

IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA

CORAM: HENRY KWOFIE JA (PRESIDING)

AMMA GAISIE JA

ERIC BAAH JA

SUIT NO. H1/182/2021

DATE: 7TH APRIL, 2022

KLENAM CONSTRUCTION LTD. PLAINTIFF/APPELLANT

VS.

1) FALCON CREST INVESTMENT LTD.

2) SAMUEL KOFI DIAME

3) NUMOO ADJEI KWANKO II

(DECEASED) SUBSTITUTED BY

BADU ODAANOR ODIAPENSE I

4) MR. ASHLEY

5) ERIC BOTWE DEFENDANTS/RESPONDENTS

J U D G M E N T

HENRY KWOFIE JA:

This is an appeal against the judgment of the High Court, Accra (Probate Division) dated the 9th of July 2018. In that judgment, the trial judge dismissed the suit by the plaintiff/appellant and also set aside Land Title Certificate No. GA 54109 Vol. 46 Folio 271 dated 11th January 2018.

Dissatisfied with the said judgment, the plaintiff/appellant launched the instant appeal on the 30th of July 2018 on the following grounds.

- i. The decision of the Court to dismiss the suit is against the weight of evidence before the court*
- ii. The court lacked jurisdiction to dismiss the suit*
- iii. The trial judge misdirected himself on the issue of whether or not the plaintiff/appellant was estopped from maintaining the suit against the defendant/respondents*
- iv. Other grounds of appeal to be filed upon receipt of a copy of the ruling*

On the 12th of March 2021 the plaintiff/appellant pursuant to leave granted on 9th March 2021 filed an amended notice of appeal on the following grounds:

- i. The decision to dismiss the suit is against the weight of evidence before the court.*
- ii. The court lacked jurisdiction to dismiss the suit*
- iii. The trial judge misdirected himself on the issue of whether or not the plaintiff/appellant was estopped from maintaining the suit against the defendants/respondents*
- iv. In the light of the decision of the Supreme Court in Civil appeal No. J4/33/2018 entitled Mrs. Agnes Ahadzi and Another vs. Boye Sowah and 2 others delivered on 21st March 2019, the ruling of the trial judge dismissing the action at the court below cannot be supported.*
- v. The trial judge erred in law when he failed and omitted to adhere to the rule on the seven (7) day automatic stay of .execution after the delivery of his ruling on the application to recuse himself from hearing and determining the action and proceeding immediately thereafter to deliver his ruling on the application to dismiss the suit.*

The relief sought from the Court of Appeal is that the said judgment be wholly set aside and the suit remitted to the High Court to be tried on its merits.

The facts of the case culminating in this appeal are that the plaintiff/appellant (hereinafter called the plaintiff) commenced an action at the High Court on the 5th day of February 2018 claiming the following reliefs against the defendants/respondents (hereinafter called the 1st, 2nd, 3rd, 4th and 5th defendants) respectively;

a) Special Damages

- 1. Damages for fence wall valued at - GH¢133,769*
 - 2. Damages to building valued at - GH¢2,377,152.00*
 - 3. Damages to building materials - GH¢51,219.00*
- Total* *- GH¢2,562,219.00*

b) General Damages for unlawful entry to plaintiffs estates

c) Interest on the sum claimed in (a) and (b) (supra) from 12th January 2018 to date of final payment

d) An order for re-entry to the land described in paragraph 2 supra and

e) Costs.

The plaintiff's case is that it obtained a grant of a piece of land at Okpoi Gonno from one Moufid El-Adas and his Company called Sadac Builders Ltd. who had acquired same from the Nungua stool. The appellant was at all times material a limited liability Company registered under the laws of Ghana to carry on business as a real estate developer. It is the case of the plaintiff that after the acquisition of the land, the Company took effective possession of the land and commenced the construction of red estate thereon and constructed 10 units of storey buildings and also stocked several building materials for the construction of the said estate and fenced the entire estate. It is the case

of the plaintiff that the defendants in executing an order of the Court in suit no. LD/0424/2017 intituled Rainsford Addoquaye Addotey and 2 others vs. Falcon Crest Investments Ltd and 2 others on 12 January 2018 wrongfully and illegally entered the plaintiff's land and without prior notice or service of any Court proceedings pulled down structures on plaintiff's land causing damage to the plaintiff's properties.

The defendants denied the plaintiffs claim and contended that the plaintiff had no interest whatsoever in the disputed land and that in their view the land did not form part of Nungua stool land. They also contended that 1st to 3rd defendant's quarter and family had obtained several judgments over the disputed land which is situate at Okpoi Gonno. In the course of the proceedings, the 1st to 3rd defendants filed a Motion on notice to have the suit dismissed on grounds of public policy, principles of estoppel and an abuse of court processes. Before the hearing of the Motion to dismiss the suit, the plaintiff also filed a motion objecting to the hearing of the application to dismiss the suit by the then trial judge Justice Kofi Abada. The High Court dismissed the plaintiff's Motion objecting to the jurisdiction of the judge to hear the Motion to dismiss suit. The High Court judge thereafter then gave his ruling in respect of the defendants' Motion to dismiss suit and, accordingly, dismissed the plaintiff's suit on grounds of estoppel, public policy and abuse of Court processes.

The plaintiff/appellant's Notice of appeal was filed on 30th July 2018.

Propriety of the Appeal

In the written submissions filed on 19-04-2021, the defendants have raised an issue with the propriety of the appeal filed by the plaintiffs and have submitted that a critical look at the Notice of appeal filed on the 30th day of July 2018 shows that it was filed by a Law Firm, Tetteh & Co. without a Solicitor's name and a solicitors License Number. The defendants have further submitted that the Notice of Appeal being an originating process

invoking the jurisdiction of this Court, ought to be prepared and filed by a named lawyer with a practicing license number at that material time but not prepared by a law firm. In effect the defendants contend that the Notice of Appeal as filed on 30th of July 2018 is incompetent and a nullity and cannot invoke the jurisdiction of this court.

Counsel submits further that it is not open to a law firm to practice as a lawyer or file a process in court as a lawyer, as it is only a natural person who can practice as a lawyer with the requisite practice license.

Counsel further submits that the Notice of Appeal in the instant suit filed in the 30th of July 2018 by a law firm Tetteh & Co. is in breach of Section 2 of the Legal Profession Act, 1960 (Act 32) and Regulation 4 of the Legal Profession (Professional Conduct and Etiquette) Rules, 1969 L.I. 613 and is therefore void. Counsel referred to the cases of **Amos (No.1) vs. Korboe (No 1) (2015-2016) 2 SCGLR 1516 at 1530 and 1540** and the case of **Agnes Tuffuor @ Serwaa vs. Akwesi Adu and Yaa Konadu (unreported)** judgment of the Court of Appeal Kumasi dated 21st February 2018 Suit No. H1/67/2013)

Responding to the defendant's contention that the notice of Appeal did not bear the name of a lawyer but was filed by a law firm Tetteh & Co. without a solicitor's name and License number and therefore void and could not invoke the jurisdiction of this court, counsel for the plaintiff/appellant in his reply to the written submissions of the 1st to 3rd defendant/respondents filed on 30-4-2021 conceded that the said Notice of Appeal did not state the name and license number of the lawyer who prepared the said process as required by law but the said process is bearing the signature of the lawyer who prepared same and therefore the said process cannot be deemed to be a process prepared and filed by a law firm.

He submitted further as follows in his reply to the defendant's written submissions:

"In any case, with the greatest respect to counsel for the 1st to 3rd respondents, a law firm being an artificial person does not have a signature and therefore it could not have signed and issued the said process. The only omission therein, is the absence of the lawyer's name and his license number"

He submitted further that the said Notice of Appeal which is bearing a signature was filed by Nartey Tetteh of Tetteh & Co; the substantive counsel in the matter at the trial High Court. Counsel then proceeded to refer to the signature of the said Lawyer Nartey Tetteh on the writ of Summons and Statement of Claim and the signature on other processes filed in the course of the hearing at the High Court including a Motion on Notice for interlocutory judgment in default of defence filed by the plaintiff/appellant at the High Court on 2nd March 2018 and other processes and submitted that the signature on the Notice of Appeal filed on 30-07-2018 was that of the said Lawyer Nartey Tetteh.

As already indicated , the respondent has in his written submissions raised the issue of the propriety of the appellants Notice of appeal filed on 30th July 2018. Did the respondent follow the correct procedure as set out in the Court of Appeal Rules 1997 (C.I.19)?

Rule 8(8) of the Court of Appeal Rules 1997 C.I. 19 provides as follows:

"(8) The appellant shall not, without the leave of the Court, argue or be heard in respect of a ground of appeal not mentioned in the notice of appeal, but the Court may allow the appellant to amend the grounds of appeal on the terms that the court thinks just"

Rule 15⁽¹⁾ and (2) and Rule 16⁽¹⁾ and (2) of C.I. 19 also provide as follows:

“15 Notice for Variation of judgment

- (1) *It is not necessary for the respondent to give Notice by way of cross-appeal, but if a respondent intends on the hearing of the appeal to contend that the decision of the Court below should be varied, the respondent shall give, within one month after service of the notice of appeal, written notice in the Form 7 set schedule of that intention to every party who may be affected by the contention.*
- (2) *The respondent shall clearly state in the written notice the grounds on which the respondent intends to rely and within the same period shall file with the Registrar of the Court five copies of the notice, one of which shall be included in the record.*

16 Notice of Preliminary objection

- (1) *A respondent who intends to rely on a preliminary objection to the hearing of the appeal shall give the appellant three clear days notice before the hearing of the preliminary objection, setting out the grounds of objection, and shall file the notice in the Form 8 set out in Part One of the schedule 8(8)*
- (2) *Where the respondent fails to comply with sub-rule (1), the Court may refuse to entertain the objection or may adjourn the hearing at the cost of the respondent or may make any other appropriate order”*

In our view, it is the grounds of appeal set out in the Notice of Appeal by an appellant that sets out his complaint against the judgment appealed against. It is based on this ground that an appellant sets out his written submissions setting out the facts of the case and the law applicable. Thus, the written submission must not deviate from the grounds of appeal. See the case of **Obeng vs. Assemblies of God Church, Ghana (2010) SCGLR 360**

On the other hand, under Rule 15 of the Court of Appeal Rules as set out earlier, a respondent who seeks a relief from the Court does not need to file a cross-appeal but may seek a relief by way of variation of the judgment and clearly state in the written notice, the grounds on which the respondent intends to rely on. Alternatively a respondent who intends to rely on a preliminary objection to the hearing of the appeal shall proceed per the notice of preliminary objection pursuant to Rule 16 of the Court of Appeal Rules.

In this instant case, the respondent has neither asked by an application for relief by way of variation of the judgment or more appropriately, filed a Notice of preliminary objection to the hearing of the appeal pursuant to Rule 16 of C.I.19. If the respondent had filed a Notice of preliminary objection to the hearing of the appeal, then the question of the propriety of the Notice of Appeal filed by the appellant on 30th July 2018 would have been set down as a preliminary point to be determined by the court. For a preliminary objection, once raised, ought to be ruled upon. It is not open in the court merely to ignore the objection. In the Nigerian case of **Onyekwuluje vs. Animashan (1963) 3 NWLR 439 at 637** it was held that:

“it is a cardinal principle of the administration of justice to let a party know the fate of his application whether properly or

improperly brought before the Court. The Court is duty bound to express in writing whether it agreed with the objections or not”

In our view the issue of the propriety of the Notice of appeal raised in the respondent’s written submissions not being based on a preliminary legal objection or on a notice for variation is contrary to the rules and same is accordingly struck out as not being properly before the Court.

With respect to grounds (ii) of the grounds of appeal on the issue of lack of jurisdiction of the trial judge to dismiss the suit raised by the appellant, the defendants/respondents had in their statement of defence pleaded several judgments they claim to have obtained against the plaintiff’s grantors including the following:

- i. Civil Appeal No. J4/8/2015 titled: Nuumo Adjei Kwako II vs. Lebanon Society and 2 others.*
- ii. Civil Appeal No. H1/213/12 titled Numo Adjei Kwako II vs. Lebanon Society and 2 others*
- iii. Suit No. L303/2001 titled Numo Adjei Kwarko II vs. Lebanon Society and 2 others*
- iv. Civil Appeal No. H1/114/2014 titled Mrs. Agnes Ahadzi & Anor vs. Boye Sowah and 2 others*
- v. Suit No. LD/0424/2017 titled Ransford Addoquaye & 3 others vs. Falcon Crest Investment Ltd and 2 others.*

In paragraphs 7, 8, 10, 11 and 12 of their statement of defence the defendants pleaded as follows:

- 7) The 1st to 3rd defendants shall contend that plaintiff is bound and estopped by the judgments herein before mentioned for*

claiming any interest in the land in dispute through the Nungua Stool, Monfid El-Adas and Sadac Builders Ltd.

- 8) *The plaintiff's grantor Sadac Builders Ltd per its lawful representative Monfid El-Adas also claim to have obtained the land in dispute from the 1st defendant's family from one Nii Nortey Adjeifio in the year 1999 but 1st defendant shall contend*

that the said grant is void ab initio as Kle Musum quarter and Tsei We lands are vested in the 1st defendant in his capacity as the Osabu and Ayiku Wulomo the only person entitled to alienate Kle Musum quarter or Tsui We lands with the elders of Tsei We as has been decided by all the superior Courts

- 10) *The 1st to 3rd defendnts say that the said Nii Nortey Adjeifio in Suit No. 383/89 titled: Nii Mate Tesa and 5 others vs. Numo Nortey Adjeifio and 3 others admitted that Kle Musum quarter Lands is vested in the 1st defendant, in the Osabu and Ayiku Wulomo of Tsui We who exercise ownership over the said land*
- 11) *The 1st to 3rd defendnats say the instant action is an abuse of Court processes and shall pray the court to dismiss some in limine*
- 12) *The 1st defendant says apart from judgments against the plaintiff and its grantors his quarter and family has had several other judgments over his quarter and family land.*

Given the nature of the statement of defence filed by the defendants, and the plaintiff's statement of claim, several triable issues had to be determined by the trial judge.

And yet on the 10th of April 2018, the defendants filed a Motion on notice to dismiss the plaintiff/respondents Suit under Order 11 rule 18 of C.I. 47 and under the inherent jurisdiction of the Court.

In paragraphs 23, 24, 25, and 26 of the affidavit in support, the 2nd defendant deposed as follows:

- “23 That I am advised by our counsel and I verily believe to be true that the instant action has been brought in bad faith purposely to frustrate us from enjoying the fruits of our judgments and to put us into unnecessary expenses as any purported grant or interest and any Land Title Certificate based on same in favour of respondent and his grantors are void ab initio.
24. That I am further advised by our counsel and I rely believe to be true that the Plaintiff/respondents are estopped from maintaining the instant action.
25. That I am further advised and I verily believe to be true that the public policy demands that litigation must come to an end
26. that our counsel shall seek the leave of the honourable court to refer to the processes filed in this case.
27. wherefore I swear to this affidavit in support praying the honourable Court to dismiss the entire suit of plaintiff/respondents in grounds of public policy, on principles of estoppel and for an abuse of court processes and set aside the grant and the Certificate No. GA 54109 Vol. 46 Folio 271 of plaintiff/respondent over a portion of our land”

Order 11, rule 18 of the High Court (Civil Procedure) Rules 2004 provides as follows:

- “18. Striking out pleadings
1. The Court may at any stage of the proceedings order any pleading or anything in any pleading to be struck out on the grounds that:

- a) *It discloses no reason the cause of action or defence, or*
 - b) *It is scandalous, frivolous or vexatious, or*
 - c) *It may prejudice, embarrass, or delay the fair trial of the action, or*
 - d) *It is otherwise an abuse of the process of the Court, and may order the action to be stayed or dismissed or judgment to be entered accordingly*
2. *No evidence whatsoever shall be admissible on an application under rule (1) (a)”*

On the face of the pleadings, especially on the defendant’s own statement of defence, several issues were in contention. These include whether the judgments referred to in the defendant’s statement of defence related to the same land claimed by the plaintiff and whether the plaintiff’s Land Title Certificate No. GA 54109 Vol. 46 Folio 271 was void ab initio.

With all these issues in contention, the trial judge proceeded to terminate the proceedings summarily by dismissing the plaintiff’s suit and making a consequential order setting aside the plaintiffs Land Title Certificate No. GA 54109 Vol. 46 Folio 271 dated 11th January 2018 when he stated as follows in his ruling at page 69 volume 2 of the record of appeal thus:

“This motion is sustained and all the consequential orders by the defendants/applicants are granted as prayed”

This was inspite of the fact that the defendants in their statement of defence had not filed a counterclaim for an order to set aside the plaintiffs Land Title Certificate No. GA 54109

Vol 46 Folio 271. As was held by the Privy Council in the case of **Duedu vs Yiboe (1961) 1 GLR 346** a defendant who does not make a Counterclaim gets no unsolicited relief

In the case of **Gbenartey & Gblie vs. Netas Properties & Investments & others (2015-2016) 1 SCGLR 605** it was held by the Supreme Court in holding 2 as follows:

“ 2) The procedure for terminating proceedings by summary process should be applied only in cases where the action was clearly unsustainable, plain and obvious that it was beyond doubt that the case was unarguably frivolous and vexatious, and even legitimate amendments could not cure the defect Per curiam. The jurisdiction to strike out pleadings should therefore be sparingly exercised with extreme care and circumspection in plain and obvious cases”

We are of the view that the trial judge lacked the jurisdiction to summarily determine the matter and to dismiss the plaintiff’s suit. Accordingly, we allow the appeal and set aside the judgment of the High Court, Accra dated 9th July 2018 together with all consequential orders made by the trial judge. We remit the case back to the High Court, Accra to be tried de novo. The Registrar of this Court is hereby ordered to bring this case to the attention of His Lordship the Chief Justice for his direction as to the High Court Judge to hear this case.

SGD

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JUSTICE HENRY KWOFIE

(JUSTICE OF THE COURT OF APPEAL)

SGD

I AGREE

.....

**JUSTICE AMMA GAISIE
(JUSTICE OF THE COURT OF APPEAL)**

SGD

I ALSO AGREE

.....

**JUSTICE ERIC BAAH
(JUSTICE OF THE COURT OF APPEAL)**

COUNSEL:

BOTH COUNSELS ABSENT