IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF JUSTICE

ACCRA, GHANA.AD. 2016

CORAM: G. PWAMANG, J.S.C. SITTING AS A SINGLE JUSTICE OF THE SUPREME COURT

CIVIL MOTION

NO. J8/132/2016

27TH OCTOBER 2016

RICHARD APPIAH-NKYI - PLAINTIFF/RESPONDENT/

LEGAL AND WELFARE OFFICE RESPONDENT

REGISTRAR'S OFFICES, KNUST-KUMASI

H/NO. BUROBURO & KNUST CAMPUS, KNUST-KUMASI

VRS

NANA ACHINA NUAMAH) - DEFENDANT/APPELLANT/

V (ASSUOWINHENE (FOR AND ON APPLICANT

BEHALF OF ASSUOWIN STOOL)

ASSUOWIN PALACE, ASSUOWIN NEAR NKAWIE/ASHANTI

R U L I N G

PWAMANG, JSC.

On 27th June, 2016, the Court of Appeal dismissed an appeal filed by the defendant/appellant/applicant, hereafter referred to as "the applicant" against a judgment of the Circuit Court, Kumasi. The Applicant felt aggrieved by the decision of the Court of Appeal and since it was in respect of a judgment of a court lower than the High Court, he applied for leave of the Court of Appeal in order to appeal against its decision. The Court of Appeal dismissed that application for leave upon a preliminary objection raised by the plaintiff/respondent/respondent who will be referred to as "the respondent" in this ruling. The Applicant has therefore brought this application under Article 131(2) of the 1992 constitution praying for special leave of this court to appeal against the judgment of the Court of Appeal dated 27th June, 2016.

In the Circuit Court the respondent claimed against the applicant among other reliefs for a declaration that six plots of land at Twindurase within Assuowin Stool land in the Ashante Region were granted to him in 1999 by Nana Etwi Kwaku, Odikro of Twindurase and Opanin Akwasi Addai, Ahwerewa Abusuapanyin of Kotwi and that the grant was endorsed and ratified in 2003 by applicant being the occupant of the Assuowin Stool. The respondent stated that when the applicant ratified his grant he permitted him to develop the plots pending the issuance of formal allocation papers upon completion of a re-demarcation scheme applicant was then preparing for the area.

The respondent constructed a wall around four of the plots and partially developed the other plots and placed some cement blocks on them. Respondent subsequently contacted applicant for the allocation papers and, even though he was prepared to pay customary drinks to applicant in order to be given the papers, applicant refused to sign them for him hence the suit. Applicant filed a defence wherein he denied the grant to respondent and contended in the alternative that Nana Etwi Kwaku and Opanin Akwasi Addai had no capacity to grant the land to respondent. He also denied ratifying or endorsing the grant.

After a full trial in which respondent testified and called two witnesses and applicant testified without calling any witness, the trial judge held that Nana Etwi Kwaku as Odikro of Twindurase and Opanin Akwasi Addai, as Ahwerewa Abusuapanyin of Kotwi acted on behalf of Assuowin Stool in granting the land to respondent. The trial Circuit Court judge also found on the evidence that applicant ratified the grant that was made to respondent. He therefore entered judgment for respondent. The applicant being dissatisfied with the judgment appelled against it to the Court of appeal.

Strangely, in his written submission in the Court of Appeal, respondent in whose favour the trial court entered judgment questioned the holding of the judge that Nana Etwi Kwaku as Odikro and the caretaker of Assuowin stool had capacity to grant the Divisional Stool land. At paragraphs 38 and 39 of the Judgment of the Court of Appeal, it is stated as follows:

"Contrary to the view the trial judge held of the capacity of Nana Etwi Kwaku, counsel for plaintiff/respondent argued that as a caretaker, Nana Etwi Kwaku lacked capacity to make the said grant. He referred to the definition and function of an "Odikro" as stated in the Law of Chieftaincy in Ghana authored by His Lordship Justice S. A. Brobbey (retired) in which the learned judge stated at page 50 to 51 that:

> "Adikrofo is alleged to have originated from the concept of getting a caretaker to oversee the lands and properties of the divisional chief of the area. He is the "Odikro" on behalf of the Obrempong or divisional chief and as such is in the position of a supervisor or a caretaker."

39. The question raised by that definition of a caretaker is whether or not Nana Etwi Kwaku had capacity to alienate the plots as an agent of the Assuowin Stool. Counsel found the answer in **Awuku v Tetteh [2011]1 SCGLR 366** at page 4 of the written submission that:

> "Thus, the statement of law is that a grant by "Odikro" who is the caretaker of stool lands is null and void because he lacks capacity to do so and nothing passes or is received legally under the transaction unless the grant is adopted or ratified by the occupant."

The Court of Appeal continued as follows in its judgment:

"But the above submission rather gave counsel for the defendant ammunition to pose the question whether an act which is null and void could in anyway be ratified at all?"

In a bid to address the submissions of the parties referred to above, the Court of Appeal reviewed the general principles of the customary law of Ghana on valid grants of stool lands by the occupant, his councilors, caretakers and agents and stated as follows at paragraphs 44, 45 and 46 of its judgment:

"44. According to Ollennu, in the book Principles of Customary Land Law in Ghana, 1962 at page 127, the one indispensable person in the alienation of stool or skin land is the occupant of the stool or skin. This is because the occupant of the stool is considered the embodiment of all his subjects and the custodian of the land which is considered to belong to the dead, the living who are few and the countless numbers yet unborn. Therefore any dealing with the land which is adverse to the interest of the stool as a whole is not countenanced at all.

45. The law is therefore well settled that for a grant of stool land to be valid, the appropriate body of persons made up to the occupant of the stool and his principles councilors must grant it. Aside that, any grant by a single person, he being the chief or a councilor or a body of persons not properly constituted is declared as void not voidable. So a grant by the occupant of the stool alone without the knowledge,

consent and concurrence of his councilors, or by the occupant of the stool with consent and occurrence of a minority of the councilors are all null and void – see the **Awuku case** (supra).

46. If the grant of stool land by those office holders in those situations is considered null and void, then the grant by an Odikro or a caretaker such as Nana Etwi Kwaku is most untenable. I noticed however that in the Awuku case, the appellant's uncle who was his grantor was described as a "mere caretaker". The court also stated that the appellant's uncle described himself as the "donor" of the land and that the grant was not made in the name of the Osu Mantse to be ratified later."

The statement by the Court of Appeal that the Supreme Court in **Awuku v. Tetteh** held that a grant of stool land by the occupant of the stool with the consent and concurrence of a minority of the councilors is null and void is not entirely correct. I have closely read that case and do not find that holding in it. In a similar vein, the position by the Court of Appeal that it is settled law that a grant of stool land by the occupant of the stool and minority of his councilors is null and void is in fact inconsistent with what is stated at page 128 of N. A. Ollennu's book; **Principles of Customary Law Land in Ghana** which was referred to by the court in its judgment. In that book the position of the customary law is stated to be that grant of stool land by the occupant acting with minority of his councilors is not void but

only voidable and may be set aside by a court on application by the other councilors acting timeously. See also the cases of **Mensah v Ghana Commercial Bank (1957) WALR** and **Quarm v. Yankah** (1930)1 WACA 80.

I therefore find that prima facie, the Court of Appeal committed an error of law apparent on the record by stretching this court's decision in **Awuku v. Tetteh** to cover a fundamental principle of customary law that was not considered in that case. A reading of the whole of its judgment shows that the Court of Appeal assigned other reasons for dismissing the applicant's appeal while varying the orders of the trial court. Nevertheless, the prima facie error of law explained above is serious and needs to be determined by this court to avoid confusion as to the correct state of the customary law on grants of stool lands. An appeal will also afford an opportunity for the Supreme Court to clarify the legal incidence and role of an Odikro in the grant of stool lands.

Respondent has vehemently opposed this application for special leave to appeal but from the record before me he is the source of the uncertainty that has been created as to the role of the Odikro in the grant of stool lands and the correct state of the law on void and voidable grants of stool lands. It therefore lies ill in his mouth to complain.

One of the grounds on which this court will grant special leave to appeal in exercise of its jurisdiction conferred by Article 131(2) of the 1992 Constitution is where there is a prima facie error of law on the face of the record as I have found in this case. Another ground is

where a decision on a point of law will inure to the benefit of the general public as I have pointed out above. See the cases of Dolphyne v. Speedine [1996-97] SCGLR 373; Kotey v. Korletey [2000]SCGLR 417 and Gyimah v. Abrokwa [2011]1 SCGLR 406.

In the circumstances, I will exercise my discretion and grant special leave to the applicant to appeal to this court. The pursuant notice of appeal shall be filed within seven (7) days.

(SGD) G. PWAMANG

JUSTICE OF THE SUPREME COURT

COUNSEL

MATTHEW APPIAH WITH HIM ALEX OBENG ASANTE FOR THE DEFENDANT/ APPELLANT/APPLICANT.

KOFI ADUWADOUR FOR THE PLAINTIFF/RESPONDENT/RESPONDENT.