IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA, A.D.2011

CORAM: DR. DATE-BAH JSC (PRESIDING)
ANSAH JSC
DOTSE JSC
BAFFOE-BONNIE JSC
AKOTO-BAMFO (MRS.) JSC

CIVIL APPEAL

SUIT NO: J4/11/2010

16TH MARCH, 2011

MRS CHRISTIANA EDITH	**-**	**PLAINTIFF/RESPONDENT**
AGYAKWA ABOA	**-**	**RESPONDENT**
VRS		
MAJOR KEELSON (RTD)	**-**	**DEFENDANT/APPELLANT APPELLANT**
AND		
1.OKYEAME YIMA	**-**	**PLAINTIFF/RESPONDENTS**
2.TEYE TIMOTHY DOKU		**RESPONDENTS**
VRS		
MAJOR KEELSON (RTD)	**-**	**DEFENDANT/APPELLANT/ APPELLANT**

J U D G M E N T

JONES DOTSE JSC:

This an appeal by the Defendant/Appellant/Appellant in both consolidated suits, hereafter referred to as the defendant against the judgment of the Court of Appeal, dated 3rd April, 2008 in favour of the Plaintiffs/Respondents/ Respondents in both cases, hereafter referred to as the plaintiffs.

The plaintiff in Suit No. 81/92 is the daughter of Odikro Kwabena Agyakwa now deceased, who was the leader of a group of farmers who purchased land from the Akim Abuakwa and Begoro stools. The portion of land in respect of which (his daughter) the plaintiff herein instituted the action is the portion of land that was apportioned to her late father. Portions of the land which Odikro Kwabena Agyakwa purchased with members of the syndicate and which was apportioned to him formed part of the land that he later sold to a group of Krobo farmers led by one Kwesi Ghartey a.k.a Kwesi Photo or Photo Kwesi. The defendant herein is the customary successor of the said Kwesi Ghartey.

The plaintiff's in suit No.L20/92 are the children of members of the syndicate of Krobo farmers who purchased portions of the land from Kwabena Agyakwa and in turn apportioned the said land to members of the group including Kwesi Ghartey, who facilitated same.

The allotment to Kwesi Ghartey seems therefore to be a just recompense for his services in ensuring the purchase of the land by the Krobo farmers, whose parents are the predecessors of the plaintiffs herein.

GENESIS OF THE ACTIONS
SUIT NO L 81/92

The plaintiff, a surviving daughter of Kwabena Agyakwa, claimed that her late father and a group of other farmers in or about 1924, after the purchase of the land from the Akim Abuakwa and Begoro stools, had his own portion of land allotted to him as did other members of the group.

After the purchase and allotment, Kwabena Agyakwa was reported to have sold portions of his land to a group of Krobo farmers led by Kwesi Ghartey.

The portions of Kwabena Agyakwa's land which remained after the land transactions between him and the Krobo farmers were customarily gifted by him to his children. The plaintiff therefore described the said parcels of land as schedules A & B.

On the other hand, the defendant claimed that his uncle the late Kwesi Ghartey purchased a large parcel of land comprising an acreage of about 1,052.52 of land from the plaintiffs' father, Odikro Kwabena Agyakwa. The defendant therefore claimed the entire portion of land as belonging to this late Uncle, Kwesi Ghartey. Having therefore succeeded him, the defendant entered the land and brought onto it a lot of farmers, reputed to have come from the northern part of the country. These people caused a lot of discomfort, pillage and plunder on the land that the plaintiff and his brother, who had since predeceased her, initiated the action herein in the High Court wherein they claimed the following reliefs against the defendant:

i. Declaration of title to the parcels of land described in the schedules described as A & B

ii. Damages for trespass

iii. Order for recovery of possession

iv. Order for account

v. Order for perpetual injunction

SUIT NO 20/92

In this case, the plaintiff who sued as descendants and successors of the syndicate of Krobo farmers who purchased land from Kwabena Agyakwa, sued the defendant for virtually claiming the entire land purchased by the syndicate as belonging to his Uncle Kwesi Ghartey.

In pursuit of the claim that the land belonged to his late uncle, the defendant was reputed to have brought onto the land many well built men from the northern parts of the country. As a result, the defendant caused many acts of trespass, pillage, plunder and wanton destruction of the plaintiff's farms and buildings. The plaintiff therefore claimed the following as reliefs in the suit before the High Court, Koforidua.

i. Declaration of title to the parcel of land described therein

ii. General and special damages for trespass

iii. Perpetual injunction against the defendant

iv. An order of account in respect of proceeds from tenant farmers on portions of the land which the defendant has been collecting.

On the contrary, the defendant denied the claims of the plaintiffs and asserted that it was his late uncle who bought the large parcel of land encompassing about 1,052.50 acres from Kwabena Agyakwa in his personal capacity and not as a leader of any group of Krobo farmers.

The defendant also claimed that it was after the purchase of the land by his uncle that a group of Krobo farmers, led by the parents of the plaintiffs approached him to re-purchase portion of the land from him.

The defendant therefore denied the claims of the plaintiffs and asserted that his uncle performed overt acts of ownership in respect of the land and this was acknowledged by all and sundry.

JUDGMENT BY HIGH COURT

Both the above two cases were consolidated, and after an exhaustive trial in which a court appointed Surveyor prepared a plan which he tendered, the High Court, Koforidua on 21st January 2003 delivered judgment in favour of the plaintiffs in both cases.

After making very important findings of fact in favour of the plaintiff in suit No. 81/92, the learned trial Judge held thus:

"I noticed that this suit was initially commenced by two of Agyarkwa's children for and on behalf of the other children of Agyarkwa. Mrs. Agyarkwa testified that the land was gifted to them by their father. She was not cross-examined or challenged on this….

I accept the evidence of the plaintiff and their witnesses in this suit and reject that of the defendant. I find that the plaintiffs have proved their claims by a preponderance of the evidence led in court and hold that they are entitled to judgment on their respective claims."

i. Accordingly, the learned trial Judge declared the plaintiff and her other siblings as being entitled to the schedules of land claimed as per the writ of summons

ii. The plaintiff was also declared as being entitled to recover possession of the land declared as being their property.

iii. The defendant was perpetually restrained from having anything to do whatsoever with the land.

iv. In view of the order of special damages that was granted the plaintiff, the learned trial Judge declined to grant the order for accounts.

v. All monies deposited with the Registrar of the Court as receiver and manager were ordered to be paid to the plaintiff.

SUIT NO 20/92

The learned trial Judge entered judgment in favour of the plaintiff in suit No. 20/92 and held thus:

i. I declare the plaintiffs' and their Krobo syndicates' title to all that parcel of land bounded on the North by W. D. Ghartey's land now in possession of the defendant, and on all other sides by the properties of Agyarkwa and company (now Mrs. Aboa and company) as demarcated in exhibit 2

ii. ¢5 million general damages for trespass against defendant

iii. Perpetual injunction restraining the defendant, his agents, assigns etc.

APPEAL TO COURT OF APPEAL

As was to be expected of a fighter, the defendant appealed on many grounds of appeal to the Court of Appeal. But like the trial court, the Court of Appeal, in a unanimous decision on the 3rd day of April 2008 dismissed the appeal filed by the defendant.

Concluding the judgment of the Court of Appeal, Aryeetey JA (as he then was) stated thus:

> ***"For the reasons given in this judgment I am of the view that the conclusions of the learned judge in the court below should not be disturbed. The appeal in respect of the two consolidated cases fails and it is accordingly dismissed. The judgment of the court below in the consolidated cases, suit No. L 20/92 and suit No. L 81/92 is affirmed".***

This is the judgment that is on appeal to the Supreme Court.

GROUNDS OF APPEAL IN THE SUPREME COURT

SUIT NO.81/92

1. The learned Judges of the Court of Appeal erred when they held affirming the holding of the Court of Appeal (sic) that the Plaintiff/Respondent/Respondent had capacity to institute the action against the Defendant/Appellant/Appellant.

2. The learned Judges of the Court of Appeal erred in entering judgment for the Plaintiff/Respondent/Respondent as she failed to prove title to the land in dispute.

3. The learned judges of the Court of Appeal erred when they held affirming the holding of the learned trial judge that the boundaries of the land owned by the Ghartey (the predecessor of the Defendant/Appellant/Appellant) are as shown in exhibit Z (marked 1) and exhibit E

4. The learned Judges of the Court of Appeal erred when they made an order for recovery of possession of the disputed land in favour of the Plaintiff/ Respondent/Respondent.

5. Additional grounds will be filed on the receipt of the record of proceedings.

SUIT NO. L20 /92

1. The learned Judges of the Court of Appeal erred when they held affirming the holding of the learned trial judge, that on the evidence the Krobo farmers purchased the land jointly with W.D. Ghartey.

2. The learned Judges of the Court of Appeal erred when they held, affirming the decision of the learned trial Judge, that the boundaries of the land owned by Ghartey (the appellants predecessors) are as shown in exhibit Z (marked 1) and exhibit E.

3. The learned judges of the Court of Appeal erred in entering judgment for the Plaintiffs/Respondents/Respondents as they failed to prove the land in dispute.

4. The learned judges of the Court of Appeal erred when they held affirming the holding of the learned trial judge, that the Defendant/Appellant/Appellant had trespassed on Plaintiff/Respondent /respondent's land when, on the evidence on record, the Respondent had clearly failed to prove that title on the disputed lands was vested in

them or that they had right to possession superior to that of the appellant.

5. Additional grounds will be filed on the receipt of record of proceedings.

SUBMISSIONS BEFORE SUPREME COURT

It should be noted that no additional grounds have been filed and the above were the grounds in respect of which learned Counsel filed their respective statements of case.

BY THE DEFENDANT

The main thrust of the submission of learned counsel for the defendant, Mr. Albert Adaare, is that the Court of Appeal in totality did not appreciate the arguments made in support of the defendants appeal. In that regard, learned counsel for the defendant stated in unequivocal language that the learned Justices of the Court of Appeal did not understand the nature of the case of the defendant. From the statement of case of the defendant, the following issues stand out as the core arguments proffered by the defendant against the Court of Appeal judgment.

1. The Court of Appeal in evaluating the evidence adduced before the trial High Court failed to apply the well established principle of proof in actions for declaration of title to land as has been laid down in sections *11 (4) and 12 of the Evidence Act, 1975, NRCD 323*, and also in decided cases like:

    a. Nartey v Mechanical Lloyd Assembly Plant Ltd. [1987-88] 2 GLR 314 S.C and

    b. Odametey v Clocuh [1989-90] 1 GLR 14 at 28

Learned Counsel for the defendant submitted very forcefully that the learned Justices of the Court of Appeal in evaluating the evidence of the defendant applied an old principle of law in the case of ***Kodilinye v Odu [1935] 2 WACA 336 at 337 – 338*** which is to the effect that a plaintiff in an action for declaration of title to land had to succeed on the strength of his own case and not on the weakness of the defendant's case.

2. Learned Counsel for the defendant also submitted that the Court of Appeal confused the land transactions of the predecessor of the defendant, W. D. Ghartey with the predecessor of the plaintiff Opanyin Kwabena Agyakwa in suit No. 81/90. In this respect, leaned Counsel for the defendant submitted that instead of appreciating the fact that W. D. Ghartey had two distinct transactions with Opanyin Kwabena Agyarkwa, to wit 80 and 120 ropes of land respectively, the Court of Appeal failed to take these transactions into account.

   In this respect, learned counsel for the defendant anchored his submissions on exhibits 16 and 16 B to support his arguments. By this confusion, which learned counsel attributed to the learned Justices of the Court of Appeal, which according to counsel led the Judges to conclude that the land described in schedule A in suit No. L 81/92 had been gifted to the plaintiff therein by her father and not purchased by the defendant's predecessor is not borne out by the record of appeal.

3. Learned counsel for the defendant submitted that on the principle of *"Nemo dat quod non habet"* the father of the plaintiff in suit No. L 81/92, Opanyin Kwabena Agyarkwa having divested himself of all title in the land had no interest left in the land to have gifted to his children as the trial court found and which was confirmed by the Court of Appeal.

Finally, learned counsel for the defendant anchored his submission in respect of the trial court's rejection of exhibit I and its confirmation of same by the Court of Appeal as erroneous and totally unsupportable.

Learned Counsel submitted that the basis upon which the Court of Appeal affirmed the decision to reject exhibit I and rather use exhibits Z and E are based on speculation.

Based on the above submissions, learned counsel for the defendant prayed this court to allow the present appeal and give judgment in favour of the defendant.

BY THE PLAINTIFF'S

From the arguments of learned Counsel for the plaintiffs in suit No. L 20/92 and L81/92, the following points of substance have been made.

1. Learned Counsel for the plaintiff on the other hand argued that the learned Justices of the Court of Appeal assessed the evidence of the parties using the accepted principles on the standard of proof on the basis of the principle of preponderance of probabilities as is provided in sections *11 (4) and 12 of the Evidence Act, 1975 NRCD 323* and the decision of Acquah JSC (as he then was) in the case of ***Adwubeng v Domfeh [1996-1997] SCGLR 660 at 670*** and the unreported case of ***Adzraku v Dzatagbo, High Court, Ho*** dated 11th February, 1993. Learned Counsel for the plaintiff therefore submitted that the Court of Appeal properly applied the correct principles of evidence in evaluating the case for the plaintiffs and defendants.

2. Leaned Counsel for the plaintiff submitted that there is no evidence on record to support the contention of the defendant that his predecessor had two separate land transactions with Opanyin Kwabena Agyarkwa. Learned Counsel for the plaintiff's in both suits therefore submitted that it was only one land transaction that was entered into by Kwesi Ghartey and Kwabena Agyarkwa and this is as follows:

   There was only one land transaction by Kwabena Agyakwa to the Krobo Syndicate led by W. D. Ghartey and that the remaining portion of land of Kwabena Agyakwa was the one gifted to the children.

3. Learned Counsel argued that, since Kwabena Agyakwa did not completely divest himself of all the parcels of land he bought from the Begoro stool as far back as 1924 or thereabout, he retained title in the remaining portion of land that he purchased. That meant that Kwabena Agyakwa still had an interest in the remaining portions of land which he could divest to his children as he did. The principle of "*Nemo dat quod non habet"* is thus inapplicable in the circumstances of this case.

Finally, learned Counsel for the plaintiff submitted that there were really very cogent reasons why exhibit I had to be rejected. This is because, having divested title in the land as far back as 1924, or thereabout to Kwabena Agyakwa & Co. the Begoro Stool had no interest left in the land to divest in 1967 to W.D. Ghartey. Therefore, it was palpably wrong for the defendant's predecessor, Kwesi Ghartey, to have given exhibit I to the successor of the Begoro Chief to authenticate the sale of land whereas that same land had in 1924 been conveyed to Kwabena Agyakwa and his company.

Counsel for plaintiff submitted that, on a proper application of the principle of *"Nemo dat quod non habet"* it will mean that the Begoro Stool had no interest left in the land to divest. Therefore exhibit I which purports to convey title in land that had already been conveyed and transferred to Kwabena Agyakwa & Co. by the Begoro Stool meant the Begoro stool had no interest left to convey. Counsel therefore submitted that exhibit I was properly rejected.

Before we proceed to deal with the issues that need to be dealt with in order to finally dispose of this appeal, we feel bound to comment on two issues namely:

1. Use of inappropriate and intemperate language by counsel in their statements of case.

2. The legal effect of the exhibits tendered in this case and their application and effect on the outcome of this appeal.

USE OF INAPPROPRIATE AND INTEMPERATE LANGUAGE BY COUNSEL

We have times without number complained about the use of inappropriate, intemperate, offensive and insulting language by counsel in their submissions before the courts.

Ours is a learned profession and this demands a very high standard of behavior not only in the etiquette at the Bar, but also in the use of language. Use of language in this case finds expression in the choice of words by defendant's counsel to express opinions on the judgments of the lower courts in this appeal.

Secondly, it also finds expression in the use of words to express opinion on the work of counsel on the other side. What must be noted is that, since the statement of case is for the consumption of this court, use of inappropriate, insulting, offensive and intemperate language is an indictment and sign of gross disrespect to the court.

In the instant appeal a few examples from either side will suffice. For example, learned counsel for the defendant, Albert Adaare, on page 9 of his statement of case stated thus:-

> "***Their Lordships in the Court of Appeal confused*** *the second purchase transaction and the dealings with the 80 ropes of land initially bought by Ghartey from Agyakwa"*

Again on page 10 of the same statement, learned counsel for the defendant stated thus:-

> *"In respect of suit No. L81/92, the errors of their Lordships in the Court of Appeal* ***are even more grievous"***

The use of very strong, inappropriate and sometimes insulting language on the part of learned Counsel for the plaintiffs, Mr. Asante-Ansong & Co. was more prevalent and pronounced.

For example, on page 4 of the statement of case for the plaintiffs, para 13, it is stated thus:

> *"I submit that my learned friend unfortunately* ***doctored the evidence on*** *record to give him a leeway to attack the Judges of Appeal Court"*

Then on page 5, paragraph 18, learned Counsel again wrote thus:-

> **"I submit that my learned friend** for the appellant **disingenuously massaged the evidence when** he wrote
>
> *'What the plaintiff in suit No. 81/92 is claiming as part of what she alleges Agyakwa gifted to his children, when infact she, Mrs. Aboa, the plaintiff in L 81/92 witnessed the payment of the balance of the purchase price for this land to Opanin Berkoe her father's successor by Ghartey.'*

On page 10 of the statement of case, learned counsel for the plaintiff states again as follows:-

> *"My learned friend* ***is either too ill at ease in telling the truth or he totally misapprehended the evidence*** *even that of his own client, the appellant".*

Finally, this is what learned counsel for the plaintiffs stated in concluding the use of strong and intemperate language thus:-

> *"Moreover if my learned friend* ***had read the record properly he would*** *have found that what Keelson said in cross examination on exhibit 17 was …"*

One need not be an Angel to conclude that the words referred to supra used by both learned counsel are strong, inappropriate and intemperate language.

The Supreme Court, speaking with one voice through me in the recent unreported case of ***Assemblies of God Church, Ghana v Rev. Ransford Obeng & 4 others*** suit No. J4/7/2009, dated 3rd February 2010 stated on abusive and insulting language by counsel as follows:-

> *"We will henceforth urge all learned counsel involved in preparation of statement of case for their clients especially at the Supreme court level to be mindful of the following:-*
>
> *Avoid abusive and insulting language not suitable for use in a court of law such as this Supreme Court. It is to be noted that learned counsel can still make their points and arguments very strongly without the use*

of language that is sometimes associated with persons in some other vocations. Not so however in a court of law."

Even though this is not a judgment, they are proceedings which have been processed and put before the highest Court of the land, the Supreme Court. We therefore find the caution and admonition by the Supreme Court in the case of ***Effia Stool v Fijai Stool [2001-2002] SCGLR 893*** where the court deprecated the use of offensive language in the writing of judgments and rulings by Judges and Adjudicators as appropriate and applicable to counsel as well. Bamford Addo JSC (as she then was), speaking on behalf of the Supreme Court in the above case stated as follows:-

It should be remembered by Judges and adjudicators that language is their working tool from which is deduced their intention and reason for their findings, judgments and rulings. For this reason, it is important to use words advisedly and to resort to judicial language whenever possible. Further, their choice of words must be clearly appropriate and non-controversial so as to avoid charges of neglect of duty to evaluate evidence properly, as has happened in this case, as well as charges of unfairness and bias which may be wrong and non-existent. The use of prudent, temperate and judicious language by Judges will no doubt prevent complaints of the nature raised in the grounds of appeal".

In a recent address to Judges and Magistrates of Ghana, on 1st October 2009, Her Ladyship the Chief Justice also had occasion to admonish Judges and Magistrates on the need to use decent language in their judgments. She stated thus:-

"But perhaps the worst damage we inflict on ourselves is when we use unsavory language in our judgments to attack fellow judges when we find ourselves in disagreement with them. I have had occasion to speak about this unprofessional behaviour, conduct which in my view, smacks of total lack of humility, but it does appear some of us are unrepentant. It is difficult to fathom why a judge would choose to treat his or her colleague in that manner, seeing that none of us can claim infallibility,

and for all we know the one castigating the other may rather be in error."

The combined effect of all these is that, Lawyers, just like Judges and Magistrates should endeavour at all times *(especially in all their pleadings and processes filed before the courts and in their viva voce submissions in court)* to use words advisedly and use words that are very decent and appropriate as the circumstances demand. A lawyer can still make his point very forcefully with the best of meanings without the use of offensive, intemperate, clumsy and insulting language.

In our opinion, a lawyer who measures up to the above standards is one that lives up to the expectation as a learned friend.

A word of caution, advice and admonition should equally go to all lawyers who take the privilege of venting their frustration in the loss of cases in the lower courts on the Judges and Magistrates of those courts with the use of harsh, offensive, intemperate and inappropriate language in the formulation of their grounds of appeal and statement of cases to desist from such conduct. This court clearly frowns upon and deprecates such conduct as not only inappropriate and unprofessional but also unlearned and ungentlemanly. It is expected that lawyers will henceforth take note and desist from the above conduct as has been illustrated in this appeal.

EVALUATION OF EXHIBITS

1. Exhibit A

This is an exhibit that was tendered by the plaintiff Mrs. Christiana Edith Aboa in suit No. 81/92 on 23rd February, 2001. It is an extract from the National Archives of Ghana and it is Gold Coast Order No. 17 of 1936. Page 216 Area R of this exhibit reads as follows:-

Name of Right Holder: **Kwabena Agyakwa**

Address: **Mampong**

Right:	**Ownership of land, Area R on plan, 1710 acres (exclusive of mining and timber rights) on Akim Abuakwa land.**
Extent:	**Area R, – 1710 acres**

From the above exhibit, it is clear that the father of the plaintiff bought the land from the Akim Abuakwa stool in 1924 or thereabout.

2. Exhibit B

This exhibit is significant in many respects. In the first place, the plaintiff testified that after the purchase of the land by her father Kwabena Agyakwa in 1924, the land in the area was declared a forest reserve in 1928, that is the ***Worobong Forest Reserve (Akim Abuakwa Portion).*** After the hearings of various claims made by the interested claimants, the Reserve Settlement Commissioner, His Worship Christopher Herbert Cooke, on the 11th of March, 1953 made the following orders on page 58 of the exhibit in respect of land belonging to the plaintiff's father:-

> "*At Mr. Beeton's enquiry, there were some fifteen sets of claimants whose claims to have purchased land from Akim Abuakwa were allowed. Two of these namely, Tetteh Kwaku Kwao and Tetteh Kwaku Adjowee mentioned above, were successful in their appeal to the West African Court of Appeal, by whose orders their lands were excluded from the area of the proposed Reserve.* ***As a result of the subsequent revision of the boundaries of the Reserve, the lands of seven more sets of claimants have now been totally excluded from the proposed Reserve, namely:-***
>
> 1. *Tei Kassaw and Asare Kwao*
>
> 2. *Nelson Darko*
>
> 3. *Kwasi Bodua Yohuno, Successor of Okyeame Kwaku Yohuno*
>
> 4. *Narh Adjebeng*

5. Kwabena Agyakwa

6. Kwaku Larbi

7. Tetteh Kwaku Carpenter"

It is therefore significant to note that, as at 1952, when the enquiries into the Worobong Forest Reserve commenced, Kwabena Agyakwa, the father and predecessor of the plaintiff in suit L81/92 was firmly ensconced upon the land. The enquiry report and judgment validated his rights of ownership and excluded same from the Forest Reserve. This in our view is a significant recognition of an overt act of ownership in respect of which sight should not be lost.

This is especially so if one considers the commencement year of the enquiry 1952 and the date of the report and judgment, 11th March, 1953. Kwesi Ghartey, the predecessor of the defendant was conspicuously absent in all the above proceedings, even though he was alleged to have been present on the land.

3. Exhibit C

This exhibit relates to the judgment in the transferred suit No. L 3/1956 dated 21st day of May, 1962 before Ollennu J*, (as he then was)* in a case intitutled

1. Nana Amoako Atta IV – substituted for Nana Ofori Atta II – Okyenhene, Kibi, Akim Abuakwa
2. Benkumhene Nana Antwi Awuah III substituted for Benkumhene Nana Antwi Awuah II of Begoro, Akim Abuakwa **- Plaintiffs**
   Bafour Kwabena Agyakwa Odikro of Onuku, near Begoro for and on behalf of himself and 24 others commonly known as the Agyakwa Company of Mampong Akwapim **-Co-Plaintiffs**
   Vrs
1. Nana Osei Kofi II Ohene of Kwahu Tafo
2. Nana Kwabena Adakwa Ohene of Bepong

3. Odikro Dankwa of Worobong, in the Kwahu Stool **- Defendants**
4. Nana Akuamoa Ampong II substituted for Nana Boateng Akuamoa VII **- Co-Defendant**

The plaintiff in explaining the reason for the tendering of this document stated that, after the enquiry report in exhibit B, her father shared the land to members of his group with whom he had purchased the land. After the sharing of the land, the plaintiff testified that, her father sold a portion of the land to a group of Krobo farmers at a cost of £2,000. The names of the Krobo farmers were given as follows:-

i. **Daniel Otieku**
ii. **Odonkor Appiah**
iii. **Paddy Agbor**
iv. **Dikye Kofi Wayo**
v. **Awo Tei Amoah and**
vi. **Osei Kakri**

According to the plaintiff these Krobo farmers were led by one Kwesi Photo aka Kwesi Ghartey, the defendant's predecessor, who acted as interpreter between her Twi speaking father and the Krobo farmers. She gave the expanse of land sold by her father to the Krobo farmers as 80 ropes at the base and 40 ropes at the side.

According to the plaintiff, her late father performed various overt acts of ownership on the land to wit, building of houses and establishment of a village, planted cocoa, plantain and a host of food crops.

However, when portions of the land were released after the Worobong Forest Reserve Enquiry, because it was on the border of the Kwahu State, a host of Kwahu farmers invaded the land and committed acts of trepass.

As a result, the suit in respect of which judgment in exhibit C was given was commenced in the High Court, Accra by the stools of Akim Abuakwa and Begoro respectively against the Kwahu Stool. However, as plaintiff's father and the other farmers had by then firmly settled on the land, they had to join the suit as co-plaintiff.

It is significant to note that judgment in exhibit C was in favour of the plaintiff therein and the co-plaintiff who was the plaintiff's father, Kwabena Agyakwa in respect of:-

i. Declaration that the boundary fixed as per a survey map is the boundary between the stool lands of Akim Abuakwa and the stool lands of Kwahu

ii. Recovery of possession and ejectment of the defendants and co-defendants therein from the land

iii. £2,000 special damages for trespass

iv. Injunction restraining the defendants and co-defendants

v. Accounts of mesne profits and cost

Another significant thing about exhibit C is that, even though the defendant's predecessor Kwesi Ghartey was visibly around, he was neither a party to the suit nor called as a witness by any of the contesting stools therein. This therefore means that Kwesi Ghartey did not appear in any of the enquiries in exhibit B and the proceedings in exhibit C. This then creates a very big doubt as to whether the claims by the defendant as to the extent of land holding the said Kwesi Ghartey was reputed to have owned before his death in 1975 or thereabout is sustainable.

5. Exhibit E

This exhibit is a plan of the land that was prepared by a licensed Surveyor, Anin-Ayeko at the instance of the then Eastern Regional Commander, Colonel Takyi. The title of the plan reads thus:-

> *"Showing the property of Opanyin Kwabena Agyakwa & Company situate at Akwamu Kotoku, Begoro Area 2040.60 acres."*

The Boundaries of land as indicated and shown on the plan are as follows:-

> *On one side by Kwaku Larbi & Co.*

On another side by Begoro Stool.

On another side by Adjabeng & Co, Kwaku Yohuno and Tettey Kwaku Adjiwe and

On the last side by Kwahu stool land

The date of the plan is 1st August 1976, and was admitted into evidence without objection on 20th July 2001. According to P.W.3 who tendered exhibit E, the defendant's predecessor Kwesi Ghartey took P.W.3 round his land and indicated to him the boundaries of the land.

On exhibit E, it is clear that the said Kwesi Ghartey's land is No. 7 and the features therein are:

1. Ghartey's Village
2. Concrete pillar marked W. D. Ghartey
3. Broken concrete pillar and
4. Deduakro village

It should also be noted that, apart from Kwabena Agyakwa whose land was also delineated on the said plan as No I, all the Krobo farmers whose children or descendants have taken action against the defendant in suit No. L 20/92 all have their parcels of land clearly delineated on the land in exhibit E.

It should also be noted that in all, about 127 farmers were indentified at the time of the preparation of the plan in early 1975 as being present on the land.

It should also be noted that PW3 knew Kwesi Ghartey long ago in the 1950's and in fact was reputed to have prepared exhibit I, which is a plan of Kwesi Ghartey's land which was accordingly tendered through him.

That being the case, it is clear that PW3 with his prior knowledge of Kwesi Ghartey and the land, should be considered as having performed his job as a professional.

In view of the relationship of exhibit 1 with exhibit E, we will tie it up with a discussion so that the two will follow a sequence.

Exhibit I – Tendered by the defendant through PW3

1. The first significant thing of substance about exhibit (one) I is the heading. It is headed thus:

> *"Plan of Land The Property of Mr. W. D. Ghartey of Winneba & Co, situates at Akwan Kotoku on Akim Begro (sic) Stool land, Akim Abuakwa District Shewn edged Pink Area 1052.50 acres or 1.645 sq miles".*

What is significant is the description of *"W. D. Ghartey & Co".* who and who are the company that has been used to denote the names of the persons who own the land covered by the plan?

Is this an admission of the fact that indeed the group of Krobo farmers, actually requested W. D. Ghartey to lead them in their land purchase transactions with Kwabena Agyakwa?

It should also be noted that the plaintiffs in suit No. 20/92 are the descendants or children of the original Krobo farmers who purchased land from Kwabena Agyakwa.

2. The second substantial point of significance about exhibit (one) I is the fact that it is signed by Nana Begorohene, Antwi Awuah III dated 6th February 1967.

This is a serious misnomer. The undisputed fact is that, Kwabena Agyakwa & Co. obtained their grant of land from the Begoro and Akim Abuakwa stools in or about 1924.

At the time, the Chief of Begoro was Nana Antwi Awua II and the Okyenhene was Nana Ofori Atta II.

The above were the principal characters at the time that Kwabena Agyakwa & Co. purchased the parcels of land from the respective stools.

For example, if one refers to exhibit B, the Worobong Forest Reserve Enquiry report, it is clear that Nana Antwi Awua II the chief of Begoro was the person who appeared before the Enquiry proceedings and confirmed the status of Kwabena Agyakwa and the other purchasers of land from them.

Again, if one refers to Exhibit C, it is clear that it was Nana Ofori Atta II and Nana Antwi Awuah II who together with Kwabena Agyakwa commenced the action in the High Court against the trespassers from the Kwahu Stool.

It was only after the death of the two chiefs that they were substituted by Nana Amoako Atta IV for Nana Ofori Atta II and Nana Antwi Awuah III for Nana Antwi Awuah II.

A very significant point is that, the portions of land in dispute, and indeed covered in this exhibit (one) 1 had long been divested by the Akim Abuakwa and Begoro stools.

There was therefore no interest and title left in those particular parcels of land for the chief of Begoro, Nana Antwi Awua III to be conveying to W. D. Ghartey & Co. on the plan as at 6th February, 1967.

What should be noted is that the land had already been conveyed to Kwabena Agyakwa & Co., and the two stools had confirmed the said conveyance by their support of Kwabena Agyakwa's title to the parcels of land in both exhibits B and C.

It therefore follows that Nana Antwi Awuah III did not have any title in the purported conveyance he seemed to be conveying to W. D. Ghartey & Co. The principle of *nemo dat quod non habet* will therefore apply in this case to further discredit and support the reason why the court rejected exhibit I.

Indeed, as was held by the Court of Appeal in ***Wordie v Awudu Bukari [1976] 2 GLR 271 C.A at 380***, applying the principle of *nemo dat quod non habet* in similar circumstances:-

> *"It follows that, although the conveyance the first appellant took from the Osu stool is valid so far as the necessary legal formalities are concerned, yet it conveyed nothing because the Osu Stool had no land in*

the area in dispute on the maxim nemo dat quod non habet. The first appellant cannot therefore legally rely on exhibit C the conveyance from the Osu stool which was a party to the consolidated suit before Jackson."

In the instant case, since the Begoro and Akim Abuakwa Stools had already divested themselves of title in the very parcel of land to Kwabena Agyakwa, any attempt by W. D. Ghartey, the defendant's predecessor to obtain a conveyance and secure validity for his document exhibit (one) 1 cannot hold since there was no interest or title left for them to convey.

It can thus be safely concluded that, the principle *nemo dat quod non habet* applies whenever an owner of land who had previously divested himself of title in the land previously owned by him to another person, attempts by a subsequent transaction to convey title to the new person in respect of the same land cannot be valid. This is because an owner of land can only convey what he owns, and having already divested himself of title, the new occupant of the Begoro stool Nana Antwi Awuah III cannot revoke what his predecessor had done. Exhibit I is therefore a worthless document.

With the above, we are of the considered opinion that exhibit I has no evidential value capable of any consideration. The trial court and the Court of Appeal were therefore right by not relying on it

Exhibits F and 18

Both exhibits F and 18 relate to series of minutes taken at meetings convened at the instance of the Eastern Regional Commissioners or Ministers to solve the worsening security problems arising from the land disputes touching and concerning the lands in dispute.

These exhibits are significant in the sense that they give a historical background to the plan prepared at the instance of the Regional Minister Colonel Takyi and tendered in evidence as exhibit E.

Exhibit 18 on the other hand is significant in the sense that it confirms the following positions:-

1. That it was Kwabena Agyarkwa and members of his company who bought land from the Akim Abuakwa and Begoro stools.

2. Kwabena Agyakwa on his part sold portions of the land to W. D Ghartey and the Krobo farmers.

3. W. D. Ghartey never bought land from the Akim Abuakwa or Begoro stool directly.

4. There was the admission of the presence of a large number of Zabrama or people of northern origin on the disputed land.

5. There were series of acts of trespass, plunder, pillage and lawlessness on portions of land occupied by the plaintiff's herein by third parties introduced onto the land by the defendant.

6. These acts of insecurity received the serious attention of the Regional Ministers for the Eastern Region

7. The persons reputed to be working for the defendant herein alone number close to about 144 as at 19th August, 1977.

As a matter of fact, DW2 Kwabena Osei, in answers to questions under cross-examination stated that defendant had about 74 Grunshie farmers on the land, and not Zabrama people. This in our view supports a material averment of the plaintiffs, in that, the defendant brought people of northern origin who committed acts of trespass on the disputed land. It is like defendant's witness, supporting plaintiff's case.

Exhibit 2

This is the Letters of Administration granted the defendant in respect of the Estate of his Uncle William David Ghartey. From this exhibit, it is clear that W. D. Ghartey died on the 1st day of March 1975 and that the defendant then Capt. John Kwesi Keelson had been appointed as the Administrator of the Estate of W. D. Ghartey with effect from 18th November, 1975.

It is therefore clear that the said defendant has the requisite capacity so far as all matters concerning the estate of W. D. Ghartey are concerned.

For a very long time, many litigants and counsel have taken the view that Letters of Administration are procured only to support and validate their capacity. That might very well be the case. However, there is also a declaration of the movable and immoveable properties of the deceased Intestate, which is a key ingredient of a Letters of Administration Certificate.

In the instant case, it is boldly written on exhibit 2, that the net worth of the entire assets of W. D Ghartey as was sworn to by the defendant which qualified him and enabled him to obtain the Letters of Administration is under ¢2,103.00 (Two Thousand, One Hundred and three cedis) as at 18th November, 1975.

Indeed, if as is stated by the defendant that W. D. Ghartey left a total of 1052.50 acres of land including several other assets then the amount of ¢2,103.00 as the net worth of the deceased W. D. Ghartey is woefully inadequate, and or misleading.

It should be noted that, courts of law should always evaluate the worth of a deceased's estate whenever a dispute arises as to the assets of the deceased person when he was alive from the depositions sworn to before the grant of an L/A. If indeed W. D. Ghartey had land to the size of 1052.50 acres, then assuming an acre of land is conservatively put at two cedis (¢2.00) then the total acreage will be valued at ¢2104. That will therefore mean that, W. D. Ghartey did not have any other assets, like houses, furniture, household chattels, dresses, shoes, clothes, jewellery, farms, bank accounts etc.

From our assessment of the value which the defendant himself put on the worth of his uncle, it is clear that he did not, and could not be the owner of the 1052.50 acres of land that he was reputed to have owned.

Persons preparing legal documents for deceased persons like letters of administration should be circumspect in ensuring that they give an accurate, detailed account of all the particulars required. This is because a legal document like letters of administration must be taken at their face value not

only for conferment of capacity but also as the worth of the person whose intestate properties are in dispute. Using the above principle, the defendant has an uphill task in convincing this court that his case must be accepted in place of the plaintiff's case.

It should be noted that, irrespective of the discrepancy in the total worth of the assets stated in exhibit 2 there are other cogent pieces of evidence on record why the plaintiff's cases are to be accepted, in preference to the defendant's case.

Exhibit Z

This is the survey plan that was ordered by the court and was eventually tendered by C.W.1, Yaw Aboagye Kyei who at all material times worked in the Regional office of the Survey Department in Koforidua. There is no doubt that the said C. W. I, is really competent and has all the requisite qualifications as a Surveyor. He accordingly tendered a survey plan of the land, marked as exhibit Z on 19th September, 2000 before the learned trial Judge Acquaye J, (as he then was).

The judgment of the learned trial Judge, which was confirmed by the Court of Appeal in relation to exhibit Z, must be understood in proper context. What it meant is that the defendant, in indicating the features and the land size of his land, used the same method he applied when he procured the plan prepared and tendered as exhibit I (one). As has already been graphically discussed and analyzed, exhibit I has been torn into pieces and has no legitimacy to stand on its own.

If therefore, the defendant in giving instructions to C.W.I towards the preparation of exhibit Z used the same criteria, then it follows that for the same reasons exhibit Z must be rejected for lack of credibility in so far as it relates to defendant's portion of the land. What must be noted is that, Survey plans generally are prepared using features that are credible and prominent and based on overwhelming overt acts of ownership. These include but are not

limited to corner pillars, natural or original boundary features like Ntome trees where these are applicable, anthills, streams, rivers, ruined villages, sites of some trees specifically planted to indicate human habitation like coconut, mango, palm trees, mahogany, citrus, etc, fetish grove or shrines, farms or farmsteads, and credible boundary neighbours to correspond with the description of the land given in the case

In the instant appeal, the defendant called D.W.I Kwame Ghartey a stepson of Kwesi Ghartey who lived and worked with him on the land in dispute. From the testimony of this witness, it is clear that the land upon which defendants predecessor owned, lived and worked upon is no more than 100 ropes.

This piece of evidence is clearly inconsistent with the land size that the defendant has claimed. The matter has been made worse for the defendant, because he claimed it was DWI and another nephew of his uncle, called Kow Pereba Ansah who showed him portions of his uncle's land. This is exactly what he said in his evidence in chief

> *"After my uncle's death in 1975, I first went on the land in April 1975. I went there to inspect the general area of my uncle's immoveable properties in the Miaso area. It was my uncle's son and his nephew call Kow Pereba Ansah who was staying with him. The son was called Kwame Ghartey but is now staying at Abosso in the Fanteakwa District. Ansah is at Winneba now. After I had been shown the boundaries of the land I went back to Accra and later started working on the land by employing labourers to assist me."*

It is therefore clear that the defendant cannot claim land more than the persons who showed him the land claimed Kwesi Ghartey purchased.

There is sufficient justification for both the trial court and the Court of Appeal rejecting the land as was claimed by the defendant in both exhibits Z and I respectively.

We are therefore of the considered view that, in construing the probative value of a survey plan, apart from the features which the court might take into consideration, pieces of material evidence, like testimonies of witnesses about

their knowledge of the extent of land and its possible effect on the instructions given to the Surveyor are indicators which should not be taken lightly. In the instant case, such evidence coming as it were from the defendant and confirmed by DWI have been very effective in reducing the credibility of the defendant's assertion that his uncle purchased 1052.50 acres of land from Kwabena Agyakwa.

Exhibits 3-17

These exhibits undeniably are purchase receipts, tendered by the defendant as proof of purchase of land by his uncle Kwesi Ghartey from Kwabena Agyakwa on the one part. On the second part, are also receipts indicating that kwesi Ghartey sold land to some Krobo farmers.

What we have observed in the writings on most of these receipts is that they all appear to be in the same handwriting. Indeed if the writings on exhibit 17 are also taken into consideration against the background that it is reputed to be a note book kept and belonging to Kwesi Ghartey, then there is no doubt that he is the author of the writings in exhibits 3 – 16^{B}.

The second observation we wish to make is that, the said receipts do not specifically identify the transactions to any parcel of land. It is a desirable practice for receipts involving transactions touching land to specifically refer to the land and perhaps a description of same. The absence of particulars of the description of the land transaction on the receipts does not negate or nullify the said transactions. It only casts doubts when in this case, the defendant is claiming that Kwesi Ghartey by those receipts purchased 1052.50 acres of land from Kwabena Agyakwa. The absence of the extent of land so purchased in the circumstances becomes very crucial.

Thirdly, in a significant number of cases and for example, exhibits 4, 5, 6, 7,8,9,11,13 we observe that the transactions were witnessed by some persons. Prominent among these persons are, Osei kakri, Odonkor Appiah, Yaw Tutu and Tetteh Sosime. Osei Kakri and Odonkor Appiah no doubt are the original Krobo farmers reputed to have purchased the land in a syndicate from Kwabena Agyakwa.

In view of all the above observations, the findings of the learned trial judge which were confirmed and explained by the Court of Appeal in their judgment when they stated per Aryeetey JA (as he then was) is very revealing as follows:-

> *"At page 2 of exhibit 17 on the left side the five payments for the total price of the 80 ropes of land which Ghartey purchased from Okyeame Agyakwa are recorded and the five recorded payments reflect five of the receipts which the defendant tendered in evidence. These are exhibits 3, 4, 5, 6 and 8 which are at pages 422, 423, and 424 respectively of the record of appeal.*
>
> *The five receipts relate to the completed payment of the sale transaction recorded at page 2 of exhibit 17. Therefore they could not be related to sale transaction, payment for which continued after the death of Okyeame Ghartey.*
>
> *None of the five receipts I have referred to was witnessed by the plaintiff's predecessors or any one else. That is in sharp contrast with the remaining receipts which were witnessed by others including some of the predecessors of the plaintiffs. That of course lends support to the plaintiff's stand that when payments were made to Agyakwa on behalf of the plaintiff's predecessors there were witnesses who were represented on the receipt. I am of the view therefore that the learned trial judge was right when he came to the conclusion that it was the predecessors of the plaintiffs who purchased the land on which they carried out their farming operations and gave a portion of it to the defendant's predecessor, Ghartey.*
>
> *From the testimonies of the two surveyors, CW1 and PW3 who were invited under different circumstances to survey the land in dispute we are left in no doubt that the seven portions of the land which the six predecessors of the plaintiffs and the one predecessor of the defendant occupied after the land had been shared among them were clearly demarcated. There is also the evidence that the seven occupants of the various portions of the land built houses on the land and all of them lived*

in harmony until the death of Ghartey and the arrival of the defendant on the scene."

We associate and agree with the conclusions reached by the Court of Appeal on the above exhibits save for the following clarification.

The only exception we wish to make is that, we in this court have had the benefit of the original exhibits, and we have accordingly found out that exhibits 4, 5 and 6 were infact witnessed by predecessors of the plaintiffs in L20/92. This has re-emphasised the conclusions reached by the Court of Appeal.

As a matter of fact, the witness column is at the back of the original receipts, which unfortunately were not re-produced in the photo copies that were made and included in the appeal record.

Save for the above correction, since we agree with the said conclusions, that will end our discussions on the exhibits used and tendered during the trial.

THE GROUNDS OF APPEAL

We have in a significant manner already dealt with the grounds of appeal in our discussions, comments, and analysis of the exhibits tendered in this case. We will therefore deal briefly with all the grounds of appeal in the manner in which learned counsel for the defendant argued them.

The defendant raised the issue of capacity of the plaintiff in suit No L81/92. Since the issue of capacity is very crucial and fundamental, it will be considered and disposed of before we proceed with further comments in this appeal.

GROUND 1 OF APPEAL IN SUIT NO. L81/92

1. The learned Judges of the Court of Appeal erred when they held, affirming the holding of the High Court, that the Plaintiff/Respondent/Respondent had capacity to institute the action against the Defendant/Appellant/Appellant.

It appears learned counsel for the defendant might have abandoned this ground because he did not advance arguments in support thereof.

However, it has to be noted that, the issue of capacity like jurisdiction is fundamental, and whenever this is raised it must be dealt with early to ensure that the issue of lack of capacity does not affect the substance of the action.

In this appeal, there is no doubt that the plaintiff herein is a daughter of Kwabena Agyakwa. However, because of the system of inheritance among the Akan generally, which is matrilineal, the plaintiff not being a customary successor to the estate of her father cannot automatically succeed him. However, the plaintiff in her testimony stated that her father gifted the portion of land in dispute to his children. The defendant did not deny the said evidence and infact did not cross-examine the plaintiff when she testified that the land had been gifted to her and her other siblings by their father, Kwabena Agyakwa.

We accordingly endorse the conclusion of the Court of Appeal when it held thus:-

> *"the court dealt with the issue of capacity of the plaintiff and came to the conclusion that from the evidence on record the plaintiffs had capacity to bring the action."*

This ground of appeal is thus dismissed.

GROUND 2 IN SUIT NO L 81/92 AND GROUND 3 IN SUIT NO L20/95

2. The learned Judges of the Court of Appeal erred in entering judgment for the plaintiff/respondent/respondent as she failed to prove title to the land in dispute.
3. The learned Judges of the Court of Appeal erred in entering judgment for the plaintiff/respondents as they failed to prove title to the land in dispute.

From our assessment of the above grounds of appeal, it is our considered view that for the plaintiffs' to succeed they must be deemed to have led credible evidence to discharge the onus that lies upon them by virtue of their positions

as plaintiffs as has been laid down in sections 11 and 12 of the *Evidence Act, 1975 NRCD 323.*

We have considered the decisions in the following cases on the burden of persuasion which a plaintiff has to satisfy in civil cases, to wit trials involving title to land, in order to succeed.

The cases are:

1. ***Ricketts v Addo [1975] 2 GLR 158 at 166 C.A***
2. ***Nartey v Mechanical Lloyd Assembly Plant Limited [1987-88] 2 GLR 314, per Adade JSC***
3. ***Odoi v Hammond [1971] GLR C.A per Azu-Crabbe J.A (as he then was)***
4. ***Odametey v Clocuh & Anr [1989-90] 1 GLR 14, at 28 where the Supreme Court spoke with one voice through Taylor JSC of blessed memory.***
5. ***Ebusuapanyin Kwame Ohember & Anr vrs Nana Obura Asankoma III and Anr unreported unanimous judgment of the Court of Appeal suit No. 39/2000 dated 17th July, 2009, Coram Dotse JSC presiding, Aryeetey JA as he then was, and Mariama Owusu JA where the court stated the following as steps that are deducible from the ratio in the decisions in Odametey v Clocuh already referred to supra.***

    i. It has to be considered whether the plaintiff has been able to make a case upon his or her testimony to entitle him or her to be granted reliefs upon his claim.

    ii. Secondly, it has to be considered whether the plaintiff's case will entitle him to relief in view of the defendant's evidence.

    iii. Thirdly, it has to be considered whether if the plaintiff having failed to make a case from his testimony can rely on the weakness in the case of the defendant and ask for relief.

iv. Consideration of the weakness of the defendants case when he testified.

v. Whether the weaknesses in the defendants case enure to the benefit of the plaintiff's case.

vi Finally, the court has to consider whether the plaintiff can rely on the weakness of the defendants' case, to strengthen his case – this latter stage would seem to be contrary to the principle laid down by Webber ***C.J in Kodilinye v Odu [1935] 2 WACA, 336 at 337.***

Applying the above stages of proof to the circumstances of this appeal, we are of the considered view that the plaintiff have been able to lead credible and convincing evidence by themselves and also supported by their witnesses.

For example, the plaintiff in suit No L81/92 apart from her own testimony tendered a number of credible exhibits to wit, A, B, C, E, F and court exhibit Z. The probative value of the above exhibits has already been discussed and there is no doubt that the plaintiff has been able to lead credible and acceptable evidence which in our view satisfied the criteria set out in the case of ***Odametey v Clocuh*** already referred to supra where Taylor JSC stated the opinion of the Supreme Court thus:

> *"I think the current principle is quite clear at least since 1st October 1979 when NRCD 323 came into force. If there was ever a doubt about the true principle, although I am firmly of the view that there has never been any doubt, then NRCD 323 has now definitely cleared all possible doubts. The position is thus:-*
>
> *If the plaintiff in a civil suit, fails to discharge the onus on him and thus completely fails to make a case for the claim for which he seeks relief, then he cannot rely on the weakness in the defendants case to ask for relief. If however, he makes a case which would entitle him to relief if the defendant offers no evidence,* ***then if the case offered by the defendant when he does give evidence discloses any weakness which tends to support the plaintiffs claim,*** *then in such a situation*

the plaintiff is entitled to rely on the weakness of the defendants case to strengthen his case."

The change in the decision delivered long ago by Webber CJ in the Kodilinye v Odu case is therefore quite clear.

Having held that the plaintiff in suit No L 81/92 satisfied the standard of proof set out in the Odametey v Clocuh case supra, we are also of the view that plaintiff's witnesses namely:

PW1 - Ghartey Boateng Sampong

PW2 - Alhaji Mohamed Kwame Osei

PW3 - Enim Ayeko – Surveyor who prepared exhibits E and 1

PW4 - Tetteh Narh

As a matter of fact, the testimony of PW1 has been so overwhelming in many respects.

This is because, as a Kwahu citizen we consider him as independent and therefore attach a lot of weight to what he said. He not only confirmed the evidence of the plaintiff in suit No L81/92 but also laid a very strong basis for the case of the plaintiff, the descendants of the Krobo farmers in suit No.L20/92.

In addition, PW1 demolished the case of the defendant to such an extent that there is no point in wasting time on any further discussions.

On the other hand, the evidence of the plaintiffs in suit No. 20/92 and their witnesses have also been very credible, consistent and highly probable and convincing. What must be noted is that, in evaluating the case of the plaintiffs in suit No L20/92, the background and foundation evidence led by plaintiff in suit No L 81/92 and the exhibits tendered must be taken into serious contention.

Quite apart from the above, the case of the defendant has been so discredited and is also inconsistent in relation to other pieces of evidence on record that

we are not able to accept it. Refer to analysis on exhibits 1, 2 and 3-17. These have been so much discredited that, under the circumstances we dismiss the above two grounds of appeal urged on us by the defendant.

GROUNDS 1 AND 4 IN RESPECT OF SUIT NO L 20/92

1. The learned Judges of the Court of Appeal erred when they held, affirming the holding of the learned trial Judge, that on the evidence the Krobo farmers purchased the land jointly with G. D. Ghartey.

4. The learned Judges of the Court of Appeal erred when they held, affirming the holding of the learned trial Judge, that the defendant/ appellant/ appellant had trespassed on plaintiff/respondent/respondent's land when on the evidence on Record the Respondents had clearly failed to prove that title to the disputed lands were vested in them or that they had right to possession superior to that of the appellant.

In considering the above two grounds of appeal to this court, we have been minded to take note of the fact that, both the trial High Court and the Court of Appeal have all made concurrent findings of fact of very important issues.

These facts or issues have been materially and or substantially confirmed by this court. There are well established principles upon which a second appellate court, like this Supreme Court will depart from the findings made by a trial court and concurred in by an appellate court.

See cases of:

1. Achoro v Akanfela [1996-97] SCGLR 209, holding 2

2. Doku v Doku [1992-93] GBR 367

3. Koglex Ltd (No.2) vrs Field [2000] SCGLR 175 and

4. The unreported unanimous decision of this court in suit No. CA/J4/7/09 dated 3rd February 2010, intitutled ***Assemblies of God Church, Ghana***

vrs Rev. Obeng & others where the Supreme Court spoke with one voice through me as follows:-

> ***"There is this general principle of law which has been stated and re-stated in several decisions of this court that where findings of fact such as in the instant case have been made by a trial court and concurred in by the first appellate court, in this case the Court of Appeal, then the second appellate court such as this Supreme Court must be slow in coming to different conclusions unless it is satisfied that there are strong pieces of evidence on record which are manifestly clear that the findings of the trial court and the first appellate court are perverse."***

In the instant appeal, we find no such perverse condition prevailing to warrant this court to interfere and or intervene in the findings of fact so ably made by the trial court and concurred in by the learned Justices of the Court of Appeal.

On our own, having evaluated the evidence on record, the testimonies of the parties as well as their witnesses, as well as the relevant exhibits in the case, we are of the considered opinion that the finding that the Krobo farmers purchased the land as a result of which W. D. Ghartey became a beneficiary as he was appointed their leader because of his special skill cannot be under estimated.

In similar fashion, considering the overwhelming evidence on record there is no doubt that the defendant has committed trespass on the land of the Krobo farmers and of the plaintiff's generally.

In the first place, the plaintiff's have been able to prove to our satisfaction the fact that their predecessors acquired the land from the predecessor of the plaintiff in suit No L 81/92.

The plaintiff therein confirmed it and supported it with relevant and convincing evidence through the tendering of documents.

Secondly, there have been massive overt acts of ownership established by the plaintiffs about their strong presence on the land.

Thirdly, it should be noted that, because the defendant as it were is challenging the title of his predecessor's grantor i.e. Kwabena Agyakwa, he has not been able to provide any credible documentary evidence save the self serving exhibits I and 2, 3-17, all of which have been discussed supra. Besides, evidence of DW2 clearly showed that the defendant had over 74 Grunshie people on the land. This is clear trespass committed by him.

We are thus unable to uphold the above grounds of appeal as well. They are accordingly dismissed.

Grounds 3 of appeal in suit No. L 20/92 and Ground 2 of Appeal in suit No. L 81/92 will next be considered.

3. The learned Judges of the Court of Appeal erred when they held, affirming the holding of the learned trial Judge, that the boundaries of the land owned by Ghartey (the predecessor of the Defendant/Appellant/Appellant are as shown in exhibit Z marked I and Exhibit E.

2. The learned Judges of the Court of Appeal erred when they held, affirming the decision of the learned trial Judge, that the boundaries of the land owned by Ghartey (the appellant's predecessor) are as shown in exhibit Z (marked 1) and exhibit E.

In our evaluation of the above grounds of appeal, we consider the effect and weight not only of the parties testimony in court, but also the importance of the exhibits tendered.

In the instant appeal, the defendant mentions exhibits E, Z and I all of which are Survey plans. It must be noted that all of them have been prepared under different circumstances. Whilst exhibit E was prepared under the direction of the Eastern Regional Minister, exhibit Z was prepared under the authority of the Court.

Exhibit 1 was prepared as a self serving document by Kwesi Ghartey and has been held not to have any evidential weight and value whatsoever.

Under the circumstances, the conclusions reached by the Court of Appeal cannot be said to be based on speculation. On the contrary, they should be considered as having based their conclusions on hard and acceptable principles of reception of evidence.

Thus, where a court ordered the preparation of a survey plan, and the other plan prepared under the auspices of a Regional Minister, where all the parties concerned had the opportunity to indicate and show their lands to the Surveyor in an open and transparent transaction, it is to be considered more credible and respectable exercise than the one sided survey plan prepared for and by the defendants predecessor, e.g. exhibit 1.

In addition, the plaintiffs in both cases and their witnesses must be taken to have led more credible evidence that the defendant. DWI for instance contradicted in material particulars the evidence of the defendant.

Under the circumstances we are of the view that the documentary evidence proffered by the plaintiff's has been able to support their case as against the case of the defendant. We find support in this by the decision of the Supreme Court in the case of ***Fosua & Adu Poku v Dufie (Deceased) & Adu-Poku Mensah [2009] SCLGR*** 310 holding 1 where the court unanimously held as follows:

> *"It was settled law that documentary evidence should prevail over oral evidence. Thus, where documents supported one party's case as against the other, the court should consider whether the latter party was truthful but with faulty recollection."*

In the instant appeal, having reviewed the evidence on record, we are of the firm belief that the recollections of the evidence by the plaintiff's have been more truthful than the defendant.

Secondly, the documentary evidence relied upon by the plaintiffs had been credible. They are therefore to prevail over the one sided exhibits tendered by the defendant.

We will therefore dismiss these grounds of appeal as well.

This will then leave us with the following grounds of appeal – Ground 4 of appeal in suit No. L81/92.

4. The learned Judges of the Court of Appeal erred when they made an order for recovery of possession of the disputed land in favour of the Plaintiff/Respondent/Respondent.

The order for recovery of possession granted by the learned trial Judge in favour of the plaintiff therein is in our opinion a natural and consequential order that flows from the facts and findings made by the trial court. Having so ably upheld the declaration of title in favour of the plaintiffs, the Court of Appeal had no option other than to confirm the order of recovery of possession.

It must be noted that, in an action for trespass where evidence abounds that the defendant has brought over 74 Grunshie people onto the land in dispute, and that piece of land has been found not to belong to the defendant then it follows that the person adjudged the owner must be put in possession. This is particularly important in view of the fact that the evidence of trespass has been confirmed not only by exhibit F, but also by the defendants own witnesses who confirmed the large presence of Grunshie men brought onto the land at the instance of the defendant.

Besides, sight must also not be lost of the fact that it has been generally accepted that before the entry of the defendant onto the scene, all had been quiet at Miaso that is before the death of his uncle Kwesi Ghartey.

The only logical deduction is that, it was the defendant who destabilised the serene atmosphere that prevailed in the area upon his entry. He must therefore be removed from the portions of the land that do not belong to him and vested in the bonafide owners.

This ground of appeal, like the others is also dismissed.

CONCLUSION

In the result, we dismiss the appeals filed by the defendant herein in the two consolidated suits, No L81/92 and 20/92 respectively. The appeals are accordingly dismissed as being without any merit whatsoever.

We therefore affirm the judgment of the Court of Appeal, dated 3rd April 2008 and by necessary implication that of the trial High Court, dated 21st January, 2003.

(SGD) J. V. M DOTSE

JUSTICE OF THE SUPREME COURT

(SGD) DR. S.K. DATE-BAHJ.S.C

JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE- BONNIE

JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO-BAMFO [MRS.]

JUSTICE OF THE SUPREME COURT

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ALBERT ADAARE FOR APPELLANT.

ODAME ADUFU FOR THE RESPONDENTS.