



Viewpoint

Legal implications of allocation papers in land transactions in Ghana—A case study of the Kumasi traditional area



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ABSTRACT

This paper studies the legal effects of land allocation papers in today's land administration system by focusing on stool lands in Kumasi. Using key informant interviews and review of relevant land legislations, court proceedings and seminar papers, we found out that, land allocation papers in their current form and substance are incapable of conveying title to purported grantees, but may only serve as evidence that an individual or corporate body has purportedly acquired land. The allocation paper is only a step towards acquiring full legal rights over land under customary tenure. This study recommends that grantees of stool lands should make every effort towards completing the other legally required processes such as formalisation and registration of the transaction at the Lands Commission for valid legal title. It is further recommended that preparation of allocation papers by chiefs should be enhanced by incorporating terms of the grant, identities of the transaction parties, consideration and proper description of the land. These enhancements will facilitate the formalisation and registration process, and potentially reduce the cost and time of registering land in Ghana. Particularly, it will challenge state institutions and land administrators to introduce stringent measures or security features that would make land title registrations using allocation papers legally binding.

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1. Introduction

Population growth, urbanisation and development of agricultural frontiers have influenced the rise in demand for land and making land scarcer with its concomitant contestations over its acquisition, holding and use. Access to secure land rights is essential for sustainable livelihoods and poverty reduction (Hughes et al., 2011), especially in Africa where agriculture continues to dominate land use systems. In Ghana, the acquisition of land has been bedevilled with enormous social, political and economic stress. In majority of cases, unhealthy competition for land especially in the urban and peri-urban regions, have resulted in land disputes. Wehrmann (2008) attributes land disputes to weaknesses in land institutions, existence of opportunities for illegal gain, and where majority of poor people lack access to land. The discussions on land tenure security and land disputes in Ghana have become very essential following the growing commoditisation of land since the early 19th Century when cash crops such as palm oil, cocoa

and groundnuts gained economic significance (Amanor, 2006). The emergence of cocoa as an economic crop resulted in the opening up of new frontier areas, characterised by land sales and purchases (Hill, 1970; Amanor, 2006). Payments for land were either in kind or cash or a combination of both. For example, Amanor (ibid) reported that land rich farmers offered land to smallholders in place for their labour assistance. Some farmers also accessed land by going into share tenancy arrangements—mainly in the form of *abunu* and *abusa* tenancies.¹ Characteristically, customary land transactions in this period remained oral, un-surveyed, unmapped and undocumented. Among the Akans of Ghana, land is not for sale. Hence, the

¹ In the case of *abusa*, the sharing proportions are two-thirds to the tenant farmer and one-third (1/3) to landlord. Under the arrangement, the tenant farmer bears the expense of clearing and cultivating the virgin forestland allocated by the landlord. The tenant is then rewarded with a two-third share of the returns for his investment in the land. Under the *abunu* system, the farm proceeds are shared equally between the tenant farmer and the landlord (Da Rocha and Lodoh, 1999). With this tenancy, the landlord does not only provide the land but also contributes to the establishment and management of the farm. It suffices to mention that, under the *abusa* or *abunu* system, the farm itself may be what is shared and not the produce.

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chiefs who are customary land trustees may accept ‘drink money’² in exchange for land use rights.

Despite the fact that numerous land disputes and counter claims over land rights and boundaries abound in recent times, huge sums of ‘drink money’ are continuously paid for land use rights. ‘Drink money’ in some cases appear exorbitant within local standards (Alden Wily and Hammond, 2001), and equated to the economic value of the land in some cases (see Kasanga, 1999:28). Prior to the 1930s, when land was considered abundant and population was relatively small, the boundaries of a person’s parcel of land were determined by how far one could clear a portion of the community’s vacant land for farming or dwelling purposes (see Ollenu, 1962; Da Rocha and Lodoh, 1999). Thus, the size of land allocated to a person or family depended on the extent of investment and energy expended on the land. Again, the interest acquired from the occupation and use of communal land remained secure so long as the individual respected the authority of the village or community head (Feder and Noronha, 1987). Such land transactions were informally made, and writing was largely uncommon. According to Asiama (2008:84), “...title security was only conceptual, but extremely effective. The customary evidence of land sales was symbolised by the ‘guaha’³... The only evidence of the land sale was the one half of the leaf which was kept by either party”. This is because customary land grants eventhough unmapped, undocumented and unregistered, remained a secure form of land acquisition due to the low level of disputes recorded.

The historical accounts of the land market in Ghana is very relevant in understanding the evolution of land markets in modern Ghanaian society and to enable one to draw trajectories for future markets. The above accounts of land allocation point to a period when land was abundant, and land allocation was a social obligation on traditional land trustees (Chiefs, *Tendaamba*⁴ and family heads) to make land available to their subjects or strangers for the purposes of housing and cultivation. This social obligation is collaborated by Gildea (1964:102) who reported that “each headman sees to it that all members of his lineage have portions to farm”. Though traditional authorities understood the importance of land-holding as a source of power and production, land was neither commoditised nor commercialised. Low levels of population and

urbanization afforded land little economic value (Kasanga, 1999). As a result, the amount of land a person appropriated from the communal stock was not an issue so long as it conformed to local customs, and did not infringe on the use rights of other members.

In the last two decades, however, population growth and increasing urbanization in most parts of Ghana have significantly changed the nature of land allocation. Nolte and Vāth (2013) observed that the increasing demand for land for large-scale agricultural investments is putting pressure on the present land governance system in both Kenya and Ghana. Presently, land governance systems are unable to cope with the increasing pressure on land resources. Particularly, institutional weaknesses of customary land tenure may be driving the growing demand for customary land in Ghana for large-scale agriculture (Amanor, 2006). The nature and scale of land alienations in recent times have exposed various weaknesses of informal land transactions. The situation is not different in the urban and peri-urban areas where there is also increasing demand for land for urban uses including residential, commercial and civic purposes.

The inherent weaknesses in the oral evidence of land transactions including the inability to use it as collateral necessitated the adoption of writing by earlier European and Ghanaian businesses to evidence the transaction between grantors and grantees (Agbosu, 2000). Thus, a written document in the form of land allocation papers proved attractive to prospective grantees of interests in land. In principle, allocation papers were supposed to serve as written evidence that land transactions ensued between a grantor and a purporting grantee. This practice started in the Kumasi Traditional area in 1943 following the establishment of the Asantehene Lands Secretariat (ALS). Even though chiefs continue to issue allocation papers to evidence land transactions, there is no critical review about the legal position of these papers within the current land market dispensation. Furthermore, the last two decades have seen growing concerns about the relevance and actual legal implications of land allocation papers in land transaction in Ghana, since these papers are procured at a cost to the grantee.

Hence, this study was undertaken to assess the true legal effect of allocation papers in Kumasi. The recommendations of this study allow for improvements in the nature and content of land allocation papers in order for them to be used to facilitate land registration. The study is focused on the city of Kumasi because the issuance of allocation papers is widespread in the urban and peri-urban areas of Ghana where land markets are more developed compared with the situation in rural areas of Ghana where oral proclamations regarding land allocations still continues. The next sections of the paper are structured under: an overview of customary land transactions in Kumasi, evolution of land allocation papers in Kumasi, dynamics and content of allocation papers, legal effects of allocation papers and the conclusion and the way forward.

2. Methodology

This paper was prepared based on information gathered from a variety of sources. We undertook extensive literature review on customary land ownership in Ghana to understand the underlying historical antecedents of land holding and allocation practices, and measures that guaranteed land tenure security in the past prior to formal land registration systems. Besides landowners and property developers we interviewed, chiefs at the Manhyia Palace⁵ and officials of the Lands Commission in Kumasi were our key informants.

² ‘Drink’ or ‘drink money’ is a moral token offering in some parts of Ghana, traditionally paid to chiefs (stools) in the southern part of Ghana, in the form of cash or a bottle of schnapps, to start negotiations on the terms of the lease. However, as demand for land has grown, this ‘drink’ or ‘drink money’ is no longer just a pre-negotiation fee, instead, it is now requested by the chiefs in huge sums of cash. Customarily, though this cash is supposed to be used for the development of their local communities and for the ‘maintenance of the stool’, this is not always the case. It is common to hear similar terminologies such as ‘kola’ or ‘kola money’ for the Northern, Upper West and Upper East regions of Ghana.

³ According to Allott (1960:243), some of the Akan customary laws provide for the sale of land as cutting *guaha*. After the agreement to purchase has been reached, the land has been inspected, the price fixed, the boundaries cut and marked with special trees (themselves as evidence of the extent of land conveyed), the parties return to the land after some days. The *guaha* ceremony then takes place before many witnesses for both sides. Vendor and purchaser each provide a representative, usually a young boy to cut *guaha*. The vendor provides a piece of fibre on which are threaded six cowry shells. The two persons cutting *guaha* then squat; each passes his left hand under his right leg and grasps one end of the string of cowries, holding the three cowries nearest to him. The respective parties keep the cowries used in the ceremony forever, in order that in case of dispute between them or others over the sale, the cowries may be produced as evidence. In fact, the production of the cowries is an essential piece of evidence to the sale. After the ceremony, the purchaser offers a drink (or drinks) and sheep to the vendor (the stamping or the *aseda*). This may vary significantly across the country. In the Northern regions of Ghana, a typical *guaha* will involve the breaking of kola-nuts, the sharing of tobacco or the sacrificing of a ram. See also Ollenu (1962: 115–121).

⁴ The *Tendaana* (plural –*Tendaamba*) are the descendants of the pioneer migrants and they are the ultimate authorities regarding land in their respective villages and towns in northern Ghana (Kasanga, 1995).

⁵ Manhyia Palace is the traditional seat and residence of the King of the Asantes, the Asantehene. The Palace also accommodates various Chiefs who perform different functions as may be required by local customs or assigned them by the Asantehene – Otumfuo Osei Tutu II.

We engaged the informants in discussions on allocation papers, its relevance and usage in the allocation of land, and in the preparation of lease documents. We also studied some landmark cases on land involving allocation notes from the Ghana Law Reports and other cases from the judiciary in Kumasi. Some relevant historical land records of Kumasi in the Manhyia archives were also studied. Again, proceedings and seminar papers on land were used to give additional insight in developing our arguments and propositions in this paper. Our involvement and experiences in the land market in Kumasi greatly influenced our arguments in this paper.

3. Customary land transactions in Kumasi

Oral history among the Asante people has it that prior to the 19th Century, when a person needed land for any purpose, especially for farming, a request was made to the chief (the traditional leader and trustee of the communal land) 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. It was common to rely on natural boundary indicators such as trees, hills, rocks, and rivers even though the use of these posed their own unique challenges. For example, boundary trees, such as *'ntome'*⁶, (Ollennu, 1962:116; Woodman, 1996; Asiyama, 2008) were immediately planted by the grantee along the boundaries of the land, especially, at the corners. In the instances where large trees already existed on the desirable boundaries of an allocated parcel of land, marks were made on such trees either with a cutlass or gunshots to distinguish them from others. Also, where there were streams, valleys or hills, these were used to mark the boundary of new plots (Ollennu, 1962). It was expected that, chiefs and other customary land custodians would know these boundaries, and hand them down to subsequent generations. The memory of the people and the existence of witnesses were the basic points of reference. Notwithstanding the amount that may be offered as *'drink money'*, land was allocated as *'akyede'*⁷ to feed oneself and to build a home, and land was not for sale.

Customary land tenure in Ghana maintains that land is not for sale (Aidoo, 1995:3; Asiyama, 2008:77). It is believed that land is an ancestral trust, which should not be sold (Gildea, 1964:102; Agbosu, 2000:13). The Asantehene, the king of the Asante Kingdom, affirmed this conception in 1971 when he declared, *"the lands in Ashanti are not for sale. It is against tradition and custom to sell any land in Ashanti"* (Woodman, 1996:64). If land transactions involve monetary exchanges, these were deemed to be discounted payments of essential customary services and protocols that a grantee ought to have performed to a grantor. With this understanding land allocation is seen more as based on tenancies and not a contract of sale. According to the late Nana Sir Ofori Atta and as was captured by Ollennu (1962:4). *"land belongs to a vast family of whom many are dead, a few are living and countless host are still unborn"*. This belief has been given a constitutional backing by Article 267(5) of the 1992 Constitution of Ghana which provides that *"no interest in, or right over, any stool land in Ghana shall be created which vests in any person or body of persons a freehold interest howsoever described"*. The effect of this provision, in simple terms, is that there shall be no outright grant of stool/skin⁸ land in Ghana to any person(s) whatsoever,

⁶ *Ntome* is a local Akan name given to a type of indigenous tree that grows quickly when planted. Due to the potential to grow very tall and large in size, *ntome* is used as a boundary indicator.

⁷ *Akyede* is an Akan terminology used to refer to *gift*. It was believed that land was acquired as a *gift* to enable one feed himself and family, and to build a home. It was never sold, and land use rights could not be bought.

⁸ The use of the terms stool and skin represents the symbols of authority of chiefs in Ghana. Whilst the stool is the symbol of authority for chiefs in the southern part

and such grants are unconstitutional. This constitutional prohibition is intended to keep stool lands within the lineage of the stools where future members would not be deprived through any outright alienation.

Prior to the Fourth Republican Constitution of Ghana (1992), customary law tolerated freehold alienation of land in some parts of Ghana. For instance, customary law permitted sale of land, if there is public liability and the community decides to outrightly sell a portion of its land to defray the debt (Hill, 1970; Sarbah, 1968:88). In the case of *Golightly v. Ashrifi* (1955), WACA 676 (also known as the *Kokomlemle Consolidated Cases*), it was ruled that a stool could sell its title in land, provided that the sale was necessary to pay off a stool debt, which could be satisfied in no other way. It was considered that sales of stool land had been unknown in the past, but that it would be unjust to creditors of the stool to refuse to allow a sale in such a case. There are other evidences of land transfer through land sales across Ghana (Aidoo, 1995). In the past, at any instance where land allocation was made in lure of monetary consideration, the purchase price or part of it was paid on the land allocated. A ceremony called *'tramma/guaha'* was then performed to conclude the transaction, if it were a sale or any other kind of outright land grant. The Court of Appeal in the case of *Mankrado Kofi Akomea & others v. Yaw Biei & others* (1958) 1 WALR 174 explained that the *tramma* ceremonies symbolises the severance of title of the grantor and vested same in the grantee (cited in Ollennu, 1962:115; Woodman, 1996:364). The *tramma/guaha* ceremony offered both wide publicity for the transaction and was deemed protected by both the earth goddess and ancestral spirits. Once all the customary procedures relating to the particular community were adhered to, the *tramma/guaha* ceremony concluded the allocation and secured such a grant even though it may be orally made.

In the case of *Tei Angmor & Coy v. Yiadom III & another* (1959) GLR 157, Korsah C.J (as he then was), held that the *tramma* ceremony as a requirement under the customary law for valid land sales. After negotiating the purchase price of the land, if the parties intended ownership to pass from grantor to the grantee, they agreed on a date when the *tramma* custom would be performed in the presence of witnesses. On the land, representatives of each party would collect twigs or tree branches and facing each other, in front of the witnesses, would hold each end of the twig or branch. They would declare the purpose of the ceremony, that is, to transfer the land from the vendor to the purchaser, and break the twigs or branch into two (Ollennu, 1962:117). For example, the grantor would say, *'from today, I transfer this land on which we stand to Mr A.'* Then the grantee would respond, *'I accept.'* The witnesses would then be paid token fees, and thereafter they became repositories of this evidence till death. This concluded the ceremony. It also transferred the land entirely to the grantee. After the *guaha/tramma* was performed, no written document was prepared, executed or exchanged to evidence the transfer as it is done today. Giving evidence in Court in 1958, in the case of *Sasraku v. David & others* [1959] GLR 7-16, the then chief Secretary to the Asanteman Council, described *tramma* as the most effective means or ceremony of outright sale of all properties in Asante (see Ollennu, 1962:116).

Since the 1940s, the effectiveness of informal evidence of land transactions began to wane. This may partly be attributable to the wide adoption of *modern* religions that have tended to weaken to a greater extent the Ghanaian traditional belief systems especially in the urban areas. Also, the oral grant may have been ineffective in urban areas because of the emerging closeness in the land

of Ghana, who sit on the stool, the skin (of an animal) is the symbol of authority for chiefs in the northern part and they sit on various ceremonial skins. Lands that are entrusted to the paramount/sub chief to be administered on behalf of the people may simply be referred to as stool/skin land.

allocation process in urban land markets, with little public participation. Today, the *tramma/guaha* custom is hardly practiced especially in the towns and cities, though it is still used in rural areas where land formalisation is very minimal. In the current economic and social environment, it is just not enough to hinge evidence of land transactions on the *tramma/guaha* alone. The complexities of land alienation and the scale at which land is transacted, makes the *tramma/guaha* alone insufficient to secure tenure on customary land. The *tramma/guaha* began to lose its efficacy when attempts were made by the British Colonial government to formalize, improve, streamline and modernise land transactions (Agbosu, 2000). Though initial attempts in this regard were vehemently opposed in the Gold Coast at large especially under the Aborigines Rights Protection Society (ARPS) in 1886, land formalization was reluctantly accepted in pre-independent Ghana.

In an era when the land market is clouded with deceit and dishonesty and leading to multiple sales and contestations, oral grants cannot be entirely relied upon. Both the state and customary institutions have thus developed more secure formal mechanisms such as deeds and land title registration. On the part of the state, the system of titling was introduced into the land holding system in the country since the colonial era. For instance, the Land Registration Ordinance of 1883 (Ordinance No. 8) and subsequently Land Registry Ordinance of 1895 (Ordinance No. 1) were introduced to perfect the land holding and alienations process (Agbosu, 1990). After independence, efforts by the state to formalise land transactions and holding through land registration continued. Hence, the Land Registry Act 1962 (Act 122) was enacted to facilitate deed registration. The general difficulties of deed registration in Ghana included accurate maps and incidences of double registration of the same parcel/piece or land (Sittie, 2006). Subsequently, the Land Title Registration Law 1986 (PNDCL 152) and the Land Title Registration Regulations 1986 (LI 1341) were passed to ensure systematic title registration in the piloted registration districts of Kumasi, Tema and Accra. Title Registration has two fold purpose: to give certainty and facilitate proof of title, and to render dealings in land safe, simple and cheap as well as prevent fraud on purchasers and mortgagees (Sittie, 2006).

The existing land administration system has been characterised by poor maps and poor records and hence, making the conversion of land documents from deeds to title almost impossible. Also, poor public education, lack of professional and technical skills and the sporadic way of implementation of title registration created more challenges. The effectiveness of the institutions involved in land formalisation has been limited by a variety of factors which can be categorised as institutional, logistical, human resource constraints, lack of funding and unclear definition of scope of functions among others. The result has been an apparent lack of confidence by the general populace of the ability of these state institutions to protect their rights or secure their tenure (World Bank, 2003). Some of the populace have resorted to self help by procuring the services of illegal private security known as 'land guards' and 'macho men'.⁹

Following these challenges, the Ghana Land Administration Project (LAP) and the newly constituted Lands Commission have been at the forefront of this formalisation process by the state. The Commission carries out lease preparation, registration, land records keeping, surveying and valuation among other important land administration and management functions on behalf of the state. On the part of the customary institutions, the chiefs are adopting more formal mechanisms of issuing allocation papers. This is

discussed further in the in section 4 of the paper within the context of the evolution of land allocation papers in the Kumasi traditional area.

4. The evolution of land allocation papers in Kumasi

Prior to 1902, administration of lands in Kumasi and Asante in general was under the traditional authority with the Asantehene playing dominant role. However, after the Yaa Asantewaa war, the Ashanti Administration Ordinance of 1902 (CAP 110) was passed which saw the vesting of all lands within the limit of the Kumasi Township in the British Colonial Administration. In 1943, the Kumasi Town Ordinance 1943 (CAP 145) was passed which saw the revocation of the Ashanti Administration Ordinance of 1902 (CAP 110) and the establishment of the Asantehene's Lands Secretariat (ALS). Section 16 of CAP 145 read: "*the Asantehene shall establish an office wherein shall be transacted and recorded all dealings with lands under his control*". From 1943 to 1958, the Asantehene's Lands Secretariat (ALS) was responsible for land administration in the Kumasi, as far as all the four functional areas of land administration were concerned - land acquisition, land documentation, revenue collection and management, and dispute resolution. According to Hammond (2011), the creation of the Asantehene's Lands Secretariat was part of several attempts by the colonial government to establish a strong legal and institutional control over the management of lands in Kumasi. Otumfuo Opoku Ware II, the 15th Asantehene, was among the first people to have worked at the Asantehene Land Secretariat from 1943 to 1951, prior to his *enstoolment*¹⁰ as Asantehene. This explains why the ALS remains an integral part of the Manhyia Palace and under the supervision of the Asantehene. The main function of the Secretariat was to collect and maintain records of land transactions within the traditional jurisdiction of the Asantehene.

Paramount chiefs, sub-chiefs, divisional chiefs and village chiefs (*Odikro*¹¹) were obliged by customary law to give a written notice to the ALS whenever they allocated a parcel of land either for farming or housing. This was to ensure that a comprehensive land register was kept on all privately acquired lands. It was also to ensure that planning schemes were strictly adhered to, and to prevent emerging land disputes. Even though most chiefs in Kumasi during these times were illiterate and could neither read nor write, they created various simple tools in order to record land allocations in accordance with the Asantehene's directive. The directive provided no guidelines for the nature, style or content of allocation papers. With the typewriter, each caretaker-chief developed simple standard letters with blank spaces on behalf of their particular stool. Thereafter, when a chief allocated land, the name of the grantee, the designated number of plots, and the size of the plot allocated to that particular person were filled into the blank spaces with pen, by stool secretaries. This paper, which bore basic, details about the particular parcel, parties, tenure, signatures/thumb prints and rent was given to the grantee to present to the ALS for it to be recorded as a sort of receipt to evidence that a certain transaction ensued between the grantor chief and the grantee. Chiefs did not keep copies because the ALS was the keeper of land records.

⁹ This is a local terminology used to describe heavily built-up men who work sometimes work as informal guards of various valuables including life and property. The term is largely popular in political circles and land disputes, as politicians use them as bodyguards and landowners use them as landguards.

¹⁰ Since the authority of the chiefs in Ghana is either a stool or a skin, there have been verb forms of these two terms created: to *enskin* or to *enstool*. That is to entrust to a chief the powers and authority of the stool or skin. From these two verbs, there have been derived nouns as well: *enskinment* and *enstoolment*.

¹¹ Refers to village chief in Twi. It may also refer to the head of house/village according to Amanor (2006).

For example, on 15 February 1955 the Tafo Stool¹² gave out a piece of land at Nhyiaso, a suburb of Kumasi. The letter allocating the land read, “I have the honour to inform you that the above plot has been allocated to ... and I should be obliged if you would prepare the necessary papers for him.” The letter was then thumb printed by the then occupant of the Tafo Stool and witnessed by principal elders of the Stool. This letter was filed at the Lands Commission as part of the requirements for land leasing. With time, such letters allocating land became known as land *allocation papers*. With the advent of allocation papers, starting, probably around 1943, the popularity of the ‘*tramma/guaha*’ custom faded. It is popularly said among the local people of Kumasi that if one has a piece of paper signed by the chief of a town and his elders, what is the use of doubtful words of mouth?

5. Dynamics and content of allocation papers

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. Details of the land, the person the land has been allocated to (grantee) and the signatures of the chief and his elders are provided. A space is also provided at the left bottom corner for the grantee to counter sign or thumb print. With respect to the Kumasi traditional area, space is often created for the Asantehene’s signature, which is a requirement for formal registration at the Lands Commission. Allocation papers are to inform the Lands Commission that a plot of land has been allocated to a particular grantee. Allocation papers often provide covenants requiring the grantees to commence development of the land within a year of allocation, and further enjoin them to pay ground rent. The Office of the Administrator of Stool Lands (OASL) collects such rents on behalf of chiefs and disburses it according to the formula spelt out in Article 267(6)¹³ of the fourth Republican Constitution of Ghana (1992). A breach of any of the documented covenants contained in the allocation paper gives grantor chiefs the right to re-enter the land and take possession.

In recent times, some chiefs including those of the Atwima and Akwamu Stools of the Kumasi Traditional Area have tried to enhance the authenticity of allocation papers by incorporating some fraud-proof features on it. They have adopted simple security features such as reference numbers and embossments, as a strategy to curtail pirating of the allocation papers by some dubious personalities. Chiefs of these Stools emboss emblems of the Stool on every allocation paper properly issued. The Atwima Stool for instance embosses a bat, which is their emblem on all its allocation papers. Again each allocation paper of the Akwamu Stool has a unique computer generated reference number to serialize all allocation papers issued. A colour passport-sized picture of the grantee is also printed on the face of the allocation paper. These basic security features though not infallible, have made it difficult to duplicate and forge the allocation papers. Before these inno-

ventions, unscrupulous people imitated the allocation papers and fraudulently granted stool land to unsuspecting developers. With these enhanced security features of allocation papers, will it serve as a conclusive land document, which can be relied upon to maintain a claim to land? In other words, if even an allocation paper is fraud proof, will it confer legal title on the holder? These questions have been critically considered by the Supreme of Ghana, which is elucidated in the following section on the legal effects of allocation papers.

6. Legal effects of allocation papers

In this section of the paper, we present the legal effects of allocation papers in land transactions as established by the courts in Ghana. As noted by [Llewellyn and Hoebel \(1941\)](#), “the safest main road into the discovery of law was through the study of disputes...” (cf. [Ubink, 2008](#): 24). Thus, to understand the position of the law regarding the allocation paper and the legal consequences thereof, it is imperative to make references to case law pertaining to the subject matter. The courts in Ghana are constitutionally mandated to apply and interpret the law and pronounce the legal consequences. Article 125(3) of the Fourth Republican Constitution of Ghana (1992) vests the judicial power in the Judiciary. In the hierarchy of the courts in Ghana, the Supreme Court is the final court of appeal, and as such all other courts are bound to follow its decisions on questions of law (Article 129 of the Fourth Republican Constitution of Ghana, 1992).

The legal implication of land allocation papers in land transfers has been considered in two leading cases in Ghana. The first was an unreported Ghana Court of Appeal case of *Abdul Majeed Kareem v. Asumadu* [11/11/99] CA No. 79/98 decided in 1999. In this case, the Court of Appeal per Aryeetey, JA held:

I conceive allocation note as a customary grant. As such, allocation note constitute a perfect title under customary law. Relying on the decision in Ankrah v. Ofori . . . it can be concluded that allocation note is effective as from the date it is issued. A lease prepared, executed and registered later by the grantor for the grantee only adds to the validity of the grant. It does not in any way take anything away from the validity of the grant. I therefore find no reason why an allocation note holder would have to ‘proceed to perfect’ his already perfect title by obtaining a lease and register it.

The legal effect of this decision was that land allocation papers were valid legal documents under Ghanaian customary law, which could be used as an instrument to convey proprietary interest in land. The judgement gave popularity to the usage of land allocation papers in land transfers in Ghana. However, the Supreme Court of Ghana in the case of *Boateng (No. 2) v. Manu (No. 2)* & another [2008] SCGLR page 1119 overruled the earlier decision in the case of *Abdul Majeed Kareem v. Asumadu* [11/11/99] CA NO. 79/98. The case of *Boateng (No 2) v. Manu (No.2)* is critically examined below for the reason that is currently the binding law on the legal effects of land allocation papers in Ghana. The facts of the *Boateng (No. 2) v Manu (No. 2)* case were that, the chief of Amanfrom a suburb of Kumasi had allocated 15.4 acres of land to the leader of a Church in 1992. The land was to be developed as a school and a church. After negotiations, the chief of Amanfrom collected €270,000¹⁴ as the consideration for the land. In 2001, the leader of the Church engaged surveyors to subdivide the undeveloped portions of the land into residential plots and sold them to individuals to develop into residential buildings. When this came to the notice of the chief, he instructed his lawyer to write to the pastor and stop him from

¹² Tafo is a town in the Kumasi Metropolis in the Ashante region of Ghana near the regional capital Kumasi. The Tafo Stool refers to the authority of the chief of Tafo, entrusted with the responsibility for the management of Stool land. Tafo is a sub-stool area of the Asante Kingdom has been engulfed as a suburb of city. This sub-stool is headed by the Tafohene, who owes allegiance to the Asantehene (King of Asante), and is accountable through him to the people of Tafo in all land transactions. In the same way, Atwima and Akwamu Stools are sub-stools of the Asante Stool.

¹³ Article 267(6) prescribes that: “Ten percent of the revenue accruing from stool lands shall be paid to the office of the Administrator of Stool Lands to cover administrative expenses; and the remaining revenue shall be disbursed in the following proportions- (a) twenty-five percent to the stool through the traditional authority for the maintenance of the stool in keeping with its status; (b) twenty percent to the traditional authority; and (c) fifty-five percent to the District Assembly, within the area of authority of which the stool lands are situated”.

¹⁴ Consideration paid for the land was €270,000 in old Ghana cedis. This is equivalent to Gh\$ 27 (US\$8.3 as of 22nd July, 2015).

selling the land. The pastor defied the Chief's warning and continued to sell the land. At the same time, some persons who acquired these parcels commenced development. When subjects of the chief went on the land to stop them from building, the pastor caused 'macho men' to harass and beat them up. The chief apparently furious about the turn of events took the pastor to the High Court in Kumasi.

The case travelled from the High Court to the Supreme Court. During trial, the leader of the church argued vehemently that when he paid the purchase price to the chief in 1990, he (the chief) gave him a land *allocation paper* covering the land. With the issuance of the allocation paper, the land was effectively transferred to him. The Supreme Court gave a unanimous decision against this reasoning. Contrary to the Court of Appeal decision that land allocation papers are instruments capable of conveying proprietary interest in land. The Supreme Court held that the issuance of land allocation papers is the initial process to evidence that an individual or corporate body had acquired land and that the allocation paper cannot by itself be conclusive of an acquisition of land, and thus does not confer any legal title on the holder. The Supreme Court in this case outlined three main reasons why land allocation papers cannot be conclusive of land acquisition in the following:

"Firstly, the allocation paper may or may not state the nature of the acquisition, i.e. whether it is a lease, a sale, a pledge, mortgage, a gift, etc. Secondly, it may not specify the duration of the acquisition; and thirdly it may not give details of the extent of the land acquired. In the instant case, the allocation given to the plaintiff did not indicate the nature of the allocation, for how long the land was allocated, the terms of the allocation and even the consideration for the allocation. Registering a document like that would not validate it to be able to give it any more probative value. At best it may be stamped for the same of its admissibility. When admitted in evidence, it can only show that some transaction had taken place to signify that the owners or holders of the land had purported to give some land to an individual or corporate body. The grantee will thereafter proceed to perfect his title by obtaining the appropriate documents that will have to be registered. The allocation paper per se cannot pass title to the grantee".

The basis of the Supreme Court ruling in the *Boateng (No. 2) v. Manu (No. 2) & another (supra)* was that allocation papers did not specify the nature of acquisition, duration (period), land size (parcel description), the terms of the allocation and the consideration of the allocation. These deficiencies of allocation papers were reaffirmed by the same Supreme Court in the case of *Nana Bediako Atwere (substituted by John Kwame Owusu) v. Osei Owusu (Alias Yaw Owusu Achiaw)* Supreme Court of Ghana Civil Appeal No. J4/36/2010, (18th May, 2010). In this case, the Court noted that the,

"...document (allocation paper) mentions only two incidents of the grant- the payment of rent and the period within which the appellant is to construct a building on the land with a right of re-entry to be exercised by the respondent in default. There is no plan attached as required by law and no reference is made to a clearly defined area. The said exhibit, in my thinking does not comply with the requirements of section 4 of the Act (Act 29)¹⁵ (sic) regarding customary grants in that it has not been certified by a registrar of a court exercising jurisdiction in the area where the land is situated. It being so, exhibit 1 (Allocation Paper) cannot have the attributes

that the Act places on documents which satisfy section 4 of the Act in terms of section 5 of the Act. The said document not having satisfied the requirements of the law cannot be called in aid by the appellant".

From the two litigation accounts, valid title is only constituted if the document purporting the transfer of title contains the names of the parties, the nature of the grant, the duration of the grant, the extent of the land (size and location), the price paid for the land, the rent payable and seals of the parties (signatures or thumb prints). These essential elements in any land grant are vital to wipe off any doubt and achieve certainty of the grant. These details are vital also because under the Conveyancing Decree 1973 (NRCD 175) where oral grants are exempted from the necessity of writing, oral grants are still required to be recorded according to the First Schedule of the Decree in order to be valid. Among the key things required to be recorded by the registrar under section 4 of the Conveyancing Decree 1973 (NRCD 175) include; nature of transaction (sale, gift, pledge among others), names of the grantors and the names of persons whose consent is required and who have given consent, consideration given for the transfer and duration of the interest passed onto the transferee. These need to be recorded by the registrar for any oral customary land grant to be enforceable under section 4 of the Conveyancing Decree 1973 (NRCD 175). Land allocation papers do not conform to these statutory requirements, and therefore may only be admissible in court as evidence of a transaction, but not to convey enforceable title to land.

The significance of the Supreme court ruling in the *Boateng (No. 2)* case supra, is that, allocation paper in their current form do not create or convey any kind of property interest, and that it is a mere letter communicating a transaction, and not a valid land contract document. Until a proper lease is prepared, executed and registered, no legal interest is created and passed on to the grantee with the issuance of allocation paper alone. The net effect of this is that anyone who relies on allocation paper to secure his tenure in land is in a legal mirage. The mainstay of the historical concept of allocation paper was based primarily on the fact that, allocation papers were not meant to convey title to land, but to serve as evidence of a transaction, and communicate same to the public. Thus, allocation papers are perceived as incomplete land documents. Furthermore, land allocation papers are often issued without regard to approved planning schemes contained in Article 267 (3) of the constitution which provides that: *"there shall be no disposition or development of any stool land unless the Regional Lands Commission of the region in which the land is situated has certified that the disposition or development is consistent with the development plan drawn up or approved by the planning authority for the area concerned"*.

Despite its legal weaknesses, allocation papers continue to serve useful purposes in the Ghanaian land market especially in the Kumasi Traditional Area. To procure a lease over land in the Kumasi area, a person must first and foremost possess an allocation paper. Without an allocation paper, endorsed by the Asantehene, no lease document over stool land within the Kumasi Traditional Area will be accepted for registration by the Lands Commission. Hence, allocation papers remain the basic document for preparing a lease on stool land. Also, the local planning authorities rely upon allocation papers as evidence of land ownership in order to grant building permits, even without a lease or title certificate, in breach of Regulation 3 of the National Building Regulation, 1996 (LI 1630). The regulation provides that an applicant for building or development permit shall satisfy the District Planning Authority that he has good title to the land relevant to the plans. Furthermore, the Office of the Administrator of Stool Lands (OASL) continues to collect ground rent from allocation paper holders as non-lease ground rent. Such extra-legal acts by these state institutions further deepen the controversy relating to the legal effects of land allocation papers in

¹⁵ We think the honourable court had wanted to refer to section 4 and 5 of the Conveyancing Decree, 1973 (NRCD 175) which provisions deals with the said issues raised in the case. Act 29 refers to the Criminal and other offences Act in Ghana. This Act deals with criminal law and not land law. We therefore think that the learned judge may have been referring to section 4 and 5 of the Conveyancing Decree, 1973 (NRCD 175).

land transfers. Consequently, land grantees enter, develop and live on land on the basis of allocation paper from chiefs without first registering their interest in the land. In the last decade, some credit institutions also resort to the use of land allocation papers as evidence of land ownership and collateral security to loans. However, these useful applications of allocation papers do not cure the legal deficiencies inherent in them in their current form.

Following the above uses of allocation papers even amidst all the legal weaknesses, many urban and peri-urban developers have continued to rely on them as evidence of land ownership. Since there are evident loopholes inherent in allocation papers, it is necessary for land grantees to acquire valid titles over land, beyond allocation papers. However, the cost and time involved in registering land in Kumasi can be huge and cumbersome. Many grantees will quickly enforce their ownership by physical occupation and keep their allocation papers as proof of ownership oblivious of the legal effects. Others may also resort to the use of land guards as protection of their lands from trespassers and encroachers. Undesirable of this new trend, the Asantehene, in 2012, instituted the Lease Documentation Project to formalize and regularize, by way of lease registration, all lands allocated by caretaker chiefs in Kumasi. For a period of six months, the general public were invited through the mass media to submit their land allocation papers or relevant unregistered title documents for conversion into leases. Under the project, the cost of land registration at the Asantehene's Lands Secretariat was reduced by about 75%. The process of lease documentation was cut short to six months. The project began in November, 2012 and was supposed to end in May 2013 (6 months) during which time the public was encouraged to submit applications. Within the 6-month period, over 15,000 applications were submitted. Notwithstanding, the intentions of the Lease Documentation project, processing of leases received under the project have been very slow.

It was the quest of the Asantehene to promote socio-economic development in Kumasi, using land tenure security as the driving force. The project was to formalize all land grants in the Kumasi Traditional Area, by converting allocation papers into leases. The thrust of this innovative approach was to make land documentation affordable and remove the bureaucratic processes that delay the documentation to ensure that grantees obtained leases in reasonable time with minimum effort and cost. The project granted an opportunity to all allottees applying for a lease to enjoy reduced cost and special lease documentation outside the normal routine at the Asantehene's Land Secretariat. The project had on board all stakeholders in the public land administration system to ensure that the processes handled at these land agencies received a complementary attention during the period. Implementation of this innovative approach was envisaged to benefit both lessees and the Golden Stool. It was also meant to improve public records on land in the Kumasi Traditional Area and promote business growth as property owners would have good title to access credit facilities for business expansion and development.

However, processing of documents received under the project is yet to be fully completed almost three years after it began. This delay reaffirms problems associated with land documentation and registration processes in Ghana. Even under this special project by the Asante King, not all the leases have been fully processed and executed. This is not surprising, as the processes will still have to end at the Lands Commission. Inadequate staff, lack of logistics and overall institutional weaknesses have operated to delay the rather noble course of perfecting the titles of land grantees relying only on allocation papers. It is partly due to the delays and cost associated with land registration that have contributed to over reliance on just allocation papers to secure interest in land. But as established in this paper, allocation papers do not confer legal interest in land transfer. It is a step towards acquiring full legal right over land and until

the other processes are completed (i.e. proceeding to execute and register the lease or title as the case may be), no enforceable legal rights can be derived from land transaction evidenced by allocation paper.

7. Conclusion

Land allocation papers are essentially incomplete land ownership documents and are no legally admissible title to land. The Supreme court decision in the Boateng (No. 2) case supra emphasised this position. It does not convey any legal title until the land in question is properly registered. The interest purported to be created or conveyed by allocation papers are indeterminate. Until a valid lease is prepared, executed and properly registered in accordance with Land Registry Act 1962 (Act 122) or the Land Title Registration Law 1986 (PNDC 152), the allocation paper per se cannot pass as title to land. The allocation paper practically now replaces the oral customary grants in most land alienations especially in the urban and peri-urban areas of Ghana. Land grants evidenced by allocation papers cannot be equated to oral grants by the *tramma/guaha* cutting ceremony. Allocation paper is essentially an instrument¹⁶ and should therefore comply fully with the provisions of the Conveyancing Decree 1973 (NRCD 175) and Land Registry Act, 1962 (Act 122) as well as the Land Title Registration Law 1986 (PNDC 152) for Kumasi, Tema and Accra registration districts to be enforceable in the courts. Under section 24 of the Land Registry Act 1962 (Act 122) for instance, no instrument other than a will or a judge's certificate shall be of any legal effect until it is registered.

It would be useful to improve the content of the allocation paper, by including all the essential ingredients such as; nature of transaction (sale, gift, lease), details of the transacting parties, consideration given for the transfer, duration of the interest passed onto the grantee and accurate description or representation of the land on a plan so as to make land grant unambiguous and informative. Under section 4 of the Land Registry Act, 1962 (Act 122), "*No instrument, except a will or probate, shall be registered unless it contains a description (which may be by reference to a plan) which, in the opinion of the registrar, is sufficient to enable the location and boundaries of the land to which it relates to be identified or a sufficient reference to the date and particulars of registration of an instrument affecting the same land and already registered*". By incorporating these ingredients, the allocation paper will potentially speed up the documentation and registration processes needed to derive a legal protection in the event of land disputes. Towards enhancing the current practice, we recommend that chiefs and sub-chiefs who directly allocate land should engage the services of lawyers and land experts to draft leases straight away, and not just issue allocation papers.

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¹⁶ "Instrument" under section 36 is defined as "any writing affecting land situate in Ghana, including a judge's certificate and a memorandum of deposit of title deeds"

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