

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: BAFFOE-BONNIE JSC (PRESIDING)

PROF. KOTEY JSC

OWUSU (MS.) JSC

LOVELACE-JOHNSON (MS.) JSC

AMADU JSC

CIVIL APPEAL

NO. J4/68/2022

15TH MARCH, 2023

**1. CHARLOTTE ADULEY
HAMMOND**

DEFENDANTS/APPELLANTS/APPELLANTS

2. YOONYAKI ADJATEY

VRS

**1. DR. EDMUND ADUKWEI HAMMOND
(SUING PER HIS LAWFUL ATTORNEY
SETH SABANG HAMMOND)**

**PLAINTIFF/RESPONDENTS/
RESPONDENTS**

2. SETH SABANG HAMMOND (DECEASED)

JUDGMENT

AMADU JSC

INTRODUCTION

- (1) My Lords, this appeal invites us to consider and determine two principal issues relative to the law on the administration of the estate of a deceased intestate prior to the enactment of the Intestate Succession Act, 1985 (PNDCL 111). The first issue begs answer to the question whether it is permissible for an administrator to adopt an earlier distribution made by another prior to his appointment as administrator ; and secondly, what amounts to fair and equitable distribution, for the purposes of the administration of the estate of a deceased? This latter issue is more germane, having regard to the absence or inadequacy of a legislative framework as provided under PNDCL 111.

BACKGROUND AND FACTS

- (2) Samuel Armah Hammond died intestate sometime in 1972. In his lifetime, he was married to three wives -Madam Theresa Lamiley Lamifio; Madam Korkor Dinsey and Madam Larkai Adegayan. These wives bore him 12 children including the Plaintiffs, the 1st Defendant and the 2nd Defendant's father (*Lionel Adokwei Hammond*). The Plaintiffs' mother was Madam Theresa Lamiley Lamifo whiles 1st Defendant and Lionel's mother is also, Madam Larkai Adegayan. 2nd Defendant is a nephew to Plaintiffs and 1st Defendant. His father, Lionel Adukwei Hammond is a maternal sibling to 1st Defendant and Plaintiffs.
- (3) In his lifetime, Samuel Armah. Hammond acquired three properties situate at Osu RE, Osu Nyaniba Estates and Oyarifa. Following his death, his customary successor and the head of Family in accordance with custom, distributed the three properties among the three wives and their children. Thus, the Nyaniba House

was given to Madam Theresa Lamiley Lamifio and all her children; the Osu RE House was settled on Madaam Korkor Dinsey and all her children while the Oyarifa house went to Madam Larkai Adegyan and all her children.

- (4) The 1st Defendant protested the distribution as not being fair and equitable. He contended also that, the said distribution was made in the absence of Letters of Administration. The surviving children of the deceased agreed and elected the 1st Plaintiff to obtain Letters of Administration from the Court. On the 23rd of March 2001, the 1st Plaintiff was appointed as the administrator of the estate of the deceased, Samuel Armah Hammond. Upon appointment, the 1st Plaintiff adopted the distribution earlier made by the Head of Family. He proceeded to execute a Vesting Assent in favour of each group including himself and his other siblings. The 1st Plaintiff and his deceased sister succeeded in registering their interest in their property-the Nyaniba Estates House and in 2009, and obtained a land title certificate.
- (5) At the time of the distribution, the Defendants together with Lionel Adokwei Hammond, the children of Larkai Adegyan, as well as the 3rd Defendant and her mother Felicia Hammond, including the 2nd Plaintiff and other tenants lived in the Nyaniba House. Plaintiffs permitted them to continue their stay in the house. While Felicia Hammond died later, Lionel Adokwei Hammond also evacuated his room. When he was leaving, he allowed the 2nd Defendant to occupy same.
- (6) The Plaintiffs demanded the exit of the tenants and the Defendants, but while the tenants left, the Defendants refused. It is important emphasizing that, while the suit was ongoing, the 2nd Defendant vacated the premises, and the action was

discontinued against him. The 1st and 3rd Defendants however, remained adamant to leave the house. It is as a result of this recalcitrance, that caused Plaintiffs to commence the action at the High Court, Land Division Accra, on the 8th day of January, 2016 by which they sought the following reliefs against the Defendants:

“(a) A declaration that Plaintiffs are owners of H/No.F650/4

Nyaniba Estates, Osu-Accra.

(b) An order for recovery of possession.

(c) Perpetual injunction restraining the Defendants

from continuing to remain in H/No.F650/4 Nyaniba Estates or from interfering in anyway whatsoever with the said property.”

(7) Upon the service of the writ on the Defendants, they entered appearance and filed their statement of defence. While admitting the family relationship and the attempt at distribution by the head of family; the appointment of 1st Plaintiff as an administrator and his adoption of the earlier distribution made, they denied that their father died possessed of three properties. According to them, despite building three houses, their father actually owned two of those houses. They claimed, that the Osu-Re House was constructed in the name of one of his daughters Josephine Adukai Azu whose name also reflected on the title documents.

(8) According to the Defendants, the estate of their late father was not equitably distributed. They claimed that, the Osu-RE property, although acquired by their father, was actually owned by their sister Josephine Adukai Azu and therefore, it could not have been included in the distribution made. They further contended, that they were not informed of the steps taken by the 1st Plaintiff to procure Letters of Administration and hence, same was fraudulent. They claimed further, that 1st

Plaintiff coaxed his siblings to apply for the Letters of Administration. They also claimed that, at the time the Letters of Administration was granted, there was a caveat that had been filed against its grant. The Defendants also challenged the Land Title Certificate obtained by Plaintiffs as fraudulent. The contention was that, the 1st Plaintiffs concealed the fact that there were controversies surrounding the property; and had misrepresented to the Land Title Registry as though he had been duly vested with the property.

- (9) The Defendants contested the action and set up a counter-claim for the following reliefs:

“(a) Declaration that the estate of the late Samuel Armah Hammond remains undistributed.

(b) An order lapsing/cancelling any registration of the property in the name of the Plaintiff or any other person.

(c) An order directing the Registrar of the High Court to equitably distribute the estate among the beneficiaries.

(d) An order revoking the letters of administration dated 23rd March 2001.”

- (10) At the application for directions stage, the following issues were adopted as the issues for determination of the dispute:

a. Whether or not the Letters of Administration in respect of the Estate of Samuel Armah Hammond was obtained by Fraud.

b. Whether or not the Letters of Administration was obtained and received in the face of a subsisting caveat.

c. Whether or not the estate of the late Samuel Armah Hammond has been properly, fairly and equitably distributed.

- d. Whether or not Defendants stay in the Nayniba Estate property also known as H/No.F650/4 is of right and as licensees of the Plaintiff.*
- e. Whether or not the late Samuel Armah Hammond (deceased) owned two or three (3) houses.*
- f. Whether or not the Land Certificate No.GA.288899 Vol.12 Folio 663 obtained by Plaintiff and his sister Janet Aduokor Hammond (deceased) on 24th February, 2009 as beneficiaries of the Nyaniba Estate was obtained by Fraud.*
- g. Whether or not the letters of administration dated 23rd March, 2001 ought to be revoked.*

JUDGMENT OF THE TRIAL HIGH COURT

(11) At the end of the trial, the Trial Court entered judgment in favour of the Plaintiffs by granting all their claims and dismissed the counterclaim of the Defendants. The Trial Court, made the following findings of facts :

- (i) The Defendants failed to prove their allegation of fraud against the Plaintiffs and that, their testimony under oath was a complete departure from their pleadings. The court found, that no evidence whatsoever was led to prove that 1st Plaintiff coaxed his siblings to elect him to arrange for the application for letters of administration. Rather, per Exhibit 'C', 1st Plaintiff was appointed by his surviving siblings to singularly apply. For Letters of Administration.*

- (ii) *Defendants did not lead any evidence on their claim of a caveat having been filed while the Letters of Administration was yet to be sealed. It appears, that they abandoned that issue.*
- (iii) *Per the presumption of regularity under Section 37(1), the Letters of Administration passes as having been regularly obtained. The Defendants could not lead evidence to rebut the presumption.*
- (iv) *Defendants could not adduce sufficient evidence to prove that the Plaintiffs' land title certificate in respect of the Nyaniba Estate was fraudulently procured.*
- (v) *Josephine Adukai Hammond, whom 1st and 3rd Defendants claim was the owner the Osu-RE property did not institute any legal action for declaration of title or for a purported wrongful inclusion of her property in the distribution of his father's Estate. The 1st and 3rd Defendants neither exhibited a Judgment of a court of competent jurisdiction declaring Josephine Hamond to be the owner of the Osu RE property nor a power of attorney from Josephine Hammond to prosecute an action for a declaration of title to the Osu-RE Property on her behalf or for a purported wrongful inclusion of the Osu-RE Property in the distribution of his father estate. ; again no lease agreement or an indenture was submitted in respect of the Osu Re property that it was the bona fide property of Josephine Hammond. The evidence points to the fact that the land was purchased and built by her father in the name of Josephine Hammond and same gives credence, that she held the property in trust for her father Samuel Armah Hammond.*
- (vi) *Exhibit '1' Series (Building Permits) were in the name of Josephine Hammond but the resulting trust was to the father. The father exercised overt acts of ownership*

over the Osu RE house and put one of his wives (that is, Madam Krokor Dinsey) and her children in that house. There is no evidence that Josephine was in charge.

(vii) During the lifetime of Samuel Hammond, he administered the Oyraifa property through the 1st Defendant's brother Lionel Hammond. This fact was never denied by 1st Defendant. The Oyarifa property was, following the distribution sold to one Samuel Addo Agoe by Lionel Hammond the brother of 1st Defendant.

(viii) The estate of the Late Samuel Armah Hammond was properly, fairly and equitably distributed. The surviving children of Madam Korkor Dinsey continue to enjoy and exercise exclusive possession of the Osu RE property, which is on two (2) plots of land, to the exclusion of children of Lamley Lamifo and Larkai Adegyan. 1st Defendant's brother Lionel Hammond also satisfied with the said distribution accepted documents relating to the Oyarifa property for and on behalf of 1st Defendant to the extent of selling same as attested to by PW1 and corroborated by 1st Defendant. It will rather be unfair that the court allows the defendants to dispose off their share of their father's estate and continue to occupy the house given to the children of Theresa Lamiley Lamifio, which is the Plaintiff and his siblings.

(12) Dissatisfied with the judgment of the Trial High Court, the Defendants appealed to the Court of Appeal. The court of appeal dismissed the said appeal affirming the judgment and findings of facts (*afore-stated*) made by the Trial Court.

(13) By their notice of appeal filed on 11th January 2022, the Defendants have appealed from the judgment of the Court of Appeal on two grounds of formulated as follows:-

“(a) The judgment of the Court of Appeal is against the

weight of evidence on record.

(b) The Judgment is wrong in law in that the administrator did not gather the estate of the late Samuel Armah Hammond."

The duty of an Appellate Court when an Appellant urges the omnibus ground of appeal vis-à-vis the effect of a concurrent findings of fact by the trial and 1st Appellate Court.

- (14) The settled law, as overly restated, is that, an Appellant who anchors his appeal on the omnibus ground of appeal that the judgment of the court is against the weight of evidence simply complains, that the Court below failed in its duty to properly evaluate the evidence adduced at the trial within the confines of legal principles for the evaluation of evidence. Where the appeal is an attack on the judgment of the 1st Appellate court, such an Appellant is obligated to point out, expose and demonstrate to the second Appellate Court, the lapses he complains of. This court will then place itself in the seat of the Trial Court, as well as the 1st Appellate Court and engage in a re-examination of the entirety of the record. Such exercise, must end in righting all wrongs as pertains to the improper evaluation of the evidence, or affirming such proper evaluation of evidence. A second Appellate Court such as this court, must not disturb or reverse concurrent findings of facts made by the Trial Court and the 1st Appellate court except in very extreme limited situations of an exceptional circumstance which will justify and authorise the reversal. Such circumstance if prevalent should have amounted to a miscarriage of justice.

- (15) As held by this court in the case of **KOGLEX VS. FIELD [1999-2000] 2 GLR 431** and cited by Counsel for the Defendants, per Holding (1) thereof, *“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 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 reason 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 findings was inconsistent with crucial documentary evidence on record.”*

EVALUATION ANALYSIS

- (16) We share in the sentiments of Counsel for the Plaintiffs, that it is difficult comprehending exactly what the Defendants’ attack is per Counsel for Defendants/Appellants’ 7 paged submission to this court. The grounds of appeal, and the judgments of the two lower courts suggest the direction of the thinking of the Defendants. As earlier indicated, the key issues for determination in this appeal dwell on whether the 1st Plaintiff’s adoption of the distribution by the customary successor was proper and more importantly, whether the estate of the late Samuel Armah Hammond (deceased) was equitably distributed. We shall deal with these issues, within the grounds of appeal formulated by the Defendants, the Appellants hereto.

- (17) We shall deal first, with the omnibus ground of appeal which alleges that the judgment of the Court below is against the weight of evidence on record. On this ground, it is not difficult to find, particularly from the concurrent judgments of the two lower courts as well as the statement of case filed by counsel for the Appellants, that the Defendants as Appellant's woefully failed to discharge the duty on them to expose any errors in the reevaluation of the evidence on record by the Court of Appeal which warrants this court to make findings of facts to reverse the said re-evaluation, the affirmation of the primary findings by the Trial Court and the judgment regulating from those findings.
- (18) The basis of the Defendants' claim that, the distribution was improper was anchored on their supposition that because the Osu-RE property, though acquired by their father but in the name of their sister Josephine Adukai Azu, she was the actual the owner of the property for all purposes. Their position therefore that, the property could not be deemed to have formed part of the estate of their father, for purposes of the distribution. While this supposition passes in the first instance as a presumption that the Parties' father advanced the property to Josephine, same was rebutted. Per the evidence on record, despite acquiring the Osu-Re property in the name of his daughter, Josephine, Samuel Armah Hammond, her father continued to exercise overt acts of ownership and possession over the said property.
- (19) From the evidence on record, it appears that, the Appellants who do not claim the Osu-RE property as theirs, are crying more than Josephine. It is striking to observe, that Josephine has never bothered to assert her ownership to the property. She was not even called in the proceedings as a witness to the suit. From the evidence, Josephine and her siblings as well as her mother forming one group accepted the

distribution made, and exercised control over the property to the exclusion of the other groups.

- (20) Further, the Appellants again failed to lead positive evidence to establish their allegation that, the Oyarifa Property is not deserving of value to be given to them, and or that same has been taken over by a government road project. There is no scintilla of, any positive evidence supporting any of these two claims.
- (21) On the contrary, following the adoption of the earlier distribution, the 1st Plaintiff executed a Vesting Assent in favour of the 1st Defendant and his deceased brother over the Oyaraifa property. It is worth pointing out that, there is no evidence on record to the effect that the deceased brother, Lionel ever objected to the vesting of the property in them. He, as a matter of fact went ahead to even sell off the said property, a fact admitted by the 1st Defendant. Having taken the benefit of the said sale, it lies ill in the mouth of the Defendants to now request a re-distribution.
- (22) The evidence on record further reveals that, the respective houses given to each of the wives of the deceased and their children had served as their place of abode while Samuel Armah Hammond was alive. They thus have utmost attachment to the respective houses. Furthermore, all the groups did accept the distribution and went ahead to take control of their respective shares. In the case of the Defendants, they sold theirs situate at Oyarifa and took the benefit thereof. In the circumstances, it is our considered view, that there is nothing unfair about the distribution. If there existed any such unfairness at all, the Defendants failed in the discharge of their evidential burden to lead the necessary positive evidence to prove same.
- (23) It must be emphasized that, what is fair or equitable as regards the distribution of the estate of a deceased intestate must be determined on case by case basis. In a

different facts scenario, notwithstanding that there were three groups entitled to the distribution of three houses, giving each group one house may be unfair , if regard is had to such factors like the size, value location of the house; the number of beneficiaries in each group among others.

- (24) These considerations which may impact such distribution must be positively proven and brought to the attention of the court. A bare claim that, a property in Osu is of more value than that in Oyarifa, is, with much deference hollow if the burden placed on the party who asserts is to be discharged. From the foregoing, we cannot, but dismiss the first ground of appeal. We accordingly dismiss same.
- (25) The second ground of appeal is that: *The Judgment is wrong in law in that the administrator did not gather the estate of the late Samuel Armah Hammond.* It is difficult to appreciate what informs this ground. The Defendants' contention is that, the distribution is improper because, the 1st Plaintiff did not gather the estate before the said distribution. The pertinent issue is, what entails the gathering of an estate? Put differently, does what has already been gathered require further gathering? To gather an estate simply means to identify, locate, and or bring the items of the estate into a basket and then, proceed with the distribution. The immovable properties, the subject of the instant action did not warrant any further gathering. For all intents and purposes the said properties upon the grant of the LA fictionally came under the possession and control of the Administrator. Empowered by the court, and upon his appointment, the 1st Plaintiff proceeded to distribute same, by adopting the earlier distribution. Would the Defendants have abandoned their objection if the Administrator had effected a fresh distribution, which was still reflective of the previous one? Clearly, the contention urged on us under this ground is just simplistic, and not persuasive. This ground accordingly also fails.

CONCLUSION

(26) For all the reasons hereinbefore set out, the entire appeal lacks merit. The Defendants, Appellants herein, failed to demonstrate from their statement of case any reason which will justify and authorise a reversal of the concurrent decisions of the two lower courts. In the result, the appeal fails in its entirety and is accordingly dismissed.

I.O. TANKO AMADU
(JUSTICE OF THE SUPREME COURT)

P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

PROF. N.A. KOTAY
(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)
(JUSTICE OF THE SUPREME COURT)

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

COUNSEL

**EMMANUEL HAMMOND ESQ. FOR THE PLAINTIFFS/RESPONDENTS/
RESPONDENTS.**

A. G. BOADU ESQ. FOR THE DEFENDANTS/APPELLANTS/APPELLANTS.