IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF GHANA

ACCRA

CIVIL APPEAL

SUIT NO.J4/59/2013

15TH JANUARY 2014

CORAM: ADINYIRA (MRS.) JSC PRESIDING

YEBOAH JSC

GBADEGBE JSC

AKOTO-BAMFO (MRS.) JSC

AKAMBA JSC

NII TACKIE AMOAH VI. **PLAINTIFF/ APPELLANT/ RESPONDENT**

VERSUS

1. NII ARMAH OKINE & ORS: **DEFENDANTS/RESPONDENTS/**

2. NUMO KANKAM **APPELLANTS**

3. NII NOI MORTON

4. JONAH YAW AYITEY

5. LANDS COMMISSION

JUDGMENT

SOPHIA ADINYIRA (MRS.) JSC

The Plaintiffs issued a writ of summons against the Defendants claiming:

a) Declaration of title to all that land situate and lying and being at Danchira in the Ga South District of Accra in the Greater Accra Region and bounded on the Northwest by Honi Stream measuring 10,200 feet more or less; on the Northeast by Manhia, Ashalaja and Afuaman lands measuring 51,700 feet more or less; on the East by Joma ands, Densu River and Kwame Amu's land measuring 10,300 feet more or less; on the South by Benyibe Pond, Amanfro and Domeaba lands measuring 17,500 feet more or less and on the Southwest by Amanfro lands measuring 3,500 feet more or less and containing an approximate area of 13,774 acres more or less
b) Recovery of possession
c) Damages for trespass
d) Perpetual Injunction
e) An order directed at 5th Defendant to expunge from all records all grants including that of the 3rd and 4th Defendants relating to Plaintiff's land which were not made by Plaintiffs' family
f) Further or other orders.

The writ was originally issued by the head and elder respectively of the Djan Bi Amu family also known as the Nii Amu family of Danchira. In the course of the proceedings at the High Court, the 2nd Plaintiff died and no substitution was done so we will only refer to one Plaintiff.

The family land at Danchira shares boundary on the South with the Amanfro family. Each family has registered at the Lands Commission a Statutory Declaration concerning their respective lands. According to the Plaintiff recently the family granted portions of their family land to certain people but when they made a search at the Lands Commission the results indicated portions of the Danchira land has been registered in the name of the 3rd and 4thdefendants who claim to have been granted the said portions of the land by the then chief of Amanfro, Nii Kwashie Gborlor 111. Pursuant to the said grants the 3rd and 4th Defendants have entered the land and have commenced developing the land. The defendants have employed land guards to threaten and intimidate members of plaintiff's family who have attempted to ward them off the land.

The Defendants responded that all grants of land they have made fall within the Ngleshie Amanfro lands; but if any of the said grants fall within the Danchira land then the same must have been done within the authority of the true heads of Danchira. They also denied employing land guards to threaten and intimidate members of plaintiff's family.

By the orders of the trial court, a composite plan was made by the Survey Department using the site plans of the parties.

The trial court dismissed the Plaintiff's case on the ground that he failed to distinctly establish the identity of the land the family was claiming. The court specifically held that:

> "The evidence tilts in favour of defendants because as earlier held in this judgment, not only does the site plan not correspond with the description of land in the statutory declaration, but the documents also bear different registration numbers. Though the composite plan shows a slight overlap of land a party seeking declaration of title must positively prove the identity of the land he claims. That is the position of the law and the composite plan does not absolve plaintiff of this duty."

The Plaintiff successfully appealed against this decision at the Court of Appeal which reversed the judgment of the High Court and granted all the reliefs claimed by the Plaintiff. The defendants obviously dissatisfied appealed to this Supreme Court on the grounds that:

i. The Court of Appeal misdirected itself on the evidence and the law;

and additional ground of appeal that:

ii The judgment is against the weight of evidence.

In their statement of case the Defendants rephrased their grounds of appeal as follows:

1. The judgment is against the weight of evidence
2. The Court of Appeal erred in law in setting up a claim for the Plaintiff and basing its judgment on that ground
3. The Court of Appeal erred in accepting the Statutory Declaration as conclusive evidence of title of the Plaintiff.

The Defendants' Submission

The Defendants submit that the judgment is against the weight of evidence; and by the nature of the reliefs sought by the Plaintiff per his writ of summons, he was required to establish clearly and distinctly, the identity of the land he claims. He submits the Plaintiff having failed to establish the exact description of his land; the trial court rightly dismissed his claim.

The Defendants submit the Court of Appeal failed to follow the established principle of law and fell into error when it sought to substitute the claim of the Plaintiff for declaration of title to a boundary dispute and on that basis granted the appeal.

The Defendants contend that the Court of Appeal suo moto attempted to reconcile the inconsistencies in the statutory declaration and the site plan attached to it and proceeded to reverse the judgment of the trial court. Counsel cites ***Lagudah vs. Ghana Commercial Bank [2005-2006] SCGLR 388.***

The Defendants further submits that the Court of Appeal erred in accepting the Statutory Declaration as conclusive evidence of the Plaintiffs title to the land described therein. The Defendants argue that a statutory declaration created no interest or any proprietary interest in land and in the circumstances; it cannot form the basis for a claim in land dispute.

The Plaintiff's Submission

The Plaintiff finds the judgment of the Court of Appeal supportable. The Plaintiff submits that both parties agree that they share a common boundary. The Plaintiff's family complaint was that

the Defendants have trespassed on portions of land that his family has granted to PW1; and registered same in the name of 3rd and 4th Defendants.

The Plaintiff therefore submits that the real issue for the trial court to resolve between the parties was the boundary limits between them and not a declaration of title to the entire lands of the parties.

The composite plan ordered by the trial court to be drawn by the Survey Department showed PW1's land to be within the Danchira family land. In view of this the Plaintiff contends the Court of Appeal correctly set aside the trial judge's finding of facts that the Plaintiff had failed to positively identify the limits of their boundaries.

Consideration

The Plaintiff endorsed on his writ a claim for declaration of title to a parcel of land as specifically described in the writ, trespass, perpetual injunction among others. The established principle of law requires the Plaintiff to lead clear evidence as to the identity of the land claimed with the land the subject matter of his suit. The authorities are legion. ***Bisssah v. Gyampoh [1964] GLR 81; Bedu v, Agbi [1972] 2 GLR 238; Anane v. Donkor [1965] GLR 188; Akoto v. Kavege [1984-86] 2 GLR 365; Nyikplokor v. Agbodotor [1987-88] 1GLR 171; Agyei Osae v. Adjeifio [2007-2008] 499; Jass Co. Ltd v. Appau 2[2009] 2 GLR 365.***

The trial court basing her judgment on some of these authorities dismissed the Plaintiff's claim in these words:

> "The evidence tilts in favour of defendants because as earlier held in this judgment, not only does the site plan not correspond with the description of land in the statutory declaration, but the documents also bear different registration numbers. Though the composite plan shows a slight overlap of land, a party seeking a declaration of title must positively prove the identity of the land he claims. That is the position of the law and the composite plan does not absolve plaintiff of this duty."

On appeal, the Court of Appeal held that there should not be a mechanical application of the rules on proof of entire boundaries in claims for declaration of title and that each case depends on its own facts. We agree with this position of the law as we recall the decision of this Supreme Court in the case of ***In Re Ashalley Botwe Lands; Adjetey Agbosu & Others v. Kotey & Others [2003-2004] SCGLR 420*** cited by the Plaintiffs. The Supreme Court per Wood JSC (as she then was) held at page 437 of the judgment that:

> "I think the court erred in applying the principle enunciated in ***Anane v. Donkor; Kwarteng v. Donkor (Consolidated) [1965 1] GLR 188 SC*** to the facts of this case. Undoubtedly, the general principle enunciated therein, namely (as stated in the headnote) that; " a claim for the declaration of title or an order for injunction must always fail; if the plaintiff fails to identify positively the identity of the land claimed with

the land the subject matter of his suit" is sound law, but applicable only in appropriate cases. I would therefore not advocate for a slavish application of this principle even where the identity or boundaries of the land claimed is undisputed. In land claims where the identity or the boundaries of the subject matter as pleaded is admitted by an opponent, the elementary principles which come into play is that which was expounded ***in Foli v, Ayirebi [1966] GLR 627, SC***, namely, that where the averments were not denied no issue was joined and no evidence need to be led on them."

Asare-Korang JA in delivering the judgment of the court said:

> "It is the duty of a court to determine very clearly what the contention of the parties is before it. In land case for example, what exactly are the parties fighting over? Is it over a whole stretch of land, a piece of land within a bigger area, a boundary dispute etc? The pleadings and the evidence eventually placed before the court should be the guide for making this determination. And it is this determination that will further inform the court of the relevance, the type and nature of the evidence needed from the parties."

The Court of Appeal in reviewing the pleadings and evidence on record came to the conclusion that the real issue before the court was a dispute on the boundary line between the two parties.

The Defendants set down as one of his grounds of appeal that: the Court of Appeal erred in law in setting up a claim for the Plaintiff and basing its judgment on that ground citing the case of ***Dam v. Addo [1962]2GLR 2008.*** The Defendants further criticized the Court of Appeal that it departed from the well-established principle of law that demands proof of all the boundaries to establish the identity of the land claimed by a party.

We find no merit in this ground of appeal. An appeal is by way of rehearing, and an appeal court is in as a good position as the trial court to determine the real issue in controversy from the pleadings and evidence and to draw inferences from the specific facts that are established. See ***Adorkor v. Gatsi [1966] GLR 31SC; Fofie v, Zanyo [1992] 2 GLR 475; Barclays Bank Ghana Ltd v. Sakari [1996-97 SCGLR 639*** and ***Effisah v. Ansah [2005-2006] SCGLR 943;*** to mention a few**.**

The pleadings and evidence clearly showed the real dispute between the parties was about the common boundary they shared peacefully until each side leased out portions of lands in the area; and the Plaintiffs complained the Defendants have trespassed on their portion. It would be prudent to produce the relevant pleadings from both sides.

Paragraphs 5, 6and 7 of the Plaintiff's Statement of Claim states:

5. Plaintiffs say that both Amanfro lands and Danchira lands as aforementioned have been registered with the Lands Commission without any objection in the nature of overlapping boundaries of or otherwise.
6. Plaintiffs further say that there has never been any boundary litigation between the two villages from the date their predecessors made their respective Declarations.
7. Plaintiffs say that they recently granted some tracts of land within the boundaries of their family land to some individuals but when they conducted searches at the Lands

> Commission, the result indicated that portions of land clearly falling within the boundaries of Plaintiffs' family land have been registered in the name of 3rd and 4the Defendants claiming to have been granted the said portions of the land by the then chief of Amanfro namely Nii Kwashie Gborlor III.

Defendants' statement of defence in response in paragraph 2 is that:

> 2. In answer to paragraphs 7 and 8 of the Statement of Claim, the 1st to 4th Defendants say that all the grants they have made fall within Ngleshie Amanfro lands but if, which is denied any of the said grants falls within Danchira, the same must have been done with the authority of the true heads of Danchira.

From the nature of the complaint and the area of their disagreement, the issue we can identify between the parties is a boundary dispute on the Southern side of Plaintiff's family land. Accordingly we hold that the formulation of the issue in controversy as a boundary dispute by the Court of Appeal was in harmony with the pleadings on record and the court should not be held back by mere technicalities. As Atuguba JSC put it in ***Delmas America Africa Line Inc. v. Kisko Products (Ghana)Ltd [2003-2005]2GLR 544,*** at page 579:

> "In arriving at this judgment, I have considered the pleadings and the evidence in the light of the fact that the law of pleadings has been undergoing changes in a bid to do substantial justice rather than uphold mere technicalities. Hence when an issue of claim or defence, though not pleaded, is established by the evidence on record, which has not been objected to, the court would uphold the same. In the same vein it is said that the court would give effect to the legal consequences following from the pleaded facts and not be held back by the formulation of the pleadings; see ***In re Vandervell's Trust 9No.2) [1974] 3 WLR 256, CA; Donkor v. WIH [1989-90] 1GLR 178 at 186; Khoury v. Micthual [189-90] 1 GLR 161, CA and Belmont Finance Corporation Ltd v. Williams Furniture Ltd [1979] 1All ER 118, CA."***

The Court of Appeal after assessing the evidence went on to hold that:

> "There was no need for proof of boundaries as is typical of claims where a whole area of land is in dispute. The other boundaries of the Plaintiffs' land had nothing to do with the Defendants for the court to have called on the Plaintiffs to establish all the boundaries of their land. Where your boundary with defendants is, was the question the Plaintiffs were to answer. There was no need for the Plaintiffs to call their boundary owners to identify the identity of the land other than the surveyor who had the documents (site plans) of the parties. He did the superimposition".

This Court in reviewing the record of proceedings is left in no doubt that the parties share a common boundary which is clearly delineated in their respective site plans. Further, the composite plan ordered by the trial court showed that all the grants made by the Plaintiff's family to PW1 were well within Danchira land. The 1st Defendant family head admitted those lands cannot be part of the Ngleshie Amanfro lands. The composite plan also showed overlapping of the boundaries at a small portion of the two families where a cemetery is sited.

We therefore affirm the decision by the Court of Appeal not to slavishly apply the principle enunciated in ***Anane v. Donkor; Kwarteng v. Donkor (Consolidated) supra.***

But should the view of the defendants be taken that the Plaintiff was enjoined to prove the identity of the land the subject matter of their claim, we would hold that the Plaintiff succeeded in discharging that burden. Contrary to the assertion by the trial and appellate courts and defendant's lawyer that the plaintiff did not give any oral evidence on the boundaries of his family land, we find at page 35 of the record of proceedings that he did. The Plaintiff in his evidence in chief tendered the statutory declaration and site plan in relation to his family land and further described his boundaries. Here is the excerpt:

> "Q: Now tell this Court the people your land share boundary with?
>
> A: My Lord we share boundary with Amanfro, Ashaladja, Jomaba and Armah Kwafo."

The names of these boundary owners mentioned in above excerpt appear on Plaintiff's site plan exhibit 'C'and equally on that of the Defendants' site plan in Exhibit '1'. This evidence was unchallenged, and as held in ***In Re Ashalley Botwe Lands* supra**, the Plaintiff need not call further evidence on the fact. This Court held:

> "Under these circumstances, the plaintiff was not bound to produce other witnesses on the same issue of identification, for the general rule which should be clearly applicable, since the defendants were represented by counsel is that, where a party's testimony of a material fact was not challenged under cross-examination, the rule of implied admission for failure to deny by cross-examination would be applicable and the party need not call further the evidence on the fact: ***see Martey v. Botwe. [1989-90] SCGLR 478, SC***."

We note that the trial and appellate courts found some inconsistencies in the description of the portion of land the Plaintiff described in his statement of claim, statutory declaration and the site plan attached to it. However the Court of Appeal upon examining these three documents came to the conclusion that they were in substance the same. Their Lordships were of the view that:

> "Inconsistencies in the names mentioned as boundary owners should not have been of relevance to the trial judge having regard to the site plans drawn to scale in their respective documents. The superimposition showed that the witness of the Plaintiffs, FK Asare has the lands granted to him by the Plaintiffs falling within lands of the Plaintiffs. The surveyor testified to that effect. His evidence was not challenged. Very significant is the evidence elicited from the head of family, Nii Armah Okine (the 1st Defendant) in his cross-examination. He accepted that any land he or his predecessors has granted which falls outside their site plan in their document tendered as exhibit 1, would not be a proper grant. He said: "Yes my Lord if it falls within our land is ours but if it falls outside our boundary then it is not ours." It is unfortunate that the trial judge glossed over such material and weighty evidence in her assessment of the evidence put before her"

We find no reason to disturb this finding. The Court of Appeal rightly went on further to say:

> "Unfortunately she (the trial Judge) made virtually no use of the surveyor's evidence as it relates to the superimposition, vis a vis the evidence of the Head of Family Mr. Okine. Within the facts of this case it appears to me there was no need for her to have resorted to the authorities that demand proof of all the boundaries to establish the identity of the land as demanded of the Plaintiffs"

The Defendants further appeals on the ground that the Court of Appeal erred in law in accepting the Statutory Declaration of the Plaintiff as conclusive evidence of his family title to the land describe therein. Counsel cites the case of ***In Re Ashalley Botwe Lands*; supra,** and **Amuzu *v.* *Oklikah* [1998-99] SCGLR 141**

Counsel submits that:

> "In its judgment, the Court of Appeal held that the contents of the statutory declaration presented by the Plaintiff was not disputed by the defendants when it stated at page 164 of the record of appeal that Plaintiffs pitch their claim to ownership of the disputed land on statutory declaration registered as No. 2572/1976 at the Deed Registry and this was not disputed by the Defendants." [Emphasis mine]

I think this ground is misconceived as nowhere did the Court of Appeal state in its judgment that the Statutory Declaration of the Plaintiff was conclusive evidence of his family title to the land describe therein. The words underlined above appear in a different sentence and therefore quoted out of context by Counsel. What the Court of Appeals said while stating the facts of the Plaintiffs case was:

> "The Plaintiffs claim to be the head and elder of the Djan Bi Amu family of Danchira otherwise known as the Nii Amu family. The 1st and 2nd defendants are the head of family and principal elder respectfully of the Amanfro Stool. Plaintiffs pitch their claim to ownership of the disputed land on a Statutory Declaration registered as No. 2572/1976 at the Deed Registry. They allege, and this was not disputed by the defendants, that the defendants' land is also based on a Statutory Declaration dated 14 May 1973 registered as No. 2748/1975.

Contrary to the suggestions of Counsel, the Court of Appeal's restatement of the decision of this Court in ***In Re Ashalley Botwe Lands***; **supra**, was accurate. The Court of Appeal stated that:

> "Before I continue with this judgment let me make some few observations by way of clarification of the statement of the trial judge attributed to the Supreme Court in the Ashalley Botwe case. She said:
>
> > "The Court (Supreme Court) held that generally statutory declarations per se are self-serving documents and so are of no probative value"
>
> With due respect to the trial judge either she misunderstood this case or she was over terse in her restatement of what value the Supreme Court would place on statutory

declarations. Nowhere did the Supreme Court make any such statement. At page 452 of the report this is what the Supreme Court said through her Ladyship the Chief Justice:

> Generally Statutory Declarations per se are self-serving documents and so are of no probative value, where the facts contained in them are challenged or disputed. Specifically therefore in the defendants' case, it only contained the facts which may be used to prove their title but it did not per se, whether registered or unregistered confer any title or for that matter create any title or proprietary right in them."

We find that the Court of Appeal did not base its judgment on the statutory declaration but on the totality of the evidence before it. We have already assessed the evidence and we affirm the conclusions reached by the Court Appeal.

From the foregoing, we find sufficient evidence on record to support the judgment of the Court of Appeal. The remaining ground of appeal that the judgment is against the weight of evidence is therefore dismissed.

Accordingly the appeal fails in its entirety.

We are drawn finally to respond to a matter raised by counsel for the defendant in his submission. Counsel submits that: "Two other courts of competent jurisdiction have pronounced that the plaintiff family has no land at Danchira and yet the family manages to hop from one court to another in different scenarios to litigate the same matter."

It seems Counsel is raising a plea of estoppel per res judicata, which was clearly not part of the Defendants case. It was neither before the Court of Appeal nor was their lordships attention drawn to it. This practice is clearly to be deprecated because the basic principle of law is that any defence that is available to a party has to be pleaded and evidence led on it. We therefore strike out this submission.

From the foregoing we find no merit in this appeal and it is accordingly dismissed.

The judgment of the Court of Appeal is affirmed.

(SGD) S. O. A. ADINYIRA (MRS)
JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

(SGD) **N. S. GBADEGBE**
JUSTICE OF THE SUPREME COUR

(SGD) **V. AKOTO-BAMFO (MRS)**
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