container on another person’s land for the purpose of business cannot ripen into title over the land, unless the real owner has exhibited an intention not to return, possess or remain on the land.

In **Nartey v Mechanical Lloyd Assembly Plant Ltd [1987-88] 2 GLR 314,SC,** Amua-Sekyi JSC, in his partial dissenting view which has gained much judicial traction, held (in holding 1 b):

“*There seems to be a misunderstanding of the cases which decide that a party who is in possession of land is entitled to the protection of the courts against all these who cannot prove a better title. The cases show that it is not possession for a day or two, a week, a month, or even a year which suffices to bring the rule into operation. It is rather long, peaceful, undisturbed possession over a considerable period of time, long and peaceful enough to raise a presumption that the occupation of the land must have a lawful origin*”

In the instant case, the possession of the respondent did not have a lawful origin, for the fact that he could not prove that the land granted to him by Alhaji Bamba was the same as the subject matter of this case. The appellants showed an intention to possess (*animus possidendi*) the subject land which is in the frontage of their building and which on the records of the Physical Planning Department of Sampa, forms part of plot No. 122, which was allotted to their father.

1. Having failed to establish that his possession was adverse to that of the appellants until the purported grant to him in 2014, and the appellants having shown that they never led the respondent to believe that they have forgone their interest in the land, the respondent forfeited the right to an order for declaration of title to the subject land. The decree of title in favour of the respondent by the trial court ran counter to the evidence and cannot be sustained.

**J. ARBITRATION**

1. Another hotly contested issue was whether or not the deliberations that took place at the Sampa Traditional Council, amounted to an arbitration. Whereas counsel for the appellant contented that it was an arbitration, counsel for the respondent argued the contrary. It was the submission of counsel for the respondent that what transpired was a negotiated settlement and not an arbitration.
2. The importance of that issue lie in the fact that if the deliberation was an arbitration, then the respondent erred in issuing a writ of summons, instead of applying to the court within the stipulated time to set the “award” aside.
3. Precedents and the statutory requirements for a valid customary law arbitration are now well settled. In the oft-quoted **Budu II v Caesar [1959] GLR 410**, the venerable Ollenu J (as he then was) laid down the following requirements:

“(1) *that in customary law there are five essential characteristics of an arbitration, as opposed to negotiations for a settlement, viz.*

1. *a voluntary submission of the dispute by the parties to arbitrators for the purpose of having the dispute decided informally, but on its merits;*
2. *a prior agreement by both parties to accept the award of the arbitrators;*
3. *the award must not be arbitrary, but must be arrived at after the hearing of both sides in a judicial manner;*
4. *the practice and procedure for the time being followed in the Native Court or Tribunal of the area must be followed as nearly as possible; and*
5. *publication of the award.*”

See also, the **Alternative Dispute Resolution Act, 2010 (Act 798)**.

1. We agree with counsel for the respondent that the proceedings at the Sampa palace presided over by three chiefs did not amount to an arbitration. All the invitation letters (exhibits 4,5,6 and 7) did not clarify that the respondent was being invited for an arbitration. The invitations were to facilitate a peaceful resolution of the dispute between the parties. There was no evidence that the appellants swore to an oath which the respondent responded to or that it was explained to the respondent that the panel was going to undertake an arbitration consequent to a complaint by the appellants. Secondly, no money was demanded from the parties to indicate their prior agreement to be bound by the award. A proceeding, notwithstanding its sanctimony, the time span and the elegance of those presiding over it cannot amount to an arbitration in the absence of voluntary submission and a prior agreement to be bound by the award.
2. Even though the evidence does not support an arbitration, it fully supports a negotiated settlement. Our conclusion is fully supported by counsel for the respondent when he stated at page 21 of his submission:

“*To begin with the method of invitation extended to the plaintiff and others to the palace suggest that the process was purely a negotiated settlement and not an arbitration.”*

The respondent was not compelled or coerced to attend to the invitation of the palace. He knew beforehand the purpose of his invitation to the palace. He voluntarily participated in the proceedings. The proceedings were presided over by three chiefs who were expected to be knowledgeable in customary modes of dispute resolution. Natural justice was respected, in that each party was allowed to present his/her case. Even though the respondent alleged bias, no evidence was put forth to support that allegation, beside the bare claim that the 1st appellant was married to the late chief. If the arbitrators exhibited any acts of bias in the course of the hearing, the respondent would have pointed it out.The proceedings were meticulous and judicial in nature. The panel took a considerable length of time, that is seven months, to complete the hearing. Remarkably, the decision was anchored on expect evidence, rendered by the Physical Development Department of the Jaman North District Assembly, and found at page 201 of the record as exhibit 11. This court of professional judges found the same expert evidence adduced through DW2 to be of high probative value in this appeal. That attests to the professionalism exhibited by the panel of chiefs. The decision in the settlement was therefore not based on the whims and caprices of the panel members. The panel delivered a formal ruling and found the respondent liable. The panel by exhibit 9 formally wrote to the respondent to indicate the costs awarded, which were particularized as follows:

* 1. Plaintiffs summons fees-GH¢200.00
  2. Plaintiffs witness fees-GH¢20.00
  3. Compensation from the defendant to the plaintiffs (Mpata) GH¢300.00.

The respondent has paid the costs of the litigation, signaling his acceptance of the decision on the settlement. By the acceptance of the decision, same has become binding on him as a judgment. In the circumstances, the respondent is *estopped* by conduct from challenging the decision, see- **Mensah v Essah [1976] 1 GLR 424,CA**.

**CONCLUSION**

1. The respondent herein as the plaintiff in the court below had the responsibility to adduce evidence on a preponderance of probability to prove:
   1. His acquisition/roof of title,
   2. Identity of his land, and further prove that the land he claimed is the same as the subject land.
   3. That since the acquisition, he has been in possession of the subject land or has had the right to possession of same.
2. By exhibits A,B,C, D (series),E,F and in particular exhibits G,K and K1, the respondent was able to prove that he acquired a piece of land described as plot No.119, New Town, Sampa, from one Alhaji Bamba in or around 2014. Indicative of the plot he acquired, the site plan issued to him by his vendor, Alhaji Bamba, that is exhibit K1, states the plot acquired as plot No. 119. Indeed, plot No. 119 still exists, as per the testimonies of the appellants and the Physical Planning Department of the Jaman North District Assembly, which conducted a revision of the planning scheme in 1984, and through DW2 and exhibit 13, confirmed that the revision of the scheme did not result in the creation out of plot No. 122, of plot Nos. 122 and 122A. The site plan, exhibit K2 on which the appellant launched his claim to plot No.122, therefore had no legal basis.

We concluded that the respondent failed to prove that the plot No.119 that he acquired from Alhaji Bamba is the same as the original plot No. 122, which he concedes belonged to the late father of the appellants.

1. The respondent admitted that the father of the appellants has constructed a house on a portion of the land he described as plot No. 122A. There was no doubt also that the respondent for some years now, placed containers on a portion of the land he claimed was numbered 119 but is now 122. He has been trading in the said structures. Before that, his predecessor-in-title and later himself, had placed blocks, sand and gravel on the subject land.

When the respondent purported to purchase the subject land in July 2024, the appellants lodged a complaint within a few months, resulting in the invitation by the Sampa Traditional Council in December 2014 for a settlement.

The possession of the respondent, which was formally resisted by the appellants within a reasonable time, was not sufficient to oust the title or interest of the appellants in plot No.122.

1. The deliberations at the Sampa Traditional Council did not amount to an arbitration, but amounted to a negotiated settlement. Having voluntarily participated in the settlement and having accepted the verdict by the payment of the costs, the respondent was *estopped* from resiling from the settlement or denying the verdict.
2. The trial judge was in error of the law for holding that the respondent proved that his plot No.119 is the same as plot No. 122. He also erred in law by holding that the respondent was in adverse possession of the subject land . Even though he vacillated as to whether the proceedings at the Sampa palace amounted to arbitration, he erred in holding that the verdict was not binding on the respondent. The proceedings amounted to a negotiated settlement, and the verdict, which was accepted by the respondent, created an *estoppel* and is binding on him.
3. On account of the above, we concluded that the judgment of the trial Circuit Court, Berekum, dated 13 October 2022, is against the weight of evidence. The appeal is upheld, and the said judgment is hereby set aside. In its place, judgment is entered for the appellants.
4. It is a fact that the appellants did not counterclaim against the respondent for title to the subject land or for recovery of possession. However, the evidence is blatant to the effect that they own plot No. 122, which encompasses the portion of land on which the respondent has placed his containers. Once the respondent lodged an unsuccessful attempt to annex title to a portion of appellants’ plot No. 122, he became liable to be ejected by the appellants. In **Ameoda v Pordier & Forzi [1967] GLR 479, CA**, it was held:

“*Since the defendants had denied the plaintiff’s title, the plaintiff was entitled to, as against them, not only an order for recovery of possession, but also an injunction restraining them from committing trespass after giving up possession and to damages for trespass*.”

To avoid the waste of time and resources of the parties and the court in a second suit for recovery of possession and perpetual injunction by the appellants, the result of which would be forgone by reason of this judgment, and focused on the need for substantial justice as against technicalities, we grant the appellants leave to recover possession of the portion of plot No. 122, occupied by the respondent with containers. We further perpetually restrain the respondent from either personally or through others, having any dealings with the subject land. In granting this unclaimed reliefs, we rely on the need for substantive justice and the avoidance of multiplicity of suits, as elucidated in the superior teachings of the Supreme Court in cases on the subject, including: **Gihoc Refrigeration & Household Ltd v Hanna Assi [2005-2006] SCGLR 455, Muller v Home Finance Ltd [2012] SCGLR 1234** and **Republic v High Court, Kumasi, Ex parte Boateng [2007-2008] SCGLR 404**. The case of **Empire Builders Limited v Top Kings Enterprises Ltd (Civil Appeal No.J4/10/2019, dated 16 December 2020**) is distinguishable, and is inapplicable to this case. That was because the plaintiff in that case had flouted the trial court’s order to amend in a specific manner. Having failed to specifically comply with that order, both the Court of Appeal and the Supreme Court considered a grant of relief not endorsed as inappropriate and an affront to the court’s order.

We order the respondent to vacate the disputed land with all his properties including the containers and the blocks within six (6) months from today.

**(SGD.)**

**ERIC BAAH,**

**JUSTICE OF APPEAL**

**I agree (SGD.)**

**ANGELINA MENSAH-HOMIAH,**

**JUSTICE OF APPEAL**

**I also agree (SGD.)**

**ALEX OWUSU-OFORI,**

**JUSTICE OF APPEAL**