

**CORAM: ATUGUBA, JSC (PRESIDING)**  
**AKUFFO (MS), JSC**  
**ANSAH, JSC**  
**OWUSU (MS), JSC**  
**BAFFOE-BONNIE, JSC**

GLADYS AKU AGBENU } DEFENDANT/RESPONDENT/  
APPELLANT

IN THE MATTER OF THE ESTATE } PLAINTIFF/APPELLANT/  
OF ROBERT AGBENU(DECEASED) } RESPONDENT  
AND IN THE MATTER OF GODWIN  
AGBENU

**ATUGUBA JSC:**

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The facts of the case as stated by the Court of Appeal per Quaye J.A. are as follows:

"Robert Agbenu died intestate on 13<sup>th</sup> December, 1979. The Plaintiff/Appellant herein, claiming to be one of only two surviving children of Robert Agbanu filed an action in the Circuit Court, Accra on 15<sup>th</sup> August, 2001 against the defendant/respondent, whom he identified as the other child of his father, claiming three heads of relief. These reliefs are:-

- a) a declaration that the subject- premises forms part of the estate of their deceased father, Robert Agbenu aforementioned.
- b) an order appointing the Registrar of the Court to gather-in the estate and distribute it to the parties herein;
- c) Defendants/respondent to render accounts of all rents and proceeds from the disputed house with effect from 1980.

The averments in the accompanying statement of claim sought to assert the plaintiff's capacity, the blood (paternal) relationship between him and the defendant/respondent, the extent of the estate of Robert Agbenu and the attempts that had been made to call the respondent to account.

In her pleadings however, the respondent denied substantially the averments of fact made by the appellant. Apart from denying any blood relationship with the appellant, the respondent asserted ownership of the disputed house No.E 119/14 Nima and counter claimed for a declaration to that effect.

At the end of the trial, the lower court dismissed the claims of the appellant, found in favour of the respondent and made orders upholding the counterclaim".

The plaintiff failed at the trial court but prevailed in the Court of Appeal. The defendant/respondent has appealed to this court on the following grounds:

“That the judgment of the Court of Appeal is against the weight of evidence addressed at the trial.

·That the judgment of the Court of Appeal cannot be supported by evidence adduced at the trial.

·That the learned Court of Appeal Judges erred in law when they adjudged the deceased to be the owner of the disputed land and house.

·The Court of Appeal failed to give the appropriate weight to the Defendant’s title Deeds (Exhibit A)”.

The parties gave evidence themselves and by two witnesses each. The trial judge however took the view that once the defendant holds a registered document evidencing title in herself that is conclusive of the case. Thus at p. 69 of the record of appeal he stated as follows:

“From the evidence adduced in court, the court finds as a fact that ***the plaintiff surprisingly tendered an indenture in respect of the house in dispute bearing the name of the defendant.*** The indenture was tendered and marked as exhibit ‘A’. It was dated 26<sup>th</sup> January 1978, stamped as AC 5426/85 and registered at the Land Title Registry as 4565/1985 of 6<sup>th</sup> August 1985”

Continuing at p. 70 he said:

***"In so far as the ownership of the plot has been registered at the Land Registry, it amplifies the position of the defendant as the owner of the land. Her ownership therefore cannot be impugned or disputed.*** Furthermore she is the house-owner collecting rent from the tenants as the landlady. The defendant is thus in legal and physical possession of the property.

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***With the type of registration effected by the defendant it can be conclusively presumed that she is the owner of the house***

***in dispute. The question to be asked by this court is by what stretch of imagination can the plaintiff claim a property for which he does not have any document to support his claim?***

The plaintiff, however, must fail in his claim on two different grounds, namely (a) that he did not prove sufficient possession and (b) the defendant proved beyond all reasonable doubts that she was the owner of the House in dispute. ***As the equity maxim goes "equity follows the law". Therefore inasmuch as the defendant has been wise enough to register the plot as her property, she is the owner of the plot.*** Again any claim by the plaintiff is defeated by the provision of the Limitation Decree of 1972 (SMCD 54)."

Consequently though he set out ***in extenso*** the evidence led in the case between pages 66-69 of the record, he regarded it as virtually irrelevant and did not assess the same. As to the Limitation Decree, the same was never in issue as it was not pleaded.

The Court of Appeal for its part rightly held that registration of purported documents of title per se does not necessarily establish the validity of the title in question. Beyond this however they also did not evaluate the evidence on record to any penetrating degree.

If the trial court had discharged its function properly that would have been the end of the matter. That function has been well known since the days of **Majolagbe v Larbi** (1959) GLR 190 and **Quaye v Mariamu** (1961) GLR 93 C.A. That function with regard to the facts in issue, has been restated in more recent times. Thus is **Nti v Amina** (1984-86) 2 GLR 13 C.A. at 148 Abban J.A. (as he then was with the concurrence of his other brethren) said: "As I said earlier on, ***the learned trial judge made a thorough and critical analysis of the evidence in the light of the issues raised before him,*** and the ***decision he arrived at was correct*** and should not be disturbed." Again in **Bisi v Tabiri** (1984-86) 2 GLR 282 C.A. at 287 Adade JSC (his other brethren concurring) said: "As ***a judge of fact,*** it is his peculiar province,

listening to the evidence and having the witnesses before him, ***to weigh the several statements on each issue and to decide which to believe and which to reject.*** And so long as ***his conclusions can find support from statements on record,*** it is not open to an appellate tribunal, except for just and compelling reasons, to disturb them." All this must be done in the light of S.80 of the Evidence Decree, 1975 (N.R.C.D. 323) relating to factors for the evaluation of evidence.

With regard to the Court of Appeal they should have also, as aforesaid critically evaluated the evidence since the trial judge had failed to do so, in order to render their decision on the facts supportable. Thus in **Appiah v Takyi** (1982-83) GLR 1 C.A at 3 Mensa Boison J.A. (his other brethren concurring), said: "though an appellate court may not lightly upset findings of fact made by a trial court, it may properly do so where, especially in a non-jury trial, ***all the circumstances are adverse to such finding of fact.*** see **George Mattouk v Ellie Massad** (1941) 7 WACA 91 at 93".

Similarly in **Kofi v Kumansah** (1984-86) 1 GLR 116 C.A. at 121 the court stated:

'In the case of **Codjoe v Kwatchey** (supra), Webber CJ said at 374:

"The Appeal Court is not debarred however from coming to its own conclusion on the facts and where a judgment has been appealed from on the ground of the weight of evidence the Appeal Court can make up its own mind on the evidence; not disregarding the judgment appealed from ***but carefully weighing and considering it*** and not shrinking from overruling it if ***on full consideration*** it comes to the conclusion that the judgment was wrong..."

From all the foregoing it is clear that with respect, neither the trial court nor the Court of Appeal directed itself satisfactorily by critically evaluating the matters of fact in issue. Of course the incidence and degree of these principles may vary on the facts of a particular case.

All this apart, we have detected much confusion in the proceedings. It appears from the record that counsel for the parties adopted the question and answer form of leading their witnesses in evidence rather than the free narrative style. However, recording such evidence in the form of question and answer is the appropriate method with regard to cross-examination. When the same method is applied, to the adduction of evidence in chief, as was done in this case, it makes the same clumsy and disjointed and impedes a fluent perusal of the evidence so led.

Then also, on **12/11/2003**, after the conclusion of the evidence of **DW1** at p 42 of the record the following note appears:

**"BY COURT: Adjourned to 8<sup>th</sup> December, 2003 for continuation"**

However for some inexplicable reason the evidence of **PW2** commences on **20/11/2003** at p.43 and concludes at p. 46 on **11/12/2003**.

That is not all. Although this case related to land situate at Nima, Accra there is between pages 91 to 110 a judgment of the Court of Appeal in a case intituled J.K.Nyamekye versus Kofi Yeboah, C.A. No. 93/95 dated 15<sup>th</sup> April, 1999 relating to land **"known and called Asanteman Council..." on Mim Stool Land in the Brong Ahafo Region of Ghana.'** How did this case get into the proceedings of this case and for what purpose?

It is trite learning that where the facts have not been satisfactorily found by the lower courts this court can itself do so upon the recorded evidence. However in the circumstances of this case where counsel in the case were unable to unravel the facts of the case to the court by evidence and there is little to choose from the two cases as to the facts, the demeanour of the witnesses might have been of help. See **Atsu v. The Republic**(1968) GLR 716 C.A. at 720. Unfortunately there is no indication as to the incidence of this factor in the trial court's judgment and with the added confusion in the proceedings as earlier alluded to supra we think the best and benign course to take in this case is to order a retrial. See **Khoury v Choitel** (1964) GLR 100 SC. **Quagraine v Davies** (1962) 1 GLR 104 S.C. of course is authority

for retrial based on confusion in a case. See also **Commissioner of Police v. Tunday Lagos** (1962) 1 GLR 127 S.C.

We accordingly allow the appeal, set aside the judgments of the Court of Appeal and the Circuit Court and remit this case for trial below before a Circuit Court, Accra, differently constituted.

**W. A. ATUGUBA**

**JUSTICE OF THE SUPREME COURT**

**S.A.B. AKUFFO (MS)**

**JUSTICE OF THE SUPREME COURT**

**J. ANSAH**

**JUSTICE OF THE SUPREME COURT**

**R. C. OWUSU (MS)**

**JUSTICE OF THE SUPREME COURT**

**P. BAFFOE-BONNIE**

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