**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT**

**ACCRA – A.D. 2018**

**CORAM: ANSAH, JSC (PRESIDING)**

**ADINYIRA (MRS), JSC**

**DOTSE, JSC**

**YEBOAH, JSC**

**BAFFOE-BONNIE, JSC**

**CIVIL APPEAL**
**NO. J4/23/2016**

**6TH JUNE, 2018**

1. GENERAL EMMANUEL A. ERSKINE
2. ROSAMUND E. ERSKINE ……. PLAINTIFFS/APPELLANTS/APPELLANTS

VRS

1. VICTORIA OKPOTI
2. MALLAM MUSA ……. DEFENDANTS/RESPONDENTS/RESPONDENTS

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# JUDGMENT

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**DOTSE, JSC:-**

**PREAMBLE**

The Plaintiffs/Appellants/Appellants hereinafter referred to as the Plaintiffs on the 24/04/2002 per their lawful Attorney, Major Albert Okine sued the

Defendants/Respondents/Respondents, hereafter Defendants in the High Court, Accra claiming a declaration of title to land described therein, possession and injunction.

The Trial High Court entered judgment in favour of the Defendants on the 21st day of December 2007. An appeal by the defendants against the High Court decision to the Court of Appeal was also by a unanimous decision dismissed on 25th October 2012. It is this judgment that the Plaintiffs have further appealed to this court

**BRIEF FACTS**

The Plaintiffs as stated in the preamble supra, issued a writ of summons against the Defendants therein claiming the following reliefs:-

a. Declaration of title to the lands described in paragraphs 6 and 8 of the Statement of Claim against the Defendants jointly and severally.

b. Recovery of possession of the two (2) plots

c. Damages for trespass

d. Perpetual injunction against the Defendants their agents, servants and workmen from dealing with the land.

e. Costs

We wish to state that originally, the Plaintiffs issued the writ against three defendants namely:-

1. Victoria Okpoti

2. Mallam Musa and

3. Samuel Nartey

It is also clear from the record of appeal that, on the 26th day of February 2004 the High Court, then presided over by Felicity Amoah J, (Mrs) ordered as follows:-

> ***"In the absence of any objection, the 3rd Defendant is hereby struck out from the suit."*** *Reference page 35 of Volume 1 of the record. The suit was therefore conducted against only the 1st and 2nd Defendants therein.*
>
> *We also wish to state the descriptions of the two plots of land as described by the Plaintiffs as per their statement of claim as follows:-*
>
> ***PLOT NO I*** *per paragraph 8 of Statement of Claim and Registered as No. 3282/1974.*
>
> *The land situate and lying at New Nungua-Accra is bounded on the North-East by the property of Lt. A.C. Okine measuring 100 feet, on the South –East by the property of Rosamond A. Erskine measuring 140 feet, on the South West by a proposed road measuring 100 feet and on the North-West by another proposed road measuring 140 feet covering a total area of 0.32 acre approximately."*
>
> ***Plot No 2, as per paragraph 11 of the Statement of Claim, and Registered as Land Documents No. 3283/1974 and described*** *as follows:-*
>
> *"The land situate and lying at New Nungua-Accra is on the North-East by stool land measuring 100 feet, on the South-East by a proposed road measuring 140 feet, on the South-West by another proposed road and measuring 100 feet, and on the North-West by the property of General E. A. Erskine measuring 140 feet covering an approximate area of 0.32 acre."*

The crux of the plaintiff's case is that they and the 2nd Defendant, obtained their grants of the land in dispute from the Nungua Stool. As per Exhibits A and B which were tendered into evidence during the trial, the Plaintiffs obtained their grants sometime in

1973 after conducting searches in the Deeds Registry which disclosed no adverse interest in the land. As stated supra, their title deeds were accordingly registered as Nos. 3282/1974 and 3283/1974 respectively.

The Plaintiffs contended that they also performed overt acts of ownership in respect of this land by taking possession thereof, planted trees, fixed corner pillars and constructed a structure on the land.

The 1st Defendant however entered the land of the Plaintiffs and commenced building operations on the land. When confronted by the plaintiffs, the 1st Defendant claimed her root of title through the 2nd Defendant whom she contended was the one who sold the land to her. It was these specie of conduct that led the Plaintiffs to institute the instant suit against the Defendants in the High Court, Accra. Whilst admitting in the pleadings that it was 2nd Defendant who sold the land to the 1st Defendant, he contended further that he had acquired the said parcel of land from the Nungua Stool by a deed dated 23rd May 1969 and registered as number 1220/1969. This document was tendered as exhibit 3 during the trial in the High Court.

The 2nd Defendant further contended that his documents of title, Exhibit 3 was the first to be registered and therefore gained priority over the Plaintiffs title deeds, exhibits A and B respectively.

Both parties testified, called witnesses and tendered documents to prove their various contending issues of fact and law. The plaintiffs in particular called one Herbert Solomon as PW1. He was described as an Assistant Chief Executive Officer of the Lands Commission Secretariat.

It is very instructive to observe that, during evidence under cross-examination by learned counsel for the 2nd Defendant on the validity and extent of exhibit 3, the said PW1 testified in part as follows:-

Q. "Exhibit 'J' reveals that Mallam Musah's land had been plotted at the Lands Commission Secretariat is that not so?

**A. My Lord, it's a portion of his land he presented which was plotted in Exhibit J.**

Q. Do you know the average of the land of Mallam Musa that was plotted?

A. **No my Lord** " emphasis

During the trial of the case at the High Court the Plaintiffs also called a former Stool Secretary to the Nungua Stool, one Rain Adotey as PW2. We have considered the evidence of this particular witness in context and found it to be quite explanatory to the entire case and therefore quoted in extenso, portions of same.

This PW2, confirmed in material particulars the probative value that ought to be attached to the evidence of PW1. During his cross-examination by learned counsel for the 2nd Defendants PW2 testified thus:-

*Q. "I am further putting it to you that since 1969 when Mallam Musah registered and occupied the land to the West of the Dam at East Legon, the Nungua Stool had never challenged him*

*A.* ***My Lord, the document Exhibit 3 was not registered in 1969 because there were disputes on the land and that it was in 1992 that they registered portion of the land for them****. They were made to understand that the stool had given out portion of the land to other people My Lord, since portion of the land was given to other people by the Stool. The result is that, where there is a dispute on such land between those granted and Mallam Musah or any other trespasser, we throw our support to those people the stool had granted such parcel or portion of land to as in the instant case before this court." Emphasis supplied.*

As we have indicated supra, the Defendants also testified on their individual behalves and called D.W.1, Nii Amisadai Bortey Mensah who was reputed to be an adviser to Nii

Odafio, III Nungua Mantse and confirmed the transactions between the Nungua Stool and Mallam Musa as well as the authenticity of Exhibit 3.

**DECISION OF THE HIGH COURT**

Based on the evidence adduced during the trial in the High Court, both oral and documentary, the learned trial Judge, Kusi-Appiah J.A. sitting as an additional High Court Judge on the 21st day of December 2007 dismissed the claims of the plaintiffs, and instead entered judgment for the Defendants in the following terms:-

> *"However, they maintained that the document of the 2nd defendant Exhibit "3" was not stamped before being registered. The Plaintiffs posed this question: How can a document receive a registration number when it had failed to go through the stages in particular stamping?*
>
> *Before answering the question posed by the Plaintiffs, we have to answer these crucial questions:* ***whose duty it is to have the 2nd defendant's document receive the stamp and plotting at the Lands Commission Secretariat?*** *Assuming without admitting, can it be said that because the* ***2nd defendant's registered land at the Lands Commission did not receive the stamp and plotting at the Lands Commission the said registration was forged or procured by fraud?***
>
> *I do not think so. This is because it is the duty of the Lands Commission to ensure that the 2nd defendant's document Exhibit "3" went through the appropriate process before being registered as number 1220 1969.* ***I must say that the Lands Commission's own internal administrative processes or niceties should not be the concern of the 2nd defendant.*** *In any case, evidence before the court indicates that that the 2nd defendant land and the subject matter of the alleged fraud and forgery was duly stamped as number AC 3440A/69 and registered in the Land Registry as number 1220/1969 with concurrent number 32000/19269. I therefore hold that the 2nd defendant's*

*registered land at the Lands Commission, Exhibit "3" cannot be said to been have forged or procured by fraud because that document did not receive the stamp and plotting at the Lands Commission during the registration. " emphasis supplied*

In the brief narrative above, the learned Trial Judge did not appreciate the concerns and issues raised by the Plaintiff's about the irregularities inherent in the registration process of 2nd Defendants Exhibit 3.

Based on the above analysis, the learned trial Judge completely shied away from assessing the probative values of Exhibits J, and K in particular, which was a list of persons including the plaintiff's whom PW2 had confirmed that the Nungua Stool had made grants of land to.

Reference pages 104-105 of volume one of the record of appeal. In concluding the judgment in the High Court, the learned trial Judge stated as follows:-

*"My understanding of the law is that a grantor who has previously granted land to one person is not permitted by any law to derogate from that grant and give the same plot of land to another person except where the first grantee is in breach of a covenant entitling the grantor to re-enter and he has actually re-entered the land.*

*Guided by the authority in* ***Brown v Quashigah's*** *case supra, I find that the Nungua Stool having validly created an interest in a large tract of land in New Nungua also known as East Legon measuring 275.47 acres in 1969 to the 2nd defendant, the Nungua stool divested herself of her interest in that property and thus would have nothing to grant or convey to a different person. The Nungua Stool is not permitted by any law to derogate from that grant and give the same plot of land or part thereof to any other person.*

*Consequently, I hold that the Nungua Stool in 1972 had no interest in the land to make a valid grant to the plaintiffs herein. The well-known rule of nemo dat quo*

*non habet applies with much force in the instant case. In the result, the earlier grant to the 2nd defendant prevails, not because of the priority of registration but because the purported subsequent grant to the plaintiffs is null and void. The plaintiffs, therefore, had no valid title to the land in dispute.*

***If there are any issues or grounds in this case not expressly dealt with so far, then, by my silence I mean to show that I am not impressed with them and are unmeritorious and dismissed as such.***

***From the above reasons, I would dismiss the plaintiffs' action and enter judgment for the defendants herein. The defendants are to recover costs of ¢10 million each (GH¢1000 each) against the Plaintiff herein.*** *" Emphasis*

**APPEAL TO THE COURT OF APPEAL AND THE DECISION THEREIN**

Feeling aggrieved with the decision of the trial High Court, the Plaintiffs appealed the decision to the Court of Appeal.

The Plaintiffs lost the appeal to the Court of Appeal, which in a unanimous decision rendered on 25/10/2012 dismissed the appeal in the following terms:

*"Quite apart from the assertion by P.W.1 debunking plaintiffs' contention as referred to above, the fact that the 1st defendant's later title over the same plots plaintiffs claimed as theirs was successfully registered in 1997, notwithstanding the existence of Plaintiffs' registered instruments covering almost the same portion of land at the Lands Commission Secretariat as far back as 1974, is enough testimony of what really goes on at the Lands Commission Secretariat.*

*It is therefore not surprising that the Lands Commission could register the same piece of land in the names of two different persons on different occasions notwithstanding the existence of evidence of an earlier registration. This is the very reason why the highest court of the land has held on a number of*

*authorities that registration per se will not confer any legal right or title on any person who took his grant from a person who had no legal title to convey. See the cases of* ***Amuzu v Oklikah [1998-99] SCGLR 144; Brown v Quashigah [2003-2004] SCGLR 930*** *etc.*

*The evidence on record is clear, as was recounted by the trial Judge that, at the time the Nungua Mantse purported to grant the four plots of land to the Plaintiffs for building purposes, the* ***Stool had already made a customary grant of a larger piece of land enclosing the said plots to Mallam Musa as Head of the Hausa Community. The fact of registration of the said piece of land under the Land Registry Act does not derogate the grant of its customary nature. The Nungua Mantse therefore had no authority to re-alienate portions of the land to third parties when the first lease had not expired.***

*To use the words of the trial Judge; "the law is that a grantor who has previously granted land to one person is not permitted by law to derogate from that grant and give the same plot of land to another person except where the first grantee is in breach of a covenant entitling the grantor to re-enter and he has actually re-entered the land."*

***We do not think the Plaintiffs have made a case strong enough to upset the judgment of the trial court. We therefore dismiss the appeal and affirm the judgment of the court below. Emphasis***

**NOTICE OF APPEAL AND GROUNDS THEREOF TO THE SUPREME COURT**

Feeling yet aggrieved and dissatisfied with the decision of the Court of Appeal, the Plaintiffs on the 28th day of November 2012 filed a Notice of Appeal against the judgment of the Court of Appeal dated 25th October 2012 with the following as the grounds of appeal to this court.

**1. The judgment is against the weight of evidence**

2. The holding by the Court of Appeal and the High Court, that the inscription "AC 3440A/69" appearing in exhibit 3 denoted payment of stamp duty is unsupportable by the requirement at law that payment of stamp duty ought to be denoted only by impressed stamp on the face of the document, not in any other manner.

3. The Court of Appeal, and the High Court also, erred in not taking cognizance of the fact that the 2nd defendant never claimed that he paid stamp duty.

4. Their Lordships in the Court of Appeal, and the High Court Judge failed to consider the effect of the prohibition in Act 311 that an unstamped deed should not be registered.

5. The holding of the Court of Appeal that exhibit 3 was stamped but "it is possible for the stamp impression to appear invisible when photocopies" is speculative and unsupported by the evidence on the record..

There being no additional grounds of appeal filed, we proceed to consider the above grounds of appeal. But before we do so, we consider it worthwhile to quote in extnso, the entire document on record, tendered and marked as Exhibit J, on page 303 of Volume one thereof.

**CONTENTS OF EXHIBIT J**

**7th February 1992**

*"BOH/ICS.15/Vol.3*

*Dear Sir,*

***DOCUMENT INDEXED AS GSL.844/69***

*Your document which was* ***processed in the then Lands Department but was not plotted in the Control Records has today been plotted. It is however, partly affected by land acquired by Government in 1944. That portion could not therefore be validly conveyed to you by the Nungua Stool.***

***A large portion of the rest of the land have been conveyed under various transactions to individuals by the La Stool and its sub-stools and also by the Nungua Stool. The portions which have not been conveyed and recorded here as at now will stand in your name.***

*Yours faithfully,*

*For Executive Secretary*

*Mallam Musah*
*P.O. Box 12300*
*Accra-North*
*Cc 32000/19265"*

In order to put the effect of this exhibit J in proper perspective, it is important to set out in detail the introductory remarks and explanation of PW1, the official from the Lands Commission pursuant to the tendering of Exhibit J. He testified thus:-

**"At this stage the witness narrated the process of registration at the Lands Commission".**

**"Witness stated that when a document is received, it is checked to see if the two parties or parties involved have accordingly signed. We also examine whether the oath has been sworn accordingly. If these requirements are, then the document is given a number. Thereafter the Lands Commission received stamp is fixed on the document. It is then**

**passed on to the Accounts Section for necessary presentation and processes fees to be paid. Thereafter, the document is returned to the presentation office for movement form to be placed on the document. It then goes to the Control Records Office for a report to be given as to whether the land affects the stated acquired interest or otherwise" or the schedule as stated in the document conforms to the site plan. From there, the document goes to Greater Accra Regional Records office also for a report to be presented to ascertain whether the land had not been given out to any other person before then as top whichever Family, stool etc owns that area land. Thereafter the document comes to the Legal Section for the legal section to ascertain the true state of the records based on the citation on the document. Based on the true state of the records the legal section directs whether to plot the land as family land, stool land or state land etc. From there, the document goes to the Regional Lands Officer who then passed it on for plotting or reject in which case the document is returned to the applicant.**

**At the Lands commission, our task is completed when the document is plotted in the name of the applicant.**

**Thereafter, the document is returned to the applicant to forward it to the Deeds Registry which is a different outfit or Department for registration. With the leave of the court, a copy of a letter reference No SCR/ICS 15/Vol.3 dated 7th February 1992, signed by the Executive Secretary addressed to Mallam Musah is admitted in evidence as Exhibit 'J' without objection."** Emphasis supplied

**PROCESS OF REGISTRATION OF A VALID LAND DOCUMENT AT THE LANDS COMMISSION**

The above constitute the evidence that was led by PW1 before Exhibit 'J" was tended without objection. From this evidence, the processes which a document presented for registration at the Lands Commission goes through were enumerated as follows:-

1. Confirmation of the signature of the parties to the document.
2. Proper administration and swearing of the oaths.
3. If the above are confirmed, then the document is given a **number**.
4. Fixing of the Lands Commission **Received Stamp**.
5. Presentation of document for assessment and payment of processing fees, this is where the document is stamped and this is a revenue generating event.
6. Placing of movement Form on the document.
7. Verification of document by the Control Record Office for a report.
8. Further verification by relevant Regional Records office (in this case, Greater Accra Regional office) as to whether the land had not been granted previously to another person before.
9. Ascertainment as to which stool, family, state, individual etc. owns that land.
10. Ascertainment by the Legal Department of the citation on the document and the records in the office.
11. **Legal Department directs whether the Land in the document is to be plotted or not, and the type of interest therein.**
12. **Land in the document is then plotted by the Reginal office or is rejected.**

This completes the work of the Lands Commission.

13. Thereafter document is sent to the Deeds Registry for registration. This is a different outfit altogether.

We believe that, if the learned trial Judge, and the learned Justices of the Court of Appeal had adverted their minds to the above processes, at the Lands Commission vis-à-vis exhibits J and K and the pleadings and the contentions of the parties in this case, most likely, those courts would have adopted a different attitude to the maxim "nemo dat quod non habet" and how it affected the doctrine of priorities in this case. Fact of the matter is that, per exhibit J, the 2nd Defendants document exhibit 3 which had been presented for registration had not been registered because it had not been plotted for the reasons stated therein. From the exhibit J, the said exhibit 3 was plotted only on the 7th of February 1992, the date on the exhibit.

We also had to deal very elaborately with the facts of the case in order to put into the proper context our decision to depart from the concurring findings of fact by both the trial High Court and the Court of Appeal. We are settled in our minds of the legal principle that a second appellate court such as this Supreme Court must be very slow in departing from the concurrent findings of fact by the lower courts.

However, when the said findings of the lower courts are perverse and or inconsistent with the record of appeal, then an appellate court can depart from these findings of fact. See cases like the following which illustrate the practical implementation of the above principles

1. **Gregory v Tandoh IV & Hanson [2010] SCGLR 971**
2. **Achore v Akanfela [1996-97] SCGLR 209**
3. **Obeng v Assemblies of God, Church Ghana, [2010] SCGLR 300**

**GROUNDS OF APPEAL**

**JUDGMENT AGAINST WEIGHT OF EVIDENCE**

From the above narrations and analysis, it is patently clear that the learned trial Judge and the Court of Appeal did not take into consideration the effect of some of the Plaintiffs documents tendered during the trial of the case. In our mind, this ground is so omnibus that in our analysis, we will deal with all the remaining grounds of appeal under this ground comprehensively.

In this rendition, we have perused the statements of case filed for and on behalf of the parties herein, by Solomon Kwami Tetteh learned counsel for and on behalf of the Plaintiffs and by Raymond Bagnabu, learned Counsel for and on behalf of the defendants.

We have also considered in detail the submissions contained therein in relation to the grounds of appeal. We note the reliance of learned counsel for the plaintiffs on the incisive effect of exhibits J and K which were not taken into any serious considerations by the two lower courts as well as infractions by the Defendants in their processing of Exhibit 3 by the Lands Commission for registration. We also note the reference by learned counsel for the defendants on the hallowed principle of a second appellate court such as this Supreme Court not to depart from concurrent findings of fact made by two lower courts, such as what has happened in this case, unless on stated legal grounds. Learned Counsel for the defendants also made copious references to the composite plan ordered by the trial court which proved conclusively that the Plaintiffs land fell within the land previously granted by the Nungua Stool to the 2nd Defendants. It was this fact which necessitated the amendment by the plaintiffs statement of claim to assert that the registration of the 2nd Defendant's document Exhibit 3, was procured by fraud. This court will deal with the principles of nemo dat quod non habet, the process of registration of a valid land document, the effect of an appeal being a re-hearing, and the Stamp Duty Act, 2005 (Act 689) which amended the Stamp Act 1965, (Act 311) the then prevailing law.

We now proceed to examine in detail the arguments and our analysis of the grounds of appeal as argued.

**OBSERVATIONS**

The date on Exhibit 'J' is very revealing. The date therein is 7th day of February 1992, meaning that was the date the Lands Commission responded to the request of the 2nd Defendant therein to plot his land document. The said exhibit 'J' makes the following significant findings which unfortunately were not appreciated by the two lower courts. That the original document presented by the 2nd defendant for plotting in the then Lands Department was not done at the time it was presented because of the following factors:-

1. That the said document had been affected partly by land acquired by Government in 1944.

2. A large portion of the rest of the land had been conveyed by the La Stools and it's sub stools and the Nungua Stool under various transactions to individuals.

Exhibit 'J' also contains these important statements that, it is after the Government acquired portions and the grants made by the La and it's sub-stools and the Nungua Stools had been deleted from the 2nd Defendants exhibit 3, that the document presented by the 2nd Defendant had been plotted in 1992.

From the facts on record, it is clear that the plaintiff's land which was acquired from the Nungua Stool in November 1973 was registered respectively in 1974. Beside, Exhibit 'K' which is a record of the transactions effected by the Nungua Stool and which was taken into consideration before the plotting of the 2nd Defendants land in February 1992 and beyond contains the names of the 1st and 2nd Plaintiffs as Numbers 245 and 247 respectively.

See page 311 of Volume one of the record of appeal. In addition, Major Albert Okine, Plaintiffs Attorney and PW3, P.N. Sogbordzor, have their names listed as numbers 168 and 250 on pages 304 and 311 respectively.

**The inference and conclusions to be drawn and made from the above are that the Plaintiffs land documents had been recorded and plotted, before the 2nd defendant's Land document was plotted and registered**. This therefore means that the 2nd Defendants land registered document Number of 1220/1969 is misleading. From all indications the 2nd Defendant's land could not have been registered in 1969 as plotting was done in 1992. It is also instructive to refer to the processing of documents at the Lands Commission that plotting is very important and a core element.

We observe that, the Defendants land document, exhibit 3, was dated the 23rd day of May 1969 and executed by Nii Odai Ayiku IV, the Nungua Manste in a representative capacity to Mallam Musa, described therein as Head of the Hausa Community of Accra also in a representative capacity.

There are distinct received stamps of the Lands Registry indicating that the document was received on the 30th day of April, 2004. This received stamp with the same date actually appears on pages 1, 2, 3, 4, and 5 of the said exhibit 3. However, on the site plan attached to this Exhibit 3, is a rare stamp from the Ministry of Lands indicating that the said document was received in the Ministry on 17th July 1969. There is also another received stamp on this exhibit 3 on page 6 thereof which indicates that the document was this time received on 27th May 1969, with the same received stamp date of 30th April 2004 whilst the actual document is stated to be dated 17th June 1969. It is interesting to observe also that there is also no stamp duty on this exhibit 3 contrary to statutory stipulations in the Stamp Duty Act 2005, (Act 698) which revised the Stamp Act of 1965 (Act 311) .

On the contrary, we observe that, the Plaintiffs land documents, exhibits A and B respectively has the embossed stamps on them, with Land Registry received stamps dated 5th April 2004 on all the pages.

We observe that, whilst Exhibits A and B have the site plans signed by Licensed Surveyor W. E. K Addo and a received Stamp of December 1974, that in Exhibit 3 has not been signed by any Surveyor and appears to be of doubtful origns. We observe

that, other Land registered documents on record, like that of Captain Patrick Nelson Sogbordjor reference pages 343-348 of volume one of the appeal record, not only has an embossed stamp, but has a signed site plan by a licensed surveyor.

Surprisingly, Exhibit 4, which is the document evidencing the transfer of land by the 2nd Defendant to the 1st Defendant has an embossed stamp on it, as well as a signed site plan, and no Ministry of Lands received stamp. Reference pages 332 to 335 of volume one of the record of appeal.

All the above specie of conduct and records referred to indicate quite clearly that 2nd defendants exhibit 3, is a document of doubtful origin and definitely does not conform to various statutory and procedural stipulations.

**PARTICULARS ON EXHIBIT 3 AND THE COMPOSITE PLAN**

**EFFECT OF NON-STAMPING OF DOCUMENTS**

It is an undeniable fact that the 2nd defendants document No. 1220/1969 had not been stamped before being registered. Secondly, the site plan attached to the said document exhibit 3, ought to have been altered in accordance with the contents of Exhibit J. All the grants made and listed in exhibit K, as per exhibit J, which included the Plaintiffs herein had to be deleted from the site plan of Exhibit 3 before being presented afresh for registration. Not having done any of the above meant that Exhibit 3 was processed in clear breach of section 17 of the Stamp Act 1965 (Act 311) which states **"no instrument shall be registered unless it had been stamped." Section 4 (1) (2) of Act 311 specifically directed that stamp duty if paid "shall be denoted by impressed stamps only."**

There being no explanation as to how Exhibit 3 was registered without compliance with these strict statutory requirements and the directives stated in Exhibit J, meant that it is an exhibit of doubtful validity and same must be rejected.

The above concerns no doubt influenced the Plaintiffs when they effected an amendment of their paragraph 4 (b) (iii) of their statement of claim thus:-

> *"Mallam Musa, his children or agents* ***did not have their document plotted till 7th February 1992, and therefore could not have had their document registered before this date as alleged.*** *That document registered at the Lands Registry in favour of Mallam Musa and the Zongo Community does not cover the land in dispute." Emphasis*

Unfortunately, the learned trial Judge failed to address these issues and rather shifted the goal posts. The above are statutory and procedural requirements, and failure to perform them meant that, people like the Plaintiffs who complied with the law and procedure would be unjustly victimised by their compliance to that of the non compliance of the 2nd Defendant.

In considering these grounds of appeal, we have been guided by settled principles of law established by a long line of respected judicial authorities that an appeal is by way of re-hearing of the case particularly where the appellant alleges in his notice and grounds of appeal that the decision of the lower court is aainst the weight of evidence.

See cases like ***Tuakwa v Boson [2001-2002] SCGLR 61, Djin v Musa [2007-2008] 1 SCGLR 689***, just to mention a few.

It is in compliance with the above settled principles of law that we have under this omnibus ground of appeal re-evaluated the entire evidence, exhibits of all descriptions as well as the remaining grounds 2, 3, 4 and 5 of the appeal since they are all related and can be dealt with together under this ground.

We consider our duty under this principle is to put ourselves in the position of the learned trial Judge and learned brethren in the Court of Appeal and consider whether the findings and conclusions reached in the case are based on the evidence adduced at the trial.

For example, we have stated in the preceding pages of this judgment that the lower courts did not appreciate the weight of the evidence of PW1 and PW2 and exhibits J and K respectively. The heading on Exhibit J, which we have already referred to in extenso states as follows:-

> "*Document Indexed As GSL.844/69"*
>
> *We have also found at the back of Exhibit 3, which is the 2nd Defendants document of title the following:-*
>
> *LS.NO. GSL.844/69*
>
> *Nii Odai Ayiku IV*
>
> *Paramount Chief of Nungua*
>
> *Traditional Area*
>
> *To*
>
> *Mallam Musa*
>
> *Head of the Hausa Community also of Accra"*

Reference page 331 of volume one of record.

There is therefore a complete linkage between Exhibit J, and Exhibit 3. That being the situation, there is every indication that both the trial court and the 1st appellate court had no real and genuine basis to completely disregard the probative effect of this exhibit J. The evidence of the Plaintiffs lands falling within the composite plan and therefore within the 2nd Defendants land was was not properly evaluated by the two

lower courts as explained. Otherwise, the learned trial Judge and the Court of Appeal would not have applied the maxim nemo dat quo non habet if exhibit J and K had been properly evaluated. This maxim was therefore wrongly applied by the lower courts.

**CUSTOMARY LAW GRANT**

We have also considered the submissions on the effect of the grant made by the Nungua Stool to the 2nd Defendant as a customary law grant.

Our short answer to these submissions is that, from the recitals in Exhibit 3, it is apparent that the said transactions was not considered and treated as a customary grant. The word *"customary"* does not appear either expressly or by necessary implication anywhere in the said exhibit. Once the said document on the face of it was deemed to have been prepared by a lawyer, we assume that if those were his instructions, he would have stated them to have been a customary grant. Besides, the introduction of this customary law grant was done by the Court of appeal without any basis and is rejected.

Considering all the circumstances of this case and the fact that there was abundant evidence on record that the grants to the Plaintiffs and several other persons mentioned in Exhibit K, ought to have had their parcels of land deleted from the site plan originally presented by the 2nd Defendant before the said document was registered as stated in exhibit J, failure to do so is fatal, and renders Exhibit 3 a document that is null, void and of no effect. That being the case, the Plaintiffs documents A and B have priority over the 2nd defendants document Exhibit 3.

We have already referred to in extenso the processes that a land document is taken through to have the document registered. Learned counsel for the Defendants seems to contend that since there are no statutory injunctions on the compliance with these processes, non-compliance is not fatal and has no effect.

We however take a contrary view. This is because in our view, non-compliance with the said elaborate processes would result into chaos and confusion in our land administration regime.

**STAMPING**

For example, section 17 of the Stamp Act 1965 (Act 311) now amended by Stamp Duty Act, 2005 (Act 689) which revised Act 311 to incorporate amendments relating to stamp duties etc. provided then as follows:-

*"no instrument shall be registered if it affected land unless it has been stamped"*

The learned trial Judge and the learned Justices of the Court of Appeal were of the view that the court had the power to receive an unstamped document in evidence. That pronouncement was most unfortunate, since this instrument is one that affected land and by the clear provisions of the law as stated supra, an instrument affecting land cannot be registered if it is not stamped.

Reference and reliance on the case of ***Antie and Adjuwuah v Ogbo [2005-2006] SCGLR 494 at 506*** is not well founded. The distinction therein was between impressed and postage stamp. The situation in the instant is completely different. There is absolutely no evidence that any form of stamp duty has been paid whether impressive or adhesive.

The contention by the learned trial Judge, "***that the Land Commission's own internal administrative processes or niceties should not be the concern of the 2nd defendant …"*** is really begging the question.

For example, if someone files a writ in the court, pays the appropriate fees and is issued with a receipt, but there is no indication on the original writ that there has been an assessment let alone payment for the assessed amount. When such a phenomenon

is detected by the presiding Judge, the party who filed the writ can easily acquit himself if he presents the receipt for payment.

It is the failure on the part of the 2nd Defendant to procure and produce any documentary evidence on the payment of the relevant stamp duty that is of concern here. Granted that, the Lands Commission staff were negligent in not fixing the impressive stamp on Exhibit 3, the 2nd defendant should have provided evidence to clear the non-compliance. What must be clearly noted is that, the various stages in the registration process of land documents have been well structured such as to give information to the public about prior compliance with the process. Having failed, refused and complicit as the facts have shown in complying with the duly established procedural steps in the registration of the document in Exhibit 3, the 2nd Defendant must be deemed for all purposes not to have met the litmus test in the registration process.

From the above analysis, there is therefore absolutely no basis for the learned Justices of the Court of Appeal to conclude that the stamp impression on Exhibit 3 might have been wiped off with the effluxion of time from 1969 to 2002 when this suit was commenced. This statement lacks factual basis, has no substance and is rejected.

We have had a critical look at this document Exhibit 3 and also the original documents of all the Exhibits in the mother docket. After such an examination which we have already referred to supra, we are convinced that Exhibit 3 was not processed through the prescribed methods, and therefore must be rejected and is 23accordingly set aside.

**CONCLUSION**

We will under the circumstances allow the appeal filed by the Plaintiffs against the judgment of the Court of Appeal dated the 25th day of October 2012, and by necessary implication that of the trial High Court, dated 21st December 2007.

Accordingly, we hereby set aside the said judgments of the Court of Appeal and the High Court. Instead, we enter judgment for the Plaintiffs as per their Writ of Summons as follows:-

1. Declaration of title to the lands described in the Schedules 1 and 2 below, against the Defendants jointly and severally.

2. Recovery of possession of the two plots of land described in the schedule I and 2 below.

3. Perpetual injunction against the defendants, their agents, servants workmen from dealing with the land.

4. Costs

**SCHEDULE I**

The land situate and lying at New Nungua covered by Land Document No. 328211974 bounded as follows:-

"On the North-East by the property of Lt. A.C. Okine measuring 100 feet,

On the South-East by the property of Rosamund A. Erskine measuring 140 feet,

On the South-West by a proposed road measuring 100 feet and on the North-West by another proposed road measuring 140 feet covering a total area of 0.32 acre approximately."

**SCHEDULE 2**

All that piece or parcel of land, covered by land document No. 3283/1974 and described as follows:-

"The land situate and lying at New Nungua-Accra is on the North-East by stool land measuring 100 feet,

On the South-East by a proposed road measuring 140 feet, on the South West by a proposed road measuring 140 feet,

On the South-West by another proposed road and measuring 100 feet,

On the North-West by the property of General E.A. Erskine measuring 140 feet covering an approximate area of 0.32 acre."

Since the Plaintiffs have not successfully established and proven substantial damages of trespass against the Defendants, there will only be an award of nominal damages of GH¢10,000.00 against the Defendants jointly and severally.

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

**ANSAH, JSC:-**

I agree with the conclusion and reasoning of my brother Dotse, JSC.

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

**ADINYIRA (MRS), JSC:-**

I agree with the conclusion and reasoning of my brother Dotse, JSC.

**S. O. A. ADINYIRA (MRS)**
**(JUSTICE OF THE SUPREME COURT)**

**YEBOAH, JSC:-**

I agree with the conclusion and reasoning of my brother Dotse, JSC.

**ANIN YEBOAH**
**(JUSTICE OF THE SUPREME COURT)**

**BAFFOE-BONNIE, JSC:-**

I agree with the conclusion and reasoning of my brother Dotse, JSC.

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

**COUNSEL**

NARTEY TETTEH FOR THE PLAINTIFFS/APPELLANTS/APPELLANTS.

RAYMOND BAGNABU FOR THE DEFENDANTS/RESPONDENTS/RESPONDENTS.