IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: ATUGUBA, JSC (PRESIDING)
ANSAH, JSC
YEBOAH, JSC
APPAU, JSC
PWAMANG, JSC

CIVIL APPEAL
NO. J4/42/2017

31ST JANUARY, 2018

RICHARD APPIAH-NKYI …… PLAINTIFF/RESPONDENT/RESPONDENT

(LEGAL AND WELFARE OFFICE
REGISTRAR'S OFFICES, KNUST-KUMASI
H/NO. BUROBURO & KNUST CAMPUS, KNUST-KUMASI)

VRS

NANA ACHINA NUAMAH V …… DEFENDANT/APPELLANT/APPELLANT

(ASSUOWINHENE)
(FOR AND ON BEHALF OF ASSUOWIN STOOL
ASSUOWIN PALACE, ASSUOWIN, NEAR NKAWIE/ASHANTI)

JUDGMENT

PWAMANG, JSC:-

This is an appeal against the judgment of the Court of Appeal dated 27th October, 2016 in which judgment the court upheld the decision of the Circuit Court , Kumasi that was given

in favour of the plaintiff/respondent/respondent, hereinafter to be referred to as the respondent. In the Circuit Court the respondent claimed against the defendant/appellant/appellant, to be called the appellant, 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 the appellant who is the occupant of the Assuowin Stool. The respondent stated that when the appellant ratified his grant he permitted him to develop the plots pending the issuance of formal allocation papers upon completion of a re-demarcation scheme appellant was then preparing for the area. Consequently he constructed a wall around four of the plots and partially developed the others and placed some cement blocks on them. According to the Respondent he subsequently contacted the appellant for the allocation papers and, even though he was prepared to pay customary drinks to the appellant, he refused to sign them for him. He therefore prayed for an order compelling the defendant to issue allocation papers to him in respect of the plots. He also claimed for recovery of possession and perpetual injunction.

The Appellant in his statement of defence denied that a grant was made to the respondent by the Odikro and the Abusuapanin. In the alternative he contended that if even they made any grant to respondent they had no capacity to grant the stool's land. He further denied ratifying or endorsing any such grant and counterclaimed for a declaration that the grant to respondent was void ab initio. The appellant further counterclaimed for damages, recovery of possession, order of demolition and perpetual injunction.

After a full trial in which respondent testified and called two witnesses and appellant testified without calling any witness, the trial Circuit Court 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 the appellant ratified the grant that was made to respondent. He therefore entered judgment for the respondent and dismissed the counterclaim of the appellant. The appellant was dissatisfied with the judgment and appealed against it to the Court of appeal.

The Court of Appeal dismissed the appeal but ordered the respondent to pay customary drinks in the sum of GHS2, 000.00 per plot to the appellant. This amount was stated by the appellant in his testimony as the money he had demanded from respondent as drinks in order to issue him with the allocation papers. Still not satisfied the appellant has filed the present appeal pursuant to special leave granted by the court.

We have read and examined carefully the grounds of appeal and the written statement of case filed by the appellant as well as the respondent's statement of case. In its judgment the court of appeal stated as follows;

> "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.
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> 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).

The appellant launched on the above statement of the customary law on grants of stool lands to argue that the grant of the land to respondent without his involvement, he being the occupant of the stool, was null and void and not capable of being ratified. However, it is obvious to us that the Court of Appeal misstated the principles of customary law on grant of stool land. The settled general principle is that for a grant of stool land to be valid the

occupant of the stool and the principal councilors of the stool must act together in making the grant. But where the occupant of the stool acts with minority of his councilors, the grant is not void as contended by the Court of Appeal but it is voidable and may be set aside at the instance of the other councilors who must act timeously.

See; N. A. Ollennu's book; **Principles of Customary Law Land in Ghana, page 128.** See also the cases of **Mensah v Ghana Commercial Bank (1957) WALR** and **Quarm v. Yankah** (1930)1 WACA 80.

Another principle of customary law is that where by practice a stool that owns land has an "Odikro" who is a caretaker of its land then though the caretaker may deal with the land he cannot make grants by himself unless such grants are endorsed and ratified by the occupant of the stool and his councilors. See **Malm v Lutterodt [1963] 1 GLR 1.**

From the facts of this case it is the later principle that is applicable here. We have reviewed the evidence on record and we agree with the concurrent findings by the two lower courts that the appellant by his conduct ratified the grant by the odikro and the abusuapanin so the grant to the respondent is valid. The appellant permitted respondent to partially develop the lands and demanded GHS2, 000.00 per plot as customary drink so he cannot reprobate the grant. Consequently, though the Court of Appeal may have erred in some respect in its statement of the customary law principles, that did not occasion a miscarriage of justice against the appellant.

The appellant also relied on Article 267(3) of the 1992 Constitution and argued that the Ashanti Regional Lands Commission did not certify that the grant made to respondent is consistent with the development plan of the area so the grant is void. The provision is as follows;

> **"There shall be no disposition or development of any stool land unless the Regional Lands Commission of the region in which the land is situated has certified that the disposition or development is consistent with the development plan drawn up or approved by the planning authority for the area concerned."**

The argument by the appellant puts the horse before the cart. That provision refers to the formal documentary grant which the appellant by his conduct has agreed to make to the respondent. Those documents must be consistent with the development plan of the area. From the evidence on record the issuance of the allocation papers to the respondent delayed because the appellant was doing a re-demarcation and since he demanded drink from the appellant before signing them it presupposes that the re-demarcation has been certified by the Regional Lands Commission.

In the circumstances we dismiss the appeal.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

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

J. ANSAH
(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

Y. APPAU
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