THE PRACTICE OF RE-ENTRY AND FORFEITURE AND ITS IMPLICATION ON LAND ADMINISTRATION IN GHANA

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ABSTRACT

The practice of re-entry is increasingly becoming common in Ghana. Clear guidelines on the practice of re-entry, has been highlighted by the Land Act, 2020 (Act 1036). This study sought to test the consistency of the practice with the Land Act (section 57). The study used the doctrinal legal method to analyse legislations and case law on the concept of re-entry and allocation paper. Also, a limited number of primary data were gathered through interviews. The study finds out the legal position of Allocation paper as held by the courts as not being sufficient to convey title, and, a breach of the covenants in an allocation paper cannot amount to automatic re-entry by grantors unless done in accordance with section 57(Act 1036). The study recommends a punitive mechanism featured in the legislative instrument of the Act, and a sensitization on the guidelines to undertaking re-entry in accordance with the Act.

1. INTRODUCTION

The increasing commercialization and individualization of land due to population increase, have caused many people to rush in for land from stools, skins, families and clans. An outright or partial grant of an interest in land by a grantor to a grantee has become typical of the transfer of land ownership (Devonshire, 1990) with the appropriate legal restrictions. Indeed, it is common to find stools, families and clans to grant land with the option of re-entry in case of a breach of a specified covenant. Devonshir (1990) has further argued that any act by a grantee which does not fall in line with the agreed terms of a grantor, may result in a determinable interest depending on the structure of the instrument of grant. In Ghana, this practice is gradually taking a center stage in land allocation especially in the peri-urban areas. Mireku et al., (2016) in their study observed that population growth and urbanization have dramatically altered the nature of land allocation, and grantors in most parts of Ghana thereby obscuring the rules of fairness in land administration.

The ownership of lands in Ghana are vested in stools, skins, families, clans, individuals and the state (Mahama & Baffour, 2009). According to Ghanaian customary practice, these lands are not sold, rather a payment of drink money is demanded, which is now almost equated to the economic value of the land in recent times (Mireku et al., 2016; Alden-Wily & Hammond, 2001; Asiama 2008, Agbosu 2001). When a grant has been made, it is usually expected that such grants be bounded by covenants. In a case of a breach of these covenants, the grantor reserves the right of re-entry and subsequently cause forfeiture. However, the practice of re-entry has been problematic as regards the approach. Although section 57 of the Land Act 2020 (Act 1036), provides the manner by which re-entry ought to be carried out, what may not be too apparent is grantor stools/families paying fidelity to the law. This practice has been done haphazardly and led to conflict.

Even though the practice of re-entry is not against any law per se, the manner by which it is done could be a subject of breach of law, particularly the Land Act 2020 (Act 1036) (see section 57). The Act, though allows for re-entry, it sufficiently highlights the manner it should be carried out such that, the grantee does not unduly suffer from the practice of re-entry. In effect, the practice of re-entry orchestrated by the enforcement of covenants arising out of a contract is therefore grounded in law. Some stools and families have attempted the practice of re-entry on the basis of a breach of stated covenants in an allocation note. One critical question that needs answering is whether or not, the allocation paper in itself is enough to convey an interest in land. In answering this question, Mireku et al., (2016) analyses of case law established that land allocation papers in their current form and substance do not convey title to purported grantees. This standing was pronounced by the highest court of the land, the Supreme Court of Ghana, in cases like Boateng (No. 2) vrs. Manu (No. 2) & Another [2008] SCGLR and Bediako Atwere (substituted by John Kwame Owusu) vrs. Osei Owusu (Alias Yaw Owusu Achiaw) Supreme Court of Ghana Civil Appeal No. J4/36/2010, (18thMay, 2010). In Boateng (No. 2) vrs. Manu (No. 2) & Another [2008] SCGLR (p.1119), the court held an allocation paper as *"incapable of conveying title to purported grantees, but may only serve as evidence that an individual or corporate body has purportedly acquired land".* The position of the supreme court was subsequently reaffirmed in another case of Nana Bediako Atwere (substituted by

John Kwame Owusu) vrs. Osei Owusu (Alias Yaw Owusu Achiaw) Supreme Court of Ghana Civil Appeal No. J4/36/2010, (18thMay, 2010).

Per the aforementioned case laws, allocation paper has been held not to have the legal effect as conveying title to land. The lingering question is would a breach of the covenants of an allocation note be sufficient to warrant re-entry by stools? Meanwhile, the terms and conditions on these allocation papers have become the basis for stools to re-enter lands that have been allocated. Such acts, whether is an attempt to enforce the expressed conditions of the allocation paper or not, could cause some grantees to lose their land. The haphazard and unregulated manner these conditions are enforced, leaves the grantees powerless and are sometimes not justified in law. These purported re-entry by some stools have led to a rise in unapproved developments (Orgen, 2010), as well as increased cases of multiple sale of land which has been inimical to smooth land administration. These actions have as well led to the constriction of the guaranteed rights to own property as enshrined in the 1992 Republican Constitution of Ghana, (See article 18).

However, the issuance of the allocation paper, though held by the Supreme Court of Ghana as not being enough basis to guarantee title, may rather serve as a contract between the grantor-stool and the grantee. Mireku et al., (2016) argued that the legal effect of the allocation paper remains unknown to the public. With such unclarity, juxtaposed with the procedural approach provided by section 57 of the Land Act 2020, (Act 1036), how does the practice of re-entry affect land administration in Ghana. This research, therefore, focuses on how the practice of re-entry by stools affect the smooth running of Ghana's land administration, hence the need for consistency in the practice of re-entry with section 57 of the Land Act 2020 (Act 1036).

2. REVIEW OF LITERATURE

2.1 STOOL LAND OWNERSHIP AND ITS DISPOSITION IN GHANA

The royal or principal families of Ghana's pre-colonial states who, during the period of British colonial authority, gained a legal position in those areas similar to that of the Crown in English law, are known as stools and skins in Ghana (Kasanga, 2001). Mahama and Baffour (2009) describes stool as an immortal entity and therefore represents the spiritual and physical embodiment of the people. Stools or skins are the embodiment of the souls and aspiration of the people and the symbol of their unified authority in a traditional area. Kasanga (2001) describes the stools/skins as "public corporate authorities who hold what is called the allodial title of all unoccupied (i.e. not actively farmed) lands in their traditional areas. That is, they are trustees of this land for all the members of the indigenous community". In simple terms, stool lands are lands owned and managed by occupants of stools; chiefs. The powers and control the chiefs at the stool land areas wiled are largely attributable to the resources they control in the form of land.

Stool lands are predominant in areas of the country with a robust centralized political system as exists in most part of the Akan areas in southern Ghana. In these areas, traditional authority is inexplicably linked to land ownership and the stool holds the allodial title to land. In Ghana, eighty percent (80%) of land is under customary (non-state sector) ownership (Mahama & Baffour, 2009). It must however be noted, that not all lands are stool lands or skin lands. There

are pockets of family and clan lands doted across the country especially in the Volta, Greater Accra and Upper West Regions. Family and clan lands are such lands whose ownership are vested in families and clans respectively. The management of both family and clan lands are undertaken by the heads of the families and clans for the benefit of the family or clan. According to the 1992 Republican Constitution of Ghana, article 267(1) states "All stool lands in Ghana shall vest in the appropriate stool on behalf of, and in trust for the subjects of the stool in accordance with customary law and usage". Stool occupants hold land on behalf of and in trust for the stool's complete subjects, according to the constitution. In stool land areas, the chiefs are the trustees of the land. The traditional authorities by custom are, therefore, fiduciaries over the lands they manage. This fiduciary role of the traditional authorities in managing customary lands is reinforced by article 267(1) and 36(8) of the 1992 Constitution of Ghana.

Customary lands are therefore managed with the principle that land belongs to a wider group of persons and that all people in the community need to be considered in the sharing of the land and all resources accrued from its management (Gyapong, 2009). Since the stool is viewed as an immortal creature, it represents the people's spiritual and physical existence. The traditional authority is tied to land ownership in many communities, and the stool owns allodial title to the land. The customary land administration system has therefore thrived over the years based on the belief that lands belong to a vast family of which many are dead; few are living and countless host yet unborn (Ollennu, 1962; Larbi et al., 2003; Gyapong, 2009). To this end, traditional authorities who are legally and socially recognized as trustees are expected to manage the lands for the benefit of the entire land-owning group including the application of revenues generated the disposition of land in their traditional area.

Stools have the power to alienate lands in accordance with law and custom. There are different means by which land is disposed of or alienated. These means of disposition are regulated by both statutory law and customary law. Adjei (2021 p.77) contends that the most common means of disposition are by gift, sale, pledge by testacy and through intestacy. The known principle in all situations is the "nemo dat quod non habet" principle, to wit, "no one can give what they do not have". This rule applies in all cases and it borders on the fact that, one should have the power to make a disposition. This rule is superior in all land disposition because one can only give what he has and not what he has not. Adjei (2021 p.77) emphasize that any alienation of an interest in land which gives a greater interest than what a person actually has renders the alienation void.

In recent years, the dominant mode of land alienation has been by sale or private treaty. The laws of Ghana permit private treaty and occupants of stools dispose of lands on behalf of subjects of the stool. An individual can sell his own land, a body corporate may sell its own acquired land and a stool may sell its land through the occupant of the stool, or where the stool is vacant the regent or caretaker with the consent and concurrence of the elders of the stool (Adjei, 2021 p.85). The stools in Asante, a predominantly stool land area, engaged in disposition of stool lands mostly led by the occupants of the stools, chiefs. Oral history among the Asantes has it that prior to the 19th Century, when a person needed land for any purpose, especially, a request was made to the chief for a parcel of farmland equivalent to his productive capacity. The boundary of the land to be allocated was then identified, consultations were held

with the relevant families or council of elders. The land was then demarcated and carved out for the person. In disposing of lands, the stools are limited to granting less of what they have.

Unlike areas in the Akim Abuakwa traditional area, where absolute title to stool lands was transmitted to individuals and organizations, the Asantes always conveyed a lesser estate than the allodial title (Adjei, 2021). It is, therefore, widely abhorrent for the chiefs to hear of the grants they make being described as a complete sale of same. One should never make a mistake of describing the grant of stool land as a sale to the hearing of the chiefs (Baryeh, 1997). Rightly so, the stools would want to reserve the right of reversion and control of the land, albeit, very minimal. The Asantehene by customary procedures and usage is to be notified of the grant and he then serves as a confirming party. The issuance of an allocation paper helps in giving such notice to the grantee and other stakeholders of the allocation of the piece of land, hence the issuance of allocation notes.

2.2 CONCEPT OF ALLOCATION PAPER IN KUMASI

In Kumasi, when a piece of land is bought from a chief, the buyer is often given a piece of paper to indicate the transfer or allocation of that piece of land to the buyer. Mireku et al., (2016) posits that allocation papers come in different forms and carry varied information, but typically printed on A-4 sized papers. At the top are often the name, symbol and contacts of the granting stool or caretaker-chief.

The piece of paper is often well known as an allocation paper. An allocation paper, therefore, indicates that there has been an original transfer of land from a stool or a chief to another person. Mireku et al., (2016) in describing allocation paper in Asante, notes that it is a note which bears basic, details about the particular parcel, parties, tenure, signatures/thumb prints and rent which is given to the grantee to present to the Asantehene Land Secretariat for it to be recorded as a sort of receipt or evidence that a certain land transaction ensued between the grantor chief and the grantee. The note is for both customary and statutory purposes and uses. The Lands Commission in the areas of the operation and use of allocation note or paper, recognizes same, as fundamental evidence of a grant of stool land to an individual or cooperate entity.

Allocation papers are to inform the Lands Commission that a plot of land has been allocated to a particular grantee and it often provides covenants requiring the grantees to commence development of the land within a year of allocation, and further enjoin them to pay ground rent (Ibid). Allocation notes often bear the logo or letterhead of the Stool or the chief selling the land. On it are often written the terms and conditions of the transaction. For example, development of the land should begin within one year and be completed in three years and that “ground rent must be paid annually”. Allocation notes are signed by the chief and his principal elders indicating a portion of their land has been allotted to prospective buyer. The date on which the grant took place is written on it, a brief description of the land that is being given out such as the plot number. In addition, three site plans of the land being sold are also attached to allocation notes.

Some grantors purport to re-enter the plots allocated to the grantees where the grantees are unable to get approval from the planning authorities and building permit to authorizes them to develop the acquired plot. Despite the fact that some of the grantees who want to be law abiding

would not want to develop their respective building plots until the area is approved by the planning authorities and building permits are issued to legalize the development of the plots, some grantors would forcibly take over the plot and re-allocate to another developer in the name of re-entry (Orgen, 2010). Adjei (2021) noted that a grantor must appreciate that time shall not run until the area in which the plot is allocated by him/her is zoned and approved by the planning authorities for residential purposes as it is illegal to expect a developer to develop a plot in an area which has not been approved for residential purposes.

2.3 COVENANTS IN LAND CONVEYANCE (EXPRESSED AND IMPLIED)

The Land Act, (2020) specifies that any implied covenants as under sections 50 and 51 yet are deemed important to parties must expressly be stated else none of the parties would be permitted to use it as a provision in the conveyance. A lease or sublease may be forfeited by failing to comply with the original lease. For example, where there is an express provision of not subletting without the written consent of the landlord, and the tenant sublets without the written consent of the landlord, he may forfeit his interest in the tenancy, lease or sublease (Adjei 2021, p. 246). Therefore, express covenants should be agreed by the parties and embodied in the conveyance as additional terms to the implied ones given by statute to merit their enforceability. Accordingly, each of the parties and their successors are bound by both the implied and expressed covenants of the conveyance. The court places such importance on what the parties agreed upon by themselves in a conveyance. In the case of Dacosta & Others vrs. Ofori Transport Ltd, it was held that, where the parties have fixed the rent payable in a lease and did not make provision against future increase, the courts cannot vary it even though the value of the rent might have fallen to make it contemptuous. Contrariwise, it would amount to the court re-writing a fresh agreement for the parties. Instructively, the parties must clearly state the express covenants to which they want to be bound. The parties may add a renewal clause as an express covenant to make it possible for the lessee to renew the lease after its effluxion. A lease agreement is mutual and any matter which the parties did not agree upon cannot be enforced against the other party on the grounds of unconscionability such as failing to provide for a renewal clause.

The covenants of land conveyance or a disposition are critical in defining the grantor-grantee relationship. A lease agreement defines the terms of a leasehold under which the lessor and the lessee are bound. These terms or covenants are either expressed and implied by law and any breach of which is actionable under law (Adjei, 2021). Covenants which run with the land affect the title of the real property to which they relate because they are binding or enforceable by the succeeding owners of such property, whether grantees, devisees or heirs. The lessee may maintain an action against the lessor where the lessor breaches any of the implied or express covenants in the leasehold agreement. In the event of a breach of any of the covenants, there exist some remedies for both the lessee and the lessor. Amongst such remedies that the lessee may seek include but not limited to the following as noted by Adjei (2021): damages for breach of contract, damages and injunction, specific performance etc. Likewise, there are remedies which exist for the lessor to seek. According to Adjei (2021), there a number of remedies available and key amongst them are re-entry and forfeiture.

2.4 RE-ENTRY AND FORFEITURE

According to Black Law Dictionary, re-entry is defined as an act of resuming the possession of lands or tenements in pursuance of a right which party exercising it reserved to himself when he quit his former possession. Re-entry has been provided for in the legal architecture of Ghana as a remedy to be held by landlords. The Land Act, 2020 (Act 1036), empowers landlords to re-enter lands they had previously granted. Indeed, the Act, whiles it allows for re-entry, it sets out the manner it ought to be done. One of the conditions on the allocation paper is for the grantee to start development within one year and complete within three years. Lacking on the allocation paper is whether or not, the three years ultimatum starts counting even when the grantee pulls the brakes to make way for planning permission. Any re-entry based on the expectation that a developer should develop a plot in an area which has not been approved for residential purposes, is illegal and void (Adjei 2021).

It begs the question as to how re-entry should be carried out by a grantor in the event of a breach. Whiles, a breach of the covenants is substantial and good grounds for a remedy, the manner by which it is carried out matters as well. For instance, a notice of re-entry ought to be served on the grantee first before the re-entry could be done. According to Adjei (2021), a re-entry cannot be enforced without first complying with section 57 of the Land Act. The implied covenant of restriction of re-entry cuts shorts the lessor's right to recover a leased property for every breach of a covenant, agreement or conditions in a lease. The procedure by which re-entry is carried out could be a subject of breach of law even though re-entry per se is a legal action. Section 57(1), of the Land Act, 2020, (Act 1036) states "A right of re-entry or forfeiture under a provision in a lease for a breach of a covenant, condition or agreement in the lease is not enforceable by court action or any other means, unless(a) the lessor has served on the lessee a notice (i)specifying the particular breach complained of, (ii)requiring the lessee to remedy the breach, if the breach is capable of remedy, and (iii)requiring the lessee to make reasonable compensation in money for the breach, except where the breach consists of non-payment of rent…"

The Act, though allows for re-entry, highlights the procedure it should be carried out such that the grantee does not unduly suffer from the re-entry. It is therefore troubling when landlords, consistently purports to exercise re-entry without due regard to the manner so established by the section 57(1) of the Land Act. Unfortunately, some grantors, may not have the patience to notify the grantee of the breach for him/her to remedy the situation first. It is however, argued by Adjei (2021) that, the mere service of notice by the grantor to re-enter, does not ripen into an automatic exercise of re-entry. The law was settled that every re-entry must be backed by a court action or otherwise, the grantee may voluntarily give vacant possession of same. Arguably, it may therefore be problematic for re-entry to be done based on an allocation paper. The position of the law on allocation paper is that, it cannot by itself represent a land acquisition, rather, it is the initial process towards the acquisition of a plot or land. As held in the case of Boateng (No. 2) vrs. Manu (No. 2) and Another [2007-2008] 2 SCGLR 1117, allocation paper is not an instrument affecting land and cannot be registered under the Land Registry Act, 1962 (Act 122).

With the current position of the law on allocation paper, the critical question of land policy is what is the effect on tenure of developers who feel sufficiently secured by a mere possession of allocation paper? Indeed, it must be made clear that in the Ashanti region and a few other

regions, developers have developed their houses for years and the only evidence of acquisition they have is an allocation paper. Even in situations where an allocation paper was not issued by paramount chief and in the case of a land within the jurisdiction of the Kumasi Traditional Council, the grantee is required to pay an additional amount of money for the signature of the confirming party (The Asantehene) before the allocation paper could be processed by the Lands Commission (Adjei, 2021). Suffice to say the Supreme Court has fundamentally held that allocation paper is not sufficient to represent an acquisition. The court laid down three reasons and they are as follows as stated by Adjei (2021): firstly, the allocation paper does not state the type of acquisition. It does not indicate whether it was a gift, lease or purchase; Secondly, allocation paper does not specify the duration of the transaction. The nature and the duration of the transaction are made known when the lease, sale or deed of gift is being prepared. It states that until the preparation of the final document (lease), the allocation paper cannot state the type of interest granted; Thirdly, the court stated that the land acquired cannot be determined from the allocation paper and that makes its size uncertain. Whiles one could agree basically with the reasons the court espoused, it is imperative for land administration in the country to focus on how the allocation note could be perfected to capture the concerns raised by the court. Mireku et al., (2016) recommended in a study that as a matter of growing concern, the state should take steps to give formal recognition to allocation papers and take steps to perfect one's possession of the allocation note.

3. RESEARCH METHODS

The research design for this study is purely qualitative with a focus on doctrinal legal paradigm. The doctrinal approach provides an analysis of the law to demonstrate how it has developed in terms of judicial reasoning and legislative enactment (McConville, 2007). Therefore, the study review existing statutes and case law on the practice of re-entry and the elements that give rise to same whiles highlighting the lived experiences of people. Thus, a descriptive approach was used to report on the lived experiences of both grantors and grantees on the subject of re-entry within the Kumasi Traditional Area. The descriptive research design is used in watching and describing a subject's activity on re-entry without altering it in any manner to compliment the review of statutes and case law. The data for this research was primarily collected from secondary sources and to a limited extent primary sources. The secondary data collection was executed through the consultation of relevant statutes (Land Act, 1036) and case law, books and research papers to aid in arriving at the research findings. The primary data collection involved interview with some grantors, and grantees in the study area. Both purposive and snowballing sampling technique was respectively employed to target and focus on the grantors on one hand and grantees on another hand. Specifically, the study interviewed five (5) respondents which comprise two (2) elders of Domeabra and Apromase stools and three (3) grantees all within Kumasi Traditional Area. The primary data was summarized, categorized and interpreted. Also, the secondary data was synthesised and analysed based on existing legal frameworks.

4. RESULTS AND DISCUSSION

4.1The Ghanaian Regulatory Framework and Legal Position of the Allocation Paper in Land Acquisition

Land acquisition in Ghana is regulated by numerous laws. They include the 1992 constitution of Ghana, the Land Act, 2020 (Act, 1036), the Minerals and Mining Act, 2006 (Act 703) among others. In Ghanaian law, case law is another major source of law that regulates land acquisition. Under article 18 of the 1992 constitution, which is the fundamental law of the land, guarantees private ownership of land. Consequently, private ownership of land is recognised by law and individuals are allowed to own lands with its legal restriction. Aside private/individual ownership of land, public ownership of land is allowed and provided for by both the constitution and the Land Act, 2020 (Act, 1036). Also, sections 233 and 234 of the Land Act 2020 (Act 1036) empowers the state to acquire land for public purpose through either the invocation of the power of eminent domain, purchase or gift. The Act further regulates the alienation and acquisition of stool lands and the other typologies of land tenure system in Ghana. Whiles the constitution, under article 267 seeks to regulate and empower stools on granting stool lands to prospective grantees, the Land Act, grants unto the stools, the authority to re-enter the land, albeit under certain legal conditions expressed under the Act. Primarily, it is safe to posit that land acquisition is largely regulated by the Land Act 2020 (Act 1036).

Allocation paper has been described by Mireku et al (2016) as a fundamental evidence of land transaction between a caretaker chief (grantor) and a grantee. For the case of the Kumasi Traditional, the caretaker chief presents this document to the Asantehene for his endorsement after a transaction. However, the courts have over the years determined the legal position of the allocation paper in Ghana, in matters of land transaction. This trajectory of events bordering on the legal effectiveness of the allocation note is worth taking note of, to ascertain the current position of the courts on allocation note. In the case of Boateng vrs. Manu and Another (2008) 3 G.M.J. page 1-3, the Supreme Court held in holding (4) as follows: "Allocation paper is the initial process to evidence that land has been acquired by an individual or corporate body. That kind of paper cannot by itself represent the acquisition." The court in describing the position of an allocation note ascribed it as a mere proof of a transaction and does not necessarily convey title to an individual. Furthermore, the position of the allocation notes as espoused by the Supreme Court in the Boateng case, was reinforced by the Court of Appeal in the case of Hydraform Estates Limited vrs. Moi Ashong (2012) JELR 64052 (CA), the court noted that, the allocation paper or noted proposal does not and cannot per se pass title of the land to that individual or corporate body. The most recent pronouncement by the courts on the position of the allocation paper is made in the case of Ghana Muslim Mission vrs. Haruna Oppong Boateng (2016) JELR 64223 (HC). The court emphasized again on the legal position of allocation paper as being a mere proof of transaction and cannot in itself convey title to holders of the allocation note. It is therefore safe for one to conclude based on the aforementioned cases, in which the courts have been unanimous in describing the position of the allocation note as a mere proof of transaction of land, the legal position of allocation paper in Ghana is not sufficient or proof of title of land. With this finding, it is indeed, incumbent on a grantee to proceed to perfect his/her title by obtaining the appropriate documents. The courts have held that allocation note

or noted proposal do not pass title to the land to a grantee. Consequently, the use of the allocation notes as a basis for a grantor to re-enter a parcel of land because of a breach of a condition of a covenant is a question of law for determination. Meanwhile, the land Act, 1036 has made provision for the regulation of the practice of re-entry or forfeiture under section 57 of the Act.

4.2 Section 57 of the land Act (Act 1036)

Re-entry and forfeiture are legal principles which grants landlords the legitimacy to re-enter a piece of land that has been granted to a grantee. For the case of Ghana, these principles are indeed permissible under law (See section 57, of Land Act). Notwithstanding, the procedure established for re-entry is as important as the concept of re-entry itself. It is therefore against this backdrop that section 57 of the land Act, (Act 1036) defines the procedural processes for re-entry and forfeiture by landlords. Again, these procedures are in order provide sanity in the execution of the legal principle and indeed protect people's right to own properties as guaranteed by article 18 of the 1992 Constitution. Truly, subsection 1 of section 57 of the Land Act stipulates as follows:

> "A right of re-entry or forfeiture under a provision in a lease for a breach of a covenant, condition or agreement in the lease is not enforceable by court action or any other means, unless (a)the lessor has served on the lessee a notice: (i)specifying the particular breach complained of, (ii)requiring the lessee to remedy the breach, if the breach is capable of remedy, and (iii)requiring the lessee to make reasonable compensation in money for the breach, except where the breach consists of non-payment of rent…"

This provision in the Act seeks to make enforceability of re-entry arising out of a breach of a covenant only possible after the aforementioned conditions have been met. Indeed, the wisdom in the provision is to protect tenants against the capricious action of landlords without recourse to due process and an opportunity for the tenant to redeem such a breach. In fact, the landlord is required by law to indicate to the lessee the nature of the breach and grant unto the lessee an opportunity to redeem the said breach. It is worth noting that, any attempt by the landlord to purportedly re-enter without completely complying with section 57 would be rendered as inconsistent with the law. Consistency with section 57 of Act 1036 by landlords is key. Unfortunately, most of the practices of the landlords have been inconsistent with section 57. Glaringly missing is a punitive mechanism to check the conduct of such landlords. The current provision of the Act on re-entry is not deterring enough in order to stop unlawful re-entry by landlords.

4.3 Arguments on the Practice of the Re-Entry by Stools Being Inconsistent with Section 57 of the Land Act

As indicated above, the practice of re-entry as a legal principle is as significant as the consistency of same with section 57 of the Land Act. A landlord cannot execute a 'legal' re-entry without paying fidelity to the dictates of the Act. Any of such contrary action by any person is deemed inconsistent with the letter and spirit of section 57 of the Land Act. Many Stools, especially in urban areas where land commodification is on the rise, are almost always

quick to re-enter lands or cause same to be forfeited. The important question that ought to be answered is 'whether such practices are consistent with section 57 of the Land Act?'. Unfortunately, these practices of re-entry have not been carried out in such a way which has been consistent with section 57. It is concerning to note that, most often than not, Stools within the study area, without due regard to the law, purports to re-enter and cause lessees to forfeit their lands. This was confirmed by a respondent when he revealed his ordeal on a purported re-entry by his grantor Stool. He said *"We have been made aware of the fact that my chief has the right to come back and take the land. But my limited knowledge of the law suggests that Nana (Chief) should have given me the chance to correct my wrong of not developing my land within the 3 years period. At least Nana (Chief) should have given me a chance rather than asking me to come and buy the land again of which I had no option but to comply…"*

Again, another respondent averred that, *"my land was taken away from me when I suffered some difficulties with my health. The land was sold to me by the previous chief who died about two years ago. This current chief came and said all developments should cease and we should submit our allocation notes to him. I did that only to be told that, we had breached the limited time for development for that reason, we should all either pay GH₵50000 for our lands to be given back to us because we have breached the agreement we signed with the earlier chief"* These two experiences of respondents suggest how pervasive and how quick grantors are willing to re-enter lands they may have been granted already.

Whiles the law allows for re-entry, one ought to avert their mind to the manner by which it is carried out in wholistic manner. The question of consistency with the law ought to be complete and whole. The stool should give the lessee the fine opportunity to meet the three conditions outlined under subsection 1 of section 57. An Elder of the Domeabra stool indicated *"such actions of we taking back our land is in accordance with law which gives us the power to do that. But I believe Nananoom (Chiefs) should offer the people the opportunity to explain why they may have defaulted and let the grantee be aware of our intention to take back our land…We as Nananom do this to drive development in our area, if not some people buy the land and leave it undeveloped for years. We just have to act in accordance with what the law says".*

Adjei (2021) whiles commenting on the importance of full compliance with section 57 noted that serving notice to the lessee is so important that its non-compliance shall render the subsequent processes void. It, therefore, cannot be the case that, a lessee is not given the opportunity to meet any of the conditions and the lessor goes ahead to re-enter. Such act will be deemed as being inconsistent with the current position of the law as captured under section 57 of the Land Act.

5. Conclusion

The practice of re-entry is very important in modern day customary land administration in Ghana due to how scarcity of land has become. Due to increasing number of re-entry in Ghana, it is therefore, welcoming that the most comprehensive land legislation in Ghana, the Land Act, 1036 has spelled out how re-entry ought to be carried out. Whiles, allocation paper continues

to represent a valid contract, it has been established in caselaw that allocation paper in itself is not sufficient to convey title to land. Meanwhile, the conditions as expressed on the allocation paper is still binding on the parties as it qualifies to be described as a valid contract agreement between the parties. The consistency of the practice of re-entry with section 57 is as important as the right of re-entry granted by the same Act. It is imperative to note, for one to purport to have carried out re-entry, there ought to be full compliance with the dictate of section 57 without which such action could be void and may not carry any legal effect. It the study therefore, recommends a state led sensitization on the position of re-entry and the manner it should be carried out in accordance with section 57 of the Land Act. The study indicates that though there is a guideline on the practice of re-entry, the Act seems to be silent on punitive action for those who disregard the guidelines. Therefore, it is recommended that, there should be a punitive mechanism put in place to go alongside the guidelines. This can be done in the formulation of regulations on the Land Act.

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