IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: PWAMANG JSC (PRESIDING)

DORDZIE (MRS.) JSC

AMEGATCHER JSC

PROF. KOTEY JSC

TORKORNOO (MRS.) JSC

CIVIL APPEAL

NO. J4/40/2022

29TH JUNE, 2022

1. MADAM RANDI LARTEY ….. 1ST PLAINTIFF
2. SAMUEL NII OTOO ANKRAH ….. 2ND PLAINTIFF/RESPONDENT/APPELLANT
3. MRS AGNES ESI ANKRAH ….. 3RD PLAINTIFF/RESPONDENT/APPELLANT

VRS

1. YAW ABOAH DJIN ….. 1ST DEFENDANT/APPELLANT/RESPONDENT
2. JUSTINY COMPANY LIMITED ….. 2ND DEFENDANT

JUDGMENT

AMEGATCHER JSC:-

INTRODUCTION

This suit commenced in the Land Division of the High Court where both parties claimed to have obtained the property, the subject matter of the dispute, from the same grantor. After a full trial, the High Court gave judgment in favour of the plaintiffs in respect of all of their reliefs. On 16th May 2019, the Court of Appeal allowed the 1stdefendant's (hereafter called the respondent) appeal and set aside the High Court Judgment. Aggrieved by the Court of Appeal judgment, the 2nd and 3rd plaintiffs (hereafter called the appellants) have appealed to this Court. Despite the multiple issues raised in the initial claim, the appeal before this Court has been mainly narrowed down to the issue of bonafide purchaser for value without notice and the respondent's counterclaim.

FACTS

The 1st plaintiff claimed that per two deeds of assignment from the 2nd defendant dated 25th May 2008 and 27th May 2008, she was assigned two parcels of land at Prampram measuring 25.97 acres and 24.33 acres, respectively. The 1st plaintiff, on 1st January 2010, assigned her interest in these two parcels of land to the appellants. The appellants subsequently presented their documents to the Land Title Registry for processing and were issued a yellow card dated 29th March 2010. The appellants averred that after the grant, they went into possession of the property and remained in quiet, peaceful, and undisturbed possession until May 2011 when the respondent trespassed on the property. The appellants also stated that the Land Certificate issued to the respondent was procured by fraud and that they are purchasers for value without any notice of defect in the 1st plaintiff's title.

The Respondent who was originally the only Defendant until he joined the 2nd defendant to the suit, denied that the 2nd defendant had assigned the property in

dispute to the 1st plaintiff. According to the respondent, he entered into a contract of sale dated 22nd March 2007 with the 2nd defendant for the sale of a parcel of land at Prampram measuring 76.41 acres. Pursuant to the contract of sale, the 2nd defendant registered its interest in the land at the Land Title Registry, obtained a land certificate, and subsequently transferred its registered interest to the respondent. Consequently, the respondent was issued a land certificate dated 4th April 2008.The respondent claimed that he was in physical possession of the land and that the appellants had rather trespassed on his land by using police to evict his security men. He, therefore, reported the matter to the Property Fraud Unit at the Police Headquarters and furnished the police with copies of his land certificate as proof of ownership. The respondent also averred that the purported assignments to the 1st plaintiff by the 2nd defendant were procured by fraud. Accordingly, the respondent counterclaimed for a declaration of ownership of the land in dispute, fraud on the part of 1st plaintiff, and an order setting aside the transfer from the 1st plaintiff to the appellants. Additionally, the respondent sought an order for recovery of possession of the land from the appellants and a perpetual injunction.

The 2nd defendant was joined to the action by the respondent. It denied assigning any land at Prampram to the 1st plaintiff. According to the 2nd defendant, per a contract of sale dated 22nd March 2007, it sold its entire interest in the land at Prampram to the respondent and had put the respondent in possession of same. Thus, the 2nd defendant claimed that the 1st plaintiff's purported deeds of assignment were procured by fraud and were forgeries. We would return in due course to examine the procedural propriety of joining the 2nd defendant to the suit and adding the 1st plaintiff as a party.

GROUNDS OF APPEAL

The appellants filed two grounds of appeal. They are as follows:

a. The Judgment is against the weight of evidence adduced at trial.
b. Their Lordships erred in law and misdirected themselves when they failed to hold that the 2nd and 3rd plaintiffs/respondents/appellants were bona fide purchasers for value without notice.
c. Further grounds of appeal to be filed upon receipt of the Record.

No further ground of appeal was filed, thus leaving the original two grounds as the grounds for consideration.

PROPRIETY OF ADDING/JOINING GRANTORS OF LAND AS PARTIES

There has been a trend by parties and counsel to either add or join grantors of land to suits seeking a declaration of title to land. The reason for this practice is not apparent. It is possible in their anxiety to fight and keep land purchased out of their sweat and toil parties out of an abundance of caution, look for a shoulder to lean on. There is also a likelihood that they are uncertain about the elements that constitute a cause of action against a party to land litigation. Be that as it may, in this appeal, the 1st plaintiff was added as a party at the inception of the writ. After the respondent was served, he applied to join the 2nd defendant to the suit. Both the 1st plaintiff and 2nd defendant, from the evidence were the grantors of the land in dispute to the appellants and respondent, respectively. The fact that in the journey of this case through the hierarchy of the courts, the 1st plaintiff and the 2nd defendant abandoned their grantees at the appellate level speaks volumes.

Order 4 Rule 3(1) of the High Court Civil Procedure Rules 2004 (C.1 47) prescribes situations where two or more persons may be added as parties in the same action as plaintiffs or as defendants without leave of the court. These are:

(a) If separate actions were brought by or against each of them, some common question of law or fact would arise in all the actions; and

(b) all rights to relief claimed in the action whether they are joint, several or in the alternative are in respect of or arise out of the same transaction or series of transactions.

As such, multiple plaintiffs or defendants are at liberty to join together to pursue or defend a claim if they fit within the two grounds above. However, before a party can bring a claim against another, it must have a cause of action. In the case of **MAHAMA VRS ELECTORAL COMMISSION AND ANOTHER**, [SC Writ No J1/05/2021 dated 4th March 2021 (unreported)], this Court held that:

"A cause of action is the existence of facts which give rise to an enforceable claim or a factual situation the existence of which entitles one to obtain from the court a remedy against another. Generally, before a party issues a writ, he must have a right recognized in law, which right has been violated by the Defendant."

Thus, before plaintiffs can join together in a lawsuit, they must have a cause of action against the defendants in which some common questions of law or fact would arise or that the reliefs being claimed against them arise out of the same transaction.

The case of the 1st plaintiff was that she had assigned her interest in the property to the appellants. The appellants, in turn alleged that the respondent had encroached on their land. The 1st plaintiff, after executing a transfer of the property in favour of the appellants, had divested her interest in the land. The legal effect of the transfer is that the transferor no longer retains an interest in the parcel of land save for a reversionary

interest, if any. A careful perusal of the reliefs being claimed shows that the crux of the claim is encroachment and fraud. The central question that will arise, is since the 1st plaintiff by her case did not have an interest in the property, what was her cause of action against the defendants? In our opinion, the 1st plaintiff did not have a cause of action because a perusal of the pleadings did not give rise to an enforceable claim which entitled her to a remedy by the Court. Indeed, the appellants who claimed ownership and possession over the land had a rightful cause of action against the respondent. Furthermore, there were no common questions of law or fact amongst the 1st plaintiffs and the appellants. The reliefs being claimed did not arise out of the same transaction. Consequently, Order 4 Rule 3(1) was not complied with when the 1st plaintiffs jointly with appellants initiated this action. Therefore, it was no surprise that the 1st plaintiff, after judgment in the Court of Appeal, chose not to pursue the appeal before us. After all, she had no interest in the subject matter of the dispute.

The 2nd defendant was joined to the suit by the 1st defendant pursuant to an application for joinder granted by the High Court under Order 4 Rule 5 (2b) of C.I 47 which states:

> **"At any stage of the proceedings the Court may on such terms as it thinks just either of its own motion or on application order any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the proceedings are effectively and completely determined and adjudicated upon to be added as a party."**

By this rule, before a party is joined by application, the Court must be satisfied that the presence of the party is necessary to ensure the effective determination of the matter. Ollennu J (as he then was) in the case of **Apenteng and Others vs Bank Of West Africa and Others (1961) 1 GLR 81** clarified the necessity test as follows:

> **"To arrive at the correct answer in a case like this where the application is by the Defendant and not by a plaintiff, the court must be guided by certain considerations and principles. The court must first of all, look at the plaintiff's writ of summons, his pleadings and the reliefs he seeks; if the plaintiff makes no claim either directly or inferentially against the party sought to be joined, or if the claim could succeed without the party sought to be joined being made a party, the application must be refused. In other words, would an order for which the plaintiff is asking in the action directly affect the party sought to be joined, not in his commercial interest, but in enjoyment of his legal right? See Amon v. Raphael Tuck & Sons. If an order in favour of the plaintiff on his claims will not directly affect the party whom a Defendant seeks to have joined, the application will be refused."**

Also in the case of **Zakari vs Pan American Airways Inc and Another (1982-1983)** GLR 975 Edward Wiredu J (as he then was) in vacating an earlier order for joinder added another test that:

> **"Another test would be whether the order if granted would raise any triable issue between the plaintiff and the party sought to be joined. If not, the only proper order to make was to refuse the joinder where the application was by the Defendant under Order 16, r. 11."**

The 2nd defendant was joined to this action as the lessor of the respondent. However, the reliefs claimed by the appellants were directly against the respondent who is alleged to be an encroacher on the land, and for an order to set aside the respondent's land certificate for fraud. Here again, the 2nd defendant by his testimony read together with the case of the respondent had divested his interest in the property the subject matter of the dispute to the respondent. Accordingly, 2nd defendant had no stake or interest in

the property by which to defend a claim or to have legally enforceable reliefs made against him. For example, any order for recovery of possession against the 2nd defendant could not be enforced because he was not in possession of the land. The reliefs being claimed by the appellants did not directly affect the 2nd defendant and the claim could succeed without his presence. Also of importance was the fact that there were no triable issues between the 1st plaintiff, the appellants, and the 2nd defendant. This explains why the 2nd defendant did not appeal against the High Court's decision against him and the respondent.

From the totality of the evidence presented and the cases of the parties, it is evident that the 1st plaintiff and the 2nd defendant were not necessary parties to the suit instituted at the High Court. In our view, the 1st plaintiff and the 2nd defendant's involvement and participation in this suit would have been better suited as witnesses for their respective grantees and not as parties. Under section 60 of the Evidence Act NRCD 323, a person is entitled to testify as a witness if he has personal knowledge of the matter. Thus, the 1st plaintiff and 2nd defendants who had personal knowledge of the events which led to the grant of the property to the appellants and respondent should have appeared and testified as witnesses rather than made parties to the suit.

Despite the inclusion of the 1st plaintiff and 2nd defendant as parties contrary to the requirements of the law, under Order 4 Rule 5(1) of C.I. 47, proceedings will not be defeated by reason of a misjoinder of a party and the court may determine the issues in dispute as long as they affect the rights and interests of persons who are parties to the suit. This is how Pwamang JSC explained the rule in the case of **Rowland Kofi Dwamena Vrs Richard Nartey Otoo & The Lands Commission, Accra, Civil Appeal No J4/47/2018 dated 19th June 2019 (unreported)** where he cited with approval the dictum of Sophia Akuffo JSC in the case of **Morkor vs Kuma (1998-1999) SCGLR 620**:

> **"Indeed, it seems that the rationale for the whole of Order 15, r 6 (the equivalent of Order 4 r 5 of C.I. 47)(sic) is to ensure that proceedings are so managed by the court as to ensure that the dispute before it is resolved in the most efficacious and complete manner possible. It is for this reason that the rule empowers the court, suo moto, to order that a party cease to be a party or that other persons be added as parties. Where, in fact or in law, a person is not a proper party to a suit, then, no matter how actively the person had participated in the suit, the fact would remain that she was never a proper party."**

In **Morkor vs Kuma(supra)** the Supreme Court struck out a managing director who was improperly made a Defendant jointly with her limited liability company in a suit brought in respect of an agreement executed by the limited liability company. Applying that principle, Pwamang JSC in Dwamena v Otoo (supra) also when striking out an unnecessary party to the suit held that:

> **"By our earlier decision in Otoo v Otoo, it has been established that the 1st Defendant was not a proper party to this case right from the start and the fact that he participated in it up to this stage does not change that position. In the circumstances, we hereby strike him out as a Defendant and dismiss his counterclaim on the strength of the earlier decision of this court."**

Accordingly, we strike out the 1st plaintiff and 2nd defendant as parties to the suit while the appeal proceeds against the other parties.

THE OMNIBUS GROUND OF APPEAL

Having disposed of the procedural issue, we now proceed to consider the first ground of appeal set out in the appellant's notice of appeal. This ground is that "**The Judgment**

is against the weight of evidence adduced at trial." In legal parlance, it is identified properly as the omnibus ground. This ground of appeal has been settled by a long and distinguished line of authorities. An appeal is by way of rehearing and an appellate court has a duty to analyze the entire record of appeal to determine whether the evidence on record supported the judgment being appealed. Essentially, this Court would only disturb the findings of the court below if the appellants can establish that there are certain pieces of evidence on the record which have been wrongly applied or which if they had been considered would have led to a decision in the appellants' favour.

Therefore, in the case of **Osei (Substituted by) Gilard v Korang [2013-2014] 1 SCGLR 221,** the Court stated as follows:

> **"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".**

However, that task cannot be accomplished by the court if the appellant just throws in the omnibus ground and makes no effort to demonstrate or point out the pieces of evidence which were misapplied by the trial judge in his appraisal of the evidence. It is incumbent on the appellant to show and demonstrate the specific lapses in the lower court's judgment to be successful.

In the case of **DJIN V MUSAH BAAKO [2007-2008] 1 SCGLR 686,** this Court opined that:-

> **"It has been held in several decided cases that where an appellant complains that a judgment is against the weight of evidence, then he is implying that**

there were certain pieces of evidence on the record which if applied in his favour could have changed the decision in his favour, or certain pieces of evidence have been wrongly applied against him. The onus is on such an appellant to clearly and properly demonstrate to the appellate court the lapses in the judgment being appealed against."

How did the appellants discharge this obligation in this appeal? We find it appropriate to refer to the appellants' Statement of Case at this stage. It stated that:

"The 2nd and 3rd Plaintiffs/Respondents/Appellants put down two grounds of Appeal supra and I intend to argue both grounds together since they are interwoven. It is submitted that the Court of Appeal did not embark upon a proper evaluation of the evidence with regards to the plea of bonafide purchaser for value without notice as a whole and that led it to set aside the finding that the 2nd and 3rdPlaintiffs/Respondents/Appellants are bona fide purchasers for value without notice as found by the High Court."

We find this limitation in the appellant's submission surprising because our examination of the Record of Appeal ("ROA") reveals that after analyzing the evidence on record, the Court of Appeal made several findings of fact that went against the appellants. These included the findings that the land in dispute was not stool land, that the 2nd defendant's officer had the capacity to execute the transfer documents, that the appellants were not bonafide purchasers for value without notice, and that the respondent and 2nd defendant followed the procedure prescribed by P.N.D.C.L 152 in transferring the registered land. Other conclusions reached by the Court of Appeal were that the 1st plaintiff had failed to establish her root of title and that the 1st plaintiff's purported acquisition was procured by fraud. However, from the appellants' submission, they first invited this Court to review the evidence about the plea of bonafide purchaser for value without notice which is covered by its ground of appeal,

and secondly, the Court of Appeal failed to apply the same standard of proof used for the appellants for the respondent's counterclaim.

It is not recommended for counsel to set an omnibus ground as the ground of appeal and seek to tie in one solitary point of law to that ground. If a party is dissatisfied by a specific finding of fact that has been made against it or that a point of law has been applied erroneously, it must specifically formulate those grounds of appeal instead of cloaking it under the omnibus ground. This is especially important where an appellant is not dissatisfied with every finding of fact or determination of a point of law that has been made against it. The caution this Court gave in the case of **Atuguba and Associates vrs Scipion Capital (UK) Ltd &Holman Fenwick William [2019-2020] 1 SCLRG 55 still** holds good. It says this of the omnibus ground as follows:

> **"In our opinion, though the rules allow the omnibus ground to be formulated as part of the grounds of appeal, 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. "**

Under this ground, the submissions made by the appellants is that the Court of Appeal failed to apply the same standard of proof used for the plaintiffs for the respondent's counterclaim. Whether this is a proper submission to make under the omnibus ground is highly debatable. We have restrained ourselves from striking out these arguments under the omnibus ground because we resolved to take a second look at the Court of Appeal judgment and satisfy ourselves that the Court properly reviewed the claim and counterclaim, especially when it reversed the findings and decision of the trial court.

Is this attack on the Court of Appeal justified? We note that at the Court of Appeal just like this Court, the omnibus ground was what was argued before it. The respondent, who was the appellant at the Court of Appeal in arguing his appeal limited his submissions to findings made by the trial High Court on his land certificate being obtained by fraud, instruments of title tendered in evidence by the appellants, the mode of acquisition of the land in dispute by the 1st plaintiff from the 2nd defendant, and the person in the 2nd defendant company 1st plaintiff dealt with. He also argued under the omnibus ground the evidence by the Director of 2nd defendant company explaining which of the parties he dealt with, the consent and concurrence of the Lands Commission to the transfer of the land, the party in effective possession of the land, the designation of the land as stool land, damages and costs. These were the arguments advanced by the appellant then against the trial court's judgment and responded to by the respondents then in the Court of Appeal. Neither the appellants nor the respondent advanced any arguments on the appellant's counterclaim. It is, therefore, unfair for the appellants in this appeal to accuse the Court of Appeal of putting the appellants "**to strict proof of their title, but failed miserably to apply the same standard**" to the respondent's counterclaim.

Even though no arguments were proffered by the parties in the Court of Appeal on the respondent's counterclaim, we have observed that the Court of Appeal's judgment reviewed the counterclaim. It is purely a matter of style in judgment writing how a judge chooses to review the claim and counterclaim of the parties before him. The fact that the appellant did not see a heading 'counterclaim' in the judgment is no basis to launch an attack on the Court of Appeal that the counterclaim leg of the evidence was not considered. There are indeed various parts of the judgment that reviewed the counterclaim of the respondent.

At page 83 of volume 3 of the ROA the Court of Appeal stated as follows:

"It is pertinent to note that the 1st Defendant as a counter claimant before the trial court assumes the same burden that a plaintiff in the substantive writ had if he is to succeed. This is because by the rules of court, a counterclaim constitutes a separate and distinct claim on its own to be substantiated by the same standard prescribed by the combined effect of sections 11 and 14 of the Evidence Act, 1975 (N.R.C.D. 323)."

After stating this legal proposition governing the counterclaim, the learned justices of the Court of Appeal went ahead to review the evidence of the appellants in support of their case before reviewing the evidence of the respondent in support of his counterclaim. The Court at pages 87-88 volume 3 of the ROA stated as follows:

"We now turn to the evidence of the 1st Defendant/appellant. The 1st Defendant in both his pleadings and testimony in court stated that he acquired the land in dispute from the 2nd defendant. He narrated how he was introduced to the 2nd defendant and the land by one Edmund Amoako, who also testified in the matter on behalf of the 1st Defendant, corroborating in all material particular, the evidence of 1st Defendant……..The 1st Defendant led evidence on how he conducted due diligence on the land and the persons he dealt with in acquiring the subject property…..He told the court how he processed his title to the land at the Land Title Registry and obtained his Land Title Certificate which was admitted as Exhibit 3….. Justice Ewool in his evidence in court corroborated the evidence of the 1st Defendant that he executed the transfer document at the Land Title Registry for the 1st Defendant and recounted how he met the 1st Defendant."

At pages 102-103 of volume 3 of the ROA, the Court of Appeal justices concluded their appraisal of the evidence proffered at the trial court in the following words:

"It is patently clear that the 1st plaintiff failed to establish her root of title on the land in dispute. It follows that 1st plaintiff's case must fail because failure to establish her

root of title is fatal to her case…….In this appeal, the record indicate that the 1st Defendant in assessing his counterclaim, led cogent and credible evidence to show that the land, the subject matter of the counterclaim, was assigned to him by 2nd defendant…….We must add that in contrast to the 1st plaintiff's tenuous case, the 1st Defendant produced documentary evidence, which showed a good root of title from the 2nd defendant on the land……the 1st Defendant/appellant had sufficiently and satisfactorily discharged his burden of proof and persuasion in proving his title to the land in dispute (that is his counterclaim)"

The Court of Appeal's judgment is clear. It would leave no one in doubt that the evidential burden was reviewed before it concluded that the appellant must fail in their claim and that the respondent must succeed in his counterclaim. The appellants' submission on this ground is not borne out by the evidence adduced at the trial. We find no basis to sustain it and accordingly dismiss the ground.

BONAFIDEPURCHASERFORVALUEWITHOUTNOTICE

The other ground argued is couched as follows:

"Their Lordships erred in law and misdirected themselves when they failed to hold that the 2nd and 3rd Plaintiffs/Respondents/Appellants were bona fide purchasers for value without notice."

The Court of Appeal in its judgment determined that if the appellants as prudent purchasers had conducted an official search at the Lands Commission before the purchase, they would have known that the land was encumbered. The Court, therefore, held that since the appellants had failed to make proper inquiries before the purchase, they could not rely on the plea of a bonafide purchaser for value without notice. Additionally, the Court of Appeal found that when the appellants attempted to register

their interest with the Land Title Registry, they were notified that the property was affected by an earlier registration by the respondent. Consequently, this defeated the appellants' plea of bona fide purchaser for value without notice. The appellants argue that the conclusions drawn by the Court of Appeal are not borne out by the facts on record while the respondent contends the opposite.

A bonafide purchaser for value without notice, (also known in legal parlance by students of law and the courts as equity's darling)is a term used to refer to an innocent party who purchases property without notice of any other party's claim to the title of that property. It is a plea that is a valid defence in land litigation and to be successful on the plea, a party must lead cogent evidence in support of it. In the case of **Hydraform Estates Gh. Ltd. Vrs Owusu [2013-14] 2 SCGLR 1117**, this Court citing the case of **Duodo v Benewah (2012) 2 SCGLR 1306** which also cited **Yeboah v Amofa (1997-1998) 1 GLR 674; Osumanu v Osumanu (1995-1996) 1GLR 672, CA** and **Toure v Baako (1993-1994) 1GLR 342** held that:

> "**The plea of bonafide purchaser for value without notice has repeatedly appeared in several cases. If a party puts up that plea, the onus is squarely on the party who pleaded it."**

The Court in the **Hydraform Estates Gh Ltd**(supra) also cited **Pilcher Vrs Rawlings [1871-72] 7 LR Ch. App 259 at 269** where James LJ said:

> "Such a purchaser when he has once put in that plea may be interrogated and tested to any extent as to the valuable consideration which he has given in order to show the bona fide or mala fides of his purchase **and also the presence or the absence of notice; but when he has gone through the ordeal and has satisfied the terms of the plea of purchaser for valuable consideration without notice then according to my judgment this court has no jurisdiction whatever to do**

anything more than to let him depart in possession of that legal estate, that legal right, that advantage which he has obtained whatever it may be."

The Supreme Court went further at page 1130to say as follows:

"As the plea is considered as an absolute, unqualified and unanswerable defence if it is upheld by a court of law, **the law requires that evidence in support of the plea must satisfy the court**."

What evidence was led in support of this plea? The appellants through the 2nd appellant in his evidence-in-chief testified that before the acquisition of the property from the 1st plaintiff in January 2010, he conducted unofficial searches using the 1st plaintiff's site plan and the results showed that the 2nd defendant had granted the property to the 1st plaintiff. He however did not tender in any evidence of these unofficial searches. He also testified that he visited the site before the acquisition and saw that it was a vast land with about 100 coconut trees and 5 uncompleted structures.

Further, according to the appellants, in May 2011, one Pastor Lewis who claimed he had been authorized by the respondent encroached on the property and the matter was reported to the police. The said Pastor Lewis was asked to bring his documents to the police station and he brought the respondent's land documents which the police used for a search. The police conducted a search at the Public and Vested Land Management Division of the Lands Commission and the results which were tendered by the appellants as Exhibits C and C1 showed that the property had been assigned from the 2nd defendant to the 1st plaintiff. The appellants further testified that after the police search, they also conducted another search in 2011 and tendered in those search results as Exhibits H and H1. These search results are dated 20th July 2011 and once again it showed that the 2nd defendant had assigned a portion of its property to the 1st plaintiff while another portion was in the name of some third parties.

The issue before us is to determine whether this evidence is sufficient to support the plea. In the case of **Kusi & Kusi Vrs Bonsu [2010] SCGLR 60**, Georgina Wood CJ in clarifying the requirements of the plea stated as follows:

> **"It is trite learning that any person desirous of acquiring property ought to properly investigate the root of title of his vendor. In this case there was no evidence of such prudent search conducted by the Defendant. In their own pleadings, they asserted that they only inspected the title deeds of the assignor coupled with the permit for construction and were satisfied. The record does not show that they even sought professional advice before entering into the transaction. In our view the steps they took are not the adequate steps of a prudent purchaser of this particular property. Indeed had they extended their search to the Lands Department, Kumasi, the statutory body that kept official records of lands in Kumasi, they would have known that the land was encumbered."**

Furthermore, in the **Hydroform Estates Gh Ltd case (supra)**at 1130, Anin Yeboah JSC (as he then was)stated as follows:

> "Even though the facts of each particular case may determine how prudent a purchaser of land must act under such circumstances, we think that, at least, official searches at the Lands Commission in this case would have clearly established that the land was not designated as the property of the plaintiff's vendor. **An official search at the Lands Commission to make inquiries as to the official records covering the land would have alerted the plaintiffs about the ownership of the disputed property. The fact that they were not professionals but were laymen, in our view, did not take away the necessity to be prudent under the circumstances**. It is indeed a notorious fact that persons seeking to acquire any interest in land in Ghana resort to conducting searches to ascertain

whether the vendor or transferor has title to pass. The Lands Commission is a governmental agency set up for keeping of official records of land transactions in Ghana. In these proceedings, the hard facts conclusively establish that no effort was made to conduct proper investigations. A certified true copy of a default judgment could not under the circumstances be accepted as a basis for the plea of bona fide purchaser for value without notice of any adverse title. In any case, the default judgment was subsequently set aside, it not being final, in every respect."

In the appeal before us, the appellants submit that they conducted unofficial searches before the acquisition. The appellants further submit that all subsequent official searches also confirmed the results they were given in their unofficial searches. However, there was no evidence tendered to buttress this claim or corroborate it. There was no proof whatsoever that the appellants had conducted unofficial searches before the acquisition of the property from the 1st plaintiff. The bare oral assertions of the appellants in evidence-in-chief were not sufficient proof of this fact. It is trite that a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting. See **Section 14** of the **Evidence Act 1975 (NRCD 323)** and **Bank of West Africa vrs Ackun [1963] 1 GLR 176**.

In any event, per the authority of the **Hydroform Estates** case (supra) the requirement to satisfy this plea where searches are concerned is to conduct an official search at the Lands Commission before acquisition. As such, unofficial searches would not suffice. This Court would only recognize official searches which have been signed under the hand and seal of the authorized official of the Lands Commission.

The official searches conducted by the appellants were all conducted after their purported acquisition of the land in 2010 and not before it, as it is required of a prudent purchaser who has to satisfy himself of his vendor's title. From the evidence, the searches that were conducted and tendered in as Exhibits C and C1 were conducted by

the police and not the appellants after the purported trespass of the respondent. These searches were dated 8th July 2011 and were done using the respondent's site plan and not even the 1st plaintiff or the appellant's site plan. Meanwhile, the deeds of assignment to the appellants were dated 1st January 2010, a whole year and a half before these searches were conducted. Additionally, the other set of searches which the appellants conducted and tendered in as Exhibits H and H1were also in July 2011, precisely dated 20th July 2011.

It is evident that these searches were not conducted before the appellants' purported acquisition in January 2010.The obligation to satisfy oneself as regards a vendor's title arises before agreeing to sell or divest of an interest in land. It defies sound reasoning for these searches to be conducted after the land has purportedly been divested to another. The essence of these searches is to ensure that one's vendor has a good title to pass on before the conveyance of an interest in land. Accordingly, these belated searches do not meet the requirements set up by the case law earlier.

We are not satisfied that the unofficial and official searches conducted by the appellant at the then Lands Commission Secretariat complied with the requirement of the law because, as at 2010, the Land Title Registration Act 1986 (PNDCL 152) had been passed to regulate the registration of title to land and the conduct of searches to determine the rightful ownership of land. Section 5 empowered the Minister for Lands by legislative instrument to declare any area a registration district. By sections 13 (1) & (3), and 135 of the Act, upon the declaration by the Minister of a registration district, any interest in land in that district had to be registered in accordance with section 14 of the Act and the Land Registry Act, 1962 (Act 122) would cease to apply to any instrument in so far as it affected that land or interest. Section 56 provided for official searches seeking information concerning any parcel or interest in land registered under the Act to be

applied for in a prescribed form to the Land Registrar for a certificate of the results, which would be presumed to be conclusive of the matters stated therein.

By 2008, all districts in the Greater Accra Region, including the Prampram district, had been declared registration districts by the Minister for Lands and Forestry. From that declaration, registration of Instruments at the Lands Registry under Act 122 ceased to apply for registering lands in the district. However, because of the provisions of section 13 of PNDCL 152 which acknowledges the fact that Instruments affecting land may have been registered previously under Act 122, a prudent purchaser of land ought to be diligent in conducting his searches over lands not only at the Land Registry under Act 122 but also at the then Land Title Registry. The appellants did not conduct any searches at the Land Title Registry. They were confident enough to testify that they conducted an unofficial search at the Lands Registry under Act 122 at the Lands Commission Secretariat. If the appellants had followed the law in force at the time, they would have discovered the encumbrance over the property they intended to buy from the 1st plaintiff and the maxim caveat emptor would have put them on notice. The appellants, therefore, ought to blame themselves and are not entitled to run into the ever loving arms of equity's darling to grant them comfort.

Accordingly, the statement made by Anin Yeboah JSC (as he then was) in the **Hydroform Estates Gh Ltd case** at page 1130 (supra), is still very much applicable; **"The fact that they were not professionals but were laymen, in our view, did not take away the necessity to be prudent under the circumstances."** The appellants failed to be prudent before acquiring the land, the subject matter of the dispute. Their plea of a bonafide purchaser for value without notice fails and is dismissed. We affirm the decision of the Court of Appeal in that respect.

REQUIREMENTS OF 1ST REGISTRATION OF TITLE & TRANSFER OF TITLE

Before concluding this judgment, an essential procedure regarding first registration of title and transfer from an existing land certificate came up for consideration in this case. The appellants invited this Court to take judicial notice of the fact that the land registration division of the Lands Commission commenced a practice of requesting that the root of title of each applicant for a land certificate must be produced and that during the processing, that document would be embedded in the Land Certificate. The appellants' case during this appeal and throughout this litigation has been that there was never a deed of assignment by the 2nd defendant in favour of the respondent so the issuance of a land certificate in favour of the respondent by the Lands Commission was in error. The respondent disagreed with this assertion and maintained that a deed of assignment has never been a requirement for transfers from an existing land certificate.

The learned trial judge in his judgment faulted the respondent for failing to attach a deed of assignment from the 2nd defendant to his application for a transfer of the land title to him. On appeal, the Court of Appeal, reversing the appreciation of the law by the trial judge observed at page 99 of volume 3 as follows:

"**It seems to us that the learned trial judge, with all due deference, misconceived the law on the procedure for transfer of an interest in land under a Land Title Certificate with that of a first applicant. The procedures for the two are different and certainly not the same. With the latter, the application forms are headed: "Application for First Registration of Leasehold Land…."whilst that of the former, the application forms are entitled: "Transfer of Leasehold".**

Given the differences in opinion this has generated between the superior court justices and also between counsel representing the parties, we deem it appropriate to revisit this legal issue and to give the necessary guidance for the benefit of all stakeholders in land registration.

The law is clear about the requirements for the first registration of a proprietor under PNDCL 152 and a subsequent transfer from an existing land certificate to another person. **Section 51** of **PNDCL 152** sets out the different types of registration that will result in the issuance of a land certificate. For our purposes, there is a first registration or a subsequent transfer. First registrations refer to registrations where no title covers the property whereas a subsequent transfer refers to transfers of registered land. The **Land Title Registration Regulations, 1986 (LI 1341)** with its subsequent amendments passed to govern the land title registration process sets out the procedure for first registration and subsequent transfers.

Regulation 1 of LI 1341 provides the form of applications for the first registration of an interest in land. Regulation 2 provides the documents which must be attached to the application for first registration. This includes the original deeds (conveyances) of the land, a triplicate of these deeds and a plan in duplicate approved by the director of surveys. Therefore, when a property is subject to first registration, a deed of conveyance (lease, sublease, assignment) is required to be submitted to the Land Registration Division. No original site plan of the proprietor is attached or embedded in the land certificate because a parcel plan is prepared by the Survey and Mapping Division based on which the Land Certificate is issued.

When it comes, to already registered land, the following provisions of **PNDCL 152** are important to consider:

> **"Section 58—Disposition of Registered Land and Interests in Land.**
>
> **Notwithstanding any enactment to the contrary any land or interest in land registered under this Law shall be disposed of in accordance with the provisions of this Law and any disposition of such land or interest in land**

otherwise than in accordance with the provisions of this Law shall be ineffectual to create, extinguish, transfer, vary or affect any right or interest in that land.

Section 79—Transfers.

(1) A proprietor may, by an instrument in the prescribed form, transfer his land or interest in land to any person with or without consideration.

Section 92—Form of Instruments.

(1) Every disposition of registered land or an interest therein shall be effected by an instrument in the form prescribed for general use or in such other form as may be prescribed for any particular case."

From the above provisions, the disposal or transfer of registered land shall only be in accordance with PNDCL 152, and a transfer of registered land shall be effected by an instrument in the prescribed form. Regulation 57of Part III of LI 1341 sets out the general format for transferring registered land, while Regulation 60 sets out the specific format for transferring a lease which is subject to rent:

"PART III—DEALINGS WITH REGISTERED LAND

Regulation 57 — Form of Transfer.

A transfer of any land on the folio of the register shall be made in Form 30 of the First Schedule.

Regulation 60—Transfer of Lease Subject to a Rent.

A transfer of lease on the folio of the register shall be made in Form 35 or 36 of the First Schedule as the case may be."

The forms referenced above are to be executed by the transfer or without requiring an accompanying deed of conveyance. Therefore, there is no legal requirement for transferring a registered land by a conveyance. The mere execution of the transfer forms suffices to properly transfer property covered under a land certificate. All that was required by the law was to buy the form for the transfer of a part or whole of the land for the parties to fill, sign, and have stamped at the Land Valuation Division (Board.) If it is a lease hold, the original lease containing the covenants, obligations, and stipulations would be embedded in the certificate so that the assignee or sub-lessee has notice and is bound by the covenants therein. One of the essences of title registration was to reduce cost in terms of conveyancing, hence the introduction of the registration forms to replace the assignment or sub lease by deed.

The respondent during his evidence-in-chief tendered in Exhibit 3 which was his land certificate and a transfer of leasehold form. The transfer of leasehold form was received as stamped by the Lands Commission on 31st March 2008. This form was duly filled out with an annual rent amount of GH¢1,200 stated and was validly executed by the 2nd defendant. In line with PNDCL 152 and LI 1341, this sufficed under the law to properly transfer title to the respondent. Therefore, the position advanced by the appellants and endorsed by the trial High Court Judge was not supported by the law. We, accordingly, decline the invitation to take judicial notice of the erroneous position of the law.

Based on the applicable principles and authorities cited above, we find no reason to disturb the findings of the Court of Appeal. The Appeal lacks merit and is hereby dismissed.

N. A. AMEGATCHER

(JUSTICE OF THE SUPREME COURT)

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

A. M. A. DORDZIE (MRS.)

(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY

(JUSTICE OF THE SUPREME COURT)

G. TORKORNOO (MRS.)

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