IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2021

CORAM: DOTSE JSC (PRESIDING)
DORDZIE (MRS.) JSC
OWUSU (MS.) JSC
LOVELACE-JOHNSON (MS.) JSC
KULENDI JSC

CIVIL APPEAL
NO. J4/32/2021

15TH DECEMBER, 2021

1. EJISU STOOL
2. EJISU APENKRA STOOL LAND .... PLAINTIFFS/APPELLANTS/APPELLANTS

VRS

J. C. ADDAI ..... DEFENDANTS/RESPONDENTS/RESPONDENTS

JUDGMENT

DOTSE JSC:- The facts and the issues raised in this appeal admit of no controversy whatsoever. This is an appeal by the Plaintiffs/Appellants/Appellants, hereafter referred to as Plaintiffs against the judgment of the Court of Appeal dated 20th November 2020 which affirmed the judgment of the trial High Court, dated 30th January 2018.

MODES BY WHICH A STOOL, COMMUNITY ACQUIRES ABSOLUTE TITLE TO LAND

This was settled and stated clearly in the celebrated case of ***Ohimen v Adjei 2 WALR 275 at 279***, where the court stated the following as the principal methods by which a stool acquires land:

> *"There are four principal methods by which a stool acquires land, they are: conquest and subsequent settlement thereon and* ***cultivation by subjects of the stool, discovery by hunters or pioneers of the stool of unoccupied land and subsequent settlement thereon and use thereof by the stool and its subjects; gift by the stool, purchase by the stool.*** *Each of these methods involves either the sacrifice of lives of subjects, or the expenditure of energy or contribution of money by subjects, and use and occupation of the land by the subjects." Emphasis*

These modes of acquisition stated supra will be relevant in the determination of the issues raised in this land appeal.

RELIEFS AND FACTS RELIED UPON

The Plaintiffs instituted the action against the Defendant/Respondent/Respondent, hereafter referred to as Defendant, claiming the following reliefs:-

(a) A declaration that all that piece or parcel of land more particularly situate at Apenkra bounded on the Eastern part of river Beakwa both sides on Apenkra-Kokofu roads, Pramo stool lands, Eddwinase Stool lands, Aboaso Stool lands, Adwumanu Stool lands and Nuaso, Preyaase Stool lands, is the bonafide property of the 1st plaintiff with the 2nd Plaintiff being the Caretaker Chief thereof.
(b) Damages for Trespass
(c) Recovery of possession.

Upon service of the writ on him, the Defendant also filed a counterclaim in which he claimed the following reliefs against the Plaintiffs.

1. Declaration of title to all that stretch of land at a place commonly called "Assia" on Apenkra Stool Land which land is bounded by the landed properties of

Matthew Nsiah Adubofour, Amma Adomah, Opanin Kwame Nuamah's family and River Biakwa which land has been defendant's family land for several centuries.

2. Recovery of possession
3. Damages for trespass and perpetual injunction, restraining plaintiffs' their servants, agents, assigns and any persons claiming title through them.

FACTS

The facts giving rise to the instant appeal take its genesis from an earlier suit commenced by the Defendant on behalf of his family against three persons reputed to be grantees of the Plaintiffs family, at the District Court Kuntenase, Suit No. A1/35/05 intitutled ***Opanyin J.C Addai (suing for and on behalf of Asona Family – Plaintiff v 1. Brother Tuffour 2. Kwaku Sarkodie 3. Abena Akomah all of Apinkra – Defendants.***

In the above suit, the Defendant herein, therein Plaintiff claimed "Declaration of title to the disputed Assia Lands" among other reliefs and detailed the boundaries therein. It is interesting to observe that, during the trial of this suit at the District Court, the Plaintiffs herein did not join the suit, but rather engaged their own solicitor who acted for them in the current suit at the High Court to defend their said grantees in the District Court at Kuntanase. Later, they sought to broker settlement between the Defendant herein and the parties he sued in the District Court, but the said attempt was unsuccessful. The suit then continued in court and the District Court entered judgment in favour of the Defendants family therein against the Plaintiff's grantees therein, on 29th January 2016 and decreed title in the same land in the Defendants family. Even though the Plaintiffs grantees filed an Appeal against the said judgment, they failed to pursue same. In order to circumvent the effect of the said judgment, the Plaintiffs herein issued the instant writ referred to supra against the defendant.

JUDGMENT BY THE HIGH COURT, KUMASI DATED 30TH JANUARY 2018

After trial in which all the parties testified and were cross-examined as well as called witnesses who testified, the learned trial Judge delivered judgment in favour of the Defendants and dismissed the plaintiff's case.

After analysing the pleadings, the evidence and the law and making the appropriate findings of fact, the learned trial Judge concluded his judgment in favour of the defendant as follows:--

> "The Plaintiffs in this case, failed to discharge their burden of proving the probability of the existence of the fact that the 2nd Plaintiff is a caretaker Chief of Apenkra stool lands. In respect of the issues raised and discussed in this judgment, the Defendant was able to prove on the balance of probability that his family has usufructuary interest in the Assia lands at Apenkra. The Defendant in this case also proved with the support of a copy of the judgment and proceedings that there was an attempt at settling the matter then pending before the District court, Kuntanase but failed. The Defendant also went ahead to prove that during the pendency of the trial at Kuntanase the Plaintiffs in the case before this court looked on as their grantees were contested in court by J.C Addai and are therefore bound by the decision of the said District Court since it is a valid judgment from a court clothed with competent jurisdiction. From the facts and pieces of evidence adduced by the Defendant, I am convinced that the Defendant J.C Addae **has proved on a balance of probabilities the existence of the fact that his family has an usufructuary interest in the Assia Lands located at Apenkra than its non- existence.** The Plaintiff being the Ejisu Stool and the Ejisu Apenkra Stool having failed to prove their claims against the Defendant, **I enter judgment in this case in favour of the Defendant who proved his counter claims against the Plaintiff and grant him the following reliefs**:
>
> 1. "I declare the Defendant, J.C.Addae and his family as having title to all that stretch of land commonly called "Assia" on Apenkra stool land which land is bounded by the landed properties of Matthew Nsaih Adubofour, Amma Adomah, Opanin Kwame Nuamah's family and River Biakwa as theirs for centuries.

2. I grant to the Defendant and his family an order to recover possession of all plots or pieces of land adversely granted by the 1st and 2nd Plaintiffs to all persons, institutions or organisations on his family's land described in relief 1 (one) above.
3. I award damages in the sum of GH¢20,000.00 against each of the Plaintiffs for trespassing onto the Defendant's family land.
4. The Plaintiffs, all their assigns, servants and all persons claiming title through them are hereby perpetually restrained from interfering in the Defendant and his family's quiet enjoyment of their usufructuary rights and further trespassing onto the Defendant's land as described in relief 1 (one).
5. Costs of GH¢10,000.00 is awarded against each of the Plaintiffs.

APPEAL TO THE COURT OF APPEAL AND DISMISSAL OF SAME ON 20TH NOVEMBER 2020 IN A UNANIMOUS DECISION

The Court of appeal dealt with the principles of law espoused in the celebrated case of **Ohimen v Adjei** supra, as well as ***Nkwantabisa II v Bonsu [1997-98] 1 GLR 892 and Bruce v Quanor (1959) GLR 292***and discussed the relationship between the Ejisu Stool and that of the Apenkra sub-stool of the Defendants.

The court then proceeded to make the following notable pronouncements on overt acts of ownership exhibited by Defendants family as well as the findings of facts made by the learned trial court which the Court of Appeal concurred in.

"In this case before us we have a subject of the Apenkra sub-stool who has been in undisputed possession of lands his family inherited from its forefathers over hundred years ago. **Their possession has been in the form of cultivation of cocoa, oil palm, citrus. The family has also been winning sand on this land without any hindrance on these lands known as Assia Lands. Indeed the 1st Plaintiff testifying through Nana Kwadwo Ampofo admitted the possession of the Defendant's family to the Assia lands and accepted even**

further that the Defendant's family have acquired usufructuary interest in the said lands.

The legal position is clear in such circumstances that where **such a subject cultivated an unoccupied land of his stool or sub-stool and settles thereon he acquires the usufructuary interest in such land, an interest which cannot be divested by the stool or sub-stool, in our case the Apenkra stool, without Defendant's family's consent.** The authorities are agreed that the usufruct has security over the land he has reduced into his possession and that land so reduced into possession is immune from divestiture by the stool, interest acquired by the usufruct acquires the attribute of inviolability. It is such interest that the Defendant and family has acquired in the Assia lands." Emphasis

The overt acts of ownership performed by the Defendants family on the disputed land are indeed massive and cannot be overlooked.

The Court of Appeal also took time to discuss in detail the issue of estoppel when the plaintiffs herein sat by and did nothing to prevent the Defendant from pursuing the case at the District Court against the Plaintiff's grantees. This is how the Court of Appeal delivered itself on this ground.

"Further evidence that the trial Judge relied on in making the declaration of title in the Defendant's family was their alertness in suing certain trespassers introduced on this land by the same 1st Plaintiff stool acting per the Ejisuhene Nana Afranie Okese IV. When the trespass got to the notice of the Defendant he issued a writ against the trespassers in the Kuntanase District Court. **The Ejisuhene who made the grant to these Defendants who were sued by the Defendant sought to settle the matter out of court but failed. When the case resumed in court the trespassers i.e. the grantees of the Ejisuhene failed to come to court and judgment was given for the Defendant. This judgment has not been set aside.** The trial Judge anchored this judgment also on this District Court judgment on the grounds that the **1st Plaintiff stool knew of the adverse claim**

the Defendant was making to his grant of part of this land to the trespassers hauled before the Kuntanase court but stood by for his grantees to defend his alleged interest in the land and failed. Here again the trial Judge was spot on in his reference to the case of ***Nyamah v Amponsah [2009] SCGLR 561*** where the Supreme Court held amongst others **that where a grantor stood by when his grantee is being challenged by a third party to his grant and he is content to see the battle fought by his grantee he the grantor will be bound by the results of the case and will be stopped by this conduct from reopening the issue determined by the court.** The Ejisuhene who granted the land to the Defendants in the Kuntanase District Court knew of the adverse claim Defendant herein was making to his grant to those persons but failed to join the suit. All it did was to attempt a settlement which failed. When the attempt at settlement failed the 1st Plaintiff stool stood by and judgment was given the Defendant, then Plaintiff in the Kuntanase court, against its grantees in respect of part of this Assia land. **We are of the opinion the trial Judge discharged his judicial duty creditably in his reasoning on this part of the evidence and application of the law on estoppel**." Emphasis

One red-herring that surfaced during the hearing of this suit is an apparent reference by the Defendant herein to CHRAJ fordetermination. Eventhough this point is of no substance, the Court of Appeal dealt with it admirably that it is worth referring to as follows:-

"Counsel for the Plaintiffs challenged the jurisdiction of the CHRAJ to entertain land matters. **That may be a genuine challenge but the evidence went further than just appearance and findings before CHRAJ. The evidence is that the Apenkrahene himself not under any compulsion invited his elders and witnesses, as testified to by Nana Nsiah Adubofour and Nana Kwaku Gyakye, at a ceremony gifting the remaining Assia lands to the Defendant.On the evidence the trial Judge had credible and sufficient**

evidence from which he found a valid gift which cannot be questioned by a subsequent Chief of Apenkra, currently the 2nd Plaintiff." Emphasis

All the above incidents which the Court of Appeal relied on are consistent with the decision in the locus classicus case of ***Ohimen v Adjei*** referred to supra.

Based on all the above reasons stated supra, the Court of Appeal authoritatively dismissed the Plaintiffs appeal in the following words:-

> "Plaintiffs complained about the award of damages but provided no basis for questioning the award and we found none either. **In such a situation that ground of appeal also finds no favour and is accordingly dismissed. In conclusion we dismiss the appeal in its entirety.**" Emphasis

APPEAL TO THE SUPREME COURT AND THE GROUNDS THEREOF

The Plaintiffs still felt aggrieved with the decision of the Court of Appeal that they filed an appeal to the Supreme Court with the following as the ground of appeal:-

Grounds of Appeal

1. "The judgment is against the weight of evidence
2. Additional grounds of Appeal may be filed after the receipt of the records of proceedings.

Relief being sought from the court of appeal

> "That the judgment of the court below dated 20th day of November 2020 be set aside and the matter determined in favour of the Plaintiffs/Appellants/Appellants."

It has to be noted that, the Plaintiffs did not file any further grounds of appeal save the sole ground of appeal referred to supra.

STATEMENT OF CASE BY COUNSEL FOR PLAINTIFFS

We want to put on record our lack of appreciation of the presentation of the Statement of Case of the former Solicitor on record of the Plaintiffs, Hansen K. Kodua.

The Statement of Case had been poorly written and badly presented. There was infact no coherence in the thought process, and references to the evidence from the appeal record. For example, Rule 15 (1) (b) of the Supreme Court Rules, 1996, C. I. 16 provides that *"an appellant shall file with the Registrar a statement of his case based on the grounds of appeal as set out in the notice of appeal."*

We have noted earlier, there is only one ground of appeal, that is, the omnibus ground of appeal that *"the judgment is against the weight of evidence".*

Rule 15 (5) of C. I. 16 further provides as follows:-

> "The Statement of Case of each party to the appeal
>
> (a) **Shall set out the full case of each party and arguments to be advanced by the party including all relevant authorities and references to the decided cases and the statute law upon which the party intends to rely**." Emphasis

We have observed with much pain the unprecedented manner in which the learned Counsel for the Plaintiffs, prepared and presented the Statement of Case. For example, on page 6 of the Statement of Case, learned Counsel states as follows:-

> **"My Lords, I humbly wish to submit that the Appellants proved their case on the balance or preponderance of the probabilities and improbabilities against the Respondent on all the reliefs endorsed on the writ of summons and statement of claim**. On the contrary, the Respondent failed to prove his counterclaim and some positive averments in his statement of defence and counterclaim yet judgment was entered in his favour. "Emphasis

Indeed the entire statement of case is replete with such unsubstantiated statements, without any reference to the evidence on record in proof.

Learned counsel for the Plaintiff, states a legal principle and then seeks to apply it without any reference to the evidence in support. Again, learned counsel for the Plaintiffs correctly stated the legal principle that *"an appeal is by way of rehearing particularly where the appellant alleges in his notice of appeal that the decision of the trial court is against the weight of evidence."*

He then rightly proceeded in our view, to state the duty on an appellate court such as this court to analyse the entire record of appeal by considering all the evidence on record, oral and documentary, and consider whether the conclusions reached by the learned court are amply supported by the evidence. Learned Counsel then proceeded to list a litany of about 22 cases as if it was a race for the court to consider the number of cases referred to in the Statement of case and win points or marks.

We observe rather painfully and surprisingly that, learned Counsel did not consider it worthwhile to refer to pieces of evidence on record to support the legal propositions he had made. The inference we draw is that, there were no pieces of evidence to support the contention of learned Counsel for the Plaintiffs.

On the whole, we find the statement of case submitted by learned counsel for the Plaintiffs wishy washy, devoid of any merit and without any substance.

STATEMENT OF CASE BY LEARNED COUNSEL FOR DEFENDANT

On the contrary, we have found the Statement of case submitted by learned counsel for the Defendants, Frederick Yeboah Agyakwa, brief but incisive and containing a lot of substance.

Learned Counsel for the Defendant, stated the principle of law or a legal issue, refers copiously to the evidence on record and invited the court to make the necessary legal conclusions based on the submissions contained therein.

For example, learned counsel for the Defendant in his submission on ground one of appeal, where the appellant argued on inconsistencies and conflicts in the identity and description of the land the subject matter of the dispute, responded to those arguments

by first referring to the pleadings. Thereafter, he referred copiously to the evidence and the cross-examination and supported same with decided cases to support the principle of law involved.See pages 7 to 9 for example of the Defendants Statement of case.

On the whole, without meaning to be repetitive, it is abundantly clear that, learned Counsel for the Defendant indeed made the necessary legal arguments and supported same with cogent evidence on record.

In our estimation, the duty that was cast on Counsel in the presentation of his Statement of case as indicated and referred to supra in Rule 15 (5) of C. I. 16, had been properly performed and we give him credit for that.

ANALYSIS BY THIS COURT

We have reviewed the entire evidence based on the record of appeal and the laws applicable. We are satisfied that, the learned trial Judge and the first appellate court appreciated the duty that was cast upon them and made the necessary findings of fact.

There are a host of respected judicial decisions that where a trial court makes findings of fact, which had been concurred in 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. From our review of the record, we find no genuine basis to depart from those findings of fact and conclusions and we accordingly confirm same.

See cases like the following:-

- **Achoro v Akanfela [1996-97] SCGLR 209**
- **Akuffo-Addo v Cathline [1992] 1 GLR 377**
- **Obeng v Assemblies of God Church, Ghana [2000] SCGLR** 300 where the Supreme Court unanimously held as follows:-

"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 appellant 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 that the findings of fact could 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."* *Emphasis*

CONCLUSION

In conclusion, it must be noted that, the position of the law as was stated in the locus classicus case of ***Ohimen v Adjei*** supra, appears to have been endorsed by the distinguished authors on Land Law in Ghana.

For example, at page 11, of Ollennu's Principles of Customary Land Law in Ghana, the position is stated with much clarity as follows:-

> ***"The Stool/Skin constitutes a corporation and the occupant of the Stool or Skin, or the head of the tribe together with his elders or counselors, are trustees holding the land for the use of the community, the tribe and family.*** *The beneficiary ownership of all land in Ghana remains vested in the stools, skins and families who have held it since time immemorial. Only their exercise of their customary rights is now subject to some control."* Emphasis

Yaw Oppong in his invaluable book, *"Contemporary Trends in the Law of Immovable Property in Ghana"* page 661 referred to Sarbah's Fanti Customary Laws where the learned author wrote thus:-

> ***"At most the king/chief is but a trustee who is as much controlled in his enjoyment of the public lands by his subordinate chiefs and counselors as the head of a family by the senior members thereof." Emphasis***

The role and conduct of the Defendant and his predecessors, their long periods of occupation and performance of overt acts of ownership are consistent with the basic principles of customary land law espoused by the distinguished authors supra.

We would under the circumstances dismiss the appeal filed by the plaintiffs against the Court of Appeal judgment dated 20th day of November 2020. The appeal thus fails and is accordingly dismissed.

In affirming the judgment of the trial High Court dated 30th January 2018 and that of the first appellate court of even date, we end this delivery by reference to a quote of Georgina Wood C.J, in the case of ***Agyeman v Anane [2013-2015] 1 GLR 131***, where the learned and distinguished Chief Justice commented on the concept of trust under customary law as follows:-

> *"Customary law detests, frowns upon and abhors dishonest or unjust gain, unjust enrichment, inequity, fraud, theft, roguery, collusion and the like."*

It is our hope that occupants of stools and stool elders will conduct their affairs in such a way as to ensure that their subjects usufructuary interests are inviolable and well protected and enjoyed by them.

The appeal fails.

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

A. M. A. DORDZIE (MRS.)

(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)

(JUSTICE OF THE SUPREME COURT)

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