IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- A.D. 2020

CORAM: BAFFOE-BONNIE, JSC (PRESIDING)

APPAU, JSC

PWAMANG, JSC

AMADU, JSC

KULENDI, JSC

CIVIL APPEAL

NO. J4/10/2019

16TH DECEMBER, 2020

EMPIRE BUILDERS LIMITED …….. PLAINTIFF/APPELLANT/APPELLANT

VRS

1. TOPKINGS ENTERPRISES LTD. ……

DEFENDANT/RESPONDENT/RESPONDENT

2. NII BORTRABI OBRONI II …… 1ST CO-DEFENDANT/RESPONDENT/ RESPONDENT

3. NUMO BORKETEY LAWERH TSURU ……. 2ND CO-DEFENDANT/RESPONDENT

4. LANDS COMMISSION …… 3RD CO-DEFENDANT/RESPONDENT

5. REIT-TOP HOUSING ESTATES LTD. ……. 4TH CO-DEFENDANT/RESPONDENT/ RESPONDENT

JUDGMENT

AMADU, JSC:-

(1) This appeal is from the decision of the Court of Appeal pronounced on the 18th December, 2014 which affirmed in part the judgment of the High Court dated 11th June, 2003. For purposes of convenience, the parties to the appeal shall be referred to by the same description as in the Trial High Court. The Plaintiff herein, aggrieved by the decision of the Court of Appeal has appealed to this court seeking an overturn of the decision.

(2) The key question for our decision in this appeal is whether the Court of Appeal correctly reevaluated the evidence on record and applied the relevant law and consequently came to the right conclusion by affirming the judgment of the Trial Court in part only.

(3) **BACKGROUND**

By a Writ of Summons issued on 24th February 1999 the Plaintiff commenced this action against the 1st Defendant for the following reliefs:

a. ***"A declaration of title to a parcel of land situate at Adjiringano-North, Accra comprising an approximate area of 456.25 acres the full description of which were provided in the statement of claim.***

b. General damages for trespass.

c. Perpetual injunction restraining the Defendant, her assigns, privies or workmen from interfering with the quiet enjoyment of Plaintiffs land.

d. An order that Land Certificate No. T.D 0042 recorded in Land Register Volume 019 Folio 28 issued in the name of the Defendant Company be nullified and expunged from the Lands Register on ground of fraud, misrepresentation and, or mistake.

e. Costs."

(4) The Plaintiff, a limited liability company registered under the laws of Ghana averred that one Barone Fiore Ernesto Taricone by four separate leases acquired a vast parcel of land situate at Adjirigano, Accra. The Plaintiff asserted that the said acquisition was made from the Ashong Mlitse Family of Odarteitse We of Teshie, Accra. The Plaintiff gave the size of the land it is claiming in the action as 1,863 acres and stated that are Barone Fiore Ernesto Taricone acquired same in 1977 for a term of (99) years. It added that the land was duly registered.

(5) The Plaintiff averred that the said Barone Fiore Ernesto Taricone assigned the unexpired term of the lease on the said land to it *(Plaintiff)* in 1979. It is the case of the Plaintiff that the Deed of Assignment evidencing same was stamped as No.AC 2420/79 and registered as No.2757/97. It stated further that in 1987 it surrendered about 1433 acres of the land to the Ashong Mlitse Family and kept only 456 acres to itself. It further asserted that it obtained a Deed of Confirmation dated 1st October 1987 over the portion it retained and had the said Deed registered as AR 5299B/89.

(6) The Plaintiff further averred that after the grant it went into possession of same and started developing various dwelling houses on the land. According to the

Plaintiff, it carried on with its developments on the land without any let or hindrance until about 1998 when the 1st Defendant was noticed encroaching on some part of the land.

(7) The Plaintiff averred further that the 1st Defendant was laying claim to a portion of the land by virtue of Land Certificate No. 0042 and alleged that the certificate aforesaid was obtained by fraud. As part of its case the Plaintiff stated that the title of Odarteitse We to the land in dispute was confirmed by the judgment of the Court of Appeal in Civil Appeal No.9187 entitled **Banga & Others Vs. Djanie & Another** reported in **[1989-1990] GLR 510.** The Plaintiff further asserted that when the Nungua Stool made an adverse claim to its land it entered into a Memorandum of Understanding with the Stool with the view to regularizing its interest with the said Stool if the Stool's claim of superior interest is established. The Plaintiff further alleged that, the 1st Defendant fraudulently registered its documents over the disputed land in order to overreach Plaintiff's interest in the land.

(8) **THE 1ST DEFENDANT'S CASE**

The 1st Defendant denied that the land in dispute belongs to any family from Teshie and therefore is Teshie land. It claimed that the land belonged to the Nungua Stool and stated that it had been in possession of the said land since 1994. It was the case of the 1st Defendant that when the Plaintiff attempted to encroach on the lands, the youth of Nungua resisted whereupon the Plaintiff approached the Nungua Stool to regularize its occupation of same but the said Stool had at that material time already divested its interest in part of the land to it the *(1st Defendant).*

(9) The 1st Defendant claimed that it acquired a total of 62 acres in two lots of 40 acres and 22 acres and registered the title deed in respect thereof at the Land Title Registry as No. 777/1999. The 1st Defendant stated further that it had to re-acquire 8 acres out of the 40 acre lot from the Nii Whang Family of Nungua because the

said family was in possession of that portion of the land. According to the 1st Defendant, it registered the said land as AR 3222/1999 and further that it paid monies to other person claiming interest with respect to the 22 acre parcel of land to enable it register same as No. 646/2000 with Land Registry No. GA 15801.

(10) By processes of joinder upon application, three other persons were joined to the action as Defendants. The Nungua Stool was joined to the suit to assert its claim to ownership of the land in dispute. It was represented by the 1st and 2nd Co-Defendants. The Lands Commission was also joined to this action as 3rd Co-Defendant by reason of the fact that a portion of the land claimed by Plaintiff fell within land already acquired by Government in 1940 for the Animal Husbandry Farm and Road. The 4th party to be joined to this action was Reit-Top Housing Estate Limited which was added as the 4th Co-Defendant because it had acquired part of the land in dispute from the 1st Defendant and had started developing same.

(11) **JUDGMENT OF THE TRIAL COURT**

The Trial High Court after a full trial made the followings findings and conclusions:

i. That the land in dispute is part of a large tract of land belonging to the Nungua Stool.

ii. The Court dismissed the Plaintiff's claim for an Order for possession of the land.

iii. The other reliefs claimed by the Plaintiff in the nature of damages for trespass, perpetual injunction and cancellation of land certificate No. TD 0042 were all dismissed.

iv. The Court upheld the Counterclaim of the 4th Co-Defendant for a declaration of title to 39.59 acres of the disputed land and restrained the Plaintiff from interfering with 4th Co-Defendant's possession.

v. By inference the judgment provided that the Plaintiff, 1st Defendant, the 3rd co-Defendant and 4th Co-Defendant should retain possession of the respective portions of the disputed land that they have already developed or were in the process of developing when the Trial Court visited the locus in quo.

(12) APPEAL BEFORE THE COURT OF APPEAL

Dissatisfied with the judgment of the Trial Court, the Plaintiff by a Notice of Appeal filed pursuant to leave granted on 17th May, 2006 mounted a challenge against same. The grounds of appeal set out in the said Notice are as follows:

a. ***"The Trial Judge erred in dismissing the Plaintiff's claim on the ground that the Plaintiff lacked capacity under Article 226(4) of the 1992 Constitution to hold the lease in issue.***

b. ***The Trial Judge erred in not referring to the Supreme Court the interpretation of Article 266(4) of the 1992 Constitution and its applicability to the Plaintiff Company.***

c. ***The Learned Trial Judge erred in entertaining the issue of capacity of the Plaintiff to hold the assignment, which issue was not properly raised for determination.***

d. ***The trial proceeded on the wrong principles of the burden of proof, thus disabling a proper assessment of the Plaintiff's case.***

e. ***The judgment is inconsistent and illogical in that having pronounced void the Plaintiff's leasehold interest on constitutional grounds, it nevertheless upheld the Plaintiff's possessory right to part of the property.***

f. ***The Learned Trial Judge erred in dismissing the Plaintiff's claim on the ground that part of the disputed land had been acquired by the Government of Ghana.***

g. ***The Trial Judge erred in not upholding the Plaintiff/Appellant's plea that the 3rd Co–Defendant/Respondent was guilty of laches, acquiescence and estopped from laying claim to the land of the Plaintiff.***

h. ***The Judgment is against the weight of evidence.***

i. ***The Trial Court erroneously dismissed the action because it failed to appreciate the Plaintiff's case and the substantial evidence in support.***

j. ***The Learned Trial Judge misconstrued the case of the Plaintiff when he held that the judgment in BANGA VS. DZANIE was tendered to establish estoppel when it was clear that the Judgment was tendered for its historical value.***

k. ***The reasons for the Judge's refusal to cancel the registration are not supported by the evidence on record or in law, there being adequate evidence on record that the Defendant was guilty of dishonesty".***

(13) JUDGMENT OF THE COURT OF APPEAL

The Court of Appeal after hearing the appeal, held as follows:

a. The phrase ***"person"*** in Article 266(4) of the 1992 Constitution has been interpreted to ***"include a natural as well as legal person or a corporate body"*** in the case of **NPP Vs. Attorney General [1996/97] SCGLR 729.** There was therefore no need to refer it to the Supreme Court for interpretation again.

b. The evidence led at the trial juxtaposed with the laws of Ghana necessarily raised the question of capacity to be determined by the Trial Judge.
c. The Trial Judge did not err in raising the capacity of the Plaintiff because there were grounds in the record of proceedings from which the issue could be determined.

d. The test for the burden of proof being by a preponderance of the evidence is not incompatible with the saying that a person seeking a declaration of title must do so on the strength of his own case. The Court of Appeal found the rules on the onus of proof as set out by the Trial Judge to be perfect and in accord with the established rules.

e. Since the Appellant failed to amend its reliefs by the inclusion of a relief for possession after it had obtained leave to do so, the leave granted thus became void ipso facto and there was therefore no claim for possession to enable the Trial Judge make any order for possession. The order for possession is therefore null and void and thereby nullified.
f. The 3rd Defendant did not claim title to it to be accused of laches and acquiescence.

g. The failure by the Appellant to make required searches when the Teshie Stool purported to lease the land to it largely accounts for its mishap. The Trial Judge was right in finding that Plaintiff failed to prove its title to the land claimed.

h. Even though registration constitutes notice to the whole world, registration per se does not constitute proof of title. There was abundant evidence on record to

support the Trial Judge's finding that the disputed land belonged to the Nungua Stool and not Teshie Stool.

i. There was the evidence to show that before the Statutory Declaration of ownership by the Ashong Mlitse Family of Teshie, the Nungua Stool per its Chief Nii Odai Ayiku had been granting leases of the land to its subjects which were registered by the Lands Commission.

j. There was also evidence the evidence that the Government of the Gold Coast acquired land from the Nungua Stool in the 1940's.

k. There was also the undisputed evidence that it was the Nungua Stool which granted part of their land to the Teshie people to settle on, but the Teshie people went beyond the area granted to them.

l. The Ashong Mlitse Family did not testify to prove ownership of the land they swore the Statutory Declaration to claim.

m. The Plaintiff's lease was registered before its grantor, the Ashong Mlitse Family's Statutory Declaration was registered. The Trial Judge was therefore right in not attaching any weight to the Plaintiff's grantor's Statutory Declaration.

n. The case of **Banga & Others Vs. Djanie & Another [1989-90]1 GLR 510** relied on by the Plaintiff was not helpful to its case because no boundaries were established in that case relative to the land in dispute.

o. The evidence on record shows that the Plaintiff later got to know that the land it occupied belonged to the Nungua Stool and not the Teshie Stool and that was why when it was challenged by the Defendants it approached the Nungua Stool to sign the Memorandum of Understanding to regularize its occupation of the Land. The Memorandum per se is not a deed of conveyance. It also

explains why in the second suit at Tema the Plaintiff claimed ownership of the land as a grantee of the Nungua Stool.

p. The evidence on record clearly established that when the Plaintiff sought to regularize its grant with the Nungua Stool, that Stool had already leased the disputed land to the 1st Defendant and therefore the Nungua Stool had no interest in the land to lease to the Plaintiff except a reversionary interest.

(14) **APPEAL BEFORE THE SUPREME COURT**

It is against the above confusions that the Plaintiff by notice to this court filed on 30/1/2015 appealed from the judgment of the Court of Appeal in which eleven (11) grounds of appeal have been set out as follows:-

GROUNDS OF APPEAL

i. ***"The judgment is against the weight of evidence.***

ii. ***The Learned Justices of the Court of Appeal erred by not holding that Defendants' claim that the disputed land belongs to the Nungua Stool was statute-barred by virtue of Section 10 of the Limitation Act, Act 54.***

iii. ***The Learned Justices of the Court of Appeal erred when they held that the decree of possession made in favour of the Plaintiff by the Trial Judge was a nullity.***

iv. ***The Learned Justices of the Court of Appeal erroneously dismissed the appeal because they failed to properly evaluate the Plaintiff's case and the evidence adduced at the trial.***

v. ***The Learned Justices of the Court of Appeal misconstrued the case of the Plaintiff when they held that the judgment in BANGA VS. DZANIE [1989-1990] 1 GLR P.***

510 was tendered to establish estoppel when it was clear that the judgment was tendered to establish its historical value.

vi. *The Learned Justices of the Court of Appeal proceeded on wrong principles of the burden of proof, thus disabling a proper assessment of the Plaintiff's case.*

vii. *The Learned Justices of the Court of Appeal erred by failing to hold that the Defendant was guilty of dishonesty.*

viii. *The Learned Justices of the Court Appeal erred when they held that since the word "person" had already been interpreted by the Supreme Court it was not necessary to refer to the Supreme Court the interpretation of Article 266 (4) of the 1992 Constitution and its applicability to the Plaintiff Company.*

ix. *The Learned Justices of the Court of Appeal erred by not holding that the capacity of the Plaintiff to hold assignment was not properly raised for determination.*

x. *The Learned Justices of the Court of Appeal erred by not holding that the judgment appealed from is inconsistent and illogical, in that having pronounced void the Plaintiff's leased interest on constitutional grounds, it nevertheless upheld Plaintiff's possessory right to part of the property.*

xi. *The Learned Justices of the Court of Appeal erred when they held that 3rd Co-Defendant was not guilty of laches and acquiescence and therefore estopped from laying claim to the land from the Plaintiff."*

(15) **DETERMINATION OF THE APPEAL**

As can be gleaned from the Notice of Appeal the Plaintiff has mounted this appeal on numerous grounds. We however note with utmost concern the poor

formulation of most of the grounds of appeal contained in the Plaintiff's Notice of Appeal. Rules 6(4) and (5) of the Supreme Court Rules, 1996 (C.I. 16) provide as follows:

"(4) The grounds of appeal shall set out concisely and under distinct heads the grounds on which the appellant intends to rely at the hearing of the appeal, without an argument or a narrative and shall be numbered seriatim and where a ground of appeal is one of law, the appellant shall indicate the stage of the proceedings at which it was first raised."

"(5) A ground of appeal which is vague or general in terms or does not disclose a reasonable ground of appeal is not permitted, except the general ground that the judgment is against the weight of evidence and a ground of appeal or a part of it which is not permitted under this rule, may be struck out by the Court on its own motion or on application by the respondent."

(16) In the context of the rules regulating appeals in this court, and the consequences of contravening rules in mandatory terms it is significant to refer to the observations made by Akamba JSC in the case of **F.K.A Company Limited Vs. Nii Teiko Okine (Substituted By Nii Tackie Amoah VI) & Others, Civil Appeal No./J4/1/2016** dated 13/4/2016. In that case, the Learned Justice observed as follows:-

"It is important to stress that the adjudication process thrives upon law which defines its scope of operation. It is trite to state for instance that, nobody has an inherent right of appeal. The appeal process is the creature of law. Any initiative within the context of the adjudication process must be guided by the appropriate,

relevant provision, be it substantive law or procedural law. As courts, if we fail to enforce compliance with the rules of court, we would by that lapse be enforcing the failure of the adjudication process which we have sworn by our judicial oaths to uphold".

(17) The Learned Justice further observed that:-

"The matter before us presently has been initiated through the appeal process and must therefore be conducted and guided by the Supreme Court Rules, (1996), C.I.16. We would reiterate compliance with the rules of this court by juxtaposing the seventeen grounds of appeal (supra) filed by the Defendants with the provisions of Rule 6(4) of the Supreme Court Rules (1996), C.I.16, to determine how far they are compliant and if not, what consequences arise".

(18) The decision and statement on the law above emphasizes the need for compliance with the rules regulating procedure in this court. Certainly, the wisdom embodied in the part of the decision just quoted is very relevant to the determination of some of grounds in the instant appeal due to the gross contravention of the provisions Rules 6(4) and (5) of C.I.16 in the manner in which the Plaintiff formulated most of its grounds of appeal which render them inadmissible and unarguable as they are incompetent and liable to be struck out.

(19) These rules regulating procedure in this court prescribe the manner in which an Appellant must formulate his grounds of appeal. The Appellant is not at liberty to settle the grounds of appeal in any manner. The grounds of appeal upon which a party challenges the judgment of the Court below must therefore not only be properly formulated but shall be set out in the manner prescribed by the rules of the court. As Kpegah JA. *(as he then was)* eruditely stated in the case of **Zabrama Vs. Segbedzi [1991] GLR 221** at **226; *"The implication of these rules is that an Appellant, after specifying the part of the judgment or order complained of, must***

state what he alleged ought to have been found by the Trial Judge; or what error he had made in point of law. I do not think it meets the requirements of these rules to simply allege misdirection on the part of the Trial Judge. The requirement is that the grounds stated in the notice of appeal must clearly and concisely indicate in what manner the Trial Judge misdirected himself either on the law or on the facts. To state in a notice of appeal that: "The Trial Judge misdirected himself and gave an erroneous decision" without specifying how he misdirected himself is against the rules and renders such a ground of appeal inadmissible. The rationale is that a person who is brought to an Appellate forum to maintain or defend a verdict or decision which he has got in his favour, shall understand on what ground it is impugned". See the case of **Dahabieh Vs. S.A.Turqui & Bros. [2001-2002] SCGLR 498** which cited the above position with approval.

(20) The proper formulation of grounds of appeal assist the court to clearly identify and situate the point of law or fact upon which the judgment appealed against is assailed. The grounds of appeal also assist the court to appreciate the context in which the Appellant is urging this court to interfere with the judgment of the court below. It is for this reason that the rules of the court require clarity where an Appellant alleges a misdirection or any error on the part of a Trial or Appellate court to set out particulars of the said allegation. A ground of appeal that is not compliant with the above rules is incompetent.

(21) In determining whether a ground of appeal is competent, a court should not be influenced by how the ground is described by the Appellant. The accepted practice is that where the ground of appeal is based on an allegation of errors decided from conclusion on undisputed facts, it is a ground of law. Where in the other hand, the error of law is founded on disputed facts calling into question the correctness of the facts determined, it is a question of mixed law and fact. This is

because the latter case is a conclusion of law coupled with the exercise of discretion. A ground of appeal being the aggregate reason why the decision appealed from is alleged to be wrong, must provide the very plank for setting the decision aside as it circumscribes the ratio *decidendi* of the judgment, for the purpose of attacking it in the light of the identified lapses. In the instant case, we find from the judgment of the Court of Appeal that its acceptance of most of the findings and conclusions of the Trial Court were based on undisputed facts supported by cogent documentary evidence.

(22) **PLAINTIFF'S GROUNDS (ii), (iii),(vii),(viii) (ix) and (xi) OF APPEAL:**

In the context of the provisions of Rules 6(4) and (5) of the Supreme Court Rules [1996] C.I.16, we shall examine the Plaintiff's grounds of appeal containing allegations of error of the part of the court below without providing particulars of such error. They are:

i. ***"The Learned Justices of the Court of Appeal erred by not holding that Defendants' claim that the disputed land belongs to the Nungua Stool was statute-barred by virtue of Section 10 of the Limitation Act, Act 54.***

ii. ***The Learned Justices of the Court of Appeal erred when they held that the decree of possession made in favour of the Plaintiff by the Trial Judge was a nullity.***

iii. ***The Learned Justices of the Court of Appeal erred by failing to hold that the Defendant was guilty of dishonesty.***

iv. ***The learned Justices of the Court Appeal erred when they held that since the word "person" had already been interpreted by the Supreme Court it was not necessary to refer to the Supreme Court the interpretation of Article 266 (4) of the 1992 Constitution and its applicability to the Plaintiff Company.***

v. ***The Learned Justices of the Court of Appeal erred by not holding that the capacity of the Plaintiff to hold assignment was not properly raised for determination.***

vi. ***The Learned Justices of the Court of Appeal erred when they held that 3rd Co-Defendant was not guilty of laches and acquiescence and therefore estopped from laying claim to the land from the Plaintiff."***

(23) The Appellant's grounds (ii), (iii),(vii),(viii) (ix) and (xi) of appeal simply, vaguely and severally allege errors contained in the judgment of the Court of Appeal without providing any particulars of the alleged errors to enable this Court reasonably appreciate the basis upon which we are being invited to interfere with the said decision on each of those grounds. What is the nature of each of the errors alleged in the said grounds? This has not been stated by the Plaintiff. The rules mandatorily require that particulars of the errors alleged are provided. The compelling interrogatory is that why is this an error? And what is the type of error? Is it an error of law of fact?

(24) In the case of **International Rom Ltd. Vs. Vodafone Ghana Ltd., Civil Appeal No.J4/2/2016** dated 6/6/2016 this Court while striking out all the grounds of appeal settled by the Appellant because they are narrative and argumentative in formulation, observed that; *"**the magnanimity exhibited by this court over these obvious lapses and disrespect for the rules of engagement is being taken as a sign of either condoning or weakness hence the persistence of the impunity. It is time to apply the rules strictly**".* **In Multi Choice Ghana Ltd. Vs. Internal Revenue Service [2011]2 SCGLR 783**, this Court per Wood C.J reiterated the position of the law at page 789 of the report as follows:

"Under the Supreme Court Rules, 1996 (C.I. 16), Rule (4) grounds of appeal are expected to be set out concisely and without argument or narrative. More

importantly, by Rule 6(5) aside from the well-known and oft-used general ground of appeal-the judgment is against the weight of evidence – a ground of appeal which is vague or general in terms or fails to disclose a reasonable ground of appeal is not permitted."

As already expressed the Appellant's grounds (ii), (iii),(vii),(viii) (ix) and(xi) of appeal patently fail to meet the requirements of the law. Being non-compliant they are inadmissible and unarguable because they are incompetent. They are consequently hereby struck out.

(25) **GROUND (x) OF THE APPEAL**

"The Learned Justices of the Court of Appeal erred by not holding that the judgment appealed from is inconsistent and illogical, in that having pronounced void the Plaintiff's leased interest on constitutional grounds, it nevertheless upheld Plaintiff's possessory right to part of the property."

It is observed that the Court of Appeal set aside the part of the Trial Court's judgment that granted the Plaintiff any possessory rights over a part of the land in dispute. It is further noted that it is the grant of the same portion by the Trial Court that founds ground (x) of this appeal. The above ground questions the comprehensibility of the judgment on that basis. We *abinitio* wonder what the Plaintiff's issue here is since the supposed incongruity appears to have been corrected by the judgment of the Court of Appeal. Apart from that, we cannot fail to notice that this ground has been formulated in argumentative terms and is in itself a contravention of the mandatory rules of this Court; specifically Rule 6(5) of C.I.16, 1996 Besides its inappropriate formulation, we find that the said ground also fails to disclose a reasonable ground of appeal.

(26) In holding (1) of the report in the **Multi Choice Ghana Ltd. Vs. Internal Revenue Service** case (supra), this Court held in furtherance of the impropriety of the Appellant's ground of appeal which alleged inconsistency and contradiction against the judgment of the Court of Appeal as follows:

"A ground of appeal, questioning (as in the instant appeal), the comprehensibility of a statement of law or finding of fact or a ruling or decision of the court, did not constitute a valid ground of appeal in terms of the rule 6(4) of the Supreme Court Rules, 1996 (C.I. 16), and ought properly to be struck out as under its (in) Rule 6(5). We would have thought that in those cases where a party's only complaint is that it finds an order or a decision incomprehensible, unless the rules of court expressly so prohibit (and we know that of any such rule), the proper procedure would be to seek clarification or directions from the court which issued the order or decision complained of, by invoking its inherent jurisdiction".

We are in the circumstances constrained to strike out the said ground of appeal as well as incompetent and we hereby struck it out. Having so ordered, we cannot gloss our eyes over any crucial issues of law which arise from those grounds in accordance with the practice in the case of **Owusu Domena Vs. Amoah [2015-2016] I SCGLR 790,** where this court held that where an appeal is anchored on the sole ground of appeal that, the judgment on appeal is against the weight of evidence both factual and legal issues arise for consideration. Guided by that practice, since the appeal has to be determined based on the re-evaluation of the evidence and the application of the relevant law, we shall examine the legal issues articulated by the Plaintiff in its statement of case notwithstanding that as basis for formulation of grounds of appeal which is not consistent with the rules, we have had to strike them out as distinct grounds for failure to provide particulars.

(27) **LEGAL ISSUES ARISING FROM PLAINTIFF'S STATEMENT OF CASE**

In its statement of case, Learned Counsel for the Plaintiff has raised several legal issues on which the Plaintiff assailed the judgment of the Court of Appeal on grounds of the failure by that court to favourably attend to the said issues on which the judgment of the Trial Court was challenged. We shall set the said issues down and deal with them sequentially.

(i) In arguing ground 3, Counsel for the Plaintiff attacked the position of the Learned Justices of the Court of Appeal on the failure by the Plaintiff to file its amended reliefs to include the relief of possession within time having obtained leave of the Trial Court to do so. At page 154 of Vol.4 of the record, the Court of Appeal held *inter alia* as follows:- ***"since the pursuant notice was not filed within 14 days from 27th March 2007, the leave became void ipso facto, meaning there was no claim for possession to enable the Trial Judge make any order for possession in favour of the Plaintiff/Appellant. See the case of Akuffo-Addo Vs. Catheline [1992]1 GLR 172. The decree for possession made in favour of the Plaintiff/Appellant is therefore null and void and hereby nullified".***

(28) According to the Plaintiff's counsel, the Court of Appeal having made this finding only on grounds of procedure had erred by misapplying the law. The Plaintiff argues that contrary to the finding by the Court of Appeal, no such amendment was filed at all. Counsel has referred to the proceedings of the Trial Court in Vol.3 of the record where the counsel on record at the trial had drawn the attention of the Trial Judge to the non-compliance of the leave granted to amend, whereupon the Trial Court granted ***'leave'*** for the insertion of the words intended to constitute the amendment to be made on the file copy, with the result that, the leave for the amendment granted by the Trial Court was complied with by

insertion albeit as the Plaintiff argues, with the indulgence of the Trial Court. To anchor this argument however counsel refers to the orders of the Trial Court as contained in the reasons of 14th May 2003 and relies on the provision of Order 28 Rule 8 of the High Court (Civil Procedure) Rules LN140A, the extant procedural regime at the time as the basis for the nature of the amendment made by the Plaintiff at the Trial Court.

(29) The Plaintiff has also relied on the law of presumptions and contends that the presumption is in its favour in that, the Court of Appeal ought to have upheld the position of the Trial Judge to the effect that the amendment so ordered had been effected and properly so until otherwise rebutted by evidence on record. The Plaintiff has referred to the decision of this court in the case of **Gihoc Refrigeration & Household Ltd. Vs. Hanna Assi [2005-2006] SCGLR 455,** the Plaintiff submits that the reliance by the Court of Appeal on the case of **Akufo-Addo Vs. Catheline** (supra) was flawed and prefers the dissenting view of Osei Hwere JSC in the said case. The Plaintiff has further urged on us to apply the decisions of this court in **Kwakaraba Vs. Kwesi Bio [2012]2 SCGLR 834 And Muller Vs. Home Finance Ltd. [2012] SCGLR 1234** at **1236** which have undoubtedly emphasized the need for courts to ensure substantial justice rather than rely on fanciful technicalities in the dispensation of justice. In response, the 1st Defendant's simple answer to the above arguments is that the Plaintiff having failed to amend as directed cannot claim to have amended by insertion of the amending words only on the file copy of the Trial Court.

(30) It needs no further emphasis that the Trial Court as a creation of statute, is a court of record. The record of appeal before any Appellate court therefore is presumed to be an accurate reproduction of all the occurred in the court from

which the appeal emanates. In our jurisdiction, where notice to settle record as per Civil Form 3 is served on parties it is not intended to be a perfunctory exercise but a critical process in the appeal process. The Appellate court cannot in the exercise of its jurisdiction presume the existence of any step in the proceedings before the Court below to determine an issue which is not on record. The issue arising from the Plaintiff's submission on the Court of Appeal's order nullifying the relief of possession sought to be enforced by the Plaintiff ought to be determined within the context of the peculiar facts. While we agree with the contention of the Plaintiff's counsel that the amendment sought which was not more than 144 words could under the provision of Order 28 Rule 8 of LN140A be effected by insertion, which the Plaintiff contends it so effected, there is no evidence from the record that upon granting leave to amend the Trial Court ordered the manner in which the amendment could be done as submitted by the Plaintiff's counsel, that it is by the insertion of the amending words rather than the filing of an amended writ to reflect the specific relief added within the time permissible by the rules of Court. If as counsel for the Plaintiff asserts, the Trial Court permitted an insertion, there ought to be an order to that effect on record. There being no evidence of such order, the Court of Appeal cannot be faulted for pronouncing that the amendment purportedly effected was a nullity even though the reasons for so pronouncing so may not be entirely accurate as the Plaintiff's counsel suggests.

(31) In his title **"Civil Procedure, A Practical Approach"** by S. Kwami Tetteh first Edition page 453 the author refers to the case of **Registered Trustee Of The Apostolic Church Vs. Olowolemi [1990]3 WASC 108** at **122** where the Supreme Court of Nigeria admonished as follows:- "***There can be no gainsaying the fact that the game of advocacy in court is one which demands maximum vigilance***

throughout the progress of the case. A prudent and industrious counsel should be ever vigilant to any important development during the progress of the case he has been briefed to prosecute or defend which impels him to take, change or amend a procedural step in order to achieve the desired result for his client". This statement is very instructive particularly where the court has favourably granted counsel the opportunity to amend and the amendment is not effected within the time permissible by the rules of the court. The counsel and the party who sought the amendment would be deemed to have abandoned the leave granted.

(32) We are aware of the decisions of this court in the **Gihoc Refrigeration & Household Ltd. Vs. Hanna Assi** (supra) and **Muller Vs. Home Finance Ltd**. (supra) cases cited by the Plaintiff's counsel where in ensuring substantial justice, this court granted reliefs not specifically claimed and endorsed. Indeed, the same thinking was applied in the case of **Republic Vs. High Court Kumasi Ex-parte Boateng [2007-2008] SCGLR 404**. But all the cases referred to above are not applicable to the circumstances of this case where the Trial Court granted leave to amend but the Plaintiff elected not to file the pursuant process. The Trial Court at that stage was bound by its own orders and would not have properly indulged the Plaintiff to choose any other form of amendment it preferred which is not supported by evidence from the record of appeal. See the case of **Ntrakwa (Decd) In Re Bogoso Gold Ltd. Vs. Ntrakwa [2007-2008] SCGLR 389.** Consequently, we find no merit in the Plaintiff's submission on this issue. The Court of Appeal cannot be said to have acted in error when it declared the decree for possession in favour of the Plaintiff a nullity not having been founded on a properly amended relief.

(33) The second legal issue provoked by the Plaintiff's statement of case is on the position of the Court of Appeal on the citizenship of Baron Ernesto Taricone and its effect on the tenure of the lease he obtained having regard to article 266(4) of the 1992 Constitution. At page 150 of Vol.4 of the record, the Court of Appeal held as follows:- ***"……the true position of the law was that the various constitutions, Section 1 of the Lands Commission Decree NRCD 24 of 1972, Section 6 of PNDCL 42 continued the prohibition against foreigners holding more than 50 years leases in Ghana. Section 46(5) of the National Redemption Council (Establishment) Proclamation, (We think it should read Provisional National Defence Council) PNDCL 42, reduced the interest of foreigners holding leases beyond fifty years to fifty. Thus whilst Baron Ernesto Tariconi a naturalized Ghanaian could hold a ninety-nine year lease, the interest he transferred to the Plaintiff company was only 50 years commencing from 22nd day of August 1969. The lease of the land of 50 years to the Plaintiff company is by operation of law and not by assignment. The Learned Trial Judge's holding at page 8 of the judgment that; "the Plaintiff was incapable of granting that which it had no legal capacity to have or to hold, we think was an over statement". The Trial Judge should have considered the Plaintiff/Appellant's leasehold interest to be 50 years and not none at all".***

(34) As the Plaintiff rightly contends in its statement of case, the Court of Appeal misapprehended the facts regarding the nationality of Baron Fiore Ernesto Taricone. The correct position is that, in 1977 Baron Fiore Ernesto Taricone took a lease for ninety-nine from the Ashong Militse Family, he was a naturalized Ghanaian. What this means is that notwithstanding article 266(4) of the Constitution, his lease was valid. In 1979, Baron Fiore Ernesto Taricone then assigned the remainder of 97 years of this lease to the Plaintiff which was wholly

owned by him. Since the Plaintiff company was at the time wholly owned by a Ghanaian citizen, article 266(4) does not affect his interest. When Baron Fiore Ernesto Taricone died and was succeeded by his children who are not citizens of Ghana, this matter of the succession to the shares of Baron Fiore Ernesto Taricone by his non-Ghanaian children came up at the trial during cross-examination of the Managing Director of the Plaintiff who is a son of Baron Fiore Ernesto Taricone. It was then the 1st Defendant capitalized on this information to contend that since the current shareholders of the Plaintiff are not Ghanaian citizens, then the Plaintiff is in effect not a Ghanaian company and cannot own more than a 50 year lease in the land, subject matter of the suit.

(35) Therefore, the Court of Appeal was in error in making pronouncements regarding the 99 year lease of Baron Fiore Ernesto Taricone and curtailed it to 50 years from August 1969. We wonder how a lease taken in 1977 could be curtailed retrospectively from August 1969. And since Baron Fiore Ernesto Taricone was a Ghanaian citizen, there was no justification for the Court of Appeal to curtail the Plaintiff's interest on that ground. Besides the Court of Appeal, the Trial Court also waded into the issue of nationality of the Plaintiff's shareholders which was not an issue that arose from the pleadings. In our view, it was a red herring thrown into the dispute by the 1st Defendant which ought to have been disregarded by the Trial Court because whether the Plaintiff was a foreign company and thus not entitled to a 50 year term from the date its ownership of shares changed to non-Ghanaian citizens, does not mean the Plaintiff had no interest at all in the land subject matter of the suit. The quantum of the Plaintiff's interest in the land was not central to the dispute before the court. The Trial Court in its judgment implied that the citizenship of the shareholders of the Plaintiff affects their capacity but

with all due respect that finding was erroneous. The citizenship of the shareholders may certainly affect the quantum of interest the Plaintiff may have in the land, but not the capacity to sue.

(36) The Plaintiff is a duly registered company and by law it has the legal personality and capacity to sue. The quantum of interest in the land in issue the Plaintiff would be entitled to by virtue of article 266(4) of the Constitution, depends on so many variable facts such as the date on which the Plaintiff ceased to be a Ghanaian company and became a foreign company by reason of the citizenship of its new shareholders. Any determination of this will require a full enquiry by itself, and since it was not pleaded in the instant suit, no evidence was led on the relevant facts and as such it was not an issue necessary for the resolution of the dispute before the court. It was therefore wrong for the two lower courts to allow themselves to be lured into discussing and pronouncing on the issue by the 1st Defendant. In the circumstances, the respective holdings by the Trial Court and the Court of Appeal that sought to reduce the Plaintiff's lease to 50 years are hereby set aside.

(37) The Plaintiff in its statement of the case proferred an interpretation of the word ***"create"*** in article 266(4) of the Constitution and tried to limit the effect of article 266(4) to only the first interest that may be granted in respect of the land. We donot accept that interpretation but since as we have said, the issue was not properly before the court, we shall refrain from making any pronouncement on it as it does not belong to the instant litigation before us.

(38) **THE ISSUE OF FRAUD**

The Plaintiff in its statement of case has alleged that the Court of Appeal failed in its duty to digest the allegation of dishonesty of the 1st Defendant thus allowing it to benefit from its own fraudulent conduct. The Plaintiff submits that there was

glaring evidence of fraud, dishonesty and misrepresentation on the part of the 1st Defendant as it did not upon the entry of appearance to the writ and delivery of defence disclose any grant nor the existence of any deed in its favour. However, by an amendment it effected in its defence to the action, the 1st Defendant averred for the first time its interest in 62 acres of the disputed land it had obtained from the Nungua Stool which it registered in 1999. According to the Plaintiff, the Court of Appeal failed to evaluate the inconsistency in the claim by the 1st Defendant that it acquired its interest in 1993 and a document was executed in its favour on 2nd February 1993 when in fact the 1st Defendant had willfully and fraudulently doctored the said document made in 1998 to read 1993 in order to overreach the Plaintiff and the court into believing that its acquisition was earlier in time before that Plaintiffs' acquisition.

(39) In support of this contention the Plaintiff has referred to the testimony of the Gborbu Wulomo as having denied the 1993 date contained in the 1st Defendant's document. The Plaintiff then assailed the two lower court's for their failure to comment on whether or not the 1st Defendant could in all probability have backdated the said conveyance marked differently at the trial as Exhibit 'U' 'AA' and '36'. The Plaintiff relies on the testimonies of the lawyers who processed the 1st Defendant's conveyance at the Lands Commission and argued that the two lawyers not having been enrolled as lawyers by 1993 but much later they could not have truthfully processed a conveyance created in 1993.

(40) Another ground on which the Plaintiff anchors its allegation of dishonesty, fraud, and misrepresentation is the date on which the oath of proof on the said Exhibit 'U' or 'AA' or '36' was administered before the senior High Court register

which is 22nd July, 1998. The Plaintiff then concludes that the date 1993 when the conveyance was dated and the consistent 1998 date when it was processed at the High Court and Lands Commission, as the evidence per Exhibit 90 reveals, coupled with the fact that David K. Agorsor, the solicitor who purportedly endorsed it having been enrolled as a lawyer two years later in 1995, cumulatively, lead to a conclusion that Exhibit 'U', 'AA' or '36', the conveyance from the Nungua Stool in favour of the Plaintiff, was fraudulently procured. Consequently, as the effect of fraud vitiates everything, it ought to apply against the 1st Defendant. The Plaintiff has attacked the attitude of the Court of Appeal in failing to make a pronouncement on the evidence of fraud perpetuated by the Plaintiff which the Plaintiff alleges resulted in the conclusion by the Court of Appeal that at the time the Plaintiff entered into the Memorandum of Understanding Exhibit 'K' with the Nungua Stool, the stool had already divested itself of the land in disputed, contrary to the true position that at that material time, it is the Plaintiff who was in possession.

(41) As further proof of fraud against the 1st Defendant, the Plaintiff has relied on the testimony of 'DW9' an official of the Lands Commission whose testimony according to the Plaintiff damaged the credibility of the 1st Defendant's Exhibit 'U', 'AA' or '36'. The witness who was subpoened to produce a copy of the receipts which were endorsed on the said Exhibit on 30/12/94 testified that as of 30/12/94 the Lands Commission was not using receipts books with initials of 'AU' as has appeared on the document but were using receipt books with the initials 'AR' and further that the said receipt quoted as No.AU/295805 was presented and received on 27/12/96 in respect of another transaction. Finally, the Plaintiff submits that all the particulars of entries of the 1st Defendant's document at the Lands Commission were dated in 1998 and the said dates only confirm the allegation that the 1st

Defendant was dishonest as it backdated its conveyance Exhibit 'U', 'AA' or '36' to 1993 in order to overreach the Plaintiff.

(42) The 1st Defendant has contested the Plaintiff's submission on the allegation of fraud as substantially inaccurate. It submits that it had been in possession of the disputed land since 1993 and had been impeded from developing same in 1995. It submits further that it was rather the 1st Defendant who noticed the Plaintiff's presence in 1998 and by reason of having commenced development, the Trial Court had to vary an earlier injunctive order against it in the year 2000 to enable it complete developing 84 buildings it had commenced. The 1st Defendant submits that, what has been presented to the court to substantiate the allegation of fraud or dishonesty on the part of the 1st Defendant were actually discrepancies resulting from lapses in the land administration system being run by different agencies of the Lands Commission at the time and partly due to an embargo on the processing of documents from the Nungua Stool between 1993 and 1998. The 1st Defendant submits that the Court of Appeal cannot be faulted in dismissing the Plaintiff's allegation of fraud against the 1st Defendant as the same was not proved.

(43) Our examination of the judgment of the Court of Appeal reveals that as the Plaintiff has alleged there was no pronouncement on the allegation of fraud, misrepresentation or dishonesty alleged by the Plaintiff. It is the Trial Court in its judgment page 409 of Vol.3 of the record of appeal which resolved the issue in the following words:

Even more unimpressive was the allegation that the Defendant was guilty of fraud, mistake or misrepresentation and therefore its documents should be cancelled. The situation in which the Nungua Stool and the second Co-Defendant found themselves vis a vis moneys to be paid for the lands was brought about by the Stool representatives and other officials of the stool who acted on behalf of

the Stool or Nungua families. People close to the Stool or representing families claiming to own lands and acting for those families were all collecting moneys at different times. Everyone felt that he or she too was entitled to a portion in the moneys representing the values of the land…….. The situation was succinctly put thus by the 'DW6' in his testimony in court.

"The system had been corrupted from 1993. The very council members who were complaining about the grants were signing the documents and collecting monies".

Significantly, some of the people even signed a Memorandum of Understanding with the Plaintiff granting it permission to stay on the land only for the second Co-Defendant to appear in court to testify that documents granted by those representatives were forged".

(44) In the instant case, whereas the Court of Appeal failed to comment on the mass of evidence adduced by the Plaintiff to substantiate its allegation of fraud, the Trial Court found no merit in those allegations. In doing so, the Trial Court made primary findings of fact about the conduct of the Nungua Stool and its principal elders. One of such findings is the conduct of the Gborbu Wulomo whose testimony the Plaintiff sought to rely on to substantiate the allegation. The Trial Court found as follows:-

"The Gborbu Wulomo in particular could not be taken seriously when he insisted that the Stool had not granted the 40 acres to the Defendant because the picture of the sod cutting in Exhibit 'N' published to the whole world in the newspapers that he endorsed the possession and development of the 40 acres of land given to the Defendant and hence to the 4th Co-Defendant. There was no evidence that anyone from Nungua or the Stool protested at the publication until the Gborbu Wulomo testified in the instant case and the publication was tendered in this

court, that it was alleged that the sod cutting was not 40 acres. Having regard to the high esteem that the Gborbu Wulomo is held in society, the inconsistencies in his evidence were most unfortunate".

As the Court of trial which perceived the evidence and placed the requisite probative value on them, we accept the finding and conclusion of the Trial Court that the Plaintiff's proof of the allegation was unimpressive with the effect that, the Plaintiff failed to sufficiently discharge its statutory burden which is proof beyond a reasonable doubt as required under Section 13(1) of the Evidence Act 1975 (NRCD 323). See the case of **Fenuku Vs. John Teye [2001-2002] SCGLR 955.**

(45) What we deduce from the drift of the evidence drawn to our attention by Plaintiff's counsel however is at best a pointer to a suspicion on the part of the lawyers who handled the Plaintiff's conveyance document. There is no evidence on record to prove that the conveyance itself was fraudulently procured. Consequently, the allegation of fraud dishonesty or misrepresentation against the 1st Defendant cannot stand. As Lord Herschell said in **Derry Vs. Peek** (supra) a case cited by the Plaintiff to make a case of false misrepresentation against the 1st Defendant, ***"fraud is proved when it is shown that a false representation has been made (1) knowingly or (2) without belief in its truth or (3) recklessly, careless whether it be true or false……..To prevent a false statement being fraudulent, there must be, I think always be an honest believe in its truth and this probably covers the whole ground for one who knowingly alleges that which is false has no such honest belief".***

(46) From the entire record of appeal, we find no evidence against the 1st Defendant that its officers knowingly knew any representations made by the lawyers who processed the 1st Defendant's conveyance could be false nor that the 1st Defendant's officers were reckless in assuming the truth of those

representations. Accordingly, the two lower courts could not be faulted for failing to make a finding of fraud, dishonesty or misrepresentation against the 1st Defendant as alleged.

(47) **GROUNDS (i), (iv), (v) and (vi) OF THE APPEAL**

(i) "The judgment is against the weight of evidence".

(iv) The Learned Justices of the Court of Appeal erroneously dismissed the appeal because they failed to properly evaluate the Plaintiff's case and the evidence adduced at the trial.

v. The Learned Justices of the Court of Appeal misconstrued the case of the Plaintiff when they held that the judgment in Banga vrs. Dzanie (1989 - 1990) 1 GLR p. 510 was tendered to establish estoppel when it was clear that the judgment was tendered to establish its historical value.

vi. The Learned Justices of the Court of Appeal proceeded on wrong principles of the burden of proof, thus disabling a proper assessment of the Plaintiff's case".

An examination of the above grounds of appeal reveal that they all relate to the alleged improper evaluation of the evidence on record. The statutory jurisdiction of this Court is re-inforced by the established principle that where the Appellant contends that the judgment appealed from is against the weight of evidence adduced at the trial, then the appellate court must embark on a consideration of the record of appeal in the nature of rehearing by which we are enjoined to reach our own conclusion on the evidence adduced so however that in so doing, we can only interfere with the decision of either of the two lower courts when we are satisfied from our consideration of all the evidence that the decision appealed from is unreasonable and perverse. We refer to this settled practice of the Appellate courts as emphasized in the decision of this court in a number of cases. In **Effisah**

Vs. Ansah [2005-2006] SCGLR 943, this court of page 959 court expounded on the rule in the following words: *"the well settled rule governing the circumstances under which an Appellate court my interfere with the findings of a trial tribunal, has been examined times without number by this court in a number of cases as for example,* ***Fofie Vs. Zanyo [1992]2 GLR 475*** *and* ***Barclays Bank Ghana Ltd. Vs. Sakari [1995-97] SCGLR 639.*** *The dictum of Acquah JSC (as he then was) in the Sakari (as he then was) in the sakari case is for our purpose highly relevant. (And equally relevant in the instant appeal). His Lordship observed (at page 650 of the Report) as follows:*

"…….where the findings are based on undisputed facts and documents…….the appellate court as in decidedly the same position as the lower court and can examine facts and materials to see whether the lower courts' findings are justified in terms of the relevant legal decisions and principles".

(48) In **Owusu-Domena Vs. Amoah** (supra), this court per Benin JSC held at page 790 of the report that; ***"the sole ground of appeal that the judgment is against the weight of evidence throws up the case for a fresh consideration of all facts and law by the Appellate Court……."*** On the strength of this principle of law, although some of the grounds of appeal set out by the Plaintiff has been struck out, the Plaintiff has been nevertheless fortuitous because as a judicial duty, we have had to determine all matters of the evaluation of the evidence on record on both factual and legal grounds in considering the omnibus ground upon which the Plaintiff has also anchored this appeal. This in no way diminishes from the reason the Plaintiff's improperly formulated grounds have been struck out.

(49) In proceeding on the omnibus ground of appeal, we are not oblivious of the fact that this appeal has been brought against a judgment which substantially

affirmed the findings of fact made by the Trial Court. We have therefore cautioned ourselves in the discharge of our duty to be guided by the well-established principle of law on concurrent findings of fact made by two lower courts. In **Mondial Veneer (GH) Ltd. Vs. Amoah Gyebu XV [2011]2 SCGLR 466** this court re articulated the legal proposition, applicable as with held in the case of **Achoro Vs. Akanfela [1996-1997] SCGLR 209 as follows**:

"In an appeal against findings of fact to a second appellate court like the Supreme Court where the lower appellate court had concurred in the findings of the trial court especially in a dispute, the subject matter of which was peculiarly within the bosom of the two lower courts or tribunals, this court would not interfere with the concurrent findings of the two lower courts unless it was established with absolute clearness that a blunder or error resulting in a miscarriage of justice, was apparent in the way the lower tribunals dealt with the facts. It must be established ,e.g. that the lower courts had clearly erred in the face of a crucial documentary evidence, or that a principle of evidence had not been properly applied ; or, that the finding was so based on erroneous proposition of the law that if that proposition be corrected, the finding would disappear. It must be demonstrated that judgments of the courts below were clearly wrong."

(50) The above principle had earlier found expression in this Court's decision in the case of **Gregory Vs. Tandoh IV & Hanson [2010] SCGLR 971**. In expounding the proposition this Court held that a second appellate court could and was entitled to depart from findings of fact made by a trial court and concurred by the first appellate court under the following circumstances:

i. Where from the record of appeal the findings of fact by the trial court were clearly not supported by evidence on record and the reasons in support of the findings are unsatisfactory.

ii. Where the findings of fact by the Trial Court can be seen from the record to be either perverse or inconsistent with the totality of evidence led by the witnesses and the surrounding circumstances of the entire evidence on record.

iii. Where the findings of fact by the trial court are inconsistently inconsistent with important documentary evidence on record.

iv. Where the first appellate court had wrongly applied the principle of law. In all such situation, the second appellate court must feel free to interfere with the said findings of fact in order to ensure that absolute justice is done in the case.

See also the case in **Mensah Vs. Mensah [2012]1 SCGLR 391** where this Court held that: ***"Where finding of facts had been made by a trial court and concurred by the first appellate court, then the second appellate court, like the Supreme Court, must be slow in coming to different conclusions unless it was satisfied that there were strong pieces of such evidence on record."***

(51) As the second and final Appellate court therefore, the law imposes a duty on us to satisfy ourselves that the judgment of the first appellate court was justified and supported by the evidence on record and if not, to depart from it or hold otherwise. Before embarking on this exercise, it is the duty of the appellant first of all, to clearly, properly and positively demonstrate to this Court in its statement of case, the lapses in the judgment appealed from which, when corrected, would result in a judgment in its favour.

(52) In summing up their re-evaluation of the evidence on record as perceived and weighed by the Trial Judge before placing on the evidence the necessary probative value, the Learned justices of the Court of Appeal held at page 156 of Volume 4 of the record as follows: ***"The evidence on record clearly established that when the Plaintiff sought to regularize his grant with the Nungua Stool the stool had already leased the disputed land to the 1st Defendant/Respondent. The 2nd Defendant/Respondent did not have the land to lease to the Plaintiff/Appellant".*** We find this re-evaluation by the Court of Appeal as consistent with the evidence on record as the Memorandum of Understanding Exhibit 'K' entered into between the Plaintiff and 2nd Defendant dated 2nd May 1996 is not a conveyance and therefore conveyed no interest in the disputed land to the Plaintiff at the time it was consummated. Neither did it operate to estop the 2nd Defendant from conveying same to the 1st Defendant.

(53) Upon our review of the entire record of appeal and having duly considered the submissions of both counsel, we are not persuaded that the findings and conclusions reached by the Court of Appeal in its judgment dated 18th December 2014 warrant any interference by this Court. On the contrary, we are in agreement with the findings, reasons and conclusions arrived at by the Court of Appeal. We are of the view that both lower courts correctly applied the principles of evaluating the evidence and attached the correct probative value to the evidence adduced in relation to the party who carried the statutory burden of proof.

(54) In the circumstances, we find that there is no sufficient basis in law for any appellate interference with the findings of fact made by the Trial Court as affirmed by the Court of Appeal and consequently no reason to disturb the order giving effect to those findings and conclusions made by the judgment of the Court of Appeal. Save the variation made with respect to the order of the Court of Appeal

which reduced the term of Plaintiff's lease, we affirm the said judgment, and hereby dismiss the appeal.

I. O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

P. BAFFOE BONNIE

(JUSTICE OF THE SUPREME COURT)

Y. APPAU

(JUSTICE OF THE SUPREME COURT)

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