IN THESUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL (CIVIL APPEAL)

ACCRA – GHANA

CORAM: SENYO DZAMEFE JA PRESIDING

MERELY WOOD JA

ERIC BAAH JA

SUIT NO. H1/79/2022

28th April, 2022

1. **THE EXECUTIVE DIRECTOR - PLAINTIFFS/RESPONDENTS**
   ECONOMIC & ORGANISED CRIME OFFICE
   OLD PARLIAMENT HOUSE
   ACCRA.

2. **NACOTICS CONTROL BOARD**
   PRIVATE MAIL BAG
   CANTONMENT – ACCRA.

vrs.

NAYELE AMETEPE … RESPONDENT

MADAM AKUA ADUBOFOUR … CLAIMANT/APPELLANT

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JUDGMENT

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DZAMEFE JA:

FACTS

On 10th day of November 2014, the respondent Nayele Ametepe, was arrested at the Heathrow Airport by the United Kingdom Border Force with 12.5 Kg of cocaine a narcotic drug and was consequently charged for "Concerned in evasion of prohibition/restriction on import imposed by Section 3(1) of MDA 71-Class A drug of the United Kingdom.

That on the 6th day of January, 2015 the respondent was arraigned before the Crown Court at lsleworth in London, presided over by His Hon. Judge Martin Edmunds QB in case Ref. T20141080, she pleaded guilty and upon her own plea was convicted and sentenced to a term of Eight (8) years, Eight (8) months imprisonment In Hard Labour (IHL). The respondent Nayele Ametepe alias Ruby Appiah @ Ruby Adu Gyamfi) served her prison sentence at HMP SEND RIPLEY- WOKING SURREY GU 23 7LJ PRISON with Prison Number A9518DH in the United Kingdom.

On 5th January 2015, HOUSE No.5, 4th Asoyi Link, East Legon Extension, Accra was seized by the 2nd Applicant/Respondent by pasting seizure notices on the walls of the house.

Subsequently, an unnumbered house at Pease, Kuntunase in the Ashanti Region of Ghana was also identified as belonging to the Respondent/Convict and therefore liable for confiscation.

The Claimant herein filed a motion on notice of interest on 23rd February 2016 in respect of both Houses.

On 6th October 2016, hearing of the application commenced where both parties that is the claimant and respondent called their witnesses and tendered documents to support their cases. At the close of the case the court delivered its ruling on 25th of July 2017, confiscating House No.5, 4th Asoyi Link, East Legon Ext, Accra as belonging to the Respondent (Nayele Ametepe) to the state.

The Claimant dissatisfied with this ruling launched this appeal on the following grounds:-

GROUNDS OF APPEAL

1. That the judgment is against the weight of evidence considering the facts and the evidence adduced before the court.

2. The court erred on the means by which ownership or title to landed property may be proved in Ghana

ADDITIONAL GROUNDS;

3. The learned judge erred in law in her conclusion that the mere construction of a borehole by the respondent on the Claimant/Appellant's property for the purpose of temporary occupation created proprietary interest entitling confiscation by the State of the said property in accordance with Narcotic Control Legislation.

4. The learned trial judge erred when she held that the mere establishment of a link between the respondent and the property in dispute is a conclusive proof of absolute ownership as well as tainted property and therefore liable for confiscation.

5. The learned judge erred in her conclusion that the payment of property rate by an unidentifiable name, namely a "Madam Ruby" created a "link" tainting the said property for the purpose of confiscation by the state of the said property by virtue of Section 15(1) of the Narcotic Control Enforcement and Sanctions Act, PNDCL256 and Section 46 of Economic and Organized Crime Office Act 2010.

GROUND 1 - ***That the judgment is against the weight of evidence considering the facts and the evidence adduced before the court.***

Submissions

Counsel for the appellant in his submission on this ground said for good reason they do not intend to be labour this ground of appeal. That after arguing all the other grounds, it will become apparent that the judgment was against the weight of evidence.

I was thinking this omnibus ground rather would have taken care of all the other grounds and effectively deal with the appeal. Be it as it may we shall look at the other grounds of appeal the appellant canvased.

GROUND 2 - ***That the court erred on the means by which ownership or title to landed property may be proved in Ghana.***

Submissions

Counsel for the Claimant/appellant submit that during the trial, the appellant tendered into evidence an indenture/lease document covering the land on which the property, House No.5, 4th Asoyi Link, East Legon is built. She told the court she purchased the said land from one Alhaji Ibrahim Issaka as far back as 10th September 2009. After the purchase Alhaji executed an indenture/lease to evidence the transaction. Thereafter the indenture was stamped by the Registrar of the High Court Accra on the 15th of September 2009.

Counsel submit that to the contrary the applicant/respondents did not provide any evidence to demonstrate that the said property is registered in the name of the respondent (Nayele Ametepe) in accordance with the law as demanded of a landed property.

Counsel submits further that in determining the mode of transfer of a property, the relevant provisions of the Conveyancing Act, 1973 (NRCD 175) are contained in Sections 1 & 2 thereof and are stated as follows:-

Sections 1(1) A transfer of an interest in land be by writing signed by the person making the transfer or by his agent duly authorized in writing, unless relieved against the need for such a writing by the provisions of Section 3

(1) A transfer of an interest in land made in a manner other than as provided in this part shall confer no interest on the transferee.

Section 2 – A contract for the transfer of an interest in land is not enforceable unless

(a) It is evidenced in writing signed by the person against whom the contract is to be proved or by a person who was authorized to sign on behalf of that person or
(b) It is relieved against the need for a writing by Section 3.

Counsel submits that the indenture covering the land provided by the claimant was in writing and met the requirement of a valid transfer under the Conveyancing Act 1973, (NRCD 175). He said the indenture dated 10th September 2009 provided documentary evidence that the claimant acquired the land from Alhaji Ibrahim Issaka. There is nowhere in the indenture that captures the name of the Respondent Nayele Ametepe as a party to the transaction between the claimant and Alhaji Ibrahim Issaka.

Counsel contend that the applicants never led any evidence to the effect that the property is owned by the Respondent or has been transferred to the respondent. There is no proof that the property belongs to the respondent.

It is his submission that though the claimant's indenture which is evidence of transfer of title in the land to her was admitted into evidence without objection, the trial judge made no reference to the indenture as a means of establishing ownership of the land as validly belonging to the claimant and same purchased in September, 2009.

It is counsel's contention that the trial court erred when it failed to consider the indenture of the claimant/appellant as the document validly held to determine ownership of the property in question especially when there was no valid and credible contrary evidence to the claimant's claim.

Counsel for the respondent in his answer submitted that what is in issue is not ownership of the land. He said the application for the confiscation of the properties was based on specific law, that is, the Economic and Organized Crime Office Act, 2010 (Act 804) which provides as follows:-

> ***"46. (1) where a person is on trial for a serious offence, the Executive Director shall apply to the Court for either or both of the following orders***
>
> ***(a.) A confiscation order against property that is <u>deemed to be tainted property</u>, or***

(b.) A pecuniary penalty order against the person in respect of benefit derived by that person from the serious offence.

(2) Where a person is convicted of a serious offence, the Executive Director shall apply to the Court within one month after the conviction, for any of the orders specified under subsection (1).

Counsel quoted Section 74, the definition of "tainted" as defined in the Interpretation Section as follows;-

"74. In this Act unless the context otherwise requires, "tainted property" means property,

a. Used in or in connection with the commission of a serious offence;
b. derived, obtained or realized as a result of the commission of a serious offence;"

Counsel submits that it is from the above laws and definition that confiscation can be ascertained. It is his submission that the confiscation of house No.5, 4th Asoyi Link, East Legon Extension, Accra was based on the fact that the said property was a tainted one irrespective of the ownership.

Counsel said once it is proved to the satisfaction of the court that proceeds of narcotics trade was used directly or indirectly in the acquisition and or maintenance of the property in issue in any manner, then same qualifies it as a tainted property. He said the attempt by the appellant to ground his appeal on the fact that the indenture was in the name of the claimant and as such the claimant should be presumed to be the owner of the property is not backed the EOCO Law, Act 804 under which the property was confiscated.

Counsel for the respondent submitted "*once it is proved to the satisfaction of the court that proceeds of narcotics trade was used directly or indirectly in the acquisition and/or maintenance*

of the property in issue in any manner, then same qualifies it as a tainted property" – (Emphasis mine).

The question we ask is whether the respondent had proved to the satisfaction of the trial court that the property in issue was acquired with the proceeds of narcotics trade either directly or indirectly as counsel submitted.

What is Proof in Law?

I know proof simply means convincing the court or jury of a fact that is alleged is true. This is the purpose of the provisions on burden of proof contained in Sections 10,11(1) and (4) of the Evidence Act 1975 (NRCD 323). There mere assertion by a party does not amount to proof – **T.K. Seeberh & Co Ltd vrs Mensah [2005/6] SCGLR 341**.

Proof in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in same positive way example, by producing documents description of things, reference to other facts, instances or circumstances and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated as oath by his witnesses, he proves it by producing other evidence of facts and circumstances from which the court can be satisfied that what he avers is true" – see **Majolagbe vrs Larbi & 2 Ors [1959] GLR 190 at 192, ii. Densoh Dapaah v Falcom Crest Ltd. …..**

A person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment or assertion is true and he does not discharge his burden unless he leads admissible and credible evidence from which the fact or facts he asserts can be properly and safely inferred. Failure of which the assertion is not true.

Except otherwise provided by law and until it is shifted, a party has the burden of persuasion as to each fact the existence of which is essential to the claim or defence he is asserting – Section 14(1) NRCD 323 (EVIDENCE DECREE). The burden of producing

evidence in any given case was not fixed but shifted from party to party at various stages of the trial, depending on the issues asserted or denied.

A party whose pleadings raises an issue essential to the success of the case assumed the burden of proving such an issue and it was incumbent on the party to have produced admissible and credible evidence so as to avoid a ruling against him and the absence of that proof will attract or earn such a ruling.

See –

(i) ***In Re Ashalley Botwe Lands, Adjetey Agbosu & Ors vrs Kotey & Ors [2003/4] SCGLR 420.***

(ii) ***Ababio vrs Akwasi II [1994/5] GBR IIII 174.***

We shall now examine the case of both parties.

The case of the Plaintiff/respondent in this appeal from the evidence before us is that the respondent before the lower court, Nayele Ametepe owns house No.5, 4th Asoyi Link, East Legon. Their evidence is that she lives in that house and had the water bill and the Accra Metropolitan Assembly (AMA) property rates in her name. The respondent's tendered the AMA property rate bill as exhibit "J", dated 26th July 2016 in the name of "Madam Ruby", though not very legible [**page 479 ROA].** They also tendered into evidence and letter from AMA dated 23rd May 2017, in response to a request for an information on property A/C No.AYW13047029 – **[exhibit 'M' page 487 ROA]**

With these information and documents, coupled with the fact that the respondent constructed a bore hole in the house meant the property belongs to her.

The Claimant/Appellant on the other hand alleged that the house is her personal property. She tendered her indenture on the property. She led evidence as to how she procured the land from one Alhaji Issaka Ibrahim and called as her witness the owner of the company that constructed the house for her. She also led evidence about her business life and her ability of being capable of constructing that house out of her own resources. That she is a trader who was going to the United Kingdom, United States and Italy to buy goods to sell in Ghana.

The trial high court judge on the issue of ownership of the property delivered herself thus:-

> *"With respect to the property at East Legon, the applicant has established a link with the respondent. According to the claimant, the respondent drilled a bore hole, got water to the house and stayed there with her children. It is a fact from the evidence adduced by the claimant that the respondent used to live there and she made developments or improvement to the property. A question is, what is the extent of development that the respondent has made to the said property? The respondent's name is on documents relating to the house. These establish a link between the respondent and the property in question. It is a fact that the claimant has an indenture with her name on it with respect to the land on which the building is. She also called a witness who confirmed her testimony that their company constructed the building for her. The facts here are that the respondent a convict has links with the property which her biological mother is claiming absolute ownership of. Once the respondent is connected with this property in a manner which is not inconsistent with her being the owner thereof (as in the case of the Piase property as explained earlier herein) the property becomes tainted with crime. This is the essence of the law of recovery of illicit assets or assets deemed procured from proceeds of the crime. The law and practice of it has sometimes been said or deemed to be harsh and cause injustice to persons who may have*

some interest in the tainted property but the point is once property is tainted with crime, it is liable to be confiscated to the State".

The trial judgment went on to hold that *"I have considered the submission made by learned counsel for the applicants and claimant, the facts of this case and the documents or processes attached and I am satisfied that the applicants have made a case to warrant the confiscation of the East Legon Property herein belonging to the respondent. It is a fact that the respondent has been convicted and is already serving her prison sentence for a narcotic drug related offence. I am satisfied that the property stated herein is derived from the proceeds of crime or is tainted property within the meaning of law*."

There is no doubt however that, the EOCO Act 2010 ACT 804 was enacted to create an office of Economic and Organized Crime as a specialized agency to monitor and investigate economic and organized crime and consequently to prosecute these offences on the authority of Attorney-General to recover the proceeds of crime and provide for related matters. It is important to note here that, the emphasis is on the proceeds of crime, and this therefore has to be proven in court. Section 45 of the ACT, states:-

"45(1) in determining whether or not a confiscation or pecuniary penalty order should be made, the Court shall presume that the property or income which is the subject of the application, including the property and income indicated in the declaration was acquired as a result of a serious offence."

This is therefore a presumption that the property in issue was acquired as a result of a serious offence. Since it is a presumption, it becomes a question of fact which must be proven in court to merit confiscation. We should also not be oblivious of the fact that all presumptions are rebuttable. Presumptions are a conclusion or inference as to the truth of some fact in question drawn from to the facts proved or admitted to be true.

Presumptions of fact are inferences which may be drawn from the facts but not conclusively (Emphasis mine).

Rebuttable presumptions of law are inferences which the law requires to be drawn from given facts and which are conclusive until disproved by evidence to the contrary – **Osborn 8th Edition page 258**.

The Black Law Dictionary defines presumption as "a legal inference or assumption that a fact exists based on the known or proven existence of some other fact or group of facts. Most presumptions are rules of evidence calling for a certain result in a given case unless the adversely affected party overcomes it with other evidence. A presumption shifts the burden of production or persuasion to the opposing party, who can then attempt to overcome the presumption – **page 1223 (Black's Law Dictionary)**

The EOCO law, Section 45 of Act 804 directs the court to presume that the property the subject of the application for confiscation was acquired as a result of a serious offence. Once it is a presumption, the onus shifted onto the adversely affected party to lead contradictory evidence to rebut the presumption.

In the instant appeal, the claimant in her quest to lead contradictory evidence to rebut the presumption that the property, 5th Asoyi Link does not belong to the daughter but her and not acquired as a result of any serious offence led evidence establish how she acquired the property.

First of all she led evidence to establish ownership of the land on which the property is. She led evidence of her root of title by tendering the indenture on the land which is in her name. The law is trite that in an action for declaration of title, the party's case must fail if he failed to prove the root of title - see **Ebusuapanyin Yaa Kwasi vrs Arhin Davies and Anor [2005] SCGLR.**

In declaration of title to land the law requires the person asserting title and on whom the burden of persuasion falls to prove the root of title, mode of acquisition and various acts of possession exercised over the subject matter of litigation. It is only where the party has succeeded in establishing these facts on a balance of probabilities that the party who be entitled to the claim. The claimant in the instant appeal led evidence to prove her root to title by calling her vendor who sold the land to her in 2007 as a witness. She built a home, the subject matter, on the said land. She called a witness who constructed the house to testify in court. She also tendered into evidence her indenture duly signed on the land.

She told the court she allowed her daughter, the respondent to live in the house with her children when she was having problems with accommodation.

The respondent/applicants case is that the claimant's daughter drilled a borehole in the house for water and also the AMA property rate bill is in the daughter's name. The question is whether these two acts are conclusive that the property belongs to the daughter.

The applicants' 2nd witness, a staff of AMA Emmanuel Anarboye Abbey said this in court;-

Q - Do you know the house number?

A - Yes No.5, 4th Asoyi Link East Legon Extension

Q - Upon receipt of the letter dated 17th April, 2017 from NACOB, what did you do?

A - The letter requested for ownership of the property, house No.5 4th Asoyi Link in East Legon. I went through our rating list and saw the ownership per our list as Madam Ruby

Q - When was the property registered in the name of Madam?

Ruby?

A - 2013

Q - Was there any valuation done on the property?

A - Yes

Q - When was it done?

A - The property was captured in 2006 and was rated in 2013

Q - What do you mean by captured?

A - It means it was listed in the valuation list

It is pertinent to draw our attention to the responses of the Head of rating to the Court when he was being cross-examined on the 14th day of June, 17 by counsel for the Claimant;

Q - How did you come by the conclusion that the said

property belongs to the Madam Ruby in your letter Exhibit M?

A - As I said when the property is prepared for rating, demand

notice is prepared and served. If it is served and there is no objection to any information on the demand notice, it is taken that all the information of the demand notice are correct. This property as I said was rated in 2013. Demand notes have been served since 2014 to date and there has never been by objection.

Again in cross examination the witness said;-

Q - Your job basically is to levy a property tax upon

identification and not necessarily to establish ownership of the property because your aim is to generate revenue from the District. Is that not so.

A - Yes

Q - That is why you are not so particular about the actual

owners or ownership of the property, is that not so?

A - As far as I am concerned, the owner of the property in

Question is Madam Ruby

Q - You will agree with me that your conclusion of the

ownership of the said property as belonging to Madam Ruby is based on assumption and not documentary fact.

A - Yes

Q - Is it also another assumption from you that exhibit 'J'

means that the property belongs to the said Madam Ruby?

A - Yes

It is trite law that ownership or title to land in our jurisdiction as established by both statute and case law is that, it must be proven and this must be done by proof of registration with the Land Title Registry and the Lands Commission and not by way of assumption or speculation. This i

s especially so in compulsory registration areas such as in the Greater Accra Region.

The applicants herein have concluded on the assumption of a property rate bill exhibit 'J and J1', in respect of House No.5, 4th Asoyi Link, East Legon Extension, Accra, the property in question belongs to the respondent Nayele Ametepe. Counsel informed the

court that at the time of the issuance of the said property Rate Bill, in 2014 the respondent convict was in custody in the United Kingdom.

The Claimant herein on the other hand tendered into evidence a Deed of Conveyance (Exhibit 22) demonstrating her ownership of the said property. The Claimant failed to register the land at the Lands Commission at the time of purchase, which according to Counsel does not sin against the law.

Counsel referred the trial court to Section 60(2) of the Land Title Registration Act, 1986 PNDCL 152 which states;-

> ***"Where an instrument is presented for registration later than three months after the date of its execution an additional fee which does not exceed five times the prescribed registration fees shall be charged but subject to clause (2) of article 174 of the Constitution, the land registrar may waive the payment of an additional fee if the land registrar is satisfied that the circumstances of the case warrant the waiver".***

Counsel contends that if the applicant had been diligent on seeking ownership of the said property from the appropriate government institutions at the time in question they would have known in whose name the said property was registered or who transferred the said land to whom.

By law, the title deed (exhibit 22) covering the property was in the name of the Claimant herein raising a presumption in her favour, albeit a rebuttable presumption, and by virtue of Section 35 of the Evidence Act 195, (NRCD 323), indeed she bore the full beneficial or legal title. This meant the applicant/respondent bore the evidentiary burden of proving that contrary to the disclosure of exhibit 22, the convict was the legal owner of the property.

See **Kusi & Kusi vrs Bonsu [2010] SCGLR 60.**

Counsel for the Claimant submits further that the Deed of Conveyance, exhibit 22 is in the name of the claimant and she has demonstrated by other documentary evidence how she was able to acquire the said piece of land at East Legon Extension. The evidence as well as the outlook of the Claimant does not in any way portray that the claimant is a person of straw. On the contrary she is a person of substance capable of acquiring properties. The applicant solely relied on a property Rate Bill issued in the name, Madam Ruby to claim that the said Madam Ruby is the owner of the property when in fact at time of the issuance of the said property Rate Bill, she was in custody in the United Kingdom.

What is the effect of a rebuttable presumption under Section 20 &21 of the Evidence Act 1975 in proving title to a property?

Section 20 state; -

> "*A rebuttable presumption imposes on the party against whom it operates the burden of producing evidence and the burden of persuasion as to the non-existence of the presumed facts*"

Section 21 states; -

> *"In an action where proof by a preponderance of the probabilities is required,*
>
> *(a) A rebuttable presumption requires the tribunal of fact to assume the existence of the presumed fact, unless the party against whom the presumption operates proves that the non-existence of the presumed fact is more probable than its existence.*
>
> *(c) where evidence is introduced contrary to the existence of the presumed fact, where reasonable minds would necessarily agree that the evidence renders the existence the basic fact that gives rise to the presumption more probable than not, the question the existence of the presumed fact is determined as follows*

(i) if reasonable minds would necessarily agree that the evidence renders the non-existence of the presumed fact more probable than not, the court shall find against the existence of the presumed fact, or

(ii) if reasonable minds would necessarily agree that the evidence does not render the existence of the presumed fact more than not , the Court shall find in favour of the presumed fact, or

(iii) If reasonable minds would not necessarily agree as to whether the evidence renders the non-existence of the presumed fact more probable than not, the court shall find ….in favour of the existence of the presumed fact unless it finds from the evidence that the non-existence of the fact is more probable than its existence, in which case it shall find against the existence of the presumed fact;".

It is the duty of this appellate court to juxtapose the evidence by the claimant and the applicants/respondents to see on the preponderance of probabilities, whose story is more likely to be the truth and in whose favour the court must rule. Which of the parties has produced sufficient evidence and the burden of persuasion as to the existence or nonexistence of the presumed facts?

In assessing the balance of probabilities all the evidence, be it that of the plaintiff or the defendant, must be considered and the party in whose favour the balance tilts is the person whose case is the most probable of the rival versions and is deserving of a favourable verdict. The plaintiff in civil cases is required to produce sufficient evidence to make out his claim on a preponderance of probabilities as defined in Section 12(2) of the Evidence Act 1875 (NRCD 323). See also **Takoradi Flour Mills vrs Samir Faris [2005/6] SCGLR 882.**

A person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment or assertion is true. And he does not discharge his

burden unless he leads admissible and credible evidence from which the fact or facts he asserts can be properly and safely inferred. Failure of which the assertion is not true. See **Memuna Amondy vrs Kofi Antwi [2006] 3MLG 183 CA.**

In the instant appeal, looking at the rival versions, which version is most probable and deserving of a favourable verdict as to the ownership of the property in issue?

The applicants started with the presumption that a "Madam Ruby" whose name appeared on the AMA property rate bill was the legal owner of the property is issue as opposed to the Claimants claim that that she was the legal and beneficial owner. The Claimant has produced sufficient evidence to establish that she is indeed the owner of the property. The applicants' presumption is simply displaced by the evidence to the contrary. The documentary and oral evidence by the claimant showing acquisition of the land and construction of the property, leads to the conclusion of the non-existence of the presumption by the applicant/respondents.

We are of the view that the claimant has produced enough compelling evidence to support her claim to the ownership of the East Legon property. She produced persuasive evidence on the balance of preponderance of probabilities that she owns the property in issue. From the evidence on record as seen in the record of appeal, the claimant gave evidence of her trading and business activities both in Ghana and abroad. She supported her evidence with compelling evidence of exporting goods to the United States of America (USA), her trading activities with the Ghana Armed Forces and Ghana Textiles Manufacturing Company Limited. None of these evidence was challenged. She also tendered her passport as evidence of her travelling and also submitted her bank statement which had sufficient amount of money in it. The law is settled that the failure to cross examine on an issue alleged in a party's evidence is deemed as an acceptance of that piece of evidence and so she was not under any obligation to lead any further

evidence to establish the assertion. – See **Akyea Djamson vrs Duagbor [1989/90] 1 GLR 224**.

The claimants exhibit 22 is the Deed of Conveyance she tendered into evidence and not challenged nor objected to by the Applicant's. Consequently exhibit 22's authenticity was accepted the moment the document went into evidence without objection and therefore entitled to such weight the court deemed fit, in the circumstances of the case. See **Affram vrs Didiye III [1999/00] 2 GLR148 CA**.

REPRODUCE SECTION 45(1) & (2)

Section 45(1) & (2) of Act 804, places the burden of proving that the property was not ill gotten on the suspect or convict. The standard is stricter than where the claimant is not the convict but a third person such as the appellant in the instant appeal.

The claimant/appellant is the third party, the standard of proof for her under Section 54(2) of the Act (Act 804) is balance of probabilities. On the balance, the evidence on the part of the appellant to the effect that she owns the subject house was far weightier than that by the applicants that she did not own it.

It is also unfortunate that while section 45(1) & (2) of the Act put the burden on the suspect or the convict, in the instant case, she was not available to testify. This robbed the trial court of listening to her side of the story as to the ownership of the property.

We hold that the claimant have been able to establish by documentary and oral evidence that she owns the property in issue. Her version of the story as to ownership is more probable than that of the applicant. She produced better credible and admissible evidence to that of the applicants who based their case on assumptions.

Considering the claimants' evidence supported with documentary evidence as opposed to the rival version of the applicants' whose case is based on the assumption that the property rate bill was in the name of the convict so is the owner of the house, we think the former deserves a ruling in her favour.

AMA testified that they prepare bills in the occupants name for revenue purposes and not interested in the true ownership of the property. This is DW1's evidence.

We are of the view that the trial High Court judge erred when she held that the property in issue belong to the convict and not the claimant. We think the property in issue, House No.5, 4th Asoyi Link, East Legon belong to the Claimant and we hold as such.

We hold that the judgment of the trial High Court was against the weight of evidence before the court. That ground of appeal is upheld and the decision of the High Court on the ownership of the property in issue is set hereby aside.

Our decision on the omnibus ground of appeal we think effectively took care of grounds 2 and 3 as well.

GROUND 4 – ***The learned trial judge erred in law in her conclusion that the mere establishment of a link between the respondent and the property in dispute is a conclusive proof of absolute ownership as well as tainted the property and therefore liable for confiscation.***

On this ground counsel submits that it is important to refer to what the law says on proof of ownership of property. He said Section 11(1) of the Evidence Act provides that;-

> "For the purposes of this Act, the burden of producing evidence means the obligation on a party to introduce sufficient evidence to avoid a ruling on the issue against that party. Furthermore, Section 11(4) provides that "in other circumstances the burden of producing evidence requires a party to produce

sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence".

As regards to the allocation of burden of producing evidence, Section 14 of the Evidence Act provides that "Except as otherwise provided by law, unless it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting". Furthermore, Section 17 of the Evidence Act states that "Except as otherwise provided by law, (a) the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof".

Counsel posited that the combined effect of Sections 11(4), 14 and 17 of NRCD 323 is that it a party fails to discharge the burden of producing evidence and persuasion in respect of any issue of fact which is upon him, the court is obligated to find against him on that issue.

Counsel contends that despite all proof by the claimant that the property belongs to her and even led evidence of how she acquired same, the applicants in disputing her claim have not denied the existence of the indenture or its validity, neither did they lead any evidence to disprove the case of the claimant/appellant or to proof their case that the property belongs to the respondent.

Counsel submits further that the proof of ownership in the case of an immovable property is evidence of a document of the sale of the property. In the instant appeal, the claimant has tendered in evidence an indenture showing her purchase as far back as 10th September, 2009 and bearing her name. That the evidence of indenture was not challenged in court by the applicants nor did the applicants produce any contrary document that shows that the property belonged to the respondent. Counsel said the

applicant throughout the trial never produced any evidence that the property in issue belonged to the respondent Nayele.

Counsel said the law required the applicant to lead evidence to establish their own claim that the respondent single handedly and exclusively bought the property more so that she used proceeds of crime to acquire same. In other words, by operation of law, the applicants should have established ownership in favour of the respondent.

Counsel submits further that whereas the claimant led evidence to show how she acquired the piece of land and built the house thereon, the amount spent to build the house, the contractors who built the house and the period within which it was built, she applicants on their side could not lead any evidence as to how the respondent allegedly bought the property, when she bought it, the price she paid for it nor any documentary proof establishing the respondents' interest in the property.

It is counsel's view that the trial judge erred when she did not take into consideration the indenture of the claimant and the numerous evidence given by her establishing how she had worked all her life to earn a living and her ability to acquire the property in dispute, in her ruling.

Counsel for the 2nd applicant, Narcotics Control Board in respondent to this ground of appeal quoted the trial judge thus;-

> *"The facts here are that the respondent a convict has links with this property which her biological mother is claiming absolute ownership of. Once the respondent is connected with this property in a manner which is not inconsistent with her being the owner thereof (as in the case of the Pease property as explained earlier herein) the property becomes tainted with crime"*

Counsel submit that in essence what the trial judge actually said was that once a link was established between the respondent and the property in question, then the property becomes tainted with crime.

Counsel said the EOCO Law which deals specifically with confiscation of properties takes a hard line approach just as the courts to ensure that criminals and for that matter drug dealers do not benefit in any way from their criminal activities. This he said is to serve as deterrent to would be drug dealers.

Counsel argued that the issue here is not about the ownership of the property in question but rather the exclusive focus on the law is on the tainted property and not the property holder. It has been argued that property becomes tainted the moment it is connected with or generated by an illegal activity. To him it does not matter who owns the house in dispute, what matters is that proceeds of crime was used to taint the property thereby creating a link between Nayele Ametepe and the property. That this fact was proved to the satisfaction of the trial High Court thereby making the property tainted with crime and therefore liable to be confiscated to the state. EOCO on this ground of appeal made the same submission as the 2nd applicant/respondent, ditto ditto.

There is no doubt however that the Economic and Organized Crime Office Act, 2010 Act 804 was enacted to create an office of Economic and Organized Crime as a specialized agency to monitor and investigate economic and organized crime and consequently to prosecute these offences on the authority of the Attorney General to recover the proceeds of crime and provide for related matters. <u>It is important to note here that, the emphasis is on the proceeds of crime and this therefore has to be proven in court</u>. (Emphasis mine)

Section 1 of Act 804 established the plaintiff/respondent office as a body corporate known as the Economic and Organized crime Office. Section 2 of the Act sets out the objects of the said office as follows;-

a. Prevent and detect organized crime.
b. Generally to facilitate the confiscation of the proceeds of crime

Section 3 set out the function of the plaintiff/respondent in extensor. Section 3(a) sets out the core mandate of the office as follows; - "the functions of the office are to:-

a. Investigate and on the authority of the Attorney General prosecute serious offence that involve
    i. Financial or economic loss to the Republic or any sate entity or institution in which the State has financial interest
    ii. Money laundering
    iii. Human trafficking
    iv. Prohibited cyber activity
    v. Tax fraud and
    vi. Other serious offence

From the onset, it is clear that the plaintiff/respondent have very wide or sweeping mandate under Act 804 but this in all subject to the overriding provision of the 1992 Constitution.

Article 18 of the Constitution (1992) states;-

(i) Every person has the right to own property either alone or in association with others.

Article 19(1);-

(2) A person charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty.

The trial High Court judge in her judgment said "With respect to the property at East Legon, the applicant have established a link with the respondent. According to the

claimant, the respondent drilled a bore hole for water in the house and stayed there with her children. The court said it is a fact from the evidence adduced by the claimant that the respondent used to live there and she made developments or improvement to the property. A question is what is the extent of development that the respondent has made to the said property? The respondents name is on documents relating to the house. These establish a link between the respondent and the property in question. The court also said it is a fact that the claimant has an indenture with her name on it with respect to the land on which the building is. She also called a witness who confirmed her testimony that their company constructed the building for her. The facts here are that the respondent, a convict, has links with the property which her biological mother is claiming absolute ownership of.

The court found that once the respondent is connected with this property in a manner which is not inconsistent with her being the owner thereof (as in the case of the Piase property as explained earlier herein) the property becomes tainted with crime. The court said "*this is the essence of the law of recovery of illicit assets or assets deemed proceeds of crime. The law and practice of it has sometimes been said nor deemed to be harsh and cause injustice to persons who may have some interest in the tainted property but the point is once property is tainted with crime, it is liable to be confiscated to the state"* (emphasis mine).

With all due respect to the learned trial judge, she herself admit the law is deemed to be harsh and cause injustice to persons who may have interest in properties alleged tainted.

The court itself said the respondent was arrested with the drugs she carried at the Heathrow Airport in London, the drugs seized and confiscated, she was arraigned before court and tried, convicted and sentenced to imprisonment. In fact as at the time of the trial of this case, she was still serving her sentence in the United Kingdom.

The obvious conclusion therefore is that the house in dispute, situated at East Legon, No.5, 4th Asoyi Link East Legon Extension Accra was not acquired out of the proceeds of the drugs. The respondent was arrested for, for which she was convicted a sentenced to imprisonment in the United Kingdom. There must therefore be available some positive evidence that the convict had participated in some serious offence other than that for which she was arrested in the UK which she was convicted and jailed into be able to acquire the property in issue. One may argue she may be a courier who was paid before her journey to the UK and she could have used that money to acquire the house before her trip. That will however be speculative and not enough proof that she benefited from proceeds of a crime.

There is no doubt that the convict has "links" with the property in issue. It is the mother's property. It is nothing strange or new in Ghana for children to live in their parents' property even at old age. The claimant told the court the circumstances that led the respondent to settle in the house. Yes, the respondent constructed a bore hole in the house but does that change the ownership of the house? The claimant led evidence to her capability of building the house, called the contractor or showed her indenture, i.e. title to the land and the property. The court held the respondent had her name on documents related to the house. This was in reference to the AMA property bill which the AMA staff explained to the court, that they only put up the name of the occupant and not interested in the owner. They are just interested in calculating their taxes. That explanation meant the name captured on such bills may not necessarily be the owner of the property.

A tenant can connect electricity to a house he rents if there was none and the meter would be in his name. Does that change the ownership of the house? No. Same as water and other utilities like telephone, DSTV, Garbage collection etc etc. Those receipts or documents do not change the ownership of the property. We should not lose sight of the

fact that the claimant is not the convict. The burden of persuasion o the convict is higher than a third party like the claimant herein – See Section 54(2) Act 804.

Civil cases care judged on the preponderance probabilities. The plaintiff in civil cases is required to produce sufficient evidence to make out his claim on a preponderance of probabilities as defined in Section 12(2) of the Evidence Act 1975 (NRCD) 323. In assessing the balance of probabilities all the evidence be it that of the plaintiff or the defendant must be considered and the party in whose favour the balance tilts in the person whose case is the most probable of the rival versions and is deserving a favourable verdict.

See **Takoradi Flour Mills vrs Samir Faris [2005/6] SCGLR 882**

A person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment or assertion is true. And he does not discharge his burden unless he leads admissible and credible evidence from which the fact or facts he asserts can be properly and safely inferred. Failure of which the assertion was not true" – **Memuna Amondy vrs Kofi Arhin [2006] 3 MLG 183 CA.** The EOCO Act, Section 54(2) supports this principle that such cases as the instant appeal be decided to the preponderance of probabilities as in all civil cases.

In this particular appeal, the claimant assert the property in dispute is her property. The respondents also assert the property in dispute is for the daughter. Both parties denied each other's assertion. It is therefore incumbent on both parties to establish their various averments and assertion through admissible and credible evidence.

While the claimant led evidence by calling witnesses and producing documents to establish her assertion, the respondent's relied on a presumption that the property is for the convict because she lived in the house. Of course they can presume that the occupant of a house is the owner but unfortunately it is only presumptive and rebuttable.

In a civil trials the court is under an obligation to measure the case of both parties and a determination which necessarily involves the balancing of the strength and weaknesses of the rival claims. The party whose claim is better deserves the court's ruling in its favour.

Again the settled principle of the law of evidence is that where oral evidence conflicts with documentary evidence, which is authentic, then the documentary evidence ought to be preferred over the oral evidence.

See

1. **Amidu Alhassan Amidu & Anor vrs Mutiu Alawiye & Ors [2019] DLSC 6573.**

2. **Nana Asiamah Aboagye vrs Ab. Kwaku Apau Asiam [2008] DLSC2486**

The claimant has tendered an indenture which was not objected to and admitted into evidence showing the land is for her.

The respondent relied on the AMA bill which I said earlier was explained off by the AMA official. The claimant as said earlier called the contractor who testified that he built the house for the claimant. This was not controverted nor disproved in cross examination.

She went further to establish her source of income, which was also not denied by the respondent in cross examination. With these I think she has established a better story of her ownership of the house than the respondents. Therefore on the preponderance of probabilities deserves a favourable ruling in her favour. The law is settled that in civil trails if the opponent does not challenge an assertion by the other party, it is deem accepted and that party need not produce any evidence to establish that claim

The trial judge, erred when she interpreted the "link" as if it was the convict who acquired the house. The "link" is there because it was her mother's property.

I understand the trial judge when she admitted the law is sometimes harsh. Of course by the Act, EOCO Act, they are right to presume that properties linked or associated with such culprits belong to them but unfortunately it is just a presumption.

Presumption of Acquisition of Property and Income:

Section 45 (1) of Act 804 states:

> *45(1) In determining whether or not a confiscation or pecuniary penalty order should be made, the court shall presume that the property or income which is the subject of the application, including the property and income indicated in the declaration was acquitted as a result of a serious offence.*
>
> *(2) The burden of proof that the property or income which is the subject of the application or the declaration of the property and income is lawfully acquired property is on the persons convicted for the offence in relation to which the application is made.**(emphasis mine)***

For EOCO to be able to confiscate the property in dispute has to establish two things:

i. *That it belongs to the convict*
ii. *That it was procured out of proceeds from crime and therefore tainted.*

As I said earlier, the plaintiff/respondent have a very wide and sweeping mandate under Act 804 but this is all subject to the overriding provisions of the 1992 Constitution. The Constitution allows citizens to own property and also everybody is assumed innocent until proven guilty of a crime. It is therefore a constitutional obligation on the applicants to prove their claim to confiscation of the property as belonging to the convict.

In effect, the convict can own property and also presumed innocent for procuring same out of proceeds of crime until proven guilty.
We admit she was arrested with the drugs at Heathrow and so she did not benefit from that particular crime to procure this property in dispute. The onus therefore is on the plaintiff/respondent to establish that she has been in that trade even before the arrest and lead evidence that she procured the house in issue from some other crime she committed. It is an onerous task but that is the only way EOCO can establish their claim in the teeth of the strong claim by the claimant.

Without any more evidence, aside the arrest, that she procured this house built nine years earlier before the arrest would be preposterous to say the least. The Piase house which the court released to the claimant also has a "link" with the convict, but was not confiscated. It belongs to the mother just as the East Legon house, so why was that released? Why did the court believe claimant built that one but not the one in dispute? If it is just because of a *"link"* as the court said, the Piase house also has a *"link"* with the convict because it belongs to the mother, same claimant. It is trite learning that by the ***Statutory Provision of the Evidence Decree 1975 (NRCD 323)***, the burden of producing evidence in any given case is not fixed but shifts from party to party at various stages of the trial, depending on the issues asserted and or denied. ***In Re Ashalley Botwe Lands, Adjetey Agbosu & Ors. vrs Kotey & Ors. [2003/4] 1 SCGLR 444.***

I think the trial High Court Judge erred in holding that there is a *"link"* between the property in dispute and the convict and because of that "link" the property belongs to the convict and so be confiscated. There is the *"link"* because it belongs to the mother but not necessarily the convicts' property. Plaintiff/respondent could not lead sufficient evidence to establish that the property belongs to the convict and that she procured same

out of proceeds of crime. At best it is in the realm of conjecture and not proven as their own law demands.

That ground of appeal succeeds.

Ground 5:

The learned trial Judge erred in her conclusion that the payment of property rate by unidentifiable name, namely *"Madam Ruby"* created a link tainting the said property for the purpose of confiscation by the State of the said property by virtue of ***Section 15 (1) of the Practices Control, Enforcement & Sanction Act (PNDCL 236)*** *and* ***Section 46 of the EOCO Act [2010] (Act 804).***

Counsel for the appellant submits that the trial High Court Judge in her judgment said *"the respondent's name is on documents relating to the house. These established a link between the respondent and the property in question."* – **[page 275 ROA].**

Counsel said the name on the alleged document is a property rate bill with the name *"Madam Ruby"*. Counsel posited that that document is meaningless for the purposes of identification and ownership of the property in issue. He quoted plaintiff/respondent's own witness who *"admitted that their job is basically to levy a property upon their identification and not necessarily to establish the ownership of the property because their aim is to generate revenue for the District."* – **[page 271/2 ROA].**

According to counsel, this response by their own witness speaks volumes of the conclusion by the trial High Court linking the respondent as the owner because of that document. Counsel submits further that under ***Section 74 of the EOCO Act, [2010], Act 804,*** a *"tainted property"* means property;

a. ***Used in or in connection with the commission of a serious offence***
b. ***Derived, obtained or realized as a result of the commission of a serious offence.***

For a property to be tainted, it must be established that the property is owned by the convict and that the property was derived, obtained or realized with proceeds from crime. That in fact, during the trial, it was never established nor was it proved that the property was acquired with proceeds of crime. Neither was it established that the property was used in or in connection with the commission of a crime.

Counsel submits further that the testimony of plaintiff/respondents' own 1st witness said at Exhibit 'J', that is, the AMA official, they are still waiting for a response from the Lands Valuation Board as to who the respondent allegedly acquired the property from – [**page 271 ROA].** That till date, there has not been any document from any State Agency to show the ownership status of the property apart from documents provided by the claimant. The plaintiff/respondent's 2nd witness's testimony to the court was that the property in issue was captured in 2006 and rated in 2013. Counsel said that piece of evidence was not supported nor any evidence led to buttress same.

He said in fact the land was purchased in 2009 by the claimant and so AMA could not have captured the property in 2006. The same 2nd witness in his evidence stated *"when they visit the premises of the property and pick the data of the premises they ask whoever is in the house as at the time they are collecting the data and whatever information they gather is what they use to prepare the property for rating. –* ***[page 271 ROA].***

Counsel opined that that piece of evidence show that no documentary evidence was used in determining ownership. The fact that a person lives in a property does not mean, he or she is the owner. The witness also testified that *"after data has been picked they process*

the property for rating so they prepare a demand notice and serve it on the property." Counsel said from this piece of evidence from their own witness, the demand notice is therefore on the property and not the owner per se. That the demand notice does not make reference to who is the owner of the property.

Further, the witness said *"they do not cross-check with the Lands Commission to know the actual owners of the properties….and their job is basically to levy a property upon their identification and not necessarily to establish the ownership of the property because their aim is to generate revenue for the District."* Counsel said the witness having said all these contradicted himself when he again said *"per the Assembly Rating list, Madam Ruby is the owner of the property in dispute"* – **[page 272 ROA]**

In conclusion, counsel submitted that with all these pieces of evidence before the trial High Court, it erred in its decision by granting the application to confiscate Hse. No. 5, 4th Asoyi Link, East Legon Extension, Accra since it was without any legal and or factual basis and same ought to be set aside.

Counsel for the plaintiff/respondent in their response said that Nayele Ametepe, the convict, is known by other names such as Ruby Appiah and Ruby Adu Gyamfi. The claimant also confirmed the daughter is called Ruby. Therefore, *"it is no way far-fetched that the property rate presented to AMA bore the name Madam Ruby".*
Counsel submits further that Nayele Ametepe is the same person known as Ruby. Ruby was the one paying those property rates with the proceeds of the ill-gotten/illegal wealth and this fact put together with other facts lead the trial court to the irresistible conclusion that the property is a tainted one. He submit the property is a tainted property and was therefore lawfully confiscated.

Section 54 of the Act states:

Protection of third parties:

54(1) ***Where an application is made to the court for a confiscation order against a property, a person with claims an interest in the property shall apply to the court within thirty (3) days for an order declaring the interest of the person.***

(2) ***If the court is satisfied on a balance of probability that the person;***

- ***a. was not involved in the commission of the serious offence and***
- ***b. acquired the interest before or after the commission of the serious offence.***
  - ***i. for sufficient consideration and***
  - ***ii. not arouse a reasonable suspicion that the property was tainted property at the time the person acquired the property, the court still make an order declaring the nature, extent and value of the person's interest at the time the order was made.***

I reproduced the section to lay emphasis on the fact that the law demands the court to be satisfied on *"a balance of probabilities"* as in all civil cases before granting applications for confiscation. Frankly speaking, I guess because of the high profile nature of the case, the applicants took a lot of things for granted especially in their investigations as to ownership of the property in issue. I said earlier the whole of Act 804 is basically based on presumptions. However, Act 804 is subservient to the 1992 Constitution Article 18(1) allows any citizen to own property. Secondly, that all persons are presumed innocent until proven guilty, Article 19(2c).

Counsel for the plaintiff/respondents on this ground submitted *"Ruby party was the one paying those property rates with the proceeds of the ill-gotten/illegal wealth and this fact put*

together with other facts led the trial High Court to the irresistible conclusion that the property is a tainted one".

With all due respect to counsel, this statement is so vague and has no evidential value. Which ill-gotten money or illegal money was he referring to? Is he aware the bills were paid before Nayele's arrest and conviction in the UK? So, how could she be paying with this ill-gotten or illegal money for that crime? Unless there is any other credible or positive evidence led in court to establish that even before this particular arrest in the UK, the convict was engaged in any crime to give her ill-gotten or illegal money, then his submission falls flat on its face. I said several times that there is no evidence of proceeds accruing to the convict for this arrest in the UK. So for this property built nine ()9 years before this arrest to be confiscated as tainted with crime, credible and positive evidence must be so led to establish same. Not just any evidence but one the court must base its decision on the *"preponderance of probabilities"* especially when someone is claiming interest like in the instant appeal.

The court must listen to both parties and see whose story is most probably the truth and which of the rival versions deserves a favourable ruling. The claimant who led credible and positive evidence as to her ownership of the house or the plaintiff/respondent who relied on presumptions and an AMA property rate bill? Even this bill was explained off by their own 2nd witness as not guarantee for ownership of the property.

Until the plaintiff/respondent lead evidence, of cause positive and credible evidence that the convict used proceeds from any other crime, for the procurement of this property other than the crime she was arrested for, it would not be just nor fair to conclude that because she was busted in the UK in 2014, property built in 2009 was procured from that

crime for which she was arrested, the drugs confiscated, tried and jailed. That conclusion will be a great miscarriage of justice and infact that was exactly what happened.

It could be possible a courier or one in possession of narcotic drugs and arrested might have taken the proceeds before embarking on the journey and so the arrest may not deprive him or her of proceeds from the crime. Yet, all these must be established by positive evidence which is missing from the plaintiff/respondent's case. The rule of the game is evidence.

We must admit the EOCO has an onerous and difficult duty but all the same, they are under an obligation not to just presume ownership of properties like in the instant appeal but need positive evidence to establish same. They could have gone to Lands Commission to check in whose name the land and property is. Also, the Land Title Registry to ascertain the title and ownership of the property which they failed to do but rather decided to take the easier option of relying on the AMA property rate bill.

Unfortunately, for them too, the officer from AMA's evidence was so contradictory of itself and worsened their case.

In conclusion, I find that the trial High Court erred in its decision that the house has a *"link"* with the convict and therefore tainted with crime. That conclusion by the learned trial High Court Judge is not supported by the evidence before her. In fact, it is against the weight of evidence before her. In effect, the confiscation order against the property is hereby quashed and same set aside.

The claimant may apply to the court for an order for the transfer of the interest to her as per ***Section 55 (2) of Act 804.***

The appeal succeeds and the order granting the confiscation is hereby quashed and same set aside.

SGD

SENYO DZAMEFE

(JUSTICE OF APPEAL)

SGD

I agree MERLEY WOOD

(JUSTICE OF APPEAL)

SGD

I also agree ERIC BAAH

(JUSTICE OF APPEAL)

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Abu Issah for 1st Applicant/Respondent

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