

**IN THE SUPERIOR COURT OF JUDICATURE  
IN THE COURT OF APPEAL – A C C R A**

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**CORAM: ASARE KORANG, JA [PRESIDING]  
KUSI-APPIAH, JA  
YAW APPAU, JA**

**SUIT NO. H1/55/06  
17<sup>TH</sup> JANUARY, 2008**

**ALEXANDER KWASI BAAH ... PLAINTIFF/RESPONDENT**

**V E R S U S**

**OWUSU AGYARKWA ... DEFENDANT/APPELLANT**

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**J U D G M E N T**

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**YAW APPAU, JA:-** This is an appeal from the judgment of the High Court, Koforidua presided over by Korbieh, J. It was delivered on 18<sup>th</sup> February 2005 in favour of the plaintiff who is the respondent herein.

The facts are that the respondent in this appeal took action in the High Court, Koforidua against six members of his wider family for granting portions of land exclusively belonging to him and his uterine siblings to the appellant in this case and two others without their authority and consent. While the matter was pending in the High Court, the parties pleaded with the court to allow them attempt amicable settlement. The matter was remitted to the Reverend Minister and elders of the Ebenezer Presbyterian Church of Akyem Sekyere to resolve.

During the settlement, the six members of the respondents' wider family who were the defendants in that case admitted that the land that they gave to the appellant and the other two persons did not belong to their family but to the respondent and his siblings as he claimed. They pleaded with the

respondent to forgive them and agreed to surrender the whole land to the respondent, which according to them, covered about fifty (50) acres. The panel that settled the matter advised the appellant and the other two persons who obtained grants from the defendants in that case to sort things out with the respondent since he was the real owner of the land but not the defendants who granted the land to them. The High Court was informed about the settlement and the court, in the presence of the parties and their lawyers, entered the terms of settlement as consent judgment in favour of the respondent.

After the entry of judgment, the other two grantees met the respondent and atoned tenancy to him. He therefore entered into a new arrangement with them in respect of their respective lands. The appellant in this case however refused to recognize the respondent as the owner of the land despite the judgment in his favour and refused to meet him over the portion he obtained from the defendants who lost in the action. He maintained that his grant was proper since the land was his grantors family land. This compelled the respondent to sue him before the very High Court that determined the first suit in his favour against the appellant's grantors.

The appellant resisted the claim of the respondent and also counter claimed for title to the land. The court below found for the respondent and dismissed appellant's counter claim. The appellant is now before us praying that the judgment of the court below be set aside.

The appellant's original notice of appeal that was filed on 4/3/2005 contained only one ground of appeal, i.e. **'The judgment is against the weight of evidence'**. On 10/3/2006, the appellant filed three additional grounds of appeal and sought leave of this Court to argue the additional grounds in addition to the original ground of appeal. The additional grounds were as follows:

**"a. The court erred when it declared at page 77 (lines 19-20) of the record that the judgment in Suit No L67/2002 was binding on the defendant: The judgment was null and void.**

**b. The judgment in Suit No. L67/2002 at page 100 was obtained by fraud.**

**c. The judge erred when he ruled that the disputed land is not family land.”**

Before touching on the arguments of the appellant as contained in his statement of case or submissions filed on 10/3/2006, we want to place on record some very important facts which are not in dispute. These are: -

1. That the respondent in this appeal first sued the grantors of the appellant over title in respect of the disputed land that they leased to the appellant. This suit was numbered L67/02
2. That the appellant was aware of that dispute between his grantors and the respondent and even took part in the settlement process at a stage.
3. That the appellant was aware of the admission made by his grantors at the settlement, which culminated in judgment being entered in favour of the respondent by the High Court as owner of the disputed land.
4. That neither the appellant’s grantors nor anybody else did take any steps to appeal against the judgment in Suit No. L67/02 dated 4<sup>th</sup> November 2002.

Flowing from the above undisputed facts, which imply that the appellant was granted nothing as his grantors had no authority to grant the lease to him on the basis of the ‘**nemo dat quod**’ principle, the appellant in his submissions, tried to move tooth and nail to discredit the judgment that was entered against his grantors in Suit No. L67/02 when the said judgment is not on appeal before us.

The appellant knew that the only thing that could save him was to find some means to invalidate the judgment in Suit No. L67/02 so all what he did in his written submissions in this appeal was to call on this Court to declare null and void and consequently set aside a judgment entered in 2002 against his grantors because it was obtained by fraud when no such claim was ever made in the Court below nor has any of his grantors ever raised hell against that judgment since 2002. That is incredible.

In fact, we need not waste time on this appeal since it has no merits whatsoever. As the court below rightly held, the appellant cannot have a better title than his grantors. If his grantors had no title as was entered by the court below in Suit No. L67/02, they could pass no title and no interest in the

land to the appellant. The trial court was therefore right when it gave judgment for the respondent and dismissed appellant's counter claim. This Court affirms that judgment since it was based on facts and sound legal principles. The appeal is accordingly dismissed.

**YAW APPAU  
JUSTICE OF APPEAL**

I agree.

**A. ASARE KORANG  
JUSTICE OF APPEAL**

I also agree.

**F. KUSI-APPIAH  
JUSTICE OF APPEAL**

**COUNSEL- YAW BARIMA & CO. FOR PLAINTIFF/RESPONDENT.**

**MR.J.E. YEBOAH FOR THE DEFENDANT/APPELLANT.**

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