



## About M&O Law Consult

M&O Law Consult is a full-service law firm located in Accra, Ghana. We have significant experience in providing legal advice and support services to clients in various sectors of the economy, including;

- Real Estate
- Construction, Infrastructure and Transport
- Litigation and Dispute Resolution
- Energy and Natural Resources

We empower our clients through expert legal advice and strive to meet their needs through superior customer service and detailed due diligence.

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## this issue

How to avoid land litigation in Ghana

## How to avoid land litigation in Ghana

The number of land litigation cases in Ghana are alarming. Research conducted at the High Court Registry in Accra showed that there were 60,000 land cases in the superior courts alone. The lower courts are so overwhelmed with cases that the Court Registry is unable to give accurate statistical data pertaining to the land matters pending in these courts.

In order to avoid land litigation, it is imperative that you buy land from authorized persons, ensure that these persons comply with the rules on conveyancing, do a thorough due diligence and register your interest in the land. It is critical that you approach every land transaction as though you were dealing with a dishonest person.

In this article, we will help you understand the main causes of land litigation and how you can avoid them.

### CAUSES OF LAND LITIGATION IN GHANA

The main causes of land litigation in Ghana are:

- 1) buying land from unauthorized persons;
- 2) failing to comply with rules on land sale;
- 3) failing to do a thorough due diligence on land;
- 4) failing to register one's interest in land.

### 1) BUYING LAND FROM UNAUTHORISED PERSONS

The persons authorized to sell land in Ghana are:

- **the Stool:** Land from a stool must be bought from the occupant of the stool with the consent of the elders of the stool.
- **Families:** Family land must be acquired from the head of family with the consent of the principal members of the family
- **Individuals;** and
- **the State:** State land must be purchased from the Lands Commission.

Research has shown that the Stool, families and individuals own about 80 percent of the lands in Ghana and the State owns the rest.

One must always ensure that they buy land from an authorised person and that documents are duly witnessed.

## 2) COMPLYING WITH THE RULES ON LAND SALE

### A) STOOL

Historically, stools have acquired land through settlement, and after a long period of being in undisputed possession of those lands, they became the owners. As owners, stools kept few or no records and did not demarcate or delineate its boundaries, let alone register these lands. Thus, these lands became insecure and risky to buy as prospective purchasers had to produce their own site plan. These plans sometimes fell into the boundaries of lands being claimed by neighbouring stools, leading to litigation.

The rules that must be followed on land sale by stools are:

- **Consent of elders:**

1) The occupant of the stool, the regent or caretaker must sell

the land with the consent and concurrence of the elders of the stool. If the stool fails to do this, the grant is void. In the case of *Awuku v. Tettey*, the caretaker, an agent of the Osu stool sold Maamobi land without the consent of the elders of the stool. The Supreme Court had to determine whether the caretaker had capacity to grant Maamobi lands without recourse to the stool. The Court held that a grant by the caretaker without the consent and concurrence of the Osu Mantse, or even a grant by the Osu Mantse without the consent of his elders was null and void and thus, unenforceable. Therefore, to avoid litigation you must procure the grant from the occupant of the stool with the consent of the elders of the stool.

- **Consent of Traditional Council:**

2) The stool must obtain the consent of the Traditional Council to sell the land. The Traditional Council is made up of all the chiefs in the Traditional Area including the Paramount Chief, Divisional Chief, Sub-divisional Chief and other lesser chiefs. A failure to obtain the consent of the Traditional Council would render the grant voidable.

A voidable grant is valid until one of the parties goes to court to declare it void because that party wants to avoid his or her contractual obligations. A practical way of doing this could be asking the court to declare the contract void for non-compliance with this rule.

- **Consent of Regional Lands Commission**

3) The stool must obtain the consent of the Regional Lands Commission to sell the land. This consent must certify that the sale or the use of the land is consistent with the development plan drawn up or approved by the planning authority for the area concerned. The courts have been flexible with this rule. They have stated that the Lands Commission's consent can be sought after the land has been sold. This consent is usually granted as a matter of course.

*Always check that you have purchased land from the appropriate person or body.*

Stools are known for attempting to invalidate contracts and selling the same piece of land several times.

In the case of *Amankwah v. Kyere*, a chief sought to invalidate a contract because his predecessor had been destooled. The issue was whether the chief could invalidate a contract entered into by his predecessor because his predecessor was subsequently removed by the stool. The court held that a stool is like a company and provided the occupant of the stool was elected and installed in accordance with custom and law, a person contracting in good faith is entitled to his remedies if the stool later seeks to abrogate the contract. In other words, if you enter into an agreement with an occupant of a stool, the stool as an entity is bound and a new occupant cannot claim that the contract is no longer valid because the occupant you entered into the contract with has been destooled.

### B) FAMILY

Family land, especially Ga-Adangbe lands namely the Ningo, Prampram and Shai areas, can be the most insecure in Ghana. Families for the purpose of selling land can break up into factions and each faction may choose to appoint a head. The heads and members of the various factions then all purport to have the capacity to sell these family lands. This is a major cause of litigation in our courts,

especially if you did not buy the land from the right family or did not obtain the consent of all principal members of the family.

Fulfilling the requirements on the sale of family lands can be quite challenging as you may have to rely on what the family tells you and there is no way of verifying this information.

The rules on how to sell family lands are as follows:

1) Family land is sold by the head of the family with the consent of the principal members of the family.

2) In cases where land is jointly owned by separate or different families, the sale must be made by the heads of all the separate families with the consent of the principal members of those families. In situations where the head of a family's consent was not sought, he could, on becoming aware of the sale by the other heads of families, act within a reasonable time to invalidate the sale on grounds that it is void.

Please note that a member of a family who builds a house on Family land does not have capacity alone to sell the land.

4) The courts have held that the immediate family can sell family land without the consent of the head and members of the wider family. This rule is supported in the case of *Andrew v. Hayford* where the deceased died

intestate without a spouse or a child. His brothers were the only surviving members of his immediate family and thus, one of his brothers was appointed his customary successor and he in law became the head of the family and the proper person to deal with the land without the consent of the head and members of the wider family.

The law on the sale of family land is so elaborate that it is highly advisable to consult an experienced real estate lawyer before purchasing family lands.

## **B) INDIVIDUAL OR CORPORATE**

Generally, individuals and corporate entities are allowed to sell land. The risk of buying land from an individual however, is that the individual could sell land which he does not have the right to sell. An example is a land agent who purports to sell land when he does not have the authority of the principal to sell the land.

If you are buying land from a reputable developer, you may be more assured of a more secure title because a developer can give you a site plan and all documents you require for your due diligence.

Corporate entities like companies, co-operatives, partnerships and religious bodies can only sell land in

accordance with their internal laws and regulations.

## **C) THE STATE**

State land is the most secure land in Ghana.

The rule regarding State land is that one must ensure that the State has paid the appropriate compensation for the land it is selling otherwise the original owners could reclaim their land.

There are various laws that grant the State the power to acquire land. You must look out for the following:

- 1) the law under which the acquisition was made;
- 2) the purpose of the acquisition; and
- 3) ensure that the appropriate compensation was paid.

Failure to do this kind of due diligence could expose you to law suits from other claimants who can challenge your title to the land because the acquisition did not follow the procedure set out in law, the land is not being used for the purpose for which it was acquired or that compensation was not paid.

Some of the laws by which the State compulsorily acquires lands are:

- 1) Constitution:- allows the State to acquire land for a public purpose and in the national interest;

2) Land Use and Spatial Planning Act, 2016 (Act 925):- allows the District Assembly to acquire land or an easement for the purposes of widening, opening, enlarging, draining or for improving the street or making a new street after paying compensation to those who own or have an interest in the land;

3) State Property and Contracts Act, 1960 (CA 6):- allows the President of Ghana to acquire properties required for the Public Services by executive instrument declaring that the property is required for the Public Services.

4) Administration of Lands Act, 1962 (Act 123):- relates to the administration of stool and other lands. For land to be validly acquired under the Administration of Lands Act, it must be established that the President in his opinion considers the land as needed for public welfare and in the interest of the State.

5) State Lands Act, 1962 (Act 125):- this Act allows the President to acquire lands not previously acquired under the Administration of Lands Act whenever he is of the view that the acquisition of the land is in the public interest.

### 3) FAILING TO DO THOROUGH DUE DILIGENCE

Due diligence is the most effective tool for avoiding land litigation.

Due diligence means conducting investigations into who owns land, finding out whether there are any encumbrances on the land, and the nature of the transactions that have occurred on the land. This would require the interested purchaser to conduct searches at the various divisions of the Lands Commission - the Public and Vested Lands Management division, the Survey and Mapping division and the Land Registration division.

If the purchaser is satisfied with the findings of the search, then the next step would involve negotiating the terms of the agreement.

#### Negotiations and contract of sale

It is imperative that the outcome of these preliminary negotiations are captured in a contract of sale. The preliminary matters that may be captured in a contract of sale include the names of the parties, a description of the property, the agreed purchase price having regard to the nature of the property, its location, state of repairs and available facilities.

The payment of a deposit goes hand in hand with the signing of a contract of sale. The deposit payment makes the contract of sale as good as a lease and ties the hands of the vendor so that the vendor cannot sell the land to a third person without the consent of the purchaser. If the vendor sells the land in breach of the contract, the purchaser could go to court and ask the court to compel the vendor to complete performance of the contract by selling the land to him. This is known as specific performance.

The contract will give the purchaser ample time to go to the community to make inquiries as to ownership and availability of the land. The purchaser could call for the following documents from the vendor - document of title; approved site plans (survey plans); leases; assignments; land certificates in case of registered land; affidavits and statutory declarations; judgments of courts and all other documents related to the land.

This type of due diligence is technical and once again you will need an experienced lawyer to assist you with reviewing these documents.

The purchaser could also do the following: conduct litigation checks in the

*State lands can be the most secure lands to buy. Family lands are often the least secure.*

courts in the area or with any local chief as to any arbitration in respect of the ownership or boundaries of the land; if possible, the purchaser should be permitted to exercise possessory right for a period; the purchaser could ask the vendor to provide an indemnity in case the sale should fail due to the claims of rival claimants.

The purchaser must ensure the vendor has paid property and utility rates that may be owed on the land to date.

The purchaser must have full knowledge of any overriding interests such as easements, leases for terms less than two years, Government right of compulsory acquisition, rights of persons in actual occupation and adverse possessors in law. Overriding interests are interests which, though not registrable under the law will nevertheless bind a purchaser of land. Generally, for third party rights to bind purchasers of land, those rights should be disclosed by due diligence and searches at the land registry, or through title deeds. However,

overriding interests are an exception to this under the law. Overriding interests will bind land, land owners or any other persons who acquire rights or interest in the land, regardless of whether or not such persons knew about the overriding interests at the time they acquired the land or the interest thereof. The general effect of overriding interests is that they have the capacity to diminish the actual value of land and may generally defeat the use of the land.

#### 4. FAILING TO REGISTER ONE'S INTEREST IN LAND

There are two sets of laws for registering land depending on whether the land is in a registration district or a non-registration district. The Land Title Registration Law, 1986 (PNDCL 152) and its regulations are the applicable laws for registering land in the registration district and the Land Registry Act, 1962 (Act 122) is the applicable law for registering land in the non-registration district.

The registration districts are Accra, Tema, Kumasi and Awutu-Senya District and the non-registration districts cover the remaining districts.

Registration gives notice of one's interest in the land especially in the case of registration in a registration district. This is because there is a publication of the



applicant's intention to register in the media and the general public is given 21 days to raise an objection. Thus, if an objection is not raised within this period, the applicant is deemed to have notice of this registration.

Moreover, a search conducted at the Lands Commission would reveal any land registrations and a prudent purchaser should not buy land which is already registered in someone else's name. You do so at your own risk.

### **Conclusion**

If one seeks to avoid litigation, you must buy land from authorised persons, ensure that these persons comply with the rules on conveyancing, do a thorough due diligence and register your interest in the land. It is imperative that you approach every transaction as though you were dealing with a dishonest person. That mindset is key if you want to avoid land litigation.



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