

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: LOVELACE-JOHNSON (MS.) JSC (PRESIDING)

PROF. MENSA-BONSU (MRS.) JSC

KULENDI JSC

ACKAH-YENSU (MS.) JSC

ASIEDU JSC

CIVIL APPEAL

NO. J4/53/2022

19TH JULY, 2023

BENJAMIN DANQUAH PLAINTIFF/RESPONDENT/APPELLANT

VS

1. AGNES AHADZI

}
.....

DEFENDANTS/APPELLANTS/RESPONDENTS

2. PIONEER MALLS LIMITED

JUDGMENT

LOVELACE-JOHNSON (MS.):-

The designation of the parties at the trial court will be maintained in this appeal.

By a writ of summons, amended twice to join 2nd defendant and to add a fourth relief, the plaintiff claimed against the defendants the following four reliefs:

1. Declaration of title to all that piece of land described in and covered by Land Certificate No. GA. 22122 in Land Register Volume 46 Folio 65.
2. Damages for trespass
3. Perpetual injunction restraining the Defendant, her agents, servants and assigns from further trespassing on the land in dispute;
4. An order for cancellation of 2nd Defendant's Land Certificate No. GA. 13523 as same was procured by fraud.

These claims were denied by 1st defendant. 2nd defendant was ordered by court to be joined to the matter upon application by the 1st defendant. They also denied the claims and counterclaimed for their own reliefs in the following terms:

- a. Declaration of title to land contained in Land Certificate No. GA. 13523, Volume 02, Folio 29;
- b. A declaration that Land Certificate No 22122, Volume 46, Folio 65 issued to Plaintiff subsequently over the same land is null and void and of no effect;
- c. Damages for trespass;
- d. Perpetual injunction restraining the Plaintiff, his agents, servants and assigns from any dealings interference or tampering with the disputed land.

The brief facts of the case are that while the Plaintiff claims his title to the land through the Tsie We Quarter of Teshie, the Defendants trace their title through the Bortei Alabi family of Nungua. Both plaintiff and the 2nd defendant had Land Title certificates to the land claimed by them. The plaintiff's complaint was that the defendants had demolished

a building he was putting up on his land. Plaintiff's position was that his land was different from those of the defendants and that the 2nd defendant's Land Title Certificate did not cover his land and contended that the 2nd defendants were not entitled to their counterclaim. On the other hand, the defendants said they had acquired the land from their grantors whose land certificate, and 2nd defendants' own certificate were earlier in time to that of the plaintiff, so any subsequent grant of the same land to plaintiff was per the said land certificate null and void.

The following were set down as the issues and additional issues for trial

1. Whether or not the land in dispute is the same as the land covered by the Defendants' Land Certificate No GA 13523
2. Whether or not the land in dispute is the same as that which is the subject of another High Court suit
3. Whether or not the Defendant trespassed on Plaintiff's land
4. Whether or not the Plaintiff is entitled to his claim
5. Any other issues arising from the pleadings

The additional issues were

1. (i) Whether the defendant demolished or caused to be demolished a building allegedly being erected on the disputed land
(ii) Whether or not the disputed land forms part of a larger tract contained in Land Certificate No 13523 currently a subject of dispute pending before another High Court
2. An order for joinder of PIONEER MALL LTD as 2nd Defendant by virtue of Land Certificate No 13523.

At the end of the hearing, the trial high court gave judgment in favour of the plaintiff on all his reliefs, dismissed the counterclaim of the 2nd defendants and awarded costs of GH 1,000.00 against each of the defendants.

Being aggrieved by this judgment, the defendants appealed to the Court of Appeal which by judgment dated 20th May 2021 set aside the judgment of the high court and entered judgment for the 2nd defendant on his counterclaim. In addition the court awarded the counterclaimant GH5,000.00 as damages and declared null and void plaintiff's Land Certificate No 22122 and ordered its cancellation forthwith.

It is the plaintiff's dissatisfaction with this judgment which has led to the present appeal on the following grounds

- i. The court of appeal erred by coming to the conclusion that the 2nd Defendant/Appellant/Respondent's Land Certificate No GA 13523 Volume 02, Folio 29 was not tainted by fraud
- ii. The Court of Appeal erred by holding that the Plaintiff/Respondent/Appellant was unable to prove that the 2nd Defendant/Appellant/Respondent's Land Certificate No GA 13523 Volume 02, Folio 29 was procured by fraud.
- iii. The Court of Appeal erred by coming to the conclusion that the Chief Registrar of Lands was wrong in cancelling Land certificate No GA 9043 Volume 02, Folio 29 suo motu
- iv. The Court of Appeal erred by ordering the cancellation of Land Certificate No GA 22122 Volume 46 Folio 65 held by the Plaintiff/Respondent/Appellant
- v. The judgment is against the weight of evidence.

Plaintiff seeks from this court, on the basis of the above grounds an order reversing the judgment of the court of appeal and a cancellation of 2nd defendant's Land Certificate No GA 13523 as tainted by fraud and any further orders this court deems appropriate.

A study of the Record of Appeal (ROA) shows that when the 1st defendant filed her additional issues at the application for directions stage, she sought a joinder of PIONEER MALL LTD as 2nd defendant. The court at its sitting of 20th June 2006 granted the said order. However the formal order signed by the learned trial judge did not include this order for joinder as it should have. It is however clear that the writ was amended accordingly and served on the 2nd defendant who thereafter entered appearance and has taken part in the hearing to date.

It is our considered opinion that this lapse on the part of the trial court should not affect the current proceedings in the light of Order 1 rule 2 of the High Court (Civil Procedure) Rules 2004, C.I. 47 which enjoins the rules to be interpreted and applied

“so as to achieve speedy and effective justice, avoid delays and unnecessary expense, and ensure that as far as possible, all matters in dispute between parties may be completely, effectively and finally determined and multiplicity of proceedings concerning any of such matters avoided”

The first two grounds of appeal relate to the sanctity of 2nd Defendants’ Land certificate. Plaintiff contends that it was obtained by fraud. The grounds were argued together. We shall consider them in like manner.

The gist of the plaintiff’s submissions on the first two grounds as gleaned from his statement of case and reply are as follows:

1. The fact that the disputed land was bought, an application made and a Land Certificate, issued all in the name of an unincorporated legal entity amounts to fraud since these acts “were driven by deceit”.
2. These acts should have been accepted as evidence of fraud by the court of appeal even if fraud had not been pleaded by the plaintiff, there being authority, (a supreme court

decision which the court of appeal was bound to follow) for the position that a court should not ignore clear evidence of fraud even if same has not been pleaded.

3. Further the plaintiff contends that the claim that the transaction to purchase the disputed land in the name of the 2nd defendant was a pre incorporation contract cannot hold because it was never raised as an issue at the trial.

4. Counsel also submits that the Companies Act 2019(Act 992) whose provisions on pre incorporation contracts counsel for 2nd defendant seeks to rely on to cloth the transaction in question as a pre incorporation contract was NOT in force at the time of the said transaction and so its provisions cannot apply.

In response, on these two grounds, counsel for the defendants, in sum, submits as follows

- a. The Court of appeal did not resolve the issue of fraud claimed by the plaintiff by relying on the concept of pre incorporation contracts even though the issue is dealt with under section 13 of Act 179 which was the applicable Act at the time of this transaction, in a similar manner as by Act 992, the current law.
- b. Counsel submits that the court of appeal found that the mere fact of the registration of the land in the name of the 2nd defendant before its incorporation did not discharge the burden of proof required in relation to fraud ie proof beyond reasonable doubt, especially since at the relevant time the Plaintiff was unknown to the persons doing the transaction.

In resolving these two grounds, the question to be answered is whether the plaintiff led evidence to prove his allegation of fraud beyond reasonable doubt contrary to the finding of the court of appeal.

As admitted by counsel for the plaintiff, the issue of fraud on the part of the 2nd defendant in the course of applying for their land title certificate No GA 13523 was never part of the former's pleadings. However, according to him, evidence of such fraud which emerged in the course of the hearing was so glaring as to warrant the court taking notice of and acting upon it to have the said land certificate cancelled.

We have gone through the entire testimony and cross examination of the representative of the 2nd defendants from pages 136 to 155. The most relevant part of the evidence on this issue can be found at page 155 towards the end of cross examination. The following ensued:

Q. Before 5th August 1999 when Pioneer Mall Limited was incorporated as a company, you were using the name Pioneer Mall Limited to do business, not so

A. My Lord, no

Q. Take a look at exhibit 2, your certificate. Can you tell the court, the date of registration of your title at the Land Title Registry per Exhibit 2

A. My Lord 22nd April 1999

Q. So at the date of the registration of the land in the name of Pioneer Mall Limited, Pioneer Mall Limited has not been incorporated as a company, by the certificate to be tendered.

A. My Lord, yes

q. But you managed to inform or mislead the Land Title Registrar that there was such a company in existence to which a certificate should be issued, not so?

A. My Lord, that time we had the name and we were contemplating of what to do, that is how it happened.

What is clear is that the land in dispute was acquired in the name of the 2nd defendants when it was not legally in existence. That will certainly have legal repercussions but nothing from the evidence on record shows that this was done knowingly and recklessly to obtain a material advantage to the detriment of another. These are the necessary elements to be proved in a charge of fraud. The standard of proof of fraud whether in a criminal or civil matter is high ie proof beyond reasonable doubt. Clearly that standard was not met. Counsel for plaintiff has described these acts as deceitful. We do not think so but even if they were, more was needed to make such acts fraudulent.

In both cases cited by counsel for plaintiff that is **Apea & Anor vs Asamoh [2003-2004] 1 SCGLR 226** and **Amuzu vs Oklikah [1998-99] SCGLR 141** in support of his fraud allegations, the acts found to be fraudulent were clear in the circumstances of those cases and so without hesitation, the court found fraud proved even though it had not been pleaded as required by the rules.

In the **Apea** case, the successor of a deceased man had surreptitiously changed the name on the document of the latter's self-acquired property to his own after his death and obtained a lease on that basis. The court found that he had acted fraudulently and made a finding to that effect even though fraud had not been pleaded since the evidence of fraud was clear and could not be ignored.

In the **Amuzu** case, this court per Atuguba JSC described the conduct of the Defendant's vendor as one which 'stinks' on the evidence. He took the position that in such circumstances, ie where the evidence was clear though not pleaded, the absence of such pleading of fraud should not be allowed to stand in the way of a finding of fraud.

The present circumstances are NOT similar to those in the above mentioned cases. In any case we agree with the court of appeal that fraud was not proved merely by the registration of the land in the name of the 2nd defendant when it had not been incorporated and agree with them that the plaintiff was unable to prove that Land Certificate No GA 13523 was procured by fraud or tainted with fraud.

On the basis of the above we find no merit in the first two grounds of appeal and dismiss them.

The third ground of appeal criticizes the finding by the court of appeal that the cancellation of Land Certificate No GA 9043 (covering the land of defendants' grantors) by the Chief Registrar of Lands was wrongful.

The pith of the submissions by counsel for the plaintiff on this ground is that the Defendants did not challenge the admission into evidence of Exhibit E, (the letter calling upon defendants grantors to produce the certificate in question for cancellation) and yet the court said it was wrongfully admitted and upon that basis proceeded to declare the cancellation wrongful. Having done this without allowing the parties to address it on the said ground upon which their finding was based, the court had been in breach of rule 8 (8) of C.I. 19 which required an address by both parties on the matter.

Further, counsel submits that even if exhibit E was not pleaded, since it had been admitted into evidence, it could be relied upon since it was not inadmissible per se and from that evidence it was clear the land certificate had been cancelled, even if suo motu by the Chief Registrar of Lands who, counsel submits had power to so cancel for the reasons stated in the said exhibit. In support of this position, this court has been referred to its decision in *Awuku vs Tetteh* [2011] 1 SCGLR 366@ 369.

Counsel also submits that the cancellation being an official act should be presumed to have been regularly done.

The response from the defendants to the above are that firstly, exhibit E was not pleaded and so came as a surprise to their grantors. Secondly the complainant in the matter which resulted in the cancellation in exhibit E had withdrawn his complaint, those put before the criminal court had been acquitted and discharged of the said fraud and finally that, it was only the High Court which was vested with power under PNDCL 152 to cancel a Land certificate.

The evidence shows that counsel for the defendants objected to the tendering of exhibit E but the trial court admitted it 'for whatever it was worth' See page 113 and 114 of the Record Of Appeal.

It is not in dispute that the provisions of section 122 (1) of PNDCL 152 vest the power of cancelling land certificates in the high court and none other.

Further such rectification of the Register is not to affect the title of anyone who has in the mean time acquired an interest in the land unless they had knowledge of or caused or contributed substantially to the 'omission, fraud or mistake'' which led to the rectification. See section 122 (2) of the above mentioned Law

In the light of the clear provisions, of section 122 (1) there must be glaring reason to extend the exercise of this power to another office. Notwithstanding the case of **Awuku v Tetteh** to which our attention has been drawn, it is our considered opinion that both courts below were not provided with any such. That is sufficient reason to uphold the court of appeal's position that the said cancellation was wrongful since it was 'cancelled without due process under PNDCL 152'' and to dismiss this ground of appeal.

There are also other good reasons to so dismiss. While it is clear from the contents of exhibit E that the land title certificate was cancelled on the grounds of fraud, it is also clear from the same contents that the Bortei Alabi family did not take part in the hearing which was unfair to say the least. Secondly, from the evidence, a criminal court had

acquitted and discharged those charged with the alleged forgery. Surely the said acquittal and discharge from a court of law should carry more weight than an administrative investigation in which the “accused” did not participate.

Counsel for the plaintiff submitted that it was wrong for the court of appeal to find fault with the cancellation since there was no challenge before them from the said family. Assuming without admitting that this is indeed the correct position, the defendants’ title to the disputed land would be protected if they had no knowledge of the proven fraud or mistake by their grantors as provided by section 122(2) of the Law.

This would only be known after the conduct of a hearing or investigation involving them. Since this was not done, the justice of the case demanded that they be not denied the root of the title to their land which we have earlier found was cancelled without due process.

On the 4th ground of appeal which impugns the cancellation of the plaintiff’s Land certificate, this is what his counsel has to say. First, counsel submits that this certificate was cancelled because the 2nd defendants counterclaim was upheld and so if his allegations about 2nd defendants land certificate are upheld then the court of appeal ought not to have cancelled his Land title Certificate.

Our position is that that allegation of fraud was not proved but more important is the fact that a counterclaim, which in this case calls for the cancellation of plaintiff’s land certificate, like a claim, has to be proved on the balance of probabilities as required by law. It is not an “either or issue”. It is possible for both a claim and counterclaim to fail and when it relates to land for the one in possession to maintain that possession until another with a better title appears to prove and claim same.

Another point made by counsel for plaintiff is that their title can only be cancelled if it is proved to have been issued by mistake or procured by fraud as stated in sect 122(1) of PNDCL 152.

What was the court of appeal's reasons for cancelling this certificate? The court embarked on the journey to determine if 2nd defendants proved their counterclaim at the high court from page 125 of the Record of Appeal. The court conducted an exhaustive examination of the evidence led, exhibits tendered and this court's judgment in suit no Misc. 1546/2000 between the defendants herein and a family from Teshie over the same piece of land. The court being satisfied that even though plaintiff was not a party in that suit, the subject matter in that case was the same as the subject matter in the present case, among many other matters such as the land certificates involved, considered the said suit as one of the many pieces of evidence which supported the 2nd defendants' counterclaim. The judgment in that suit had made a finding that the disputed land belonged to the grantors of the defendants. The court concluded that the 2nd defendants had proved their counterclaim upon the evidence on record and made a finding that the trial court had based the dismissal of the said counterclaim on "improper inferences from the facts and evidence before the court"

The court entered judgment for the defendant on their counterclaim and declared in them title to the land covered by their land title certificate. It appearing from the evidence that the plaintiff's land certificate, issued later in time to that of 2nd defendants' is in respect of a portion of the 2nd defendants larger tract of land, his land certificate could obviously not be allowed to stand in those circumstances. The court was right to have declared it null and void and had it cancelled

The fourth ground of appeal is dismissed as being bereft of merit.

The fifth ground of appeal is the omnibus one that the judgment is against the weight of evidence.

In line with what is expected of an appellant complaining under this ground of appeal, counsel for plaintiff, to aid this court in its statutory duty of re hearing, lists instances

where if certain pieces of evidence, in his opinion, been properly applied by the court of appeal, the result would have been a judgment in his favour in this matter. **Attorney-General v Faroe Atlantic Co Ltd [2005-2006] SCGLR 271 @ 306** refers.

Counsel makes reference to the fact that 2nd defendant was not incorporated at the time of the purchase of the land in question so it could not have been a contracting party to the purchase of the disputed land. Counsel submits that had the court of appeal borne this in mind, it would not have granted their counterclaim.

In relation to the court appeal's position that plaintiff should have investigated the title of 1st defendant to the disputed land, counsel contends that a search would not have revealed her title since her indenture on the land was unregistered. Further that any search before Plaintiff's purchase of the land could not have revealed the Bortei Alabi family's ownership since their certificate had at the time been cancelled by the Registrar of the Land Title Registry.

Counsel for Plaintiff also raises the omission of the concurrence of the Minister for Lands to the grant of the land by the Nungua Stool to the Bortei Alabi Stool, defendant's grantors, as required by law.

In addition to the above, counsel listed four other reasons why this court should depart from its previous decision in Civil Appeal No 74/33/2018 of 21st March 2019, which had been applied by the Court of Appeal. He also purported to bring to the notice of this court via his statement of case matters which HAD NOT been before the trial court whose decision led to the above mentioned supreme court judgment but which HAD been before the court of appeal whose appeal lies before us. The point counsel sought to make was that the court of appeal should have distinguished the present matter from Civil appeal No74/33/2018 and not held itself bound by it.

The response of counsel for the defendants to the above arguments by counsel for the plaintiff is that in relation to 1st defendant, plaintiff admitted at the trial that he saw a fence wall and a gate on the land which he claimed his grantors said they had put up but he called no evidence to prove the said claim.

On the other hand the court of appeal found that the 1st defendant had proved her possession of the land by her construction of a fence wall and a gate. Her actual possession, counsel contends gave her a greater right to the land than the plaintiff whose grantors had been found not to be owners of the land

The two issues of import whose resolution under this ground of appeal may make the resolution of other issues raised herein unnecessary, in our considered opinion, are whether a) the 2nd plaintiff, while it had not been incorporated had the capacity to enter into the contact it allegedly did with the Bortei Alabi family to purchase the land in question and b) the effect of the absence of the Minister of Land's concurrence to the alienation of the disputed land by the Nungua Stool to the Bortei Alabi family, part of which the latter alienated to the defendants.

A study of the document between the Nungua Stool and the Bortei Alabi stool does not show the Minister's concurrence was obtained in accordance with sections 1 and 8 of the Administration of Lands Act, 1962 (Act 123) the law in force at the time that transaction was entered into. It being a matter of the application of the law, counsel for the plaintiff calls upon this court to apply the consequence of the failure to obtain the Ministers' concurrence even if the point was not raised by the pleadings of the case because it arises from the evidence led and this court cannot grant a party which breaches the law immunity from such breach.

Section 8 of the Act requires the Minister's concurrence in certain situations. Failure to get this concurrence renders the disposition of land by a stool of no effect. The said section provides as follows

(1) Any disposal of any land which involves the payment of valuable consideration or which would, by reason of its being to a person not entitled by customary law to the free use of land, involve the payment of such consideration and which is made

(a) by a stool

(b) by any person who by reason of his being so entitled under customary law, has acquired possession of such land without payment of consideration or in exchange for a nominal consideration,

Shall be subject to concurrence of the Minister and shall be of no effect unless such concurrence is granted....

Section 6 of the Act states that the absence of the said concurrence renders such a transaction void.

This court in the case of **Western Hardwood Enterprise Ltd and Anor v West African Enterprises Ltd [1998-99] SCGLR 105** had cause to pronounce on the failure to obtain the Minister's concurrence under section 8(1) as follows at page 118

*" It must be noted that section 8(1) of Act 123 does not require the concurrence of the Minister to precede the disposition. The subsection contemplates the holder of the land to make all arrangements to secure the Minister's concurrence after the disposition. By this provision, the disposition remains of no effect until the concurrence is given. But it must be emphasized the disposition is **not void in the sense that it cannot ever be strengthened any time thereafter. It is therefore in the interest of the lessee to secure the Minister's concurrence. The vendor need not bother himself with that...**"*

We conclude that the absence of the Minister's concurrence on exhibit 1u does not per se invalidate the transfer of land by the Nungua Stool to the Bortei Alabi Family.

We have earlier found that the plaintiff has been unable to prove fraud on the part of the 2nd defendant beyond reasonable doubt. It is however undisputed that at the time the 2nd defendant purported to purchase the land in dispute it had not been incorporated as a company. The court of appeal admitted this at page 132 of the record of appeal but rightly concluded that this was not sufficient to discharge the burden of proof where fraud was concerned. That notwithstanding the question is how could an entity not in existence enter into an agreement to purchase land? This is a question of law raised by the evidence led and this court can suo motu raise it. It cannot be glossed over. See the case of **Tei & Anor v CEIBA Intercontinental [2017-2018] 2 SCGLR (Adaare) 906** cited by counsel for plaintiff.

The answer is that no, the 2nd defendant company could not have legally entered into an agreement for the lease of the disputed land from the Bortei Alabi family at the time it did since it was not in existence at the time. The consequences of this cannot be ignored because the court cannot shut its eyes to clear breaches of the law evident from evidence on record.

Counsel for the 2nd defendant while admitting the status of the 2nd defendant, wishes the court to treat the agreement in question as a pre incorporation contract. Apart from the fact that this was not an issue raised at the trial, a pre incorporation contract has to be ratified upon the subsequent incorporation of the said company by a resolution of the board of Directors or members in General meeting within eighteen (18) months after incorporation. The law also provides that prior to this ratification, the person who enters into such a contract is entitled to its benefit. As stated earlier the issue of the transaction being a pre-incorporation contract was not pleaded and no evidence was led on it. As counsel for the defendants himself states in his statement of case, the court of appeal did

not make the provisions of the Companies Code Act 179 on pre incorporation contracts one of the bases for its decision.

We find the agreement conveying the disputed land to the 2nd defendant voidable since the said 2nd defendant had not been incorporated at the time of its signing. They cannot therefore have legal title to the disputed land, until the proper thing is done, even if, as the evidence appears to show, they are in possession, which is nine tenths the law. The circumstances of the agreement in question notwithstanding, it is our considered opinion, the equitable thing to do is to declare the beneficial title to the disputed land in the 2nd defendants pending their taking the proper steps to acquire the legal title especially since they are in possession.

In arriving at this conclusion, we are not unmindful of section 13 of The Companies Act, 1963 (Act 179) which was the applicable law at the time which states as follows

Pre-incorporation Contracts

- (1) Any contract or other transaction purporting to be entered into by a company prior to its formation or by any person on behalf of the company prior to its formation may be ratified by the company after its formation; and thereupon the company shall become bound by and entitled to the benefit thereof as if it had been in existence at the date of such contract and had been a party thereto.*
- (2) Prior to ratification by a company, the person or persons who purported to act in the name or on behalf of the company shall, in the absence of express agreement to the contrary, be personally bound by the contract or other transaction and shall be entitled to the benefit thereof*

We have also borne in mind rules 32 (1) and (2) of the Court of Appeal rules 1997 C. I. 19 which allows the court of appeal, whose powers we are exercising in this appeal, to “give any judgment and make any order that ought to have been made, and to make such further or other

order as the case may require” in favour of any of the *PARTIES* although they may not have appealed from or complained of that decision.

The evidence is that the agreement for the disputed land was entered into by Isaac Gyau Dodoo in 1998 who described himself as the Director of the 2nd Defendant before it was incorporated in 26th February 2009. Having found this to be so, in the circumstances of this case where the said Isaac Gyau Dodoo who is not a party to this suit in his personal capacity, has not sought for an order from this court that he is entitled to the land in his personal capacity and most importantly, there no being no evidence on record as to what has transpired subsequent to the purchase between him, as an individual and the 2nd defendant for whose benefit, the land was procured, it is our considered opinion that it will not be prudent to vest the beneficial interest in the land to him.

The said agreement having been declared voidable and being the basis of 2nd defendants’ Land Title certificate numbered GA 13523, Volume 02, Folio 29, this certificate is equally voidable pending ratification of the said agreement.

In this appeal, the Plaintiff has sought an order reversing the judgment of the court of appeal against him.

The appeal fails in the following terms.

1. The cancellation of the plaintiff’s Land Title certificate No GA 22122 by the court of appeal is affirmed as being warranted by the evidence.
2. 1st Defendant’s possession of the disputed land, being based on an alienation by the Bortei Alabi family, who from the evidence were found by the court of appeal to be the rightful owners of the land, is affirmed.
3. The beneficial interest in the land covered by land title certificate no GA 13523 vests in the 2nd defendant.

4. The land title certificate No GA 13523 issued to the 2nd defendants although not tainted by fraud is voidable and so will not be cancelled.

5. Damages of Five Thousand Ghana cedis (GH¢5,000) awarded in favour of 2nd defendants for trespass is also affirmed

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

**PROF. H. J. A. N. MENSA-BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)**

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

**B. F. ACKAH-YENSU (MS.)
(JUSTICE OF THE SUPREME COURT)**

**S. K. A. ASIEDU
(JUSTICE OF THE SUPREME COURT)**

COUNSEL

S. K. AMOAH ESQ. FOR THE PLAINTIFF/RESPONDENT/APPELLANT.

**KWABENA ANKAMAH OFEI-BADU ESQ. FOR THE
DEFENDANTS/APPELLANTS/
RESPONDENTS.**