IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: BAFFOE-BONNIE JSC (PRESIDING)

LOVELACE-JOHNSON (MS.) JSC

PROF. MENSA-BONSU (MRS.) JSC

ACKAH-YENSU (MS.) JSC

KOOMSON JSC

CIVIL APPEAL

NO. J4/57/2022

5TH JULY, 2023

1. **POULTRY EQUIPMENT MANUFACTURING INDUSTRY**
2. **POULY EQUIP FARMS**

PLAINTIFFS/APPELLANTS/APPELLANTS

VS

1. **NII SOWAH OKATABAN ……. 1ST DEFENDANT**
2. **SAMUEL ADJEI AGOE …. 2ND DEFENDANT/RESPONDENT/RESPONDENT**
3. **LANDS COMMISSION ……. 3RD DEFENDANT**

JUDGMENT

KOOMSON JSC:-

This is an appeal by the Plaintiffs/Appellants/Appellants against the judgment of the Court of Appeal, Accra, dated 24th April, 2021 in favour of the 2nd Defendant/Respondent/Respondent. The Court of Appeal, in that judgment, affirmed the judgment of the High Court, dated 13th March, 2018 in favour the 2nd Defendant/Respondent/Respondent. For ease of reference, the parties shall maintain their designation at the High Court. Thus, the Plaintiffs/Appellants/Appellants shall simply be referred to as the Plaintiffs and the 2nd Defendant/Respondent/Respondent shall be referred to as the 2nd Respondent.

BACKGROUND

It is necessary to recollect the events leading to this appeal. The claim of the Plaintiffs is that they are the owners of the lands in dispute. 1st Plaintiff acquired its land by a conveyance of sale dated 14th February, 1983 which was made between Kwame O. Mireku and 1st Plaintiff. This Conveyance was stamped and registered at the Lands Registry as No. 224/1983 and receipted as AC829/83. Another land which adjoins 1st Plaintiff's land was eventually acquired by 2nd Plaintiff by a Deed of Conveyance dated 23rd January, 1984. 2nd Plaintiff's land was stamped and registered as Land Registry No. 1491/1984 and receipted as AC 561/84. Thus, the Plaintiffs' respective lands are contiguous to each other.

1st Plaintiff claims that it commenced construction activities on the land in 1978 before its conveyance was executed in 1983. It constructed an Administrative Block, then a Factory for the manufacture of Poultry Equipment such as incubators, feeders and allied equipment. These construction works and installations began in 1978 and were

completed in 1984. 2nd Plaintiff's land is used primarily for agricultural purposes and a portion of the land serves as an entrance to 1st Plaintiff Company's land. Plaintiffs claim that they mortgaged their lands on two occasions in 1984 and 2004, and both were discharged in 1995 and 2006 respectively.

Plaintiffs discovered in 2015 in an official search at the Lands Commission that their Lands were affected by a "*judgment dated 21st June 2001 in favour of Adjei Kwashie, Adjei Kpabi and Sowah Klotia Families (Suit No. L586/97)*". An inquiry by Plaintiffs on the judgment in Suit No. L586/97 revealed that it was an action between Nii Sowah Okataban vs Samuel Adjei Agoe (Lawful Attorney of Adjei Kwashie, Adjei Kpabi and Sowah Klotia Families of Amanfro-koo). In that suit, the High Court gave judgment in favour of the Defendant on 21st June, 2001, but the said judgment affected Plaintiffs' land, although they were not parties in Suit No. L586/97. This caused the Plaintiffs to institute a fresh action against the parties in Suit No. L586/97 and the Lands Commission for the following reliefs:

a. An order setting aside the judgment in Suit No. L568/97 dated 21st June 2001.
b. An order for declaration of title of all that piece or parcel of land described in the schedule to the endorsement to the writ hereunder.
c. An order directed against the 3rd Defendant to expunge from the records the plotting of judgment dated 31st June 2001 which affects Plaintiffs' land.
d. Perpetual injunction restraining the Defendants by themselves, their agents, servants, assigns, privies or by whomsoever claiming through them from interfering in any way whatsoever with Plaintiffs' land.

The 1st Plaintiff described its land as, "all that piece or parcel of land situate lying and being at Fafraha, Accra and bounded on the North-East by Vendor's land measuring 405 feet more or less on the South by Vendor's land measuring 275 feet more or less on the South-East by Existing Road measuring 140 feet more or less on the South-West by Vendor's land measuring 315 feet more or less and covering an approximate area of 1.77 Acres. The land of the 2nd Plaintiff is also described as; "All that piece or parcel of land situate lying and being at Frafraha, Accra containing an approximate area of 0.78 acres and bounded on the North-East by Mr. Annan's Property measuring 430 feet more or less on the South-East by Vendor's land measuring 80 feet more or less on the South-West by Vendor's land measuring 375 feet more or less on the North-West by Aburi to Accra Motor Road measuring 90 feet more or less.

2nd Defendant denied the claim of the Plaintiffs and in turn asserted ownership of the land as forming part of a larger tract of land belonging to 2nd Defendant's family. It is the claim of the 2nd Defendant that, the High Court, in Suit No. L568/97, pronounced the 2nd Defendant's family as allodial owners of the land. On the issue of Plaintiffs' undisturbed possession of the land, it is the contention of 2nd Defendant that his family did not sleep on their rights as the family issued a Writ against the Plaintiffs for the recovery of possession of the said parcel of land. The 2nd Defendant, also in a counterclaim, asked for the following reliefs:

a. A declaration of title to all that parcel of land known as "Amanfro-koo bounded on North-West by the Kplen-koo being the Kplen We family lands measuring 3435ft more or less and on the North-East by the said Kplen We family lands measuring 2400ft more or less on the South-East by the Accra-Dodowa Road, measuring 6820ft more or less on the South by the Agbawe family lands at Adenta measuring 2200ft more or less on the South-West by the

Accra-Aburi Road measuring 3700ft more or less on the North, by the Owusu We family land measuring 3100ft more or less on the North-West, by the Owusu We family measuring 920ft more or less and on the North-East by the Owusu We family land measuring 3500ft more or less covering an approximate area of 624.16 acres or 282.78 hectares which said piece or parcel of land includes the land which is the subject matter of this dispute.

b. A declaration of title to all that piece or parcel of land situate, lying and being at Frafraha, Accra and bounded on the North-East by Vendor's land measuring 405 feet more or less on the South by Vendor's land measuring 275 feet more or less on the South-East by Existing Road measuring 140 feet more or less on the South-West by Vendor's land measuring 315 feet more or less and covering an approximate area of 1.77 acres, which land falls within the larger parcel of land described in relief (a) above.

c. A declaration of title to all that piece or parcel of land situate, lying and being at Frafrah, Accra containing an approximate area of 0.78 acres and bounded on the South-East by Mr. Annan's property measuring 430ft more or less on the South-East by the Vendor's land measuring 00 ft more or less and on the South-West by Vendor's land measuring 375ft more or less on the North-West by Aburi to Accra Motor Road 14 measuring 90ft more or less, which land falls within the larger parcel land described in relief (a) above.

d. An order of perpetual injunction restraining the Plaintiffs by themselves, their agents, servants, assigns, privies or by whomsoever claiming through them from interfering in anyway whatsoever with the 2nd Defendant's family land.

e. General Damages for trespass.

The following issues were set down for trial by the High Court:

i) Whether or not this honourable court has supervisory powers or jurisdiction over another High Court, in other words, a court of coordinate jurisdiction.

ii) Whether or not this honourable court is constitutionally mandated or has jurisdiction to set aside the judgment by the High Court and obtained by the Defendant on 21st June, 2001, in Suit No. L568/97.

iii) Whether the Adjei Kwashie, Adjei Kabi and Sowah Klotia families hold a Land Title Certificate Numbered GA 12030 covering the lands described in paragraph 3 of the Statement of Defence and Counterclaim.

iv) Whether or not the 2nd Defendant and the 2nd Defendant's families have obtained various judgment from courts declaring their ownership of the lands captured in Land Title Certificate Numbered GA 12050.

v) Whether or not the land claimed by the Plaintiffs fall within the 2nd Defendant family lands.

vi) Whether or not the 2nd Defendant is entitled to his counterclaim.

The following were also set down as additional issues:

a) Whether or not the judgment obtained by the 1st Defendant against the 2nd Defendant in suit No. L568/92 dated 21/6/2001 has injuriously affected the interest of the Plaintiffs.

b) Whether or not since the Plaintiffs were not parties to the said suit they are strangers to the said action.

c) Whether or not as strangers whose interests have injuriously been affected by the Defendant's plotting the judgment he obtained in Suit No. L568/92 dated 21/6/2001 in the records of the Lands Commission, the Plaintiffs are entitled to institute the present action to have the said judgment set aside as well as have the plotting expunged from the records of the Lands Commission.

The High Court entered judgment for the 2nd Defendant on his counterclaim and dismissed the Plaintiffs' reliefs. An appeal was lodged in the Court of Appeal by the Plaintiffs seeking to reverse the decision of the High Court. However, the Court of Appeal dismissed the appeal and affirmed the judgment of the High Court.

The Plaintiffs have invoked the appellate jurisdiction of this Court seeking to set aside the judgment (including costs) of the Court of Appeal in favour of the 2nd Defendant on the following grounds set out in the Amended Notice of Appeal:

a) The judgment is against the weight of the evidence on record.
b) The Court of Appeal failed to consider decisions of Superior Courts of Judicature that the 2nd Defendant/Respondent/Respondent's Land Certificate No. GA 12050 had been withdrawn, thereby occasioning a serious miscarriage of justice.
c) The judgment of the Court of Appeal was per incuriam decisions of Superior Courts of Judicature that the 2nd Defendant/Respondent/Respondent's Land Certificate No. GA 12050 had been withdrawn, thereby occasioning a serious miscarriage of justice.
d) The Court of Appeal erred in holding that Plaintiffs/Appellants/Appellants had failed to bring their case within the ambit of Section 46(1)(f) and (g) of PNDCL 152.
e) The Court of Appeal erred in holding that it had no justifiable ground to amend the 2nd Defendant's Land Title Certificate.
f) The Court of Appeal erred in affirming the judgment of the trial High Court.

THE APPELLATE JURISDICTION OF THE SUPREME COURT

It is trite learning that an appeal is by way of rehearing. The principles that guide the approach of this Court in the exercise of its appellate jurisdiction is that, where a trial court makes findings of fact, which had been concurred to by the first appellate court, and those findings are not perverse or inconsistent with the evidence on record, then, the second appellate court, like this court, should be slow in departing from those findings. In **Obeng v Assemblies of God Church, Ghana [2010] SCGLR 300,** the Court stated thus:

> ***"Where findings of fact had been made by the trial court and concurred in by the first appellate court (as in the instant case), the second appellate court must be slow in coming to different conclusions unless it was satisfied that there were strong pieces of evidence on record which were manifestly clear that the findings of the trial court and the first appellate court were perverse. It was only in such cases that the findings of fact would be altered thereby disregarding the advantages enjoyed by the trial court in assessing the credibility and demeanor of witnesses. In the instant appeal, the court found no such compelling reason to disturb the findings of fact so ably formed by the trial court and concurred in by the Appeal Court."***

The above principle does not prohibit the Court from making findings of fact that are contrary to that of the trial Court and the first appellate court. In essence, when this Court determines an appeal as a second appellate court, it is in a unique position to either affirm, dismiss or substitute findings of fact made by the courts below.

PRELIMINARY LEGAL OBJECTION

The 2nd Defendant raised a preliminary objection on the basis that the procedure adopted by Plaintiffs in annexing five (5) judgments of the High Court to their statement of case is an attempt to introduce fresh evidence in this suit without leave of the Court. Counsel

relied on the case of **Mensah v Asiamah [1011 GHASC 13 SC.** In response, Counsel for the Plaintiffs disagreed with the objection raised and submitted that "*a judgment of a competent jurisdiction can therefore be cited in a suit before both trial and appellate courts without tendering them in evidence.*"

The real question is, were the Plaintiffs introducing fresh evidence in this appeal by annexing those five (5) judgments to their statement of case? Counsel for the Plaintiffs in his statement of case at page 20 thereof, filed on the 14/4/22 stated thus:

''These passages from the judgment of the Court of Appeal have been reproduced here to buttress the point that in affirming the judgment for the 2nd Defendant, the Honourable Court had also relied on the Land Certificate No. GA 12050. However, a number of court judgments have made adverse decisions on the Land Certificate No. 12050 and by extension, the judgment in suit No. L568/97. **These are unreported decisions and so the effort has been made to supply your Lordships with copies thereof attached hereto.**'' (emphasis supplied)

It appears to us that, the reference to the 5 cases and their attachment to the statement of case is permissible, as the reference and attachment of these 5 cases was done in reference to the case law, albeit, not binding on this court. However, if it was done for evidential purposes, then, the threshold provided under Rule 76 of CI.16 would have applied. The Rule 76 of CI.16 provides:

''76. (1) A party to an appeal before the Court shall not be entitled to adduce new evidence in support of his original action unless the Court, in the interest of justice, allows or requires new evidence relevant to the issue before the Court to be adduced.

(2) No such evidence shall be allowed unless the Court is satisfied that with due diligence or enquiry the evidence could not have been and was not available to the party at the hearing of the original action to which it relates.

(3) Any such evidence may be by oral examination in Court, by an affidavit or by deposition taken before an examiner as the Court may direct.''

The 2nd Defendant's Counsel has not been able to demonstrate to us that, the 5 judgments were tendered by means of an oral examination in Court, or by means of an affidavit evidence, or by means of a deposition taken before an examiner. These decisions referred to by Plaintiffs' Counsel are part of the case law.

We accept the explanation given by counsel for Plaintiffs that 'these are unreported cases and effort has been made to supply your Lordships with copies thereof…'' It is therefore our opinion that, the objection raised by counsel for the 2nd Defendant is unfounded and accordingly same is overruled.

We will now consider the grounds of appeal. It is noted from the onset that, all the grounds of appeal shall be resolved together under the omnibus ground, that is, 'the judgment is against the weight of evidence' (ground (a), in accordance with the law and the evidence.

In this action, the Plaintiffs are praying this Court to set aside the decision of the Court of Appeal as the evidence on record does not support the judgment. The Plaintiffs, in such a situation, assume the burden of showing from the evidence on record that, there are some pieces of evidence, if applied, could change the decision in their favour, or that certain pieces of evidence have been wrongly applied against them: see Djin v Musah Baako [2007-2008] SCGL 686.

What then are the respective roots of title relied on by both parties? This is a land dispute in which the Plaintiffs are claiming ownership of land totaling **2.55 acres** based on two

separate conveyances. They claim that their lands are contiguous to each other and trace their root of title to the Agbawe family of Frafraha, the purported allodial owners of those lands. They relied on **Exhibits A and B** (see pages 39 and 44 of the Record of Appeal) their indentures executed by their grantors. These instruments were registered at the Lands Commission and all other interests affecting the land have also been registered. It is to be noted that **Exhibits A and B** were registered in 1984 under the Land Registry Act, 1962 (Act 122) and not the Land Title Registration Act, 1986 (PNDCL 152) because it was not in force then. The evidence on record shows that the plaintiffs took possession of their lands after acquiring same in 1983 and 1984 respectively and constructed an administration block, a factory and breeding houses between 1978 and 1984. The plaintiffs further contended that they mortgaged these two parcels of land as security for loans in 1984 and 2004. The Plaintiffs tendered exhibits A and B to buttress their title registration. The Plaintiffs further tendered exhibit C in evidence to support their case. The said exhibit C is a search results from the Lands Commission. The item (f) to item (i) confirms the evidence of Plaintiffs that they used the land they acquired as collateral security in the nature of a mortgage to secure a loan on two different occasions.

The 2nd Defendant contends that his family is the allodial owner of the land in dispute. The 2nd Defendant relied on a Land Title Certificate with Number GA 12050 (Exhibit 1) and the decision of the High Court in Suit No L568/97 (Exhibit 2) to buttress the claim that his family is the allodial owners of the land. The 2nd Defendant did not tender any evidence of having exercised acts of possession over the disputed lands. 2nd Defendant further failed to adduce evidence of the mode of acquisition of the disputed lands except to rely on the High Court decision in suit No. L568/97 and the subsequent title registration based on the said judgment by the Lands Commission as No. GA 12050.

From the above, it is evident that both parties are claiming ownership to the land in dispute, that is, 2.55 acres. Although the 2nd Defendant counterclaimed for a declaration of title to the land in dispute, they added a claim for 624.16 acres. It is observed that, the claim by the 2nd Defendant for a declaration of title to an approximate area of 624.16 acres in his relief (a) of his counterclaim is misplaced. 2nd Defendant knows as a fact that the plaintiffs laid claim to two parcels of land in Frafraha with a specific description as contained in their pleadings. An examination of the reliefs (a) and (b) of the counterclaim of the 2nd Defendant reveal that the land described therein by 2nd Defendant doesn't even share boundary with the land the subject matter of dispute between Plaintiffs and 2nd Defendant. It appears to us that, the 2nd Defendant introduced these two reliefs so as to obtain judgment on the blind side of the rightful owners so that they can register same and to use it to unjustifiably claim ownership. This is what happened in suit no. L586/97 where the judgment obtained was used to register their title to the land without reference to the true owners. It must however be noted that, a court of law, such as this court, cannot be simply overreached by such pranks. The 2nd Defendant knows or ought to know that the parcels of land being claimed by him in his reliefs (a) and (b) in his counterclaim have nothing to do with the Plaintiffs. The said reliefs (a) and (b) are accordingly struck out as not arising for determination.

2nd Defendant challenged Plaintiffs' root of title by suggesting that the Agbawe Family did not have an interest to pass to Plaintiffs' grantors because the Agbawe Family was the Plaintiff in Suit No. L568/97 in which they lost. Under-cross examination at page 115 of the RoA, the following ensued:

Q: In Exhibit A you will see from paragraph 1 that the Agbawe family of Frafraha is alleged to have granted land to Mr. Mireku is that not correct?

A: Yes, my lord.

Q: It was after this that it was allegedly passed on to the Plaintiffs?

A: Yes, my Lord.

Q: And the same sequence happens in Exhibit B?

A: Exhibit B was directly from Philip T. Nartey to the 2nd Plaintiff's company.

Q: Look at paragraph 1 of Exhibit B, it was a family that granted it to Mr. Nartey before it was handed over to Mr. Nartey?

A: Yes, my lord

Q: In paragraphs 21 to 23 of your witness statement you have stated that the Plaintiffs were not a party to Suit No. L586/97 which gave judgment to 2nd Defendant?

A: Yes, my lord.

Q: Are you aware that the plaintiff in that suit was the original grantor of the individuals who granted the parcels of land to the Plaintiffs?

A: I have to check the documents then I can answer.

Again, on page 117 of the RoA, this ensued:

Q: I suggest to you that in the said suit No. L568/97 the original grantors of the lands occupied by the Plaintiffs sued the 2nd Defendant family for declaration of title and lost.

A: I am not aware.

Q: I suggest further that the said suit No. L568/97 was commenced after 2nd Defendant family was granted title over the parcel of land.

A: I am not aware.

A cursory reading of Exhibit 2 (see page 71-82) of the RoA which is the judgment in Suit No. L568/97 indicates that the land in dispute claimed by the Plaintiff therein (the Agbawe family) was 1.03 acres. The Defendant in that suit claimed the 1.03 formed part of a larger land of 624.16 owned by them. On page 72 of the RoA, the parties were clear as to what land was in issue and the main contention was whether the said 1.03 acres formed part of Adenta lands or Amanfro-Koo lands.

The judgment stated:

> "*Issue (1) contained in the summons for direction filed on 28th January 1998, in my view is the most important issue to be determined, since it goes to the root of the matter.*
>
> *The issue is: Whether or not the land in dispute forms part of the lands commonly known as Adenta lands.*
>
> *Paragraph 3 of the Plaintiff's statement of claim reads;*
>
> *3. The plaintiff says his family known as the Agbabwe (Agbahe) family of Adenta are the allodial owners of all those lands commonly called Adenta lands.*
>
> *The defendant admits the above pleading partially at paragraph 3 of the defence in the following words;*
>
> *4. In answer to paragraph 3 of the statement of claim the defendant admits that the Agbawe family of Adentan are the allodial owners of those lands commonly known as Adentan lands but denies that the land which is the subject matter of the dispute forms part of the said Adentan lands."*

At the end of the trial, the trial judge found as a fact that the disputed land was not part of Adentan lands but Amanfro-koo lands hence it belonged to the Defendant's family therein. The trial judge in Suit No L568/97 held that (see page 79 of the RoA):

> *"The plaintiff may be the lawful Mantse of Adentan is not in dispute; neither is it in dispute that in that capacity he may oversee Adentan lands. However, from the evidence on record, the land in dispute is not, and cannot be, part of what is known as Adenta land. His claim to the disputed land therefore fails and I dismiss same accordingly."*

In Suit No. L568/97, the trial judge indeed entered judgment for the Defendant's family on their counterclaim therein. We are of the opinion that, the judgment in Defendant's favour only affected the disputed land therein, that is, 1.03 acres. The issue resolved by that Court was not ownership of 624.16 acres but 1.03 acres found to be owned by 2nd Defendant's family. It is surprising that 2nd Defendant herein who was the Defendant in that suit could use that judgment in Suit No. L568/97 to plot 624.16 acres of lands which were not in dispute before the High Court. It comes as no surprise that, the Plaintiffs in this action were unaware of any challenge in court over the lands they are in possession.

The trial judge did find that the Agbawe family were responsible for dealing with lands in Adentan but because the land in dispute in that case did not form part of Adentan lands they could not alienate it. Therefore, the Agbawe Family have interests in Adentan lands.

It is a misconception therefore, for the 2nd Defendant to use Suit No. L568/97 as the basis to assert that the Agbawe family did not have any interest to pass to Plaintiffs' grantors in 1978. The Plaintiffs in this action, claim, per the schedule described in their statement of claim that, the land in dispute is in Frafraha and not Amanfro-koo. As proof of this,

they tendered in site plans stating that the lands were located in Frafraha per Exhibits A and B. These site plans were approved by the Land Registry with the numbers 1224/1983 and 1491/1984, respectively. The High Curt erroneously found that the Plaintiffs did not challenge the claim of the 2nd Defendant that the land in dispute was situated at Amanfro Koo. The burden was on 2nd Defendant to show that the subject matter in dispute in Suit No. L568/97 was the same as the subject matter in the instant action, however, from the evidence on record, the lands are completely different and we find that the land in dispute in Suit No. L568/97 ought not to have been used as an entry affecting the Plaintiffs' land at the Lands Commission. On page 145 of the RoA, the 2nd Defendant exhibited a land title certificate based on an indenture executed for a third party. From the site plan approved by the Lands Commission, the land therein is described as being at Amanfro-koo. This is to buttress the point that even if 2nd Defendant's family may be the owners of lands in Amanfro-koo as they have alienated to some third parties, they do not have any right to alienate lands in Frafraha where the Plaintiffs land is situated and we so hold.

The next challenge to the Plaintiffs' interest in the land as contained in **Exhibits A & B** was the claim by 2nd Defendant that as allodial owners they had a Land Title Certificate over the land and the Plaintiffs had none. They relied on **Exhibit 1** which is a Land Title Certificate Number GA 12050 at page 62 of the RoA. Per paragraph 4 of the 2nd Defendant's statement of defence, it is the case of his family that as allodial owners they obtained **Exhibit 1** in 1996. This was put to the Plaintiffs but they denied it under cross-examination, see page 117 of the RoA:

Q: You can see from Exhibit 1 that the Lands (sic) Title Certificate has been granted to the 2nd Defendant family covering a large track (sic) of land.

A: I can see from the drawing here that there is a large track (sic) of land but there is nothing to show that it covers our land.

Counsel for Plaintiffs submitted that their prior occupation and registration of their lands make **Exhibit 1** defeasible. They relied on Section 46(1) (g) of the Land Title Registration Law, 1986 (PNDCL 152) which provides:

46. Overriding interests

46. (1) Unless the contrary is recorded in the land register, a land or an interest in land registered under this Act is subject to any of the following overriding interests whether or not they are entered in the land register as may for the time being subsist and affect that land or interest:

a) the rights of way, rights of water, profits or rights customarily exercised and enjoyed in relation to the parcel which are not recognised interests in land under customary law that were subsisting at the time of first registration under this Act;
b) customary rights which were subsisting at the time of first registration in respect of concessions granted under the Concessions Act, 1939; 8(8)
c) natural rights of water and support;
d) rights of compulsory acquisition, resumption, entry, search and user conferred by any other enactment;
e) leases for terms of less than two years and not capable of extension to terms of two years or more by the exercise of enforceable options for renewal;
f) rights, whether acquired by customary law or otherwise, of a person in actual occupation of the land except where enquiry is made of that person and the rights are not disclosed;
g) subject to this Act, rights acquired or in the course of acquisition by prescription or under the Limitation Act, 1972.

h) charges for unpaid rates and any other moneys which without reference to registration under this Act, are expressly declared by an enactment to be a charge on land;

i) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams created, constructed or laid in pursuance or by virtue of a power conferred by an enactment.

The prior registration of the Plaintiffs' land at the Lands Commission was not challenged by the 2nd Defendant. Rather, the 2nd Defendant asserted that Plaintiffs' grantors did not have an interest to pass to them in the first place because the Agbawe Family put their title in issue in Suit No. L568/97 and lost. As stated earlier in this judgment, it is a misconception for the 2nd Defendant to use suit No. L568/97 to assert that the Agbawe family did not have any interest to the lands granted to the plaintiffs. Furthermore, the Plaintiffs' prior registration of Exhibits A and B is also affected by records of two mortgages over the lands in 1984 and 2004 which were both discharged in 1995 and 2006, respectively. These entries clearly show that the Plaintiffs' had registered their rights over the lands at the Lands Commission as far back as 1983 and 1984, see Exhibit C and D at pages 49 and 51 of the RoA. Moreover, in Suit No. L568/97 the 2nd Defendant's family admitted that the Lands Commission had requested them to submit **Exhibit 1** for cancellation since their interests was registered in error.

The Plaintiffs' occupation of the land was also not in dispute as 2nd Defendant had actual notice of same. It was admitted by the 2nd Defendant that his family was aware of the presence of the Plaintiffs on the land as far back as 1984. This was what ensued under cross-examination at page 171-172 of the RoA:

Q: Have you visited Plaintiff's company before?

A: I have been visiting plaintiffs company always?

Q: When you visit the site do you see the structures of Plaintiff's company on the site?

A: In 1984 we saw that they have come on the land and we drove them out but they did not leave and continued with what they were doing on the land.

In our opinion, the fact of the Plaintiffs' prior registration and actual open occupation of the land constitutes an overriding interest within the meaning of section 46 (1) (g) of PNDCL 152: see **Brown v Quarshigah [2003-2004] 2 SCGLR 930.**

In the instant case, the 2nd Defendant admitted the possession of the plaintiffs to the disputed land as far back as 1983. There is also evidence that at the time the 2nd Defendant's interest in the disputed land was being registered, the Lands Commission had in their records an entry of the Plaintiffs' interest in the disputed land. We do not think that the reliance on **Exhibit 1** by the 2nd Defendant to assert title to the disputed land is conscionable, as the 2nd Defendant is fully aware that the Exhibit 1, by the Court of Appeal's decision in the case of SAMUEL ADJIN SACKEY v SAMUEL ADJEI AGO (2nd Defendant herein), suit no. H1/51/2020 and dated 16th December,2021, has been ordered to be expunged from the records of the Lands Commission. For the avoidance of doubt, the Court of Appeal's decision is hereby reproduced:

> ''However, there is evidence on record i.e exhibits B and C that communication in respect of Land Tittle Certificate No. GA 12050 had been addressed to the Respondents' grantors. Exhibit B was captioned RECALL OF LAND CERTIFICATE NO. GA 12050 VOL. 59 FOLIO 31 and was dated 18th January, 1999. The Reference Number of this letter is LTR/181. It made reference to letters dated 14th September,1998 (No. LTR/SDM/181) and 9th October, 1998 (No. LTR/SDM/181) and stated that despite persistent reminders, the named persons on Land

Certificate No. GA 12050 had failed to comply with the directive to surrender the said Land Certificate….''

The Court of Appeal then proceeded to expunge the record of the registration in relation to Land Title Certificate No. GA 12050 as follows;

''From the foregoing, we hereby make an order expunging Land Certificate No. GA 12050 from the records of the Land Title Registry as having been issued irregularly and/or unlawfully.''

It is interesting to note that the 2nd Defendant in this instant action was the Defendant in suit No. H1/51/2020 referred to above. There is no information whether the Defendant appealed against the decision of the Court of Appeal. As it stands, the Court of Appeal has ordered the obliteration of the registration of any interest that the Land Title Certificate No. GA 12050 conferred on the 2nd Defendant and his family. Surprisingly, despite being aware that the Court of Appeal has ordered that the Land Certificate No. GA 12050 be expunged, the 2nd Defendant and his Counsel pretentiously presented it to this Court as if the said Land Certificate is still valid. In our view, the conduct of both 2nd Defendant and his Counsel needs to be condemned as it amounts to dishonesty, especially, that of Counsel as an officer of the Court, who should know better and be informed to advise his client appropriately. With the said Land Certificate No. GA 12050 having been ordered to be expunged from the records of the Lands Commission, the 2nd Defendant, from the record of appeal, did not adduce any cogent, reliable and sufficient evidence to establish his title to the disputed land. Being a counterclaimant for a declaration of title, the law requires 2nd Defendant to prove his root of title, mode of acquisition and various acts of possession exercised over the disputed land: see **Mondial Veneer Ghana Limited v Amuah Gyebu XV [2011] 1SCGLR 466.** The 2nd Defendant however failed to discharge this burden.

We hold therefore that, the Land Title Certificate held by 2nd Defendant over Plaintiff's land ought to be expunged by the Lands Commission. The 2nd Defendant is hereby ordered to submit the Land Certificate No. GA 12050 to the Lands Commission for the purposes of being cancelled. The Lands Commission is accordingly ordered to remove and or expunge Land Certificate No. GA 12050 from their records as previously ordered by the Court of Appeal in suit No H1/51/2020.

The Plaintiffs' pleaded in paragraph 13 of their amended statement of claim as follows:

> ''*13. The Plaintiffs say that they have been in peaceful, quiet and uninterrupted possession of their respective properties for a period of 37 years and 31 years respectively and that any person who attempts to recover possession from them would have their action statute-barred''.*

We must say that we are at a loss as to whether to consider the said pleading in paragraph 13 of the amended statement of claim as a plea of the Statute of Limitation against the 2nd Defendant. The pleading is so vague and generalized and not properly couched to address the specific needs of the Plaintiffs against the 2nd Defendant. Be as it may, the section 10(1) of the Limitation Act, (Act 54) reads:

> ***"No action shall be brought to recover any land recover after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to some person through whom he claims, to that person."***

A careful reading of the provisions in section 10 of the Limitation Act, (Act 54) on recovery of land shows clearly that, the section only applies to land that is held to be in adverse possession. Subsection (2) of section 10 of the Act reads:

> "**No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (in this section referred to as ''adverse possession'').**

The above provisions in effect mean that, a person in adverse possession of land for over 12 years acquired a possessory title in the said land and the right of the original owner in that land would become extinguished. The question, however, is whether the Plaintiffs were in adverse possession and therefore had acquired possessory title?

'Adverse possession' is defined by Black's Law Dictionary, 9th Edition by Brain A. Garner as;

> **The enjoyment of real property with a claim of right when that enjoyment is opposed to another person's claim and is continuous, exclusive, hostile, open, notorious". The Shorter Oxford Dictionary (Deluxe Edition), defines the term as; *"the occupation of land to which another person has title with the intention of possessing it as one's own".***

Possession by itself is not enough to give a title. It must be adverse possession. The true owner must have discontinued possession or have been dispossessed and another must have taken it adversely to him. There must be something in the nature of an ouster of the true owner by the wrongful possessor: see **Djin v Musah Baako [2007-2008] SCGLR 686.**

Given the facts of this case, the Plaintiffs' occupation of the land cannot be said to be adverse. The records show clearly that the Plaintiffs effectively and lawfully registered their interest in the lands the subject matter of dispute. They took possession of the land

after acquiring same. They had constructed a factory and office complex on it. Their possession cannot be described as adverse. However, if the 2nd Defendant had succeeded in asserting a better or superior title so as to dislodge the plaintiffs from possessing the land, then, the issue of adverse possession would have been considered, as their possession was open since 1984 and no action was brought by the 2nd Defendant's family to claim this land even though they admit they have always been aware of the presence of the plaintiffs on the land. Assuming for a moment that the 2nd Defendants held any interest in the land, it would have automatically become extinguished upon the passage of 12 years as they became aware of the possession of the plaintiffs in 1983.

In conclusion the appeal succeeds in its entirety. The decision of the Court of Appeal dated 29th January, 2021 in which it affirmed the High Court's decision of 13th March, 2018, is hereby set aside. Judgment is entered in favour of the Plaintiffs on all of their reliefs. The counterclaim of the 2nd defendant is accordingly dismissed. The 2nd Defendant, his agents, servants, assigns, privies or by whomsoever claiming through him are hereby restrained and or prohibited perpetually from interfering in any way whatsoever with the plaintiffs' land, that is the disputed lands as properly described in the schedule attached to exhibit A and B.

G. K. KOOMSON

(JUSTICE OF THE SUPREME COURT)

P. BAFFOE-BONNIE

(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS.)

(JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS.)

(JUSTICE OF THE SUPREME COURT)

B. F. ACKAH-YENSU (MS.)

(JUSTICE OF THE SUPREME COURT)

COUNSEL

A.A. SOMUAH ASAMOAH ESQ. FOR THE PLAINTIFFS/APPELLANTS/

APPELLANTS WITH LOMO ARYEE ESQ.

EBO LAING ESQ. FOR THE 2ND DEFENDANT/RESPONDENT/RESPONDENT.