IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: YEBOAH CJ (PRESIDING)
PWAMANG JSC
PROF. KOTEY JSC
AMADU JSC
PROF. MENSA-BONSU (MRS.) JSC

CIVIL APPEAL
NO. J4/04/2021

7TH DECEMBER, 2022

CECILIA AMPONSAH ..... PLAINTIFF/RESPONDENT/APPELLANT

VRS

YAA DUFIE ..... DEFENDANT/APPELLANT/RESPONDENT

JUDGMENT

PWAMANG, JSC:-

My Lords, the parties to this appeal are disputing over ownership of House No 17, Block A, Atonsu Agogo, Kumasi which contains a number of buildings. The plaintiffs claimed in the High Court, Kumasi, that the buildings stand on land acquired some years ago by the late Akosua Addai and were put up by the joint efforts of her children who included Akwasi Kankam, Kwasi Abebreseh and Kwaku Nantwi. They sued the defendants because

the defendants claimed that the property belonged to only Akwasi Kankam, Kwasi Abebreseh and Kwaku Nantwi and that it was these three who acquired the land and built the structures on it without any participation of Akosua Addai and her other children or any member of the family.

Following some substitutions, the present parties are those that carried the fight to the apex court. The trial in the court of first instance was by oral and documentary evidence. We wish to refer to two key documents concerning the property in dispute. First, there is an allocation letter covering the plot, with attachments from the Kumasi Planning Committee, by the Antwiwaa Anyinam Stool in favour of Akwasi Kankam dated 16th May, 1992. The allocation letter requested the Regional Lands Officer, Ashanti Region to take the necessary action which meant that she was to prepare land documents in favour of Akwasi Kankam.(pp 414 to 422 of the record of appeal(ROA)). Secondly, there is a declaration of "Joint Ownership of House No 17 Blk A Atonsu Agofo-Kumasi" dated 1st day of February, 2002, made by Akwasi Kankam, Kwasi Abebreseh and Kwaku Nantwi (p410 of the ROA) in which they shared 34 rooms and 6 stores of the house on the land among the three of them alone. That declaration mentioned a family house at Lobito (New Amakom Extension) Kumasi and the three brothers surrendered their interest in it in favour of their three sisters, Akua Addai, Akosua Kwango and Akua Serwah, and their children. The defendant's testimony was that the three brothers were successful cocoa farmers and stated the locations of their farms. The declaration made provision for the signatures of all six but only the three beneficiaries signed and the three sisters have not signed.

From the above documentary evidence, the land on which the buildings in dispute stand was acquired by Akwasi Kankam who subsequently acknowledged his other two brothers, Kwasi Abebreseh and Kwaku Nantwi as co-owners. These documents clearly support the case of the defendant/appellant/respondent (the defendant) about how the land was acquired and the house on it put up.

The version of the plaintiff/respondent/appellant (the plaintiff) that the land was acquired by the late Akosua Addai is not supported by any document but the plaintiff relied on oral

testimonies to the effect that Akosua Addai was the one who acquired the land and started building on it with the support of her three daughters who were fish mongers. They made Akwasi Kankam, the eldest son of Akosua Addai, the supervisor of the development. The testimony was that after the death of Akosua Addai, Akwasi Kankam became head of their family and it was for that reason that the documents of the property were made in his name. The plaintiff argued, that it was the family character of the disputed property that informed the decision by the three brothers to make provision on the joint declaration of ownership for their three sisters to also sign.

Further evidence by the defendant was, that throughout Akwasi Kankam and his brothers exercised ownership of the property to the exclusion of other members of the family and that the provision made on the joint declaration for endorsement by their sisters did not make them co-owners. The defendant said the three brothers each made a Will disposing of his share of the property. There is another documentary evidence of a tenancy agreement with Forewin (Gh) Ltd, a notable trading company, and it was signed by Akwasi Kankam as landlord. It is dated 19th June, 2004 (p427-431 of the ROA). On the record are four other tenancy agreements all executed by Akwasi Kankam and the defendant contended, that apart from the other two brothers, the family had no hand in all these transactions.

But the plaintiff denied that the family was not part of these tenancies and called a witness who testified that the transaction with Forewin was done with the involvement of the family and that it was the family that contracted a loan to build the warehouse for Forewin to rent.

My Lords, from the summary of the evidence above, this case ought to turn on whether the plaintiff led compelling evidence to dislodge the presumption that arises in favour of the defendant on account of the above documentary evidence. For, the rule of evidence is, that where one party's case on a material issue in a case is supported by documentary evidence that has not been impeached under cross examination or rendered invalid on account of a rule of law, but her opponent's evidence on the issue is oral testimony and not supported by documents, then a court ought to lean favourably towards the side

whose case is supported by documents and to disbelief the oral testimony unless there are compelling reasons for ruling otherwise and the compelling reasons must be stated by the court. See **Fosua & Adu-Poku v Dufie (Decd) [2009] SCGLR 310.**

The High Court on evaluation of the evidence led came to the conclusion that the plaintiff's evidence was strong enough to overturn the documentary evidence of the defendant but the Court of Appeal, after a thorough review of the evidence, disagreed and reversed the High Court. We have read closely both the High Court and the Court of Appeal judgments and examined the evidence on record ourselves and we are satisfied that it is the Court of Appeal that came to the right conclusion in this case. The plaintiff attempted to prove that it was the family that contracted a loan to build the warehouse for Forewin to rent but the documents they tendered showed that the loan was applied for three years after the warehouse was rented to Forewin. Meanwhile, the tenancy with Forewin stated that rent for twelve years in advance was paid to the landlord, ostensibly to be used to complete the building and deliver possession to Forewin within 60 days.

We agree with the Court of Appeal that this inconsistency in the documentary evidence of the plaintiff substantially weakened the credibility of their evidence as a whole. Secondly, from the evidence on record, the three brothers had exclusive ownership of the house and the sisters were aware of this, at least from February, 2002 when they sighted the declaration, but they did not challenge them at any forum, even before their traditional authorities. They waited until May, 2008, after the death of some of the brothers, to raise an objection. As for the fact of their names appearing on the declaration of joint ownership, that is understandable because the declaration was not drafted by a professional and since there is mention of a family house that was being ceded to the three sisters, their names for signatures plainly relates to that house and cannot undo the clear and unambiguous words in the declaration concerning House No 17, Block A, Atonsu Agogo, Kumasi. In our opinion, if indeed and in truth the three sisters were the ones who used their profits from fish business to build the first house on their mother's land, they would have taken remedial action against their three brothers, at least following the declaration.

In our view, on the balance of probabilities, the defendant's case is preferable to that of the plaintiff and the property belonged to only Akwasi Kankam, Kwasi Abebreseh and Kwaku Nantwi as co-owners. For the reasons explained supra, we do not find merit in the appeal and same is dismissed.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH
(CHIEF JUSTICE)

PROF. N. A. KOTEY
(JUSTICE OF THE SUPREME COURT)

I. O. TANKO AMADU
(JUSTICE OF THE SUPREME COURT)

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