



Responsible Land Governance: Towards an Evidence Based Approach

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MANAGING DEVELOPMENT CHALLENGES AND SECURITY THREATS ARISING FROM MULTIPLE AND CONFLICTING COURT JUDGEMENTS ON LAND IN GHANA

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Abstract

The land administration system in Ghana has been characterized by undefined customary land ownership boundaries, difficulty in accessing land for development purposes, inadequate security of tenure, poor co-ordination among various actors in land and land racketeering among others. This galvanized Government to initiate a land reform process through the Ghana Land Administration Project. A major player in clarifying the different ownership hierarches in land is the judiciary. Concern has however been expressed severally within land administration and management circles on multiple and conflicting judgments on the same pieces of land (Kotey & al 2001).

Despite this concern, no specific study has been conducted to empirically demonstrate the state, magnitude and implications of such judgments and their resultant conflicts. This reflects one of the weaknesses of official land administration and management in Ghana.

This work through selected existing court judgments in the western and eastern parts of the Greater Accra Metropolitan Area (GAMA) examines the magnitude and implications of such judgments and what initial measures have been taken to address some of the anomalies observed. The study reveals that, indeed contrary to views held by some top judges, there are judgments whose spatial coverage that overlap with judgments of courts of cognate jurisdiction. Negative impacts of this phenomenon include new legal suits, use of self-help to protect land interests, haphazard developments and reduction in values of land.

Even though the entire gamut of negative impacts of multiple judgments are unknown, concerns on those that have been identified have galvanized some interventions and assistance to the Ghana judiciary in the form of establishment of automated land courts, introductions of case management systems court connected Alternative Dispute Resolution (ADR) and written witness statements. Some provisions have also been made in the upcoming consolidated Land Bill to provide guidance and improve judicial processes affecting land.

Keys Words

Customary tenure, and administration, conflicts, court, judgments mandamus

Introduction

Land occupies the nucleus of social, economic and political life of virtually all African countries and economies. In Ghana, the economy continues to rely heavily on agriculture, natural resources and lately tourism and real estate. Overall, the land sector's contribution to Ghana's Gross Domestic Product (GDP) consisting of agriculture, mining, forestry and tourism account for close to 75% (ISSER 2015)¹. The value of land to the state economy is therefore very significant. The efficiency with which land is managed determines the extent of socio-economic development in the country.

Most land in Ghana is held under customary tenure. It is commonly estimated at 80%. The characteristic of customary land ownership in Ghana is one of indeterminate land boundaries, uncertainty in the hierarchy of ownership and interests, insecurity of tenure (National Land Policy 1999). With increases in population growth at a rate of 2.5% per annum and a rapid urbanization rate at 4.2% annually (TCPD 2016)² demand for land has increased substantially and peri-urban lands are rapidly being converted from agriculture to urban development. Several customary claimants compete for the sole right to alienate such lands. The result of this is several disputes over land which eventually end up in the courts for settlement.

The Problem

Court Judgements on disputes are expected to bring finality to the disputes. However, the problem that arises is that, many of the judgments made on titles to land when spatially represented overlap each other. Persons who are not parties to the adjudicated cases may find themselves deprived of their interest in the land concerned. This sparks a further spate of litigation before the courts and in so doing clog the court system (Twum, 2010). Kotey et al (2001) suggest that land litigation is on the rise. Fear of losing lands lead to the use of self-help

¹ State of the Ghanaian Economy 2015

² National Spatial Redevelopment Framework

(land guards)³ to protect land interests (land guards) and creating insecurity. For a country aspiring to be a fully-fledged upper middle income country, land ownership and land development need to be rationalized with much urgency. This study therefore aims to raise awareness of the issues emanating from multiple court judgments affecting the same pieces of land, measures required to address the issues observed, highlight some of the interventions made by the Judiciary as a result of some of the negative impacts identified and submit recommendations for further improvement of the situation.

The Approach:

The Greater Accra Metropolitan Area is awash with disputes. To enable the key issues to be identified and addressed, two areas involving large tracts of land in excess of six (600) acres (approx. 240 ha) in the western and eastern parts of the Accra Metropolitan area are examined. Four (4) judgements are examined in the western part while in the eastern part, six (6) judgements are assessed.

The cases are examined in terms of claims made, the reliefs sought from the courts, issues raised for adjudication and the judgements delivered. The land area affected in each litigation is spatially described by way of a cadastral plan. The cadastral plans are thereafter superimposed on each other to determine if they overlap each other in any way. If there are overlaps, then further examination is made of whether the reliefs given by the court conflict with one another, whether further disputes arise and what impacts are observed on the ground. From this the key emerging issues are identified, analyzed and conclusion drawn from the phenomenon. Recommendations are thereafter proffered to improve the situation in order to meet national development objectives. In doing this, it is also acknowledged that the Judiciary has initiated some measures to address some of the observed negative impacts of Judicial decisions on land.

³ Land guards is a terminology commonly used in Ghana to describe persons privately hired by contesting parties to protect lands they claim ownership of. These persons may be armed and are a source of insecurity in the disputed areas.

Customary Land Tenure in Ga Dangme

Customary Land holding and ownership patterns in Ghana have been severally described by Abdulai (2010), Acquaye (1984), Agyepong (2013), Amanor (2008), Asante (1975), Kludze (1987) among others. It is acknowledged that the hierarchy of interests in customary land range from allodial ownership, usufructuary interest acquired by citizens or members of the land owning group and lesser interests like tenancies, licences and pledges. The highest form of interest is the allodial or absolute interest which vests in the entire community and held in trust by their head be it a chief, clan or family head.

The Ga State occupies the area around the capital city of Ghana, Accra. While the date of settlement is not known, Accra developed through a series of contiguous settlements along the beach approximately 2 degrees west longitude and 5 degrees west latitude. Socially, they were grouped around different clans with Nungua, Teshie and Osu to the east. In Accra Central, clans made up of Asere, Abola, Gbese and Otublohum whose settlements were close to the Dutch Fort were known as Dutch Accra. To the west were three other clans of Sempe, Akumajay and Ngleshie. The Ngleshie Alata were decedents of Nigerian migrant workers who worked at the James Town seaport and also helped to construct the European Fort. This part of Accra is known as British Accra. Individual families from among these families migrated northwards and established farming villages in no particular order. Succession to these lands was through patrilineal inheritance (Field, 2002).

This social setting provided for the exercise of land rights either as allodial (absolute) owners or usufructuary rights holders. It is commonly understood that, allodial land ownership is not vested in stools but in clans or families. However, following legislative enactments in the colonial period where indirect rule was practiced, chiefs assumed leadership of their states and were therefore recognized as allodial owners. Grants of land were therefore made by them for official recognition. This practice continued after independence.

This apparent distortion of the rights of clans and families to the ownership of the allodial title was severely dented in the case of Mechanical Lloyd Assembly Plant Limited Vrs Nartey (1984 – 1986) 1 GLR 412 where the Supreme Court ruled that Frafraha Chief exercised the rights of

allodial ownership for such a long period to the knowledge of the La Stool which had acquiesced and therefore was estoppel by their conduct. This important judgement has led to mutation of several stools into clans and families as far as land ownership is concerned.

The Judiciary

Article 125(3) of 1992 Republican Constitution vests judicial power of Ghana in the Judiciary. Accordingly; neither the President nor Parliament nor any organ or agency of the President or Parliament shall have or be given final judicial power. The courts comprise of superior courts of judicature comprising; the Supreme, Appeal, High Court and Regional Tribunals and such lower courts or tribunals as Parliament may by law establish. These include Circuit, Magistrate and District Courts. Article 127 of the provides that ‘in the exercise of the judicial power of Ghana, the Judiciary in both its judicial and administrative functions, including financial administration is subject only to the Constitution and shall not be subject to the control on direction of any person or authority. Article 127(3) further provides that a Justice of a superior court, or any person exercising judicial power shall not be liable to any action or suit for any act or omission by him in exercise of the judicial power.

It is observed from above that the law gives the Judiciary significant authority to determine the fate of people and issues brought before them. It is therefore important that their role in the determination of land cases should inspire such confidence as to ensure closure when land disputes are brought to them. However the illustrations that follow appear to suggest that judicial decisions in land matters in the Accra area may in some cases fuel more conflicts and therefore the benefits of good land administration for the economy and society may be frustrated.

Judicial Decisions on Land in Western GAMA

The western part of Accra is mainly occupied by people of Asere Akumajay, Sempe and Ngleshie Alata (James Town). It roughly occupies an area of about 19,331 acres (7,823.25 ha). Sparked by the acquisition for the Korle Bu Hospital⁴ and its facilities, Suit No. 22/1948 was commenced by Nii Yaw R. Crabbe III of James Town Stool against J. A. Quaye and Nii Tetteh

⁴ Korle Bu Hospital, the largest hospital in Ghana was constructed by Sir Gordon Guggisberg in 1927.

Kpeshie of Sempe Stool. Judgment delivered by Acolatse J. in 1957, held that the people of Sempe Akumajay and James Town were so intertwined that where each stool had a majority of its people settled, then that is their land.

Dissatisfied with this ruling, Sempe Stool appealed against the judgment of Acolatse J. This appeal was finally determined in 1970 where Sempe was declared owners of all that piece of land approximately measuring 6,544.4 acres (2,648.51 ha). Sempe Stool subsequently exclusively granted lands in that part of Accra on the strength of the 1970 Judgment of the Court of Appeal.

Akumajay Stool dissatisfied with this situation also appealed against the 1970 Appeal Court decision to the Supreme Court through Civil Appeal No.10/89 in reference to the same case of Nii Yao Duade Crabbe III against J. A. Quaye. In 1991 the Supreme Court determined the case to the advantage of Akumajay Stool where a total land of 3,193 acres was carved out of the northern parts of the 1970 Appeal Court ruling and adjudged to be exclusively for Akumajay Stool. Even though this appears to have settled the case of land ownership boundaries between Sempe, Akumajay and James Town (Ngleshie Alata), there was the unrecognized factor of the existence of the Gbawe Kwatei Family of the Kpakpatsewe Clan of Asere of Accra.

This unique customary law Family had through numerous court cases dating from 1922 claimed ownership of large tracts of land. The legal contests have been against Nii Charbukwei Family of Anyah a clan under Sempe Stool, Sempe Stool, James Town Stool, Akumajay Stool and Weija Stool (a sub- stool of James Town). The combined total acreage of these lands by Gbawe Kwatei Family measure in the region of approximately 9,577 acres (1,294.35 ha).

In 2006, judgment was delivered in favour of Gbawe Kwatei Family In the Matter of Consolidated Suits:

Nii Adotey Obuor II Vs Ikam Ltd & 4 Others (Suit No. L.215/2001)

Nii Adam Kwatei Quartey Vs Ikam Ltd & 2 Others (Suit No. AL. 23/2003)

The High Court ruled in favour of Nii Adam Kwatei Quartey of Gbawe Kwatei Family on 11th July, 2006. This case is still in the Courts on appeal.

The ownership contest between Sempe Stool and Akumajay Stool has been concluded by the Supreme Court since 1991. However, the Supreme Court also has given its rulings in relation to ownership contest between Gbawe and Nii Charbukwei Family of Anyah which affect large parts of the land adjudged earlier in the Sempe/Akumajay case. The area of overlap measures approximately 2,140 acres.

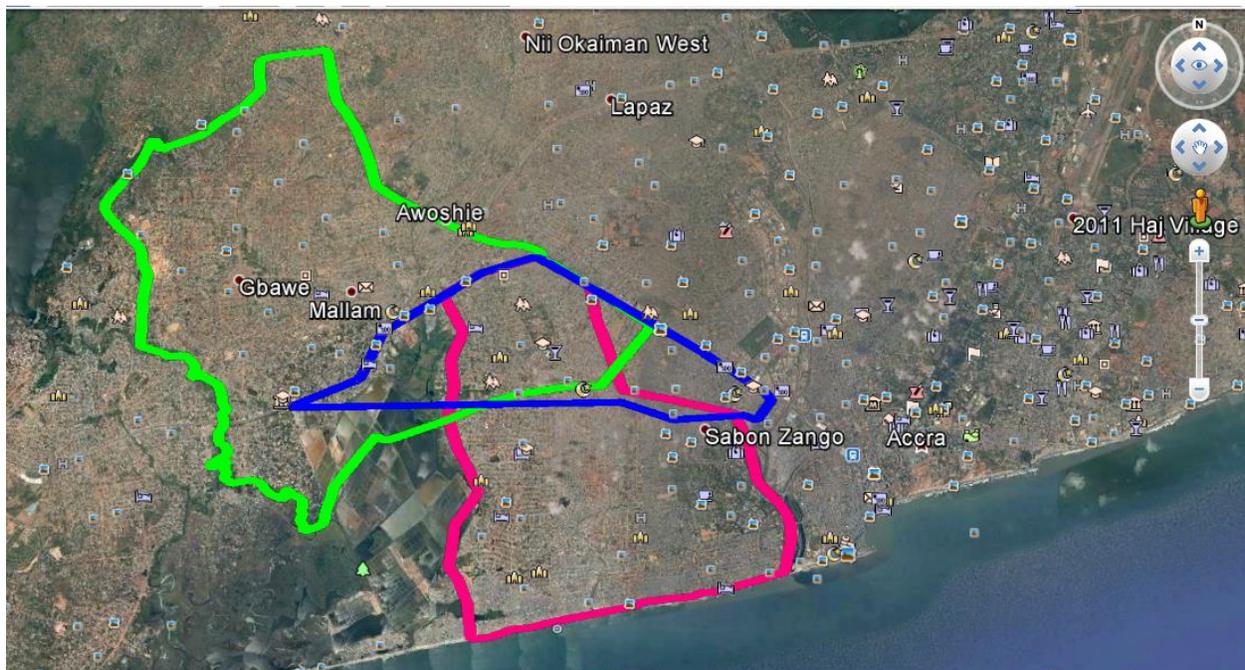


Fig 1: Overlapping judgements – Accra West (Sempe, Akumajay & Gbawe Kwatei)

The Judgments described above pose a number of challenges to the land administrator. A key function of land administration is to maintain up-to-date and accurate records of land transactions (Dale & McLaughlin 2003).

The key issues that confront the land administrator include:

1. For land acquirers whose interests were registered based on earlier judgments (pre 1970 and post 1991), how should the records be altered to reflect the new allodial ownership?
2. For the area where there is an overlap of boundaries, to which court adjudicated title holder would subsequent transaction be registered for.

3. How can innocent acquirers be protected and prevent appropriation of earlier grants by adjudged owners especially when the lands have not been developed?
4. What about those who on account of earlier registration have mortgaged their interests? Do the financial houses lose their security?
5. What about those who have transferred ownership but the documentation processes have not been completed?

These questions have fundamental implications for a good land administration system. It appears from above that in the delivery of justice, a whole can of worms is uncapped which tears the fundamental fabric of economic certainty, social harmony and sustainable development. How can these be addressed?

Some Judicial Decisions on Land in GAMA East

The second strand of issues that emerge are found in the eastern corridor of the Greater Accra Metropolis stretching from the coastline to the south, to the foot hills of the Akuapim–Togo ranges to the north of Accra.

Judgements decisions on land in Eastern GAMA

Another strand of judgments whose management pose difficulties for land administrators relates to ownership of lands covering small areas initially but which upon judgment are enlarged to include much larger areas as illustrated by the Nii Kotey Amli III and the Nuumo Nmashie cases. In Nii Kotey Amli III, (Plaintiff) versus Rebecca Kuffour (Defendant) in Suit No. CCL 67/89, the plaintiff brought the action for a declaration of title to land, recovery of possession, perpetual injunction restraining the defendant and her agents from dealing with the land and damages for trespass at the Circuit Court. The land, the subject matter of the dispute measured 70 feet by 100 feet (0.16 acres) originally granted by the Nungua Stool. The plaintiff succeeded in obtaining judgment against the defendant on the 31st January 1991. In her judgment, the Circuit Court Judge noted that ‘it could be argued that the relief endorsed was specific in the area in dispute and not on the larger area as shown in Exhibit ‘A’. It is however settled that where there is action in respect of a portion of land, evidence is admissible to cover a wider area if such wider area is put in issue. In Robertson versus Reindorf 1971 GLR 289, it was held that if an action in

respect of a portion of land title to a wider area covering that portion is put in issue, a judgment would operate as an estoppe against any subsequent suit involving a portion of the larger area’

‘In the case under consideration even though the relief were endorsed for a declaration in respect of portion of land described in the Statement of claim, Exhibit ‘A’ and the evidence had put the larger area in issue, these areas including Bawaleshie and Otele without any evidence in rebuttal. Indeed the Nungua Stool had notice of the action. They did not join the suit, but chose to give perjured evidence.’

With this judgment Nii Kotey Amlie III sought to have it recorded in the records of the Lands Commission. Following the refusal of the Lands Commission to record this judgment Nii Kotey Amlie III obtained a mandamus order from the High Court and the judgment was subsequently accepted into the records of the Lands Commission.

The area in question measures 1,464.04 acres (592.47 ha), zoned as a first class residential area as an adjunct to the East Legon Residential Area. It included other neighbourhoods like Bawaleshie, East Legon Ambassadorial Residential Area, (part of Government land acquired in 1944 as part of the Anti Amaryl Aerodrome under the Public Lands Ordinance 1876 (Cap 134)), Mpehuasem and Nungua New Town. Relying on this judgment there began a wholesale resale of the lands covered under the said judgment even though there were several third parties not involved in the suit between Kotey Amlie III and Rebecca Kuffour.

One such 3rd party Alhaji Alfa Musah who also obtained a large tract of land covered by almost the exact area of Kotey Amlie’s claim, sought relief in the High Court in the case Alhaji Alfa Musah versus 1. The Lands Commission & 2. The Regional Lands Commission (Suit No. 1054/2000).

By a judgment dated 29th June, 2000, the Judge ruled that ‘the plotting and registration of judgment given on the 31st January 1991 in favour of Nii Kotey Amlie III in the records of the defendants herein as null and void. Consequently the court orders the recording and registration of the said judgment be expunged from the records of the defendant.’

However, by another ruling by the same Judge on 26th October, 2000 in relation to the same issue, the judgment given to the respondent on 29th June 2000 was set aside! Nii Kotey Amlil III and the Klanaa Quarter still hold sway over this land by virtue of the Circuit Court Judgement discussed earlier. The issues raised by the preceding narration are many.

Firstly, as part of comprehensive development plan for Accra, it was conceived that to avoid Foreign Embassies and Chanceries from competing for prime residential properties in Accra for use as offices, an exclusive Ambassadorial enclave was created in the East Legon Ambassadorial Residential Area. The Kotey Amlil III judgment effectively put paid to this development necessity. Even though this land was acquired and compensation fully paid to the La Stool in 1947, the Judgments and mandamus granted defeated this purpose even though the development need still exists.

This raises the question of the public land agencies especially the Lands Commission, Town and Country Planning and the City Authorities' ability and commitment to rational land use planning, development and enforcement of rules and regulations. How prime public property such as the East Legon Ambassadorial Enclave can be allowed to be taken over when Government was not a party in the Kotey Amlil III case is most bewildering! This leaves a lot of governance questions unanswered.

In the case of Land Acquired at Adjancote for Television Station, the State Lands Tribunal held on 26th February 1976 that, the first claimant Nana Adu Mireku Agyemang II, Chief of Brekusu was appropriate owner to be paid compensation. The land in question was 26.00 acres. Nuumo Nmashie Family subsequently appealed to the Court of Appeal. The Court in Civil Appeal No. 49/80 dated 15th December 1982 entitled "In the Matter of the State Lands Act and the Matter of Land acquired for Ghana Broadcasting Corporation Television Station at Adjancote Vrs the Berekusohene Twafohene of Akwapim Nana Adu Mireku Agyemang II (Claimant-Respondent), the Nuumo Nmashie represented by Nii Azaria Adjei Klu- Teshie (Claimant –Appellants) and the Dowuona Family – Osu represented by C. B. W Dowuona (third Claimant) overturned the

judgment of State Lands Tribunal in favor of the Nuumo Nmashie Family of Teshie to be the appropriate receiver of compensation for the land acquired”.

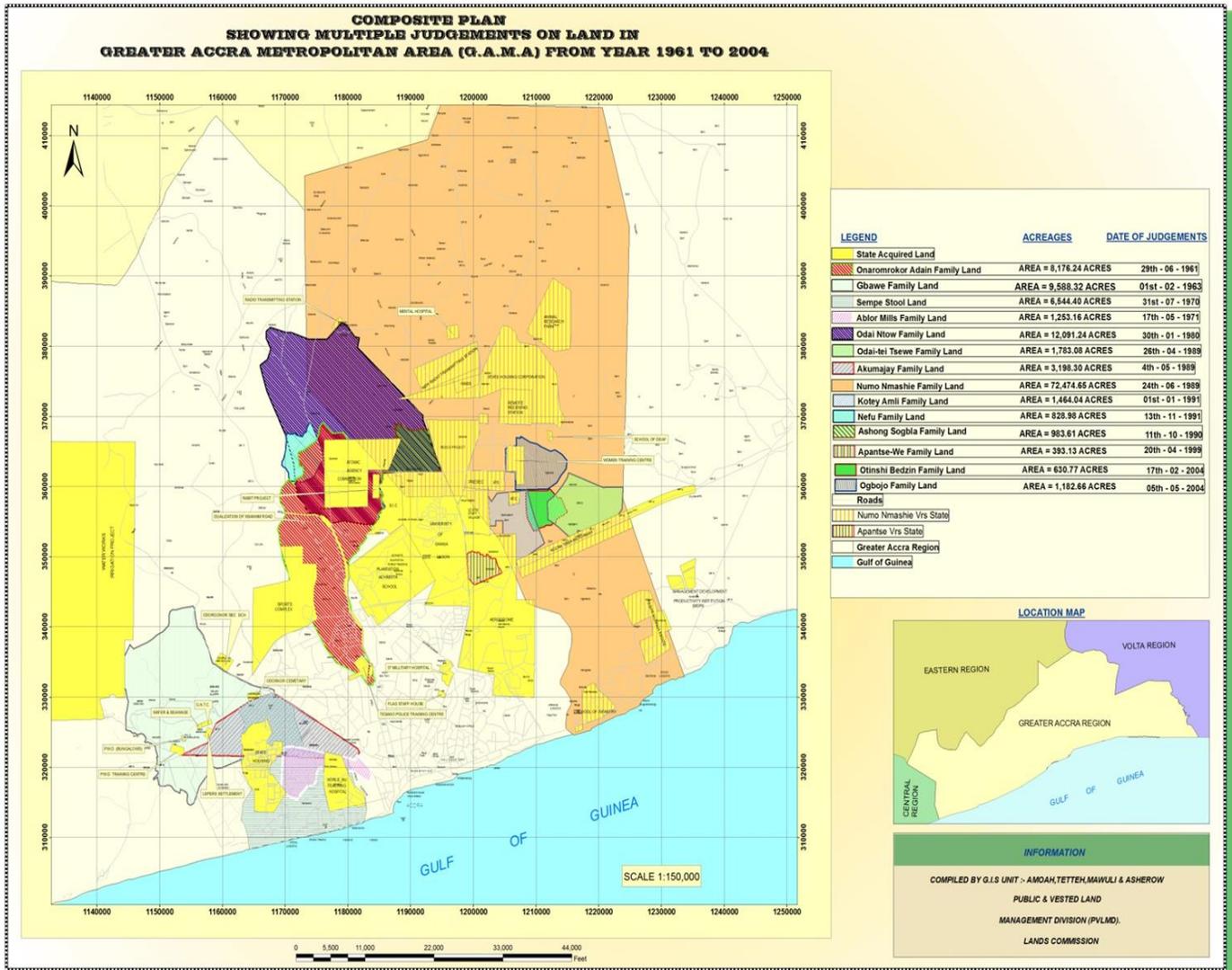


Fig 2: Composite plan showing multiple judgements on land and some State acquisitions in the Greater Accra Metropolitan Area (GAMA) from 1961 to 2004

In presenting this judgment to the Lands Commission for entry into its records, the site plan accompanying the Judgment showed an area of 72,474.65 acres. The area encompassed Teshie, through the areas now known as East Airport, Martey Tsuru, Adjiringano, Ashalley Botwe, Madina, Adenta, Pantang, Oyarifa, La Nkwatanang, Abokobi, Adjancote Village. Upon the refusal of the Lands Commission to enter this claim into the records as the Adjancote Site, the

subject of dispute measured about 26 acres only, a mandamus order dated 19th July 2001 was issued compelling the Lands Commission to enter the judgment into its records.

The practical impact of this recording is a grave distortion of the land ownership realities on the ground. It is instructive to observe that Teshie is constituted by five quarters – namely Krobo, Agbawe, Kle, Lenshie and Gbugbla. These quarters in turn have mutated into several clans and families, each of which claims and owns its lands in its own right. Following from this, it is observed that Otinshie/Bedzin, the Odartei Tse We of Adjiringano, Ashalley Botwe, Nmai Dzorn, Sraha, Pantang and Ashongman are all directly controlled by the Heads of the Families who founded these villages to the exclusion of the quarters in Teshie.

For instance in the Matter of Civil Appeal No. J4/22/2007 dated 7th May, 2008 involving: Theodore Adjei Osae (Dr.), Trebi Ashitey, T.S. Osae (As Plaintiff-Respondent–Appellants) Vrs Numo Nortey Adjeifio, Empire Builders Limited, Numo Adjei Kwanko (Osabu & Ayiku Wulomo of Teshie, Accra, the Supreme Court ruled that ‘the Osae Family exercised his inherent right and formed the village of Otinshie out of the then Teshie Lands. He thereby created allodial title. That was before quarter lands were created.’

Similarly, In *Banga and Others V Djanie and Another* GLR[1989 – 90] 1 GLR at page 510, the Court of Appeal, Accra on 26th April 1989, gave judgement to the Odartertse We over Adjiringano lands.

Again, in the same Adjiringano area, in Suit No. L.94/99, involving Empire Builders Ltd Vrs. Top Kings Enterprise Ltd, the Fast Track High Court gave judgment confirming ownership of lands granted by the Nungua Stool on some portions of the Adjiringano Lands to Top Kings Enterprise Ltd and to Empire Builders on portions occupied out of grants made by the Odarteitse We Family of Adjiringano.

In *Re:Ashalley Botwe Lands: Adjetey Agbosu and Others V Kotey and Others* (Civil Appeal No. 24/2002 dated 5th May, 2004), involving families from Teshie, the Supreme Court gave ruling in

favour of Adjetey Agbosu and others. This was done against the fact that the Adjancote ruling and plan existed in the records of the Lands Commission.

The continued issuance of judgments by various courts on land matters appear to indicate non-recognition of the claim by the Nuumo Nmashie Family over the areas under consideration. All these judgments were made despite the existence of the interpretation given to the plan in the Ajancote Case. The confusion and uncertainty that the mandamus order has created in that half of eastern Accra is quite significant.

Besides the Teshie villages' claims, several La villages are situated within the area covered by the Numo Nmashie Judgement plan. Areas like Mpehuasem, Ogbojo, Madina, Adentan, Nkwantanang, Frafraha, Amrahia and Oyarifa have owned and alienated lands in their respective areas since the 1960s. In the case of Mechanical Lloyd Assembly Plant Ltd Vrs Tetteh Nartey, Frafra lands were adjudged to belong to the Frafra Mantse to the exclusion of the La Mantse. Recently a similar judgement has been delivered in favour of Ogbojo Mantse on Ogbojo lands. Yet all the lands so described in these judgments are covered by the plan emanating from the Appeal Court judgment in the compensation case at Adjancote.

The mandamus order thus has created a nightmare for effective and rational land administration. Who do you deal with in these areas in terms of capacity to grant land? If the capacities are uncertain, then most of the land transactions go unrecorded. This promotes opportunistic behaviors for traditional authorities, land administrators and land speculators. In such cases land administration becomes fraught with the exercise of discretion.

Another key issue raised here is how judgments on land impact on government acquisitions. In the area under reference, there are such State acquisitions like the School of Infantry (present day Southern Command of the Ghana Armed Forces, Military Academy & Training Schools etc), Teshie- Nungua Estates, Accra – parts of Accra - Tema Motorway, National Women' Training Center, Presbyterian Secondary School , Accra Training College, Institute of Professional Studies, The Radio Project, West African Secondary School, Adenta Remote Receiving Station, New Radio Transmission Station, Animal Research Station and Adenta State Housing

Corporation falling within the boundaries. It is instructive to note that in the case of the School of Infantry acquisition, compensation was fully paid to the Teshie Mantse and Head of the Lenshie Quarter of Teshie.

How many of these other acquisitions did Numo Nmashie apply for compensation to warrant the claim of all the land in excess of 72,000 acres? For the land administrator, the difficulty the various judgments have raised in the areas under reference may be summarized to include:

- a. Uncertainty in the land boundaries described,
- b. Uncertainty in the type of land rights adjudged in the face of other parties on the ground who were not parties to the conflict,
- c. Unclear methodologies adopted in the public land agencies to record the judgments,
- d. Capacity of the land agencies to manage the import of the judgments.

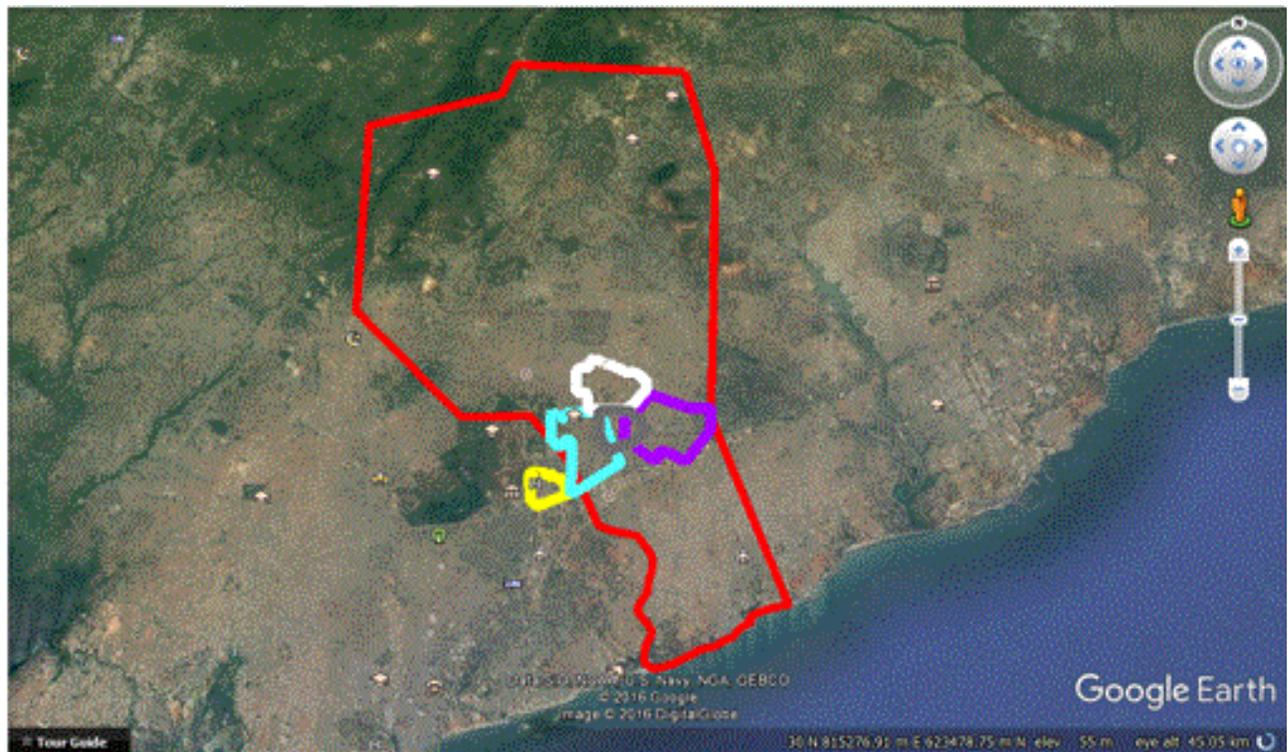


Fig 3: Overlapping judgements – Accra East (Numo Nmashie, Apantse We, Klanaa, Otinshie & Odarteitse We)

Some Observations:

From the foregoing, it is obvious that efficient functioning of an effective land administration system composed of efficient and effective land tenure, land valuation, land use planning and land development is hard to attain in the area under coverage as illustrated by the following observations:

Land tenure uncertainties

A good land tenure system clearly provides unambiguous ownership hierarchies and boundaries. This provides certainty for land transactions emanating from the allodial or freehold title owner at any point in time. The case of the apparent conflict in the judgments on Gbawe Kwatei Family Lands and Akumajay Stool in Accra–West makes the allocation and security of rights in lands and the transfer of property through sale or lease become onerous on business and individual investors. How can an innocent purchaser determine which of the two allodial parties to transact with? The consolidated cases of Suit No. L215/2001 and Suit No. 219/2003 (Now AL 23/2003) involving Nii Adotey Obour II Vrs Ikam Ltd & others as well as Nii Adam Kwatei Quartey Vrs Ikam Ltd adjudged 2006 has not stopped the disputes in the area.

The same issues are transmitted to the Accra East area. In the Mechanical Llyod Vrs Tetteh Nartey case, Frafra boundaries were not determined by the Court. Subsequently many investors have fallen into agony over what constitutes the boundaries of Frafra as against other La Rural lands like Adenta and Oyarifa. The overwhelming Numo Nmashie claim that cuts across all the judicial decisions as well as lands noted to be La Stool and various La clan lands exposes the extent of uncertainty in land rights and boundaries in these areas. The Judicial decisions therefore appear to accentuate uncertainties in land tenure.

Time taken to resolve disputes

Justice Twum (2010) asserts that “in a civil court, the experience in this country is that, land cases that go fully for trial take at least between 24 – 36 months. There are even many land cases that have lasted a whole decade; sometimes even longer.”

This aptly sums up the length of time it takes to adjudicate land cases. In the case of the Gbawe Kwatei Family, disputes over their land boundary started in court since 1911 over title to portions of their boundaries. This is a period of 106 years spent on litigation over land. Similarly, the time Numo Nmashie case which started with the acquisition of the Land Acquired at Adjancote for Television Station, has travelled through the courts until the Supreme Court in a decision in Civil Motion No. J5/1/2017 entitled The Republic Vrs High Court (Land Division) Accra, Ex Parte Finali Ltd & Ors on 30th November 2016 put paid to their claims beyond the 26.00 acres for which compensation was claimed in 1976, a journey of 40 years. How much has been expended on legal fees and other costs remain to be assessed.

Even with this new judgement, it is unclear how the interests created by the grants from the Numo Nmashie Family will be treated.

Under-valuation of Lands

Given the proportion of sector contributions to gross domestic product that emanates from land and given the emphasis on increasing levels of output to generate further incomes for national development, the uncertainties in land tenure tend to adversely affect land values. Where there is certainty of tenure, it is observed that the areas are better utilized and better developments take place on them. The prime residential and commercial areas of Accra attract premium values and which indexed to the United States Dollar, show of US\$2,500,000.00 – US\$ 3,000,000.00⁵ million per acre. These areas include Ridge, Cantonments and Airports Residential Areas.

While the main East Legon Residential Area fetches US\$600,000.00 per acre, adjoining sites for the Apantse We of Shiashie hover around US\$320,000.00 and \$400,000.00 per acre. In other residential areas like Adjiringano, Otano, Nmai Dzorn where overlapping courts judgment are found, the comparable rates are between US\$70,000.00 – US\$88, 000.00. The big reduction in values emanate mainly from the uncertainty in titles and level of infrastructure which can only be provided in areas where the investment can be recouped. This cannot be guaranteed in areas of uncertain land ownership regimes. Gbawe Kwatei's total land area adjudged in its favor

⁵ US\$ 1.00 is equivalent to GHC4.50 as at February 12, 2017

measures approximately a total of 9588.32 acres. If there was certainty in land access and security, land values could have risen dramatically from the US\$45,000.00 – US\$60,000.00 per acre going rates.

Land use planning

Land use planning and development which guides control of land use through planning policies, regulations and enforcement appear to have very little impact in the areas covered by the multiple judgments. In the Accra East area where the creation of East Legon in 1974 saw the consequential development of Nungua New Town, Mpehuasem and lately Adjiringano, Ogbojo, Otano and Nmai Djorm. All these planning schemes are based on the neighborhood concept where as a living area all the ancillary use facilities are provided.

The litigations over ownership of land and the effects of the subsequent judgments appear to have led to sub division of parcels, conversion of uses from residential to commercial, the proliferation of temporary structures in the forms of kiosks and table top businesses. The East Legon Residential Area Planning scheme had reserved a substantial commercial and civic use area. Most of this site lies within the judgment area for the Apantse We. The statutory planning scheme was subsequently rezoned to convert the commercial area to residential. The result is the almost total conversion of Lagos Avenue in East Legon Residential Area into a shopping street. On-street drinking bars have sprouted, hotels have mushroomed and the serene first class residential atmosphere envisaged for the area has all but vanished. The real cost and impact of this phenomenon is yet to be studied, assessed and evaluated.

For other areas, like Oyarifa, Otano, Pantang and surrounding neighborhoods, the uncertainty in ownership has resulted in opportunistic sale and resale of lands by all manner of persons whose claims are difficult to prove. Each contending party has its own planning scheme which invariably conflict with others. The resulting chaos are the winding unpaved roads in emerging neighborhoods, semi developed and abandoned structures that dot the landscape. All these take place without development and building permits. Road reservations are absent as development precedes planning, the results being all manner of road arterials feeding directly into the main roads and causing traffic chaos.

Weak Management Structures

Several studies and the Ghana National Land Policy have long articulated the weak management structures at the public land agencies and the local authorities. In the management of court judgments, public land agencies have assumed a passive role and only react to issues when compelled by the law or by current exigencies. Given the sheer volume of judgments on land emanating from the courts, public land agencies have not demonstrated sufficiently a proactive engagement with the Judiciary to realize the objects of good land administration system. The weak structures in management are reflected in response time to dealing with court cases, quality and attention placed on pleadings in cases where the State has an interest, methods of managing delivered judgments and appropriate supervision of recording judgments appear half-hearted and perfunctory. The weak structures in the records management creates further delays in providing timely advice to the Judiciary in disputes handling. The benefits of well planned neighborhoods, high land values, highest and best use of land and good, accurate land information, all indicators of well functioning of land administration system has become a mirage.

Interventions by the Judiciary

The Judiciary itself has through some interventions in partnership with the Land Administration Project (LAP) and the Millennium Development Authority (MiDA) under Compact one, initiated some remarkable reforms in the adjudication of land cases.

These include:

a. Establishment and Automation of Land Courts

With the support of the Land Administration Project, the Judiciary established six (6) land courts in Accra. Three other Land Courts have been established in the Regional capitals of Tamale, Sekondi–Takoradi and Kumasi. Following the development of a modern Court Complex in Accra, six (6) additional land courts have been added. The Millennium Development Authority supported the automation and furnishing of ten (10) selected circuit courts in the Central, Eastern, Northern and Volta regions to clear the backlog of prime lands locked in ligation. Selected Judges and Court Staff were trained to use the equipment. Discussion with Judges and Solicitors revealed that land cases are now handled in a much faster way.

b. Implementation of Written Witness Statements

The Judicial Service commenced activities to incorporate Written Witness Statements into the court rules in 2012. The Written Witness Statement is “a written form containing the evidence which a witness before the court, would lead by viva voce, signed by him and made available to all parties in the case.” The rationale for this is that, time that is spent by witness in giving detail oral testimony would have been saved, thereby reducing a considerable level, the delay in the trial system (Judicial Service, 2015).

c. Judicial Training

In pursuance of raising awareness of the Written Witness Statement among the Judiciary, 253 Judges, Magistrates, Lawyers, and selected Court Staff nationwide were trained. In addition, 74 Court Officers in Accra and Kumasi were further trained in the processes.

d. Amendment of Court Rules

To ensure compliance with the amended procedures aimed at expediting land cases, there was a need to amend the court rules. The High Court (Civil Procedure) (Amendment) Rules, 2014 (CI 87) came into force on 4th March 2015.

e. Court Connected Alternative Dispute Resolution (ADR)

The Court Connected Alternative Dispute Resolution (ADR) is being practiced at the Land (High) Courts in Accra. Mediators were trained to handle cases in ten selected Circuits Courts located at in four different the Volta, Central, Eastern and Northern Regions to clear the backlog of land cases. Initially, it was observed that both patronage by parties and referrals from the Courts were low. However, in 2016 out of a total of 1,373 cases submitted for mediation, 605 were successfully settled. Currently 67 courts are connected to the ADR programme. This helps to reduce the backlog on land cases.

Other Initiatives

The Land Administration Project also initiated the revision, classification and consolidation of all land related legislation into a comprehensive Land Bill. In this effort, provisions have been made for land disputes sent to the courts to be first referred for settlement by ADR, failing which

a full trial will commence in the courts. Also, orders of the court declaring title to land must describe the land by way of a certified cadastral plan. Furthermore, a final judgement of a court of competent Jurisdiction must be accompanied by a certified plan to describe the extent of that land and what title or rights are being passed.

Conclusion

From the discourse, it is obvious that multiple judicial decisions on land in the Greater Accra Metropolitan area is a contributing constraint to the effective land administration system and limit land's contribution to national development.

The National Development Agenda which focuses among others on macro-economic stability, development of productive infrastructure, good governance and human capital development will be difficult to achieve in such a regime. Where land values are devalued due to poor planning and uncertainties, contributions to macroeconomic stability through land related taxes and other land revenues will be grossly diminished.

With uncertainty in land ownership from multiple ownership claims and vague interpretations of land related judgments, opportunistic behaviors that lead to use of self-help, violence and distortion of land use plans have become manifest as seen in the Accra East areas of Ogbojo, Frafraha, Pantang and Oyarifa

Weak institutional capacities within the public land agencies to accurately interpret and record judgments further accentuate the confusion of multiple claims. With virtually non-existent enforcement capacities in local authorities, further distortions of urban land use plans will occur as different parties rely on different court judgments to enforce their rights. Governance arrangements are put to severe test in ensuring compliance to rules and regulations.

Additionally, the way the court cases are adjudicated based mainly on what is presented in the statement of claim often times ignores other hidden rights that are not in contention at the time. In the Nii Duade Crabbe and the James Town Stool case, Gbawe a substantial owner of land was not brought into the picture at all. Boundaries ascertained to be for Sempe were subsequently

found to contain Gbawe interest and fueling another spate of litigation. Similarly in the Adjancote compensation case, all the La interests in the affected area was not a subject of discussion. However, with the extensive judgment plan presented to the Lands Commission, it became obvious the Teshie Numo Nmashie was claiming virtually all La rural lands to be its property.

In cases where land rights are the issue and not boundaries as in Mechanical Llyod Vrs Nartey, interpreting the confines of the judgment and its physical boundary becomes a veritable mine field. In this case, what are the boundaries of Frafraha or Adentan? The subsequent multiple claims by various quarters of La to these areas is manifested by the patterns of development and the suppression of land values in the areas.

Finally, given that courts of cognate jurisdiction do not cancel out their overlapping or conflicting rulings, public land agencies officials are provided with considerable discretion to choose and pick which judgment to work with. In such circumstances, land records become very hazy and uncertain. The temptation of being influenced in one direction or the other can not be ruled out. It appears currently there is no mechanism to draw attention to such conflicts and institute corrective measures.

Recommendations

Following from the observations and conclusions of this paper, the following recommendations are submitted for consideration:

Publication of all land cases:

Substantial publication of large land area cases before any court is advocated. This publication should describe in detail the land in question, the claims being made so that interested parties may join from the beginning. In addition to the print media, they may be posted at the local authority and on the land as is done in compensation cases. This will provide enough publicity and compel interested parties who may be aware but do not want to test the veracity of their claims to be brought and thus prevent future and subsequent opportunistic litigation. This publication must be done at the cost of initiators of the suit.

Land must be described:

Any litigation affecting land should be fully described by its boundaries and accompanied by a certified cadastral plan. This will put the land being disputed over in context and enable affected parties to join.

Conduct of searches:

In urban and peri-urban areas, a good number of land transactions have been recorded. Searches conducted at cost to the litigants at the Lands Commission will reveal recorded transactions which may show other interests than those of the claimants and therefore bring these to the attention of the Court.

Increased utilization of expert witnesses

Land issues tend to be technical; requiring the expertise of professionals like geomatic experts, valuers and physical planners. Courts should increasingly use these experts to verify boundary plans, valid land use plans and ascertain land values and other such information required to strengthen the judgment given in any land case. As part of the Lands Commission's mandate, it is required to support the Judiciary and any other public agency with information and expert advice. Insistence should be on qualified experts and not clerical and other supporting staff not versed in the technical issues at hand.

Notification and submission of judgments for recording

The practice where a judgment once delivered is left at the discretion of the successful party to submit it for recording need to be stopped. All courts should formally submit the certified ruling together with the certified cadastral plan to the Lands Commission for recording and registration. This way the alteration of the judgment and its attached plans will be curtailed.

Instituting improved recording system at public land agencies

Judgments submitted to the Lands Commission for recording are administratively authorized by the Executive Secretary in Accra and in the regions by the respective Regional Lands Officers. Given that there is a legal directorate in the Lands Commission, the administration of court cases and judgment should be improved by supporting legal directorate to advise on the implications of

the judgment through case management teams of senior multi-disciplinary experts. This team advises on its feasibility of being entered into the records or advising the judiciary of any issues that may arise. This will stop the practice of wanton use of discretion of individual solicitors, cartographers and valuers from unilaterally entering judgments into the records. This will also provide a check on the integrity of the record.

Continuous professional education

There is need for continuous education to judges and land experts on the nature and patterns of land relations. The Judiciary has already initiated efforts at periodic training and retraining of judges in land dispute management at the court. Some land administration professionals have been serving as adjunct instructors at these courses. It is recommended that the current effort be enhanced to provide all judges and magistrates dealing with land cases greater exposure to the workings of the land administration system. Joint workshops and seminars could be explored and pursued.

Ways forward with existing conflicting and overlapping judgments

The over lapping and apparent conflicts and their effects have been discussed extensively in this paper. Judgments ranging from Circuit Courts to the Supreme Court have been found to be affected in this way. Interests have been created that in some cases exceed twelve years. How do we correct the anomalies? What processes need to be undertaken by the Judiciary to review the Judgments where any injustice has occurred. This needs to be taken up directly by Judicial Authorities at the highest level.

Funding

The Judiciary's own efforts at reform have chalked some remarkable gains. The specialization of some of the courts into commercial and land courts is very welcome. Other efforts have been made to seek support to strengthen physical infrastructures and human capacity to deliver justice. But there is a long way to go looking at the sorry state of some courts even in urban areas. Further funding is therefore urgently required. Limiting the funding requirements to the present case specifically, multilateral and bilateral agencies support for a specific project to clear up

these uncertainties in judgments on land would be the surest way to deal conclusively with the difficult and provide a clean slate to improve judicial decisions on land disputes.

List of Figures

Fig 1: Overlapping judgements – Accra West (Sempe, Akumajay & Gbawe)

Fig 2: Composite plan showing multiple judgement on land in the Greater Accra Metropolitan Area (GAMA) from 1961 to 2004

Fig 3: Overlapping judgements – Accra East (Numo Nmashie, Apantse We, Klanaa, Otinshie & Odarteitse We)

List of Court Judgements

Court Judgments – Accra West

1. Suit No. 22/1922 (Supreme Court Interpleader) – Mantse Kojo Ababio IV Vrs Nii Mensahfio Gbawe Mantse & 2 others
2. Suit No. 209/48 (Ga Native Court) – John R. Quartey Vrs Nii Boi Quatey Gbawe Mantse & 3 others
3. Land Acquisition No. 3/1950 (Supreme Court) – Nii Kofi Akrashie, James Town Mantse Vrs Nii Boi Quatey Mantse & 4 others
4. Land Acquisition Case 2/53 (Supreme Court) – In the matter of Land Acquired for Water Works Pipe Line between Weija and Odorkor for Water Works Extension
5. Suit No. 1/1954 (Supreme Court) – Nii Boi Quartey Gbawe Mantse Vrs The Attorney-General
6. Concession Enquiry No. 1075/56 – Nii Boi Mantse (Grantor) Vrs Gold Coast Industrial Development Corporation Ltd (Grantees) & Nii Teiko Ansah II & 4 others
7. Suit No. 107/1961 (High Court) – K. A. Owoo-Papafio Vrs Amadu Wangara
8. Suit No. 8/71 (Court of Appeal) – Ebenezer Amartey Armah Vrs Tom Akrashie
9. Suit No. L.561/81 (High Court) – Augustus Kpakpo Brown Vrs Bosomtwi & Co. Ltd & Another
10. Suit No. 1/2001 (Supreme Court) – Augustus Kpakpo Brown, Substituted for Jonas Ako Clotley (Deceased) Vrs S. Bosomtwi & Co. Ltd & Another
11. Suit No. L215/2001 (High Court) – Nii Addotey Obour II Vrs Ikam Estates Ltd & 3 others
12. Suit No. L219/2003 Now AL23/2003 – Nii Adam Kwatei Quartey Vrs Ikam Estate Ltd & 2 others

13. Suit No. J4/29/2004 (Supreme Court) – Samuel Kwasi Ntiri & Another Vrs Gbawe Mantse Adam Kwatei Quartey
14. Suit No. SOLM 4/2010 (High Court) - The Republic Vrs Lands Commission Secretariat, Land Title Registration & Nii Adam Kwatei Quartey: Ex-Parte Nii Kojo Ababio V

Court Judgments – Accra East

16. Suit No. FAL/363/13 (High Court) – The Numo Nmashie & Ashiyie Families of Teshie/La Vrs Benjamin Quarshie Mensah & Others
17. Land Acquisition No. 4/1951 (Supreme Court) – Public Lands Ordinance & Land Acquired for the service of the Gold Coast Colony and Ashanti & Nii Afotey Adjin II, Nungua Mantse We. Nii Ashitey Kamoah II, Teshie Mantse We, Nii Okan Nmasi III, Mankralo of Teshie, Nii Adsei Abadsen II, Shikitele of Teshie, Nii Norte Adjei Ayiku Wulomo, Teshie, Nii Adjei Onano V & La Mantse, Labadi
18. Judgement in the State Lands Tribunal, Held at the Supreme Court Buildings, Accra on 26th February, 1976 before Abban J. (Chairman), Dua-Sakyi Esq., Brown Esq. Legal Practitioners (Members) Land Acquired at Adjangote for Television Station
19. Suit No. 49/80 – State Lands Act & Land Acquired for the Ghana Broadcasting Corporation Television Station at Adjancote Vrs The Berekusohene Twafohene of Akwapim – Nana Adu-Mireku Agyemang II, Nuumo Nmashie represented by Nii Azaria Adjei Klu, Teshie, the Dowuona Family, Osu represented by Mr. G.B.N. Dowuona, Osu Accra
20. Suit No. 24/2002 (Supreme Court & Civil Appeal) – Ebenezer Nikoi Kotei Vrs Adjetey Agbosu & 5 others
21. Suit No. L323/83 (High Court) – Ebenezer Narku Okwei Vrs Daniel Addoo Addoquaye & Another
22. Suit No. CCL 67/89 (Circuit Court) – Nii Kotey Amlia III Vrs Mad. Rebecca Kuffour
23. Suit No. L.94/99 (High Court) – Empire Builders Ltd Vrs Topkings Ent. Ltd & 4 others
24. Suit No. H1/33/2004 (Court of Appeal & Civil Appeal) - Nii Nikoi Olai Amontia Vrs The Managing Director (Subst. by Nii Tafo Amon II) & Another
25. Suit No. J4/14/2005 (Supreme Court & Civil Appeal) – Nii Narh Dowuona Subst. By Nii Noi Kofi and 2 others Vrs Addokwei Tetteh Olewolon Subst. By Daniel Addoquaye Addo & 3 others
26. Suit No. J4/22/2007 (Supreme Court & Civil Appeal) – Theodore Adjei Osae (Dr.) Vrs Numo Nortey Adjeifio & 3 others

27. Suit No. AL 83/2007 (High Court) – Agric Cattle Lakeside Estate Limited Vrs Lands Commission & Another
28. Suit No. JA/21/2008 (Supreme Court) – Nii Ago Sai (Subst. By Joseph Nii Torgbor Obodai II) Vrs Nii Kpobi Tettey Tsuru III & 3 others
29. Suit No. H1/119/2013 (Court of Appeal & Civil Appeal) – Boi Stool & 13 Others Vrs Daniel Addoquaye Addo & 2 others.
30. Suit No. J5/1/2017 (Supreme Court) – The Republic Vrs High Court, (Land Division), Ex – Parte : Finali Ltd & Ors

List of footnotes

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2. National Spatial Redevelopment Framework
3. Land guards is a terminology commonly used in Ghana to describe persons privately by contesting parties to protect lands they claim ownership of. These persons may be armed and are a source of insecurity I the disputed areas.
4. Korle Bu Hospital, the largest hospital in Ghana was constructed by Sir Gordon Guggisberg in 1927.
5. US\$ 1.00 is equivalent to GH¢4.50 as at February 12, 2017

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