IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: PWAMANG JSC (PRESIDING)
OWUSU (MS.) JSC
AMADU JSC
PROF. MENSA-BONSU (MRS.) JSC
ACKAH-YENSU (MS.) JSC

CIVIL APPEAL
NO. J4/13/2023

14TH JUNE, 2023

NII DANIEL MARLEY NAI ….. PLAINTIFF/APPELLANT/
(HEAD OF ASAFOATSE MARLEY FAMILY) APPELLANT

VS

1. KATAMANSO STOOL
(PER ITS REGENT NII LARYEA AFOTEY AGBO) — 1ST DEFENDANT/RESPONDENT RESPONDENT/RESPONDENT

2. THE LANDS COMMISSION ….. 2ND DEFENDANT

JUDGMENT

AMADU JSC:-

INTRODUCTION:

(1) My Lords, in land disputes, especially those shrouded in conflicting traditional history such as the instant appeal, the time-tested principle for the evaluation of conflicting traditional evidence has been to analyse same in the light of such more recent facts as revealed by the evidence adduced at the trial. This principle is referred to in the cases as the **ADJEIBI-KOJO VS. BONSIE** principle.

(2) The principle sounds a caution to courts analyzing conflicting traditional evidence not to be swayed so much by how consistent or contradictory the narration of historical events are, nor by the demeanour of the witnesses, nor even pronouncements in published works on the history and traditions of the community concerned; but that the evidence ought to be assessed in the light of acts within living memory.

(3) In the instant appeal therefore, the key issues for determination are whether the two lower courts properly understood the evidence in this case and whether they correctly applied the ADJEIBI-KOJO VS. BONSIE principle in the evaluation of the evidence adduced in support of the respective cases of the parties who relied largely on traditional evidence.

(4) **BACKGROUND**

On the 12th day of July, 2018, the Plaintiff/Appellant/ Appellant *(hereinafter simply referred to as "Plaintiff")* issued a writ of summons against the Defendants/Respondents/ Respondents (*the first of whom contested the appeal and*

hereinafter referred to as the 1st Defendant) at the Land Division of the High Court, Accra, for the following reliefs:

"a. Declaration of title to all that pieces of land containing

an approximate area of 2,172.68 acres situate at Marley Koo (near Pinkwai) Accra commencing at pillar marked ANM6 at the Northern-Western Corner bounded by Ga State Land on the North for 3,100.0 feet on the bearing of 89.46 to the pillar marked ANM7 thence for 2330.0 feet on the bearing of 89.46 to the pillar marked ANM8 thence for 2985.0 feet on the bearing of 89.42 to the pillar marked ANM9 thence for 2520.1 feet on the bearing of 89.33 to the pillar marked ANM10 thence for 2675.1 feet on the bearing of 179,27 to the pillar marked ANM12 on the east side of the Ga State Land thence for 3180 feet on the bearing 1179,54 to the pillar marked ANM13 thence for 1818.2 feet on the bearing of 270 for approximately 3752.4 feet and thence on the Southern side thence on the South-Eastern side commencing from pillar ANM1 for 1945.0 on the bearing of 00.00 to the pillar marked ANM2 thence for 269.35 feet on the bearing of 680.0 to the pillar marked ANM3 thence for 848.1 on the bearing of 00.58 to the pillar marked ANM4 thence for 1214.6 feet on the bearing of 03.41 to the pillar marked ANM5 thence for 3770.1 feet on the bearing of 00.08 to the pillar marked ANM6.

b. An order directed at the Lands Commission to expunge the plotting of 14,400 acres of land in the name Katamanso Stool from the records of the former.

c. Recovery of Possession.

d. Perpetual injunction to restrain the 1st Defendant, its agents, assigns, privies from interfering with the peaceful enjoyment of the land by Plaintiff."

Although the 2nd Defendant entered appearance, it took no further step and did not also participate in the proceedings.

(5) On 30th January, 2020, the 1st Defendant filed an Amended Statement of Defence and counterclaimed against the Plaintiff as follows:

"a. A declaration that Pinkwai lands form part of the State Lands of the Nungua Stool Lands and Katamanso Stool has a right to deal with same.

b. *Declaration that the land in dispute is affected by the judgment by the Chief Justice of the then Supreme Court of the Gold Coast namely Chief Justice Hutchinson in October 1892 between King Odai of Nungua (Plaintiff) and King Kpoi of La and King Kraku Kpobi representing Tema which judgment or position has been confirmed in the recent judgment issued by the Court of Appeal (Civil Division dated 28th March, 2018, delivered by His Lordship Amadu Tanko J.A).*

c. *An order for perpetual injunction restraining the Plaintiff, his family, assigns, privies or anyone claiming through the said family from further interference with the land.*

d. *An order for perpetual injunction to restrain the Plaintiff, his family, assigns, privies or anyone claiming through the said family from further interference with the land.*

e. *An order of recovery of possession of portions of the land encroached upon by the Plaintiffs' family or such areas as the said Family will encroach upon during the pendency of his case.*

f. *Damages for trespass.*

g. *Cost (including Legal Fees)."*

(6) **<u>THE PLAINTIFF'S CASE</u>**

According to the Plaintiff, the disputed land was acquired through the skill and efforts of his family's ancestor. That, the said ancestor, through hunting, settled on the land. He also cultivated farms on portions of the land and put up a hamlet thereon called, "***Marley Koo".*** The Plaintiff claimed that, during the Katamanso War between the Ashantis and the Gas, his ancestor's valour was outstanding and his efforts were recorded in books published on the history of the Gold Coast. The Plaintiff asserted that after the war the then colonial government agreed with the Ga states in 1902 that Pinkwai Forest and its surrounding lands be divided among the Ga states which participated in the war. In pursuance of the said agreement, Pinkwai and the surrounding lands were initially given to Nungua and Tema as caretakers while the remaining lands were left for all other Ga states.

(7) The Plaintiff stated that, on 1st June 2006 the 1st Defendant obtained a default judgment against the University of Ghana in respect of 670 acres of land. That, about two months after the default judgment, on the 3rd of August, 2006, the 1st Defendant fraudulently procured a site plan for an enlarged acreage of over 14,000 acres to include lands that were reserved for the other Ga states. The Plaintiff added that, the said site-plan was filed in the registry of the High Court and same was plotted at the Lands Commission, the 2nd Defendant herein in the name of the 1st defendant. The Plaintiff particularised fraud against the 1st Defendant in this respect as follows:

"a. 1st Defendant caused to be prepared a site plan
covering over 14,000 acres when the judgment was
in respect of 670 acres.

b. ***1st Defendant filed the Site Plan in the Registry of the High Court to make it appear as though it were the judgment plan when he knew that the judgment was delivered in respect of 670 acres of land two months earlier.***

c. ***1st Defendant submitted the site plan covering over 14,000 acres of land as the judgment plan when he knew that the judgment plan was in respect of 670 acres.***

d. ***1st Defendant deliberately omitted to submit the judgment plan of 670 acres for plotting instead submitted a site plan of over 14,000 acres in respect of no judgment was awarded."***

(8) It is the Plaintiff's case that, the Lands Commission *(2nd Defendant)* was negligent in plotting the land with the site plan of 14,000 acres in the name of the Katamanso Stool contrary to the terms of the judgment the Stool obtained in 2006 and that the plotting of the judgment for an area in excess of 670 acres had affected his family land.

(9) **<u>THE CASE OF THE 1ST DEFENDANT</u>**

The 1st Defendant contested the Plaintiff's claims and contended that, the disputed land has never belonged to the Plaintiff's family. According to the 1st Defendant, the disputed land had never been claimed by any of the warriors as of right or interest in the land. The 1st Defendant states that Pinkwai Forest and the land in dispute from time immemorial belonged to the Nungua Stool but it permitted indigenes of Teshie and La to hunt and fetch firewood from the forest but they never claimed ownership of the land. The 1st Defendant contended further that, in 1892, the Chief Justice of the then Gold Coast, Chief Justice Hutchinson in the case of **KING ODAI OF NUNGUA (PLAINTIFF) VS. KING KRAKU KPOBI** held that, the Nungua Mantse and the Nungua Stool

were the owners of the land. The 1st Defendant contended further that, in Civil appeal No.H1/95/2017, the Court of Appeal affirmed the Nungua Stool's ownership of Pinkwai Lands. According to the 1st Defendant they had not fraudulently registered the land as alleged and that, the Katamanso Stool is the only entity that is allowed by the Nungua Stool to deal with Pinkwai Lands.

(10) ISSUES FOR TRIAL

At the close of pleadings, the Trial Court set down the following issues for determination for trial:

"(i) Whether or not in the aftermath of Katamanso War, there was an agreement between the Colonial Government and the Ga State in respect of Pinkwai and its surrounding lands.

(ii) Whether or not the judgment obtained by Katamanso Stool acting per Nii Otu Akwetey against University of Ghana was in respect of 670 acres of land and yet Nii Otu Akwetey submitted a site plan covering 14,000 acres as judgment plan for plotting at Lands Commission.

(iii) Whether or not the actions of Katamanso Stool acting per Nii Otu Akwetey in submitting a site plan covering 14,000 acres instead of 670 acres as per judgment plan is fraudulent.

(iv) Whether Plaintiff's ancestors were in occupation of a portion of the land which was named Marley-Koo for centuries.

(v) Any other issue arising from the pleadings."

(11) JUDGMENT OF THE TRIAL COURT

On the 26th day of July, 2021, the Trial High Court delivered it's judgment. The Trial Court dismissed the Plaintiff's claim for declaration of title to the land and recovery of possession but granted the relief for Lands Commission to expunge the registration of 14,000 acres of land by the 1st defendant as fraudulent and ordered the Director, Survey and Mapping Division of the Lands Commission to delete from its records the 14,405.28 acres purportedly plotted on behalf of the Katamanso Stool as representing the extent of land in the 1st Defendant's judgment plan in Suit No.BL/272/2006 titled: NII OTU AKWETEY IX VS. UNIVERSITY OF GHANA. In respect of the counterclaim of the 1st defendant, the Trial Court dismissed the first and fourth reliefs of the 1st Defendant but granted its reliefs '2' and '3'.

(12) In its judgment, the Trial Court cautioned on a wholesome reliance on Exhibit "E" a letter authored in 1922 written to the Gborbu Wulomo of Nungua by the Colonial Secretary. That exhibit referred to a complaint made by one Mr. Nai whom Plaintiff claimed was his ancestor. The said Exhibit also referred to a complaint by the said Nai and his brothers about messengers sent by the Gborbu Wulomo of Nungua to collect tolls from them but they refused on grounds that, the land on which they farmed belonged to their ancestor. The Trial Court's observed as follows in respect of Exhibit "E"; the ***"Gborbu Wulomo refused to attend all invitations extended to him on the matter"*** hence, ***"it can be inferred that the Governor did not have the benefit of hearing from the Gborbu Wulomo before writing Exhibit "E".***

(13) Be that as it may, the Trial Court was of the view that, the Plaintiff ought to have led credible evidence of recent acts of possession which connects the Plaintiff's family with the land in dispute for him to succeed. The Trial Court further observed that, while under cross-examination, the Plaintiff's attorney

did admit that the land had been largely developed and occupied by persons who are agents, grantees or assigns of the 1st Defendant and the Nungua Stool. The court noted *inter alia* as follows: ***"I note that under cross-examination, the Plaintiff's attorney admitted that the land in dispute was largely developed. He further admitted that the land in dispute was occupied by people who were agents or assignees of the 1st Defendant's family. He even stated that when his family started visiting the land in 2006, they were resisted by land guards. One wonders why the Plaintiff's family started visiting the land in dispute in 2006 when their site plan was prepared in 1989 and whether the land in dispute is the same as the subject matter of Exhibit 'E'. This is because there appeared to be a lack of connection between the Plaintiff's traditional evidence and the current state of affairs in relation to the land in dispute. . .***

I find it exceedingly strange that the Plaintiff could not produce a strand of evidence of recent acts of ownership that his family had exercised over the land in dispute. For the law is settled that where a party relies on traditional evidence as proof ownership of land, the traditional evidence must be weighed against recent acts of ownership."

(14) On the relief (a) of 1st Defendant's counterclaim, the Trial Court observed that, despite the dismissal of the application by the Nungua Stool to join the suit, the said stool sought to pursue it's interest in the case through the 1st Defendants' counterclaim. The Trial Court was however of the view that, there was insufficient evidence that the mere fact that Katamanso is a sub-stool of the Nungua Stool that per se gave it the right to deal with land in dispute since it is the Nungua Stool and not the Katamanso Stool which has been recognized in the old judgments as owner of Pinkwai lands. Consequently, the trial court dismissed the 1st defendant's relief (a) of its counterclaim.

(15) The Trial Court further reasoned that, since the judgments referred to in reliefs 'b' of the 1st defendant's counterclaim are matters of public records, and there being no evidence that they had been set aside, same can be safely presumed as duly delivered. The court accordingly granted the reliefs 'b' and 'c' of the counterclaim of the 1st defendant. That notwithstanding, we must at this stage place on record that, subsequent to the judgment of the Trial Court as aforesaid, this court on 18th March 2020 per Marful-Sau JSC *(of blessed memory)* set aside the judgment of the Court of Appeal dated 28th March, 2018 referred to in relief 'd' of the Defendant's counterclaim on the ground that the writ and all proceedings therefrom were a nullity for want of capacity as the original Plaintiff to the action. That would automatically vary the judgment of the trial court to exclude the decision of the Court of Appeal in Civil Appeal H1/95/2017 dated 28th March, 2018. Furthermore, the Trial Court refused to grant relief 'd' of the counterclaim reasoning that, there was no evidence that the Plaintiffs' family were in possession of the disputed land so an order of recovery of possession would be meaningless.

(16) **APPEAL AGAINST THE HIGH COURT JUDGMENT**

Dissatisfied with the judgment of the Trial Court, the Plaintiff appealed to the Court of Appeal by notice of appeal on the following grounds of appeal;

"a. The judgment is against the weight of evidence.

b. *The Trial Court erred when it granted relief (2) of the 1st Defendant's counterclaim when the said relief did not inure to the benefit of the 1st Defendant/ Respondent.*
c. *The Trial Court misapplied the principles enunciated in* ***ADJEIBI-KOJO VS. BONSIE*** *to the case under consideration when the evidence preferred by the parties did not warrant its application.*

d. *The Trial Court erred in exercising preference for recent possession of the land by 1st Defendant/ Respondent instead of historical and documentary evidence of Plaintiff in refusing to decree the ownership of the land in the Plaintiff/Appellant.*

e. *The Trial Court misdirected itself in the application of the burden of proof in land cases to the case under consideration when it applied a stricter burden of proof on the Plaintiff/Appellant than on the 1st Defendant/ Respondent.*

f. *The Trial Court erred when it ignored the challenge to the capacity of the 1st Defendant/Respondent's lawful attorney without stating legal reasons for ignoring it.*

g. *The Trial Court erred when it ignored or rejected expert witness evidence, which was material evidence on the issue of possession without any legal justification or statin reasons for doing so.*

h. *The Trial Court erred when it failed to decree title in favour of the Plaintiff in the light of the court's finding that 1st Defendant's claim to the land was based on fraudulent registration and plotting.*

i. *Having concluded that 1st Defendant/Respondent fraudulently procured a site plan which extended its boundaries, the Trial Court erred in granting relief (3) of the counterclaim of the 1st Defendant."*

It must however be stated for the record that the 1 st defendant did not cross-appeal against the order by the trial judge for the deletion by the Lands Commission of the 14,000 acres it registered in its name.

(17) On the 24th day of March 2022, the Court of Appeal dismissed the appeal affirming substantially, all the findings made by the Trial Court. The court reasoned that :

(a) On the issue of capacity, the Court of Appeal did observe that, same was raised in the written submission. Secondly, the issue was not a capacity challenge of the 1st Defendant but in relation to the capacity of the witness of 1st Defendant, Dr. Nii Kpapko Sraha. The Court of Appeal was of the view, that a witness did not require a Power of Attorney to be eligible to testify on behalf of the stool, and that per Sections 58 and 59 of the Evidence Act 1975, (NRCD 323) and relying on the case of **IN RE : ASHALEY BOTWE LANDS; ADJETEY AGBOSU AND OTHERS VS. KOTEY AND OTHERS [2003-2004] SCGLR 420,** the court was of the position, that Dr. Nii Kpapko Sraha did not need a Power of Attorney to testify on behalf of the 1st Defendant Stool. The Power of Attorney executed by the Katamanso Chief, Nii Otu Akwetey was therefore, unnecessary and superfluous.

(b) On the ground that, the Trial Court having pronounced the site plan of the 1st Defendant to be fraudulent, yet proceeded to grant relief 3 of the counterclaim, the Court of Appeal found the Plaintiff's contention untenable and baseless. The Court of Appeal was of the view, that the Plaintiff had failed to lead evidence showing that, the 2,172.68 acres of land it was claiming was part of the 14,405.28 acres fraudulently plotted and registered in the records of the Lands Commission.

(18) On the alleged misapplication of the principle in the **ADJEIBI-KOJO VS. BONSIE** case, the Court of Appeal explained that, both parties relied on traditional evidence but, the evidence revealed that, the 1st Defendant and the

Nungua Stool, their privies, agents and assigns had been in undisturbed possession of the land for generations. The Court of Appeal thus, swayed the balance in favour of the 1st Defendant as against the Plaintiff who did not lead evidence of recent acts of ownership.

(19) APPEAL TO THE SUPREME COURT

Dissatisfied with the judgment of the Court of Appeal, the Plaintiff mounted the instant appeal to this court. Per Notice of Appeal filed on 22nd day of June 2022, the Plaintiff anchored the appeal on the following grounds:

"a. Judgment is against the weight of evidence.

b. Court of Appeal erred when it failed to distinguish between the evidence of Katamanso Stool and that of a non-party (Nungua Stool) before concluding that the parties to the action relied on traditional evidence.

c. The Court of Appeal erred when it failed to distinguish between testifying in support of a party via a power of attorney and testifying in support of a party and relied on the evidence of Nii Kpakpo Sraha II to dismiss the appeal thereby occasioning miscarriage of justice.

*d. Court of Appeal erred in the application and import of the principle in **ADJEIBI-KOJO VS. BONSIE** to the case under consideration.*

e. Court of Appeal erred when it endorsed the finding of fraud relating to the plotting and registration of 14,400 acres in the name of Katamanso Stool and yet decreed possession of the land in the Katamanso Stool contrary to the principle that fraud vitiates everything.

f. *Court of Appeal erred when it concluded that Plaintiff/Appellant/Appellant did not lead any evidence in proof of its claim that its land was part of the 14,400 acres of and fraudulently plotted and registered as the judgment plan of Suit No. BL/272/2006 entitled* ***'OTU AKWETEY IX VS. UNIVERSITY OF GHANA'*** *contrary to evidence on record.*

g. *Court of Appeal also erred in cherry picking the evidence in CW1 to the suit the case of the 1st Defendant/Respondent/Respondent thereby occasioning miscarriage of justice.*

h. *The Court of Appeal like the Trial Court mired itself in contradiction when it concluded that the Nungua Stool a non-party gave evidence indirectly in the suit and yet decreed possession in Katamanso Stool whose evidence was non-existent.*

i. *The Court of Appeal erred when it decreed possession in Katamanso Stool in 14400 acres of land when they did not discharge onus of proof of ownership of the said lands.*

j. *Further grounds to be filed upon receipt of the judgment."*

The relief sought by the Plaintiff before this court, is for the judgment of the Court of Appeal to be set aside, and in its stead prayed for judgment to be entered in his favour for all the reliefs in claimed in the High Court.

(20) PRELIMINARY OBSERVATIONS

We observe that, the action commenced at the Trial Court was initially against the Katamanso Stool simpliciter as 1 st defendant and Lands Commission as 2nd defendant. But, the settled law is that, in litigations affecting stool property, it is the occupant of the stool; in his absence the regent or caretaker as the case

may be at the customary law applicable, who can pursue or defend an action for and on behalf of the Stool. The settled practice is further that the originating process ought to be endorsed with the name of the person through whom the Stool is suing or by whom the Stool has been sued. With respect to family lands, it is the head of family or such other person recognised under the applicable customary law. There are however exceptional circumstances recognized under customary law, and referred to as the rule in **KWAN VS. NYIENI [1959] GLR 67 CA,** whereby a member of a family who does not answer the description; head of family, may sue to protect family property. The rule of practice in suits concerning Stool and Family property is now given statutory recognition by **Order 4 Rule 9 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47). See also the case of; IN RE: ASHALEY BOTWE LANDS; ADJETEY AGBOSU AND OTHERS VS. KOTEY AND OTHERS [2003-2004] SCGLR 420.**

However, in this case, subsequent to the filing of the case, the right thing was done by amending the endorsement in respect of the 1st defendant and stating that the Katamanso Stool was being proceeded against per Nii Laryea Afotey Agbo, the Regent of the Stool.

(21) We further observe that, most of the grounds of appeal stated on the Notice of Appeal in the Supreme Court are formulated inelegantly and are needlessly repetitive. The resolution of some of the grounds will necessarily render others moot. We have therefore decided to determine the appeal on the basis of only grounds "a"; "c" and "d" in the order set out hereunder:

"(i) The Court of Appeal erred when it failed to distinguished between testifying on behalf of a party via a power of attorney and testifying in support of a party and relied on the evidence of Nii Kpakpo

Sraha II to dismiss the appeal thereby occasioning miscarriage of justice.

(ii) Judgment is against the weight of evidence.

(iii) Court of Appeal erred in the application and import of the principle in ADJEIBI-KOJO VS. BONSIE to the case under consideration."

(22) **EVALUATION OF THE GROUNDS OF APPEAL:**

(i) THE COURT OF APPEAL ERRED WHEN IT FAILED TO DISTINGUISH BETWEEN TESTIFYING ON BEHALF OF A PARTY VIA A POWER OF ATTORNEY AND TESTIFYING IN SUPPORT OF A PARTY AND RELIED ON THE EVIDENCE OF NII KPAKPO SRAHA II TO DISMISS THE APPEAL THEREBY OCCASIONING MISCARRIAGE OF JUSTICE.

In our view, this ground ought not to have been seriously pursued, as the motivation for same is unclear. The Plaintiff chose his Defendant as the Katamanso Stool, per its Regent Nii Laryea Afotey Agbo. The 1st Defendant originally stated on the writ of summons was the Katamanso Stool. The Occupant of the Katamanso Stool at that time, Nii Otu Akwetey IX, was reported to be unwell and could not physically appear in court to defend the action so he executed a Power of Attorney, appointing Dr. Nii Kpakpo Sraha to testify on his behalf. It is important to emphasise from the outset that, the Plaintiff's attack purporting to be an attack on the capacity of the witness is most untenable and misconceived because it is not an attack on the capacity of 1st Defendant since the power of attorney was not meant to make Dr Nii Kpakpo Sraha the representative of the Katamanso Stool but as a witness. The capacity of the 1st defendant was resolved when there was an amendment and

the name of the regent of the Stool stated. That in our view brought this matter to a close.

(23) It appears from Counsel's statement of case that, the fact that Dr. Nii Kpakpo Sraha is the secretary to the Nungua Stool is construed to mean that he was testifying to indirectly prosecute the suit on behalf of the Nungua Stool. He has submitted as follows:

"When the ill-fated attempt by the Nungua Stool to join the suit failed, the 1st Defendant was left with only one alternative i.e. to let Nungua Stool pursue the defence or prosecute the suit indirectly hence its entire counterclaim was based on Nungua Stool's claim to the land and not Katamanso Stool. In pursuance of this objective the Katamanso Stool through its Chief Otu Akwetey IX gave Power of Attorney to Dr. Nii Kpakpo Sraha. Dr. Nii Kpakpo Sraha is a Secretary to the Nungua Stool and even though the said stool is not a party to the suit, the said Stool, it also gave Power of Attorney to Dr. Nii Kpakpo Sraha to testify in the current suit. It is our contention the ambivalent capacity of the said Dr. Nii Kpakpo Sraha is not necessary and cannot save the 1st Defendant. The ambivalent capacity is to save the Katamanso Stool from testifying in the suit as they have no history of acquisition of the land except the fraud being complained of."

(24) Counsel for the Plaintiff further submitted, that: ***"A witness who is not a party to the suit cannot give a Power of Attorney to another to testify on his behalf. In this respect, one can only agree with the Court of Appeal's decision that the said Dr. Nii Kpakpo Sraha did not need the power of attorney from the Nungua Stool to testify".*** Indeed, if Plaintiff's Counsel agrees with the court below that, it was superfluous for Dr. Nii Kpakpo Sraha to have testified with

a Power of Attorney, what then is the substance of Plaintiff's complain? This ground of appeal is dismissed as having no merits.

(25) **GROUND D:**

THE COURT OF APPEAL ERRED IN THE APPLICATION AND IMPORT OF THE PRINCIPLE IN ADJEIBI-BONSIE VS. KOJO TO THE CASE UNDER CONSIDERATION.

Evidence of traditional history, recounted several years ago; family or relational history; pertaining to community boundaries although generally hearsay, is exempted and made admissible by virtue of Sections 128 and 129 of the Evidence Act, 1975 (NRCD 323). In the instant case, both lower courts took the position that, the parties relied on traditional evidence that were conflicting. With this premise, both lower courts decided rightly to apply the settled tests for evaluating rival traditional evidence, espoused in the *locus classicus* of **ADJEIBI-KOJO VS. BONSIE [1957] 3 WALR 257, PC.** In that case, the Privy Council, speaking through Lord Denning stated the test for the evaluation of traditional evidence as follows:

*"[T]he dispute was all as to the traditional history which had been handed down by word of mouth from their forefathers. In this regard it must be recognized that, in the course of transmission from generation to generation, mistakes may occur without dishonest motives whatsoever…**The most satisfactory method of testing traditional history is by examining it in the light of such more recent facts as can be established by evidence in order to establish which of two conflicting statements of tradition is more probably correct."** [Our emphasis].*

(26) The above test, has been accepted, adopted and applied in numerous decisions of this court and others in the common law jurisdiction, as the best approach and the objective test to resolve conflicting traditional history. The

Evidence Act 1975 (NRCD 323) appears to support this approach when it provides under Section 48 thereof, that:

(1) ***The things which a person possesses are presumed to be owned by that person.***

(2) ***A person who exercises acts of ownership over property is presumed to be the owner of it.***

(27) In the case of **HILODJIE VS. GEORGE [2005-2006] SCGLR 974**, this Court, in applying Section 48 of the Evidence Act held as follows:-"***Therefore, findings and decisions of courts of competent jurisdiction, may appropriately qualify as evidence. Facts in living memory. But evidently in land litigation, proven uninterrupted and unchallenged acts of possession, in the absence of some cogent evidence on record to the contrary, as, for example, an unreserved acceptance of crucial parts of the other side's oral history, cannot be ignored or denied the deserved weight, given that, in the first place, by the clear provision of Section 48 of the Evidence Decree, 1975 (NRCD 323), such acts raise a presumption of ownership.***"

(28) The above principle has been applied in a plethora of cases. **IN RE: TAAHYEN & ASAAGO STOOLS; KUMANIN II V ANIN [1998-99] SCGLR 399,** this Court, speaking through Acquah JSC *(as he then was)* pronounced as follows: *"In assessing rival traditional evidence, the coherence of a party's version or his demeanour should not be the sole criteria for its preference over the other version; what is important is to find which of the rival versions is authenticated by acts and events within living memory, especially where such acts and events are acts of possession and ownership by a party claiming ownership and title to the subject matter*

*of the claim. For what raises a presumption of ownership in favour of a party is not his impressive demeanour nor the coherence of his traditional evidence but acts of possession and ownership he exercises over the subject-matter of the action…**To sum up, in assessing rival traditional evidence, the court must not allow itself to be carried away solely by the impressive manner in which one party narrated his version and how coherent that version is; it must rather examine the events and acts within living memory established by the evidence paying particular attention to undisputed act of ownership and possession on record; and then, to see which version of the traditional evidence, whether coherent or incoherent, is rendered more probable by the established acts and events ; and finally, the party whose traditional evidence such established acts and events support or render more probable must succeed unless there exists on the record of proceedings, a very cogent reason to the contrary.***"

(29) Such other cases where the principle prevailed include: **AGO SAI AND OTHERS VS. KPOBI TETTEH TSURU III [2010] SCGLR 763-HOLDING 1; IN RE: KROBO STOOL (NO.1); NYAMEKYE (NO.1) VS. OPOKU [2000] SGLR 347; ACHORO VS. AKANFELA [1996-97] SCGLR 209; ADWUBENG VS. DOMFEH [1996-97] SCGLR 660; ADJEI VS. ACQUAH [1991] 1 GLR 13.** Therefore, the **ADJEIBI-KOJO VS. BONSIE PRINCIPLE** applies, where the tribunal is in doubt as regards which of the rival stories it is to believe.

(30) Undoubtedly, the application of the test has not been without difficulty so the courts continue to explain its scope. **IN RE: KODIE STOOL; ADOWAA VS. OSEI [1998-99] 23** this Court observed *inter alia* per **Charles Hayfron-Benjamin** in concurring the opinion of Aikins JSC at page 64 of the report as follows: ***"I think counsel for the Plaintiff has misunderstood the amplification-perhaps if I may say so-the simplification of the ADJEI-KOJO PRINCIPLE.***

The dictum of Edward Wiredu JSC in ADJEI VS. ACQUAH does not mean that rival traditional evidence may be resolved solely by recent acts of events without reference to the traditional evidence on record … that dictum requires two steps to be taken in assessing the probable correctness of rival traditional 'stories'. First, the rival stories must be weighed along the recent facts to ascertain which story appears more probability of the and second, facts established by matters and events within living memory must necessarily take precedence over mere traditional evidence."

(31) In the instant appeal, Counsel for Plaintiff has left the matter of whether their side adduced evidence of recent acts of ownership of the disputed land and has concentrated on the holding of the lower courts that the 1st defendant acted fraudulently by registering 14,000 acres of land in its name at the Lands Commission on the basis of a judgment for 670 acres of land. Counsel has made a mountain out of this finding against the 1st Defendant, and anchored his case on the contention that, since fraud vitiates everything then, the two lower courts ought to have rejected the whole claim of the 1st Defendant and decided the question of ownership of the land in dispute in his favour.

(32) The point Plaintiff's Counsel glosses over is that, it is only the registration of the over 14,000 acres of land instead of 670 acres following the University of Ghana case that the Trial Court held to be fraudulent and not the 1st Defendant's claim through its overlord stool, the Nungua Stool, to ownership since time immemorial of Pinkwai Forest and its adjoining lands of which the land in dispute here forms part. The plaintiff claimed to be the owner of the disputed land and the 1st defendant also counterclaims for owner so either party had to adduce evidence of the root of title relied upon as well as acts of uninterrupted exclusive possession over a long period of time. In the

case of **FOSUA & ADU-POKU VS. DUFIE (DECEASED) & ADU-POKU MENSAH [2009] SCGLR 310,** this court quoted with approval the statement of Azu Crabbe J.A *(as he then was)* in the case of **ODOI VS. HAMMOND [1971]2 GLR 375,** and which erudite statement is applicable to the instant case as follows:

" It is now common learning in this country that in an action for declaration of title to land the onus is heavily on the Plaintiff to prove his case, and he cannot rely on the weakness of the defendant's case. He must indeed 'show clear title': per Yates Ag C.J. in KUMA VS. KUMA [1934] 2 WACA 178 at P 179. In KPONUGLO VS. KODADJA [1933] 2 WACA 24 at P. 25, the Judicial Committee of the Privy Council observed that in an action for a declaration of title the "first question logically and chronologically, to consider in the appeal is the traditional evidence regarding the acquisition of a title to the disputed territory." For a stool or family to succeed in an action for a declaration of title it must prove its method of acquisition conclusively, either by traditional evidence, or by overt all of ownership exercised in respect of the land in dispute."

(33) Consequently, the plaintiff needed to discharge the onus of producing evidence of ownership of the land in dispute and not rely solely on the finding of fraudulent registration made against the 1st defendant. The plaintiff has failed to realize that in this case the claim of ownership to the disputed land by 1st defendant and the Nungua Stool is not premised on the registration in the Lands Commission records of 14, 000 acres but they rely on a colonial Supreme Court judgment of ancient pedigree dated 13th October 1892 in a suit intituled **King Odai of Nungua (Plaintiff) Vrs King Kpobi of La & King Kraku (representing Tema).** That judgment by Chief Justice Hutchison upheld the right of the Nungua Stool over Pinkwai lands. This judgment is supported by

the acts of sustained ownership of the land by the Nungua Stool from that time to recent times and admitted by the plaintiff. The plaintiff has not been able to produce any document as evidence of his root of title that matches the weight of this judgment of the colonial Supreme Court in favour of the Nungua Stool. The letters and references to the plaintiff's ancestor in the publications on the History of Ghana do not directly or even indirectly say that the ancestor was the owner of Pinkwai Forest and the lands adjoining it. There is evidence on the record of appeal of persons to whom, since the 1960s, the Nungua Stool itself, and in some instances the Katamanso Stool on behalf of the Nungua Stool, made grants of portions of the land now being claimed by the Plaintiff have been in peaceful and undisturbed possession without challenge by the Plaintiff's family. In fact these grants and acts peaceful possession were admitted by the Plaintiff under cross-examination.

(34) The Court appointed witness, the surveyor in his testimony also testified as follows:

"Q: Per your survey work and the acts of possession shown by the 1st Defendant on the ground there are developments on the land shown in the site plan of the Plaintiff which developments were carried out at the behest of the 1st Defendant is that correct?

A: I did not go round the boundary of the Plaintiff but for the features I did for the 1st Defendant. The pig farm is no longer a farm but now being occupied by Regimanuel Grey Estate. It is within their fence wall. The Akotiampong forest and Agblomate lands road construction is going through the parcel of land and it is also falling within the Regimanuel Gray Estates Ltd. And the Irroko Furniture 1st Defendant claimed they leased the land to Irroko Furniture.

Q: Is it your submission that the land that falls within the site plan of Plaintiff's herein edged green. Is now a developed residential area?

A: Not entirely. I will say it has been occupied but majority is not developed.

Q: Please when you say occupied what do you mean?

A: What I mean is, I will say the parcels are within a fenced area belonging to Regimannuel Gray Estates, for example the Pigfarm, the Akotiampong forest, the Agblomate.

This Regimanuel Gray Estates covers a large tract of land granted by the 1st Defendant. The company fenced the land since that time and has been in possession, built houses and sold to third parties all to the knowledge of the Plaintiff but they never raised a finger to challenge that grant.

(35) The Trial Court made the following findings on the evidence;

"I note that under cross-examination, the Plaintiff's attorney admitted that the land in dispute was largely developed. He further admitted that the land in dispute was occupied by people who were agents or assignees of the 1st Defendant's family. He even stated that when his family started visiting the land in 2006, they were resisted by land guards. One wonders why the Plaintiff's family started visiting the land in dispute in 2006 when their site plan was prepared in 1989 and whether the land in dispute is the same as the subject matter of Exhibit 'E'. This is because there appeared to be a lack of

connection between the Plaintiff's traditional evidence and the current state of affairs in relation to the land in dispute.

I find it exceedingly strange that the Plaintiff could not produce a strand of evidence of recent acts of ownership that his family had exercised over the land in dispute. For the law is settled that where a party relies on traditional evidence as proof ownership of land, the traditional evidence must be weighed against recent acts of ownership."

(36) In the face of these findings which were based on the evidence, the Court of Appeal was justified in affirming the Trial Court's decisions. In the circumstances, we reject the submissions by the Plaintiff that the Court of Appeal erred in preferring the case of the 1st Defendant to his case. That submission is not tenable on account of the evidence on record.

(37) **THE JUDGMENT IS AGAINST THE WEIGHT OF EVIDENCE**

This court has in several decisions emphasised the duty on an Appellant who anchors an appeal on this ground, to point out to the Appellate court, the lapses in the judgment appealed from, which they consider to have occasioned to them a miscarriage of justice. This duty stems from the position that, a party who alleges that a judgment is against the weight of evidence is simply contending that, the Trial Court or for that matter, the Appellate court failed to properly evaluate or analyse the evidence adduced at the trial, or had misapplied the law to the evidence; or excluded pertinent evidence that ought not to have been excluded; or received inadmissible evidence and by so doing, wrongly evaluated the evidence occasioning the Appellant a miscarriage of justice.

(38) An appeal, it is trite, is by way of a re-hearing. This court is therefore obliged, following an Appellant's pointers of the errors committed by the lower court in the evaluation of the evidence adduced to engage in a re-examination and re-evaluation of the entire record, and make its own findings as to whether the findings can or cannot be supported having regard to the evidence adduced at the trial.

(39) In the oft cited case of **TUAKWA VS. BOSOM [2001-2002] SCGLR 61,** this court held *inter alia* per Sophia Akuffo JSC *(as she then was)* that:- ***"An appeal is by away of rehearing, particularly where the Appellant 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 testimonies and all documentary evidence adduced at the trial before arriving at its decision, so s to satisfy itself that, on a preponderance of the probabilities, the conclusions of the Trial Judge are reasonably or amply supported by the evidence."***

This court, being a second appellate court, will therefore be very slow in reversing concurrent findings of facts made by the trial and first appellate court unless there are demonstrable exceptional situations warranting the reversal.

(40) In the instant case, as already pointed out, both lower courts affirmed that, the 1st Defendant's registration of the 14,400 acres of land in its name following the default judgment against the University of Ghana was fraudulent but the 1st defendant and the Nungua Stool have not based their claim of ownership on that impugned registration. Therefore, that holding does not

blight the conclusions of the two lower courts in favour of the Nungua Stool's claim of ownership, after subjecting both the Plaintiff and 1st Defendant to strict proof. In prosecuting this appeal as aforesaid the Plaintiff erroneously assumed that, the courts below, having affirmed the fraudulent registration of the site plan following the University of Ghana case, the same will amount to an entitlement to an order for declaration of title in his favour. We disagree as we find that, the application of the test for evaluation of traditional evidence as laid down in the **ADJEIBI KOJO VS. BONSIE case** (supra) was properly done by the two lower courts. Therefore, we will not disturb the findings and conclusion arrived at by the courts. We are of the view that, the Plaintiff failed to demonstrate that, the concurrent judgments of the two lower courts are against the weight of evidence. The judgments, contrary to the Plaintiff's contention, are rather heavily support by the evidence on record.

(41) We realize that our decision in the case of **NII KPOBI TETTEY TSURU III & ANOTHER VS. AGRIC CATTLE & 4 OTHERS Civil Appeal No.J4/15/2019** dated 18th March, 2020 needs to be addressed in this Judgment since the 1st Defendant relied on the decision of the Court of Appeal in that suit and the High Court in its judgment in this case adopted that decision. In that case, just as in the instant suit, the ancestral ownership of the Pinkwai forest and adjoining lands was considered by the High Court and the Court of Appeal with the plaintiff in that earlier case, the Chief of La, claiming ownership of the land against Agri Cattle Lakeside Estate Ltd and other defendants. The Court of Appeal decided the case on the evidence in favour of Agri Cattle Lakeside Estate Ltd and the other defendants who counterclaimed. However, when the case came before the Supreme Court on final appeal, it was decided on the question of the incompetence of the parties in the suit from the High Court and the whole proceedings were quashed. In the instant case, though the land of

Agri Cattle Lakeside Estates Ltd is part of the land being claimed by the plaintiff and counterclaimed by the 1st defendant, the plaintiff did not join Agri Cattle Lakeside Estate Ltd or any of the grantees of the 1st defendant and the Nungua Stool as defendants.

(42) Nonetheless, the record of appeal before us reveals that, in paragraph 19 of the witness statement of the 1st Defendant's witness, Dr. Nii Kpakpo Sraha III *(pages 172 to 177 of Volume 1 of the record),* the said witness acknowledged the leasehold interest granted by the Nungua Stool to Agri Cattle Lakeside Estate Limited and attached the land certificate subsequently procured by the said entity in pursuance of the assignment made on 18th January 1974 and the lease made on 28th September 1995. The Land Certificate No. TD 0513 issued to Agri Cattle Lakeside Estate Ltd pursuant to the Land Title Registration Act 1986 (PNDCL 152) covering an area of land in extent 1178.28 hectares or 2911.53 acres more or less was issued on 8th November 2006 is also on the record before us. (See page 303 vol 1 of the Record of Appeal).

(43) In the Plaintiff's Statement of Claim and in the witness statement of one Stanley Anyetei Nunoo, (*pages 53 to 56 of Volume 1 of the record)* no adverse claim was made against the interest of Agri Cattle Lakeside Estate Limited in respect of any portion of the extent of land described in the land certificate held by the said entity despite the fact that these documents were served on the plaintiff. The effect is that, as grantee of the Nungua Stool, neither the plaintiff herein, 1st Defendant or the Nungua Stool, whether by themself, or persons claiming through them, can deny or lawfully claim to have any interest in the land certified in favour of Agric Cattle Lakeside Estate Limited. Though not being a party to the instant proceedings, the parties herein are estopped from laying any claim of ownership in the future to the land of Agric Cattle Lakeside Estate

Limited covered by its Land Certificate being No. TD 0513 pursuant to the Land Title Registration Act 1986 (PNDCL 152) covering an area of land in extent 1178.28 hectares or 2911.53 acres more or less was issued on 8th November 2006.

(44) In conclusion, save for the above statements with regard to the interest of Agric Cattle Lakeside Estate Ltd in the land covered by its Land Certificate, we find no reason to disturb the concurrent judgments of the two lower courts so the appeal against the judgment of the Court of Appeal dated 24th March, 2022 fails and is dismissed.

I. O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)

(JUSTICE OF THE SUPREME COURT)

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

(JUSTICE OF THE SUPREME COURT)

B. F. ACKAH-YENSU (MS.)

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