IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL (CIVIL DIVISION)

ACCRA – GHANA

CORAM: HENRY KWOFIE JA PRESIDING

P. BRIGHT MENSAH JA

CYNTHIA P. ADDO JA

SUIT NO. H1/63/2021

20TH APRIL 2023

BETWEEN:

WILLIAM MENSAH … PLAINTIFF/RESPONDENT

vs

MUTALA LAMIDI … 1ST DEFENDANT/APPELLANT

ISAAC MAMAA DARPOH … (DECEASED)

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JUDGMENT

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BRIGHT MENSAH JA:

This is an appeal the 1st defendant/appellant herein has launched against the judgment of the High Court, Tema delivered 29/05/2020 in plaintiff/ respondent's favour. The judgment complained of, appears on ***pp 360-383 of the record of appeal [roa].***

Being dissatisfied with the said decision of the lower court, the 1st defendant/ appellant soon thereafter caused to be filed on his behalf, a notice of appeal that appears on ***pp 386-387 [roa]*** by which notice he complains that the judgment is against the weight of evidence. It was indicated in the notice that upon receipt of the record of appeal the 1st defendant/appellant shall file additional grounds of appeal. As I proceed along, I shall refer to the 1st defendant/appellant simply as the appellant and the plaintiff/respondent, the respondent.

On record, the appellant with the leave of this court granted 01/03/2021, filed additional grounds of appeal listed here below as that:

1. The learned judge erred when she held that 1st defendant/appellant failed to prove that he purchased the disputed land from the deceased 2nd defendant.

2. The learned judge erred when she failed to hold that 1st defendant/appellant's prior possession of the disputed land entitled him to ownership of the land in the absence of a better title.

3. The learned judge erred when she upheld Exhibit CW the Police Investigation statement of the deceased 2nd defendant and jet-tisoned Exhibit 3 (also Exhibit CW6) an official Police report in giving judgment against the appellant.

4. The learned judge erred when she failed to hold that the Survey and Mapping Division picked, plotted and registered a markedly different piece of land from that which was originally sold to the plaintiff/respondent.

5. The learned judge erred when she upheld the authenticity of the Land title certificate of plaintiff/respondent and failed to order that the same be expunged from the records of the Lands Commission.

6. The judgment is against the weight of evidence.

It is worth noticing that save the omnibus ground [ground 6], all the additional grounds of appeal learned Counsel for the appellant filed, did not comply with the mandatory rules of this court. It is claimed the learned trial judge erred and or misdirected herself on the facts and the law. Yet Counsel for the appellant never gave particulars of such errors or misdirection as required by the rules. This is another way of stating that the appellant gave no specifics as regards the errors the learned trial judge is accused of

committing. That sins against the **Court of Appeal Rules, 1997 [C.I 19], rules 8(4) & (5)** that stipulate:

> *"(4) Where the grounds of an appeal allege misdirection or error in law, particulars of the misdirection or error shall be clearly stated.*
>
> *(5) The grounds of appeal shall set out concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively."*

It bears emphasis that this court is vested with the power to strike out any ground of appeal that is vague or couched in general terms or where any ground of appeal or any part thereof is not permitted under the rules. See: ***Rule 8(6) of C.I 19.*** The common law courts have always frown on non-compliance of mandatory rules. In ***FKA Co. v Nii Tackie Amoah VI & ors (Civ. App. No. J4/1/2016 dated 13/02/2016 (unreported)*** the Supreme Court speaking through Akamba JSC ruled, *inter alia:*

> *"…… it is important to stress that the adjudication process thrives upon law which defines the scope of operation. It is trite to state for instance that nobody has an inherent right of appeal. The appeal process is the creature of law. Any initiative within the context of the adjudication process must be guided by the appropriate relevant provision, be it substantive*

law or procedural law. As courts, if we fail to enforce compliance with the rules of court, we would by that lapse be enforcing the failure of the adjudication process which we have sworn our judicial oaths to uphold." **[emphasis underscored]**

In re-echoing the rule, the Supreme Court in ***Ayikai v Okaidja III (2011) SCGLR 205*** stated the law that non-compliance with the rules of court result in fatal consequences as they not only constitute an irregularity but raise issues of a jurisdictional nature as to whether or not the jurisdiction of the court has by the irregularity been properly invoked.

By operation of law as sanctioned by **CI 19, rule 8(6)** and applying the principles the Supreme Court so laid down in the cases cited supra to the instant suit, I strike down as improper, the impugned additional grounds of appeal ie grounds (1) to (5) for non-compliance. However, in order not to dismiss the appeal on a technical point but to do substantial justice in the matter, I will go ahead and consider the appeal on that omnibus ground that the judgment is against the weight of evidence. When the Supreme Court was confronted with a similar situation in ***Vodafone (Gh) Ltd v International Rom Ltd [2015-2016] 2 SCGLR 1389*** in which case the appellant violated **rule 6(4) & (5) of C.I 19,** the apex court in adopting a practical approach to do substantial justice in the matter held, *inter alia*:

"……[I]n order not to yield overly to legal technicalities to defeat the cries of an otherwise sincere litigant, we would and hereby substitute them with what actually emerged as the

core-complaint and general ground which is that the judgment

is against the weight of evidence."

I am not unmindful that the appellant in his initial notice of appeal he stated as his ground that the judgment of the lower court was against the weight of evidence. The omnibus ground was repeated in the additional grounds of appeal.

It is now settled law that the omnibus ground that the judgment is against the weight of evidence throws up the whole case for real assessment and analysis and for the appellate court to make inferences and come to its own conclusions as to where the balance of probabilities tilts. To say that a judgment is against the weight of evidence implies invariably that the learned trial judge took into consideration, extraneous matters that were not relevant in law; excluded matters that were pivotal to be considered and that the lower court also failed to draw the proper inferences from the evidence led on record. See: ***Agyenim Boateng v Ofori & Yeboah [2010] SCGLR 861***.

Is it really the case that the judgment of the trial High Court in the instant appeal is against the weight of evidence?

From the pleadings and the evidence led on record, the prime issue that determined the controversy between the parties was whether it was the appellant or the respondent that validly purchased the land, the subject matter of the suit.

Per his amended statement of claim, the respondent claimed that he purchased the disputed land from the lawful owner, Isaac Mamaa Darpoh described as the 2nd defendant in the suit. It is claimed the respondent then entered into an agreement with the grantor by which he was allowed to make a part payment at the outset of the purchase and to tender the outstanding balance subsequently. In support, the

respondent relied on a memorandum of understanding the parties signed. It was his case that his grantor denied vehemently the appellant ever purchasing the subject matter from him.

The appellant, on the other hand, pleaded in his statement of defence that he purchased the disputed land from the same person, Isaac Mamaa Darpoh through one Francois Gbedema in the year, 2004. Before setting out to purchase the land, according to the appellant, he made enquiries and the result was that the land indeed belonged to the said Isaac Mamaa Darpoh. At the time of his purchase, according to the appellant, the disputed land was overgrown with weeds and was unoccupied. Thus, he caused the weeds to be cleared and then erected corner pillars and constructed wall thereon. See: ***pp 60-63 [roa].***

It is common knowledge that whilst the suit was still pending for determination, Isaac Mamaa Darpoh [the 2nd defendant] passed on and at a time when he has not filed a defence. However, before the initiation of the suit some events have taken place over the ownership of the disputed land which issue eventually landed in the Police station where both the appellant and the respondent were present to have the matter resolved one way or the other. Isaac Mamaa Darpoh, around whom the whole controversy revolved, was also invited/arrested. According to a Police Report received in evidence as **Exhibit CW1**, Isaac Mamaa Darpoh denied flatly ever selling any land or the disputed land to the appellant.

Now, the learned trial judge in assessing the evidence observed as follows:

> *"From the evidence so far led, it is not in dispute that the land*
>
> *forms part of a larger parcel of land belonging to the 2nd defend-*

ant. The plaintiff was assigned an interest in the land in dispute directly by the 2nd defendant in 2013. The 2nd defendant was the lawful owner of the land and the rightful person to transfer any interest in the disputed land. It also comes out clearly that the 1st defendant neither met not dealt with the 2nd defendant during the negotiation to buy the land and during the alleged payment of the land. The court holds as a fact that whilst the plaintiff bought his land directly from the 2nd defendant, made payments to him, the 1st defendant bought his land through Francois Gbedema, and one Lawyer Lassey. 1st defendant never met nor knew the 2nd defendant prior to the year, 2006." See: ***p. 365 [roa]***

Having considered the evidence on record, the lower court in the final analysis held on ***p. 371 [roa]*** that with the 2nd defendant's total denial of the claim of the appellant that he purchased the land, the subject matter the appellant ought to have invited the said Lawyer Lassey as a witness to corroborate him on that thorny issue. However, the appellant and his lawyer failed to call him.

Significantly, filed in this suit as appearing on ***pp 108-110 [roa]*** was a witness statement signed/authored by Lawyer Lassey. However, as he never gave evidence so as to be examined on the averments contained in the witness statement and be subjected to cross-examination, the witness statement is liable to be expunged from the record and it is hereby expunged from the records.

It is pertinent to observe that the lower court held further on ***p. 376 [roa]*** that apart from the bare assertion by DW1, Francois Gbedema that he bought the land in dispute from the 2nd defendant's lawyer for the appellant, the 2nd defendant maintained that he never sold any land and or the disputed land to the 1st defendant. The evidence also established that DW1 either never demanded receipts of every money he allegedly made to the 2nd defendant or did her tender any receipts from the 2nd defendant to show payments for the alleged purchase of the disputed land on behalf of the appellant.

Admittedly, receipts are by themselves not meant to transfer interests in land. However, they are evidence of payments in pursuance of an agreement to transfer an interest in land. See: ***In Re: Ashalley Botwe Lands [2003-2004] SCGLR 420.*** See also: ***Donkor v Alhassan [1987-88] GRLD 77 CA***.

The lower court in our present appeal having juxtaposed the story of the appellant with the respondent, preferred that of the respondent to the appellant and held as a fact that it was rather the respondent that purchased the land in dispute from the 2nd defendant.

I have critically read the records of appeal and do hold that the conclusion the lower court reached is supported by the evidence led on record and that the appellant has shown no good cause for the conclusion to be overturned on appeal. As a matter of fact, the evidence led on record supports the findings of the lower court and the learned trial judge rightly applied the law to the evidence. l do, therefore, roundly agree with the findings of the lower court that having regard to the serious doubt as to whether the appellant did indeed purchase the disputed land from Isaac Mamaa Darpoh, Lawyer Lassey became an indispensable witness to have given evidence in the matter. According to DW1, Francois Gbedema he tendered the purchase money to the land owner, Isaac Mamaa Darpoh through the said Lawyer Lassey and the lawyer executed

documents on behalf of the land owner to the appellant. In this regard, it cannot be over-emphasized that the testimony of the lawyer was absolutely necessary. He was a star witness, so to speak, and his testimony would have titled the case one way or the other in appellant's favour. The appellant's failure to invite him dealt a fatal blow to his cause.

Under the English Common Law, a witness whose evidence is likely to be sufficiently important to influence the outcome of a trial is a material witness who must be invited to assist the court. Therefore, the failure of the appellant in our present case to call such a material witness was fatal to his case. See: ***R v Ansere [1958] 2 WALR 385.*** See also: ***Ogbarmey-Tetteh v Ogbarmey-Tetteh [1993-94] 1 GLR 353 SC***.

That leads me to discussing the legal significance of the statement the 2nd defendant gave to the Police, tendered in evidence as **Exhibit C** and **Exhibit CW6** respectively, at the time when the 2nd defendant had passed on. Some serious doubts have been expressed about the legitimacy of the statement being admitted in evidence and the lower court relying on it. It is arguable if that piece of evidence was hearsay and by operation of law, inadmissible *per se* and ought to be rejected. In the context of this case, the question that has to be addressed is whether the statement of Isaac Mamaa Darpoh tendered in evidence by the Police through Chief Superintendent Cecilia Arko was meant to state a fact or to prove the truth that Isaac Mamaa Darpoh never sold the disputed land to the appellant.

It bears stressing, **S. 116(c) of the Evidence Act, 1975 [NRCD 323]** defines **'hearsay evidence'** as evidence of a statement other than a statement made by a witness while testifying in the action at the trial, offered to prove the truth of the matter stated.

Admittedly, a hearsay evidence is by operation of law made inadmissible by **S. 117 of NRCD 323.** However, there are exceptions to the general rule, for eg., where a party may be treated as an unavailable witness by reason of death or immune from testifying or is disqualified to testify on grounds of law. These come within the category of circumstances whereby a hearsay statement may be admitted in evidence. Some of the exceptions are provided for in **S. 118 (1)(a&b) and S. 116 (e)(ii) of NRCD 323.**

It is provided for in **S. 118 (1) of NRCD 323** that for the purpose of **S. 117,** evidence of hearsay statement is admissible if—

(a) the statement made by the declarant would be admissible had it been made while testifying in the action and would not itself be hearsay evidence, and

(b) the declarant is:

(i) unavailable as a witness, or

(ii) a witness, or will be a witness, subject to cross-examination concerning the hearsay statement; or

(iii) available as a witness and the party offering the evidence, has given reasonable notice to the court and every other

party of his intention to offer the hearsay statement at the trial and that the notice gave sufficient particulars (including the contents of the statement, to whom it was made, and, if known, when and where) to afford a reasonable opportunity to estimate the value of the statement in the action.

A party being **'unavailable as a witness'** has been statutorily defined by **S. 116(e)(iii) of NRCD 323** to mean that the declarant is:

(i) exempted or precluded on the ground of privilege from testifying concerning the matter to which his statement is relevant; or

(ii) disqualified as a witness from testifying to the matter; or

(iii) dead or unable to attend or testify at the trial because of a existing physical or mental condition; or

(iv) absent from the trial, and the court is unable to compel the attendance of the declarant by its process; or

(v) absent from the trial and the declarant has exercised reasonable diligence but has been unable to procure the attendance of the declarant by the court's process;

(vi) in a position that the declarant cannot reasonably be expected in the circumstances including the lapse of time since the statement was made) to have a recollection of matters relevant to determining the accuracy of the statement in question.

Guided by the law as stated supra, it is a right proposition of law to state that a party may only be declared unavailable as a witness where the matter the declarant was to speak to, if he was available as a witness, was relevant and that his statement was not being tendered in evidence to prove the truth of the matter but to state the fact that the declarant made that declaration in issue.

In the instant case, Isaac Mamaa Darpoh who was at the centre of the controversy volunteered the impugned statement whilst alive and before the initiation of the suit. His statement bordered on the land, the subject matter of the suit. Therefore, the declaration/statement was relevant for the determination of the suit. It is equally important to stress that the effect of the Police tendering the statement in evidence was not to prove either that Isaac Mamaa Darpoh sold the disputed land to the appellant or the respondent. Rather, it was that Isaac Mamaa Darpoh made that statement of fact.

Having regard to the fact that the statement was relevant to the issue in controversy; was tendered during the trial when the declarant was dead, Isaac Mamaa Darpoh qualified as an unavailable witness. It follows, therefore, that the lower court had jurisdiction and was right in relying on it to come to the conclusion it reached on the issue after carefully evaluating the whole evidence.

One other issue worth considering and capable of disposing of the case one way or the other, is the propriety of the site plan the respondent submitted to the Land Title Registry of the Lands Commission for registration and the cadastral plan the Mapping & Surveying Division that seemingly was different albeit the claim of the appellant that he has long been in possession of the disputed land before the respondent did. It is the case of the appellant that the respondent's site is markedly different from the one in his deed of assignment. According to the appellant, per search report, **Exhibit 4** the respondent's site plan also differs from the appellant's, thus the 2 site plans are not the same.

To assist the lower court in making a determination of the issue so stated herein, it appointed a surveyor to visit the site in dispute, to survey the disputed area with the parties showing their respective pieces or parcels of land they lay claim to draw a composite. Pursuant to the order of the court, the surveyor drew a composite plan marked **Exhibit CW 10** that appears on ***p. 207 [roa].***

A careful analytical examination of the evidence on record particularly from **Exhibit CW 10** indicates that site plans of both parties ie the appellant and the respondent did not fall on the respective parcels or pieces of land they showed the surveyor and laid claim to. This seemingly anomaly was however explained away by the court appointed witness, the Surveyor from the Survey & Mapping Division of the Lands Commission. Appearing on ***p. 273 [roa]*** is an interaction between the witness and Counsel for the respondent in response to questions under cross-examination that sought to throw light on the issue:

> *"Q. From your visit to the site, would you say that the land as shown*
>
> *you on the ground by both parties is the same as indicated on the*

site plan in the deed of assignment of the plaintiff [respondent].

A. It is the same as in the land title plan but not on the site plan attached on the deed of assignment (DA).

Q. With your work with the Lands Commission, is it normal practice that an applicant who presents a site plan for the preparation of a cadastral plan is given a different cadastral plan from the site plan he or she presented.

A. Yes under the Land Title Registry, lands presented by applicants normally fall short of the actual position of the land. Hence it is important that any application brought to the Land Title Registry, the Survey and Mapping Division is made to go back and ascertain the correct position of the land.

Q. You are telling this court that the Survey and Mapping Division (SMD) can produce a cadastral plan whose position is different from the position of the land on the site plan presented to the Division.

A. Exactly so because the work of the SMD of Lands Commission is to perfect the position of the land, since most of the plans brought to the office are not good in terms of the exact position

of the land."

Now, the surveyor explained himself further in his evidence under cross-examination by Counsel for the appellant. The evidence which appears on ***pp 275-276 [roa]*** is reproduced here below for purposes of clarity:

"Q. Will you agree with me that the land on the site plan in the 1st defendant's **[appellant]** *indenture is substantially the same as the land pointed to you by the plaintiff and the 1st defendant when you went on site.*

A. I will not agree with you because on the plan here, Exhibit CW10 there is a disparity. It does not fall exactly in the same position on the site plan both parties showed on the land.

Q. Can we say it is almost the same but not exactly the same.

A. About three quarters of the land on the site plan falls within the land shown by the parties.

Q. At cadastral stage you agree that the size of the land can change. Is that right.

A. *That is correct."*

The learned trial judge having accepted the explanation of the court appointed surveyor observed in her judgment as follows:

"It is a fact that though the site plan presented by the plaintiff **[res-**

pondent] *to the Survey & Mapping Division, he was able to point to the position of the land assigned to him by the 2nd defendant. It was that land and no other land. I take judicial notice of the fact the Survey & Mapping Division being experts are there to correct the position of lands brought for registration, the Survey & Mapping Division did the right thing to correct the position of the land assigned to the plaintiff before being issued with the land certificate. This is an accurate statement of the duties of the Survey & Mapping Division of the Lands Commission as provided by S. 20 of the Lands Commission Act, 2008 (Act 767) which empowers the Survey & Mapping Division to supervise, regulate and control the survey and demarcation of land for the purpose of land use and land registration. Also plans presented for land registration must meet the standards set by the Survey (Supervision & Approval of Plans) Regulations, 1988 (LI 1444)."* See: ***pp 379-380 [roa]***.

It is deducible from the evidence of the surveyor and the explanation he offered that cadastral plans give accurate positions and description of the land unlike ordinary site plans not prepared with cadastral gadgets. Thus, those site plans are almost invariably different in size and or positions of the land in question. In the circumstance, the learned trial judge cannot be faulted for the position she took on the matter having regard to the peculiar facts of the case. The position of the trial judge was in accordance

with the facts of the case and the law. In any event, although admittedly on general principle, a plaintiff who had sued for a declaration for title land etc., must succeed on the strength of his case and not to rely on the weakness of the case of the defendant, no court minded to do justice in a matter would simply say that since both parties, as it were in the instant case, showed land at the locus that were different from the ones depicted by their site plans, both had therefore presented weak cases and consequently the plaintiff had lost and the defendant had won the case. A trial court confronted with such an issue would therefore look for other pieces of evidence to decide the case one way or the other. For, after all by settled principles of law, civil cases are decided upon the preponderance of the evidence led at the trial. See: ***Sasu v Amua-Sekyi [1987-88] GLRD 76 Holding 7 CA.***

Beyond the issue that both site plans of the parties not falling within the cadastral plan, it is obvious on the face of the record that there were other pieces of evidence that the lower court in our present case relied on to found its judgment in the respondent's favour, notably the failure of the appellant to invite the star witness in the face of strict denial by the 2nd defendant of the assertion that he sold the disputed land to the appellant.

The next leg of the discussions has to do with the allegation that the appellant was the first in time to go into possession long before the respondent did. As a matter of emphasis, I recount the case of the appellant to be that he claimed he purchased the disputed land from the 2nd defendant, the owner thereof through one Francois in the year, 2004. The appellant had insisted that at the time of his purchase, the disputed land was overgrown with weeds and unoccupied. Therefore, he caused the land to be cleared of the weeds, erected corner pillars and constructed a wall thereon.

The respondent in his evidence to the trial court stated that he was granted a deed of assignment by the 2nd defendant in or about August 2013. He took possession and control of the disputed property without any let or hindrance and subsequently took steps to register the land and was issued with land title certificate. The appellant however took serious issue with the registration of the land by the respondent and the issuance of land title certificate to him pursuant to the registration, on ground of fraud. However, the lower court dismissed the allegation of fraud, holding that the appellant led no evidence to show that the documents the respondent submitted for registration were forged. See: ***pp 380-383 particularly @ p. 382.***

It cannot be over-emphasized that once the appellant made the allegation of fraud but which allegation the respondent in his reply had denied and demanded strictest proof from the appellant, on the law, the appellant carried the burden to prove fraud. And the question is, did he prove fraud? A party who alleges wrongdoing carries the higher burden to prove the criminality by proof beyond reasonable doubt as required by **S. 13 of the Evidence Act, 1975 (NRCD 323)**. In view of the serious allegation the respondent in the instant appeal made imputing criminality that is to say, fraud against the appellant, the burden was equally cast on the former to lead evidence to prove it beyond reasonable doubt. See: ***Okofoh Estates Ltd v Modern Signs Ltd & anr [1995-96] 1 GLR 310.***

On general principle, the court is not to find fraud unless particulars thereof has been distinctly pleaded and proved strictly, for a finding of fraud is not to be made without clear and cogent evidence upon it. See: ***Thomson v Eastwood [1874-77] 2 AC 215 HL @ p.233*** per Lord Cairns L.C.

I have scrutinized the records of appeal in the instant case and do roundly agree with the lower court that the appellant was unable to prove the allegation of fraud against the respondent.

As regards the specific question whether the appellant was on the disputed land long before the respondent did or whether the respondent had prior notice of the appellant's possession and ownership, the lower court ruled that from its observation both the appellant and his witness, DW1 were not candid with the court.

It has been submitted that the appellant was in possession of the disputed land long before the respondent did. Therefore, in absence of a better title, the appellant ought to have been held as the equitable owner of the disputed land. It was argued further that the law was that a person in ownership and possession was entitled to the protection of the law against the whole world except the true owner or someone with a better title. In support of the legal proposition, this court's attention has been drawn to a number of judicial authorities including ***Osei (subt'd by Gilard) v Korang [2013-2014] 1 SCGLR 221 @ 234*** in which case the Supreme Court propounded the law thus:

> *"Now in law, possession is nine-tenths of the law and a plaintiff in possession has a good title against the whole world except one with a better title. It is the law that possession is prima facie evidence of the right to ownership and it being good against the whole world, except the true owner, he cannot be ousted from it."*

Undoubtedly, there is that evidence in the present appeal that there was some structure of an uncompleted 2 bedroom house on a portion of the disputed land. On ***p. 376 [roa]*** the lower court observed it was a matter of fact that the respondent met a wall and some

structures on the land. However, the lower court held DW1 had tried to purchase the land for the appellant but could not because he failed to make the necessary payments to the land owner.

It is obviously plain on the face of the record that the appellant never dealt directly with the land owner, the 2nd defendant. Arguably, the appellant using his friend, Francois Gbedema to purchase the land, rather dealt with the agent of the landowner's lawyer, Lawyer Lassey. However, in the stiff opposition to the averment that the appellant ever purchased the land, it was expedient and or incumbent for the appellant to have tendered at the trial some receipts evidencing payments to dislodge any mere denial. That never happened in this case. There was also the claim that the wife of the appellant had some tape/video recordings of the purchase of the land by the appellant. Strangely enough, that was also not tendered in evidence and was therefore lacking for the consideration of the court.

In those circumstance, I do agree with the lower court that the 2nd defendant being the rightful owner of the land reserved the right to dispose of the land to the respondent. Though the principle stated in ***Osei (subt'd by Gilard) v Korang [supra]*** and other cases herein cited to us is good law, it is inapplicable to the present appeal for reasons stated supra.

I now come to consider the last leg of the appeal.

That is to say, the memorandum of understanding received in evidence as **Exhibit B** being an instrument affecting land having violated the legal requirement for lack of stamping and registration.

Admittedly, since **Exhibit B** was an instrument affecting land, it was inadmissible *per se* in terms of **S. 32(1)&(6) of the Stamp Duty Act (Act 689)** for lack of registration. See: ***Lizori v Boye School of Domestic Science & Catering [2013] SCGLR 889***.

The legal consequence is that the lower court erred in law when it relied on it in its judgment. In the result, I uphold the submission that it was improper for the lower court to have given probative weight/value to **Exhibit B** which was inadmissible *per se.* That defect notwithstanding, I need to point it out that there were other evidence that the lower court relied on to reach the overall conclusion it did in the case. In any event, the law is that when in a trial any exhibit was found to be inadmissible, the court ought to consider further whether apart from the inadmissible exhibit, there is no other evidence to sustain that party's claim. If there were other admissible evidence and materials on record to sustain the party's claim, then the court is duty-bound to consider those other matters. As a matter of law, the inadmissibility or invalidity of an exhibit does not mean the automatic failure of the party's action unless from the pleadings and the evidence that claim cannot be sustained on any other ground apart from the evidence. See: ***Western African Ent. Ltd v Western Hardwood Ltd [1995-96] 1 GLR 155 @ 166*** per Acquah JSC (as he then was).

Overall, I think save the finding of this court that the lower court erred in law in relying on the memorandum of understanding, **Exhibit B** and giving a probative value to it, the appellant has been unable to demonstrate sufficiently why the judgment of the lower court must be set aside. I have no good cause whatsoever to upset the judgment. In the result, the judgment of the lower court is affirmed. The appeal therefore fails and is hereby dismissed for lack of merit.

The respondent's costs assessed at Ghc5000.00.

SGD

P. BRIGHT MENSAH

(JUSTICE OF APPEAL)

SGD

I agree **HENRY KWOFIE**

(JUSTICE OF APPEAL)

SGD

I also agree **CYNTHIA P. ADDO**

(JUSTICE OF APPEAL)

<u>COUNSEL</u>

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