IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: BAFFOE-BONNIE JSC (PRESIDING)

OWUSU (MS.) JSC

LOVELACE-JOHNSON (MS.) JSC

PROF. MENSA-BONSU (MRS.) JSC

ASIEDU JSC

CIVIL APPEAL

NO. J4/29/2022

26TH APRIL, 2023

1. THEOPHILUS TEIKO TAGOE

2. THE NUNGUA STOOL — **PLAINTIFFS/RESPONDENTS/ RESPONDENTS**

VS

1. DR. PREMPEH

2. BENJAMIN AMARTEY MENSAH — **DEFENDANTS/APPELLANTS/ APPELLANTS**

JUDGMENT

ASIEDU JSC:-

(1). INTRODUCTION:

My lords, there are basically two major issues to be determined in this appeal and, these are: whether the land in dispute in this matter falls in the lands generally referred to as the Adjiringano lands or whether it forms part of the lands generally known as Tesa lands. The Defendants/Appellants/Appellants (hereafter referred to as the Defendants) claim that the land in dispute is part of Tesa lands whiles the Plaintiffs/Respondents/Respondents (subsequently to be known as the Plaintiffs) also claim that the disputed land is part of Adjiringano lands. The second issue is whether or not the witness for the 2nd Defendant herein had the right to testify as a witness in the matter before the trial High Court.

(2). FACTS:

The 1st Defendant, Doctor Prempeh claims that he acquired the land in 1993 or thereabout for the purpose of building a clinic known as Adehye Clinic. He was given an indenture in 1995. According to him, whiles on the land, he observed an encroachment by the 1st Plaintiff who broke a wall which he had erected on the land. The 1st Defendant initially acquired the land from the Ashong Mlitse family but was subsequently directed to the Numo Kofi Anum family, represented by the 2nd Defendant, from whom he re-acquired the same parcel of land between 2003 and 2004. According to the 1st Defendant, the land belongs to the Numo Kofi Anum family of Tesa and Teshie. The 1st Plaintiff says that he acquired the land in question from the Nungua stool, particularly from the Gborbu Wulomo in about 2007 and immediately went into possession. 1st Plaintiff says that he also built a wall around his land, but the 1st Defendant broke down the wall and entered his 1st Plaintiff's land. The 1st Plaintiff therefore instituted an action at the High Court,

Accra for a declaration of title to the land, recovery of possession, damages for trespass and perpetual injunction against the 1st Defendant. Later, the 2nd Plaintiff, the Nungua stool, the grantor of the land joined the suit whiles the 2nd Defendant who granted the land to the 1st Defendant also joined the suit, both to protect their respective titles to or interests in the land. The 2nd Plaintiff claims a declaration of title to the land, recovery of possession, perpetual injunction, damages for trespass and an order for the cancellation of the Defendant's documents registered with the Lands Commission. The 2nd Defendant also counterclaimed for a declaration of title to the whole of Tesa lands as well as perpetual injunction, general damages for trespass and costs.

(3). DECISION OF THE HIGH COURT:

After the close of the case at the High Court, the learned judge found that the land in question falls within the lands known as Adjiringano lands. The Judge also found that Adjiringano had been declared, in the case of Empire Builders vs. Topkings, to be owned by the Nungua stool through settlement. The judge therefore entered judgment in favour of the Plaintiffs against the Defendants and consequently dismissed the 2nd Defendants' counterclaim.

(4). DECISION OF THE COURT OF APPEAL:

Aggrieved by the judgment of the trial High Court, the Defendants appealed to the Court of Appeal which, after the hearing thereof, affirmed the judgment of the trial High Court and dismissed the appeal. The Defendants/Appellants have now appealed to this Court.

(5). APPEAL:

Per their Notice of Appeal filed on the 29th day of August 2019, the Defendants/Appellants pray that "the entire judgment of the Court of Appeal dated 6th day of June, 2019 be set aside and for judgment to be entered for the Defendants/Appellants/Appellants. The ground for the relief sought by the Defendants

are that "the judgment of the Court dated 6th day of June 2019 was against the weight of the evidence"

(6). PRELIMINARY OBJECTION:

Before we consider the appeal, we wish to determine a Preliminary Legal Objection filed by the Plaintiffs/Respondent on the 15th June 2022. In the said Notice of Preliminary Objection, Counsel for the Plaintiffs/Respondents says that "having already filed a statement of case which they wrongly titled "written submission" on the 10th November 2020, the Defendants/Appellants are not entitled to file another statement of case as of right in the same appeal on the 7th June 2022, under the guise that the Registrar of the Court of Appeal, after rectification of the record pursuant to an order of this Court, issued another Civil Form 6 and same served on the parties. The Plaintiffs/Respondents therefore invite this Court to strike out the statement of case filed by the Defendants/Appellants on the 7th June 2022 as being contrary to rules 14 and 15 of the Supreme Court Rules, 1996, (CI.16).

The Appellants' answer to the preliminary objection is that this Court granted an order for the rectification of the record of appeal upon application by the Plaintiffs/Respondents after the Appellants had filed their statement of case on the 10th November 2020. After the record of appeal had been duly rectified by the Registrar of the Court of Appeal, a second Civil Form 6 was issued and served on the parties, as a result; the Plaintiffs/Appellants filed another statement of case on the 7th June 2022. The Appellants say that the Notice of Preliminary Objection is without merit because, if they did not file the statement of case on the 7th June 2022, it will mean that their statement of case would have been based on the record of appeal as it existed before the rectification; whereas, the statement of case of the Plaintiffs/Respondents will be based on the record of appeal as rectified. The Defendants/Appellants therefore pray that the preliminary objection be dismissed.

Rule 14 of the Supreme Court Rules, 1996, CI.16 empowers the Registrar of the Court of Appeal to notify the parties to the appeal, by the issuance and service of Form 6 on the parties when the record of appeal is ready, after which the Registrar of the Court of Appeal shall transmit the record of appeal together with other documents specified in the rule, to the Supreme Court. By rule 15, the Appellant is supposed to file his statement of case within three weeks after being served with Form 6 or the Appellants shall file his statement of case within such time that this Court may give. After the service of the Appellant's statement of case on the Respondent, he shall, in turn, file his statement of case within three weeks thereof. Thus, the rules of Court make provision for the issuance of Form 6 once and this is done after the record of appeal is ready. There is no provision for the issuance of another Form 6 by the Registrar of the Court of Appeal after corrections or rectifications had been made to the record of appeal upon the orders of this Court. Rule 14 deals with a situation where the record of appeal had been settled by the parties and all the conditions of appeal had been fulfilled by the parties at the Registry of the Court of Appeal and the record is, thus, ready to be transmitted to this Court in order to kick-start the process leading to the hearing of the appeal. Hence, it was wrong for the Registrar of the Court of Appeal to have issued a second Form 6 and served it on the parties to this appeal. It was equally wrong for the Defendants/Appellants to file another statement of case on the 7th June 2022 upon the service of the second Form 6 by the Registrar of the Court of Appeal.

It has been argued also that if the statement of case filed on the 7th June 2022 was not allowed to stand, it will mean that the Plaintiffs/Respondents' statement of case would be based on the rectified record of appeal whiles that of the Defendants/Appellants would be based on the record of appeal as it existed before the order for rectification. In our view this is no ground to file a second statement of case. There cannot be two valid statements of case filed by an Appellant or Respondent in the same appeal at the same time.

Indeed, it is for situations like this that the rule makes provision for amendment of the statement of case. Thus, rule 15(11) of CI. 16 provides that:

> *"(11) Despite anything to the contrary contained in these Rules, a party to a civil appeal may at any time before judgment apply to the Court to amend a part of the statement of case or in answer of that party and the Court may, having regard to the interests of justice and to a proper determination of the issue between the parties allow the amendment on the appropriate terms."*

Thus, as a result of the rectification, if the need arose for the Appellant to give further information by way of further legal argument to the Court, what Counsel should have done was to apply for leave of this Court to amend their statement of case which had already been filed. This will enable them to make further arguments necessitated by the rectification instead of filing a fresh statement of case as if they had not already filed one. See **Republic vs. Adamah-Thompson and Others; Ex parte Ahinakwah II (substituted by) Ayikai [2012] 1 SCGLR 378 at 383 to 384**.

A similar issue confronted this Court in **Nii Kojo Danso II vs. Lands Commission & 2 Others (Joshua Quarshie - Applicant) [2017-2018] 2 SCLRG 880.** In that case, the Court of Appeal had ordered that the record be remitted to the High Court for rectification or correction of some errors therein. The appellant in that case argued before this Court on appeal, that "*once the record of appeal was remitted to the Court below, it could only be transmitted again to the Court of Appeal by the issuance of a fresh Civil Form 6, which was not done*". This Court, speaking through Benin JSC, unanimously ruled at page 891 of the report that:

> "Under rule 21 of CI.19, the Court of Appeal becomes seised of the entire appeal when the record of appeal has been transmitted to it. From that moment, the Court below has nothing to do with it except when directed by the Court of Appeal. For

that reason, the correction of errors in the record are done at the direction of the Court of Appeal as it is seised with the appeal. Every directive or order which the registrar and the lawyers require to help rectify the record are directed to the Court of Appeal and not the Court below. The registrar's duty is purely administrative in respect of the record of appeal, the Court below has no judicial function to perform in this regard. In short, the Court of Appeal does not relinquish its jurisdiction over the appeal because it has remitted it for errors to be corrected. This view is buttressed by the fact that in the interim, every interlocutory application must be heard by the Court of Appeal and not the Court below. Thus, after the registrar of the Court below has corrected the errors, if any, he only notifies the registrar of the Court of Appeal who then lists the appeal before the Court of Appeal and issues hearing notices to the parties. There is no provision in the rules of the Court for a second Civil Form 6 to be issued, and as such none should be imported into the rules. It follows that the written submission which had been filed prior to the record being remitted to the Court below, remain valid. The parties may exercise their right under rule 20(9) of CI.19 to apply for leave to amend the written submissions. On the other hand, if a party had not filed a written submission earlier on, being out of time, he may seek the Court's leave to do so, especially if the record was indeed rectified."

It follows therefore that the statement of case filed for and on behalf of the Plaintiffs/Appellants on the 7th June 2022 is duplicitous and cannot be allowed to stand. It is therefore struck out.

(7). CONSIDERATION OF THE APPEAL:

As already noted, the only ground of appeal which the Appellants have stated in the Notice of Appeal is that the judgment of the Court of Appeal dated the 6th day of June 2019 was against the weight of evidence adduced at the trial.

As to this ground of appeal, the authorities have explained that whenever this ground of appeal is alleged, it means that the Appellant seek to say that the record of appeal abounds with pieces of evidence which the trial and the first appellate Court failed to apply in favour of the Appellant and that if they had properly applied those pieces of evidence in favour of the Appellant, they would have been compelled to enter judgment in favour of the Appellant. On the other hand, this ground of appeal means also that certain pieces of evidence were wrongly applied against the Appellants and that a favourable result would have inured to the benefit of the Appellants if those pieces of evidence have been properly applied by the trial and or the first appellate Court. See: **Republic vs. Conduah; Ex parte Aaba (substituted by) Asmah [2013-2014] 2 SCGLR 1032**

There are numerous authorities to the effect that an appeal is by way of re-hearing and especially where the Appellant alleges the omnibus ground of appeal that the judgment is against the weight of evidence adduced. Indeed, that ground of appeal requires that this Court peruses every sinew of the record of appeal including the oral as well as all the documentary evidence given before the trial Court and come to its own decision as to whether or not the conclusions reached by the trial and the first appellate Court are supported by the evidence having regard to the relevant law as far as the facts of the case admit. **See In re Bonney (decd); Bonney vs. Bonney [1993-94] 1 GLR 610.**

In so doing, the burden rests upon the Appellant to point out to this Court as regards the judgment of the first appellate Court, the pieces of evidence which the first appellate Court and or the trial Court failed to apply to his benefit or which were otherwise wrongly applied against the Appellant. See: **Djin vs. Musah Baako [2007-2008] SCGLR 686.**

In the instant matter, the judgment of the trial High Court was affirmed by the first appellate Court, the Court of Appeal. In such situations, a second appellate Court such

as this Court is admonished to be slow in interfering with the concurrent findings of fact by the two lower Courts. Thus, in **Koglex Ltd vs. Field [1999-2000] 2 GLR 437**, this Court stated in holding one that:

> *"Where the first appellate Court had confirmed the findings of the trial Court, the second appellate Court was not to interfere with the concurrent findings unless it was established with absolute clearness that some blunder or error resulting in a miscarriage of justice was apparent in the way in which the lower Court dealt with the facts. Instances where such concurrent findings may be interfered with included where the findings of the trial Court were clearly unsupported by the evidence on record or where the reasons in support of the findings were unsatisfactory; where there was improper application of a principle of evidence or where the trial Court had failed to draw an irresistible conclusion from the evidence; where the findings are based on a wrong proposition of law and that if that proposition be corrected, the findings would disappear; and where the finding was inconsistent with crucial documentary evidence on record."*

(8). CAPACITY TO SUE OR PROSECUTE THE SUIT:

This appeal will therefore be determined within the context of the principles stated above. Under the sole ground of appeal filed by the Appellants that the judgment of the Court of Appeal was against the weight of evidence adduced at the trial, Counsel for the Appellants submitted on behalf of the Appellants that "*based on the submissions of learned Counsel for the Respondents on a preliminary legal point, the learned justices of the Court of Appeal proceeded to hold that, the 2nd Appellant's witness, Daniel Markwei Marmah, testified on behalf of the 2nd Respondent (sic) on the basis of a power of attorney granted by Grace Telley Tesa. The Court of Appeal proceeded to state that with the death of Grace Telley Tesa, the power of attorney granted to Daniel Markwei Marmah stood revoked by operation of law. Accordingly, the Court of Appeal struck out the case of the 2nd Respondent (sic) and by implication, the case of the Numo Kofi Anum family of Tesa.*"

Counsel further submitted that the record did not support the stance taken by the Court of Appeal on the power of attorney tendered by Daniel Markwei Marmah which was exhibit 1 which can be found at page 69 of Volume 2 of the record of appeal (ROA). Counsel pointed out that the power of attorney on the basis of which Daniel Markwei Marmah gave evidence on the 12th December 2014, was donated by Benjamin Amartey Mensah, who was then the head of the Numo Kofi Anum family of Tesa. Counsel argued that "*the conclusions on the law and fact reached by the Court of Appeal on the basis of which it dismissed the case of the 2nd Respondent (sic) on the lack of capacity is not supported by the evidence on record.*"

Counsel also submitted that Daniel Markwei Marmah was a party to the suit at the date he gave evidence because he had been substituted for one Frederick Shamo Quaye who had died but that in preparing an order for joinder following an application by Grace Telley Tesa to join the suit, the Registrar of the Court mistakenly substituted the name of Grace Telley Tesa for that of Daniel Markwei Marmah. Counsel says that the order drawn by the Registrar of the Court was made in error and for that matter the error of the Registrar and the 2nd Appellant's Counsel should not be visited upon Daniel Markwei Marmah if substantial justice is to be done and miscarriage of justice avoided.

At any rate, Counsel submitted, that in so far as Counsel for the Respondents cross-examined Daniel Markwei Marmah without raising any objection to his evidence, the Respondents should be taken to have waived their right to object.

It has also been argued on behalf of the Appellants that the trial judge considered the propriety of the evidence of Daniel Markwei Marmah and ruled that the evidence was properly received by the Court and, according to Counsel, the Respondents did not contest the ruling of the trial judge on the propriety of the evidence given by Daniel Markwei Marmah. Finally, Counsel submitted that the preliminary point argued before

the Court of Appeal was misconceived and that the Court of Appeal erred in not dismissing it.

(9). In response, it was submitted on behalf of the Respondents herein that in so far as Counsel for the Appellants concede that the ruling of the Court of Appeal on the capacity or the right of Daniel Markwei Marmah to testify was made as a result of a preliminary legal objection raised by the Respondents herein, then the Appellants were bound under rule 6(2) and (4) of CI.16 to file a distinct ground of appeal setting out the errors committed by the Court of Appeal. Counsel referred to the cases of **Owusu-Domena vs Amoah [2015-2016] 1 SCGLR 790** and the case of **Atuguba & Associates vs. Scipion Capital (UK) Ltd & Holman Fenwick Willan LLP [2018-2019] 1 GLR 1**. Counsel submitted that the issue at stake was a legal matter which Counsel for the Appellants had smuggled under the omnibus ground of appeal and for that reason, the submissions of the Appellants on this point of law should be struck out.

Counsel further submitted that the decision of the Court of Appeal to expunge the testimony given by Daniel Markwei Marmah on the 3rd and the 12th December 2014 was sound in law and amply justified by the record of appeal. Counsel submitted that the cross examination conducted on behalf of the 2nd Appellant on the 3rd day of December 2014 be expunged from the records.

(10). In considering this issue, the Court of Appeal stated in its judgment on page 83 volume 3 of the record that:

> *"in the instant matter, it is not denied by the Defendants herein that the power appointing the 2nd Defendant – Daniel Markwei Marmah emanated from Grace Telley Tesa nor has any evidence been led by the Defendants to neutralize the Plaintiffs' assertion that at the time the donee mounted the witness box to testify for and on behalf of the Numo Kofi Anum Family of*

Tesa on the 12th December 2014, the power of attorney had long elapsed as the donor died on 26th May 2014"

At page 84 of the record the Court of Appeal continued its judgment by stating that:

"I hold that the power of attorney by Grace Telley Tesa to Daniel Markwei Marmah would be rejected as invalid. And to the extent that the said power of attorney was invalid, it could not have provided legitimate basis on which Daniel Markwei Marmah could have prosecuted the case on behalf of the Defendants herein. In effect I further hold that Daniel Markwei Marmah had no capacity with which to prosecute the case for the Defendants and or on behalf of Numo Kofi Anum Family of Tesa."

(11). To appreciate the arguments of the parties, it is necessary to trace the representation of the 2nd Defendant/Appellant in particular from the very beginning of the case. From the record, the initial writ, filed on the 2nd November 2009 was issued by the 1st Plaintiff, Theophilus Teiko Tagoe against the 1st Defendant, Dr. Prempeh and Shamo Quaye as the 2nd Defendant. The Defendants were sued as trespassers. Subsequently, an application was filed by Daniel Markwei Marmah on the 18th February 2010 to be substituted in place of Shamo Quaye who had died on the 20th January 2010. At paragraph 2 of the affidavit in support of the application, which can be found at page 13 of the ROA, the said Shamo Quaye was described as the acting head of the Numo Kofi Anum family until his death. Daniel Markwei Marmah deposed in the said affidavit at paragraph 5 that one Griffith Sowah Osekre was appointed to succeed Shamo Quaye as the head of family of the Numo Kofi Anum Family of Tesa, but that he Daniel Markwei Marmah had been appointed by the family to be substituted in place of Shamo Quaye to prosecute the case. From the records, page 26 Volume 1, the trial Judge then granted the application and ordered that Daniel Markwei Marmah be substituted in place of Shamo Quaye for the prosecution of the case. We think that the order for the substitution of Daniel Markwei Marmah in place of Shamo Quaye was made in error. This is because it is the head of family who can be

sued where there is dispute about family property. Thus, Order 4 rule 9(2) of the High Court (Civil Procedure) Rules, 2004 CI.47 provides that:

> *"(2) The head of a family in accordance with customary law may sue and be sued on behalf of or as representing the family."*

In the instant matter therefore, the trial Judge should rather have substituted Griffith Sowah Osekre, the then head of family in place of Shamo Quaye (deceased) as the 2nd Defendant and not Daniel Markwei Marmah who was not the head of family. Since this Court has all the powers of the trial Court vide, article 129(4) of the Constitution, 1992, we hereby make the necessary orders to substitute Griffith Sowah Osekre, head of family in the stead of Shamo Quaye (deceased). On the 10th of February 2012, the Nungua stool filed a motion for leave to join the suit as the 2nd Plaintiff. This application was granted on the 7th March 2012. See page 195 volume 1 of the ROA.

It is worthy of note that on 2nd January 2014, Grace Telley Tesa, caused a motion to be filed for an order for her to be joined to the suit as the 3rd Defendant. In the affidavit in support of her motion, Grace Telley Tesa deposed that she was the current head of the Numo Kofi Anum Family of Tesa and that her predecessor, Griffith Sowah Osekre, consented to the substitution of Daniel Markwei Marmah in place of Shamo Quaye and that as the head of family she had been authorised to prosecute the suit on behalf of the family. The learned trial judge did the right thing by striking out the name of Daniel Markwei Marmah from the suit and making an order to join Grace Telley Tesa as the 2nd Defendant in her capacity as the head of the Numo Kofi Anum Family of Tesa. See page 271. Therefore, contrary to the submission of Counsel for the Appellants at paragraph 23, 24 and 25 of his statement of case that the order for substitution was drawn up in error by the Registrar of the trial Court, that position is rather incorrect as the trial Court could not continue to maintain the name of Daniel Markwei Marmah on the record as the 2nd Defendant. Indeed, the relationship of the said Daniel Markwei Marmah to the Numo

Kofi Anum family is not known and it has been shown that he was not the head of the Numo Kofi Anum family and therefore, he could not continue to wrongly represent the family when a head of family was in place and was prepared and able to represent the said family to protect the alleged family's property in dispute. It bears emphasis that from the 27th day of January 2014 when the trial Judge made the order substituting Grace Telley Tesa in place of Daniel Markwei Marmah, the said Daniel Markwei Marmah effectively **ceased** to be a party in the suit even if there was any notion that he was hitherto a party to the suit after he had been wrongly made a party by the trial Court earlier on.

(12). On the 15th of December 2014, Benjamin Amartey Mensah filed a motion with a supporting affidavit for an order to be substituted in the stead of Grace Telley Tesa who had died on the 26th May 2014. The said Benjamin Amartey Mensah had been appointed the head of the Numo Kofi Anum family of Tesa following the death of Grace Telley Tesa as deposed to in the supporting affidavit to the motion for substitution. See pages 339 to 342 of the ROA. It ought to be pointed out that after the 26th May 2014 when Grace Telley Tesa died, there was no 2nd Defendant in the suit until the grant of the order to substitute Benjamin Amartey Mensah in place of the deceased Grace Telley Tesa. The motion for substitution was filed on the 15th December 2014 to be moved on the 17th December 2014. Although the record does not indicate the exact date that the said motion was moved, one would not be far from correct to assume that it was moved and granted not earlier than 17th December 2014. Meanwhile, on the 12th day of December 2014, the said Daniel Markwei Marmah started giving evidence on behalf of a ***"2nd Defendant"*** in the matter on the strength of a power of attorney, allegedly, donated to him by Benjamin Amartey Mensah who was, at the time, not a party to the suit and indeed when nobody had been substituted as the 2nd Defendant. We wish to state that a person who is not a party to a suit cannot donate a power of attorney to another to give evidence on behalf of that

person. It is only parties to a suit who have the right to donate power of attorney to other persons to testify on behalf of the party.

In respect of the testimony by Daniel Markwei Marmah, the Court of Appeal, speaking through Kusi Appiah JA, stated in its judgment on page 85 of volume 3 of the ROA that:

> *"I hold that the power of attorney by Grace Telley Tesa to Daniel Markwei would be rejected as invalid. And to the extent that the power of attorney was invalid, it could not have provided a legitimate basis on which Daniel Markwei Marmah could have prosecuted the case on behalf of the Defendants herein. In effect, I further hold that Daniel Markwei Marmah had no capacity with which to prosecute the case for the Defendants and or the Numo Kofi Anum family of Tesa. It follows that the evidence of the donee at the time the donor was dead is inadmissible. So, whether the Plaintiff objected to the tendering of the power of attorney or the evidence of the donee (Daniel Markwei Marmah) or not will not entitle the Court to consider inadmissible evidence."*

At page 88 of volume 3 of the ROA, the learned justices of the Court of Appeal concluded on this issue that:

> *"In the premises, the Plaintiff's preliminary objection is hereby upheld. I therefore hold that the 2nd Defendant did not have the relevant capacity to sue or prosecute for and on behalf of the Numo Kofi Anum family of Tesa in this case. Consequently, the 2nd Defendant's case including his claim and evidence is incompetent before us and the same is accordingly struck out. This leaves the Court with the evidence of the Plaintiffs/Respondents and the 1st Defendant/Appellant to consider in this appeal."*

The finding by the Court of Appeal that the power of attorney, on the basis of which Daniel Markwei Marmah testified, was donated by Grace Telley Tesa is not borne out of the record. The said power of attorney, tendered on the 12th December 2014, was received in evidence and marked as exhibit 1 as shown on page 320 of volume 1 of the record. The

power of attorney in question can be found at page 69 volume 2 of the record. We find that the said power of attorney was in fact donated by Benjamin Amartey Mensah head of family of the Numo Kofi Anum family of Tesa to Daniel Markwei Marmah on the 27th August 2014. Nonetheless, we agree with the conclusion reached by the Court of Appeal that the evidence given by Daniel Markwei Marmah on the 12th day of December 2014 should be struck out or expunged. For, there is authority to the effect that where a Court reaches a correct conclusion but through wrong reasoning, an appellate Court such as this Court has power to sustain the correct conclusion by relying on the correct reasoning which ought to have been the basis for the correct conclusion arrived at by the Court below. See **Mensah Larkai vs. Ayitey Tetteh (substituted by) Tetteh Quarcoo; Mensah Larkai vs. Tetteh Quarcoo & Ayaa Cudjoe (Consolidated) [2009] SCGLR 621** at page 634 to 635.

We hold that the evidence given by Daniel Markwei Marmah, particularly, on the 12th December 2014 was given without authority and that he did not have the competence to give evidence in the suit on that date since the person who donated the power of attorney to him, that is, Benjamin Amartey Mensah and on whose behalf, Daniel Markwei Marmah purported to give evidence, **was not a party to the suit by the 12th December 2014 when the evidence was given**. Accordingly, the testimony of Daniel Markwei Marmah, together with all the exhibits tendered on the said day was a nullity and could not have been legally relied upon by the trial Court. For that reason, we proceed to dismiss as unmeritorious the issues and the arguments which Counsel for the Defendants/Appellants raised in respect of the competence of Daniel Markwei Marmah to testify at the trial as part of the omnibus ground of appeal which was argued on behalf of the Defendants/Appellants.

(13). Next, the Appellants argued under the omnibus ground of appeal that *"the 1st Respondent averred that he acquired an interest in the subject matter land by virtue of a lease*

granted by the Gborbu Wulomo of Nungua, Numo Borketey Larweh on the 23rd November 2007. He claimed to have gone into possession thereafter and later travelled out of the country." Counsel referred to further evidence given by the 1st Respondent in respect of the title of his grantor, the 2nd Respondent and then submitted again that *"the Appellants contend that having set out the basis of his claim, the 1st Respondent was required to adduce sufficient evidence to show how he acquired the purported interest in the subject matter land and also produce convincing evidence in support of his alleged grantor's (the 2nd Respondent's) claim of ownership of the disputed land. Without such an evidence the 1st Respondent's claim ought to have failed and the learned Justices of the Court of Appeal erred in law in failing to so hold"*. Counsel submitted further that *"in order to have succeeded in the action, it was incumbent on the Respondents to have furnished convincing evidence in support of the averments in the 1st Respondent's amended statement of claim to the effect that: (a). The 2nd Respondent made a grant to the 1st Respondent; (b) That the 2nd Respondent was the owner of the parcel of land described at paragraph 3 of the 1st Respondent's amended statement of claim; (c) That the disputed land fell within the judgment plan covering the parcel of land declared as forming part of the large tract of land described as Nungua lands belonging to the Nungua stool as held by His lordship Justice Brobbey JSC (as he then was) in the case of Empire Builders vrs, Nii Bortrabi Obroni &* 3 others."

According to Counsel, apart from exhibit A, the indenture which can be found at page 1 of volume 2 of the ROA, the 1st Respondent did not tender any other document such as a "**land title certificate, an indenture or a site plan**" in support of 2nd Respondent's claim of entitlement to the land described at paragraph 3 of the 1st Respondent's amended statement of claim. Counsel says therefore that "**the 1st Respondent failed to adduce sufficient evidence in support of his root of** title". On the part of the 2nd Respondent, the Appellants say that the judgments which the 2nd Respondent tendered in evidence did not contain a judgment plan "***setting out the exact boundaries of the lands, the subject matter of those judgments***". Counsel then submitted that "***a judgment of a Court***

declaring title in favour of a party without an accompanying judgment plan showing the actual land affected by the judgment is not enforceable at law." Again, Counsel argued that the Respondents failed to establish the identity and the boundaries of the disputed land.

(14). It has also been submitted on behalf of the Appellants that the trial Court and the Court of Appeal failed to give adequate consideration to the evidence of the Appellants and the binding legal effect of the judgment in suit no. L383/89, entitled Nii Mate Tesa & 5 others vs. Numo Nortey Adjeifio in which the title of the 2nd Appellant to Tesa lands was declared in their favour. According to Counsel, the trial Judge made an erroneous finding of fact which was concurred in by the Court of Appeal to the effect that "*the judgments in favour of the 2nd Defendant confirm their title over Tesa lands but does not operate as estoppel against the 2nd Plaintiff because, the 2nd Plaintiff is claiming Adjiringano and not Tesa land. The subject matter of the judgments in favour of the 2nd Defendant is Tesa and not* Adjiringano." Counsel's argument was that the Nungua stool was a party to Suit No. L383/89 which declared Tesa lands in favour of the 2nd Defendant and that by not following the ratio in the said judgment, the lower Courts breached the doctrine of stare decisis.

It was also submitted in favour of the Respondents that the evidence on record shows that the disputed area of land fell within the judgment plan in suit no. L383/89 and that if the lower Courts had considered this evidence they would have found for the Defendants in this matter. Counsel therefore invited this Court to reverse the judgment of the Court of Appeal and then enter judgment for the Defendants/Appellants in this matter. **********

(15). For the Respondents, Counsel submitted that the issue turned on whether the land in dispute fell on Adjiringano lands or Tesa lands. According to Counsel, the trial Court, after evaluating the evidence on record concluded that the land in dispute was part of

Adjiringano lands and therefore found for the Respondents herein. Counsel says that the finding of the learned trial judge which was concurred by the Court of Appeal is supported by the evidence on record. Counsel also submitted that it was found at the trial that the Nii Kofi Anum family of Tesa had taken more lands than was declared in their favour by the High Court in suit no. L383/89 and that that act was the cause of the present litigation. Finally, Counsel submitted on behalf of the Respondents that the Appellants admitted at the trial that the land in dispute is part of Adjiringano lands.

(16). In respect of the criticism that the 1st Respondent failed to prove the title of his grantor, the Nungua stool, to the disputed land, we find that there is evidence on record by the 1st Plaintiff/Respondent that he approached the Nungua stool which demarcated the land in dispute measuring about 0.62 of an acre for him about the year 2000. The 1st Plaintiff/Respondent said that the land is situate at a place called Adjiringano which is part of Nungua stool land. The 1st Plaintiff/Respondent tendered in evidence an indenture and a site plan which was given to him in respect of the land by the Nungua stool. This was received in evidence as exhibit 'A' which can be found at page 1 of volume 2 of the ROA. Exhibit 'A' shows clearly that the land in question was conveyed to the 1st Plaintiff by the Nungua stool represented by Numo Borketey Laweh, the Gborbu Wulomo and that the conveyance was made with the consent and concurrence of the principal members of the Nungua stool. We must however state that the Defendants/Appellants objected to the reception of exhibit 'A' in evidence. Counsel for the 2nd Defendant raised objection on two main grounds: That exhibit 'A' was an unregistered document and that it was also not stamped according to law and therefore exhibit 'A' was inadmissible. In ruling on the objection, the trial Judge stated that:

> *"The absence of registration is not a bar to the admissibility of a document involving land. A document not stamped may also be admitted but its stamping made a condition precedent to its use at the end of the trial. Objection overruled. The document is admitted on condition*

that the Plaintiff will see to its stamping by the end of the trial before it can be used by the Court in its judgment. The indenture dated 23rd November 2007 is tendered and marked as exhibit 'A'."

We wish to point out that the ruling on stamping and admissibility of a document that requires stamping given by the trial Judge does not represent the current state of the law as stated in the Stamp Duty Act, 2005, Act 689. The fact that the lease, exhibit 'A' is subject to stamping is not in doubt as shown by the first schedule to the Stamp Duty Act. Section 32(1)(2)(6) of the Act provides that:

32. Admissibility of insufficiently stamped or unstamped instrument

(1) Where an instrument chargeable with a duty is produced as evidence

(a) in a Court in a civil matter, or

(b) before an arbitration or referee,

the judge, arbitrator or referee, shall take notice of an omission or insufficiency of the stamp on the instrument.

(2) If the instrument is one which may legally be stamped after its execution, it may, on payment of the amount of the unpaid duty to the registrar of the Court or to the arbitrator or referee, and the penalty payable on stamping that instrument, be received in evidence subject to just exception on other grounds.

(6) Except as expressly provided in this section, an instrument

(a) executed in Ghana, or

(b) executed outside Ghana but relating to property situate or to any matter or thing done or to be done in Ghana,

shall except in criminal proceedings, not be given in evidence or be available for any purpose unless it is stamped in accordance with the law in force at the time when it was first executed.

In respect of the above section, this Court held in **Lizori Ltd vs. Boye & School of Domestic Science & Catering [2013-2014] 2 SCGLR 889** that:

"The provision in section 32 of Act 689 was so clear and unambiguous and required no interpretation. Either the document had been stamped and appropriate duty paid in accordance with the law in force at the time it was executed or it should not be admitted in evidence. There was no discretion to admit it in the first place and order the party to pay the duty and penalty after judgment."

See also **Woodhouse Ltd. vs Airtel Ghana Ltd. [2017-2018] 2 SCLRG 615 at 623.**

The trial Judge should not have admitted exhibit 'A' in evidence as he did for the simple reason that exhibit 'A' was an unstamped document at the time it was received in evidence. Thus, once exhibit 'A' has not been stamped as required by law at the time it was sought to be tendered, it just cannot be admitted in evidence. Nonetheless, we find that exhibit 'A' had, since, been duly stamped and that it was stamped before judgment was delivered by the trial Judge. However, even if the said exhibit had been rejected, we find that there is sufficient evidence on record to sustain the judgment entered for the Plaintiffs/Respondents. In addition, the admission in evidence of an unstamped document shall not be the sole basis to reverse a judgment. Thus, section 109 of the Courts Act 1993, Act 459 (as amended) provides that:

"109. Wrong ruling as to stamping

Where an objection is taken in a Court to the admissibility of a document in evidence on the ground of absence or insufficiency of a stamp, the decision of the Court shall not be reversed, set aside or otherwise interfered with by reason only of a ruling of the Court that

the document requires a stamp or that the stamp on the document is insufficient or because the document does not require a stamp."

(17). There is also evidence to the effect that after the land had been demarcated for the 1st Plaintiff/Respondent, he took possession of it by constructing a fence wall around the land. After sometime, the 1st Defendant and his workmen pulled down the wall which had been constructed on the said land on the pretext that the land had been acquired by the 1st Defendant/Appellant. The 1st Plaintiff/Respondent denied the Defendants' assertion that the land in question forms part of the land of the 2nd Defendant/Appellant's ancestral land known as the Numo Kofi Anum family land of Tesa. The evidence given by the 1st Plaintiff herein was corroborated in every material particular by the testimony of the 2nd Plaintiff given by Nii Shipi Bobui Kakai IV. The 2nd Plaintiff/Respondent testified that the land in question is situate at Adjiringano which is part of Nungua stool land and that it was the stool that demarcated the said land to the 1st Plaintiff. The 2nd Plaintiff also tendered in evidence as exhibit 'B' a certified copy of the judgment in suit no. L94/99 titled Empire Builders vs. Topkings and Others which can be found on pages 7 to 29 of volume 2 of the record. Indeed, the learned trial Judge correctly found and same was affirmed by the Court of Appeal that in the Empire Builders case, the Court found as a fact that the Adjiringano lands was owned by the Nungua stool. Counsel for the Defendants/Appellants submitted that no judgment plan accompanied the judgment in the Empire Builders case and therefore the judgment in the Empire Builders case is unenforceable. We wish to state that a judgment of a Court of competent jurisdiction which has found and declared a parcel of land in favour of a party to the dispute, does not derive its validity from an attached judgment plan; but, from the legal competence of the Court to sit and adjudicate on the case presented to the Court by the parties. A judgment plan is only one of the means by which the dimensions and the boundaries of a parcel of land could be identified. There are other means of identifying a parcel of land

on which a declaration had been made by a Court of law in favour of a party to a suit. Thus, in **Anane and Others vs Donkor; Kwarteng vs Donkor (Consolidated) [1965] GLR 188**, a case which was cited by Counsel for the Defendants/Appellants, this Court held on pages 192 to 193 that:

> *"Where a Court grants declaration of title to land or makes an order for injunction in respect of land, the land the subject of that declaration should be clearly identified so that an order for possession can be executed without difficulty, and also if the order for injunction is violated the person in contempt can be punished. If the boundaries of such land are not clearly established, a judgment or order of the Court will be in vain. Again, a judgment for declaration of title to land should operate as res judicata to prevent the parties relitigating the same issues in respect of the identical subject-matter, but it cannot so operate unless the subject-matter thereof is clearly identified. For these reasons a claim for declaration of title or an order for injunction must always fail if the Plaintiff fails to establish positively the identify of the land to which he claims title with the land the subject-matter of the suit."*

Thus, as pointed out, what was required in a suit for a declaration of title to land and a corresponding judgment was not necessarily a judgment plan but a proper description of the land in question, setting out the dimensions of the land as well as the boundary owners and if possible, the boundary features so that the land, the subject matter of the judgment, could be identified upon reading the said judgment. A good judgment plan may serve the purpose just as a well thought out description of the land may also serve the same purpose of enabling the identification of the land concerned. To the extent, that the land the subject matter of dispute in the Empire Builders case was clearly set out and identified in that suit, Counsel's submission is untenable and the same is hereby rejected. At any rate, the record shows that it is not the whole land, subject matter of dispute in

the Empire Builders case, that was in issue in the instant case but the land claimed by the 1st Plaintiff herein.

(18). In respect of the issue of the identity of land raised by Counsel for the Appellants herein, the learned trial Judge found as a fact which was affirmed by the Court of Appeal that, the 2nd Defendant, largely, relied on the judgments in suit no L383/89 which was entered at the High Court and affirmed by the Court of Appeal and the Supreme Court in Adjei Fio (substituted by) Adjei Sankuma & Adjei Kwanko II vs. Mate Tesa (substituted by) Marmah & Others. [2013-2014] 2 SCGLR 1537. The trial Judge found that in suit number L383/89, the 2nd Defendant herein was declared to be the owner of Tesa lands measuring 918.24 acres. The trial Judge again found as a fact that the Court of Appeal as well as the Supreme Court affirmed the judgment in L383/89. However, instead of 918.24 acres declared in their favour, the 2nd Defendant had added more acreage of land to what was declared in their favour. At page 482 volume 1 of the record, the trial Judge observed that "*instead of the 918.24 acres, the 2nd Defendant's family coerced the Lands Commission to issue them a land certificate covering 998.890 acres. Strangely, the 2nd Defendant's land title certificate has a site plan that does not tally with their judgments acreage wise. Nobody therefore knows which direction the capture of lands was effected. There is clearly something fishy. None of the site plans tendered by the 2nd Defendant date-wise and acreage-wise accords with the acreage granted by the Courts.*"

The Court appointed surveyor confirmed the finding that the acreage of land declared in favour of the 2nd Defendant herein in suit number L383/89 is not what had been captured in the land title certificate tendered by the 2nd Defendant. An overlap was established to the effect that "*about 40% of the land as on the judgment plan and certificate NO. GA2811 edged BLUE and YELLOW respectively for Numo Kofi Anum family overlap about 50% of the land as on boundary plan for Adjiringano presented by Theophilus Teiko Tagoe edged dark GREEN, and the disputed land falls within these* overlap" Counsel for the Defendants/Appellants

submitted that "*the claim that the 2nd Appellant's family coerced the Lands Commission to issue their land title certificate is not supported by the evidence on record*".

We find however that far from Counsel's assertion, the land certificate tendered by the 2nd Defendant/Appellant herein which can be found on page 93 volume 2 of the record shows that the land which was registered in favour of the 2nd Appellant was 998.980 acres. This confirms the observation by the surveyor as well as the findings made by the learned trial Judge and concurred in by the Court of Appeal to the effect that the land declared in favour of the 2nd Defendant/Appellant had overlapped into the land known as the Adjiringano lands and ultimately, the land in dispute falls within the overlap.

One of the critical questions which faced the trial Court was whether the land in dispute is part of the Adjiringano lands or part of Tesa lands. From the evidence adduced by the parties, it is clear that each party made efforts to show that it had been in possession and exercised effective rights of ownership over its land. This was shown by various grants made to individuals and or institutions. The land certificate, exhibit 7 herein on page 93 volume 2 of the record, which the 2nd Defendant tendered in evidence as proof of its ownership of their lands described the land of the 2nd Defendant as situate at Tesa. The 2nd Defendant also made a grant of a parcel of land to one Samuel Larbi Darko. The land certificate, exhibit 4 described the said land as situate at Adjiringano in the Greater Accra Region but the site plan attached to the said land certificate describes the parcel of land as situate at Adjiringano/Tesa. In the year 2013, the 2nd Defendant made a grant of a parcel of land to one Christiana Kyeremeh. The indenture stated that the said land is located at Tesa but the site plan in the said conveyance says the land is located at Adjiringano. Again, by exhibit 2, a grant was made to the Presbyterian Church of Ghana. The site plan depicting the grant described the parcel of land as situate at Tesa. These site plans were all approved and signed by the Director of Survey at the Lands Commission. We have no

reason to doubt what the various site plans say about the location of the parcels of land conveyed.

Exhibits DP1 is the Lease evidencing the grant to the 1st Defendant herein. The site plan accompanying the Lease describes the land in dispute as situate at Adjiringano and it is also approved by the Director of Survey. Exhibit DP2, the land certificate was also tendered in evidence by the 1st Defendant as evidence of his title to the land in dispute. Again, the land certificate as well as the site plan therein both described the land in dispute as situate at Adjiringano. See page 238 volume 2 of the record. The 1st Defendant again tendered in evidence a Report which he made to the Police on the 16th March 2011 about disturbances which he was facing on the land. This Report was marked as exhibit DP3. In the said report, he described the land in question as situate at Adjiringano. Under cross examination he admitted that the content of the said Report which he made to the Police was true. We hold that the Indenture tendered by the 1st Defendant and the Report which he made to the Police constitute admission in favour of the case put forward by the Plaintiffs/Respondents herein that the land, subject matter of this suit, is situate at Adjiringano and not Tesa. Indeed, this Court has held in **Asante vs. Bogyabi and Others [1966] GLR 232** that:

> *"Where admissions relevant to matters in issue between parties to a case are made by one side, supporting the other, as appears to be so in the instant case on appeal, then it seems to me right to say that that side in whose favour the admissions are made, is entitled to succeed and not the other, unless there is good reason apparent on the record for holding the contrary view".*

It is worth stating that during cross examination, it was pointed out to the 1st Defendant that his title certificate indicates that the disputed land is situate at Adjiringano and not Tesa. His answer was that he saw it on the site plan given him by his grantors but when he enquired from them about the location of the land, the answer which he was given

was that the location stated on the site plan was merely for administrative purpose and that the land was actually located at Tesa. This explanation was never corroborated by evidence from the planning authorities who alone can give evidence whether, for administrative purposes, the name Adjiringano is used on indentures and other conveyances notwithstanding the place where a particular parcel of land is situate. No evidence was given by the Town Planning Department in charge of the area and, hence, the explanation given by the 1st Defendant about the location of his land cannot be accepted. The trial judge found this as a fact in his judgment that the 1st Defendant failed to adduce evidence to scale the burden of persuasion imposed on him on the issue concerning the location of his land. In such circumstances, as stated under sections 12 and 14 of the Evidence Act, 1975, NRCD 323, a Court of law is enjoined to find against a party who failed to adduce evidence to establish that degree of certainty of belief in the mind of the Court by which it can be convinced that the existence of the fact that the land is situate at Tesa is more probable than its non-existence. See **Ahadzi & Another vs. Sowah & 2 Others [2019-2020] 1 SCLRG 79** where it was pointed out that:

> *"Since the Defendants pleaded that the land which is the subject matter of this dispute belongs to Kle Musum Quarter and that averment was denied by the Plaintiffs, the Defendant bore the burden of proof in respect of that issue in terms of sections 11(1), 14 and 17 of the Evidence Act, 1975, NRCD 323. The Defendants, however, failed to discharge that burden and the ruling on that issue ought to be against them."*

It implies therefore that once the 1st Defendant herein had admitted that the land in dispute is situate at Adjiringano, his evidence supports the case of the Plaintiffs that the land in question is part of the Adjiringano lands. Hence, the 2nd Defendant and the Numo Kofi Anum Family of Tesa do not own that land and cannot give to the 1st Defendant what they do not own. We therefore affirm the finding of the trial Judge which received the concurrence of the Court of Appeal to the effect that the land in question is part of

Adjiringano lands and was validly granted to the 1st Plaintiff as against the 1st Defendant. From the records, it is not in dispute that by the judgment in the Empire Builders case, all that lands known as Adjiringano lands were declared to be owned by the Nungua stool. In the same vein, by the judgment in Nii Mate Tesa & 5 Others vs. Numo Nortey Adjeifio, all that lands known as Tesa was declared to be owned by the Numo Kofi Anum Family of Tesa.

(19). Even the manner in which the 1st Defendant/Appellant purported to have acquired the disputed land leaves much to be desired. The evidence on record, as found by the trial Court, supported the fact that in his effort to acquire the land in dispute, the 1st Defendant first approached the Ashong Mlitse family for a grant in 1995 and was given an indenture in 1997 by the Ashong Mlitse family. The 2nd Defendant in his evidence stated that the 1st Defendant came to the Numo Kofi Anum Family for a grant in 2003-2004. The judgment in the Empire Builders case which went in favour of the Nungua stool against the Ashong Mlitse family was given on the 14th May 2003. Therefore, at the time that the 1st Defendant was directed by the secretary to the Ashong Mlitse family to contact Shamo Quaye the secretary to the Numo Kofi Anum family, the land in question, being part of Adjiringano lands, had been declared as belonging to the Nungua stool. We hold therefore that it was wrong for the 1st Defendant to be directed to the 2nd Defendant for a grant when the land had been pronounced as being part of the Nungua stool lands. If the 1st Defendant had extended or deepened his search he would have found that at the time he was asked to contact, the Numo Kofi Anum Family for the land in question, the said family did not own the land and could therefore not make a valid grant of the land in dispute to him. See **Brown vs Quarshigah [2003-2004] SCGLR 930.**

(20). CONCURRENT FINDINGS:

My lords, it is clear from the record before this Court that the findings and the decision of the trial Court are sufficiently supported by the evidence on record. These findings and decision of the trial Court were, in a large measure, concurred in by the Court of Appeal in its judgment delivered on the 6th day of June 2019; a judgment which we have, in this appeal, been called upon to reverse on the sole ground that the judgment was against the weight of evidence. The grounds upon which a second appellate Court, such as this Court, may interfere with concurrent judgments of two lower Courts have been set out by this Court in **Koglex Ltd. (No.2) vs. Field [2000] SCGLR 175.** At page 184 to 185, the Court, speaking through Acquah JSC (as he then was), held that:

> *"Briefly, the primary duty of an appellate Court in respect of a judgment based on findings of facts is to examine the record of proceedings to satisfy itself that the said findings are supported by the evidence on record. Where there is no such evidence that findings ought to be set aside. However, where such findings of the trial Court are based solely on the demeanor and credibility of witnesses, then the trial Court which had the opportunity of seeing and hearing the witnesses, is in a decidedly better position than an appellate Court. And therefore, an appellate Court should be extremely slow in interfering with such findings. On the other hand, where the findings are based on established facts, then the appellate Court is in the same position as the trial Court and can draw its own inferences from those established facts.*
>
> *"A second appellate Court, like the Supreme Court, is bound by the same principles set out above. It must satisfy itself that the judgment of the first appellate Court was justified or supported by evidence on record. Where there was no such evidence that finding ought to be set aside". However, where the first appellate Court has confirmed the findings of the trial Court, the second appellate Court is not to interfere with the concurrent findings unless it is established with absolute clearness that some blunder or error resulting in a miscarriage of justice is apparent in the way in which the lower Court dealt with the facts.*

It is therefore clear that, a second appellate Court, like this Supreme Court can and is entitled to depart from findings of fact made by the trial Court and concurred in by the first appellate Court under the following circumstances:

1.Where from the record the findings of fact by the trial Court are clearly not supported by evidence on record and the reasons in support of the findings are unsatisfactory.

2.Where the findings of fact by the trial Court can be seen from the record to be either perverse or inconsistent with the totality of evidence led by the witnesses and the surrounding circumstances of the entire evidence on record.

3. Where the findings of fact made by the trial Court are consistently inconsistent with important documentary evidence on record.

4. Where the first appellate Court had wrongly applied the principle of law in Achoro vrs Akanfela [1996-1997] SCGLR 209 and other cases on the principle, the second appellate Court must feel free to interfere with the said findings of fact, in order to ensure that absolute justice is done in the case."

As already pointed out, the findings of fact and the decision of the learned trial Judge which were concurred in by the Court of Appeal find support from the evidence adduced by the witnesses before the trial Court. There is therefore no basis for this Court to interfere with the decisions of the two lower Courts.

CONCLUSION:

After reviewing the evidence on record, we hold that the judgment of the trial Court which was affirmed by the Court of Appeal is not against the weight of the evidence adduced at the trial. We hold that the judgment of the trial Court as well as that of the Court of Appeal are sound having regard to the evidence on record. The appeal therefore fails and it is hereby dismissed.

S. K. A. ASIEDU

(JUSTICE OF THE SUPREME COURT)

P. BAFFOE-BONNIE

(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)

(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS.)

(JUSTICE OF THE SUPREME COURT)

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

(JUSTICE OF THE SUPREME COURT)

COUNSEL

O. K. OSAFO-BUABENG ESQ. FOR THE PLAINTIFFS/RESPONDENTS/ RESPONDENTS.

ERNEST KUSI ESQ. FOR THE DEFENDANTS/APPELLANTS/ APPELLANTS.