IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DORDZIE (MRS.) JSC (PRESIDING)
AMEGATCHER JSC
OWUSU (MS.) JSC
TORKORNOO (MRS.) JSC
PROF. MENSA-BONSU (MRS.) JSC

CIVIL APPEAL
NO. J4/26/2022

20TH JULY, 2022

1. DAVID OKAE ANSAH
(A.K.A. DAVID OKAE)
2. EVA ANSAH
(PER HER LAWFUL ATTORNEY DAVID OKAE)
PLAINTIFFS/RESPONDENTS/RESPONDENTS

VRS

COMFORT ANSAH ..... DEFENDANT/APPELLANT/APPELLANT

JUDGMENT

OWUSU (MS.) JSC:-

On 29th April, 2021, the Court of Appeal, Kumasi dismissed the Defendant/Appellant's appeal and affirmed the Judgment of the High Court dated 19th February 2020.

Dissatisfied with the decision of the Court of Appeal, the Defendant/Appellant filed an appeal to the Supreme Court on the following grounds:

a. *That the Judgment is against the weight of evidence.*
b. *That the Court below erred in holding that Plot. No. 12 Block XXIII, New Amakom Extension was held in trust for the 1st Plaintiff/Respondent/Respondent.*
c. *That the Court below erred in holding that Plot No, 10 Block 'B' Asokwa was held in trust for the 2nd Plaintiff/Respondent/Respondent.*
d. *That the Court Below erred in holding that 1st Plaintiff/Respondent/Respondent is the successor in title of the estate of Opanin Afari Mintah.*
e. *That the Court below erred in not granting the Defendant/Appellant/Appellant her Counterclaim.*
f. *Additional issues will be canvassed upon receipt of the record of proceedings.*

In this appeal, the parties would be referred to by their designations at the trial Court. Consequently, the Plaintiffs/Respondents/Respondents would be referred to as 1st and 2nd Plaintiffs respectively and the Defendant/Appellant/Appellant would be referred to as Defendant

Before dealing with the arguments advanced in support and against this appeal, we will give a brief background of the case,

The parties in this case are uterine siblings. Their mother the late Agnes Temah had six children including the parties in this case. In her lifetime, Agnes Temah acquired House No. 12 Block XXIII, New Amakom Extension, Kumasi and House No. Plot 10 Block 'B' Asokwa in the names of the 1st and 2nd Plaintiffs respectively and managed these during her lifetime. Upon her death in 1992, her estate was managed by her daughter Theresa Derkyi who had succeeded her customarily. Theresa Derkyi died in 2007 and was succeeded by Comfort Ansah who also took over the estate of Agnes. The Plaintiffs all this while were domiciled outside the country. The Plaintiffs alleged that some years into the successorship of her sister, Theresa Ansah, the Defendant in this case started treating the disputed houses as her personal properties. The 1st Plaintiff lodged a

complaint before their head of family. The family resolved the matter in his favour but the Defendant has refused to hand over the properties to him hence this action claiming the following reliefs:

1. *A Declaration of title to all that building known as Plot No. 12, Block XXIII, Amakom Extension, Kumasi and Plot No. 10 Block 'B' Asokwa Residential Area, Kumasi are the properties of the 1st and 2nd Plaintiffs given to them as gifts by their late mother, Agnes Temah and do not form part of her estate.*
2. *Recovery of possession of the said buildings by the 1st and 2nd Plaintiffs.*
3. *(a) Perpetual Injunction restraining the Defendant her agents, servants, workmen and or/privies from dealing with the said properties or in anyway interfering with 1st and 2nd Plaintiffs' possession of their buildings.*

   (b) Perpetual Injunction restraining the Defendant, her agents, servant, workmen and or/privies from collecting proceeds from caretakers or in any other way interfering with the cocoa farms and other properties the 1st Plaintiff inherited from his grandfather the late Emmanuel Afari Mintah as his Customary Successor.

4. Account to the Plaintiffs of any rent she has been collecting from House No. Plot 12, Block XXIII and the cocoa monies the Defendant has collected from the Cocoa Farms 1st Plaintiff inherited as customary successor to the late Afari Mintah.

In her amended Statement of Defence and Counterclaim, the Defendant denied Plaintiffs' claim. She averred that her late grandmother Yaa Aseidua jointly Acquired a number of Cocoa farms at Kukuom, Subriso and Bomah with her granduncle by name Afari Mintah. Defendant averred further that the late Afari Mintah gifted his properties to Yaa Aseidua before he died. She continued that, members of the late Afari Mintah's family and his children objected and brought a suit against her late grandmother contesting the gift to her. It is the case of the Defendant that, her grandmother passed on in 1981 and was succeeded by her mother who distributed the properties gifted to Yaa Aseidua by the late Afari Mintah among her extended family. She concluded that her mother passed away in 1992 and was succeeded by Theresa Derkyi who took

possession of the estate of her mother. That she has succeeded her sister Theresa Derkyi and the disputed houses form part of her late mother's estate. Consequently, the Plaintiffs are estopped by conduct from claiming title to the disputed houses. The Defendant gave particulars of estoppel and Counterclaim for:

A. *A Declaration that properties Plot No. 12 Block XXIII, New Amakom and Plot No. 10 Block 'B' Asokwa, Kumasi are family properties and she is the owner by succession.*
B. *A Declaration that all the Cocoa Farms situate at Bomah, Subriso, and Kukuom are family properties of the Defendant and she is the owner by succession.*
C. *Perpetual Injunction restraining the Plaintiffs their representative, assigns, workmen and person(s) claiming through them etc. from dealing with any of the disputed properties as their own.*

In arguing the appeal, counsel for the Defendant on ground (a) of the appeal referred to portions of the Judgment in contention which had held that the trial Court *"was right in relying on the documentary evidence of the Plaintiffs as against the Defendants mere assertions devoid of any corroboration".* He then submitted that, the evidence cannot be regarded as mere assertions as claimed by the Court below in the sense that, it was demonstrated with extracts of the Plaintiffs' own witnesses, the 1st Plaintiff and Defendant's attorney that the Judgment of the trial Court was against the weight of evidence on record. Consequently, these pieces of evidence pointed out far outweighed those relied on by the Court below in arriving at their decision to dismiss the Defendant's appeal. Secondly, from the record of appeal, it is not disputed that the Defendant succeeded her late sister Theresa Derkyi, who had also succeeded their late mother, Agnes Temah. Thirdly, the Defendant also demonstrated that their late mother had also succeeded her late grandmother by name Yaa Aseidua who was also the customary successor of the Late Afari Mintah and that PW3's evidence corroborated these facts. Counsel continued that the Court below ignored these pieces of evidence on record which corroborated the Defendant's claim that the properties of the late Afari Mintah

devolved unto Yaa Aseidua upon his death. From the narration above, counsel for Defendant submitted that the evidence on record were not mere assertions by the Defendant at the trial Court but were backed by corroborated evidence that the said properties are family properties. He therefore invited this Court to uphold ground (a) of the appeal and reverse the decision of the Court of Appeal.

On grounds (b) and (c) of the appeal which were argued together, counsel for Defendant submitted that, House No. Plot 12, Block XXIII, New Amakom and Plot 10 Block 'B' Asokwa, are not trust properties that were held in trust for the Plaintiffs. These two grounds should also be upheld and the decision of the Court of Appeal reversed.

On grounds (d) and (e) of the appeal, counsel for the Defendants relied on his submissions of ground (h) and (i) of the Defendant's appeal at the Court below respectively and submitted that the Defendant was able to prove her Counterclaim on preponderance of probabilities and same should be granted.

Based on the forgoing, counsel for Defendant invited this Court to allow the appeal and reverse the decision of the Court of Appeal.

In response to the above submissions, counsel for the Plaintiffs argued that the Judgment of the Court of Appeal is unassailable both on the facts and the Law. He continued that, there was no error in applying the facts of the case and the Law or principle of the evidence on the part of the two lower Courts. This is because, the issues of the acquisition of the two houses at New Amakom and Asokwa and the principle of advancement were correctly applied by the two lower Courts. Similarly, the question of who succeeded Afari Mintah was properly dealt with in accordance with the evidence on record. The two lower Courts also properly evaluated the evidence on record as they were founded on sound legal principles and precedent. Counsel for the Plaintiffs therefore invited this Court not to vary the findings made by the two lower Courts and or substitute same with our own findings. He referred us to the case of **CONTINENTAL PLASTICS ENGINEERING**

COMPANY LTD v IMC INDUSTRIES-TECHNIK GMBH [2009] SCGLR 298, 307-308.

On ground (a) of the appeal, counsel for the Plaintiffs submitted that, Defendant woefully failed to establish this ground and urged us to dismiss same He referred this Court to the following cases to buttress his point:

1. **ABBEY & ANTWI v [2010] SCGLR 17, 34-35.**
2. **TUAKWA v BOSOM [2001-2002] SCGLR 61, 65.**
3. **DJIN v MUSAH BAAKO [2007-2008] SCGLR 686 and lastly,**
4. **NANTWI & NANTWI v AMENYA [2017-2020] 1 SCGLR 972.**

He then submitted that the Defendant failed to make good her claim under this ground of appeal as the burden is on her to point out the lapses in the Judgment. But Defendant failed to discharge this burden.

On grounds (b), (c), (d) and (e), counsel for the Plaintiffs submitted that, the Defendant had no arguments for those grounds and took flight under the omnibus ground. Counsel continued that, the properties in dispute are properties acquired by family members and there could have been no better testimony than that from members with personal knowledge of the history of the family. Therefore, the Defendant's failure, inability or neglect to advance specific facts and arguments to support these grounds of appeal is indicative that the allegations lacked factual basis and same were made in bad faith and without condor. He concluded on these grounds that, when the Defendant failed in her attempt to dislodge the unshakable evidence in respect of the acquisition of the properties at Amakom and Asokwa by Agnes Temah, for and on behalf of the Plaintiffs and for their advancement, she then vainly sought to argue that because Agnes Temah is a woman, she could not validly acquire the properties and gift them to the Plaintiffs. According to counsel for the Plaintiffs, this argument was swiftly shot down by both the High Court and the Court of Appeal with cases like, **RICHARDS (JULIANA) v NKRUMAH [2013-2014] 2 SCGLR 1577, 1578** and **FYNN v FYNN [2013-2014] 1 SCGLR 731.**

Thus, the oral and documentary evidence the Plaintiffs adduced at the trial Court could not be challenged or dented and no argument worthy of note has been advanced both at the Court of Appeal and before the Supreme Court. Consequently, the appeal is without merit as same is frivolous and this Court should dismiss same.

At the heart of this appeal is the issue of Advancement. The question to be answered by this Court is whether the two properties, Plot No. 12 Block XXIII, New Amakom Extension and House no. 10 Block 'B' Asokwa Residential Area acquired in the names of the Plaintiffs created legal Advancement in their favour.

The question then is what is Advancement? In their Book "Ghana Land Law and Conveyancing" by BJ da Rocha and CHK Lodoh, the Second Edition at pages 114-115, the Authors on Advancement state:

"The presumption of advancement applies to all cases in which the person providing the purchase money has an equitable obligation to support or make provision for the person to whom the property is conveyed. Usually this is between husband and wife, father and child or a person to whom the purchaser stands in loco parentis"

The authors continued in the following paragraph that:

"If a father buys property in the name of his child, prima facie, it is a gift to the child and the presumption of advancement arises"

Like any presumption, presumption of advancement can be rebutted by contrary evidence. See Section 18 of the Evidence Act, 1975 (NRCD 323), which provides that:

"A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action".

In this appeal, it is not in dispute that the two houses the Plaintiffs are claiming were acquired in the names of 1st and 2nd Plaintiffs by their late mother *Agnes Temah. The witness statement of the Defendant's Attorney Charles* Fosuhene is clear on this when he stated in paragraph 16 and 18 as follows:

16. In 1957, my late mother acquired a plot Numbered Plot 12 Block XXIII, New Amakom Extension, Kumasi from the Amakom Stool in the 1st Plaintiff's name and took possession of the land.

18. My late mother also acquired another Plot Numbered Plot 10 Block "B" Asokwa Residential Area, Asokwa, Kumasi in the name of the 2nd Plaintiff and took possession of same.

In the Supreme Court case of **RICHARDS (JULIANA) v NKRUMAH [2013-2014] 2 SCGLR 1577,1578 holding (1)** and **(2)** of the head notes. Their Lordships held that:

(1) "Where a father obtained a conveyance in the name of his child, the presumption was that of advancement of such a child. In the instant case, the relationship between the plaintiff and the deceased father created the presumption of advancement in favour of the plaintiff. And by the provision in Section 25 (1) of the Evidence Act, 1975 (NRCD 323), the facts recited in a written document such as exhibit A, the deed of purchase by the deceased father as a trustee for and on behalf of his infant children, were presumed to be true as between the parties to the instrument or their successors in interest, The recital to Exhibit A, identified the named infants (including the plaintiff) as the beneficiaries of the advancement.

(2) The presumption of advancement might be rebutted by evidence of a contrary intention collected from the act or declaration of the parties before or at the time of the transaction. And the presumption might exist even though the parent, as in the instant case had actually received the income during his lifetime and make leases of the property. The burden of rebutting the presumption of advancement would be on the party disputing the advancement. In the instant case, the evidence did not rebut the presumption in favour of the plaintiff".

In the case referred to supra, it was held Per curiam:

*"The Court's view is that the retention of title deeds (per se), by a father is not conclusive to rebut the presumption of advancement arising out from the purchase of the property in the name of a child. In this particular instance, the evidence on record (which was not seriously discredited) was that the documents of title exhibit A were given to the plaintiff sometime before the deceased passed on. We think that even if the trial Judge had found that the deceased retained possession of exhibit A until his death, there was no evidence showing that the deceased never intended to advance those developments to the plaintiff". (*Our emphasis).

In coming to this conclusion, their Lordships relied on the case of **In re SASU-TWUM (Deceased) SASU-TWUM v TWUM [1976] 1 GLR 23** where ***Abban J*** (as he then was) in upholding the presumption of advancement in favour of a child whose father has acquired two houses in the name of his eldest son, held that the party who disputed the presumption of advancement had the burden of rebutting the presumption, which rebuttal evidence ***"must be strong, such as a contemporaneous- not subsequent declaration or act of the father manifesting a clear intention that the child was to hold as trustee".***

"In the Sasu-Twum case referred to supra, there was evidence of subsequent activities by the deceased father before the Court that upon the completion of the house, the father occupied it with plaintiff and his children. He later moved out and let it to tenants. There was evidence also that the deceased father collected rents and made use of same. Of all these subsequent activities, Abban J held that such subsequent acts and dealings of the father in relation to the house were inadmissible to rebut the presumption". See page 1588 of the report in the **RICHARDS (JULIANA) v NKRUMAH** case supra.

Relating the case referred to supra to the case under consideration, the question is whether the Defendant at the trial Court was able to rebut this presumption of

advancement in favour of the Plaintiffs. The answer is obviously, No. All that the Defendant said was that the late Agnes Temah was in the habit of purchasing houses in the names of her children. This can hardly be a rebuttal of the presumption of advancement in favour of the Plaintiffs.

Consequently, the disputed houses No. 12 Block XXIII New Amakom Extension and Plot No. 10 Block 'B' Asokwa did not form part of the estate of the late Agnes Temah and are therefore not family properties of the Defendant.

See also the case of **HANNAH KWARTENG (Subs. By KWADWO OPPONG) v ADWOA TIWAA & ADWOA FOSUAA (Subs. By DIANA MENSAH) Suit No. J4/01/2017 dated 14th November, 2017** where the Supreme Court upheld the presumption of advancement in favour of a nephew by an uncle.

A critical look at the submissions of counsel for the Defendant on ground (a) of the appeal which states that:

"The Judgment is against the weight of evidence", focused on the evidence that the Defendant succeeded customarily her sister Theresa Derkyi, who had had also succeeded their late mother, Agnes Temah. That Agnes Temah had also succeeded Yaa Aseidua who was the customary successor of the late Afari Mintah. Having come to the conclusion that the disputed houses did not form part of the estate of the late Agnes Temah, that leaves us with the farms of the late Afari Mintah. In the witness statement of the Defendant's Attorney, paragraphs 9, 10 and 11, it states that:

"9. My late grandmother by name Yaa Aseidua jointly acquired a number of cocoa farms at Kukuom, Subriso, and Bomah with her brother by name Afari Mintah.

10. The late Afari Mintah made a gift of his properties to my grandmother before his death.

11. When other members of my granduncle, the late Afari Mintah's family and children got to know about the gift made to my grandmother, they brought a suit against her contesting the gift made in favour of my grandmother."

The 1st Plaintiff's case is that he succeeded his granduncle customarily.

So, the question is which of these two versions of the late Afari Mintah's farms/properties is true. In the first place the suit against Yaa Aseidua is capable of proof. The Defendant who raised this issue about the suit should have proved it by the tendering of the proceedings in court. Merely mounting the witness box and repeating her averments on oath is not enough. Where corroborative evidence must exist ,the Court expects a party who makes an averment (which the other side denies) to call such corroborative evidence in support of his case. See holding (4) in the case of **MAJOLAGBE v LARBI & ORS [1959] GLR 190**. The dictum of Ollenu J as he then was is still good law when he held:

"Proof in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way, e.g., by producing documents, description of things, reference to other facts, instances, or circumstances, and his averment is denied, he does not prove it by merely going into the witness-box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true."

Secondly, there is evidence on record to show that the issues that have culminated in this case before Court was settled by the elders of the family headed by the head of family of the parties and they found for the 1st Plaintiff. When the Defendant refused to accept the decision of the elders the Plaintiff filed the present suit in court.

Thirdly, there is documentary evidence to show that the cocoa farms at Subriso, Kukuom were all acquired by Afari Mintah alone. Indeed, the cultivation of these farms were done by farm contract workers. The receipts from these contract workers were all

paid for by Afari Mintah between 1946 and 1955. See Exhibit E and the receipts at pages 96-112 of the record of proceedings. With this evidence on record, the finding by the trial Court that the 1st Plaintiff succeeded the late Afari Mintah is clearly supported by the evidence on record. On the contrary, these pieces of evidence rather support the 1st Plaintiff's case and they were properly evaluated by the trial Court and affirmed by the Court of Appeal.

The law is that:

"It was settled that documentary evidence should prevail over oral evidence. Thus, where documents supported one party's case as against the other, the Court should consider whether the latter party was truthful but with faulty recollection." See the case of **FOSUA & ADU-POKU v DUFIE (Deceased) & ADU-POKU MENSAH [2009] SCGLR 310,311.**

We find no merit in ground (a) of the appeal and it is accordingly dismissed. This also disposes of grounds (b) and (c) of the appeal since counsel for the Defendant relied on his submissions advanced in support of ground (a).

This brings us to ground (d) and (e) of the appeal. We addressed these grounds when we came to the conclusion that, 1st Plaintiff succeeded the late Afari Mintah. In coming to that conclusion, the trial Judge and indeed the Court of Appeal preferred the evidence of the family members especially the evidence of PW3, the 96-year-old lady to the sole witness of the Defendant who was a caretaker of a farm and did not know how it was acquired. In the case of **DOTWAAH & Another v AFRIYIE [1965] GLR 257** it was held that:

"For evidence of tradition to be admissible, the witness who deposes to it must be a person who has the right to be told and a duty to know the tradition or history and none other however intimate and close that other may be to the deceased member of the family who might have related the tradition to him".

Having come to the conclusion that the 1st Plaintiff succeeded the late Afari Mintah, the trial Court, rightly dismissed the Defendant's Counterclaim which decision was affirmed by the Court of Appeal.

We have perused the entire record of appeal and have come to the conclusion that the findings of the trial Court and the Court of Appeal are clearly supported by the evidence on record and we do not intend to disturb these findings.

From all of the forgoing, there is no merit in the appeal and it accordingly dismissed. The Judgment of the Court of Appeal dated 29th April, 2021 is hereby affirmed.

M. OWUSU (MS.)
(JUSTICE OF THE SUPREME COURT)

CONCURRING OPINION

DORDZIE (MRS.) JSC:-

I had the opportunity to read the lead judgment written by my sister Owusu JSC beforehand; I agree that the appeal has no merit and ought to be dismissed. I however have a concurring opinion, which is set out below.

FACTS

The parties herein are siblings; a misunderstanding arose between them in respect of ownership of some landed properties. Efforts of elders of their family to settle the differences between them failed. The plaintiffs therefore instituted this action in the High Court Land Division Kumasi claiming the following reliefs.

1. A Declaration of title to all that buildings known as Plot No. 12 Block XXIII, Amakom Extension, Kumasi and Plot No. 10 Block B, Asokwa Residential Area,

Kumasi are the properties (of the 1st and 2nd Plaintiffs) given to them as gifts by their late mother Madam Agnes Tema and do not form part of her Estate.

2. Recovery of Possession of the said Buildings by the 1st and 2nd Plaintiffs.
3. (a) Perpetual Injunction restraining the Defendant her agents, servants, workmen and/or privies from dealing with the said properties or in any way interfering with the 1st and 2nd Plaintiffs' possession of their buildings

   (b) Perpetual injunction restraining the Defendant, her agent, servants, workmen and/or privies from collecting Cocoa proceeds from the Caretakers or in any other way interfering with the Cocoa farms and other properties the 1st Plaintiff inherited from his grandfather the late Emmanuel Afari Minta as his Customary Successor.

4. Account to the 1st Plaintiff for any rent she has collected from his house N0 Plot 12 Block XXIII and the Cocoa monies the Defendant has collected from Cocoa Farms 1st Plaintiff inherited as the Customary Successor to the late Nana Afari Minta.

The facts upon which the above claims are based as averred in the plaintiffs' pleadings are summarised as follows:

1. The 2nd Plaintiff is resident in Maryland, U.S.A. therefore has given the 1st Plaintiff Power of Attorney to prosecute her case for and on her behalf. Agnes Tema (deceased) was the mother of the parties.
2. In 1957, whiles the 1st Plaintiff was a minor the mother, late Agnes Tema purchased a plot of land namely Plot No. 12 Block XXIII, New Amakom extension, Kumasi from Amakom Stool in his name. She later built on the land and informed him it is a gift to him.
3. Similarly, Agnes Tema purchased Building Plot No. 10 Block B, Asokwa Residential Area at Asokwa, Kumasi in 2nd Plaintiff's name, built a house on it and gave it as a gift to 2nd plaintiff.

4. The 1st Plaintiff avers that later their grandfather named Nana Emmanuel Afari Minta died and he was appointed to succeed him customarily by the head and other principal members of the family.

   Among the properties, which he succeeded to, are some cocoa farms in Brong Ahafo, Western and Ashanti Regions.
5. In 1986, he sojourned to United Kingdom; before he left, he asked his mother Madam Agnes Tema to take care of the house, Plot No. 12 Block XXIII, New Amakom Extension and also the Cocoa farms and other properties he inherited from his grandfather Nana Emmanuel Afari Minta in his absence.
6. The 2nd Plaintiff also sojourned to the United States of America and asked her mother the late Agnes Tema to look after her property, House No. Plot 10 Block B, Asokwa Residential Area, Kumasi for her until she returns.
7. The Plaintiffs further averred that their mother died and was succeeded by their sister Mrs. Theresa Derkyi; they asked their sister to take care of their properties, which their mother was looking after for them after the funeral of their late mother as she has succeeded their mother customarily.
8. The said Mrs. Theresa Derkyi also died and was succeeded by the Defendant. The defendant began treating the properties of the plaintiffs' of which she was made a caretaker as her own.
9. On 24August 2014, their Head of family organized a family meeting in Aduamoa, Kwahu, Eastern Region, the parties' hometown. The parties were summoned before the chief of Aduamoa, and other elders and principal members of the family.

   The purpose of the meeting was to ask the Defendant to hand over the 1st and 2nd Plaintiffs' properties to them and also to account for her stewardship since she succeeded her late sister Mrs. Theresa Derkyi who had succeeded their late mother Agnes Tema.
10. The Defendant did not attend the meeting and denied the plaintiff's ownership of the properties, hence this action.

The defendant in resisting the plaintiff's claims maintained in an amended statement of defence dated15 June 2016 that:

1. Agnes Tema her mother passed away in 1992 and was succeeded by her sister Theresa Ansah who took possession of the estate of her mother and constructed a number of stores on the frontage of Plot 12, Block XIII, New Amakom with proceeds from her late mother's cocoa farm without let or hindrance.
2. She succeeded her sister Theresa Ansah when she passed on in February 2008 and also continued with the construction of the shops to the second floor without let or hindrance.
3. Because the two properties Numbered Plot 12, Block XXIII, New Amakom and Plot 10 Block "B" Asokwa Kumasi formed part of her late mother's estate and for that matter are her family's property, she had been maintaining them with proceeds from her late mother's cocoa farms.
4. Assuming without admitting that the Plaintiffs are the owners of the disputed properties, they are estopped by conduct from claiming title to the disputed properties.

The defendant gave the particulars of the alleged estoppel by conduct as follows:

i. The Plaintiffs stood by and watched their late sister Theresa Ansah administer the disputed properties as part of the estate of their mother Madame Agnes Tema in her capacity as their mother's successor without let or hindrance from the Plaintiffs since 1992.
ii. The Plaintiffs stood by and watched their late sister, Theresa Ansah construct a number of stores on the frontage of the property numbered Plot 12, Block XXIII, New Amakom without let or hindrance from the Plaintiffs since 1992.
iii. The Plaintiffs stood by and watched their late Theresa Ansah maintain the disputed property with proceeds from their late mother's Cocoa farms since 1992.
iv. The Plaintiffs stood by and watched the Defendant administer the disputed properties as part of the estate of their mother Madame Agnes Tema in her

capacity as successor to the late Theresa Ansah without let or hindrance from the Plaintiffs since 2008.

v. The Plaintiffs stood by and watched Defendant maintain the disputed properties with proceeds from their late mother's Cocoa farms since 2008.

The defendant further denied that the first plaintiff inherited their grandfather Nana Afari Minta's cocoa farms

The defendant counter claimed for-

a. A declaration that properties Numbered Plot 12, Block XXIII, New Amakom and Property numbered Plot 10 Block "B" Asokwa Kumasi are the Defendant's family property and she is the owner by succession.
b. A declaration that all the Cocoa farms situated at Bomah, Subriso and Kukuom are family properties of the Defendant and she is the owner by succession.
c. Perpetual Injunction restraining the Plaintiffs, their representatives, assigns, workmen and person(s) claiming through them, etc from dealing with any of the disputed properties as their own.

In an amended reply and defence to the defendant's counterclaim, the plaintiffs denied the defendant is entitled to her counter claim and further averred that -

1. Paragraph 10 of the amended statement of defence is false. The Plaintiffs shall contend that the Cocoa farms of Kukuom, Subriso and Bomah were acquired by Afari Mintah without any contribution, assistance or involvement of the said Yaa Asiedua. She was never a joint or part owner of the said farms.
2. Paragraph 11 of the amended statement of defence is palpably false. The said Afari Mintah never gifted any part of "his properties" to the said Yaa Asiedua.
3. Safe that it was the children of Afari Mintah who brought a suit against Yaa Asiedua for her false claim of ownership of Afari Manta's properties, paragraph 12 of the amended statement of defence is partly admitted.
4. Paragraph 14 of the amended statement of defence is denied. The Plaintiffs shall state that Afari Mintah had in his lifetime built houses in the names of his nieces

Akua Manu at Bompata, Afua Mansah at Nsawam, Yaa Agyekumwaa in Accra and Agnes Tema at Asafo, Kumasi and beneficial ownership of these properties were merely confirmed in the persons in whose names they were acquired.

5. Paragraph 5 supra is repeated and the Plaintiffs shall state that it was only 10 acres of Cocoa farm at Kukuom, which was re-allocated to Afari Manta's nieces at Kukuom.

7. Paragraphs 16, 17, 18 and 19 of the amended statement of defence are denied. In answer, the Plaintiffs shall state as follows:

i. It was the 1st Plaintiff who started the construction on the frontage of H/No. 12 Block 23, New Amakom.
ii. 2 years after commencing the construction of the stores, the "tro-tro" from whose proceeds 1" Plaintiff was carrying out the project broke down resulting in the stalling of the said project.
iii. The 1st Plaintiff's sister Theresa Ansah (deceased) approached 1st Plaintiff concerning the continuation of the project and it was agreed between the two that since Theresa was the caretaker of the 1st Plaintiff's Cocoa farms, which he had inherited, she should use the proceeds therefrom to continue the building project.
iv. The Said Theresa Ansah used proceeds from 1st Plaintiff's Cocoa farm to continue the project and built up to the second floor when she died.
v. After the death of Theresa Ansah, Charles Fosuhene and Bennet Aboagye were mandated to continue the project since they were the only siblings then in Ghana.
vi. Charles Fosuhene continued the building up to the third floor and Bennet Aboagye provided the money for the roofing of the building.
vii. There was no hindrance because the family was then united and the clear understanding was that the property belongs to the actual beneficiary and not to Theresa Ansah.

viii. The two (2) properties did not form part of the estate of their mother since those properties had already been given to the named beneficiaries before her death in the following manner -

a. Plot No. 12 Block 23, New Amakom Extension to David Okae (1st Plaintiff).
b. Plot No. 10 Block 'B' Asokwa for Eva Ansah (2nd Plaintiff).
c. Plot No. AA59, Asafo to Theresa Ansah Derkyi (deceased).
d. H/No. NTER 138/9, Fanti New Town for Comfort Ansah (Defendant).
e. H/no. Block 'B' Plot 18 Obomeng/Kwahu to Bennet Aboagye

ix. That the gifts of the properties to the siblings/beneficiaries were well received and accepted and recognized and all lived in harmony and understanding until the Defendant succeeded Theresa Ansah Derkyi after which she started to wrongfully and greedily lay claim to all the properties.

x. That the properties were given to the siblings in the lifetime of their mother Agnes Tema and any claim of ownership after her death by the Defendant is unlawful.

xi. That at all times material to this action the Plaintiffs and other beneficiaries exercised ownership rights over the properties and never ceded control, possession and/or management to Theresa Ansah or Defendant and anything Theresa Ansah did concerning the properties was with their consent, authorization, mandate and the same was carried out with proceeds from the 1st Plaintiff's Cocoa farm.

The High Court after a full trial granted plaintiffs' prayers and dismissed the defendant's counter claim. The defendant dissatisfied appealed to the Court of Appeal. The Court of Appeal affirmed the trial court's decision in a judgment dated 29 April 2021

The defendant came to this court on a further appeal.

Grounds of Appeal

The grounds of appeal the defendant canvassed before this court are

a) The judgment is against the weight of evidence

b) The court below erred in holding that plot N0. 12 Block 22, New Amakom was held in trust for the 1st plaintiff
c) The court below erred in holding that Plot N0. 10 Block B Asokwa was held in trust for the 2nd plaintiff.
d) The court below erred in holding that the first plaintiff is the successor in title of the estate of Opanin Afari Mintah
e) The court below erred in not granting the defendant her conter claim.

Grounds (b) to (e) allege errors on the part of the lower appellate court but contrary to the requirements of Rule 6 of the Supreme Court Rules 1996 C. I. 16, the alleged errors are not particularized. I make particular reference to Rule 6 sub-rules (2) (f) and (5) which provide that-

(2) A notice of civil appeal shall set forth the grounds of appeal and shall state-

> ***(a) the address for service of the appellant;***
>
> ***(b) whether the whole or part of the decision of the court below is complained of and in the latter case the part complained of;***
>
> ***(c) the nature of the relief sought;***
>
> ***(d) the name and address of counsel for the appellant, if any, which address shall be an address for service;***
>
> ***(e) the names and addresses of all parties affected by the appeal; and***
>
> ***(f) the particulars of any misdirection or error in law, if so alleged.***

(5) No ground of appeal which is vague or general in terms or discloses no reasonable ground of appeal shall be permitted, except the general ground that the judgment is against the weight of evidence; and any ground of appeal or any part of it which is not permitted under this rule may be struck out by the Court on its own motion or on application by the respondent.

Site must not be lost of the fact that appeal is a creation of statute therefore it is important the statutory regulations provided for the procedure an appeal should take ought to be followed. Thus, this court, per Akamba JSC expressed the view in the case of ***International Rom Ltd. (N0.1) v Vodafone GH Ltd. & Fidelity Bank Ltd. (N0. 1) [2015-2016]2 SCGLR 1389 at 1400*** that ***"Appeal is a creature of statute as no one has an inherent right of appeal. Thus, the statute that created this right of appeal has also provided rules of procedure for seeking or obtaining this remedy…….. Undoubtedly, it is an atmosphere of compliance with procedural rules of court that there would be certainty and integrity in litigation"***

That compliance with procedural rules leads to certainty and integrity in litigation had been always emphasized by this court. ***In Dahabieh v S A Turqui & Brothers [2001-2002] SCGLR 498 the court emphasised the purpose of rule 6.*** At page 504 of the report the court per Adzoe JSC held that ***"Clearly the intention behind rule 6 is to narrow the issues on appeal and shorten the hearing by specifying the error made by the lower court or by disclosing whether or not a point at issue had earlier on been raised. By that way, both the court and counsel for the respondents would be enabled to concentrate on the relevant parts of the evidence in the record of proceedings and not waste time on irrelevant parts of the evidence. With respect to questions of law, it is necessary that the respondent and his lawyers know well in advance what points of law are being raised so that they may prepare their case and marshal their authorities. Whilst an indication that the point of law was or***

was not raised in the court below may help the court resolve the issue faster."

The manner grounds (b) to (e) of the grounds of appeal in the notice of appeal in this appeal are framed sets this court on a wild goose chase as to what particular errors the first appellate court is alleged to have committed. These grounds in my opinion are vague and cannot be sustained. They flout rule 6 (1) (f) and 6 (5) of C. I. 16 therefore, they cannot be permitted; they are hereby struck out.

In my view, ground (a) is the only valid ground to be considered in this appeal. It is trite that in determining this ground, which is the general ground that the judgment is against the evidence, this court, as the second appellate court is obliged to review the entire evidence and come to its own conclusions. The onus also lies on the appellant to demonstrate to the satisfaction of the court, the lapses that inform the basis of his/her complaint. ***See the case of Abbey v Antwi V [2010] SCGLR.***

The main issue that went on trial in this suit is the ownership of the properties named H/No. 12 Block 23, New Amakom; Plot N0. 10 Block B Asokwa Residential Area, Kumasi and the cocoa farms that were owned by Opanin Afari Mintah in his lifetime.

What evidence then did the parties place before the trial court in proof of their respective claims of ownership of these properties? I would for the purposes of evaluating the evidence sumarise the evidence of the parties. Upon evaluating the evidence, the next question I would consider is - what were the findings of fact made by the trial court and the first appellate court; and whether the findings so made are in line with the evidence adduced.

Plaintiff's evidence

First plaintiff testified for himself and on behalf of the second plaintiff. Per his evidence, the properties in dispute were acquired for them by their mother when they were minors. His property, Plot N0 12 Block XXIII New Amakom Extension Kumasi, has the

allocation paper and site plan issued in his name he tendered these as exhibit B. He went on to say he conducted a search at the Lands Commission Kumasi and has confirmation that the registration of the title deeds is being processed in his name. He tendered the search report as exhibit C. The other property in dispute, Plot N0. 10 Block B Asokwa Residential Area Kumasi was also purchased by their mother Agnes Tema from one Kwabena Agyapong per an indenture dated 31st March 1987; she gifted the said property to her sister the 2nd plaintiff. He tendered the lease agreement as exhibit D to confirm this. Exhibit D is in the name of the second plaintiff Eva Ansah. Similarly, their mother acquired properties for all their other siblings including the defendant except Charles Ofosuhene their last born who disrespected the mother therefore she refused to give him a property. He gave the list of every sibling's property purchased in their names.

First plaintiff further testified that as minors, their mother managed the properties for them until they attained the age of majority. They both that is first and second plaintiffs, travelled and lived abroad for a long period of time. He was back in Ghana permanently at the time of the institution of the action but the second plaintiff still lives in the United State of America. Because of their absence, their mother continued to manage the properties for them.

His grandfather Nana Afari Minta died in 1962 and he was made his customary successor. He inherited his cocoa farms located in the Ashanti, Eastern and Western regions. He was young at the time therefore his grandmother Yaa Asieduaa held and managed the cocoa farms in trust for him. He tendered various documents on some of the farms as exhibit E, confirming that the farms were owned by Nana Afari Minta. When he attained the age of majority the properties were handed over to him. In 1986, he migrated to live in the United Kingdom. Before he left he handed over the management of his house and the cocoa farms to his mother Agnes Tema to manage for him in his absence. At the time he was leaving Ghana the 2nd plaintiff was already resident in the United States of America, Their mother and sister Theresa Derkyi were

living in 2nd plaintiff's property Plot N0. 10 Block B Asokwa Residential Area, Kumasi. The management of that property was also left in the hands of their mother. Their mother died and was customarily succeeded by Theresa Derkyi. Their sister Theresa therefore took over the management of the properties including the cocoa farms on their behalf. Theresa died and the defendant was made her customary successor. There was no dispute among them, siblings as to ownership of the properties. Each of them mutually understood who owns what. They therefore allowed the defendant, when she succeeded Theresa to continue to manage their properties on their behalf. The defendant was also resident in the United States of America. They therefore entrusted the management of the properties to their younger brother Charles Ofosuhene. The plaintiffs refuted the defendant's contention that Plot N0 12 Block XXIII New Amakom Extension Kumasi, was redeveloped by her from proceeds from the cocoa farms she managed. First plaintiff testified that he financed the redevelopment from his own resources. Theresa, when she took over the management of the properties advised him that she could use proceeds from his cocoa farms to continue with the construction work. His brother Bennet Aboagye who testified as PW2 assisted him by providing funds for the roofing. When the defendant succeeded Theresa, they allowed her to continue managing the redevelopment work, which involved building of shops in front of the property. As their sister, they never expected she would turn round and dispute their ownership. Bennet Aboagye a sibling of the parties and three other family members testified confirming the evidence of the plaintiffs

Defendant's Evidence.

Charles Ofosuhene represented the defendant as her attorney in the suit, he testified on her behalf. He admitted that the houses, N0 12 Block XXIII New Amakom Extension Kumasi and Plot N0. 10 Block B Asokwa Residential Area, Kumasi were acquired by their mother Tema in the names of the plaintiffs. He however maintained that the properties remained Tema's personal properties until her demise. The properties therefore devolved to her estate. She was succeeded by Theresa Derkyi, after Theresa's death

she was succeeded by the defendant, who inherited their mother's estate. Theresa Derkyi constructed the stores in front of the New Amakom property with proceeds from the cocoa farms. When the defendant took over their mother's estate, she continued with the construction work. The defendant assigned him to manage the properties because she lives abroad. It is the evidence of the defendant that the cocoa farms in dispute were acquired jointly by their grandfather Nana Afari Minta and their grandmother Yaa Asieduaa. Before his death, Afari Minta made a gift of the farms to their grandmother Asieduaa. When Asieduaa died their mother Tema, her only child succeeded her. Therefore, the houses and the cocoa farms in dispute belong to the estate of their mother. The said properties are family properties being managed by the defendant. The defendant called one witness who said he worked for the defendant on some of the cocoa farms. He admitted he had no knowledge about the ownership of the properties in issue.

Findings of fact made by the trial court.

The trial court found as a fact that Agnes Tema made a gift of the two properties situate in Kumasi to the first and second plaintiffs. Her conduct during her lifetime confirmed that she managed the property for the plaintiffs.

The court further found (based on the legal principle established in decided cases such as Sese v Sese [1984 -1986] 2 GLR 166 that the gift being that of a parent to a child could be revoked any time in her life time or by devising same in a will) that Agnes Tema never revoked the gift in her life time and did not make any devise of the gifts to the plaintiffs in a will. The two properties therefore remain properties of the plaintiffs.

The court also found as a fact that the cocoa farms were inherited by the first plaintiff. The mother Tema managed the farms for him and so did Theresa Derkyi. The farms therefore are not part of Tema's estate.

Findings by the Court of Appeal

The Court of Appeal affirmed the findings of fact made by the trial court and held that the facts of this case are consistent with a presumption of advancement. The burden of displacing the presumption lies on the defendant. The defendant failed to discharge the burden

Consideration of the Appeal by the Supreme Court

The evidence on record on the ownership of the two houses in dispute support the legal principle of presumption of advancement in favour of the plaintiffs; a presumption the defendant did not succeed in rebutting. The lead judgment had sufficiently dealt with the principle of advancement; no useful purpose would be served to repeat same.

The appellant herein is praying this court to interfere with the concurrent findings made by the trial court and affirmed by the 1st appellate court. It had been a long established principle that the second appellate court would be slow in granting such a prayer unless the appellant demonstrates that some specific breaches had occurred and for which redress he is seeking the opinion of the second appellate court. This court in the case of ***Ghana Commercial bank Ltd.(N0 1) v Plange & Others (N0 1); Ghana Commercial Bank Ltd (N0 1) v Boateng & Others (N0 1) (Consolidated) [2013-2014] 1 SCGLR 743,*** reinstated its position when it numerated instances where concurrent findings may be interfered with to include: ***"(i) where the findings of the trial court are clearly not supported by the evidence on record or where the reasons in support of the findings were unsatisfactory; (ii) improper application of a principle of evidence or where the trial court had failed to draw an irresistible conclusion from the evidence; (iii) Where the findings were based on a wrong proposition of the law, such that if that proposition was corrected, the finding would disappear; (iv) Where the finding was inconsistent with crucial finding on record'.***

The appellant in her statement of case had not succeeded in demonstrating that any of the above numerated circumstances exist in the judgment on appeal.

The evidence on record documentary and oral proving plaintiffs' ownership of the properties in question is overwhelming. Family members of the parties who have personal knowledge of facts surrounding the acquisition of the properties in dispute supported the position of the plaintiffs. The defendant invariably did not produce any convincing evidence that could have swayed any findings in her favour. None of the instances where a second appellate could interfere in the concurrent findings of the two lower courts exists in this instant case. I concur that the appeal has no merit and should be dismissed.

The appeal is dismissed in its entirety the judgment of the Court of Appeal is affirmed.

A. M. A. DORDZIE (MRS.)
(JUSTICE OF THE SUPREME COURT)

N. A. AMEGATCHER
(JUSTICE OF THE SUPREME COURT)

G. TORKORNOO (MRS.)
(JUSTICE OF THE SUPREME COURT)

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