IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- A.D. 2021

CORAM: BAFFOE-BONNIE, JSC (PRESIDING)

PWAMANG, JSC

AMADU, JSC

HONYENUGA, JSC

PROF. MENSA-BONSU (MRS.), JSC

CIVIL APPEAL

NO. J4/21/2020

19TH MAY, 2021

ERNESTINA OPOKUAH …… PLAINTIFF/APPELLANT/APPELLANT

VRS

1. **ADWOA NYAMEKYE**
   SUBST. BY EMMANUEL OSEI KISSI } **DEFENDANT/RESPONDENT/ RESPONDENT**
2. **THE CHIEF REGISTRAR,**
   LAND TITLE REGISTRY

JUDGMENT

BAFFOE-BONNIE, JSC:-

My lords, I wish it to be placed on record that this is one of the cases where their Lordships were of the view that the appeal should be dismissed summarily, essentially, because their Lordships were of the view that the trial High Court Judge had identified the correct issues and had done a proper analysis and evaluation of the evidence adduced and had come to the correct conclusions. The Court of Appeal had also properly concurred in the findings of fact made and confirmed the conclusions. Further, this case did not raise any new principles of law of public interest. So this brief ruling should be read alongside the Judgment delivered by the Court of Appeal

This is an appeal against concurrent findings by the High Court in its judgment dated 3rd May, 2017 and the Court of Appeal whose judgment was delivered on 25th October, 2018, both in favour of the 1st defendant/respondent/respondent (the 1st defendant) and against the plaintiff/appellant/appellant (the plaintiff). The authorities are settled that we ought to be slow in reversing such findings unless a compelling case is made by the appellant. The cases include **Achoro v Akanfela [1996-97] SCGLR 209; Asibey v Gbomittah & Commander Osei [2012] 2 SCGLR 800 and Acquie v. Tijani [2012] SCGLR 1252;** and **Koglex Ltd v Field (No.2) [2000] SCGLR 175**. In the case of **Gregory v Tandoh [2010] SCGLR 971,** the Supreme Court, speaking through Dotse, JSC stated the grounds on which the court would depart from concurrent findings in the following passage at pages 986-987 of Report;

"…….a second appellate court, like this Supreme Court can and is entitled to depart from findings of fact made by the trial court and concurred in by the first appellate court under the following circumstances: First, here from the record the findings of fact by the trial court are clearly not supported by evidence on record and the reasons in support of the findings are unsatisfactory; Second, 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; third, where the findings of fact made by the trial

court are consistently inconsistent with important documentary evidence on record; fourth, where the first appellate court had wrongly applied the principle of law in Achoro vrs Akanfela (already referred to supra) and other cases on the principle, 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."

In this appeal the parties are disputing over ownership of a piece of land at New Achimota lying along the Nsawam-Accra Road. Their claims are based on the respective title documents of their grantors which include site plans all tracing their root of title from the Onamrokor Adain Family of Accra. Both parties' documents of title are registered under the **Land Registry Act, 1962 (Act 122)** but in addition, the grantor of the 1st defendant registered his title under the **Land Title Registration Act, 1986 (P.N.D.C.L 152)** and was issued with Land Certificate No. GA 16344**.** On the ground the parties are contesting over the same piece of land but the site plans in their respective documents do not relate exactly to the same land. The plaintiff after the execution of a deed of assignment by Kingsley Adu Baffour in her favour on 29th July, 2004 went on the disputed land but met some mechanics on it. She initiated proceedings in the High Court in 2006 to evict them and when this came to the attention of the 1st defendant, she applied to join the case on the basis of the ownership of her grantor, Emmanuel K Tweneboah but she was denied on technical grounds and the plaintiff proceeded with developing the land. Nonetheless, the plaintiff subsequently tried to register the land in dispute in her name at the Land Title Registry and she was notified of the earlier recoded interest of the said Emmanuel K Tweneboah so she had no option but to sue him together with the Land Title Registrar in this present case. As Emmanuel K Tweneboah was deceased the 1st defendant applied and was substituted for him.

During the proceedings in this second case, the High Court ordered for a composite plan covering the site plans in the documents of title of the parties to be drawn by the Greater-

Accra Regional Head of the Survey and Mapping Division of the Lands Commission. This was done and tendered in evidence as Exhibits CE1 & CE2 to be found at page 285 of the Record of Appeal (ROA). Based on this documentary evidence and the testimonies of the parties and the witnesses the trial judge made the following findings in her judgment;

"The land in respect of which Emmanuel K. Tweneboah's Land Title Certificate was issued, is designed as parcel number 159, by the parcel plan in the Land Certificate, Exhibit 7. DW1, a Chief Reporting Officer of Land Title Registry, produced before the Court, the original copy of the parcel plan of Emmanuel K. Tweneboah, signed by the Director of Survey. A copy marked as Exhibit 15K. This parcel plan is the same as that in the Land Title Certificate of Emmanuel K. Tweneboah, Exhibit 7. From Exhibit CE1, the Plaintiff has her uncompleted structure within the parcel plan of E. K. Tweneboah, being parcel number 159. This shows clearly, that the area of land in dispute in this suit, is within parcel number 159."

We have examined closely the composite plan ourselves and it shows that the larger portion of the site plan in the document of title of the plaintiff falls onto the Nsawam-Accra road with only a small overlap on the disputed land. However, the site plan in the documents of title of the 1st defendant cover the disputed land as it exists on the ground. We have read the testimonies of the parties and their witnesses and we are satisfied that the evidence supports the findings of the trial judge that the documents of title of the 1st defendant are in respect of the land in dispute whereas those of the plaintiff do not cover the disputed land so the 1st defendant has demonstrated a better claim to the land.

The trial judge also made the following finding from the evidence;

"The site shown by the Plaintiff's three search reports, as being the site upon which the search was conducted is not within parcel number 159, as shown by the site plans

she submitted for the searches to be conducted. The site upon which the search was conducted is not numbered and is some distance away from parcel no. 159. The inference therefore is that the site upon which the Plaintiff conducted her searches is different from that on which she has constructed her structure on the ground and is claiming by this suit."

The above finding answers the plaintiff's contention that before acquiring the land she conducted a search at the Land Registry but it did not disclose the 1st defendant's grantor's title. That might have been so but as the trial judge pointed out, the site plan she used for her search does not conform to the land as it exists on the ground and she cannot blame anyone for relying on an inaccurate site plan. But, when she sought to register the actual land as it exists on the ground under the Land Title Registration Law, she hit a rock. That reason is simple. The registration regime under the Land Registry Act was registration of instruments so the accuracy of the site plans under that system was not guaranteed but under the title registration put in place by PNDCL 152, the parcel or cadastral plans are eminently accurate as the registration regime there is title registration. See **Ussher v Darko [1977] 1 GLR 470. C.A.**

Even if we consider the small overlap of the site plan in the documents of title of the plaintiff, since the parties trace title from the same source, it is easy to determine whose grant has priority and ought to prevail. The plaintiff's predecessor-in-title got his grant from the Onamrokor Adain Family on 8th March, 1995 and it was registered as No. AR/809/2004 (See page 102 of the ROA) whereas the 1st defendant's predecessor-in-title got his document on 30TH December, 1965 from the same Onamrokor Adain Family and it is registered as No. 416/1967 (See page 158 of the ROA). Thus, after the family made the grant of the land in 1965, it divested itself of any interest and on the principle of *nemo dat quod non habet,* the family had nothing to grant to the plaintiff's predecessor-in-title in

1995. Furthermore, in the case of **Nartey v Mechanical Lloyd Assembly Plant [1987-88] 2 GLR 314. S.C** it was held at holding (4) of the Headnote of the Report as follows;

"(4) Per Adade, Taylor and Wuaku JJ.S.C. Since exhibit F was registered in 1979 but the appellant's document, exhibit B, was registered in 1976, and by the provisions of section 26 (1) and (5) of Act 122 each of those instruments would take effect from the date of its registration, the appellant's document would have priority over it."

Since the registration of the 1st defendant's predecessor-in-title was earlier in time, 1967, it enjoys priority over the instrument of the plaintiff's predecessor-in-title which was registered in 1995. So, on the score of the registration under Act 122, the 1st defendant's title still prevails over that of the plaintiff.

Acts or evidence of Recent possession.

The plaintiff in this final appeal tried to make a case based on her acts of possession on the disputed land but the evidence shows that when she entered the land and embarked on proceedings to evict the mechanics, the 1st defendant acted timeously and intervened in those proceedings to protect her interest in the land. Therefore, the plaintiff was warned very early in the matter about the defendant's claim of ownership of the land. If that notwithstanding she continued with developments of the land, then she cannot rely on such possession to claim title to the land. See **Amua-Sakyi & Ors v Sasu & Ors [1984-86] 2 GLR 479.**

On the contrary there is the undisputed and irrefutable evidence that during the reconstruction of the Accra/Nsawam road, when compensation was ordered to be paid to persons whose lands and properties were affected, the defendants father/grantor E.K. Tweneboah was the person who was the beneficiary of the compensation paid in respect of that part of the land in dispute that was affected by the reconstruction. See the cases of

In re Kodie Stool; Adowaah v Osei (1998 99) SCGLR 22, and Adjeibi-Kojo v Bonsie (1957)3 WALR, 257 PC

As a final attempt to salvage her claim to the land, the plaintiff tried to impeach the Land Certificate of the 1st defendant's grantor but the evidence led showed that the Land Certificate was properly issued by the Land Title Registry after all the requisite processes were gone through.

It is for the above reasons that we find ourselves unable to reverse the concurrent findings and conclusions of the two lower courts in this case. We find no merit in the appeal against the judgment of the Court of Appeal dated 25th October, 2018 and same is accordingly dismissed.

P. BAFFOE-BONNIE

(JUSTICE OF THE SUPREME COURT)

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

I.O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

C. J. HONYENUGA

(JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS.)

(JUSTICE OF THE SUPREME COURT)

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