

CA. NO. 49/2002.
27TH NOVEMBER, 2003.

JOHN K.A. KLU ... PLAINTIFF/RESPONDENT
VRS.
1. MAVIS DARKO } ...
2. DR. KOFI APRAKU } ... DEFENDANTS/APPELLANTS

OMARI-SASU, J.A.

After a close examination of the record of proceedings, the exhibits tendered together with the arguments and statements of learned counsel, I am of the considered view that in a land suit such as ours in which both litigants cases show that the property in dispute originally belonged to the same grantor – and in our case the same stool, to wit, the Nungua Stool in Greater Accra Region, the judgment should go in favour of which of the parties has proved a good root of title. In considering and or proving title it is to be borne in mind that the old maxim **NEMO DAT QUI NON HABET.** [He gives nothing who possesses nothing] should not be ignored.

In simple language, the two grounds of appeal indicate that the judgment is against the weight of evidence adduced and that it is wrong in law. These shall be considered together.

The case for plaintiff tends to show that the Plaintiff acquired his grant from one Agbantow Bellow in 1978. The said Agbantow Bellow is said to be deceased but **Exhibit “4”**, the search tendered by the appellants from the Lands Commission states [inter alia] that:

- “1. The Land [in dispute] is not Government land
- “2. The Land is affected by the following transactions:
 - “ (i) Lease dated 23/05/69 from Nii Odai Ayiku IV to Mallam Musa.
 - (ii) Gift dated 30/12/74 from Nii Odai Ayiku IV to K Agbator Berllow.
 - (iii) Gift dated 06/03/80 from K Agbator Bellow to John K. Agnagueh-Klu.”
- “3. There is a court judgment dated 31/01/91 in favour of Nii Amui III.”

On Exhibit “4”, if the Respondent had been more candid and cautious he should have questioned his Donor, Mr. Bellow, how he came to be gifted the property in dispute on 06/03/80 when on 23/05/69 Nii Odai Ayiku IV is said to have leased the property to Mallam Musa.

There is no answer to this problem, but it shows one of the weaknesses in the Respondent’s root of title.

Secondly, Respondent testified in the Court below that he acquired the property in 1978 but Exhibit “4” shows he had it in 1980.

Respondent, however, got his document registered and finally obtained a title Certificate.

In time Respondent says he walled three sides of the land and erected a two-room out-house on a portion of the plot of land - The present claim arose when the Defendant is

said to have trespassed upon the land and damaged the 2-room out-house valued at ₵4 million as the agent of Co-Defendant.

On the facts the appellant's case is that he got the disputed property from one Mensah who had been gifted the property by the Nungua Stool. This Mensah, a Seaman [now out of the country] then after he had received valuable consideration from Co-Defendant contacted the accredited representatives of the Nungua Stool who gave him a document of title which was tendered as Exhibit "3". It was this same Mensah who demolished the two-roomed structure from the land.

Among the evidence received by the court below which I consider very vital but which unfortunately the learned trial Judge did not give them the weight they carried are the testimonies of D.W. 2, Yaw Adjei Barnard and D.W. 4 – Nii Bortey Danfa. D.W. 2 – testified and said he erected the wall and two-roomed house which were demolished on the instructions of the said Mr. Mensah. He also said no one came to challenge him when the said Mensah made him caretaker of the land. Strangely this witness was unshaken during cross-examination and his testimony clearly goes to support the case of the appellant.

D.W. 3, a representative of Nungua Stool testified for the grantor Stool and in respect of the property in dispute.

He gave the history of the property in dispute and tendered in evidence Exhibit "5" which shows the chiefs who control the property in dispute and Exhibit "6" which is an Executive Instrument No. 18 which shows that Nii Odai Ayiku was destooled on 13/06/67 and that this fact was made known to the press and to the people of Nungua.

Exhibit "6" shows the Government of Ghana was officially informed of the said destoolment in 1970. The next question is if Nii Ayiku was destooled on 13/06/67, had he authority to make grants of Nungua Stool land to Mallam Musa and the Respondent's donor after his destoolment? The answer is clearly in the negative.

It is my considered view therefore that if the learned trial Circuit Judge had considered the cases of the litigants here alongside the search in respect of the property in dispute and the question of the date of destoolment of Nii Odai Ayiku IV of Nungua he would not have given judgment in favour of the Respondent.

I accordingly find and hold that notwithstanding the acquisition of a title certificate by the Respondent, he could not prove a better title than appellants in respect of the property in dispute. A title certificate is not a state guaranteed title. **See KWOFIE VRS. KAKRABA [1966] GLR 229.**

In the result I allow the appeal, set aside the judgment of the court below together with its consequential orders. The appellants are entitled to costs for winning the appeal.

(Sgd.) K. OMARI-SASU
JUSTICE OF APPEAL

FARKYE, J.A. [PRESIDING] I support the judgment of this court as read by my brother Omari-Sasu, J.A.

(Sgd.) S.T. FARKYE
JUSTICE OF APPEAL

ANINAKWA, J.A. - Read a dissenting judgment.

BOAFO for Appellants. Prays for ₵10 million costs against the Respondent.

HAYIBOR for Respondent offers ₵500,000.00 as costs.

BY COURT - Appellants are granted ₵5 million costs.

(Sgd.) S.T. FARKYE (PRISIDING)
JUSTICE OF APPEAL

(Sgd.) K. OMARI-SASU
JUSTICE OF APPEAL

(Sgd.) R.T. ANINAKWA
JUSTICE OF APPEAL

**COUNSEL - CHARLES HAYIBOR FOR RESPONDENT.
BOAFO COR THE APPELLANTS.**