IN THE SUPERIOR COURT OF JUDICATURE
THE SUPREME COURT
ACCRA-GHANA

CORAM: ADINYIRA (MRS.), JSC (PRESIDING)
ROSE OWUSU, JSC
DOTSE, JSC
ANIN YEBOAH, JSC
GBADEGBE, JSC

CIVIL APPEAL
SUITE NO: CA. J4/50/2010
18TH APRIL, 2012

EBUSUA PANYIN KWA KAKRABA **-PLAINTIFF/APP. /APPELLANT**
SUING FOR HIMSELF & ON BEHALF
OF THE ROYAL AWENADZE FAMILY
OF EDUKROM

VERSUS

KWESI BO, **-DEFENDANT/RESP. RESP.**
EDUKROM

J U D G M E N T

ANIN YEBOAH, JSC;

This is an appeal from the Court of Appeal, Accra, which affirmed the judgment of the High Court, Cape Coast. In these proceedings the appellant herein who sued as

plaintiff claimed for a declaration to the effect that as an overall head of the Royal Adwenadzi family of Edukrom he is the proper person to deal with the lands in Edukrom. Other reliefs to the effect that the land the subject matter of the dispute is vested in the overall head of family by virtue of a judgment and other reliefs which are ancillary were also sought. The plaintiff endorsed his writ as suing for himself and on behalf of the Royal Adwenadzi family of Edukrom.

In a lengthy statement of claim which accompanied the writ of Summons, the appellant traced the root of title of the family to pre-colonial times and asserted that ever since his ancestors migrated from Techiman to settle on the land, they had enjoyed undisturbed possession. According to the appellant it has always been the custom that the land in dispute is vested in the overall head of the family and the respondent herein (as the defendant at the High Court), who is an ordinary member of the family has no right to asset ownership of the land to alienate portions thereof. Several suits which the appellant claims to have been decided in his favour were pleaded to establish that the respondent had no right to assert ownership as he was not the overall head of family and for that matter the respondent is estopped per rem judicata by virtue of the judgment of William J. sitting at the High Court, Cape Coast. He further alleged that he was the family member who performed the customary rites concerning the burial of Kwesi Yaa and bore the funeral expenses. By that very fact he was the customary successor of Kwesi Yaa and therefore the head of the Royal Adwenadzi family of Edukrom.

The respondent as defendant at the trial court in response to the statement of claim filed a statement of defence traversing most of the allegations. He denied the appellant's leadership of the family even though he admitted that both of them are members of the same family. He pleaded that his section or branch of the Adwenadzi family, (that is, Edu Abekwa section) were the original settlers on the

Edukrom land and they were later joined by the appellant's section, that is Apentsen Kwakwa section. He contended that as original settlers, the respondents section is the rightful one to select an overall head of the amalgamated family and the only instance where a member of the appellant's section was appointed was due to the fact that there was no elderly person from the respondent's section. The respondent also pleaded the decision of Williams J, the Abura Traditional Council judgment and the Circuit Court case which ended at the Court of Appeal involving the two sections, in support of his case.

At the trial court, few issues were set down to be determined before Justice Nana Gyamerah Tawiah. After careful evaluation of the rival stories the learned trial judge held that after the tenure of Kwesi Bo as the overall head of family, no person (neither the appellant nor the respondent had been lawfully appointed as the overall head of the Royal Adwenadzi family. The learned trial judge ordered that none of the parties should hold himself out as the overall head of the family until a new head of family is validly appointed.

The appellant lodged an appeal to the Court of Appeal, Accra, which heard the appeal and dismissed it as without merits.

In dismissing the appeal, the Court of Appeal was of the view that the appellant as plaintiff failed woefully to discharge the burden of proof that he was the overall head of the Adwenadzi family. The Court of Appeal also relied on the several judgments pleaded by both parties in their respective pleadings and tendered at the trial court to hold that the respondent's section are the exclusive owners and custodians of Edukrom Stool Lands.

The respondent herein at the Court of Appeal lodged a cross-appeal against the final order in the judgment of the trial court at Cape Coast in which the learned judged ordered as follows:

> "I think it is only proper that I dismiss the claim of the plaintiff in its entirety. I shall, however order that each section should CEASE any further alienation of Edukrom lands until a proper overall head of the Adwenadzi family is appointed to take charge of the Edukrom lands"

The Court of Appeal set aside the order of injunction placed on the land by the learned trial judge and proceeded to declare title to the land in favour of respondent's section of the family as well as the Edukrom stool.

The appellant has appealed to this court on several grounds seeking the reversal of the judgment of the Court of Appeal. For a fuller record, the grounds of appeal are stated below;

a. The Court of Appeal did not adequately consider or did not consider at all the case of the Plaintiff/Appellant/Appellant.
b. The Court of Appeal erred in dismissing the Plaintiff/Appellant/Appellant's appeal.
c. The Court of Appeal erred in allowing the Defendant/Respondent's cross-appeal.
d. The Court of Appeal erred in declaring title to the Edukrom Stool and its lands for or in the Defendant/Respondent/Respondent and his family.
e. The Court of Appeal erred in setting aside the order of the trial High Court that each section should cease any further alienation of Edukrom lands until a

proper overall head of the Adwenadzi family is appointed to take charge of the Edukrom lands

f. The Court of Appeal erred in awarding costs against the plaintiff/Appellant/Appellant.

g. Further or additional grounds of appeal may be filed upon receipt of the Record of Appeal.

On record, no additional grounds of appeal were filed. We have taken the trouble to repeat all the grounds of appeal to expose the procedural flaws therein. The Supreme Court Rules, that is, CI 16 of 1996 Rule 6 (5) does not permit vague and other grounds of appeal which disclose no reasonable grounds to be argued. Even though this strict adherence to the rule appear to be relaxed on some occasions, we think several grounds of appeal in this appeal before us deserve to be struck out as they completely offend the applicable rules. In our respectful opinion, grounds (b), (c) and (f) are not proper grounds of appeal and should be struck out as running counter to the settled practice and the operative rules.

In arguing grounds (a), (d) and (c) together in the statement of the appellant's case, learned counsel for the appellant, with due respect, had little to quarrel about. No attempt was made to demonstrate which aspect of the appellant's case was not considered which led the learned Judges to tilt the scales of justice against the appellant. The statement of case is indeed bereft of any serious attacks on both the two lower courts evaluation of the admissible evidence on record including of course the numerous exhibits tendered by both parties. It was the duty of counsel for the appellant to demonstrate where the court below failed to consider the case of the appellant and thus denying him justice. This he could have done by drawing this

court's attention to pieces of evidence which was led but ignored to the detriment of the appellant.

Learned counsel found it very difficult in persuading this court both on the facts and on the law. Under such circumstances counsel can in appropriate cases throw in the towel. In BEACHAMP (EARL) V MANDRESFIELD [1872] LR 8 CP 245. Bret J said at page 245 as follows:

> "I quite agree that it is the duty of counsel to assist the court by referring to authorities which he knows to be against him. But I cannot help thinking that, when the counsel has satisfied himself that he has no argument to offer in support of his case, it is his duty at once to say so, and to withdraw altogether. The counsel is master of the argument and of his case in court, and should at once retire if he finds it wholly unsuitable, unless indeed he has express instructions to the contrary" [emphasis mine]

The first ground of appeal argued is accordingly dismissed as unmeritorious.

Another ground which was also not argued with any seriousness was ground (d). From the statement of defence the respondent as defendant did not lodge any counterclaim for declaration of title. The Court of Appeal, however, basing itself on the recent case of HANNA ASSI (No. 2 v GHIHOC REFRIDGERATION & HOUSEHOLD PRODUCTS LTD [2007-2008] SCGLR 16 decreed title in favour of the respondent. From the record, the High Court did not make the order complained of and at the Court of Appeal the cross-appeal filed by the respondent was limited exclusively to the grant of interlocutory injunction by the trial judge which order was discharged by the Court of Appeal in allowing the cross-appeal. In the summons for directions filed

on 22-2-2001 the plaintiff as the appellant herein set down some issues for determination as follows:

(iii). Whether or not the disputed land is vested in the defendant

(iv) Whether or not the plaintiff and his section of the family are mere licensees on the disputed land.

It is thus clear that the Court of Appeal like the trial court was called upon to decide whether the disputed land was vested in the respondent. In any case, apart from the issues referred to above which led the Court of Appeal to make the declaration, the facts and the circumstances of the case made the application of the ratio decidendi in the HANNA ASI (No. 2) case appropriate. The Court of Appeal is also bound by that decision by virtue of Article 129 (3) of the 1992 Constitution. This was the reason advanced in the judgment of the Court of Appeal before it proceeded to rely on the HANNA ASI (No. 2) case:

"In any case, the judgment of the Circuit Court, Cape Coast dated 3rd March, 2003, tendered in evidence as Exhibit "18" acknowledged the defendant as the Ebusuapanin of Edu Abekwa royal family of Edukrom. The same judgment was affirmed by the Court of Appeal in Civil Appeal No. H1/66/2005 when the plaintiff's predecessor (Okyeame Kwesi Adoko and another) appeal was dismissed by the Court of Appeal on 17 February, 2006.

Besides, there has been numerous judgments by the Abura Traditional Council, Abukrampa, the Regional House of Chiefs, Cape Coast and the High Court, Cape Coast as Exhibits "1", "2", "3", and "4" respectively, all recognizing the defendant and Edu Abekwa royal Adwenadzi family of Edukrom as owners and custodian of Edukrom stool and its lands"

The circumstances of the case are such that the Court of Appeal could not have been in error in applying the HANNA ASSI (No. 2) case.

Another point which was raised but not argued relates to the proceedings at Abura Traditional Council in the case of OPANYIN KWESI YAA V OPANYIN KWESI BO. OPANYIN KWESI YAA was declared destooled by the Abura Traditional Council in 1978 and thereafter lodged an appeal at the Regional House of Chiefs. At the time of his death the appeal was pending. The judgment was delivered in November 1983. Reference was made to the section 27 of the repealed Chieftaincy Act (Act 370) of 1971 and its provisions which operate to stay execution on filing of an appeal. Counsel pointed out that since an appeal was pending and the execution was stayed by operation of law, the said Opanyin Kwesi Yaa continued to act in his position as the overall head of the family until his death. The stay of execution in such proceedings is statutorily conferred on any appellant under Act 370 of 1971.

The judgment however, determined his status as regards the headship of his family. Given the nature of the claim, nobody could have substituted him to continue the case to finality on appeal. As the Abura Traditional Council had jurisdiction over the matter, it raised estoppel per rem judicata at that level. This was not argued under any ground of appeal but as it appears in the statement of case it would not be out of place to consider it.

The last ground which was also not seriously argued was the one dealing with the discharge of the order of the High Court granting an interlocutory injunction over the land in dispute after judgment. On record, the judgment of the High Court was delivered on 23/01/2008 when the High Court Civil Procedure Rules CI 47 of 2004 was in force.

Order 25 rule 1 (2) gives the court jurisdiction to grant interlocutory injunction before and after judgment. One may ask whether the jurisdiction conferred on the court was fairly exercised under the circumstances of the case.

It is the settled practice that such applications are mounted by parties by an application to the court. A trial judge would hardly grant such application when there is no motion before the court.

It is unusual for a Court of law to grant such application under the circumstances which amounts to substantially granting a stay of execution in the matter. The Court of Appeal as an appellate court exercising its jurisdiction in determining the cross-appeal was of the view that the jurisdiction was unfairly exercised by the learned trial judge. In fact the trial judge did not hear the parties to the suit before making the order which had far-ranging consequences as it directly affected the substantive rights of the parties to the suit.

Under the circumstances, the Court of Appeal was therefore right to discharge the order by allowing the cross-appeal. In any case, the discharge of the order does not amount to any error or misdirection to lead any court to set aside the judgment.

On the whole the appeal is unmeritorious and same ought to be dismissed.

[SGD] ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

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

JUSTICE OF THE SUPREME COURT

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

JUSTICE OF THE SUPREME COURT

[SGD] J. V. M. DOTSE

JUSTICE OF THE SUPREME COURT

[SGD] N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT

<u>COUNSEL:</u>

SOMUAH ASAMOAH FOR THE APPELLANT.

CAB ADDAE FOR THE RESPONDENT.