IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: TORKORNOO (MRS.) CJ (PRESIDING)

PWAMANG JSC

OWUSU (MS.) JSC

AMADU JSC

ACKAH-YENSU (MS.) JSC

CIVIL APPEAL

NO. J4/30/2019

5TH JULY, 2023

JOSEPH YAO ZIWU (SUBSTITUTED BY)

1. GODWIN ZIWU
2. WISDOM ZIWU — **DEFENDANTS/APPELLANTS/APPELLANTS**

3. LANDS COMMISSION, HO …. DEFENDANT

VS

1. MAWUTOR KUDZORDZI (DECEASED)
2. FRANK KUDZORDZI
(SUING FOR AND ON BEHALF OF THE CHILDREN OF FRANZ KOKU KUDZORDZI (DECEASED)) — **PLAINTIFFS/RESPONDENTS/ RESPONDENTS**

JUDGMENT

OWUSU (MS.) JSC:-

On 28th February, 2018, the Court of Appeal sitting at Ho, dismissed the appeal of the 1st Defendant/Appellant/Appellant and affirmed the Judgment of the trial High Court.

Dissatisfied with the decision of the Court of Appeal, the Defendant mounted the appeal before the Supreme Court on the following grounds:

a) *That the Court of Appeal woefully failed to adequately consider the case of the 1st Defendant/Appellant /Appellant thereby occasioning substantial miscarriage of justice.*
b) *That the judgment is against the weight of evidence.*
c) *That the Court of Appeal erred in failing to hold that 2nd Plaintiff/Respondent/Respondent is guilty of estoppel by laches and acquiescence.*
d) *That the Court of Appeal erred in failing to hold that 2nd Plaintiff/Respondent/Respondent is guilty of unjust enrichment.*
e) *That the Court of Appeal erred in holding that 2nd Plaintiff/Respondent/Respondent is entitled to the recovery of possession of the disputed land with all the developments carried on the land by the 1st Defendant/Appellant/Appellant in good faith after providing valuable consideration.*

Additional grounds of appeal to be filed upon receipt of the record of proceedings.

On 7th March 2019, the Defendant with the leave of this Court filed additional ground of appeal which states that:

f) *The Plaintiffs have no locus standi or capacity to sue 1st Defendant/Appellant/Appellant herein in respect of the Land in dispute which is said to form part of the estate of Franz*

Kudzordzi (Deceased) for and on behalf of the children of the said deceased person by operation of law.

In this appeal the parties would maintain their designations at the trial court. Consequently, the 1st and 2nd Plaintiffs would be referred to simply as 1st and 2nd Plaintiffs and the 1st Defendant as Defendant.

Before going into the arguments advanced in support and against this appeal, we will give the background of the case.

By their Writ of Summons, plaintiffs' claim against the Defendant for the following reliefs:

1. *Recovery of Possession of all that piece or parcel of land the subject matter of a leasehold agreement registered in the Deeds Registry as 196/1975 which piece or parcel of land is bounded as follows:*
   On the North-East by Dugbadza Market;
   On the South-West by Road to Dome;
   On the North-West by Ho to Dome Road and
   On the South- East by Lorry Park.
2. *Damages for Trespass*
3. *Damages for breach of contract.*
4. *Further or other reliefs.*

In their 9 paragraph Statement of Claim which accompanied the writ of summons, the Plaintiffs averred that they are the children of Franz Koku Kudzordzi (Deceased) of Ho. The Plaintiffs averred further that on 3rd of December, 1974, the said Franz koku Kudzordzi entered into a leasehold agreement with the Defendant whereby the latter was granted a term of twelve years lease concerning the use of the land subject to certain conditions. The said agreement was registered in the Lands Registry as No. 379A and 196/1975. It is the case of the Plaintiffs that during the subsistence of the said agreement,

the Defendant refused to pay rent to the successors of the decease for over ten years despite repeated demands. They concluded that to date the lease has expired and Defendant has not renewed same as provided for in the agreement. As a result, the Plaintiffs on the 18th December, 1986, notified the Defendant to vacate the land within fourteen days but Defendant has refused hence this action.

In his Defence, the Defendant averred that during the subsistence of the agreement, officials of Lands Department informed him that the Plot of land the subject matter of the dispute has been acquired by the Government of Ghana. As a result, he informed the Plaintiffs but the latter would not budge in their demands on Defendant to satisfy them as to the conditions contained in the previous agreement. The Defendant continued that, by the acquisition of the disputed land by the Government of Ghana of all the land in the area including the disputed land, the Plaintiffs have been diverted of their title and any interests they have left in the land in the form of compensation would be due them from the Lands Department. It is the case of the Defendant that on 15th of March, 1979, the disputed land demarcated as Plot No. 1, market area at Ho was leased by Professor George Benneh then Chairman of Lands Commission on one part and the Defendant herein for fifty years. The said lease according to Defendant is registered as No, V. 4692 Ho. 226/79 and Land Registry No. 3066/1997. The Defendant gave the dimensions of the land and concluded that, in view of the lease granted him by the Lands Commission, the Plaintiffs have no demand to make on him and any prior agreement entered between him and Plaintiffs' father is now null and void and of no effect. Consequently, the Plaintiffs are not entitled to their claim.

In view of the Defence filed by the Defendant, Lands Commission was joined to the suit by an Order of the Court dated 17th July, 1987 as 2nd Defendant. Thereafter, interlocutory judgment was entered against Lands Commission for failing to file a Defence on the 21st December, 1987.

After close of pleadings, the matter was adjourned sine die after the Summons for Directions was filed. When the Plaintiffs tried to relist the case for hearing they were told that the case was struck out by Registrar's Summons in 2006 which turned to be untrue. An application to relist the case was dismissed on 11th April 2008, whereby the Plaintiffs filed an appeal to the Court of Appeal.

On 5th February, 2010, by an Order of the Chief Justice, the case was transferred to His Lordship Justice Kofi Essel Mensah to be dealt with according to Law.

On 15th June, 2012, the Ruling dated 11th April, 2008 was set aside as void as having been made in error. The reason being that, the entire process was based on non-existing facts that the case was struck out by a Registrar's Summons when that was not the case.

The Application for Directions was taken on 24th July 2012 and the parties were ordered to file and exchange documents they intend to rely on at the trial by 15th August, 2012.

The Plaintiffs opened their case on 8th March, 2013 and it was adjourned to 26th April for further cross-examination. On 24th April, 2013, the Defendant filed a Motion for Leave to amend his Statement of Defence which application was granted on 3rd May, 2013 and hearing resumed on 23rd July, 2013. Plaintiffs closed their case after calling one witness. Defendant opened his defence on 11th April, 2014. Whilst testifying, the Defendant sought leave of the court to amend his Statement of Defence. This time round the amendment was to the effect that, when the Lands Commission wrote to him in a letter dated 17th July, 1987 to lapse the lease granted him, he resumed payment of rent for the disputed land to Plaintiffs through 1st Plaintiff Mawutor Kudzordzi until the latter sold the land to him. Thereafter, the Plaintiffs abandoned their case against him at the District and Circuit courts.

We have given an elaborate background of the case just to put it in perspective and to show that, the delay in the prosecution of the case was not one sided but by both parties.

In arguing the appeal, counsel for the Defendant argued grounds (a) and (b) together. He then submitted that, by Exhibit 5, Defendant purchased the land in dispute from 1st Plaintiff for valuable consideration of ₵3,500.00 for himself and the beneficiaries of the estate of Franz Kudzordzi on 7th August, 1997 in the presence of witnesses. However, 2nd Plaintiff turned around later to say that he does not recognize the said sale. This was when the Lands Commission was not able to confirm the lease to Defendant in Exhibit '7' in the letter dated 15th of March, 1979. Counsel continued that the Defendant believed that Exhibit '7' granted him was regular on the face of its acquisition. When the grant of the lease to him lapsed, that is why he purchased the disputed land from the 1st Plaintiff who was representing the other beneficiaries of the estate of Franz Kudzordzi (Deceased). Counsel pointed out that the Plaintiffs stayed for over twelve years without going on with the case at the High Court. He continued that the Plaintiffs did not deny that the said persons were present from the Kudzordzi family. This is the reason why the Defendant raised the issue of Plaintiffs having no capacity or locus standi to sue for the recovery of possession in respect of the disputed land. Counsel for Defendant concluded on this point that, having paid the outstanding rent calculated by Lands Commission and later purchased the land in dispute from 1st Plaintiff acting for himself and on behalf of his other siblings for valuable consideration of ₵3,500.00 in 1997 as per Exhibit '7', the latter cannot take possession of the properties in issue as well as the purchase price paid in 1997 as per the receipt to that effect.

Counsel for the Defendant therefore invited the Supreme Court to set aside the Judgment of the Court of Appeal dated 28th February, 2018.

In response to the above submissions on grounds (a) and (b) of the appeal, counsel for the Plaintiffs argued that, the submissions by counsel for the Defendant must be considered in the face of legal principles and the grounds of appeal filed by the Defendant in this case. He then submitted that the Court of Appeal gave adequate consideration to the Defendants case. Therefore, the judgment of the Court of Appeal is not against the weight of evidence adduced at the trial. This is because the Defendant admitted he was

brought onto the disputed land by Plaintiffs' father in 1974 and he paid yearly rent per the Lease Agreement, Exhibit 'A'. According to Defendant, later the Lands Commission re-zoned the area and offered a fifty-year lease to the Defendant. However, per Exhibit '1' the Lands Commission wrote to the Defendant intimating to him that the lease has lapsed as the Government of Ghana never acquired the disputed land by Executive Instrument. It was at this stage that according to Defendant he turned to 1st Plaintiff Mawutor Kudzordzi and bought the land for 3.5 million cedis. Counsel for the Plaintiffs stated that similar ground of appeal was filed at the Court of Appeal against the trial High Court Judgment and the Court of Appeal gave its considered view on the facts as narrated by the Defendant. He then submitted that the Court of Appeal evaluated the evidence adduced and agreed with the trial High Court on the issue of the sale of the land by 1st Plaintiff to the Defendant and held that the 1st Plaintiff could not validly alienate the land to the Defendant without the consent and or concurrence of the other siblings of Franz Koku Kudzordzi. He continued that in coming to this conclusion, the Court of Appeal appraised itself of *Rule 8 (1) of the Court of Appeal Rules CI 19* which directs the Court to re-hear the matter which involves evaluating the evidence. Counsel submitted that, the question to be considered is whether the Court of Appeal wrongly evaluated the evidence laid before the trial High Court which led to a wrong conclusion. He answered the question in negative and cited the cases of **KOGLEX LTD (N0.2) vs. FIELD [2000] SCGLR 175 and FOFIE vs. ZANYO [1992]2 GLR 475** to buttress his point.

On the point that the Plaintiffs abandoned the prosecution of the case and that the Defendant eventually purchased the land from Mawutor Kudzordzi, counsel for the Plaintiffs quoted a portion of the evidence of the Defendant when he alleged that the sale was effected by the 1st Plaintiff in the presence of the brothers of Plaintiffs Enoch and Jacob Kudzordzi. When the 2nd Plaintiff challenged the Defendant on this assertion, the Defendant eventually admitted that the witnesses to the purported sale were not the said brothers of the Plaintiffs but were three non-relatives of the 1st Plaintiffs. Counsel also referred to the evidence of PW1 the uncle of the Plaintiffs on the sale of the land. This

witness told the court the custom of patrilineal system of inheritance as practiced by the people of Ho. PW1 was emphatic that the sale of the disputed land could only be validly made by 1st Plaintiff with the consent of the other children of Franz Kudzordzi. Thus, the eldest son 1st Plaintiff Mawutor cannot sell the disputed land alone and without the consent of the rest of his siblings. He cited the case of **MENSAH vs. LARTEY [1963] 2 GLR 92** and also referred to the Book the *Ewe Law of Property by A. K. P. Kludze* to support his case. Counsel for the Plaintiffs concluded on this point that the disputed land was held in trust for the family by the Head of Family. The Court of Appeal after exhaustively evaluating the evidence on record was satisfied that the findings and holding by the trial High Court were correct and rightly dismissed the Defendant's appeal and affirmed the decision of the High Court. He therefore submitted that the Order for Recovery of Possession granted by the two lower courts was grounded in law and same should not be disturbed.

As stated above, counsel for the Defendant argued grounds (a) and (b) together and we will follow the order in which the grounds of appeal were argued.

Ground (a) and (b) of the appeal state:

(a) That the Court of Appeal woefully failed to adequately consider the case of the 1st Defendant/Appellant/Appellant thereby occasioning substantial miscarriage of justice.

(b) The judgment is against the weight of evidence.

In this appeal the following facts are not in dispute.

1. *That the disputed land belonged to the Plaintiff's late father. Exhibit 'A' is clear in this.*
2. *That the 2nd Plaintiff and the other surviving children of the late Franz Koku Kudzordzi succeeded and inherited the property customarily.*
3. *The Lease Agreement was originally between the Defendant and the Plaintiffs' father. Exhibit 'A' supports this fact*

4. *The Lease Agreement was for twelve years and has since expired before the writ was issued.*
5. *The Defendant was served with Notice to give up vacant possession.*

In its judgment, the Court of Appeal referred to Rule 8 (1) of the Court of Appeal Rules CI 19 and held that, a complaint that the Judgment is against the weight of evidence at the trial invokes the jurisdiction of the Court to re-hear the matter. It continued that, the re-hearing involves evaluating the evidence led both oral and documentary at the trial and coming to its own conclusion in support or against the trial court's findings. The Court of Appeal correctly identified the main issue for determination and that is whether the trial court's finding that the first Plaintiff sold the land in dispute to the Defendant without the consent of the 2nd Plaintiff and Jacob Kudzordzi is supported from the evidence adduced at the trial.

From the respective Statements of Case filed, the parties correctly stated the law as to what is required of an appellant who appealed on the ground that the judgment of the trial court was against the weight of evidence on record. Both counsel for the Plaintiffs and Defendant cited the relevant cases in support of their respective positions. In this respect, it is incumbent on this Court as a second appellate Court to examine the entire record of appeal and come to its own conclusion whether the findings and the conclusion arrived at by the trial court and for that matter the first appellate court are clearly supported by the evidence on record. Additionally, such an appellant has a duty to pinpoint the lapses he is complaining about. See the case of **BINGA DUGBARTEY SARPOR vs. EKOW BOSOMPRAH [2020] 170 644,647** where this Court relying on the case of **DJIN vs. MUSAH BAAKO [2007-2008] 686** held that:

> ***"Where (as in the instant case) an appellant complains that a judgment is against the weight of evidence, he is implying that there are certain pieces of evidence on record which if applied in his favor, could have changed the decision in his favour or certain pieces of evidence have been wrongly applied against him. The onus is***

on such an appellant to clearly and properly demonstrate to the appellate court the lapses in the judgment being appealed against."

See also the case of **OWUSU DOMENA vs. AMOAH [2014-2016] 1 SCGLR 790, 792** where this Court clarified its decision in **TUAKWA vs. BOSOM** on what an appellate court is expected to do when the ground of appeal is that the judgment is against the weight of evidence. The Supreme Court held in holding (2) of the report that:

"Where the appeal was based on the omnibus ground that the judgment was against the weight of evidence, both factual and legal arguments could be made where the legal arguments would help advance or facilitate a determination of the factual matter."

This Court held Per Curiam that:

"The sole ground of appeal that the judgment is against the weight of evidence, throws up the case for a fresh consideration of all the facts and the law by the appellate court."

In attacking the judgment of the Court of Appeal and for that matter the judgment of the trial High Court, counsel for the Defendant mentioned three things which according to him were not properly evaluated. They are:

1. *The alleged payment of ₵3,500.00 as consideration for the disputed land to 1st Plaintiff and the erection of stores and bakery on same as he is an innocent purchaser for value without notice.*
2. *For over twelve years the Plaintiffs failed to prosecute this case.*
3. *Some relatives of Plaintiffs were aware of the sale of the disputed land to Defendant.*

On the first point, the Defendant cannot claim that he is an innocent purchaser for value without notice. We say so for the simple reason that the alleged payment was made in the heat of challenge of his occupation on the land in the present suit. Secondly, when he

was sued, Lands Commission promptly wrote to him lapsing the Lease it granted to Defendant as the Government of Ghana did not have any interest in the land to convey and failed to participate in the proceedings in the High Court. With all these the Defendant cannot claim to be an innocent purchaser for value without notice. But more importantly, the alleged purchase was made on the blind side of the 2nd Plaintiffs and the other surviving children of the late Franz Koku Kudzordzi. The sale could validly be made with the consent of 2nd Plaintiff and the other surviving children of their late father. Even the title of this case should leave Defendant in no doubt as to who to consult in respect of the alleged sale. Besides, the Defendant has himself to blame. Per Exhibit 'A' bullet 2 (c), the Defendant was not to build permanent structures. The said covenant and or condition states:

> *"The Lessee hereby covenant with the Lessors as follows;*
>
> *(c) Not to use or permit the use of the demised premises or any building or buildings thereon otherwise than for residential/kiosk purpose only."*

Having breached the covenant, the Defendant cannot blame anyone but himself. This piece of evidence does not inure in favour of the Defendant. He who comes to equity must come with clean hands.

Secondly, PW1 the uncle of the Plaintiffs whose testimony was not challenged, told the trial Court what the customary law of the Ewe people of Ho is. He also said the land has not been shared among the family of the late Franz Koku Kudzordzi and any alienation should be with the consent of all the children of the deceased. This is what PW1 said:

> *"If someone dies in Ho the family would meet and decide whether to distribute the property among the children of the deceased then they do that. If the person has landed property, then the children will have to come together and use it. The most senior child takes charge of the property but he has no power to do whatever he likes with the property. If the senior child wants to sell or lease the property, he has to consult the other siblings.*

The children of Franz Koku Kudzordzi who are alive are Frank Kudzordzi, 2nd Plaintiff and Jacob Kudzordzi. The properties of Franz Kudzordzi have not been shared as far as I know."

If the properties of the deceased have not been shared by his children, then they hold the property as tenants in common by virtue of *Section 4 (3) of the Conveyancing Act 1973, (NRCD 175).* In ***MENSAH vs. LARTEY (1963) 2 GLR 92,*** the Supreme Court on property in both matrilineal and patrilineal families held as follows:

> ***"In both patrilineal and matrilineal societies in Ghana where a man makes a gift of property to his children without any limitation as to the estate which the children are to have in the property, such property is considered family property. The children constitute the family for the purpose of holding and enjoying the said property in perpetuity. The concept of family property imports the principles of non-divisibility of the said property except by the consent of the family, of the members of family having joint interest in the property and the appointment of the head of family as the "caretaker" of the property. Of family property there is, strictly speaking, no devolution on intestacy for the property remains in the family at all times."***

Although the case referred to supra dealt with gifts of properties made by a man to his children the principle of the fiduciary nature of family property and the ratio is a correct statement of the law.

Based on the customary law of the Plaintiffs, the pieces of evidence on record and the cases referred to supra, the trial judge and for that matter the Court of appeal did not have any difficulty in coming to the conclusion that the sale was invalid, null and void and did not confer any title to the Defendant.

On the delay by the Plaintiffs in prosecuting this suit for over twelve years, we have narrated the background of the case just to show that the delay cannot be blamed on the Plaintiff alone. For example, when the Plaintiffs wanted to relist the case for continuation,

they were told the case had been struck out by a Registrar's Summons when that was not correct. It took a while to get the case relisted. In any event the Court of Appeal on this point held that:

> *"But what is evident to us is that the suit before the High Court remained pending and was never stuck out,* ***and that to us is indicative of the fact that the challenge to the first defendant's occupation of the disputed land was never abandoned by the Plaintiffs*** (our emphasis). *The pause (albeit for a considerable period) in the prosecution of the claim could not therefore make the case for the appellant as he has labored to do, that the plaintiff had no proper claim before the court, or that they abandoned same."*

On the point that the brothers of 2nd Plaintiff were aware of the sale to the Defendant, when challenged the Defendant made a u turn as the said witnesses were not the siblings nor relatives of second Plaintiff.

From all of the forgoing, the above pieces of evidence on record were properly evaluated. Grounds (a) and (b) of the appeal fail and they are hereby dismissed.

This brings us to Grounds (c) and (d) which were also argued together. They are:

(c) *The Court of Appeal erred in failing to hold that 2nd Plaintiff/Respondent/Respondent is guilty of Estoppel by Laches and Acquiescence.*

(d) That the Court of Appeal erred in failing to hold that 2nd Plaintiff is guilty of unjust enrichment.

The argument canvassed in support of these grounds are that, when the Defendant was developing the disputed land, the Plaintiffs looked on without placing injunction on the former in court till the institution of this action. Consequently, the Plaintiffs are caught by estoppel by laches and acquiescence by operation of law.

As rightly pointed by the Court of Appeal in its judgment, the issue of estoppel by laches and acquiescence and unjust enrichment were not issues before the trial court as they

were not pleaded. No evidence was led in this regard. Secondly, besides the institution of this action, we do not know what the Defendant expected the Plaintiffs to do. In the words of the Court of Appeal:

> ***"The fact of the matter is beyond instituting a suit for the recovery of the land, the Plaintiffs could not have done much else to state their claim to the land. In our judgment, no matter the delay in prosecution, as long as the matter was not struck out, the plaintiffs (sic) had notice that his occupation of the land remained under challenge thus if he made the choice to go on with the development of the land, putting up permanent structures when the lease under which the land was held proscribed such, he did so at his own risk. In any event the first defendant did not as aforesaid state when the development he had placed on the land an issue".***

We could not have agreed more with the Court of Appeal on the above analysis and or findings. Besides, when the said developments were carried out on the disputed land is not known from the record of appeal.

Grounds (c) and (d) have not been made out and they are accordingly dismissed. The above analysis on grounds (c) and (d) also dispose of ground (e) which touches on the finding that the Plaintiffs are to recover possession of the disputed land from the Defendants. Suffice to note that the Defendant did not counterclaim in this suit.

The next ground of appeal is ground (f) which states:

> *The Plaintiffs have no locus standi or capacity to sue the 1st Defendant/Appellant/Appellant herein in respect of the land in dispute which is said to form part of the estate of Franz Koku Kudzordzi (Deceased) for and on behalf of the children of the said deceased person by operation of Law.*

The submission by counsel for the Defendant on this ground is that since the disputed property was acquired by the father of the Plaintiffs and the latter have not obtained Letters of Administration and Vesting Assent, they lacked the capacity to sue. Counsel

cited the cases **of SARKODIE vs, BOATENG [1982-1983] GLR 881; YORKWA vs, DUAH [1992-93] GBR278, 279; COMMEY VS. BENTUM WILLIAMS [1984-86] 1 GLR 301** and **STANDARD BANK OFFSHORE TRUST COMPANY LTD vs. NATIONAL INVESTMENT BANK LTD & 2 ORS.**

In response to the submissions on Plaintiffs' capacity to initiate this action, counsel for the Plaintiffs' response is that the Plaintiffs are beneficiaries of the estate of their father. Their action was aimed at protecting family property from the danger of being lost or wasted. He cited the case of **In re APPAU (Deceased); APPAU s. OCANSEY [1993-94] 1 GLR 159.**

We concede that any challenge to a person's capacity to initiate an action must be established by cogent evidence before the party is given a hearing on the merit. See the case of **SARKODIE vs. BOATENG** supra. The 1st Plaintiff as the head of family of Plaintiffs had capacity to sue in respect of their family property.

From the Writ of summons, the Plaintiffs brought this action in a representative capacity as beneficiaries and successor of their deceased father's property in connection with the lease which was in danger of being lost to the family. The Defendant acknowledged the capacity of the Plaintiffs in their Statement of Defence paragraph 10 (a) when he averred that;

> 10 (a). *The 1st defendant says that plaintiff (sic) resumed paying rent for the land to the Plaintiffs through Mawutor Kudzordzi, the Plaintiffs' head of family until Mawutor Kudzordzi sold the land to the 1st defendant. (*Our emphasis)

In cross-examining 2nd plaintiff, the capacity of the plaintiffs was alluded to by counsel for defendant. This is what transpired between 2nd plaintiff and counsel for defendant.

Q: Mawutor Kudzordzi was a party

A: Yes, my Lord

Q: He was your elder brother and the oldest of your father's children

A: That is correct

Q: <u>Mawutor was the head of the family created by your father</u> (our emphasis)

A: That is correct

The fact of 1st Plaintiff being the head of family of Plaintiffs was stated by PW1 the uncle of the Plaintiffs. As already held in this judgment PW1's evidence was not challenged in anyway in cross-examination. Besides, **Order 4 Rule 9 (2) & (3) of the High Court Civil Procedure Rules CI 47 p**rovides that:

> ***2. The head of a family in accordance with customary law may sue and be sued on behalf of or as representing the family;***
>
> ***3. If for any good reason the head of family is unable to act or if the head of a family refuses or fails to take action to protect the interest of the family any member of the family may subject to this rule sue on behalf of the family.***

If the 1st Plaintiff was the Plaintiffs' head of family, in his dealing with the family property, they did not need Letters of Administration and Vesting Assent to cloth them with the capacity to sue. The Court of Appeal in resolving the issue of capacity raised before it held that:

> ***"It seems to me that it is disingenuous for the appellant who fought the suit on the allegation that the first plaintiff had the capacity to and did sell the property to him, to now turn round to say that the plaintiffs had no capacity to bring the suit……In our judgment when the Plaintiff resumed the prosecution of the claim, he had brought jointly with his deceased brother, he did so in the capacity in which it was brought to protect that property which was in danger of being lost to the estate. In that capacity, he could maintain the suit for himself and the other beneficiaries."***

Ground (f) fails and it is accordingly dismissed.

From all of the forgoing, there is no merit in the appeal and same is hereby dismissed. The judgment of the Court of Appeal, Ho, dated 28th February, 2018 is hereby affirmed.

M. OWUSU (MS.)

(JUSTICE OF THE SUPREME COURT)

G. A. E. SACKEY TORKORNOO (MRS.)

(CHIEF JUSTICE)

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

I. O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

B. F. ACKAH-YENSU (MS.)

(JUSTICE OF THE SUPREME COURT)

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