IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- A.D. 2024

CORAM: SACKEY TORKORNOO (MRS.) CJ (PRESIDING)
AMADU JSC
PROF. MENSA-BONSU (MRS.) JSC
KULENDI JSC
ASIEDU JSC

CIVIL APPEAL
NO. J4/34/2023

28TH FEBRUARY, 2024

1.	**HANNA OKYERE ALIAS ABENA KWABUA (DECEASED)**	**PLAINTIFFS/APPELLANTS/ RESPONDENT**
2.	**JIM OKYERE ALIAS YAW YEBOAH**	

VRS

1.	**JAMES OKYERE (DECEASED)**	**.....**	**1ST DEFENDANT/RESPONDENT**
2.	**FLORENCE DARKO OKYERE**	**.....**	**2ND DEFENDANT/RESPONDENT**
			APPELLANT

JUDGMENT

PROF. MENSA-BONSU JSC:

This is an appeal from judgment of Court of Appeal dated 10th June 2020 which set aside orders made by the High Court in Koforidua.

Facts and background

This case has arisen because a man who gifted landed property to his wife and children by her, purported to gift that property again to one of the children a decade later. The new donee (1st defendant) then registered the property in his name only, raised a loan by way of mortgage on it, and purported to settle it on his ex-wife as part of a divorce settlement.

The other siblings have mounted a protest, contending that their late father, Opanyin Kwaku Okyere, customarily gifted the subject-matter of dispute to his children (the plaintiffs and 1st defendant) and their mother. This, the father did on 26th January 1975, at a large meeting called for the purpose. The plaintiffs have since been in possession of the property. In consequence of the plaintiffs and defendants switching roles in the 1st and 2nd appellate courts the original designations of plaintiffs and 1st and 2nd defendants will be maintained as appropriate, to avoid confusion.

The plaintiffs complain that the 1st defendant made an adverse claim to the outhouse of the property, by insisting that their father granted the said outhouse solely to him. Although the 1st defendant admitted the customary gift made by their father in January 1975 was to them all, he denied that the subject matter of the dispute was part of that gift. He claimed that the outhouse and adjoining land was gifted to him solely by their late father by custom sometime in 1975, and same documented by way of Deed of Gift in 1986. Further that he transacted on the said property without any form of protest from the plaintiffs. The 2nd defendant his now ex-wife, developed a portion of the property, while they were still married, into a restaurant, on his admission, with the consent of his other siblings, the plaintiffs herein.

The 1st defendant admitted that he made a gift of the said outhouse and its adjoining land to the 2nd defendant and the children of their marriage, as part of settlement terms in a divorce suit in 2009. On her part, the 2nd defendant contested the plaintiffs' claim that their father gifted the property to them in the manner admitted by the 1st defendant and the plaintiffs. The 2nd defendant further contended that 1st defendant granted to

her, and the children of the marriage, the subject matter of the dispute as part of the settlement terms of their divorce proceedings, and that she had placed structures on the land from which she ran a restaurant. She later put up permanent structures which she had developed into stores, on the land, and rented them out. She denied needing the consent of the plaintiffs since the property was gifted to her then husband alone, by their father.

The plaintiffs issued this writ against their brother, the 1st defendant, and his ex-wife, their former sister-in-law, claiming that the customary gift was to all of them and not to 1st defendant alone, and that they had consistently protested the dominance of the 2nd defendant's use of the property for her own commercial purposes.
The trial court gave judgment for the plaintiffs, but ordered that in consideration of the investment the 2nd defendant had made in the property, the 5 stores were to be set aside for the use and benefit of 2nd defendant in the following terms:

> *"I however sign judgment for the Plaintiffs and against the 1st Defendant in part in respect of relief (2) by restraining him from granting, gifting, selling any portion of the property described in their relief (1) of the amended writ. This however, excludes the five (5) market stalls built and being used by the 2nd Defendant herein, to whom is reserved the right of use of same*".

The trial court also set aside the terms of settlement of the divorce because the property that was settled on 2nd defendant did not belong to 1st defendant, and the 2nd defendant had sufficient notice of the state of affairs.
The plaintiffs, being dissatisfied with these orders, mounted an appeal against these orders at the Court of Appeal. The Court of Appeal in its judgment set aside the orders. Aggrieved by this decision of the Court of Appeal, the 2nd defendant /respondent, by notice of appeal filed on 12th June, 2020, sought to question this decision of the Court of Appeal, in the Supreme Court.

Grounds of appeal

The 2nd defendant/appellant, mounted the instant appeal against the judgment of Court of Appeal on the following grounds:

a) *The Plaintiffs have no capacity to initiate and maintain the action*
b) *Judgment is against the weight of evidence.*

The appeal will be discussed under the grounds so stated.

Ground (a)

At the Court of Appeal, the defendants questioned the validity of the writ as the 1st defendant was also acknowledged by the plaintiffs as a co-beneficiary and therefore a co-plaintiff. At the trial court, they pointed out that the 1st defendant, having denied being added as plaintiff with his consent, that rendered the writ invalid. At the trial, the following transpired during cross-examination

Q. Did you give your brothers instructions to sue you on your behalf?

A. I am not aware. I did not give any order.

The Court of Appeal affirmed the trial court's decision on the plaintiffs' capacity to maintain the action. The appellants contest this finding of the Court of Appeal, and maintain that since the plaintiffs sued in a representative capacity, and they included the 1st defendant as co-plaintiff, whereas the suit was against 1st defendant and 2nd defendant, that rendered him both plaintiff and defendant, thereby violating Order 4 R 5(3) of CI 47.

Consequently, they have urged the Supreme Court to find the action incompetent. To this end, the appellants have cited **Fosua** v Adu v **Dufie** [2009] SCGLR 310 and **Asante-Appiah** v **Amponsa** [2009] SCGLR 90. **Aryeetey** [2003-2004] SCGLR 398 to buttress the fact that issues of capacity are relevant matters that can be raised at any

time, even on appeal, and must be dealt with as a preliminary issue. The 2nd defendant further submits in the statement of case (p. 10) that

> "*By the Plaintiffs own showing, since the property was jointly owned by them and their maternal siblings, they cannot commence and maintain an action in only their names without the consent of all the beneficiaries as any judgment emanating from the action would have an effect of the property jointly owned*".

The plaintiffs maintain that they have capacity to maintain the action. On the issue of capacity, the High Court in its judgment dated 13th February, 2017, (Suit No. E5/04/2010 entituled ***Hannah Okyere & Anor*** v. ***James Okyere & Anor*** before His Lordship Richard Mac Kogyapwah J.) held thus:

> *"A reading through the writ of summons and the statement of claim clearly shows that whereas the plaintiffs do not have the authority of James Okyere to issue the writ on his joint behalf [sic], he has been properly sued, considering the reliefs being sought in this action as per the writ of summons filed on the 20/11/15. The action is not thereby flawed for want of capacity as the plaintiffs and their uterine brother Aaron Okyere are properly clothed with the requisite capacity to sue in protection of the property in dispute."*

The Court of Appeal agreed with the fact that despite the position of 1st defendant among the plaintiffs', the group of other beneficiaries could maintain the action. The defendant cites the case of ***Kasseke Akoto Dugbartey Sappor*** v. **Very Rev Solomon Dugbartey** (2019 146 GMJ 230 at 237 on capacity, without distinguishing the special facts of that case from this one. In that case, all the persons entitled to maintain the action had dropped out leaving the non-entitled person, to prosecute the appeal. (See ***Kasseke Akoto Dugbartey Sappor*** **(subs by *Atteh Sappor*)** v. ***Very Rev Solomon Dugbartey*** **(subs by *Ebenezer Tekpertey Akwetey Sappor*** Civil Appeal No J4 /46/2020; decided on 13th January, 2021 (Unreported)) In this case, the other parties

remain entitled to sue, even after 1st defendant dropped off from the suit, to maintain the action and the appeal. The Court of Appeal, citing **Republic** v. ***High Court (Human Rights Division Accra. Ex parte Akita*** [2010-2012] 1 GLR SC 635; and ***Gorman & Gorman*** v ***Ansong*** [2012] 1 SCGLR 174***,*** was thus right in upholding the capacity of the plaintiff/respondents to maintain the action. To hold otherwise, could mean that persons whose co-beneficiary misconducted himself or herself to the detriment of such co-owners, would not have capacity to call the errant co-beneficiary to order.

Ground b)

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

The appellant pleads the omnibus ground of appeal. The role of an appellate court when this omnibus ground is pleaded has been repeated times without number. In the oft cited case of ***Tuakwa*** v ***Bosom*** [2001-2002] SCGLR 61, Sophia Akuffo JSC (as she then was) held at p. 65 as follows:-

"An appeal is by way of rehearing, particularly where the appellant, …alleges in his notice of appeal that, the decision of the trial court is against the weight of the evidence. In such a case…. 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 it arrives at its decision, so as to satisfy itself that, on a balance of probabilities, the conclusions of the trial Judge are reasonably or amply supported by the evidence." See also ***Djin*** v ***Musah Baako*** [2007-2008] 1 SCGLR 686; ***Ago Sai & Others*** v ***Kpobi Tetteh Tsuru III*** [2010] SCGLR 762, at 791 -792; ***Akufo-Addo*** v ***Cathline*** [1992] 1 GLR 377; ***Mintah*** v ***Ampenyin*** [2015-2016] 2 SCGLR 1277 at 1282; ***International Rom Ltd (No.1)*** v ***Vodafone Ghana Ltd & Fidelity Bank Ltd. (No. 1)*** [2015-2016] 2 SCGLR 1389; and a number of others. In ***Cyril Mainoo & Anor*** v. ***Ama Ataa & 4 Ors*** Suit No. J4/27/2022; judgment delivered on 30th November 2022; (Unreported), Dotse JSC summed up and restated the principles applicable when the omnibus ground of appeal is pleaded, thus:

> ***"What all these authoritative decisions require of an appellate court, such as this Court especially, when a ground of appeal like the***

instant, formulated on the basis that "the judgment is against the weight of evidence" have to do are the following:

i.Consider the case as one of re-hearing. This means an evaluation of the entire record of appeal.

ii. Consider the reliefs claimed by the plaintiff and if there is a counterclaim by the Defendant, that must equally be considered.

iii. Consider and evaluate the evidence led by the parties and their witnesses in support of their respective cases especially the cross-examination as this is the evidence that is now elicited from the parties and their witnesses after the tendering of the witness statements.

iv. An evaluation of the documents tendered during the trial of the case and how they affect the case.

v. An evaluation of the application of the facts of the case vis-à-vis the laws applied by the trial court and the intermediate appeal court.

vi. A duty to evaluate whether the trial court and Court of Appeal correctly or wrongly applied the evidence adduced during the trial.

vii. The burden on the final appellate court, such as this court is generally to carefully comb the record of appeal and ensure that both in terms of substantive law and procedural rules, the judgment appealed against can stand the test of time. In other words, that the judgment can be supported having regard to the record of appeal.

The above criteria are by no means exhaustive, but only serve as a guide to appellate courts such as the task facing us in the instant appeal." (Emphasis in original.)

It is thus the duty of this court to evaluate the entire evidence and make up its own mind as to the matters in dispute in the case.

The appellant contends that the setting aside of the terms of settlement of the divorce on grounds of fraud, was not fair or reasonable, especially as fraud was not specifically pleaded. See ***Amuzu*** v ***Oklika*** [1998-99] SCGLR 141 at 183 per Atuguba JSC.
The authorities cited on fraud are not apposite to the facts of this case. No one is saying that the 2nd defendant's root of title being the terms of settlement of the divorce proceedings, it was fraudulent. What the plaintiffs did was to attack the conduct of 1st defendant having been fraudulent. Indeed, by the time he signed the terms of settlement, the 1st defendant knew he did not own the property, and had already mortgaged it to HFC Bank, without disclosing the charge placed on it by his acts. That certainly did not amount to saying that the 2nd defendant's title was based on fraud she had committed.

The plaintiffs further maintain that on a previous occasion, the issues had been litigated and the evidence accepted by the two High Courts. They put in evidence ***HFC Bank Ltd*** v ***James Okyere & Co and Jim Okyere & Hannah Okyere*** **(Claimants)** Suit BFS/173/11. In that case, the High Court, Koforidua, presided over by Adjei Frimpong J (as he then was), made findings in a sheriff's interpleader claim in respect of the same property. The facts were that the 1st defendant in the instant case, had mortgaged the property, the subject matter of the dispute in the instant case, to HFC Bank, for a loan for a company owned by him, and of which he was Managing Director. The 1st defendant defaulted on the loan and the Bank sued on the mortgage. The plaintiffs in the instant case discovered what their brother had done when notices were pasted on the property pursuant to the Bank's enforcement of the judgment debt. The current plaintiffs resisted the Bank's claims, by proving to the satisfaction of the court, that the property did not belong to James Okyere (the 1st defendant herein), as it was gifted by their father to "his 2nd wife Maame Mansah and her children", which included the plaintiffs herein, and the now 1st defendant, on 26th January, 1975. Therefore, James Okyere could not have unilaterally, and without the consent of his siblings and their mother, mortgaged the property for a facility for his company. He therefore had no right to take a mortgage on it when he purported to do so sometime in 2006. This, however, was what the 1st

defendant had done. That court found as a fact that though the property was registered in the name of James Okyere, and the Bank had done due diligence, the property was not his to mortgage without the consent of the co-beneficiaries. Consequently, the property could not be sold in satisfaction of the debt that arose thereunder.

From the record of the case reproduced at p 42 (ROA 2 42) Adjei-Frimpong J. (as he then was) stated:

> *"I have considered the totality of the evidence adduced by the Plaintiff and the witnesses. I have done so against background of the essentials of customary law gift. There was a clear intention of the late Op. Kwaku Okyere to make the gift, the reason for which he summoned the meeting. He publicized the gift. The donees accepted same and provided aseda. Thereafter they occupied the property.*
>
> *I am satisfied that the essentials of customary gift were duly met and accordingly hold that the subject property was validly gifted to the named beneficiaries".*

Of the documentation on record that misled the Bank, the court said (ROA 45)

> *"I consider that Exhibit '1' was James Okyere's own fabrication but even if it told any truth at all, it was a document which never had any legal effect on account of what had been said… Further I hold that the mortgage founded on Exhibit '1' was also of no effect.*

And further that (ROA 46)

> *"James Okyere clearly dealt with the property on the blind side of the Plaintiffs and the other beneficiaries and got away with it…… The property remains as such for the benefit of all the donees and can certainly not be sold to settle the debt of James Okyere or his company"*.

The 1st defendant must obviously have been very happy with the result of the interpleader action launched by his siblings. James Okyere did not testify against the interest of his siblings by insisting that the property had been gifted to him alone. The defendant Bank did not appeal against the judgment of the High Court, dated 11th September 2013 and so the judgment stood.

Again, as far back as 2009, the 1st defendant had come to terms of settlement in a divorce case with the 2nd defendant and yet relied on the same facts. Thus, from the evidence, the property had been mortgaged to HFC Bank for a loan, but 1st defendant still purported to settle it on his wife as part of divorce settlement without, apparently, indicating the charge he had placed on it.

In the Statement of Case of defendant/appellant, the following cross-examination in the trial court of the instant case is here reproduced (p 31):

> *Q. Mr. Okyere, will you agree with me that when the 2nd Defendant constructed a restaurant on that portion of the land in dispute in 2006 nobody challenged her*
>
> *A. Nobody contended with her because she pleaded from us and also discussed it with my siblings before we gave it to her.*
>
> *Q. Now when the 2nd Defendant converted the restaurant into stalls or shops nobody challenged her*
>
> *A. My Lord, it is true because I have already told my siblings before we gave to her, but when she changed her mind she did not tell anybody".*

Why would 1st defendant testify to having consulted his siblings when his then wife wanted to build a restaurant on the vacant plot, if it had been gifted to him alone, and he owned it all by himself? The 2nd defendant/appellant cites Section 26 of NRCD 323 and ***In re Asere Stool*** [2005-20] SCGLR 637 in support of her case. The provision and the case are to the effect that an admission of one's case by an adversary is good without further need to prove the point. In this case, both the provision and case cited appear to support the case of the respondents' as the 1st defendant's testimony amounts to an admission that favours the case of the plaintiffs. If the 2nd defendant consulted her

husband's siblings before building the restaurant, why did she do so when her husband owned the property alone? The fact that the 2nd defendant admitted seeking consent to build restaurant, but not when she converted the restaurant into stores speaks volumes about her attitude to the interest of the other co-beneficiaries.

The appellant's counsel further submits in explanation of why the 2nd defendant did not counterclaim against the plaintiffs' claim at p. 37 of the Statement of Case thus:

> *"Though the 2nd Defendant did not counterclaim the totality of her evidence* ***shows a counterclaiming Defendant****. In her pleadings as well as evidence before the trial court, she said the property belong to [sic] to the 1st Defendant, who was her ex-husband."*

Counsel does not go further to exhibit what a "counterclaiming Defendant" looks like, and so it is impossible to engage in any argument on that score. The fact remains that the 2nd defendant did not file a counterclaim. The Court of Appeal was of the opinion that she did not do so because, had she done so, she would have to prove her counterclaim to the same evidentiary standard as a claim, which she clearly could not have done.

The 1st Defendant had testified thus (see Statement of case p 40)

> *"My name is James Okyere. I am aware of this matter before this court, I however have something to say. My ex-wife, the 2nd Defendant has travelled overseas. Meanwhile I was all the time working with my father when the court matter came up, I sworn [sic] to an affidavit and stated that I James Okyere decided to gift the house, the property in dispute to the 2nd Defendant but later realized my mistake so I swore [sic] to an affidavit to that effect. I therefore brought it to court for the court to know that the property in dispute belong to me and my siblings jointly … I therefore wish to plead with the Court that it was not the 2nd Plaintiff who forced me to swear to the said affidavit. I realized my own mistake because the property had been gifted by our father to my siblings and I."*

In the trial court (Suit No. E5/04/2010 entituled ***Hannah Okyere & Anor*** v. ***James Okyere & Anor***) the 1st defendant herein deposed to an affidavit on 13th October 2011. In paragraphs 3,4 and 5, he deposed thus:

"3. That my late father during his lifetime made a customary gift of all his properties including this house to all his children with his various wives including the children of our late mother Madam Amma Mansah and this house is the separate out house and the land behind it was customarily gifted to the entire children of Madam Amma Mansah who are: Myself, Madam Abena Kwabuwaa alias Yaw Yeboah, Aaron Okyere alias Kofi Agyei and Madam Abena Fosua-Deceased.

4. That the customary gift took place in his residence mentioned herein in the presence of some prominent citizens of New Juaben including Nana Juaben Serwaa, the Queen mother of New Juaben Traditional Area, Nana Oduro Panin, the Apempoahene of New Juaben, Nana Oko Yaw, members of his paternal and maternal families. This customary gift made to all his children including the children of the late Madam Amma Mansah was reduced into writing by a LAST WILL which was read to the members of his family and his children after his death.

5. The property was given to the children of Madam Amma Mansah including myself and not I alone; but I secretly registered the property in my name, after I had been able to persuade my late father to allow me to use the property as collateral to obtain a bank loan to expand my business during his lifetime, and this transaction took place without the knowledge and consent of my uterine brothers and sisters, the children of my late mother who were also beneficiaries to this building."

He further swore in paragraph 6 of that affidavit that:

6. That this building and the adjacent land behind the building on which Madam Florence Darko is laying claim to be my bonafide property does not form part

of my self-acquired properties but the joint property of the children of Madam Amma Mansah named in this affidavit.

That the document registered in my name since the year 1986 giving title to me as the owner of this landed property and the adjacent land was fraudulently executed by me without the knowledge and consent of my brethren and that it should be declared null and void.

That the transfer of the house and the land to Madam Florence Darko was done under duress, as result of her claim of compensation from our dissolution of our marriage.

Wherefore I swear to this affidavit confirming that the documents which gave title to the house and the land mentioned herein, are all false and the same be nullified"

When a person of sound mind swears to an affidavit such as this, it is hard not to place any reliance upon the evidence, when it tends to support the case of the plaintiffs herein.

On this matter of fraud, what did the 2nd defendant know about the ownership of the property? The 2nd defendant was part of those who prepared food as refreshment for the large number of people including traditional dignitaries who graced the occasion
How could she not have known what transpired at the event; and the fact that her mother-in-law and her children (her husband included) presented the traditional Aseda to their husband and father (her then father-in-law)? Did the 1st defendant present a separate aseda too for the supposed gift of the Outhouse made to him alone? Did she believe her husband alone was gifted that part of the property? The evidence does not so say, and 2nd defendant says nothing about it either. On p.4 of the plaintiffs statement of case, it was there stated

"*The plaintiffs stated that the 1st defendant informed them when the 2nd defendant wanted to operate a restaurant on the vacant land but they were not informed when she decided to convert it into permanent structures as stores so they challenged her about it They also confronted her when she wanted to rent them out*."

At pp.14-15 of the Statement of Case plaintiffs contend that

"*the divorce settlement was entered into during the pendency of this court suit. The divorce case between the 1st and 2nd defendants commenced on 4/03/2009 and the terms of settlement dated 7/09/2009 were filed by the parties on 3/09/2009. The writ in this present case was filed on 3/09/2009 against the 1st and 2nd defendants was still pending in court. . Both the 1st and 2nd defendants were served with a copy of the plaintiffs writ of summons and statement of case on 3/09/2009. They nevertheless went ahead with the settlement] The 1st and 2nd defendants were therefore fully aware of the challenge of the plaintiffs to the 1st defendant's ownership of the property in dispute before they filed the terms of settlement in court.*"

Further, on p.16, the plaintiffs submitted thus

Since it is clear from the evidence before the court that the property was vested in the plaintiffs and their siblings the terms of the settlement entered into by the defendants to transfer the property to the 2nd defendants and their children was null and void on the principle of Nemo dat quod non habet."

When therefore, the 2nd defendant complains that she was not heard when allegations of fraud were made against her, it is hard to appreciate the substance of her complaint. All the same, on this score, one might observe that the allegation of fraud was not made against the 2nd defendant, but against the 1st defendant. It is true that the allegation of fraud undermined the root of her title, but it was not made against her, so there is no issue of her not having been heard. It was the 1st defendant who had himself sworn an

affidavit, admitting fraudulent conduct that led to his being able to register jointly owned property as his solely-owned property. Therefore, the 2nd defendant has little to complain about as regards not having been heard on the matter of fraud.

At p 50 in the Statement of Case of the appellant, Counsel submits:

> *"The 1st Defendant's own testimony above shows that he together with his siblings had allowed the 2nd Defendant to develop the property. This same property was later used to settle the 2nd Defendant in a divorce proceeding. By the judgment of the divorce proceedings therefore the 2nd Defendant and the children of the marriage have become the new owners of the property.*
>
> *……. We pray this honourable court to restore the judgment in the divorce proceedings which will in effect return the entire disputed property to the 2nd Defendant not only the smaller portion decreed by the trial judge in her favour in the said trial court judgment"*.

Having thus pleaded for the Terms of settlement of the divorce proceedings to be taken into account, Counsel now submits that the divorce case was not pleaded, therefore it ought not to be taken into account.

Counsel went on to submit strenuously that:

> *"**My Lords, the divorce proceeding of Florence Darko Okyere v James Okyere Suit No. E6/9/09 was not a subject matter of dispute at the trial court** [emphasis in original]. From the record, the suit was not pleadings [sic] same was not part of discoveries, but portions of the proceeding was tendered during trial by the Plaintiffs through the 2nd Defendant and same was not part of the original reliefs before the court.*
>
> *However, an order to declare the divorce proceedings as void became a relief after the parties have closed their cases, addresses ordered and judgment date fixed by the trial court.*
>
> *In the Judgment of the trial High Court, the Judge proceeded to set aside the Judgment emanating from the divorce proceeding on the basis that same was void.*

The trial court came to that conclusion on the basis that the fundamental document Exhibit "4" which the 2nd Defendant's case is hinged upon was fraudulently made.

Again the trial Court came to the conclusion that the said Exhibit "4" was fraudulently made based on a decision of another High Court in a suit entitled HFC Bank Ltd v James Okyere & Co & Anor; and James Okyere & Hannah Okyere Suit No. BFS/173/11.

This judgment of another High Court was equally not in issue and same was not pleaded."

The appellant also submits that "*the trial court was entitled to make an evaluation of that piece of evidence among others and make such orders which can clearly be justified by evidence of record."* Yet resists evaluation of evidence before the court on the contention that the judgments were not pleaded before they were put in evidence. Why is counsel approbating and reprobating on the issue of the divorce proceedings, and adopting two contradictory positions in the same breath?

Were the plaintiffs guilty of acquiescence and laches? There is no evidence to support such a posture. These defences arise in Equity and are subject to the maxims of Equity. The equitable maxims "Equity aids the vigilant and not the indolent" and "Delay defeats Equity" do not arise when there is ample evidence that far from being indolent the plaintiffs had moved times without number to get the 1st defendant to desist from the acts of "sole ownership" that he wanted to assert over the property which was their common heritage. Indeed, a more apposite maxim of Equity is "He who comes to equity must come with clean hands." Are the hands of the 2nd defendant clean enough to press equitable reliefs into service? They are, clearly, not.

First of all, what did the 2nd defendant know about the property and the circumstances surrounding its acquisition by her husband and siblings? The 2nd defendant was present when the customary gift was made to "Amma Mansah and her children", which included the 1st defendant. How was it that she sought to push the descendants of the other siblings out in favour of her own, by accepting such a divorce settlement when she knew

that the siblings-in-law had interest in the property? In any case, her siblings-in-law took steps before the terms of settlement of the divorce were filed, to register their interest, but to no avail. The 2nd defendant even continued to develop permanent structures thereby evincing an intention to permanently keep the other siblings out of their inheritance. She built stores which were rented out in 2012, although the divorce was in September 2009 ie about three years after this instant action began. How could such a defendant benefit from a maxim about "clean hands" when she knew, or ought to have known, the nature of her husband's root of title, being the gift to him and his siblings from their father?

The Court of Appeal noted that on the evidence the 2nd defendant was a licensee of the siblings. Her claim having challenged the title of her licensors, the Court of Appeal relied on ***Duro & Anor*** v ***Anane*** [1987-88] 2 GLR 275, that a licensee who denies a landlord's title forfeits the premises. 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. In this honourable Court, the principle was recently upheld in ***Tismark Inja*** v. ***Tina DeHeer & Amelia Laing*** Suit No. J4/43/2021; judgment dated 29th March, 2023; (Unreported). Consequently, the Court of Appeal cannot be faulted for applying the principle, and holding 2nd defendant a licensee who had set up an adverse claim to the title of the licensor. Clearly, on subjecting the facts of the instant case to analysis, it is obvious that the Court of Appeal was right in setting aside the orders of the High Court. We so affirm, and dismiss the appeal.

Conclusion

The 1st defendant sought to elbow out his siblings from a gift made to all of them and their mother. At the time of the registration of the documents in 1986, the father had already divested himself of the property and did not have power to make another gift of it to anyone else. The 1st defendant and 2nd defendant had cause to pause when they agreed on the terms of settlement for their divorce, in respect of

property that had co-beneficiaries, but they chose to close their eyes to the evidence. They have themselves to blame. The Court of Appeal was right to set aside the trial court's orders in respect of the five stores. The appeal is dismissed as unmeritorious.

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

G. SACKEY TORKORNOO (MRS.)
(CHIEF JUSTICE)

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

E. YONNY KULENDI
(JUSTICE OF THE SUPREME COURT)

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

COUNSEL

K. OWUSU-POKU ESQ. FOR THE PLAINTIFFS/APPELLANTS/RESPONDENT

KWADWO ADDEAH-SAFO ESQ. FOR THE 2ND DEFENDANT/RESPONDENT/ APPELLANT WITH AKOSUA DOWA KARIKARI.