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

CORAM: *Sowah, JA. (PRESIDING)*
Gaisie, J.A
Kyei-Baffour, J.A.

SUIT NO: ***H1/122/2022***

15th March, 2023

Mark William Hanson _____ ***Plaintiff/Respondent***

Vrs.

Lukman Salifu _____ ***Defendant/Appellant***

JUDGMENT

***SOWAH*, J.A.:**

Introduction

This appeal is from a judgment delivered by the Circuit Court Weija, Accra on 26th November 2021. The judgment is at pages 143 – 151 of the record of appeal.

The defendant/appellant filed his Notice of Appeal on 9th December 2021 and is seeking that the judgment in favour of the plaintiff/respondent is set aside and in its place judgment entered for the defendant/appellant.

Hereafter in this judgment, the parties will retain their designations at the trial court

Brief facts

The dispute is in respect of a parcel of land which is at Kokrobite in the Ga South District, Greater Accra Region. The parties each claim that the Nii Arde Nkpa family of Plerno (or Plarno) is their grantor. The plaintiff alleges a lease in 2003 with a Land Certificate obtained in 2014 whilst the defendant alleges a lease in 1997 and registered at the Deeds Registry in 1998 and a pending registration at the Land Title Registry.

Plaintiffs case

The plaintiffs' suit was filed in October 2020 and sought a declaration of title to the parcel of land as described in paragraph 3 of the Statement of claim, Perpetual injunction, Recovery of possession and Cost.

His case was that he entered and took possession of a bare land immediately he received his indenture in 2003 and started with the registration process. He received the Land Title Certificate exhibit C in September 2014 after publication had been duly made in the Newspapers. He asserted in his Reply to the statement of defence and evidence that it was in or about 2010 that he found upon his usual visit to the land that someone had erected a dwarf wall at two sides of the land. He then erected a signpost indicating that the land was not for sale. In 2014, whilst erecting a fence wall, it was demolished by unknown persons who left contact numbers for a meeting at the Municipal Assembly. At the Ga South Municipal Assembly, the parties were advised to see the Kokrobite chief to resolve the problem. They went in an attempt to resolve the dispute but they were advised to go to the Regional Surveyor for a composite plan to be

drawn to ascertain their lands. The plan showed the defendants land to be at a different location from the disputed area.

The plaintiff made allegations of fraud against the defendant and particularized them at paragraph 9 of his statement of claim.

Defendants case

The defendants' case is that he was granted a piece of land which was later evidenced by a Lease document dated 19th August 1997. He says he and his grantors together physically inspected the land which was bare and he was shown his boundaries on the ground after which he took physical possession and constructed a barbed-wire fence around the property and has been paying ground rent. Sometime in or about 2009/2010, he constructed a short fence wall to replace the barbed wire fencing and also constructed a water storage tank to aid construction. Sometime in 2014, he received information from the person acting as his caretaker that somebody was building on his existing short wall. He reported the matter to the Municipal Assembly. He and the plaintiff were advised to see the Chief of Kokrobite but he could not resolve the matter. The Defendant said he conducted a search [Exhibit 5 at page 192, 193 of the record] at the Lands Commission with his 1997 site plan in May 2015 and it showed that the land was registered in his name with his adjoining land owners also shown. He had already registered his land at the Deeds Registry in 1998 but was advised that he needed to also register at the Land Title Registry. He commenced the process whereupon he was informed of a conflict.

On the basis that the plaintiff had not disclosed that the land he was seeking to register was encumbered, the defendant pleaded and particularized fraud and **counter-claimed** as follows:

a. *A declaration of tile to all that piece or parcel of land bounded on the North East by Lessor's land (described bordered on the North-East by Mr. and Mrs. Ben Osei Onomah's property measuring 130 feet more or less, on the South-East by Edmond Robert Odoi's property*

measuring 100 feet more or less, on the South-West by proposed road measuring 110 feet more or less with an approximate area of 0.27 acres for ninety-nine (99) years with a yearly rent of three thousand cedis (¢3,000) which said rent has been revised recently and has had the document stamped and registered a the Lands Commission and indexed as No. AR133089/97 and LVB 3854/98

b. *Recovery of possession of the land*
c. *A declaration that plaintiff obtained Land Title Certificate No. GA-45053 by fraud*
d. *An order cancelling and expunging Land Title Certificate No. GA-45053 from the records of the Lands Commission.*
e. *Damages for trespass.*

Decision of the trial court

In the course of the trial, the court ordered a composite plan to be drawn. On the plan, the defendants land was depicted as falling some distance away from the area both parties were claiming.

Relying on the composite plan, the Court found that the indentures of the parties with attached site plans put in evidence as proof of their respective leases do not cover the same piece of land. That whilst the plaintiffs land fell within the same location as the land in dispute, the defendant did not know his land which was miles away from the land in dispute.

On the allegation that the plaintiff had obtained his Land Title Certificate by fraud, the Court found that the allegation had not been proved beyond reasonable doubt. The court said no evidence had been led to show that the plaintiff had with ulterior motive registered his title whilst having notice of the defendant's interest in the land. The Court accepted the testimony of the plaintiff that he had began the process of registration immediately he received the documents on the land, and that the registration process had been published in the newspaper without objection.

In the light of the above reasoning, all the claims of the plaintiff succeeded whilst the counter-claim of the defendant was dismissed.

Grounds of appeal

The ground and additional grounds of appeal are:

1. The judgment is against the weight of the evidence on the records
2. The learned trial judge erred when he held that the Defendant did not know the identity of his land
3. The learned trial judge erred when he held that he found no fraud on the part of the plaintiff.

Consideration of the grounds of appeal.

I begin with a consideration of ground 2 together with the omnibus ground since they both entail an examination of the totality of the evidence.

A ground of appeal that states that the judgment is against the weight of evidence obligates an appellate Court to review the totality of the evidence on record to ascertain whether the findings of the trial Court both on factual and legal issues were reasonable, and amply supported by the evidence. See the cases of:

Oppong Kofi & Ors v Attiburukusu III [2011] 1 SCGLR 176

Oppong v Anarfi [2011] 1 SCGLR 556 @ 558 holding 4
Owusu-Domena vs Amoah [2015-2016] 1 SCGLR 790

An appeal being by way of re-hearing as per rule 8 of the Court of Appeal Rules 1997, C.I.19, the appellate court is entitled to make up its own mind on the facts and to draw inferences from them to the same extent as the trial court could; however bearing in mind that the Court should not interfere with the findings of fact by the trial judge except where they are clearly shown to be wrong, or that he did not take all the circumstances and evidence into account, or has misapprehended certain pieces of the evidence or has drawn wrong inferences without any evidence to support

them or that he has not taken proper advantage of his having seen and heard the witnesses. See:

Praka v Ketewa [1964] GLR 423 at 426

Bonney v Bonney [1992-93] Pt II GBR 779 at 787

Location of the land per the parties' site plans

The issue at the core of the dispute was the location of the land as per the site plans of each party. On this issue, the Court relied on the Survey plan and the evidence of CW1 which are at pages 109-113 of the record of appeal. The finding of the trial judge that the plaintiff did not know the identity of his land was obviously based on the fact that the composite plan showed that the respective lands of the parties by their site plans lay in different places with the defendants land on the ground 500 meters or miles away from the disputed land. Ordinarily, this fact would in the absence of any impeachable fact require the party whose land in the composite plan did not correspond to the disputed land on the ground to throw in the towel.

However, the defendant contended that he was in physical possession of the disputed land as evidenced by a barbed wire/dwarf fence wall and a water tank when the plaintiff encroached in 2014.

The wall and the water tank were shown to be within the area in dispute and the defendant continued to assert, relying mainly on the search exhibit 5, that his site plan in fact represented the land in dispute.

CW1's answers to questions in cross-examination however bring no clarity at all to the issue whether the site plans of the parties in fact represented the same land or not.

He was asked by the plaintiffs counsel:

Q. The two site plan represent the same land

A. No

Yet cross-examination by defendants counsel elicited the following answers:

Q. How many site plan did you receive from the defendant

A. 2

Q. How many did you receive from the plaintiff

A. Two

Q. You are a Geometric Engineer. Are the site plan the same

A. They are the same

Q When was the plaintiff site plan signed

A. 17/06/14

Q Look at your composite plan you have 4 different columns

A. Yes. The two site plan are the same

Q. The search was shown that the land belongs to Mr. Salifu

A. Yes

Q. How can the search show that the land belongs to Mr Salifu and the composite plan is different?

A. From the site plan to land paths etc on it

Q. The fence wall showed was on the composite plan referring to the fence wall by the composite plan by defendant

A. Yes

Q. You also indicated water tank

A. Yes

Q. It is shown on the land

A. Yes

The Search that is referenced in the above questions is exhibit 5 which is a search conducted by the defendant at the Lands Commission in May 2015

with the site plan given to him by his grantors in 1997. This search report indicated that the land covered by defendants site plan was the subject of a lease dated 19/8/1997 from Nii Arde Nkpa VI and another to the defendant [See exhibit 5 at pages 192 and 193]. This vital piece of evidence was overlooked by the trial judge.

In the cross-examination of PW1, he had admitted that plaintiffs' exhibit C which is his indenture dated 11th October 2003 was without a site plan as was normal whilst his Land Title document had a 2014 site plan. CW1 also confirmed that plaintiff's site plan was signed on 17th June 2014.

Interestingly, the 1997 site plan of the defendant shown in exhibits D and 5 [pages 180 and 193] showed neatly plotted parcels of land. The Search report exhibit 5 even identified the adjoining land owners of the defendant. On the contrary [as shown by exhibits A and D at pages 165 and 179], on the site plan of the plaintiff in his indenture purportedly made in 2003, plaintiffs parcel of land stands alone without reference to adjoining lands or to plot numbers as was the case with the earlier site plan of the defendant.

The defendant contended that the plaintiff had used a plan prepared specifically for the certificate in 2014 for the composite plan whilst he used his 1997 site plan as the primary document for the composite plan. Thus the parties were relying on different qualities of site plans that would account for inaccuracies. That seems to me to be a plausible reason for plaintiffs land falling 500 meters away from the disputed area.

Other evidence that brought clarity to the issue of the location of the land but was overlooked by the learned trial judge was evidence to the effect that when the defendant attempted to register his interest, he was informed by the Land Title Registry of a multiple request for registration of the same land.

Thus the defendants answer to a question during cross-examination raised a very pertinent question that ought to have made the trial judge hesitate in finding that the defendant did not know his land.

Q. *And disputed land is not your land*

A. *If my land was in different location the Lands Commission could not have told me theres request for multiple survey*

Indeed, if the locations of the land were different or the defendant had not known where his land was, the Lands Commission would not be faced with the difficulty of multiple requests, and CW1's evidence would have been clear and to the point.

The trial court failed to take account of the fact of the presence of the defendant on the land many years before its purported acquisition by the plaintiff; defendants registration of his indenture with attached site plan in accordance with the law in force at the time; the search report in 2015 confirming defendants lease, as well as the Land Commissions acknowledgement of a multiple request for registration of the same land. Had the Court done so, it would not have held that the defendant did not know the identity of his land.

Sadly, it is observed that such incidents of "mistaken locations of land" are becoming common with the introduction of modern and more accurate methods of preparing site plans. Thus section 232 of the new Land Act, 2020 (Act 1036) provides that the Lands Commission may rectify its records if the position of the land plotted in its records is found to be incorrect, or there is a mistake in the plotting. It is submitted for the defendant that such an application for rectification would have been made had it not been for the fraudulent registration by the plaintiff

With all of the above, and considering that the defendant said he had been in possession of the disputed area since 1997, the trial judge ought not to

have decided the issue of ownership simply on the fact that on paper, the defendants land lay elsewhere.

Possession

The issue of possession was raised in the defendants' pleadings and in his evidence. The same issue of possession as evidenced by the wall and water tank had been noted as a challenge in CW1's report and evidence. The trial judge ought therefore to have addressed that issue – **whether in fact and in law the Defendant was in possession and if so whether it negatived the plaintiffs' claims and Land certificate.**

The plaintiff was claiming ownership of land which the defendant said had been in his possession for over 10 years. The question of fact whether the defendant had a physical presence on the land when the plaintiff purportedly acquired his interest in 2003 is quickly resolved; most importantly, by plaintiffs admission that there was a dwarf wall on the disputed land but he did not know who built it.

These were his answers under cross-examination:

Q. The defendant was already on the land before you registered it
A. I saw a structure on the land
Q. What structure
A. A dwarf wall
Q. You did not have any land title litigation
A. I saw it in 2013
Q. Apart from this structure did you see crops on the land
A. Yes

The fact was also established by the evidence of the defendants' witnesses DW1 Benjamin Sowah and DW2 Kofi Amponsah who corroborated that it was the defendant who had them construct the wall in or about 2009-2010 to replace a barbed-wire fence.

The next question would be the legal effect of the established fact of defendants' possession. In the unreported Supreme Court case of **Rosina Aryee vs Shell Gh Ltd & anor; Civil Appeal No.J4/3/2015 dated 22nd October 2015**, the Court laid down that if a party to a land dispute was fixed with notice of any encumbrance, as for example possession by the other party, it would negative the bona fides plea notwithstanding the prior registration of title by that party, and that this was normally determinable from the facts of every given case.

Also in **Mary Laryea Nunoo vs Manase Afaglo J4/73/2018 dated 28th July 2020**, the Supreme Court noted that:

> *"Where a purchaser of land had the opportunity of seeing evidence of possession no matter how slight on any part of the land he intended to purchase but he fails to investigate the authority behind the adverse possession he is fixed with notice of the adverse possessor"*

In his evidence in chief, the plaintiff had said it was in 2010 that he saw the dwarf wall but under cross-examination he said he saw it in 2013. Either of those dates preceded his lodgement and the registration of title in 2014, and would constitute part of the reasons to fix him with notice and negative his registration of title.

The second reason which will be discussed under the third ground of appeal will be plaintiffs' failure to give the required notice of the registration.

The trial court was remiss in not properly evaluating the evidence and making a finding of fact; which I hereby do, that the defendant was in possession of the disputed land when the plaintiff purported to have acquired his interest. The plaintiff is thereby fixed with notice of the encumbrance.

The defendant sought a relief for recovery of possession in his counter-claim even though his evidence was that he has been in possession since 1997 and he resisted the plaintiffs trespass. He is therefore entitled to his possessory rights since he is already in possession.

Burden of proof

Having counter-claimed for declaration of title, the defendant bore a similar burden to prove his claim. **Ackah v Pergah Transport Ltd. [2010] SCGLR 728** held that it is the duty of an appellate court to ascertain from the record of appeal whether the party who bears the burden of proof has properly discharged it.

With respect to search reports at the Lands Commission such as exhibit 5 is, **Buildaf vs. Catholic Church [2017-2020] 1 SCGLR 1143,** held that the report of a search conducted at the Lands Department is an indication of the situation of the land in question as the Department had it at the date of the search although its credibility could be impugned in judicial proceedings and when successful would be rejected by the Court.

In the present case however, the credibility of exhibit 5 was not impugned at all by the plaintiff and so ought to have weighed in defendants favour. The defendant did not also need to call any boundary owner or witnesses to confirm that he had a structure on the land.

Had the trial judge properly evaluated all the pieces of evidence on record, including the legal effect of the defendants registration of his lease in 1998 under the Land Registry Act 1962, (Act 122), as well as the search report exhibit 5, it would have reached the conclusion that the defendant had discharged the burden of producing evidence and persuasion on a preponderance of probabilities as required of a counter-claimant by sections 11(1) and 12(1) of the Evidence Act.

Thereafter the plaintiff assumed the burden of persuading the court that as at the date he acquired the land it was not in any way encumbered by the presence of the plaintiff on the land.

The plaintiffs' claim that his grantors took him to the land when it was leased to him cannot be true because if they had been to the land even as early as 2003, the barbed wire fence would have been seen which would have put the plaintiff on notice of an encumbrance.

The plaintiff's sole witness PW1 Rev. Michael Nii Tackie who was the current head of the Nii Arde Nkpa family gave evidence to the effect that the family had sold land to the plaintiff in 2003. He said the family usually took steps to ascertain and avoid double sale. He confirmed that the parties had appeared before the family to resolve the matter and were advised to conduct a search at the Land Commission by submitting their site plans which they did. The result was that the defendants land was found to be at a different location about 500 meters away from plaintiffs land. Under cross-examination he admitted that he had no personal knowledge of the acquisition by the plaintiff. He also admitted that the plaintiff's indenture did not contain a site plan although plaintiffs land title document had a site plan dated 17th July 2014. He could not explain why the site plan was dated 2014 when the land was purportedly acquired in 2003. His lack of knowledge of the matters he had been called to testify to went to his credibility and ought to have been noted by the trial judge who did not take proper advantage of having seen and heard the witnesses, nor did he take all the circumstances and evidence into account.

From my evaluation and analysis of the evidence, I find the plaintiff's assertion that he purchased the land in 2003 and went into immediate possession and enjoyed peaceful and undisturbed occupation and

possession until 2017 when he erected a fence wall encompassing the land cannot be true. PW1's evidence was not corroborative of these claims as he had no personal knowledge. The only part of that evidence that could be true is that the plaintiff erected a fence which was demolished at the instance of the defendant hence the parties sought audience with their common grantor to resolve the issue.

I believe that it was in 2014 and not an earlier date, that the plaintiff went to the land, at which date the defendant had a dwarf wall in place and a water tank as well as crops on the land which ought to have served as notice to the plaintiff. Instead of making the necessary enquiries, he attempted to build on that wall and was resisted by the defendant. The plaintiff nevertheless went ahead to lodge his lease for a Land Title certificate.

I find that the plaintiff had notice of an encumbrance and a possible prior interest before he applied for registration of title. He failed to discharge the burden to prove his case on a preponderance of probabilities.

Registration

In the **Rosina Aryee case (supra),** Benin, JSC whilst dealing with issues of possession took note of the fact that people have resorted to erecting temporary structures on land to serve as visible sign to everybody who goes there to know that at least somebody is on the land. He said it behoves a prudent purchaser to make further or reasonable inquiries; which involves legal searches at the land registry, but more critically it involves a physical inspection of the land to to ensure it is free from any encumbrances. A legal search at the Lands Commission as was done by the defendant in 2015 no doubt would have shown the same results in exhibit 5.

Indeed in the evidence of the Court-appointed surveyor CW1, he conceded that the Search report exhibit 5 from the records of the Land Commission had indicated that the disputed land was for the defendant.

In 1997 when the defendant acquired the land, the applicable laws were the Land Registry Act 1962 (Act 122) and the Land Title Registration Act 1986 (PNDCL 152). Section 24 of Act 122 provided that registration of an instrument was necessary for its validity whilst section 25 of the Act provided that registration was actual notice to all persons and for all purposes as from the date of registration. The defendant had duly registered his interest in the land as evidenced by his exhibit 1 [see at pages 185-187].

From defendants registered indenture exhibit 1 and the search exhibit 5, it is clear that as far back as 1997, the records of the Lands Registry had the disputed land in its records. Had the registrar examined his records as required by section 23 (3) of Act 122 when the plaintiff presented his application, he would have discovered the registered interest in the land the plaintiff was seeking to register.

Fraud

I now come to a consideration of the third ground of appeal which states that "***The learned trial judge erred when he held that he found no fraud on the part of the plaintiff".***

I do so for completeness because the conclusions arrived at in respect of the 1st and 2nd grounds of appeal with regards to possession by the defendant would on its own be sufficient to overturn the judgment of the trial court.

It is contended for the defendant that the plaintiff perpetrated fraud in obtaining the Land Title Certificate.

The Supreme Court in **Amuzu v. Oklikah [1998-99] SCGLR 141** and **Western Hardwood Enterprise Ltd. & anor vs. West African Enterprises Ltd. [1998-99] SCGLR 105** sounded the warning that registration under the law does not dispense with the requirements of the equitable doctrines of fraud and notice, so a purchaser of land who saw evidence of possession but he failed to investigate the authority behind the adverse possession would be fixed with notice of the adverse possessor.

The reasons given by the trial judge in holding that the defendant had failed to prove that the plaintiff obtained his Land Certificate by fraud were that per **Sasu Bamfo v. Sintim [2012] 1 SCGLR 136,** fraud was required to be proved beyond reasonable doubt. The learned judge further stated that the authenticity of the Newspaper publication [exhibit B] had not been challenged by the defendant, thus same amounted to an admission. Nor, he said, had the defendant proved that the plaintiff had with ulterior motive registered the land despite having notice of defendants' interest.

It seems to me that the learned trial judge took a simplistic view of the law regarding proof of fraud without adverting to pertinent Supreme Court pronouncements on the subject.

In **Sasu Bamfo v. Sintim (supra)** which he relied on, even though the Supreme Court referred to its holding in **Fenuku and Anor vs John-Teye and Anor [2001-2002] SCGLR 985** that: *"The law regarding proof of forgery or any allegation of a criminal act in civil trial was governed by section 13(1) of the Evidence Decree which provided that the burden of persuasion required proof beyond reasonable doubt."*

However, the Court though finding that the respondent in the **Sasu Bamfo case** had failed to prove any of the particulars of the forgery/fraud as

pleaded, after evaluating and scrutinising the whole of the evidence including documents exhibited, found ample evidence of fraud, and held that the Court of Appeal which could draw its own inference from the evidence and was in that regard in the same position as the trial court, had rightly found that Exhibit “A” was fraudulent.

Better clarity of what fraud is in civil cases is found in the judgment of the Supreme Court in **Good Shepherd Mission vs Sykes & others [1997-98] 1 GLR 978**. Wood C.J, defining fraud as pertains in civil case said:

> *D L Mcdonnel and J G Monroe, two distinguished English text writers in their "Treaties on the Law of Fraud" which is found in their invaluable book Kerr on Fraud and Mistake (7th ed), p 1 have spelt out what amounts to or constitutes fraud in the eyes of the civil court. They write: [pg 991] "Fraud in the contemplation of a civil court of justice may be said to include properly all acts, ommissions, and concealment which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscient advantage is taken of another. All surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered as fraud. Fraud in all cases implies a willful act on the part of any one whereby another is sought to be deprived, by illegal or inequitable means of what is entitled to."*

The particulars of fraud averred by the defendant in the statement of defence were:

1. *Laying claim to land when he knows that defendant is the owner*
2. *Making false statements to the Land Title Registry that the land is not encumbered when he know (sic) defendant had constructed a fence wall and water tank on the land*
3. *Not disclosing to the Land Title Registry that defendant was calming (sic) ownership of the land which non-disclosure amounted to deceiving a public officer and making false statement.*

As discussed earlier in this judgment, the facts established by the evidence on record are that the defendant took possession of the disputed land in 1997 when he acquired it from the same family, appointed a caretaker and registered his lease. That registration in 1998 was notice to the whole world of defendants' presence on the land. The plaintiff does not appear to have visited the land or made any enquiries or he would have seen that the land was walled. He ought to have known that the land he was leasing was in the adverse possession of another who actually confronted him and caused a wall being put up by the plaintiff to be pulled down. The parties had appeared before their common grantor to resolve the dispute which had been unsuccessful. These incidents were preceded the Plaintiffs registration in 2014. Nor did the plaintiff make any legal searches otherwise the defendants name would have come up from the records of the Lands Commission as the lessee as it did in exhibit 5.

Many of these facts were established through cross-examination of the plaintiff and CW1 by the defendants' counsel, and ought to have counted as evidence in support of defendants' allegation of fraud.

They constitute prima facie evidence of fraud in that any registration subsequent to these events was through concealment of the pending dispute and/or omission to reveal the true facts to the Lands Commission that the land was encumbered.

An omission to disclose a pending dispute concerning a land being registered can be a basis for cancellation of the certificate of title that is issued. In the 2015 case reported as **Buildaf Ltd & ors vs Catholic Church [2017-2020] 1 SCGLR 1143,** the Supreme Court held that the land certificate of the appellants were rightly cancelled by the trial court because it was done contrary to the provisions of Land Title Registration Act 1986 (PNDCL 152) as at the time of the registration, the applicant was fully aware that the respondent church was laying claim to the land.

Clearly, when he submitted his papers for registration the plaintiff did not disclose that the defendant was already on the land.

The contention of the defendant has been that the plaintiff who admitted that he deals in land acquired the land in 2014 but fraudulently backdated it to 2003 hence errors such as the oath of proof apparently administered by the Registrar of the High Court on 11/10/13 which was a non-working day; Plaintiffs indenture without a site plan from his grantor as was usual; No original site plan prepared by the grantors but only a parcel plan dated 17th June 2014 which was what was used for the composite plan; the indenture exhibit A purportedly made in 2003 but describing the land as in the "Ga South District" when the Ga South District was established by Legislative Iinstrument only in July, 2012; and lastly an admission by the plaintiff that Stamp Duty had not been paid yet a stamp number on the face of his document.

The above may be described as inferential facts, which is defined in Blacks Law Dictionary 7th Edition as *"a fact established by conclusions drawn from other evidence rather from direct testimony or evidence; a fact derived logically from other facts".*

Interestingly, the plaintiff offered no explanation to these facts or allegations in the witness box. It is clear that the plaintiff was not being candid in his evidence when he feigned that he could not see that his document was stamped in 2014 and shifted the blame for the inconsistencies in dates that were pointed out to him in cross-examination on to his grantors. Nor are the issues raised thereby addressed in the submissions of counsel.

The trial judge had given as one of the reasons for dismissing the defendants' case, the fact that an open publication had been made but no objection had been made by the defendant. Naturally, the plaintiffs counsel

agreed that this failure to object amounted to an admission by the defendant.

To show that the defendant could not be fixed with Notice of the publication exhibit B, defendants counsel questioned the plaintiff as to how anyone could identify the land from the description in the publication exhibit B.

Q. Look at exhibit B the lodgement are unnumbered

A. Mark seen is 121

Q. For description on the land what does it say

A. Parcel No. 254

Q. Telling from the publication, can you tell us where the land is

A. They write the name of the grantor

Q. Look at the lodgement number, in looking at your publication can you tell where the land is

A. The land is made under Kokrobite

Q. Where exactly

A. The parcel and block numbers written

Q. Point out where in exhibit B the block and parcel number is written

A. It is the number where my land is

An examination of exhibit B proves the point the defendant sought to make; namely that having failed to notify the Lands Commission of a competing interest in the land when he applied for registration, the plaintiff could not rely on the publication exhibit B which did not adequately describe the land as giving fair notice to anyone who wanted to object.

Contrary to the holding of the trial court that the defendant failed to prove beyond reasonable doubt that the Land Title Certificate of the plaintiff was obtained through fraud, I would on the totality of the evidence, draw a conclusion of fraud in the registration of the disputed land, considering the many facts alluded to above and deducting a logical consequence from them.

Section 11(1) of the Evidence Act 1975, NRCD 323 requires that a defendant who is the plaintiff in the counter-claim must introduce sufficient evidence to avoid a ruling on the issue against him whilst
Section 13(1) of the Evidence Decree provides that the burden of persuasion required regarding proof of fraud is proof beyond reasonable doubt. The defendant discharged this burden of proof and persuasion regarding the allegation of fraud as there is ample evidence on the record of unconscionable advantage taken of the defendant by the plaintiff. The actions and omissions of the plaintiff can only be described as wilful and fall squarely within the definition of fraud in **Good Shepherd Mission vs Sykes & others [supra].**

In the case of **Brown v Quarshigah [2003-2004] 2 SCGLR 930** which held that the plaintiffs fraudulently procured Land Certificate was subject to defendant's right of occupancy, the apex Court per Professor Kludze JSC put it straightforwardly at page 957 thus:

> *"Procuring a lease and a subsequent land certificate in circumstances when the plaintiff, on the evidence, knew or ought to have known that the land had been previously granted to a prior incumbrance, is tantamount to fraud"*

Conclusion

In conclusion, for all the reasons stated above, the plaintiff is not deserving of the judgment obtained from the Circuit Court, Weija.

The appeal of the defendant/appellant succeeds on all the grounds of appeal.

The judgment of the trial Circuit Court dated 26th November 2021 is set aside. In its stead we make the following orders:

All the claims of the plaintiff in his writ of summons are dismissed.

Judgment is entered for the defendant for declaration of title to the land as described in his counter-claim, and Recovery of possession against the plaintiff.

We hereby make a declaration that the plaintiff obtained Land Title Certificate No. GA-45053 by fraud. An Order is hereby made cancelling and expunging the said Land Title Certificate No. GA-45053 from the records of the Lands Commission.

The defendant/appellant is awarded GH¢10,000.00 in Damages for trespass.

Costs in favour of the defendant/appellant against the plaintiff/respondent is assessed at GH¢10,000.00

(Sgd.)
CECILIA H. SOWAH
[JUSTICE OF APPEAL]

(Sgd.)

Gaisie, (J.A.) *I agree* ***AMMA A. GAISIE***

[JUSTICE OF APPEAL]

(Sgd)

Kyei-Baffour, (J.A.) *I also agree* **ERIC KYEI-BAFFOUR**

[JUSTICE OF APPEAL]

COUNSEL:

- Maame Sarpong with Faisal Ziblim for Defendant/Appellant
- Jonathan Dzaisu for Plaintiff/Respondent1