WRITE-UP

MULTIPLICITY OF JUDGEMENTS ON LAND AND ITS EFFECT ON LAND ADMINISTRATION – SITE PLANS AS PART OF PLEADINGS AND SETTING UP OF LIST UNITS IN THE COURTS

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1. Introduction

The Courts create new legal interests and oft times conflicting interests in land whenever it declares a party an adjudged owner of a piece of land. Since the late 18th Century, various interests created by legal instruments such as Executive Instruments, land documents and judgments have been recorded at the Deeds Registry and in the records of the Lands Commission through plotting and issuance of land certificates under title registration. The rules of Court enable land suits to commence without recourse to parties who may hold prior legal interests in such lands. The Courts cannot be faulted as they perform their judicial duties by determining per the preponderance of probabilities the rights between or among litigants in each suit.

The principle of 'res judicata' have been held by the Courts as an avenue by which parties bring prior adjudged cases on a particular land to its notice. However, without a search conducted with the aid of an accurate scientific site plan persons who have prior legal interests in such lands cannot be revealed and joined as parties to a suit.
Until the rules enable the Courts to put in a search process, so that prior legal owners have notice of suits connected to their lands, Courts would continue to create multiple 'owners' of lands through judgements.

Pursuant to the Land Title Registration Act, 1986 (PNDCL.152) Section 23 (5)(d) *"a final judgement of a Court of competent jurisdiction"* is "good title" and therefore a registrable instrument. Every judgement on declaration of title on a piece of land is binding (unless set aside) and must be executed by plotting before accepted for registration of title.

Records in the Lands Commission reveal numerous lands encumberedby various judgements and other legal instruments in respect of the same lands. Registration of lands which is intended to provide certainty and security of title to registered proprietors is currently a mirage culminating invariably to actual physical conflicts on lands and chaos in land transactions.

2. Background

Registration of instruments (documents) on land enables a proprietor's interest in a particular land to be protected by law.

2.1 Registration of interests in the country is by either Deeds or Title registration. Registration of interests on land in areas not declared as registration districts is by Deeds registration as provided under the Land Registry Act, 1962 (Act 122). This involves the chronological filing of copies of the engrossed deeds in a register after it has been plotted and signed by the Land Registrar. Deeds registration does not involve publication in the dailies and investigation of title but provides access to the chain of transactions that can be used to prove title.

2.2 Land title registration on the other hand started in Ghana in 1987 after the promulgation of the Land Title Registration Act, 1986 (PNDCL 152) under a World Bank Pilot Project. Title registration currently covers the Greater Accra Region, parts of Kumasi and the Awutu-Effutu-Senya Districts in the Central Region. Title registration involves the procedure for proving title under the "Torrens System" which has three (3) main objects:

To ascertain the title put forward by the applicant. This is a matter of conveyancing and land law.

To ascertain the land to which the title relates in so far as it can be delineated on a map or plan. This is primarily the work of the surveyor with the specific tradition that boundaries are proved strictly.

To discover adverse claims to the land and, if adverse claims are discovered, adjudication process follows with attempts at resolution of the claims.

2.3 Title to land could be in the form of possession, a document or series of documents. A good title according to Section 23(5) of PNDCL.152 [1]

"consists of or commences with- any enactment;

grant or conveyance from the State; a grant, conveyance, assignment or mortgage which is more than thirty years old and establishes that a person is entitled to deal with the land;

a final judgment of a Court of competent jurisdiction."

2.4 It is in the issues of **"a final judgement of a Court of competent jurisdiction"** (emphasis mine) that the relevance of an effective collaboration between the land sector agencies and the judiciary is crucial with a view to having the "Rules of Court Committee" amend its procedures relating to suits for the declaration of title to land.

Sometimes suits are filed in different courts on the same piece of land, with the parties seeking the same reliefs because of lack of a spatial reference point. The judgements of the Courts also invariably 'conflict' with the interests of other prior legal and adjudged owners on these same lands. A myriad of judgments on land are subsequently forwarded to the land agencies for plotting and registration of titles and also to the law enforcement agencies to execute Court orders on possession of land.

2.5 The Land Registration Division of the Lands Commission, pursuant the Lands Commission Act, 2008 (Act 767) S.21, has the mandate to register titles and interests in land. It therefore carries the burden of explaining to 'newly adjudged owners' of land, the Division's inability to register their judgements because state-guaranteed title is vested in proprietors who have been issued land certificates and secondly, were not parties to those suits. The resultant effect is that the acquisition of a land certificate does not provide security of title to proprietors - one of the main objects for the promulgation of PNDCL.152. The 'newly adjudged owners' seeking the fruits of victory in Court use these judgements to sell the lands to willing buyers; oblivious to earlier created legal interests - leading invariably to physical chaos on these lands.

1 Land Title Registration Act, 1986

3. Land Suits

3.1 The adversarial nature of Court proceedings demand that Courts adjudicate on the claims of the various litigants and give judgement to one party, on the proof of preponderance of probabilities. This is in accordance with Section 12 of the Evidence Act, 1975 (Act 323). In land suits the commonest claim is the 'declaration of title' to a piece of land. Submission of site plans which would delineate the area being claimed is done in the course of the trial as part of adducing evidence.

3.2 Through the years various judgements have been given on lands but the accuracy of what is called 'a judgement plan' cannot be vouched for. There is a wide difference between the description of these lands as delineated on the judgement plans and its interpretation on the ground. The site plans used as the basis for the claim to a piece of land which later become judgement plans are a lot of times not prepared by licensed surveyors.

4. The Concurrent Jurisdiction of the High Courts

4.1 A bit of English medieval history indicate that the right of jurisdiction was attached to the inherent right to estates (courts) the lords and nobles had inherited. These rights also included their servants. This gave judicial power to the nobles and lords to preside over quarrels and feuds that arose 'in their domains (courts)".

A Court was therefore a specific defined area (estate) belonging to a "Lord" or a "Noble". **So whilst the English medieval courts that evolved into our present Court system were confined to certain specific spatial areas, our present High Court system is virtual-based which is not aligned to any defined land area.**

4.2 Although the Courts basically determine the rights between parties in a suit, the determination of land cases is done without reference to any spatial data, as to whether that particular land has been the subject matter of an earlier litigation either between the same parties, one party to an earlier suit or a different set of

claimants. The concurrent jurisdictions of the High Courts therefore enable litigants to prosecute their claims at any of the High Courts. A party can raise the issue of 'res judicata' i.e the principle that the particular subject matter or claim has been the subject of an earlier suit and judgements pronounced. This implies that the rights of the parties have been determined and therefore cannot be the subject of another claim. But this happens after the trial has begun and parties have gone through various court processes and legal arguments spanning sometimes years and decades.

5. Arguments for Site Plans as Part of Pleadings

5.1 The Survey (Supervision and Approval of Plans) Regulations, 1988 (LI 1444), was passed with the intent to ensure that all plans attached to any land document (instrument) would comply with the provisions of LI 1444. Implementation of LI 1444 has been a challenge and this contributed to the plotting of inaccurate plans into the records of the land agencies. Execution of judgements on lands by plotting in the records of the Lands Commission tends to be erroneous because of inaccurate site plans which became the basis for the judgement plans. It is forcefully argued that a Court of law should seek to uphold the provisions of all laws when that area of law is before it.

5.2 Scientifically accurate site plans as part of pleadings would immediately bring to fore the exact areas which are the subject of litigations bringing it in consonance with its interpretation on the ground. A search with that site plan would reveal prior adjudged owners and other legal instruments affecting that land the subject of that particular Suit. The real issues in dispute as stipulated under Order 1(2) of the High Court (Civil Procedure Rules), 2004 (CI 47) relating to prior interests would be revealed and would constitute notice to the Courts to enable the Courts pronounce on such issues.

5.3 Records on land are retrieved through spatial data; the accuracy of a site plan is therefore key. Without an attached accurate site plan (L.I. 1444[2] compliant site plan) when a Writ is served on the Lands Commission[3] , it has no means of conducting a search as may relate to the land the subject of the suit to retrieve records relevant to that Writ. An inaccurate site plan would also invariably provide records that are not in anyway linked to the land the subject of dispute. It is argued that no matter how detailed the description

2 Survey (Supervision and Approval of Plans) Regulations, 1988
3 Lands Commission Act, 2008 (Act 767)

of a land, a Legal Officer at the Lands Commission has to delay the process of response and apply to the Court for further and better particulars (the site plan relating to the land the subject of the Suit) before one can retrieve information on that piece of land to prepare a Statement of Defence. If a site plan is not made available, the Legal Officers are unable to access records on these l ands to prepare Statements of Defences that would protect the interest of sometimes the State and innocent third parties.

5.4 Interlocutory judgements are sometimes given before the real issues are tried. These interlocutory judgements are forwarded to the Lands Commission for plotting; the accuracy or otherwise of attached site plans notwithstanding. A Defendant's land may fall outside the boundaries of the land the subject matter of the Suit but at that stage of the trial such issues would not have been considered because site plans may not have been tendered in evidence.

6. Further Reasons for Site Plans as Part of Pleadings

6.1 Different Names Of Heads Of The Same Families

Most lands especially in the Greater Accra Region are designated family lands. The names of families and its Heads do not have a distinct peculiarity (nomenclature) such as 'La Mantse' or 'Sempe Mantse'. It is therefore difficult to associate a previous Head of a Family with a subsequent one who may be a successor-in-title. The family tree keeps growing and branching out into smaller and smaller units; without any spatial referencing, one cannot link a described area to a previous judgement that affects a particular family line.

6.2 Indeterminate Boundaries of Family/Stool Lands

80% of land holdings in the country are administered by either Stools or Heads of Families. Since the advent of the 1992 Constitution, various families (especially within the Greater Accra Region) have asserted their proprietorship in lands. A lot of areas hitherto known and alienated as stool lands are now designated family lands and

alienated as such. The grant of concurrence for stool land transactions, required under Article 267 (3) of the 1992 Constitution, which had compliance with physical planning and revision of ground rents payable before a stool land grant was deemed valid is almost a redundant legal provision - particularly for lands within the Greater Accra Region. Virtually all lands within this region are now described as family lands where theHeadship position is the subject of numerous court suits.

6.3 Lack of Physical Planning

The Town and Country Planning Act, 1945 (now the Land Use and Spatial Planning Act, 2016 (Act 925)) made the whole country a planning area. However physical planning and submission of town planning layouts are done by the owners of these lands with little or no consultation with the District Assemblies. The Families as owners andcustodians of most of these lands alienate them haphazardly especially within the peri-urban areas without recourse to any approved planning schemes. These same lands are the subject of litigation and re-litigation without any unique spatial identifiers.

6.4 Descriptions of Plots of Land by State Agencies

Every State agency associated with physical planning and provision of amenities on lands have its own unique identifiers even for planned areas. The description given by the then Town and Country Planning Department (now Department of Land Use and Spatial Planning) which is the basis for allocations and leases on state land residential areas by the Public and Vested Lands Management Division (PVLMD) of the Lands Commission differs from the unique parcel identifier given by the Survey and Mapping Division (SMD) of the Lands Commission for parcel plans used for registration of titles under PNDCL.152. Every utility agency and District Assembly also has their own unique identifiers.

6.5 Changes in Names of Specified Areas

Names of various places and localities change or become extinct with the passage of time. An area which was once known as Papao in the Greater Accra Region is now known as 'West lands'; whilst Martey Tsuru is now known as 'Airport Hills' etc; and no contemporary person would link the old description to its new name. A further example is the area now known as 'East Legon' which encompass names of areassuch as Shiashie, Mpehuasem, Otinshie, Nmai Dzorn, Ashale Botwe, Dzornaman and Tessa.

A case in point is that, three (3) site plans were prepared on the same parcel of land with one describing the land as being at Adadraka, the second one stated it as being at 'Ridge' whilst the third one stated it as being at 'Asylum Down'.

6.6 Redefining Of Regional Boundaries

Political, administrative or other public purpose exigencies have also led to redefining of various regions. Greater Accra Region began in the colonial era as the Eastern Region, then it became the Accra Region and now known as the Greater Accra Region having spread to incorporate areas which were then located in the Eastern Region. Lands in areas such as Obosomase, Berekuso, Adomrobe all used to be in the Eastern Region, so Court judgements relating to these areas have been plotted in the Lands Commission in the Eastern Region. Registered/plotted records on these redefined areas are not in the records of the new regions created to encompass these areas. Judgements, for example, given over lands in the Central Region and the Greater Accra Region in areas described as Kokrobite, Nyaanyano and Tuba in reality and in fact relate to the same or parts of the same lands.

7. Setting up of LIS unit within the Judiciary

7.1 The Judiciary acknowledging that lands have been the subject of litigations for decades; can set up protocols which mandate that cases be assigned to Courts by means of spatial

data. Land cases can then be assigned to designated Courts by means of the spatial data inputted into the LIS records of the Judiciary.

7.2 Under title registration[4] , a declared area may be divided into Sections and Districts[5]. The spatial data referencing may be done using the data-base already created by the SMD of the Lands Commission or the layouts within the District Assemblies. The judgement of the Court and its orders would be inputted into the LIS records of the Courts by means of this spatial data. It is proposed that the way information is retrieved when searches are conducted on land by means of a site plan at the land agencies, so would the L.I. 1444 compliant site plans of parties to actions be used to retrieve information from the records of the Court. The Court records on an adjudged particular piece of land may incorporate the following particulars:

- The Suit No.
- Parties to the Suit
- Site plan
- The acreage of the subject land
- The Orders of the Court in relation to that Suit

The above stated information (data) would immediately bring to fore the cases that have been deliberated upon by the Courts on more or less the same areas and capture the earlier decisions of the Courts and its orders. The Courts having had notice of these earlier decisions would bring same to the attention of the litigants. Judicial notice having been taken of these earlier judgements, it should become imperative then for the Courts to factor these decisions and orders in its rulings or the adjudication process.

7.3 The need for plans to be made an integral part of the litigation process but not only as evidence tendered during trial was made in the case of Kwabena V Atuahene[6] , Apaloo CJ said:

"Finally, I wish to quote the following dicta in **Udofia v Afia**[7] *'We think it desirable to state that we consider that the practice followed by one judge at least in this country (Nigeria) of making the plan part of his judgement and causing it to be pasted in the Judgement book is a practice which should be the rule in this country. The plan will, if the land claimed and awarded is clearly marked, be a*

4 Land Title Registration Act, 1986 S.5 and 7
5 Land Title Registration Act, 1986 S.5 and 7
6 [1981] GLR 136-144
7 1940) 6 W.A.C.A. at p.219

permanent record and might obviate subsequent dispute in respect of the same land."

He continued *"This sentiment was expressed 40 years ago and its inherent wisdom has not undergone any attrition; instead it has grown, in stature in view of what happened in Wordie v Awudu Bakari*[8] *, where this Court was obliged to adduce fresh evidence suo motu with the consent of the parties in order to establish the true identity of a plan relevant to a previous judgement – an exercise that would have been unnecessary if the plan had been pasted together with the judgment in the relevant court record books. I wholeheartedly recommend the 1940 suggestion to the registrar of this Court for consideration and implementation'*

It is advocated that His Lordship Chief Justice Apaloo's recommendation cited supra be made law.

8. Amendment of Rules of Court

It is submitted that unless the 'Rules of Court' in relation to the procedures for land litigation is amended, by making LI 1444[9] compliant-site plans an annexure at the commencement of court cases (as part of pleadings) and eventually linking judicial processes to an LIS established unit, security of title cannot be guaranteed. Litigants would (a lot of times knowingly) abuse the Court system by seeking redress on the same land or parts of the same land at different Courts.

An LI 1444 - compliant site plan at the commencement of the litigation process on land would also bring to an end the practice where adjudged owners of lands submit larger acreages of land to the land agencies as 'judgement plans' whilst the actual acreages sought in the reliefs were smaller than it is on the 'judgement plan'. Also, it is only a managed LIS that would inform the Court Registrars about relitigation on the same lands, who can retrieve the records on such and bring same to the notice of a particular Court.

9. Conclusion

It is a general principle of law that a purchaser of land is not estopped or affected by a judgment adverse to his/her vendor in proceedings commenced after the acquisition of that land. Although

8 1976] 2 G.L.R. 371 at p.380
9 Survey (Supervision and Approval of Plans) Regulations, 1988

the Courts basically determine the rights between parties, litigants are able to seek redress on the same lands when they are aggrieved about a decision as the concurrent jurisdiction of the High Courts 'aids' them to relitigate on the same lands. The concurrent jurisdiction of the High Courts also places land administrators and the law enforcement agencies into disarray when it comes to execution of Court orders. Adjudged owners of land seek compliance to Court orders without regard to earlier decisions and orders that have already been given to these agencies on the same lands. With an LI 1444 compliant site plan any licensed surveyor can accurately survey and demarcate judgement plans without subjective considerations thus reducing conflict on the ground.

LI 1444 - compliant site plan as part of pleadings and the setting up of an LIS Unit within the judiciary would sanitise the procedures for land litigation. Records of the Lands Commission, would ultimately indicate one legal owner of a parcel of land at any one point in time; providing registered proprietors the much needed security of title.

POST SCRIPT
– THE NEW 'LAND ACT'

The long title of the new land act, "Land Act, 2019" provides that the objective of the Act

"… is to revise and consolidate the laws on land, with the view to harmonising those laws to ensure sustainable land administration and management, effective land tenure …"

Very commendably, Section 50(9) and (11) of the Act provides for automatic renewal of leases for an indigene of an area where a lessee has developed the land and an implied term for renewal of the lease if a lessee is a citizen. This Section gives a general umbrella protection of the property rights of citizens as stated in Article 36(7) of the 1992 Constitution and reduces substantially the harshness of the principle in pacta sunt servanda where contracts of leases do not provide for renewal.

The new law does not however seem to have achieved harmonization in uniformity for disposition

and registration of all categories of land holdings. Section 102(3) of the Act provides:

" (3) The Land Registrar ***shall not register a large scale disposition of a stool or skin land, or clan or family land*** *unless the Regional Lands Commission in respect of (a) stool or skin land, has in furtherance of clause (8) of article 36 and clause (3) of article 267 of the Constitution, or (b) clan or family land, has in furtherance of clause (8) of article 36 of the Constitution, granted consent and concurrence to the disposition taking into account ...*

(4) For the purposes of subsection (3), ***"large scale land disposition"*** *means disposition of land or interest in land which exceeds ten acres for residential purpose and fifty acres for agricultural, civic, cultural, commercial or industrial purpose."*

(emphasis mine)

This provision still maintains to a large extent the discriminatory regulatory framework pertaining to disposition and registration of family land grants vis-a-vis stool/skin/clan land grants. The provision only makes for sameness when a grant does not exceed **"ten acres for residential purpose and fifty acres for agricultural, civic, cultural, commercial or industrial purpose".** (emphasis mine)

A provision making the concurrence applicable to all categories of land holdings – Stool/Skin/ Clan and Family - notwithstanding the acreage - involved would have ensured standardized processes for registration of all types of land grants and greatly enhance land administration. Such a provision would also have empowered land administrators to review low rents oft quoted in Family land leases and seek compliance to physical planning - vide S.117 of the Act - by ensuring that site plans annexed to these leases conform to approved local layouts amidst protecting other public interest considerations.

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Section 112 (4) makes the Regional Lands Commissions (RLCs) a quasijudicial body. Legislative Instruments to the Act would outline the procedures required. The drawback however is – the time lapse which occurs when the terms of the Chairman and members of the RLCs expire after

four (4) years vide Article 264(1) of the 1992 Constitution. It can take between one (1) to two (2) years for these Commissions to be re-constituted. Also, would the members of the RLCs assigned these quasi-judicial duties be working full time or part time? This provision would invariably add up to the applications that pend at the various RLCs for the grant of consents and concurrence when the RLCs are defunct for that period of time.

'Land Act, 2019' is applauded. It is prayed that the legislative instruments required for its operationalization are completed in good time so the objectives of the law are promptly achieved.

* The writer is a Legal Officer and Registrar at the Land Registration Division of the Lands Commission, Accra – Ghana