IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA, AD. 2016

CORAM: **ATUGUBA, JSC. [PRESIDING]**
ADINYIRA (MRS), JSC.
ANIN YEBOAH, JSC.
BENIN , JSC.
AKAMBA, JSC.

CIVIL APPEAL
NO.J4/59/2014

13TH APRIL 2016

OFORI AGYEKUM (FOR HIMSELF & ON BEHALF OF HIS BROTHERS & SISTERS OF MAMPONG ASHANTI)	**PLAINTIFF/APPELLANT /RESPONDENT**
VRS.	
MADAM AKUA BIO (Dec'd) SUBST. BY AGARTHA AMOAH (CUSTOMARY SUCCESSOR OF AKUA BIO (Dec'd) MAMPONTENG ASHANTI **)**	**DEFENDANT/RESPONDENT /APPELLANT**

J U D G M E N T

BENIN, JSC:-

My Lords, the issue that is raised in this appeal is a familiar one, familiar in the sense that since the promulgation of the Intestate Succession Law, 1985, PNDCL 111, upon the death intestate of a person, the extended family immediately argues that the immoveable property that the deceased's immediate family seek to enjoy is the property of the extended family. The deceased's immediate and extended family would therefore embark upon oftentimes protracted litigation to determine whether or not the property in question is the self-acquired property of the deceased or that of his extended family. This is one of such cases that we are called upon to finally resolve. The good intentions behind the promulgation of PNDCL 111 have unfortunately resulted in a new wave of litigation, and who knows when this type of litigation will end, especially given the fact that a lot of properties acquired in this country have been, and continue to be, done through customary grant of land without any form of title registration. And so it happened in this case that as soon as Opanin Yaw Manu of Mamponteng-Ashanti died in the year 2001, his customary successor, the defendant/respondent/appellant herein, hereafter called the defendant, assumed full control of all the assets, both moveable and immoveable, which the children of the deceased claimed were owned by him. The children of the late Opanin Yaw Manu, who are being represented in these proceedings by one of their number called Ofori Agyekum, resisted the defendant's control over their late father's assets, saying property numbered EB 26, subsequently re-numbered as Plot 11C, Block F, situate at Mamponteng was their father's self-acquired property. The defendant's position was that Opanin Yaw Manu only enjoyed this property as caretaker for his life since it was family property. Thus the familiar issue whether or not the property in dispute numbered EB 26 but renumbered as Plot 11C, Block F, Mamponteng is the self-acquired property of the late Opanin Yaw Manu or that of his extended family. Indeed it was the key issue to be resolved on the pleadings between the plaintiff/appellant/respondent, hereafter

called the plaintiff and the defendant; all other issues are ancillary and not quite controversial.

By the endorsement on the amended writ of summons the plaintiff sought these reliefs against the defendant:

i. **A declaration that H/No. EB 26 renumbered as Plot 11C, Block F, Mamponteng-Ashanti was the self-acquired property of Opanin Yaw Manu (deceased).**
ii. **A declaration that the distribution of H/No. Plot 11C, Block F Mamponteng-Ashanti as well as the intestate estate of the late Opanin Yaw Manu is governed by the Intestate Succession Law, 1985, PNDCL 111.**
iii. **Damages for trespass.**
iv. **An order for accounts.**
v. **Recovery of possession.**
vi. **Perpetual injunction restraining the defendant by herself, her agents, servants and workmen or any other persons claiming through or by her from in any manner interfering with the subject-matter.**

The plaintiff pleaded that through his own efforts, their late father Opanin Yaw Manu acquired the plot numbered EB 26 and erected a swish house thereon. Some years later he pulled down the swish building and erected a block house in its place. Among other acts of ownership, the plaintiff pleaded that their late father obtained a site plan in respect of the plot. He also discharged all bills, rates and levies in his own name. Their late father also enjoyed absolute possession of this property until his demise. He listed some personal assets of their late father which he claimed the defendant had taken over; he also averred that the defendant had taken over the only house of their late father and let out the rooms to tenants and had refused to account to them.

For her part the defendant pleaded that the plot was given to their family at the instance of the Asantehemaa, who they were serving as

messengers, when they were moving from the old settlememt called Old Ebuorso to the present site at Mamponteng. Their ancestors called Kwabena Ofori and Osei Kwame, both deceased, put up the swish house on the plot. At all material times the plaintiff's late father was living at Benimase in the Asante-Akim area of Ashanti. The late Kwabena Ofori and Osei Kwame sent her, defendant, to go and fetch the plaintiff's father to return home which she did. They sent for him because the two ancestors were themselves living at Dunkwa-on-Offin in the Central Region and at Goaso in the Brong-Ahafo Region, respectively and they needed him to come and take care of their mother that is Yaw Manu's grandmother. That was how come the late Yaw Manu assumed control of this property. She also averred that the two named ancestors pulled down the swish house and erected the block house in its place. The defendant also pleaded that the late Opanin Yaw Manu was the head of family and thus through succession he inherited all family assets. So whatever he did with the property in dispute was done in trust for the family. She averred the late Yaw Manu rented some of the rooms out in his lifetime. She rejected the claims that she had taken over the late Yaw Manu's personal assets. In the latter days of his life, the late Yaw Manu suffered a severe illness and became bedridden, and as a result she, the defendant, rented some rooms out in order to raise money to maintain him. She also averred that in his lifetime, the late Yaw Manu attempted to gift one room in the house to one of his children but the family rejected it. Moreover, on the fortieth day celebration of his death, nobody came forward to claim that this property was the self-acquired property of the deceased Yaw Manu. What the children claimed that day was another plot acquired by the late Yaw Manu as his own property, and the family accepted the claim and surrendered the document on it to them. The defendant counter-claimed for these reliefs:

a. **A declaration that plot no. 11 Block F is the family property of the defendant.**

b. Ejectment of the children and recovery of the rooms being occupied by any of the children of the late Yaw Manu.
c. General damages.
d. Perpetual injunction to restrain the plaintiff and his siblings, successors and indeed anybody claiming through him from in any way dealing with the house in dispute.

This was the state of the pleadings. Evidence was adduced by both sides. The plaintiff testified by himself and called his mother, the divorced wife of Opanin Yaw Manu as a witness. This woman called Amma Dapaah testified that it was during the period she was married to the late Yaw Manu that the latter constructed the property. They left for Benimase to seek greener pastures. At Benimase they carried out trading from a shop. Later the late husband secured a tipper truck by the kind courtesy of a white man. They returned to Mamponteng with the tipper truck and there the husband used it to cart sand with which he moulded cement blocks which he used to reconstruct the building. They lived in this house with their children as well as the mother and grandmother of her husband. The plaintiff tendered a number of documents evidencing payment of property rates and conservancy fees all bearing the name of Opanin Yaw Manu dating back to 1980. The site plan dated March 1989 bearing his name and duly signed by the Mampontenghene as well as two of his key chiefs was also tendered as exhibit B.

The defendant testified by herself and called two witnesses. One of them was the wife of the late Yaw Manu's brother. She said she saw the late Ofori, one of the defendant's ancestors physically constructing this building. The other witness is the current Gyasehene of the grantor Mamponteng stool. He said the late Nana Kofi Owusu told him the plot was granted to the defendant's two named ancestors. He admitted the Mamponteng stool signed a site plan of this land for the late Yaw Manu in 1989, and he DW1 was one of the signatories to this site plan, exhibit B. However, he went on to explain that Yaw Manu was told to come for an allocation note

accompanied by members of the family but he never came back. The plaintiff rejected this claim.

The trial court gave judgment in favour of the defendant, upholding the counter-claim and dismissing the plaintiff's claim. On appeal to the Court of Appeal, the appeal was upheld and judgment was entered in favour of the plaintiff upon a review of all the evidence on record. The findings and inferences drawn from the evidence by the two courts below will be highlighted as we discuss the issues. The defendant brought the present appeal against the judgment of the Court of Appeal on these grounds:

a. **The learned justices of the Court of Appeal erred in law when after they had made a concurrent finding of fact with trial Circuit Judge to the effect that the evidence the plaintiff led in proof of his claim for declaration of title to land fell short of the standard of the preponderance of probabilities, they then made a sudden u-turn to enter judgment for the self same plaintiff for most of the reliefs sought by him on the sole ground that the defendant counterclaimed.**

PARTICULARS OF ERRORS OF LAW

i. **The Court of Appeal erred in law when they failed to affirm the decision of the learned trial Circuit Judge to dismiss plaintiff's claim even after they themselves had cited the case of ABAKAM EFFIANA FAMILY V. MBABIDO FAMILY (1959) GLR 362 at 364 , where it was held thus "if the whole evidence in a case be conflicting and somewhat confused, and there is little to choose between rival traditional stories the plaintiff fails in the decree he seeks, and judgment must be entered for the defendant."**

ii. **The Court of Appeal erred in law when they were swayed by the presence of the defendant's counterclaim which also bore an equal burden of proof and was equally capable of being dismissed by the Court of Appeal which said court in**

the instant case was bent on pronouncing one party a victor at all cost.

b. The judgment is against the weight of evidence.

Counsel for the defendant appeared to have argued all the grounds of appeal together. We think that approach was appropriate in a case like this which could be decided largely on the facts and laws which are well settled. Counsel for the defendant cited two decisions of this court namely ACHORO vs. AKANFELA (1996-97) SCGLR 209 and KOGLEX LTD. vs. FIELD (2000) SCGLR 175 which decided that where a first appellate court has confirmed the findings of the trial court, the second appellate court would not interfere with the concurrent findings unless it was established with absolute clearness that some blunder or error, resulting in a miscarriage of justice, was apparent in the way the lower court had dealt with the facts. He cited these in reference to the fact that the Court of Appeal had agreed with the trial judge that the plaintiff's case failed to reach the required standard of proof and that there was very little to choose between the rival traditional stories. He believed that the Court of Appeal having cited the authority of ABAKAM EFIANA FAMILY vs. MBIBADO FAMILY, supra, it ought to have dismissed the plaintiff's action. In counsel's view "the Court of Appeal ought to have affirmed the decision of the learned trial Circuit Court but they did not. They rather gave judgment for the plaintiff in a bizarre twist……." Counsel believed the Court of Appeal had contradicted itself. We do not see it that way. What the court did was to point out all the shortfalls in the evidence and the trial court's evaluation before making its own findings where the trial court failed to do so and drawing what appeared to it to be the correct inferences from the accepted facts. In the process they appeared to be contradicting themselves but when one examines the decision critically they did not. What the court did was to examine other forms of evidence on record especially documentary when it found itself not to rely on any of the

traditional stories narrated in support of the acquisition of the plot, the construction of the swish house and the subsequent construction of the block house. The court's conclusion did not endorse what the trial court had found; for instance it rejected the trial court's reliance on the financial means of the parties which was a key finding by the trial court. It also rejected the trial court's refusal to place any weight on the documents tendered as exhibits. These were the core reasons the trial court dismissed the plaintiff's case. The Court of Appeal could not therefore be said to have endorsed the trial court's findings of fact. It only agreed with the trial court that the oral testimony alone did not reach the required standard of proof, but when the documents were taken into account the court concluded the plaintiff had reached that standard where judgment ought to be entered for him. It behoves this court, therefore, to examine the entire record to decide whether the judgment of the Court of Appeal should be upheld or not. The Court of Appeal concluded thus: "*The courts have long fashioned out a pragmatic approach in resolving such a puzzle in cases where the evidence led is traditional. In the first place, it is cautioned in the case of IN RE TAAHYEN & ASAAGO STOOLS; KUMANIN vs. ANIN (1998-99) SCGLR 399 that, the coherence of one of the party's version or his demeanour should not be the sole criterion for its preference over the opponent's version. That apart, it was held in ADJEI vs. ACQUAH (1991) 1 GLR 13 that in a case where the evidence is traditional, a favourable finding on the evidence is not essential to the case of a party seeking a declaration of title to land. Rather, the traditional evidence must be weighed alongside recent acts or facts. More specifically, it is advised in ADJEIBI-KOJO vs. BONSIE (1957) 3 WALR 257 that the traditional evidence must be examined in the light of more recent acts such as long occupation and exercise of rights over the land. This principle was unanimously approved and applied in AGO SAI & Ors. Vs. KPOBI TETTEH III (2010) SCGLR 762.*

And in IN RE KODIE STOOL; ADOWAA vs. OSEI (1998-99) SCGLR 23, it is directed that the assessment of the probability of the correctness of the rival traditional stories must be in two stages as follows: (a) the rival stories must be weighed along the recent acts to ascertain which appears more probable, and (b) the facts established by matters and events within living memory must necessarily take precedence over traditional evidence.

Applying the above principles to the facts as established in the instant case, the occupation of the disputed house by plaintiff's late father Yaw Manu is acknowledged by defendant and her witnesses. There is an authentic plan in the name of plaintiff;s father……There are also receipts for the payment of property rate in the name of plaintiff;s father in respect of the disputed property. These documents were in existence during the lifetime of the defendant's uncles.

On the part of the defendant, until the death of plaintiff's father, she was not living in the house. And all claims that she lived in the house before or that family members lived and are still living in the house have remained throughout the trial mere assertions without proof…….

In the premises it is our view that the preponderance of probability of the evidence which is proved tilts in favour of the plsintiff."

We find there was no contradiction in the inferences drawn from the proven evidence and the conclusion reached by the Court of Appeal, and we are in agreement with them. We would, however, proceed to evaluate the evidence on record. The parties agree that the land in dispute is stool land originally owned by the stool of Mamponteng. The parties also agree that at the time the land was acquired in or around 1947, the occupant of the Mamponteng stool was Nana Kofi Owusu, who from the record was no longer the stool occupant as at 1989 and as at the commencement of

these proceedings. Both the plaintiff and the defendant told the court the history of the acquisition and development of the plot. The plaintiff was supported by a former wife of the late Yaw Manu who said she was still married to him when Yaw Manu constructed this house. This assertion was refuted by the defendant and Hanna Fordjour, the wife of late Kofi Nyamekye, junior brother of late Yaw Manu. Whereas the defendant testified to the construction of both the original swish house and the reconstruction with blocks, Hanna Fordjour, DW2 testified to the reconstruction only. She said it was her husband who told her the original swish house was put up by their ancestors the late Kwabena Ofori and Osei Kwame. Dw2 said the house was rebuilt by Osei Kwame who also physically took part in the construction, as well as her own mother.

Dw1, the present Gyasehene of Mamponteng spoke about the relocation of some five different families from old Ebuoso to the present site at Mamponteng when the stool of Mamponteng gave them land to settle on at the request of the Asantehene. But he personally did not see these five families, including the defendant's put up their houses. Whatever he narrated was what he was told by the Mampontenghene. He said that when he swore the oath of allegiance to the then Mampontenghene Nana Kofi Owusu, the latter briefed him on all these. He admitted in cross examination that the Mamponteng stool signed a site plan of this land for the late Yaw Manu.

It is clear that the Court of Appeal was not satisfied that from the totality of the evidence on record that either party was able to proffer sufficient and convincing evidence based on traditional history about the acquisition of the land, to begin with. The plaintiff as well as his only witness both did not give any detailed account as to how the land was acquired, except to say it was given to the late Yaw Manu by the then Mampontenghene Nana Kofi Owusu. The evidence does not say anything about the

acquisition of a customary grant of land, how it was done, whether any form of consideration was paid, whether any form of 'aseda' was presented by way of customary drinks and so on and so forth. On the other hand, the defendant said the land was granted to their family at the instance of the Asantehemaa. Needless to say the alleged Asantehemaa was not named. The name of the family to which the alleged grant was made was not stated and it is still not known to the court. Here again no incidents of a customary grant were mentioned. Pw1 who said he was told by Nana Kofi Owusu about the grant was the same person who signed the site plan exhibit B in favour of the late Yaw Manu as owner of the same plot of land. Dw2 did not know how the land was acquired. Hence the court below found it difficult to choose between the competing stories. That was why counsel for the defendant argued that it should be possible to dismiss both claims. A court should be slow in dismissing both a claim and a counter-claim, unless there is no credible and sufficient evidence on the record from which a decision could be reached one way or the other. The court should examine every piece of evidence and evaluate same, taking into account who has been more consistent, pointing out contradictions and inconsistencies in the two versions, and arrive at an overall assessment of the competing stories. These are all legitimate steps open to a court to follow in arriving at a decision.

In the circumstances the High Court judge placed reliance on the financial means of the parties as regards the construction of the building on the land. The Court of Appeal did not accept it but rather placed reliance on the documentary evidence. We would have due regard to all the pieces of evidence as well as the material contradictions and inconsistencies in the presentation of the respective cases.

It is clear from the pleadings and evidence that the acquisition of the land and the construction of the swish house, and subsequently the block house on it were done by the same

person/s. It was either Yaw Manu alone, or Kwabena Ofori and Osei Kwame jointly who acquired the plot and built both the swish house and subsequently the block house on the plot. It was thus reasonable for the courts below to find from the totality of the evidence adduced that this or that person constructed the building and exercised acts of ownership over it in arriving at the decision that the land was acquired by either party. And in seeking to arrive at a just conclusion, the High Court relied on the financial means of the parties, and rejected entirely all the documents presented at the trial by the plaintiff, namely the property rates, conservancy fees and site plan. In his view these did not establish any form of ownership.

The trial judge made some relevant findings and inferences. The first relates to a building plan pleaded by the plaintiff and in respect of this the trial judge said: "The question now is between the two versions which one should I rely on? paragraph 6 of the plaintiff's statement of claim reads: *'plaintiff states that subsequently his father pulled down the swish building on the said plot and erected a new house with cement blocks which was renumbered by the planning authorities as plot 11C Block F. Plaintiff states that his father had earlier caused a plan of the new building to be made for him*.' It is of essence that the said building plan was not tendered in evidence to enable the court form an opinion on same."

And in respect of the site plan, exhibit B, this is what the trial court said: "It is also not a denying fact that the plaintiff relied heavily on exhibit B a site plan covering the disputed land. DW1 the Gyasehene of Mamponteng was a signatory to same. He stated further that since they knew the land was a family property they refused to give an allocation paper to Yaw Manu until he brought one of his family members but he failed to do that. If I may ask how come it took Yaw Manu too long a time to cause Exhibit B to be prepared. No doubt the defendant told the court it was after the

death of her uncles that Yaw Manu told her he was going to prepare documents to cover the plots."

On the financial means, the trial court judge posed the question: "Was the late Yaw Manu financially sound when he put up the swish house in 1949 as claimed by the plaintiff?" And his answer was "I must say no evidence was led to prove his financial position when he allegedly put up the swish house which clearly goes to show that the swish house was put up by the uncles of the defendant. I say so because the swish house was constructed before same was demolished and the house in dispute was put up. This invariably goes to show that whoever put up same obviously acquired the land on which stands the house in issue. On the contrary there is uncontroverted evidence before me that the late uncles of the defendant who she claimed put up the swish house were cocoa farmers. I think financially they were capable of putting up the house in issue."

As regards the payment of statutory bills like property rates and other utility bills like conservancy fees, which were paid by Yaw Manu in his own name from 1980 or thereabouts and which were tendered as part of the plaintiff's claim of ownership, the trial court disregarded them completely. This is what the learned judge said: "I shall attach no weight to Exhibits A1-A17, receipts covering payments of property rates. I say so because the act of paying property rates does not vest title in the person who effects such payment."

The trial court judge did not analyse the evidence to determine whether the defendant's version of the construction of the property as against that of the plaintiff was preferable. He concluded that the defendant's version was acceptable because Osei Kwame and Kwabena Ofori had financial means to construct the building. Indeed if it is true that Yaw Manu was not financially capable of constructing the house, then the trial court's conclusion could be supported.

On possession, the trial court found that various members of the defendant's family lived in the house rent free. Deceased members of the family were also laid in state there. Upon these findings the trial court dismissed the plaintiff's claim and accepted the counter-claim of the defendant.

In its judgment dated 31st January 2014, the Court of Appeal appropriately cautioned itself as to the requirement that an appellate court be rather slow in interfering with the findings of fact made by a trial court. This principle is very well known and does not require any further discussion. After going through the evidence the Court of Appeal upset the trial court's findings on some issues, and set aside its conclusion. It is our duty therefore to decide whether the Court of Appeal was justified in interfering with the trial court's findings of fact and conclusion.

In a civil trial, the standard of proof required is that of a balance of probabilities. In this case the Court of Appeal found that none of the traditional evidence satisfied the requirement of the standard of proof on a balance of probabilities. Thus the court was bound to take into account various acts of ownership exercised over the property in times past and in recent past, as well as any relevant documents that have a bearing on the property, if such documents are authentic and not fraudulently procured.

We would examine the Court of Appeal's decision in relation to each one of the six factors and/or reasons the trial court relied upon or omitted in arriving at its decision, which have been summarized above.

First the trial court said the failure to tender the building plan disabled it from forming an opinion. The Court of Appeal mentioned this in passing but made no comment on it. The acquisition of a building plan is no evidence that the holder owns the plot. And even when a building permit is issued, it is clearly indicated thereon that it is not confirmatory of ownership of title.

The failure to produce a building plan was not fatal; indeed it was not even a material piece of evidence, especially having regard to the fact that the defendant also had no such plan of the building bearing the name of her uncles or their family. Be that as it may, where no evidence is adduced on a fact that has been pleaded, it is treated as having been abandoned by the pleader; the court does not call it into question in its judgment. The court's only duty is to consider the evidence the party has proffered in determining whether or not he has met the required standard of proof.

Secondly, the trial court rejected exhibit B because of the evidence of DW1 that the late Yaw Manu failed to produce a member of the family to enable the stool give him an allocation paper. The Court of Appeal discussed this issue at length in the following words: "The site plan was endorsed by the Mampontenghene, DW1 and the Akwamuhene. DW1 admitted knowledge of the site plan and its authenticity because the three of them actually signed it but that an allocation paper could not be issued him unless his family members consent to the same. But then the contrary evidence of DW1 is that after signing the site plan, Opanin Yaw Manu requested for an allocation paper to cover the land. But the chief told him that since the land does not belong to him exclusively but to his family, an allocation paper could not be issued him unless his family members consent to the same. He concluded that an allocation paper was not issued to him because he failed to bring any family member……This evidence of DW1 needs to be carefully analysed to determine whether the inference the trial judge made therefrom is right. In BOATENG (No. 2) vrs. MANU (No. 2) & Or. (2007-08) SCGLR 1117, at holding 3, the court held that the allocation paper is the initial process to evidence that the land has been acquired by an individual or corporate body. The allocation paper cannot by itself represent the acquisition of the land. The court then went on to give three reasons why an allocation paper is not a registrable instrument. The allocation paper thus represents the first process/step in the

acquisition of land from a grantor. It is a paper which gives the grantee the right to perfect his title or access to the land……The issue of an allocation paper is such a notorious practice in the Ashanti Region that we cannot fail to take judicial notice of it-see the case of ENYIDADO COMPANY LTD. vs. ODEEFO OWUSU AMOAYE II, unreported judgment of this court dated 29th November 2013. The allocation paper enables a grantee to enter the land, and take measurements for purpose of making a site plan. A site plan drawn to scale by a qualified surveyor is not only accurate but also identifies the location and boundaries of the land granted. That is what is shown on Exhibit B…….That being so, DW1's evidence that after they signed the site plan for Opanin Yaw Manu, he asked for an allocation paper is a complete afterthought……If the Mampontenghene and his elders including DW1 were satisfied that the land was not granted to Opanin Yaw Manu exclusively as appeared in the site plan, then they should not have endorsed it in the first place in the absence of an allocation paper…….

I noted that DW1 admitted the authenticity of Exhibit B. In HAYFRON vs. EGYIR (1984-86) 1 GLR 682, it was held that whenever there is in existence a written document and oral evidence over a transaction; the practice of the court is to consider both the oral and the documentary evidence and often to lean favourably towards the documentary evidence; especially where the documentary evidence is authentic and the oral evidence is conflicting."

In the result the court concluded as follows: "On the weight attached to Exhibit B by the trial judge and its effect on the plaintiff's claim, we hold the view that the conclusion reached by the trial judge is not supported by practice and evidence on record."

We think the analysis of the issue by the Court of Appeal was well thought through. In the first place, the grantor stool knew the

person/s to who it gave the land in dispute. It is therefore logical that the occupant of the grantor stool and his elders would only endorse any document in respect of the land for their grantee only. Dw1 admitted the authenticity of Exhibit B, yet he wanted the court to believe that he, together with the chief of Mamponteng and one other principal stool occupant the Akwamuhene, with full knowledge that the land did not belong to Yaw Manu nevertheless signed exhibit B for him as owner. Were they helping Yaw Manu to perpetrate a fraud on the true owners or what? Surely they knew what they were doing, that is they knew they were signing the site plan for the true owner. There was no case of duress or misrepresentation on the part of Yaw Manu. As between the chief of Mamponteng and his elders and successors in interest on one side and Yaw Manu or his descendants on the other, exhibit B raises a conclusive presumption in favour of the latter. Exhibit B was signed in March 1989 so it would be caught by the provision in section 25(1) of the Evidence Act, 1975 (NRCD 323) which reads:

Except as otherwise provided by law, including a rule of equity, the facts recited in a written document are conclusively presumed to be true as between the parties to the instrument, or their successors in interest.

Having admitted the authenticity of exhibit B, DW1 was bound by it. It is noted that an allocation paper is the first step in the process of acquiring and perfecting title to land especially in the Ashanti Region. It follows logically that any other document follows the initial acquisition of title. In the instant the land was granted as far back as 1947, and it had been fully developed. It was thus reasonable that a site plan, rather than an allocation note would be issued, therefore the issue of the site plan was in order. For unless the chief and his elders knew who their grantee was, they would never endorse a site plan for him as owner before

asking him to come for an allocation note, when the latter should be the first in time. They were bound by exhibit B.

The subsequent evidence by DW1, that the chief asked him to bring a member of the family before they would give Yaw Manu an allocation note was an afterthought. At any rate that was evidence being offered against a deceased estate which should be accepted with caution. At page 306, paragraph 13-11, the learned authors of Phipson on Evidence, 15th edition, wrote on the title 'Claimants to to the property of deceased persons' that '*It is a rule of practice that courts will not act upon the uncorroborated testimony of such claimants unless convinced that such testimony is true.'* They cited the case of RAWLINSON vs. SCHOLES, (1899) 79 L.T. 350. The case cited followed what Sir J. Hannen said in RE HODGSON; BECKETT vs. RAMSDALE; (1886) 54 LT Rep (No. 5) 224; 31 Ch. D 177, 183 that "*The statement of a living man is not to be disbelieved because there is no corroboration, although in the necessary absence through death of one of the parties to the transaction it is not natural that in considering the statement of the survivor, we should look for corroboration in support of it, but, if the evidence given by the living man brings conviction to the tribunal which has to try the question, then there is no rule of law which prevents that conviction being acted upon."*

Much as a court could rest its decision on the relevant testimony of only one competent witness if it passes the twin test of personal knowledge and credibility, such evidence when offered against a deceased person ought to be accepted only if it is the truth. In this case it is noteworthy that at the date exhibit B was signed, both Osei Kwame and Kwabena Ofori were alive. Yet DW1 did not find it necessary to inform them that Yaw Manu had come to take a site plan of their property in his personal name. Indeed he did not tell any member of that family until he testified in this case. That evidence could not be true for DW1 had every opportunity to have refused to sign that document since he claimed to know the true

owners; he had every opportunity to have informed any member of the family that Yaw Manu had taken this document in his own name but he did not. His testimony which ran counter to the contents of exhibit B required some amount of confirmation from the Chief of Mamponteng or the Akwamuhene or, if they were dead, from their successors in interest since the document binds all of them.

Rather unfortunate to recall, the trial judge accepted the defendant's case that it was after the death of the two uncles that Yaw Manu told her he wanted to secure documents on the land. The trial court judge wrongly found that the site plan was obtained after the death of the two named uncles Osei Kwame and Kwabena Ofori. But the unchallenged evidence of the plaintiff was that Kwabena Ofori died in 1993 whilst Osei Kwame died in 1997. On 30th October 2009, the defendant was under cross examination and this is a relevant extract therefrom:

"Q-Between Osei Kwame and Kwabena Ofori who died first?

A-Ofori.

Q-How long ago was this?

A-A long time ago.

Q-Give a rough idea about the date.

A-About 20 years.

Q-I suggest to you that Kwabena died before Osei Kwame died in 1993.

A-That is not correct.

Q-What of Osei Kwame.

A-About 11 years ago."

From the foregoing evidence of the defendant, Osei Kwame died in or about 1998. Thus the date 1997 which the plaintiff stated positively should be accepted as the correct one. And whether Osei Kwame died in 1997 or 1998, the truth is that the trial court's conclusion was not factually correct. The truth again was that exhibit B was issued to the late Yaw Manu during the lifetime of both Osei Kwame and Kwabena Ofori.

Exhibit B is authentic, and was endorsed by the chief and elders of the grantor stool; they have never rejected it as their act, having endorsed it with full knowledge of who their grantee was. At the time both Osei Kwame and Kwabena Ofori were alive, yet the chief and his elders signed this document for Yaw Manu. The conclusion reached by the Court of Appeal is therefore supportable.

The next reason given by the trial court in dismissing the plaintiff's action was the fact that there was no evidence of Yaw Manu's financial means as opposed to Osei Kwame and Kwabena Ofori who were cocoa farmers. The Court of Appeal did not agree with the trial court for the following reasons: "The trial judge made no determination of whose version of the construction of the house as it stands today is more reasonably probable. He went straight to determine the financial ability of the ancestors of the parties to put up the building. He held that because there was no evidence that Yaw Manu was financially sound to put up the swish building in 1949, it meant the swish house was put by the defendant's uncles who later demolished it as owners of this land. He credited the defendant's uncles with the financial means to put up the house because they were cocoa farmers. He referred to no evidence on the work the plaintiff's father did in his life. But the plaintiff's evidence is that his father was a trader in his lifetime. According to PW1 at Benimase, she manned a store they operated. As a trader DW1 stated that he met Yaw Manu trading at Yeji along the river Volta. He said Yaw Manu even traded in

drugs……This evidence of DW1 which supports the plaintiff's case that his father was a trader contradicted sharply, defendant's claim that Yaw Manu was a hewer of wood for a mining firm. Should the case of the plaintiff on his father's occupation not be preferred to defendant's uncorroborated evidence on the authority of ASANTE vs. BOGYABI (1966) GLR 232?

That is not all. PW1 stated her ex-husband Yaw Manu was given a tipper truck by a white man. He returned to Mamponteng with the tipper truck with which he carted sand to mould blocks to put up the sandcrete building……"

In the first place there was no issue as regards the financial means of the deceased persons, namely Yaw Manu, Osei Kwame and Kwabena Ofori. It did not even arise by implication from the pleadings. Secondly, the evidence as to what type of work these persons were doing in their lifetime was clearly not intended to establish their financial capability. If that was the intention, then all the evidence failed to reach the required standard of proof on a balance of probabilities. That is so because there was no evidence as regards the volume of trade that Yaw Manu was carrying out both at Benimase and at Yeji or how much he was earning from the use of the tipper truck. And so too there was no evidence as to how much acreage of cocoa these uncles of the defendant were engaged in, what their production levels were or how much they earned from them. It is a known fact that cocoa is purchased by the State per its agents so it is easy to have documents including receipts to show how much the farmer has sold to the State. Being a cocoa farmer is per se not evidence that a person is financially sound. This was the fallacious assumption underlying the trial court's conclusion. It is clear the trial court drew wrong inferences and conclusion from the accepted facts. The court ought to have applied the same consideration to the case of the plaintiff that Yaw Manu being a trader at Benimase and

at Yeji and an operator of a tipper truck was also capable of earning money to put up the building. The Court of Appeal's conclusion on this matter was thus justified. In the absence of evidence as regards the income of any of the parties, it was wrong for the trial court to have concluded that Kwabena Ofori and Osei Kwame had the financial means to put up the house simply because they were cocoa farmers.

On the construction of the building, as earlier pointed out, the trial court did not analyse the evidence, it largely relied on the financial means of the deceased persons. The Court of Appeal did the right thing by considering all the relevant evidence. The construction of the swish house in 1949 was not very clear. There was very little to choose between the two stories, there is clearly no certainty as to which of them did put up the swish house. And in respect of the sandcrete building too the evidence on record left little to choose between them. The plaintiff and PW1 said Yaw Manu constructed it. Yaw Manu used his tipper truck to cart sand to mould blocks for the construction. And Pw1 said she was still married to him and she witnessed it. On the other hand the defendant supported by PW2, wife of Yaw Manu's brother said Osei Kwame constructed this house personally. In the face of such conflicting evidence, which leaves the court unable to choose between them, the law permits the court to make reference to other pieces of evidence in respect of acts of ownership and possession to determine which one should be accepted on a balance of probabilities. We believe the trial court found itself in the difficult situation of choosing between these competing stories, hence the recourse to the financial means of the actors in resolving who could have constructed the building. The Court of Appeal analysed the contradictions in the evidence of the defendant and her witness DW2 on the construction of this property. But it concluded that the evidence on both sides was inconclusive. We do not agree with this conclusion by the Court of Appeal, because having carefully analysed the evidence and rightly pointed out the contradictions

in the case by the defendant and her key witness on the construction, and not having any cause to discredit what the plaintiff and Pw1 said, the only logical conclusion should be that the plaintiff's case was made out on a balance of probabilities.

The contradiction or at least inconsistency between the story of the defendant and her key witness DW2 on the construction leaves one with the impression that they intended to discredit Yaw Manu for no just cause. The defendant said the construction of the block house was the joint effort of the two uncles. According to her the role of Yaw Manu during the construction was an overseer or keeper of the building materials. At least she acknowledged that Yaw Manu was present and somehow played a minor role in the construction. But according to DW2, Yaw Manu was nowhere around during the period of the construction. At page 58 of the record this is what DW2 said: "The house was re-built by Osei Kwame. He mould (sic) some sandcrete blocks and thereafter he was assisted by a mason…….All the while I did not know the whereabouts of Yaw Manu. In fact I did not know him then. It was later that I got to know him….." We would point out some more contradictions and inconsistencies in the narration of events later in this delivery. But for the moment it is certain the defendant's key witness was only determined to support her case at any cost, to the extent of even saying Yaw Manu was not around during the construction. This was blatantly false which does the defendant's case no credit. On the evidence the plaintiff's story on the construction was acceptable on a balance of probabilities, in view of its consistency and credibility.

We would go further to consider various acts of ownership and possession exercised by the actors in respect of this property which would help decide this case. As part of his case that Yaw Manu was the owner of the property, the plaintiff testified that his late father settled all the bills in respect of the house in his own name. The receipts covering these payments were put in evidence

as exhibits A-A17. The receipts cover property rates for the years 1982, 1983, 1984, 1985, 1986, 1988, 1991, 1993 and 1994; the others are for conservancy fees for the period 1980 to 1987. As stated earlier the trial court judge just brushed aside these exhibits as proving nothing. That conclusion is unfortunate, especially in view of the fact they were introduced in support of the plaintiff's claim of ownership. In other words, that the late Yaw Manu paid these bills in his name because he was the owner of the property. The Court of Appeal disagreed with the trial court on this issue and it delivered itself in these words: "*The trial judge attached no weight to the receipts because he held the view that receipts do not vest title in the person who makes the payment. That conclusion is true but there is more to it. In TONADO ENTERPRISES vs. CHOU SEN LIN (2007-08) SCGLR 135 where the payment of ground rent was relied on as evidence of ownership of the land in dispute, the court held in holding 1 that 'payment of ground rent may be some evidence of ownership. It is however, not an invariable rule that any payment of any ground rent should be construed as evidence of ownership because caretakers and tenants can pay ground rents and when that happens, it will be wrong to interprete the payment as conclusive of ownership. The principle that can be laid down on such payments is that payment of ground rent may in some circumstances represent evidence of occupation, control (by caretakers) or in some cases evidence of ownership (where payment is by the landlord) but it cannot be taken that payment of any ground rent is conclusive evidence of ownership. Such payments merely raise a presumption of ownership which is rebuttable.*

The Court of Appeal went on to state that like ground rent, property rate demand comes in the name of the land owner. Thus unless the name of Yaw Manu is in the records of the Kwabere Sekyere District Assembly as the owner of property no EB 26, he would not be able to effect such payments in his own name upon receipt of the demand notice. However, that per se is not evidence

of ownership, but all these exhibits A-A17 and B raise a rebuttable presumption in favour of the plaintiff. Thus the trial judge was bound to consider the evidence led by the defendant to decide whether she succeeded in rebutting that presumption. At this stage it is necessary to recall what the law says on rebuttable presumptions and the burden of producing evidence and of persuasion. The relevant provisions are in NRCD 323 and they are:

11(1) For the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.

14 Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence of which is essential to the claim or defence he is asserting.

17(1) Except as otherwise provided by law, the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof.

What then was the rebuttal evidence that was led by and on behalf of the defendant? The defendant's case as pleaded was that the late Yaw Manu inherited the properties of his late uncles so as head of the family he was holding them in trust for the family. But at the hearing she did not speak to this plea, meaning she had abandoned it. She rather dwelt on the fact that Yaw Manu was made a caretaker of this property by their late uncles. It was she who was sent to Benimase to go and fetch Yaw Manu to return to Mamponteng. That Yaw Manu was to take care of his mother and grandmother in this house that was why he was sent for. She then spoke about the fact that in his lifetime Yaw Manu wanted to gift a room in the house to his daughter which request was rejected by

the family. That request was repeated during the 40th day celebration of Yaw Manu's death but it was rejected. The children of Yaw Manu made no claim for this house; the only request they made was for a plot Yaw Manu had acquired and used for a piggery which the family obliged. She also talked about the occupancy of the house, but that will be addressed when we consider the issue of possession. The issue of the construction of the block house has been disposed of already. She also gave the impression that Yaw Manu was not doing any gainful employment which misled the trial court to conclude that it was her uncles who had the financial means to build the house. But this has been found to be false in the light of the evidence of PW1 and DW1.

The evidence of the defendant that she was sent by their uncles to go and bring Yaw Manu to come and look after his mother and grandmother was not accepted by the Court of Appeal for reason that it was odd to ask a man to come and look after older women when there were female adult children and grandchildren available. Much as it sounds odd, it might still be possible if the situation called for it. We would thus not read too much into that. What is important to consider is that evidence as against that of Yaw Manu's wife who said she returned with Yaw Manu to Mamponteng when the husband secured a tipper truck which enabled him to cart sand, mould blocks and rebuild the house. After that they stayed there with their children as well as Yaw Manu's mother and grandmother. The story as told by PW1 appears more reasonably probable because Yaw Manu who had left to seek greener pastures and was working at Benimase would return to Mamponteng if he had acquired or had something to do. Hence having acquired the tipper truck it sounds reasonable that he would return home as his ex-wife said.

On the purported gift of a room in the house to Yaw Manu's child, this is what the defendant said at page 46 of the record: "At his 40th celebration one of Yaw Manu's daughters called Boahenemaa

told me that she was gifted a room by Yaw Manu but I told him (sic) the family will not accept same. In the lifetime of Yaw Manu, Boahenemaa came in the company of his (sic) uncle to inform the family of the said gift to (her) the family refused since…..the house is a family property. Yaw Manu agreed to this and apologized to his uncles." The event which took place especially on the 40th day celebration where the family and sympathisers had gathered would readily find supporting evidence. The story itself sounds incredible because even whilst her father was alive Boahenemaa failed to secure a gift of the room, and defendant would want the court to believe the same lady Boahenemaa repeated the gift after the death of her father. It is a story which certainly required more than the bare assertion of the defendant offered against the deceased estate.

Then the defendant wanted the court to believe that the only property of Yaw Manu that his children asked for on the 40th day celebration was a piece of land he acquired for a piggery. In the amended statement of defence, the defendant averred that documents on the only plot acquired by Yaw Manu were handed to his children during the 40th day celebration of his death. Apparently this was the plot acquired for the piggery. The defendant's case on this was put across to the plaintiff under cross examination at pages 37-38 of the record as follows:

"Q-Apart from the disputed plot, did your father have any other plot?

A-No, he did not have a building plot. But he acquired a land to rear animals.

Q-And on the 40th day celebration the said plot was handed over to you and your siblings.

A-That is not true.

Q-Are you saying the said plot is in possession of the defendant's family?

A-No, the chief reclaimed and sold same.

Q-I put it to you that this plot was handed over to you and your siblings during the 40th day celebration of your father's death.

A-This is not true."

From the foregoing discourse, the defendant's position on this land acquired by Yaw Manu for a piggery was the only land acquired by him and that the family handed it over to the children. However, the defendant's witness DW1 rather confirmed the plaintiff's position. DW1 spoke about this land for piggery in his evidence-in-chief saying: "During the lifetime of Opanin Yaw Manu, he pleaded with the then chief for a place to rear his pigs and same was granted. However same later revert (sic) the chief after the collapse of the pig farm." From the answers given by the plaintiff during cross examination which find support from DW1's clear testimony this piece of land was not in the hands of Yaw Manu before his demise. How then could the family have handed it over to the children on the 40th day celebration? This was nothing but a deliberate attempt to bolster the defendant's case that Yaw Manu was not owner of the disputed plot that was why on the 40th day only the land for piggery was handed over to his children. When a party resorts to plain falsehood it is indicative that he has a bad case.

The sixth and final consideration is the issue of possession. It is noted that in a community setting in this country, it is normal for an owner of property to permit members of the family, both immediate and extended, to live in his self-acquired property. Indeed that is the hallmark of family life. And until PNDCL 111 came into force, there would have been no problem at all for this property would have passed on to Yaw Manu's extended family notwithstanding that he acquired it on his own. Thus as far back

as 1949 when the house was built, it would not be surprising that different persons, including the parents, uncles, siblings, grandparents, wives and children of the landlord would all at one time or the other be living in the house in harmony. It is only when a dispute as to ownership arises that naturally parties try to draw lines of demarcation, trying to separate the wheat from the chaff.

In this respect the Court of Appeal considered all the evidence on possession and concluded that the defendant had not succeeded in her claim that members of the extended family occupied the house as of right. Indeed the late Yaw Manu lived in the house with his wife, PW1 a fact admitted by the defendant and with difficulty by DW2; he also lived there with his children up to his death. As against this clear evidence, the witnesses called by the defendant were not helpful to her cause as regards the issue of possession. This extract from the cross-examination of DW1 at page 56 of the record of proceedings is revealing:

"Q-Did Yaw Manu, his wife and children live in the house in dispute?

A-Yes. Even before his death none of his children was living in the house.

Q-Presently some of his children are residing in the house.

A-I know that one lived there but I cannot tell whether the child is living there since it has been a long time."

Thus according to this witness none of the children of Yaw Manu was living with him before he died. And after his death one of them came back to live in the house. This contradicts the defendant's own story. Under cross-examination of the defendant it was suggested to her that Yaw Manu's wife and his children lived in the house and that after his death some of his children are still in the house. Her answer to be found at page 51 of the record was that "throughout his lifetime and after his death only 3 of his children

are still living there." What did DW1 seek to achieve by denying that Yaw Manu's children were living with him in this house before his death and have continued to live there at least up to the time they testified in court? It was clear he was eager to bolster the defendant's case and was lying about facts which were easily verifiable.

The least said about the testimony of DW2 the better. In her evidence in chief she said she never saw Yaw Manu living in this house, see page 59 of the record. Then in cross examination when asked whether any of Yaw Manu's children lived in this house, her answer was that they only stayed there during celebrations, the obvious inference being that they did not live there but only stayed there temporarily during celebrations. But when pressed further during cross examination to the effect that it was Yaw Manu who built the house and it was suggested to her that Yaw Manu lived in the house with his children till his demise, DW2 took a contrary position to her earlier stand when she said: "I met Yaw Manu's wife and children who were then young at the time living in the house till their marriage was dissolved and PW1 left. I was also living in the house at the time." It is clear that both DW1 and DW2 were trying to support the defendant's claim that the family were in exclusive possession, but in the process they went beyond what the defendant herself had said and their story contradicted the defendant's. The only consistent story in respect of possession was that Yaw Manu lived in this house with his wife (until she was divorced), and three children throughout, and these children continue to live in the house even after the death of their father. Other persons might have lived there at one time or the other but not permanently unlike Yaw Manu and his children. Every other story is either inconsistent or contradictory or plainly unsupportable. In this scenario the court would prefer the consistent story of the plaintiff which defendant and eventually DW2's admission supported as against the defendant's which has no credible support.

It was clear that besides occupying the house throughout with his children, the late Yaw Manu was in full control of the property as owner in all other respects. There was clear evidence that he rented out some rooms to tenants and took the rents and nobody complained, including those who were said to have built the house.

From the totality of the evidence the plaintiff was able to establish his case on a balance of probabilities, in respect of the construction of the sandcrete block, the payment of property rates as owner, physical occupation of the property with his wife and children till his death, the approval he got from the grantor stool, by way of exhibit B, the renting out to tenants and keeping proceeds without any objection. It is reasonably safe to accept the plaintiff's case that Yaw Manu acquired the land and built the swish house on it before travelling to Benimase with his wife to work, as PWI said. All these cumulatively point to one and only one conclusion that the late Yaw Manu was the owner of this property. Section 48(2) of NRCD 323 provides that '*A person who exercises acts of ownership over property is presumed to be the owner of it."* The defendant did not succeed in rebutting this clear presumption which the evidence raised in favour of the plaintiff.

We therefore find no merit in the appeal which we hereby dismiss, and uphold the decision/s of the Court of Appeal.

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

(SGD) W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

(SGD) S. O. A. ADINYIRA (MRS)

JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

(SGD) J. B. AKAMBA

JUSTICE OF THE SUPREME COURT

COUNSEL

OBENG MANU (JNR) ESQ. FOR THE DEFENDANT /RESPONDENT/APPELLANT.

F. K. BUOR ESQ. FOR THE PLAINTIFF/APPELLANT/RESPONDENT.