IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA AD. 2023

CORAM:

POKU-ACHEAMPONG J. A. PRESIDING

ADJEI-FRIMPONG J. A.

OWUSU-DAPAA J. A.

SUIT NO.: H1/102/2023

DATE: 11TH MAY, 2023

DANIEL ADDO TAGOE	**:**	**PLAINTIFF /APPELLANT**
VRS		
1. SIGNUM DEVELOPMENT LTD		**DEFENDANTS / RESPONDENTS**
2. ALEX OSEI BONSU		

J U D G M E N T

POKU-ACHEAMPONG, J.A.:

We have before us an appeal by the Plaintiff/Appellant against the judgment of an Accra High Court, Land Division, dated 11th November, 2021 which went in favour of the Defendants/Respondents.

In this opinion the parties, shall for reasons of convenience, retain their designations in the trial court. The Plaintiff/Appellant shall therefore be referred to as the Plaintiff and the Defendants/Respondents as the 1st Defendant and the 2nd Defendant.

Background:

The Plaintiff by an amended writ of summons filed on 16th January 2020 claimed the following reliefs against the Defendants:

1. Declaration of title to all that piece or parcel of land lying and being at Tse Addo, La behind the Ghana International Trade Fair Centre and covering an approximate area of 0.28 acres or 0.11 hectares more or less and bounded on the North-West by Lessor's land measuring 101.2 feet more or less on the South-East measuring 98.1 feet more or less on the North-East by Lesser's land measuring 123.3 feet more or less and on the South-West 124 feet more or less.
2. Recovery of possession
3. Damages for trespass
4. Perpetual Injunction restraining the defendants, their servants, agents privies, assigns workmen and whomsoever from interfering with the land of the Plaintiff.
5. An order to demolish any structure constructed on the land by defendants.

The 1st Defendant entered appearance and filed a statement of defence on the 17/10/2019. Pursuant to the grant of an application for joinder the 2nd Defendant entered appearance on 30/1/2020 and on 13/2/2020 filed a motion on notice for an order for Plaintiff to file an Amended Statement of Claim pursuant to Order 11 rule 1(2) of the High Court (Civil Procedure) Rules, 2004 (C.I. 47.)

On 26th February 2020 Plaintiff filed an Amended Statement of Claim, on 13th March 2020 the first Defendant filed an Amended Statement of Defence and on the 12th May 2020 the 2nd Defendant filed his Statement of Defence (pursuant to an order for joinder granted on 15/11/19) seeking the following reliefs:

i. Declaration of title to all that piece of land, lying and being at La Dadekotopon-East and measuring 81.2 feet more or less (North-West) and 90.6ft more or less (South-East) and 157.00 feet more or less (North-East) 160.1 feet more or less (South-West)

ii. Recovery of possession of the land

iii. Damages for trespass

iv. Perpetual Injunction restraining the Plaintiff, his servants, agents, privies, assigns, workmen and persons claiming through him from interfering with the land of the 2nd Defendant.

v. An order directed at the Registrar Lands Commission Accra to delete from its records any registration of the Plaintiff in respect to the Lease dated 19th September 2017 purportedly issued by the Trust to the Plaintiff.

vi. Cost.

Alternatively the 2nd Defendant counterclaimed against the Plaintiff for:

vii. Specific performance of the agreement between the Plaintiff and the 2nd Defendant for the sale of the land.

viii. A declaration that with the sale of the land by the Plaintiff to the 2nd Defendant for valuable consideration the 2nd Defendant is the bonafide owner of the land.

ix. Recovery of possession.

x. Perpetual Injunction restraining whether by himself, servants, agents, privies whomsoever from entering on and /or encroaching upon the said land or doing any works thereon or a portion thereof the subject matter of this suit or

interfering in any manner with the 2nd Defendant's ownership of the said piece/parcel of land.

xi. Damages for breach of contract

xii. An order that the Plaintiff confers title on the land to the 2nd Defendant.

xiii. Cost including Counsel's fees.

On 19/6/20 Application for Directions was filed by the 1st and 2nd Defendants which had eight issues for trial (see pages 79-80 of the ROA) including:

Issue 5: whether or not the Plaintiff agreed to use his 2(two) plots of land at Tse Addo La as security for a loan of £1,200.00 (One Thousand, Two Hundred Pounds) from the 2nd Defendant.

Issue 6: whether or not the 2nd Defendant falsified and forged the following documents:

a. Acknowledgement of receipt dated 17th November 2004.
b. Undertaken (sic) dated 21st January 2005 and
c. Statutory Declaration dated 21st January 2005.

Summary of the Case of the Plaintiff

The Plaintiff's case was that Royal Sentry Limited a firm in which he was both a Director and Shareholder, was in 1996 offered 30 plots of land at New Kpeshie Estates site at La. The Company made part payment of ¢80,000.00 out of the total cost of ¢165,000.00 and was issued with a Land Agreement Form which was tendered in evidence as Exhibit "A". Due to encroachments and rival claims the company had to enter into agreement with the La Dadekotopon Task Force the new body in charge of land allocation in La, to be given 2

plots out of the 30 plots. This was evidenced by a Memorandum of Understanding (MOU) dated 6th October 2000 (Exhibit B).

In 2017 a leasehold agreement dated 19th September (Exhibit C) was executed between the East Dadekotopon Development Trust as legal owners of the land and Plaintiff for two plots of land. The leasehold agreement was stamped as LVGAST290362017. Plaintiff claims he deposited 2000 sandcrete blocks on the land and embarked on construction works on the land.

In 2018 he applied to the Land Registration Division of the Lands Commission for the registration of the land and the necessary approvals were given for the preparation of a cadastral plan over the land. The issuance of a land title certificate for the land was delayed owing to litigation over the land in respect of the East Dadekotopon Development Trust but he was granted a building permit he applied for by the La Dadekotopon Municipal Assembly on 30/4/2019.

In or around 30th September 2019 1st Defendant forcibly entered the land, destroyed Plaintiff's uncompleted 5 bedroom structure and a wooden structure for his caretaker and started putting up new structures on the land. Despite warnings the 1st Defendant who claimed he had been contracted by 2nd Defendant to erect a building on the land went ahead with the construction work with indecent haste and this compelled Plaintiff to issue the writ against the Defendants.

Plaintiff claims that he first met 2nd Defendant in London in 2004 when he went there on a visit. The 2nd Defendant was introduced to him by Vincent Ofoe Agbettor (DW1).

Plaintiff claims he borrowed an amount of £1,200.00 from 2nd Defendant with the understanding that in the event of failure to repay the loan he will sell two plots of land to him at a price to be agreed on and the amount lent to him treated as part payment.

On the basis of this agreement Plaintiff issued a handwritten receipt describing the amount borrowed as down payment for the land.

2nd Defendant without his consent came over to Ghana in 2005 and started construction works on the land. Plaintiff took steps to stop 2nd Defendant from continuing work on the land. He realized in the course of this that 2nd Defendant was claiming ownership of the land on the basis of forged documents. The 2nd Defendant, Plaintiff claims, tried but failed to get the east Dadekotopon Development Trust to issue him with title documents on the land. He therefore brought an action against the Defendants for the reliefs he is seeking.

Summary of case of Defendants

1st Defendant:

The evidence of the 1st Defendant was given by its representative, Tanko Fattah who described himself as the Project Manager/Structural Engineer of the 1st Defendant Company. He stated that the 1st Defendant was a company engaged in the construction and sale of houses to potential clients.

The 1st Defendant was contracted by the 2nd Defendant to erect a fence wall on the disputed land.

He indicated that he went onto the land with workmen and equipment and they cleared the land.

In response to a question on what was on the land that he cleared, he stated that it was an old wall with a strip foundation.

In response to a further question by Counsel for Plaintiff that there was a five bedroom structure up to window level on the land he stated as follows:

"I don't think so, not on that site in question; it may be a different site."

2nd Defendant:

2nd Defendant is a Ghanaian ordinarily resident in the United Kingdom. In 2004 he accepted an offer from Plaintiff to sell the land in dispute to him for the sum of US$14,000.00. In furtherance of this he paid an amount of £1,200.00 (One thousand Two Hundred Pounds Sterling) to the Plaintiff on 17th November 2004 when Plaintiff visited him at his home in London.

The receipt in respect of the above, issued and signed by him and the Plaintiff was tendered into evidence as Exhibit 1.

On the 21st of January 2005 2nd Defendant claims that he paid the amount outstanding to the Plaintiff in cedis at the Asylum Down Accra Office of one Vincent Ofoe Agbettor (DW1) who had earlier on introduced Plaintiff to him.

After receipt of the purchase price the Plaintiff handed over documents in respect of the land i.e. the receipt and building drawings to him in the presence of Vincent Ofoe Agbettor (DW1).

The 2nd Defendant tendered a copy of the receipt Plaintiff gave him as Exhibit 2 dated 21st January 2005. He also tendered in evidence the documents Plaintiff gave him on that day i.e. the building drawings as Exhibits 3.

2nd Defendant also tendered in evidence as Exhibit 4 an undertaking the Plaintiff executed on that day for him by which undertaking he surrendered his title and interest in the land to 2nd Defendant.

Also tendered in evidence was Exhibit 6 a statutory declaration sworn to by Plaintiff. In the statutory declaration also dated 21st January 2005 the Plaintiff stated that he had relinquished his title and interest in the land to the 2nd Defendant.

Upon the sale of the land to him the 2nd Defendant stated that he constructed a fence wall around the land and put a caretaker on the property.

2nd Defendant explained that he was introduced to Plaintiff by Vincent Ofoe Agbettor their common friend in November 2004 as a prospective vendor of 2 plots of land at the La, Trade Fair site.

2nd Defendant states that he paid an amount of ¢6,000.00 to the East La Dadekotopon Trust on 19/8/2015 for preparation of his title documents to the land evidenced by Exhibit 7. The Trust invited Plaintiff for discussion as to how he acquired the land. At the meeting the Plaintiff informed the Trust that he wanted the title documents to be prepared in his Plaintiff's name for him to transfer same to 2nd Defendant. This proposal was rejected by the 2nd Defendant's representatives at the meeting who were his wife and DW1 Vincent Agbettor. He however learnt subsequently in 2017 that the documents had been issued in the name of the Plaintiff and when he contacted the Plaintiff to effect the transfer to him he refused to do so despite persistent demands.

He lodged a complaint with the Police who caused Plaintiff's arrest. Plaintiff denied that he had sold the land to 2nd Defendant at the police station. The Police conducted a forensic investigation of the documents the Plaintiff presented to 2nd Defendant. The result of the police forensic examination report dated 21st August 2019 was that it was highly probable that the signatures on the undertaking and the statutory declaration were that of the Plaintiff, 2nd Defendant tendered in evidence a copy of the police forensic examination report as Exhibit 8.

In support of his evidence the 2nd Defendant produced two witnesses – Vincent Ofoe Agbettor (DW1) and Samuel Addo Otswe (DW2) the caretaker.

The evidence of (DW1) was that he was a friend of both the Plaintiff and the 2nd Defendant. He had known Plaintiff for 20 years and 2nd Defendant for about 40 years. He explained

that Plaintiff had become a family friend and almost like a brother to him whilst the 2nd Defendant was a mate at the University.

He said the Plaintiff approached him in 2004 that the intended to sell his land at Tse Addo and asked for help to get a prospective buyer, at a price of $14,000.00.

He in turn informed 2nd Defendant who was in the United Kingdom and who had previously expressed the desire to acquire land in Ghana.

He thus arranged for Plaintiff to meet 2nd Defendant when Plaintiff travelled to London in 2004. The Plaintiff thereafter informed him that he 2nd Defendant had paid a deposit of £1,200.00 to him.

In 2005 when 2nd Defendant came to Ghana he arranged for the two of them 2nd Defendant and Plaintiff to meet at his office at Asylum Down at which meeting the 2nd Defendant made final payment for the land to the Plaintiff.

The indenture for the land was not ready at the time so he insisted, that the Plaintiff gives an undertaking to the 2nd Defendant that he had been paid in full for the land and had relinquished and transferred all his interest in the land to the 2nd Defendant.

The Plaintiff he said assured him and 2nd Defendant at the meeting that he would ensure that the indenture was prepared in the name of the 2nd Defendant.

DW1 stated that he attended a meeting with the La Dadekotopon Trust as a representative of 2nd Defendant. He found out at the meeting that the Plaintiff had had the title documents prepared in his name. He therefore together with the 2nd Defendant asked Plaintiff to transfer the land to the 2nd Defendant but he refused to do so.

The second witness of 2nd Defendant the caretaker of the land also corroborated the evidence of 2nd Defendant DW1.

Decision of the High Court.

After a full trial the Learned High Court Judge decided the matter in favour of the Defendants. She made the finding that the Plaintiff had succeeded in establishing that he was not a credible witness and was not worthy of belief.

"He has woefully failed to prove his claims before this court and accordingly his claims against the Defendants fail.

From the evidence on record, the 2nd Defendant has been able to adduce sufficient evidence to prove on the balance of probabilities that he acquired the land in dispute for valuable consideration from the Plaintiff, had exercised overt acts of possession over the land since 2005 and is entitled to the reliefs he seeks, especially when the Plaintiff has failed to establish his claims before the court."

Grounds of Appeal

The Plaintiff aggrieved and dissatisfied with the judgment filed a notice of appeal on 9/02/22 with the following as the grounds of appeal:

1. The judgment of the trial court is against the weight of evidence adduced at the trial.
2. The trial court erred in making a finding of fact that 2nd Defendant /Respondent paid £14,000.00 for the land.
3. The trial court erred in placing evidentiary value on the Police Forensic Report against Plaintiff/Appellant.
4. Further grounds of appeal to be filed upon receipt of the record of appeal.

The reliefs the Plaintiff is seeking from this court are that *"the judgment of the High Court be set aside and judgment entered in favour of the Plaintiff/Appellant for the reliefs endorsed on the writ of summons"*

Contrary to the indication of Counsel for Plaintiff to file additional grounds of appeal no additional grounds of appeal were filed in the matter.

It is trite law that when a person puts forward the omnibus ground of appeal what he is claiming is that certain important facts have been overlooked which if given due consideration by the Trial Judge would have tilted the decision in his favour. It also means that the Trial Court was wrong in the findings and conclusions it had come to in view of the evidence adduced at the trial and the relevant law.

The duty of an Appellate court, such as ours, when the omnibus ground is put forward is to thoroughly review both the documentary and oral evidence adduced at the Court below and make a determination as to whether the Judge was right in his decision given the available evidence and the law.

See Tuakwa Vrs Bosom [2001-2002] SCGLR 61 and

Djin Vrs Musa Baako [2007-2008] SCGLR 686

Owusu-Domena vrs Amoah [2005-2006] SC GLR 790

Ampomah vrs VRA [1989-1990) 2GLR 28

In **Otoo and Another vs. Dwamena [2018-2019] 1 GLR 23** Pwamang JSC noted at page 28 as follows:

> ***"In this final appeal by the first Defendant, the sole ground of appeal is that the judgment is against the weight of the evidence. This ground of appeal is an invitation to the Court to comb through the record that was placed before the lower Court and decide for ourselves whether, having regard to the evidence and the law relevant for a determination of the case, the lower Court was right in its findings and conclusions."***

In **Olivia Anim vs. William Dzandzi (Unreported) Civil Appeal No. J4/10/2018** dated 6th June 2019, the Supreme Court held that:

> ***"Where an appeal is based on the ground that the judgment is against the weight of evidence, the Appellant implies that there were certain pieces of evidence on record which if applied in his favour could have changed the decision in his favour or pieces of evidence were wrongly applied against him. The onus is on such an Appellant to clearly and properly demonstrate to the appellate Court the lapses in the judgment being appealed against."***

In Oppong vrs Anarfi 2011 1 SCGLR 556 the apex court stated as follows:

> ***"Even though it is ordinarily within the province of the trial court to evaluate the veracity or otherwise of a witness, it is incumbent upon an appellate court in such a case, to analyse the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial before it arrives at its decision, so as to satisfy itself that, on the preponderance of the probabilities, the conclusions of the trial Judge are reasonable or amply supported by the evidence."***

The Appellate Court is also entitled to make up its own mind on the facts and to draw inference from them to the same extent as the trial court. See also ***Praka vrs Ketewa (1964) GLR 423 at 426, SC. Bonney vrs Bonney (1992-93) Part II GBR 779 at 787.***

Simmons vrs. Trassaco Estate Development Co. (2010-2012) 1 GLR 293 CA, and Achoro Vrs Akanfela (1996-97) SCGLR 209.

Counsel for Appellant argued grounds 1 and 2 together. The grounds as indicated supra are:

Ground 1 – The judgment of the trial court is against the weight of evidence adduced at the trial.

Ground 2 – the trial court erred in making a finding of fact that 2nd Defendant/Respondent paid £14,000.00 for the land.

Before tackling these grounds I will like to deal with the preliminary point made by Counsel for the Defendants that grounds 2 and 3 of the Appellant's grounds of appeal sin against Rule 8(4) of C.I. 19 the Court of Appeal, Rules 1997 (C.I. 19) for alleging misdirection without providing particulars of the misdirection or error. Citing the case of ***Tetteh Vrs T. Chandiram & Co. Gh Ltd and others (2017-2020) 2 SCGLR 770 at pages 776-77*** Counsel invites the Court to strike out grounds 2 and 3 for violation of the above mentioned rule 8(4).

The Rule under reference is Rule 8(4) of the Court of Appeal Rules 1997 (C.I. 19) which provides as follows:

> *"Where the grounds of an appeal allege misdirection or error in law, particulars of the misdirection or error shall be clearly stated."*

It has been held in a plethora of cases that where misdirection or error of law or fact was alleged, the appellant must clearly spell out the nature of the error complained of. This is to ensure that the opponent is sufficiently notified of the alleged error to enable him adequately respond to the appeal. It is intended to set the parameters and confine the appellant to the specific grounds under which he assails the judgment.

In the celebrated case of ***Zambrama v. Segbedzi [1992] 2 GLR 221,*** where the offending ground was struck out because it simply alleged *"misdirection"* without specifying how the court misdirected itself, the Court of Appeal held that it did not meet the requirements of the rule and was inadmissible under the Rules. The court explained that the rule requires that the appellant clearly describes the terms of the error complained of. The court stated the requirement and the rationale thus:

".....The requirement was that the ground stated in the notice of appeal must clearly and concisely indicate in what manner the trial judge misdirected himself either on the law or the facts. The rationale was that a person who was brought to an appellate forum to maintain or defend a verdict or decision which he had got in his favour should understand on what ground it was being impugned ...."

The reasoning was re-echoed in ***Dahabieh v. S.A. Turqui & Brothers [2001-2002] SCGLR 498,*** where the Supreme Court speaking through Adzoe JSC, explained the rationale for Rule 6 of the Supreme Court Rules 1996, (C.I. 16) (which is same as Rule 8(4) of C.I. 19) thus:

"The intention behind rule 6 of the Supreme Court Rules, 1996 (CI 16), is to narrow the issues on appeal and shorten the hearing by specifying the error made by the lower court or by disclosing whether or not a point at issue had been raised ..... With respect to questions of law, it is necessary that the respondent and his lawyers know well in advance what points of law are being raised so that they may prepare their case and marshal their authorities ....."

With the rationale for the rule in mind, the Supreme Court in ***Tetteh vrs. T. Chandiram & Co. Ghana Limited & Ors [2017-2020] 2 SCGLR page 770,*** (cited by Plaintiff in support of the submission) struck out the defective grounds of appeal because the alleged errors could not be sufficiently inferred from the wording of the grounds of appeal to enable the court address same.

In the more recent case of ***Republic vrs Ghana National Gas Company Ltd; Ex Parte: King City Development Co. Ltd (Lands Commission Interested Party) Civil Appeal No. H1/233/2020 dated 25th March 2020, (unreported),*** the court ruled that where the ground of appeal failed to specifically set out the alleged error but sufficient particulars are

discernible from the entire reading of the grounds of appeal, the impugned ground would not be held to be in breach of the Rules. Dismissing the objection to the grounds of appeal, the Court observed that, *"for each of the said grounds, sufficient particulars are discernible from the entire reading of the ground such that a clear understanding of the basis upon which the attack is mounted, is not lost."*

The principle distilled from the cases referred to supra is that, where the issues for the determination of the appellate court are discernible from the wording of the grounds of appeal, or where the wording of the grounds of appeal sufficiently convey the alleged error and the matters the Appellant intended to argue thereunder, failure to particularlise the alleged error per se would not render the ground inadmissible.

We are therefore unable to accept this invitation as it is our position that though the particulars of error may not have been outlined formally one can infer from the statement the essence of the ground.

This paves way for us to now deal with the substance of the appeal.

Counsel for Appellant assails the following statement of the Trial Judge at page 19 of the judgment (page 352 of the ROA) as follows:

> *"On the other hand, the 2nd defendant's exhibits and Plaintiff's own Exhibit 'A' and 'B' bear the same signature of the Plaintiff to the naked eye between 1996 and 2005, his signature appeared the same, with the distinctive signature, appearing within what looks like the letter 'A'. However, this distinctive way of signing his signature does not appear in the lease of 19th September, 2017 with the East Dadekotopon Trust and thereafter on processes he has signed before this court so essentially, how could this characteristic suddenly disappear from his signature after 21 years? His signature on the witness statement he deposed to also differ from what appears on his lease agreement with the trust…"*

In reacting to this, Counsel complained that the court failed to observe and comment on the glaring difference in the signatures of 2nd Defendant as well as handwriting differences on record.

He argued that the Plaintiff vehemently denied ever writing and signing the second part of Exhibit '1' (page 109 of the ROA) which is reproduced as follows:

> *"NB: Total price agreed between two parties is '?' 14,000 US. Dollars."* Counsel for Plaintiff further contends that 2nd defendant failed to produce the original of Exhibit '1' for scrutiny There were indications on the basis of which it could be inferred/deduced that the second part of the exhibit was an addition made later on.

He outlines the following as the indications:-

i. *"The handwriting for the second part is different from the first part.*
ii. *The ink impression is thinner and lighter than the first part.*
iii. *Edith Karikari did not sign the second part as seller meaning she was not present when it was added.*
iv. *The signature of 2nd respondent on Exhibit '1' is visually different from his signature on the undertaking, Exhibit '4' which was purportedly made barely 2 months later on 21/01/2005. Among other things, the 'alex' in Exhibit '1' is clearly visible whilst it is not in Exhibit '4', whilst 'Bonsu' is visible in Exhibit '4', but not in Exhibit '1'."*

Counsel further contends forcefully that from the answers provided by 2nd defendant, he was being evasive, dodgy or untruthful about the whereabouts of Exhibit '1' the receipt and referred to excerpts of the said cross-examination at pages 231 of 245 of the ROA.

Counsel for Plaintiff argued further that the dodgy answers of the 2nd

Defendant on the whereabouts of the original of Exhibit '1' and the reliance on a photographed copy were clearly an attempt by him (2nd Defendant) to conceal evidence of the additions made to the exhibit after the first part had been written and signed by the Plaintiff.

He contended further that since the Plaintiff denied ever authoring and signing Exhibits '2' (statutory declaration – page 187 of the ROA) and Exhibit '4' (Undertaking at page 181 of the record), the burden was on the 2nd Defendant to prove the contrary. Counsel continued further that paragraph 2 & 3 of the undertaking (Exhibit '4') do not even constitute a receipt or acknowledgement of any payment allegedly made to Plaintiff.

Exhibit '4' according to Counsel was only prepared to create the false impression that $14,000.00 has been paid to Plaintiff without any convincing corroborative recitals.

Counsel makes the point that DW1 (Vincent Ofoe Agbettor) in his witness statement could not state the exact amount that he claimed was paid to Plaintiff in his office on 21/01/2005.

He argues that the inability of 2nd Defendant and his witness DW1 to tell the court how much was paid to the Plaintiff on 21/01/2005 was baffling. The only logical deduction is that no payment whatsoever was made on that day.

Counsel for Plaintiff then discusses the evidence of DW2 and remarks that his cross-examination casts serious doubts on when Exhibit '2' the Statutory Declaration dated 21/01/2005 and Exhibit '4' the Undertaking dated 21/01/2005 were made and the likelihood that they were not made in January 2005 at all.

According to Counsel for Plaintiff/Appellant the evidence adduced by 2nd Defendant in support of his claim that he paid US$14,000 to Plaintiff for the disputed land was weightless and lacked depth and merit and should have been rejected by the court below.

Unstamped Documents:

Counsel then touched on the issue of Exhibit '1' Receipt, Exhibit '2' Statutory Declaration and Exhibit '4', the Undertaking being unstamped documents which cannot be admitted as evidence to establish a claim. As unstamped documents, they are of no evidential value. Counsel cited the case of ***Gen. Emmanuel Erskine & Anor. vs. Victoria Okpoti & Anor. (J4/23/2016) dated 6th June, 2018*** in support of his contention.

The apex court in the said case held that an unstamped land document cannot be accepted as evidence since it does not fulfil the statutory requirements of ***Section 32 (6) of the Stamp Duty Act 2005, Act 689,*** which provides as follows:

> ***"Except as expressly provided in this section, an instrument (a) executed in Ghana; or (b) executed outside Ghana but relating to property situate or as to any matter or thing done or to be done in Ghana – shall except in criminal proceedings not to be given in evidence unless it is stamped in accordance with the law in force at the time when it was first executed."***

On the basis of the above submissions, Counsel invites us to overturn the findings of the court below and find for the Plaintiff.

In response to the submissions of Plaintiff's Counsel in respect of grounds 1 & 2 the Counsel for Defendants argued that the Plaintiff's Counsel had failed in discharging his duty to pinpoint pieces of evidence that had been ignored by the trial Judge to the disadvantage.

Section 11 of the Evidence Act 1975 Act 323 states that the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.

In the case of **Tifuuro** ***vs. Alhaji Saaka Yakubu Civil Appeal No. J4/32/2014, 9th May, 2018, Baffoe-Bonnie, JSC,*** held as follows:

> ***"The role of a trial Judge in a civil matter is to determine from the evidence available which of the parties adduced credible and sufficient evidence to tilt in his favour the balance of probabilities on an issue."***
>
> In ***Bisi v. Tabiri alias Asare [1987-88] 1 GLR 360,*** the Supreme Court had this to say on the burden of proof:
>
> ***"The standard of proof required of a Plaintiff in a civil action was to lead such evidence as would tilt in his favour the balance of probabilities on the particular issue. The demand for strict proof of pleadings had however never been taken to call for an inflexible proof either beyond reasonable doubt or with mathematical exactitude or with such precision as would fit a jigsaw puzzle. Preponderance of evidence became the triers' belief in the preponderance of probability. But probability denoted an element of doubt or uncertainty and recognized that where there were two choices it was sufficient if the choice selected was more probable than the choice rejected."***

In ***Adwubeng vrs Domfe [1996 – 97] SCGLR 660 @ 662*** the apex court held that:

> *"in all civil actions the standard of proof is proof by the preponderance of probabilities and there was no exception to that rule."*

In this matter, both the Plaintiff and 2nd Defendant have staked a claim to ownership of the disputed land and thus the obligation to prove the assertion that the land is his rest on the 2nd defendant as well, as a countercliamant

See: ***Obey vrs. Korang [2013] 58 GMJ 1.***

As is required of us, when the omnibus ground is put forward in a ground of appeal, we have combed through the evidence and the pleadings in this matter and come to the firm conclusion that the decision of the Trial Judge is sound and must not be disturbed.

The trial Judge had two choices to select from. It is our position that the learned trial Judge has selected the more probable one and rejected the one i.e. the Plaintiff's story which seems highly improbable.

The following provides the basis for our decision. Plaintiff in his evidence claimed that his signature had been forged or falsified in Exhibits '1', '2' and '4'. Specifically, the Plaintiff's claim was that his signature appearing at the bottom part of Exhibit '1' had been forged although he accepted that the signature on the top part of Exhibit '1' in which he acknowledges receipt of £1,200 from the defendant is a genuine one.

The Plaintiff had the burden of producing evidence of the alleged fraudulent conduct on the part of 2nd defendant. This, he woefully failed to do apart from the mere assertion in his reply to the defendants' counterclaim.

By the provision of ***Section 13 (1) of the Evidence Act NRCD 323,*** the Plaintiff had the burden of proving beyond reasonable doubt the allegation of fraud against the 2nd defendant.

In ***Akufo-Addo v. Quashie Idun [1968] GLR 667*** the court held that;

> ***"Even in the most ordinary cases an allegation of fraud is a very serious matter. It is not lightly made. The courts look with disfavour on a party who makes it and is unable to substantiate it."***

Again, in ***Dzotepe v. Hahormene [1987-88] 2 GLR 681 at page 701 Francois JSC,*** stated as follows:

"The judicial edifice was not constructed to lend ear to every cry of fraud from suitors who have lost on merit."

It is our position that this is a contest in which the Plaintiff has lost on merit and his cries of fraud cannot and should not be heard.

Evidence of DW1 Vincent Ofoe Agbettor:

In determining which of the rival stories to choose in this matter i.e. to determine the balance of probabilities the evidence of DW1 Vincent Ofoe Agbettor was very crucial. DW1 strikes us as a fair arbiter or umpire who sought for and yearned to ensure fairness between the two players or combatants whom he described as his friends. He referred to Plaintiff as someone he had known for over twenty (20) years and had in the course of time become a very close family friend and 2nd defendant as a friend and a mate in the University whom he had known for over forty (40) years. It is instructive to remark that DW1 described Plaintiff as cunning and as a result sought to ensure that he was on his guard when dealing with Plaintiff.

It was he who brought the two key players Plaintiff and 2nd Defendant together on the issue of the sale of land at Tse Addo by the Plaintiff.

Our impression of him from his witness statement and his cross-examination i.e. answers/responses (in the ROA pages 248-256) is that of a credible witness whose desire was to assist the court arrive at the truth in the matter.

His testimony that he arranged a meeting at his Asylum Down Office on 21/01/2005 for the Plaintiff and 2nd Defendant at which meeting 2nd Defendant paid the balance of the cost of the land to Plaintiff could not be successfully controverted by Counsel for Plaintiff.

It is true that the specific amount said to have been paid to Plaintiff by 2nd Defendant is not indicated and that is an omission. It is however not a fatal omission as the totality of the evidence indicates that the full payment for the land was made to Plaintiff.

DW1's assertion that he ensured that a statutory declaration and an undertaking, exhibits 2 & 4 respectively were made and signed by the Plaintiff relinquishing his title in the land to 2nd Defendant is convincing and worth of belief. He explains that he did this because the indenture on the land was not ready at the time.

DW1, Vincent Ofoe Agbettor had stated that he had a close relationship with Plaintiff and indeed pointed out that he was even closer to the Plaintiff than the 2nd Defendant because 2nd Defendant was ordinarily resident in the U.K. There was therefore no earthly reason why he should conspire with the 2nd Defendant against the Plaintiff to prepare forged documents against him the Plaintiff. The Plaintiff and his Counsel did not deny the existence of this relationship between DW1 and Plaintiff.

Section 80 of the Evidence Decree, 1975 NRCD 323 deals with the subject of Attacking or Supporting the credibility of a witness and provides as follows:

80(1) Except as otherwise provided by this Decree, the court or jury may in determining the credibility of a witness consider any matter that is relevant to prove or disprove the truthfulness of his testimony at the trial.

(2) Matters which may be relevant to the determination of the credibility of the witness include but are not limited to the following:

- ***a) the demeanour of the witness***
- ***b) the substance of the testimony***
- ***c)***
- ***d)***

e) ***The existence or non-existence of bias, interest or other motive***

f) ***The character of the witness as to traits of honesty or truthfulness or their opposites.***

g) ***.....***

h) ***.....***

We comment on item (e) and state that there was not in existence any iota of bias interest or ulterior motive in the evidence of DW1 against the Plaintiff.

In the case of ***Chantel vrs. Koi [2011] 29 GMJ 20 CA, it was held at page 51*** that an important principle that should guide the tribunal of fact in determining the credibility of witnesses is the need to test the story of the witness as to its consistency with the probabilities that surround the currently existing conditions. In short, the test is whether the story of the witness is in harmony with the preponderance of probabilities which a practical and informed person would recognise as reasonable in those conditions.

In ***Ntriri & Anor vrs Essien & Anor [2001-2002] SCGLR 451*** the apex court held that it is the trial court which determines the credibility of a witness. These include, the demeanour of the witness, the substance of his testimony, the existence or non-existence of any fact testified to by the witness, the character of the witnesses as to traits of honesty or truthfulness or their opposites.

In the instant case we find and hold that the trial Judge who had the privilege of seeing the witnesses and looking at their demeanour did not err in deciding who to believe and in determining where the balance of probabilities should tilt towards.

See also:

- *Tamakloe & Partners Unltd vrs GIHOC Distilleries Co. Ltd (SC) per Amegatcher JSC (Civil Appeal No. J4/70/2018 dated 3/7/2019;*

- *Ayeh & Akakpo Vrs Ayaa Iddrisu [2010) SCGLR 891 @ Holding 5;*
- *Akufo-Addo vrs Catheline [1992] 1GLR 377*
- *Asamoah vrs Setordzi [1987-88] 1 GLR 67;*

Again as pointed out by the Trial Judge whilst the 2nd Defendant's, account was consistent and corroborated by his witnesses the Plaintiffs story was contradictory and preposterous and in fact difficult to accept.

For instance Plaintiff's story that he had put up a five (5) bedroom structure on the land which had been demolished could not be proved and turned out to be a mere assertion.(see pages 34 – 37 of the ROA)

In fact the evidence of DW2 Samuel Addo Otswe and Tanko Fattah DW3 the 1st Defendant's witness show that there was no such uncompleted five story building on the land which had been demolished. The documentary evidence in the form of photos exhibits also belie this assertion.

The story of Plaintiff that he gave out his land documents and building drawings to the 2nd Defendant and permitted him to put a fence wall around the disputed plot to ward off intruders is preposterous and can simply be described as untrue.

It is more probable and reasonable to accept the 2nd Defendant's version as the Trial Judge did, that the building drawings were given to him after he had made payment for the land.

That the 2nd Defendant exercised acts of possession and started construction of the fence wall after he had made payment is also a point in his favour.

The Plaintiff's Counsel makes the legal point that Exhibits 1, 2, 4 are all unstamped documents and therefore of no evidentiary value.

See the case of ***General Emmanuel Erskine & Anor Vrs Victoria Okpoti & Anor*** cited supra.

The apex court held in that case that an unstamped land document cannot be accepted as evidence since they do not meet the statutory requirements of Section 32(6) of the Stamp Duty Act, 2005, Act 689.

This is a good point and reflects the position of the law. We therefore accept the point that Exhibits 1, 2, and 4 tendered in evidence by 2nd Defendant as unstamped documents are of no evidentiary value.

The question that has to be posed however is does the acceptance of the fact that these exhibits 1, 2, & 4 are to be discounted as having no evidentiary value completely nullify or destroy Defendants' case?

We are of the view that the oral evidence of 2nd Defendant and DW1 are cogent and compelling evidence which still tilts the balance of probabilities in favour of the Defendants as already indicated.

It is therefore our position that grounds 1 & 2 have not been made out and are both without merit.

Ground 3:

Ground 3 "The trial court erred in placing evidentiary value on the Police Forensic Report against Plaintiff/Appellant.

Counsel for the Plaintiff contends that the 2nd Defendant went to the police for the report Exhibit 6 after he had been sued by the Plaintiff and the police gave him an incomplete and unreliable report. Counsel for Plaintiff contends that the "Police Forensic Laboratory

Report" which formed the basis of the conclusion reached was not attached to the report and none of the exhibits mentioned were attached to Exhibit "6."
Counsel argues further that the officer who prepared the report was also not called to testify to it and be cross-examined.

The conclusion drawn by the report, Counsel argues is frowned upon and rejected by the courts and cited the case of ***Commey vrs Bentum Williams [1984-86] 2 GLR 301*** in support of his position.
In that case the Court of Appeal held as follows:

> ***"a handwriting expert was not required to state definitely that a particular writing was by a particular person. His function was to point out similarities or differences in two or more specimens of handwriting submitted to him and leave the court to draw its own conclusions. In other words an expert in handwriting having examined, deciphered and compared the disputed writing with any other writing, the genuineness of which was not in dispute was only obliged to point out the similarities or otherwise in the handwriting; and it was for the court to determine whether the writing was to be assigned to a particular person."***

Counsel concluded that the trial Judge erred in placing evidential value on the report and that the Judge relied on immaterial facts, ignored relevant and material facts and wrongly applied the evidence against the Appellant.

In a riposte to these arguments Counsel for the Defendants first referred to Section 6(1) of the Evidence Act 1975 NRCD 323 that a party has the right to object to evidence at the time it is being tendered. Should a party fail to do this and his opponent tenders a document without objection the court is obliged to consider it.

Section 6(1 & 2) of the Evidence Act specifically provides as follows:

> *"6(1) In every action and at every stage thereof any objection to the admissibility of evidence by a party affected thereby shall be made at the time the evidence is offered".*
>
> *6(2) "Every objection to the admissibility of evidence shall be recorded and ruled upon by the court as a matter of course."*

Counsel for Defendants contend that the Plaintiff failed to object to the Police Report and this was tendered without objection and marked as Exhibit 8 (See pages 124-125 of ROA)

The Judge was therefore bound, he argues, and quite rightly, to consider it and attach the appropriate weight to it.

Since he failed to do so the Plaintiff cannot be heard now to cry foul.

Counsel for Defendants argues that the Plaintiff could have subpoenaed the author of "Exhibit 8" to appear before the court for cross-examination but he failed to do so and thus the Trial Judge cannot be faulted for taking into account the Exhibit 8 in the analysis of the issue of falsification and forgery of the exhibits 1, 2 and 4 i.e.

a) The acknowledgment of receipt dated 17th November 2004
b) Undertaking dated 21st January 2005 and
c) Statutory Declaration dated 21st January 2005.

In analyzing Exhibit "8", the Learned Trial Judge was right in law and in fact when she came to the following irresistible conclusion on page 19 paragraphs 3-5 of the Judgment (See page 352 of ROA):

"The 2nd Defendant tendered the police report which was completed after the documents which the Plaintiff disputes were submitted to forensic analysis by the police, a process the Plaintiff willingly submitted to and very obviously provided specimen signatures for."

It must be noted that section 37 of NRCD 323 states that 'it is presumed that official duty has been regularly performed'. In Ghana Ports & Harbours Authority & Another vrs Nova Complex Ltd [2007-2008] SC GLR 806, the court considered section 37 (1) of NRCD 323 and held that:

'the common law rule of presumption, Omnia Praseumuntiur rite et Solenmiter(sic) esse acta, which has gained statutory recognition under section 37(1) of .. NRCD 323 providing that "it is presumed that an official duty has been regularly performed applies not only to official, judicial and governmental acts, but also to duties required by law ..."

The Plaintiff was unable to impugn this police report or to offer any evidence to rebut the presumption that the police forensic examination was regularly performed."

Another point which Counsel for Defendants makes and which finds favour with us is that the Judge did not reach her conclusions on the basis of Exhibit 8 alone. The Trial Judge considered all the pieces of evidence before her, the confusing, conflicting, contradictory nature of the evidence of the Plaintiff and his witnesses as opposed to the credible evidence of the Defendant and his witnesses who corroborated his story.

For instance the Plaintiff admitted on at least two occasions under cross examination that he sold the land to 2nd Defendant but the 2nd Defendant had failed to pay fully for the land. This is in sharp contrast to his story that he only took a loan from 2nd Defendant and used the land as collateral. All these were considered by the Trial Judge in arriving at her conclusion as the expert trier of facts.

The Counsel for Plaintiff cited in support of his client's position the case of ***Commey Vrs Bentum Williams*** referred to supra, on what a handwriting expert was required to do and also the role of the judge. It is our position that the Judge made her own independent findings, decision on the report as she is required to do after considering the expert's opinion. In fact the authority cited by Plaintiff's Counsel supports the position adopted by the Trial Judge.

It is our view that this ground of appeal has not been made out and the appeal fails in its entirety.

In ***Fosua & Adu-Poku Vrs Dufie (Deceased) & Adu Poku-Mensah [2009] SCGLR 310*** the apex court held as follows in Holding 4:

> *"In the instant case the most important issue was whether the disputed house was the self-acquired property of the late Kwaku Poku as contended by the Defendants. That was an issue of fact entirely within the province of the trial Judge to determine one way or the other provided he resolved the issue in favour or against one side based on the evidence before him, the settled law was that an appellate court would be slow to interfere with or set aside the finding of facts so made unless the findings were so perverse or not supported by the evidence on record.*
>
> *... the veracity or otherwise of a witness was a function reserved exclusively for the Trial Judge and would ordinarily not be interfered with except it was proved he did not take advantage of seeing the witnesses as they testified before him or drew the wrong inferences from the evidence. The Trial Judge had enough evidence to make his finding and, for that reason, was not so perverse as to be reversed on appeal".*

See also ***Bisi vrs Tabiri alias Asare [1987-88] 1 GLR 360 at 368 SC.***

Achoro Vrs Akanfela [1996-97] SCGLR 209

Koglex Ltd (No 2) Vrs Field [2000] SCGLR 175

In Re Okine (Deceased) [2003-2004] 1 SCGLR 582 at 607

Also in ***Agyenim-Boateng vrs Ofori & Yeboah [2010] SCGLR 891*** the court restated the principle as follows:

> *"It is the trial court that has the exclusive right to make primary findings of fact which would constitute building blocks for the construction of the judgment of the court where such findings of fact are supported by evidence on the record and are based on the credibility of witnesses when the trial tribunal has had the opportunity and advantage of seeing and observing their demeanour and has become satisfied of the truthfulness of their testimonies touching on any particular matter in issue. The appellate court can only interfere with the findings of the trial court if they are wrong because*
>
> a) *The court has taken into account matters which were irrelevant in law,*
> b) *The court excluded maters which were critically necessary for consideration,*
> c) *The court has come to conclusion which no court properly instructing itself would have reached and*
> d) *The court's findings were not proper inferences drawn from the facts. However, just as the trial court is competent to make inferences from its specific findings of fact and arrive at its conclusion, the appellate court is entitled to draw inferences from findings of fact by the trial court and to come to its own conclusions."*

This is not one of the cases an appellate court can and should disturb the findings of the court below on the grounds that the Judge has relied on immaterial facts and ignored relevant and material facts and wrongly applied the evidence against the Appellant.

On the contrary the findings of the trial Judge and her conclusions are properly made and supported by the law.

We do agree with the Learned Trial Judge in her observation that "the Plaintiff succeeded in establishing that he is not a credible witness and is not worth of belief."

Conclusion:

The appeal therefore fails and is dismissed in its entirety.

Costs of GH¢15,000.00 is awarded for Respondents.

(SGD)

ALEX B. POKU-ACHEAMPONG

(JUSTICE OF THE COURT OF APPEAL)

(SGD)

I agree, **RICHARD ADJEI-FRIMPONG**

(JUSTICE OF THE COURT OF APPEAL)

(SGD)

I also agree, **DR. ERNEST OWUSU-DAPAA**

(JUSTICE OF THE COURT OF APPEAL)

COUNSEL:

1. Nii Adama Adamafio with Vida Antwi for Plaintiff /Appellant
2. Hans Awude for Defendants /Respondents.