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

CORAM: ATUGUBA JSC. (PRESIDING)
ANSAH JSC.
OWUSU (MS.) JSC.
GBADEGBE JSC.
A. BAMFO (MRS.) JSC.

CIVIL APPEAL
NO. J4/36/2010

18TH MAY, 2011

NANA BEDIAKO ATWERE: PLAINTIFF/RESPONDENT/RESPONDENT
(Substituted By John Kwame Owusu)

VRS

OSEI OWUSU: DEFENDANT/APPELLANT/APPELLANT
(Alias Yaw Owusu Achiaw)

J U D G M E N T

OWUSU, JSC.

On 18/05/11, the court unanimously dismissed the Appellant's appeal. We now proceed to assign reasons for the dismissal.

This is an appeal against the judgment of the Court of Appeal, Kumasi: Coram: Mariama Owusu (Presiding), F. G. Korbieh and Irene Danquah JJA, delivered on 29th January, 2010.

The plaintiff/Respondent herein had by a writ of summons accompanied by a statement of claim issued in the High Court, Kumasi, claimed against the Defendant/Appellant herein the following reliefs:

(a) Declaration of title to all that 15 acre piece and parcel of building land compassing situate and lying at Amanfrom near Kumasi and bounded by the properties of Abondwoase Stool Land.

(b) Declaration that the Defendant is liable to forfeit the land described in paragraph (a) supra on grounds that the Defendant has breached the terms of the grant of the land described in paragraph (a) supra to him.

(c) Order for Recovery of Possession of the said 15 acre-parcel of land.

(d) Order of Perpetual Injunction against the Defendant herein whether by himself or his servants, agent's workmen or assign from in anyway interfering with the Plaintiff's possession occupation and enjoyment of the said plots.

The Appellants, resisting the Respondent's claim, entered appearance and filed a statement of Defence and counter claimed for:

(a) Declaration of title to and recovery of possession of all that 15.4 acre piece and parcel of building land situate and lying at Amanfrom near Kumasi and bounded by the properties of Abondwoase Stool.

(b) Declaration that the defendant has complied with all the terms of the grant.

(c) An order of perpetual injunction to restrain the plaintiff, his agents, servant, workmen, etc. or any person claiming fitle through him from interfering with the defendant's quiet enjoyment of the said land.

This statement of Defence and counter-claim was later amended with leave of the court granted on 26/02/07.

At the end of the trial, Judgment was delivered in favour of the Respondent in terms as follows:

"(a) Declaration that by his conduct the Defendant is liable to forfeit the land granted him by the plaintiff except the area developed by the Defendant for his school and denial and the plots the Plaintiff's elders sold for the Defendant.

(b) An Order of Possession of all other within the fifteen-acre area originally granted except as specified above.

(c) Perpetual Injunction restraining the Defendant by himself his agents, servants and privies and all claiming through him from having anything to do with the land. These should vest in the Plaintiffs. I award costs of GH¢1,000.00 for the Plaintiff.

Dissatisfied with the judgment, the Appellant appealed to the Court of Appeal on the omnibus ground that the judgment is against the weight of evidence.

The Court of Appeal, unanimously dismissed the appeal in its entirely and affirmed the Judgment of the trial court.

Aggrieved and dissatisfied with that Judgment, the Appellant is before this court on appeal on the grounds that:

(a) The Court of Appeal did not adequately consider the defence and counterclaim of the Defendant/Appellant/Appellant.

(b) The Court of Appeal erred in holding that the Defendant/Appellant/Appellant had committed a breach of the terms or conditions of the grant of the land by the Plaintiff/Respondent/Respondent and that the sale of the plots was illegal.

(c) The Court of Appeal erred in its conclusion that the letter from the Respondent's lawyer constituted legal notice and satisfied the requirements of Section 29 of the Conveyancing Act 1973, NRCD 175 for forfeiture of the grant of land to the Defendant/Appellant/Appellant.

(d) The Court of Appeal erred in dismissing the Defendant/Appellant/Appellant's appeal in its entirety and affirming the judgment of the trial High Court.

(e) The Court of Appeal erred in dismissing the Defendant/Appellant/Appellant's counterclaim as being without merit.

(f) The Court of Appeal erred in awarding costs against the Defendant/Appellant/Appellant.

(g) Additional grounds of appeal may be filed upon receipt of the Record of Appeal.

THE RESPONDENT'S CASE

It is the case of the Respondent that the Appellant who styled himself as Head pastor of a church, Come Preach Christ Christian Fellowship approached him as chief of Amanfrom and occupant of Abondwoase Stool for a piece of land for the purpose of building a school and a church in 1990.

Acting for and on behalf of his Stool, the Appellant was granted a tract of land measuring about 15.4. acres for a token fee of ¢2,700,00.00.

According to him, in addition to the payment of the token fee, the Appellant was to provide the Amanfrom Community with Electricity and Pipe-borne water. He mobilized his subjects to offer free communal labour whenever the Appellant worked on or cleared the land.

However, it came to his notice somewhere in 2001, that the Appellant had demarcated portions of the land into plots and was selling to private developers for residential purpose. He caused his solicitor to write to the Appellant to stop selling portions of the land as same was given to him conditionally.

At the time the letter was written, the Appellant himself was into in the country but the letter was received by the church members and when the Appellant returned, he came to him with a view to having the matter settled and pleaded with him to stop the court action.

All the same, those to whom portions of the land had been sold, continued to build. When he went to the land to find out the truth, the Defendant caused his arrest by the police alleging that he had gone there with fifteen (15) macho men to assault him. This led to his prosecution with some of his elders, at the end, they were acquitted and discharged.

He therefore instituted the action for the reliefs endorsed on his writ of summons.

THE APPELLANT'S CASE

The Appellant in his defence contends that the transaction between him and the Respondent was a sale and that the only obligation on his part was to build a church and school which he fulfilled. He said the ¢2, 700,000.00 (Two Million Seven Hundred Thousand) Cedis he paid was not a token free but the purchase price for the land which turned out to consist of 60 plots, each plot costing ¢45,000.00.

The demarcation and sale of the plots he continued, was done with the consent of the elders of the Respondent. That the first three plots were sold by the elders on behalf of the Appellant. He thus denied any breach on his part and therefore counter-claimed for the reliefs already set out in his counter-claim.

Before this court, he is asking for the following reliefs –

i. "That the Judgment of the Court of Appeal, Kumasi dated 29th January, 2010 dismissing the Defendant/Appellant/Appellant's appeal affirming the judgment of the trial High Court, Kumasi and awarding costs against the Defendant/Appellant/Appellant be set aside"

ii. That judgment be entered for the Defendant/Appellant/Appellant on both his appeal and counter-claim.

iii. Any other order as the Supreme Court will consider fit to make.

Arguing the appeal, counsel sought leave of the court to argue ground (b) first. This ground attacks the Court of Appeals holding that the Appellant breached the terms or conditions of the grant of the land and that the sale of the plots was illegal.

Counsel sought to identify the terms or conditions of the grant. He set them out from the statement of claim as –

(a) The payment of ¢2,700,000.00

(b) The provision of pipe-borne water amenities for the Amanfrom community.

(c) The provision of electricity for the Amanfrom community and

The Respondent from the statement of claim admitted that the ¢2,700,000.00 was paid and it was therefore his contention that the provision of electricity and pipe-borne water for the community were no conditions for the grant.

It is counsel's further submission that the land was acquired for the construction of a school and a church and that the Appellant did construct the church and the school.

In reply, counsel for the Respondent referred to Ex "1", the allocation paper issued to the Appellant on acquisition of the land and submitted that the Appellant breached the purpose for which the land was acquired.

Ex "1" is reproduced from the record as follows:

"**AMANFROM STOOL LANDS**

Plot A Block 12
Amanfrom Kwasi/Ash.
Date: 20TH FEBRUARY, 19

PLOT ALLOCATION
PLOT A BLOCK 12

PLOT NO. 1 – PLOT NO. 64 at Amanfrom.
I the undersigned acting for and on behalf of Amanfrom Stool have allocated the above mentioned plot to C. P.C. CHRISTIAN FELLOWSHIP.

The Allocation is made subject to the following conditions.

1. That, the Allottee will pay the ground rent involved.

2. That the Allottee will within Two years starting from the date above this allocation is issued complete the building on the plot.

3. That the Amanfrom Stool reserves the right to re-enter on the plot if any of the above conditions is not complied with and that the Allottee will then has no right of claim for replacement, expenses, compensation or recourse to any litigation.

SIGNED BY:
NANA BEDIAKO ATWERE"

From the allocation paper the Appellant was to complete construction of the church building and the school within two years from the date of the allocation i.e. 20/02/90.

The Respondent instituted the action on 23/01/03 when according to him it came to his notice that the Appellant was selling the plots to private developers for residential purpose in 2001.

The reason for the institution of the action was not essentially failure to provide electricity and pipe-borne water to Amanfrom community. He had caused his lawyer to write to the Appellant to warn him about his conduct i.e. selling of the plots to private developers. This letter was not in evidence but the Appellant did not dispute receiving such a letter.

Under cross-examination this is what he told the court

"(A) I went to Lawyer Awuah because initially I was in good terms with your client and he had called me when I came back from overseas and had gone to him and he had pointed out that Lawyer Awuah was his lawyer so I went to lawyer Awuah trying to solve the case amicably.

(Q) What case was there that you were solving amicably?

(A) That was the initial steps he took to re-claim the land.

(Q) What case?

(A) It was over this same case for which we sit here. He had already made lawyer Awuah write to us in my absence that because of the sale of the land he wanted his land back so on my return I went to see lawyer Awuah that was it.

In his evidence in chief, the Respondent told the court the subject matter of the letter was the sale of the land. To a question, "what was the subject matter of the letter?" The answer was "the subject matter was that, the land that he was selling, he should put a stop to it."

His evidence is that the conditions for the provision of electricity and pipe-borne water were verbal. Denying that there was any such obligation, the Appellant told the court that "being part of the community and being church members we had said that whatever we could be of extra (sic) blessing to the community, we would and we graciously supplied the town with electricity when we had the big plant - - - - This the Respondent however denied.

What is the nature of the transaction between the parties?

The trial court had found from the evidence that the transaction was a customary grant and this finding was not disturbed on appeal. Indeed in his statement of case before this court, counsel fro the Appellant accepts that the grant by the Respondent to the Appellant was a customary grant. This is what counsel said –

> **"The undisputed evidence on record is that the grant by the Respondent to the Appellant was a customary grant." - - -**

If the grant is a customary grant, in this case not a leasehold, will the provisions of the Conveyancing Decree and for that matter section 29 of the Decree (Act) N. R. C. D. 175 be applicable? Counsel has argued that even if for purposes of argument it is conceded that there was a breach for which the Respondent could exercise a right of re-entry, that right had not been properly exercised in accordance with section 29 of the Decree (Act).

The said section reads as follows:

> **"(1) A right of re-entry or forfeiture under any provision in a lease for a breach of any covenant, condition or agreement in the lease shall not be enforceable, by action or otherwise, until –**
>
> **(a) the lessor serves on the lessee a notice;**
>
> **i. specifying the particular breach complained of;**
>
> **ii. if the breach is capable of remedy, requiring the lessee to remedy the breach, and**
>
> **iii. (except where the breach consists of a non-payment of rent) requiring the lessee to make reasonable compensation in money for the breach; and**

(b) the lessee has knowledge of the fact that such notice has been served;

and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and (except where the breach consists of a non-payment of rent) to make reasonable compensation in money, to the satisfaction of the lessor, for the breach …

(3) this section applies notwithstanding any provision to the contrary in the lease."

"A Leasehold is an interest granted by the owner of land to a person to occupy his land for a specified period. A leasehold interest is a creation of the common law and not customary law." See Ghana Land Law And Conveyancing (2nd edition) by BJ da Rocha and CHK Lodoh p. 5

The transaction between the parties is not covered under the Conveyancing Decree (Act) N. R. C. D. 175. Section 29 of the Act therefore has no application in this suit. We do not therefore agree with the Court of Appeal on its holding that the letter written by the Respondent's lawyer to the Appellant constituted notice within the meaning of section 29 of the Conveyancing Decree (Act) N. R. C. D. 175.

Section 3(1) (h) exempts any transfer or contract for the transfer of an interest in land by oral grant under customary law from writing to give effect to sections 1 and 2 of the Decree (Act).

3(1) states that sections 1and 2 shall not apply to any transfer or contract for the transfer of an interest in land which takes effect –

"(a) -

(h) by oral grant under customary law."

Whatever interest that the Respondent granted the Appellant was not reduced into writing. It was an oral customary grant and therefore subject to customary law."

Whatever interest that the Respondent granted the Appellant was not reduced into writing. It was on oral customary grant and therefore subject to customary law.

Ex "1" was merely an allocation paper which by itself does not constitute title. In the case of BOATENG (NO.2) VRS MANU (2) & Another [2007-8] 1117, it was held inter alia "that an allocation paper is only an initial process to evidence that land has been acquired by an individual or corporation body. That kind of paper cannot by itself represent the acquisition -"

That notwithstanding, in KOMEY VRS KORKOR, [3 WALR] 331 a caretaker of Asere Stool Land had granted the usufructuary interest (i.e. a determinable estate) in an area of the stool land to the plaintiff, a stool subject, and later purported to make a similar grant of the same area to the defendant. The plaintiff thereupon commenced action for a declaration of his title and damages for trespass. It was asserted by the defendant that the original grant to the plaintiff had been for the purpose of building and that as a number of years had elapsed without the plaintiff commencing any building, he was deemed, by custom, to have forfeited his estate in the land which thereby reverted to the stool.
The court held as follows:

(i) On the evidence the re-grant of the land to the defendant was made without prior notice being given by the stool to the plaintiff, who was in possession, of the intention of the stool to take re-possession of the land by forfeiture for breach of condition.

(ii) Where a grant of land is made by a stool to a stool-subject for a determinable estate, the stool grantor may cause forfeiture of the grant for breach of condition - - - - - - - - -

(iii) Where a determinable estate is created by grant by a stool to a stool-subject for building purpose this is a condition of the grant the breach of which will entitle the stool to cause forfeiture of the grant. If a time limit within which the building is to be erected is not specified in the grant, then the grantee will be deemed to be in breach of condition if he fails to build within a reasonable length of time - - - - - - - - - "

This case has been cited just to establish the concept of forfeiture on breach of condition even under customary law. The facts are not on all fours with the case under consideration.

The case of AMOABIMAA VRS OKYIR [1965] GLR 59, also touches on forfeiture. The court however held that forfeiture, is not automatic. The offender must be duly notified of the breach and where possible be given the opportunity to remedy the breach.

The holder of a customary freehold title or interest forfeits his title or interest when he denies the title of his grantor.

The Court of Appeal per Korbieh JA. quoting from Ghana Land Law, an exposition, Analysis and critique by Prof. K. Bentsi-Enchil and relying on same concluded that the Appellant is liable to forfeit the property, subject matter of the grant. Writing on the topic "*forfeiture*" under customary law, the late professor of blessed memory had this to say:

> **"A leading condition of forfeiture in those situations is conduct on the part of the licensee or tenant, amounting to denial of the title of his licensor or landlord. An attempt to alienate such land by the licensee or tenant is regarded as amounting to such conduct."**

It is note worthy that in the present case, the Appellant had not attempted to sell but actually sold, as he himself admitted, fifteen (15) plots of the land.

Counsel for the Appellant had argued that the only conditions which the Appellant was obliged to fulfill from the Allocation paper was the building of the school and the church.

This had to be done within two (2) from the date of the allocation, failing which the Respondent reserved a right of re-entry.

Admittedly, the allocation paper does not speak of selling plots from the land granted the Appellant. That conduct of the Appellant without any reference to the Respondent amounts to a challenge to and denial of the Respondent's title. The breach is fundamental as it defeats the purpose for which the land was granted.

Any dealings with the land, unrelated to the purpose for which the land was granted, should entitle the grantor to exercise his right of forfeiture.

The letter written by the Appellant's lawyer constituted sufficient notice to register his displeasure and disapproval of the sale of the plots by the Appellant. Following receipt of

that letter, the elders of the church approached him and from the record according to the Respondent, this is what transpired –

> **"I told them that what the Osofo is doing is that he's made a fool out of us, for I gave him the land to build a church and a school even the school he's not built, and even the church I made announcement for the community to help build the church, so if he is selling the plot then he called me an idiot so because of that, that I went to lawyer Awuah to write to them say that, what they are doing, they should stop it."**

At that time the Appellant was out of the country but on his return, he went to see the Respondent and told him to stop the court action. This is his evidence:

> **"He said I should stop the court action, and my response was that I did also (sic) want litigation, so should let us resolve the issue peacefully. After that people still went ahead to build."**

It was when he went to the land to ascertain the truth and left a message for the Appellant for them to meet lawyer Awuah for a date to be fixed for settlement that the Appellant caused his arrest, framing a false charge of sending macho-men to go and kill him (Appellant) against him. This resulted in his arrest and subsequent prosecution, at the end of which he was acquitted and discharged.

The Respondent, had sufficiently notified the Respondent of the breach and given him every opportunity to remedy it but from the record, the Appellant would not remedy the situation and for that reason the situation did not call for a second notice as the court held in KOMEY VRS KORKOR already referred to.

It is the submission of counsel for the Appellant that the finding by the learned trial Judge that *"so yes, the plaintiff through his elders sold part of the land on behalf of the Defendant . . ."* raises estoppel against the Respondent who is consequently estopped from alleging a breach against the Appellant?

By this submission, counsel is urging upon the court that by the sale of part of the land on behalf of the Respondent he is precluded by his act or conduct from asserting a right (of forfeiture) which he otherwise would have had.

Counsel concedes that estoppel was not pleaded as the rules require but relying on the authority of AGYAKO VRS NAZIR [10 WACA] 277 submits that on the facts and evidence before the court, estoppel is clearly made out and the other party would not be taken by surprise so failure to specifically plead it is not fatal to a consideration of the plea by the court.

In that case the court on facts that appeared on the record stated:

> **"It is of course, a rule of pleading that estoppel must be specifically pleaded. In this case there were no pleadings and consequently no plea of estoppel, but we are of opinion that in the circumstances that should not prevent the plaintiff-Appellant from succeeding upon what is on obvious answer to the point decided against him in the court below."**

The Supreme Court in the case of SASU VRS AMUA-SEKYI & Anor [2003 2004] SCGLR 742 re-stated the position of the law per Bamford-Addo JSC (as she then was) as follows:

> **"But it has been held in some cases, correctly, that failure to plead estoppel per rem judicatem as required under order 19 r 16 of LN 140A can be cured by evidence on record such as would make the plea obvious . . ."**

In his judgment in Sasu vs Amua-Sekyi & Anor. (supra), His Lordship Dr. Date-Bah JSC at page 771 of the report also stated the point thus:

> "The instant case thus establishes that where, on the facts, an estoppel, which was not pleaded, should nonetheless be obvious to the party against whom it is raised, the court may ignore the failure to plead it and give effect to it. The justification for this line of thought is that the party affected is not likely to be surprised where the evidence on record makes the estoppel obvious. As Brooke J says above: "the

> object of the rule is to prevent the other party being taken by surprise and to give him full opportunity of meeting the plea." Where, therefore, the facts on record show that the other party could not have been taken by surprise, the rationale for the rule falls away and an exception may legitimately be made. I am therefore inclined to agree with Twumasi JA that on the facts of this case, the first respondent's failure to plead estoppel per rem judicatam should not preclude him from relying on it …"

These cases cited in support of counsel's submission, I am afraid are distinguishable from the case before us. The emphasis in those cases is where, on the facts, the plea is obvious to the party against whom it is raised, and therefore no surprise will be sprung on him.

In this case, on what facts is the plea of estoppel being raised? The Appellant's case is that, even if the selling of the plots constitutes a breach, the Respondent is estopped by his conduct from exercising his right of re-entry because he per his elders, led the Appellant's elders to sell three of the plots.

The unchallenged facts are that the Respondent himself was not in the country when the plots were sold allegedly by his elders. He did not complain on his return so he might be deemed to have acquiesced in the sale.

What is significant however is that he Appellant's members of the church had sought for the Respondent's consent and approval for the sale of the plots because they needed money when the Appellant was away from the country. The parties are not agreeable as to what the money was needed for. The evidence of the members of the church is that they needed the money to purchase a school bus whereas the Respondent's elders evidence is that they were told the money was needed to get the Appellant out of trouble in which he was involved.
Having sought permission and approval, the Appellant acknowledged the title of the Appellant in the sale of the plots.

With regard to the sale of the remaining thirteen (13) plots, no such consent of the Respondent was sought for and such a conduct as has already been stated, amounts to a denial of the Appellant's title.

On the facts and evidence before the court, a plea of estoppel will not avail the Appellant.

With the conclusion of the court that the Appellant's conduct rendered him liable for forfeiture I am of the view that the Appellant's appeal on ground (b) fails as the court of Appeal fell into no error in holding that the Appellant breached a condition of the grant by the sale of the plots.

Ground (c) succeeds to the extent that the Court of Appeal erred in its conclusion that the letter from the Respondent's lawyer constituted legal notice and satisfied the requirements of section 29 of the Conveyancing Act of 1973, (N.R.C.D. 175)

Grounds (a), (d), (e) and (f) were argued together. These grounds in substance are against the dismissal of the Appellant's appeal in its entirety and failure of the Court of Appeal to consider the defence and counter-claim of the Appellant.

The Court of Appeal adequately considered the counter-claim and rightly pronounced on it. The court fell into no error when for reasons stated therein, it dismissed the counter-claim as unmeritorious and the appeal in its entirety.

Grounds (a), (d), (e) and (f) are also dismissed.

Having concluded that the Conveyancing Decree (Act) is not applicable, the Appellant's relief against forfeiture is misplaced.

In the end the appeal before us fails and it is for the reasons assigned herein that same was dismissed.

(SGD) R. C. OWUSU [MS].

JUSTICE OF THE SUPREME COURT

GBADEBGE JSC:

I agree with the judgment of my worthy sister Rose Owusu JSC but wish to add a few words of my own on the issue of forfeiture in respect of which the appellant invites us to invalidate the decision of the Court of Appeal on the ground of noon-compliance with the requirements of section 29 of the Conveyancing Act, NRCD 175 of 1973(hereinafter conveniently referred to as "the Act").The appellant has argued strenuously that the respondent not having complied with the requirements of section 29.1 of the **Act**, the order of forfeiture is wrong and must be set aside. The complaint relating to the order of forfeiture was contained in ground (C) of the notice of appeal that reads as follows:

> "**The Court of Appeal erred in its conclusion that the letter from the Respondent's lawyer constituted legal notice and satisfied the requirements of Section 29 of the Conveyancing Act, 1973, NRCD 175 for forfeiture of the grant of land to the Defendant/Appellant/Appellant."**

Section 29 of the **Act** provides as follows:

> **(1) A right of re-entry or forfeiture under any provision in a lease for a breach of any covenant, condition or agreement in the lease shall not be enforceable, by action or otherwise, until-**
>
> **(a) the lessor serves on the lessee a notice:**
>
> **(i) specifying the particular breach complained of;**
>
> **(ii) If the breach is capable of remedy, requiring the lessee to remedy the breach; and**

(1) (except where the breach consists of a non-payment of rent0 requiring the lessee to make reasonable compensation in money for the breach; and

(b) The lessee has knowledge of the fact that such notice has been served;

And the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and (except where the breach consists of a non-payment of rent0 to make reasonable compensation in money, to the satisfaction of the lessor, for the remedy."

Sub-section 3 of section 29 of the Act, provides that the protection granted to lessees under section 29 (1) of the Act applies notwithstanding anything to the contrary in the lease. This sub-section seeks to avoid situations in which parties may by a stipulation in the lease waive the said provisions. In his submissions to the Court, the appellant contends that since the respondent did not specifically serve a notice in compliance with section 29(1) of the Act, the order of forfeiture is wrong. For this reason, the appellant invites us to invalidate the order of forfeiture that was affirmed by the Court of Appeal. This contention loses sight of the fact that the grant on which this action is based is an oral grant under customary law as provided for in sections 1, 2 and 3 of the **Act.** The rationale for this appears to be that writing is not of the essence of a customary transaction and that although writing may add to the grant under customary law, its absence cannot derogate from the validity of the grant. In the case before us the only evidence offered by the parties beyond the grant which was made under customary law as indeed the learned trial judge rightly found is the document referred to as the allocation paper, Exhibit 1.

That document mentions only two incidents of the grant- the payment of rent and the period within which the appellant is to construct a building on the land with a right of re-entry to be exercised by the respondent in default. There is no plan attached as required by law and no reference is made to a clearly defined area. The said exhibit , in my thinking does not comply with the requirements of section 4 of the Act regarding customary grants in that it has not been certified by a registrar of a court exercising jurisdiction in the area where the land is situated. It being so, exhibit 1

cannot have the attributes that the Act places on documents which satisfy section 4 of the Act in terms of section 5 of the Act. The said document not having satisfied the requirements of the law cannot be called in aid by the appellant.

That aside, even if exhibit 1 were to be construed as spelling out the conditions of the grant, the act on which the respondent relied to sue out the action is one that falls outside the stated conditions in the document, it being derived from the conduct of the appellant in selling the lands contrary to the purpose for which he had acquired it-construction of a church and school for the community. In such a situation, the appellant's conduct amounts to fundamentally changing the character of the transaction and entitles the respondent as the grantor for its effect is to deny his title as by his conduct the appellant had repudiated the title of his landlord. The appellant's conduct clearly shows that he was no longer acting under the grant he obtained from the respondent but as an owner in his own right. The evidence of a previous sale being done with the respondent's approval is a clear indication that in dealing with the land by way of sale without reference to his grantor, the appellant was denying his title to the land. Accordingly, by bringing an action to enforce forfeiture, the respondent was not acting under any condition attached to the grant but acting by operation of law as an owner whose title has been denied. It being so, the provisions of section 29(1) of the Act are inapplicable. The evidence on record discloses that the appellant was given the opportunity by the respondent to mend his ways but he would not and therefore by bringing the action, the respondent acted rightly.See: **MANU v AINOO** [1976]1 G. L.R. 457.

The right of forfeiture that the respondent took out the writ to enforce is one available to him at customary law and the provisions of the Act not having clearly stated that rights existing at customary law ire to be subject to its provisions, the respondent in our thinking could enforce his customary law right to bring to an end a conduct by his grantee that has the effect of denying his title to the land without first having to comply with the requirements of section 29(1) of the Act. See: (1) **WARNER v SAMPSON** [1958] 1 All ER 314; (2) **DOE d WILLIAMS v PASQUALI** [1793) PEAKE, 196, N.P.; (3) **DOE d. CALVERT** v **FROWD (**1828), 4 BING.557.

It is observed further in relation to section 29(1) of the **Act**, that the denial of title of the landlord by the appellant is a conduct that is incapable of remedy and therefore

the right to its enforcement is one that arises by operation of law and not under a stipulation in a lease. Any conduct that amounts to a denial of title of ones grantor as unfolded in the case before us has the effect of bringing the relationship of landlord and tenant to an end. It being so, there is strictly speaking, no lease or grant under which there might be stipulations or conditions that having been breached require to be remedied within the contemplation of section 29 (1) of the Act. In his judgment in the **WARNER** case (supra) **ASHWORTH J** at page 315, pronounced on the applicability of section 146 of the Law of Property Act, 1925 (the equivalent of our section 29) thus:

> "**It appears to me plain beyond argument that it would have been quite impossible for the landlord in this case to comply with those conditions and, moreover, the section does not contemplate the application of those conditions to such a situation as that of the present case. In my judgment, this is not forfeiture under any proviso, or stipulation in a lease; it is a forfeiture which arises by operation of law."**

It looks quite unreasonable that a tenant whose conduct amounts to a denial of his landlord's title and therefore brought the relationship of landlord and tenant to an end can turn round to say that the action by the landlord against him to forfeit the tenancy is derived from an agreement which by virtue of his voluntary conduct is no longer in existence. The conduct of the appellant in selling the land to others for residential purposes notwithstanding protestations from the respondent is an act that is fundamentally different from what he acquired the land for and quite frankly fraudulent. That conduct in my view denies the title of the landlord, bringing the grant to an end with the result that there is no lease or tenancy to which the provisions of section 29(1) that refer to "A **right of re-entry or forfeiture under any provision in a lease……."** are applicable**.**

Although the decision in the **WARNER** case (supra)on this point was set aside on appeal and reported in [1959] 1 All ER 120, the Court of Appeal in reaching the said conclusion thought that the facts on which the allegation of forfeiture was based did not amount to a denial of title such as to render the provisions of section 146 of the Law of Property Act inapplicable , it appears that the decision did not seek to overrule

previous decisions to the effect that where there has been a repudiation of title of the landlord, there is no need to serve a notice in compliance with section 29 (1) of the Act. See generally **Case No's 6621-6662 in the ENGLISH AND EMPIRE DIGEST**, Volume 31(2) of Replacement Issue of 1973 at pages 801-804. The same position was asserted by the learned authors at paragraph 440 page 344 in **Halsbury's Laws of England Volume 27 (Fourth Edition)** as follows :

> **"The statutory provisions do not apply to forfeiture for non-payment of rent, or probably, to forfeiture by reason of denial by the tenant of the landlord's title."**

One aspect of the ground of appeal that concerns section 29 of the Act is that the grant to the appellant was not expressed to be of a specific duration and appears to be for an indefinite period and as such it does not appear that it comes within the designation of a "lease "such as to have the provisions of section 29 of the Act on which so much reliance is placed of relevance to the exercise by the respondent of his right to bring the grant to an end by the action herein. In the Oxford Advanced Learner's Dictionary (International Student's Edition (7th Edition) at page 841, the noun lease is defined as follows:

> "**legal agreement that allows you to use a building, a piece of equipment or some land for a period of time usually in return for rent."**

This definition of the word "lease" finds support in Barron's **Law Dictionary**, 5th Edition at page 289 as follows:

> **"an agreement whereby one party (called the landlord or lessor) relinquishes his right to immediate possession of property while retaining ultimate legal ownership. Ordinarily when a Lease is made we find an agreement by the owner lessor to turn over specifically described premises to the exclusive possession of the lessee for a definite period of time and for a consideration commonly called rent."**

For these reasons, the ground of appeal that touches section 29 of the Act fails and

(SGD) N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT

(SGD) W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

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