IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA – GHANA AD 2023

CORAM: ***1. SENYO DZAMAFE J.A (PRESIDING)***

2. MERLEY A. WOOD (MRS), J.A

3. ERIC BAAH, J.A

CIVIL APPEAL NO H1/117/2022

DATE: THURSDAY, 2ND FEBRUARY, 2023

KWABENA DAPAAH-SIAKWAN == PLAINTIFF/APPELLANT

VRS

JOSEPH BOYE == DEFENDANT/RESPONDENT

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JUDGMENT

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M. WOOD (MRS), JA

In this appeal against the judgment of the High Court, Accra, delivered on 21st June 2016, the Plaintiff/Appellant seeks the setting aside of the aforesaid judgment.

This case involved two consolidated suits on the land involving two different parties. The second case was struck out for lack of capacity of the person suing as the lawful attorney on behalf of the claimant of the land who resides outside the jurisdiction. The Plaintiff/Appellant hereafter will be referred to as Plaintiff or alternately as the Appellant while the Defendant/Respondent will be referred to as Defendant or alternately as the Respondent.

THE CASE OF THE PLAINTIFF/APPELLANT

The matters that have given rise to the instant appeal are as follows:

The Plaintiff instituted an action against the Defendant on 19th May 2004 which was later amended on 26th July, 2004 and further amended on 15th January 2010 for the following reliefs:

a. A declaration of title to all that piece of land situate lying and being at Kisseman in Accra and covering an approximate area of 0.92 of an Acre.
b. Recovery of possession to the said land.
c. Perpetual injunction to restrain the Defendant, his agents, servants and assigns from interfering with the possession and quiet enjoyment of the Plaintiff.
d. General damages for trespass

The case of the Plaintiff is that he is the owner of land lying at Kisseman which he acquired from Abena Asantewaa Mainooo who registered her interest in the land at the Land Title Registry and was issued with Land Title Certificate No. GA 6204. He avers that at the time of the acquisition, there was a partially completed building up to lintel level on the plot as well as a fence wall covering the entire four plots of land.

Upon the acquisition, he discovered that the land was a Government land which had been acquired in the name of State Insurance Company (SIC). He therefore regularized his interest with State Insurance Company after which it executed in his favour a sub-

lease dated 1st November 2001 which had a site plan of the area delineated as 0.730 acres instead of 0.9 acres. Realising this anomaly, he drew the attention of SIC to it and SIC engaged Rudan Engineering Limited to determine the actual plot size on the ground.

Following the re-survey of the land, SIC executed a Supplemental sub-lease as an addendum to the original sub-lease dated 1st November 2001. By a letter dated 14th May 2004, SIC confirmed the regularization after which he placed a caretaker on the land. It is the case in pleading of the Plaintiff that in March 2004, the Defendant wrongfully entered the land and broke part of the fence wall and started building on the land thereby trespassing thereon.

CASE OF THE DEFENDANT/RESPONDENT

The Defendant filed an Amended Statement of Defence on 12th November 2008 and pleaded that neither Abena Asantewa Mainoo nor SIC has title to the land to transfer same to the Plaintiff. Also, he avers that the Land Certificate was procured by mistake or false representation on his part. The basis of the defence is that the subject land and other lands were acquired by government for State Insurance Corporation not State Insurance Company Ltd in 1979 by the "Site for the State Insurance Corporation (SIC) Instrument 1979", EI 58 under the State Lands Act 1962. In an action instituted in 1987 at the High Court in suit No. CS 2916/87 titled ***Ebenezer Tetteh Amartei substituted*** *for by* ***Benedict Botchway vrs State Insurance Corporation,*** the Nii Amarh Sogblah family of Osu, part of whose land at Haatso village was included in the acquisition, challenged the validity of the entire acquisition on the ground that the State Insurance Corporation was not a statutory corporation for which the State Lands Act could be applied to make compulsory acquisition of land. On 16th November, 1990, the court held that the acquisition by the Government was a nullity on the ground that the State Insurance Corporation was not a statutory corporation for whose business land could be compulsorily acquired under the State Lands Act, 1962, Act 125.

It is the Defendant's case in pleading that he acquired the land for his brother and constructed two separate dwelling houses for him after he learnt that the land was part of the land the Owoo family had granted to Dr Victor Lawrence. According to the Defendant, to secure quiet possession for his brother, he entered into negotiations with Dr Victor Lawrence's agent in Ghana to settle matters with him.

Also, the Defendant further avers that Dr Victor Lawrence shared a boundary with Abena Asantewaa Mainooo but after losing her land, she came on Dr Victor Lawrence's land on grounds that the same member of the Owoo family through whom she acquired the land was the same person through whom Dr Victor Lawrence also acquired his land, but Abena Asantewaa Mainoo's claim was rejected by the West Legon Residents Association.

From that time, Abena Asantewaa Mainoo left the area without taking steps to recover her land with the result that those who took and developed her land have remained in possession as owners till date. He says that if she sold to the Plaintiff the parcel of land one half of which the Defendant bought and developed for his brother, then she purported to sell the land which did not belong to her and so the Plaintiff acquired no title to that land from her.

In the Plaintiff's reply filed on 4th February 2009 to the Defendant's Amended Statement of Defence, he stated among others that Abena Asantewaa Mainoo's interest in the land was duly published in the newspapers before the issuance of the Land Title Certificate, and that the Court of Appeal has in the case of ***Botchway vrs State Insurance Corporation [1993-94] 1 GLR 89*** upheld the validity of Executive Instrument EI 58 of 1979. He further pleads that the Lands Commission duly published EI 58 in compliance with the State Lands Act thereby validating the acquisition of the land by the Government in the name of State Insurance Company.

The Plaintiff further says that the Defendants falsely represented facts to S.I.C that no other person was occupying the land for which he was seeking regularization and SIC mistakenly granted a sublease in favour of the Defendant in the name of his brother in respect of the two plots but S.I.C realizing that it had made a prior grant to the Plaintiff informed the Lands Commission Secretariat by a letter dated 18th May 2004 to stop processing the sublease in the name of Nana Apau as same was granted in error. The Plaintiff in further answer says that by a letter dated 30th August 2004, the Land Registry requested a copy of the sublease and the site plan of Nana Apau covering the land in dispute in order to protect the interest of the SIC and same was forwarded by SIC by a letter dated 8th September 2004. He says that Dr Victor Lawrence is not the owner of the land.

After a full trial, the trial High Court judge held on the 21st June, 2016 in his judgment that: "*whereas the Plaintiff (Kwabena Dapaah-Siakwan) sought declaration of the title to an area of land measuring 0.92 acre from his testimony and documentary evidence, his root of title from Abena Asantewaa Mainoo to the State Insurance Co. Ltd as well as the consent instrument issued by the Lands Commission provide different and conflicting particulars on the survey plans attached to the very documents he has relied on to seek declaration of title. While as I have earlier found those conflicts may not be his own creation, they in my view cumulatively affect his claim for declaratory relief. And that is why I refuse to grant same.*"

Being aggrieved by the said judgment, the Plaintiff/Appellant filed a Notice of Appeal on the 8th July 2016 on the following Grounds of Appeal

(I) The Judgment is against the weight of evidence.

(II) Further grounds of Appeal shall be filed upon receipt of the judgment and the Record of Appeal.

The Plaintiff/Appellant on the 15th day of August, 2016 filed the following additional grounds of appeal:

a. That the learned trial judge erred in law by relying on the grant by Abena Asantewaa Mainoo when her interest in the land was extinguished by the acquisition of the Government of Ghana in the name of State Insurance Company under Executive Instrument E.I 58 of 1979.

b. That the learned trial judge erred when he held that the documents tendered by Plaintiff contain such inconsistencies and conflicts that will not give the documents the requisite reliability to attract a verdict in favour of the Plaintiff in terms of the reliefs sought, when in fact those inconsistencies and conflicts were immaterial and did not go to the root of the action.

c. That the learned trial judge failed to adequately consider the case of the Plaintiff by failing to consider the effect of the supplemental lease dated 6th April, 2009 in proving the identity of Plaintiff's land.

d. That the learned trial judge erred when he denied the Plaintiff judgment on the basis that no explanation was offered for the difference in the acreage of the land on the Sub-lease dated November, 2001 as against the supplemental lease dated 6th April, 2009 when in fact the supplemental lease effectively corrected the anomaly on the Sub-lease.

The relief sought from this court is an order to set aside the Judgment against the Plaintiff in the first suit and enter judgment in favour of the Plaintiff for the reliefs endorsed on the Writ of Summons and Statement of Claim.

It is noted that the Defendant/Respondent did not file his written submission.

Counsel for the Appellant opted to argue ground 2 first, followed by ground 4, then grounds 3 and 5 together and lastly ground 1.

Arguing Ground 2, Counsel submits that the position of the law is that compulsory acquisition by the Government extinguishes all interest in the land prior to the acquisition and refers to the cases of ***Marina Hotel Ltd vrs Stephen Ofosu Mensah [2016] 92 GMJ 141*** at ***146*** and ***Memuna Moudy vrs Antwi [2003-2004] SCGLR 967***. He further submits that even though Appellant initially acquired the land from Abena Asantewaa Mainoo who registered her interest at the Land Title Registry and later regularized her interest with SIC, the Appellant testified that he was relying on the grant by SIC. Counsel argues that this fact notwithstanding, the trial judge variously relied on the grant by Abena Asantewaa Mainoo in his evaluation of the case. See page 15 of the judgment and pages 367 to 377 of Volume 2 of the Record of Appeal. He argued that the trial judge erred when he relied on the invalid grant by Abena Asantewaa Mainoo as part of the root of title of the Plaintiff in dismissing his claim and also because her interest was destroyed by the acquisition of the land by the Government.

Regarding Ground 4, it is the submission of Counsel that the trial judge in his judgment did not raise any issue about the validity of the Plaintiff's Supplemental lease. He posits that the trial judge erred to have found that the Appellant did not prove the identity of the land when the supplemental lease issued by SIC after the issuance of the Land Certificate, put to rest the identity of the land that the Appellant was claiming.

He submits that our Courts have held that the identification of land must not be proved with mathematical accuracy or precision and relies on the case of ***Mensah vrs Komfo [2015] 91 GMJ 37*** at ***70*** and ***Jass Co. Ltd & Apau & Anor [2009] SCGLR 265.*** In

conclusion, he argues that having noticed the mistakes and differences in the site plan of the sub-lease granted to him by SIC and that of the Land Registry, he notified SIC which asked Ruder, a surveying firm to conduct a verification and so after taking measurements, he was given the supplemental lease.

In respect of Grounds 3 and 5, Counsel submitted that the trial judge erred when he held that the Appellant's evidence contained inconsistencies and conflicts to which no explanations were given when in actual fact there is enough oral and documentary evidence on the record for the trial judge to have held that way. Counsel relied on the cases of ***Fosua & Adu-Poku vrs Adu Poku Mensah [2009] SCGLR 310*** at ***332*** and ***Effisah vrs Ansah [2005-2006] SCGLR 943*** where it was held that in the real world inconsistencies, conflicts or contradictions are bound to be found in trials with a number of witnesses but where they were reconcilable, the court would be right to gloss over the inconsistencies.

Regarding Ground 1, Counsel argues that since the findings of the trial judge are inconsistent with crucial documentary evidence on record, the court is being called upon to analyse the entire record taking into account the testimonies of the witnesses and documentary evidence adduced before it arrives at its decision so as to satisfy itself that on a preponderance of the probabilities the conclusions of the trial judge are reasonably supported by the evidence. Counsel relied on the cases of ***Rev. Daniel Okpotiokertchiri vrs Eddie Nelson [2016] 191 GMJ 138; Fay International Ltd vrs Habib George Beany & Anor [2016] 92 GMJ 42*** at ***59*** and ***Koglex Ltd (No. 2) vrs Field [2000] SCGLR 175.***

We will deal with the grounds in the same order as the Appellant.

GROUND 2

That the learned trial judge erred in law by relying on the grant by Abena Asantewaa Mainoo when her interest in the land was extinguished by the acquisition of the Government of Ghana in the name of State Insurance Company under Executive Instrument E.I 58 of 1979.

We realize that the contention between the parties is the root of title to the land. Whilst the Plaintiff initially relied on a grant by Abena Asantewaa Mainoo as root of his interest in the claim to the land under dispute, he later relied on the State Insurance Company (SIC), whose title to the land is premised on Executive Instrument (E.I 58) of 1979 to trace his interest in the land. The Defendant on the other hand, claims his interest from Dr. Victor Lawrence, who also claims he acquired the land from the Nii Owoo family of Osu.

We deem it absolutely necessary to revisit the judgment of the Court of Appeal in ***Benedict Botchwey vrs State Insurance Corporation [1993-94] 1 GLR 89***, since the Plaintiff's claim to the land is premised on the Executive Instrument. The Plaintiff derives his root of title and legitimacy from E.I. 58 of 1979.

Both Counsel have placed different interpretations on the said judgment. The Counsel for the Plaintiff claiming that the majority of the Court of Appeal judges ruled in favour of SIC, the Counsel for the Defendant also claims the judgment was in favour of Botchway, the Respondent therein.

Lamptey J.A (as he then was) at page 96 of the judgment in ***Botchwey vrs State Insurance Corporation [1993-94] 1 GLR 89*** dated 16th December 1993 in the majority decision held that EI 58 of 1979 is "*a lawful instrument of full legal force and effect*" and held that the land would be deemed to have been compulsorily acquired when all the mandatory statutory provisions have been fully and strictly complied with. According to him, the trial judge was right in the conclusion she reached, because since there was

no publication of E.I. 58 according to law, the land in dispute never vested in the President for and on behalf of the people of Ghana. He therefore affirmed that the land in dispute never vested in the President at any time after 12th April 1979. He held that title to the land in dispute remained in the true owners of the land. He further held at page 96 that: *"In the lower Court the trial judge having held that E.I 58 of 1979 had not been published according to law proceeded further and held that in the circumstances the land in dispute did not vest and could not have vested in the President. I find that the conclusion reached by the trial judge is supported by the Rockson case (supra). At holding (3) of the report in the Rockson case (supra) appears the following statement of the legal position consequent upon non-publication of the executive instrument:*

"(3) Consequently the title in the land therefore remained in the Plaintiff as owner and the Lands Commission could not Transfer any interest in the property [ie land] to the defendant….and all her dealings with the land were therefore unlawful".

In my opinion, the above statement is good and sound law. I adopt it. I find that the trial judge was right in the conclusion she reached, namely because there was no publication of E.I 58 of 1979 according to law, the land in dispute never vested in the President for and on behalf of the people of Ghana. I therefore affirm that the land in dispute never vested in the President at any time after 12 April 1979. I hold that title to the land in dispute remained in the true owners of land". .

Also, Essiem JA (as he then was) states thus at page 97:

> "*I have had the privilege of reading beforehand the opinion which has just been read by my brother Lamptey JA and I am in agreement with that opinion".* He then went on to state the facts of the case and ruled at page 98 thus:
>
> *"Whatever the reason for the acquisition the evidence on record shows that "copies of the instrument were not affixed at a convenient place on the land" as required by law. Thus*

the law was not complied with and the purported acquisition cannot be said to have been done in accordance with law. In my opinion, as the law was not complied with, the acquisition cannot be said to have been done in accordance with law. The defendant therefore committed trespass when it entered the Plaintiff's land."

Though there was a dissenting opinion by Amuah JA (as he then was), we do not think there is a need to reproduce parts of it.

Consequently, SIC being the 2nd Defendant in suit no TOCC/5/10 completed the vesting of the acquisition in the President by complying with the requisite publication and notice to the Owoo family and three consecutive publications in the Ghanaian Times newspaper as per Exhibits 2DA, 2DB and 2DC found at pages 465 to 470 of the record of appeal. An affidavit of service and posting by Bailiff Alexander Afari (Exhibit 2D3) at page 464 of the Record of Appeal indicates that on 20th April 1994, he was entrusted with twenty five copies of the Executive Instrument for service as required by section 2 of the State Lands Act 1962 Plan No. LD. 9349/71047 and he served same on certain members of the Owoo Family and posted some at conspicuous places at Haatso village, Christian village, Ga District Assembly Notice Board, Amasaman, Town and Country Planning Notice Board, Amasaman and the Owoo Family House in Accra.

We find that with the learned judge having held that E.I. 58 was "*a lawful instrument of full legal force and effect*" and with the requisite publication having been effected subsequently in 1994, it cannot be declared null and void. Bearing in mind that E.I. 58 compulsorily acquired the land, it means that the interest of all concerned including Abena Asantewa Mainoo was extinguished by the said acquisition. In ***Marina Hotel Ltd vrs Stephen Ofosu Mensah [2016] 92 GMJ 141*** at ***146*** *it was held that "upon the acquisition by the State in 1973 through EI 75, every interest he had in the land would be extinguished, in view of the settled legal effect of acquisition of land by the State.* The law on this subject is settled and Counsel for the Appellant was right when he cited the case of ***Memuna***

Moudy vrs Antwi [2002-2004] SCGLR 967 where Wood JSC (as she then was) stated at page 972 to 973 as follows*: "I am in complete agreement with Twumasi JA that land compulsorily acquired….vests automatically in the government upon a publication of the gazette notice and further that by virtue of section 11 thereof, the acquisition operates to bar and destroy "all other estates, rights, titles, remainders, reversions, limitations, trusts and interests whatsoever of and in the lands acquired…"*

According to the Appellant as found at page 76B of the Record of Appeal, sometime in March 1999, he bought four plots of land from Abena Asantewaa Mainoo but before he paid for it, he saw a publication in the national dailies stating that all those who had bought land in the area should regularize with SIC. He therefore went to SIC with the said vendor to verify whether he would be given a sub-lease and the assurance was given. At the time he bought the land, it was bare, walled, steel gated and a two room structure for caretakers and another at the foundation level. The trial judge at page 368 of the record of appeal says that "*The Plaintiff maintained that he was relying on the registered title of the SIC and not on the title of Abena Asantewa Mainoo even though the two land certificates are with respect of the same parcel of land*." The trial judge therefore in his evaluation of the evidence confirmed what the Appellant had stated.

We find that in spite of this finding, the trial judge relied on the grant of Abena Asantewaa Mainoo in dismissing the claims of the Appellant for at page 376 of the record of appeal he stated thus in his judgment: "*From an examination of the survey plan attached to Exhibit D, in terms of acreage, it is clearly in conflict and substantially different from the survey plan attached to the mother sublease Exhibit C which strangely covers an area of 0.73 acre only. The acreage area in the site plan attached to Exhibit A, the site plan of Abena Asantewaa Mainoo who sold her interest to Kwabena Dapaah-Siakwan. Significantly it is on the strength of these documents that the Plaintiff seeks relief against Joseph Boye and has urged this court to enter judgment in his favour in terms of the reliefs sought. I have carefully examined the*

entire testimony of Kwabena Dapaah-Siakwan with a view to establishing whether or not he gave any explanation on these conflicts and discrepancies. I have found none."

We find that the trial judge considered irrelevant material, that is the initial grant to the Appellant by Abena Asantewaa Mainoo, and failed to take account of the fact that since the subject land had been compulsorily acquired under E.I. 58, it was the SIC and the Lands Commission which could grant sub interests in it to other persons. The interest of Abena Asantewaa Mainoo in the subject land was extinguished by compulsory acquisition. The grant made by the SIC and concurred in by the Lands Commission prevailed over the grant made to the Respondent since Respondent's grantor had no title in the subject land to be able to grant any interest to the Respondent.

GROUND 4

That the learned trial judge failed to adequately consider the case of the Plaintiff by failing to consider the effect of the supplemental lease dated 6th April, 2009 in proving the identity of Plaintiff's land.

In proof of his case, the Plaintiff/Appellant tendered the following exhibits among others: Exhibit A: Land Title Certificate in the name of Abena Asantewa Mainoo GA 6204; Exhibit B: Offer letter from SIC to Plaintiff dated 7th May 1999; Exhibit C: Sublease dated 1st November 2001 with site plan delineating the area as 0.730 instead of 0.9 acres. See pages 400-406 of the record of appeal; Exhibit D: Supplemental lease dated 6th April 2009 found at page 408 to page 411 of the record of appeal.

Exhibit D, the Supplemental lease offered an explanation for the reason for the discrepancy. According to the Plaintiff/Appellant at page 119B of the record of appeal, after he noticed some mistakes and differences in the site plan of the sub-lease that was given to him by SIC and that of the Land Registry, he drew the attention of SIC to it and

they later asked Ruder, a surveying firm to check and afterwards he was given the supplemental lease.

We will reproduce the Supplemental Lease.

1. *"This deed of addendum is supplemental to the sublease made on the 1st day of November 2001 between the parties herein and registered at the Land Title Registry, Accra as number GA. 27190 on the 29th day of July 2008.*
2. *The said lease dated the 1st day of November 2001 and registered as number GA 27190 was a regularization of title to the land registered in the name of Abena Asantewaa Mainoo with Land Title Certificate number GA 6204 with a site plan indicating the acreage as 0.9 acres.*
3. *The said lease aforesaid dated 1st November 2001 had the site plan of the delineated as 0.730 acres.*
4. *The said sublease registered at the Land Title Registry as GA 27190 delineated the size as 0.690 acres.*
5. *In order to determine the actual plot size involved in the said sublease dated the 1st November 2001 and registered in the Land Title Registry as number GA 27190, Rudan Engineering Limited, a firm of surveyors was engaged to determine the plot size on ground.*
6. *The resurvey carried out by Rudan Engineering Ltd. indicated the plot size as 0.918 acres.*

Now therefore, this Deed corrects the plot size in the lease dated 1st day of November 2001 between the parties herein and registered in the Land Title Registry with registration number GA27190 as indicated below.

It is our firm belief that this Supplemental lease gave an explanation of the factors which led to it being made. It clarified and corrected the discrepancies and mistakes

made in the acreage of the sublease and the Land Certificates issued. We believe that the Supplemental lease settled the issue of the identity of the land and thus the trial judge erred not to have taken it into consideration in arriving at his conclusion and determining otherwise.

GROUNDS 3 AND 5

3. ***That the learned trial judge erred when he held that the documents tendered by Plaintiff contain such inconsistencies and conflicts that will not give the documents the requisite reliability to attract a verdict in favour of the Plaintiff in terms of the reliefs sought, when in fact those inconsistencies and conflicts were immaterial and did not go to the root of the action.***

5. ***That the learned trial judge erred when he denied the Plaintiff judgment on the basis that no explanation was offered for the difference in the acreage of the land on the Sub-lease dated November, 2001 as against the supplemental lease dated 6th April, 2009 when in fact the supplemental lease effectively corrected the anomaly on the Sub-lease.***

The trial judge at page 381 of the Record of Appeal stated that "*the Plaintiff testified that a subsequent sublease per a deed of addendum made on 6th April 2009 executed between him and SIC which document has endorsed on it Plot 113, Block 22 Section 166 and has thereto attached a survey plan of the property of the Plaintiff approved by the Director of Surveys dated 7/2/2008 and has endorsed thereon Block 22, Plot 113 with an acreage of 0.1918 in area. The Plaintiff as I have earlier observed did not in his entire testimony explain these inconsistencies, contradictions and or conflicts.*"

We are of the opinion that the Plaintiff/Appellant has in both his testimony and exhibits tendered, explained the inconsistencies. Ansah JSC in ***Fosua & Adu-Poku vrs Adu Poku***

Mensah [2009] SCGLR 310 at ***332*** referred to the opinion of Wood CJ in the case of ***Effisah vrs Ansah [2005-2006] SCGLR 943*** at 960 on inconsistencies in the following manner:

> *"In the real world, evidence led at any trial which turns principally on issues of fact, and involving fair number of witnesses, would not be entirely free from inconsistencies, conflicts or contradictions and the like. In evaluating evidence led at a trial, the presence of such matters per se, should not justify a wholesale rejection of the evidence to which they might relate. Thus, in any given case, minor, immaterial, insignificant or non-critical inconsistencies must not be dwelt upon to deny justice to a party who has substantially discharged his or her burden of persuasion."*

She went on to say that:

> *"Where inconsistencies or conflicts in the evidence are clearly reconcilable and there is a critical mass of evidence or corroborative evidence or crucial or vital matters, the court would be right to gloss over these inconsistencies."*

We find that the Plaintiff/Appellant offered an explanation of the discrepancies in both his testimony and the Supplementary lease Exhibit D and therefore the holding of the judge is not supported by the evidence.

GROUND 1

That the judgment is against the weight of evidence.

It is trite that every appeal is by way of rehearing and our jurisdiction is invoked by Rule 8(1) of the Court of Appeal Rules CI 19. This involves going through the entire record to satisfy ourselves that a party's case is more probable than not, and that the finding of the court below is supportable from the evidence led. See the cases of ***Ansu-Agyei vrs Fimah [1993-94] 1 GLR 299*** at ***305*** and ***Tuakwa vrs Bosom [2001-2002] SCGLR***

61. The Appellant who complains that a judgment is against the weight of evidence bears the burden of demonstrating that certain pieces of evidence on the record which having not been properly evaluated led to a different conclusion from what ought to have been. See the case of ***Djin vrs Musa Baako [2007-2008] SCGLR 686.***

It is also trite law that it is the trial court that has the right to make primary findings of fact and where they are supported by the record, the appellate court is not permitted to interfere with same. The findings will however be interfered with upon certain conditions.

In the case of ***Amoah vrs Lokko & Alfred Quartey (Substituted by) Gloria Quartey &Others [2011] 1 SCGLR 505*** at pages ***514-515*** the court speaking through Aryeetey JSC stated thus regarding the findings of the trial court: "*It is only when the findings of the trial court are not supported by the evidence that the appellate court could interfere and substitute its own findings for that of the trial court. It is trite law that the trial court has the exclusive duty to make primary findings of fact which would constitute the means by which the final outcome of the case would be arrived at. For the trial court's findings to be irrefutable: first, it must be supported by evidence on record; second, it must be based on credibility of witnesses; third, the trial court must have had the opportunity and advantage of seeing and observing the demeanour of witness; and fourth, it must be satisfied of the truthfulness of the testimonies of witnesses on any particular matter…… The appellate court can only interfere with the findings of the trial court if they are wrong because (a) the court had taken into account matters which were irrelevant in law; (b) the court excluded matters which were critically necessary for consideration; (c) the court had come to a conclusion which no court properly instructing itself would have reached and (d) the court's findings were not proper inferences drawn from the facts.*"

The Plaintiff testified that he was relying on the grant of SIC and not that of Abena Asantewaa Mainoo but even though the learned judge confirmed this fact, he relied on her grant as part of his root of title. By that act, the trial judge considered irrelevant evidence to the disadvantage of the Appellant. The Plaintiff testified that he initiated moves to correct the anomalies and differences in the acreage of the land as contained in the sub-lease Exhibit C and the land Certificates. As a result of his initiative and moves, the SIC after the land was surveyed by a Surveying firm by name Rudan, gave him a Supplemental lease Exhibit D dated 6th April 2009. This corrected all the anomalies in the size of the land as it appeared in the sub lease on the ground. The respected learned trial judge unfortunately failed to consider the legally permitted correction made by the supplemental lease.

We find that the decision of the learned trial judge is against the weight of evidence.

Accordingly the appeal succeeds in its entirety. The decision of the trial High Court, Accra, dated 21st June 2016, by which the claims of the Appellant were dismissed is hereby set aside. In its place, we enter judgment for the Appellant on all the reliefs sought at the court below. The Appellant is hereby granted leave to recover the subject land as better delineated in the site plan annexed to the supplemental lease, Exhibit D. The Respondents, his agents, servants and assigns are perpetually restrained from interfering with Appellant's possession and quiet enjoyment of the subject land. We award general damages of GH¢10,000.00 against the Defendant.

Costs of Thirty Thousand Ghana Cedis (GH¢30,000.00) is awarded in favour of the Plaintiff/Appellant against the Defendant/Respondent.

(SGD)

MERLEY A. WOOD (MRS.)

(JUSTICE OF APPEAL)

(SGD)

I AGREE **SENYO DZAMEFE**

(JUSTICE OF APPEAL)

I ALSO AGREE *(SGD)*

ERIC BAAH

(JUSTICE OF APPEAL)

COUNSEL:

- **FRANK ASAMOAH FOR PLAINTIFF/APPELLANT**
- **NO LEGAL REPRESENTATION FOR DEFENDANT/RESPONDENT**