

IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA – GHANA AD – 2024

CORAM: - E. KYEI-BAFFOUR, J.A (PRESIDING)

N. ARYENE (MRS.), J.A.

S. OPPONG, J.A.

SUIT NO. H1/74/2022

DATE: 2024

MRS. SARAH ANKOMAH KYEI === PLAINTIFF/APPELLANT

VRS.

1. THE REGIONAL LANDS OFFICER

2. NII MOI MORTON === DEFENDANTS/RESPONDENTS

JUDGMENT

STEPHEN OPPONG, JA

This is an appeal against the judgment of the High Court sitting at Cape Coast dated the 29th day of June 2021. Dissatisfied with the aforesaid judgment, the Plaintiff/Appellant herein launched an appeal against the aforesaid judgment on the 2nd day of July 202.

The grounds of appeal contained in the notice of appeal are as follows;

- a. The judgment is against the weight of evidence adduced at the trial.

- b. Further grounds of appeal will be filed upon the receipt of the Record of Appeal.

Per the Amended Writ of Summons and a Statement of Claim filed on the 15th day of November, 2013, the Plaintiff/Appellant herein who shall hereinafter be referred to as the Appellant instituted the present action which has culminated in the appeal before us against the Defendants/Respondents herein who shall hereinafter be referred to as the Respondents for the following reliefs:

1. A declaration that by virtue of his registered Deed no. 3335/1984, he is the owner of the land, the subject matter of this suit.
2. An order compelling Lands Officer, Central Region, Cape Coast to expunge from the records of Deeds Registry, Central Region and other Registration of Deeds subsequent to the Plaintiff's registration of 1984 and affecting the Plaintiff (s.i.c).

The basis of the claim as can be gathered from the Amended Statement of Claim is that, the land in dispute was acquired by him at Asabahan on 2nd January 1981 for farming purposes from the chiefs and people of Domeabra near Kasoa. It is the case of the Plaintiff that the acquisition was reduced into writing and same registered at the Deeds Registry in Accra as No. 3335/1984 and has been in undisturbed possession since 1981. It is the case of the Plaintiff that sometime in 2006, he applied for Land Title Certificate over the land in dispute and was later informed that the land was rather in the Central region as opposed to Greater Accra where he had laboured under the impression that the land fell within, and requested that the records be transferred to Cape Coast. It is the case of the Plaintiff that the records of his pre-existing registration affecting the disputed land was not transmitted to the Central Region Deeds registry nor was the said parcel of land plotted in his name. It is the case of the Plaintiff that some parts of the disputed land have

subsequent to his registration, been registered in the names of third parties by the Deeds registry, Cape Coast.

The 1st Defendant after filing defence to the action did not participate further in the proceedings leading up to the aforesaid judgment.

The 2nd Defendant however, contested the action by filing a Statement of Defence and a Counterclaim resulting in a judgment in his favour based on his counterclaim.

The basis of the 2nd Defendant's counterclaim is that, he holds a valid lease of a large tract of land from the chief of Ngleshie Amanfrom and Djaasetse, head and lawful representative of the Akramanaa family of Ngleshi Amanfrom and has divided the land into nine lots and has registered each of these nine lots. It is the case of the 2nd Defendant that the only people who have valid title to convey the land in dispute is the royal Akramanaa family of Ngleshie Amanfrom who acquired the land through their founder Nii Quarshie Gbolor I.

Basing on these facts, the 2nd Defendant who was variously described as the Co-Defendant counterclaimed against the Plaintiff for the reliefs endorsed in his counterclaim.

It was based on this rival claims by the parties herein that the trial court after hearing the parties rendered its judgment on the 29th day of June 2021, the subject of the present appeal.

As has been alluded to earlier, the Appellant in his notice of appeal indicated that she will file further grounds of appeal upon receipt of the Record of Appeal. True to form, the Appellant on the 6th day of October 2021 filed Additional Grounds of Appeal as follows:

- i. The learned High Court Judge erred in law when she held that registration of the Plaintiff landed instrument under the land Registry Act 1962, Act 122 was not conclusive evidence of her title to the aforesaid land and in so doing proceeded to dismiss the claim of the plaintiff.
- ii. The learned High Court Judge failed to advert her mind to the fact that registration of instruments under the land Registry Act 1962, Act 122 constitutes evidence of title as well as notice to all third parties of registration of a particular landed instrument and in so doing proceeded to dismiss the Plaintiff's claim.
- iii. The learned High Court Judge conclusion that the land in contention is not owned by the Weija stool is not borned out of the evidence on record before the court for which she used same as premise in dismissing the Plaintiff claim.
- iv. The learned High Court Judge failed to advert her mind to the fact that the 1st Defendant Land Institution had already registered Plaintiff's land in its records as number: CR/404/2008 for which there was no basis for holding that the Plaintiff had no title to the land in contention more so as she has held that there was evidence of double registration of the same land on record.
- v. The learned High Court Judge erred in law and by way of procedure by adjudging the 2nd Defendant as the rightful owner of the land after so, holding that the 1st Defendant Land Institution had compromised on the principles of equity fairness and justice in the registration of the land in contention in the name of the 2nd Defendant more so as there was evidence of earlier registration of the same land in the name of the Plaintiff.

- vi. The learned High Court Judge erred in law by so holding that the Plaintiff was barred by the Limitation Act 1972 N.R.C.D. 54
- vii. The learned High Court Judge erred in holding that the 2nd Defendant herein had proven his counterclaims and title to the land described therein when the High Court Accra had in an earlier judgment in the case of SOLOMON AYAA AYEETEY AND OTHERS VRS. NUMO KANKAM & OTHERS (SUIT NO. SOL 12/090) dated 12th of April 2013 in respect of the aforesaid land therein before this court held that the root of title of the 2nd Defendant were fraught with difficulties and set aside same on the grounds of Fraud.
- viii. The learned High Court Judge erred in law by directing the 1st Defendant/Respondent to expunge all the records of the registered land of the Plaintiffs from its records.

As a preliminary comment on the Additional Grounds of Appeal, we notice that it was filed on the 6th day of October 2021 which said date is beyond the statutory period of three months from the date of the judgment. We notice again that there is nothing on record to show that leave was granted for its filing. This issue will be revisited later in this judgement.

We will now determine the appeal in accordance with the arguments in the written submissions by the parties in this appeal.

The first and only ground contained in the Notice of Appeal filed on the 2nd day of July, 2021 is as follows:

THE JUDGMENT IS AGAINST THE WEIGHT OF EVIDENCE ADDUCED AT THE TRIAL.

In arguing this ground of appeal, Counsel for the Appellant devoted all his efforts at attacking the grant of the counterclaim of the 2nd Defendant/Respondent rather than pointing to us pieces of evidence which if applied will establish the claim of the Plaintiff/Appellant on the balance of probabilities as the authorities demand from an appellant appealing on the omnibus ground of appeal.

Counsel argued that the trial court found in pages 615-621 that there had been a double registration of the land in dispute as such the trial high court should not have granted the 2nd Defendant's counterclaim.

Counsel submitted that the Exhibits which formed the basis of the grant of the 2nd Defendant's counterclaim had a lot of discrepancies as such the trial court should not have granted the counterclaim based on those exhibits.

Counsel further submitted that the evidence which formed the basis of the grant of the counterclaim is so porous that the counterclaim should not have succeeded.

In response to the written submission by the Appellant's, Counsel for the Respondent contended that the Appellant woefully failed to establish his claim before the trial court as such the trial court was right in dismissing his and that there is no merits in the appeal.

In determining the present appeal on this ground, we adopt the words of Dotse JSC in the case of Abbey & ors vrs. Antwi (2010) SCGLR 17 @34-35 cited by Counsel for the Appellant as follows"

"it is now trite learning that where the appellant alleges that the judgment is against the weight of evidence the appellate court is under an obligation to go through entire record to satisfy itself that a party's case was more probable than not."

In the case of Djin vrs. Musah Baako (2007-2008) SCGLR 686, it was held that where a party complains of a judgment being against the weight of evidence, it implies two things:

- i. That there are certain pieces of evidence on the record which if applied could have changed the decision in his or her favour or certain pieces of evidence have been wrongly applied against him.
- ii. That the onus is on such an Appellant, to clearly and properly demonstrate to the Appellate court the lapses in the judgment against him.

We have gone through the entire record and we are satisfied that the Plaintiff could not prove his claim to the disputed land on the balance of probabilities as against that of the 2nd Defendant who proffered evidence to establish his root of title and other relevant pieces of evidence. We are satisfied that the Appellant could not prove his root of title to the disputed land.

Worse still, the Appellant woefully failed in his duty to clearly and properly demonstrate to us the lapses in the judgment being appealed against. We are satisfied that the Appellant failed to prove his acquisition of the land in dispute as he could not properly identify his grantors as the rightful person with title to pass to him etc. Again, the Appellant failed to prove possession which was the bulwark of his case that he had reduced the land into farming from which they were exporting produce etc.

In the result, we do not see the need to disturb the judgment of the trial high court. Accordingly, this ground of appeal fails and same is hereby dismissed.

The next batch of grounds which were argued by the Appellant are those which are contained in the Additional Grounds of Appeal.

Before going into the merits of the arguments advanced in favour of these grounds, we wish to consider the objection that has been raised by Counsel for the Respondent in his Written Submission filed on the 24th day of May 2023 against the propriety of the admission of those grounds of appeal.

Counsel for the Respondent submitted that since the judgment which is under attack was delivered on the 29th of June, 2021, the Appellant could not have filed additional grounds of appeal outside the three months period as stipulated by Rule 9(2) of the Court of Appeal Rules, C.I. 19 without leave.

Counsel submits that since the Additional grounds were filed on the 6th of October, 2021, it was not filed within the three months period provided by the statute and there being no evidence of leave being granted, the Appellant is not permitted to argue those grounds of appeal.

We have considered the objection by Counsel for the Respondent and there being no response by Appellant on this point, and there being no evidence on record to indicate that leave had been granted for the filing of the additional grounds, we uphold the objection of counsel for Respondent and hold that the additional grounds of appeal filed on the 6th day of October 2021 are incompetent.

In conclusion, we find no merits in this appeal and same is accordingly dismissed.

STEPHEN OPPONG, JA