IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA

CORAM: 1. ARYEETEY, J. A. [PRESIDING]
2. ANIM, J. A.
3. MARFUL-SAU, J. A

SUIT NO. HI/22/2006

13th DECEMBER 2007

AUGUSTINA ODONKOR - PLAINTIFF/RESPONDENT

VRS.

NII AKUSSI ASSINU II & ANOR. - DEFENDANTS/APPELLANTS

J U D G M E N T

MARFUL-SAU J.A.

This appeal is taken form the judgment of the Circuit Court, Accra dated the 15th day of April 2003. The Plaintiff hereinafter referred to as the Respondent per her amended writ of summons, claimed the following against the Defendants, who are the Appellants herein: -

1. Declaration that all that piece or parcel of land situate lying and being at Lashibi known and marked as 116 A2 bounded on one side by a road measured 80 feet more or less bounded on one side by the land of Aunti Momo measuring 65 feet more or less, on another side by the land of the second Defendant measuring 80 feet more or less and on the side by second Defendant 's land measuring 65 feet more or less has been validly granted to the Plaintiff and that same cannot be re granted to the second Defendant by the first Defendant.
2. Recovery of possession of the said piece or parcel of land.
3. Perpetual injunction restraining the Defendants, their agents, assigns workmen and servants from interfering with the Plaintiff occupation use and enjoyment of the said land.

The Defendants who disputed the Respondent's claim also counterclaimed for the following: -

a) Declaration of title to the Land.
b) The payment of seven million cedis (¢7,000,000.00) being the cost of the building and other materials the Plaintiff destroyed.
c) The interest on the said amount from January 1998 to the date of Judgment at the current Bank rate.
d) Perpetual Injunction restraining the Plaintiff, her servant, workmen and privies and or agent from interfering with the use or doing anything with the disputed land.

From the record of appeal the facts of the case are that the 1st Appellant who happened to be the caretaker of old Lashibi lands granted various parcels of land to the Respondent, all of which the Respondent could not take possession, due to adverse challenges. The land, the subject matter of this suit happened to be one of such lands. The 1st Appellant had granted the same land to the 2nd Appellant who challenged the interest of Respondent in the Land. The dispute between the Respondent and Appellants was referred to the Nungua Traditional Authority which appeared to be the allodial owners of the land in dispute. At the Nungua Traditional Authority, it became clear that the land in dispute was part of a parcel that had been granted to one Auntie Momoh. The Traditional Authority however was able to persuade the said Momoh to release the land in dispute to the Respondent and the 2nd Appellant. The Traditional Authority then demarcated the land in dispute into two parcels and granted each to the Respondent and the 2nd Appellant. .

The record reveals that the 2nd Appellant after the distribution of the land fenced the entire land, thus preventing the Respondent access to her land. The Respondent then commenced this action. At the end of the trial, the trial court entered judgment for the Respondent. On the 29th May 2003 the Appellants filed a Notice of Appeal against the Judgment. This Notice of Appeal is at page 98 of the record of appeal. The Notice of Appeal had the following grounds.

(1) The Judgment was contrary to the law.
(2) The trial Judge wrongly preferred the evidence of Plaintiff and her witness.
(3) The reasons on which the judgment is founded are for fetched and did not arise in course of proceedings.

On 8th February 2006, the Appellants filed additional ground of appeal to wit, that the trial Judge erred in not considering the 2nd Appellant defence independently from the

1st Appellant as they are two separate individuals with separate rights. Counsel for the Respondent has taken issue that Counsel for Appellants did not seek leave of this court before arguing the said additional ground. Counsel for Respondent has therefore urged on this court to ignore the entire statement of case since it argues only the said additional ground. Counsel for Respondent's submission seems to be supported by Rule 8(7) of the Court of Appeal Rules 1997 CI 19. However Rule 20(1) of the Court of Appeal (Amendment) Rules 1999 CI 25 provides as follows:

> "An Appellant shall within 21 days of being notified in form 6 set out in Part 1 of the schedule that the record is ready, or within such time as the court may upon terms direct, file with the Registrar a written submission of his case based on the grounds of appeal set out in the notice of appeal and such other grounds of appeal as he may file."

This rule seems to have silently amended Rule 8(7) of CI 19, in as much as an appellant is granted the liberty to argue grounds as he may file outside the notice of appeal. Consequently by virtue of Rule 20(1) of CI 25 the statement of case filed by the Counsel for Appellants would be admitted and considered in this appeal.

The grounds on which this appeal is argued shall therefore be as follows:
The judgment was contrary to the law

(1) The trial Judge wrongly preferred the evidence of Plaintiff and her witnesses
(2) The reasons on which the judgment is founded are far fetched and did not arise in the course of proceedings.
(3) The trial Judge erred in not considering the 2nd Appellant defence independently from the 1st Appellant as they are two separate individuals with separate rights.

I have looked at the four grounds of appeal above and I think the combined effect of these grounds is that the judgment is against the weight of evidence adduced at the trial. It is under this ground therefore that I seek to address this appeal. I have carefully examined the judgment of the trial court and I am of the considered opinion that there is enough evidence on record to support the findings and decision of the trial court.

From the record there is evidence that it was the 1st Appellant who sold the land both to the Respondent and the 2nd Appellant. There is evidence that the 1st Appellant was only a caretaker of the land on behalf of the Nungua stool, the allodial owners. The 1st Appellant's assertion that the land in dispute was purchased by his family could not be supported by evidence on record. Tendered in evidence was Exhibit C. This exhibit was a letter dated 10th February 1995, on the letterhead of the office of Nungua Mantse and signed by the 1st Appellant. The content of Exhibit C was that the Lashibi Mantse had allocated a plot of land to the Respondent and the said Lashibi Mantse was requesting the Nungua stool to prepare a lease to grant the Respondent title to the said plot of land.

Indeed if the land in dispute was purchased by the family of 1st Appellant why would he sign such a letter indicating that title in the land is vested in the Nungua stool. This evidence is further corroborated by the 1st Appellant himself under the following examination.

Q. If in deed this land was yours why did you have to ask Nungua stool to prepare lease for the Plaintiff. (See paragraph 2 of Exhibit C)

A. It was because we did not have land at that place.

From the above examination it was clear that 1st appellant had no title in the land in dispute and as such he could not convey same to the Respondent and the 2nd Appellant as he did it this case.

Tendered in evidence again in the trial was Exhibit B. This was a report dated 14th March 1998 by the Office of the Nungua Mantse on the settlement of a land dispute between the Respondent and the 2nd Appellant. This exhibit was tendered without objection. The exhibit reveals that the dispute came before the Nungua Traditional Authority, which settled the dispute as testified by the Respondent. Paragraph 3 of Exhibit B is relevant and reads as follows:-

> "During proceedings Emelia Aku Tetteh by her deeds and utterances was found to be disrespectful to the stool elders and also flouted the authority of the Nungua Stool. The elders therefore confiscated Aku Tetteh's land and prohibited her from entering the disputed land. She subsequently came together with her husband to the elders and pleaded for the restoration of the said land. Plots of land involved in the case were 2. Following her pleadings,

the elders ordered that a plot each of the dispute land be given to the disputants. Augustina Odonkor therefore possesses a plot and Aku Tetteh the other plot of the disputed land".

This evidence contained in Exhibit B was corroborated by the 2nd Appellant under cross-examination, after attempting to deny the title of the Nungua Stool in her evidence in chief. At page 70 of the record of appeal, lines 26 to 28, the 2nd Appellant stated thus

"The Nungua Elders sent some people to come and share the land for us (myself and Plaintiff) but I did not agree. I did not agree because the Nungua Stool has nothing to do with the land in dispute."

However the 2nd Appellant under cross-examination corroborated Exhibit B to the effect that she actually appeared before the Nungua Traditional Authority for settlement of the dispute.

At page 77 of the record of appeal the following examination of 2nd Appellant is recorded and is relevant.

Q. You became offended with the decision of the elders of Nungua Traditional Authority.

A. That is not correct. I did not agree with them when they wanted to demarcate the land.

Q. As a result of your anger you insulted the elders for deciding to demarcate the land.

A. That is so.

Q. As a result of your conduct the elders told you not to set foot on even the portion that had the platform.

A. That is not correct.

Q. As a result of this directive you and your husband and another person went to the Traditional Authority and pleaded with them.

A. That is not correct.

Q. Indeed as part of your plea you provided a bottle of whiskey and ¢20,000.00

A. I pleaded not because of the land but it was because they said I insulted the elders. I did provide the whiskey and then ¢20,000.00 for the insult.

Q. After the plea, the elders restored your parcel of land to you.

A. Yes, they restored the whole land to me.

This cross-examination wholly corroborates the contents of exhibit B and I am satisfied that the fact stated in the Exhibit that the land was demarcated between Respondent and 2nd Appellant is what actually happened. The 2nd Appellant after the said demarcation had no right in taking over the Respondent land under the authority of the of the 1st Appellant because it was clear from the evidence on record that the Nungua Stool had better title to the land than the 1st Appellant, as evidenced by Exhibit C.

For the above reasons, it is therefore clear that the judgment of the trial court is not contrary to the law. I am satisfied from the above reasons that evidence on record, supports the judgment. The appeal is therefore without merit and same ought to be dismissed. I accordingly dismiss the appeal.

MARFUL – SAU
JUSTICE OF APPEAL

I agree

B.T. ARYEETEY
JUSTICE OF APPEAL

I also agree

S.Y. ANIM
JUSTICE OF APPEAL

COUNSEL

O. K. IMBEAH FOR PLAINTIFF/RESPONDENT

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