IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DOTSE JSC (PRESIDING)

AMEGATCHER JSC

PROF. KOTEY JSC

TORKORNOO (MRS.) JSC

KULENDI JSC

CIVIL APPEAL

NO. J4/05/2018

14TH DECEMBER, 2022

1. JULIANA COLEMAN TAKYI
2. CATHERINE COLEMAN

……

PLAINTIFFS/APPELLANTS/APPELLANTS

VRS

1. MRS. GRACE WIREKO @ ABENA MABERE
2. REGINA WIREKO

…….

DEFENDANTS/RESPONDENTS/RESPONDENTS

JUDGMENT

KULENDI JSC:-

INTRODUCTION

By a unanimous decision on the 14th of December, 2022, we dismissed in its entirety, the appeal by the Plaintiffs/Appellants/Appellants (hereinafter called the Appellants) and reserved our reasons, which we hereby give.

The said appeal is against the judgment of the Court of Appeal dated 25th July, 2016, which affirmed a judgment of the High Court dismissing the Appellants' claim to house No. B59 Mfuom Road, Dunkwa-on-Offin and upholding the Defendants/Respondents/Respondents' (hereinafter called the Respondents) counterclaim to the property.

BACKGROUND

The Appellants filed a writ of summons at the registry of the High Court, Cape Coast on the 16th of April, 2012 against the Respondents, seeking the following reliefs:

1. A declaration that House Number B59 Mfuom Road, Dunkwa-on-Offin is the bona fide property of the late Mrs. Regina Coleman;
2. An order for cancellation of the purported sale of the said No B59 Mfuom Road, Dunkwa-on-Offin to the 1st Defendant by the late S.B. Coleman;
3. Recovery of possession of the said No. B59 Mfuom Road, Dunkwa-on-Offin and
4. Perpetual injunction restraining the defendants, their agents, servants, workmen, personal representatives, executors, administrators and assigns, from having anything to do with No. B59 Mfuom Road, Dunkwa-on-Offin.

The Respondents in an Amended Statement Defence also counterclaimed against the Appellants jointly and severally as follows:

I. "A declaration of title in favour of the 2nd Defendant in the piece or parcel of land with TWO STOREY House thereon, variously numbered B59 and D128 in the 1970s and 80s and currently as EMA/3/2 High Street, Dunkwa-on-Offin, which was registered at Lands Registry, Kumasi as 970/1973 originally in the name of Samuel Busumpim Coleman;

II. A declaration that any Order by the High Court stating that the said TWO STOREY House with current No. EMA/3/2 High Street, Dunkwa-on-Offin forms part of the estate of Mrs. Regina Coleman (deceased) is a nullity as the said parcel of land with Two storey building thereon has been the property of the 2nd Defendant since 1st defendant acquired it in or about 2nd November, 1980 (sic);

III. General damages against Plaintiffs for instituting this vexatious suit;

IV. Costs, including the cost of defending this suit."

In the Statement of Claim filed on behalf of the Appellants, they alleged that the land in dispute was originally purchased by A.B Coleman and I.B Coleman, siblings of Appellant's father, S.B Coleman from one lawyer Francis Awoonor Williams. The said parcel of land was added to a large track of land owned by Appellants' father, S.B Coleman. The said S.B. Coleman together with his wife, the late Regina Coleman, mother of the Appellants, built a house on the parcel of land.

The house in dispute is said to have been initially rented to the Social Security and National Insurance Trust (SSNIT) and subsequently, to one Helena Amponsah.

It is further alleged by the Appellants, that after the said Helena Amponsah vacated the property, the 2nd Respondent without the consent of the Appellants' parents, clandestinely entered and occupied the property and has remained in occupation since. The Appellants say that when this came to their attention, their mother confronted the 2nd Respondent who informed her that it was her father, Mr. M.E. Wireko, who put her in occupation and possession of the property. Until his demise, the said Mr. M.E. Wireko was the 1st Defendant to this action.

The Appellants claim that their mother confronted the late Mr. Wireko, who then informed her that he had purchased the property in dispute from her then deceased husband, S.B. Coleman. The Appellants further stated that in 2007, upon noticing that the 1st Respondent was adding another floor to the building, they reported the dispute to the Omanhene of the Denkyira Traditional Area, who mediated over the dispute between them and the Respondents' late father, Mr. Wireko.

During the customary mediation, the late Mr. Wireko is alleged to have reiterated that he purchased the property from the Appellants' late father, S.B Coleman and therefore had the right to alter or add to the property. According to the Appellants, when Mr. Wireko was asked to produce documentation supporting the purchase of the property, he was unable to do so. As a result, Appellants claim that customary mediator, Omanhene Nana Boamponsem, advised the late Mr. Wireko to return the property to the Appellants, who were in turn advised to compensate him for money spent upgrading the building. The Appellants allege that at first, Mr. Wireko agreed to do so but subsequently reneged and refused to comply with the advice of the Omanhene.

The Appellants contended in the alternative that, in any case, the house in dispute could not have been sold by their father without the consent of their mother, to the Respondents' father, because the property belonged to both of their parents.

On their part, the Respondents contended that the land was purchased by the late S.B Coleman with help from his sister, one Janet Coleman, and that S.B Coleman single-handedly constructed the building on the land without contribution from his wife, Regina Coleman. The Respondents further contended that Regina Coleman could not have contributed to the construction of the building because she had *"no recogniseable trade"*.

According to the Respondents, the late S.B Coleman obtained a number of facilities from Barclays Bank which attracted compound interest at a rate of 10% per annum, and secured these loans with a mortgage of the property in dispute. S.B Coleman is alleged to have defaulted in his repayments and consequently, the bank sued, and sought to foreclose on the property.

The Respondents further contended that, in order to avoid a public scandal, the late S.B Coleman arranged for the property to be sold by private treaty and that the late Mr. Wireko's bid was accepted by the late S.B Coleman. Further, the Respondents allege that after their father's successful bid and purchase of the property in 1980, he permitted the sitting tenant to remain in the property. After the sitting tenants vacated the property, the Respondents allege that they let the property to several tenants, collected rents and that subsequently, the 2nd Respondent herself moved into the property without any protest, let or hindrance from S.B Coleman and/or his said wife, Regina Coleman both of who lived next to the property in dispute.

In conclusion, the Respondents contended that the Appellants, having stood by for over thirty years, are caught by laches and acquiescence and their action is barred by the Statute of Limitations.

At the end of the trial, the High Court gave judgment in favor of the Respondents in terms of their counterclaim. On appeal to the Court of Appeal, the judgment of the trial Court was affirmed. Dissatisfied with the decision of the Court of Appeal, the Appellants have thus mounted the instant appeal to this Court.

GROUND OF APPEAL

Per the Notice of Appeal filed as far back as 18th August, 2016, the Appellants' plaint is anchored on a sole ground that "*the Court erred in law by not adequately considering the case of the Plaintiff.*"

ARGUMENTS OF THE APPELLANTS

In arguing the said ground of appeal, the Appellants per the Statement of Case filed on their behalf recounts their perspective of the facts and argues that the trial judge failed to attach appropriate weight to the evidence adduced by the Appellants at the trial. Specifically, the Appellants take issue with the finding of the trial Court that the creation of Exhibit 'B', a purported acknowledgment of receipt by Mr. Wireko, the Respondents' father, of Mr. S.B Coleman's title documents to the property in dispute, which was tendered by the Appellants, could neither be attributed to the said Mr. Wireko, nor could he be said to be party to it.

Consequently, the Appellants submit that the trial Court was in error when it concluded that as evidence in support of Appellants claim that her father pledged the property to the Respondents' father, Exhibit B is of negligible probative value.

It was further argued by Counsel for the Appellants that the central issues in this case turned on whether the transaction between the predecessors in title of the Appellants and Respondents was a pledge of the property in dispute or an outright sale.

Counsel for the Appellant contends that if the transaction between S.B Coleman and Mr. Wireko was a sale, Mr. Wireko, being a moneylender, a finance man and a wise man, would have demanded a deed of sale or at the very least, a receipt evidencing the sale of the property. In an effort to buttress this contention, Counsel for the Appellant also submits that the trial court failed to give Exhibit B, the appropriate weight in coming to her decision. According to the Appellant, the trial court was wrong to find that that Exhibit B was of negligible probative value because the document was the unilateral creation of S.B Coleman and Mr. Wireko did not partake in its creation and did not also sign it. Counsel for the Appellant states that Exhibit B has the words "please turn over" at the bottom, and that if the trial court Judge had turned over, she would have seen that Exhibit B has a second part which was handwritten and signed by both parties. According to counsel for the Appellant, this document proves that the parties were ad idem that the transaction was a pledge and not a sale.

Counsel for the Appellant therefore urges this Court to reject the assertion by the Respondents that a written receipt for the sale of the property existed, but same was burnt and lost in a fire. He further argued that it is unlikely that the written receipt was kept separate from all the other documents relating to the transaction for the property, and that the receipt was consumed alone by the fire. He argues that it is more likely that this

story about the fire consuming a receipt evidencing the sale was made up by the Respondents.

It was further argued that even though the Respondents claim that their father, Mr. Wireko purchased the property at a distress sale by private treaty, they did not produce any documentary evidence of such a sale.

The Appellants also argued that while the property was the subject of a mortgage to Barclays Bank, Mr. Coleman could not have purported to sell the property to Mr. Wireko.

The conclusion of the Appellants is that there is a complete lack of evidence that the property was sold by S.B Coleman and that the lower courts erred in finding otherwise, in favour of the Respondents.

ARGUMENTS OF THE RESPONDENT

Counsel for the Respondent on his part, argued that the evidence on record supports their case that the house was sold to Mr. Wireko. First, the Respondent states that the Appellants themselves, through PW1 stated that their parents, Mr. and Mrs. Coleman, petitioned the Denkyira Manhene to intervene with Mr. Wireko to "*have pity on them and sell the house back to them, even with interest.*" The Respondents' case is that Mr. Wireko refused to do so.

The Respondents say that the evidence offered by the Appellants witnesses at the trial tendered to support the Appellants' case, was self-contradictory and/or unreliable in material respects. The Respondents point to the Appellants' PW2, Robert Yaw Kodua, and say that while he first stated in a Statutory Declaration dated 3rd March 2011 that S.B. Coleman had "secretly", and "without the knowledge of his wife, Regina Coleman and

the whole Coleman family" sold the property in dispute to Mr. Wireko, he later stated during his evidence in chief that the building was rather pledged and not sold. This declaration was tendered in evidence as Exhibit 10.

The Respondents argued that contrary to the Appellants' claim that there is no written evidence of a sale of the building to Mr. Wireko, there exists the Appellants' own exhibit 10, whereby Appellants' own witness and undisputed head of family acknowledges a sale to Mr. Wireko in writing, albeit with queries.

The Respondent also state that DW1, a tenant in the property testified that she was put there by S.B. Coleman, but subsequently acknowledged Mr. Wireko as her landlord before she eventually vacated the property. She testified that she offered to buy the house, but that S.B Coleman informed her that he had obtained a higher bid from Mr. Wireko and refused to sell to her.

LAW AND ANALYSIS

Rule 6 of the Supreme Court Rules, 1996 C.I. 16 governs the formulation or drafting of the Notice of Appeal, the foundational document which originates the appellate proceedings to this Court. **Subrule 5** of that rule reads as follows;

> *"No ground of appeal which is vague or general in terms or discloses no reasonable ground of appeal shall be permitted, except the general ground that the judgment is against the weight of evidence; and any ground of appeal or any 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."*

This means that any appellant to this Court is under an obligation to formulate grounds of appeal which are clear and concise and do not cloud or confuse the reason why the appeal has been lodged. The only exception to this rule is the so-called 'omnibus ground' of appeal that the judgment is against the weight of evidence. This Court has time without number, reiterated the requirements that grounds of appeal must be formulated in the form and substance prescribed by the rules.

In a judgement of this court dated 3rd April, 2019 in suit No.: J4/04/2019 entitled **Atuguba & Associates v. Scipion Capital UK & Anor,** this Court per Amegatcher JSC, opined that;

> *"...it will greatly expedite justice delivery if legal practitioners formulate specific grounds of appeal identifying where the trial judge erred in the exercise of a discretion. A proper ground of appeal should state what should have been considered which was not and what extraneous matters were considered which should not have been. We believe this approach will better serve the ends of justice and lessen the use of the omnibus ground particularly in interlocutory matters and in the exercise of judicial discretion."*

In the instant case, the sole ground of appeal bears repeating at this point:

> *"the Court erred in law by not adequately considering the case of the Plaintiff"*

A cursory reading of this ground of appeal reveals its vagueness, lack of precision and particularity. Consequently, it clearly sins against the express terms of rule 6(5) *supra* and the principles enunciated in the plethora of the decisions of this Court on the formulation of the grounds of appeal. The Appellant having failed to set out any

particulars of the error of law alleged to have been committed by the court of appeal, this ground ought to fail in *limine*.

In any event, this appeal is against concurrent decisions of the Court of Appeal and the High Court. This Court will not disturb the concurrent findings of two lower courts in an appeal unless the Appellant demonstrates that there are serious blunders or errors committed by the lower courts which have occasioned the Appellant a miscarriage of justice.

In the case of **Achoro & Anor. v. Akanfela & Anor. [1996-1997] SCGLR 209**, Acquah JSC (as he then was) expressed the above principle in the following terms:

> *"This court would not interfere with the concurrent findings of the two lower courts unless it was established with absolute clearness that some blunder or error resulting in a miscarriage of justice was apparent in the way in which the lower courts had dealt with the facts."*

See also the case of **Crentsil v. Crentsil [1962] 2 GLR**.

The instances where this court may justifiably interfere with the concurrent findings of the Court of Appeal and the High Court were restated in the case of **Koglex Ltd v. Field (no 2) [2000] SCGLR 175**, to include the following: -

a. *Where the findings of the trial court are clearly unsupported by evidence on record or the reasons in support of the findings are unsatisfactory.*
b. *Where there has been improper application of a principle of evidence or where the trial court has failed to draw an irresistible conclusion from the evidence.*

c. *Where the findings are based on wrong propositions of law and, if that proposition is corrected, the finding disappears and*
d. *Where the finding is inconsistent with crucial documentary evidence on record.*

The above authorities concur that the nature of lapses on which an appellant seeks to ground his bid to overturn the concurrent judgments of lower Courts must be apparent, clear and obvious errors which results in grave injustice or miscarriage of justice on the Appellant. In such circumstances, the ends of justice warrant an interference by an appellate court to avert an unjust outcome.

In this case, contrary to the contention by the Appellants that the Court of Appeal did not give adequate consideration to their case, we find from an evaluation of the record that the evidence proffered by the Appellants as well as the principles of law urged in aid of their case was appropriately and adequately evaluated and considered, initially by the trial High Court and subsequently re-evaluated by the Court of Appeal before affirming the judgment of the High Court.

On the other hand, the Respondents contended that the action was statute barred in paragraphs 17 and 18 of its Amended Statement of Defence filed on 9th October, 2012 and which can be found at page 114 of the Record of Appeal as follows:

> "17. Plaintiffs' paragraphs 12, 13, 14 and 15 are denied and Defendants state that Defendants have since 1980 or thereabout put in tenants, collected rents and since the 2nd Defendant herself moved into residence in 1988 Defendants have continued to treat the property as their own without let or hindrance. Whether the Plaintiffs can now come after THIRTY YEARS to lay any legitimate claim.

18. The Defendants would say that the Plaintiffs are caught by the Statute of limitation; and Defendants will seek to have the question of limitation, latches and acquiescence argued out as a preliminary point of law before trial."

Dotse JSC in a judgment of this court dated 9th November, 2016 in Civil Appeal No.: J4/17/2016 entitled **Jean Hanna Assi vrs. Attorney General**, has opined concerning actions which are statute barred as follows:

> "**If indeed [an action] is [statute barred], then there is no need to look at the merits of the case since the statute of limitation is a venerable shield that can be used to ward off indolent and piece meal litigators."**

In the same regard, this Court in an earlier decision in **Armah v. Hydrafoam Estates (Gh.) Ltd [2013-2014] 2 SCGLR 1551**, at pages 1568 to 1569, per Benin JSC, reasoned that:

> "A party who seeks to rely on laches, acquiescence or limitation has a duty or obligation to plead them or to plead such facts as evince an intention to rely on same. … **These matters like laches, acquiescence and limitation are all to be pleaded since the party who is entitled to rely on them may decide not to do so; the other party should not be taken by surprise and is therefore entitled to notice in the pleadings in order to raise any answer he may have to these claims** …" (emphasis mine)

Therefore, a party who seeks to rely on laches, acquiescence or limitation has a duty or obligation to plead them or to plead such facts as evince an intention to rely on same. The relevant portions of Order 11 rule 8(1)(a) of C.I. 47 provide as follows:

'A party shall in any pleading subsequent to a statement of claim plead specifically any matter, for example…….any limitation provision…or any fact …..which the party alleges makes the claim…of the opposite party not maintainable."

As earlier indicated, the Respondents have specifically pleaded the matters of limitation, laches and acquiescence as required by the rules and the principles set out in the precedents alluded to above.

Further, on the Appellants' own showing during the trial, the Respondents have exercised overt acts of ownership which are adverse to any title, rights and interest that the Appellants allege in the property in dispute for over 20 years prior to the institution of the action in court.

At page 137 of the Record of Appeal, the following evidence was elicited from the 1st Appellant during cross-examination.

Q: According to you, you sought the intervention of people to reverse the sale of the property to Regina's father; why did you wait so long to seek a reversal of the sale?

A: The truth of the matter is that Mr. Wireko was my father's bosom friend so when the 2nd Defendant and her husband were occupying the house, my father told us that they were in occupation as tenants.

Q: In that case, precisely when do you say 2nd Defendant's occupancy converted from tenancy to ownership?

A: In 1987, we heard a rumor that our father had pledged the house to Mr. E.M.K. Wireko who was a money lender in the town. My mother upon hearing this informed Nana Boamponsem. It was in 1980 that the 2nd Defendant's occupancy converted from tenancy to ownership.

Q: According to you, Odeefo pleaded with Mr. Wireko to peacefully hand over the house to your father; is that right?

A: That is true.

Q: Tell the Court on what terms Mr. Wireko was to hand over the house peacefully to your father?

A: Nana Boamponsem said that if Mr. Wireko handed over the property to us he will ensure that we add more money to what was taken from him for the house.

Q: So at the Palace, how much money was your father to return to Mr. Wireko?

A: Eighty Thousand Cedis.

Q: Is it the same Eighty Thousand Cedis in 1980 that your Uncle P.C. Appiah Ofori says is equivalent to 8 Ghana cedis today?

A: Yes.

Q: Were you present at that meeting at the Omanhene's Palace?

A: Yes I was present.

Q: Was any issue raised at the meeting that the Eighty Thousand cedis was inadequate consideration for that house?

A: No

Q: Will you therefore tell this court what was the main grounds for wanting to pay back Mr. Wereko's money?

A: Because my mother had no knowledge of the transaction

The evidence of PW 2 who testified on behalf of the Appellant also shows that as far back as 1987 the Appellant's mother had already called Nana Boamposem to intervene to reverse the sale of the house to the Respondent's father. This can be found at page 148 of the Record of Appeal as follows:

Q: Can you tell me which year Plaintiffs' mother invited you to Dunkwa-On-Offin?

A: December, 1987.

Q: And did this woman tell you when she reported this matter to Boamponsem?

A: She did not tell me the date she made her complaint to Boamponsem; she rather said they had already been to Boamponsem.

Q: Did she tell you how much her husband sold the house?

A: She said the man said he bought the house for 4 pounds.

Q: When this woman invited you to Dunkwa, was her husband there?

A: When she started complaining her husband was present. Just when he heard her start complaining, he got up and entered his room.

Q: Did Regina Coleman inform you how much money passed between S.B. Coleman and Mr. Wireko?

A: She told me it was 4 pounds and that this was revealed at the Palace.

Q: At the palace, who first mentioned the sum of 4 pounds?

A: I do not know. I was not there."

From the above pieces of evidence on record, it cannot be lost on the court that if the Appellants' story is taken as a true representation of events, then it means that at the very least, the Appellants became aware of the Respondents' adverse claims to the property by 1987.

Having become aware of the adverse claims of the Respondent in the property by 1987, the Appellants cannot be said to have been diligent when they slept on their rights and

only instituted the present action on 16th April, 2010. The present suit was therefore filed beyond the statutory period allowable for the initiation of such actions for the recovery of possession of lands.

Specifically, section 10(1) of the Limitations Act, 1972 (NRCD 54) states as follows:

> "10(1) A person shall not bring an action to recover a land after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to a person through whom the first mentioned claims to that person."

Having waited from 1987 to 2012, a period of about twenty-five years, the Appellants are clearly out of time for which reason they did not properly invoke the jurisdiction of the court for a consideration of their case on its merits.

In addition to the twenty-five years Appellants cause of action being statute barred, on the merits, the evidence on record sways overwhelmingly in favour of the Respondents. The Appellants' case is to a large extent inconsistent with the evidence adduced at trial.

First, the Appellants commenced this suit in their capacity as Executors of the estate of their mother Regina Coleman. Yet, the evidence of PW2 is to the effect that the land on which the property is situated is the property of Appellants' paternal family. In his evidence in chief, PW 2 testified as follows:

> "…*I saw that S.B. Coleman had built on my grandfather's property. The only litigation which has arisen concerning the property is what is before this Court. …The part I played is*

that, one day Regina Coleman sent me information that there was misunderstanding between her and her husband so I should come to Dunkwa. So I went and she complained that the building she had put up with her husband, her husband had pledged it to someone and he would not be truthful to her when she inquired from him and that because her husband was not being truthful, she had gone to inform Nana Boamponsem to intervene. Boamponsem invited the person to whom the house was pledged and settled the matter. The woman told me that Boamponsem settled the matter and told the man to whom the house was pledged to consider and sympathise with the woman and the children and return the property to them…So she was informing me to go and visit the man and see how best I could be of assistance. When she told me, I thanked her for playing that role on my behalf in my absence. I enquired of S.B. Coleman whether what his wife had told me was true. He answered that it was true…"

From the above testimony of PW2, the house in question was built by the Appellants' father on the land belonging to Appellants' paternal family. Therefore, it is questionable how the Appellants decided to institute the present action as executors of the estate of their mother. The record does not bear out when the Appellants mother became sole owner and beneficiary of the property in dispute. This inconsistency was not explained by the Appellants at trial to lend credence to the capacity in which the action was instituted.

On the contrary, Exhibit 5, which can be found at page 263 of the Record of Appeal is a conveyance between Francis Awoonor Williams and Samuel Busumpim Coleman in respect of the land on which the property in dispute is situated. The land was acquired in the sole name of Appellants' father, and no evidence whatsoever, apart from their mere say so was offered by the Appellants in proof of Mrs. Regina Coleman's joint ownership of the land.

There is also in evidence, Exhibit A, a Deed of Mortgage between S. B Coleman as mortgagor and Barclays Bank Ghana Limited whereby the property in dispute was single handedly charged as security for a loan by Mr. Coleman without any reference whatsoever to his wife who is alleged by the Appellants to be a joint owner of the property. This may be found at page 272 to 281 of the Record of appeal.

Further, per the pleadings, both Appellants and Respondents agree that at one point in time, one Helena Amponsah, who testified as DW1, was a tenant of the house in question over the period that straddled the ownership of their respective predecessors in title. Specifically, in paragraphs 9 and 12 of the Statement of Claim filed by the Appellants, they averred as follows:

> "9. That after the completion of the said H/No. B59, Mfoum Road, Dunkwa-on-Offin, the house was rented out first to SSNIT and then to one Helena Amponsah as tenants.
>
> 12. That when Helena Amponsah, as tenant, left the said B59, the 2nd defendant moved in secretly and stayed there without any express or implied authority from Mrs. Regina Coleman, the owner of the said B59, Mfoum Road; Dunkwa-on-Offin.

Similarly, the same DW1 received a mention in paragraph 14 of the amended Statement of Defence of the Respondents as follows:

"14. At the time the 1st Defendant purchased S.B. Coleman's property one Helena Amponsah was in occupation as a tenant in 1980 and she was allowed to remain until 1988 when she finally left."

These agreed significant and relevant facts make DW1 a material witness whose testimony in the case ought to be given a careful consideration. It is therefore not surprising that she was sought after by both parties as a witness.

When DW1 mounted the witness stand, at the instance of the Respondents, she testified that she lived in the house in dispute between 1979 and 1981. According to her, the house was initially offered to her to buy by the Appellants' father at a price of Fifty-Five Thousand Cedis in 1981. However, after her uncle, one T.K. Appiah had made three installments in part payment of the purchase price for and on her behalf, the Appellants' father reneged on his agreement to sell the house to her. It turned out that this was because Appellants' father had succeeded in concluding a sale at a higher price with the Respondents' father. At page 151 of the Record of Appeal, DW1 after a coherent display of direct personal dealing with the Appellants' father continued her testimony as follows:

"Not so long after that, Coleman came to me in my shop and told me that he had gone to pay my money into my account since I did not want to take it from him. He said he was not going to sell the house to me but rather had sold it to Mr. Wireko being Defendant's father. That is how come I got to know the Defendant. When Coleman told me that he had sold the house to Mr. Wireko, he said any discussions concerning the house, I should direct it to Mr. Wireko. Soon after he departed, Mr. Wireko arrived and told me that he had purchased the house so he was the one to whom all discussions should be directed. I told him Coleman had collected a year's advance rent payment from me so

he Wireko did not have anything to discuss with me at the time. Mr. Wireko came with his wife. Wireko's wife said the house now belonged to her so she wanted to inspect the house, so I asked for a short while prior to that.

Since then, Mr. Wireko's wife would bring every guest she had to come and see the house her husband had purchased for her and I would open the house and let them go through the rooms. Since then, i.e. 1982 and 1983, Mr. Wireko was the one who received the rent and then his wife continued bringing her guests and relatives to the house to inspect the house and would inform all of them that I was living in her house. This went on till May, 1988 when I moved out of the house. From 1982 till 1988. I lived in the house with my husband and children.

…

After the purchase of the house by Wireko, his wife took vacant possession of the house from them thinking they were renting it. When she took vacant possession, she detailed 2nd Defendant to use it as her shop but she did not come into possession until I vacated the premises."

It is worthy of note that the materiality of DW1's testimony remained unchallenged and uncontradicted by both parties in this suit, and this is even the more reason why both parties approached her to testify in the proceedings. From the outset, it was clear that DW1, having no interest whatsoever in the case, had only come to court to tell the court what she knew, and nothing more.

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DW1's candor even in the face of a veiled attempt by Appellants to influence her to give a favourable testimony in Court makes her, in our view, not only a material, but also a credible witness. In any event, testimony of DW1 corroborates the case of the Respondents in every material particular. It severely tilts the balance of probabilities in favour of the Respondents.

It is our considered opinion that DW1's testimony on the timelines of the respective assertions of rights of ownership by the predecessors in title of the parties; overt acts of ownership and control; acts of acquiescence by the Appellants' parents; the proximity of the predecessors in title to each other and some relevant interactions among them; the nature of the transaction as communicated to her by both predecessors in title, is authoritative, persuasive and compelling, to say the least.

In consequence, DW1's testimony, without more, dealt an evidentiary death blow to the case of the Appellants on the one hand, and lent compelling credibility, persuasive force and evidentiary weight to that of the Respondents on the other.

The Appellants plaint about the lack of written evidence of a sale of the house to the late Mr. Wireko is a relevant point that merits due consideration. In that same regard, Appellants' query and inference that the story of the fire destroying the receipt of the sale of the house, but not the other documents relating to the property is unlikely to be true, was an equally compelling position that ought to have been given some weight in the Courts below in the holistic consideration of the evidence on record.

In this respect, we consider Exhibit 10, "a declaration on Oath in accordance with statute by the Appellants own family head and witness" (PW2) and available written evidence of a sale of the property by the Appellants' father.

In addition to this, the testimony of PW1, Okyeame Akwasi Tutu, the linguist of Odeefo Boamponsem, whose evidence in chief, which can be found at pages 143 to 145 of the Record of Appeal. Though short the said testimony is instructive on the nature of the transaction as understood by the Appellants own mother, Mrs. Regina Coleman,

when she beseeched Odeefo Boamponsem to seek his intervention. At page 143, PW1 testified that Mrs. Coleman told Odeefo that:

"Mr. Wireko had bought a property and the way the purchase was done; she does not understand. Mrs. Regina Coleman came to inform Odeefo that the property was purchased at 4 pounds at the time. She said she had brought the money and that Wireko should take the money and give her back the property"

As if this testimony was not unequivocal enough, this was how PW1 acquitted himself under cross-examination at page 144 of the Record of Appeal on the issue of whether the transaction was a sale:

Q: "Did Regina Coleman complain that the price of the house was too small or that her consent was not sought?

A: All she said was that Wireko had purchased her house so she had brought the money and that Wireko should take the money and hand over the property to them. She further stated that the money would not buy that property but if he would demand more money, she was ready to give it to him and buy it back."

On her part, DW1, Helena Amponsah who took tenancy in the disputed property in 1979 testified in her evidence-in-Chief which can be found at page 150 of the Record of Appeal that:

"when Coleman told me that he had sold the house to Mr. Wireko, he said any discussions concerning the house, I should direct it to Mr. Wireko. Soon after he departed, Mr. Wireko arrived and told me that he had purchased the house so he was the one to whom all discussions

should be directed. …Mr. Wireko came with his wife. Wireko's wife said the house now belonged to her so she wanted to inspect the house, so I asked for a short while prior to that"

Under cross examination of DW1, the following ensued:

Q: "When was this alleged sale of the house by Mr. Coleman to you?

A: I rented the house in 1979 and it was in 1981 that he stated that he wanted to sell the house.

Q: Was this alleged sale of the house to you known to Mr. Wireko?

A: I do not know.
Q: Was this abrogation of the said sale of the house to you known to Mr. Wireko?

A: I do not know."

Under further cross examination of DW1 at page 154, the following testimony was elicited:

Q: have you ever discussed the alleged sale of the house to Mr. Wireko with Plaintiff?

A: No.

Q: Have you ever seen the Plaintiffs about the conduct of Mr. Wireko concerning the house in dispute?

A: No, I never went to her. It was when this case started that 1st Plaintiff came to me to tell me that the house which her father was selling to me, which sale was aborted and later sold to Mr. Wireko was under litigation and she would invite me as her witness and I told her I will only say what knew.

In addition to this consistent and corroborating trail of evidence, this last startling answer by DW1 was not challenged and or contradicted by Counsel for the Appellants. It is unavoidably fatal to Appellants' case that their own witness, PW1 corroborates the Respondents witness, DW1 on the allegation that the transaction between Mr. Coleman was more of a sale than a pledge even though Mr. Wireko is alleged to be a money lender among other activities.

It is clear to us that there is overwhelming evidence that the transaction consummated between the predecessors in title of the parties in the dispute was in the nature of a sale and not a pledge, and we so find.

Consequently, we are persuaded that in the circumstances of this case, no amount of consideration and weight attributed to the inadequacy or even absence of written evidence of the sale, will on the preponderance of probabilities, sway the totality of the evidence in favour of the Appellants.

This is more so given the fact that the evidence of adverse possession and overt acts of ownership, title and control by the Respondents' predecessors in title in the full glare of the Appellants' parents and yet without let or hindrance is compelling and unimpeachable.

Therefore the lack of a written record of the sale and/or an implausible explanation about how the receipts got burnt, though intriguing, is insufficient to tilt the preponderance of the evidence in favour of the Appellants.

On the question of whether or not the Appellants are liable for laches and acquiescence, the following testimony elicited from the 1st Appellant under cross-examination which can be found at page 140 of the Record of Appeal is telling:

Q: do you agree with me that it was Mrs Wireko who rented the house to Great African Insurance?

A: I will agree but I have an explanation which is that one Saturday we were there when two gentlemen came to us and said they were from Great African Insurance. They said they needed to see the Landlord. I told them my father was upstairs and they went to see him. After about 15 minutes, Mr Wireko sent someone to come and call my father and the guests to his house. From then, he warned my father not to go anywhere near the house again because he had bought the house with the debt my father owed him. Mr. Wireko at the time was selling bullets and my father was scared. From then, Mr. Wireko went to Accra to Great African Insurance and collected the money, ie the rent. From then, Mr Wireko purchased cut-off (wood) ie timber for my father to sue (sic) in burning charcoal."

Under further cross-examination at page 141 of the Record of Appeal, the 1st Appellant answered that:
Q: In what house did you and your parents and siblings live?

A: We lived in the house close to this property built by my grandfather.

By this self-explanatory answer under cross-examination the 1st Plaintiff corroborates what is already apparent from the evidence on record that the Colemans resided very close, if not next door from the property in dispute. This is a brief extract from the evidence-in-chief of the 2nd Respondent which can be found at page 158 of the Record of Appeal :

"*In 1988 Helena Amponsah (PZ Agent) moved out of the house. She sent the keys to M.E.K Wireko and Grace Wireko.M.E.K Wireko and Grace Wireko let me into occupation that same 1988. When I went into occupation, S.B Coleman and Regina Coleman were resident in the wooden storey building by J.B Coleman next to where I was living. When I went to live there neither Mr nor Mrs Coleman asked me how I came to live there nor about any rent. …In 2009, I commenced construction on Grace Wireko's house. The road which the trucks use to come and deposit sand for me is between my residence and that of the Coleman's and its width is about 5 meters. For two years, trucks were bringing sand, stones, wood and cement.*"

On the basis of the foregoing uncontroverted testimonies of DW1, 2nd Respondent and even the 1st Appellant herself, we can, and have positively concluded that Mr. and Mrs. Coleman and subsequently, the Appellants were eye witnesses to practically all things, happenings and activities taking place on the property in dispute at the instance, initially of Mr. and Mrs. Wireko and subsequently the Respondents.

Still bearing in mind this context of the proximity of the Colemans to the property in dispute, the following additional testimony proffered by the 1st Appellant herself, still under cross-examination, at page 141 of the Record of Appeal is relevant to a resolution, one way or the other, of the charge of indolence, laches and acquiescence

by the Respondents against the Appellants and their deceased parents from whom their claims are derived:

Q: When Mr. Wireko bought the house, at what level of development was it?

A: The ground floor had been completed at the time.

Q: What stage of development is it presently?

A: 2nd Defendant has added another storey to the house and it is now a two storey building instead of one.

Q: Do you know who put up the other floor in addition to what was existing?

A: Mr. Wireko and his children did it.

We cannot over emphasize enough the principle that laches and acquiescence arises where a party who knows that his property is being alienated and/or developed, sits by and does nothing only to wake up from his slumber after expenses have been incurred in such development or alienation to assert his or her rights to the property.

Needless to say, as a matter of equity, fairness, conscience and reasonableness, such a party will be estopped from asserting any rights which are inconsistent with his or her inaction. In **Nii Boi vrs Adu (1964) GLR 410** per holding 2, this Court spelt out the conditions for invoking estoppel by acquiescence as follows:

"To establish acquiescence under equity and customary law, five conditions must be satisfied: the person who enters upon another's land must have done so in honest but erroneous belief that he has the right to do so; he should have spent money in developing the land; the actual owner must be aware of this person's entry upon the land and his mistaken belief which is inconsistent with his ownership; and finally he should have fraudulently encouraged his development of the land by not calling his attention to the error."

In the premises, we are therefore unable, by any stretch of evidentiary scrutiny and legal imagination, to appreciate the Appellants contention per their sole ground of appeal that "*the Court erred in law by not adequately considering the case of the Plaintiff*".

The Appellants led very little or no evidence in support of their own claims because the Appellants themselves as well as the witnesses they called, did more in aid of the Respondents case, than theirs.

In the circumstances, it is our considered opinion, no error whatsoever, let alone in law, was committed by the trial and first appellate Courts in their evaluation of the evidence and consideration of the case of the Appellants.

The finding by the High Court that the Appellants action is statute barred is well grounded on the facts and the law and consequently the Court of Appeal was right in its affirmation of the decision by the High Court. Since we have already opined that the defence of limitation alone is enough to defeat the appellants action against the Respondents in its entirety any collateral findings, even if made in error will not be sufficient to avail the Appellants.

It is for these reasons that we unanimously concluded that this appeal ought to fail and accordingly dismissed same, in its entirety.

Cost of Thirty Thousand Ghana cedis (GH¢ 30,000.00) is awarded against the Appellants in favour of the Respondents.

E. YONNY KULENDI

(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

N. A. AMEGATCHER

(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY

(JUSTICE OF THE SUPREME COURT)

G. TORKORNOO (MRS.)

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