IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: DOTSE JSC (PRESIDING)

LOVELACE-JOHNSON (MS.) JSC

AMADU JSC

PROF. MENSA-BONSU (MRS.) JSC

KULENDI JSC

CIVIL APPEAL

NO. J4/80/2022

22ND MARCH, 2023

NII AFLAH …… DEFENDANT/APPELLANT/APPELLANT

VRS

BENJAMIN KWAKU BOATENG …… PLAINTIFF/RESPONDENT/RESPONDENT

JUDGMENT

KULENDI JSC:-

INTRODUCTION.

By a unanimous decision of this Court on the 22nd day of March 2023, this appeal by the Defendant/Appellant/Appellant (hereinafter called the Appellant) against the judgment

of the Court of Appeal dated 16th December 2021 failed in it's entirety and was accordingly dismissed. In its place the judgement of the High Court, dated 24th July 2018 was thereby restored. We however reserved our reasons to be filed on a subsequent date, which we hereby deliver.

BACKGROUND:

The Plaintiff/Respondent/Respondent (hereinafter referred to as "the Respondent") issued a Writ of Summons and Statement of Claim against the Appellant on 12th July, 2013 for the following reliefs:

a. *Declaration of title to land lying or being at Odorkor at Teiko Adam near Tsum, Odorkor with an approximate area of 0.29 acre with a house thereon and more particularly described on Plaintiff's title documents.*
b. *Perpetual injunction restraining the defendant herein, whether by himself, agents, assigns, representatives, hirelings or whosoever from entering into, trespassing or intermeddling with the said property.*

In a fifteen (15) paragraph Statement of Claim, the Respondent described the land as a 0.29 acre land bounded on the North-West by a proposed road measuring 100 feet more or less, on the North-East by J. Welbeck's land measuring 130 feet more or less, on the South East by vendor's land measuring 100 feet, to the South West by A.M Allotey's land measuring 130 feet more or less and more particularly described in the Plaintiff's title documents and site plan.

According to the Respondent, the land in dispute was conveyed to him and his wife by a conveyance dated June 1989 by one Stella Aso Siaw who earlier acquired the land by a lease dated 10th January, 1979. The Respondent alleges that upon the acquisition of the land, he constructed a two-bedroom house on the land and resides there whenever he comes to Ghana. According to him, he also put in a tenant in the house who doubled as

his caretaker and that the said house has been on the land for over 20 years prior to the institution of the action.

In June, 2013, the Appellant sued and obtained a judgment from the Kaneshie District Court against the Respondent's tenant at a time when the tenant had travelled. The Appellant then proceeded to eject the Respondent's tenant from the house. It was contended by the Respondent that the Appellant's claim to the land is fraudulent and the particulars of the alleged fraud were stated as follows:

a. "The Defendant or his family had leased the same land to Stella Aso Siaw in 1976.
b. The said land had been conveyed to Plaintiff in 1989.
c. A two bedroom with Kitchen has been on the land for more than 20 years built by Plaintiff and not the Defendant."

It was also contended that the Respondent, having been in possession of the land without let or hindrance from 1989, "a period of more than 14 years," the Appellant is caught by the law of limitation.

The Appellant on the other hand, by an Amended Statement of Defence filed on the 8th of December, 2016 contended that he has obtained and executed a judgment of the District Court by ejecting the occupants of the land with police assistance on 12th June, 2013. According to him, the said judgment has neither been appealed nor set aside. It was further contended that the Respondent was on notice of the action at the District Court but failed to join the suit despite the opportunity given him to do so. It was also alleged that the Respondent's root of title derives from the Teiko Adams Family and not Appellant's family, the Chuim Tawiah Family. It was therefore contended that the Respondent was not entitled to any of the reliefs sought.

In a reply to the Amended Statement of Defence filed on 21st December, 2016, the Respondent contended that he was never served with a copy of the writ of summons issued at the District Court and further, that the judgment that was obtained at the District Court was against his tenant, who was said to be a squatter. Therefore, title to the said house at Odorkor was never determined by the the District Court.

After trial, the High Court, in the said judgment of the 24th July, 2018, granted the Respondent the reliefs sought per his Writ of Summons, dismissed the defence of the Appellant and awarded cost of Ten Thousand Ghana Cedis (GH¢ 10,000.00) in favour of the Respondent against the Appellant. The Court held in part as follows:

> "The Court finds as a fact that the Plaintiff has been in occupation and control of the land. He is also in possession of the land and holds equitable title to the land. The Court has found as a fact that the plaintiff built on the land in dispute a two bedroom self-contained house on the land, demolished same and rebuilt it, walled it and installed a gate. The Defendant alleged that he saw some persons on the land who presented drinks to his father, but the names he mentioned did not include the Plaintiff's. Plaintiff built on the land in broad daylight, the Defendant refused or failed to stop him or report him to the police. These acts of adverse possession were not temporary but permanent. … The Plaintiff has been in possession of the land for more than twelve years. The Plaintiff's possession was open, visible and unchallenged. No action shall be brought by any person after the expiration of 12 years from the date the cause of action accrued, which is 1990 when the Plaintiff entered the land and began construction."

The appeal against the judgment of the High Court to the Court of Appeal was dismissed in its entirety. The present appeal to this Court is therefore one which is against the concurrent judgment of the Court of Appeal.

GROUNDS OF APPEAL:

The Appellant's grounds of appeal as contained in the Notice of Appeal filed on 18th January, 2022 are as follows:

I. The Court of Appeal erred in law when it failed to address the issue of Mr. Joseph Issah Kaponde's capacity to prepare the Writ of Summons and the Statement of Claim on behalf of Plaintiff/ Respondent/ Respondent at the time he had no solicitor's licence to practise when there was overwhelming evidence on the record.

II. The Judgment is against the weight of evidence.

III. The Court of Appeal failed to consider that Plaintiff/ Respondent/ Respondent lacks capacity to mount the suit without any authority from his wife which has caused substantial miscarriage of justice to the Defendant/Appellant/Appellant.

IV. The Court of Appeal failed to consider that Plaintiff misspelt his name and has far reaching consequence in law per Exhibit C.

V. The Court of Appeal failed to consider that Benjamin Kwaku Boating and Mr. And Mrs. Dina Boateng are not the same identity.

VI. The Court of Appeal failed to consider that Plaintiff/Respondent/ Respondent's almighty Exhibit C, is not stamped as the law requires.

VII. The Court of Appeal failed to consider that Plaintiff/ Respondent/ Respondent has not been able to show his boundary to the disputed land.

VIII. The Court of Appeal erred in law or failed to consider that Plaintiff/ Respondent/ Respondent's grantor, Stella Aso Siaw, cannot acquire 0.29-acre land and grant same to the Plaintiff/ Respondent/ Respondent and still build on 0.29 acre and live on it with her family.

IX. The Court of Appeal woefully failed to consider that there was no grant in 1989, between Stella Aso Siaw and Plaintiff/ Respondent/ Respondent and his wife as claimed.

RESOLUTION OF GROUNDS OF APPEAL:

In resolving these numerous grounds of appeal, we shall discuss grounds I, III and VI independently as they each border on points of law and for that matter, ought to be discussed seperately. We shall however, discuss ground II, which is the omnibus ground of appeal together with grounds IV, V, VII, VIII and IX. This is because, grounds IV, V, VII, VIII, and IX like the omnibus ground of appeal, each and all require an examination of the evidence on record having regard to the applicable law.

GROUND I:

In this ground of appeal, the Appellant contends that the Writ of Summons and Statement of Claim issued in this suit are a nullity as counsel for the Respondent did not have a

valid Solicitor's practice license at the time of the issuance of the Writ of Summons and Statement of Claim.

This argument is premised on the fact that the Writ of Summons and Statement of Claim were issued on 12th July, 2013 and endorsed with a 2012 Solicitors Licence number as GAR: 07134/2012. Thus, whilst the appeal was pending before the Court of Appeal, the Appellant did conduct a search at the General Legal Council which by a letter dated 7th May, 2021, confirmed that as at 12th July, 2013, Respondent's Counsel, Joseph Kaponde did not have a Solicitors licence to practise. The search results from the General Legal Council as well as the practice certificate of Joseph Kaponde issued on 5th September, 2013 were annexed to a Reply filed at the Court of Appeal by Appellant to the Respondent's written submissions on 4th November, 2021, a portion of which states as follows:

> "The records of the GBA National Secretariat and those of the GLC Sub-Committee on Chambers Registration & Issuance of Solicitors' Licences reveal that as at 12th July 2013, Mr. Joseph Kaponde did not have a Solicitors Licence to practise. He however obtained Licence No. GAR 06498/13 issued on 05/09/2013."

This may be found at page 48 of Volume 3 of the Record of Appeal.

On the basis of the above exhibits, the Appellant prays that the Writ of Summons filed to commence the action be declared defective and a nullity.

On this ground the Appellant seeks solace under the decision of this Court in a judgment dated 21st April, 2016 in **Suit No. J4/56/2016** entitled **Henry Nuertey Korboe v. Francis Amosa** where this Court, speaking through Dotse JSC held that upon a plain and natural construction of Section 8(1) of the Legal Professions Act, 1960 (Act 32), where a lawyer who does not possess a valid solicitors' license engages in the practice of law, all professional acts undertaken in his capacity as a lawyer, during that 'defective' period is null, void and of no legal effect.

The learned judge further postulated that:

"The rationale for the above conclusion stems from the fact that, having lost his right to practice law pursuant to section 8 (1) of Act 32, it is apparent that no validity flows from any process or appearance that such a lawyer will offer any client."

If this were simply the case, the Appellant would have had an unimpeachable argument, with a straight statutory provisions, a wealth of case law and evidence to warrant an invalidation of all processes filed by the said Joseph Kaponde during the period within which he did not have a solicitors license.

In our considered opinion however, the allegation and/or evidence that the Respondent's Counsel did not have a valid licence to practise at the time of the issuance of the Writ of Summons was not properly before the Court of Appeal. Similarly, this evidence and allegation is not properly before this Court and consequently does not form part of the evidence to be considered in the determination of this appeal. This is because, the evidence introduced to support this ground did not form part of the record of proceedings of the trial High Court. In fact, the contention was never raised before the trial Court. Rather, the search results and the copy of the practice certificate were belatedly and without leave of Court, introduced into the appellate proceedings by a mere attachment of same to the Reply filed to the Respondent's Statement of Case. This, obviously constitutes an attempt by the Appellant to introduce fresh evidence on appeal in a manner not permitted by the rules and practice.

In this regard, the caution by the venerable Dotse JSC in a judgment of this Court dated the 15th day of February 2012 in **Suit No. J8/92/2011** entitled **Republic vrs. Thompson and Others** is worth reiterating. The learned jurist reasoned as follows:

"It has been time tested practice that, in an appeal, the parties and the court are bound by the record and no one is permitted to manufacture evidence or refer to any evidence that cannot be supported by reference to evidence on record"

The Law is therefore unequivocal and the practise settled on how fresh or new evidence may be introduced for the first time on appeal. It ought to be done by an application that allows the Appellate court to interrogate the circumstances that occasioned the inability of the proponent of such fresh or new evidence to adduce the evidence at the original trial in order to motivate the discretion of the Court as to whether or not the requirements under the relevant rules of Court and the imperatives of the ends of justice have been duly satisfied to justify the introduction of such new or fresh evidence on appeal. Consequently, any approach that has the effect of denying the Court the opportunity of exercising its discretion in relation to any such new or fresh evidence is procedurally fatal and renders such evidence inadmissible for the purposes of consideration as part of the record of the proceedings properly so called.

Specifically, rule 76 of the Supreme Court Rules, 1996 (C.I. 16) which regulates the introduction of fresh or new evidence on appeal provides as follows:

"Rule 76—New Evidence.

(1) A party to an appeal before the Court shall not be entitled to adduce new evidence in support of his original action unless the Court, in the interest of justice, allows or requires new evidence relevant to the issue before the Court to be adduced.

(2) No such evidence shall be allowed unless the Court is satisfied that with due diligence or enquiry the evidence could not have been and was not available to the party at the hearing of the original action to which it relates.

(3) Any such evidence may be by oral examination in Court, by an affidavit or by deposition taken before an examiner as the Court may direct.

This court has on several occasions given judicial interpretation to the meaning, scope and prerequisites for the exercise of our discretion on whether or not to allow new or fresh evidence on appeal under this rule.

In a ruling of this Court dated 28th April, 2020 in **Suit No.: J8/131/2020** entitled **Ogyeedom Obranu Kwesi Atta VI v. Ghana Telecom Co. Ltd. & Anor**, this Court considered a compendium of judicial decisions tracing the chronology and development of the applicable legal rules, principles and requirements that underly the adduction of fresh evidence on Appeal.

Among others, the Court considered the consolidated case of **Rev. Rocher De-Graft Sefa and Anor v. Bank of Ghana and Anor [Civil Motion No. J8/75/2014]; Samuel Gyamfi v. Bank of Ghana and Anor [Civil Motion No. J8/76/2014]** wherein Benin JSC, laid out the pre-requisite factors to be proven by a party seeking to adduce fresh evidence on Appeal as follows:

1. The evidence was not available to the applicant at the trial;
2. The evidence could not have been obtained by the applicant upon reasonable diligence for use at the trial;
3. Had the evidence been adduced at the trial it would have had an important influence on the result of the case, although it need not be decisive;
4. The evidence is such as is presumably to be believed. In other words, the evidence is of a sort which is inherently not improbable.

The position espoused in Samuel Gyamfi vrs. Bank of Ghana supra, was following the earlier decision of this Court in the case of **Poku v. Poku *2007-2008] SCGLR 996*** at page

998 where the framework for the consideration of such applications was prescribed as follows:

> *"in an application to lead fresh or new evidence before the Court of Appeal, the first criterion, which an applicant ought to establish, was whether the evidence sought to be adduced, was neither in the possession of the applicant nor obtainable by the exercise of reasonable diligence or human ingenuity before the impugned decision was given by the lower court. It was only when that first hurdle had been surmounted, that the court should proceed to determine the other pertinent question of whether or not the intended evidence would have a positive effect on the outcome. If the first criterion was not met, no useful purpose would be served by examining the other factors"*

In the circumstances, it is needless to say that there can be no judicial justification for us to consider grievances grounded on evidence that has not been allowed or adduced by way of "fresh evidence" in a manner warranted by the rules and practice of Court to properly form a part of the record of appeal.

In a judgment of this Court dated the 4th da of May 2022 in **Suit No.: J4/73/2021** entitled **Kofi Amofa Kusi vrs. Afia Amankwah Adarkwah**, this Court observed that:

> **"We are mindful that authorities abound on the principle that a point of law can be raised for the first time on appeal provided that the facts that may help in the resolution of the point of law are part of the evidence already on record. Otherwise, it will be unwarranted, impermissible and to no avail for want of the necessary evidentiary bases to ground the point of law. See the cases of: Ama Serwaa Vrs Gariba Hashimu and Another [Civil Appeal No.: J4/31/2020], judgment dated 14 April 2021; Tamakloe & Partners v. GIHOC Distilleries**

[Civil Appeal No. J4/70/2018], judgment dated 3rd July 2019; and Fattal vrs. Wooley [2013-2014] 2 SCGLR 1070."

Therefore, the evidence of the Respondent's Counsel's want of a valid Solicitor's Practice Licence, at the time of the issuance of the Writ is not part of the Record of Appeal, properly so called. This is because, it was not admitted into evidence in a manner and/or by procedure permitted by the rules and practice of Court. We are of the view that an allegation that lawyer did not have a valid practice license at the time he/she purported to commence or take out process for and on behalf of a party is an allegation of fact that requires proof by way of evidence properly adduced at the trial. This position of the law was reiterated by this court in its judgment dated 13th May 2020 in **Suit No.J4/02/2019** entitled **Emmanuel Amoakohene vrs. Juliana Amoakohene a.k.a Maame Sika**, per Dordzie JSC at page 4 thereof. Consequently, the objection to the validity of the proceedings on the basis that the Respondent's lawyer did not have a valid practice license is not supported by any proper evidence on record. Accordingly, ground I of the Appellant's appeal lacks substance and merit for want of the necessary evidentiary basis in the record to effectively sustain and render such an objection unimpeachable.

Unless it relates to complaints of nullity, it is also trite that objections must be raised timeously and a litigant who neglects, fails and/or refuses to raise an objection within a reasonable time, having regard to all the circumstances at hand, risks being held to have been indolent and therefore forfeited the opportunity or the right to maintain such an objection.

In a judgment of this Court dated 14th June, 2017 in Suit No J4/51/2016 entitled Nana Ampofo Kyei Barfour vrs. Justmoh Contruction Co. Ltd & 3 others, this Court had cause to bemoan the increasingly prevalent tactic employed by lawyers

to belatedly raise issues regarding the validity of processes. The Court, speaking through ADINYIRA (MRS), JSC stated:

"Though an objection such as this goes to the validity of the processes filed by a solicitor and could therefore be raised at any stage of the proceedings, the best practice in our opinion, is for the point to be raised at the earliest opportunity and at the early stage of the proceedings at the trial court."

In our considered opinion, in addition to introducing the proper legal and/or evidentiary basis, the time to have raised an objection to the issuance of the Writ and Statement of Claim filed by counsel for the Respondent who did not have a valid practicing licence was during the trial in the High Court. A party should not fold his or her arms, go to sleep or look on when an objectionable issue arises in the Court of first instance and hope to use the right to raise the objection as a fall-back to challenge future proceedings.

It must be emphasised that the lawyer's status as an officer of the Court places an honour bound obligation on the lawyer to promptly draw the Court's attention to such actions and inactions that tend to undercut the judicial process or undermine the proper conduct of a suit before the Court. A lawyer, like a judge shares in the responsibility to ensure that the conduct of proceedings in Court are pursued in such a way that encourage and achieve speedy and effective justice and avoid unnecessary expense.

In our view, ground one of the Appeal and the particulars thereto, which essentially seek to rely on evidence which does not properly constitute part of the record of appeal, as a basis for contending that Counsel for the Respondent did not have a valid licence to practise at the time he issued the Writ of Summons and Statement of Claim is unmeritorious, untenable and is accordingly dismissed.

GROUND III.

The next ground of appeal which we wish to consider is the ground which contends that the Court of Appeal failed to consider that the Respondent lacks capacity to mount the suit without any authority from his wife which has caused substantial miscarriage of justice to the Appellant.

This ground of appeal is premised on Paragraph 11 of the Statement of Claim wherein the Respondent contended that the conveyance in the land was conveyed to himself and his wife Mrs. Diana Boateng. Also, the Respondent prosecuted the action through an attorney who, per the terms of the power, acted on behalf of Respondent alone and not the Respondent and his wife.

It is therefore argued that, having stated in his Statement of Claim that the land which is the subject matter of the present suit was conveyed to both Respondent and his wife, the Respondent alone cannot authorise the prosecution of the case without "the consent and tacit knowledge of his wife and consequently the Power of Attorney issued by the Respondent alone, for the prosecution of the suit is a nullity."

In this ground of appeal, while the Appellant does not dispute the interest of the Respondent in the subject matter of the dispute, he argues that the Respondent alone can neither institute nor prosecute a cause of action in relation to the house whether directly by himself or indirectly through an Attorney without acting in either regard, together with his wife

In the case of **Fosua and Adu-Poku vrs Dufie (dec'd) and Adu Poku-Mensah [2009] SCGLR 310** at 337 Atuguba JSC stated that "Capacity to sue was a matter of law and

could be raised at any stage of the proceedings even on appeal. It can even be raised by the court suo motu."

This principle was subsequently reiterated by this Court per Amegatcher JSC in a judgment dated the 3rd day of July 2019 in Suit No. J4/70/2018 entitled **Tamakloe & Partners UNLTD vs. Gihoc Distilleries Co Ltd.**

Consequently, unlike ground I, which, in the absence of the proper legal and/or evidentiary basis, cannot be raised for the first time on appeal, the question of capacity can always be raised at any time by a party or by the Court on its own motion. Where the issue on capacity is raised on appeal however, such belated inquest would only be entertained when the Appellate court can, by exclusive recourse to the evidence already on record, conclusively resolve the issue relating to that other party's capacity.

In the case of **Fattal v. Wolley [2013-2014] 2 SCGLR 1070**, this Court opined that:

> "We concede that the legal question of capacity, like other legal questions, such as jurisdiction, may be raised even on appeal. But it is trite learning that the principle is clearly circumscribed by law. The right to raise legal issues even at such a late stage is legally permissible only if the facts, if any, upon which the legal question is premised, are either undisputed, or if disputed, the requisite evidence had been led in proof or disproof of those relevant facts, leading to their resolution by the trier of facts; failing which the facts could, and based purely on the evidence on the record and without any further evidence, decidedly be resolved by the appellate court."

In the instant case, we are of the opinion that we are seized with the relevant facts and evidence to properly determine the issue of the Respondent's capacity to institute the action in the trial court. Consequently, we shall proceed to consider the said issue.

The fact that the conveyance in the land was made to the Respondent and his wife jointly does not mean that the Respondent is legally incapacitated from single-handedly taking legal action to protect his joint interest in the property.

At page 179 of Volume 2 of the Record of Appeal, we find that Exhibit B, a Conveyance dated June 1989 from Stella Aso Siaw to Mr and Mrs Kwaku and Dina Boateng, being the Respondent and his wife, is evidence of the Respondent's legal and beneficial interest in the subject matter in dispute, albeit held jointly with his wife. We see no legal inhibition whatsoever to the Respondent's capacity to unilaterally institute this action to protect his legal and beneficial interest in the property. There can be no justifiable legal preclusion to the Respondent's right to institute the action to protect his interest in the manner that he did, especially when from the facts of the case, he stood a chance of losing the interest and rights that he had in the land.

Consequently, we find no merit whatsoever in ground 3 and same accordingly fails.

GROUNDS II, IV, V, VII, VIII and IX.

We now turn to the Appellant's plaint that the judgement is against the weight of evidence together with grounds IV-IX which we consider to be interrelated and therefore capable of being conveniently resolved together.

Under these grounds of appeal, this Court would evaluate the entire evidence on record to ascertain whether or not the two lower courts rightly applied themselves to the law and the evidence in coming to the findings made and conclusions reached in this suit.

It is important to note that the findings and conclusions of the Court of Appeal were concurrent with that of the High Court. We cannot overemphasise the requirement that an Appellant who is challenging the concurrent findings of two lower courts must

demonstrate with compelling clarity that the two lower courts, in coming to the objectionable findings and conclusions, committed blunders or errors resulting in a miscarriage of justice. Such errors may be errors of law and/or fact. Where for example it is demonstrated that the two lower courts erred in the face of crucial evidence which error when corrected would result in contrary findings, we will be inclined to set aside such concurrent findings.

Wood, CJ in **Mondial Veneer (Gh) Ltd v. Amua Gyebu XV [2011] 1 SCGLR 466**, cited with approval the dictum of Acquah, JSC (as he then was) in the case of **Achoro & Anor. v. Akanfela & Anor. [1996-1997] SCGLR 209** on the position of the law as follows:
"In an appeal against findings of facts to a second appellate court like… (the Supreme Court), where the lower appellate court had concurred in the findings of the trial court, especially in a dispute, the subject-matter of which was peculiarly within the bosom of the two lower courts or tribunal, this court would not interfere with the concurrent findings of the two lower courts 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 lower tribunals had dealt with the facts. It must be established; e.g. that the lower courts had clearly erred in the face of a crucial documentary evidence, or that a principle of evidence had not been properly applied; or that the finding was so based on erroneous proposition of the law that if that proposition be corrected, the finding would disappear……It must be demonstrated that the judgments of the courts below were clearly wrong".

*Earlier in the **Achoro case**, Acquah JSC (as he then was) articulated the above principle in the following terms:*

> *"This court would not interfere with the concurrent findings of the two lower courts 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 courts had dealt with the facts."

The instances where this court may justifiably interfere with the concurrent findings of the Court of Appeal and the High Court were restated in the case of **Koglex Ltd v. Field (no 2) [2000] SCGLR 175**, to include the following: -

a. *Where the findings of the trial court are clearly unsupported by evidence on record or the reasons in support of the findings are unsatisfactory.*
b. *Where there has been improper application of a principle of evidence or where the trial court has failed to draw an irresistible conclusion from the evidence.*
c. *Where the findings are based on wrong propositions of law and, if that proposition is corrected, the finding disappears and*
d. *Where the finding is inconsistent with crucial documentary evidence on record.*

The above authorities concur that the nature of lapses on which an appellant seeks to ground his bid to overturn the concurrent judgments of lower Courts must be apparent, clear and obvious errors which result in grave injustice or miscarriage of justice on the Appellant. In such circumstances, the ends of justice warrant an interference by an appellate court to avert an unjust outcome.

The Appellant has contended that the Respondent had misspelt his name in Exhibit C, the document conveying the land from Mrs Stella Aso Siaw to the Respondent and his wife, and that the said error has far reaching consequences in law.

A perusal of the Record of Appeal as well as the submissions of Counsel shows that the document conveying the land from Mrs. Stella Aso Siaw to the Respondent and his wife is Exhibit B and not Exhibit C as was erroneously stated in the grounds of Appeal. To do

substantial justice to the Appellant, we shall not treat this misnomer as fatal and so shall proceed to deal with those grounds of appeal as grounds referencing Exhibit B instead of Exhibit C. In any event, we struggle to appreciate, how the misspelling of the Respondent's name in Exhibit B, affects the Appellant at all, let alone in such a manner as or to such an extent as to occasion him a miscarriage of justice.

A look at Exhibit B, the conveyance dated June 1989 between Stella Aso Siaw and the Respondent and his wife would reveal that the Respondent and his wife were described in the said conveyance as "Mr and Mrs Kwaku and Dina Boateng." This description of the Respondent is what the Appellant raises issues with and contends that the Respondent has misspelt his name in the said Exhibit. In addressing the issue, counsel for the Appellant has argued that "the Exhibit B bears the names Mr and Mrs Kwaku and Dina Boateng, which names are different from the names on the Writ of Summons and the Statement of Claim… Nowhere in the Writ and the Statement of Claim that Plaintiff/Respondent can be called Mr and Mrs Kwaku and Dina Boateng; and it is the law that mis-spelt name has far reaching consequence in law in any matter. It is now known that Mr. and Mrs. Kwaku and Dina Boateng and Benjamin Kwaku Boateng are not the same identity and same cannot be taken for granted in law." (see Page 14 of the Appellant's Statement of Case.)
The Appellant's counsel then cited a couple of cases in which it was held that a misspelt name may have far-reaching consequences in law in support of the above assertion.

The question we ask ourselves under this contention is whether or not the Respondent's name been misspelt in the indenture? We think not. This is so because, one cannot hold that Benjamin Kwaku Boateng and Mr. Boateng are in the circumstances of this case not referable to one and the same person. This is especially so when Respondent's grantors testified on his behalf and confirmed the grant of the land to the Respondent and his wife

by Stella Aso Siaw. It is to be noted that Stella Aso Siaw's son testified on behalf of the Respondent as PW1. It was his testimony that his mother acquired two plots of land in 1976 and sold a portion of the said land to the Respondent. After a year of the sale the land was partitioned. The Respondent then brought his brother-in-law to live on the land as caretaker. Indeed, the ownership of Stella Aso Siaw of the adjoining land is not in dispute. In fact, Appellant's Attorney who testified on behalf of the Appellant admitted that Stella Aso Siaw had lived on the land with her children since the Attorney was a child. He testified under cross-examination, which may be found at pages 260 to 264 of Volume 2 of the Record of Appeal as follows:

"Q: Stella Aso Siaw has built on her portion of the land and lived in that house with her family since 1976 until her demise in the year 2000?

A: Stella Aso Saw came to live at Odorkor in 1985. I know her children very well I use to play with them especially her son Atta. And therefore the land granted to Stella Aso Siaw by Emmanuel Aflah Addo she is still in occupation on the said land. She has not granted any portion of that land to any other person. Beside that Emmanuel Aflah Addo is not related to my family (Ni Tsuim Tawah family) in anyway, we don't know him anywhere.

Q: Stella Aso Saw's house is fenced with a gate?

A: Yes.

Q: The plaintiff's house is just by Stella Aso Siaw's house?

A: The plaintiff has no property there what he is currently occupying belongs to the Tsuim Tawiah family.

Q: The plaintiff has a two bedroom house and an uncompleted storey building on the land?
A: The two bedroom self-contained was put up during the pendency of the suit.

Q: Exhibit D attached to Plaintiff's witness statement is the photograph of the plaintiff's house on the land?

A: Exhibit D is a structure put up by Kwabena Boateng who is the son of the plaintiff after we granted him permission to do so. He did not claim ownership of the land through his father at the time but he pleaded with us to permit him to put up the structure. It is so because Stella Asor Siaw deceived them and collected money from him to grant him land but upon investigation he had realized that As Siaw had no land in the area.

Q: Since 1976 your family has never challenge Stella Aso Siaw's ownership of the land she acquired from Emmanuel Aflah Addo?

A: It is not that we never challenged her and I have mentioned earlier on that I know Aso Saw and her children very well and we have come to the realization that she got the land by means of fraud that is why we are challenging it now.

Q: Since she acquired the land in 1976 and built on it you have never send her to court neither have you send her successors to court?

A: I have mentioned that we have a very good relationship with Aso Saw and her children but once we have realized that the land was acquired by means of fraud we are going to take further steps to reclaim the land.

Q: Since 1990 the plaintiff family and tenants have been living in the two bedroom house he built on the land?

A: It is not correct.

Q: Plaintiff's house is fenced with a gate on it?

A: The plaintiff has no building in the area.

Q: Is the house fenced with a gate or not?

A: Plaintiff has no house in the area and therefore cannot fenced same.

Q: The house in which plaintiff's family and tenants are residing as at now is the subject of this dispute is fenced round with a gate?

A: The house the plaintiff attorney is occupying does not belong to the plaintiff and his family even though it is fenced with a gate."

From the above evidence, it cannot be lost on the Court that the Appellant knows the Respondent's grantor who from the evidence has lived on the subject matter since 1976 with her children without any let or hindrance. The testimony of the Appellant's Attorney is one which to some degree corroborates Respondent's root of title. This is because the Appellant's Attorney testified that he had permitted Respondent's son to put up the building on the land because the Respondent's son had been deceived by Stella Asor Siaw in respect of the land in dispute. This piece of testimony is in startling contrast to the testimony by the Appellant's grantee that the Respondent did not have any house on the

land in dispute. Indeed, Appellant's grantor, having been on the land since 1976 and having sold a portion of the said land to the Respondent in 1989, the Respondent acquired an interest which was as valid as that of his grantor.

We note that in this Appeal the Appellant has taken issue with the identity of the land and contends that the Respondent failed to prove the identity of his land. This is because the grant that was made to Stella Asor Siaw was a grant of 0.29 acres of land. The conveyance that was also made to the Respondent was also for 0.29 acres of land. In fact, the description that is in the original conveyance that was given to Stella Asor Siaw in 1976 is the same description of land that is recited in the conveyance that was given to the Respondent and his wife in 1989. This could possibly mean one of two things: that Respondent's original grantor conveyed the parcel of land as she acquired it to the Respondent or that there was an erroneous description of the land that was to be conveyed to the Respondent. What is clear from the evidence of PW1, is that Stella Asor Siaw acquired two adjoining plots of land and did convey one of the plots to the Respondent and his wife. The fact of the conveyance is not in dispute as same is corroborated by the evidence of PW1. Also, the fact that the land in dispute shares a boundary with the house of Stella Asor Siaw is also a fact amply supported by evidence on record. In our estimation therefore, to suggest that the land that is represented by Exhibit C, the conveyance between Stella Asor Siaw and Emmanuel Aflah Addo, represents a bigger portion of land out of which a smaller portion of land was sold out to the Respondent and his wife would be to engage in speculations to defeat the documentary evidence. Such speculation would be needless in the face of compelling corroborative evidence on the acquisition by the Respondent of the land in dispute.

The identity of the land in dispute need not assume mathematical precision. Indeed, in the case of **Jass Co Ltd & Anor vrs Appau and Anor [2009] SCGLR 265 at 275** it was held by this Court that proof of identity of land need not be made with mathematical precision. The Court put it thus:

> "As a matter of fact, the contention that a party must prove the identity of land in a land suit with certainty to enable a court decree title does not mean mathematical identity or certainty. It is enough, such as in the instant appeal where the defendants have been able to establish the identity of the land purchased from the Asere Stool by the first defendant and that conveyed to the second defendant by the first defendant."

We are agreeable with the Appellant that a party who wants a declaration of title to land has a duty to establish the identity of the land. This is supported by a plethora of cases including this Court's decision in the case of **Tetteh vrs Hayford [2012] 1 SCGLR 417** wherein Dotse JSC held at page 426 as follows:

> "The position of the law, following from the decision in Fofie v Wusu [1992-93] GBR 877 is that it is the plaintiff who bears the burden of establishing the identity of the land she is laying claim to. Failure to prove this identity is fatal to a claim for declaration of title. In the Fofie case, the Court of Appeal: coram, Lampety, Adjabeng and Brobbey JJA (as they then were) speaking with one voice through Lamptey JA held as follows:
>
> "To succeed in an action for a declaration of title to land a party must adduce evidence to prove and establish the identity of the land in respect of which he claimed a declaration of title. On the evidence, the plaintiff failed to prove the identity of the land claimed.
>
> **See also Kwabena v Atuahene (1981] GLR 136, CA; Anane v Donkor [1965] GLR 188, SC and Bedu v Agbi [1972) 2 GLR 238, CA."**

In the instant case, the Respondent described the identity of his land in detail in Paragraph 6 of the Statement of Claim as a 0.29 acre of land bounded on the North-West by a proposed road measuring 100 feet more or less, on the North-East by J. Welbeck's land measuring 130 feet more or less, on the South East by vendor's land measuring 100 feet, to the South West by A.M Allotey's land measuring 130 feet more or less and more particularly described in the Plaintiff's title documents and site plan.

At trial, the Respondent tendered as Exhibit C, the original conveyance to his grantor in 1976 which bore the description stated above. Further, the Respondent also tendered in as Exhibit B, the conveyance given him and his wife by his grantor in 1989 which also bore the description stated above. Attached to Exhibit B is a site plan which on the face of it describes the size of the land as 0.20 acre. Of course, we are not oblivious to the fact that a 0.20 acre of land cannot be said to be the same as a 0.29 acre of land. There is therefore on the face of the documents presented an apparent inconsistency in the description of the size of the land. We are however unable to, at this stage, verify the scale to which the site plan to Exhibit B was drawn. We can therefore not tell whether the 0.20 acre as appears on the site plan is a misnomer or that the boundary description on the site plan of the land does not indeed match up with the description stated in the conveyance. These inconsistencies in a site plan and an indenture may not however always be fatal unless it can be shown that the land described by the site plan is in fact, on grounds, different from the one recited in the indenture to which the site plan is attached.

In the judgement of this Court in **Suit No. J4/45/2021** and titled **Samuel Otu Boateng and Anor v Kwabena Ntim and Others** which I had the privilege of rendering on behalf of the Court, this Court, faced with a similar situation where the description of a site plan attached to an Indenture did not necessarily correspond *in exacto* to the description in the indenture, opined as follows:

> "In the instant case, we do not think that the difference in the descriptions of the coordinates of the land in the site plan attached to the indenture and the coordinates of the land contained in the indenture itself is enough to ground fraud. This is especially so when there is no evidence that the coordinates referred to in the indenture is referable to a land different from the one in dispute. In our view, there is therefore no evidence on record to back the claim that land as described in the indenture is not the same as the land in dispute."

Similarly, we do not think that the Respondent failed to prove the identity of his land. On the contrary, the Appellant failed to establish that the land in dispute indeed fell within the Chuim Tawiah Family land. This is especially so, when from the evidence on record, the acquisition that was made by Stella Asor Siaw is dated 1976 and the said Stella Asor Siaw had not had any opposition, hindrance, or challenge to her occupation of the land for all these years although her acquisition of the land was not from the Chuim Tawiah Family but rather from the Teiku Adam Family. What is more, the Appellant described their land as being at Odorkor Chuim and pleaded a Court of Appeal judgement in Suit No 166/99 entitled S.K Ntiri and Anor v Gbawe Mantse and Anor which the Appellant relied on to say that they are the owners of a whole track of land called "Chuim Odorkor."

It is to be noted that the Respondent and his grantor's land are described in both Exhibits B and C as one located at "Teiko Adam, near Tsuim." To prove that the land in dispute is not near Tsuim but at Chuim, the Appellant's could have done more and may as well have superimposed the land in dispute to the land described in the Court of Appeal judgement. Having failed to do all of this, the Appellant's claim to the land seems less probable than that of the Respondent's.

GROUND VI

The Appellant complains that "the Court of Appeal failed to consider that the Respondent's almighty Exhibit C is not stamped as the law requires". We must point out that from the record the exhibit that is at the heart of this pliant, ought to be Exhibit "B" and not "C". We will therefore evaluate this ground as being referable to Exhibit "B" and not "C".

As can be observed from our conclusion of our evaluation of grounds II, IV, V, VII,VIII and IX, we have already come to the considered opinion that the Appellant's claim is less probable than that of the Respondent. Consequently, the admission of Exhibit B in evidence becomes inconsequential to the fate of this Appeal. Besides, Exhibit B was not given much evidentiary weight and that seems to be the reason why the Appellant does not allege that its admission in evidence has occasioned a miscarriage of justice, let alone one that is substantial. However, as the Apex Court we cannot gloss over the legal import of this complaint which turns on the vexed issue of the admissibility or otherwise of unstamped instruments in evidence.

In this regard, we note that the Court of Appeal, sitting as the apex Court in the case of **Amonoo & Ors v. Dee [1975] 1 GLR 305** at page 315 reasoned that:

"Exhibit A is an instrument which could properly be stamped at any time provided both duty and penalty are paid. In my view the learned circuit judge having erroneously admitted it, ought to have called upon the plaintiffs to give undertaking to pay the fee. I will in this connection refer to Cross on Evidence (2nd ed.), p. 507. He stated: "If an unstamped document can be lawfully stamped after execution, it may be received in evidence against undertaking to pay the appropriate stamp and penalty." In civil proceedings stamp objections are taken by the court. Having discovered while listening

to addresses that the instrument had not been stamped, she should have invited counsel to give an undertaking or to have it stamped in accordance with the law in force at the date of its execution that is the Stamps Ordinance, 1885. Whatever be the state of the law before, there is nothing in the Stamp Act, 1965 (Act 311), which
precludes the reception of an unstamped document which could properly be stamped upon the proper payment of fees and both the law and ordinary justice demand this be so in the circumstances of this case. Accordingly we will order that the document be stamped in terms of the Act."

This reasoning of the Court was succinctly edited into holding three (3) at page 306, which we need not repeat for brevity.

Subsequently, on an appeal to this Court against an affirmation by the Court of Appeal, of a refusal by the High Court to admit in evidence, improperly stamped receipts, on the ground that they were not stamped in the case of **Antie & Adjuwuah vrs, Ogbo [2005-2006] SCGLR 494 at page 506**, this Court opined that:

" … A more pragmatic approach, which clearly would have served the ends of justice, was for it (an improperly stamped instrument) to have been admitted into evidence and the person seeking to tender it ordered, if at all necessary, to rectify the anomaly. " (emphasis ours)

The law on the admissibility or otherwise of documents or instruments on grounds of stamping thus appeared settled until the case of **Lizori Ltd. v. Boye & School Of Domestic Science And Catering (2013-14) 2 SCGLR 889**, where this Court at page 903, sought to distinguish Antie vrs. Ogbo supra, and reasoned as follows:

'The provision in Section 32 of Act 689 is so clear and unambiguous and requires no interpretation. **Either the document has 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 after judgement**.' (emphasis ours)

When it appeared that this Court had departed from the preceding decisions, and made an equivocal statement of the law on the admissibility of unstamped documents in evidence, the Court in a subsequent judgement dated 7th June 2018 in suit No. J4/36/2016 entitled **Mary Tsotsoo Laryea vrs Amarkai Laryea**, did a u-turn when it delivered itself as follows:

"We have noticed on the face of that Exhibit that it was not stamped in accordance with the Stamp Act, 1965 (Act 311) as amended, which was in force at the time it was executed. **Since we are exercising the powers of the trial Court in determining the admissibility of the said lease in evidence as we are empowered to do by Article 129(4) of the Constitution, 1992, we shall have recourse to section 14(2) of Act 311 and admit the document in evidence subject to a direction that it shall be stamped in accordance with the Act within ten days of this judgment.**" (emphasis ours)

When the Court in its dicta in the Mary Tsotsoo case supra, reverted to the common practice of admission of unstamped documents in evidence subject to stamping, the pendulum swung again even before the ink in this latest decision dried up. The obvious lack of consensus again manifested in a decision of this Court in **Woodhouse Ltd. vrs. Airtel Ghana Ltd [2017-2018] SCLRG 615** , where this Court found as follows:

> "The Court of Appeal was of the opinion, and rightly so in our view, that Subsection (6) covered documents such as exhibit A which was tendered by the plaintiff and which actually formed the basis of the trial judge's judgment. That document was not stamped at the time it was admitted and remains unstamped till today. Relying on the case of Lizori Ltd v. Boye & School of Domestic Science & Catering [2013-2014] 2 SCGLR 889, the Court of Appeal ruled that exhibit A was inadmissible and same ought to have been thrown away, saying "It is clear from all this that Exhibit A in this case, being unstamped ought not to have been admitted into evidence by the trial court even if no objection was raised by the defendant. It is hereby excluded."

This chronology illustrates a flip flopping by this Court, on the law on admissibility of unstamped documents. Whilst in the cases of **Amonoo v. Dee, Auntie v. Ogbo** and **Mary Tsotsoo** on the one hand, this Court essentially decrees a discretion in trial Courts to admit in evidence, unstamped documents and instruments that are liable to stamping, subject to such stamping, this Court in the cases of **Lizori** and **Woodhouse** on the other hand, is emphatic and unequivocal that stamping is a precondition for the admissibility of documents and instruments liable to stamping and therefore trial Courts have no discretion to admit such documents subject to stamping.

In order to bring clarity and hopefully finality to the law by dealing a death blow to these inconsistencies by this Court, it is helpful to reproduce for the purpose of examination, the relevant provisions of the Stamp Act 1965 (Act 311) as well as the Stamp Duty Act, 2005 (Act 689) in extenso.

Firstly, **Section 14** of the Act 311 provides as follows:

"(1) Where an instrument chargeable with a duty is produced as evidence in a Court in a civil matter, or before an arbitration or referee, the judge, arbitrator or referee, as the case may be, shall take notice of any 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 to the registrar of the Court or to the arbitrator or referee, of the amount of the unpaid duty, and the penalty payable on stamping that instrument, be received in evidence, saving all just exception on other grounds:

Provided that any instrument which is sufficiently stamped under the provisions of this Act shall be receivable in evidence although such instrument may be unstamped or is insufficiently stamped according to the law in force in the place where such instrument was executed.

(3) The registrar, arbitrator or referee receiving the duty and any penalty shall give a receipt for it, and make an entry in a book kept for that purpose of the payment and pf the amount thereto, and shall communicate to the commissioner the name or title of the proceeding in which, and of the party from whom, he received the duty and penalty and the date and description of the instrument, and shall pay over to the central revenue department the money received by him for the duty and penalty.

(4) Upon production to the Commissioner of any instrument in respect of which any duty or penalty has been paid under this section, together with the receipt of the registrar, arbitrator or referee, as the case may be, the payment of such duty shall be denoted on the instrument by an impressed stamp or stamps, and the payment of such penalty shall thereon by a certificate under the hand of the Commissioner and his seal.

(5) Save as otherwise expressly provided in this section, any instrument executed in any part of Ghana or relating, wheresoever executed to any property situate, or to any matter

or thing done or to be done, in any part of Ghana, shall not, except in criminal proceedings, be given in evidence, or be available for any purpose whatever, unless it is duly stamped in accordance with the law in force at the time where it was first executed."

Secondly, **section 32 of Act 689** provides:

"(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.**

(3) An instrument which is sufficiently stamped under this Act shall be receivable in evidence although that instrument may not have been stamped or is insufficiently stamped according to the law in force in the place where that instrument was executed.

(4) The registrar, arbitrator or referee shall

(a) give a receipt for moneys paid as duty or penalty; …

(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."**

It must be emphasized that the dictates of a statute unless amended, annulled, or repealed are inescapable. Therefore, where a statute forbids an act, a Court cannot grant immunity or waive the effects of a breach of a statute. This principle has been expressed in the case of **The Republic vrs. High Court [Fast Track Division] Accra, Ex Parte Operation Association & Ors Interested Parties [2009] SCGLR 390** wherein it was held that:

"No judge has authority to grant immunity to a party from the consequence of breaching an Act of Parliament".

Similarly, in the case of **Gaizie Zwennes Hughes Others Co. vrs. Loders Crocklaan Bv[2012]1 SCGLR 363** this Court per Gbadegbe JSC stated that:

"No judge has authority to grant immunity to a party from consequences of breaching an Act of Parliament. The judicial oath enjoins judges to uphold the law, rather than condoning breaches of Acts of Parliament by their orders".

We must therefore be mindful of the statutory remit and imperatives in respect of compliance with section 14 of Act 311 and Section 32 of Act 689 in the cases decided under these Statutes.

It is obvious from the language of section 14(2) of Act 311, from which this Court in the Amonoo vrs. Dee and Mary Tsotsoo cases, purported to derive a discretion to 'admit subject to stamping', that the said section 24(2) does not bear out such discretion either in its express words amd/or inferrentially. It can also be seen that, significantly, section 32(2) and (3) of Act 689, is *in pari materia* with and an almost verbatim reproduction of section 14(2) of Act 311. Quite clearly, section 14(2), much like its reenacted version, section 32(2) confers a right on, and for that matter, an option to a party seeking to tender an unstamped or improperly stamped document or instrument in evidence, to first pay the duty and applicable penalty to the Registrar of the Court, and thereafter tender the document or instrument in evidence.

The wording of section 14(2), irrespective of the obviously well-intended policy considerations that must have motivated the Court in the Amonoo vrs. Dee and Mary Tsotsoo cases, does not admit of an interpretation that vests a discretion in a trial court and for that matter an appellate court, to admit or affirm the admission of an unstamped, or improperly stamped document in evidence, prior to stamping whether in pursuance of he ends of ordinary justice or in obedience of the statute as claimed in the Amonoo vrs. Dee case. The language of Section 14(2), like its reenactment in Act 689 makes stamping and or the payment of the penalty a precondition or condition precedent to admission in evidence of any document or instrument liable to stamping.

It is for the foregoing reasons that we opine, with due deference, that the decisions in the Amonoo vrs. Dee and Mary Tsotsoo Laryea cases, to the extent that this Court sought to lay a general rule on the admissibility of an unstamped document in evidence, was in error. Even though it seems to have been a widespread practice of our trial courts, to admit documents and instruments subject to stamping, such practice, however dated in antiquity or anchored in pragmatism or desirable in outcome cannot be justified where

the practice in issue is regulated by an Act of Parliament in clear and unambiguous language.

We must say however that in the **Antie vrs. Ogbo case**, this Court did not expressly indicate a statutory basis for the discretion that it purported to exercise. That notwithstanding, to the extent that the practice in issue was regulated by statute, it ought to have been determined having regard to the terms of the statute, in this case the Stamp Duty Act, 2005 (Act 689), even if the liability to stamp ought to have been in accordance with the Stamp Act, 1965 (Act 311), the statute in force at the time the document or instrument was first executed. Consequently, the decision of this Court in Antie vrs. Ogbo suffers the same fate as being *per incuriam* to the extent that it seeks to propound a general rule of practice on the admissibility of unstamped documents or instruments.

When we turn to an examination of Act 689, the clear and unambiguous language of section 32(6) supra cannot be lost on any Court. The words used are simple, basic, straightforward vocabulary which admit of no interpretation in order to appreciate the intent of Parliament.

The clarity of the legislative intent and effect may be better inferred from a reading of the entire section 32. The said section 32 read as a whole, imposes the following procedural practice regime in respect of situations where a document or instrument chargeable with stamp duty is sought to be tendered in evidence in a civil court or before an arbitration or referee:

i. The judge, arbitrator or referee, is obligated to ***take notice of an omission of stamping or insufficiency of the stamp*** *on the instrument in issue.*

ii. The party who produces such an instrument must ***be given the option*** *by the Court to pay the amount of unpaid duty and any applicable penalties to the registrar of the court or to the arbitrator or referee.*

iii. Prior to the grant of this option, the document or instrument is ***neither received by the Court in evidence and marked as an exhibit nor rejected by the Court and marked as such.***

iv. ***After the payment*** *of the amount of unpaid duty and any penalties,* ***the document can then be tendered and received in evidence*** *by the Court.*

v. After the payment of the applicable stamp duty and/or penalty and at the point of tendering or reception in evidence, the instrument or document may be subject to any just exception or objections on other grounds that may arise. This is to say, there may well be other justifiable exceptions and/or grounds to exclude a duly stamped document from being received in evidence or having been received in evidence, from being given negligible or substantial weight in the process of evaluation even though admitted evidence during a trial.

It is obvious from the terms of section 32 that Parliament is intent on achieving two primary progressive objectives in its reenactment of the law on the admissibility or otherwise by Courts, arbitrators and referees of documents or instruments sought to be tendered in evidence, and which are amenable to stamp duty. Firstly, Parliament ensures by its crafting of sections 32(1)(2)(3)(4) and (5) that the revenue objectives of the Act are not defeated by providing a convenient option for the payment of the applicable duty and any penalties to the Registrar of the Court or the Arbitrator or Referee, as the case may be. The said sections enjoin the Registrar, Arbitrator or Referee, to issue receipts for

the duties and/ or penalties paid and provide returns to the Commissioner of Taxes in a prescribed form. Secondly, section 32 ensures that a party desirous of putting an unstamped document in evidence does not automatically forfeit the opportunity of having such a document received into the record but marked as rejected on the ground that it is either unstamped, as in the Lizori, Mary Tsotsoo and Woodhouse cases or insufficiently or irregularly stamped as in the Antie vrs. Ogbo case. The proponent of the unstamped document is given the option to pay the applicable stamp duty and/or penalty to the Registrar of the Court and thereafter have the instrument received in evidence. Otherwise, an unstamped document will be rejected and marked as such and consequently cannot be considered as part of the evidence for the purposes of adjudicating a dispute.

By this formulation in Act 689, both the revenue objective of the Stamp Duty Act and the need to ensure that documents or instruments that may be relevant and credible is not excluded from being received in evidence and considered by a Court, Arbitrator or Referee to aid the ends of justice, are secured. In other words, the provisions of Section 32 of Act 689 are nuanced in order to maximize the primary revenue objectives of the Stamp Duty Act, 2005 (Act 689) while ensuring that trial processes and ultimately the ends of justice are not unduly disabled from doing substantial justice by the exclusion of relevant documentary evidence that may well enable an effective, fair and just adjudication of disputes.

We are of the view that Section 32 supra is consistent with the law on a wrong ruling as to the requirement or otherwise of stamping. This is provided for under section 109 of the Courts Act, 1993 (Act 459) which provides that:

"Where an objection is taken in any court to the admissibility of a document in evidence on the grounds of the 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 stamping."

The import of section 109 supra is that an erroneous ruling by a Court that a document offered in evidence is not subject to stamping at all or if subject to stamping, that sufficient stamp duty has been paid, will not of itself invalidate a decision of the Court. Consequently, a decision which took into account such wrongly adjudged and admitted documents shall not be reversed, set aside or otherwise interfered with, on the sole ground that the document was subject to stamping or that the full stamp duty was not paid, or that the document was not subject to stamping.

For the reasons proffered above, we are of the considered opinion that the law on the admissibility or otherwise of unstamped documents or instruments as enunciated in the cases of **Lizori** and **Woodhouse** are more accurate precedents of the proper construction of Section 32 of the Stamp Duty Act, 2005 (Act 689).

In the present case, an examination of Exhibit B, shows clearly that it was not stamped in accordance with Section 32(6) of Act 689. Consequently, the trial court ought not to have admitted Exhibit B in evidence even though from the record we find that no such objection was taken to its admissibility. This is because a Court has no discretion to admit in evidence an instrument which has not satisfied any preconditions for admissibility, such as stamping, imposed by the express provisions of an Act of Parliament, such as the terms of section 32 of the Act 689.

The inadmissiblity of Exhibit B, notwithstanding, on the totality of the evidence adduced at the trial and for that matter on the record of appeal before us, we find that even with Exhibit B, the instrument at the heart of ground VI, excluded and discounted from being considered, there is still ample evidence on record to sustain the findings and conclusions by the trial court which were affirmed by the Court of Appeal, in respect of the title of the Respondent. There is evidence on the record, which sufficiently demonstrates that indeed, there was a conveyance of the land in dispute to the said Stella Asor Siaw who in turn put the Respondent and his wife in possession and whereby they exercised overt powers and rights of ownership and control without let or hindrance by the Appellant. Therefore, since the ownership of the land by the Respondent grantor is proven by the evidence on record, coupled with the long period of possession exercised by the Respondent and his wife as well as their predecessor in title or grantor, the declaration by the High Court of the ownership of the land in dispute in the Respondent which was affirmed by the Court of Appeal unimpeachable and holds good. The Appellant, on the other hand, woefully failed to demonstrate that the land in dispute indeed forms part of his family land.

CONCLUSION:

Having considered carefully the grounds of appeal, the submissions by counsel and the applicable law, we are of the considered opinion that this appeal is unmeritorious and ought to fail. The evidence on record supports the concurrent findings of the two lower courts and the Appellant has failed to meet the criteria that would otherwise have persuaded us to disturb such concurrent finding. Consequently, on the basis of our evaluation of the evidence on record, we find that the case of the Respondent was more probable than that of the Appellant and therefore the two lower courts were right in their

findings in favour of the Respondent. This appeal therefore fails in its entirety and is accordingly dismissed.

We award cost of Twenty-Five thousand (GHS. 25,000.00) cedis to the Respondent against the Appellant.

E. YONNY KULENDI

(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS.)

(JUSTICE OF THE SUPREME COURT)

I.O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

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

(JUSTICE OF THE SUPREME COURT)

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