

**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE COURT OF APPEAL**

**ACCRA – GHANA AD – 2024**

***CORAM: - JENNIFER A. DODOO, (MRS.) J.A (PRESIDING)***

***STEPHEN OPPONG, J.A***

***CHRISTOPHER ARCHER, J.A***

**SUIT. NO. H1/243/2023**

**DATE: 9<sup>TH</sup> MAY, 2024**

**EMMANUEL TETTEH                    =    PLAINTIFF/RESPONDENT**

**(Subtituted by Edward Martey Tetteh)**

**H/NO. B254/17**

**SOUTH ODORKOR**

**ACCRA**

**VRS.**

**1. JAMES SANKA TETTEH**

**2. JONATHAN DARPOH**

**3. AARON DARPOH                    =    3<sup>RD</sup> DEFENDANT/APPELLANT**

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**JUDGMENT**

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***STEPHEN OPPONG, JA***

This is an appeal against the judgment of the High Court, Probate and Letters of Administration Division, sitting in Accra held on the 28<sup>th</sup> day of April 2022. Dissatisfied with the aforesaid judgment, the Defendant/Appellant herein appealed against the judgment of the High Court on the following grounds:

- a. That the judgment dated 28<sup>th</sup> April, 2022 is against the weight of evidence.
- b. Further grounds of appeal may be filed upon receipt of record of appeal.

For the purposes of this appeal, the parties herein shall maintain their respective designations at the court below. In that regard, the Plaintiff/Respondent shall hereinafter be referred to as the Plaintiff whereas the 3<sup>rd</sup> Defendant/Appellant shall be referred to as the 3<sup>rd</sup> Defendant. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants who are not parties to this appeal shall maintain their designations as 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

The Plaintiff herein instituted the action which has culminated in this appeal on the 30<sup>th</sup> day of June, 2015 against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants herein praying for the following reliefs:

1. Plaintiff claim (s.i.c) jointly and severally against the Defendants for a declaration that all those hereditaments known as House No B336/18 (House No B336/18) Bubiashie, Accra is family property.
2. Plaintiff further claims for a declaration that the devise of the said hereditaments by a ROBERT KODI DARPOH in his last will and testament dated 19<sup>th</sup> July, 2012 to certain beneficiaries is void of effect. (s.i.c).

The basis of the claim as can be gathered from the Amended Statement of Claim which accompanied the Writ of Summons filed on the 11<sup>th</sup> day of April 2016 is that:

He (Plaintiff) is the incumbent head of the Tetteh family of Prampram and brings the action in that capacity. It is the claim of the Plaintiff that his said Tetteh family had one Sophia Morkor Tetteh as a member and that the aforesaid Sophia Morkor Tetteh died sometime in 1978. It is the further case of the Plaintiff that the aforesaid Sophia Morkor Tetteh died possessed of House No. B336/18 Bubiashie the property in dispute. The Plaintiff averred that the deceased Sophia Morkor Tetteh purchased the land from Nii Asere and was issued with a receipt dated 15<sup>th</sup> August, 1972.

It is the case of the Plaintiff that upon the death of Sophia Morkor Tetteh, the property in dispute devolved on Tetteh family of which he is the head.

The Plaintiff says that it has come to his notice that one Robert Kodi Darpoh in his Will and Testament has devised the disputed property to certain people and has named the three Defendants as his executors hence the action which has culminated in the present appeal in which he is challenging the locus of the said Robert Kodi Darpoh to devise the disputed property.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants upon service of the Writ of Summons and the Statement of Claim filed a joint Statement of Defence dated the 28<sup>th</sup> day of July 2015 admitting the averments in the Plaintiff's Statement of Claim and positively averred that the Plaintiff is entitled to his claim.

The 3<sup>rd</sup> Defendant however upon service mounted a serious challenge to the Plaintiff's claim.

It is the case of the 3<sup>rd</sup> Defendant that the deceased Madam Sophia Morkor Tetteh at the time of her death in 1978 had divested herself of her interest in the disputed property. It is the case of the 3<sup>rd</sup> Defendant that the late Sophia Morkor Tetteh gifted the land on which the disputed property stands to his (3<sup>rd</sup> Defendant's) late father by name Robert Kodi

Darpoh in August, 1972 for which the necessary custom relative to the gift was performed by his late father in the presence of certain people.

The 3<sup>rd</sup> Defendant says that the present buildings on the disputed land were constructed solely by his late father and it was his late father Robert Kodi Darpoh who had been in undisturbed possession for over 30 years till his death in 2012. He averred further that his late father sometime in 2009 made a Statutory Declaration affirming his ownership of the disputed house.

It was based on these rival claims to the disputed property that the trial high court after going into the matter rendered its judgment on the 28<sup>th</sup> day of April, 2022.

We shall begin this judgment by commenting on some few preliminary matters bordering on this appeal. In the first instance, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not contest the suit mounted by the Plaintiff which has culminated in this appeal. In fact they admitted the averments in the Plaintiff's Statement of Claim based upon which the trial high court entered judgment on admission against them on the 25<sup>th</sup> day of November, 2015.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not appeal against the judgment which was entered against them. This therefore explains why they are not parties to the present appeal before this court.

The next issue is that even though the Defendant indicated in the Notice of Appeal that further grounds of appeal may be filed on receipt of the record of appeal, none was filed. In effect, the Defendant is relying on the sole ground of appeal which is "that the judgment dated 28<sup>th</sup> day of April, 2022 is against the weight of evidence"

The last but no means the least, is the fact that the Plaintiff failed and/or refused to file Written Submission in response to the Written Submission by the Defendant.

With this introductory background, we hereby set forth to determine this appeal which is challenging the trial high court's judgment on the ubiquitous ground of appeal, the omnibus ground of appeal which in this appeal was formulated as follows:

*"That the Judgment dated 28<sup>th</sup> April, 2022 is against the weight of evidence."*

When an appellant pleads the omnibus ground of appeal as has been done in this case, the role of an appellate court, as was enunciated in the oft cited case of *Tuakwa v. Bosom [2001-2002] SCGLR 61* which has assumed the status of 'locus classicus' on the duty of the appellate court, which has been referred to times without number, by Akuffo JSC as she then was, quite succinctly as follows:

*"An appeal is by way of rehearing, 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... it is incumbent upon the appellate court, in a civil case to analyse the entire record of appeal, take into consideration the testimonies and all documentary evidence adduced at the trial before it arrives at its decision, so as to satisfy itself that, on a balance of probabilities, the conclusions of the trial Judge are reasonably or amply supported by the evidence."*

See also the case of *Djin v. Musah Baako [2007-2008] 1 SCGLR 686*.

In the case of *Cyril Mainoo & anor v. Ama Ataa & ors (suit No. J4/27/2022)* unreported Dotse JSC (as he then was), summed up and restated the principles applicable when the omnibus ground of appeal is pleaded as follows:

*"What all these authoritative decisions require of an appellate court, such as this court, especially when a ground of appeal like the instant, formulated on the basis that "the judgment is against the weight of evidence" have to do are the following:*

- i. *Consider the case as one of re-hearing. This means an evaluation of the entire record of appeal.*
- ii. *Consider the reliefs claimed by the Plaintiff and if there is a counterclaim by the Defendant, that must equally be considered.*
- iii. *Consider and evaluate the evidence led by the parties and their witnesses in support of their respective cases especially the cross-examination as this is evidence that is now elicited from the parties and their witnesses after tendering of the witness statements.*
- iv. *An evaluation of the documents tendered during the trial of the case and how they affect the case.*
- v. *An evaluation of the application of the facts of the case vis-à-vis the laws applied by the trial court and immediate appeal court.*
- vi. *A duty to evaluate whether the trial court and the court of appeal correctly or wrongly applied the evidence adduced during the trial.*
- vii. *The burden on this final appellate court, such as this court is generally to carefully comb the record of appeal and ensure that both in terms of substantive law and procedural rules, the judgment appealed against can stand the test of time. In other words, that the judgment can be supported having regard to the record of appeal.*

*The above criteria are by no means exhaustive, but only serve as a guide to appellate courts such as the task facing us in the instant appeal.”*

Applying the principles enunciated above to the present appeal, our duty as the appellate court is to evaluate the entire evidence in the record of appeal and make up our minds as to the matters in dispute in this appeal, which in this case is narrowed to the simple issue of whether or not the late Sophia Morkor Tetteh gifted the disputed property to the late Robert Kodi Darpoh. This is so as the parties in this appeal are not disputing the fact of acquisition of the disputed property by the late Sophia Morkor Tetteh. Also, there is enormous evidence on record to establish that the aforesaid Sophia Morkor Tetteh is from the Tetteh family.

By the Written Submission filed on behalf of the Defendant in this appeal, the Defendant's arguments are as follows;

Firstly, it was submitted on behalf of the Defendant that gift was proved by long and exclusive possession of the disputed property. On this, according to the argument, the late Robert Kodi Darpo is on record as having been in long and undisturbed possession of the disputed property and cited the cases of:

1. *Cato vrs. Larbi (1960) GLR 146*
2. *Nartey vrs. Mechanical Lloyed Assembly Plant (1987/88) 2 GLR* in support of that argument.
3. It was also submitted that the late Robert Kodi Darpoh's possession was evident in his giving the disputed property out to tenants without accounting to anyone. Defendant, in advancing this argument refers to Exhibits 1, 2, 3, 4, 5, 7 and 8 being Tenancy Agreements that were supposedly entered into by Robert Kodi Darpoh in support of this contention. Defendant also refers to Exhibit 9 and 10 being Bills in respect of the disputed property which bore the name of his late father and submits that had the trial court adverted its mind to these documents it would not have come decision being impugned.

It was also submitted by the Defendant that the trial court erred by not being guided by the proposition of the law in the cases of:

1. *Bisi vrs. Tabiri alias Asare(1987/88) GLR 360*
2. *Effisah vrs. Ansah (2005/2006) SCGLR 943*

As observed earlier in this judgment, the Plaintiff did not file Written Submission in response to that of the Defendant. That notwithstanding, this court is not relieved of its duty of examining the entire record of proceedings by way of rehearing to determine the appeal in accordance with the dictates of the duty casts on us as the appellate court to which a prayer by the appellant comes to, for redress.

Again, one principle that guides an appellate court such as this court is that notwithstanding the fact that we may disagree with the reasons by which the trial court's conclusions are reached or better still, placed in the situation of the trial court, the appellate court would have used different reasons to reach its conclusion, if on the evidence on record, there is sufficient evidence to support the decision of the trial court, the appellate court ought not to disturb the finding of the trial court. See the case of *Abaka v. Ambradu (1963) 1GLR 456* where it was stated as follows:

*"The judgment of the Learned trial judge was based on wrong application of the law in Lartey vrs. Mensah (supra) which cannot be supported. But a court of appeal is entitled to uphold a judgment, if proper grounds exist on the record to justify the judgment even though it cannot be supported for the reasons given by the court which gave it"*

We hereby set forth to determine this appeal having in mind these principles as a guide.

In this appeal just like the trial court, the main issue which

calls for determination is whether on the evidence on record, the Defendant was able to prove gift of the disputed property to his late father Robert Kodi Darpoh.



In his bid to prove that the late Sophia Morkor Tetteh gifted the disputed property to his late father, he relied heavily on the evidence of DW 1 who is said to have witnessed the aforesaid gift. Her evidence is to the effect that the late Sophia Morkor Tetteh gifted a bare land to the late Robert Darpoh, showed him the boundaries and prayers were said, and that the gift was accepted by the offering of certain items in the presence of witnesses. The evidence of DW 1 goes on to state that it was the late Robert Kodi Darpoh who subsequently constructed the buildings currently on the disputed property.

The evidence of the Defendant is that the late Sophia Morkor Tetteh put up a mud structure to secure the land before gifting same to his late father.

We have examined the entire record of appeal and have also considered the submission by Counsel for the Defendant on this issue of gift having been proved by long and exclusive possession of the disputed property by the late Robert Kodi Darpoh and we find that submission not borne out of the record of proceedings.

At page 102 of the ROA, during the cross examination of the Defendant this is what transpired:

*“Q: do you also know that Sophia Morkor Tetteh when she left the swish house building her brother Ataa Akrong came to occupy the swish house.*

*A: yes but the mud structure was finished by my father the late Robert Kodi Darpoh when Ataa Akrong was sick and that Madam Sophia Morkor Tetteh asked my father that he should bring Ataa Akrong to come and live with my father for somebody to take care of him.*

*Q: I am putting it to you that Ataa Akrong lived in the house alone until he died in 1974.*

*A: it is not true that Ataa Akrong lived in that house alone.”*

From the foregoing, it becomes preposterous for the same Defendant to argue that his late father had been in exclusive possession of the disputed property in the face of his own evidence that the late Ataa Akrong a member of the Tetteh family had lived in the house till he died. This clearly defeats the argument that the late Robert Kodi Darpoh had exclusive possession of the disputed property.

It also comes out clearly that the late Sophia Morkor Tetteh had structures on the disputed property and even lived there. A fact which runs counter with DW 1's evidence that the disputed property when being gifted to the late Robert Kodi Darpoh was a bare land for which reason he had to be shown the boundaries. The evidence of DW 1, who was the star witness of the Defendant, is that the disputed property when it was being gifted to the late Robert Kodi Darpoh, was a bare land. This is contrary to the evidence of the Defendant who testified under cross examination that the late Sophia Morkor Tetteh built swish houses on the land on the disputed land before gifting same to his late father.

The evidence of DW 1 on the gift also throws up another area of concern. It is the evidence of DW1 that the gift to the late Robert Kodi Darpoh was in 1972. When pressed under cross examination about the fact that the late Sophia having finished paying for the disputed property in 1972, was unlikely to have gifted the property that same year to the late Robert Kodi Darpoh that same year, her answer was that it was not immediately after finishing payment but sometime later. This is coupled with her own evidence that the late Sophia Morkor was being then taken to the hospital when she (Sophia Morkor Tetteh) made the alleged gift, makes it very difficult for a tribunal of fact to believe the gift story. This is made worse when it is juxtaposed with the issue of whether the land was bare or had structures thereon before the alleged gift and also whether it had been occupied by the late Sophia Morkor Tetteh and the late Ataa Akrong. We find the gift story to be not credit worthy in the face of the evidence on record.

On the issue of the Tenancy Agreements which were tendered in evidence as Exhibits 1-8, there is no evidence on record to show that indeed House No. B.272/18 North Kaneshie to which Exhibits 1, 2, 3, 4, 5, 7 and 8 relate is the same as the house in dispute which is numbered as House No. B336/18 Bubuashie, we find no evidence on record to show that indeed the two House numbers relate to the one and the same property and indeed, it is the disputed property. Besides, Exhibit 6 relates to a different house with its number as House No. B.171/18 North Kaneshie, Accra.

On the arguments about exhibits 9 and 10, we have observed that having names of occupants of properties on utility bills is a normal occurrence which does not confer title on the person whose name appear thereon.

The position of the law on a valid customary gift was succinctly laid down in the case of *Barko vrs. Mustapha* (1964) GLR 78 @ 81 citing with approval the case of *Asare vrs Teing* (1960) GLR as follows:

*“The essentials of a valid gift made in accordance with customary law are: publicity, acceptance, and placing the donee in possession. The way to give publicity to a gift of land is to make the gift in the presence of witnesses, particularly members of the family of the donor who would succeed to the property upon the donor’s death intestate; and the acceptance must be evidenced by the presentation of ‘drink’ or some small amount of money to the donor, part of which is served to or shared among the witnesses to the transaction.*

*Possession is given by taking the donee to the land, owners of the adjoining lands having been given previous information to stand on their boundaries and the donee is taken round the said boundaries.”*

Applying the principle in the *Barko’s* case supra to the present appeal before us, having examined and evaluated the entire evidence, we agree with the conclusion by the trial

high court that the Defendant failed to establish a valid customary gift as there were too many inconsistency in the evidence proffered to establish the alleged gift of the disputed property by the late Sophia Morkor Tetteh to the late Robert Kodi Darpoh as the evidence led by the Defendant and his star witness DW 1 in proof of the gift suffered credibility deficit.

Counsel for Defendant in his Written Submission makes capital of the reason by the trial court about DW 1's failure to recollect when the gift was made citing the cases *of Bisi vrs. Tabiri @ Asare* to show that the trial court should have been flexible and not demand strict proof in the circumstances of this case.

It is on this basis that the decision of *Abaka vrs. Ambradu* cited supra becomes apposite in that even if we do not agree with that particular reason, there is enough grounds upon which the judgment of the trial court should not be disturbed as outlined supra in this judgment.

In line with our duty as the appellate court to which this present appeal comes for determination and in consonance with our core function of rehearing of the case, we have come to the conclusion that the decision of the trial court is well grounded in the evidence adduced at the trial and therefore do not find any justification to disturb the judgment of the trial court.

In conclusion, we find no merits in the appeal and consequently dismiss same and affirm the decision of the high court that the disputed property is the family property of the Tetteh family of which the Plaintiff is the head.

*(SGD)*

**STEPHEN OPPONG  
(JUSTICE OF APPEAL)**

**I AGREE**

*(SGD)*

**JENNIFR A. DODOO (MRS.)  
(JUSTICE OF APPEAL)**

**I ALSO AGREE**

*(SGD)*

**CHRISTOPHER ARCHER  
(JUSTICE OF APPEAL)**

***COUNSEL:***

- **EDEM MINKA FOR 3<sup>RD</sup> DEFENDANT/APPELLANT**
- **NO LEGAL REPRESENTATION FOR PLAINTIFF/RESPONDENT**