IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA- GHANA , A.D.2014

CORAM: ATUGUBA, J.S.C. (PRESIDING)
ANSAH, J.S.C.
BONNIE, J.S.C.
GBADEGBE, J.S.C.
AKAMBA, J.S.C.

CIVIL APPEAL
NO.J4/20/2011

7TH MAY 2014

GRACE AYELEY WELBECK	**....**	**PLAINTIFF/RESPONDENT/ RESPONDENT**
VRS		
GRACE OKAIKAI OKINE	**....**	**DEFENDANT/APPELLANT/ APPELLANT**

JUDGMENT

ATUGUBA J.S.C.

Facts of the Case

The facts of this case are fairly well stated in the Plaintiff/Respondent/Respondent's Statement of case dated 2/1/2014 as follows:

> "By a Deed of Gift dated the 8th day of June, 1959 the James Town Stool conveyed a parcel of Land to the late Madam Regina Naa Oyoe Mills [Deceased]. She subsequently built two twin houses on the said land which became known as H/No. A 303/7, the subject matter of this instant suit.

Madam Regina Naa Oyoe Mills, being a native of James Town, Ga Mashi *practiced the matrilineal system of inheritance.* She died intestate on the 21st day of August, 1973.

After her death her two surviving children Madam Harriet Thompson and Rgina Aku Sackey took out Letters of Administration from the Circuit Court, Accra on the 14th day of May, 1991 to administer the estate of their late mother. On the 6th day of August, 1991, they executed a vesting Assent and vested the disputed property unto themselves.

They, subsequently empowered by the Vesting Assent put up the property for sale and same *was sold to the Defendant/Appellant/Appellant.* In her quest to occupy and take possession of the property, the defendant had opposition from the Plaintiff/Respondent/Respondent and her children as a result of which she caused her Solicitors to write to the defendant on the 1st day of October, 1991. Notwithstanding Notice of the said letter, the defendant/Appellant/Appellant went ahead to execute the sale Agreement dated 31st October, 1991. It is against this background that the Plaintiff/Respondent/Respondent caused her solicitors to sue out a writ of summons in the High Court as follows "The Plaintiff's claim as a member of the maternal family of Regina Naa Oyoe Mills for and on behalf of the Regina Naa Oyoe Mills maternal family is for

a. A declaration that the alleged or purported sale of House No. A 303/7 situate at Old Dansoman, Accra by Madam Harriet Thompson and Madam Regina Aku Sackey to the defendant is null and void.
b. An order setting aside the said sale."

It must be pointed out that the trial High Court granted the reliefs claimed by the Plaintiff, and same were affirmed by the Court of Appeal.

It must also be stressed that the Plaintiff /Respondent/Respondent is the daughter of Regina Aku Sackey(deceased) one of the two sisters who sold the property to the Defendant/Appellant/appellant.

The right to dispose of the self-acquired property of a woman, subject to the matrilineal system of inheritance who has died intestate

The right to succeed to and dispose of the property of a deceased person under a matrilineal system of intestate succession started off on controversial generalisations as shown by the early writers on customary intestate succession, such as Sarbah, Danquah, Bentsi-Enchilland Ollennu.

These have been extensively reviewed by the eminent late Professor Justice A. K. P. Kludze in his monumental work, Modern Law of Succession in Ghana, in chapter 10 thereof.

However over the years the courts have clearly established the principle that in a matrilineal system of inheritance the self-acquired property of a deceased intestate is inherited by his immediate family and that family has the right to dispose of the same. The matter has been exhaustively dealt with in the illuminating judgment of Lartey J (as he then was) in *Doudu v. Kwasi* (1992) 1 GLR 109. The facts of that case are as stated in the headnote as follows:

"By his will, one A devised a cocoa and kola nut farm and a building to his children. Subsequently, the plaintiff, his successor, brought an action on

behalf of their family against the defendants, A's executors and his children, for a declaration that those properties were family properties. The evidence established that the properties had originally been acquired by an ancestor of and had devolved on A by inheritance. Counsel for the plaintiff contended that although by virtue of the Courts Act, 1971 (Act 372), s 49, r (2) and (3) the validity of the devise was to be determined by customary law principles, since the will was in English form, it was governed by English law and therefore since A had no title to the properties his purported devise was by virtue of section 1 (1) of the Wills Act, 1971 (Act 360) ineffectual. *The court found on the evidence that the properties were owned by A's immediate family of which he was the last survivor and that the customary successor belonged to A's wider family.*" (e.s)

Upon these facts Lartey J (as he then was) expounded the applicable law at pp. 116-117 as follows:

"*Even though the properties in dispute have been proved to be family properties, the defendants have raised a very important point of law. They contend that since I B Asamoah was the only survivor of his immediate family he had the right to dispose of the properties in dispute by his will in favour of his children to the exclusion of his wider family even if they were properties inherited by him.*

In their argument, both sides sought to rely heavily on *Atta v Amissah,* Court of Appeal, 4 May 1970; digested in (1970) CC 73. That case states the customary law principle in relation to the self-acquired property of an intestate and the right of beneficial enjoyment of property which vests solely in the immediate family. The court held in that case as follows:

> "It is settled customary law that upon the death of a person intestate, although his self-acquired property becomes the property of the whole family, the immediate and the wider family together-the right to the immediate or beneficial enjoyment in it and to the control use and present possession of it vests in the immediate or branch family alone. If the property is held by tenants, the right to the landlord's benefits vests also in the immediate family alone. *It is the immediate family, and not the extended family, which has the power to alienate the property by virtue of its possession of the right to the beneficial enjoyment of the property. Those members of the extended family who do not belong to the immediate family are excluded from enjoyment of the property until the extinction of the immediate family*."

It is clear from the foregoing that where a person dies intestate, his self-acquired property becomes that of the family as a whole; the immediate and the wider family. But the immediate enjoyment of the property together with its control, use and possession vests solely in the immediate or branch family alone, not the extended or wider family. Other authorities cited by both sides in support of this proposition included the following*: Busumafie v Hydecooper* (1946) DC (Land) '38-'47, 245; *Kwakye v Tuba* [1961] GLR 535 and *Arthur v Ayensu* (1957) 2 WALR 357.

I was also referred to the recent case of *Andrews v Hayford* [1982-83] 1GLR 214, CA. That case deals with the power or right of alienation of the self-acquired property of a person who dies intestate and whose property is being enjoyed by members of the immediate family of the deceased. In the Andrews case (supra), Prah who had two other brothers bought a piece of land and built a house on a portion of the land.

On his death intestate he was survived by his only two uterine brothers who constituted the only members of the deceased's immediate family. In 1952 the two surviving brothers sold the undeveloped portion of the land. The question arose whether the two surviving brothers could validly sell the self-acquired property of Prah without the consent of the head and members of the wider family.

In the course of the judgment Abban JA (as he then was) observed at 219-220 as follows:

> "In the present case, the surviving members of the immediate family were two males. If the immediate family with the right to beneficial enjoyment had power of disposition even where that family consisted of only one female as it was clear in the *Busumafie* case (supra), then I do not see any good reason why the two surviving members of the immediate family of Prah . . . could not in their lifetime dispose of the said property without reference to the head and members of the wider family.
>
> In the circumstances of this case, *I hold that the two uterine brothers, who happened to be the only surviving members of the immediate family of Prah, had the sole control and enjoyment of the self-acquired property of Prah and they could validly sell the disputed land during their lifetime without the concurrence and consent of the head and members of the wider Twidam family of Cape Coast*."

This legal position has been substantially followed in *Nyamekye v Ansah* (1989-90) 2 GLR 152 C.A and *Amponsah v Budu* (1989-90) 2 GLR 291 S.C. at 293 and in the recent decision of this court in *Fianko v Aggrey* (2007-2008) SCGLR 1135.

In this case the only surviving members of the immediate family of the deceased intestate original owner of the disputed property competently conveyed it to the defendant/appellant/appellant.

The respondent and the other members of the wider family on whose behalf she sues have only, realistically, a ***spes successionis*** to that property, which by reason of its sale to the appellant, cannot be attained.

Consequently we allow the appeal and set aside the judgments of the Court of Appeal and the High Court and dismiss the plaintiff/respondent/respondent's action.

(SGD) W. A. ATUGUBA
JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE BONNIE
JUSTICE OF THE SUPREME COURT

(SGD) N. S. GBADEGBE
JUSTICE OF THE SUPREME COURT

(SGD) J. B. AKAMBA
JUSTICE OF THE SUPREME COURT

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GEORGE HEWARD-MILLS ESQ. FOR THE PLAINTIFF/RESPONDENT/ RESPONDENT.