IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA 2011

CORAM: ATUGUBA, JSC (PRESIDING)

AKUFFO (MS), JSC

ANIN-YEBOAH, JSC

GBADEGBE, JSC

AKOTO-BAMFO (MRS), JSC

CIVIL APPEAL
SUIT NO. J4/40/10

DATE: 23RD FEBRUARY, 2011

ANNA VICTORIA BART PLANGE ---- PLAINTIFF/APPELLANT/ APPELLANT

Vs

NANA EGYEI FOAH ---- DEFENDANT/RESPONDENT/ RESPONDENT

J U D G M E N T

GBADEGBE JSC:

This is an appeal from the decision of the Court of Appeal that affirmed the decision of the High Court, Cape Coast in an action that turned on the ownership of a piece or parcel of land situate at Momofra Akyenim in the Central Region. It appears from

the judgment of the Court of Appeal that the leaned judges accepted the determination of the trial High court. Delivering the judgment of the court, Piesare JA (as he then was) said by way of a comment on the appeal before them as follows:

> "*At the end of the day, the trial judge gave a straightforward and comprehensive judgment dismissing the plaintiff-appellant's claim, and entered judgment in favour of the defendant on his counterclaim. We have carefully examined the judgment, and we have no good reason to disturb that judgment."*

In our view the facts that led to the issue of the writ of summons herein in the trial court were as said by the learned judge of the Court of Appeal whose pronouncement has just been quoted relatively simple and turned on the question as to who owned the disputed land that on the admitted evidence was first acquired by the plaintiff's family by purchase. The defendant while admitting the prior ownership of the plaintiff's family pleaded a grant from the family to his predecessors in title on September 22, 1944. The said transaction of sale on which the defendant relied was covered by a deed that was registered as No 273A/1945. The relevant pleadings of the defendant on how they came to be possessed of the disputed land was averred to in paragraphs 7–10 of the statement of defence, which in our view provided the plaintiff with what we consider to be a full and frank disclosure of the reason why their claim of title to the land was being resisted. Reference is made shortly afterward in this delivery to the relevant pleadings for a better appreciation of the very narrow compass within which the action ought to have been contested in the trial court having regard to the case put forward by the parties. Since the defendant admitted the prior ownership of the plaintiff but relied

on a purchase by his ancestors from the plaintiff's predecessors in title, we think that the right to begin at the trial rested on the defendant and accordingly in considering the pleadings filed on their behalf in the trial Court, we commence with that of the defendant. The relevant pleadings of the defendant that answer the plaintiff's averment as to title that is asserted in paragraph 4 of the statement of claim is contained in the following paragraphs.

> "*7. In answer to paragraph 4 of the statement of claim, Defendant says that his great grand fathers; Atekye Panyin, Nana Amba Kainbah and John Braham all Atekyem Quarters and members of the Anona family of Elmina acquired the land in dispute from Jacobus Vanderpuye Neizer and Elizabeth Ackon alias Essi Kubil of Elmina.*
>
> *8. Defendant further says that the said Jacobus Vanderpuye Neizer and Elizabeth Ackon alias Essi Kubil acted for and on behalf of the late Kwamina Amissah, Anona family of Elmina.*
>
> *9. Defendant further says that his (Defendant) great grandfathers aforementioned in consideration of the land in dispute paid (twenty six pounds), a receipt for which was issued by the vendors and a deed of conveyance was then executed on September 22, 1944 to the purchasers and registered as No 273A / 1945.*
>
> *10. Defendant says that the land in dispute after its acquisition by the purchaser in 1944 became the property of the Nana Egyei Foah Anona family of Elmina and the family has since exercised uninterrupted right and control over same."*

Paragraph 4 of the statement of claim to which the above pleadings refer was expressed as follows:

"*The said land was acquired in the late 19th century by plaintiff's ancestor George Emissang aka Kwamina Amissah who was a lawyer by profession*."

In our thinking at the close of the pleadings the crucial issues for determination were correctly set out by the learned trial judge in the course of his judgment at page 164-165 of the record of appeal. We make reference in this regard to page 164 where the learned judge observed of the issues that turned on the pleadings for his determination as follows:

"*Basically, there are three issues, which issues are whether or not Jacobus Vanderpuye Neizer and Elizabeth Ackon @ Essi Kubil, members of the plaintiff, had alienated portions of the land, which land, ie the subject matter of the present suit. If so whether or not they had the capacity to alienate the land. Whether or not the land was given to the Defendant's ancestor to cultivate coconut thereon. There is the issue whether or not the defendant had perpetrated fraud."*

The learned trial judge then mentioned other issues for determination that included that of estoppel by the judgment in the case of *Mary Conduah* v Adzaye that was placed before him as part of the plaintiff's case. Clearly the learned trial judge appreciated the nature of the task before him and we find no fault with the manner in which he set out to determine the issues for trial. After what we consider to be a careful evaluation of the evidence the learned trial judge accepted the defendant's version of the matter in preference to that of the plaintiff. The evaluation to which we refer is found at pages 164 to 167 of the record of appeal. In particular, at page 167 he observed by way of his concluding remarks of the respective cases of the parties as follows:

> "In *this case the plaintiff did not adequately prove the boundaries of the land he is claiming, neither has he been able to show that his ancestors gave the land to Kweku Mensah to plant coconut. It is not enough for a plaintiff to make certain depositions of fact in his statement of claim and mount the witness box to repeat those assertions without evidence of any corroborative evidence in proof of his assertions. Consequently, I will dismiss the plaintiff's claim in its entirety and therefore make a declaration in favour of the defendant to that entire piece or parcel of land situate lying between Mboframa and Akwandah, the boundaries of which are in exhibit 2. The defendants are already in possession of the land so there is no need to make an order of recovery of possession."*

We think that the learned judges of the Court of Appeal came to the right conclusion on the evidence by dismissing the appeal. Having alleged by way of answer to the defendant's claim to have acquired the land fraudulently, in the face of the due execution of the deed of conveyance and its proof before the Registrar of the Divisional Court, Cape Coast on 27 September 1944, we think that his failure to introduce any evidence to sustain the said crucial averment fractured his denial of the purchase on which the defendant relied and rendered his adversary's case more probable than that which he asserted before the trial court. It appears that on the evidence and the recent acts of possession that were exercised on the land by the defendant, which acts were traceable to the purchase that they relied on the entire evidence pointed hugely in the direction of a verdict in favour of the defendant. It is observed that the document on which the defendant relied having been in existence for more than twenty years and acted upon by the possession of the

defendant rendered it a document that comes within the designation of an ancient document under section 130(2) of the Evidence Act, NRCD 323 which provides thus:

> "*Evidence of a hearsay statement that is not made inadmissible by section 117 if the statement is contained in a writing more than 20 years old and the statement has since been acted upon as true by persons having an interest in the matter*."

We are of the opinion from the admitted evidence that the defendant's family have been on the land for several years consequent upon the grant to them by the predecessors in title of the plaintiff and this must explain why the plaintiff was unable to call any evidence to support his allegation that their family had granted the land to a member of the family of the defendant to cultivate coconut thereon as a tenant. It is surprising from the evidence that the plaintiff was unable to call any other evidence to support his claim that the coconut plantation was made on their land and that there was at the date he testified in the matter arrears of ground rent owing to their family in respect of the farm.

Then there is the issue relating to the fact that the decision on appeal to us is one in which the Court of Appeal had affirmed the trial Court on findings of fact that turned on the pleadings. In line with settled judicial pronouncements, to succeed before us the plaintiff is required to satisfy us that the decision of the Court of Appeal that confirmed that of the trial court on issues of fact was one that contained an error or blunder resulting in a miscarriage of justice. We refer in this regard to the case of *Achoro* v *Akanfela* [1996-1997] SCGLR 209 per Acquah JSC (as he then was) at page 212 as well as *Jass Co Ltd* v *Appau* [2009] SCGLR 208.We have carefully read the statement of case submitted to us by the plaintiff on the grounds contained in the notice of appeal that originated these proceedings and

have come to the opinion after considering the record of appeal that there is no error or blunder that has the slightest effect of a miscarriage of justice. On the whole, we are satisfied with the decision of the Court of Appeal in the matter herein.

We say in regard to the purely legal ground of appeal that is numbered as one in the notice of appeal, which seeks to call in question the court's reliance on exhibits 1 and 2, the receipt for the purchase of the land and the deed of conveyance that the substance of the complaint that touches and concerns the non-compliance with provisions of the Stamp Act as well as the Public Records and Archives Administration Act, (Act 535) of 1997 that the issues raised by the said points were correctly expounded by the Court of Appeal and accordingly we shall spend no further time in considering them. We add that the document having been in existence before the coming into being of the two statutes, the presumption against statutory retroactivity applies to them.

On the appeal generally, we have observed that the grounds of appeal to this court that is contained at page 240 0f the re cord of appeal is a repetition of those that were previously filed in the Court of Appeal at page 168 of the record of appeal before the Court of Appeal save that where there was in the previous notice a reference to the trial court in the new one the words *"Court of Appeal"* have been substituted. Having come to the view that the decision on appeal to us was right, we think this is sufficient to dispose of the instant appeal for the reasons above.

The result is that the appeal herein is dismissed and we proceed to affirm the decision of the Court of Appeal.

[SGD] S. GBADEGBE J.S.C

JUSTICE OF THE SUPREME COURT

ANIN YEBOAH JSC:

I am unable to sit with my colleagues in this case as I have to travel to Kumasi to

Attend to other "judicial" matters. I, however, agree with the opinion of my learned brother Justice Gbadegbe that the appeal be dismissed.

[SGD] ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

[SGD] W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

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

JUSTICE OF THE SUPREME COURT

[SGD] V. AKOTO-BAMFO

JUSTICE OF THE SUPREME COURT

COUNSEL:

MAXWELL HALM REPRESENTS THE APPELLANT.

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JOHN MERCER (WITH COSMOS ANDOH) FOR THE APPELLANT.

MICHAEL ARTHUR-DADZIE FOR RESPONDENT.