IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA, AD 2021

CORAM: SENYO DZAMEFE JA (PRESIDING)

BRIGHT MENSAH JA

NOVISI ARYENE JA

SUIT NO H1/21/2020

DATE: 31ST MARCH, 2022

ALI ANUM YEMOH **PLAINTIFF/APPELLANT**

VRS

ADJARA YEMOLEY YEMOH & 4 ORS **DEFENDANTS/RESPONDENTS**

JUDGMENT

NOVISI ARYENE JA:

This is an appeal against the judgment of the Circuit Court Accra, dated 29th November 2018, in which the claim of plaintiff/appellant herein was dismissed and judgment entered for defendants/respondents on their counterclaim. In this judgment, the parties shall be referred to by the designations they bore in the court below.

The facts as disclosed by plaintiff in his statement of claim filed on 17th October 2007, are that he is the beneficial owner of H/No C239/26 Abotsi Street, East Legon, and that 1st and 2nd defendants (his niece and sister respectively), were living with him in the said house,

at his sufferance. According to plaintiff, he acquired the land on which the house is situate from the Lands Commission, by a lease executed between himself and the Government of Ghana, on 9th July 2003. He asserted that the said property was not included in their late father's Will because it did not belong to him. And that in the late 1970s, he (plaintiff) gave permission to 2nd defendant's late husband, who was in dire need of accommodation, to put up two rooms on part of his land for their temporary residence until they relocated. However, the attitude of 2nd defendant created a strain on the relationship which was not conducive to their continued stay on the property.

Plaintiff posits that he decided to relocate 2nd defendant and her family to Haatso, so he built a two bed room house there for her. Even though 2nd defendant took possession of the house, she refused to leave plaintiff's property. Plaintiff further pleaded that 1st defendant has resorted to insults and quarrels thereby creating tension in the house, compelling him to revoke her license. Without his permission, 2nd defendant started digging foundation trenches with the view to building a house on his land. This development provoked him to cause his Solicitors to write to 2nd defendant revoking her license to continue to live in his house and she was asked to relocate to Haatso. But 2nd defendant has refused to move out of his house and has evinced an intention of challenging his ownership of the property hence the instant action against defendants seeking the reliefs endorsed on the writ of summons.

Defendants denied the claim and averred that the disputed house was not plaintiff's personal property but was part of the estate of their late father, Anum Yemoh. And that the land title documents plaintiff was relying on, were obtained by defrauding the beneficiaries of the estate of the late Anum Yemoh. In further denial of the claim, defendants averred that the two rooms referred to by plaintiff in paragraph 6 of his statement of claim, were constructed with permission of the late Mr. Anum Yemoh the

owner of the property and not plaintiff. And that their late father gave all his children permission to build on the compound.

2nd defendant admitted that she was putting up a structure on the land and averred that she was doing so as of right and that she did not need plaintiff's permission to build on the land. She also denied plaintiff's averment that he built a house for her at Haatso.

Challenging plaintiff's claim still further, defendants averred that the disputed land belonged to their great grandfather who founded and settled at Abotsiman and that their father continued the settlement, farmed and reared cattle on the land. During the political detention of their father, their mother put up a mud house on the land. In the 1970s, plaintiff who hitherto resided at Takoradi, sought permission from their father to build on the land. And that the entire family contributed towards the building of the house, with their father supplying roofing sheets and other building materials.

2nd Defendant averred that with the permission of their father, her other siblings also built on the land. And that her husband who was a distant member of the family, was also granted permission to build on the land in the 1970s and that she has used the structure as a chop bar since 1981.

According to 2nd defendant, their parents and her husband lived on the disputed land throughout their lifetime and on their death, they were laid in state in the said house. Defendants contended that for a very long time, the disputed house was a meeting place for the Anum Yemoh family and was the place where the family performed religious rituals. Plaintiff had at all times been present and had witnessed the aforementioned activities which clearly indicated that the disputed house was the property of the Anum Yemoh family. It was the case of the defendants that their father did not include the disputed property in his Will because he had already distributed the land among his

children. And that plaintiff had hitherto never laid any adverse claim to the disputed property.

Defendants alleged that plaintiff has unilaterally leased a part of the disputed land to a third party and has refused to account for the proceeds of the lease to the Anum Yemoh family. In their amended statement of defence (not included in the ROA but referred to in the judgment at pages 421 to 422 of the ROA), defendants averred "the subject matter in dispute forms part of land compulsorily acquired in 1944 and that according to a publication by the Lands Commission, the people of the villages of Abotsiman, Shiashie, Okponglo and Bawalashie whose lands were affected by the acquisition, petitioned the Government through the La Mantse to permit them to remain on the land. The request was granted following recommendations of a committee set up to consider the petition……."

Defendants contended further that having permitted the indigenes to remain on the land for decades, the purported grant to plaintiff, was a mistake and unjust. They counterclaimed for a declaration that the disputed property was part of the estate of their father and for an order for plaintiff to account for proceeds of the lease of part of H/No C239/26.

On application, 1st 2nd and 3rd Co-defendants (the younger brothers of plaintiff and 2nd defendant) were joined to the suit. The ROA however does not disclose an amended writ of summons and statement of claim including the co-defendants. Neither do the records include co-defendants' entry of appearance. The records however disclose that the co-defendants filed their statement of defence to which plaintiff filed a Reply. Court Notes at pages 184 and 191 of the ROA, also show that the trial court at a point in time granted leave for the co-defendants to amend their statement of defence, but the amended statement of defence is not part of the record. We further observe from page 421 of the ROA that the trial judge referred to an amended statement of defence of 1st and 2nd

defendants in her judgment, but the said amended statement of defence is not included in the ROA. It is also significant to note that all processes filed by the parties, the title of the suit in the record of proceedings, the judgment of the court, written addresses filed by counsel at the court below and written submissions filed in this court, all bear the names of the co-defendants.

This court drew the attention of the Registrar of the Court of Appeal to the omissions, but enquiries at the court below yielded no positive result. See letter reference No. CA/S73/03/22 dated 4/3/22 signed by the Deputy Registrar, Court of Appeal on the matter.

We have given careful thought to the question as to whether in the absence of an amended writ of summons and statement of claim and entry of appearance, the co-defendants are proper parties to the suit. We rule that by filing their statement of defence (in the absence of an amended writ of summons including them as parties) and by plaintiff filing a Reply thereto, (in the absence of entry of appearance by the co-defendants), both parties are deemed to have waived the irregularity. More importantly, the co-defendants participated effectively in the trial without any objection as borne out by the ROA.

Further, a necessary inference from references made to the missing amended pleadings in the judgment and written addresses filed by the counsel in the court below, is that the pleadings formed part of the record before the trial court, but could not be made part of the ROA.

In their statement of defence, the co-defendants, re-echoed the assertions of the defendants that their great grandfather owned a large track of land including the land in dispute and that their father who succeeded the estate, farmed and reared cattle on the

land. They also averred that the disputed property was part of the estate of their deceased father, Anum Yemoh.

At the end of the trial, plaintiff's claim was dismissed on grounds that having allowed the indigenes to remain on the land, Government had no land to convey to plaintiff. The trial court found that the late Anum Yemoh, father of the parties, had possessory title over the disputed land. And that this title was backed by the 1976 decision of government to allow indigenes of Abotsiman to remain on the land. The court held that title of the late Yemoh to the land was valid, and the disputed property formed part of his estate. Judgment was entered in favour of defendants for relief (1) of their counterclaim. Relief (2) of the counterclaim was dismissed.

THE APPEAL

Dissatisfied, plaintiff's prayer before us is for the judgment to be set aside and for all the reliefs endorsed on the writ of summons to be granted. The judgment is assailed under the following grounds of appeal filed on 27th December 2018:

a) *The trial judge erred in law in misapplying section 1 (2) of the Conveyancing Act, 1973 (NRCD 175) and held that the plaintiff/appellant has no valid title to the land in dispute because the government did not authorize the grant by the Lands Commission to plaintiff/appellant and that the government had allowed or permitted indigenes of La to remain on the acquired land, hence the government had no land to grant to plaintiff/appellant.*
b) *The trial judge erred in law in departing from the rules of pleadings and making a case suo motu, for the defendants/respondents and the co-defendant/respondents in holding that the government did not authorize the Lands Commission to grant the land in dispute on which H/No C239/26, Abotsi Street, East Legon, is situate to plaintiff/appellant.*

c) *The trial judge erred in law and in fact in holding that H/No C239/26, Abotsi Street, East Legon, Accra forms part of the estate of the late Anum Yemor because the late Anum Yemoh owned the land on which the house in dispute was built and also contributed to the building of same.*

d) *The trial judge erred in failing to hold that the defendants/respondents have no capacity to counterclaim against plaintiff/appellant.*

e) *The trial judge erred in law and in fact in failing to hold that the defendants/respondents are not licensees of plaintiff/appellant who have asserted the title of the plaintiff/appellant and has forfeited their licence and ought to be ejected by plaintiff/appellant.*

Having read plaintiff's submission on grounds (a) and (b) of the appeal, we shall address these grounds together as they relate to the status of the disputed land.

It was argued on behalf of the plaintiff that the trial judge misapplied Section 1 (2) of the Conveyancing Act, 1973 (Act 175) when she held that Government had no land to grant to plaintiff since Government had permitted the indigenes to remain on the land. And that in the circumstances, without authorization by Government, the Lands Commission lacked the capacity to make a grant of the land to plaintiff

The portion of the judgment under attack is at page 450 of the ROA where the trial judge delivered herself thus,

> *"To the extent that plaintiff himself applied for title to the land from Lands Commission based on his search that it had been compulsorily acquired by government in 1944, when in actual fact government had allowed the indigenes to remain on the land as far back as 1976, government had no land to convey to plaintiff when he applied for title in 1992. The land belonged to his father who settled on the land earlier and not plaintiff. The nemo dat quod non habet rule applies here and therefore plaintiff's title is not valid in law."*

Arguing ground (a) of the appeal, counsel for plaintiff referred us to Article 258 (1) (a) and Article 265 of the 1992 Constitution and Section 5(a) of the Lands Commission Act 2008 (Act 767), and argued that the Lands Commission is statutorily and constitutionally empowered to grant any Government land and did not need any further authorization or approval by Government.

It was further submitted that the effect of the acquisition by Government of the disputed land in 1944 and the publication of same in the gazette, extinguished all interests of the original owners in the land on which the disputed house was built. All interests became vested in the President of the Republic of Ghana. Accordingly whatever interest the parties' great grandfather and later their father had in the said land, was extinguished.

Citing the case of **Memuna Moudy v Antwi [2003-2004] SCGLR 967 at 985-986**, counsel argued that assuming without admitting that Government of Ghana permitted indigenes to remain on the land as licensees, that license could not extinguish the title of the State, and that license could be revoked at any time by the Government either impliedly or expressly. Counsel also referred us to the case of **Okudzeto Ablakwa (N0 2) & Anor v Attorney General [2012] 2 SCGLR 845,** and submitted that since the disputed land was Government land, same could be legally alienated by Government through the Lands Commission.

It was submitted further that plaintiff's document of title, a fifty year lease in evidence as exhibit A, and his Land Title Certificate, in evidence as exhibit B, makes him the lawful owner of the disputed land. And that their late father, Anum Yemoh through whom defendants claim title, had no document of title. And that the purported license granted the indigenes, would be deemed to have been revoked upon the grant of the lease to plaintiff.

It is not in dispute that the disputed land was acquired by Government in 1944, under a certificate of title L.S No 481/44 under the Public Lands Ordinance (Cap 134), for the extension of the Airport. The acquired land was rezoned in the early 1970s for residential purposes. The instrument by which the East Legon lands were acquired by Government is in evidence as exhibit C. The document is certified by the Public Records and Archives Administration Department (PRAAD). See pages 473 to 475 of the ROA. It is also in evidence that on the acquisition of the land, Government paid compensation to the inhabitants of the land including the La Mantse in 1949.

Subsequently, following a petition by the La Mantse and President of the La Traditional Council, the Government of the day appointed the Alomatu Commission to consider the plea of the indigenes. Government in implementing the recommendations of the Alomatu Commission in 1977, permitted the indigenes made up of the communities of Shiashie, Bawlashie, Okponglo and Abotsiman, to remain on their lands. See page 265 of the ROA.

We disagree with the trial court's application of the nemo dat quod non habet rule, at page 450 of the ROA. In our view, title of Government in the acquired lands, never reverted to the indigenes who had been paid compensation.

The position of the law is that whenever such an acquisition was made by Government, the interest of the land owners became extinguished. Discussing the effect of compulsory acquisition of land on the interest of the original land owners in their book **Ghana land law and Conveyancing 2nd edition,** the learned authors**, BJ da Rocha and CHK Lodoh**, stated at page 21 that, the effect of the acquisition by the state pursuant to the State Lands Act, 1962, was to vest the allodial title and all other subordinate titles and interests, including the customary freehold, in the State free from all encumbrances whatsoever. It is for this reasons that we hold that the nemo dat rule was wrongly applied.

It has been argued that a presumption of regularity operates in favour of plaintiff who had a grant from the Land Commission. In ascertaining whether the grant made to plaintiff was regular, we refer to the case of **Okudzeto Ablakwa (N0 2) & Anor v Attorney General (surpa),** where the issue of presumption of regularity of allocations by the Lands Commission, was discussed under similar circumstances, for guidance.

It was held per holding 5 that the applicable rule was the common law principle of Omnia praesumuntur rite esse acta which has gained statutory recognition under section 37(1) of the Evidence Act, 1975 (Act 323) as follows, "It is presumed that an official duty has been regularly performed." This presumption is rebuttable under Section 20 of the Act, thereby imposing upon the party against whom it is invoked, (in this case the defendants) the burden of producing evidence and the burden of persuasion as to the non-existence of the presumed fact.

We have carefully reviewed the ROA and submissions by counsel and also read the relevant portion of the judgment. Applying the reasoning of the court in Okudzeto Ablakwa case (supra) we rule that there is sufficient evidence on record in rebuttal of a presumption of regularity in the grant made to plaintiff.

It is in evidence that prior to the compulsory acquisition of the disputed land by Government in 1944, the father of the parties had possessory title to a large tract of land including the disputed land. After the acquisition, the land owners including the father of the parties (and by extension, the parties herein), became licensees of Government.

As we have earlier discussed in this judgment, the Lands Commission has the mandate to grant Government lands. However, the indigenes having become licensees by reason of the Government directive of 1977, a grant of a lease by the Lands Commission is contrary to the title the Government directive intended the indigenes to have in the land. Indeed, the interest plaintiff acquired by the grant as evidenced by exhibits A and B, made

him an indefeasible title holder under Section 43 of the Land Title Registration Act; a interest contrary to the Government directive.

Where as in the instant case the land was acquired for a public purpose, namely for the extension of the Airport, Article 20 (5) of the 1992 Constitution provides that it shall be used only in the public interest, or for the purpose for which it was acquired. Article 20(6) provides that,

> *"Where the property is not used in the public interest or for the purpose for which it was acquired, the owner of the property immediately before the acquisition, shall be given the first option for acquiring the property and shall on such re-acquisition refund the whole or part of the compensation paid to him as provided for by law or such other amount as is commensurate with the value of the property at the time of the re-acquisition."*

In view of the clear provisions of the Constitution, we rule that if Government intended the indigenes to have title to the land, they would have done so by returning the land to them after compliance with the provisions of the Constitution as hereinbefore referred to. Accordingly, we hold that the presumption of regularity does not apply, and the grant of the disputed land to plaintiff was irregular. The grant is hereby set aside.

Ground (a) of the appeal fails.

GROUND (b) It was submitted that the defendants never pleaded that Government did not authorize the Lands Commission to grant the disputed land to plaintiff. And that the trial judge set up a different case for the defendants when at page 448 of the ROA she ruled that,

"If the land the subject matter at the time belonged to Government as plaintiff wants the court to believe, the Government should have authorized the Lands Commission expressly or by a statute to convey the land to plaintiff."

In support of this submission, counsel referred us to the following cases: **Dam v Addo & Brothers [1962] 2 GLR 200, Bisi v Tabiri [1987-88] 1 GLR 360, and Serwaa v Kwame [1993-94] 1 GLR 429.**

The principle distilled in **Dam v Addo** and the related cases cited above is that, a court must not substitute a case *proprio motu*, nor accept a case contrary to, or inconsistent with that which the party himself puts forward, whether he be the plaintiff or the defendant. It has been the case of defendants all along in the instant case that, having granted the indigenes permission to remain on the land, the Lands Commission cannot make a grant of that land.

Accordingly, the principle in Dam v Addo does not support the concerns raised by counsel under this ground of the appeal. In our considered opinion, being a question of law arising from the evidence, the trial court was justified in commenting on the legal status of the land which was returned to the indigenes. It is our view that the submission that the ruling amounts to making a new case for the defendant is a misconception.

The appeal fails on this ground also.

GROUND (c) "THE TRIAL JUDGE ERRED IN LAW AND FACT IN HOLDING THAT HOUSE No C239/26, ABOTSI STREET, EAST LEGON, ACCRA, FORMS PART OF THE ESTATE OF THE LATE ANUM YEMOH BECAUSE THE LATE ANUM YEMOH OWNED THE LAND ON WHICH THE HOUSE IN DISPUTE WAS BUILT AND ALSO CONTRIBUTED TO THE BUILDING OF SAME."

This ground of the appeal is an invitation to this court to set aside the finding by the trial court that the disputed property formed part of the estate of the late Anum Yemoh: A finding which led to the trial court granting defendants, relief (i) of their counterclaim.

Defendants counterclaimed as follows:

i. *A declaration that H/No C239/26 is part of the estate of the late Anum Yemoh*
ii. *An order at the plaintiff to account to the Anum Yemoh family for the proceeds realized from leasing part of H/No236/26 out.*

In determining this ground of the appeal, we are guided by the settled principles under which an appellate court would set aside or interfere with the findings of a trial court. In **Amoah vrs Lokko & Alfred Quartey [2011] 1 SCGLR 505,** the Supreme Court in holding (2) elaborated on the principles under which the court may interfere with the findings of the trial court as follows: (a) Where the court had taken into account matters which were irrelevant in law; (b) the court excluded matters which were critically necessary for consideration; (c) the court had come to a conclusion which no court properly instructing itself would have reached; and (d) the court's findings were not proper inferences drawn from the facts.

See also the earlier cases of **Kyiafa v Woro [1967] 2 GLR 490, Fofie v Zonyo [1992] 2 GLR and Robins v National Trust Co ltd [1972] AC 515,** where it was held that an appellate court will set aside findings of the trial court where the findings are clearly unsupported by the evidence on record or where the reasons advanced by the court in support of same are unsatisfactory; for improper application of the principles of evidence; where the findings are based on wrong proposition of law.

To be entitled to judgment on the counterclaim, the defendant carried the evidential burden. See **Jass co ltd & Anor v Appau & Anor [2009] SCGLR 265 at 270 where Dotse** JSC stated

"We wish to observe that the burden of proof is always put on the plaintiff to satisfy the court on balance of probabilities in cases like this. Thus where in situation the defendant has not counterclaimed; and the plaintiff has not been able to make out a sufficient case against the defendant, then the plaintiff's claim would be dismissed"

His lordship stated at page 271 that the same standard or burden of proof applies in evaluating and assessing the case of the defendant who counterclaims.

It would be noted that defendants who averred that the disputed property formed part of their father's estate, backtracked in cross examination and admitted that the disputed property was not built by their father and did not form part of his estate. We uphold the submission that in the circumstances, the testimony of plaintiff on the issue ought to have been preferred. Our conclusion is supported by the case of **Manu v Nsiah [2005-2006] SCGLR 25,** where it was held per holding (1) thus,

"It is a well-established rule that where the evidence of a party on a point in a suit is corroborated by witnesses of his opponent, whilst that of his opponent on the same issue stands uncorroborated even by his own witnesses, a court ought not to accept the uncorroborated version in preference to the corroborated one, unless for some good and apparent reason the court finds the corroborated version, incredible, impossible or unacceptable."

It is in evidence that the parties built their houses on land over which their father had possessory rights prior to Government acquisition. It is in evidence that at the time the parties put up the structures, the Government directive of 1977, had not been issued. As earlier discussed in this judgment, with the acquisition of the disputed land by Government in 1944, their father's title to the land became extinguished and interest thereto was vested in the State. It is for this reason that we set aside the trial court's ruling that the disputed H/No C239/26 forms part of the estate of the deceased Anum Yemoh.

The appeal succeeds on this ground.

GROUND (d) "THE TRIAL JUDGE ERRED IN FAILING TO HOLD THAT THE DEFENDANT/RESPONDENT HAS NO CAPACITY TO COUNTERCLAIM AGAINST THE PLAINTIFF/APPELLANT.

The pith of arguments under this ground of the appeal was that in the absence of probate, letters of administration or vesting assent, defendants had no capacity to mount a counterclaim on the purported estate of the late Anum Yemoh. Counsel cited the case of **Fosua & Adu-Poku v Dufie (deceased) & Anor [2009] SCGLR 310**, in support of this claim, and submitted that the trial court erred in granting defendants' counterclaim.

Responding, it was argued on behalf of defendants that plaintiff, the eldest son of their late father and the sole executor and administrator of his estate, mounted the action in his personal capacity, to claim the disputed property, accordingly, as beneficiaries of the estate, defendants are as of necessity, clothed with capacity to counterclaim for the reliefs sought.

It would be noted that the issue of capacity was not raised by plaintiff at the trial court. It is however well settled that the issue of capacity can be raised at any stage of the proceedings, even on appeal. The court can also raise the issue of capacity suo muto.

From the evidence on record, the interest of the parties in the disputed property, H/No C239/26, which plaintiff is laying claim to, can be traced to their father's possessory interest in the land prior to the compulsory acquisition by Government, and subsequently to the Government directive which allowed them to remain on the land. It is also in evidence that the disputed property, consists of three buildings constructed by plaintiff, 2nd defendant's husband and 3rd defendant and that 2nd defendant used her portion of the disputed building as a chop bar in the 1980s. It is also not in dispute that defendants were

in occupation before plaintiff obtained the Land Title Certificate in 1992 and the Lease in 2003.

As part owners of H/NoC329/26, we rule that defendants have an interest to protect which gives them capacity to mount a counterclaim against plaintiff who is laying claim to the entire property described as H/NoC329. As to whether the counterclaim would succeed or not, is another matter. The trial court cannot therefore be faulted for not ruling that the defendants had no capacity to counterclaim.

The appeal fails on this ground.

GROUND (e) THE TRIAL JUDGE ERRED IN LAW AND IN FACT IN FAILING TO HOLD THAT THE DEFENDANTS/RESPONDENTS ARE NOT LICENSEES OF PLAINTIFF/APPELLANT WHO HAVE ASSERTED THE TITLE OF THE PLAINTIFF/APPELLANT AND HAS FORFEITED THEIR LICENCE AND OUGHT TO BE EJECTED BY PLAINTIFF/APPELLANT.

A license according to Section 139 of the **Land Title Registration Act, 1986, (Act 152)**, is "a permission given by a proprietor of land or of an interest in land which allows the licensee to do certain acts in relation to the land which would otherwise be a trespass." In the third edition of his book **Land Law, Practice and Conveyancing in Ghana,** the learned author, Dennis Dominic Adjei, stated at page 369 that,

> *"A licence is a permission given by a person with interest in land to another person to use the land or part of it which without such permission would have amounted to trespass."*

With this definition of a license as a guide, we proceed to address this ground of the appeal. It is significant to note that defendants denied plaintiff's averments in paragraphs 10 to 15, that they were licensees of plaintiff or that they were living in his house. The law is that where defendant denies plaintiff's claim, the onus is on the plaintiff to prove the

claim on a balance of probabilities. See **Fosua & Adu-Poku Mensah-Ansah [2009] SCGLR 310 and Zabrama v Segbedzi [1991] 2 GLR 221.**

See also **Ackah v Pergah Transport Ltd & Others [2010] 728** where Adinyira JSC stated at page 736 as follows,

> *"it is the basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence."*

Plaintiff who carried the evidential burden of demonstrating that H/No C239/26 was solely his lawfully acquired property, failed to discharge the burden. He failed to produce evidence in support of the averment that 1st and 2nd defendants were living under his roof. With overwhelming evidence on record that the disputed property was not solely owned by plaintiff, there was no evidence on which a ruling that 1st and 2nd defendants were licensees of plaintiff could be grounded. Accordingly the learned trial judge cannot be faulted for not ruling in his favour. We further hold that with title in the land vested in government, the parties are all licensees of government and none holds a better title than the other. Plaintiff is therefore not entitled to his prayer for ejection of defendants from H/No C239/26.

This ground of the appeal also fails.

GROUND (f) The onus is on plaintiff who is alleging that the judgment is against the weight of evidence, to demonstrate by way of evidence on record, which pieces of evidence which if properly applied by the trial court, would have tilted the case in his favour. See **Republic vrs Eastern Regional House of Chiefs: Ex parte Divine Tetteh**

Ologo & 5 Others (KK Nyumutei & 5 Others- Interested Parties) [2017] 114 GMJ 63 where this court differently constituted, ruled,

> "*It is equally incumbent on the Appellant on whom rests the onus to demonstrate from the judgment that there were pieces of evidence which were overlooked by the trial court or which were wrongly applied and if same were properly applied, the decision would have gone in his favour.*"

In addressing this ground of the appeal, we shall also consider whether or not plaintiff is entitled to his prayer before this court, which is an order setting aside the judgment dated 29th November 2018, and for an order granting him the following reliefs endorsed on the writ of summons:

1. *A declaration that plaintiff is the sole lawful and beneficial owner of H/No C239/26 Abotsi Street, East Legon, Accra.*
2. *1st and 2nd defendants are bare licensees living in plaintiff's house above mentioned, at his sufferance.*
3. *Plaintiff having revoked the licence of 1st and 2nd defendants to continue living in his said house, is entitled to recover possession of the rooms occupied by defendants in plaintiff's said house.*
4. *An order for the immediate ejection of 1st and 2nd defendants from plaintiff's house.*
5. *An order of perpetual injunction restraining the defendants from laying any adverse claim to or doing anything inconsistent with plaintiff's ownership of his house aforementioned*

Regardless of Government having acquired the land in dispute as far back as 1944, it is in evidence that plaintiff completed his house on the Government acquired land, sometime in 1973. It is also in evidence that defendants built their houses in the late seventies on the same compound. In other words, before 1977, when the Government of the day allowed the indigenes to remain on the land, the parties were in occupation.

Plaintiff who is seeking declaration of ownership of house no C239/26, testified that his house was not located on his father's land and that his parents' house was about half a kilometer away from the disputed property.

The testimony of defendants that the land on which the disputed house was situate belonged to their grandfather and their father, was corroborated by DW 1, Moktar Yemoh Nsiah, a retired accountant and a cousin of the parties. He testified that he first visited the Anum Yemoh's ranch when he was thirteen years old and that at the time, fresh eggs, meat, corn and milk were sold on the land in dispute. He denied that the ranch was located where the second wife's house was situate. His testimony remained unshakable in cross examination and is worth believing.

3rd defendant testified that their father was a farmer and established a cattle ranch and a poultry farm on the land. And that the cattle ranch was established where the disputed house is located while the poultry farm was located on the land currently occupied by their stepmother. Plaintiff also admitted in cross examination that his great grandfather had a large track of land and that his father owned a cattle ranch but denied that the house was situated on his father's land.

Plaintiff's testimony at page 110 of the ROA, to the effect that he lived on the land with the understanding that the land was his ancestral land, however supports the assertion of defendants that their father had possessory rights over the disputed land. It is also our respectful opinion that with his father having possessory rights over large tracts of land, and encouraging his children to build on it, and also considering the proximity of the disputed house to the father's lands, we rule that it is more probable than not that plaintiff would build on his father's land, rather than a stranger's land, next door.

Although defendants did not produce documents of title to the land, it is in evidence that their grandfather and their father exercised acts of uninterrupted possession over the

disputed land before it was compulsorily acquired by Government. And that their late father gave permission to the parties to build on the land after same had been compulsorily acquired by Government. It is also in evidence that the houses were built before plaintiff applied for the Land Title Certificate in 1992 and the lease in 2003.

Possession has been described in **Ghana Land Law and Conveyancing 2nd edition by BJ da Rocha and CHK Lodoh** at page 97 thereof, as the physical possession of land or the right to immediate possession. Under the common law, possession by itself, gives a good title to land against the whole world except someone having a better legal right to possession. With interest in the land vested in Government, we rule that the parties are all licensees of government, without any legal rights in the land beyond the possessory rights allowed by Government under the directive of 1977. The conclusions of the trial judge are supported by the evidence Plaintiff failed to demonstrate that the judgment was against the weight of evidence and the appeal fails on this ground also.

In conclusion, after reviewing the ROA, we affirm the findings of the trial court that the disputed land was part of a large tract of land over which the late Anum Yemoh, father of the parties, had possessory interest before same was compulsorily acquired by Government in 1944: We rule that with the compulsory acquisition of the land by Government, whatever interest the father of the parties had in the land was extinguished and became vested in the State, effective 1944: That by the Government directive of 1977, the indigenes became licensees of government: With the interest of their father extinguished by the compulsory acquisition of the land, we set aside the finding that the disputed property formed part of the estate of the late Anum Yemoh:

We rule that although the Lands Commission had the mandate to make a grant of government lands, where as in the instant case, the land was compulsorily acquired and pursuant to Government directive of 1977, the indigenes were allowed to remain on the land, the Lands Commission did not have the mandate to change the legal status of the

plaintiff from a licensee to a leasehold interest, registered under Act 152. We affirm the finding by the trial court that house number C239/26 consists of three houses belonging to plaintiff, 2nd defendant and 3rd defendant and that 1st and 2nd defendants are not licensees of the plaintiff.

Save ground (c) of the appeal, a declaration that the disputed house does not form part of the estate of the late Anum Yemoh, the judgment of the trial court dated 29th November 2018, is affirmed. The appeal succeeds in part. The parties being siblings, there will be no order as to Costs.

SGD

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JUSTICE NOVISI ARYENE

(JUSTICE OF THE COURT OF APPEAL)

SGD

I AGREE **.....**

JUSTICE SENYO DZAMEFE

(JUSTICE OF THE COURT OF APPEAL)

SGD

I ALSO AGREE .....

JUSTICE P. BRIGHT MENSAH

(JUSTICE OF THE COURT OF APPEAL)

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