IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

TAMALE – GHANA

A.D. 2022

CORAM: V. D. OFOE, JA (PRESIDING)

J. BARTELS-KODWO (MRS.), JA

S. R. BERNASKO ESSAH (MRS.), JA

SUIT NO.: 6/4/2021

DATE: 24TH JUNE 2022

SKONES SECURITY LIMITED - PLAINTIFF/APPELLANT

VRS

1. **ABUBAKARI MOHAMME - 1ST DEF/ RESPONDENT**
2. **ISSAHAKU SOSO - 2ND DEF/RESPONDENT**

JUDGMENT

V. D. OFOE

This suit was filed on the 23rd of April 2014 and determined by the trial High Court on the 9th of October 2020. It is a dispute over land. Both parties claim to have bought the disputed land from the Vittin Skin but under different circumstances. The plaintiff described the land as plot No 1.4 Blk. A South East Vittin Residential Area, Tamale. We will refer to this land as the disputed land or No 1.4 A. where necessary for the sake of convenience.

From the pleadings plaintiff bought the land from Mohammed Yakubu who got it directly from the Vittin Skin in 2008. Yakubu after the grant from the Vittin head got a confirmation of the grant from the Regent of Gulkpugu, Alhaji Ziblim Abdulai. Yakubu eventually sold the plot to the plaintiff in September 2011. As is usual of land purchasers, the plaintiff company claimed it deposited sand on the plot part of which was used to mould blocks. It is its pleadings that it got its documentation through the official process and had it registered at the Lands Commission. After putting 20 concrete pillars on the boundaries of the plot and sending two water tanks preparatory to developing the plot, the defendants entered the land demolished the pillars and perforated the water tanks making them unusable. According to plaintiff the Zobog Na (The Nyankpala Na) who the defendant traced his title to, invited the 1st defendant to show him the

land allocated to him but the 1st defendant declined the invitation and continued to make claim to the land.

From the pleadings of the plaintiff it can be inferred that not that the 1st defendant had not been granted land by the Vittin but his land is not what the plaintiff is claiming. The Nankpala Na was ready to show him his plot but 1st defendant refused to see the chief.

The plaintiff found he had no option than to sue claiming:

1. ***Declaration of title to Plot No. 1.4, Blk 'A', South East Vittin Residential Area, Tamale – the dimension of which are as described in a lease executed by Gulkpe-Na Alhassan Abdulai and the Plaintiff.***
2. ***Recovery from the defendants the sum of One Thousand Six hundred Ghana cedis (GH¢1,600.00) being the cost of 20 pillars and 2 water tanks destroyed by the Defendants.***
3. ***Damages for trespass by the Defendants unto the said Plot No. 1.4, Blk 'A', South East Vittin Residential Area, Tamale.***
4. ***An order of perpetual injunction restraining the Defendants either by themselves, their agents, servants, or persons whatever on the Defendants' behalf or instructions from entering unto or otherwise dealing with the said land inconsistent with the rights or interest of the Plaintiff.***

The concrete pillars cost GH¢400.00 in all and the water tanks cost GH ¢1600.00

The defendant's case on the contrary was that he got his land from the Vittin Chief in 1997 when the area had no lay out and the area was bushy. He took possession of the land by erecting corner pillars and gave it out for farming. He also had sand and stones on the land and gave the frontage out for use by occupiers of containers. He contended that the land having been granted to him earlier could not have been validly granted to the plaintiff by the same Vittin chief.

The following issues were set down for trial:

a. ***Whether or not the disputed area had been schemed in 1997.***
b. ***Who was allocated the disputed plot No. 14, Blk A, South East Vittin Residential Area, Tamale.***
c. ***Whether or not the 1st Defendant erected pillars, corner walls and heaped sand on the disputed plot prior to the grant of same to the Plaintiff.***
d. ***Whether or not the 2nd Defendant caused pillars erected by the Plaintiff to be destroyed.***
e. ***Whether or not the Plaintiff has performed acts of ownership on the disputed plot No. 14, Blk A, South East Vittin Residential Area, Tamale.***

f. ***Whether or not the Defendants committed acts of trespass on the disputed plot No. 14, Blk A, South East Vittin Residential Area, Tamale.***

g. ***Whether or not the Plaintiff is entitled to its claims.***

h. ***Any other issue arising from the pleadings.***

Upon application by the Defendants, the following were also set down as additional issues for trial:

a. ***Whether or not the 1st Defendant was granted the land, the subject matter of the action by the chief of Vittin.***

b. ***Whether or not the land granted by the Chief of Vittin to the 1st Defendant is the plot of land now being referred to as Plot No. 1.4 Block A, South East Vittin Residential Area, Tamale.***

c. ***Whether or not the chief of Vittin granted the land, the subject matter of the action to one Mohammed Yakubu, Plaintiff's grantor.***

d. ***Whether or not Plaintiff's grantor validly transferred any interest known in law to the Plaintiff.***

Since the parties were tracing their title to the same Vittin Chief, the trial judge on conclusion of the case identified one issue which he believed

should dispose of the case basing himself on the authority of **Fatal v Wolley (2013-2014) SCGLR 1070 at 10….** He stated:

> ***"The issues listed supra could be conveniently be resolved by interrogating only one issue i.e. Who was the first in time to acquire the disputed land from the Vittin Skin, was it the 1st defendant or the plaintiff's grantor Mohammed Yakubu. I intend to discuss this issue for its resolution would render the other issues moot or irrelevant. This position of mine is fortified by the dictum of Wood CJ in the case of Fatal v Wolley (2013-2014) SCGLR 1070 at 1070 holding 2 where she stated:***
>
> > ***"It is a sound basic learning that courts are not tied down to only the issues identified and agreed upon by the parties at pre-trial. Thus if in the course of the hearing an agreed issue is clearly found to be irrelevant, moot or even not germane to the action under trial, there is no duty cast on the court to receive evidence and adjudicate on it. The converse is equally true. If a crucial issue is left out but emanates at trial from either the pleadings or the evidence the court cannot refuse to address it on the grounds that it is not included in the agreed issues. On the facts of the instant case the argument that the trial court had the duty to determine the issue of capacity would be rejected as having no merit"."***

The issue which determination he found could dispose of the trial was which of the disputants had his grant from the Vittin earlier. He found for the 1st defendant.

He relied on the following evidence of PW1 and PW2 for concluding that it was the 1st defendant who had his grant first:

> ***"In this regard the evidence of PW1 Mohammed Yakubu is crucial for he is the one who claimed he acquired the disputed land from the Vittin Chief and transferred same to the plaintiff. This witness in his evidence-in-chief said he acquired plot number 1.4 South-East Vittin Residential Area, Blk A, Tamale in May 2008 from the Vittin Chief Sayibu Yabani. He was given an allocation letter to that effect which was confirmed by the Gulkpe-Na in 2011. This witness under cross-examination was asked (page 13 of the ROP):***
>
> ***"Q. How often over a period of time have you visited the land.***
>
> ***A. After selling the land I have not visited the plot.***
>
> ***Q. When did you sell it.***
>
> ***A. Around 2007 or 2008. I cannot remember the exact year".***

This witness was subsequently emphatic that he acquired the land in 2008. PW2 Abdulai Alhassan under cross-examination told the court that he was asked to show the 1st defendant his land in 1997. At page 19 of the ROP he was asked:

"Q. In 1997 you were sent by the Zobogu Na who is now the Nyankpala Na to go and show land to Alhaji Grundo.

A. I was told to go and show the plot to the 1st defendant and not Alhaji Grundo.

Q. The land you went to show to the 1st defendant is the subject matter of this dispute.

A. Yes" (emphasis mine)

Therefore in terms of time, it was the 1st defendant who was the first to be shown the land as admitted by the plaintiff's witness".

The trial judge continued:

"The admission by this witness relieves the defendants from proving that the 1st defendant was the first in time to acquire the disputed land. The position of the law is that where an adversary has admitted a material fact advantageous to the other party's cause, the latter needed not prove anything but to rely on that admission in the case of OWORSIKA III v AMONTIA IV (2006) 1 MLRG 61, the Supreme Court succinctly stated the principle that where an adversary has admitted a fact which is to an advantage to the other party's cause there is no better evidence to establish that fact than by relying on that admission"

The surveyor who was appointed by the court had his report jettisoned by the trial judge for reasons incorporated within the judgment. We quote in extenso:

> ***"From the evidence before this court it is not in dispute that the Vittin Skin granted pieces of land to the 1st defendant and Mohammed Yakubu (PW1). It is also not in dispute that the lands granted overlap. Indeed there are portions of the party's land which are not in dispute. The evidence of the court expert (CW1) shows that the said land overlap even though the positions on their respective site plans shifted when the said witness went to the disputed area. I have to say that the court witness could not explain himself satisfactorily to this court why both plans submitted to him by the parties shifted on the ground. Since this court is not bound by the findings of a court expert, I will stick to the dimensions of the land as shown to CW1 by the parties as their true boundaries on the ground. I am saying so because from Exhibit CWE2 the Salvation Army wall on the western side shares common boundary with the land identified by the 1st defendant as his boundary with the said Organization. Where CW1 has shifted the boundary encompasses the Salvation Army land where there is no dispute. Likewise where the plaintiff identified as the dimensions of its land has increased in size from the work done by CW1. It is for***

these reasons that I prefer to work with the lands identified on the ground by the parties as their boundaries. Hence at the end of the day any decision by this court, whether it goes in favour of the plaintiff or the 1st defendant shall be limited to the size of the land as shown to CW2 by the parties. That is indicated Blue for the plaintiff and pink for the 1st defendant, at places the said land overlaps".

After making a finding that the Vittin having granted the said land to the 1st defendant had no right to grant the same land to the plaintiff on the principle of nemo dat qoud non habet, he concluded his judgment:

"Having found that the 1st defendant was the first to acquire the disputed land all the other issues listed supra have been rendered unnecessary and any attempt to interrogate same would be an exercise in futility, as I have already indicated supra.

Before concluding I wish to reiterate that the plaintiff has trespassed unto the area edged pink indicated in Exhibit 1and is ordered to vacate same, his lease notwithstanding. The position of the law is that where land has previously been granted to a purchaser by the rightful grant or under customary law, any subsequent grant of the same piece of land to another person cannot claim priority over the earlier grant, any subsequent documentation, formal lease or registration obtained by the latter is of no legal

effect. (See the case of Brown vrs Quarshigah (2003-2004) SCGLR 930). For emphasis the plaintiff shall vacate the area edged BLUE and GREEN within the 1st defendant's land edged PINK in exhibit CWE2"

The plaintiff/appellant (herein referred to as the plaintiff) has his grievance against this judgment expressed in the following grounds of appeal. (The defendant respondent we refer to as the defendant)

1. ***The judgment is against the weight of evidence.***
2. ***The trial judge erred when he failed to determine boundaries of the respective land claimed by the parties having regard to the composite plan showing the land of the parties as prepared by the surveyor.***
3. ***The trial judge erred when he rejected the composite plan prepared by CW1 (the Court Expert) on the sole ground that CW1 could not explain himself satisfactorily why plans submitted by the parties shifted on the ground.***
4. ***The trial judge erred when he held that CW1 shifted the boundary encompassing the Salvation Army and increased the size of the dimensions of the Appellant's land.***
5. ***The trial judge erred when he preferred boundaries claimed by the parties to the boundaries scientifically determined by CW1.***

6. ***The trial judge erred when he based his determination of the disputed land on the testimony of PW2 that the land he showed to 1st Respondent was the subject matter of the suit having regard to other pieces of evidence on record.***
7. ***The cost awarded is excessive.***

Before proceeding we need to remind ourselves that appeal is a request for a rehearing which entails a whole review of the record of appeal to convince ourselves the trial judgment is supportable having regard to the evidence on record. We are so enjoined on the dictates of cases like ***Akufo Addo vrs Catherine (1992) 1 GLR 377, Abbey vrs Antwi (2010) SCGLR 17, Aryeh & Akakpo vrs Ayaa Iddrisu (2010) SCGLR 891***

We are also to note that setting aside findings of a trial court is a decision an appellate court is warned by several case law authorities to abstain from unless the judgment is unsupportable on the evidence. See the cases of ***Kusi & Kusi vrs Bonsu (2010) SCGLR at 86, Fofie vrs Zanyo (1992) 2 GLR 475 Barclays Bank Ghana Ltd vrs Sakari (1996-97) SCGLR 639***

It would be realized from the grounds of appeal that the plaintiff has several grievances concerning the trial judge's rejection of the surveyor's report and his evidence.

Now let us understand what the surveyor presented to the court in his superimposition and why the trial judge rejected it.

The surveyor captured the land as shown him by the parties themselves on the ground, that is the dimensions of the respective plots as known by the parties on the ground. He showed also the plots of the parties using their site plan as captured by the survey equipment. Whilst the plot of the plaintiff as captured by the survey equipment of his site plan was located almost at the same position as that shown by the plaintiff on the ground that of the defendant site plan captured by the survey instruments shifted some distance from what the 1st defendant knows and he showed on the ground to the surveyor. The result of the shift of the 1st defendant's land as shown by the surveyor's instruments was that a wall that was on the 1st defendant's westwards boundary of his land as shown by him on the ground served no more as the boundary. His westward boundary had shifted and entered the salvation army lands over the wall. By the results of the surveyor's superimposition the wall is no more the 1st defendant's western boundary. His western boundary had shifted into the lands of the salvation army, an entity which is not a party in the case and has no issue with the defendant. The plaintiff's land had also had a little addition at its northward ends. This in substance is the result of the superimposition.

If the scientific report of the surveyor will introduce new issue with others not part of the case why should the judge make use of such report of the surveyor? If the surveyor has after his survey located the 1st defendant's western boundary over the wall into the Salvation Army who are not

parties to the suit and have no complains with its boundary with anybody why should the surveyor's work be reliable for use by the court? These were some of the questions asked by the trial judge for which he answered rejecting the report. Secondly, according to the trial judge, the surveyor was not able to explain why the shift in the plots of the parties, particularly that of the defendant, when he was under cross examination.

Counsel for the plaintiff disagrees with the reasons the trial judge gave for rejecting the surveyor's evidence and superimposition. To counsel if the position pointed out by the parties on the ground do not tally with the scientific outcomes the reasonable inference to make is that the parties have all this time been wrong as to the land location they believed was theirs, and that is that. The trial judge had no basis to reject the scientific report with the reason that it shifted the plots as shown by the parties into other lands. Counsel relied on the authority of **Nene Narh Malti vrs Teye (2017-2018) 1 SCLRG 746 at 761** which emphasized the importance of survey reports and its composite plans. Counsel however admits, relying on the authority of **Nana Kwasi Broni vrs Kwame Kwakye (2017-2018) SCGLR 284** that the trial judge had the discretion to reject the survey report but he emphasized that there should be good reasons for the rejection. In this case the reasons for the rejection was untenable. On the other reason given by the trial judge for rejecting the report counsel found

not tenable because nobody had asked the surveyor why the shift for him to have failed to explain as the trial judge concluded.

Counsel for the 1st defendant on the other hand sides with the decision of the trial judge to reject the surveyor's work. If the work as submitted, CE2, has the potential of creating further litigation with others not parties in this suit why should the trial judge make use of such report, counsel argued.

What we are being called upon to decide is where a superimposition by a court appointed surveyor determines that the parties, let's use one party, that one of the parties is disputing over land which boundaries he knows on the ground but this land as captured from his site plan by the surveyor puts his land somewhere else, is it the duty of the court to so declare or for the court to find a way of determining the matter by avoiding the superimposition results with the reason that he finds it unhelpful in the determination of the case before him? We do not hesitate in expressing our view that if the surveyor has not failed the credibility test in his evidence before the court and has sailed through cross examination creditably with his report, the court has a duty to accept his evidence and the report for assessment. What he has come out with is presumably scientifically based and expected to be the accurate location and dimension of the disputed plots. Refer to the case of **ASSAFUAH VRS ARHIN DAVIES (2013-2014) 2 SCGLR 1459.** It is necessary to bear in mind that since the surveyor's

work and the resultant superimposition may favour the case of one of the contending parties its rejection should be on well-reasoned fair and acceptable grounds. If a party's land, for example, is declared in a superimposition to be where somebody else has already developed his story building it is for that party to consult and advise himself. It is not for a court to find a solution for such a situation by rejecting the survey report. In the circumstances of this case it is our view it was not proper for the trial judge to reject the survey evidence because it put the 1st defendant's into an area not in dispute and encumbered by other persons not part of the suit.

We have considered the other reason given by the trial judge for rejecting the evidence of the surveyor and we think he missed the evidence of the witness. Nowhere in the records was the surveyor asked to explain why the shift in the plots of the parties for him to have failed to explain. This view of the trial judge is erroneous. We find therefore that the reasons for rejecting the surveyor's evidence and his report was not tenable and in our view erroneous. The composite plan evidencing the position of the plots of the parties is indicative of the location and other particulars of the plots in the site plan of the parties as scientifically established by the surveyor. The superimposition did not increase the land sizes really as indicated by the trial judge. All it did was to show the new positions as scientifically captured from the site plan of the parties.

We would uphold all the grounds of appeal 2, 3 and 5

On a total reading of the record of appeal we find there is sufficient reason for a finding that the 1st defendant was granted the land as per the documentation he exhibited, the allocation letter and exhibit 1. In the first place by the pleadings the plaintiff admitted that the Nyankpala Na invited the 1st defendant for the Nyankpala Na to show him where exactly the land allocated to him by the skin was but the 1st defendant did not honour the invitation. This pleading was corroborated by the 2nd plaintiff witness Abdulai Alhassan. It is reasonable therefore to conclude that 1st defendant was given land by the Vittin.

The question then will be, where was the land granted the 1st defendant? On the balance of probabilities we are convinced by the evidence of the 1st defendant supported by his witnesses Yakubu Abdulai, Chief of Nyamkpala and Yakubu Issahaku that the 1st defendant was granted the land he claims in this suit and which formed part of the super imposition exercise. From the records there is convincing evidence he took possession of the plot and got containers on the fringes of part of the plot. That there were such containers was confirmed by the surveyor's visit to the land with the parties. We are convinced it is this land that was granted the 1st defendant. We do not see it as a coincidence that the 1st defendant took possession of the same land and permitted it to be cultivated and allowed containers to be put on it. Again it is this same land that this site plan

exhibit 1 confirm on the ground is within the area claimed by the plaintiff. Counsel for the plaintiff contends in the contrary maintaining that there is no evidence the 1st defendant was granted any land or granted land in that area. He argues that the exhibit 1, the site plan of the 1st defendant attached to the allocation letter on the basis of which the plaintiff is claiming this particular plot, should be given no weight because there was conflict as to where this exhibit 1 came from. Secondly he argues that it could be an exhibit the 1st defendant created for the purpose of the litigation since in an earlier application for injunction by the 1st defendant which was refused, he did not exhibit this site plan. The records support counsel's argument that there is doubtful evidence where this exhibit 1 came from. 1st defendant himself told the court in cross examination that exhibit 1 was prepared by the Zabo Naa who allocated the land to him but this evidence was contradicted by his own witness who testified that it was the 1st defendant himself who brought the site plan to the palace to be confirmed by the chief. We appreciate the submission based on this conflict but when the evidence is considered in total the importance of this conflict is subdued. Wherever the site plan came from we find not of such materiality as to negate its value. Either the 1st defendant or his witness was genuinely mistaken as to where the site plan came from. But the important question to us is was there a site plan that accompanied the allocation of the plot to the 1st defendant? We think there was. If the grantor was satisfied with the site plan and on that basis he allocated the

1st defendant the plot, there should be convincing evidence to question there was such site plan accompanying the allocation. Furthermore, the allocation letter that accompanied the site plan issued in 1997 made reference to a site plan. We have no reason to doubt that exhibit 1 was that site plan.

From the surveyor's work the land the 1st defendant claimed on the ground and that found to be his plot after the superimposition of exhibit 1 were not so far apart to suggest that the land in exhibit 1 was distant somewhere.

As regards the submission that the 1st defendant did not exhibit this site plan when he went seeking for the injunction and therefore he created it for the purpose of this case we think differently. The omission to exhibit it in the application should not necessarily mean the site plan was not existing at the time of the application for injunction and that it was created subsequently. There may be several reasons for failure to exhibit the site plan. The factual circumstances of this case negates any such conclusion that exhibit 1 was created by the 1st defendant as submitted by counsel for the plaintiff.

Still on this issue of the site plan, exhibit 1, we wish to note that the evidence which was accepted by the trial judge, and we think there was sufficient evidence for such acceptance, was that the grant to the 1st defendant was in the nature of a customary grant. Another person Alhaji

Grundo was granted his plot contiguous to that of the 1st defendant at the same time. The land was identified for him, he took possession, erected corner pillars, put sand and stone and thereafter got some people to farm the land as far back as 1997. Such customary grant and possession thereafter was a valid grant irrespective of whether or not there was documentation or site plan accompanying the grant. The important thing in such customary grant was whether a clearly identified area was granted the 1st defendant.

The 1st defendant accepts that at the time he got this plot the area had no lay out. It had not been demarcated. His witness testified that after the demarcation they gave the 1st defendant some plot numbers. It is counsel for the plaintiff's submission that there is the possibility that after the area was laid out the 1st defendant was placed somewhere else and that is why he was keeping away from the court the new plot numbers given him after the new demarcation. Is this evidence of plot numbers by this witness reliable? We will reproduce the cross examination of the witness to show this witness's evidence is not reliable. At page 177 there was this cross examination:

> ***"Q. At the time that you purportedly allocated the plot to the 1st defendant was he given a site plan?***
>
> ***A. At the time the plot was given to the 1st defendant there was no site plan. It was later that we did the demarcation that <u>we gave</u>***

***him a site plan** of the place that was allocated to him(emphasis ours)*

Q. So who did the demarcation? I hope they are the Town and Country Planning Official?

A. Yes

Q. And you want this court to believe that before the Town and Country Planning laid down the area you had given the 1st defendant a place consistent with the lay out"

Witness did not answer directly but this is what he said:

"A. Initially when the plot was allocated to the 1st defendant we gave him an allocation letter then after the layout was done we gave him another. After the allocation letter was given to the 1st defendant he went for a site plan for his plot and brought it to my uncle for signing to confirm it?" (Emphasis ours)

We understood the witness to be saying that when they gave the 1st defendant the plot there was no site plan but after the demarcation by the Town and Country officials that they gave him a site plan of the place. They gave him an allocation letter and after the layout they gave him another allocation letter and the 1st defendant brought his own site plan for this new allocation letter. So we have the witness saying that they gave

allocation letter twice. He again said they gave him a site plan. This same witness said 1st defendant brought his own site plan.

Then in subsequent answers at page 185 to 186 he said

"Q. You were specific that in 1997 when you allocated the plot to the 1st defendant the place has not been demarcated

A. Yes that is true

Q. Because it has no lay out it did not have an official number for it

A. Yes. We took his particulars and told him that if we officially demarcate the place we will give him the numbers. When the 1st defendant came we gave him the numbers

Q. So when you gave him the numbers did you give him fresh allocation letters to reflect the numbers?

A. I cannot tell. It was between the 1st defendant and the secretary?"

Here the witness is saying that they took the particulars of the 1st defendant and told him that if they officially demarcate the place they will give him the numbers and they did give him the numbers. Whether 1st defendant was given another allocation letter witness said he did not know and that was between the 1st defendant and the secretary. But earlier this witness told the court they gave the 1st defendant another allocation letter.

In his witness statement he stated at page 115

"12. The 1st defendant was given the land in 1997 when there was no lay out in the area when later the rezoning of the area was done the Planning Department did not incorporate 1st defendant and the other grantees site plans into the layout which was later drawn by the Planning Department

13. The site plans of all who were granted land were submitted by me and my secretary to the then Planner, one Mr Antwi, but it appears that when the Planning Authorities completed the layout the site plan of the 1st defendant and several other persons were not incorporated. This fact was not made known to us until later on when problems of double allocation begun to surface"

In his cross examination at page 186 this is what he said

"Q. According to you you discovered that the 1st defendant's land allocated to him was not captured by the Town and Country Planning

A. It was captured

Q. In your own words you said that the site plan and several others were not incorporated in paragraph 13

A. When they came they captured the whole area"

Clearly evidence of this witness in this area of allocation letter and who provided the site plan cannot be relied on by the court and not reliable for use by counsel for the plaintiff as he seeks to do to question why the 1st defendant was given fresh documentation and plot numbers but failed to present them to the court. The evidence of this witness is not that reliable having proved inconsistent and confused in his evidence in this area for a finding that the 1st defendant was given fresh allocation letters and plot numbers which he hid from the court.

Having said that we are still of the view that the allocation letter and its annexure exhibit 1 is sufficient to back the claim of the 1st defendant to the plot the subject matter of the superimposition. Exhibit 1 provides sufficient particulars of the land including the boundaries of the land claimed by the plaintiff.

Counsel has a submission disagreeing why the trial judge limited the issues for his determination to which of the parties had his grant first. He contended that the issue was the boundary between the parties as the trial judge himself found. It was therefore wrong for him to have set the issue of who had his grant first because the parties were not disputing over the same land. Counsel contends further that there was the other issue of whether the land granted to the 1st defendant is the plot referred to as No 14 Block A. On review of the record we find it difficult to appreciate the submission of counsel questioning why the trial judge had to find out who

had his grant first. Who had his grant first was a germane issue, probably not a primary issue that needed to be settled by the trial judge. If not how do we determine whether the 1st defendant had any business challenging the plaintiff over this plot at all? We agree with him however that the germane issue is the boundary between the parties. In any case this concern of counsel to us is peripheral and amount to nothing in this appeal.

Now having upheld the submission of counsel for the plaintiff that the trial judge erred in rejecting the surveyor's superimposition what do we make of the case of the parties viz a viz the superimposition which was ordered by the court in determining the boundaries of the parties?

From the superimposition report of the surveyor (CWE2) which we have no reason to reject as unreliable, the conclusion we come to regarding the boundaries and therefore the plots of the parties is that the plaintiff's plot is hatched green less any land area hatched yellow.

Flowing from the superimposition and evidence led thereon and our opinion on the grounds of appeal considered in this judgment, the relief plaintiff can have from this court is a declaration that it is the owner of plot size marked green in the superimposition, exhibit CWE2, less any area hatched yellow in the said exhibit. The surveyor, CW1, to locate the plots as described in colours to the parties.

In respect to the plaintiff's grievance at the cost of GH¢20,000.00 awarded against him, we have noted the submissions of both counsel. We have considered the circumstances of this case, including the fact that the dispute was not really a creation of any of the parties but partly the grantors and the surveyors who were involved in identifying the plots for the parties and noting also the outcome of this appeal we are of the view the cost of GH¢20,000.00 awarded by the trial cost should be set aside and no cost awarded against any of the parties.

From the foregoing and in terms of this opinion the appeal is granted in part.

(SGD.)

V. D. OFOE

[JUSTICE OF APPEAL

J. BARTELS-KODWO (MRS.), (JA), I agree *(SGD.)*

J. BARTELS-KODWO (MRS.)

[JUSTICE OF APPEAL]

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

S. R. BERNASKO ESSAH (MRS.)

[JUSTICE OF APPEAL]

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