

IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA

CORAM: HENRY KWOFIE JA (PRESIDING)
AMMA GAISIE JA
RICHARD ADJEI-FRIMPONG JA

SUIT NO. H1/49/2021
DATE: 19TH JANUARY, 2023

AZIMI SHAARANI PLAINTIFF/APPELLANT

VS.

REV. WILLIAM AMANKWAA..... DEFENDANT/RESPONDENT
(SUBSTITUTED BY REV. MRS.
ROSE AMANKWAA)

J U D G M E N T

HENRY KWOFIE JA:

This present appeal has been launched by the plaintiff/appellant against the judgment of the High Court Accra (Land Division) delivered on 22nd of November, 2019. The trial court in that judgment dismissed the plaintiffs claim and entered judgment for the defendant on his counterclaim. Dissatisfied with the said judgment, the plaintiff/appellant launched the instant appeal on 5th December 2019 on the following grounds:

- i) The whole judgment is against the weight of evidence before the Court.*
- ii) The learned trial judge erred in law when he equated the unproved irregularities around the issue of the plaintiff/appellants Land Certificate with fraud*

- iii) *The learned trial judge failed woefully to appreciate the nature, time and consequence of plaintiff/appellants possession and occupation of the land in dispute and led him to wrong conclusion that led to a miscarriage of justice*
- iv) *The learned trial judge erred in law when he failed to appreciate the legal effect of the sale of the land by the original defendant to a third party one Mr. Agyekum and its legal bearing on defendants interest if at all.*
- v) *The learned trial judge erred in law and fact when he concluded that plaintiff/appellant paid an amount of \$21,000 for acquisition of his land certificate and thereby wrongfully concluded that it was obtained by fraud.*
- vi) *The learned trial judge failed to appreciate the consistency in the plaintiff/appellants oral evidence with the documentary evidence before the court.*
- vii) *The trial courts judgment was heavily weighed by and with speculative conclusions that resulted in erroneous conclusions in law and fact*
- viii) *The learned trial judge erred grievously in concluding that the age of the plaintiff/appellant determined his ability to purchase the land in dispute in 2005 and thereby leading to a wrong conclusion.*
- ix) *The learned trial judge erred grievously when he concluded his judgment on fraud based on circumstantial evidence.*
- x) *The learned trial judge erred in law when he held that the defendant/respondent had succeeded in proving the fraud to the legal standard when in fact, defendant did not lead or demonstrate or prove any fraud against plaintiff*
- xi) *The learned trial judge erred grievously in law when he embarked on a siege or legal exercise to find fraud when none was established by defendant or proved or existed at the trial*
- xii) *The learned trial judge also erred in law when he held that the defendant/respondent had proved her title when indeed fact and law he/she had failed to do (sic) the legal standard*

- xiii) *The learned trial judge erred in law in the award of excessive damages and costs of GH¢50,000 and GH¢20,000 respectively without any legal or factual basis thereby causing a miscarriage of justice.*
- xiv) *The learned trial judge erred in fact and law on the location of the plaintiff/appellants land in dispute vis-à-vis the land claimed by defendant/respondent by his documents of title.*
- xv) *The learned trial judge also erred grievously on the issue of the damaged wall when DW2 who claimed to have purportedly erected same could not identify it or describe it.*
- xvi) *The learned trial judge erred on his conclusions on the invoice and receipts covering the reconstruction of the damaged fence wall*
- xvii) *The learned trial judge erred when he woefully failed to appreciate and decide specifically on the irreversible material defects in the title documents of the defendant/respondent*
- xviii) *The learned trial judge erred grievously in law when he ordered the defendant/respondent to demolish the 5 bedroom property on the land in dispute thereby occasioning a miscarriage of justice under the circumstances when plaintiff/respondent acted in good faith*
- xix) *The learned judge erred in law on the conclusion he arrived at regarding the police report and the internal Memorandum (Exhibit 7) by the Chief Registrar of Lands thereby leading to the wrong decision on same as same were inconclusive opinions of persons who the plaintiff was not given opportunity to cross - examine*
- xx) *The trial judge erred when he concluded that in respect of plaintiff/appellants Land Certificate, due process was not followed when there was no such evidence*
- xxi) *The learned trial judge erred when he failed to appreciate the circumstances and persons involved in the sale of the land in dispute by Ashong Mlitse family of Odaitei Tse We of Teshie to plaintiff.*

xxii) Further grounds of appeal shall be raised upon receipt of the record of appeal.

It is noted for the record that no additional ground of appeal was filed by the plaintiff/appellant. The relief sought from the Court of appeal is an order to set aside and reverse the entire judgment of the High Court and enter judgment in favour of the plaintiff/appellant on his claims.

Before dealing with the arguments advanced in support and against, the appeal, I will give a brief background of the case that has culminated in this appeal.

By an amended Writ of Summons and statement of claim filed on 2nd December, 2013, the plaintiff claimed against the defendant the following reliefs:

- i) Declaration of title to all that piece or parcel of land being the subject matter of this suit as claimed by plaintiff and described in paragraph 3 of the statement of claim.*
- ii) Declaration that any or all grants, alienation, licences etc. made in respect of plaintiff's land so described, by or in favour of the defendant without the consent and concurrence of plaintiff are null and void*
- iii) Declaration that plaintiff's Land Certificate No. TD7841 Vol. 018 with Folio No. 1953 covering the plaintiff's land was validly issued in accordance with law and practice.*
- iv) Recovery of possession of the portion of plaintiff's Land trespassed upon by the defendant*
- v) Special damages in the sum of GH¢ 6785.00 which represents expenses incurred in rebuilding fence wall demolished by the defendant, his agents, assigns and/or representative*
- vi) Damages for Trespass*
- vii) Perpetual injunction restraining the defendant or his agents, assigns, workmen, representatives, grantees etc. and all other persons laying adverse claim and title to*

- that (sic) of the plaintiff from trespassing on, carrying out activities, developing, constructing or in any way interfering with the interest of the plaintiff's title in the land described herein.*
- viii) A declaration that plaintiff's Land Certificate covering his land with the particulars Land Certificate No. TD 7481 Vol. 018 with Folio No, 1953 is valid*
 - ix) An order for the demolition of all or any structures, buildings, developments etc. on plaintiffs land as erected by the defendant or his agents, successors in title, privies, relations or representatives etc.*
 - x) An order directed at the Land Commission to cancel, nullify and expunge from its records any registration of any document, indenture or title deeds in the name of the defendant in so far as same covers or touches and concerns plaintiff's land*
 - xi) Any orders as the court may deem fit to make*
 - xii) Costs*
 - xiii) Legal fees.*

It is the plaintiff's case that he acquired the land in dispute from his grantors the Ashong Mlitse family of Odaiteitse We of Teshis, Accra on 17th May 2006, went into possession by depositing sand, stones and blocks on the land. He also fenced the land and has been in effective possession of same ever since. He was issued with an indenture which was stamped as LVD 647B/13 and subsequently acquired a Land Title Certificate with number TD 7841 Vol. 018 Folio No. 1953 upon following due process as required by law. Plaintiffs asserts that he constructed a structure up to lintel level and had to stop the construction because of the present action. The plaintiff asserts that he enjoyed peaceful possession of the land without any interference from any quarters until the defendant and his agents surfaced in the early part of 2013. They destroyed the wall he constructed on the land on two different occasions and he had to rebuild the wall at a cost of GH¢ 6,785.00. The plaintiff asserts that the defendant's destructive

activities were reported to the police who conducted various searches at some divisions of the Lands Commission all of which revealed that the plaintiff was the bona fide owner for value of the land in dispute. The plaintiff further states that recent development have caused his grantor family to reconfirm their grant to him. He contends that the defendant has no interest whatsoever in the land and the documents the defendant is relying on are either defective or fraudulent and the defendant's conduct borders on criminality.

The defendant denied the plaintiffs claim and contended that he is the owner of the land in dispute and has therefore not trespassed unto plaintiff's land. It is his case that he was granted the land in dispute by the Ashong Mlitse Family of Odaiteitse We of Teshie in the year 2005 and took possession of the land and constructed a wall and a single room structure on the land. He put a lady teacher on the land as a caretaker and also had four wooden kiosks and one iron container on the land. The defendant stated that sometime in March 2013, the plaintiff with the assistance of land guards broke down a portion of the wall he had constructed, entered the land and used his (defendants) sand to raise the wall he (the defendant) had constructed and also commenced construction on the land. The defendant asserted that the plaintiff and his land guards also drove out his caretaker from the land and maltreated and terrorized the defendant and his caretakers. The defendant says that he had to report the conduct of the plaintiff to the police and on one of their visits the police had to fire warning shots to ward off the land guards. The defendant says that the plaintiff did not have a valid grant from the Ashong Mlitse family of Odaiteitse We and that the document the plaintiff is relying on as coming from that family is fraudulent. He denied pulling down the plaintiff's wall and contended that it was rather the plaintiff who pulled down his wall. The defendant said the disputed land was situate at Otano Adjiriganor and gave the boundaries and stated the size of the land as measuring 0.68 acres or 0.30 hectares.

The defendant accordingly counterclaimed as against the plaintiff for the following reliefs:

- i) *Declaration of title to all that piece or parcel of land described in paragraph 47 of the amended statement of defence and counterclaim.*
- ii) *Recovery of possession*
- iii) *Damages for trespass*
- iv) *Perpetual injunction to restrain the plaintiff from interfering with the defendant's quiet enjoyment of his land*
- v) *An order directed at the Lands Commission to cancel the Land Title Certificate No. TD7841/Vol. 018 Folio 1853 issued on 12th day of April 2013 to the plaintiff.*

In this judgment the plaintiff/appellant will hereinafter be described as plaintiff and the defendant/respondent will be described as defendant.

Counsel for the plaintiff argued grounds 1, 6,7,15 and 16 of the appeal. We will tie these grounds in with grounds 2, 5, 8, 9, 10, 11 and 17 dealing with fraud. Counsel referred to Exhibit B, the indenture and Site plan from Apaamor Construction to plaintiff and stated that this document supported the first purchase by plaintiff. He asserted that it was this document that the plaintiff first presented for registration which led to the realisation that another family, the Ashong Mlitse family had plotted a portion of the land in its name. Counsel added that this was what prompted plaintiff to seek out and repay and repurchase the land from the Ashong Mlitse family which subsequently produced the payments that manifested in 2013. Counsel asserted that the most important thing was that the plaintiff first purchased the land in May 2006 and this was what plaintiff used to take possession. He asserted that actual initial acquisition was in May 2006 and the second payment to the Ashong Mlitse family was supported by the 2013 receipts

Exhibit C series. He finally submitted that in rehearing the case, this court must therefore hold that the possession of the plaintiff through his first grantor Quaye family and Apaamor Construction is valid, and supports the plaintiff's possession before the encounters with the defendant or the Ashong Mlitse family.

Responding to the arguments of plaintiff, counsel for the defendant submitted that plaintiff claimed that he first purchased the land from Apaamor Construction Works in the year 2005, and was given an indenture dated 17th May 2006 and stamped as LVD13104/2013 tendered in evidence as Exhibit B. Counsel added that it is usually possible for a grantor to put the grantee in possession whilst the grantee is waiting for the documentation. He submitted however that the receipts tendered by the plaintiff Exhibit C series shows that all payments were made for the land in 2013. Counsel then poses the question; if plaintiff bought the land from the second grantor on 17th May 2006 why were the payments for the land made in 2013 per Exhibit C series?

Counsel referred to the contract of sale made between David Ampofo and Azimi Shaarani (the plaintiff) Exhibit C6 and C27 made and dated 2nd January 2013. Counsel asserted that the indenture could not have been made in 2006 before the contract of sale was prepared. He submitted that the only conclusion that can be drawn is that the indenture Exhibit B was actually executed in 2013 but was backdated to the year 2006. He added that the evidence shows clearly that the plaintiff acquired the disputed land in 2013 but fraudulently had the documents prepared for him by Apaamor Construction and Odartei Tse We family backdated to 17th May 2006.

The authorities are replete on the principle that where an appellant appeals on the omnibus ground that the judgment is against the weight of evidence, the Court is to

consider comprehensively the entire evidence on record before coming to a conclusion on the matter.

In **Tuakwa vs. Bosom (2001-2002) SCGLR 61** it was held thus:

“an appeal is by way of re-hearing, particularly where the appellant alleges in his notice of Appeal that the decision of the trial court is against the weight of evidence. In such a case although it is not the function of the appellate court to evaluate the veracity or otherwise of any witness, it is incumbent upon an appellate court, in a civil case, to analyse the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial before arriving at its decision, so as to satisfy itself that, on a preponderance of the probabilities, the conclusions of the trial judge are reasonably or amply supported by the evidence.....”

See also **Ayeh and Akakpo vs. Ayaa Iddrisu (2010) SCGLR 891** holding 1.

An appeal is therefore in the nature of a rehearing within the limits set out by the authorities or case law. These limits were stated in the Supreme Court case of **Bonney vs. Bonney (1992-1993) GBR 779** as follows:

“an appeal court ought not under any circumstances interfere with findings of fact by the trial judge except where they were clearly shown to be wrong, or the judge did not take all the circumstances and evidence into account or had drawn wrong inferences without evidence

in support or had not taken proper advantage of having seen and heard witnesses”

See also the cases of **Effia Stool vs. Fijai Stool (2001-2002) SCGLR 893; Djin vs. Musa Baako (2007-2008) SCGLR 686**. The appellant therefore carries the burden of showing from the evidence on record that the judgment of the trial court is indeed against the weight of evidence since there is a presumption that the judgment on the facts are correct.

The fundamental question in this case is when did the plaintiff and defendant acquire the land in dispute and what were their respective roots of title? It is important at the outset not to lose sight of the fact that both parties claim their root of title from a common grantor, the Ashong Mlitse family of Odaitei Tse We of Teshie.

In paragraph 4 of the plaintiff’s statement of claim he stated with regard to the date of acquisition of the disputed land as follows:

“plaintiff categorically says that he acquired the land which is currently registered from his grantors on the 17th May 2006 and has since been in effective possession and control of same without let or hindrance”

In his witness statement filed on 16th February 2016, the plaintiff’s attorney David Ampofo attached the Deed of Assignment that was given to the plaintiff by his grantors Apaamor Contract Works and this was admitted in evidence as Exhibit B. Exhibit B at page 491 to 496 of Vol. 2 of the ROA is dated 17th May 2006. Although the indenture Exhibit B is dated 17th May 2006, the plaintiff’s attorney David Ampofo under cross-examination insisted that the plaintiff acquired the land in the year 2005 implying that

the documentation was finalized on 17th May 2006. Under cross-examination the plaintiff's attorney was asked by counsel for the defendant:

Q. You said you negotiated and bought the land with the plaintiff, is that correct

A. That is correct.

Q. In which year was that

A. We met in 2005. We met the owners of the land the Nungua people in 2005.

Q. According to your witness statement, you said that you bought the land from Apaamor Construction and later from Odaiteitse We family

A. My lord the Nungua people are separate family. They initially sold the land to us. Later, the Odaiteitse We family of Teshie said they are the owners of the land so we should pay them before we start construction on the land.

Q. In which year did you buy the land from the Apaamor Construction Works.

A. 2005

Thus, the plaintiff claims his root of title from 2 sources; firstly that he purchased the land from the Nungua people through Apaamor Construction and later re-purchased the same land from the Odaiteitse We family of Teshie. Although the plaintiff claims he bought the land from Nungua people/ Apaamor Construction Works in 2005 the receipts issued for the payments he made for the land Exhibit C and C1 are dated 24th April 2013 and 29th April 2013 respectively. See Exhibit C and C1 at pages 497 and 498 of Vol. 2 of the Record of Appeal. Both receipts for Two Thousand Ghana Cedis (GH¢2000) each totalling Four Thousand Ghana Cedis (GH¢4000) being payments to the Nungua Traditional Council representing the Nungua people.

Also see Exhibit C27 dated 11th April 2013 being receipt for the sum of GH¢6000.00 being payment for an indenture between Azimi Shaarani and Apaamor Construction.

From Azimi Shaarani \$3000 (Three Thousand Dollars) being part payment for land at page 524 of the Record of Appeal vol. 2.

In his judgment the trial judge after examining the receipts and listening to the evidence both documentary and oral of the plaintiff stated as follows at page 439 of Vol. 2 of the Record of Appeal:

“Thus per the evidence on record, all payments that were made by the plaintiff for the acquisition of the land in dispute were made in the year 2013. The question that the court is trying to answer is which landowner in Ghana will supposedly grant you four plots in 2005 and however wait and receive payment eight years later in 2013 when there is no evidence of any installment plan having been agreed? The practice as the Court understands it is that even if the land owner may not demand all the money upfront, he will definitely demand a substantial payment upfront and the rest paid over an agreed period. There is no such evidence in this suit. The overwhelming evidence with respect to the receipts evidencing payment for the land in the year 2013 (exhibit C series) point to only one conclusion and this is the fact that the plaintiff only came onto the land in the year 2013, negotiated with the supposed owners and made payments all in the year 2013 but made them to backdate the documents to make them appear as if he had been on the land at an earlier time”

On the basis of the evidence both oral and documentary this finding of the trial judge cannot be faulted.

Even more intriguing is the plaintiff’s case in respect of the indenture the plaintiff claimed to have obtained from the Ashong Mlitse family. From the pleadings and the

evidence on record, the plaintiff contacted the Ashong Mlitse family of Odaiteitse We for a lease after he encountered problems at the Land Title Registry when he attempted to register his land because apparently the land had been registered in the name of the Ashong Mlitse family of Odaiteitse We of Teshie. The evidence on record further shows that the plaintiff's attorney David Ampofo engaged the services of the PW2 David Lamptey to assist with the registration of his documents obviously obtained from Apaamor Construction Ltd. Exhibit B. It was in the course of attempting to register Exhibit B that the PW2 realized that the land was already registered in the name of the Ashong Mlitse family. In paragraph 2 of his witness statement PW2 Nii Odartey Lamptey testified as follows:

"Sometime in 2013, David Ampofo engaged my services to assist the plaintiff to register his title in the land in dispute in his favour"

Under cross-examination by counsel for the defendant PW2 testified as follows:

"Q. According to your witness statement you said you were engaged by one David Ampofo to assist the plaintiff in the registration of his title

A. Yes my lord.

Q. Which year were you engaged.

A. my lord 2013

Q. You presented your documents in respect of this land to Land Title Registry in 2013. That is correct

A. That is correct

Q. Can you tell us the documents you presented to Land Title Registry for the registration

A. Apaamor Contract Works which had already been worked on at the Lands Commission but when we took it to Land Title Registry, they told us that they cannot give us the certificate with that document because that land

belongs to two people. They indicated that unless they see the Ashong Mlitse family of Odarteitse We family of Teshie to present their document. So we went back to inform the plaintiff that this is what has transpired. So they went back for the said family and the plaintiff bought the land again from that family. He was given an indenture and site plan

Q. All these happened in 2013

A. Yes my Lord in 2013

Q. The document from Ashong Mlitse family which was given to you, did you look at the date on it

A. My lord, it's been a long time, I have not thought of this

Q. Look at Exhibit 6A dated 17th May 2006

A. Yes my lord

Q. So the certificate was issued on the basis of this Ashong Mlitse family document

A. Yes my lord

Q. When you went to Land Title Registry with Apaamor Contract Works document, you were told that the land belongs to the Ashong Mlitse family

A. My lord that is what we were told. They cannot grant title on the basis of the Apaamor Contract Works document unless they get the documents from Ashong Mlitse family

As the evidence of the PW2 shows, he was engaged in 2013 by the plaintiff's attorney to assist in the registration of the plaintiff's land document in 2013 and it was in the course of the registration that he was told that the land does not belong to Apaamor Contract Works his grantor, but rather the Ashong Mlitse family of Teshie. This was what compelled the plaintiff to re-purchase the land from the Ashong Mlitse family of Odarteitse We of Teshie. He was given an indenture and a site plan by this family. The

evidence on record further shows that the document the plaintiff obtained from the Ashong Mlitse family after re-purchasing the land was tendered in evidence by the defendant as exhibit 4B (page 614 of Vol. 2 of the Record of Appeal) attached to the plaintiffs Land Title Certificate. The indenture Exhibit 4B executed between Jonathan Afotey Odai and Samuel Afotey Tetteh Joint heads of family and lawful representatives of the Ashong Mlitse family of Odaitse We of Teshie of the one part and Azimi Shaarani of the other part is dated 17th May 2006. Sight should not be lost of the fact that this 17th May 2006 is the same date of execution of the plaintiffs Exhibit B the indenture between Apaamor Construction Works and the plaintiff. How could the 2 documents Exhibit B and Exhibit 4B bear the same date 17th May 2006? It should also be recalled that from the evidence of PW2 Nii Odartey Lamptey it was in 2013 at the Lands Title Registry that he was informed that the land belonged to Ashong Mlitse family and the plaintiff had to re-purchase the land from the Ashong Mlitse family of Odaitsetei We of Teshie. Clearly, exhibit 4B the plaintiff's indenture from the Ashong Mlitse family which was used as the basis to register the plaintiffs Land Title Certificate and dated 17th May 2006 was clearly fraudulent.

In his judgment, the trial judge stated as follows;

“Another issue that was not lost on the Court was the supposed execution of the two documents in favour of the plaintiff on the same day. The plaintiff asserts that it got the land from Apaamor Contract Works in 2005 but the document from Apaamor Contract Works is dated 17th May 2006. He also claims that he contacted the Ashong Mlitse family of Odaitei Tse We in 2013 when he was registering the Land but the document coming from the Ashong Mlitse of Odaitei Tse We is also dated 17th May 2006, the same date as the Apaamor Contract Works document. If the plaintiff contacted the Ashong Mlitse family of Odaitei Tse We at a later date, then it is highly impossible for the Ashong Mlitse family of Odaitei Tse We to

have issued a document bearing the same date of 17th May 2006 to plaintiff unless that was done to perpetuate fraud”

On the basis of the evidence on record this finding by the trial judge cannot be faulted.

Indeed all the receipts tendered by the plaintiff as evidence of his acquisition of the land from the Ashong Mlitse family Exhibit D series are also dated 2013. Not surprisingly, when a publication appeared in the 2nd March 2013 edition of the Weekly Spectator Newspaper publishing the Land Title Registration of the disputed land for the plaintiffs under the Land Title Registration Regulation (Exhibit F) at page 539 of Volume 2, the Ashong Mlitse Family acting through Samuel Afotey Tetteh raised issues with the authenticity of the publication and made a statement to the police as was borne out by Exhibit 13 page 634 of Volume 2 of Record of Appeal as follows:

“I wish to state that our attention has been drawn to a publication in the weekly Spectator dated 2nd March 2013 in respect of Azimi Shaarami. I wish to state that on 14th May 2013, publication of such nature was caveated to notify Land Title Department not to recognize Azimi Shaarami in their records. I therefore present this matter for investigation. My record shows one Rev. William Amankwah as the lessee to that parcel of land at Adjiriganor”

It should be recalled that the writer of the letter Exhibit 13 Samuel Afotey Tetteh is the same person alleged to have signed Exhibit 4B as a co-grantor. Although the record shows that the Ashong Mlitse family sought to negate the effect of Exhibit 13 by a Letter of withdrawal tendered as exhibit K, there is no doubt that they conceded by the same Exhibit 13 that the defendant Rev. William Amankwah was indeed the lessee of the disputed land.

The record shows that on 15th February 2005 an indenture of lease had been executed between John Afotey Odai and Samuel Afotey Tetteh joint heads of the Ashong Mlitse family of Odaiteitse We of Teshie of the one part and Rev. William Amankwah & Mrs. Rev. Rose Amankwah in respect of the disputed land. See Exhibit 2 pages 595-606 of Volume 2. Indeed by their letter Exhibit 13 the Ashong Mlitse family admitted clearly that Rev. William Amankwah was their lessee. Indeed exhibit K the letter of withdrawal is a red herring: The record further shows that the defendant submitted his document for registration in 2007 with Lodgment No. 08909/2007 whilst the plaintiff submitted his document for registration in 2013 with lodgment No. 00407/2013. See Multiple Registration for survey and Preparation of parcel plan Exhibit 8 at page 624 of Record of Appeal Volume 2.

The record shows that there were Multiple Request for Survey and Preparation of parcel plan firstly between the applicants Apaamor Contract works, Rev. William Amankwah and the plaintiff Azimi Shaarami and it was whilst these Multiple requests were pending that the plaintiff managed to get the Land Registry to use a different reference number to get a letter dated 11th February 2013 (exhibit 5) to fraudulently procure the Land Title Certificate of the plaintiff see the Memorandum Exhibit 7 at page 622-623 Volume 2 of Record of Appeal dated 2nd July 2013 entitled "Fraud in preparation of plan in relation to Multiple Requests" from the Director (LRD) to Director (SMD) and copied to the Ag Executive Secretary, Land Commission. With all these clear evidence of fraud running through the process leading to the issuance of the lease Exhibit 4B and to the registration of the plaintiffs Land Title Certificate Exhibit M, the trial judge stated as follows in his judgment:

"The evidence on record circumstantially points out to a systematic and calculated fraud that led to the issuance of exhibit 4B and eventually Exhibit M. and this systematic fraud as I have said earlier even baffled the Chief Registrar of

Lands. In so far as the plaintiffs supposed lease from the Ashong Mlitse family of Odaitei Tse we is tainted with fraud, the Land Title Certificate of the plaintiff which is based on exhibit 4B is also tainted with fraud. From the totality of the evidence on record therefore and based on the analysis above, the Court is left without any shadow of doubt that the plaintiffs indenture and his Land Title Certificate were all fraudulently acquired. The defendant has thus been able to prove beyond reasonable doubt that the plaintiff's indenture and his Land Title Certificate are all products of fraud. Since fraud vitiates everything the plaintiff's Land Title Certificate can therefore not stand"

With the copious documentary evidence on record and the oral evidence all pointing clearly at the plaintiff documents being tainted with fraud, the trial judge's finding of fraud is clearly unimpeachable.

Before concluding with the issue of fraud dealt with by the trial judge and his finding that the plaintiffs lease Exhibit 4B was tainted with fraud, there is the fundamental issue of whether the Ashong Mlitse family even if they had made a valid grant to the plaintiff, that grant could be considered valid when the evidence shows clearly that they had granted the land in dispute to the defendant on 18th February 2005 by the lease exhibit 2. The Ashong Mlitse family representative Isaac Corley Martey lawful attorney of Samuel Afotey Tetteh the head of family admitted in his evidence that the Ashong Mlitse family had signed the defendants lease in respect of the same land in February 2005. The validity of the defendant's lease Exhibit 2 was never in doubt throughout the trial. As already indicated, the Ashong Mlitse family by their letter exhibit 13 confirmed that the defendant Rev. William Amankwah was their lessee. That being the case, the family, even if true that they executed Exhibit 4B could not have made a valid grant of the said land to the plaintiff as the land had already been granted to the defendant. The

maxim Nemo Dat Quod non habet would apply. See the case of **Seidu Mohammed vs. Saanbaye Kangbere** (2012) 2 SCGLR 1182 where the Supreme Court stated as follows in holding 2:

“The principle of nemo dat quod non habet would operate ruthlessly and by it, an owner of land could only convey title owned by him at the material time of the conveyance. Since, on the evidence in the instance case, the original owner of the disputed land had divested her title to one Anna Benieh Yanney, who had also divested herself of title to the disputed land to one Emmanuel Nkrumah, the plaintiff’s vendor, on 12 December 1986, there was definitely no title left in her to convey to any other person at the time the conveyance to the defendant’s vendors was effected. Consequently, the conveyance to the defendant’s vendors and subsequently to the defendant were null and void and of no effect. The Court of Appeal had therefore rightly set aside the decision of the trial High Court in favour of the defendant and entered judgment for the plaintiff.

Indeed, any Land Title Certificate founded on the void grant by the Ashong Mlitse family cannot be valid. But as already indicated the whole process leading to the acquisition of the plaintiffs Land Title Certificate was tainted with fraud. Aside from the issue of the grant from the Ashong Mlitse family to the plaintiff being void, we have also discussed the fact that the Land Title Certificate of the plaintiff was tainted with fraud. Section 122(1) of the Land Title Registration Law PNDC Law 152 provides as Follows;

“(1) Subject to subsection 2 of this section the Court may in its discretion order the rectification of the Land Register by directing

that such registration has been obtained, made or committed by fraud or mistake”

In the case of **Rosina Aryee vs. Shell Ghana Ltd. and Another Civil Appeal No. J4/3/2015** (Unreported decision of the Supreme Court dated 22nd October 2015) where the co-defendant was relying on its Land Title Certificate to defeat the title of the plaintiff, the Supreme Court held per Benin JSC at page 5 of the judgment that :

“Registration under the Law (PNDC Law 152) does not dispense with the requirements of the equitable doctrines of notice and fraud”

Also see **Apollo Cinemas Estates (Gh.) Ltd. vs. Chief Registrar of Lands (2003-2005) 1 GLR 167; Brown vs. Quarshigah 2003-2004 SCGLR 930.**

Section 122(2) of PNDC Law 152 further provides that:

(2) *The register shall not be rectified to affect the title of a proprietor who has acquired any land or interest in land for valuable consideration unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought or had himself caused such omission, fraud, mistake or substantially contributed to it by his act, neglect or default”*

In **Brown vs. Quashigah** (supra) the Supreme Court explaining section 122 (2) of PNDC Law 152 stated per Dr. Seth Twum as follows:

“The PNDC Law 152 does not define fraud but at common law a charge of fraud is such a terrible thing to bring against a man that it cannot be maintained in any court unless it is shown that he had a wicked mind per Lord Esher in Le Lievre vs. Gould (1893) 1

QB 491 at 498 In Derry vs. Peek (1889) 14 App Case 337, the House of Lord held that an absence of honest belief is essential to constitute fraud. In short fraud is dishonesty”

Further on at page 947 His Lordship continued:

“There appears to be a mistaken feeling abroad that in land matters, once a party gets his title deeds registered in the Land Title Register his title is indefeasible. That, of course is not true. Fraud vitiates everything”

Was the plaintiff dishonest in procuring the registration of his lease? The evidence clearly shows that the plaintiff knew from the very beginning that the land in dispute belonged to the defendant and yet sought in concert with Nungua/Apaanor Contract Works and Ashong Mlitse family of Odaiteitse We and with some anonymous officials of the Land Registry to perpetuate a fraud leading to the execution of the 2 leases exhibit 4B and Exhibit B and contrived to secure the registration of his Land Title Certificate. These 2 leases Exhibit 4B and exhibit B were clearly meant to overreach the defendant. It is my opinion that the requisite fraud was established by the defendant to enable the trial court to order the rectification of the land register by removing and/or cancelling the plaintiff’s Land Title Certificate from same and we endorse the orders of the trial court to that effect.

Ground 1, 6, 7, 15 and 16 of the appeal fails. Indeed the issues of fraud raised in grounds 2, 5, 8, 9, 10, 11, 19 and 20 of the appeal equally fail.

Counsel for the plaintiff argued grounds 3, 4, 12 and 14 of the appeal substantially dealing with possession of the land and argued that the plaintiff has been in possession of the land and not the defendant. He argued that possession is nine-tenth of

title/ownership and asserted that the evidence on record shows that the plaintiff is the person in actual possession of the disputed land and is therefore presumed by law to be the owner of the land.

The evidence on record shows that a distinction can be made between pre-2013 possession and post- 2013 possession. The trial judge found clearly that since the early part of the year 2013 the plaintiff has been in possession of the disputed land and even has a five (5) bedroom structure on the land which has been constructed up to lintel level. He had stopped the construction activities because of an order of interlocutory injunction made by the trial court.

The trial judge correctly asked the question, whether the plaintiff had been in undisturbed possession of the land from 2005 up to the time he instituted the action. As already set out earlier in this judgment, although the plaintiff claimed to have purchased the land in 2005, all the receipts tendered in support of the alleged purchase of the land in dispute by the plaintiff Exhibit C series are all dated in the year 2013. The trial judge in his judgment posed the rhetorical question, how a person can claim to have acquired land in such a prime area in Accra Adjiriganor in 2005 and only pay for it in the year 2013, eight years later.

Again Exhibit D series being receipts tendered by the plaintiff which were allegedly receipts for registration of the land were all dated in 2013 which from the evidence was the year the plaintiff came unto the land.

The records also show that exhibit E and J series which are pictures of the structure the plaintiff started constructing on the land in 2013 are all dated 2013 lending credence to the trial judge's finding that the plaintiff went into possession of the land in 2013 and not 2005 as he sought to portray. The application for a building permit per the evidence

on record Exhibit L series are dated 11th June 2013 whilst the building permit itself per the record was issued on 30th July 2014. All these documents clearly support the trial judge's finding that the plaintiff went unto the disputed land in 2013 and not 2005 as he sought to portray. From the evidence on record the plaintiff was unable to prove his claim to the land having regard to the issue of fraud, possession and the clear evidence that the defendant acquired the land in 2005 from the Ashong Mlitse family of Odartei Tse We. Grounds 3, 4, 12 and 14 of the appeal also fail.

Grounds 13 and 18 of the appeal.

Under these 2 grounds of appeal, the appellant argued that award of GH¢50,000 general damages and cost of GH¢20,000 against the plaintiff were excessive.

Counsel submitted that as a general rule an award of damages for trespass is at the discretion of the Court. Counsel submitted that the GH¢50,000 awarded was excessive as the plaintiff failed to prove that the appellant caused damages to the land and the extent of the damages caused. He added that although the appellant has been on the land since 2005, once the dispute arose between the plaintiff and the defendant the appellant promptly stopped working on the land and therefore the defendant was not denied access to the land. He submitted finally that the plaintiff did not derive any benefit from the land as he was unable to complete the construction of the residential building he intended to erect on the land.

Counsel for the plaintiff concedes that the award of general damages is a matter for the discretion of a trial judge although the discretion must be exercised judicially. In the case of **Ayisi vs. Asibey III (1964) GLR 695** it was held in holding 5 therefore as follows:

“(5) In assessing damages for trespass consideration should be taken not only of the extent of the land on which the trespass had been committed by the

individual defendants, but also the length of time that the plaintiff had been wrongfully kept off the land"

In his judgment the trial judge justified the award of GH¢50,000 as general damages thus:

"Considering the fact that the plaintiff dispossessed the defendant and currently has a 5-bedroom structure on the land which is at lintel level I award the defendant GH¢50,000.00 as damages for trespass"

Having considered the evidence on record and the length of time the plaintiff dispossessed the defendant of his land and the uncompleted structure the plaintiff has constructed on the land which structure the defendant may have to pull down or demolish at great expense, we do not consider the award of GH¢50,000.00 damages for trespass as excessive. With respect to the plaintiffs contention that the cost of GH¢20,000 awarded in favour of the defendant was excessive, we notice that the plaintiff did not make any submission in respect of that ground. Accordingly we consider that ground of appeal as having been abandoned. Grounds 13 and 18 of the appeal fail.

On the whole we are of the view that the judgment of the trial Court dated 22nd November 2019 is faultless and cannot be impeached. Accordingly we affirm the said judgment and the orders of the trial court. The appeal of the appellant is hereby dismissed as being without merit. Costs of GH¢10,000.00 for Respondent.

SGD

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**JUSTICE HENRY KWOFIE
(JUSTICE OF THE COURT OF APPEAL)**

SGD

I AGREE

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

SGD

I ALSO AGREE

.....
JUSTICE RICHARD ADJEI-FRIMPONG
(JUSTICE OF THE COURT OF APPEAL)

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