

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: YEBOAH CJ (PRESIDING)

PWAMANG JSC

AMEGATCHER JSC

PROF. KOTEY JSC

TORKORNOO (MRS.) JSC

CIVIL APPEAL

NO. J4/28/2021

10TH MAY, 2023

SULEMAN SUBERU
(SUING PER HIS LAWFUL
PLAINTIFF/RESPONDENT/APPELLANT
ATTORNEY AMINA SUBERU MRS.)

VS

1. MRS ESI DAVIDSON
& 13 OTHERS

}

DEFENDANTS

2. MARTHA DAVIDSON
(SUBST. BY EMMANUEL DAVIDSON
DEFENDANT/APPELLANT/RESPONDENT

}

15TH

JUDGMENT

TORKORNOO JSC:-

Background

This case reflects the sad state of delays in justice delivery on the effort of citizens to invest in economy of Ghana. At the commencement of this suit in June 2008, the plaintiff/respondent/appellant (hereafter referred to as Plaintiff) lived in the United States of America. He sued through his wife, who acted as his attorney. His case is that in 2005, he purchased a part of house number 891/2 Kotobabi, also known as parcel number 215, which included shops. The purchase price of the property he bought was GHC 30,000.

Prior to negotiating to purchase the property, he conducted a search in the Land Title Registry and satisfied himself that the property from which parcel 215 was carved out of was registered in the name of the vendor Samuel Davidson. Following the purchase, he also registered his interest in the Land Title Registry.

His case is that he informed both the vendor and the tenants in the shop of his intention to bring down the existing structure in order to build a new one for commercial purposes. His lawyers also demanded for the vendor and tenants to pay rent to him as the owner of the property for the respective parts of the property that they were using. Both the vendor and the tenants failed or refused to accede to his requests for rents, leading to the commencement of the action in the high court for the following claims:

- a. Declaration of title to the part of H/No 891/2, Kotobabi which was sold to the plaintiff by the late Samuel Davidson**
- b. Payment of all rent arrears and mesne profit due him**

By the time the action started, the vendor of the property had died. Plaintiff averred that the vendor's widow had started exercising acts of ownership over the said property. Thus the first defendant is his widow, and the 2nd to 14th defendants are the tenants.

The 1st to 14th defendants initially entered a common defence which was later rectified as the defence of only the 1st defendant, and amended. In her amended statement of defence, the 1st defendant averred that she was neither the customary successor nor the personal representative of Samuel Davidson and so Plaintiff had no cause of action against her. The 1st defendant admitted having witnessed a record of money collected by her deceased husband from somebody called Alfah. She said she did not know the plaintiff, and she did not read the content of the document that witnessed the receipt of money. She admitted having collected rents from the tenants after the death of her husband but said she gave the money to his sister. She also denied knowing which part of H/No 891/2 Kotobabi that plaintiff had bought.

She further denied that the late Samuel Davidson had capacity to sell the house, because the house was jointly owned by the children of Samuel Davidson's father, and they had not given their consent for the sale of the property.

The suit was later joined by the 15th defendant, who is the sister of the deceased vendor. In her statement of defence, the 15th defendant denied that the property in issue belongs to the deceased Samuel Davidson, and said that it was the property of her father Samuel William Davidson, also deceased. She said that on the death of their father intestate, letters of administration were given to family members. The house was first sold to one George Asem, but that sale was repudiated. A Deed of Surrender from this George Asem to William Davidson, Samuel Davidson (the vendor) and the 15th defendant was given to the Plaintiff's vendor for processing at the Lands Commission, where he '*fraudulently*' took a land certificate in his sole name, without the consent of the other two joint owners.

The 15th defendant went on to allege that the vendor thereafter fraudulently sold the property to plaintiff without the notice and consent of other beneficiaries of the property, and that a search at the Lands Commission would have shown her to be a signatory to the Deed of Surrender. As such, the property in issue is family property, and the plaintiff could not purchase house number 891/2 Kotobabi *'without dealing with the true owners of the property who are the surviving children of Samuel William Davidson (deceased)'*. It was her case that since the family had not sold the house to anyone, the sale to the plaintiff was null and void. She contended the following **particulars of fraud**:

- a. That the Deed of Surrender was granted to William Davidson, Samuel Davidson, and Martha Davidson all children of Samuel William Davidson (Deceased)
- b. That without the consent of William Davidson and Martha Davidson, Samuel Davidson took the Land Certificate in his sole name as if he was the sole owner of the property

She went on to counterclaim for:

- a. A declaration that house number 891/2 Kotobabi is a family property of the Davidson family and never sold to plaintiff by the family
- b. That any purported sale of the said house by 1st defendant's husband alone is without authority and must be declared null and void
- c. A declaration that the land certificate taken in the name of 1st defendant's husband as the sole owner of the family property is a nullity
- d. An order directed at the Land Title Registry to cancel from their register the said Land Certificate in the name of 1st defendant's husband
- e. Any further order that the court may deem fit to make to restore the family property to Davidson family

The trial was conducted after the tenants were served notice of hearing by a substituted mode. The joinder of 15th defendant paved way for her to testify. The testimony of 15th defendant included acknowledgement of the position that she had been involved in telling the vendor to register the interest of he and his siblings with the Lands Commission. She testified that in that registration, the vendor took advantage of the other interest holders. She was aware that the vendor registered the property in his sole name. She said that their senior brother who is called William Davidson was insane, and where she was concerned, her own words given in testimony to the court were that, *'we thought the property was safe and sound since Samuel was a man and I was a woman. Not knowing Samuel registered the property in his name and sold it without us'*. She was adamant that the family wanted the property back. She also admitted under cross examination that in all transactions in respect of the property the vendor Samuel Davidson had been described as owner of the property. She said that she became aware of the sale of the property to plaintiff after the tenants had told her that plaintiff was asking for rents to be paid to him. In response to the question:

Q. 'Did you challenge the sale to plaintiff?', her answer was

A. No. I challenged Samuel

She admitted challenging Samuel when he applied for land certificate in his name. She said because he resisted her with a cutlass, she stopped going to the house.

The evidence of 15th defendant closed the hearing and thereafter the trial court entered judgment in favor of the plaintiff.

Judgment of high court

The court was satisfied that the plaintiff was a purchaser for value without notice of any interest by the 15th defendant and her brother that she described as insane. He was also satisfied from the testimony of the 15th defendant that the family were aware that the

vendor had registered the property in his sole name, and given the vendor their consent to do the registration in his sole name. They were also aware of the sale to the plaintiff.

Further, with the registration of the plaintiff's interest, notice had been given to the family concerning the sale by the deceased Samuel Davidson, and they had failed to caveat the registration. The trial judge therefore upheld the plaintiff's interest in the property.

Appeal

The 15th defendant filed an appeal on several grounds, the last of which was the omnibus ground that the judgment is against the weight of evidence.

The court of appeal evaluated all but the omnibus ground of appeal as incompetent and struck them. In reviewing the judgment by the high court against the evidence tendered in court however, the court of appeal overturned it, finding the judgment to be against the weight of evidence. It was their conclusion that if the *'trial court had critically examined the documentary evidence put before him and not merely glossed over them, it would not have escaped him that the (plaintiff's) search was conducted after the sale and the institution of the present action and not before'*. It said that the trial judge *'would also have found that some payments (by the plaintiff) were made before George Atter Asem even surrendered the property to Samuel Davidson and his siblings and further that the document given to the (plaintiff) after the purported sale, did not contain in its recitals, the story of the land and the fact that Samuel Davidson was entitled to deal with the property as required by section 23 (5) of the Land Title Registration Law 1986 (PNDCL 152)'*.

It was the opinion of the court of appeal that since it was the evidence of the plaintiff that he instituted the court suit in 2008 after failure of the tenants to attorn tenancy to him and after 1st defendant challenged his title by collecting rents from the tenants, it meant that he persisted in registering his interest knowing the challenges to his purchase of the property. The registration of the plaintiff's interest was in 2009. The court of appeal

evaluated the land title certificates granted to the vendor and the plaintiff, declared them as not being genuine instruments in respect of the disputed property because they were not captured in a record of a search on the land at the Lands Commission in September 2013.

It held itself able to interfere with the findings of facts and conclusions of the trial court because the said findings and conclusions were not borne out by the evidence. It referred to authorities such as **Bonney v Bonney [1992-93]GBR Pt 11 779, Jass Co Ltd & Another v Appau & Another [2009] SCGLR 265** on when an appellate court would interfere with findings of fact made by a trial court.

The court of appeal therefore allowed the appeal, reversed the judgment of the high court, entered judgment for the 15 defendant on all the reliefs set out in her counter claim, and ordered that on account of their finding that the land title certificates of Samuel Davidson and the plaintiff are not genuine, the said land certificates are to be expunged from the records of the Lands Registration Division of the Lands Commission.

The appeal to this court are on the following grounds:

1. The judgment of the court is not supported by the weight of evidence on record
2. The court of appeal erred in holding that that the plaintiff /respondent/appellant's land certificate was not published when the land certificate was a 'transfer of whole' – from the plaintiff's vendor's existing certificate not requiring publication
3. The court of appeal erred in holding that the plaintiff/respondent/appellant's documents are not genuine

Consideration and analysis

Ground 1 - Judgment not supported by the evidence

We have no hesitation in upholding this appeal. The umbrella issues in this suit from the high court, and which must travel with the appeal to us, since the primary ground of appeal is that the judgment of the court of appeal is not supported by the weight of evidence – are whether the deceased vendor Samuel Davidson had capacity to sell the property in issue even after the Deed of Surrender was executed in the name of the 15th defendant, the vendor and their brother; and whether the sale to the plaintiff passed legal interest in the property claimed by the plaintiff to him. In consonance with the determinations of the high court, our review answers both issues positively, contrary to the evaluations of the court of appeal that led them to overturn the judgment of the high court.

The principles underscoring the reasons for which an appellate court may disturb the findings of fact and legal conclusions of a lower trial court are established, if not closed. Such findings and reasons given in support of findings may be set aside by an appellate court if they are unsupported by the evidence on record, and the conclusions ought to be reversed in that they are premised on a wrong application of law. A long line of dicta from this court establish this position including **Re Okine (Deceased) & Dodoo & Others v Okine [2003-2004] SC GLR 582** and **Achoro v Akanfela & Another [1996-97] SCGR 209**, and **Kyiafi v Wono [1967] 463 at 466**

In the present case, we are satisfied that the findings of fact of the trial judge were supported by the evidence on record and his legal conclusions supported by the law on contracts, evidence, and property, including registration of interests in property.

With regard to the decision of the court of appeal however, we must refer to the decision of this court in **Gregory v Tandoh IV & Hanson 2010 SCGLR 971** where this court speaking through Dotse JSC reiterated the general principle that where findings of fact were based on established facts, then an appellate court is in the same position as the trial court and perfectly in a position to draw its own inferences from the established facts.

And where the findings of fact by a lower court are clearly not supported by evidence on record and the reasons in support of the findings are unsatisfactory, or where the findings of fact can be seen from the record to be perverse or inconsistent with important documentary evidence, or the totality of evidence led by the witnesses, an appellate court must feel free to interfere with the said findings of fact in order to ensure that absolute justice is done.

See also the application of these principles in **Koglex Ltd (No 2) v Field [2000] SCGLR 175**

On this score, it is clear to us that the evaluations of the court of appeal reversing the conclusions drawn from the evidence on record by the high court are rather inconsistent with important documentary evidence on record, inconsistent with the totality of the evidence and legal context of the case, and the reasons given for the contrary findings of the court of appeal are not supported by the evidence on record. We also see that the court of appeal wrongly applied principles of the law of contract, the law of evidence, the law of equity and the law of property. In the circumstances, it is our duty to straighten the inappropriate evaluations and reverse the wrong applications of law including the conclusions reached by the court of appeal.

Consideration of the court of appeal's evaluations in the law of contract, evidence and equity

Samuel Davidson's capacity to sell the property and validity of the sale of the property

The evidence that the property in issue had devolved to the vendor with the 15th defendant who is now deceased, and their brother William Davidson, described as insane by the 15th defendant was given by the 15th defendant. But beyond that assertion of joint devolution, the 15th defendant made it clear in her own sworn testimony before the trial court that she affirmed the vendor's registration of legal title to the property in his sole

name *'because she is a woman and he is a man'*, and their brother was *'insane'*. She also did not contest the vendor's registration of title in his sole name while he was alive because of the vendor's violent behavior. We will quote this swathe of testimony that she gave under cross examination:

Q. In all transactions in respect of the property Samuel Davidson have been described as the owner of the property

A. Yes, but he was not acting to sell

Q. You became aware when the tenants told you that Plaintiff had asked that rent be paid to him

A. I became aware then but I told them not to pay rent to plaintiff

Q. Did you challenge the sale to plaintiff

A. No. I challenged Samuel

Q. when Samuel applied for land certificate in his name did you challenge

A. I challenged him but he said I should not come to the house again

Q. So you stopped going to the house

A. Yes because he always has a cutlass

The above testimony under oath establishes the following legal circumstances; the 15th defendant knew of her brother's registration of legal title in his sole name and took no step to reverse it. She also became aware of the sale transaction between the vendor and the plaintiff regarding the part of the property in issue before the death of the vendor and took no steps to reverse it.

That affirmation and choice not to contest the registration of title in the sole name of the vendor in this suit binds her, raises a conclusive presumption of her acquiescence to his

right to deal with the property as the holder of legal title, and cannot be raised after his death.

Section 26 of the Evidence Act 1975 NRCD 323 provides:

Estoppel by own statement or conduct

Except as otherwise provided by law, including a rule of equity, when a party has, by his own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon such belief, the truth of that thing shall be conclusively presumed against that party or his successors in interest in any proceedings between that party or his successors in interest and such relying person or his successors in interest

In Re Asere Stol; Nikoi Olai Amontia IV (substituted by Tafo Amoni 11) v Akotia Oworsika 111 (substituted by) Laryea Ayiku 11 [2005-2006] SCGLR 637 this court pointed out that where an adversary has admitted a fact advantageous to the cause of a party in court, the party does not need any better evidence to establish that fact than by relying on such admission, which is an example of estoppel by conduct. A party cannot deny the existence of some state of facts which he had already asserted.

Following the above testimony of the 15th defendant therefore, the issue of the propriety of Samuel Davidson's registered interest ought not to be countenanced by any court of law, including the court of appeal whose judgment failed to take this salutary rule of the law of evidence into account. Having yielded her right to have the property registered in her name to her brother, the court of appeal was palpably wrong in failing to appreciate from the evidence that the vendor's capacity in law to register title in the property in his name was unchallenged by those with whom he held any undisclosed joint interest, and that capacity, with reference to the interest of 15th defendant, was conferred by the 15th defendant herself.

At best, the 15th defendant and her brother that she described as disabled, could be said to have held an equitable interest in the property through the vendor, and not much more. And as legal title holder, any challenge they had against his power to deal with the property could be directed only against the vendor, as trustee for their interest, and not a third party who acquires an interest through him.

It is also critical to point out that apart from a search result from the Lands Commission, the alleged surrender of interest in the property from George Atter Assem to the vendor, 15th defendant and their brother was not corroborated by any documentary proof of the said surrender. So in essence, the court of appeal preferred to accept the veracity of indication that such a deed of surrender existed when it had not seen any documentary evidence on the said surrender, than to accept the veracity of the transaction expressed in the MOU and corroborated through receipts up to land title registrations that were actually presented in evidence.

This preference confounds and flies in the face of the court's duty to only accept a case established by a preponderance of probabilities, and founded on sufficient evidence. See the provisions on 'Burden of Proof' in **sections 10 to 17 of the Evidence Act 1975, NRCD 323**.

Indeed, to the extent that the basket of corroborative evidence on the fact of, and consideration for the sale transaction between the vendor and plaintiff were not incredible, impossible or unacceptable in content, it was wrong of the court of appeal to reject the claims of the plaintiff that were corroborated by the documentary pieces of evidence, and to prefer the claims of the 15th defendant which stood in contradistinction to her own testimonies, and was also uncorroborated beyond the administrative search response.

We refer especially to the oft cited dictum of this court in **Manu v Nsiah [2005-2006] SCGLR 25**. We would state that because the evidence of the plaintiff on the fact of the sale was corroborated by documentary evidence, while the evidence of the 15th defendant on the 'fact' of the surrender stood uncorroborated by any documentary proof beyond the search, the court of appeal ought not to have accepted the 15th defendant's uncorroborated evidence in preference to the plaintiff's corroborated evidence. This is especially because the various pieces of evidence supporting the fact of the sale of the property were not incredible to believe, or impossible to accept.

When it comes to the 15th defendant's assertion of continued interest in the property that the court of appeal granted through her counter claims, it will be noticed that the first of her particulars of fraud did not even constitute an allegation of fraud. It reads: *'that the Deed of Surrender was granted to William Davidson, Samuel Davidson, and Martha Davidson all children of Samuel William Davidson (Deceased)'*.

This is a mere statement of what was alleged to be the state of registration of title over the contested property as at **29th June 2005**. It cannot in any wise constitute a case made for a finding of inability by the said people to divest themselves of the interest gained from the alleged surrender of title by the said George Asem.

And the second of her particulars of fraud was contradicted by herself in her testimony. It reads: *'That without the consent of William Davidson and Martha Davidson, Samuel Davidson took the Land Certificate in his sole name as if he was the sole owner of the property'*.

Clearly therefore, the court of appeal had no legal premise not to hold the 15th defendant bound by the registration of the vendor's title in December 2005, and his capacity in law to dispose of part of the property.

It is in this vein that the trial judge's holding that the plaintiff was a purchaser for value without notice of the 15th defendant's unregistered and undisclosed interest in the

property in issue, is consistent with the facts and the law. His citation of the authority of **Basare v Sakyi & Another [1987-88] 1 GLR 313** and **Abodom v Tawiah & Prasar [1958] 3 WALR 31** to arrive at the position that the plaintiff was a bonafide purchaser for value without notice of whatever equitable interest anyone else could have through the vendor who held the duly conferred legal interest in the property was proper and must be upheld.

Timings and Dates and their alleged effect on the validity of the sale transaction between the vendor and plaintiff

We note that the court of appeal went to great lengths to find fault with the dates and information on the Memorandum of Understanding (MOU) that commenced the sale transaction between plaintiff and his vendor, the receipts issued in evidence of payments made by the plaintiff, and the Indenture on the transfer of interest. The court of appeal stood on these alleged discrepancies to arrive at the conclusion that the sale transaction ought not to have been recognized by the trial court. The court noted that while the Memorandum of Understanding is dated 25th July 2006, some receipts indicated payments as early as 20th July 2006, when the MOU had not been signed. Again, some receipts tendered on payments made to the vendor by the plaintiff indicated a payer with a name different from the plaintiff. Further while the indenture on the sale is dated 13th January 2006 the formal search on the vendor's title ostensibly conducted before the sale was dated 21st October 2008

Our opinion is that the observations of the court of appeal vis a vis peculiarities regarding time and content that led to their finding of invalidity of the sale to the plaintiff were not only inconsistent with the directions of the law of contract, but also uncalled for, within the remit of the adjudication in this suit.

We will address the wrong application of law first, since the court of appeal expended a lot of ink on these alleged inconsistencies to arrive at their conclusion that the judgment of the trial high court was against the weight of evidence.

In determining whether or not parties to a transaction have entered into a valid contract, the law applies an objective test as a fundamental principle. What is the reasonable meaning of the words and conduct of the parties as opposed to what someone alleges to be their intention?

It is understood that the documentation on a contract need not be in tight ship shape in terms of date and recitals or even be in any particular form for a contract to be binding. Human behavior is not perfect. Thus parties may enter into a contract on a day, and decide to post date or back date their record of the contract. Parties to a contract may also decide to allow third parties to pay or receive part of the consideration for a transaction on their behalf. **Sections 5 and 6 of the Contracts Act 1960, Act 25** provide for third party rights in contracts and even make such rights enforceable by the third parties.

It is therefore not the place of a court to determine the fine contours of a contract, or make or unmake a contract for parties, especially when the parties to the contract are not themselves seeking to set aside the contract on any set of grounds. The duty of a court is to enforce an uncontested transaction by operation of the doctrine of sanctity of contracts.

Since there was evidence of capacity in the vendor, consideration given by the plaintiff and accepted by the vendor, and intention to create legal relations through the documentations such as the MOU, receipts, and Indenture, the only conclusion that should have been reached regarding the sale transaction between the vendor and plaintiff is that it was a valid contract between them. The lack of chronology and certain recitals in the Indenture could carry no legal import on the validity of a sale in which the vendor

had capacity to sell, received consideration for the sale, and the parties fulfilled the basic incidents of intention to create legal relations.

But beyond that, the court of appeal should have appreciated that the 15th defendant presented no counterclaim to set aside the sale from the vendor to the plaintiff on account of irregularity in the transaction. Her counter claims were centered on the lack of capacity of the vendor to sell the part of the property in issue to the plaintiff without the consent and authorization of other interest holders, and nothing more. Her attacks against the registration of interest of her dead brother were grounded on the two particulars of fraud she set out. If his capacity to register the title in his sole name could not be impeached as has been shown, then the court's enquiry ought to have stopped there.

It is not the place of a court to extract new issues to resolve and use them to find that a judgment is against the weight of evidence. The seminal directions from **Dam v Addo [1962] GLR 200** continue to be relevant. This admonishment is even stronger in the present case because the other party to the sale contract in issue was dead by the time the writ was issued, and unavailable to confirm or explain why certain activities pre-dated other. It is a strong principle of law that when a court is called on to evaluate matters relating to acts of a deceased person, the evidence must be dealt with, with a lot of caution. See **Fosua & Adu-Poku v Adu-Poku Mensah [2009] SCGLR 349**; **Bisi v Tabiri alias Asare [1987-88] 1 GLR 360 at 409**, and **In Re Kra (Decd); Yankyeraah v Osei-Tutu [1989] 1GLR 638 at 662**

The 15th defendant's counter claims read:

- a. A declaration that house number 891/2 Kotobabi is a family property of the Davidson family and **never sold to plaintiff by the family**
- b. That **any purported sale of the said house by 1st defendant's husband alone is without authority** and must be declared null and void

- c. A declaration that **the land certificate taken in the name of 1st defendant's husband as the sole owner of the family property is a nullity**
- d. An order directed at the Land Title Registry **to cancel from their register the said Land Certificate in the name of 1st defendant's husband**
- e. Any further order that the court may deem fit to make to restore the family property to Davidson family **(all emphasis supplied by us)**

We see that in evaluating the alleged discordance in the dates and records of the documentation before the court, the court of appeal had clearly lost view of the legal issues the courts were to resolve in the claims of the plaintiff, and counter claims of the 1st defendant case. To the extent that the 15th defendant was not the vendor and was not alleging a failure in the contract of sale on account of the records on the sale, the evaluation carried on by the court of appeal from pages 17 to 20 of their judgment regarding the evidence on the sale from the vendor to the plaintiff had no foundation in the case before it.

Validity of the registration of title by the vendor and the plaintiff

As grounds for finding a lack of genuineness and so, invalidity in the records of registration by the plaintiff and his vendor at Land Title Registry, the court of appeal decried the evidence that the Indenture on the sale to the plaintiff predates the Memorandum of Understanding between the vendor and the plaintiff for the sale of the property; that the plaintiff's agent conducted a search on the land on 21st October 2008 which was tendered as exhibit D and this date was well after the sale transaction which was first recorded in a Memorandum of understanding dated 25th July 2006; that the Indenture did not reflect the exact portion of land being sold to plaintiff; that the Indenture did not have a recital on the history of ownership on the land contrary to **section 23 of Land Title Registration Law 1986, PNDCL 152** and the registrations by the

vendor and plaintiff at the Land Title Registry were not captured in a search at Lands Commission in 2013

It is on these alleged discrepancies that the court of appeal arrived at the conclusion that the registrations of the title of the vendor and the plaintiff were not genuine and so ordered them to be expunged from the Land Title Register.

Clearly, none of these evaluations can pass muster in law. As has already been pointed out, this case raised no issue regarding the regularity of the documentations on the property sale for adjudication, to warrant the finding of fault with the dates and contents of the various documents that recorded the transaction. And even if they were raised, they could not affect the legality and validity of the sale transaction, as has already been determined.

The failure of a search at Lands Commission in 2013 to capture the registrations by the vendor and plaintiff at the Land Title Registry in 2008 and 2009 respectively cannot also ground the invalidation of registration of interest in land. We think that the reliance on a search result to ground a finding that a land title certificate cannot be authentic is a highly unfortunate evaluation. Registrations of title under the **Land Title Registration Law 1986, PNDCL 152** (now repealed by the **Land Act 2020 Act 1036**, with all acts done thereunder saved by **section 282 of Act 1036**) provide conclusive evidence of interest in land, while a search result is only an administrative response to an enquiry with no binding effect. **Section 18** and other sections of **PNDCL 152** provide:

18. Conclusiveness of the Register.

(1) The land register shall be conclusive evidence of title of the proprietor of any land or interest in land appearing on the register.

PART IV—EFFECT OF REGISTRATION

Section 43—Indefeasibility of Title.

(1) Subject to subsections (2), (3) and (4) of this section and section 48 of this Law, the rights of a registered proprietor of land whether acquired on first registration or acquired subsequently for valuable consideration or by an order of a Court, shall be indefeasible and shall be held by the proprietor together with all privileges and appurtenances attaching thereto free from all other interests and claims whatsoever.

(2) Any such rights of a proprietor shall be subject to any interests or other encumbrances and conditions, if any, shown in the land register.

(3) Nothing in this section shall be deemed to relieve a proprietor from any duty or obligation to which he is otherwise subject as a trustee.

(4) The registration of any person as the proprietor of land or an interest in land shall not confer on him any right to minerals not already vested in him

Section 50—Entries to Constitute Actual Notice.

Any proprietor who acquires any land or interest in land shall be deemed to have had notice of every entry in the land register which he was entitled to inspect at the time of acquisition.

Registrations of land title in the Land Title Registry are therefore not light and trifling records that can be easily overturned without recourse to appropriate examination of any competing interest. They lead to legal rights that were to be overturned only through resort to judicial proceedings commenced before the adjudication committee set up pursuant to **section 22 (3) of the law**.

Section 22—Establishment of Land Title Adjudication Committees.

(1) There shall be established in a registration district a Land Title Adjudication Committee (in this Law referred to as "the Adjudication Committee").

(2) Every Adjudication Committee shall consist of a chairman and two other persons all of whom shall be appointed by the Secretary on the advice of the Board.

(3) There shall be referred to the Adjudication Committee either by the Land Registrar or any interested person any dispute relating to the registration of land or interest in land.

(4) The Adjudication Committee shall determine any dispute referred to it under subsection (3) of this section.

The court of appeal also purported to evaluate the root of interest expressed on the land certificates of the vendor within the light of **section 23 (5) of PNDC Law 152** and concluded that the vendor's registration failed to reflect 'good title'. It reads

Section 23—Claims.

(1) Subject to the provisions of sections 13 and 22 of this Law any person who claims to be a proprietor of any land or interest in land situated in a registration district shall make an application setting forth his claim in the manner and within the period specified in the notice given under section 11 of this Law.

(5) In this section "good title" means, in any case in which a title is founded on documentary evidence, a title which consists of or commences with— (a) any enactment; (b) a grant or conveyance from the State; (c) a grant, conveyance, assignment or mortgage which is more than thirty years old and establishes that a person is entitled to deal with the land; (d) a final judgment of a Court of competent jurisdiction.

When one looks at the vendor's land title certificate as a matter of fact, there is a record on the source of his interest. It reads: 'proprietor of an estate of freehold'. This was not title founded on 'documentary evidence' as provided for under section 23 of PNDCL 152, and therefore even the reference to section 23 (5) by the court of appeal was wrong.

An estate of freehold falls under section 19 of PNDCL 152

Section 19—Who May be Registered as Proprietor of Land; Registrable Interests.

(1) A person shall be registered as proprietor of land if in relation to that land—

(a) he is the allodial owner, that is to say, he holds it under customary law in such manner that he is under no restrictions on his rights of user or obligations in consequence of his holding other than any such restrictions or obligations imposed by the law of Ghana generally; or

(b) he holds a customary law freehold therein, that is to say, he holds rights of user subject only to such restrictions or obligations as may be imposed upon a subject of a stool or a member of a family who has taken possession of land of which the stool or family is the allodial owner either without consideration or on payment of a nominal consideration in the exercise of a right under customary law to the free use of that land; or

(c) he holds the land for an estate of freehold vested in possession or an estate or interest less than freehold according to the rules generally known as the rules of the common law; or

(d) he holds a leasehold interest, that is to say, he holds an interest under a lease for a term of years of which more than two years are unexpired;

(e) he holds a lesser interest in land, that is to say, he holds an interest in land by virtue of any right under contractual or share cropping or other customary tenancy arrangement.

Conclusion

From whichever angle that the judgment appealed against is analyzed, it fails the test of law and must be reversed. The defense of the 15th defendant to the plaintiff's action had no basis in law, and her counter claim had no basis in law, after her accession to her brother's registration of their joint interest in his sole name.

As stated at the commencement of this judgment, this case reflects the sad effect of delays in justice delivery on the effort of citizens to invest in economy of Ghana. Though the

plaintiff made the substantial investment in 2005, with the intention of obtaining profit therefrom, he has had to wait eighteen years for this suit to be settled in the court system so that he can enjoy the fruit of his investment.

The appeal is allowed, the judgment of the court of appeal is hereby set aside and the judgment of the high court dated 16th May 2014 is restored. The Land Title Division of the Lands Commission as currently constituted is ordered to restore the plaintiff's registration of his interest.

We award costs of 10,000 Ghc to the appellant against the respondent.

**G. TORKORNOO (MRS.)
(JUSTICE OF THE SUPREME COURT)**

CONCURRING OPINION

AMEGATCHER JSC:-

I have had the opportunity of reading the well-researched opinion of my learned and respected sister, Torkornoo JSC. I agree with her analysis and conclusion that the appeal be allowed. However, because the Court of Appeal set aside all the two land certificates issued to the grantor of the plaintiff and the plaintiff himself and further the ease with which trial courts set aside such land title certificates, I have been compelled in this concurring opinion to give an exposition of the law on the effect of title registration, hoping that it will benefit the legal profession, land administrators, property developers, and members of the general public interested in acquiring landed property.

Many developing countries consider land registration and titling to be a high priority in their quest to develop their economies. Transitional economies have been particularly interested in land registration and titling, as they endeavor to become more market-based. Land title registration is also widely considered a great way to secure land rights and avail lands for socioeconomic development. There is convincing evidence from around the world that land registration and titling has led to better access to formal credit, higher land values, higher investments in land, and higher output/income. However, the Supreme Court has observed with concern how in recent times, land certificates are set aside in a casual manner thereby undermining the rationale behind the introduction of the title registration system.

In this appeal, the learned trial judge after his analysis of the evidence concluded that:

“Under the Land Registry Act, Act 152, the law enjoins the Land Title Registry to publicise application for registration in a newspaper of national circulation. This publication is mandatory and was duly done. With this publication the plaintiff’s interest in the property in dispute was advertised so that other persons with interest in the property would mount a challenge. Under cross-examination the 15th defendant said she did not see the publication. I hold that the Land Certificate issued to the plaintiff was regular. It is worthy of note that the transaction between Samuel Davidson deceased and the plaintiff was witnessed by William Davidson, brother of Samuel Davidson as well as the 15th Defendant.”

On appeal to the Court of Appeal, the learned justices at the conclusion of their judgment opined:

“In the instant case, the Respondent has tried to show that he made investigations and was satisfied that the property was registered in the name of his vendor before

proceeding with the purchase. This cannot however be true having regard to the analysis concerning the dates on some of the receipts tendered in support of the purchase, which were made even before the issue of the Land Title Certificate, exhibit E, bearing the name Samuel Davidson..... From our analysis of the evidence given before the Court, in our duty to rehear the matter under rule 8(1) of C.I. 19, we are satisfied that the conclusion reached by the trial judge was as a result of his failure to properly evaluate the entire evidence put before him, and his failure to give sufficient consideration to the evidence led on behalf of the appellant. If he had not been carried away by the account of the Respondent, but critically examined the documents he was relying on in proof of his claim to the dispute property, his conclusion would have been different. As the findings and conclusions made by the trial Judge are not supported by the evidence led at the trial, this Court is duty bound to interfere with such findings and conclusions. Accordingly, the appeal is allowed and the judgment of the trial Court, dated 16th May 2016, is hereby set aside and in its stead, judgment is entered for the appellant in respect of the reliefs in her counterclaim. Even though this court has found that the documents contained in exhibits E and F are not genuine, out of abundance of caution, they are to be expunged from the records of the Lands Registration Division of the Lands Commission."

On the strength of the Court of Appeal judgment, part of which has been quoted above, the two Land Certificates issued to the plaintiff's vendor and the plaintiff were set aside as prayed by the 15th defendant in her counterclaim.

A History of Land Registration

My Lords, a little bit of history will guide us all to understand the rationale behind the introduction of land title registration in this jurisdiction. It was Sir Robert Torrens,

Premier of South Australia in 1858, in a bid to address the defectiveness of the deeds registration system who conceptualized a new system whereby a centralized registry of all land recorded the transfers of interests in property and the names of the said land owners. The rationale was that, with the registration of these interests in land, the title would be deemed *indefeasible*. The system was such a success and eventually spread into England and other parts of the world. This is what has now become known as the Torrens title system which is in use in Canada, parts of Europe and commonwealth countries including Ghana.

In Ghana, the Lands Registry 1962 Act (Act 122) supported deeds registration whereby the registrar registered written conveyances executed between parties but did not verify the validity of the said transactions. Although registration acted as proof of a transaction by the parties, it was not conclusive evidence of a transfer of title to the transferee. Thus, the operation of the Deeds Registry helped to identify transactions related to land but failed to confer a title on the individual who held the deed. Cadastral maps which accompanied such deeds were also frequently inaccurate or, in some instances, not required and thus missing. Therefore, the system failed to address the issues of multiple claims to the same parcel of land.

To address these challenges, legislative reforms were initiated leading to the enactment of the Land Title Registration Act 1986 (PNDCL 152). The object of PNDCL 152 was to provide machinery for the registration of land and interests in land. With land title registration, registration is only effected if the Land Registrar is satisfied that the transferor actually has legal title to the property and there are no encumbrances in granting title to the transferee. Essentially, it was envisaged that certainty will be given to title in land thereby facilitating simple and economical land transactions. The Land Title Registration Act, 1986 (PNDCL 152) was repealed by the Land Act, 2020 (Act 1036).

The new Act reproduced certain important features of PNDCL 152 and retained the key provisions incidental to the concept of land title registration. More specifically, the provisions on the conclusiveness of the register and indefeasibility of title were maintained with nominal but key modifications.

The law on the conclusiveness of the register and indefeasibility of title

An important feature in the system of land title registration is the **‘conclusiveness of the register’** and **‘indefeasibility of title.’** Both have been highlighted under sections 111 and 119 of Act 1036 respectively

Section 111 of Act 1036 reads:

- “(1) **An entry in the land register shall be conclusive evidence of title of the holder of the interest specified in the land register.**
- (2) Subsection (1) does not affect any right or interest in land acquired under the law relating to prescription or the Limitation Act, 1972 (N.R.C.D. 54) except that where title to registered land has been acquired under the law relating to prescription or the Limitation Act, 1972 (N.R.C.D. 54), the registered holder of the right or interest shall hold the land in trust for the person entitled.
- (3) A person who claims to have acquired land or an interest in land under subsection (2), shall apply to the Regional Lands Commission through the Regional Lands Officer for an appropriate amendment

to be made to the land register upon the payment of a prescribed fee”.

Section 119 of Act 1036 also reads as follows:

- “(1) **Subject to subsections (2), (3) and (4) and to section 118, the rights of a registered proprietor of a parcel of land whether acquired on first registration or subsequently or by an order of a Court are indefeasible and shall be held by the proprietor together with the rights and privileges attaching to the parcel of land free from all other interests and claims.**
- (2) The rights of a proprietor are subject to the interests or other encumbrances and conditions, shown in the land register.
- (3) This section does not relieve a proprietor from a duty or an obligation to which the proprietor is otherwise subject as a trustee.
- (4) The registration of a person as the proprietor of land or a holder of an interest in land does not confer on that person a right to minerals in the natural state in, under or upon, the land”.

The law makes it clear that the conclusiveness of the land register is a key feature of the indefeasibility of title. The principle of indefeasibility is the foundation of the Torrens system of title. **“It is a fundamental pillar of the Torrens title system, allowing full reliance to be placed on and certainty given to the dealings and interests in the land registered on its title without enquiry”.** Theodore Ruoff, a former Chief Registrar of the English Land Title system in his book **“Theodore BF Ruoff, An Englishman Looks at the Torrens system (Sidney: the Law Book Co of Australasia Pty 157)** describes the paramount features of the Torrens system and indefeasibility as being underpinned by three principles.

Firstly, is the Mirror Principle where Ruoff states **“the proposition that the register of title is a mirror which reflects accurately and completely and beyond all argument the current facts that are material to a man’s title”**. The second is the Curtain Principle which provides that **“the register is the sole source of information for proposing purchasers, who need not and, indeed, must not concern themselves with trusts and equities which lie behind the curtain”**. The last is the Insurance Principle which **“warrants that if the mirror of title gives a specious or an incomplete reflection by reason of which someone incurs a loss that cannot otherwise be made good, the State will recompense him. When this happens there is a conversion of a legal right into cash, for the person deprived is to be put in the same situation, so far as money can do it, as if the wrongful act complained of had not been done”**.

C. B. Aryee, the first Chief Registrar of Lands under PNDCL 152 in a lecture delivered to the Ghana Bar Association 7th Workshop on Continuing Legal Education held on 21st July 1994 and published in Lectures in Continuing Legal Education 1993-1994 page 213 observed on the conclusiveness of the Register as follows:

“An important feature in the system of land title registration is the ‘conclusiveness of the register’ and ‘indefeasibility of title.’ Sections 18(1) and 43 of the Land Title Registration Law, 1986 contain elaborate provisions relating to the conclusiveness of the land register and indefeasibility of title.....It will be observed from the above statutory provisions that the register operates not merely by declaring good a title found to be so, but confers the title stated, notwithstanding that, but for registration, the registered owner would have no title at all.”

These principles underpinning the concept of indefeasibility of title leave no doubt about the certainty of a registered owner’s title to land. Due to this principle of indefeasibility, purchasers of land were confident in placing full reliance on the title registry to ascertain the ownership of their vendor’s property.

Throughout the development of the land registration process across several jurisdictions, Courts all over the world have had cause to interpret the underpinning principles of indefeasibility of title. One of the earlier cases that addressed this concept is the Canadian Supreme Court case of **C.P.R. vrs Turta**, [1954] S.C.R. 427. Estey J in discussing the effect of land title under the Land Titles Act of 1906 held:

“The foregoing preamble and quotations, as well as others to similar effect, emphasize that the Torrens system is intended "to give certainty to the title" as it appears in the land titles office..... That one who is named as owner in an uncanceled certificate of title possesses an "indefeasible title against all the world", subject to fraud and certain specified exceptions,That such a system may from time to time impose hardships is obvious and, therefore, in addition to preserving actions against the wrongdoer, the legislature has provided an assurance fund out of which, in appropriate cases, compensation may be paid to those who suffer a loss.”

In **Frazer vs. Walker** [1967] 1 ALL ER 649 at 651-652 the Privy Council, discussing sections 62 and 63 of the Land Transfer Act, 1952 (No 52 of 1952) (New Zealand) which is comparable to our sections 111 and 119 on conclusiveness of title and indefeasibility, said:

“Even if non-compliance with the Act’s requirements as to registration may involve the possibility of cancellation or correction of the entry.....registration once effected must attract the consequences which the Act attaches to registration whether that was regular or otherwise.....It is in fact the registration and not its antecedents which vests and divests title.....it is these sections which, together with those next referred to, confer on the registered proprietor what has come to be called "Indefeasibility of title." The

expression ... is a convenient description of the immunity from attack by adverse claim to the land or interest in respect of which he is registered, which a registered proprietor enjoys. This conception is central in the system of registration”.

The concept is no different under Ghanaian law. According to the memorandum of PNDCL 152, Section 43 (which has been reproduced in section 119 of Act 1036) indefeasible title is defined to mean **“A complete answer to all adverse claims on mere production of the lands register, and a person acquiring title from a registered proprietor has, on being himself registered, a conclusive title against the whole world.”**

The Supreme Court in the case of **Brown v. Quarshigah (2003-2004) SCGLR 930**, per Kludze JSC held:

“Under sections 43(I)-(4) and 48 of the Land Title Registration Law, 1986 (PNDCL 152), the rights of a registered proprietor of land acquired for valuable consideration or by an order of a court shall be indefeasible and shall be held by the proprietor together with all privileges and appurtenances attaching thereto free from all other interests and claims whatsoever. An indefeasible title meant a complete answer to all adverse claims on mere production of the certificate”.

From the foregoing, it is evident that it is the effect of the registration of an interest in land which confers title and not the mere transfer of interest via a conveyance or deed from the transferor to the transferee. In fact, it is not a system of registration of title but rather a system of title by registration.

This position was also advanced by Barwick CJ in **Breskvar v. Wall (1971) 126 CLR 376 at 385** where it was held:

“The Torrens system of registered title of which the Act is a form is not a system of registration of title but a system of title by registration. That of which the certificate of title describes is not the title which the registered proprietor formerly had, or which for registration would have had. The title it certifies is not historical or derivative. It is the title which registration itself has vested in the proprietor”.

From the text of the Act and decided cases by the courts, once title has been vested in a proprietor, that is a guarantee by the state of title to the holder of the certificate and to all other persons who want to deal with the owner. An indefeasible title to land essentially suggests that title in a registered property cannot be defeated, cancelled, voided, or nullified by any errors or omissions in the title. Accordingly, once a proprietor has been entered into the land register, no claim inconsistent with the title on the register can be enforced against the proprietor of the said land. As such, where two or more people are litigating over land and one person has a registered title over the disputed land, his title cannot be challenged even if his conveyance was void or if there were defects with his lessor's title.

In Barwick CJ in **Breskvar v. Wall (supra)** held:

“Consequently, a registration which results from a void instrument is effective according to the terms of the registration. It matters not what the cause or reason for which the instrument is void. The affirmation by the Privy Council in *Frazer v Walker* of the decision of the Supreme Court of New Zealand in *Boyd v Mayor*,

& Co of Wellington now places that conclusion beyond question. Thus, the effect of the Stamp Act upon the memorandum of transfer in this case is irrelevant to the question whether the certificate of title is conclusive of its particulars.”

Again, Lord Watson in **Gibbs v. Messer [1891] A.C. 248**, a case from Australia, stated at p. 254 that:

“The object is to save persons dealing with registered proprietors from the trouble and expense of going behind the register, in order to investigate the history of their author's title, and to satisfy themselves of its validity. That end is accomplished by providing that everyone who purchases, in bona fide and for value, from a registered proprietor, and enters his deed of transfer or mortgage on the register, **shall thereby acquire an indefeasible right, notwithstanding the infirmity of his author's title.**”

Again, from the foregoing, it is evident that the issuance of a land certificate to a proprietor of land constitutes his evidence of title regardless of any earlier incidents of a void or defective instrument. The fact that a registered proprietor's lease, sublease, assignment, etc. was procured by any kind of fraud will not suffice to challenge his title to land. As such, the general principles of fraud vitiating everything will not apply herein to title registration. It is only very limited types of fraud that will suffice in the cancellation of a registered entry on the land register. It is for this reason that it is critical for the system of registration of lands to be handled delicately and diligently by all stakeholders in the land registration system. Registration should only be effected after the Land Registrar has satisfied himself beyond any doubt that the proprietor actually has a good title.

There is no doubt that Act 1036 gives wide powers to the Land Registrar in the performance of his duties, including refusing to proceed with registration where the Land Registrar has reasonable cause to believe that the Republic or a person who is a minor or lacks the capacity to contract or who is absent will be adversely affected. The Land Registrar may also refuse registration where he has reasonable cause to believe that there is fraud or improper dealing with the land. The Land Registrar is also barred from registering large-scale dispositions of stool, skin, clan, or family land unless the Regional Lands Commission has granted consent taking into account certain prescribed circumstances.

In addition, under section 106 of Act 1036, the Land Registrar is mandated to reject an application for first registration if:

- a) the instrument deals with the land or part of the land in a manner inconsistent with an instrument previously executed whether by the same grantor or a predecessor-in-title or by any other person;**
- (b) on the face of the records or from common knowledge, the grantor named in the instrument does not appear to a Land Registrar to have been entitled to deal with the land as the instrument purports to have done;**
- (c) the instrument was made in contravention of, or is void by virtue of, an enactment;**
- (d) the instrument contains an interlineation, a blank, an erasure or an alteration not verified by the signature or initials of the persons executing the instrument;**
- (e) the Land Registrar is not satisfied with the statutory declaration submitted in support of the application; or (f) the instrument was made in contravention of a prior registration**

These powers in the hands of the Land Registrar demonstrate the seriousness attached to title registration in Ghana. The provisions governing registration were enacted to ensure that wrong proprietors and criminals are not registered as owners to the detriment of the real owner. Therefore, once all the processes are complied with and the necessary precautions applied, it is presumed that the title has been properly conferred. The whole essence of the reforms to introduce land registration in Ghana was to give finality to purchasers of land and security against adverse claims which the deed registration system could not guarantee. Consequently, when a claim is being made against a registered proprietor of the land, it is enough for him to wave his land certificate as a defence to any adverse claims. However, as robust as the system was engineered to be, it is a human institution, and as such the indefeasibility of title is subject to certain overriding interests and exceptions. Exceptions such as fraud, mistake, omission and other vitiating factors actively perpetuated by the proprietor may lead to the rectification of the land register.

Rectification of the Land Register

The law makes it quite clear that even though indefeasibility of title is guaranteed by the state, it is not an absolute concept, and the land register is capable of being rectified by the Land Registrar or the Court. In section 194 of Act 1036, the Land Registrar may rectify the land register if the register or the instrument for registration contains clerical errors, omissions or matters that do not materially affect the interests of the proprietor, the interested persons consents to the rectification or on a survey verified and approved by the Director of Survey and Mapping Division, a dimension or an area shown in the land register is found to be incorrect.

Additionally, Section 195 of Act 1036 sets out the basis for rectification of the Land Register by the Court as follows:

(1) Subject to subsection (2), the Court may order the rectification of the land register by directing that a registration be cancelled or amended where the Court is satisfied that the registration has been obtained or made by fraud, mistake or other vitiating factors.

(2) A court shall not order a rectification of the land register, so as to affect the title of a proprietor who has acquired land or an interest in land for valuable consideration unless

(a) the omission, mistake, fraud or other vitiating factor was caused by the Lands Commission.

(b) the proprietor had knowledge of the omission, mistake, fraud or other vitiating factor in consequence of which the rectification is sought; or

(c) the proprietor had caused the omission, mistake, fraud or vitiating factor or substantially contributed to the omission, fraud, mistake or vitiating factor.

In effect, the land register cannot be rectified to affect the title of a proprietor who has acquired an interest in land for valuable consideration unless it falls within the limited provisions as stated above. Furthermore, the above section is an expansion on section 122 of PNDCL 152 and now includes rectification of the register if the omission, mistake, fraud, or other vitiating factor was caused by the Lands Commission and the proprietor had knowledge of it. This modification and inclusion is progressive on the part of the lawmaker as some of the land cases filed in the courts have encountered various instances of infractions by officials of the Lands Commission. The evidence from many appellate records of appeal confirms, regrettably, that the very body that has been mandated by

law to ensure an efficient registration system has over the years succeeded in causing confusion and chaos by its officials taking an active part in reckless and fraudulent registration. This practice has resulted in the issuance of land certificates to more than one individual over the same parcel of land, a mischief the law was passed to cure. Not surprisingly, the activism of the courts in invoking their general equitable jurisdiction to set aside such registrations.

What has also been challenging to the courts when called upon to set aside such registration is the requirement that the register may only be rectified if the proprietor had actual knowledge of, caused, or substantially contributed to the omission, mistake, fraud, or any vitiating factor. In recent times, we have noted the trial Court's penchant for ordering the rectification of the record on grounds of fraud, specifically, fraud that cannot be attributed to the participation or substantial contribution of the registered proprietor of the land. It is important to correct this erroneous position that fraud of any kind will suffice for the rectification of the land register.

Effect Of Actual Fraud On Title Registration

What type of fraud will qualify to rectify the land register and set aside a land title certificate? The conduct which constitutes fraud must be **"actual fraud, thus, dishonesty of some sort, not what is called constructive or equitable fraud."** See **Assets Co Ltd v. Mere Roihi [1905] AC 176 at 210**. In this case, the English Court of Appeal held that:

"Further, it appears to their Lordships that the fraud which must be proved in order to invalidate the title of a registered purchaser for value, whether he buys from a prior registered owner or from a person claiming under a title ... must be brought home to the person whose registered title is impeached or to his agents. Fraud by persons from whom he claims does not affect him unless knowledge

of it is brought home to him or his agents. The mere fact that he might have found out fraud if he had been more vigilant and had made further inquiries which he omitted to make, does not of itself prove fraud on his part. But if it be shown that his suspicions were aroused, and that he abstained from making inquiries for fear of learning the truth, the case is very different, and fraud may be properly ascribed to him."

Sir Louis Davies C.J., in **Union Bank of Canada and Phillips v. Boulter Waugh Ltd., (1919) 58 Can. LII 84 (SCC), S.C.R. 385.**), referring to the Saskatchewan statute, quoted with approval from the New Zealand case of **Fels v. Knowles (1906)** at 387 that:

"The cardinal principle of the statute is that the register is everything and that, except in cases of actual fraud on the part of the person dealing with the registered proprietor, such person, upon registration of the title under which he takes from the registered proprietor, has an indefeasible title against all the world."

Again, in the case of **Brown v. Quarshigah (supra)**, the Supreme Court per Kludze JSC held:

"Under section 122(1) of the Land Title Registration Law, 1986 (PNDCL 152), a court might, in its discretion, order cancellation of land certificate issued pursuant to the Law on grounds of fraud or mistake materially affecting the interest of the proprietor. And by fraud was meant dishonesty. However, under section 122(2) of PNDCL 152, the register "shall not be rectified ... unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought or had himself caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default." In the instant case,

the requisite fraud had been established by the defendant to enable the court to order rectification of the Land Register by removing the plaintiff's lease from it. *Le Lievre v Gould* (1893) 1 QB 491 at 498 and *Derry v Peek* [1889] 14 App Cas 337, HL cited.”

Due to the nature of responsibility conferred on the Land Registrar by Act 1036, it is presumed that there has been due care and regard to compliance with the laws on registration and that certainty about the proprietor’s title has been guaranteed. On that basis, it is only actual fraud on the part of the proprietor or the Lands Commission that will suffice to rectify the register.

Remedy When Title is Lost Due To Improper Registration Of Another By Land Commission Officials

Because the land certificate issued to a proprietor constitutes State Guarantee Title to the land, an actual owner who lost his land or is deprived of or prevented from acquiring an interest because of a decision by the Land Registrar which cannot be rectified under sections 194 and 195 of Act 1036 is entitled to be indemnified by the Republic. The category of persons who can be indemnified are:

- “(1) A person who suffers damage from rectification of the register;**
- (2) A person who suffers damage from any mistake or omission in the register which cannot be or is not ordered to be rectified;**
- (3) A person who suffers damage from any error in a certified copy of or extract from any document or plan.**

However, indemnity would not be paid if the person claiming it caused or substantially contributed to the damage by fraud or negligence. The indemnity is also not payable to a person who derives title otherwise than under a registered disposition made bona fide for valuable consideration from a person who caused or substantially contributed to the damage. Additionally, if the loss or damage of a submitted application under section 108, or an omission, a mistake, a fraud, or any other vitiating factor leading to the rectification was caused by the Lands Commission, the Lands Commission shall indemnify a person who suffers a loss as a result of the rectification. See section 196 of Act 1036.

The amount of indemnity payable shall not exceed where the land register is not rectified, the value of the land, interest or right at the time when the loss or damage, the omission, mistake, fraud or other vitiating factors which caused the damage occurred; or (b) where the land register is rectified, the value of the land, interest or right in the land immediately before the rectification. The law also provides that a claim for indemnity has to be made to the Lands Commission by application and where sums of money are paid by way of indemnity, the Lands Commission may by suit or otherwise recover the amount paid from a person who had by fraud or negligence caused or substantially contributed to the loss, and (b) enforce any express or implied agreement or other rights which the person who is indemnified would have been entitled to enforce in relation to the matter in respect of which the indemnity has been paid. See sections 197, 198 and 199 of Act 1036.

This indemnity will come at a great cost to the state. However, section 278 grants immunity to officers of the Lands Commission for acts done in good faith in the discharge of their duties or the exercise of the powers of the officer under the Act. Since the State bears the liability of payment of compensation in the first instance, steps should be taken by the State to hold its officials who act recklessly, deliberately and negligently by recovering the amounts paid to claimants pursuant to Section 199 of Act 1036. Criminal

prosecution of such officials will also serve as a deterrent in the collusion business and compel all such state officials to sit up and ensure that recklessness in compiling the register is eliminated completely or reduced to the barest minimum.

In conclusion, in this appeal, the evidence adduced did not satisfy the actual fraud test on the part of the plaintiff. Further, the historical antecedents of the alleged fraud (if any) did not affect the land certificate issued to the plaintiff.

N. A. AMEGATCHER
(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH
(CHIEF JUSTICE)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTey

(JUSTICE OF THE SUPREME COURT)

COUNSEL

F. K. QUARTEY ESQ. FOR THE PLAINTIFF/RESPONDENT/APPELLANT.

CLETUS ALENGAH ESQ. FOR 15TH DEFENDANT/APPELLANT/RESPONDENT.