IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- A.D. 2021

CORAM: BAFFOE-BONNIE, JSC (PRESIDING)

APPAU, JSC

DORDZIE (MRS.), JSC

HONYENUGA, JSC

AMADU, JSC

CIVIL APPEAL

NO. J4/48/2013

10TH MARCH, 2021

1. OKONTI BORLEY

PLAINTIFFS/RESPONDENTS/APPELLANTS

2. OKONTI BORTEY

(For themselves and on Behalf of the Okonte Borley and Okonti Bortey Family of Nungua)

VRS

HAUSBAUER LIMITED ……

DEFENDANT/APPELLANT/RESPONDENT

JUDGMENT

AMADU JSC:-

(1) In the High Court Accra, the Plaintiffs/Respondents/Appellants *(hereinafter referred to as 'Appellants')* obtained judgment against the Defendant/Appellant/Respondent *(hereinafter referred to as 'Respondent')* for all the reliefs endorsed in their statement of claim. The Trial Judge further ordered that the registration of the subject matter in dispute by the Land Title Registry in the name of the Respondent herein be expunged from the records. On appeal to the Court of Appeal, the judgment of the High Court was wholly reversed. It is the judgment of the Court of Appeal which is the subject matter of the instant appeal.

(2) The question for our decision in this appeal therefore is which of the two lower courts came to the right conclusion on the evidence placed before them in the matter. This is because whereas the Learned Trial Judge accepted the case of the Appellants on the strength of the evidence before him, the Learned Justices of the Court of Appeal unanimously upon a reevaluation of the entire record, arrived at their own finding that the Trial Judge failed to appreciate that on the preponderance of the totality of the evidence the Appellants who carried the burden of proof had failed to discharge their statutory burden.

(3) In the circumstances, our duty in the determination of this appeal largely depends on our own reevaluation of the record of appeal by which we should arrive at our

own conclusion on the evidence adduced by the parties so as to justify where appropriate an interference with the decision of either of the two lower courts when satisfied from our consideration of the totality of evidence that, one of the verdicts was either unreasonable, perverse or unsupported by the evidence such that appellate interference would be authorized and justified.

(4) It is instructive to refer to the decision of this court in **Tuakwa Vs. Bosom [2001-2002] SCGLR 61** a classicus which justifies the interference by this court to set aside the decisions of lower courts. In her statement on the law which authorizes the attitude of this court Sophia Akuffo JSC *(as she then was)* held in that case that:- ***"After reviewing the record, it was therefore our conclusion that on the preponderance of probabilities, the judgment of the Trial Judge in favour of the Defendant i.e. the Respondent was not supported by the totality of the evidence and the Court of Appeal erred in confirming the same without any scrutiny of the record".***

This position has been reiterated in several subsequent cases including ***Osei (Substituted by) Gilard Vs. Korang [2013-2014]1 SCGLR 221*** at ***226*** *to* ***227*** where Ansah JSC citing ***Tuakwa Vs. Bosom*** (supra) with approval, said:- ***"It is trite learning that an appeal to this court is by way of rehearing and the appellate court has the duty to study the entire record to find whether or not the judgment under appeal was justified as supported by the evidence on record. An appellate court is entitled to make up its mind on the facts and draw inferences to the same extent as the Trial Court could do".***

(5) Where therefore, upon a reevaluation of the evidence of the Trial Court, the findings and conclusions of the said court and for that matter the 1st Appellate Court, may be reversed where they are based on a wrong proposition of the law or rules of evidence, or where those findings and/or conclusions are inconsistent with the mass of evidence on record such that further appellate interference is necessary.

(6) **BACKGROUND FACTS**

By writ issued from the High Court Accra issued on 15/9/2003 the Appellants as respective heads of their families sued the Respondent for:

(a) ***A declaration of title of all that piece and parcel of land lying and being at South Nmai Dzovn in the Greater Accra Region covering an approximate area of 132.25 acres bounded on the North-West by Lessor's Land measuring 4.310 feet more or less, on the North-East by Lessor's land measuring 6.998 feet more or less, on the South-East by Lessor's Land measuring 2.100 feet more or less, and on the South-West by Lessor's land measuring 3,500 feet more or less which piece of land is more particularly delineated on the site plan attached.***

(b) ***Recovery of possession of all that portion of Plaintiff's 132.25 acres of land Defendant has trespassed upon and developing and transferring without the Plaintiff's family's knowledge, consent and approval.***

(c) ***Perpetual injunction to restrain the Defendant, his agents, assigns, privies and workmen and anybody claiming through him from entering,***

transferring and or developing any portion of the Plaintiff's family parcel of land measuring about 132.25 acres described above.

(d) General Damages for trespass.

(e) Costs".

(7) In their Statement of Claim, the Appellants asserted that their root of title was ancestral, having acquired the land by virtue of the settlement of their great grandfather forty years after the Katamanso war in 1866 and have been in uninterrupted possession since then. They further assert to having obtained a confirmatory grant of their parcel from the Nungua Stool in 1993 by virtue of a lease dated May 9, 1993.

(8) The Respondent on the other hand asserted in its statement of defence that it has been in lawful possession of the disputed land since 1994 by virtue of a grant from the same Nungua Stool which conveyance received statutory confirmation by the Lands Commission by the issue in its favour Land Certificate in accordance with the Land Title Registration Act, 1986 (PNDCL 152) The Respondent denied the allegation of trespass by the Appellants but asserted that there being no earlier conveyance by their common grantor of the subject matter, the document relied upon by the Appellants i.e. Exhibit 'A' never existed as of the date it was purported to have been created. The Respondent alleged that the Appellants have backdated the said Exhibit 'A' in order to establish a fraudulent claim to the land in dispute.

(9) At the end of the trial, the Trial Court found for the Appellants having accepted the Appellants' testimony as holders of a usufructuary interest by virtue of the settlement of their great grandfather from time immemorial and being subjects of the Nungua Stool and proceeded to grant all the reliefs sought by the Appellants as per the endorsement in the writ and statement of claim.

(10) APPEAL TO THE COURT OF APPEAL

On appeal to the Court of Appeal, upon a reevaluation of the evidence on record the Court of Appeal concluded that the Appellants' lease, Exhibit 'A', asserted by the Appellants as confirmatory of their usufructuary interest could not have been executed in 1993. The Court of Appeal further held that, the claim of the Appellants of ancestral settlement on the subject matter by their great grandfather by which they claim usufructuary rights thereof had not been proved and since the evidence that the Nungua Stool only started executing documents in 1996, the credibility of Exhibit 'A' upon which the Appellants' claim had been further anchored, having been discredited and tainted with forgery, the Appellants could not hold any interest in the subject matter inconsistent with the Respondent's interest. The Court of Appeal thus reversed the judgment of the Trial Court and entered judgment for the Respondent.

(11) APPEAL TO THE SUPREME COURT

By their notice of appeal to this court, the Appellants have set out the following grounds:-

"1. The judgment is against the weight of evidence.

2. ***The Court of Appeal erred in law in holding that the parties have a common grantor when the Plaintiff's title was customary free hold title.***

3. ***The Court of Appeal erred in law in holding that the Plaintiff's failed to prove that case.***

4. *The Court of Appeal erred in law in relying on the evidence of the Defendant's only witness who had no actual knowledge of the matters he testified to*

5. *The Court of Appeal erred in holding that the Learned Trial Judge's conclusion on the issue of Defendant's Exhibit '1' were not borne out by the evidence on record.*

6. *The Court of Appeal erred in holding that Exhibit 'A' was executed after 1994.*
7. *Further grounds could be filed on receipt of the record".*

We need place on record that at the time this appeal was heard no further grounds had been filed nor argued by the Appellants.

(12) PROPRIETY OF GROUNDS OF APPEAL,

Before we consider the grounds of appeal filed and argued by the parties to the appeal there are crucial issues with respect to the improper formulation of grounds of appeal by the Appellants which are in contravention of the ground rules of this court. This court cannot overemphasize the position it had stated severally that, where grounds of appeal are formulated in a manner contrary to the mandatory rules of court, they will not be considered as proper grounds as they are inadmissible and unarguable because they are incompetent. Akamba JSC in the case of **F.K.A Company Ltd. Vs. Nii Teiko Okine (Substituted by Nii Tackie Amoah VI)** Civil Appeal No.J4/1/2016 dated 13/4/2016 restated our position in the following words:- ***"It is important to state 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 imitative 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 the lapse be enforcing the failure of the adjudication process which we have sworn by our judicial oaths to uphold". In other words, the appellate jurisdiction being statutory, the power to adjudicate on any appeal by allowing or dismissing it, includes the power to decline to adjudicate on the merits where an appeal is not properly before the court or based on incompetent grounds.

(13) It is provided in Rules 6(4) of the Supreme Court Rules 1996 (C.I.16) as follows:- ***"The grounds of appeal shall set out concisely and under distinct heads the grounds upon which the Appellant intends to rely at the hearing of the appeal, without any argument or 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 where it was first raised".*** From the Appellants' grounds of appeal, grounds 2, 3, 4 allege errors of law without setting out any particulars of the error alleged, nor the stage of the proceedings it was first raised in compliance of Rule 6(4) of C.I.16 aforesaid. Grounds 5 and 6 allege errors simpliciter without indicating to this court and the Respondent how the error alleged was occasioned. The said grounds are therefore not only in vague terms and but are general in nature which contravene Sub-rule 6(5) of C.I.16.

(14) It must be reiterated that, rules of court are not mere rules but subsidiary legislations by virtue of article 11(7) of the Constitution 1992 and therefore have the force of law. That is why rules of court must be respected and obeyed. When there is non-compliance with the rules especially those in mandatory terms, the

court cannot remain passive and condone same.There must be sanctions, otherwise the purpose of enacting those rules will be defeated. In formulating grounds of appeal which are intended to comply with the provisions of Rules 6(4) and (5) of C.I.16, the grounds must contain precise, clear unequivocal and direct statements of the decision attacked. They must in other words, give the exact particulars of the mistake, error or misdirection alleged. As such, any ground of appeal alleging error of law or misdirection without particulars, except an omnibus ground, is defective and incompetent and they are liable to be struck out.

(15) In the context of the instant appeal, all but the omnibus ground set out in ground one of the notice of appeal fail the mandatory test. They are incompetent and therefore unarguable. They are accordingly struck out. Having so ordered, it is observed that all the impugned grounds are founded upon the improper evaluation of evidence and which can be conveniently subsumed under the only surviving ground of appeal in that the judgment is against the weight of evidence. Consequently, the Appellants are fortuitous as the entire statement of case will be considered as if the appeal is anchored on one ground of appeal which is on the question of weight of evidence. In doing so, we are mindful of the decision of this court in the case of **Owusu Domena Vs. Amoah [2015-2016] I SCGLR 790** in which this court held that, where an appeal is based on the sole ground of appeal that the judgment is against the weight of evidence, both factual and legal matters arise for consideration. Guided by this practice therefore, we shall examine any legal issues articulated by the Appellants in their statement of case in order to determine the appeal on the entire merits of the case of either party to the appeal.

(16) **APPELLANTS' STATEMENT OF CASE**

In the judgment of the Court of Appeal, there was a clear departure from and reversal of the findings and conclusions of the High Court. Consequently, the Court of Appeal substituted its own findings with those of the Trial Court and entered judgment in favour of the Respondent. The Court of Appeal's position is founded on the following findings and conclusions:-

i. That the Respondent successfully rebutted and contradicted the Appellant's claims of acquisition and continuous possession of the subject matter in dispute as the Appellants failed to adduce credible, cogent and admissible evidence that the subject matter was vacant Stool land which was subsequently granted to their family by a lease in 1993.

ii. The Trial Court failed to evaluate the competing and conflicting evidence of the rival claimants with respect to their possessory rights. Therefore, there was nothing on record to justify why the Trial Court preferred the evidence of the Appellants to that of the Respondent. Thus, the findings by the Trial Judge were perverse as they were not consistent with the totality of the evidence on record.

iii. The Court of Appeal found as improbable the assertion of uninterrupted possession and the contention by the Appellants that until they presented their document to the Land Commission for registration, they were not aware that there had been prior registration of the entire parcel by the Respondent who had thereafter transferred various portions of the subject matter to third parties.

iv. That Exhibit 'A', the confirmatory deed tendered by the Appellants lacked credibility as it was forged by backdating same in order to overreach the Respondent's title and possession which has been properly documented.

v. The issue of usufructuary rights and the customary interest relied upon by the Appellants was not applicable as the mass of evidence on record pointedly show that the Appellants' family has no interest whatsoever in the subject matter having failed to discharge their evidential burden on same to warrant a determination in their favour.

vi. The plea of res judicata raised by the Appellants against the Respondent while relying on the ruling of Asare Korang J.A dated 26th July 2002 in the case of **Isaac B. Tawiah Vs. Hausbauer Ltd.** was not applicable to the facts and issues for determination the instant case.

(17) **APPELLANTS' SUBMISSION IN STATEMENT OF CASE**

The Appellants have assailed the judgment of the Court of Appeal on the grounds set out in their notice of appeal. As we have earlier indicated, all the grounds on which this appeal is mounted will be compositely discussed under one main ground of appeal in that the judgment is against the weight of evidence. In arguing the appeal, counsel for the Appellants has drawn our attention to the general principle of law and rule regulating appeals in this court which confers on this court the power of rehearing once an Appellant pleads the omnibus ground of appeal.

(18) According to the Appellants in setting aside the judgment of the Trial Court, the Court of Appeal erred in basing its conclusion on three grounds. First, the Appellants challenged the conclusion of the Court of Appeal that, they failed to prove their case. The Appellants recounted their ancestral history and contended that, contrary to the conclusion arrived at by the Court of Appeal, there was evidence on record with respect to their ancestral acquisition of a customary

freehold title of the subject matter in dispute. The Appellants contend further that in accordance with customary law, the subject of a stool or members of a family have an inherent right to occupy any vacant Stool land for his use and such acquisition assumes the character of a holder of a customary freehold title. Relying on B.J da Roda and C.K. Lodoh in their academic title: ***"Ghana Land Law and Conveyancing"*** and the Privy Council decision in **Nii Amon Kotie Vs. Asere Stool [1961]1 GLR 493** at **495** as well as the case of **Awuah Vs. Adeitutu [1987-88] GLR 191,** the Appellants submit that the evidence of PW1 meets the standard of evidence required in the principle laid by the cases cited and notwithstanding that, the Court of Appeal still found the evidence adduced by the Appellants as unreliable to support their case.

(19) The Appellants further contend that they held a customary law free hold title by virtue of the settlement of their ancestors and had relied on witnesses who testified to same. Consequently, having satisfied the principle of law of evidence in the **Majolagbe Vs. Larbi [1959] GLR 190**, the Court of Appeal was wrong in setting aside the findings and conclusions of the Trial Court founded on that evidence. The Appellants submit that the findings and conclusions of the Trial Court were not perverse to warrant the interference by the Court of Appeal. It is submitted further by the Appellants that, as holders of a customary law title, it stands good against the whole world and could not be defeated by a subsequent registered title from another source as argued by the Respondent in the instant appeal.

(20) In concluding their submission, the Appellants contend that since on the totality of the evidence before the court, the Appellants' family held a usufractuary interest in the land, the Nungua Stool could not legally make a grant of the same

parcel to the Respondent. In support of this contention, the Appellants rely on the case of **Nyamekye Vs. Ansah [1989-90]2 GLR 152.** They submit further that, the issue of the respective documents of the parties and their authenticity is therefore irrelevant.

(21) Unless, we have misapprehended the Appellants' submission, they appear to suggest that the finding of forgery with respect to Exhibit 'A' which they tendered in order to prove their interest as earlier in time before the Respondent's land Certificate was issued in November 1995 is irrelevant in the instant appeal. If Exhibit 'A' was indeed irrelevant and thus of no consequence to the interest of the Appellants, why did they procure it in the first place? And indeed as the Court of Appeal rightly deduced from the attack on its credibility mounted by the Respondent, why was it backdated to appear as if it is first in time before Respondent's Land Certificate was issued. These matters shall be exhaustively dealt with in the course of this judgment when the effect and consequence of forgery and fraud is discussed.

(22) **RESPONDENT'S SUBMISSION IN STATEMENT OF CASE**

The Respondent in support of the judgment of the Court of Appeal submits that the Appellants' evidence in totality was a mere repetition of the pleadings which contained no evidence of prior possession of the subject matter by the Appellants. The Respondent has referred to the previous decisions of this court in **Kusi & Kusi Vs. Bonsu [2010] SCGLR 60** at **72 and Abbey & Others Vs. Antwi [2010] SCGLR 17** at **23** where the principle of the burden of proof was further elucidated upon.

The Respondent contends that, whereas, it is the Appellants who carried the burden of proof, they failed to successfully discharge same on the preponderance of the evidence. Their reliance on Exhibit 'A' as a confirmatory deed also failed the test of credibility upon scrutiny by the Court of Appeal. Consequently, the two grounds on which the Appellants claim were founded being the ancestral acquisition, occupation and possession as well as the confirmation by the Nungua Stool were found respectively as unsubstantiated and devoid of credibility.

(23) In further attack on Exhibit 'A' the Appellants' purported confirmatory deed, the Respondent has referred to the holding No.(4) in the case of **Nortey (No.2) Vs. African Institute Of Journalism and Communication & others (No.2) [2013-2014] 1 SCGLR 703 at 707** and has urged us to disregard Exhibit 'A' as the site plan which was intended to confirm the size of land claimed by the Appellants' was neither signed nor authorized by the Director of Surveys or his representative. The Respondent submits that, not only did the Appellants fail to prove their ancestral acquisition, they also failed to prove their claim of continuous unchallenged possession from time immemorial. The Respondent prays that the judgment of the Court of Appeal ought not to be disturbed.

(24) **DETERMINATION OF THE APPEAL**

Two key issues arise for determination. Did the Appellants sufficiently discharge their statutory burden of proof to entitle them to the reliefs sought as the Trial Court held, or that the Court of Appeal was right in setting aside the findings and conclusions of the Trial Judge and entered judgment for the Respondent? From the evidence on record, the basis on which the Appellants mounted their action for declaration of title and other consequential reliefs is contained in the evidence

of the 2nd Plaintiff at pages 26 to 28 of the record. In that testimony, the Appellants had testified that their family originated from Borketey Laweh who was the first to settle in Nungua and traced his family ancestral interest in the subject matter from the period of 40 years after Katamanso war of 1866.

(25) According to the 2nd Appellant, upon the death of their father in 1986, he and the 1st Appellant became caretakers of the subject matter. However, when in 1990 he noticed that some persons were developing parts of the land, they decided to prepare land documents which they sent to the elders of the Nungua Stool whereupon Exhibit 'A' was created and dated 9th May 1993. The Respondent denied these assertions which are intended to demonstrate prior possession of the subject matter by the Appellants.

(26) Notwithstanding the weakness of the evidence of possession proferred by the Appellants, the Trial Judge was impressed and without scrutinizing Exhibit 'A' in order to establish its authenticity and probative value in relation to the time it was created and regularized, found in favour of the Appellants and granted all the of reliefs they sought. The 1st Appellate court found otherwise. As the Court of Appeal was entitled to analyze the evidence and arrive at its own findings and conclusions, the Court of Appeal accepted the grounds on which the Respondent attacked the credibility of Exhibit 'A' which it placed on record as follows:-

"1. The date "9th May 1993" was typed into the documents Exhibit 'A' in a type face different from the rest of the document. Whereas the main body of the document was typed using manual type writer with carbon paper the "9th May 1993" was typed using an electronic typewriter. This shows that the date was typed at a different time from the main document.

2. The commencement date of the lease appearing at paragraph

1 of the document is clearly made after some erasures and cancellation. These have not been authenticated by the signatories to the document as is legally required for amendments and interlineations.

3. ***The document is expressed to have been witnessed by Nii Abotsi Borlabi but he neither signed nor thumprinted it.***
4. ***The site plan is undated.***
5. ***The oath of proof is dated 9th May 1987 and the document itself is 1993".***

(27) These observations by the Court of Appeal clearly destroyed the credibility of Exhibit 'A' and *ipso facto* the credibility of the proponents of the evidence. Significantly in this appeal, the Appellants failed to contest the findings of the Court of Appeal on the very document on which they had sought to anchor their case of prior acquisition and possession. In their statement of case, the Appellants significantly failed to contest the findings of the Court of Appeal with respect to Exhibit 'A' by simply stating that since the Appellants' family held a usufructuary title in the subject matter the Nungua Stool could not grant same to the Respondent, just as they abandoned the issue of *res judicata* raised against the Respondent which the Court of Appeal found to be inapplicable. However, irrelevant as the Appellants now contend the respective documents of the parties are, the Trial Judge made a finding on Exhibit 'A' at page 129 of the record as follows:- ***"…The grant as in Exhibit 'A' is just evidence of … usufructuary right. The usufructuary interest is a right acquired by virtue of the fact that the usufruct is subject of the stool or a member of the family or clan. Exhibit 'A' in the view of this court is just evidence of the usufructuary interest of the Plaintiff whether made before or after the grant of the Defendant…"***

(28) With all respect to the Learned Trial Judge, the issue raised by the Respondent with respect to Exhibit 'A' which the Court of Appeal upheld was not merely one of dates and events but one of bad faith and forgery on the part of the Appellants who procured Exhibit 'A' and inserted particulars thereon intended only for the purposes of the litigation in order to overreach the Respondent and mislead the courts on the issue of prior possession and documentation. The Court of Appeal cannot therefore be faulted on the findings and conclusions it arrived at with respect to Exhibit 'A' and the consequential effect on the Appellants' case.

(29) Now, in the Appellants statement of case, counsel for the Appellants presented a case as if, even as claimed the Appellants that they are holders of a customary freehold title, that interest was indefeasible and not impeachable by subsequent conduct on the part of the Appellants. As the Court of Appeal rightly found, the Appellants failed to adduce any credible evidence of prior possession as the pieces of evidence they purported to adduce did not pass the acid test. Indeed, the Court of Appeal found that, the Appellants from the evidence held no usufructuary interest in the subject matter having failed to prove that their great grandfather had acquired the land in dispute and that their family had been and remained in uninterrupted possession from time immemorial. For, it is now well settled that where title or interest in land is derived by either grant, sale, conquest or inheritance etc., the pleadings ought to aver facts relating to the founding of the land in dispute and the person or persons who founded the land and exercised original acts of uninterrupted possession.

(30) In the instant case, the Appellants having pleaded that their great grandfather founded the disputed land through settlement from time

immemorial, failed to produce evidence of the intervening period during which the Respondent lawfully acquired interest from the Nungua Stool from whom the Appellants themselves sought a confirmatory deed of a purported customary free hold interest.

(31) In the case of **Brown Vs. Quarshigah [2003-2004] SCGLR 930,** this court reiterated the position of the law that, customary law knows no writing. It is the Appellants themselves who opted to change the status of their purported interest into writing by procuring Exhibit 'A' which failed to pass the test of credibility. With respect to their claim to a customary freehold title which the Appellants have in their statement of case urged us to uphold as a prior in time and which cannot be taken away by a subsequent grant by the Nungua Stool to the Respondent, the position of the law as held by the Court of Appeal in the case of **Adjei Vs. Grumah [1982-83] GLR 985 at 988** is that:- ***"The Principle of customary law that a subject of the stool acquires a determinable or usufructuary title in the stool land he occupies does not apply to virgin forest land on which he expended no labour - Notice of reentry to such areas may be desirable but failure to do so is not fatal nor can it defeat the customary right of the stool to reenter and reallocate virgin forest land where there has been a default in development (by the customary freeholder)".***

(32) With particular relevance to the in the instant case, granted the customary usufructuary interest claimed by the Appellants were credible, the evidence clearly points to a situation of abandonment of the interest. See **Obeng Vs. Marfo [1962]1 GLR 157** where the then Supreme Court in determining the effect of land acquired by a Plaintiff under customary law but was abandoned after cultivating it for forty (40) years held that:- ***(1) the stool, having become owner of the farm on its abandonment, was able to make a valid transfer of title regardless of who***

originally cultivated the farm". From the evidence, the Appellants attempted to establish their possessory rights by evidence of some farming activity through the testimony of the 2nd Appellant and PW1, who described himself as the Chief of Nmaijor. That evidence of possession was vehemently rebutted by the Respondent whose case has consistently been that, at the time it acquired its interest in the subject matter, there was nothing on the land to indicate any prior interest by any person including the Appellants.

(33) The situation of the Appellants in our view is at best one of abandonment if at all they held any customary interest as they claimed. Thus, besides the failure to establish on the preponderance of the evidence that their presumed customary freehold title was never abandoned and therefore the Nungua Stool could not convey any portion of the land to the Respondents, the Appellants attempt to prove their case by the use of Exhibit 'A' also failed to pass the test of credibility and thus offered no value at all to the entire testimony of the Appellants. In paragraphs 9 and 10 of the Appellants statement of claim *(page 4 of the record),* the Appellants pleaded as follows:-

"9. The Plaintiffs say that sometime in 1993, they approached the Nungua Stool to ask for a formal conveyance to confirm the customary title of the Plaintiff's family.

10. The Plaintiffs say that by a lease dated May 9th 1993, the Nungua Stool confirmed the title, right and interest of the Plaintiff's family in the said land".

(34) From a careful examination of Exhibit 'A' the purported confirmatory deed referred to in Appellants' pleadings aforementioned, the recitals do not confirm

any prior customary interest held by the Appellants' family in the subject matter. Thus, even if Exhibit 'A' were to pass the test of credibility which the Court of Appeal found it did not, the Appellants' claim of a preexisting customary interest earlier in time before the Respondent acquired its interest from the Nungua Stool and subsequent certification thereof is therefore without foundation as the purported confirmatory deed not only lacked credibility but it confirmed nothing.

(35) In **Awuku Vs. Tetteh [2011]1 SCGLR 366** this court held per holding (1) as follows:- ***"In an action for a declaration of title to land, the onus was heavily on the Plaintiff to prove his case; he could not rely on the weakness of the Defendant's case. For a Stool or family to succeed in an action for declaration of title, it must prove its method of acquisition conclusively, either by traditional evidence, or by overt acts of ownership exercised in respect of the land in dispute.*** (***Odoi Vs. Hammond [1991]1 GLR 375 at 372 CA applied)".***

In all these material respects, based on the evidence on record, the Appellants failed to prove their claim. The Court of Appeal was therefore not in error when upon a reevaluation of the totality of the evidence and application of the relevant law, it reversed the judgment of the Trial High Court and entered judgment in favour of the Respondent.

(36) In the instant case, once the Court of Appeal arrived at the conclusion upon the examination of Exhibit 'A' that it is tainted with forgery of particulars, the judgment obtained by the Appellants which was founded on evidence including Exhibit 'A' was correctly set aside. We take notice that in the Respondent's pleadings at the Trial Court neither fraud nor forgery was pleaded nor particularized. Indeed the propriety of Exhibit 'A' was not even settled as an issue for determination at the trial. However, in **Appeah Vs. Asamoah [2003-2004] I SCGLR 226** this court held that:- ***"fraud will vitiate everything. And ordinarily***

fraud should be pleaded. It had not been pleaded in the instant case. Notwithstanding the rules on pleading, the law was that where there was clear evidence of fraud on the face of the record, the court could not ignore it…" In the above case, this court cited with approval the case of **Amuzu Vs. Oklikah [1998-99] SCGLR 141** where Brobbey JSC said: *"Ordinarily, fraud should be pleaded. It was not pleaded in the instant case. Notwithstanding the rules on pleading, the law is that where there is a clear evidence of fraud on the face of the record the court cannot ignore it. That was the decision of this court in Amuzu Vs. Oklikah [1998-99] SCGLR 141. In that case, fraud was not pleaded but when it was raised, it was upheld by the Trial Court and in the Supreme Court. In the same way, failure to plead the issue of fraud at the Trial Court did not prevent the Trial Court and this court from endorsing it when it was raised. Indeed fraud vitiates everything. A relevant statement on that will be found in Okofoh Estates Ltd. Vs. Modern Signs Ltd. [1996-97] SCGLR 233 at 253 reads:- "An allegation of fraud goes to the root of every transaction. A judgment obtained by fraud passes no right under it and so does a forged document obtained by fraud pass no right".*

(37) On the same subject of forgery and consequential fraud, in **Sasu Bamfo Vs. Sintim [2012] I SCGLR 136 at 151** this court unanimously said:- *"We have carefully perused, examined and scrutinized the totality of the evidence in the record of appeal and we have no doubt in my mind that Exhibit 'A' is a forged and fraudulent document. This finding is amply supported on the face of Exhibit 'A'…Admittedly, the Defendant failed to prove any of the particulars of forgery or fraud as pleaded but if after evaluating and scrutinizing the whole of the evidence including documents exhibited, there was evidence of fraud, the appellate court i.e., Court of Appeal could draw its own inference from the evidence and was*

in that regard in the same position as the Trial Court, rightly found that Exhibit 'A' was fraudulent".

(38) By the same parity of reasoning therefore, in the instant case, notwithstanding the fact that the Respondent did not plead fraud, as was patently discovered and placed on record by the Court of Appeal, the finding of forgery which is apparent on the face of Exhibit 'A' intended to overreach the Respondent could not be ignored. The Court of Appeal cannot be faulted for the finding on same. That barge of fraud on Exhibit 'A' on which particulars were clearly forged tainted the case of Appellants and irredeemably damaged it.

(39) The attitude of the appellate court to primary findings and conclusions of a Trial Court has been stated in a number of rich line of judicial decisions. In summary the intervention of the appellate court will arise in the following circumstances; where the primary judge's conclusion was wrong or inconsistent as demonstrated by incontrovertible facts or uncontested testimony; where the conclusion was based on evidence wrongly admitted occasioning a substantial miscarriage of justice; where the reasons for the conclusion go beyond credibility and indicate a consideration at the trial of irrelevant matters or a failure to weigh all relevant issues and also, where notwithstanding a finding of credibility by the Trial Judge, the overwhelming pressure of the rest of the evidence not properly evaluated at the trial was such as to render the conclusion expressed either glaringly improbable, perverse, or contrary to compelling inferences of the case that it justifies and authorizes appellate disturbance of the conclusion reached at the trial and the judgment giving it effect as the Court of Appeal proceeded to do.

(40) In the instant case not only did the Trial Judge erroneously apprehend the facts, he evaluated the evidence placed before him superficially and treated Exhibit 'A' with the wrong perception by glossing over the particulars and the effect thereof. Thus in the judgment, the Trial Judge attempted to discount its effect as if it was irrelevant in relation to the purported customary usufructuary interest the Appellants claim to hold over the subject matter when infact Exhibit 'A' was purported to be a confirmatory deed of that interest which the Appellants had failed to prove.

(41) The well-established judicial attitude to erroneous findings and conclusions by the Trial Court was elucidated upon in **Effisah Vs. Ansah [2005-2006] SCGLR 945** where Wood JSC *(as she then was)* at page 959 restated the position of the law with respect to the approach of the appellate courts to findings of fact of the Trial Court as follows:- *"The well settled rule governing the circumstances under which an appellate court may interfere with the findings of the 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 & Barclays Bank Ghana Ltd. Vs. Sakari [1996-97]SCGLR 639.*** *The dictum of Acquah JSC (as he then was) in the Sakari case is for our purposes, highly relevant. His Lordship observed (at page 650 of the report) as follows:-*

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

It is thus well settled that specific findings of fact might properly be said to be wrong because the tribunal had taken into account matters which were irrelevant in law; or had excluded matters which were relevant in law; or had excluded matters which were crucially

necessary for consideration or had come to a conclusion with no court, instrumenting itself on the law would have reached; and where the findings were not inferences drawn from specific facts, such findings might properly be set aside…"

(42) In our view therefore, the Court of Appeal correctly applied this settled principles of law guiding the attitude to the Trial Court's primary findings of facts and conclusions which were inconsistent with the facts and evidence adduced. In the instant case, the Trial Court not only misapprehended the drift of the evidence in its evaluation but erroneously misconstrued the legal effect of Exhibit 'A'. The law is that a Plaintiff must succeed on the strength of his own case and not on the weakness of the defence. Where a Plaintiff's evidence is unsatisfactory as is the case of the Appellants in the instant appeal, the judgment should be in favour of the Defendant on the ground that, it is the Plaintiff who seeks relief who carried the statutory burden to prove that he is entitled to the reliefs claimed. See the cases of **Frempong II Vs. Brempong 14 WACA 13, & In Re Ashalley Botwe Lands, Adjetey Agbosu & Others Vs. Kotey & Others [2003-2004] SCGLR 420** per Brobbey JSC.

(43) Having found no error on the part of the Court of Appeal after it had reevaluated the evidence on record and ascribed to it its own probative value, the appeal wholly fails and it is hereby dismissed. The judgment of the Court of Appeal is hereby affirmed.

I. O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

P. BAFFOE-BONNIE

(JUSTICE OF THE SUPREME COURT)

Y. APPAU

(JUSTICE OF THE SUPREME COURT)

A. M. A. DORDZIE (MRS.)

(JUSTICE OF THE SUPREME COURT)

C. J. HONYENUGA

(JUSTICE OF THE SUPREME COURT)

COUNSEL

ARCHIE DANSO FOR THE PLAINTIFFS/RESPONDENTS/APPELLANTS.

BELINDA PWAMANG FOR THE DEFENDANT/APPELLANT/RESPONDENT.