



Viewpoint

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



Kwaku Obeng Mireku^a, Elias Danyi Kuusaana^{b,*}, Joseph Kwaku Kidido^c

^a General Services Division, Prudential Bank, Kumasi, Ghana

^b Department of Real Estate and Land Management Department, University for Development Studies, Wa Campus, Wa, Ghana

^c Department of Land Economy, Kwame Nkrumah University of Science and Technology (KNUST), Kumasi, Ghana

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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.

* Corresponding author.

E-mail address: ekuusaana@yahoo.com (E.D. Kuusaana).

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 Ollennu, 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 Ollennu (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.

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