IN THE SUPREME COURT OF JUDICATURE
IN THE SUPRME COURT OF JUSTICE
ACCRA-GHANA

CORAM: AKUFFO (MS), JSC (PRESIDING)
ADINYIRAH (MRS), JSC
ANIN-YEBOAH, JSC
BAFFOE-BONNIE, JSC
GBADEGBE, JSC

CIVIL APPEAL
SUIT NO: J4/35/10

17TH MAY 2011

HAWA MUSAH ----- PLAINTIFF/APPELLANT/APPELANT

Vs

FATI MUSAH ----- DEFENDANT/RESPONDENT/ RESPONDENT

J U D G M E N T.

GBADEGBE JSC:

We begin this delivery with the statement that this case is in our opinion another example of how simple fact situations in the dealings between blood relations often end up in the courts requiring pronouncements that involve important questions of law. In our view although this is a vindication of the capacity of the legal system to order our lives, it would have been preferable if the action herein had been resolved through ADR. We must express our regret that such determinations have the effect of impacting negatively on the future relationship of the parties. Now to the facts on which this case turns.

Following the death of a person to whom we shall conveniently in this judgment refer to as B, and in the course of the distribution of his estate a building situate in Tamale that was being utilized as a hotel (the property) was allotted to the plaintiff herein and her daughter as well as four other persons. The beneficiaries and those who were responsible for the distribution of B's estate who from the evidence were not appointed by the court either as executors or administrators without a will annexed reached an agreement that if any of the beneficiaries was willing to buy the property it would be sold to him at an agreed price. We believe that this arrangement must have been intended to secure some financial provision for the beneficiaries by way of a lump sum payment and observe that before us nothing of consequence arises from it.

The admitted evidence discloses that the plaintiff offered to buy the property, a decision which meant that she had to buy off the interests of the other four beneficiaries amounting to two thirds of the one hundred thousand cedis. As she was not able on her own to raise the purchase price of the property, she approached the first defendant, her uterine sister to assist her in buying off the interest of the four beneficiaries. It appears that although the sister initially agreed, she resiled therefrom and had to be persuaded so to do by members of her family including her mother and indeed her husband. When subsequently she paid up the purchase price, she claimed she did so because the plaintiff had agreed with her that in relation to the quantum of her contribution which was two thirds of the value of the property, she was to hold two thirds of the interest in the property while the plaintiff and her infant child took the remaining one third.

After the payment for the property, the plaintiff and the first defendant could not agree on what the effective terms of their joint ownership of the property was to be and how it was to be documented. While the plaintiff insisted that they were to take equally, the first defendant averred that she was to take two thirds whiles the plaintiff and her infant child took one third. Attempts to have this resolved failed and the plaintiff took out the writ of summons herein claiming that she and her infant daughter were the sole owners of the property. Also claimed was a declaration that the amount paid by the first defendant towards the acquisition of the property was a loan to her wherefore she demanded an order of accounts from

the sister for the operation of the property as a hotel and an order of ejection and recovery of possession against her. As regards the second defendant she made a claim against him as an agent for the vendors (that from the evidence meant the other four beneficiaries of that particular property). The first defendant in her defence to the action filed a counterclaim that sought an order of specific performance of an agreement that she made with the plaintiff and her daughter relating to the purchase of the property and a further declaration that she takes two thirds of the value and the plaintiff and her daughter the remaining one third.

Such was the state of the pleadings that at the trial the crucial issues to be determined were that of whether the payment as on behalf of the plaintiffs or the first defendant in her own right as a purchaser. There was also the question of accounts from the first defendant to the plaintiffs. Closely linked with the capacity in which the payment made by the first defendant for the property is whether or not the property was ever offered to her to buy. The learned trial judge after what we consider to be an unhappy session that had him preside over a trial between two uterine sisters came to the conclusion on all the disputed issues of fact arising from the pleadings in favor of the first defendant and in particular dismissed the plaintiffs' claim in its entirety and allowed the counterclaim of the first defendant. The plaintiffs lodged an appeal from the decision of the High Court, Tamale to the Court of Appeal. At the end of the hearing of the appeal, the Court of Appeal affirmed the trial court's decision. The instant proceedings are as a result of an appeal to this court from the judgment of the Court of Appeal.

Before proceeding to consider the several grounds of appeal filed in the matter herein, we observe that in the main they raise for our determination purely matters of fact that were determined by the two concurrent lower courts in favor of the first defendant. Therefore based on a long established principle in such cases, it is our duty to consider whether Delivering the judgment of the court in the case of *Achoro v Akanfela* [1996-97] SCGLR 209 at 214, *Acquah JSC* (as he then was) made the following pronouncement:

> " *Now in an appeal against findings of facts to a second appellate court like this court, where the lower court had concurred in the findings of the trial court, especially in a dispute, the subject-matter of which is peculiarly within the bosom of the two lower courts or tribunals, this*

court will not interfere with the concurrent findings of the lower courts unless it was established with absolute clearness that some blunder or error resulting in a miscarriage of justice, is apparent in the way which the tribunal dealt with the facts. It must be established, eg, that the lower courts had clearly erred in the face of a crucial documentary evidence, or that a principle of evidence had not been properly applied……..or as pointed out in Robins v National Trust Co [1927] Ac 515, that the finding is so based on an erroneous proposition of the law that if that proposition is corrected, the finding disappears. In short, it must be demonstrated that the judgment of the courts below are clearly wrong: see Allen v Quebec Warehouse Co (1886) 12 App Cas 101."

We have patiently examined the record of appeal in the light of the grounds of appeal touching the findings and are left in no doubt that the decisions that are under attack in this appeal were arrived at after a careful consideration of the evidence that looked at in terms of the probabilities that turned on the case pointed more in the direction of the case of the first defendant. Since we are in agreement with the two lower courts on the issues of fact as found by them we would ordinarily have been content with the said findings and say nothing more on them but noting that learned counsel in the matter have made considerable submissions to us in the matter herein out of respect to them we wish to take some time in giving our attention to some of the issues raised. Regarding these, we wish to pose for our consideration certain questions the answers to which are supportive of the decision on appeal to us. If we may ask for example, why did the plaintiffs not call any of her relations to support her version of the circumstances in which the sister, the first defendant accepted to buy off the interests of the other beneficiaries? It seems that she thought that if called they would not support her narration of the events and unsurprisingly when they testified on behalf of the first defendant their evidence was contrary to what she had put forward.

Again, in the face of the withdrawal by the first defendant of her offer to pay up the required amount, we think that she must have had a change of mind only after she was persuaded that the plaintiff had now acquiesced in the sharing of 2.1 in regard to the ownership of the property. We are of the opinion that the decision of the first defendant not to provide the purchase price of the property as a result of apprehensions about her sister's real intentions were subsequently proved true by her conduct in refusing to sign the agreement relating to their joint ownership and the sharing of profits and losses which reasonably is traceable to her decision that

the interests be equally apportioned. Then there is the evidence that the plaintiff took her sister to the property and introduced her to the employees as a co-owner. In our view if the true facts were as contended by the plaintiff, she would not have introduced her as a co-owner, a conduct that constitutes a declaration against her own interest that compels us o believe the version of the first defendant. There has been a complaint by the plaintiff regarding the question whether not being a beneficiary of the estate of the deceased any offer to sell the property was made to her. From the evidence, we are of the opinion that the conduct of the other beneficiaries whose interest she purchased in accepting the money renders any such complaint by the plaintiff wholly devoid of any substance.

Examining the evidence as a whole in terms of its substance, the version of the first defendant had the simple color of the truth as it accorded not only with a common sense but the conduct of the plaintiff as well as her co- beneficiaries following the offer to buy the property by the 1st defendant and subsequently thereto. We also think that in the absence of any proof by the plaintiff of any agreement subsequent to the offer of the property which had the effect of conferring on the purchaser an interest less than that of those whose interests were purchased the first defendant stepped into the shoes of the beneficiaries whose interest in the property she had purchased. It being so, we think that the version of the matter as tendered to the trial court by the plaintiff looked quite improbable and was rightly rejected by both courts. See- section 80 (2) of the Evidence Act, NRCD 323 of 1975.

Having confirmed the findings of the two lower courts on the crucial matters of fact that were in dispute before them for determination, we are of the thinking that the counterclaim of the first defendant succeeds as indeed these two courts concluded. In our view the said awards may be said to truly bear the sense of justice in the matter and accordingly proceed to dismiss the appeal herein and affirm the decision of the Court of Appeal.

[SGD] S. N. GBADEGBE

JUSTICE OF THE SUPREME COURT

[SGD] S. A. B. AKUFFO (MS.)

JUSTICE OF THE SUPREME COURT

[SGD] S. O. A. ADINYIRA (MRS).

JUSTICE OF THE SUPREME COURT

[SGD] ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

[SGD] P. BAFFOE-BONNIE

JUSTICE OF THE SUPREME COURT

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