IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT,

ACCRA – A.D. 2018

CORAM: ANSAH, JSC (PRESIDING)
ADINYIRA (MRS), JSC
YEBOAH, JSC
BAFFOE- BONNIE, JSC
APPAU, JSC

J4/ 34/2018

24/10/2018

YEHANS INTERNATIONAL LTD. … PLAINTIFF / RESPONDENT / RESPONDENT

VRS

MARTEY TSURU FAMILY & 1 OR. … DEFENDANTS / APPELLANTS / APPELLANTS

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J U D G M E N T

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ADINYIRA (MRS), JSC: This is an appeal against the judgment of the Court of Appeal dated 30 March 2016 which affirmed the judgment of the High Court in favour of Yehans International Ltd, the Plaintiff Respondent/Respondent [Respondent] as against the Martey

Tsuru Family and 18th July Ltd.; the 1st and 2nd Defendants/ Appellants/ Appellants respectively [1st and 2nd Appellants respectively]

BRIEF FACTS

The Respondent filed in the High Court, Accra a claim for declaration of title and an order for possession of land in Accra measured about 2.59 acres, bounded on the North by the Accra-Tema Motorway, on the South by the Spintex Road on the east by Bank of Ghana Annex (Warehouse) and on the West by open space. The Respondent claimed the land through a grant from one Pendergrass Borketey Alabi son of Nii Tsui Alabi a subject of Nungua stool who traced his initial grant from the Nungua Stool.

The 1st Appellant counterclaimed for declaration of title and possession of the land claiming same formed part of Martey Tsuru Family lands. The 2nd Appellant also counterclaimed for a part of the Respondent's land, being 1.9 acres based on an assignment from Stanford Development Services Company Ltd [SDCS] dated 24 February 2006. SDCS got 18.7 acres of part of the land in dispute from the 1st Appellant by virtue of a conveyance dated 14 December 1993.

The Respondent answered Appellants by stating that the disputed land lies outside the lands which 1st Appellant had referred to as Martey Tsuru lands, which in any case were originally part of Nungua ancestral land that the 1st Appellant family who came from Teshie years ago, settled on.

The trial judge dismissed their counterclaim and entered judgment in favour of the Respondent declaring it as the owner of the land the subject matter of the dispute. This decision was affirmed by the Court of Appeal.

The Appellants being dissatisfied appealed to this on the following grounds

GROUNDS OF APPEAL

a) *That the judgment is against the weight of evidence.*
b) *That the learned Justices of the Court of Appeal, with respect erred when they failed to place the same degree of burden of proof on the Respondent's case as they did on the Appellants' counterclaim.*
c) *That the learned Justices of the Court of Appeal, with respect, erred when they upheld the 2nd Appellant's ground of appeal (f) and yet proceeded to affirm the judgment of the trial High Court.*
d) *That the learned Justices of the Court of Appeal erred in law when they affirmed the judgment of the trial Court when same was given per incuriam.*

*Particulars of Error of Law*

*The Respondent [Plaintiff] asserted during trial that the land in dispute was previously acquired by Executive Instrument 46 (E.I. 46) and compensation given to the Nungua Stool however, there was no evidence of another Executive Instrument revoking E.I. 46 which renders the judgment of the Court of Appeal void.*

*e)That the learned Justices of the Court of Appeal, with respect misdirected themselves on the effect of the Jackson Report of 1956 which was heavily relied upon by the Appellants and opposed by the Respondent*

*Particulars of Misdirection*

i. *The Jackson Report of 1956 settled the boundaries between Nungua and Teshie in favour of Teshie including "Martey Tchuru" village and*
ii. *the Court of Appeal was in error when it held that it will not be proper to declare title on the 1st Appellant alone on the basis of the Jackson Report when reference in the Jackson Report was to Teshie.*

*i. The Court of Appeal failed to take into account the fact that the land in dispute does not fall anywhere near or within Nungua Stool lands.*

*f)That the learned Justices of the Court of Appeal, with respect erred when they agreed with the trial High Court that the Respondent had succeeded in proving recent acts of possession over the land in dispute.*

*Consideration*

The central issue arising from the above grounds of appeal for determination before this Court is no different from what the two courts below determined in favour of the Plaintiff that is: whether the traditional owners of the piece of land the subject matter of the dispute is the Nungua Stool or the Martey Tsuru family.

Before we proceed we wish to make the following observation about three major undisputed facts in this case. The first being the traditional evidence that the Nungua Stool was the original owners of the area of land largely occupied by the people of Teshie. The second being that the location of the area in dispute is situated near the Bank of Ghana Annex (Warehouse) on its East side and bounded on the North by the Accra-Tema Motorway and bounded on the South by the Spintex Road. Thirdly, the Respondent traces its root of title from the Nungua Stool whereas the 2nd Appellant traces its root of title from the Martey Tsuru family, the 1st Appellant herein.

Initially the Respondent claimed the land was part of land acquired by the government from the Nungua Stool to construct the Accra - Tema Motorway, by E.I.46 of 1973; while on the other hand the Appellants claimed the land was part of government land acquired for the creation of an Industrial Site from the Martey Tsuru Family, by E.I. 140 of 1976 and in the course of the trial the Appellants claimed it formed part of land the government intended to

acquire for use for military training but gave it back to the Martey Tsuru Family. They tendered a letter dated 21 April 1978 of Nii Ashikwei Akomfra111 of Teshie to the Chief Lands Officer confirming Martey Tsuru lands but not the site plan referred to in the letter. The site plan of those lands released by the military authorities did not get close to the disputed land.

In any event in their submissions before the Court of Appeal the lawyers for both parties were ad idem that the land in dispute was not government land in that it was not affected by any compulsory land acquisition. Accordingly the learned justices of appeal upheld Counsel for the Appellants ground of appeal that the trial court erred in holding that the area in dispute fell within E.I. 46. Notwithstanding this holding, the Court of Appeal affirmed the part of the judgment of the trial court that the Plaintiff was entitled to a declaration of title to the land on the basis that the Plaintiff was able to establish ownership of the land.

Surprisingly Counsel for the Defendants premised an appeal in ground d) of their notice of appeal on the trial judge's erroneous finding on EI. 46; which states:

> *That the learned Justices of the Court of Appeal erred in law when they affirmed the judgment of the trial Court when same was given per incuriam*
>
> *Particulars of Error of Law*
>
> *The Respondent [Plaintiff] asserted during trial that the land in dispute was previously acquired by Executive Instrument 46 (E.I. 46) and compensation given to the Nungua Stool however, there was no evidence of another Executive Instrument revoking E.I. 46 which renders the judgment of the Court of Appeal void.*

Counsel submitted that "…the Respondent who originated the action ought to have had its case dismissed because part of its case before the trial High Court was that the land in

dispute which formed part of a larger land of its grantor (Nungua Stool) has been acquired on (sic) by E.I. 46…instead of reversing the trial court's judgment based on this, rather upheld the Appellant's ground of appeal on this error, and nevertheless affirmed the trial Court's judgment."

As Counsel for the Respondent rightly pointed out, the Appellant was making a mountain out of an anthill partly due to a slip in the cross-examination of PW1. He submitted that the Court of Appeal rightly glossed over the inconsistency relying on Effisah v Ansah [2005-2006] SCGLR 943 where it was held that:

*"Where inconsistencies or conflicts in the evidence are clearly reconcilable and there is a critical mass of evidence or corroborative evidence on crucial or vital matters, the court would be right to gloss over these inconsistencies."*

We will summarily dismiss this ground of appeal as the law is well-settled that an appellate court can affirm the decision of a lower court which is correct but founded on wrong reasoning. See the cases of Mensah Larkai v Ayitey Tetteh [2009] SCGLR 621 at 634; Mensah v Ghana Football Association [1989-90]1 at 8; Abekah v. Ambradu [1963] 1 GLR 456 AT 464.

We accordingly dismiss ground d) of the notice of appeal.

So the over-arching issue to be determined is whether the learned justices of appeal assigned the right reasons for their decision. This brings us to consider grounds a) and b) of the grounds of appeal

Grounds a) and b)

1. *That the judgment is against the weight of evidence.*
2. *That the learned Justices of the Court of Appeal, with respect erred*

*when they failed to place the same degree of burden of proof on the Respondent's case as they did on the Appellant's counterclaim.*

Counsel for the Appellants submits that the learned justices of appeal failed to review and evaluate the whole evidence and wrongly placed the burden of proof on the Appellants.

We take note that the Court of Appeal per Lovelace-Johnson JA , stated at page 565 Vol. 2 of the record of appeal [ROA ] that: "*Such a ground of appeal implies that the conclusions reached by the trial judge are not justified by the evidence on record…"* and therefore they were bound by numerous authorities to "…*review the whole of the evidence, documentary and oral, adduced at the trial and come out with a pronouncement on the weight of evidence in support of the judgment of the trial court or otherwise*"; while referring to the cases of Oppong Kofi v Awulae Attribrukusu 111 (2011) 1 SCGLR 176; Re Asamoah (deceased) Agyeiwa & Others v Manu [2013-2014] 2 SCGLR 909.

The learned justice dutifully identified all complaints and list of exhibits which the Appellants claim should have been applied in their favour at pages 566 – 570 Vol. 2 of the ROA. The learned Justice considered every single exhibit laid before them by the Appellants as well as the oral testimonies of all the parties at the trial and came to the conclusion that the Respondent had succeeded in proving the title of its grantor, i.e. the Nungua Stool, its mode of acquisition and acts of possession in respect of the disputed land.

Since an appeal is by way of rehearing our focus would be to look closely at the totality of the record, and draw the necessary inferences from facts that were clearly established by both oral and documentary evidence adduced at the trial.

.However it is settled law that an appellate court such as this ought not to disturb findings of fact by two lower courts unless the findings are perverse. See for example Achoro v Akanfale [1996-97] SCGLR 209; Koglex Ltd v Field [2000] SCGLR 175; Ntiri v Essien

[2001-2002] SCGLR 494; Sarkodee v F. K. A. Co Ltd [2009] 2 SCGLR 79; Awuku-Sao v Ghana Supply Co Ltd [2009] SCGLR 710. In Achoro, *supra* at 214 to 215, per Acquah JSC (as he then was) made the following proposition:

> *"Now an appeal against findings of facts to a second appellate court such as this court, where the lower appellate court had concurred in the findings of the trial court, especially in a dispute, the subject matter of which is peculiarly within the bosom of the two lower courts or tribunals, this court will therefore not interfere with the concurrent findings of the lower courts unless it is well established with absolute clearness that some blunder or error resulting in a miscarriage of justice, is apparent in the way in which the lower tribunal dealt with the facts."*

Furthermore as we stated in of DJIN v MUSAH BAAKO (2007-08) SCGLR 686 per Aninakwah JSC at page 691:

> "*It has been held in several decided cases, and the authorities are many, that where an appellant complains that judgment is against the weight of evidence, then he is implying that there were certain pieces of evidence on the record which if applied in his favour could have changed the decision in his favour, or certain pieces of evidence have been wrongly applied against him."*

Counsel for the Appellants enumerated some of the pieces of evidence adduced before the trial court which he argued; both the trial judge and the court below either completely ignored or did not give them any weight. These are Exhibits1,2,3,4,5,6,7,8,9,11, and evidence of DW1 and Cyril Yeboah and the lack of evidence of an instrument revoking E.I.46 (Exhibit D)..

We on our part dutifully examined the exhibits to ascertain whether the learned justices of appeal committed some blunder or error in the way in which they dealt with the facts.

The Appellants tendered exhibits and site plans to show the extent of Martey Tsuru family lands. However we find that the area in dispute is not captured in their land title certificate; and from their evidence they decided it had to be part of Martey Tsuru lands when they realized the area in dispute did NOT fall within the area acquired by Government by an E.I.140.

This explanation appears to be far-fetched as DW1; John Christian Acquah who testified for the 1st Appellant was the Greater Accra Regional Surveyor at the time the survey plan was prepared by him for the Martey Tsuru family. He had custody of all plans of government lands in that area and it is rather unlikely that he was ignorant of government acquisitions. He carried out the survey and produced the site plan in 1992 for the Martey Tsuru Family without any input from other families settled in that area We are inclined to believe that the area of the land in dispute was not included in the site plan of Martey Tsuru Family Lands as that area did not form part of their lands. It is as simple as that.

It seems to us that the 1st Appellant was vacillating between two stories that the land in dispute was part of the land acquired for a Light Industrial Area by E.I. 140 and on the other that it was part of land earmarked for military training but released to them, indicate the family was out to take over any vacant land within their vicinity.

Further, an evaluation of the evidence shows that Plan No Y 1043CC, tendered as exhibit "17" was prepared on 13/6/2013, i.e. during the pendency of the suit. That document prepared by the 1st Appellant which seeks to connect the disputed land to exhibit "15" entitled "Site for Martey Tsuru Family Lands" without any input from the Plaintiffs can rightly be described as self-serving and worthless as held by the Court of Appeal. Their lordships were justified in not attaching any weight to this survey plan.

Counsel further referred to Exhibits12, 13 and 14 being judgments of the High Court and

Court of Appeals, which he said were in favour of neighbors of the 1st Appellant as against the Nungua Stool.

After examining these judgments we find the boundaries of the respective lands in those litigations shared no boundary with the area in dispute and are therefore irrelevant to determine the appeal before us.

Another judgment relied on by the Appellants was the Jackson Judgment of 1952 which formed the basis of ground e) of the notice of appeal; and therefore convenient to consider at this point.

Ground e) *supra*

Counsel for the Appellants referred us to the Jackson Judgment which declared the Teshie Stool owner of the area acquired for the Infantry Training School.

This ground of appeal is quite trivial. Contrary to submissions by Counsel for the Appellants, the Jackson Judgment did not settle the general boundaries between the three stools of Nungua, Teshie and Labadi as the remit of the inquiry was limited to compensation of a particular area acquired for use as an Infantry training school.

Jackson J. held that from traditional history, the Nunguas were the first occupants of the land which they permitted the people of Teshie to settle there and were paying annual tolls of a sheep and drink to the Nungua Chief but there was no evidence of recent memory of such payments. Jackson J concluded that at the time of the acquisition of the land it was the Teshie Stool that was in possession and so entitled to compensation.

The judgment describes the land the subject matter of the inquiry which is nowhere near the area in dispute, and it does not help the 2nd Appellant's attempt to prove the title of its grantor land.

The Court of Appeal in examining Exhibit 11 held it will not be proper to declare title of the disputed land in the 1st Appellant's family alone on the basis of this judgment when reference in the judgment was to Teshie Stool.

We do not find any error in this finding as ownership was declared in the Teshie stool and the Martey Tsuru family cannot use such pronouncement to bolster its claim. In any event, Teshie Lands are known to end at the Railway Line, the land for the Infantry training school lies on the Southern portion of the Accra-Tema Railway line. Meanwhile the Martey Tsuru family claim not to have settled in Teshie but to have settled in the area between the Railway line and the Accra-Tema Motorway.

However it was clear from the evidence on record that the land near the Bank of Ghana Annex Warehouse does not lay on the land where the Martey Tsuru family settled.

We now turn to the main issue before us.

*The Issue Relating to Whether the Respondent discharged the Burden of Proof to establish its Claim*

It is settled and trite law that a person claiming title has to prove: i) his root of title, ii) mode of acquisition and iii) various acts of possession exercised over the disputed land. See Mondial Veneer (GH) Ltd v Amuah Gyebu XV [2011] 1SCGLR 466. This can be proved either by traditional evidence or by overt acts of ownership in respect of the land in dispute. A party who relies on a derivatory title must prove the title of his grantor, Awukuv Tetteh [2011] 1SCGLR 366. Further, to prove ownership through possession, the possession must be long, peaceful and uninterrupted. See the case of Akoto v Avege [1984-86] 2GLR 365.

The Respondent gave evidence through Cyril Yeboah its Chief Executive Officer. He said

his company required land for its factory building and was shown the land in dispute which was vacant. He said he met the owner who showed him copies of his indenture over the land dated 9th February 1996 and signed by the Nungua Stool for his grantor, Pendagrass Borketey Alabi @ Borketey Alabi. His grantor explained to him that he was processing his title deeds at the Land Title Registry. After negotiations he paid for the land and documents of transfer were executed for his company. He tendered the deed of assignment dated 30th May 2002. Plaintiff was put in vacant possession after the grant and they deposited building materials on it. They regularly cleared the land without any challenge and took some soil sample for test in South Africa. Then in December 2006 the Appellants entered the land and commenced development at very fast rate. Respondent therefore swiftly sued in the High Court, and obtained an injunction restraining the Appellants pending the final determination of the suit.

Kpakpo Sraha, PWI, a secretary of the Nungua stool, gave evidence on behalf of the Nungua Stool to the effect that the lands surrounding the 2.59 acres in dispute had from time immemorial been Nungua Stool land. He explained that Nungua was the first to acquire the land from the coast to the Akwapim mountain by settlement. In 1710, Teshie Township was established at the coast by a family from Labadi who got the land from the Nungua. Stool. He said with time people from Teshie like the Martey Tsuru family settled on other lands belonging to the Nungua Stool but the disputed land was never settled on and remained Nungua Stool land.

He said the lands commencing from Baatsona Railway towards the Spintex Road to the Accra-Tema motorway and beyond belongs to the Nungua Stool. He tendered an indenture of 1953 [Exhibit C], by which the Nungua Mantse, Nii Afotey Adjin II granted land for the construction of the Accra- Tema Railway to the Government of the then Gold Coast.

He also referred to E.I. 46 whereby the Government acquired part of Nungua Stool Lands

for the construction of the Tema Motorway leaves; and said that the Bank of Ghana Warehouse and other light industries were on part of this land. He said compensation was paid to the Nungua owners of the land.

Evidence of long, peaceful and uninterrupted occupation and possession of the land in dispute was given by PW2, Nii Tsui Alabi, the father of the Respondent's grantor. He said in about 1954-56 when he was young, he was following his late father to farm and rear cattle on that land. They got to know that the government, had acquired in 1973 by E.I. 46, a portion of the land adjacent to the Accra- Tema Motorway, which did not affect where they were settled. So they went to the Nungua Stool for a grant of their portion of land, to be made in the name of his son Pendergrass B. Alabi.

The Respondent also in proof of his possession of the land said after they got their grant they deposited sand and stone on the land, they cleared the land without challenge and took some soil samples to South Africa. They could not develop the land as they were still waiting for funding from their partners and processing their documents. In December 2006, the Appellants entered the land and commenced development at a very fast rate and he therefore issued a writ and obtained an injunction restraining the appellant.

Significantly the evidence of acts of possession by PW2, the grantor's father of the very land the parties were litigating over was never challenged under cross-examination conducted on 5th July, 2012, by both lawyers. That in effect means that the Appellants had admitted those acts of ownership testified to by PW2 which were in respect of the 2.59 acres in dispute.

The 1st Appellant based his root of title on long occupation of the Martey Tsuru Family land which they claim was not part of Teshie Stool lands. The 1st Appellant claimed the land in dispute was part of Martey Tsuru Family lands which was acquired for the Accra-Tema Motorway Industrial Area in 1976 by E.I.140.

In view of our earlier holding that the that the area in dispute is not captured in the land title certificate and site plans of the Martey Tsuru Family Lands; and from their own evidence that they decided it had to be part of their lands when they realized that it did NOT fall within the area acquired by Government by a E.I.140, we do not see how the 1st Appellant can succeed on their claim to this portion of land based on this evidence.

The 1st Appellant led evidence that upon knowing that the area in dispute was not government land they applied to the Town and Country Planning Office to zone the place into a light industrial area and they started to develop it. It is our considered opinion that the alleged zoning of the land is not unequivocal evidence of ownership by the 1st Appellant.

If the alleged zoning is weighed against the evidence that the land in dispute lies within Nungua Stool Land and in the vicinity of land acquired by the government from the Nungua Stool to construct the Leave ways of the Tema Motorway and PW2's unchallenged evidence of his family's farming activities on the said land, the scales tilt in favour of the Respondent.

Meanwhile PW1's assertion in cross examination that it was the Nungua stool which gave land to Regimanuel Estates, Coca Cola, Kasapreko, and the Spintex factory was not denied. Certainly these pieces of evidence carry more weight as evidence relating to long ownership and title to the land than to judgments related to plots of lands neither directly connected to nor share boundary with the disputed land. They also outweigh 2nd Defendant's three month building activities.

We may also add that since the land was adjacent to the Accra-Tema Motorway and it is by the E.I.46 that portions of Nungua land was acquired by the Government for the construction of the Leave ways of the Tema Motorway, then the legal position is that any vacant land, lying in that environs remained Nungua Stool lands; which on the evidence

happened to be part of where the Alabis were farming as subjects of the Nungua Stool.

An analysis of the Respondent's case shows that it did not base its claim on any registered document. For that reason whatever flaws there are in the said land documents cannot by themselves be sufficient reasons for vitiating the grant to the Respondent especially when he is relying on acts of possession and traditional evidence of his grantor's predecessor good title.

On the other hand the 2nd Appellant based his claim on an assignment from [SDSC] which in turn had their grant from the Martey Tsuru family and tendered a land title certificate in its favour. The evidence of acts of possession was the construction of a fence wall which precipitated this action, building of a warehouse, construction of a foundation and erection of pillars. The Respondent in his evidence said at the time he issued the writ the 2nd Appellant had only laid a foundation but he quickly continued with the construction works.

Our attention was drawn to the indenture executed between Martey Tsuru Family and SDSC Ltd. SDSC had a lease from the 1st Appellant family part of land reserved in their layout for cemetery in 1993 which purported grant SDSC Ltd had registered at the Lands Commission. In an action by the Head and Principal Elders of 1st Appellant family against SDSC Ltd and the Executive Secretary of the Lands Commission in the High Court, Accra and in a decision delivered on 9th May 2000, the 1993 grant to SDC Ltd was declared null and void and an order made for the Lands Commission to expunge it from their records. SDSC Ltd thereafter entered a settlement with the lawful authorities of the1st Appellant's family and filed a consent judgment on 28/4/2003.

Based upon that consent judgment, 1st Appellant executed a document dated 14th May, 2003 making a fresh grant to SDSC Ltd which is found at pp 89-93 Vol. 1 of the ROA. The recitals of this Deed stated that it is executed pursuant to the Consent judgment. Taking a

look at the attached site plan of the indenture, we can see that the land that is clearly delineated on the site plan [page 91 Vol. 1] does not extend Northwards beyond the Spintex Road.

The only reasonable conclusion to be drawn from this site plan is that SCSD's land fall outside the area in dispute and below the Spintex Road. The site plan of the Martey Family Lands show that their portion of the land ends at Spintex Road which is their Northern boundary.

Accordingly we hold that the land granted to SDCS was different from the land the subject matter of this dispute. It follows that SDCS Ltd could not in turn assign part of the land in dispute to the 2nd Appellant; and so the 2nd Appellant got nothing. The registration by the 2nd Appellant of his document of title, per se, does not defeat the unregistered interest of the Respondent as in any event a registered instrument does not create an indefeasible title. See Amuzu v Oklikah [1998-99] SCGLR 141. This is now trite learning.

On the preponderance of the evidence we are satisfied the Respondent was able to lead unchallenged evidence of his grantor's root of title. We therefore find no reason to disturb the finding of the trial judge's decision that the Respondent was entitled to his claim. In the circumstances we will not interfere with the concurrent findings by the Court of Appeal.

.Accordingly we dismiss the appeal based on grounds a) and b). For the same reasons we dismiss ground d)

From the foregoing, we dismiss the appeal and affirm the judgment of the Court of Appeal.

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

ANSAH, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira, JSC.

J. ANSAH
(JUSTICE OF THE SUPREME COURT)

YEBOAH, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira, JSC.

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

P. BAFFOE-BONNIE, JSC:-

I agree with the conclusion and reasoning my sister Adinyira, JSC.

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

APPAU, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira, JSC.

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

COUNSEL

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