IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA – GHANA

AD - 2022

CORAM: *OFOE, J.A. (PRESIDING)*

MERLEY WOOD, J.A.

BERNASKO ESSAH, J.A.

SUIT NO. HI/203/2021

27TH APRIL, 2022

EMMANUELLA NAA TSOTSO TETTEH

SUING PER HER LAWFUL ATTORNEY - PLAINTIFF/APPELLANT

EMMANUEL TETTEH

VRS

ABDUL LAMIN aka ATAA BOYE - DEFENDANT/RESPONDENT

JUDGMENT

V. D. OFOE, J.A.

Plaintiff's claims he file before the trial High Court on the 3rd of June 2016 were for the following reliefs:

> ***"A declaration of title to all that piece or parcel of land situate and being at Odorkor-Tsuim, Accra containing an approximate area of 0.26 acre land more or less and bounded on the North East by Lessor's land measuring 105 feet more or less, on the south west by a proposed road measuring 113.9 feet more or less, on the south west by a proposed road measuring 94.2 feet, more or less on the North west by lessor's land measuring 123.1 feet more or less which was stamped as No. LVD GAST 3218/2016***
>
> ***b. An order for recovery of possession***
>
> ***c. An order for damages for trespass***
>
> ***d. An order for perpetual injunction to restrain the defendants their agents, assigns, privies or servants from continued interference with the plaintiff's land***
>
> ***e. Cost"***

The basis of his claim as averred to in his pleadings are that in 1981 he had a grant of this land from the Gbawe Tawiah family for 99 years. Upon her return from travel out of the jurisdiction in 1988, she found that the defendants had occupied the land with temporary structures which they were using as a mosque and given a portion to mechanics. She confronted the then head of the Gbawe Tawiah family, her grantors, but had no convincing explanation. This was in 2009. It was the current chief of Odorkor-Twuim who advised her to seek redress in court.

The defendant on his part claimed the land was acquired by their predecessors for the Muslim Community at Odorkor about 50 years ago from the Odorkor Mantse, Nii

Sackeyfio. This grant was confirmed by Nii Akramah II and his successor Nii Olai Amontia IV as the Asere Mantse. It is his case that the Muslim group, which had been led by various persons through the years, took over this vacant land after purchase and erected a wooden structure on it and has been using it as a place of worship till date. When they decided to register the land they approached Nii Nikoi Amontia the then head of Asere who gave them an indenture to the land and also wrote to the Executive Secretary of the Land Commission confirming the grant made to them by Sackeyfio, the Odorkor Mantse from whom they had their earlier grant. Subsequently they were informed at the Lands Commission that the Gbawe Kwatei family had obtained judgment over the whole area including their land. This led them to the Gbawe Kwatei family who granted them a new indenture. The defendant believes his Muslim Community had been in possession of this land for more than 50 years the plaintiff cannot have this land because they are estopped by the Limitation Act, 1972, NRCD 54. If the plaintiff claims to have acquired the land in 1981 and they stood by whiles the defendant's Muslim family built and used this land then they are further caught by the doctrines of acquiescence and laches.

The plaintiff offered a reply to these defences raised by the defendant. In the first place they contend that Nii Nikoi Olai Amontia as the Asere Mantse had no legal right to have granted this land to the defendant and his Muslim group when his predecessor had earlier granted this same land to Nii Tsuim Tawaih as far back as 1917. Not only has Nii Amontia no right to grant this land but the Gbawe Kwatei family also has no such right, the disputed land not forming part of the land for which they had judgment in the Supreme Court.

They ended their reply to the defence alleging fraud and providing appropriate details as required by the rules of court.

At the end of trial the defendant had judgment. The trial judge found that since as far back as 1917 the Asere Stool had granted a large portion of their lands, including the one in dispute, to the Gbawe Tawiah family they had no right to have granted this same land either through Sackeyfio, the Chief of Odorkor or Nikoi Olai to the Muslim community. In respect to whose grantor had a title, the trial judge found for the plaintiff. But he held the plaintiff's case to have fallen on the application of the Limitation Act, (NRCD 54). He said at page 9 of his judgment, found at page 183 of the record of appeal:

> ***"This account of the evidence on record portrays clearly that the Muslims entered or otherwise trespassed unto the land and plaintiff learnt of this trespass as far back as 1995. The fact that the Muslims drove away the carpenters plaintiff put on the land coupled with the fact that the Muslims entered the land without the permission of plaintiff was strong indication of adverse possession on the part of the Muslims and it was incumbent on plaintiff to have registered her objection by taking some legal action. This expected action could have been taken by plaintiff on or before 2007. The fact that it was not until 2016, that the plaintiff took this action makes the action damnable and unmaintainable by virtue of the Limitation Act. That is to say plaintiffs action is statute barred. Going by the law as spelt out in the Adjetey Adjei case by the*** Supreme ***Court, plaintiff's acquired interest in the land was extinguished and consequently the Muslims acquired possessory interest in the land and the court and for that matter the law is enjoined to protect such possessory title in the Muslims as far as the very area the Muslims have entered and built their mosque for worship is concerned.***

The court is not oblivious of the plaintiff's excuses for not suing the Muslims when she noticed their trespass. For instance the plaintiff's attorney wanted the court to believe that his mother did nothing when she saw the unwanted presence of the Muslims on the land because there was an injunction on the land. This was challenged but the plaintiff failed to substantiate the alleged injunction as no order was tendered. At any rate, the court holds the view that even if there was an injunction since both plaintiff and defendant were not parties to any suit she should have taken steps to protect her interest in the land. Plaintiff's attorney put up another red herring as to why the mother did not take action but had to wait till about 18 years before taking the instant action. In cross examination when the plaintiff's attorney was asked that it was 18years after he personally saw the Muslims on the land he answered: "Yes but my mother said she thought because the land had been in the name of her mother and under the caretakership of the family leader she never knew trespassing could occur". That response was not only a red herring but difficult to understand in the face of the fact that the Muslims had actually entered the land and plaintiff herself learnt of that unsolicited entrance as far back as 1995.

The court holds the view that this determination by the court will suffice to dispose of this case. That is the court is not bound to consider every conceivable issue arising from the pleadings and the evidence if in the opinion of the court as the court holds herein, few of the issues could legally dispose of the case in accordance with the law. In effect, since the Limitation law mercilessly dismantled plaintiff's claim to title to the disputed land, the court would proceed to dismiss plaintiff's case. The Muslims are awarded costs of GH 8000.00"

The plaintiff is aggrieved at the judgment of the trial court she is on appeal to this court with nine (9) grounds of appeal. We reproduce them as follows:

"i. The decision of the trial judge in declaring judgment in favour of the Defendant/Respondent over the land situate, lying and being at Odorkor-Tsuim-Acca, a.k.a. Tsuim in the Republic of Ghana is against the weight of evidence.

ii. The trial judge failed to consider that Abdul Hamid alias Atta Boye lacks capacity to prosecute the case on behalf of Abdul Lamin a.k.a. Ataa Boye.

iii. The trial judge erred in law or failed to consider that the Defendant/ Respondent had made it clear to the court that his claim that he had been on the land for over 50 years is not true.

iv. The trial judge erred in law or failed to consider that Defendant/ Respondent's document (Indentures) are not stamped.

v. The trial judge erred in law when he failed to consider that Plaintiff/ Appellant pleaded fraud against the Defendant/Respondent.

vi. The trial judge fell in grave error when he failed not to comment on the Defendant/Respondent's fictitious document marked as exhibit "8" which was tampered with and this has occasioned on the Plaintiff/ Appellant a substantial miscarriage of justice.

vii. The trial judge fell in great error when he did not consider that Defendant/Respondent mis-spelt his name or identity which has far reaching consequence in law.

viii. **The trial judge once again fell in grave error or failed to consider that the Defendant/Respondent's exhibit "8" which is the Plot No. 1854, Principal Document of the Defendant which he relied on to prosecute the case does not represent the disputed land, and that the land which is in dispute is depicted by exhibit "10" i.e. Plot No. 1855, which was granted in the year 2010.**

After reading the record of appeal in its entirety as we are bound to do as an appellate court in a rehearing exercise, our view is that in the same way the trial judge found it unnecessary to proceed to determine other issues raised or arising out of the pleadings at the trial because he found the operation of the Limitation Act making such approach unnecessary, we also find consideration of all these several grounds of appeal in the face of the trial judge's faultless invocation of the Limitation Act unnecessary. We see in these grounds of appeal an underlying mis-appreciation by counsel for the plaintiff what the effect of the Limitation Act is when successfully invoked. In the first place since the trial judge determined the case on the Limitation Act one would have expected that any appeal by the plaintiff would be fully blown on this aspect of the judgment but that was not to be. We have eight grounds of appeal all aimed in substance questioning the courts assessment of the evidence on issues set for trial in the case.

The relevant part of the Limitation Act provides:

" 10.

(1) A person shall not bring an action to recover a land after the expiration of twelve years from the date on which the right of action accrued to the person

bringing it or if it first accrued to a person through whom the first mentioned claims to that person.

(2) The right of action to recover land does not accrue unless the land is in the possession of a person in whose favour the period of limitation can run

…

(6) On expiration of the period fixed by this Act for a person to bring an action to recover land, the title of that person to the land is extinguished"

Several case law authorities have explained this section few should serve our purposes explaining why this appeal should be dismissed. We mention the case of ***Adjetey Adjei vrs Nmai Boi (2013-2014) SCGLR 1474*** where the Supreme Court had this to say:

"If a squatter took possession of land belonging to another and remained in possession for twelve years to the exclusion of the owner, that would represent adverse possession and accordingly, at the end of twelve years the title of the owner would be extinguished. In the circumstances, assuming the defendant's title was bad their adverse possession of the land for a period of twelve years and over, had conferred on them possessory rights by virtue of section 10 of the Limitation Act, 1972 (NRCD 54)"

In another case of ***Klu vrs Konadu Apraku (2009) SCGLR 741*** at 743 the Supreme Court stated at page 743:

"On the contrary, the trial court found that it was he who had put up the outhouse on the disputed land. In the circumstances assuming title from the Nungua Chief, the grantor of the plaintiff's vendor was invalid by reason of his destoolment, that fact was not decisive of the matter. The adverse possession of

the said land by the plaintiff for up to and even over twelve years conferred on him possessory title by of the provisions of section 10 of the Limitation Act, 1972 (NRCD 54)"

Refer also the cases of ***Gihoc Refrigeration & House hold Products Ltd vrs Hanna Asi (2005-2006) SCGLR 458 at 469.***

What is clear from these authorities is that the adverse possessor need not have any title or good title to be declared entitled to the possessory rights. It is simply a question of time. If the circumstances of the case establish uninterrupted possession of 12 years, ownership automatically changes with the rightful owner having his title extinguished in favour of the trespasser or the contestant, who the evidence may have disclosed has a weak case.

What is evident from the record of appeal is that right from the pleadings of the plaintiff she started sowing the seed for the Limitation Act to destroy her case. In paragraphs 7, 8 and 9 of her statement of claim she stated:

"7. Plaintiff says that she travelled out of the jurisdiction in the country in 1988, upon her return she finds out that the defendant has occupied the said land.

8. Plaintiff says she confronted the then head of the said family in 2009 by name Samuel Okaikwei Tawiah for explanation but proved futile

9. Plaintiff says further that, until last year when she met with the current Chief of Odorkor Twuim, then he advised the plaintiff to go to the High Court for redress"

In further explanation and as if these pleadings were not enough invocation of the Limitation Act against herself, Emmanuel Tetteh, the plaintiff's Attorney stated in his evidence in chief i.e. his witness statement that:

> ***"8. Somewhere in 1995 and 1998 my mother returned to Ghana and on these two occasions to develop her land but met the Muslims who had trespassed on her land and had constructed this their temporary structure but my mother could not approach them"***

The mother noticed the Muslim's presence on the land as far back as 1995 but issued her writ in June 2016.

The trial judge rightly referred to the cross examination of the plaintiff's attorney found at page 129 of the record of appeal where he emphasized these dates the mother noticed the Muslim's on the disputed land.

We have no doubt in our minds that the trial judge rightly invoked the Limitation Act that extinguished the rights of the plaintiff and upheld the possessory rights of the Muslims over the disputed land. By such successful invocation of the Act, all the weaknesses in the case of the Muslims represented by the defendant, Abdul Lamin aka Ataa Boye fall out of the consideration of the court, provided the parties are found to be litigating over the same land. On the records we have no reason to doubt the parties were disputing over the same land. And so all the weaknesses the plaintiff's counsel has drawn our attention to in the grounds of appeal argued are irrelevant and of no moment. It is for that reason we dismiss this appeal as being without merit.

(SGD.)

V. D. OFOE

[JUSTICE OF APPEAL]

MERLEY A. WOOD (MRS.), (JA), I agree *(SGD.)*

MERLEY A. WOOD [JUSTICE OF APPEAL]

S. R. BERNASKO ESSAH (MRS.), I also agree *(SGD.)*

S. R. BERNASKO ESSAH (MRS.)

[JUSTICE OF APPEAL]

COUNSEL:

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J. K. GYIMAH FOR PLAINTIFF/APPELLANT