

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2018

CORAM: ADINYIRA, JSC (PRESIDING)
DOTSE, JSC
BAFFOE-BONNIE, JSC
GBADEGBE, JSC
BENIN, JSC

CIVIL APPEAL
NO. J4/22/2017

31ST JANUARY, 2018

KWAME OFEI PLAINTIFF/APPELLANT/RESPONDENT

VRS

1. MRS JANET DARKO

2. THE TRUSTEES OF REXFORD AYE DARKO

3. OKOFOH ESTATES LTD. DEFENDANTS/RESPONDENTS/APPELLANTS

JUDGMENT

BAFFOE-BONNIE, JSC:-

The facts in this case are fairly simple and straightforward. The plaintiff/appellant/respondent (hereafter, plaintiff) issued the writ in the Circuit Court against the first defendant alone, claiming recovery of possession of house number C822/4, formerly known as Russian Embassy, order of ejection and Mesne profits. His evidence in support of his claim, both in his statement of claim and before the

trial Circuit Court was very consistent. In 2005, he purchased the property in dispute from one Kwabena Apenteng. Kwabena Apenteng told him the property was his personal property. Apenteng executed in his favour an indenture, which he tendered in evidence. He testified that in proof of his ownership of the property, Kwabena Apenteng gave him the building permit as well as drawings and designs of the house which all bore his name. He tendered those documents too. He later obtained a land certificate which he also tendered. After the purchase, the plaintiff said Kwabena Apenteng impressed upon him that the defendant, who is a wife to his deceased brother, Rexford Aye Darko, was in occupation so he had given her a year's notice to vacate. After the year the defendant refused to vacate hence this action.

The defendant/respondent/appellant(hereafter, defendant), denied the claim of the plaintiff saying the property was acquired by her late husband and that she has lived in that house as her matrimonial house. Initially she said the husband bought the property from one Geoffrey Asare in 1974. Later, after plaintiff had given evidence and tendered documents in support of his claim, the defendants were permitted to amend their defence saying the property was acquired in the 1950s and that the building was constructed by Micheletti company. Since the death of her husband she has been permitted to stay there by the administrators of the estate. The Trustee of the Estate of Rexford Ayeh Darko, and Okofoh Estate Ltd, the administrators, applied and they were joined as co-defendants. Except where it becomes necessary to refer to them as either 1st defendant or co-defendants, they shall be referred to as defendants.

The defendants in their evidence were ad idem on the fact that the property was not acquired by Kwabena Apenteng, plaintiff's grantor, but rather Rexford Ayeh Darko, 1st defendant's husband. As proof of this the defendants said the plaintiff's grantor never lived in that house and that anytime he visited the house he passed the night in the boys quarters. Further, the property was rented out by Rexford to the Russian Embassy, and any revenue accruing therefrom, was enjoyed solely by Rexford to the exclusion of Kwabena Apenteng or anybody else. Again, all outgoings on the building including property rates, and other utilities are paid by the estate of Rexford Darko in his name. It was their case that the property was acquired by Rexford Darko in

the name of his brother. When the plaintiff pointed out that the property was leased to the Russian Embassy by Rexford Darko only acting as the lawful attorney of Kwabena Apenteng, as narrated in the lease hold agreement, the defendant's answer was that as a businessman Rexford Darko had some 'issues' with the government of the day that is why he used his brother's name in the transaction with the Russian Embassy. Concluding their evidence, the defendants portrayed the plaintiff's vendor as a man of no substance who lived virtually at the financial mercy of the late Rexford Ayeh Darko.

In spite of the copious documentary documents to the contrary, the trial Circuit Court placed a lot of premium on the oral evidence of the defendants, particularly, the fact that the defendant has lived in the disputed property for a long time without let or hindrance from the plaintiff's grantor, and gave judgment in favour of the defendants.

Aggrieved, the plaintiff appealed to the Court of Appeal on the sole ground that the judgment was against the weight of evidence. After reviewing the submissions of both counsel and making copious references to the evidence adduced at the trial, their Lordships concluded as follows,

***'We have looked at the judgment of the trial judge and have no doubt that the judgment is not based on the facts or evidence which was led at the trial but on the deductions and observations of the trial judge. A trial court owes it as a duty to resolve the primary facts, making findings on relevant matters necessary to establish the claim or defence of the parties, state her findings and apply the law.'*(pg 409)**

***'Had the trial judge analysed the evidence placed before her and not relied on her sentiments she would have arrived at a conclusion different from what she did. We find that the plaintiff satisfied the duty of producing evidence in proof of his claims and is entitled to judgment. We thus set aside the judgment of the trial court.'*(pg 413)**

Dissatisfied by the judgment of the Court of Appeal, the defendants have mounted this appeal before us on the following grounds;

- a. The judgment is against the weight of evidence
- b. The Court of Appeal erred in law and in fact when it failed to consider the fact that in the circumstance and on the evidence, a resulting trust was created with Kwabena Apenteng being the legal owner and Rexford Ayeh Darko the beneficial owner of House number C 822/4
- c. The Court of Appeal misdirected itself in law and in fact when it held that there was no adverse possession as time only began to run against Kwabena Apenteng in 2005 when the property was sold and the defendants refused to yield possession of the house to the plaintiff herein.

PARTICULARS OF MISDIRECTION

- i. There is no evidence on record of consent by Kwabena Apenteng to the first defendant living in the house
 - ii. There is no evidence of Kwabena Apenteng having notified the first defendant to vacate the house in 2005
 - iii. On the contrary there is evidence of Kwabena Apenteng's knowledge of the use of the property by the Defendants as their bona fide property since 1960.
- d. The Court of Appeal failed to rule as a finding of fact that the Purported purchase of the property by the Respondent herein for a surprisingly low value of GHC10,000 while the defendant was in occupation, and without any investigations as to her interest in the said property, smacks of bad faith for which he should not be permitted to take advantage.
 - e. The Court of Appeal was wrong in setting aside the findings of fact of the trial judge and substituting its own findings without sufficient and valid reasons. Before us the defendants have filed a 50-page statement of case in which they have argued the grounds of appeal. The submissions before us are no different from the one made before the Court of Appeal and same can be summarised as follows;

On grounds A and E which were argued together, counsel submitted that the mere fact that the documents on the disputed property were in the name of plaintiff's vendor was not conclusive of the fact that he owned it. That, there

were many pieces of evidence from which to deduce that the property was indeed owned by Rexford Darko and that the plaintiff's vendor held it in trust for Rexford. Such pieces of information included the fact that (a)the plaintiff's vendor never lived in that house, (b)save for the period of time when the Russian Embassy was in occupation, the property has been the matrimonial home of the defendant and her late husband,(c) the plaintiff's vendor only had access to the boys quarters anytime he visited, (d)there was evidence that Kwabena Apenteng held some properties in trust for the late Rexford which he later re-conveyed to the estate of Rexford Ayeh even after his death, example exhibit 6, a house at Kokomle. Further, it was Defendants husband who rented out the property to the Russian Embassy on the intervention of the late Dr Kwame Nkrumah, and he enjoyed all revenues and paid all outgoings including property rates. All these should be weighed together with the emphatic testimonies of all the defence witnesses to the fact that the property was actually built by Rexford Darko, against the unsubstantiated evidence that the property was owned by plaintiff's vendor.

At paragraph 87 at page 37 of his written submissions counsel wrote,

"My lords, the appellants (meaning defendants) and DW1 all maintained under cross examination that the disputed property was built by Rexford Aye Darko on or about 1956. On the contrary, the respondent and his sole witness did not proffer the least bit of evidence to show how Kwabena Appenteng came by the property. My lords, we submit that in the circumstances of this case, an indenture executed in the name of Kwabena Apenteng without more, is not sufficient proof that he owned the property in dispute."

Counsel concluded that the Court of Appeal in setting aside the judgment of the trial Circuit Court drew wrong inferences and arrived at conclusions not borne out by the record.

On ground B, counsel submitted that there was enough evidence on record to support the contention that the property was purchased by Rexford Darko and that plaintiff's vendor only held same in trust for Rexford Darko. The pieces of evidence referred to here are no different from those referred to in arguing grounds A and E. Counsel referred to the evidence of defendant and

that of Boateng Darko, to the effect that Rexford Darko was indeed a rich person who had several properties which included the property in dispute.

On ground C, defendants had argued before the Court of Appeal to the effect that the plaintiff's vendor's interest in the property, if any, would have been extinguished by now because of adverse possession claimed by the defendants. So any claim would be statute barred. The Court of Appeal however ruled that time began to run only when the defendant refused to yield vacant possession when the property was sold to plaintiff. Before us counsel's submission on this ground concluded as follows;

"My Lords, we reiterate that Rexford Ayeh Darko received rent in respect of the property, paid all the utilities, property rates and together with the first appellant, undertook significant changes and renovations to the property (not borne out by the record) all without any protest from Kwabena Apenteng. Therefore, from whichever angle you compute time for adverse possession to commence, we submit that Kwabena Apenteng has forfeited any interest he had in the property as the statutory period of 12 years has long lapsed."

The defendants' final ground to be argued was on the 'surprisingly' low amount of 10,000GHC which the plaintiff claimed to have paid for the house while the 1st defendant was in occupation and without any investigations as to her interest in the said property. Counsel cited a number of cases notably **Brown v. Quashigah (2003-2004) SCGLR**, where this court held that

"Purchasers of land who ignore signs of possession by a party other than their vendor on the land, do so at their own risk".

Counsel then concluded (on pg 33 par 79) as follows,

"My Lords, it is our submission that, taking into consideration the surprisingly low value of GHC 10,000 at which the disputed property was purchased coupled with the deliberate failure and refusal of the respondent to ascertain the nature of the interest of the 1st Appellant in the Property, the sale of the property by Kwabena Apenteng to the respondents, smacks of bad faith. It is fraudulent and for this reason we humbly invite your Lordships to declare the sale and purchase of the property by the respondent as null and void and leave the respondent to wallow in his self-inflicted grief."

On his part the plaintiff filed an 8-page written submission generally supporting the conclusions of the Court of Appeal and concluded that the appeal has no merit and must be dismissed.

In this judgment we intend to deal with the various grounds of appeal as filed and as argued by the defendants starting with grounds A and E.

GROUND A and E

As the judgments of both the trial Circuit Court and the Court of Appeals turned on the evaluation of the evidence on record, and since the grounds of appeal are mixed law and fact, we yield to the oft cited principle laid down in the case of **Tuakwa v. Bosom(2001-2002) SCGLR61** that

"appeal is by way of rehearing 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, it is incumbent upon an appellate court, in a civil case, to analyse 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 balance of probabilities the conclusions of the trial judge are reasonably or amply supported by the evidence." See also

Aryeh and Akakpo v Ayaa Iddrisu (2010) SCGLR 891 and

Djin v Musah Baako (2007)-2008) SCGLR 687

We intend therefore to examine the evidence as adduced at the trial, both oral and documentary, and come to a conclusion as to whether the correct inferences were drawn and whether the conclusions arrived at by the trial judge were supportable by the evidence on record.

The plaintiff's evidence at the trial as borne out by the record is simple. He testified that he purchased the house in dispute from Kwabena Apenteng who

duly executed exhibit B on 5th October 2005 Exhibit B is registered at the Lands Registry The original indenture showing ownership of the plot by Kwabena Apenteng was also tendered as as Exhibit H. In further proof of Kwabena Apenteng's ownership of the property in dispute the plaintiff tendered the building plans and designs and building permit, both bearing the name Kwabena Apenteng. Against these pieces of solid documentary evidence the defendants just mounted the box and repeated what had been put in their amended statement of defence to the effect that Rexford Ayeh Darko acquired the property and put the name of his elder brother on it.

Another documentary tendered by the plaintiff that completely destroyed the defendants' case was the agreement signed with the Russian Embassy for the leasing of the property in dispute. In this lease hold agreement executed with the Russian Embassy, Rexford Darko signed as the lawful attorney of Kwabena Apenteng who is described as the owner. We find this document executed by Rexford Darko as evidence against self-interest. In the case of **Re Asere Stool; Nikoi Olai Amontia iv (substituted by Tafo Amon ii v. Akotia Oworsika 111 substituted by Laryea Ayiku iii (2005-2006) SCGLR 637** this court held as follows;

"Where an adversary has admitted a fact advantageous to the cause of a party, the party does not need any better evidence to establish that fact than by relying on such admission, which is an example of estoppel by conduct"

Defendants' attempt to explain this anomaly was totally unconvincing. Their explanation was that as a businessman Rexfod Darko had some "issues" with the government of the day that is why he used the name of his elder brother to execute the lease. Whatever these issues are were never given in court. We find this explanation untenable. This picture of a person building a house in somebody else's name then renting same out and describing himself as a lawful attorney for the owner, as being painted by the defendants, is not consistent with normal practice. It is on record that Kwabena Apenteng was Illiterate. What is rather consistent with normal practice is where an illiterate person like Kwabena Apenteng builds a house but when it comes to renting it out to an entity like Russian Embassy, he permits his educated younger

brother to represent him as his lawful attorney in the said transaction. And even then this fact of Rexford Darko leasing the property to the Russian Embassy but signing as the lawful attorney of Kwabena Apenteng the owner thereof was explained away by PW1 in his evidence in chief, (pg 47 of the ROA). He said

"The house is known as the Russian Embassy because my father rented it out to the Russians formerly USSR. There is a tenancy agreement between my father and the Russian Embassy, (he then tendered the agreement as Exhibit J). In this transaction, RA Darko acted as the true and Lawful Attorney of Kwabena Appenteng and he signed as such. The property belongs to my father and not RA Darko as the defendants are asserting.

My father told me that he allowed RA Darko to act as his attorney because apart from being brothers he and R A Darko formed a limited liability company by the name Mpotima Ltd. My father told me there was a court case and through that the business collapsed so he had to leave the business and go into farming so he had to allow his junior brother then in Accra to take care of his properties including the one in dispute. So because the business was in debt he had to use the rent accrued from the property to pay the debts owed"

Again, if the defendants are to be believed then this property was the first property put up by Rexford Darko. Boateng Darko who gave evidence as DW1 said this in evidence in chief.

"I know the property known as Russian Embassy. In 1954 my brother RA Darko came for me from the village Adeiso and brought me to Accra. In 1955 he enrolled me to school. We were at Batakari laundaries near Sadisco Traffic lights. He later informed me that he had acquired a plot of land at Kokomlemlle. He said that the land was being developed by some white men. My brother said when the building was finished we would move into it. The building was completed and we moved into it. It was myself, RA Darko and defendant who went to live in that building."

Under cross examination he confirmed this evidence as follows;

Q. Was the Russian Embassy house RA Darko's first house from your evidence?

A. Yes, that is correct.

The 1st defendant's evidence also confirmed that this was RA Darko's first building. The defendant's explanation as to why the leasehold agreement described R A Darko as lawful attorney of the OWNER Kwabena Apenteng was that, RA Darko had "issues" with the government. What they have not been able to do is to explain why all the documents on the land and the building are in the name of Kwabena Apenteng. They have not been able to explain because it is not true that the property was acquired by RA Darko.

Throughout the trial and in counsel's submissions, Rexford Aye Darko was portrayed as very rich while Kwabena Apenteng was impecunious. Indeed in her evidence in chief the 1st defendant deliberately skipped the early part of Kwabena Apenteng's business life and said,

"Mr Kwabena Apenteng was a dealer in logs. He run a loss in this business so he commenced trading in cocoa. This business also failed. I never saw any property owned by Kwabena Apenteng in his life time"

DW1 also testified as follows; (pgs197-198 of ROA),

"R.A.Darko gave Kwabena Apenteng money to be purchasing cocoa farms at Nyakokoa for sale to the government. However, he made losses. He took money from a lot of people and so he was arrested. R.A. Darko sent me and one of his clerks named Mr Yirenyki to go and bail him"

Yet, as far back as 1960s this same Kwabena Apenteng together with RA Darko and other shareholders had formed a company Mpotima Ltd and brought series of actions against Bank for West Africa.

In exhibit L which is the record of proceedings in the case between Kwabena Apenteng and Bank for West Africa and Haynes appearing at pages 291, 292 and 293 of the record of appeal, Rexford Darko himself testified to the industry and resourcefulness of Kwabena Apenteng. On page 291 of the ROA Rexford Darko stated,

'I did not help the plaintiff to build his house financially'

At page 293 of the ROA Rexford again said,

'I remember that the plaintiff paid cash for the Christianborg property and I was present. I cannot remember how he purchased the other properties'

Then at pg 292 of the ROA Rexford Darko testified as follows;

"Apenteng is now a farmer at Sushenso, Wassa district. He has four buildings and one land made up of two twin buildings. The title deeds of all are with the defendants. In February 1959 the plaintiff negotiated to sell C 381/4 kokomlemle for 250pounds to one yaw Amoako and Kwadjo from Akwamu..."

All these pieces of evidence were given in May and June 1965 in the suit referred to above, by no means a person than Rexford Ayeh Darko 1st defendant's husband. And they attest to the fact that even in the 1950s Kwabena Apenteng was a man of substance who had acquired substantial properties. It is possible that from the heights of substance in in the '50s and early '60s, Kwabena Apenteng might have fallen to the lows as described by defendants, but it still does not take away the fact that the plaintiff's vendor was very capable financially at the time this property was acquired.

Does it lie in the mouth of Mrs Darko, who was also part of these legal suits, to describe her brother in law as if he was an impecunious wretch who was living at the financial mercy of her husband? Or is it a case of selective amnesia?

Yes, there is no denying that at the time of his death RA Darko was rich. The man who was known to be associated with so many companies, one of which

was Mechanical Lloyd, must have been very rich. But even he started from somewhere!

From the evidence on record the plaintiff's contention that the property belonged to Kwabena Apenteng was supported by solid documentary evidence while the defence case that the property belonged to Rexford who acquired same in his elder brother's name is not supported. Even some of the documents tendered in this case by the defendants did not bear any relationship with the property in dispute as they related to other properties. For example, the bill for payment of property rate is not referable to the property in dispute. Yet, the defendants cleverly tendered same alongside the utility bills to deceive the court and bolster their case. It was only upon close scrutiny that the court realised that they were not referable to the property in dispute. This we see as deliberate lack of candour on the part of the defendants.

On the receipts for the payment of utility bills, we find the reasoning of the Court of Appeal quite sound. Payment of utility bills does not prove ownership, particularly, when as in this case, it is not disputed that the defendant has lived in the property all along. We believe the defendants were not candid with the court, and the trial judge should have seen through this.

We have looked at the numerous pieces of documentary evidence tendered in this case and we are convinced that they all point to the plaintiff's vendor, Kwabena Apenteng, as the owner of the disputed property.

In the case of **Duah v Yarkwa (1993—94) GLR 217**, it was held that whenever there was in existence a written document and conflicting oral evidence, the practice of the court was to lean favourably towards the documentary evidence especially if it was authentic. The authenticity of all of the documents on the property tendered by the plaintiff has not been questioned. On the other hand the defendants gave conflicting evidence as to how and when the property was acquired. Whilst their original evidence was that the property was purchased from one Geoffrey Asare in 1974, they later amended their statement of defence to say that Rexford Darko acquired the

plot and contracted Michelletti company ltd, to construct the building in the early '60s.

It is our belief that if the trial Circuit Judge had evaluated the evidence on record properly, she would not have come to the conclusion she did. The appeal, on this ground, fails.

GROUND B

In view of our holding that we believe that the property was acquired by Kwabena Apenteng in his own right and for himself, we do not find any need to comment on this ground of appeal which suggests that the property was purchased by Rexford Darko but was held in trust for him by Kwabena Apenteng. No evidence was put forward for us to consider resulting trust.

GROUND C.

Before the Court of Appeal the defendants had submitted that the plaintiff's vendor had stood by while the defendant lived in the house as her matrimonial home and never laid any claim to it inspite of the claim of adverse possession by the defendants. Any interest the plaintiff's vendor had if there was any, had been extinguished by passage of time and therefore the action was statute barred. The Court of Appeal held that there was direct evidence that when Kwabena Apenteng fell on bad times he left his businesses and properties in the hands of Rexford Darko to manage and pay his debts, hence the rental of the disputed property to the Russian Embassy by his lawful Attorney. The Court of Appeal opined that as the occupation by the defendant and her husband was by the consent of Kwabena Apenteng, there is no evidence of adverse possession and that, time only began to run against Kwabena Apenteng in 2005 when the property was sold and the Defendants refused to yield possession of the house to the plaintiff herein. For all the time that the defendant was in occupation she was a licensee of Kwabena Apenteng and became adverse possessor after 2005.

We find no error in this reasoning of the Court of Appeal and therefore dismiss the appeal on this ground too.

GROUND D.

This ground of appeal seems to be in two parts. The defendants seem to be questioning the veracity of the sale and or purchase of the property at what they term a surprisingly low price of GHC10,000. It is their contention that a property of the nature as the one in dispute, a two storey building at Kokomlemle would be worth more than 300,000 USD and so the 10,000ghc purchase price makes the whole transaction smack of fraud.

We do not see the locus of the defendant in making this argument seeing that they are not the beneficiaries or managers or trustees of the estate of Kwabena Apenteng. Even the son of Kwabena Apenteng, who stands to gain from an unencumbered property of his deceased father, mounted the witness box and gave evidence that the property was actually sold by his father to the plaintiff. In deed the evidence of Kwabena Apenteng's son suggested that the purchase price was not the only consideration for the sale of the property to the plaintiff. He said (pg 117),

"When my father called me, whatever arrangement he had done with pricing in connection with the property was limited to me in that he said the plaintiff had really helped him. That if it had not been for the plaintiff, after retiring from active farming life would have been very difficult for him especially when he started having troubles with his nephews R.A. Darko's children."

The second part of this ground of appeal seems to question the plaintiff's failure or refusal to make inquiries about the ownership of the property seeing that the defendant was in occupation when he allegedly bought it. Counsel cited several cases particularly **Brown v Quashigah** (supra), where our esteemed brother, Date Bah JSC made this remark;

"Purchasers of land who ignore signs of possession by a party other than their vendor on the land, do so at their own risk and are liable to grief."

We do not see the relevance of this quotation in relation to the purchase of this property. The plaintiff is not claiming to be innocent purchaser for value without notice. And with the court having declared his vendor to be the rightful owner of the

property, his failure or deliberate refusal to ascertain the status of defendant who was in occupation, was of no moment. He took a risk and trusted his vendor and he has been proved right. This ground of appeal also fails.

We find no merit in the appeal as a whole and so same is dismissed. The judgment of the Court of Appeal is affirmed.

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

ADINYIRA, JSC:-

I agree with the conclusion and reasoning of my brother Baffoe-Bonnie, JSC that the appeal be dismissed.

**S. O. A. ADINYIRA (MRS)
(JUSTICE OF THE SUPREME COURT)**

GBADEGBE, JSC:-

I also agree that the appeal be dismissed.

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

BENIN, JSC:-

I also agree that the appeal be dismissed.

**A. A. BENIN
(JUSTICE OF THE SUPREME COURT)**

DOTSE, JSC:-

PREAMBLE

I have had the benefit of reading the judgment of my respected brother, Baffoe-Bonnie JSC at a time I had almost completed this opinion. However, I have given it the best consideration I can, I find myself unable, in the end to subscribe to it. On

the contrary, I think that Kwabena Appenteng was fake in the way he dealt with the disputed property, and the Plaintiff reckless in his dealings with him, I feel I must answer the points of substance dealt with in this appeal, precisely in the manner that the learned trial Judge dealt with them instead of maintaining the Court of Appeal decision.

I now proceed with my dissenting opinion.

This is an appeal by the Defendants/Respondents/Appellants, hereinafter Defendants, against the judgment of the Court of Appeal dated 4th February 2016 which was in favor of the Plaintiff/Appellant/Respondent, hereafter Plaintiff.

BRIEF FACTS OF THE CASE

The Plaintiff by his writ claimed against the 1st Defendant the following reliefs in the trial Circuit Court:-

- a. Recovery of possession of house No. C822/4 formerly Russian Embassy
- b. Order of ejection
- c. Mesne Profits

The 1st Defendant entered appearance and filed defence. Later upon application, the 1st Defendants, who are the Trustees of the Estate of Rexford Aye Darko, (deceased husband of the 1st Defendant) were joined as 1st Co-Defendants.

The 2nd Co-defendants Okofoh Estates Limited, the managers of the property and those who granted the 1st Defendant a licence to continue to reside in the house, were upon application joined as 2nd Co-defendants.

The Plaintiff by his amended statement of claim in support of the endorsement averred that he is the owner of the house in which the 1st Defendant resides. He averred that, he purchased the house from it's previous owner, Kwabena Appenteng, also deceased. He further averred that, all attempts to let the 1st Defendant quit the said house and give him vacant possession have been unsuccessful, hence the issuance of the writ against her.

The 1st Defendant by her amended defence naturally denied the Plaintiffs claims. On the contrary, she asseverated that the property in dispute was built by her deceased husband, Rexford Aye Darko in the 1950's.

She further contended that, she and the husband lived in the house after completion in or about 1957 until in or about 1959 when it was rented for use as the Russian Embassy. After the Russians left the house, she went back to live in the house after her return from England to Ghana after the 1966 coup and has since been staying in the said house.

On their part, the 1st and 2nd Co-Defendants also denied the claims of the Plaintiff. They also averred that the disputed property belongs to Rexford Aye Darko and that it has always been the matrimonial house of the deceased and the 1st Defendant. They further contend that, after the death of the husband of the 1st Defendant, the property was conveyed by the 1st Co-Defendants to the 2nd Co-Defendants and that the 1st Defendant has been living in the said property through the license granted her by the 2nd Co-Defendants.

It is worthy to note that, all the parties testified and called witnesses. Plaintiff testified and was cross-examined by the Defendant and Co-Defendants. Plaintiff called Kwaku Darko Appenteng as PW1. This witness is the son of Kwabena Appenteng, the Plaintiff's vendor, and elder brother of the 1st Defendants husband.

The Plaintiff closed his case after the evidence of PW1. Thereafter, the Co-defendants representative Rexford K. A. Darko testified and was cross-examined. 1st Defendant, Janet Esther Darko then testified and was exhaustively cross-examined by the Plaintiff's lawyer.

Boateng Darko, a brother to Kwabena Appenteng, the Plaintiff's vendor and the 1st Defendants husband Rexford Aye Darko, was next called as the witness for the 1st Defendant as DWI.

It must also be noted at this stage that several documents of title and of other agreements all in respect of the property in dispute as well as those in respect of the

distribution of the Estate of Rexford Aye Darko had been tendered by the parties during the trial. Some of these exhibits will be referred to in the main body of this judgment

JUDGMENT OF THE CIRCUIT COURT

After trial, the learned Circuit Court Judge delivered judgment in favour of the Defendants and dismissed the Plaintiffs case.

DECISION OF THE COURT OF APPEAL

Dissatisfied with the decision of the Circuit Court, the Plaintiff appealed the said judgment to the Court of Appeal. The Court of Appeal, in a unanimous decision of 4th February, 2016 allowed the appeal, and set aside the decision of the trial Circuit Court and instead gave judgment to the Plaintiff.

APPEAL TO THE SUPREME COURT WITH SPECIAL LEAVE

Naturally dissatisfied with the judgment of the Court of Appeal, the Defendants filed a Notice of Appeal against the said judgment pursuant to special leave granted by the Supreme Court on 19th May 2016.

GROUNDINGS OF APPEAL

The grounds of appeal filed by the Defendants against the Court of Appeal judgment are the following:-

- a. The judgment is against the weight of evidence.
- b. The Court of Appeal erred in law and in fact when it failed to consider the fact that in the circumstances and on the evidence, a resulting trust was created with Kwabena Appenteng being the legal owner and Rexford Aye Darko the beneficial owner of House Number C822/4.
- c. The Court of Appeal misdirected itself in law and in fact when it held that there was no adverse possession as time only began to run against Kwabena Appenteng in 2005 when the property was sold and the

Defendants/Respondents/Applicants refused to yield possession of the house to the Plaintiff/Appellant/Respondent herein.

PARTICULARS OF MISDIRECTION

1. There is no evidence on record of consent by Kwabena Appenteng to the 1st Defendant/Respondent/Appellant living in the house.
- ii. There is no evidence of Kwabena Appenteng having notified the 1st Defendant/Respondent/Appellant to vacate the house in 2005.
- iii. On the contrary there is evidence of Kwabena Appenteng's knowledge of the use of the property by the respondents as their bonafide property since 1960.
- d. The Court of Appeal failed to rule as a finding of fact that the purported purchase of the property by the Respondent herein for a surprising low value of GH¢10,000.00 while the 1st Appellant herein was in occupation, and without any investigations as to her interest in the said property, smacks of bad faith for which he should not be permitted to take advantage.
- e. The Court of Appeal was wrong in setting aside the findings of fact of the trial Judge and substituting its own findings without sufficient and valid reasons.

ANALYSIS OF THE GROUNDS OF APPEAL

I have carefully perused the incisive statement of case of learned counsel for the Defendants, Mr. Yonny Kulendi, as well as that of learned counsel for the Plaintiff, Mr. A. G. Boadu. In this rendition, I will follow the methodology adopted by learned Counsel for the Defendants by arguing grounds (b), (c) (d) in that order and thereafter grounds (a) and (e) together in the resolution of this appeal.

GROUND B

THE COURT OF APPEAL ERRED IN LAW AND IN FACT WHEN IT FAILED TO CONSIDER THE FACT THAT IN THE CIRCUMSTANCES AND ON THE EVIDENCE, A RESULTING TRUST WAS CREATED WITH KWABENA

APPENTENG BEING THE LEGAL OWNER AND REXFORD AYE DARKO THE BENEFICIAL OWNER OF HOUSE NUMBER C822/4.

Learned Counsel for the Defendants argued in his statement of case that, even though the property in dispute was bought in the name of Kwabena Appenteng, he held the said property in trust for Rexford Aye Darko who was the beneficial owner of the property, and in whom a resulting trust had been created.

In this respect, it must be noted that, the Indenture evidencing the transaction in respect of this disputed property is marked as Exhibit H, tendered by Plaintiff on the 17th June 2011. By that document, the property was conveyed to the Plaintiff's vendor, Kwabena Appenteng by one David Cofie Odonkor on the 15th day of August 1957. Thereafter, it is not clear why Kwabena Appenteng, on the 20th September 2002 indexed a Statutory Declaration in respect of the said property stamped as No Ac 3895/57 in his name whilst he already had a conveyance in his name.

All the above recitals are indeed stated in Exhibit B which is the document of title that Kwabena Appenteng effected in respect of the disputed property to the Plaintiff herein. This Exhibit B is dated 5th October 2005, with Land Registry No. 111/2006.

It is also an undeniable fact that, since the purchase of the land and the construction of the house (known as the Russian Embassy) it is only the 1st Defendant and her late husband, R. A. Darko who have lived in this house apart from tenants like the Russian Embassy, and the Ugandan High Commission for a very brief period only.

What is of significant interest is that, when this property came to be leased to the Russian Embassy, reference Exhibit J, tendered by Plaintiff on 17th June 2011, R. A. Darko was the **Lawful Attorney of the said Kwabena Appenteng, and it was to him that rents were paid.**

This is how this Exhibit J, captures the recitals thus:-

"This indenture is made the 2nd day of July, in the year of our Lord One Thousand nine hundred and fifty nine (1959) Between Kwabena Appenteng of Accra in the Eastern Region of Ghana (hereinafter called "THE LESSOR" which

*expression where the context so requires or admits shall include the Reversioner for the time being immediately expectant upon the term hereby created) **acting by his true and Lawful Attorney Rexford Aye Darko of the one part and THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLIC acting by IVAN SEMEHOBIVH BLAKOU...***"

The point urged to be noted is that, where and when it mattered most, when the disputed property was leased out at a rental of £2000.00 for six months, it was Rexford Aye Darko who was the lawful Attorney. That meant it was to him that rents would be paid and were paid.

Indeed, the evidence on record is that, Kwabena Appenteng never received rent payment from the Russians in respect of this property. Learned Counsel for the Defendants therefore submitted that, the above specie of conduct amounted to Kwabena Appenteng, holding the property in trust for the deceased husband of 1st Defendant, Rexford Aye Darko who was the beneficial owner. He argued that a resulting trust may be created where one person purchases property in the name of another. Learned counsel then referred to a passage by the learned Authors, **BJ da Rocha and CHK Lodoh in their Book, Ghana Land Law and Conveyancing, 2nd Edition**, where writing on the principle of Resulting Trust at 114 they stated thus:-

*"The conveyance need not, on the face of it, state that the price has been paid by a person different from the one to whom the conveyance is made. It does not even matter if the conveyance contains a receipt clause. **Extrinsic evidence is admissible to prove who actually paid the purchase price.**"*

In this regard, it is necessary to refer copiously to the evidence of the 1st Defendant in support of this extrinsic evidence as follows:-

"My name is Janet Esther Darko. I live at Kokomlemle. I am unemployed. I have lived there for about fifty years. The house number is C/822/4, I only got to know plaintiff in this court. I have not seen him anywhere before, I do not own the property in which I live. It is owned by my husband who is

deceased. My husband has owned this property for over sixty years. We initially lived there between 1957 and 58 then we moved out when the Russians rented the property."

The above constitute sufficient proof that only the 1st Defendant and her husband have lived in the disputed property apart from the tenants since it's construction.

This means that the Plaintiff's vendor, Kwabena Appenteng never performed any overt acts of ownership or possession in respect of this house.

Secondly, it is only the 1st defendant's husband, R. A. Darko who enjoyed the rent payments in respect of this house, as per Exhibit J.

Despite the above specie of overwhelming evidence in support of a resulting trust, learned counsel for the plaintiff, A. G. Boadu stated in his statement of case as follows:-

*"The Court of Appeal's judgment is therefore correct. Resulting trust does not arise in this case. In the Book Commentary and Cases on The Law of Trusts and Equitable Remedies, tenth edition by Di Hayton, Resulting trust is discussed in chapter 5. It states, **"Megarry J, has classified resulting trusts from the way in which they arise as either being "automatic resulting trusts" or "presumed resulting trust"**.*

Learned counsel for the Plaintiff proceeded further to set out what constitutes a resulting trust. In his opinion since there has been no adverse possession in this case, the appeal must fail and that it lacks merit and must be dismissed.

In my candid opinion, the above conclusions by learned counsel for the Plaintiff suggests very strongly that he did not appreciate the contents of the appeal record.

For example, Exhibit 2 is a very important document whose import must be dealt with instantly.

On the 3rd of March 2012, one Rexford K. A. Darko a son of Rexford Aye Darko, testified before the trial Circuit Court as a representative of the Co-Defendants.

During his testimony, he tendered Exhibit 2, and this is how he led the introductory evidence in support of this document.

"My father is deceased. After his death, all his properties were put under the management and ownership of Okofo Estates Limited. Defendant does not own this property presently. There was a meeting in our hometown Akropong-Akwapim in respect of my father's properties between the executions (sic) of my father's estate, some of us his children and representatives from his extended family."

This meeting included one Appenteng, my father's elder brother Papa Kojo Sekyi. Kwabena Appenteng is also my father's older brother. The purpose of this meeting was to settle the extended family in so far as my father's properties were concerned. The outcome of the meeting resulted in a document being drawn up and signed by the executors of the estate on the one part and Papa Kojo Sekyi and Kwabena Appenteng on behalf of the extended family.

This document gave certain properties which included houses, cars and some cocoa farms and certain amounts of money to the extended family. I have the document in question to tender. No objection. Accepted and marked Exhibit 2. *Emphasis*

I have had a critical look at this Exhibit 2, and found it to have had many children of the deceased Rexford Aye Darko and some of his siblings including Kwabena Appenteng the Plaintiff's vendor present at the meeting. In short, whilst the children of the Estate of the deceased Rexford Aye Darko formed the first part of this document, the maternal and paternal families formed the 2nd and 3rd parties respectively.

I have also observed that, in the ***Certificate of Interpretation*** column of this Exhibit 2, at page 6 thereof, the following certificate appears:-

"These presents were read over, interpreted and explained in the Twi language by E. Darko Owiredu of Edo Zip, Accra to Nana Oduro Darko, Kwadwo Sekyi and Kwabena Appenteng when they seemed

to understand the same perfectly before executing and or making their marks in the presence of me Nii Odoi Annan and E. Darko Owiredu and Rt. Rev. G. K. Sintim-Misa who also executed this deed as witnesses thereof". Emphasis

It should further be noted that, during their lifetime, judicial notice can be taken of the fact that Nii Odoi Annan was a reputed lawyer, and little wonder therefore that he prepared this Exhibit 2, and Rt. Rev. G. K. Sintim-Misa was a respected religious and church leader, who was at one time the Moderator of the Presbyterian Church of Ghana.

Furthermore, this exhibit 2, contains significant distribution of properties out of the Estate of Rexford Aye Darko to beneficiaries of different descriptions, including Kwabena Appenteng and others. Of particular importance is the following statement in parts of this exhibit which read as follows:-

"Kwadwo Sekyi and Kwabena Appenteng are the surviving elder brothers of the said Intestate and uncles of the settlors herein and representing themselves and all others the sisters of full blood of the intestate."

This meant that Kwabena Appenteng must be deemed to have fully understood the contents of exhibit 2 before he signed. Following the execution of exhibit 2, Kwabena Appenteng further gave an acknowledgment in exhibit 3 in proof that all the properties of his junior brother Rexford Aye Darko given to him as part of his inheritance had been complied with and duly received. The disputed property herein was never one of the properties that the said Kwabena Appenteng was given. It is also interesting to note that, another property at the same Kokomlemle was devolved on him and his other brother as part of their inheritance.

I am satisfied with the contents of exhibits 2 and 3 that Kwabena Appenteng, never had any rights of interest in the disputed property. In any case, judging from the eminent persons who were present during the execution of this exhibit on 27/4/1981, the contents therein represent exactly what transpired.

These were the findings of fact that the learned trial Judge made which unfortunately were set aside by the Court of Appeal without any basis whatsoever.

Indeed, the fact that Rexford Aye Darko during his lifetime was an extremely wealthy man cannot be disputed. This was even confirmed by P.W.1, Kwabena Appenteng's son who testified that *"I came to know that he later acquired a lot of properties"* which was a reference to Rexford Aye Darko.

It is also part of the record of appeal that both PWI and DWI all stayed with the 1st Defendant and her husband in this disputed house and were enrolled in schools respectively. It is not surprising therefore that DWI during his evidence testified as follows:-

"R. A. Darko gave Kwabena Appenteng money to be purchasing cocoa farms at Nyakokoa for sale to the government. However, he made losses. He took money from a lot of people and so he was arrested. R. A. Darko sent me and one of his clerks named Mr. Yirenkyi to go and bail him."

From all the pieces of evidence, both oral and documentary, it is certain that Rexford Aye Darko was a very wealthy man and provided the money for the purchase of the land and for the construction of the disputed house.

This therefore puts beyond any shadow of doubt that Kwabena Appenteng held House No. C.822/4 in trust for Rexford Aye Darko.

In this respect, I will further rely on the very respected case of **Ussher v Darko [1977] 1 GLR 476** at holding 2, where it was held that:-

"The Plaintiffs Vendor M, in whose name the property was purchased by E had legal title to the property, but she held that title as bare trustee; i.e. on a resulting trust for the purchaser."

Another case on point is the Supreme Court decision in the **In Re Koranteng (Decd) [2004-2005] SCGLR 1039 at 1042**, holden 3 thereof which states as follows:-

*"In essence, a resulting trust was a legal presumption made by law to the effect that where a person had purchased property in the name of another, that other person will be deemed to hold the property in trust for the true purchaser. It was a trust implied by equity in favour of the true purchaser or his estate upon death. **The trust was regarded as arising from the unexpressed or implied intention of the true purchaser.**" Emphasis*

From the available evidence, and the current state of the authorities on how a resulting trust arises, it is clear that the transactions between Kwabena Appenteng and his junior brother Rexford Aye Darko was nothing other than a resulting trust. This is because, even though the legal title remained in Kwabena Appenteng, the equitable title, from the conduct of the parties amounted to a resulting trust in favour of Rexford Aye Darko. In that respect therefore, there was no title left for Kwabena Appenteng in the disputed property to convey to the Plaintiff. This ground of appeal accordingly succeeds.

GROUND C

C. THE COURT OF APPEAL MISDIRECTED ITSELF IN LAW AND IN FACT WHEN IT HELD THAT THERE WAS NO ADVERSE POSSESSION AS TIME ONLY BEGAN TO RUN AGAINST KWABENA APPENTENG IN 2005 WHEN THE PROPERTY WAS SOLD AND THE DEFENDANTS/RESPONDENTS/APPLICANTS REFUSED TO YIELD POSSESSION OF THE HOUSE TO THE PLAINTIFF/APPELLANT/RESPONDENT HEREIN.

PARTICULARS OF MISDIRECTION

- 1. There is no evidence on record of consent by Kwabena Appenteng to the 1st Defendant/Respondent/Appellant living in the house.**
- ii. There is no evidence of Kwabena Appenteng having notified the 1st Defendant/Respondent/Appellant to vacate the house in 2005.**

- iii. **On the contrary there is evidence of Kwabena Appenteng's knowledge of the use of the property by the respondents as their bonafide property since 1960.**

The Court of Appeal, in dealing with the issue of adverse possession, delivered themselves thus:-

*"On the submission by counsel for the defendants/respondents that the defendants have acquired possessory, title by their long adverse possession, there the evidence from PW1, a son and administrator of Kwabena Appenteng that when the latter incurred the judgment debt he left his business in the hands of Rexford Darko to manage and pay his debts, hence the rental of the disputed property to the Russian Embassy by his lawful Attorney. As the occupation by the defendant and her husband who was also Kwabena Appenteng's brother, was by the consent of Kwabena Appenteng, time would begin to ran only when the defendant showed adverse possession i.e. when she refused to vacate the property after purchase by the Plaintiffs which was in 2005. See **Djin v Musah Baako [2007-2008] SCGLR 687**. In **Re Neequaye (Dec'd) Adea Kotey v Kootse Neequaye [2010] SCGLR 348**. The writ in this suit was issued in 2007 so the period for the limitation of time will not be due until 2017. For all the time that the defendant was in occupation she was a licensee of Kwabena Appenteng and became adverse possessor after 2005". Emphasis*

On the contrary, there is abundant evidence on record to indicate that the said findings by the Court of Appeal are not only wrong, but perverse. From the record, the following are the uncontroverted facts found by the learned trial Judge.

1. The land was purchased and documented in the name of Kwabena Appenteng.
2. The House was however built by Rexford Aye Darko.

3. Upon completion of the house, 1st defendant and her husband lived in the house from 1957-1959 or thereabout when the facility was leased out to the Russians and later by the Ugandan High Commission.
4. After the 1966 coup d'état, the 1st Defendant and her husband returned to live in the house until her husband died on 13th September 1977.
5. When the property was being rented to the Russian Embassy, the Lease Agreement correctly stated Rexford Aye Darko as the Lawful Attorney and in whose name the rents were to be paid.
7. From 1977 to date, the 1st Defendant has continued to live in the said house without let or hindrance from Kwabena Appenteng until his demise later.
8. It should be noted that, Kwabena Appenteng never in his lifetime ever took any steps to claim ownership or possession of the house or eject the 1st Defendant from the house.
9. The various overt acts of ownership/possession performed by Rexford Aye Darko and later by 1st Defendant are so pronounced that their rights cannot be extinguished by the bare legal title that Kwabena Appenteng held in the property.
10. Exhibit 2, to which copious reference has already been made shows clearly that Rexford Aye Darko was a person of extreme wealth and was in addition a philanthropist who was generous to his maternal and paternal family just as he was to his children.
11. Furthermore, the properties that the said Kwabena Appenteng benefited from the Estate of his junior brother, houses, cocoa farms, vehicles and cash and which he acknowledged are proof that kwabena Appenteng was dependent on his junior brother, reference Exhibit G, which valued the total worth of Kwabena Appenteng's estate at GH¢10,000.00.
12. When all these specie of conduct are put together, it is apparent that the adverse possession against Kwabena Appenteng are so manifest that the

Court of Appeal's evaluation of that piece of evidence and decision is not only wrong on the facts, but is also not supported by the law, and are therefore perverse. In this rendition, it must be clearly noted that, if Kwabena Appenteng's right of interest had any putative standing, the distinguished persons who gathered and prepared exhibit 2 would have given it some credence. Besides, Kwabena Appenteng himself did not raise any such title or interest. It was much later that, in or about 2005 that he did the unthinkable by attempting to alienate the property to the Plaintiff under bizarre circumstances.

I have also observed that the Court of Appeal gave some credence to the legal proceedings in Exhibit L. This exhibit is however dated 21st December 2004 and the parties are Kwabena Appenteng v Terrence Darko, Okofo Estates and others as Defendants. From this exhibit, the suit therein was commenced in the year 2000, 23 years after the death of Rexford Aye Darko and 19 years after the distribution of the Estate of Rexford in exhibit 2.

The overt acts of Rexford and later by his wife the 1st Defendant were open, visible, pronounced and for very long periods and were unchallenged. This therefore brings these specie of conduct in tune with the decision in the Supreme Court case of ***Abbey & Others v Antwi [2010] SCGLR, 17 at 20***, where it was held as follows:-

" a claim of adverse possession could not be based on clandestine payments of tribute alone. They must be open, visible, unchallenged and apparent so as to give notice to the legal owner that someone might be asserting a claim..."

See also the case of ***Klu v Konadu Apraku [2009] SCGLR 741 at 743***. In view of all the above analysis I will uphold ground C of the grounds of appeal.

GROUND D

THE COURT OF APPEAL FAILED TO RULE AS A FINDING OF FACT THAT THE PURPORTED PURCHASE OF THE PROPERTY BY THE RESPONDENT HEREIN FOR A SURPRISING LOW VALUE OF GH¢10,000.00 WHILE THE 1ST APPELLANT HEREIN WAS IN OCCUPATION, AND WITHOUT ANY INVESTIGATIONS AS TO HER INTEREST IN THE SAID PROPERTY, SMACKS OF BAD FAITH FOR WHICH HE SHOULD NOT BE PERMITTED TO TAKE ADVANTAGE.

I will begin a discussion of this ground of appeal by a reference to the ruling of King Solomon that had been acclaimed as a *wise ruling*. This was a dispute over a son by two prostitutes, one of whom lost the son through negligent conduct.

Faced with a dilemma when one woman says "*my son is alive and your son is dead*" and unable to resolve the problem posed by the two prostitutes, the King said, "*Bring me a sword*" so they brought a sword for the King. He then gave an order "*cut the living child in two and give half to one and half to the other.*" As is generally known, the woman whose son was alive being moved out of love for the son said to the King "*Please my Lord, give her the living baby, Don't kill him*".

LESSONS FROM THIS RULING

The most pronounced lesson from this Solomonic ruling is that, by such a clever ploy, the true owner of the child was detected and an unbroken relationship between a mother and her son had been restored. Fast forward to Kwabena Appenteng in 2005 in Accra, in a respected residential/commercial environment like Kokomlemle and in respect of a two storey building of the type described as the Russian Embassy with the amenities stated therein, 6 bedrooms, kitchen, sitting rooms, boys quarters etc., being sold for GH¢10,000,00.

This is unheard of. The said transaction only epitomizes someone who is in indecent haste to dispose off a valuable asset he has not toiled for.

The most important thing worthy of note is that, at all material times that this purported transaction was going, the Plaintiff knew very well that the 1st Defendant

was in occupation and possession of the said house. But nonetheless, he like his vendor was very reckless in not taking steps to do any due diligence. For example, in answer to a question during cross-examination as to the number of rooms in the house he purchased from Kwabena Appenteng, the Plaintiff testified as follows:-

“I would not like to speculate. Mrs. Janet Darko was in the house then.”

This knowledge on the part of the Plaintiff that the 1st Defendant was living in the house at the time imposed legal obligations which he was obliged to discharge. It is in this respect that I endorse the quotation from the respected Book on ***Ghana Land Law and Conveyancing, Second Edition page 396 by B. J. Da Rocha and CHK Lodoh*** wrote thus:-

*“Even though a vendor is under obligation to disclose matters affecting his title, the matters he is obliged to disclose are usually few. **The common law principle of caveat emptor therefore applies to all purchases of land.** When therefore a lawyer is consulted by a purchaser of land prior to the purchaser entering into a valid and binding contract with **the vendor, the lawyer must seize the opportunity to carry out preliminary enquiries.**”* *Emphasis*

Based upon the above principle, I am of the respectful opinion that, since the 1st defendant was in absolute possession and occupation of the disputed property the Plaintiff ought to have investigated the presence of the 1st Defendant before proceeding to purchase the property. The 1st Defendant must be deemed to be in actual possession of the disputed property. See cases of ***Boateng v Dwinfour [1979] GLR 360*** and ***Brown v Quashigah [2003-2004] SCGLR 930, 954 and 957.***

It should further be noted that, the search conducted by the Plaintiff which he tendered as Exhibit A was conducted in or about 17th January 2006 after he had already entered into the transaction, parted with money to Kwabena Appenteng as evidenced by Exhibit B, dated 5th October 2005 at the ridiculous price of GH10,000.00. Indeed, Exhibit G, which are the Letters of Administration tendered by PWI son of Kwabena Appenteng (Deceased) in support of his capacity and also to

indicate the status of his father speaks for itself. Unfortunately, the value of the entire Estate of Kwabena Appenteng is stated as GH¢10,000.00 as at 20th February, 2009. This is definitely not the Estate of someone who is of any wealth. No doubt from the appeal record, he was dependent on his junior brother.

Even the assets given to him from the Estate of Rexford Aye Darko as per Exhibit 2 are far more worth than that. In retrospect, it is quite clear that, Kwabena Appenteng decided to alienate the disputed property to the Plaintiff, out of greed and envy and an anxiety to dispose the Estate of his brother of that valuable asset by the ridiculous price at which he purported to sell. To all intents and purposes therefore, Kwabena Appenteng did not seem on the state of the legal records to be someone of substance.

It must also be observed that, even a tenant who is desirous of leasing premises is enjoined to not only inspect the premises to find out whether they are in a tenable condition, but also vacant or to become vacant in the future.

From all the surrounding circumstances, the Plaintiff was not only reckless in his dealings with the disputed property, but like his vendor, Kwabena Appenteng was in an indecent haste to divest the Estate of Rexford Aye Darko of the valuable asset.

Based on the above analysis, I will allow this ground of appeal as well. I will thus declare the sale and purchase of the disputed property by the Plaintiff as null and void.

GROUND A AND B

- A. THE JUDGMENT IS AGAINST THE WEIGHT OF EVIDENCE.**
- B. THE COURT OF APPEAL ERRED IN LAW AND IN FACT WHEN IT FAILED TO CONSIDER THE FACT THAT IN THE CIRCUMSTANCES AND ON THE EVIDENCE, A RESULTING TRUST WAS CREATED WITH KWABENA APPENTENG BEING THE LEGAL OWNER AND REXFORD AYE DARKO THE BENEFICIAL OWNER OF HOUSE NUMBER C822/4.**

In discussing these two grounds of appeal together, I will be quite brief since most of the factual situations had been referred to supra. Learned counsel for the Defendants, Mr. Youny Kulendi, argued that the Court of Appeal, drew factual inferences which are not borne out by the evidence on record contrary to those made by the trial Circuit Court. By so doing, the Court of Appeal erred by setting aside the findings of fact made by the learned trial Judge and substituted their own findings and inferences not borne out by the record.

Learned counsel for the plaintiff, Mr. A. G. Boadu even though did not address these two grounds distinctly, he nonetheless argued the grounds of the appeal, and submitted that the judgment of the Court of Appeal be maintained.

It is instructive at this stage to refer to the conclusions of the Court of Appeal on the findings and judgment of the learned Circuit Court Judge. This is what the Court of Appeal stated:-

“We have looked at the judgment of the trial Judge and have no doubt that the judgment is not based on the facts or evidence which was let at the trial but on the deductions and observations of the trial Judge. A trial court owes it as a duty to resolve the primary facts, making findings on relevant matters necessary to establish the claim or defence of the parties, state her findings and apply the law.”

According to the Court of Appeal, the trial Judge failed in this duty to a large extent.

In my estimation this conclusion of the Court of Appeal is not only perverse, but completely unjustified having regard to the evidence on record.

1. The first finding made by the learned trial Judge was to the effect that the search result, Exhibit A which the plaintiff tendered shows that the Indenture, Exhibit B, was executed before he conducted the search. This is borne out by the dates on both Exhibits as correct.
2. The second finding of fact is that, there are well regulated rules on what a prudent purchaser of land must do in this country. On the record, the Plaintiff was found wanting, since he did not do **any due diligence and purchased**

this property as if he was buying a goat. This is also supported by the record.

3. The third finding of fact is that the 1st Defendant had at all material times lived in this house as a matrimonial home, except for the brief periods that the Russians were tenants. This is also borne out by the record.
4. The fourth finding of fact made by the learned trial Judge was that Rexford Aye Darko was a man of substantial wealth and properties. The record supports this.
5. The fifth finding of fact made by the trial court was that Kwabena Appenteng never lived in this house himself. Whenever he did when he was on a visit, he lodged with DWI in the boys quarters. This evidence was not denied. The learned Judge therefore proceeded to make the right inferences.
6. The sixth finding made by the trial Judge was to the effect that PW1 also once lived with the 1st defendant and her husband, Rexford Aye Darko from when the house was built until the death of Rexford Aye Darko in 1977. This is also correct.
7. The seventh finding of fact was about the meeting in Akropong-Akwapim at which Rexford Darko's properties were distributed to the family members. At that meeting, Plaintiff's vendor, Kwabena Appenteng was present and was a major beneficiary. Reference exhibit 2 already referred to supra. This is also borne out by the record.

The learned trial Judge then concluded her evaluation and assessment of the findings in these hallowed sentences:-

*"All these acts of complete silence by Kwabena Appenteng over his alleged self acquired property does not add up. **He did not stake a claim to the property when his brother was alive nor did he when he died. He only decided to stake his claim two long decades after his brother passed.** Any reasonable mind would there conclude that Kwabena Appenteng did not own this property as is being alleged. It rightfully belongs to his*

*deceased brother who only used his name to execute deeds regarding the property. **This would therefore make Kwabena Appenteng the legal owner but the real beneficial interest lies in Rexford Aye Darko. See the case of **Ussher v Darko.*****” *Emphasis*

I will also add that, considering all the specie of conduct referred to supra, in addition to Exhibit G, the Letters of Administration of Kwabena Appenteng which put the value of his Estate at GH¢10,000.00 and Exhibit 6, which was tendered through Co-defendants representative, **the only logical conclusion is that, it is Rexford Aye Darko who bought the disputed land, developed it and has enjoyed it to date.**

For example, this exhibit 6, is a document of conveyance from Kwabena Appenteng, dated 6th day of April 1987 and Okofoh Estates Limited, acting by Ronald Terence Kwabena Darko. In this exhibit, are the following recitals:-

1. By a Deed made the 10th day of December 1957 (Registered No... between Wilkinson Sai Annan acting head and lawful representative of the Osu Tetteh Family of Accra as Vendor therein and the Vendor herein, the land situate at South East Kokomlemle Accra (hereinafter called the property) was conveyed to the vendor forever.
2. Kwabena Appenteng purchased the property for and on behalf of the brother the late Rexford Aye Darko who had same conveyed in the name of the said Kwabena Appenteng.
- 3. Kwabena Appenteng therefore became a trustee for his brother the late Rexford Aye Darko.**
4. The said Rexford Aye Darko died intestate on the 13th day of September 1977 and his estate devolved on his Administrators and Trustees.
5. The beneficiaries of the Estate of the late Rexford Aye Darko incorporated Okofoh Estates Limited the Purchasers herein to hold the properties of the late Rexford Aye Darko.

6. The vendor hereby conveys the property to the purchasers in consideration of the sum of one thousand cedis (GH¢1,000.00) paid by the Purchaser to the vendor..”

Kwabena Appenteng and Terence R. K. Darko executed this Exhibit 6. This Exhibit 6 is significant for the following reasons:-

1. It reinforces the fact that Kwabena Appenteng was the conduit through which Rexford Aye Darko purchased most of his immovable properties.
2. At the time of the execution of exhibit 6, R. A Darko had died.
3. Kwabena Appenteng acknowledged that he held the property therein in trust for the deceased brother.
4. Even though the property in exhibit 6 is separate and distinct from the disputed property, it is significant because it is consistent with the practice that existed between the two brothers.

In view of the many references supra, it is crystal clear that, it was rather the Circuit Court which made very consistent and cogent findings of fact in tune with the record of appeal. On the contrary, the Court of Appeal had no basis to depart from the findings made by the trial court unless they were perverse, which was not the case. See cases of **Achoro v Akanfela [1996-97] SCGLR 209**, **Obeng v Assemblies of God Church, Ghana [2010] SCGLR 300**, **Gregory v Tandoh IV & Hanson [2010] SCGLR 971**.

Since the setting aside of the findings of fact made by the learned trial Judge by the Court of Appeal was without any basis, same are considered perverse and therefore set aside.

Based on the above analysis, and the sound principles of law established in very respected authorities such as **Djin v Musa Boako [2007-2008] SCGLR 686** at holding 1, and **Oppong Kofi & Others v Attibrukusu III [2011] 1 SCGLR 176 at 178** Holding 1, it is certain that the judgment of the Court of Appeal is against the weight of evidence. Accordingly, I will allow the appeal on these grounds as well.

CONCLUSION

In the premises, I will allow the appeal filed by the Defendants against the judgment of the Court of Appeal dated 4th February 2016. I accordingly set the judgment of the Court of Appeal aside and in its place, restore the judgment of the Circuit Court dated 21st December 2012.

Judgment is therefore entered for the 1st Defendant, 1st and 2nd Co-Defendants respectively.

**J. V. M. DOTSE
(JUSTICE OF THE SUPREME COURT)**

COUNSEL

YONY KULENDI WITH HIM DANIEL SAGO OSEI AND CHARLES TETTEH AND HARRIET DODDO FOR THE DEFENDANTS/RESPONDENTS/APPELLANTS.

A. G. BOADU FOR THE PLAINTIFF/APPELLANT/RESPONDENT.