IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2016

CORAM: ANSAH JSC (PRESIDING)
ANIN YEBOAH JSC
BAFFOE- BONNIE JSC
GBADEGBE JSC
AKOTO- BAMFO (MRS) JSC

CIVIL APPEAL

NO. J4/8/2015

29TH NOVEMBER 2016

NUMO ADJEI KWANKO II ... PLAINTIFF/RESPONDENT/ RESPONDENT

VRS.

LEBANON SOCIETY ... 1ST DEFENDANT/APPELLANT/ APPELLANT

LANDS COMMISSSION ... 2ND DEFENDANT

LAND TITLE REGISTRY ... 3RD DEFENDANT

JUDGMENT

ANSAH JSC:

On 29-11-2016, this court dismissed the appeal brought against the judgment of the Court of Appeal dated 18 November 2013, and reserved our reasons for so ruling which we proceed to deliver now. The said Court of Appeal dismissed the appeal against the judgment of the High Court, Accra, given in favor of the plaintiff at the trial but the respondent in the appeal at the Court of Appeal and in this court.

Aggrieved by the judgment of the Court of Appeal, the first defendant appealed to this court on the grounds that:

"1 The judgment of the Court of Appeal is wrong because it completely flies in the face of the Land Title Registration Law and its underlying theory of getting rid of the necessity of investigating all over again the title of the vendor with its attendant doctrine of notice applicable under the land Registry Act each time the land or interest therein comes to be dealt with, once title to the land gets registered under the Land Title Registration Law.

2 The Court of Appeal committed error by rejecting the general principles governing the land title registration system counsel quoted because, in its opinion, they are principles from foreign authorities which do not bind it, regardless of their high persuasiveness.

3 The Court of Appeal misdirected itself in seeing nothing wrong with the plaintiff's family seeking to rely on the alleged excess between the term of years granted to the Lebanon Society and the grantor's own term of years as an element of fraud to challenge the Society's registered title when there is no *privity* of state or interest

existing between the family as landlord and the Society's grant or as tenant in any way prejudiced by the grant.

4 The finding that the terms of years granted to the Society was in excess of the term of years the grantor himself held is against the weight of evidence.

5 The Court of Appeal misdirected itself in law when it failed to appreciate that the statutory declaration relied upon by the plaintiff as the root of his family's title to the land in dispute is a mere self-serving document of title to land in dispute which can have no greater validity than a registered title to that land guaranteed by the state.

6 The statutory declaration relied upon as the root of the plaintiff's title to the land in dispute is *ultra vires* and void since the declaration was made of a family land and not as land acquired by the law".

On 21st January 2016 this court granted the 1st defendant appellant permission to file the following additional ground of appeal, that:

"Both the High Court and the Court of Appeal were wrong in giving judgment in favor of the plaintiff on the basis of the document described as "deed of title" dated the 21st July 1965 registered at the land registry as instrument No. 1332/65, whereas that document was not a registrable instrument under the Land Registry Act, 1962, Act 122".

Brief facts of the case.

They are that the plaintiff sued the defendants for:

(a) a declaration title to over 100 acres of land situate, lying and being at Teshie, Accra, bounded on the North

measuring 4000 feet more or less on the South measuring 4000 feet more or less on the east measuring 500 feet more or less and on the West measuring 500 feet more or less

(b) Perpetual injunction to restrain 1st defendant from any further development on the land until

(c) Perpetual injunction to restrain gnat and 3rd defendants from registering any transaction made by 2nd defendant in favor of the 1st defendant

(d) An order of cancelation of the registration made by 2nd defendant in favor of the 1st defendant

(e) An order of cancelation of the land certificate issued by the 3rd defendant in favor of the 1st defendant.

The defendant/appellant Lebanon Society is a registered association of citizens of Lebanon living in Ghana; the plaintiff/respondent, Numo Adjei Kwanko II, is a Wulomo and head of Tsiewe family at Teshie Accra. The plaintiff sued the society at the High Court, Accra to recover 15 acres of land at the Spintex Road, Accra.

Statement of claim and the evidence of the plaintiff at the trial:

The plaintiff pleaded and gave evidence in support thereof that he is the Osabu and Ayiku Wulomo of Teshie and sued as the custodian of Kle Musum Quarters of the Tsie We family and of the land in dispute registered as Registry No. 1332/65. The plaintiff bought the land from a member of the Society called Moufid El-Adas, who obtained it on a lease from the Nungua Stool and registered it at the Land Title Registry, Accra; and obtained a land certificate on it. He registered his title at the Deeds Registry as No. 1332/65. El-Adas assigned his registered title to the Society and commenced developing it by constructing institutions of learning on it. The plaintiff said he was developing

the land when in 2001, Nii Adjei Kwanko II instituted action at the High Court, Accra against it, the Lands Commission and the Land Title Registry.

The Supreme Court adjudged in Suit No. 8/92 dated 19/4/94, that the beneficial interest in document number 1332 /65 resided in only the Tsie We family of Teshie, and made a further finding of fact that "Only the Wulomo and elders of Tsie We can alienate lands described in registered document No.1332/65."

The plaintiff averred that the 1st defendant has appropriated about 100 acres of his land without his consent; the 2nd defendant has registered the 1st defendant's document even though there was a prior registered document No. 1332/65 in the records of the Lands Commission, and also violated Supreme Court judgment in Suit No. 8/92, on Tsie We lands. The 3rd defendant was alleged to have issued a land certificate to the 1st defendant even though there were prior records of plaintiff's interest in public records, unimpeached by any Court of law.

Amended Statement of defense and evidence of the 1st defendant:

The 1st defendant admitted that the plaintiff is the Osabu and Ayiku Wulomo of Teshie but asserted however that by a ruling of the High Court in Suit No. Misc.1108/97, dated 17th August 1999, entitled Republic v. Chief Register of Lands, Ex parte Nii Nortey Adjeifio & 2 others. The opening words: "THIS IS TO CERTIFY THAT NUMO ADJEI KWANKO II OSABU AND AYIKU WULOMO, FETISH PRIEST OF TESHIE AND HEAD OF KLE KUSUM QUARTER …" were quashed by an order of certiorari by the High Court. The Supreme Court confirmed the judgment of the Court of Appeal and held that the Kle Musum Quarter lands are owned by Tsie We.

The 1st defendant pleaded further that he was the assignee in possession of the piece of land occupying an area of 15.36 acres (6.237) hectors of land registered as No. GA 11981. There was the consent of the Nungua Stool and the Greater Accra Regional Lands Commission by a Deed of Assignment dated 18th February 1998, executed by Moufid-El-Adas as the sub-lessor, the 1st defendant, the assignee in possession of that piece of land.

Moudfid-El-Adas derived his title to the land from the Nungua Stool by an indenture of lease dated 1st November 1977, executed by Nii Odai Ayiku IV, the Nungua Mantse and his principal elders, and another lease dated 5th June 1943 for a term of 99 years stamped as LVB 7662/95.

The 1st defendant described the Lebanon Society as a purchaser for value without notice, and the plaintiff was estopped by acquiescence and laches. The 1st defendant and its assignor had been in possession of the said land since 1977 and have exercised acts of ownership over same including clearing the land from time to time and leveling it with hired machinery incurring great expense because of sand winning activities. They had been in adverse possession of the land for 24 years and the plaintiff's title to the land was extinguished in 1989, under the provisions of the Limitation Decree, 1972, (NRCD 54).

Summons for directions:

The parties settled the following issues for determination at the trial, namely:

a) Whether defendants' land certificate and leases obtained are valid.
b) Whether plaintiffs' document by virtue of plaintiffs' registered document No. 1332/65, is the owner of the said quarter land.
c) Whether plaintiff is the custodian of Tsie We and the Kle Musum Quarter land.

The additional issues were:

1. Whether the plaintiff is entitled to bring the action in the capacity of Osabu Ayiku Wulomo and in the capacity as "Trustee of Tsie We lands."
2. Whether or not the 1st defendant has appropriated about 100 acres of plaintiff's land.
3. Whether or not :
   a) The plaintiff is stopped by acquiescence and laches.
   b) The plaintiff's title became extinguished in 1989 under the provisions of the Limitation Decree, 1972, (NRCD 54).

The trial court took evidence in support of the respective cases of the parties and found as a fact that 1st defendant's lease and Land title certificate were invalid; also that plaintiff by virtue of its registered document number 1332/85, is the owner of the land in dispute. The judge entered judgment for the plaintiff on its claim to the land in dispute and ordered recovery of possession thereof in his favor. He finally granted an order of perpetual injunction to restrain the 1st defendant from any further development of the disputed land.

In accordance with Section 122 of the Land Title Registration Act, 1986, (PNDC Law 152), the judge ordered the Lands Commission (Land Title Registry Division), the rectification of the Land Title Register by cancelling the registration of 1st defendant's Land Title Certificate No. GA 1981 Vol. 02 Folio 233 forthwith; he awarded costs of GH ¢6,000.00 (Six thousand Ghana Cedis) against the 1st defendant.

Section 122 of PNDCL 152 "The Land Title Registration Act, 1986" was that:

"Rectification by Court

(1) Subject to section (2), the Court may order the rectification of the land register by directing that a registration where it is satisfied the cancellation or the amendment of the registration has been obtained, or committed by fraud or mistake.
(2) The register shall not be rectified so as to affect the title of a proprietor who has acquired a land or an interest in land for valuable consideration, unless the proprietor ha knowledge of the omission, fraud or mistake or substantially contributed to it by an act, a neglect or default."

The trial court found as a fact that the 1st defendant's grantors did not own any piece of land at Teshie and contended that their registration was void and fraudulent whose particulars were given as:

'a) 1st defendant and its grantors registered their document while there was a prior registered document of plaintiff that land had not been expunged by any judicial process;

b.) 1st defendant and its grantors registered the land in dispute which belongs to, plaintiff's family'.

On 20 April 2011, the 1st defendant appealed the judgment to the Court of Appeal on the grounds that:

"1 His Lordship the trial judge erred in not dismissing the plaintiff's (case) in the face of the evidence that the grantor of the 1st defendant had registered its title to the land in dispute at the Land Title Registry before it was bought by the 1st defendant who registered that title at the Registry.

2 His Lordship the judge erred in allowing his decision to be influenced by the irrelevant fact that the lease granted to the 1st defendant was for a term longer than that of its

grantor when the plaintiff was not the lessor of the head-lease and claimed adversely to the title of the lessor.

3 His Lordship the trial judge in not appreciating that once title to the land in dispute became registered at the Land Title Registry and that title was disposed of to another.

The Court of Appeal considered the submissions by the parties before it and after making some findings of facts, concluded that they were supported by the evidence; for these reasons, it did not feel satisfied to disturb them; it found no merit in any of the grounds of appeal before it and unanimously dismissed the appeal.

The plaintiff further appealed to this court against the judgment of the Court of Appeal on the grounds that:

"1 The judgment of the Court of Appeal is wrong because it completely flies in the face of the Land Title Registration Law and its underlying theory of getting rid of the necessity all over again the title of the vendor with its attendant doctrine of notice applicable under the Land Registry Act, each time the land or interest therein comes to be dealt with, once title to the land gets registered under the Land Title Registration Law.

1. The Court of Appeal committed an error by rejecting the general principles governing the land title registration system counsel quoted because in its opinion, they are principles from foreign authorities which do not bind it, regardless of their high persuasiveness.

3. The Court of Appeal misdirected itself in seeing nothing wrong with the plaintiff's family seeking to rely on the alleged excess between the term of years granted to the Lebanon Society and the grantors and the grantor's own term of years as an element of fraud to challenge the Society's registered title when there is no privity of estate or interest existing

between the family as landlord and the Society's grantor as tenant in any way prejudiced by the grant.

4. The finding that the term of years granted to the Society was in excess of the term of years the grantor himself held is against the weight of evidence.
5. The Court of Appeal misdirected itself in law when it failed to appreciate that the statutory declaration relied upon by the plaintiff as the root of his family's title to the land in dispute is a mere self –serving document of title to land which can have no greater validity than a registered title to that land guaranteed by the state.
6. The statutory declaration relied upon as the root of title to the land in dispute is *ultra vires* and void since the declaration was made of a family land and not of stool land as required by the law".

Consideration of the grounds of appeal:

Ground one of the appeal:

The crux of ground 1 of appeal was that the appellant was not obliged under the Land Title Registration Law to conduct a search or investigate a land title of its grantor before purchasing land so far as it paid a consideration for same. Counsel for the appellant submitted that the judge relied on English and American authorities in coming to this conclusion, but which authorities do not bind the Ghanaian courts, particularly when there are Ghanaian statutes and authorities available. That may well be so but it is common knowledge that even if American and English authorities are not binding on local courts on the same topic, but when there are no local authorities on a topic then foreign authorities can be borrowed or received and applied as guides or as being of a persuasive force.

If there are authorities on the same topic/subject, they may be received and applied if; there are any from outside they

may be treated as offering guidance but not as binding on the Ghanaian courts applied to suit local circumstances.
But in this case, the judge found that evidence on the respondent's acquisition of the land in dispute was not challenged by the appellant.

Ground two of appeal: We did not find any merits in the submissions on the grounds of appeal marshaled before us that a sub lease could conceivably be of a longer duration than a head lease and still be valid, and we therefore rejected it.

We are satisfied the judgment under appeal was amply supported by the evidence led and do not feel able to disturb them as urged upon us by counsel for the appellant.
Ground four of appeal: As stated already the gravamen of this ground of appeal was the hackneyed ground that the judgment was against the weight of evidence; a ground of appeal that a judgment was against the weight of evidence, was dealt with by this court in ***Tuakwa v Bosom 2001-2002 SCGLR 61*** where this court stated that:
" an appeal is by way of re-hearing, particularly where the appellant alleges in his notice of appeal that the decision of the trial court is against the weight of evidence. In such a case, although it is not the function of the appellate court to evaluate the veracity or otherwise of any witness, it is incumbent upon an appellate court, in a civil case, to analyze the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial before arriving at its decision, so as to satisfy itself that on a preponderance of the probabilities, the conclusions of the trial judge are reasonably or amply supported by the evidence."
See also ***Odonkor v Amartei [1992-93] 1 GBR 59***; we have reviewed the entire record and concluded that on the

preponderance of the probabilities the judgment of the trial court in favor of the plaintiff at the trial, respondent herein, was reasonably supported by the evidence and the Court of Appeal justifiably affirmed it on appeal before it. We find no reason to allow the appeal against the judgment of the lower courts and we dismiss the ground of appeal couched in the words of ground four of appeal.

Section 59 of PNDCL 152 Land Title Registration Act, 1986, (PNDC Law 152), provided as follows:

"Protection of persons dealing with registered land

Where valuable consideration is given by a person in respect of a disposition, the rights accruing to that person through the disposition shall not be affected by the omission

(a) To inquire into or ascertain the circumstances in which the consideration for a previous registered transaction was paid or the manner in which that consideration was utilized;

(b) To search a register or record kept under the Land Registry Act, 1962 (Act 122.)

Fraud tainted the acquisition and registration of the title to the land in dispute by the appellant. In this case fraud was pleaded by the respondent, and found proved by the trial court - see pages 244 and 247 of the record of appeal. The trial judge found also that the appellant did not challenge the evidence. The trial judge ordered the appellants under PNDCL 152, to rectify the record. The Court of Appeal affirmed the finding of fraud by the trial court and the order to cancel the title and affirmed the finding of facts that 1. The land in dispute belonged to the respondent's family; 2. The Nungua stool had no authority to grant it to the appellant's grantors. The trial court was right on the unchallenged evidence of the respondent on the ownership

of the land in dispute –the principle 'nemo dat quod non habet' applied.

Also, a purchaser is bound to investigate the validity or otherwise of the grant to him of a piece of land or to be deemed to have notice of any defect in the title of his grantor; see:

1 Zabramah v Mohammed & other [1992-93] GBR 1614;

2 Basare v Sakyi [1987-88] 1 GLR 313.SC.

GROUNDS 5 AND 6 OF APPEAL.

These dealt with the method of acquisition by the respondent.

1 The evidence that following the acquisition of the land by the 5 quarters of Teshie, the apportionment between them, and subsequent farming and division of the land, was not challenged;

2 The evidence in the Exhibit E series judgments on the land in dispute in favor of his quarter;

2. Exhibits F and F1 were judgments by Jackson J on the land in dispute. They went on appeal to the West African Court of Appeal.
3. The statutory declaration was not challenged. It was evidence of ownership of the land in dispute farmed on by the respondent.
4. Paragraph 3 of Exhibit H showed the appellant took the land in dispute as a lessee from the Tsie We family of Teshie – see p 385, the respondent is the head of family of the Tsie We family of Teshie. The appellant admitted that the land in dispute belonged to the Teshie family but not the Nungua Stool. The appellant's grantor admitted that the land in dispute belonged to the Teshies. In law, where the evidence of a party corroborates the evidence of the other party the evidence of that party ought to be believed: see Manu v Nsiah [2005-2006] SCGLR 25.

5. Where evidence on the ownership of the land in dispute is corroborated by the appellant's own grantor, then the evidence of ownership of the respondent to the land in dispute is corroborated by the appellant's own grantees evidence, the respondent's version as to ownership of the land in dispute is to be believed by the court.

Now as we have endeavored to state in this appeal the facts are clear that the first appellate court concurred in the findings of facts by the trial court and the principles governing concurrent judgments of a lower appellate court and trial courts are well known to be that namely;

"Now in an appeal against findings of facts to a second appellate court like this court, where the lower appellate court had concurred in the findings of the trial court, especially in a dispute the subject matter of which is peculiarly within the bosom of the two lower courts or tribunals this court will not interfere the concurrent findings of the lower courts unless it is established with absolute clearness that some blunder or error resulting in a miscarriage of justice, is apparent in the way in which the lower tribunals dealt with the facts." See Achoro v Akanfela and another [1996-97] SGLR 209; Obrasiwa v Otu [1996-97] SCGLR 618; Godzi v Laryea 1[1992-93 GBR. 428, CA;Gregory v Tandoh IV; Fosua & Adu Poku v Dufie (Deceased) & Adu Poku Mensah (2009) [2009] 975; Tuakwa v Bosom [2001-2002] SCGLR 61.

Ground four of appeal that the judgment was against the weight of evidence.

It was held that an appeal is by way of a rehearing, particularly where the appellant alleges in his notice of appeal that the decision is against the weight of evidence. In

such a case, although it is not the function of the appellate court to evaluate the veracity or otherwise of any witness, it is incumbent upon an appellate court, in a civil case, to analyze the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial before arriving at its decision, so as to satisfy itself that on a preponderance of the probabilities, the conclusions of the trial, judge are reasonably or amply supported by the evidence; see Tuakwa v Bosom [2001-2002] SCGLR61; Odonkor v Amartei 1992-93] 1 GBR 59.

In Colonial Securities Trust Company v Massey 55 LJ. QBD 101, Lord Esher MR. said where a case tried by a judge without a jury comes to the Court of Appeal, the presumption is that the decision of the court below was right and that presumption must be displaced by the appellant. If he satisfactorily makes out that the judge was wrong then in as much as the appeal is in the nature of a re-hearing, the decision should be reviewed, if the case is left in doubt, it is clearly the duty of the court of Appeal not to disturb the decision of the court below.

Applying these principles to this case, we have examined the judgment under appeal, the evidence on record including the submissions by counsel and found no error or blunder in them and we therefore proceeded as we were bound to do, reject this and all the other grounds of appeal, and dismissed the appeal before us and reserved our reasons for to today, which we have given above, this morning.

Conclusion: For the reasons given above, we affirmed the judgment of the Court of Appeal and the trial court. Consequently we dismissed the appeal brought against it.

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COUR

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

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

(SGD) N. S. GBADEGBE
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