IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: PROF. KOTEY JSC (PRESIDING)

OWUSU (MS.) JSC

AMADU JSC

PROF. MENSA-BONSU (MRS.) JSC

KULENDI JSC

CIVIL APPEAL

NO. J4/09/2022

18TH JANUARY, 2023

MORGAN KWAME OPOKU ……. PLAINTIFF/APPELLANT/APPELLANT

VRS

AKOSUA OSAA …….. DEFENDANT/RESPONDENT/RESPONDENT

JUDGMENT

OWUSU (MS.) JSC:-

On 21st March, 2019, the Court of Appeal, Accra, in a unanimous decision dismissed the Plaintiff/Appellant/Appellant (hereinafter referred to as Plaintiff's) appeal against the

Defendant/Respondent/Respondent (hereinafter referred to as Defendant) and affirmed the Judgment of the Trial Court as follows:

"Upon the facts and analysis of the evidence, the only reasonable conclusion is that the appellant's grantor sat by, saw the respondent enter the land in 1984 and acquiesced in her spending money and labour to develop it without challenge.

The appellant's right of action first accrued to his grantor through whom he derives his title. Thus, his explanation that he had been away and did not know of the encroachment, and that he has registered his document cannot avail him.

I will hold on the authority of VANDERPUYE vs. GOLIGHTLY & ORS. [1965] GLR 453 SC that the appellant's grantor Dauda and thus the appellant was estopped through the grantor's acquiescence from asserting his rights because after the respondent had acquired the land in good faith in 1984, Dauda stood by for over 15 years while the respondent incurred expenditure in developing the land. They are deemed to have waived their right….

It is for the above reasons that the appeal of the plaintiff/appellant fails in its entirety and is dismissed.

The Judgment of the trial Court is affirmed in favour of the defendant/respondent, but on grounds of laches and acquiescence on the part of the plaintiff/appellant's grantor from whom the plaintiff/appellant derived his title".

Dissatisfied with the decision of the Court of Appeal, the plaintiff mounted this appeal before the Supreme Court on the following grounds;

a. Both the Court of Appeal and the High Court were wrong in law when they dismissed the Plaintiff/Appellant/Appellant's case.
b. The Judgment of both the Court of Appeal and the High Court were all against the weight of evidence.

c. Additional grounds of appeal shall be filed upon the receipt of the Certified True Copy of the Ruling.

It is noted for the record that, no additional ground was filed.

The relief being sought from the Supreme Court:

To reverse/set aside the decision of the Court of Appeal, Accra and all the consequential orders dated the 21st Day of March, 2019.

Before dealing with the arguments advanced in support and against the appeal, we will give a brief background of the case.

The plaintiff instituted this action at the High Court, Accra for,

1. A declaration of title to: "all that piece or parcel of land in extent of 0.12 hectare (0.32 of an acre) more or less being Parcel No. 709 Block 17 Section 218 situate at Odorkor in the Greater Accra Region of the Republic of Ghana aforesaid as delineated on registry Map No. 008/218/1993 in the Land Title Registry, Victoriaborg, Accra and being the piece or parcel of land shown and edged with pink colour on Plan No. 216/2008 annexed to this certificate.
2. Recovery of Possession.
3. Damages for Trespass and
4. Perpetual Injunction to restrain the Defendants their agents and assigns from interfering with plaintiff's quiet enjoyment of the land.

The suit was originally commenced by plaintiff against 1st Defendant. Subsequently, one Augustina Akyea Boakye applied and was joined to the action as second defendant (2nd Defendant).

The plaintiff's case is that, he acquired the disputed land by an assignment made to him by one Dauda Larbi Laryea. An Exhibit C, shows that his assignor was granted a

99 years Lease by the Gbawe Kwatei Quartey of Accra who intend assigned his interest to Plaintiff on the 8th of March, 2005. According to Plaintiff, he went into possession of the land by depositing building materials on the land and left for Europe. He later registered his interest in the land and was issued with Land Title Certificate No. GA 30572 by the Land Title Registry on the 8th of September, 2009. It is the case of the Plaintiff that, when he went onto the land to develop same, a woman came and claimed ownership of the land. He therefore conducted a Search at the Lands Commission. The result of the Search indicated that the land was owned by the Gbawe Kwatei family after a judgment was made in their favour who had leased a portion of the land to Dauda Larbi Laryea in July, 1977. The Plaintiff concluded that, based on the Search Result, he commenced this action against 1st Defendant claiming the reliefs mentioned above.

In her response, the 1st Defendant averred in her Statement of Defence that, she has been living on the disputed land for fifteen (15) years before she was confronted by the Gbawe Kwatei family of Accra and had to re-purchase the disputed land from the said family. The 1st Defendant continued that; she first acquired the disputed land from the Charbukwei family of Anyaa in 1984. She and her children developed and moved into the building in 1986 and have lived there since that date. They were however given the Indenture on the land on 20th September, 2002. Thereafter, they heard an announcement that those who purchased land from the Charbukwei Family should regularize their interest with the Gbawe Kwatei Quartey Family since the latter had been declared true owners of the land in dispute. The 1st Defendant concluded that, she accordingly re-purchased the disputed land in October 2004 from the Gbawe Family.

At the trial, the Plaintiff testified through his attorney and called one witness in the person of Dauda Larbi Laryea. 1st Defendant also testified and called one witness

her daughter. 2nd Defendant also testified before the Court. Her evidence basically was that, she bought the disputed plot from Dauda Larbi Laryea, PW1, in 1978. She continued that, initially, PW1 gave her land at Nyamekye. She travelled and upon her return, PW1 had sold the land and the latter replaced it with the land in dispute. It is the case of 2nd Defendant that, when she bought the land, she initially paid ₵4,800 out of ₵8,500 for which a receipt, Exhibit 1 (for 2nd Defendant) was issued to her. She concluded that, the disputed land was 120 X 100 feet so, PW1 sold it to her for ₵22,000 which she paid in 1986. Thereafter, PW1 gave a photocopy of his Indenture and a site plan and told her when she finished paying for the land the former will transfer the land into her name. That she had completed payment but PW1 has not done the transfer. When she went onto the land, the 1st Defendant's husband has built on the land she therefore sued PW1 and the latter was found liable and was ordered to go for her land. The Court further asked her to make an Indenture for PW1 to sign which she did but up till now PW1 has not signed the Indenture, Exhibit 5(for 2nd Defendant).

In his judgment, the trial High Court Judge made the following findings of fact:

1. That Dauda Larbi Laryea, PW1 the common grantor of the Plaintiff and 2nd Defendant made the Kwatei Quartey family of Gbawe who were his grantor to assign his interest in the disputed land to the Plaintiff on 20th July, 2009, Exhibit 'B' but did not execute Exhibit 5 the Deed of Assignment between him and 2nd Defendant.
2. The Indenture Exhibit 3 on which the 1st Defendant was relying as his root of title was made between the Kwatei Quartey family of Gbawe and Matilda Mawusi Mensah 1st Defendant's daughter.
3. All the parties trace their root of title to the Kwatei Quartey family of Gbawe.

4. Exhibit 11 (for 2nd Defendant) shows that PW1 acquired the land in dispute from the Kwatei Quartey family of Gbawe in July, 1977 and Exhibit 3 (for 1st Defendant's daughter) showed that 1st Defendant's daughter acquired the land in dispute from the same family on the 16th October, 2004.

The trial Judge did not have any difficulty in coming to the conclusion that, 2nd Defendant's Exhibit '5' did not confer any interest in the land in dispute to her since Exhibit 5 has not been signed by both PW1 and 2nd Defendant. He relied on *section 2 and 3 of the Conveyancing Act, 1973 (NRCD 175)* and the case of **ASANTE APPIAH vs. AMPONSA @ MANSAH [2009] SCGLR 90.**

The trial Judge further found as a fact that, since Plaintiff's assignor/grantor PW1 acquired the land in dispute from the Kwatei Quartey family of Gbawe in 1977, it follows that the Plaintiff's title will relay back to that date which is earlier in time than the acquisition of 1st Defendant's daughter Matilda Mawusi Mensah who acquired her title from the same family in 2004.

The trial Judge also found as a fact that, 1st Defendant has been in possession of the land in dispute since 1986, having built on the land and is residing in same when Plaintiff moved onto the land and was resisted by 1st Defendant.

Relying on *section 2 of the Land Development (Protection of Purchasers) Act 1960 (ACT 2)* and the case **of NTEM vs. ANKWANDAH [1977] 2 GLR 452 CA** and **ODOI & ANO. vs. HAMMOND [1971]1 GLR 375 CA**, the trial Judge held that, 1st Defendant had conformed to all the requirements of Act 2 in that she initially purchased the land in dispute from the Charbukwei family of Anyaa. When it turned out that the land belongs to the Kwatei Quartey family of Gbawe, she re-purchased that same piece of land from the Gbawe family. She had built her two-bedroom house on the disputed land in the honest belief that she had title as she did not have notice of the grant to Plaintiff's assignor. Not only that, Plaintiff and his assignor made no attempt to stop her from building on the land. Consequently,

Act 2 will avail 1st Defendant and therefore declared her owner of the disputed land notwithstanding the fact that, her acquisition of the land was later in time to that of the Plaintiff.

Based on the forgoing, the trial Judge dismissed the Plaintiff's claims. 2nd Defendant's counterclaim was also dismissed as not proved.

Aggrieved by the decision of the High Court, the Plaintiff appealed to the Court of Appeal which appeal was also dismissed albeit on different reasons.

The Plaintiff has appealed against the decision of the Court of Appeal and is before the Supreme Court.

At this stage, let us put it on record that that the 2nd Defendant did not appeal against the decision of the Court of Appeal.

In arguing the appeal, counsel for the Plaintiff on ground 'A' of the appeal submitted that, the dismissal of the Plaintiff's case by the High Court and the Court of Appeal was wrong. This is because the Plaintiff amply demonstrated his root of title and same was supported by the Plaintiff's Attorney. Counsel referred to the case of **FAUSTINA TETTEH vs. CHANDIRAMS & 3 ORS; Civil Appeal No. J4/52/2018 dated the 24th July, 2019** unreported judgment**.** Still on ground 'A' counsel for the Plaintiff in his statement of case had issues with the trial Judge allowing the application for Joinder joining the 2nd Defendant to the suit after Plaintiff's attorney and PW1 had testified. He submitted that, the trial Judge should have given the Plaintiff the opportunity to be recalled or better still the trial court ought to have conducted the trial denovo. Counsel continued that; these procedural irregularities render the entire trial a nullity. He referred us to the cases of **THE REPUBLIC vs. HIGH COURT, ACCRA, EX-PARTE: SALLOUM & OTHERS (SENYO COKER INTERESTED PARTY) [2011] 1 SCGLR 574; MACFOY vs; UNITED AFRICA CO [1961] 3 AER 1169 and MOSI vs. BAGYINA [1963]1 GLR 337** as well as **OTUO TETTEH & OPANIN KWADWO ABABIO**

(Deceased) Substituted by NAA DEAWO CHOCHO & NANA KOJO ADU II, Civil Appeal No. J4/30/2017 dated 14th February, 2018 and concluded that, the trial was a nullity.

On ground 'B' of the appeal, which alleged that the Judgment is against the weight of evidence, counsel for the Plaintiff submitted that from the volume of documents tendered by the Plaintiff's attorney and PW1 coupled with the pieces of evidence on record, all point to the fact that the Plaintiff's case is weighty and strong. Therefore, the decisions of the High Court and the Court of Appeal were wrong. He therefore invited us to evaluate the evidence on record and come to a different conclusion from the two lower courts based on the documentary and oral evidence on record. He referred us to the cases of;

1. **ACHORO & Another vs. AKANFELA & Another [1996-97] SCGLR 209;**
2. **FOSUA & ADU-POKU vs. DUFIE (DECEASED) & ADU-POKU MENSAH [2009] SCGLR 310** and
3. **SAMPSON OBENG AND ANOTHER vs. KWABENA MENSAH etc. unreported Suit No. J4/78/2018 dated 17th July, 2019.**

Based on the forging, counsel for the Plaintiff invited us to allow the appeal since the Judgment is against the pieces of evidence on record since the findings by both the High Court and the Court of Appeal are perverse.

In response to the above submissions, counsel for the defendant on ground 'A' of the appeal after stating the facts of the case submitted that; "purchasers of land who ignored signs of possession by a party other than their own vendor on the land, do so at their own risk and are likely to come to grief". He referred to the following cases to buttress his point:

ROSINA ARYEE vs. SHELL GHANA LTD & FRAGA OIL, unreported **Civil Appeal No. J4/3/2015** and **SUSANA BANDOR vs. DR MRS MAXWELL APPIAGYEI-GYAMFI**

& ALEX GYIMAH [2019] DLSC 6502 on notice and due diligence on the acquisition of land. He continued that, from the record of appeal, it is clear that Plaintiff is not a bona fide purchaser for value without notice. This is because, he saw the 1st Defendant in possession, asked her no question and proceeded to buy the land. Counsel further submitted that, Plaintiff admitted that his assignor, PW1 had earlier granted the same land to one Dan Oppong and that he got to know of this after his transaction with PW1. Secondly, from the record of appeal, Plaintiff's assignor in 1980 had granted the same land to Augustina Akyea Boakye for ₵22,000 (old Ghana cedis). He then submitted that, the principle of nemo dat quad non habet applies to the transaction between Plaintiff and PW1 and concluded on this point that, when Plaintiff issued the writ in this case on 19th January, 2010, the 1st Defendant had been in adverse possession of the land in dispute for twenty-six (26) years. He referred to the Court of Appeal Judgment and stated that, it is grounded on laches and acquiescence. The result is that, even though legal title of the property resides in the Plaintiff, possessory interest resides in the Defendant. After referring to Black's Law Dictionary on what constitute laches, he argued that, the rationale behind the doctrine of laches is that, a Court of Equity will not assist a claimant who has not exercised reasonable diligence in commencing proceedings and in this regard, the key test is whether the lapse of time in commencing proceedings, it would be unconscionable for the claimant to assert his right. He submitted that, the delay of twenty-six (26) years is unconscionable as for all those years, PW1 had never laid claim to the land except to secretly resell it to the highest bidder. Counsel for the Defendant concluded on this point that, the Court of Appeal was grounded in law in conceding legal estate to the Plaintiff and Possession to the Defendant as the justice of the case demands. He therefore invited us to dismiss the appeal and uphold the Judgment of the Court of Appeal.

On ground 'B' of the appeal, counsel for the Defendant stated that an appeal is by way of re-hearing. In this regard, the appellate Court has to review the case and come to its own conclusion. Additionally, the appellant has to point out the lapses he is complaining off. He referred us to a plethora of cases including, **JNJ MINING SERVICES LTD vs. TOM McDonagh & SONS LTD [2016] 95 GMJ; ABBEY & ORS. vs. ANTWI V [2010] SCGLR 17-20; BINGA DUGBARTEY SARPOR vs. EKOW BOSOMPRA [2020]170 GMJ 664,647-648** among others. He concluded that, the Plaintiff had not discharged this onus required on him and invited us to dismiss the appeal.

At the heart of this appeal is the Defendant's possession of the disputed land for over fifteen (15) years as against the Plaintiff's documents. The trial High Court held that, the Defendant has been in possession of the land in dispute since 1986. She has put up a building on the land and is residing therein and there was no evidence that the Plaintiff nor his assignor made any attempt to stop her from building on the land. She has conformed to all the requirements of Act 2 and could therefore avail herself of the Statutory protection provided by Land Development (Protection of Purchasers) Act 1960, Act 2 even though the Defendant had not pleaded same. The trial Judge exercised his discretion and held that, that Defence can avail the Defendant and thus dismissed Plaintiff's claim.

The Court of Appeal in dismissing the Plaintiff's appeal, referred to *Section 10 (1), (2) and (6) of the Limitation Act 1972 (NRCD 54)* and held that, since the Defendant did not plead *NRCD 54*, that defence was closed to her in view of *Order 11 rule 8 (1) of the High Court (Civil Procedure) Rules, 2004 CI 47*. The Court further held that, since the Defendant failed to specifically plead the *Land Development (Protection of Purchasers) Act 1960, Act 2,* it was not opened to the trial Judge to raise these defences on her behalf. Therefore, the trial Court thus erred in applying Act 2 when there is no evidence on record to support its application. This is what the Court of Appeal said in its judgment;

"The Land Development (Protection of Purchasers) Act 1960, Act 2 is an Act to protect purchasers of land and their successors whose titles are found to be defective after building has been erected on the land. The Act has limited application. Had the respondent sought its protection by pleading it, she would have been required to establish that the land is in a prescribed area. The fact that a purchaser has in good faith erected a building on a piece of land does not automatically entitle her to the protection of Act 2. The trial Court thus erred in law in applying Act 2 where there is no evidence on record to supports its application". After referring to Rule 31 and 32 (2) of the Court of Appeal Rules, CI 19, which empowers the Court in civil appeals to make any Order necessary for determining the real question in controversy, it continue as follows;

"From the record of proceedings, one of the key statements made by both the respondent and her witness was that they had been in undisturbed, visible and unchallenged possession of the land since 1986. This assertion was not dented in cross examination". It continued;

"What is essential now is to consider whether that long stay on the land entitles the respondent to the protection of the Law. Laches means unreasonable delay or negligence in pursuing a right or claim. It is an equitable doctrine by which a Court denies relief to a claim (in this case the appellant) who has unreasonably delayed or been negligent in asserting the claim when that delay or negligence has prejudiced the party against whom the relief is sought.

Acquiescence is also defined in Black's Law Dictionary as a person's tacit or passive acceptance; implied consent to act. Acquiescence as a principle of substantive Law is grounded in the concepts of good faith and equity".

The Court of Appeal then concluded as follows:

"The trial Court had found as a primary fact that the respondent had purchased the land from the Anyaa family in 1984 and gone into possession and had also re-purchased it from the Gbawe family in 2004 while in possession. This appellate Court has held that the purchase from the Gbawe family was a bona fide purchase in good faith without notice of the prior claim of the appellant's grantor.

Upon the facts and analysis of the evidence, the only reasonable conclusion is that the appellant's grantor sat by saw the respondent enter the land in 1984 and acquiesced in her spending money and labour to develop it without challenge".

The Court of Appeal was on point when it held that not having pleaded the Land Development (Protection of Purchasers) Act 1960, Act 2, the trial Judge erred in invoking it to protect the defendant. Act 2, like the Limitation Act 1972 (NRCD 54) being a point of Law must be specifically pleaded to enable the party against whom it is being invoked to response to same. In other words, there is the need for a party entitled to the defence of a breach of statute to plead it and also give the other party notice to adduce any evidence in rebuttal. See the case of **DOLPHYNE (No.3) vs. SPEEDLINE STEVEDORING CO LTD and Another [1996-97] SCGLR 514, 515 holding (2)** of the headnotes **where their Lordships held that:**

"The Limitation Decree, 1972 (NRCD 54), was essentially a special plea which must be pleaded as required by the High Court (Civil Procedure) Rules, 1954 (LN 140A). If not pleaded, it could not be averted in submissions to the Court; and the court would not of its own motion take notice that an action was out of time. In the instant case, there was no real defence to the plaintiff-appellant's claim for damages for fraud because the defence of the action being statute-barred had not been pleaded (our emphasis).

See also the case of **DAM vs, ADDO [1962] 2 GLR 200** where the Court reiterated the age long principle that a Court must not substitute a case proprio motu, nor accept a case contrary to, or inconsistent with that which the party himself puts forward, whether he is the plaintiff or defendant. Not having specifically pleaded Act 2 in her defence, the trial Judge erred in invoking the said Act on behalf of the Defendant.

Before discussing the grounds of appeal, we will address the procedural irregularities counsel for the Plaintiff raised in his Statement of Case, which according to him makes

the trial a nullity. The 1st complaint is relief (3) where the Plaintiff claims "Damages "die in diem" for trespass. This relief was repeated in Plaintiff's amended Statement of Claim filed pursuant to the Order of the Court dated 25th October, 2011, at pages 2 and 141 of the record of appeal. It is therefore strange for counsel for the Plaintiff to turn round and say he does not know what it means. This complaint is frivolous and it is according rejected. The second complaint is that, when Augustina Akyea Boakye applied and was joined to the suit as 2nd Defendant, the Plaintiff had already testified. The trial Judge should have recalled Plaintiff for further evidence or better still the trial should have been started de novo. The application for joinder can be found at pages 132 to 133 of the record of appeal and it was made on notice to Plaintiff or his Lawyer Felix Quartey, ESQ of Beacon Law Consult, and Defendant.

The application for joinder was granted on the 25th October, 2011. We will reproduce the Court's notes for that day for purposes of emphasis. The Court's notes read:

"BY COURT:

The application is granted. Let Augustina Akyaa Boakye be joined to this suit as 2nd Defendant.

The Plaintiff is to amend his Writ of Summons within seven (7) days of this Order. The 2nd Defendant shall enter appearance to the writ and file her statement of defence within fourteen (14) days of the service of the Plaintiff's amended statement of Claim on her. Leave is also granted 1st Defendant to amend her statement of defence within seven (7) days of the service of the statement of claim on her if she finds it necessary.

I also grant leave to the Plaintiff to amend his reply within seven (7) days of the service of the defendants' statement of defence on him if he so desires.

I adjourn this suit to 7th December, 2011".

Then on 8th November, 2011, the Plaintiff filed his amended statement of claim. See pages 141 to 143 of the record of appeal. Thereafter the Court order the parties to file and exchange documents they intend to rely on. The 2nd Defendant filed additional issues on 8th of May, 2012. The application for further directions was taken and set down for trial on 10th July, 2012, which was taken. It is instructive to know that, all the proceedings above were and or taken in the presence of counsel for Plaintiff. On 13th November,2012, the suit was adjourned to 19th, 20th, and 21st, November at 10 am each day for Plaintiff to call his witnesses. On 19th November, 2012 when the case was called, counsel for Plaintiff informed the Court he does not intend to call any witness and has closed his case. See pages 212 to 213 of the record of appeal. From the proceedings quoted above, nowhere did counsel for the Plaintiff make an application to recall Plaintiff's attorney or PW1 and the application was refused. It is too late in the day for counsel for Plaintiff to complain.

Ground "A" of the appeal states that:

"Both the Court of Appeal and the High Court were wrong in law when the dismissed the Plaintiff/Appellant Appellant's case"

This ground of appeal is vague and discloses no reasonable ground. Why both the Court of Appeal and High Court were wrong in law have not been stated or the particulars of the law they breached have not been given and this is in breach of Rule 6 (5) of the Supreme Court Rules, 1996 CI 16 and it is accordingly struck out.

This brings us to ground "B" of the appeal which states that:

"The Judgment of both the Court of Appeal and the High Court were all against the weight of evidence".

The arguments canvassed in support of this ground is that, since an appeal is by way of rehearing, this Court should go through the entire record of appeal and come to its own decisions. This is because if the Judgment of the Court of appeal and the High Court are

critically examined the appeal ought to be allowed considering the volume of documents couple with the pieces of evidence of Plaintiff's Attorney and PW1 all point to the fact that, the Plaintiff's case is weighty and strong and that the decision of both the Court of Appeal and the High Court were wrong. Additionally, the findings are really perverse and same ought to be reversed and the appeal allowed and a trial de novo ordered.

The submission of counsel for the Plaintiff is not sufficient to discharge the duty cast upon him under this ground. There is plethora of cases which state that the Plaintiff is required to pinpoint the evidence if applied in his favour would have tilted the case in his favour or the pieces of evidence wrongly applied against him. See the case **of OWUSU-DOMENA vs. AMOAH [2015-2016] 1 SCGLR 790, 792 holding (2)** of the headnotes where this Court held that:

"Where the appeal was based on the omnibus ground that, the Judgment was against the weight of evidence, both factual and legal arguments could be made where the legal arguments would help advance or facilitate a determination of the case. See also the case of **ABBEY & OTHERS vs. ANTWI V [2010] SCGLR 17, 27 holding (4)** of the headnotes where their Lordships held that:

"It was well settled that where an appellant has alleged that the Judgment of the trial Court was against the weight of evidence, the appellate Court would be under an obligation to go through the entire record of appeal to satisfied itself that a party's case was more probable than not. Further, the appellant has to properly demonstrate what lapses he was complaining about (our emphasis***)".***

In this case right from the word go, the Defendant in her statement of defence averred that she acquired the land in dispute in 1984 and by 1986, she has built a house on the land and was living in the house with her children. The fact that there was a structure on the land was confirmed in every material particular by the Plaintiff's

Attorney. This is what transpired between Plaintiff's Attorney and counsel for Defendant in cross examination.

"Q. The last time I asked you whether you visited the site before you purchased it.

A. Yes.

Q. I also asked whether you saw anything on the land?

A. There was a structure on the land.

Q. Will you describe the kind of structure?

A. The person from whom we purchased the land had blocks on the land. There was no fence wall. There was an uncompleted 2-bedroom structure and the one we bought the land from said they had used his blocks to do the structure.

Q. Who are the they who used your vendors blocks?

A. He said it was one Mr. Mensah.

Q. So at that stage you were on notice that someone else had already built on the land?

A. Yes. We saw that structure. The landlord said we should conduct a search which we did which showed that the land was in the landlord's name. The search result showed that the land was in the name of one Larbi Laryea from whom our landlord had purchased the land from.

Q. Right from the inception you had noticed there was someone on the land

A. Yes".

From the cross examination of the Plaintiff's Attorney quoted above, the Defendant's possession on the disputed land was corroborated by the Plaintiff's Attorney. The Law is that:

"Where the evidence of one party on an issue in a suit was corroborated by witnesses of his opponent, whilst that of his opponent on the same issue stood uncorroborated even by his own witnesses, a court ought not to accept the uncorroborated version in preference to the corroborated one unless for some good reason (which must appear on the face of the judgment) the court found the corroborated version incredible or impossible".

See the case of **ASANTE vs. BOGYABI AND OTHERS [1966] GLR 232 holding (2)** of the headnotes.

As already shown above, both the Court of Appeal and the High Court found as a fact that, the Defendant has been in possession of the land in dispute since 1986, well over fifteen (15) years before the Plaintiff and or his assignor came to assert their right. This finding is clearly supported by the evidence on record and as a second appellate Court we do not find any reason to reverse this finding. See the case of **FOSUA & ADU-POKU vs. DUFIE (Deceased) & ADU-POKU MENSAH [2009] SCGLR 310,** where their Lordships **held in hold (4)** that:

"In the instant case, the most important issue was whether the disputed house was the self-acquired property of the late Kwaku Poku as contented by the defendants. That was an issue of fact entirely within the province of the trial judge to determine one way or the other. Provided he resolved the issue in favour of or against one side based on the evidence before him, the settled law was that an appellate court would be slow to interfere with or set aside the finding of facts so made unless the findings were so perverse or not supported by the evidence on record" (our emphasis).

The need to be prudent in the acquisition of land was articulated by PROF KLUDZE JSC in his concurring opinion in the case of **BROWN vs. QUARSHIGAH [2003-2004] SCGLR 930, 954** this way:

"In my opinion, the burden must rest squarely on the vendor and the prospective purchaser to satisfy themselves that the land intended to be sold is available and vacant or not allocated. The principle of caveat emptor is still a postulate of our law. A prospective vendor or purchaser of land cannot shift onto the shoulders of the existing owner the burden of informing them of the encumbrance, title or interest held by him. In many cases it will not even been enough to conduct a search in the Deeds Registry or the Land Title Registry. The Register will fail to disclose many interests in the land which have not been registered". He continued as follows;

"An inspection of the land itself would be the best means of ascertaining if it was vacant".

As stated above, the Court of Appeal affirmed the decision of the High Court in dismissing the Plaintiff's appeal albeit on different grounds. Where a decision is correct it can be supported by another sound reason. See the case of **OPPONG vs. VAUGHAN-WILLIAMS (per lawful attorney) ACQUAYE [2015-2016] 1 SCGLR 781, 784** where **SOPHIA ADINYIRA JSC** in the unanimous decision of the Court held that:

"We are of the view that this case can be decided on other grounds as, indeed, in this court, no judgment would be set aside on the ground that its ratio is erroneous, if there is another sound basis on which it can be supported".

It is our decision that, the Court of Appeal rightly dismissed the Plaintiff's appeal on the ground of Laches and Acquiescence.

Having perused the entire record of appeal, we found no pieces of evidence wrongly applied against the Plaintiff or the pieces of evidence if applied in favour of the Plaintiff would have changed the decision in his favour. Thus, both the Court of Appeal and the High Court made the correct findings of fact and came to the right decision.

Ground "B" of the Appeal has not been made out and it is accordingly dismissed.

It is for these reasons that the appeal fails in its entirety and it is hereby dismissed. The Judgment of the Court of Appeal dated 21st March, 2019 is hereby affirmed.

M. OWUSU (MS.)

(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY

(JUSTICE OF THE SUPREME COURT)

I.O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

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