IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2017

CORAM: WOOD (MRS) CJ PRESIDING
ANSAH JSC
DOTSE JSC
YEBOAH JSC
BENIN JSC

CIVIL APPEAL
NO. J4/3/2015

14TH MARCH, 2017

BENJAMIN QUARCOOPOME SACKEY - PLAINTIFF/APPELLANT/ RESPONDENT

VRS

ISSAKA A. MUSAH - DEFENDANT/RESPONDENT APPELLANT

JUDGMENT

DOTSE JSC:-

On the 21st October 2015, this court in the course of delivering judgment, made the following orders in order to bring finality to the real issues in controversy.

1. The Regional Surveyor, (Survey and Mapping Division of the Land's Commission, Accra) is hereby appointed to carry out a survey of the land in dispute, and superimpose the position of any of the said land

documents or site plans of the parties herein in relation to the actual position of the disputed land on the ground.

2. Her Ladyship the Chief Justice shall appoint a Circuit Court to be the trial Court for the purposes of carrying out the order of this court.

3. The Circuit Court shall hear, record and transmit to this court the evidence of the Regional Surveyor after he had carried out the survey as aforesaid.

4. Within 14 days of the service of the order on the parties, they shall file their survey instructions to the Surveyor and submit all relevant land documents of title, and site plans that were used at the trial court.

5. Each party to pay an initial deposit of ¢1,000.00 within 14 days of this order, the payment to be made to the Registry of this Court.

6. The Circuit Court shall submit to this court a full report on the state of the case by 22/12/2015.

Due to delays on the part of the parties, the Regional Surveyor, both counsel as well as the Circuit Court itself, the order referred to supra could not be executed within the time frame anticipated by this court.

However, on the 1st of March 2017 this court satisfied itself that all the parties had been given certified true copies of all the evidence and cross-examination of the Regional Surveyor's representative on the survey plan that had been prepared and tendered as exhibits CE1 and CEB the report on the plan.

We now proceed to bring closure in this case, based on the evidence contained in the Plan and report namely, exhibits CE1 and CEB, as well as the appeal record and the statements of case of all the parties filed before this court.

Our Observations Based On Exhibit CE1, The Survey Plan Are As Follows:-

Indeed, from all indications, the various land documents given by the Plaintiff/Appellant/Respondent, hereafter Plaintiff, to the Surveyor and plotted on the plan indicate quite clearly that those documents relate to the actual land in dispute as depicted on the ground. Refer to Legends 1, 3, 4, and 5 as shown and indicated in exhibits CE1 and CEB.

Furthermore, Plaintiff's Land Title Certificate No. GA 3359, Plot Numbers 313 and 314 had been plotted almost exactly into the disputed land on the ground.

Indeed, it is quite apparent from the survey plan and further explained by the Surveyor in his evidence that the Defendant/Respondent/Appellant, hereafter Defendant, put up his building to cover the entire land space as covered by Plot Number 314 on the Survey Plan.

On the Defendant's position, even though the land he showed and indicated to the Surveyor is marked yellow on the survey plan, which is the same land covered by Plaintiff's plot Number 314, the only land document produced by the Defendant to the Surveyor is marked **Magenta.**

This as can be seen and verified on the Survey Plan, exhibit CE1 is quite removed from the disputed land and is therefore different and separate from the disputed land.

Whilst the Plaintiff relied basically on exhibits A and B, which are Indenture and Land Title Certificates respectively, the Defendant on the other hand relied on exhibits 3 and 4 which are Indentures, one dated 15th September 1974 which is a conveyance from the Asere Stool of Accra acting through Nii Akramah II to the Defendant, and exhibit 4 is another Indenture dated 8th March 1986 from the **Nikoi Olai Stool** family apparently in respect of the same land.

It must also be noted that, whilst exhibit 3, has no site plan attached to this Indenture, exhibit 4 has, and this was the only site plan that the Defendant produced to the Surveyor for the purpose of the survey.

Furthermore, whilst Defendant's land documents in exhibit 3, is without a site plan, the document has a description of the land as follows:-

On northwest by vendors land measuring 100 feet, on the South East by vendors land, measuring 100 feet, on the North East by a proposed road measuring 70 feet and on the South West by Methodist Church Property measuring 70 feet more or less. The Vendor mentioned therein must be a reference to the Asere Stool who incidentally are the Plaintiff's vendors as well. It must be noted that the land on which this Methodist Church property stands belongs to the Plaintiff herein.

On the other hand, the description of the land as per exhibit 4, which has a site plan attached indicates that the land shares boundary with the Nikoi Olai family on 3 sides and a proposed road as the 4th side. Furthermore, the Methodist Church property is visible as it is indicated on this site plan, but is far removed from the land denoted, by the description. This therefore confirms the findings of the Surveyor that, the Defendant's land is where it has been plotted as the **Magenta,** which is quite some distance from the Plaintiff's land (see page 204 of the appeal record).

The effect of this is that, if the evidence of the Surveyor is to be believed and accepted as an expert then it means that the Defendant has indeed trespassed and built on portions of the Plaintiff's land on Plot No. 314.

We have warned ourselves that we need not necessarily endorse the expert opinion of the Surveyor if there are indeed any legal reasons why we should not. However, there are no compelling reasons why we should not accept the opinion in this case. We therefore endorse the survey plan and it's report tendered into evidence before the Circuit Court as authentic and one that has brought closure to the real identity of the land in dispute.

We are further strengthened in our decision by the following pieces of evidence in the proceedings taken before the Circuit Court when the Surveyor tendered the Plan without any objection and testified to the following effect:

The Surveyor indicated that, the documents of the Plaintiff particularly his land title certificate exhibit B and Indenture, exhibit A, overlap, even though they are not exactly the same. We have looked at the plan, and we have found this to be correct.

> "The Surveyor put the matters in dispute beyond per adventure when he stated thus:-
>
> Q. However, using the GPS with high level of accuracy the defendant's land per his old plan was edged magenta.
>
> A. Yes
>
> Q. As a matter of fact the area of the defendants land edged magenta is nowhere near the area of dispute.
>
> A. That is so"

With the above authoritative answers, the issue as to whether the Plaintiff is entitled to the reliefs he claims against the Defendants has been established beyond any shadow of doubt.

From our observations of the Survey Plan and confirmed by the Surveyor's evidence, we are convinced that the Defendant erected his building on the Plaintiff's land as depicted by his land title certificate plot Number. 314.

We therefore conclude that the Defendant has committed trespass on the Plaintiff's land, and in that respect, the appeal must fail.

In the premises, we dismiss the appeal herein, and in its place, we affirm the judgment of the Court of Appeal dated 20th May 2010. We therefore enter judgment for the plaintiff on his claims against the Defendant as per his writ of summons endorsed in the trial court.

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

(SGD) G. T. WOOD (MRS)
(CHIEF JUSTICE)

(SGD) J. ANSAH
(JUSTICE OF THE SUPREME COURT)

(SGD) A. YEBOAH
(JUSTICE OF THE SUPREME COURT)

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

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