IN THE SUPERIOR COURT OF JUDICATURE

IN THE HIGH COURT OF JUSTICE HELD AT DUNKWA-ON-OFFIN ON TUESDAY THE 14TH DAY OF MARCH, 2023 BEFORE HIS LORDSHIP JUSTICE EMMANUEL AYESU ESSAMPONG, HIGH COURT JUDGE. CONSOLIDATED SUITS:

SUIT 1: SUIT NO.: A1/08/2020

ADWOA AFRAH

FOR HERSELF AND ON BEHALF

OF ASONA FAMILY, DIASO --------- PLAINTIFF/APPELLANT VRS

VRS

1. MAAME POKUAA

2. YAA WASSA ---------- DEFENDANTS/RESPONDENTS ALL OF DIASO

SUIT 2: SUIT NO.: A1/09/2020

ADWOA AFRAH

FOR HERSELF AND ON BEHALF

OF ASONA FAMILY, DIASO ---------- PLAINTIFF/APPELLANT VRS

VRS

1. MAAME POKUAA

2. GYAMFUAA ---------- DEFENDANTS/RESPONDENTS ALL OF DIASO

JUDGEMENT

This appeal is in respect of the Judgements of the District Court, Diaso dated 4th November 2020 in the above-named Consolidated suits. The Plaintiff/Appellant on the 13th January 2020 sued the Defendants/Respondents in Suit No. A1/08/2020 (hereinafter referred to as Suit 1) and sought the following reliefs.

a. Declaration, vacation and recovery of possession of a building plot situated at Diaso.

b. GHC 5,000 being general damages for Trespass.

c. Perpetual Injunction.

The Defendants/Respondents filed their Statement of Defence three days later which was 16th January 2020.

The hearing commenced 30th January 2020 that was two weeks after the pleadings had closed but on 5th February 2020 when the case was adjourned for further hearing the attention of the court was drawn to the fact that the Plaintiff/Appellant had filed another Suit Numbered A1/09/2020 (hereinafter referred to as Suit 2) against the same 1st Defendant in Suit 1 but a different person as 2nd Defendant. The court after enquiring from Plaintiff saw that the subject matter was the same and the parties almost the same. The court subsequently consolidated the two suits into one suit as required by the Rules of Court. See also the cases of Nana Ampiah Andoh VII vrs Paramount Stool of Breman Essiam & Others [2017] 106 GMJ 92 CA and Yaw Atuahene & Anor Vrs Mr. Botantim & Anor (2006) 5 MLRG 218.

A brief background to the current suits is that the Plaintiff/Appellant claimed her late brother sold a portion of their grandmother's land situate at Mentukwa in Diaso to the 1st Defendant in both suits. Her late brother was called John Effah. He sold the land to 1st Defendant at ₵60,000.00 now GHC 6.00 and that she was to construct a two-room mud house on it. Plaintiff/Appellant claimed she and her late

elder sister Yaa Donkor were not part of the decision to sell the land to 1st Defendant. However, their brother John Effah later showed them the land where the 1st Defendant was already in possession with a fence around the land.

Plaintiff claimed the female section of the Asona family led by its Obaapanin magnanimously permitted the 1st Defendant to stay on the land carved out to her by their late brother but they sternly warned her not to build beyond or extend her boundaries

beyond where she had built her two-bedroom house or where she was originally granted by late John Effah.

Concluding Plaintiff claimed she recently heard 1st Defendant had sold a portion of the land to 2nd Defendant in Suit 1 who had put up a house and when she confronted 2nd Defendant, she indicated it was 1st Defendant who sold it to her. She confronted 1st Defendant who confirmed the sale hence the suit she filed in Suit 1.

1st Defendant's case was simply to the effect that she purchased the piece of land from the late John Effah about 24 years ago. She paid ₵60,000.00 (now GHC 6.00) and offered drinks to seal the sale. Present at the meeting were John Effah himself, his wife Aunty Mary and grandson Kwadwo Agyeman. On her side, she was present as well as Aunty Ntaadie and one Kwame Peter.

Concluding 1st Defendant claimed she fenced the land and later built her house on half plot of the land and it is the remaining half plot she sold to 2nd Defendant who had also put up her house on it and that the sale and subsequent building by 2nd Defendant occurred during the life time of John Effah who never protested on same.

It is therefore not true she had extended her boundaries or trespassed into anybody's land.

The facts in Suit 2 is almost the same as presented by Plaintiff/Appellant except that in this case she (Plaintiff) was informed that somebody had cleared with grader portions of their family land in the areas 1st Defendant was staying and her enquiries was that it was the 1st Defendant who had trespassed onto their land and sold same to the 2nd Defendant, one Gyamfuaa in Suit 2. And that they confronted the 2nd Defendant who admitted same hence the second suit she filed.

1st Defendant in her response indicated it was true she cleared that portion with a grader but she did so to prevent reptiles and other animals from attacking her in her house. Besides people unduly defecated in the area. So, after clearing the area 2nd Defendant came to contact her if she could sell the area to her but she directed 2nd Defendant to Plaintiff.

A fact 2nd Defendant confirmed and maintained that she had not purchased any land from 1st Defendant and as such did not own any land there.

The lower court based on these facts tried the two cases on the merits and came out with its judgement in both Suit 1 and Suit 2.

The Judgement in Suit 1 was to the effect that the 1st Defendant acquired the disputed land about 24 years ago and had been in possession all these while without any let or hinderance. So, the grant John Effah made to 1st Defendant was voidable but the Plaintiff had sat down all this while so had thus acquiesced and had also been caught by the Statute of Limitation. Besides the locus inspection report showed that

the 1st and 2nd Defendants had restricted their developments within the boundaries of their land. Finally, if there was a party to complain then it is one Kwabena George who also purchased a portion of land at the same place from the late John Effah but who claimed the 2nd Defendant when putting up her house put up a bathroom on his land. But in the ensuing misunderstanding Plaintiff directed her husband who resolved the impasse and fixed the boundary between 2nd Defendant and Kwabena George. So if anybody had any claim then it is the said Kwabena George who could sue 2nd Defendant and not Plaintiff.

Concluding her judgement in Suit 1 the trial magistrate held that the evidence adduced by Plaintiff to prove her claim was woefully unsatisfactory and was below the standard required by law and accordingly dismissed her claims and awarded cost of GHC500 against Plaintiff/Appellant.

With regard to her Judgement in Suit 2 the learned trial magistrate indicated that she had combed through the evidence but did not get any information to support Plaintiffs claim. She indicated 1st Defendant explained that she had no intention of selling Plaintiffs land and 2nd Defendant also testified that she had not purchased any land from 1st Defendant and as such did not have any land there. The learned trial magistrate claimed wherein lied the sale by 1st Defendant to 2nd Defendant when none of them claimed ownership of the graded land. She concluded by tagging this second Suit as frivolous and dismissed it with

a cost of GHC600.00 in favour of each of the 1st and 2nd Defendants against the Plaintiff who was to pay it within 2 weeks of the Judgement.

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The Plaintiff/Appellant peeved by these two judgements accordingly appealed against same on the 5th November 2020 that's a day after the judgements were delivered. However, the Plaintiff/Appellant who during the trial at the lower court was not represented by Counsel subsequently appointed a Counsel to prosecute the appeal on her behalf. Her Counsel on 19-1-2021 filed a Notice of Discontinuance of the Appeal with liberty to re-apply before the lower court which was granted and on the same day filed a new Notice of Appeal. The grounds of Appeal were that

a. The judgement of the trial court in both suits ie Consolidated suits (No. A1/08/2020 and No. A1/09/2020) were against the weight of evidence. b. Additional Grounds of Appeal shall be filed upon the receipt of the Certified true copy of the Judgements.

The Reliefs sought from the Appeal were as follows;

a. To reverse, set aside etc the Judgement/Decision in the two Consolidated Suits dated 4th November 2020 and all the consequential orders made thereof.

It is trite learning that an Appeal is always by re-hearing and the Appellate court is called upon to review the entire evidence to ascertain if the judgement appealed against was consistent with the evidence or not.

This point was well articulated in the case of Owusu Domena vrs Amoah [2015 - 2016] 1 SCGLR where the apex court held as follows "where the appeal was based on the omnibus ground that the judgement was against the weight of evidence both factual and legal arguments could be made where

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the legal arguments would help advance or facilitate determination of the factual matters".

See also the case of Tuakwa vrs Bosom [2001 – 2002] SCGLR 61 and Djin vrs Musah Baako

[2007 – 2008] SCGLR 686.

However, the Appellant has a duty to assist the Appellate court in pointing out the differences alleged in the impeached judgement to enable the court come to a fair and realistic conclusion in the assessment of the evidence on appeal.

This point was elaborated upon in the case of Nyamebekyere Sawmill vrs Ghana Red Cross (2014) 68 GMJ CA where the Court of Appeal held as follows; "Indeed it has been common place in Appellate court that whenever an Appellant appeal on the grounds that the judgement is against the weight of evidence, he is implying that there are certain pieces of evidence on Record if applied in his favour would have changed the decision in his favour or certain pieces of evidence on Record have been wrongly applied against him. In such a situation the onus is on such an Appellant to pin point the pieces of evidence on Record if applied in his favour would have changed the decision in his favour or the pieces of evidence wrongly applied against him."

See again the case of Agyenim Boateng vrs Ofori (2010) SCGLR 861 where the apex court set out the conditions under which an Appellate court could set aside judgement of the trial court.

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Finally in the case of Amoah vrs Lokko & Alfred Quartey (Substituted by) Gloria Quartey & Ors [2011] 1 SCGLR 505 the Supreme Court in guiding Appellate courts on when to set aside a judgement on appeal held as follows

"The Appellate court can only interfere with the findings of the trial court if they were wrong because

a. The court had taken into account matters which were irrelevant in law. b. The court excluded matters which were critically necessary for consideration.

c. The court had come to a conclusion which no court properly instructing itself would have reached and

d. The courts findings were not proper inferences drawn from the facts." From the Notice

of Appeal Counsel for Appellant filed the sole ground of appeal was the omnibus ground of appeal which was to the effect that the judgements of the trial court in both suits ie Consolidated Suit (Suit No. A1/08/2020 and Suit No. A1/09/2020) were against the weight of evidence. However before delving into the various issues Counsel highlighted as being the inconsistences in the two judgements this court after perusing the entire Record of Appeal with the two judgements made some observations which it would like to address first.

To begin with in perusing the entire Records this Court did not find the Summons and Statement of Claim if any which the Plaintiff/Appellant filed with the lower court in Suit 2. It was however on the 5th February 2020 when the learned trial

magistrate indicated she had seen the second summons and enquired from Plaintiff/Appellant who indicated the subject matter was same with Suit 1 and consolidated the two suits. Besides there was nothing in the Records to indicate that 1st and 2nd Defendants/Respondents in Suit 2 also filed any defence. This court thus sides with Counsel for Appellant when he raised this issue that 1st and 2nd Defendants/Respondents in Suit 2 did not file any defence.

Next the proceedings on 5-2-2020 also revealed that the 1st and 2nd Defendants in Suit 2 were called upon to plead to the claims against them. 1st Defendant pleaded Not Liable but 2nd Defendant pleaded Liable. This court is not surprised when Counsel for Appellant submitted why the case in Suit 2 was tried particularly against the 2nd Defendant who pleaded liable.

The second main observation this court made in perusing the Record was that the learned trial magistrate after Consolidating the cases did well in insulating the cases from each other and took the evidence separately for each of the two suits as is required by law and practice. In the case of Agboado & Ors Vrs Fiankor & Anor [1995 – 1996] 1 GLR 278 the court on the need to insulate the identity of cases in Consolidated suits held as follow

"Although an important incidence of consolidating cases was to enable the hearing to be facilitated and expedited another equally important incidence of consolidation was that a

separate judgement had to be delivered in each suit. Thus, the individual identity of each of the

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consolidated suits had to be maintained throughout the proceedings up to execution."

See again the case of Nana Ampiah Andoh VII vrs Paramont Stool of Breman Essiam (Supra) where the same principles were re-echoed as follows; "This appears to be a fundamental error in law because whereas the rules permit the consolidation of two or more suits under certain conditions to enable the hearing or trial to be facilitated or expedited, a judgement arising from the hearing in consolidated suits should reflect the individual character of the suits."

So, the trial magistrate did well in consolidating the suits and equally did well in delivering separate judgements. However, the problem this court found out was with when the evidence in the two suits were taken. The evidence was so mixed up that in one breadth the evidence of Plaintiff and his first witness in Suit 1 were taken, then the next the evidence of Plaintiff and his witness in Suit 2, and sometimes a witness in Suit 1 is called then the next time a witness in Suit 2 is called. This alternation affected the chronology of the evidence that it was of little surprise at a point the trial magistrate in Suit 2 labelled three witnesses as PW1 throughout who should have instead been PW1, PW2 and PW3 in Suit 2. So when the fourth witness was called in Suit 2 for the Plaintiff, being PW4 since the Plaintiff in Suit 2 first called her daughter as PW1, one Kwabena George as PW2, and Kwabena George's wife as PW3, so the Plaintiffs husband should have been PW4 but because of how the evidence was lumped together PW2 and PW3 were all labelled as PW1 whiles

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PW4 was labelled as PW2. This setback in the courts opinion affected the chronology of the evidence and made the comprehension of the evidence slightly difficult.

Now back to the Notice of Appeal, Counsel for Appellant touched on about two main

issues in Suit 1 and two also in Suit 2 in the omnibus ground of appeal he set down. The first issue he raised with regard to Suit 1 was that the learned trial magistrate erred when she restricted her judgement to the portion of the land which the 1st Defendant had built on it which was not in issue without averting her mind to the main issue before her which was that the 1st Defendant had extended her land beyond the plot originally granted to her and sold portions of the new land she had trespassed onto to 2nd Defendant who had also built on same.

This court is ad idem with Counsel for Appellant that the holding of the trial magistrate that the transaction between the late John Effah and 1st Defendant over the land the 1st Defendant built her house on was voidable and not void and that the Plaintiff was estopped from questioning the validity of the over 24 years' transaction was wrong in law since from the pleadings and evidence the said issue never arose. The Plaintiff throughout her evidence was emphatic that although the female section of the Asona family which she currently heads opposed the sale initially they subsequently gave in and approved the transaction. However, they warned 1st Defendant not to step beyond the land which John Effah gave her. So, there was no any such issue during the trial over the ownership of 1st Defendants control over the land she occupied which she had a building situate thereon.

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The trial learned magistrate thus went into error when she suo muto raised the said issue and purportedly resolved same in favour of the Defendants when the said issue did not arise during the trial. In the case of Dam vrs Addo (1962) 2 GLR 200 the court in a similar case held as follows that;

"A court must not substitute a case proprio motu nor accept a case contrary to or inconsistent with that which the party himself puts forward, whether he be the Plaintiff or the Defendant."

See again the case of Amammo vrs Essibu [2014] 68 GMJ SJ CA, where the court on this same issue again held as follows;

"Indeed the acceptance in favour of a party of a case different from and inconsistent with

that which he himself has put forward by his pleadings has been consistently held to be unjustifiable and fundamentally wrong both by the English Courts and our Superior courts."

Flowing from the above this court is of the opinion and holds that the decision of the learned trial magistrate on the ownership of 1st Defendant on the land she had her building on was in error since the said issue never arose during the trial. Accordingly, the said decision is set aside as being in error.

The second issue Counsel for Appellant raised with Suit 1 was that the learned trial magistrate placed much emphasis on a locus report and that in his new (that's Counsel's view) the said report could not help resolve matters. In her judgement the trial magistrate indicated that the locus inspection showed that the Defendants had restricted their developments within the boundaries of the land. The said locus

inspection was undertaken on the 28th February 2020 which had in attendance the Magistrate, the courts Registrar and the Parties together with other people and the report was tendered by the courts Registrar who was cross-examined by the Plaintiff and 1st Defendant.

However, the Locus Inspection Report Which Counsel for Appellant rightly pointed out was not straight forward and thus made its comprehension somewhat difficult. The report in this courts' opinion failed to adequately describe what the parties pointed to which affected the proper appreciation of what actually appeared on the ground. It is thus of little surprise that Counsel for Appellant suggested in his submissions that the trial court should have instead appointed a surveyor who could have presented a proper pictorial evidence of the situation the ground. On the import of Survey plans see the case of Seidu Mohammed vrs Saanbaye Kangbere (2012) 51 GMJ 173 SC, where the apex court held as follows that;

"Composite plans present pictorial evidence of the situation as if the court had moved to the locus in quo".

Flowing from the above this court again sides with Counsel for Appellant and accordingly

holds that the locus inspection report the trial court relied on was not straight forward and thus did not effectively assist the court in determining the dispute which ensued between the parties.

However, the pertinent question to ask at this point is did the two errors the learned trial magistrate commit occasioned any grave miscarriage of justice in the overall judgement which she gave in Suit 1 where she dismissed the Plaintiff's claim

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on grounds that she woefully failed to prove her claim and that the 1st and 2nd Defendants restricted their developments within the boundaries of their land. The Plaintiffs claim as per her Writ was for a declaration, vacation and recovery of a building plot situated at Diaso. The authorities are clear that a party seeking for declaration of title to land must first clearly identify the subject matter he is claiming. See the case of Anane vrs Donkor [1965] GLR 188 where the court per Olltennu held as follows;

"where a court grants declaration of title to land or makes an order for injunction in respect of land, the land the subject matter of that declaration should be clearly identified so that an order for possession can be executed without difficulty."

After clearly identifying the land, the party seeking for declaration of title to the land must also prove the root of title, mode of acquisition and acts of possession/ownership over the land. See again the case of Mondial Veneer (Gh) Ltd vrs Amuah Gyebi XV (20111) SCGLR 466 where the apex court on this issue held as follows;

"That in land litigation even where living witnesses directly involved in the transaction had been produced in court as witnesses the law would require the person asserting title and who bore the burden of persuasion to prove the root of title, mode of acquisition and various acts of possession exercised over the land in dispute."

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The Plaintiff/Appellant in her Writ in Suit 1 indicated the land she was claiming was a building plot situated at Diaso. In her Statement of Claim Plaintiff/Appellant again

described the land she was claiming as a building plot situated at Mentukwa on Diaso stool land which is bounded by an old cemetery, Appea, a gutter and brother Kwaku. The Plaintiff/Appellant gave the root of title of the disputed land as the Asona family of Diaso and the said land had devolved onto her by inheritance based on the fact that she is the current Obaapanin of the Asona family.

However, in her evidence at the trial Plaintiff/Appellant failed to describe the land she was claiming but focused mainly on the transaction which ensued between her late brother John Effah and the 1st Defendant. But for the fact that she described the land she was claiming in her Writ and Statement of Claim, her entire evidence to wit her evidence in chief and cross examination was totally silent about the land she was claiming.

It is trite learning that even the mere repetition of a party's pleadings in the witness box does not constitute evidence let alone the Plaintiff/Appellants situation where she did not make any significant reference to same. See the case of In Re Ashalley Botwe Lands: Adjetey Agbosu & Others vrs Kotey & Ors [2003 – 2004] SCGLR 430 where the apex court held as follows;

"It is trite law that a bare assertion by a party of his pleadings in the witness box without proof did not shift the evidential burden onto the other."

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See again the case of Majolagbe vrs Larbi (1959) GLR 100 where Ollenu J (as he then was) on this issue held as follows;

"Proof in law is the establishment of facts by proper legal means where a party makes an averment capable of proof in some positive way he does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances from which the court could be satisfied that what he avers is true."

As indicated earlier the Plaintiff/Appellant in her evidence-in-chief focused on their root of title to the disputed land which she traced to their grandmother Akua Boakumah which passed on to her late brother John Effah who sold a portion to the 1st Defendant. And that although herself and her late elder sister Yaa Donkor objected to the sale they

eventually approved the sale but warned 1st Defendant to stay within what had been given her and never to go beyond that.

Plaintiff/Appellant added that the 1st Defendant/Respondent constructed a fence around her land which was bounded by a refuse dump site. However, she Plaintiff realised the 2nd Defendant had also built a house near the refuse dump site and when she enquired she was told it was 1st Defendant who sold it to her, hence the suit.

Plaintiff/Appellant failed to adequately describe their land which the 1st Defendant had trespassed upon and sold to 2nd Defendant. Throughout her evidence and cross-examination Plaintiff/Appellant position was that the Respondents had

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trespassed onto their land. But as to which land, they had trespassed onto the Plaintiff/Appellant could not adequately illustrate.

To make matters worse Plaintiff/Appellant revealed that her late brother John Effah sold another plot of land to one Kwabena George but when 2nd Defendant was developing the land she purchased from 1st Defendant she allegedly built a bathroom on Kwabena George's land. A report was made to Plaintiff/Appellant who delegated her husband PW1 in Suit 1 who resolved the impasse between 2nd Defendant and Kwabena George by fixing the boundary between them. So if the land 1st Defendant/Respondent sold to 2nd Defendant/Respondent was Plaintiffs/Appellants land then why didn't she protest at that time but instead delegated her husband PW1 who resolved the boundary dispute between 2nd Defendant/Respondent and Kwabena George and reported back to Plaintiff/Appellant.

From the totality of the evidence this court is of the opinion and sides with the learned trial magistrate that the evidence of 1st Defendant/Respondent that she built on half of her plot she purchased from John Effah (late) and sold the remaining half to 2nd Defendant/Respondent who also built on it appears to be more probable on the preponderance of probability and that the 1st and 2nd Respondents developed their properties within the plot the 1st Defendant/Respondent acquired.

Next this court also sides with the learned trial magistrate that if there is any trespass

involving 2nd Defendant/Respondent then it is the said Kwabena George who could sue the 2nd Defendant/Respondent because she earlier trespassed onto his land and built a bath room there and that the Plaintiff/Appellant and her people had

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divested their interest via the sale to Kwabena George and she cannot sue on his behalf for any trespass.

A careful examination of the Plaintiff/Appellants evidence together with her witness, PW1 who is her husband, it is the evidence which PW1 gave which attempted to throw some clarity on what the Plaintiff wanted at the disputed area. But the said evidence of PW1 also came in a flash and was not properly echoed to carry home the claim of Plaintiff/Appellant. PW1 in his evidence claimed after John Effah (late) had sold a portion of the land to 1st Defendant/Respondent, he accompanied John Effah to the disputed land where he carved out and sold another portion to Kwabena Georgea and beyond the 1st Defendants land was another land which John Effah indicated he was going to give to his nephews and nieces. So if the evidence of PW1 is anything to go by then we have three categories of land at the disputed site. The one for 1st Defendant/Respondent which she claimed she had sold part to 2nd Defendant/Respondent, the other one for Kwabena George and a third one which John Effah claimed he was going to give his nephews/nieces.

The Plaintiff/Appellant as already indicated failed woefully in this courts' opinion to adequately lead evidence to describe the land she was claiming. Her, husband PW1 tried and threw better insight which was to the effect that there was a third plot of land at the disputed site which belongs to the Plaintiff/Appellants family.

A critical look at the evidence in the Suit 2 which would be addressed shortly seem to suggest that there is a third plot at the area which both the 1st and 2nd

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Defendants in Suit 2 claim is not theirs but rather belong to the Plaintiff/Appellants family. And that Kwabena George also has his plot there and is not claiming the said third

plot.

All said and done this court is of the opinion and holds that although the trial learned magistrate erred in giving a decision on the sale 1st Defendant/Respondent entered into which was not in issue and also erred in relying heavily on the locus inspection report which was not self-explanatory, these errors did not occasion any grave miscarriage of justice and that the final decision of the trial learned magistrate that Plaintiff/Appellant failed to prove her claim in this courts' opinion was a sound and proper conclusion. Plaintiff/Appellant woefully failed to prove her claim and the clarity PW1 also brought pointed to the fact that there is a third plot of land which the 1st and 2nd Defendants in Suit 2 are saying it belongs to Plaintiff/Appellant. Accordingly, the decision of the trial learned magistrate is affirmed and the appeal against the final judgement in Suit 1 is hereby dismissed.

With regard to Suit 2 Counsel for Appellant again raised two issues. Firstly, the 1st and 2nd Defendants/Respondents in Suit 2 did not file any defence. And worse of all the 2nd Defendant/Respondent even pleaded liable yet the learned trial magistrate ignored the plea and went ahead to hear the case on its merits. Apart from these two issues Counsel for Appellant raised this court on its own also found out the writ which was issued in Suit 2 was also not part of the Records.

However, in addressing the courts observation first this court found out that the proceedings of 5-2-2020 revealed that learned trial magistrate enquired from

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Plaintiff/Appellant after she had read the Suit 2 as to whether the subject matter was the same as Suit 1 and the 1st Defendant is the same as in Suit 1 which the Plaintiff/Appellant confirmed as the same. The learned trial magistrate proceeded immediately by indicating that she was going to consolidate the two suits. So although the Writ in Suit 2 appeared missing on the docket this court is of the opinion and holds that it was actually filed, the trial court read it and after enquiries indicated in consolidating it with Suit 1. So the absence of the Writ in Suit 2 did not materially affect the subsequent proceedings in Suit 2.

Now with regard to the first issue Counsel for Appellant raised, in going through the Record of Appeal it is not in dispute that the 1st and 2nd Respondents in Suit 2 did not file any defence. It is also not in dispute that 2nd Defendant pleaded liable. So this court is at a loss as to why the learned trial magistrate after indicating she was going to consolidate the two suits did not stop there but went ahead to take the plea of the Defendants. This is because evidence had already been given by Plaintiff/Appellant in Suit 1 on 30-1-2020 and Cross-examination began but her mouth was sealed and the case was adjourned to 5-2-2020 for further cross examination.

So when on the 5-2-2020 the magistrate's attention was drawn to the Writ in Suit 2 and she elected to consolidate it with Suit 1 she should have ended there and asked the 1st and 2nd Defendants/Respondents to file their defence. This was not done and the plea was taken. When 2nd Defendant/Appellant pleaded liable that should have been the end of her case and 1st Defendant/Respondent asked to file her

defence. However, the learned trial magistrate ignored these procedures and on 13- 2-2020 instead of further cross-examination of Plaintiff/Appellant in Suit 1, rather asked the Plaintiff/Appellant to open her case in Suit 2 which she did and cross examination also commenced in Suit 2.

Flowing from the above this court is of the opinion and sides with Counsel for Appellant that the learned trial magistrate erred when she ordered 2nd Defendant/Respondent to be part of the trial despite the fact she pleaded liable and more especially ordering the 1st Defendant/Respondent to defend herself when she filed no defence.

However, these procedural breaches from the learned trial magistrate in this courts' opinion did not occasion any grave miscarriage of justice if one looks at the fact that the District Court is a court of summary jurisdiction where strict application to procedure is not adhered to. The District Court Rules 2009, C.I 59, permits cases to be heard summarily without filing of pleadings etc. so although the 1st and 2nd Defendants had their ease heard on the merits without filing a Statement of Defence this was not fatal because it was a District Court. Besides although 2nd

Defendant/Respondent was heard on the merits this was also not so fatal because the learned trial magistrate earlier ordered consolidating the case with Suit 1 to be heard on the merits since hearing in Suit 1 had already commenced.

So although by subsequently ordering the 1st and 2nd Defendants/Respondent to plead was an anomaly this could be pardoned because by hearing the case on the

merits it enabled the court to have a better insight into the case which impacted on Suit 1.

Now back to the evidence in Suit 2, Plaintiff/Appellant gave evidence on her own and called four (4) witnesses being her daughter (not biological daughter) PW1, Kwabena George (PW2), Kwabena George's Wife (PW3) and the Plaintiff/Appellants husband (PW4). 1st Defendant/Respondent gave evidence on her behalf and on behalf of 2nd Defendant/Respondent and called two witness as DW1 and DW2. The evidence of Plaintiff/Appellant in Suit 2 simply bordered on the fact that the 1st Defendant/Respondent had cleared portions of her land with a grader and sold same to 2nd Defendant/Respondent. Her evidence further recounted how 1st Defendant/Respondent purchased a plot of land from the late John Effah but besides moving beyond her boundaries and selling other portions to Defendant/Respondent in Suit 1 who had built on same she had also graded other portions of the land and sold to 2nd Defendant in Suit 2.

Plaintiff/Appellant's witnesses all seemed to have towed the same line of evidence that 1st Defendant/Respondent had graded portions of the Plaintiff/Appellants land and sold to 2nd Defendant/Respondent.

However, 1st Defendant/Respondent in her response denied selling any such land to 2nd Defendant/Respondent. She admitted grading portions of the Plaintiff/Appellants land but she did so because reptiles and other creeping animals were attacking her place from the over grown weeds and that after the grading she informed Plaintiff/Appellant about the grading of her land, apologized to her and

explained why she did so. Around the same time 2nd Defendant/Respondent approached her that she was interested in the graded land and wanted to buy it from her but she directed her to go to Plaintiff/Appellant since the chunk of the graded land belonged to her.

2nd Defendant/Respondent confirmed this and indicated that she in the company of her mother went to Plaintiff/Appellant to buy the graded land but she told them to wait because there was litigation over the land. She thus concluded she was waiting to see if Plaintiff/Appellant would sell the graded land to her and thus became shocked when she was sued that she had trespassed by buying the graded land from 1st Defendant/Respondent who had not sold any land to her and that she also did not own any land there.

It thus became somehow puzzling when during cross-examination Plaintiff/Appellant and her witnesses insisted 2nd Defendant/Respondent had purchased the graded land from 1st Defendant/Respondent when the former maintained it was false and she did not own the graded land.

This court is ad idem with the learned trial magistrate when she held that she found Suit 2 to be frivolous and dismissed it as having no merit. All said and done the graded plot at the disputed site is vacant and both 1st and 2nd Respondents have indicated the graded land belongs to the Plaintiff/Appellant. So if her husband in Suit 1, then PW1 also revealed that there were three categories of plots at the disputed site namely the one which belonged to 1st Defendant/Respondent, the second one to Kwabena George and the third one which John Effah (late) elected to

give to his nephews and nieces. So in this court's opinion it is that third category of land which 1st Defendant/Respondent graded which herself and 2nd Defendant/Respondent have all indicated it belong to Plaintiff/Appellant.

In sum Plaintiff/Appellant could not prove her claim against 1st and 2nd Respondents in Suit 2. The learned trial magistrate did not err when she held that the said suit was

frivolous and vexatious and dismissed it. Accordingly, the appeal against the Judgement in Suit 2 is also dismissed irrespective of the few procedural breaches which did not gravely affect the merit of the case.

In totality the entire appeal of the Plaintiff/Appellant is dismissed and the decision of the District Court, Diaso dated 4-11-2020 in Suit 1 and Suit 2 are affirmed.

Cost of GHC 2,000.00 is awarded in favour of the Defendants/Respondents in the two suits. The court awarded this minimal cost because the Defendants/Respondents did not employ the services of a lawyer and thus did not file any processes except their T&T to and from court.

SGD:

HIS LORDSHIP EMMANUEL AYESU ESSAMPONG (HIGH COURT JUDGE)

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