IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD 2021

CORAM: BAFFOE-BONNIE, JSC (PRESIDING)
LOVELACE-JOHNSON (MS.), JSC
HONYENUGA, JSC
PROF. MENSA-BONSU, (MRS.) JSC
KULENDI, JSC

CIVIL APPEAL
NO. J4/19/2021

14TH APRIL, 2021

1. ADAMS ADDY
2. ADU AKWAANOR } **DEFENDANTS/APPELLANTS/ APPELLANTS**

VRS

SOLOMON MINTAH ACKAAH ……. PLAINTIFF/RESPONDENT/RESPONDENT

JUDGMENT

KULENDI, JSC:-

INTRODUCTION

We have before us an appeal against the judgment of the Court of Appeal, confirming the judgment of the High Court (Probate and Administration Division) which held that the Plaintiff/Respondent/Respondent (hereinafter called "the Respondent") is the true head of the Akwaanor Royal Family.

BACKGROUND

The background to this appeal is that the Respondent, by an amended Writ of Summons and Statement of Claim dated 25th April, 2014, sought the following reliefs against the Defendants/Appellants/Appellants (hereinafter called "the Appellants"):

i. A declaration that the Plaintiff is the substantive Head of the Akwaanor Royal family of Ashalaja;
ii. A declaration that the Defendants are not the Heads of the Akwaanor Royal family of Ashalaja;
iii. A declaration that any act or acts done by the Defendants in the purported capacity as Heads of the Akwaanor Royal family of Ashalaja is null and void;

iv. An Order directed at the Defendants to relinquish any asset of the Akwaanor family of Ashalaja that might have come into their possession by reason of them holding themselves out to be the Heads of the Akwaanor family of Ashalaja;

v. Perpetual injunction restraining the Defendants from holding themselves out as the Head of the Royal family of Ashalaja.

The Appellants, by an Amended Statement of Defence and Counterclaim amended after the Respondent had closed his case in the trial, claimed against the Respondent as follows;

i. A declaration that the Defendants have always been the heads or joint heads of the Akwaanor Royal family of Ashalaja;
ii. A declaration that the Plaintiff is estopped from styling or calling himself as lawful head of the Nii Akwaanor Royal family of Ashalaja;
iii. A declaration that the Plaintiff, his agents, assigns and witnesses hail from Moree in the Central Region and therefore cannot be members of the Nii Akwaanor Royal family of Ashalaja;
iv. A declaration that any land title document executed by the Plaintiff, his agents, assigns and privies in relation to the Ashalaja lands without lawful authority is null and of no legal effect;
v. An order directed at the Lands Commission and its divisions to expunge the records and registration of grants purportedly made by the Plaintiff, his agents, assigns, concerning Ashalaja lands;
vi. An order of perpetual injunction restraining the Plaintiff from styling or calling himself as the lawful head of the Akwaanor Royal family of Ashalaja;

vii. An order of perpetual injunction restraining the Plaintiff, his agents, assigns, privies and witnesses in this suit from entering, leasing, selling, assigning, or in anyway whatsoever dealing with the lands at Ashalaja.

THE APPELLANTS' CASE

The Appellants say that the Respondent is not the head of the Akwaanor Royal family of Ashalaja and contend that the Appellants are the joint heads of the family. They trace their co-headship through their father who they say was the immediate past head of the Akwaanor Royal family of Ashalaja. They say that contrary to the claim of the Respondent, no person was appointed head of the Akwaanor Royal family on 9th July 2009.

The Appellants further claim that the Plaintiff is not a member of the Nii Akwaanor Royal family of Ashalaja which hails from Winneba. They say that the Respondent hails from Moree and not Winneba, both in the Central Region. They also say that they have been joint heads of the Nii Akwaanor Royal family since December 2003.

The Appellants say that after Kwame Addy was the head of family, Peter Kojo Addy and Akwanorfio Addy became joint Heads of the Akwaanor family. They say that both heads died in March and October 1999. The Appellants state that after the death of Nii Akwaanorfio Addy in 1999, the 1st Appellant was appointed Head of Family until December 2003 when the 1st Appellant was confirmed as head of family and the 2nd Appellant made joint Head of Family days later. They contend that as joint heads of the family, Peter Kojo Addy and Akwanorfio Addy executed several leases to third parties without objection from anyone and that in some of these cases, Land Titles have been issued in respect of these grants.

The Appellants also assert that Nii Akwarnorfio Addy was sued in his capacity as the Head of Family in the case of **Nii Kojo Appiah II & 2 Ors vs. Nii Akwanor substituted by Adams Addy Suit No. 1222/89.** The Appellants allege that after the death of Nii Akwanorfio Addy, the 1st Appellant was appointed by the family to substitute for Nii Akwanorfio Addy in the case and to serve as acting head of family. The Appellants state that Nii Bornal Ackaah, the Respondent's predecessor in title, does not hail from Winneba and as such was not eligible to be elected as Head of the Awkaanor family.

They allege fraud on the part of the Respondent saying that he knew or ought to have known that they (the Appellants) had been co Heads of the Family since 2003. They also contend that he (the Respondent) knew or ought to have known that the Appellants were the heads of the family on the 9th day of July, 2009 when the Respondent purports to have been made the head of family. As a result, they say that the Respondent did not have authority to grant interests in Ashalaja lands to 3rd Parties.

THE RESPONDENT'S CASE

The Respondent on the other hand, says while he is the Head of Family of the Akwaanor family of Ashalaja, and has been since 2009, the Appellants have been mischievously presenting themselves as the joint heads of family of the Akwaanor Royal family. The Respondent says he was appointed Head of Family in 2009, after one Daniel Quao Ntadu was removed as Head of Family that year. According to the Respondent, Daniel Quao Ntadu was installed in 2007, following the death of the late Nii Bornal Ackaah, who in turn was made the Head of the Akwaanor family in 1999 following the demise of Peter Kojo Addy. The Respondent says that Peter Kojo Addy was made the Head of Family in 1980, following the death of one Kwame Addy. The Respondent says Kwame Addy served as Head of the Akwaanor Royal family of Ashalaja from 1973 to 1980.

This is how far back the Respondent traces his claim to the Headship of the Akwaanor Royal Family.

The Respondent says that the Appellants had been unlawfully holding themselves out as joint heads of the Akwaanor Royal family. He says, as an example, that on or about the 25th of January 2013, the 1st Appellant misrepresented himself to Bookman-Amissah and Associates and instructed them to write to the Lands Commission describing him as the head of family.

The Respondent says that this conduct is fraudulent because the Appellants knew or ought to have known that they are not the heads of the Akwaanor Royal family when they did represent themselves as such. He also argued that the Appellants knew or ought to have known that by custom, usage and practice of the Akwaanor Royal family, the family is at all

times headed by one person. He also says that the Appellants, holding themselves out as joint heads of the Akwaanor Royal family, have been selling lands in that capacity.

The following issues were settled at the directions stage and adopted for determination by the Trial Court;

1. Whether or not the Respondent is the substantive head of the Akwanor Royal Family of Ashalaja.
2. Whether or not the Respondent was appointed the head of the Akwanor Royal family of Ashalaja in 2009.
3. Whether or not Suit No. 1222/89 did confer title of the head of the Akwanor family on the 1st Appellant
4. Whether or not the Appellants have fraudulently been describing themselves as head of the Akwanor Royal Family of Ashalaja
5. Whether or not the Respondent is entitled to his reliefs.
6. Any other issues arising out of the pleadings.

At the conclusion of the trial, the Trial High Court held in favour of the Respondent in the following terms;

i. It is hereby declared that the Plaintiff Solomon Mintah Ackaah is substantive head of family of the Akwanor Royal Family of Ashalaja and not the Defendants
ii. It is hereby declared that any act or acts done by the Defendants in their alleged capacity as joint Heads of family are null and void
iii. Defendants are to relinquish any assets of the Akwanor Royal Family of Ashalaja that may have come to them by reason of their holding themselves out as joint family heads
iv. The Defendants are hereby perpetually restrained from holding themselves out as heads of the Akwanor Royal Family of Ashalaja.

Aggrieved by the decision of the High Court, the Appellants appealed to the Court of Appeal which upheld the decision of the High Court. The Appellants are thus in this Court seeking a decision to overturn the judgments of the Trial Court and the Court of Appeal.

GROUNDS OF APPEAL

The Appellants appealed to this Court on the following grounds;

i. The judgment is against the weight of the evidence

ii. The learned Justices of the Court of Appeal did not consider the case
iii. of the Appellants, as a witness to the Respondent confirmed that the Respondent was installed as a chief and not family head and therefore engendered a grave miscarriage of justice.

iv. Additional grounds of appeal will be filed on receipt of the judgment and proceedings.

LAW AND ANALYSIS

The Respondent has raised a preliminary objection about the Appellants' second ground of appeal, arguing that it does not comply with the established rules set down for couching grounds of appeal. Specifically, in his Statement of Case, counsel for the Respondent (on page 15) states, "*… I humbly submit that this ground of Appeal is argumentative and lacks sufficient particulars to assist this Honourable Court to identify and situate the point of law or facts upon which the Appellants seek to impugn the judgment of the Court of Appeal."* They further argue that since appeal is a creature of statute, they believe that a non-compliant ground of appeal ought to be struck out.

The Appellants in their Reply to the Respondent's Statement of Case effectively argue that they do not seek to rely on or argue this ground of appeal, and that the entirety of the second ground of appeal may be subsumed within the omnibus ground of appeal. They however ask this Court not to strike out this ground of appeal.

However, he Appellants did not proffer any submissions in respect of the said ground two and consequently, we deem this Ground to be abandoned.

In any event, **Rule 6(2)(f) of the Supreme Court Rules C.I. 16** states that, "*(2) A notice of civil appeal shall set forth the grounds of appeal and shall state— (f) the particulars of any misdirection or error in law, if so alleged*."

In our opinion, ground 2 of this appeal breaches this rule of Court. This ground was couched in the same misconceived manner as many of the grounds of appeal to the Court of Appeal, which grounds were struck off as violating the Court of Appeal Rules of Court. Similarly, this ground would not have been deserving of our consideration.

In view of the foregoing, we are left with the omnibus ground of Appeal as the sole ground of appeal since the Appellants did not file any additional grounds further to ground 3.

DISCUSSION OF THE OMNIBUS GROUND

In the case of **Atuguba & Associates v. Scipion Capital UK & Anor. Civ. Appeal No. J4/04/2019 delivered 03 April 2019,** Amegatcher JSC, opined about the omnibus ground in the following terms, "*The omnibus ground has been a hideout ground. The responsibility in even minor appeals is shifted to the appellate judges to comb through the records of appeal, review the evidence and identify the specific areas the trial judge erred before coming out with the court's opinion on the merits or otherwise of the appeal. The situation is worrying where no viva voce evidence is proffered and a judge is called upon to exercise judicial discretion, such as in applications for injunction, stay of execution, amendment, joinder, judicial review, and consolidation, just to mention a few. In our opinion, though the rules allow the omnibus ground to be formulated as part of the grounds of appeal, it will greatly expedite justice delivery if legal practitioners formulate specific grounds of appeal identifying where the trial judge erred in the exercise of a discretion. A proper ground of appeal should state what should have been considered which was not and what extraneous matters were considered which should not have been. We believe this approach will better serve the ends of justice and lessen the use of the omnibus ground particularly in interlocutory matters and in the exercise of judicial discretion.*"

This dictum was not the first or the last time that this Court has raised concerns with the use of the omnibus ground and the lack of specificity in couching grounds of appeal. In the case of **International Rom Limited v Vodafone Ghana Limited and Another [2015-**

2016] SCGLR 1389 at 1400, this court said "*Thus the 1st defendant's so called grounds of appeal when juxtaposed with the above requirement reveals an obvious non-compliance with the rules of court. Undoubtedly it is only in an atmosphere of compliance with procedural rules of court would there be certainty and integrity in litigation. All the so called grounds filed by the appellant (above) are general, argumentative and narrative and to that extent non-compliant with Rule 6 sub-rules 4 and 5 of CI 16. They are struck out. In order not to yield overly to legal technicalities to defeat the cries of an otherwise sincere litigant we would and hereby substitute them with what actually emerges as the core complaint and general ground which is that 'the judgment is against the weight of evidence'. It does appear that the magnanimity exhibited by this court over these obvious lapses and disrespect for the rules of engagement is being taken as a sign either of condoning or weakness hence the persistence of the impunity. It is time to apply the rules strictly."*

However, there is a requirement that we consider the entirety of the record once the omnibus ground has been adduced. Per Benin JSC in the case of **Owusu Domena v. Amoah [2015-2016] SCGLR 790 at 792** "The sole ground of appeal throws up the case for a fresh consideration of all the facts and law by the appellate court."

As a result, in compliance with the statutory requirement that appeals are by way of rehearing, and the established principle that once the omnibus rule is asserted by an Appellant, the Court ought to consider the entirety of the record, we proceed to deliver our judgment on the entirety of the evidence before us.

There are multitude of decisions of this Court which state that unless the Appellant points to specific findings of fact and demonstrates why they are not supported by the evidence on the record, Appellate Courts ought not to disturb the findings of the Courts below them.

In the case of **Achoro & Anor v Akanfela & Anor [1996-97] SCGLR 209 at Page 214**, Acquah JSC, (as he then was) stated as follows:

"*Now in an appeal against findings of facts to a second appellate court like 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 not interfere with the concurrent findings of the lower courts unless it is established with absolute clearness that some blunder or error resulting in a miscarriage of justice, is apparent in the way in which the lower tribunals dealt with the facts."

[See also: OBENG & OTHERS V ASSEMBLIES OF GOD CHURCH, GHANA [2010] SCGLR 300 AT 409; NTIRI V ESSIEN [2001-2002] SCGLR 459; SARKODIE V F K A CO LTD [2009] SCGLR 79; JASS CO LTD V APPAU [20009] SCGLR 266 AND AWUKU-SAO V GHANA SUPPLY CO LTD [2009] SCGLR 713; GREGORY V TANDOH IV [2010] SCGLR 971]

The burden herein therefore rests with the Appellant who now has to demonstrate to this Court what pieces of evidence would change the decisions of the lower Courts, otherwise this Court would be minded not to disturb their findings.

The Appellants contend that the judgment in the case of **Nii Kojo Appiah II & 2 Ors vs. Nii Akwanor substituted by Adams Addy [supra]** which they tendered as their Exhibit 10 is crucial in determining whether the Respondent was ever validly elected and/or appointed as the head of the Akwaanor Royal family of Ashalaja. Per the Appellants, this exhibit shows that while one Samuel Afful Akwanor joined as party to this suit maintained that one Nii Bornal Ackah was the head of the Akwanor family at the time of the commencement of the trial and that he just delegated the father of the Appellants, Nii Akwanorfio Addy to be the representative of the family in the trial, the trial judge in that action made a finding of fact in his judgment that Akwanorfio Addy was the head of the Akwanor royal family.

He claims that this was a final determination of the issue of the Headship of the family and could not be reopened by the Respondent in this matter. This, they say, dislodges the Respondent's claim that Nii Bornal Ackah was the head of family, and therefore his tracing of his headship through Nii Bornal Ackah meant that he (the Respondent) could not be Head of Family.

Counsel for the Appellants concedes that the suit in Exhibit 10 was in respect of the ownership of the Ashalaja lands but says that the Court in that case went ahead to make a determination on who the head of the Akwaanor family is, and that such determination is binding on both parties. They assert that the issue of the Headship of the family is a matter that is sealed by *estoppel per rem judicata.*

The Respondent on his part argues in his Statement of Case that suit no. 1222/89 did not confer headship of the Akwaanor Family on the Appellants. He then points to the record of Appeal on page 429 of volume 1 where the following exchange on cross examination of the 1st Appellant is captured.

> "*Q - You are relying on Suit No. 1222/89 to say that you are the head of family.*
>
> *A - Yes.*
>
> *Q - Do you know that the matter did not decide headship of the family?*
>
> *A - Yes it did not but the one I represented was sued as head of family and I was made acting head of family in relation to the case."*

Counsel for the Respondent points to this testimony and urges that the 1st Appellant himself admits that the effect of the Judgment in the earlier case does not decide who is the head of the family. They contend that since the 1st Appellant has admitted this, they do not need to present evidence to prove that fact.

FINDINGS OF THIS COURT

The main piece of evidence in contention in this Appeal is the earlier case of **Nii Kojo Appiah II & 2 Ors vs. Nii Akwanor substituted by Adams Addy [supra]** . During the trial in this case, the question of whether or not that earlier case conferred headship came up. On cross examination the 1st Appellant admitted that that earlier case does not confer headship on anyone. Counsel for the Respondent is right when he describes the effect of this admission.

In **IN RE: Asere Stool; Nikoi Olai v. Amontia IV (Substituted by Nii Tafo Amon II) v. Akortia Oworsika III (Substituted by Laryea Ayiku III) [2005-2006] SCGLR 637,** this Court, speaking through Dr. Twum, JSC (as he then was) said, "*Where an adversary has admitted a fact advantageous to the cause of a party, the party does not need any better evidence of estoppel by conduct. It is a rule whereby a party is precluded from denying the existence of some state of facts formerly asserted. That type of proof is salutary of evidence based on common sense and expediency*."

E**vidence Act, NRCD 323 of 1975** states thus:

Section 26 – Estoppel by own statement or Conduct.

"*Except as otherwise provided by law, including a rule of equity, when a party has, by his own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon such belief, the truth of that thing shall be conclusively presumed against that party or his successors in interest in any proceedings between that party or his successors in interest and such relying person on his successors in interest.*"

As a result, 1st Appellant cannot admit under oath that the earlier case of **Nii Kojo Appiah II [supra]** did not confer the title of Head of Family and at the same time, counsel for the Appellants argue in his submission that that case did in fact confer the title of Head of Family on the predecessor in title of the Appellants.

CONCLUSION

It is settled law that once a Trial Court had heard evidence and made findings on that evidence, the Appellate Courts ought not to disturb the findings unless there is evidence on the contrary to support disturbing those findings.

In the case of **Amoah v. Lokko & Alfred Quartey (substituted by) Gloria Quartey [2011] 1 SCGLR 505 at 505,** his Lordship Aryeetey JSC said;

"*The appellate court can only interfere with the findings of the trial court if they are wrong because (a) the court has taken into account matters which were irrelevant in law, (b) the court excluded matters which were critically necessary for consideration, (c) the court has come to a conclusion which no court properly instructing itself would have reached and (d) the court's findings were not proper inferences drawn from the facts.*"

See also the case of **In Re Fianko Akotuah (deceased): Fianko & Another vs. Djan & Others [2007-2008] 1 SCGLR 165, at 171** where Atuguba JSC delivering the judgment of the Court stated the legal position relating to concurrent findings of fact as follows:

"*The Supreme Court in the case entitled Achoro vs. Akanfela [1996-97] SCGLR 209 held that, in an appeal against findings of facts to a second appellate court, such as in the instant case, where the lower appellate court had concurred in the findings of the trial court, the second appellate court would not interfere with the concurrent findings of the two lower courts (our emphasis) unless it was established with absolute clearness that some blunder or error resulting in a miscarriage of justice was apparent in the way in which the lower tribunals had dealt with the facts.*"

In any event, we are of the view, that family headship is by appointment and therefore has to do with the factual circumstances of the appointment of a person as against historic predecessorship. At best, what Suit Number 1222/89 may have established is that all parties in the instant suit have a commonality of lineage to the Akwanor Royal Family of Ashalaja and it dispels claims that the parties in this instant Suit hail from two different families with Respondent's root from Moree and Appellants' root from Winneba.

The succession to family headship being by appointment or election, much emphasis ought to be given to the factual circumstances of the appointment or election of a person such as the nature of the appointment or election and the recognition of the appointment or election by the family itself. This being a civil suit, the trial Judge was to examine the evidence offered by each party and determine which of the parties' claims was more probable.

It is to be noted that the appointment of a person as head of a family is neither automatic nor does it devolve on any person as a matter of right. The Appointment is made by the elders of the family either formally and expressly or by necessary implication, such as where a family accepts and supports acts of headship performed by a member who is not expressly elected as head of the family. **[see the cases of HERVI V. TAMAKLOE [1958] 3 WALR 342, NYAMEKYE V. ANSAH [1989-90] 2 GLR 152, MILLS V. ADDY (1958) 3 W.A.L.R. 357, AMAH V. KAIFIO [1959] G.L.R. 23, IN RE ESTATE OF KWABENA APPIANIN (DECD.); FRIMPONG V. ANANE [1965] GLR 354-363, LARTEY V. MENSAH (1958) 3 W.A.L.R. 410 AND ABAKAH V. AMBRADU [1963] 1 G.L.R. 456, S.C]**

Having examined the entire record, including the evidence before the trial Court, the findings of the trial Court, the arguments urged on the Court of Appeal, its findings as well as the submission canvassed before this Court, we have come to the conclusion that the findings, reasoning and conclusions of the Court of Appeal were properly made and ought not to be disturbed.

For these reasons the Appeal wholly fails and is accordingly dismissed.

E. YONNY KULENDI
(JUSTICE OF THE SUPREME COURT)

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

A. LOVELACE–JOHNSON (MS.)
(JUSTICE OF THE SUPREME COURT)

C. J. HONYENUGA

(JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)

COUNSEL

O.K OSAFO BUABENG ESQ FOR DEFENDANTS/APPELLANTS/APPELLANTS.

A.K BANNERMAN WILLIAMS JNR ESQ WITH HIM ROBERT PAPPOE FOR PLAINTIFF/RESPONDENT/RESPONDENT.