

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. J4/43/2021

29TH MARCH, 2023

TISMARK INJA PLAINTIFF/RESPONDENT/RESPONDENT

VS

1. TINA DEHEER 1ST DEFENDANT/APPELLANT/APPELLANT

**2. AMELIA LAING 2ND
DEFENDANT/APPELLANT/APPELLANT**

JUDGMENT

PROF. MENSA-BONSU (MRS.) JSC:-

1. This case has come to this honourable court on appeal from a judgment of the Court of Appeal dated 4th June 2020. A transaction between two close friends got entangled in the vicissitudes of Ghana's constitutional history with regrettable results. As a character in William Shakespeare's famous Play 'Hamlet' counsels his son,

"This above all: To thine own self be true

And it must follow as the night the day

Thou canst not then be false to any man."

Facts and Background

2. The plaintiff was the owner of House No. 9 2nd Close, Airport Residential Area, Accra (herein referred to as 'the subject-property'). He acquired the property by Deed of Assignment dated 27th June 1978 from one Emanuel Richard Ofori. He let his friend and former employee Group Captain Timothy Laing occupy the property, rent-free with his family in 1981. In 1982, he formed a shipping company, Remco Shipping Company, with a foreign investor. He held 50% shares of the company, and was its Managing Director. In that capacity, he employed his friend Group Captain Timothy Laing (now deceased), as the General Manager.

3. The company got into some difficulties with the authorities over an alleged shipload of Ghana's cocoa that was supposed to have disappeared on one of Remco Shipping Company's ships on the high seas. The company was forced to fold up in 1986. The plaintiff later fled abroad and remained in exile until the government went out of office in 2001. In 1989, however, he was notified by the Government of Ghana that the subject-property had been confiscated to the state.

4. The Confiscated Assets Committee set up by the Armed Forces Revolutionary Council as the Confiscated Assets (Recovery And Disposal) Committee Decree, 1979 (AFRCD 25)) to manage and administer confiscated properties, had responsibility for all confiscated assets. The property must have come under the responsibility of the Confiscated Assets Committee, for in 2002, the Chairman of the Confiscated Assets Committee had a series of meetings with the 1st defendant and her lawyers. It is unclear what provoked these meetings, following which the Chairman signed a letter titled NOTIFICATION TO QUIT and dated 6th February 2002 asking the 1st defendant to vacate the property and turn in the keys for it to be handed to its original owner. The 1st defendant ignored the request, contending that she and her children were beneficial owners of the property because her deceased husband, Group Captain Timothy Laing, had bought it, and made part-payment for it.

5. Subsequently, by a letter dated 15th December, 2008, the Government of Ghana, then led by President Kuffour, notified him that the property had been de-confiscated; and by a Deed of Transfer dated 5th January 2009, the subject property was transferred back to the plaintiff. He registered the property and was issued Land Title Certificate numbered GA31413. Following the said de-confiscation he tried without success to gain vacant possession of the subject property from the defendants, the wife and daughter respectively of the late Group Captain Laing. He therefore commenced action at the High Court on 25th January, 2011, for a declaration of title and recovery of possession, culminating in the judgment of 21st October, 2016.

Case for the plaintiff

6. The plaintiff averred that he received a letter dated 15th December 2008, which stated:

“The President pursuant to Sections 3 and 4 of the Confiscated Assets (Removal of Doubt) Law 1993 (PNDC 325), Section 29 (3) of the Transitional Provisions of the Constitution and upon the recommendations of the Confiscated Assets Committee, the Restoration of Assets Committee and the Attorney-General and in the spirit of national reconciliation deconfiscated the properties of Tismark Inja.”

Following this act of de-confiscation, Justice VCRAC Crabbe, the Statute Law Revision Commissioner, signed a letter on behalf of the Attorney General, dated 6th January, 2009, granting him a Deed of Transfer. The Deed of Transfer was signed by the President of Ghana, President Kuffuor.

7. The defendants, however, remained in occupation and so the plaintiff wrote to 1st defendant on 15th June, 2009, asking her to vacate the premises by 31st July, 2009, and even offering to waive the rent payable for that month. The 1st defendant ignored the request. However, by a letter from lawyers for the defendants dated 22nd June, 2009, she informed plaintiff that her husband had acquired the confiscated property, and so she and her children had become beneficial owners of the property. This letter elicited some protest from plaintiff. On 23rd October 2009, the 1st defendant was written to by Justice V.C.R.A.C. Crabbe, again asking her to give up vacant possession by 30th November, 2009, so that the original owner of the property could also have use of his property. Still the defendant sat tight and refused to budge.

8. On 20th May, 2010, lawyers for the plaintiff wrote to the Attorney-General bringing to her attention what the 1st defendant now claimed was the status of the subject-property. Further, that if the claim was true, then the acquisition would be illegal as contrary of Section 1 of the Public Lands (Protection) Act 1974 NRCD 240. Consequently, if such acquisition was true, it would be void for illegality. The Attorney-General responded

that the 1st defendant's claims were untrue and that the subject-property had not been sold off to anyone. Frustrated at every turn by the defendants, the plaintiff issued a writ.

Case for defendants

9. The defendants claimed that the property was acquired by Remco Shipping Company from Mr. Emmanuel Richard Ofori. They averred that deceased Group Captain Laing was a former employee of Remco Shipping Lines and was let into the subject property as a service accommodation. That the deceased acquired the subject property from Remco Shipping Lines when he worked with them by making an initial lump sum payment and then using the major part of his emolument paid in foreign currency abroad, to offset the outstanding part of the purchase price. They further claimed that they had no documentation because lawyers were to draw up the necessary paperwork transferring title from Remco to the deceased and the 1st Defendant upon the full payment of the purchase price; that, however, before this could happen one of the vessels of Remco Shipping was alleged to have disappeared with a full load of cocoa belonging to the government of Ghana.

10. This led to the Government of Ghana confiscating to the state the assets of Remco Shipping Company and those of the plaintiff's as shareholder of the said company. The company folded up, while its principal officers left Ghana. That in consequence, the documents formalising the sale between the Company on the one part, and Group Captain Laing and his wife, the 1st defendant, on the other part were never prepared; and that although the documents formalising the sale were never prepared, they become the beneficial owners upon the full payment of the purchase price.

11. They recounted further, that sometime in 1991, some persons, apparently members of the Committees for the Defence of the Revolution (CDRs), acting as agents of the State,

attempted to forcibly move them out, but they successfully fought them off. At that point, the husband (now deceased), was heard saying to them that he had bought the property.

12. On 6th February, 2002, the Chairman of the Confiscated Assets Committee wrote to the 1st defendant giving her notice to quit the premises following some discussions with 1st defendant and her Lawyer. The body of the letter read

“I am directed to kindly request you to relocate and surrender the keys to the property to enable same to be restored to its original owner within 3 months from the date of this letter in pursuance of Government decision to restore all confiscated assets to their original owners.”

The defendants held on, refusing to move, and claiming they were beneficial owners of the property following the demise of Group Captain Laing.

13. In a letter dated 22nd June, 2009, from lawyers for the defendant, the plaintiff and his lawyers were informed that the 1st defendants had stated that her husband had acquired that property about “twenty-five years” before that time, hence her posture.

The main body of the rather defiant letter stated that

“Our client further informs us that they find the alleged de-confiscations and transfer of ownership of the property to your client by the government very curious. In any event our client does not consider herself bound by the alleged de-confiscation and vesting of ownership and will contest the legality and (or propriety of any action of government of its agencies in respect of her property.”

13. In reliance upon these allegations, they challenged the title of the plaintiff and insisted they had become beneficial owners of the property, and challenged the legality of the

supposed de-confiscation. They also averred that the Land Title Certificate obtained by the plaintiff had been procured by fraud and that the Deed of Assignment between plaintiff and Emmanuel Ofori was a forgery since the property was owned by Remco Shipping Lines.

Trajectory of the case in the High Court

14. The plaintiff sued for

(i) declaration of title to parcel No. 75 Block 2 Section 004 being House No. 3 2nd Close Airport Residential Area, Accra;

(ii) Recovery of Possession;

(iii) Mesne profit from 15th December 2008 till date of possession.

15. The defendants entered appearance on 10th February, 2011 but took no further steps. The plaintiff obtained judgment in default of defence on 24th March, 2011, and defendants applied for an order to set aside the judgment and for leave to file the Statement of defence and counterclaim out of time on 14th April, 2011. The defendants were granted the leave and so filed the Statement of Defence and Counterclaim.

16. The defendants counterclaimed for:

(a) A declaration that the Indenture dated 27th June 1978 made between Plaintiff and Mr. Emmanuel Richard Ofori is a forgery

(b) A declaration Land Certificate Number GA 31413 was procured by fraud and in breach of the procedure stipulated under the Land title Law and Regulation.

(c) An order for the delivery up and cancellation of Land Title Certificate No. GA 31413 on the grounds of fraud and or mistake and certificate of ownership be issued to the Defendants.

(d) A declaration that the claim for declaration of title and recovery of possession is statute barred and /or estopped.

(e) A declaration of title in the Defendants to House No. 9, 2nd Close, Airport Residential Area.

17. On 23rd June, 2011, an attempt by the defendants to join the Attorney-General and Lands Commission as co-defendants failed, with the court ruling that they were not necessary parties. The defendant filed interlocutory appeal against the ruling. However, there did not appear to be any follow up on that appeal.

18. In February 2014, the plaintiff filed a motion to amend the Statement of Claim. This motion was granted on 28th February 2014, and the defendant filed a motion February on 13th March 2014, for an order of Review and to set aside the Order made on 28th February. This application was dismissed, however, the defendants were given leave to file a response to the process filed by plaintiff on 1st April 2014.

19. At the trial court on 22nd March, 2016, the 2nd defendant, who had been left by the 1st defendant to fight the case alone, made this telling admission:

“Q. In your own words on the 10th of July 2015 you said it was an initial payment at least there will be an acknowledgment of receipt of that?”

A. My Lord again the conversation that went on I don't know how it went and apart from that my dad was employed by Uncle

Tismark. They were also very good friends so I am not able to say what sort of agreement on what terms any acknowledgment was not given to him.

It was painful to read the frequency with which the 2nd defendant referred to the plaintiff as “Uncle Tismark”. If they were as close as the 2nd defendant makes out, then surely it is a case of a trust betrayed.

20. During the trial, the defendant presented no receipts or other documentation evidencing the ‘lump sum payment’, or any other payment. The 2nd defendant who explained that was a young child at the time these events transpired, could not give any details of how and when they became beneficial owners. The claim of 1st defendant that her husband had acquired the property at the time it was deemed to be confiscated, was exploded as a myth when the Attorney General stated that *“enquiries from the Confiscated Assets Committee, the Castle Osu indicate that the Confiscated Assets Committee had not authorized the sale”* of the House and that the Committee had no records of any such sale. Having failed to lead any evidence to support the counterclaim, same was accordingly dismissed.

21. It is again noted that the 1st defendant never attended court though she, then as wife of Group Captain Laing, (now deceased), was in the best position to give details of what had transpired. For instance, when the company that had employed him went out of business in 1986 and the Directors fled the country, what was she told by her husband about payments he had made, if, indeed, he had made any, towards the acquisition of the property? The plaintiff said he put his friend in occupation in 1981, before he employed him in the company in 1982. The defendants contested this claim, insisting that Group Captain Laing was let into the property “service accommodation” provided to the General Manager. The 1st defendant, being a wife at the time, was the best person to provide contrary evidence since the defendants had filed a counterclaim which put the

burden of proof of those matters on them. She did not attend court to testify to such matters, how could 2nd defendant provide evidence to the requisite standard of proof? No wonder her response to questions of most critical nature was “I don’t know.”

22. Again, the 1st defendant had been previously involved in discussions on the subject-property, culminating in the letter of 6th February, 2002, from the Chairman of the Confiscated Assets Committee asking her to surrender the keys. Upon all of this, she did not appear to have taken any steps to seek the necessary evidence of payments etc. if any existed.

23. This the trial judge considered in his judgment on page 12 of judgment

“Quite understandingly (sic) the second defendant found it difficult to support her claim as to the acquisition from Remco Shipping lines (as in the statement of defence and counterclaim or from the plaintiff (as per her evidence on oath). Her evidence was based on uncorroborated hearsay evidence based on a story allegedly told them in 1991 when government officials went to inform them that the house had been confiscated to the government. The 1st defendant who is alleged in the statement of defence and counterclaim to have contributed to the initial deposit on the house failed to attend court to support that contention.”

All the 2nd defendant had to go on, was that she believed what her father told her because he was a man of integrity. Unfortunately, the evidence does not provide any basis for that belief. No wonder the Judge could not find in their favour, concluding, and rightly so, that

“The Plaintiff led credible and sufficient evidence of title to the land. The Defendant, on the other hand woefully failed to show an interest in the land in question.”

24. The defendants also mounted arguments to the effect that the supposed de-confiscation was done under PNDCL 325, which had been repealed, and so the President had no power to order a de-confiscation. The trial court further clarified that the property was done under the Confiscated Assets Committee Decree 1979 (AFRCD 25) and not by PNDCL 325, and that the Committee had power to make recommendations and manage matters relating to confiscated assets. They duly did so, as evidenced by the letter of 6th February, 2002 of the Chairman of the Confiscated Assets Committee notifying her of the de-confiscation of the property. Thus, in fact it rendered the letter of de-confiscation of 15th December 2008 somewhat superfluous. However, the realization that the act of confiscation had legally extinguished the plaintiff's right to the property led to the Deed of Transfer from the state to the plaintiff.

25. Aggrieved by the judgment of the High Court dated 21st October, 2016, the appellants appealed to the Court of Appeal on the grounds that the judgment was against the weight of evidence; That the learned trial Judge erred in law when after correctly holding that the state confiscated the subject property and vested it in itself and that President Kuffour acted under a non-existing law (Sections 3 and 4 of PNDCL 325 which was repealed) by the Statute Law Revision Act (Act 543) when he purported to de-confiscate it, he went on to rely on irrelevant matters to give effect to the unlawful act of de-confiscation. They cited *-The Registered Trustees of Afrikania Mission v Major Quarshie (Rtd) (substituted by Mrs. Mary Quarshie Civil Appeal J4/36/2014 dated 2nd December 2015,* and contended that it was a binding decision of the Supreme Court that ought to have been applied. They therefore claimed that the learned judge upholding the validity of Land Title Certificate No. GA31413 offended the statutory title to the subject property vested in the State by the confiscation; and that the Court erred in declaring title in the plaintiff in the face of evidence that the property was confiscated by law and the admission that the confiscation extinguished any title of the plaintiff in the property.

26. At the Court of Appeal, a completely new argument was introduced by the plaintiff-respondent, which the Court of Appeal agreed to entertain as it was germane to the case. The plaintiff respondent submitted, rather belatedly, that the subject property was not confiscated at all because it was not listed in the schedule of the Confiscated assets (removal of Doubt) Law, 1993, (PNDCL 325). The submissions found favour with the Court of Appeal which considered the arguments and proceeded to find that **Afrikania Mission v Quashie** supra, was not relevant in this particular case. In consequence of finding that the respondent had been lawfully given title to the property, the Court of Appeal held that the appellants were licensees of the respondent from the date of the de-confiscation. Further that having challenged the title of their licensor, they were liable to give up possession of the property. The appeal was consequently dismissed, and further orders accordingly made.

27. Aggrieved further by this decision, the appellants have appealed to this court. They filed submissions on 27th May 2022 and Reply on 23rd June 2022. The respondent filed submissions on 7th June 2022.

Ground of Appeal

28. The Appellant filed a notice of appeal on 4th September 2020 against the judgment of 4th June 2020 and the sole ground was that the judgment was against the weight of evidence. No further grounds were filed.

29. In consequence the instant appeal will proceed on that sole omnibus ground. It is trite law that an appeal is in the nature of a rehearing. In the oft cited cases of *Tuakwa v Bosom* [2001-2002] SCGLR 61; *Djin v Musah Baako* [2007-2008] 1 SCGLR 686, *Oppong v Anarfi* [2010-2012 GLR 159], the point has been made about the duty of the appellate court when an appellant has pleaded the omnibus ground that the judgment was against the weight of evidence. In *Tuakwa v Bosom*, supra, Akuffo JSC (as she then was), held at p.65 that,

“an appeal is by way of a re-hearing particularly where the appellant, is the plaintiff in the trial in the instant case, alleges in his notice of appeal that, the decision of the trial court is against the weight of evidence. In such a case, although it is not the function of the appellate court to evaluate the veracity or otherwise of any witness, it is incumbent upon an appellate court, in a civil case, to analyse the entire record of appeal, take into account the testaments and all the documentary evidence adduced at the trial before it arrives at its decision, so as to satisfy itself that on a preponderance of the probabilities the conclusions of the trial judge are reasonably or amply supported by the evidence”.

30. *Djin v Musah Baako*, supra, also reiterates the point. Aninakwah JSC at p 691, clarified that it is not only the court that bears a duty. The appellant also bears a responsibility when bringing an a appeal.

“It has been held in several decided cases that where an (as in the instant case) appellant complains that a judgment is against the weight of evidence, he is implying that there are certain pieces of evidence on the record which, if applied in his favour, could have changed the decision in his favour, or certain pieces of evidence have been wrongly applied against him. The onus is on such an appellant to clearly and properly demonstrate to the appellate court the lapses in the judgment being appealed against”.

31. The penchant for relying on a single ground without any effort to state the specific complaint of the appellant has, indeed become rampant, and is a disservice to the whole enterprise of re-hearing. In the instant case, the appellants stated on the Notice of Appeal

that they were dissatisfied with the whole judgment, yet they relied on the omnibus ground as a single ground of appeal.

32. In light of these practices, it would be well to heed the caution administered by Amegatcher JSC, in *Atuguba & Associates v. Scipion Capital UK & Anor.* [2018-2019 1 GLR 1 at p.7, where he admonished practitioners on the tendency to place total reliance on the omnibus ground in the following terms:

“The omnibus ground has been a hideout ground. The responsibility in even minor appeals is shifted to the appellate judges to comb through the records of appeal, review the evidence and identify the specific areas the trial judge erred before coming out with the court’s opinion on the merits or otherwise of the appeal. The situation is worrying where no viva voce evidence is proffered and a judge is called upon to exercise judicial discretion, such as in applications for injunction, stay of execution, amendment, joinder, judicial review, and consolidation, just to mention a few. In our opinion, though the rules allow the omnibus ground to be formulated as part of the grounds of appeal, it will greatly expedite justice delivery if legal practitioners formulate specific grounds of appeal identifying where the trial judge erred in the exercise of a discretion. A proper ground of appeal should state what should have been considered which was not and what extraneous matters were considered which should not have been. We believe this approach will better serve the ends of justice and lessen the use of the omnibus ground particularly in interlocutory matters and in the exercise of judicial discretion.”

The admonition is particularly poignant in a case such as this one where the issues are complex, and the Notice of Appeal gives no advance warning as to what the appellants

find objectionable in the judgment. Having thus thrown themselves on the court, the appellants have left the resolution of whatever they have issues with, to the judgement of the court, and have to live with the consequences of not articulating the specific dissatisfaction with the judgment appealed from.

33. This posture also emboldened the respondent to contend that appellants had no basis to question concurrent judgments of High Court and Court of Appeal. Was the issue one of questioning the concurrent judgments of the trial court and first appellate court? The pleadings do not so suggest. The issues had been fought in the trial court on grounds somewhat different from what happened when the parties came to the appellate court.

34. On this occasion, it was the respondent who raised a matter that had not featured in the trial court as everyone had taken the fact of confiscation of the property for granted. The respondent suddenly emerging with a novel point that the property had, in fact, never been confiscated took the hearing of the appeal somewhat off the course of what the trial court had built its decision on. As the appellants indicated, they were not the only ones taken by surprise, but the Court of Appeal itself as well. The submission that the property had not, after all, been confiscated, marked a somewhat strange development in the case, and changed the trajectory of the discussion.

Was the subject-property confiscated property?

35. The only fortunate aspect of this development on the part of the respondent was that it forced the appellants not only to concede that the subject-property was confiscated, but also to defend the status of the subject-property as 'property confiscated to the State'. The appellants asserted firmly that the subject property was confiscated.

36. To provide further proof of the fact of confiscation, the 2nd defendant stated that all parties believed and treated the property as confiscated property. She drew attention to letters she received from the Statue Law Revision Commissioner, writing for the

Attorney-General, in which official knowledge of the state of confiscation was clearly articulated. For instance, a letter dated 29th April, 2009, signed by the then Statute Law Revision Commissioner Justice VCRAC Crabbe, informed the 2nd Defendant of the de-confiscation and that accordingly she was required to hand over vacant possession to the respondents herein. (*See Exhibit 2A of Appellants and Exhibit K of the Respondent*).

37. In the said letter of 29th April, the Statute Law Revision Commissioner, referred to the letter from the Chairman of Confiscated Assets Committee dated 6th February 2002, referred to above, requesting the 1st defendant to relocate and surrender the keys to the property to enable same to be referred to the original owner within three (3) months. Further, that Exhibits G, J and M (Attorney-General's letter of 10 June, 2010; Attorney-General's letter of 23rd October 2009; and Attorney-General's letter of 27th May 2010; respectively, all contain similar reference to letters from Confiscated Assets Committee requesting the Appellants to give vacant possession to enable the return of the property to the original owner. She submitted that the effect of all these letters provided undisputed evidence that the subject-property was known in official circles as confiscated property under the authority of the Confiscated Assets committee. Therefore, there was no doubt that the property was confiscated by the state. Further, how, then, could respondent now turn around and claim that the property was never confiscated? 38. The appellants managed to prove that the confiscation was a fact which was within the knowledge of the Confiscated Assets Committee, and that they exercised control over the subject property. Therefore, the submission of the respondent that the appellants had failed to prove that the property was confiscated, was not well-founded. The fact of confiscation being so notorious, there was no burden on them to prove same.

Constitutional arguments

39. The trajectory that the respondent's case took, raised serious constitutional issues that have to be dealt with towards the resolution of this matter. In paragraph 5.18 of the Statement of Case, the Appellants quoted Section 34 (3) & (4) of the Transitional Provisions, which prohibited any court from questioning any acts of the AFRC and PNDC. They maintained that it was the Court of Appeal that was questioning the confiscation when the Transitional provisions had prohibited any court from doing so. They submitted further that for the Court of Appeal to make a declaration that the subject property was not confiscated to the State because it was not listed in PNDCL 325 is not only unsupported by the record but same is unlawful as being a violation of Section 34 (3) and (4) of the Transitional Provisions of the Constitution 1992.

40. The appellants then question the power of the President to de-confiscate the property in the face of sections 34 (3) and (4) of the Transitional provisions to the Ghana Constitution, 1992, and insist that, as far as they are concerned, the property remains confiscated property "*until it is validly de-confiscated*". They then further submitted that the case was on all fours with the case of *Registered Trustees of Afrikania Mission v Quarshie*, supra, and that it being a Supreme Court precedent binding on the Court of Appeal, the case should not have been decided the case the way it was.

41. First, the issue of whether or not the property was confiscated by the Provisional National Defence Council (PNDC) was resolvable on the available evidence, as being beyond doubt. The plaintiff himself stated in evidence that he was written to in 1989, informing him that his property had been confiscated. That was sufficient admission of his knowledge of the confiscation. In the nature of things, many events occurred in those days which were shielded from scrutiny by the water-tight protection cast on them by the Transitional Provisions to the Ghana Constitution, 1992

42. Section 34 (3) provided as follows"

*“For the avoidance of doubt, it is declared that no executive, legislative or judicial action **taken or purported to have been taken** by the Provisional National Defence Council or the Armed Forces Revolutionary Council or a member of the Provisional National Defence*

Council or the Armed Forces Revolutionary Council or by any person appointed by the Provisional National Defence Council or the Armed Forces Revolutionary Council or by any person appointed by the Provisional National Defence Council or the Armed Forces

Revolutionary Council in the name of either the Provisional National Defence Council or the Armed Forces Revolutionary Council shall be questioned in any proceedings whatsoever and, accordingly, it shall not be lawful for any court or other tribunal to make any order or grant any remedy or relief in respect of any such act. (emphasis supplied)

43. In summary the content of section 34 of the transitional provisions and the scope of the indemnity it provides are as follows:

A. Section 34

i. No member of the National Liberation Council, (1966) the National Redemption Council, (1972) the Supreme Military Council (1978), the Armed Forces Revolutionary Council (1979); and the Provisional National Defence Council (1981) is open to punishment or damages for anything they did towards the overthrow

of the governments and seizure of executive power of the state whether in their official or personal capacities (section 34(1)).

ii. Nor can the government of Ghana be sued on grounds of any such action of its agents. None of the coups can be pronounced illegitimate or illegal and no reliefs may be granted against the state or any agent of the coup-makers based on injury suffered as a result or in the course thereof. Section 34 (2) is thus an anti-reparations provision.

iii. Courts have no jurisdiction to examine a complaint against or grant compensation for any act or omission, valid or purported by the AFRC/PNDC or their agents. (section 34(3)).

iv. It matters not that the said act was not done under any law. This protects acts committed by AFRC/PNDC agents that amount to them 'going on a frolic of their own' in a matter not at that time regulated by law. (section34(4))

v. Courts have no jurisdiction in an action against an agent of the PNDC/AFRC for an act that was actually illegal under PNDC/AFRC law. (Section 34(5))

Section 34 (3) and (4) thus provide the very limited scope under which the courts may assume jurisdiction in a case involving an act of confiscation and presumably de-confiscation by any agents of the AFRC and the PNDC.

44. In order to assume jurisdiction, the court must answer the following question: Is this action seeking to question an act/omission, real or purported of the PNDC/AFRC? The answer in this instant case is, clearly not. Nothing in the case is purporting to question the power of the PNDC to confiscate any property, and for the Confiscated Assets Committee, whose enabling law is still in force, to administer same, and also to make recommendations for de-confiscation.

45. What, then, is the regime under which the Confiscated Assets Committee operates? This obviously involves a discussion of the trajectory of the transfer of executive power from one administration to the next as follows:

46. Section 1 of the AFRC 25 established the Committee whose full title is the *Confiscated Assets (Recovery and Disposal) Committee*.

Section 2 set out the functions of Committee thus:

“(1) Subject to the written directions of the Armed Forces Revolutionary Council the functions of the Committee are —

(a) to locate and take an inventory of all assets and properties confiscated to the State by the Armed Forces Revolutionary Council;

(b) to make to the Armed Forces Revolutionary Council recommendations as to the disposal of any assets and properties confiscated to the State by the Armed Forces Revolutionary Council;
and

(c) to ensure that the beneficiaries of confiscated assets and properties do not include individuals and non-State organisations.

(2) It shall also be the function of the Committee to see to the implementation of any decisions of the Armed Forces Revolutionary Council in respect of any such assets and properties.”

Since the AFRC went out of office in September 1979, the authority to which the Committee could make recommendations under section 2(1)(b) became the President of the Republic.

47. In the Transitional provisions to the 1979 Constitution, section 14 provides that,

“14. Subject to section 13 of this Schedule -

(a) where under an existing law, a right, prerogative, power, privilege or function is vested in the Armed Forces Revolutionary Council, that right, prerogative, power, privilege or function shall, on the coming into force of this Constitution, vest in the President or such other person or authority as is specified under this Constitution who, subject to the provisions of this Constitution or any other law, shall have power to do all things necessary for its exercise or performance thereof; and (emphasis supplied).

(b) a right, power, privilege, an obligation, a duty or function vested in, the Government of Ghana by an existing law shall continue to be so vested.”

48. This meant that the executive powers of the AFRC vested in the President. Such powers, of course, included the mandate of the confiscated Assets Committee. When the PNDC assumed power in 1982, it passed the Provisional National Defence Council (Establishment) Proclamation Law 1981, which was later substituted by Provisional National Defence Council (Establishment) Proclamation (Supplementary and Consequential Provisions) Law 1982. Section 63 (3) provided that “*Any reference in this law, the Proclamation or any other law to ‘powers of Government shall be construed to include ‘LEGISLATIVE, EXECUTIVE, ADMINISTRATIVE AND JUDICIAL POWERS’*”(emphasis in original.) See Sir Kofi Kumado, ‘*A Handbook of the Constitutional Law of Ghana and its History*’, Black Mask Ltd, Accra, 2021, p.98.

49. Thus the PNDC assumed the executive powers then vested in the President under section 14 of the Transitional provisions to the 1979 Constitution. Upon the drafting of the Constitution, 1992, the provisions in section 14 of the 1979 Constitution were

reproduced almost verbatim, with some minor differences, as section 33 of the transitional provisions on the transfer of executive power under the new Constitution, as follows:

“33. Subject to section 32 of this Schedule -

*(a) where under an existing law, a right, prerogative, power, privilege or function is vested in the Provisional National Defence Council, that right, prerogative, power, privilege or function shall on the coming into force of this Constitution, **vest in the President** or such other person or authority as is specified under this Constitution who, subject to the provisions of this Constitution or any other law, may do all things necessary for its exercise or performance; and*

(b) any right, power, privilege, obligation, liability, duty or function vested in, or subsisting against the Government of Ghana by or under an existing law shall continue to so vest or subsist.”

50. Thus, the executive power of the State which was exercised by the PNDC was vested in the President of the Republic. In any case, the Statute Law Revision Commissioner in execution of his statutory mandate, has confirmed this position and reworked the status and functions of the Committee under AFRC 25 to reflect the constitutional changes, so that all references therein to the AFRC, are now rendered as ‘President’ in the revised Act. Therefore, from all appearances in the instant case, we are emboldened to say that the President did have power to act to de-confiscate the property in exercise of the powers vested in him from the Transitional Provisions.

51. The provisions of Section 34 mean that whether or not a confiscation had been validly done or properly done could not be questioned in any proceeding, since it is provided

that “it shall not be lawful for any court or other tribunal to make any order or grant any remedy or relief in respect of any such act.” Consequently, whether or not there was a written order or verbal order of confiscation or none at all, whether there was proper evidence of plaintiff’s complicity in the event that occurred, none of these questions matter.

52. The reality was that the property was the subject of an act or purported act of confiscation, evidenced by:

1. A letter was written to the plaintiff informing him of the confiscation; 2. A visit to the premises of CDR operatives as agents of the State in the account of 2nd defendant; 3. The involvement of the Chairman of the Confiscated Assets Committee in the de-confiscation exercise; and 4. Letters from the Office of the Attorney-General signed by Justice V.C.R.A.C. Crabbe, Statute Law Revision Commissioner in Exhibits G, J, and M referencing the fact of confiscation. All these put the matter of “*act or purported act*” beyond doubt. Therefore, if he was so informed by letter, then it was so, according to the Transitional provisions.

53. The respondent further submitted that he believed the property was never confiscated because it did not appear on the list of properties in PNDCL325 is thus neither here nor there. In paragraph 5.25, the appellants submit in response that

The Court of Appeal’s statement of the purpose of PNDC L 325 is in sync with the view we take on the issue, which is that PNDCL 325 only seeks to remove doubt as to the legal status of the properties listed in the Schedule thereto. As indication above, it does not suggest that the two schedules thereto contain exhaustive lists of properties confiscated to the state.”

54. While this argument is plausible, there are other plausible ones as well. For instance, it is possible that as the title of the legislation states, the list was only of those whose legal

status was in doubt, leaving out those whose status was not in doubt. The appellants further submit what in effect requires this Court to amend the remit of the statute, by inserting “exhaustive” into the statute. It is not the province of the Court to insert words the lawmaker has not put into legislation. The fact that nearly ten years after PNDCL 325 was passed the Chairman of the Confiscated Assets Committee purported to deal with the case of that confiscated property and de-confiscate it, strengthens the argument of the appellants that the subject property remained confiscated.

55. It must be here stated that if the Court of Appeal saw wisdom in the plaintiff-respondent’s argument, that did not amount to questioning the process of confiscation. If anything, it was the appellants, who first questioned the fact of confiscation by insisting that the subject-property had been purchased for them, as well as the legal validity of process of de-confiscation by the Confiscated Assets Committee when they were written to in 2002.

56. Granted that the letter conveying the de-confiscation quoted the wrong legislation as it had been repealed by Act 543, but the fact of the repealed statute (PNDC Law 325) cited did not affect the power of the President to act in the circumstances.

57. The appellants have other hurdles to overcome, for the Confiscated Assets Committee was mandated under section 2(c) “*to ensure that the beneficiaries of confiscated assets and properties do not include individuals and non-State organisations.*”(emphasis supplied) This is a provision that would certainly cause difficulties for the appellants and it is no surprise that their efforts to retain the property could not be blessed by the Confiscated Assets Committee.

58. The appellants also contend that the *Registered Trustees of Afrikania Mission v. Quarshie* case is on all fours with the instant case, and ought to be applied. This is incorrect as that authority is distinguishable from the situation in the instant case. The

facts were somewhat different. As has been established, the power to act on the recommendations of the Confiscated Assets Committee did vest in the President by reason of the trajectory of constitutional developments, and the Law has been amended to reflect this fact. Consequently, the President had power to act, and did so act. Therefore, notwithstanding the fact of the reliance on repealed legislation to attempt to de-confiscate the property, that did not affect the existence of the power to act. This is where the similarity ends.

59. The differences are clear on the evidence. First, it is true that being a non-State body, the Afrikania Mission did not qualify for an allocation under section 2(c) of AFRCDC 25, but the property in question had been allocated to them. Section 34(5) of the Transitional Provisions protected the Confiscated Assets Committee, as an agency of the PNDC, from scrutiny by the courts for any wrongful exercise of power, and so it can be stated that the property had been properly allocated to the Afrikania Mission under AFRCDC 25.

60. Second, a serious mistake was committed thereby undermining its validity, for, the property that was listed as deconfiscated was the wrong one, and the Deed of Transfer signed by the President in the name of the supposed true owner recited that error, thereby failing to convey any property at all. When the mistake was discovered, the officials should have retraced their steps and got the President to correct the error by issuing a new Deed of Transfer. Instead, the Attorney-General purported to correct the error by issuing a new Deed of Transfer. Clearly, without written evidence of the President's delegation of his powers to the Attorney-General in that respect, the Attorney-General had no power to so act. The Deed of Transfer therefore conveyed no title to the supposed true owner in that case. These differences certainly made the case inapplicable to the instant case.

61. The Judgment of Benin JSC stated the point of difference quite clearly.

1. The property was listed in PNDCL 325
2. The letter deconfiscating the property made reference to H/No 100A 4th Norla Street. This turned out to be an incorrect description of the property which was at H/No.2 Senchi Street Airport, Accra. The Attorney-General therefore purported to correct it and so the formal transfer of the property was not by the President but by the Attorney-General.
3. The Supreme Court rightly indicated that when PNDCL 325 was repealed by Act 543, it was AFRCD 25 that was the only applicable legislation. However, the Court did not explore the terms of AFRCD 25 and so concluded that the President had no power because the wrong legislation was quoted as the source of power.
4. Following the repeal of PNDCL 325 the status quo was restored meaning AFRCD 25 fully applied, and an allocation by the Confiscated Assets committee remained valid.

Thus, the *Afrikania Mission v Quarshie* case had enough points of difference to be readily distinguishable from the instant case.

62. From the evidence, the State took appropriate steps to put the plaintiff back into the property by granting him fresh title to the property in a Deed of Transfer that could be granted pursuant to the President's powers under AFRCD 25 and article 257 of the Constitution, 1992 which vests State Lands in the President.

63. Having disposed of the constitutional problem the resolution of the matter can proceed as the Court of Appeal resolved them.

64. The respondent began his submissions by pointing out to the appellants that they were purporting to attack concurrent findings of two lower courts, which task was not easy to achieve. The appellants took issue with the use of "concurrent" and pointed out that the issues before the two courts were different and so could not be considered as

“concurrent”. We agree with the appellants in part, for some of the matters raised at the Court of Appeal had been determined by the High Court. However, there were important differences, and it was the responsibility of the appellants to point out which pieces of evidence might have caused the second appellate court to review the evidence in their favour. Instead, they chose to rely on the omnibus ground of appeal.

65. The Court of Appeal found that the appellants became licensees of the plaintiff’s when the Deed of Transfer signed by the President, in whom the power over State Lands is vested, gave him title to the property “in the spirit of national reconciliation.” Instead of negotiating with the plaintiff to remain on the premises as a gesture to the memory of his friend, now deceased, the appellants chose to deny the plaintiff’s title and to fight him with every legal weapon at their disposal. Indeed, the 2nd defendant went so far as to attempt to wrestle the property from the plaintiff by writing to Accra Metropolitan Authority (AMA) in 2014, that they were the owners of the property. Consequently, and rather imprudently, the AMA issued the Property Rate for that year, and payment was made in the 1st defendant’s name. She tendered this gleefully as evidence of ownership of the property in an adverse claim against the true owner. Although this receipt was of no legal significance in determining ownership of the property, it showed quite clearly that the defendant-appellants were intent on wresting the property from the plaintiff who used to be a close friend and whom they had known for a very long time.

66. Section 28 of the Evidence Act 1975, (NRCD 323), as well as the authorities are clear that when a gratuitous licensee sets up adverse claim against a licensor, the license can be revoked, and such licensee would have to yield up the property. See also *Duro & Anor v Anane* [1987-88] 2 GLR 275; *Mamudu Wangara v Gyato Wangara* [1982-83] GLR 639. Consequently, the Court of Appeal cannot be faulted in so holding. The appellants have proved themselves unworthy of any magnanimity on the part of the respondent. They pulled no stops to push the respondent out of his property and even accused him of fraud

for having obtained a Land Title Certificate following the Deed of Transfer that transferred the State's interest back to him. They have no one to blame but themselves, and must face the consequences.

Conclusion

67. The appellants have failed to mount a successful attack on the judgment of the Court of Appeal. The President had power to convey the property to the respondent, and has done so. The appeal is dismissed as unmeritorious. The judgment of the Court of Appeal is affirmed.

68. The respondent is entitled to:

- i. a declaration of title of House Number 9, 2nd Close, Airport Residential Area;
- ii. recovery of possession from the appellants; and

In addition, we award:

- iii. General Damages assessed at Ghc 50,000.
- iv. Costs of Ghc 30,000 to the respondent.

So ordered.

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

**E. YONNY KULENDI
(JUSTICE OF THE SUPREME COURT)**

COUNSEL

**NANA AGYEI BAFFOUR-AWUAH ESQ. FOR THE DEFENDANTS/APPELLANTS/
APPELLANTS WITH HIM THERESA TABI ESQ..**

KWAMI ADOBOR ESQ. FOR THE PLAINTIFF/RESPONDENT/RESPONDENT.