IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: PWAMANG JSC (PRESIDING)

DORDZIE (MRS.) JSC

OWUSU (MS.) JSC

LOVELACE-JOHNSON (MS.) JSC

PROF. MENSA-BONSU (MRS.) JSC

CIVIL APPEAL

NO. J4/52/2021

9TH FEBRUARY, 2022

MRS. MARGARET Y. N. ACHIAMPONG …. PLAINTIFF/APPELLANT/APPELLANT

VRS

1. **STATE HOUSING COMPANY LTD.**
2. **MR. KUDOM** } **…. DEFENDANTS/RESPONDENTS/**
3. **NII AFOTEY AHWIAH II** } **RESPONDENTS**
4. **CLEMENT BORTEY**

J U D G M E N T

LOVELACE-JOHNSON (MS.) JSC:-

On 25th January 2020, the court of appeal dismissed the plaintiff/appellant/appellant's appeal against the judgment of the high court, which judgment had dismissed her claims against the defendants/respondents/respondents. Dissatisfied with this, she has launched a further appeal to this court on the matter. The respondents in this appeal are the 1st and 2nd defendants.

The designation of the parties at the high court will be maintained in this appeal.

The plaintiff's claim by her amended writ at the high court was for the following eight reliefs:

a) Declaration of title in No 4, School Street, Teshie/Nungua Estate originally covering 3.06 acres by the indenture of the 1st Defendant but found out to cover 3.11 acres by surveyors of Land Title Registry.

b) An order for Recovery of possession of all that piece of land identified as No. 4 School Street by the document given to the plaintiff by the 1st Defendant.

c) An order to cancel the document of Defendants or setting aside of same.

d) An order for perpetual injunction restraining the Defendants, their agents, assigns and all those who claim through them from by any way or means interfering with the Plaintiff's quiet enjoyment of the said land and development of the same upon the satisfaction of the Court's subsisting order on the 1st Defendant.

e Special damages of GHC4 million against the Defendants for the unnecessary mental agony, physical suffering in the form of loss of uncalculated time spent

both on the land to prove title to the 2nd, 3rd and 4th Defendant and at the Police station even at the expense of going to Court to represent fee paying clients as Counsel.

f) General damages for trespass

g) An order to 1st Defendant to pay for Plaintiff's new drawing to be charged by her Architect Mr. Friz Andoh in replacement of the ones earlier sent to him for onward transmission to City Engineers Department for approval.

h) Costs.

A summary of the background to this case is that the plaintiff, upon an application to the 1st defendant was leased a portion of land by the latter for the erection of a school. Several years later, the 1st defendant leased the same portion of land to Nii Odai Ayiku who also granted a sub-lease to one Michael Amartey who in turn granted same to ACL Properties, a company, one of whose directors is the 2nd defendant.

The 1st defendant claims to have so acted because plaintiff defaulted on the covenants stated in the lease granted her and so after the required notice, re-entered the land by virtue of its powers of ejection under Act 322 and leased the land to another.

The plaintiff's reaction to this in effect is that it is the 1st defendants who caused her to default because they did not meet certain of their obligations and thus made it impossible for her to abide by the said covenants. Plaintiff's position appears to be that her interest in the land still persists and so the actions of defendants amount to fraud and trespass.

The court of appeal in dismissing plaintiff's case stated at page 32 of the Record of Appeal (ROA) as follows

…we find no reason for which there should be appellate interference with the findings of the trial court. Not only did the appellant fail to discharge her statutory burden that No.4 school street is different from plot No.2 Cone Street, the mass of evidence which the appellant could neither contradict nor rebut was that the 1st Respondent exercised its powers pursuant to Act 322 upon the Appellant's inordinate default of the covenants in the lease between the 1st Respondent and the Appellant by re-entering and ejecting the Appellant from the land several years before she commenced the action at the Trial Court.

Plaintiff's grounds of appeal in this court are that the judgment of the court of appeal is against the weight of evidence on record and that BOTH the trial court and the court of appeal misdirected themselves "in terms of the applicable legal principles/laws to the case" in certain four particulars listed in (i) to (iv).

It must be noted that since this is an appeal against the judgment of the court of appeal, it is misdirection on the part of that court which must be raised and particularized in the grounds of appeal where such is sought to be used as a ground for overturning their judgment. An alleged misdirection on the part of the high court has no place in the present grounds of appeal.

We shall however look at the particulars of misdirection stated in this ground of appeal as they relate to the court of appeal judgment. The misdirection which is described as one of law mentions fraud, estoppel, frustration of contract, the principles of nemo dat quod non habet and caveat emptor.

Rule 6(2) of the Supreme Court Rules 1996 (CI 16) requires a party alleging any misdirection or error of law to give particulars of same. Rule 6(4) also requires a ground of appeal to be without argument or narrative. It is to be borne in mind that the alleged misdirection being on the part of the court should have in the particulars how this misdirection occurred. The courts have consistently reiterated this.

In this particular instance, how did the Court of Appeal wrongly apply the law or legal principles raised in the particulars or **not** apply same to the issues in the case? In other words, how did the Court of Appeal misconceive the issues of law raised in the particulars? The practice has been to directly quote the portion of the judgment where the court misdirected itself. The narrative given in the particulars laid no 'charges', so to speak against the court of appeal. They sound or indeed are a criticism of the actions of the 1st and 2nd defendant.

This second ground of appeal, found at pages 523 and 524 of the ROA being bereft of the required particulars of misdirection as required by the rules and being full of narrative is hereby struck out by virtue of rules 6(2)(f)and (4) of CI 16. See

Ofosu-Addo v Graphic Communications Group Ltd [2011] 1 SCGLR 355

International Rom Ltd (No 1) v Vodafone & Fidelity Bank Ltd (No 1) [2015-2016] SCGLR 1389

Is the judgment of the court of appeal against the weight of evidence adduced as alleged by the plaintiff? It is trite that such a ground of appeal throws open the door for the appellate court to examine all evidence led, be it documentary or oral and determine if the essential findings of fact properly flow from them and determine if the applicable law has been properly applied.

See the oft cited cases of

Tuakwa vs Bosom [2001-2002] SCGLR 61

Owusu-Domena vs Amoah [2015-2016] SCGLR 790

To instigate this process however, it has been said that it is the plaintiff who is making this complaint who carries the onus of demonstrating to the appellate court the lapses in the judgment.

See the cases of

Djin vs Musa 1 SCGLR 687@691

Abbey vs Antwi V [2010] SCGLR 17

These lapses should be such as will convince this court that in spite of the concurrent findings of fact by the two lower courts, which one should be slow to disturb, had certain pieces of evidence been correctly applied in her favour or had certain pieces of evidence not been wrongly applied and the law correctly applied, the proceedings would have resulted in a judgment in her favour.

What are the alleged lapses in the judgment according to the plaintiff?

This ground of appeal is argued from page 21 of the unnumbered statement of case of the plaintiff but the alleged lapses are raised from page 25. The first issue raised under this omnibus ground relates to the identity and measurements of the land in dispute.

The plaintiff states that the trial judge's finding that the 2nd defendant's exhibits 3D1 and 2D2 were evidence of a better title than hers "is not borne out of a proper judicious assessment of the evidence put before him."The concurrence of this finding by the court of appeal, it is implied, was wrong. Plaintiff's position is that the differences in the extent of the land in dispute in her indenture and site plan (ie .306 acres and 3.06 acres) could only have been a typographical mistake and in any case the measurement in a plan attached to an indenture should override that stated in the indenture if it is stated that the property is "more particularly delineated and described" on the plan. Plaintiff argues that it was wrong for the judge to describe this typographical mistake as 'grave'

and describe her exhibit B1 as bristling with controversy while that of 2nd defendant was described as coherent and consistent.

An examination of the ROA shows that the trial judge did indeed describe the anomaly in the size of the land in her documents as "grave" and the said document as bristling with controversy. He also described the documents of 2nd defendant as coherent and more consistent.

A perusal of the judgment of the court of appeal does not reveal a specific concurrence of the findings of the trial court on the above two issues. However, even if that court had, it is clear that these two findings were not the basis of the court of appeal's acceptance of the findings, conclusions and orders of the trial court. The court of appeal reproduced what it considered the relevant findings at pages 513 and 514 of the ROA as follows

(35) ***DETERMINATION OF THIS APPEAL***

In the judgment of the Trial Court, a number of significant Findings were made some of which are as follows:-

(i) *"As stated earlier Plaintiff was granted the lease of the land in 1986. As would be expected of any lease it had its own terms and covenants. In Exhibit "B1" Plaintiff covenanted with 1st Defendant to pay yearly rent and "to commence the erection in a substantial and workmanlike on the demised land within the years of the date of the commencement thereof a substantial dwelling house together with suitable access to the adjoining road and to complete the building within three (3) years" among other covenants. It would therefore be expected that plaintiff should have completed building the School in 1989/1990 if this covenant alluded to supra was to be respected. But the Plaintiff did not comply with this covenant. Plaintiff had not done any work on the*

School building let alone doing substantial development thereof". (Page 354 of the record).

(ii) "In the circumstance the 1st Defendant was constrained to write to Plaintiff notifying her of reentry and forfeiture of the lease. The letter dated 30th May 1994 to that effect was tendered as Exhibit "1D3". This letter of entry and forfeiture attracted Exhibit :1D2" a response from Plaintiff by which Plaintiff pleaded with 1st Defendant to "suspend your intention to re-enter the land up to February 1995 when you can re-enter without notice to me if by then I have not fully started developing the land……" (page 355 of the record).

(iii) Act 322 provides for the ejection of persons owing arrears of rent and persons who sublet premises contrary to the terms of any lease under which the premises were let to them by 1st Defendant and for other purposes connected therewith. It is my understanding that any act of a tenant or lessee of 1st Defendant that grounds a cause of action for ejectment or forfeiture of a lease, all 1st Defendant was required to do is to give requisite notice and then forcefully remove the tenant, the only exception being where the premises have been let under the hire purchase contract and at least 80 percent of the high purchase price has been paid in which case 1st Defendant shall not enforce any right to recover possession of the premises or its right of reentry otherwise by court action" (Page 356 of the record).

(36) it is based on these finding that the Trial Court arrived at the conclusion which it placed on record as follows:- "it is therefore my considered view that Exhibit :1D3" and "1D4" constituted due notice under Act 322 and therefore Plaintiff ceased to be a tenant of the premises after July 1995 as the premises as repossession by 1st Defendant". We need state without equivocation, that upon a thorough examination of the record these findings and conclusions are amply supported by the evidence on record. We accept the said findings and conclusions and the orders giving effect to them in the judgment.

The court then concluded 'without equivocation that upon a thorough examination of the record' the said findings were amply supported by the evidence on record.

In conclusion, the findings in question have not been proven by the plaintiff to have resulted in judgment being entered against her and cannot be considered a lapse.

The next complaint by the plaintiff under this ground of appeal is that the finding by the trial court that, on the ground the parties were litigating over the same piece of land even though they were described differently in the documents of plaintiff and 2nd defendant should have led to a finding for her on her allegations of fraud and trespass because the 1st defendant had allocated the land already allocated to her 1986, subsequently to Nii Odai Ayiku. Plaintiff's position is that since the authorities state that fraud vitiates everything even where such is not pleaded, the evidence should have led to such a finding being made . Connecting this to the judgment of the court of appeal, the plaintiff argues that by concurring with the judgment of the trial court, it meant that the former court failed to do an examination of the totality of the evidence. In other words a proper examination would have led to a finding of fraud and trespass.

The portion of the court of appeal judgment reproduced above shows it concurred with the trial court's findings on the 1st defendant's defence that the plaintiff had breached the covenants in the lease granted her and that as a result of this, they had lawfully re-entered the land in dispute upon this breach.

The record clearly and readily bears out that plaintiff breached some covenant of the lease granted her. By exhibit 1D3 dated 30th May 1994, the plaintiff was warned of the 1st Defendant's intention to re-enter the disputed land because she had failed to develop it within an eighteen month period. The time stated in paragraph 2(e) of the lease granted her ie exhibit B is a period of two years from the commencement of the lease(in this case

24th September 1986) to commence construction and to complete same within three years.

Clearly, the plaintiff was in breach of the covenant to build within the two years stipulated in her lease. The purpose of her being granted the lease was to put up a school in line with the planning scheme of the first defendant. It is without question that she did not do this. Plaintiff's response to the letter referred to above (exhibit 1D2) while long and cataloguing her woes in seeking finance to build the school and her likely success of obtaining same, did not dispute the 1st defendant's right to re-enter, but rather sought an extension of time to fulfil the covenant to build failing which she told the 1st defendant they could re-enter the land in February 1995. That letter was tendered without objection through her even though she claimed during her cross-examination that the exhibit was not a letter pleading with the 1st defendant but rather informing 1st defendant that her project was a school project and so she had to seek financial aid and that they were not helping in this by their failure to develop her access to the land. See page 225 of the ROA.

A reading of the contents of the exhibit shows this to be incorrect. It was a letter pleading for time to fulfil the obligation imposed by the covenant in the lease. By exhibit 1D4 dated 24th February 1995 tendered through plaintiff, she was given an additional six months to develop the land. The concluding paragraph of the said exhibit states as follows

"Your client is being warned that if after a period of six months from 25/1/95, she fails to develop the land or show any evidence of her intention to develop the land the Corporation shall re-enter and forfeit the lease"

As at 25th February 2015, when plaintiff was being cross examined, she had not developed the land "for reasons I have already stated in my evidence in chief". See page

229 of the ROA. We shall discuss those reasons and their effect, if any, on plaintiff's obligation to build elsewhere in this judgment.

Clearly, plaintiff was in breach of her covenant to commence and complete construction of her school within the stipulated period which had been extended further for her upon her plea. No issue of fraud arose between her and the 1st defendant because at this time, no 3rd party, that is ACL Properties, was involved in her issues with 1st defendant regarding the lease granted her, the breach of its terms, her plea for extension of time and her failure to build during the extended period. The court of appeal was right in confirming that finding by the trial court.

Indeed the court of appeal did say at page 506 of the ROA that plaintiff failed to prove her allegation of fraud. A party alleging fraud is required to prove it beyond reasonable doubt (section 13(1) of the Evidence Act 1975, Act 323). See also

Ghana Commercial Bank Ltd v Commisioner of Human Rights and Administrative Justice [2003-2004] 1 SCGLR 91

As this court stated in the case of **Osei Ansong v Ghana Airports Co Ltd [2013-2014] 1 SCGLR 25,**

"Fraud is not fraud merely because it has been so stated in a writ to excite the feelings of the courts"

It is no wonder that the paucity of evidence led by the plaintiff on her allegation of fraud led to a finding by the court of appeal that she failed to prove same at the trial.

The plaintiff had raised and testified to certain matters which allegedly made it impossible to fulfil her obligation to build within the stipulated time. She testified at the trial that she had sued 1st defendant in the year 2006 and had obtained judgment, (exhibit D) ordering 1st defendant to provide her with roads, drainage and the necessary

infrastructure to facilitate her development of the land. She also testified about the failure of the 1st defendant's officer to submit the correct number of copies of architectural drawings and his refusal to pay for copies misplaced by him which copies had to be sent to the City Engineers department for approval to enable her commence construction. See page 216 of the ROA.

As stated earlier, plaintiff sued the 1st defendant in the year 2006. Judgment in that case was given in 2012, years after the 1st defendant had entered the land and leased it to another.

The trial judge stated that the judgment was not worth the paper it was written on and that the action was invalid and illegal. In her ground b(i) to the court of appeal, the plaintiff made this judgment one of the particulars of her complaint about misdirection on the part of the trial judge. That ground was struck out as being incompetent and so did not form part of the grounds of appeal.

Regarding the alleged failure of the 1st defendant's officer to perform certain duties, plaintiff's own letter exhibit 1D2 shows clearly that it was lack of funds which disabled here from meeting the obligation to put up the school building within the required time period so this alleged shortcoming, on the part of 1st defendant's officer, even if proven, cannot be a justification for her failure to meet her obligation to build. It therefore cannot be one of the factors used to prove that the judgment is against the weight of evidence.

From the plaintiff's statement of case, under this ground, these were the lapses raised. The issue relating to the applicability of the State Housing Corporation (Ejectment) Act,1970(Act 322) was raised under the particulars of her complaint of misdirection on the part of the court of appeal, which ground has earlier been struck out.

Considering the fact that the propriety of the re-entry by the 1st defendant and ejectment of the plaintiff under the provisions of Act 322 was one of the major issues before the court of appeal we shall in line with the duties required of us under this omnibus ground of appeal examine it. We will consider whether the position taken by the court of appeal, which position was a confirmation of the position of the trial court, was right in law.

First, there is no doubt that the applicable law for the ejectment of lessees of the 1st defendant is Act 322, an Act specifically passed for the purpose of ejecting tenants of 1st defendant owing arrears of rent among other defaults and not the Conveyancing Act 1973 as contended by the plaintiff.

The preamble of Act 322 states as follows

An act to provide for the ejectment of persons owing arrears of rent to the State Housing Corporation and persons who have sublet premises contrary to the terms of any lease under which the premises were let to them by the State Housing Corporation; and for other purposes connected therewith

It is true that the preamble of Act 322 makes specific reference to people owing arrears of rent and subletting premises contrary the terms of their lease. We however hold that the expression "**and for other purposes connected therewith"** covers people who have breached terms of their lease whose consequence include ejectment. Such breaches will include a breach of the covenant to build within a stipulated time as committed by the plaintiff. Any other position will defeat the purpose of the Act.

The modern trend is to take a purposive approach to interpretation of statutes in order to achieve the intent of the Act or enable it to cure the ill for which it was passed. See

Ofori v ECOBANK Ghana Ltd & 2 Others Civil Appeal No J4/11/2016 which also cites

Abu Ramadan & Nimako v Electoral Commission & A-G [2013-2014] 2 SCGLR 1654 in which this court stated (regarding construction of portions of the Public Elections (Registration of Voters) Regulations, 2012 (CI 72)) per Wood CJ in part as follows

"….established principles of statutory interpretation require that CI 72 be read as a whole, not piecemeal, and purposively construed and with the impugned legislation interpreted in the context of the other parts of CI 72"

The preamble of Act 322 reproduced above shows that its purpose is for the ejectment of certain tenants of the 1st defendant who are in breach of the payment of rent and have sublet without contrary to the terms of their lease. Interpreting the words in bold in the preamble to exclude defaulters like the plaintiff, whether as a person who has breached the covenant to develop the land within a required number of years, or who has been granted a "public utility land"…..for rent… will amount to interpreting the preamble literally and will not achieve the purpose for which the Act was passed.

The Act by section 2 gives 1st defendant power to re-enter premises after the requisite notice of termination is given to a tenant in breach. Surely, Act 322 applies to Plaintiff even if she is a beneficiary of a public utility land. She was under an obligation to pay rent among other obligations. That made her a tenant of the 1st defendant. Failure to meet any of these obligations had its consequences such as termination of her lease. Paragraph 5 of her offer letter found at page 370 of the ROA clearly states that failure to pay rent for three months would result in her ejectment under Act 322.Paragraph 3(a) of her indenture (exhibit B1) permits 1st Defendant to re-enter the land leased to plaintiff should she be in breach of any of the covenants stated therein. This puts to rest any question about which law is to apply in the event of a default on her part and the 1st Defendant's right to enter under the provisions of Act 322.

According to the evidence of the 1st Defendant's representative, they re-entered the land leased to the plaintiff for non-payment of rent. Exhibits 1D3 and 1D4 make reference to failure to build within a stipulated period. Plaintiff admitted that even at the trial she was in arrears of rent. Whichever it was, the plaintiff was in breach. A breach which entitled the 1st defendant to terminate her lease upon the requisite notice. Exhibits 1D3 and 1D4 satisfy the requirement of notice under Act 322. Failure to build within the stipulated time in her lease was a breach which could lead to its termination.

It is our considered opinion that having given the proper notice of their intention to re-enter the land for a proven breach on the part of the plaintiff, she ceased to be a tenant of the premises 6 months after the date stated in exhibit 1D4 which would be July 1995. There was no need for a physical re-entry by the 1st defendant. A subsequent grant of the land to any other person was of no concern to the plaintiff. Her rights had been extinguished. They could not be resurrected. Not even by the latter act of the 1st defendant participating in an action brought by her over the same piece of land, which she won. Indeed, had the 1st defendant even accepted rent from her after re-entry, that act would not have made any difference. Her extinguished rights could not be encroached upon. See

Mensah v Cofie [1991] 1 GLR 254

The finding of the trial court that the plaintiff, after she was served with notice under Act 322, ceased to be a tenant upon the expiration of the period stated within the notice, (found at page 337 of the ROA)was concurred to by the court of appeal at page 515 of the ROA. We hold that the finding is supported by the evidence on record because on this matter we are satisfied that the requirement of notice under Act 322 (which we have found to be the applicable law) was met.

The finding that plaintiff's rights in the land were extinguished means that as regards the plaintiff, 1st defendant's leasing of the land to Nii Odai Ayiku who also subleased it to Michael Amartey who eventually assigned his interest to the company ACL Properties Limited, of which 2nd defendant was a director was proper. Indeed it does not matter that there were some structures on the land. This is not a situation where ACL Properties Limited needs to prove that it was a bona fide purchaser without notice of the interest of the plaintiff. She had none for them to have any notice of. It is not unusual for there to have been some structures on the land at the time of re-entry. 1st defendant's letter to plaintiff found at page 182 of the ROA warns in the penultimate paragraph that no compensation would be paid for development of the land in case of default. In other words, the presence of structures on the land in circumstances such as this, ie where there has been re-entry cannot constitute the kind of notice referred to in the bona fide purchaser for value without notice doctrine.

Be that as it may, the trial court found that the said company was a bona fide purchaser even though the pleadings do not disclose that this defence was put up by their director who had been sued and the said company was itself not a party to the suit. This amounted to the trial court putting up an unnecessary case for a company which was not a participant in the trial, especially when the court itself had acknowledged that this company, the appropriate entity which should have been sued, had not been sued by the plaintiff and so was not a party to the suit. The court of appeal did not comment on this strange state of affairs but the failure to do so does not inure to the benefit of the plaintiff such as to change the outcome of the proceedings because as stated earlier, plaintiff's interest in the land had been extinguished before it was formally assigned to Nii Odai Ayiku.

After a comprehensive examination of the record, we find that, the crucial findings that underpin the judgment are supported by the evidence on record. The failure on the part

of the court of appeal to comment on the finding that an entity not a party to the suit was a bona fide purchaser for value without notice does not remove from this conclusion. Plaintiff has not given us reason to disturb the judgment. The appeal fails in its entirety and is dismissed. The judgment of the court of appeal is hereby affirmed.

A. LOVELACE-JOHNSON (MS.)
(JUSTICE OF THE SUPREME COURT)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

A. M. A. DORDZIE (MRS.)
(JUSTICE OF THE SUPREME COURT)

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