IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: PWAMANG JSC (PRESIDING)
DORDZIE (MRS.) JSC
OWUSU (MS.) JSC
HONYENUGA JSC
PROF. MENSA-BONSU (MRS.) JSC

CIVIL APPEAL
NO. J4/64/2021

20TH JANUARY, 2022

1. GEORGE KWADWO ASANTE

2. ERIC DANPARE ASANTE ..... PLAINTIFFS/APPELLANTS/APPELLANTS

VRS

1. MADAM ABENA AMPONSAH

2. PETER KOFI ADU ..... DEFENDANTS/RESPONDENTS/RESPONDENTS

JUDGMENT

HONYENUGA, JSC:-

This appeal is against the judgment of the Court of Appeal dated the 14th day of January, 2019 for having dismissed the appellants appeal.

In this Judgment, the plaintiffs/appellants/appellants would hereinafter be referred to as the appellants and the defendants/respondents/respondents as the respondents.

BACKGROUND FACTS

The facts which culminated into this appeal as gleaned from the statement of claim is that the appellants who are father and son respectively acquired the land in dispute from the Oshiuman Family acting then per Nii Oshiu Ardey Cudjoe and Nii Abban Otoo sometime in 1997 with a Deed of Assignment in their favour. The appellants went into possession, occupation and constructed a solid sandcrete fence wall. The appellants had quiet enjoyment of the land until sometime in 2007 when their occupation of the land was challenged by some persons who claimed that the parcel of land was granted them by Akwein as Farms Company Limited and Nii Kwaku Fosu II, the Ablekuma Mantse. To continue their peaceful enjoyment of the land, the appellants approached the Ablekuma Mantse to have their title regularized. In the circumstances, a Deed of Assignment was executed between Akweinas Farms and them. This deed was dated 17th September 2007, stamped as LVB 2 7377/08 and LVB 9978/08 respectively. According to the appellants, the respondents trespassed on the land by breaking part of the fence wall and started the construction of permanent building structures. All attempts to stop the respondents failed and therefore caused a writ of summons accompanied by a statement of claim to be issued out against the respondents claiming thus: -

> "i. A Declaration of Title To ALL THAT piece or parcel of land described as SCHEDULE 'A' and 'B' in the statement of claim.
>
> ii. Recovery of possession.
>
> iii. Damages for Trespass
>
> iv. Perpetual injunction restraining the Defendants their agents and assigns from ever interfering with the plaintiff's quiet enjoyment."

The respondents resisted the claim of the appellants and averred that the real owners of the land in dispute are Akweinas Farms Company Ltd and whose land does not form part of Oshiuman land. They maintained that at the time the appellants went to register the land,

they were confronted with the respondents' prior interest dated 15th June 2002 stamped as AR/6399A/2005. Further, Akweinas Farms Company Ltd divested themselves of interest in the land after executing a Deed of Assignment in favour of the 1st respondent and therefore the appellants Land Certificate was fraudulently obtained. The particulars of fraud were clearly stated. The respondents counterclaimed as follows:-

> "1. The defendants aver that they are the actual owners of the land described in the schedule.
>
> 2. Injunction restraining the plaintiff's by their agents, workmen, privies however from interfering with the land the subject matter hereof.
>
> 3. Recovery of possession.
>
> 4. Costs"

At the end of the trial, the trial High Court judge dismissed the claim of the appellants and entered judgment for the respondents upon their Counter-claim.

The learned trial judge found that both parties have a common grantor and from the evidence led, the respondents were first in time to be granted the land in dispute. The trial court also cancelled the Land Title Certificates issued to the appellants.

APPEAL TO THE COURT OF APPEAL

The appellants appealed against the decision of the High Court to the Court of Appeal. The Court of Appeal dismissed the appeal and affirmed the findings and conclusions of the trial High Court that the assignment from Akweinas Farms, their common grantor to the first respondent predates that of the Appellants, so their common grantor had no title to pass on at the time they purported to grant the land to the Appellants. The Court of Appeal concluded that the learned trial High Court judge erred in cancelling the Land Title Certificates on the grounds that it was in the interest of the parties and justice. The Court of Appeal rather found that the Land Title Certificates be cancelled on the ground of fraud but concluded that at the very least the said certificates were issued by mistake.

APPEAL TO THE SUPREME COURT

The appellants appealed against the judgment of the Court of Appeal to this court praying that the decision of the Court of Appeal be reversed based on the following grounds:-

> "I. The Judgment of the Court of Appeal is against the weight of the evidence available on record.
>
> II. The learned Court of Appeal judges failed to give adequate consideration to Exhibit N which authorized Akweinas Farms to change the user of the Land to residential purpose.
>
> III. The Court of Appeal judges erred when they held that despite the Appellant's act of possession since 1993 his grant from the Ablekuma could not be deemed valid.
>
> IV. The Court of Appeal judges erred when they gave sufficient consideration to the testimony of the DW1 when the same person acted a (sic) witnesses for the alienation of the land in disputes.
>
> V. The Court of Appeal Judges erred when they held that the Land Title Certificate issued to the Plaintiffs/Appellants were issued by mistake.
>
> VI. Further or other grounds of appeal to be filed on receipt of the Record of Appeal."

The appellants failed to file additional grounds of appeal and they are considered abandoned.

APPELLANTS SUBMISSIONS

The appellants contend per their statement of case that there is overwhelming evidence on record that the judges of the Court of Appeal wrongly applied the law and arrived at a conclusion which this court must disturb. The appellants further contend that by the evidence on record they had demonstrated their presence on the land by fixing corner pillars and dwarf walls before the respondents sought to acquire the land and therefore the respondents were fixed with notice of their presence but went ahead to demolish their dwarf wall. Boateng v Dwinfour [1979] GLR 360@366 was cited by counsel for appellants to support their case that the respondents were fixed with notice of their presence and they ought to have made enquiries into the title of their vendor before purchase.

The appellants submitted that if the Court of Appeal had considered the import of Exhibit N, the Court would have reached the incontrovertible conclusion that the Respondents acquired their title after the appellants had regularised their title merely to overreach the appellants.

RESPONDENTS' SUBMISSIONS

The Respondents in their statement of case contend that both parties are claiming title from a common grantor, Akweinas Farms but the grant to them predates that of the appellants in that their document is dated 15th June, 2002 while that of the appellants was on 29th June 2007. The appellants' Land Certificate and Provisional certificates are dated 15th February 2007 and 26th July 2010 that is exhibits F and G respectively.

The respondents therefore further contend that their common granter having divested their interest in the land to the respondents; the same granter cannot grant the same land to the appellants and the *nemodatquodnon habet* principle applies. The respondent submitted that the Court of Appeal was right in concluding that the appellants could not prove their title as it predates that of the respondents: The respondents further submitted that exhibit N was only signed to reaffirm the contents of exhibit 3, a letter from the Ga District Assembly dated 13thSeptember 2002 which indicated that the land was to be used for residential purposes since 1990.

CONTENTS OF THE GROUNDS OF APPEAL TO THE SUPREME COURT

This court is the final appellate court and seeks to resolve appeals based on grounds of appeal arising from allegations of error of fact or law or mixed law and fact. Rule 6 of the Supreme Court Rules, 1996 (C. I. 16) deals with notice of grounds of appeal filed from the Court of Appeal to the Supreme Court. This court has severally, in Gregory v. Tandoh IV & Hansen [2010] SCGLR 971, In re Asamoah (Decd), Agyeman Manu [2013-3014] 2 SCGLR 909 and recently in Okonti Borle & Anor v. Hausbauer [2021] 17 GMJ 321, and others, admonished counsel and or parties to endeavour to comply with the provisions of rule 6 of the Supreme Court Rules, 1996 C I 96 to no avail. Indeed, the rules of procedure were not made for nothing they are to be complied with in order to facilitate the hearing of appeals.

These rules of procedures are subsidiary legislations under Article 11 (7) of the Constitution 1992 which must be complied with. Rule 6 (2) (f) and (4) of C I 16 provides: -

> "(2) A notice of civil appeal set forth the grounds of appeal and shall state . . .
>
> (f) The particulars of a misdirection or an error in law if so alleged."
>
> 4. The grounds of appeal shall set out concisely and under distinct heads the grounds upon which the Appellant intends to rely at the hearing of the appeal, without any argument or narrative and shall be numbered seriatim and where a ground of appeal is one of law the Appellant shall indicate the stages of the proceedings where it was first raised."

The rationale behind rule 6 of the Supreme Court Rules, 1996, CI. 16 is clearly stated by this court in Dahabieh versus Turquoi & Bros [2001 – 2002] SCGLR 498 holding one as follows: -

> "The intention behind rule 6 of the Supreme Court Rules, 1996 (C. I. 16) 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 been raised. By that way, both the court and counsel for the respondent 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 evidences 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 marshall 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. In the instant case, ground (1) of the grounds of appeal alleging that the judgment is wrong in law is in effect saying that there is an error of law in the judgment. If so, then rule 6 (2) required the appellate court to specify in the ground of appeal that particular complaint amounting to an error of law. Having failed to do so, ground (1) of the grounds of appeal is inadmissible."

In the instant appeal, a perusal of the grounds of appeal clearly reveal that grounds 3, 4, 5, 6 and 7 allege errors of law without setting out the particulars of the error alleged nor the stage of the proceedings it was first raised pursuant to Rule 6 (4) of C.I. 16. In the circumstances, excepting the omnibus ground and ground 2 the said grounds 3, 4, 5, 6 and 7 are in effect inadmissible, incompetent and are hereby struck out.

It is observed that the surviving grounds 1 that is the omnibus ground and 2 and others would be conveniently subsumed and determined underground 1 that the judgment is against the weight of evidence.

DETERMINATION OF THE APPEAL

The issues in this appeal are whether the judgment of the trial High Court which was essentially affirmed by the Court of Appeal is right? Further whether the appellants had notice of the earlier grant of the land to the respondents and whether their common grantor could divest the same land after having divested its interest.

On the ground of a Judgment being against the weight of evidence, the authorities are germane that an appeal is by way of rehearing and it is incumbent on the court to analyse the entire record of appeal, taking into consideration the totality of the evidence on record, both oral and documentary so as to satisfy itself on the preponderance of the probabilities that the conclusion of the trial court and the first appellate court were reasonably and amply supported by evidence adduced at the trial. See Tamakloe & Partners unlimited v. Gihoc Distilleries Co. Ltd [2019-2020] 1 SCGLR 176 at 189,Osei (substituted by Gillard) v Korang [2013-2014] 1 SCGLR 221 at 226 to 227, Sarpong v Google Ghana & Another [2017 – 2018] 2 SCGLR 839 at 843,Tuakwa v Bosom [2001-2002] SCGLR 61 at 65, Sarkodie v FKA Co. Ltd [2009] SCGLR 65 Ago Sai v Kpobi TettehTsuru III [2010] SCGLR 762 and a host of other respectable authorities. In the cited case of Tuakwa v Bosom (supra) the basis of an omnibus ground of appeal was succinctly stated at page 65 per Sophia Akuffo JSC (as she then was) as follows:-

> "An appeal is by way of re-hearing particularly where the appellant alleges in his notice of appeal that the decision of the trial court is against the weight of evidence. In such a case it is incumbent upon an appellate court in a civil case, to analyse the

> entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial before it arrives at its decision so as to satisfy itself that, on a preponderance of the probabilities, the conclusions of the trial Judge are reasonably or amply supported by the evidence."

Further, it is trite that the onus is on such appellant to clearly and properly demonstrate to the appellate court the lapses in the judgment appealed against. See Djin v Mensah Baako [2007-2008] 1 SCGLR 689 holding (1), Akufo-Addo v Catheline [1992] 1 GLR 337, Attorney-General v First Atlantic Co. Ltd [2005-2006] SCGLR 271 and others.

The court of first instance and the Court of Appeal found and affirmed that the land the subject matter of dispute belong to the respondents.

In an action for declaration of title the onus of proof lies with the plaintiff. See Dokutso Tei Kwabla v Lands Commission and Another [2017 – 2018] 1 SCGLR 497 at 509. In the instant case, the parties claim and counterclaim respectively for declaration of title to the same parcel of land and therefore each party bears the onus of proof as to which side has a better title. See Jass Co. Ltd v Apau [2001] SCGLR 265. The parties were required by sections 11 (2) and 12 and of the Evidence Act, NRCD 323 to proof their case on the balance of the probabilities.

Were the findings and conclusions of the trial High Court which were essentially affirmed by the first appellate court right? On page 227 of the record of appeal the learned trial judge made findings of facts as follows:-

> "It is a fact in this case that both parties have a common grantor that is Akweinas Farms. It is also a fact from the evidence led that the defendants were the first in time to get the land in dispute from their grantor. There is therefore no dispute that in the interest of fairness and the land law principles the defendant be declared owners of the land in dispute. I find as a fact therefore that the defendants herein are owners of the land in dispute and have title."

At page 228 of the record of appeal, the learned trial judge concludes that:-

> "It is clear from the totality of the evidence led and the assessment of it that the defendants have proved their counterclaim to the standard required by law. Judgment is therefore entered for the defendant against the plaintiffs with respect to their counterclaim for all the reliefs sought."

At page 376 of the record of appeal, the learned justices of the Court of Appeal also made findings as follows:

> "There is no doubt the land had first been given to the Defendants by Akweinas Farms before the attempted regularization by the same Akweinas. The said Akweinas could not purport to transfer title in the disputed land to the plaintiff when it had divested itself of the said title. Nemodat quod non habet."

At page 385, the Court of Appeal justices concluded thus; -

> "I am satisfied that the plaintiff has failed to prove that the judgment is against the weight of evidence… In conclusion the appeal fails and is dismissed in its entirety."

The learned counsel for the appellants submitted that the appellants had possession of the land by fixing corner pillars and dwarf walls but the respondents admitted demolishing part of the walls and therefore the respondents had constructive notice of their incumbrance on the land. Counsel cited Boateng v Dwinfour [1979] GLR 360 @366 in support. Counsel further submitted that the onus lay on the Respondents as provided in section17 of NRCD 323 to prove that their acquisition of the land which predated 2005, but failed in view of Exhibit N.

On the other hand, the respondents' counsel submitted that the 1st appellants acknowledge in their statement of claim and in his evidence that the land originally belonged to the people of Ablekuma who alienated same to Akweinas Farms Limited and that it did not belong to Oshiuman family. Counsel further submitted that Oshiuman family grant to the appellants in 1997 which is evidenced by Exhibits A and B is invalid. Counsel submitted that the grant of the same land by Akweinas Farms to the appellants since it has already divested themselves of intent to the respondents and therefore a nullity. On exhibit N, learned counsel submitted that although the land was for agricultural purposes and it was

not until 2005 that the land was vested in Akweinas Farms to use it for different purposes. Counsel referred to exhibit 3 and submit that as far back as 1990 the land had been zoned for residential purposes and Exhibit N was only signed to reaffirm its contents.

In an action for declaration of title the onus is heavily on the plaintiff to prove his case. If the plaintiff failed to discharge the onus on him and also failed to make a case for the reliefs sought, then he could not rely on the weakness of the defendant's case to ask for relief. However, if the plaintiff made a case which would entitle him to relief if the defendant offered no evidence, then if the case offered by the defendant disclosed any weakness which supported the plaintiff's claim then the plaintiff was entitled to rely on the weakness of the defendant's case to strengthen his case. The Supreme Court in Odametey v Clocuh& Another [1989-90] 1 GLR 14 SC succinctly held in holding 1 as follows:-

> "(1) the present position, was that if the plaintiff in a civil suit failed to discharge the onus on him and thus completely failed to make a case for the claim for which he sought relief then he could not rely on the weakness in the defendant's case to ask for relief. If, however, he made a case which would entitle him to relief if the defendant offered no evidence, then if the case offered by the defendant when he did give evidence disclosed any weakness which tended to support the plaintiff's claim, then in such a situation the plaintiff was entitled to rely on the weakness of the defendant's case to strengthen his case. That was amply supported by sections 11 and 12 of the Evidence Decree 1975 (N. R. C. D 323)."

Indeed, this authority is backed by the provisions of the Evidence Act, 1975 NRCD 323.

It is also for the plaintiff to prove its methods of acquisition conclusively. In Awuku v Tetteh [2011]1 SCGLR 366 holding (1) this court held as follows:-

> "In an action for a declaration of title to land the onus was heavily on the plaintiff to prove his case. He must, indeed, show clear title. He could not rely on the weakness of the defendant's case. For a stool or family land to succeed in an action for declaration of title, it must prove its method of acquisition conclusively, either by traditional evidence or by overt acts of ownership exercised in respect of the land in dispute. (Odoi v Hammond [1991] 1 GLR 375 CA applied."

See also Mondial Veneer (Gh) Ltd v. AwuahGyebuXV [2011] 1 SCGLR 466. Holding (4) in the instant case, the appellants were required to prove their claim conclusively on the balance of the probabilities. A perusal of the evidence on record reveals that the appellants' root of title and their mode of acquisition of the land in dispute could not be proved. They relied on exhibits A and B being indentures they procured from the Oshiuman family as proof of their title and put up overt acts like dwarf walls and corner pillars. The appellants registered the land and procured Land Title Certificates being exhibits F and G based on the grant by Oshiuman family. From a perusal from the record of appeal, it is clear that the land originally belonged to the people of Ablekuma who alienated same to Akweinas Farms Company Limited (hereinafter called Akweinas Farms). The appellants in their paragraph 6 of the statement of claim and their evidence-in-chief at page 147 of the record of appeal, acknowledge this fact. After the challenge to their title by the respondents, the appellants realizing that title rather resided in the Ablekuma Mantse and Akweinas Farms regularised their title with them and a deed of Assignment was executed as Exhibit D and E paragraphs 6 and 7 of the statement of claim reads:-

> "6. For the purpose of maintaining their land and peaceful enjoyment, the plaintiffs approached the Ablekuma Mantse and the representatives of AKWEINAS FARMS.
>
> 8. The Deed of Assignment executed between AKWEINAS FARMS COMPANY LIMITED and the plaintiffs dated 17th September 2007 is stamped as LVB 27377/08 and LVB 9978/08 respectively."

It is thus clear that the appellant had foreknowledge that the land belonged to Akweinas Farms at a time they took the grant from the Oshiuman family. Indeed Exhibit H the search dated 11th August 2000 clearly indicated that the land was granted by Nii KwakuFosu II to Akweinas Farms. The appellants took a grant from Oshiuman family who had no title to the land.

Furthermore at the time the appellants purported to have regularised their title with Akweinas Farms, Akweinas Farms had earlier divested their interest in the land to the respondents. The appellants admitted this on page 163 of the record of appeal under cross examination thus:-

"Q. I am also putting it to you that at the time Akweinas Farms purported to have regularize the transaction for you they had divested themselves of title in the land because they had transferred to the defendants.

A. Yes they had given it to him already but we later sat down with Nii Larbie Mensah and Nii Larbie Mensah said that when they were giving out the land they did not know that there was a fence wall on it so he should come and they would give a different one. But the defendant did not agree."

We agree with and adopt the findings of the learned Justices of the Court of Appeal at page 376 of the record of appeal thus;

"With this admission and even without the evidence of DW1 who described himself as secretary of Akweinas Farms, there is no doubt the land had first been given to the Defendants by Akweinas Farms before the attempted regularization by same Akweinas. The said Akweinas could not purport to transfer title in the disputed land to the plaintiffs when it had divested itself of the said title. Nemodat quod non habet."

The principle of nemodat quod non habet is notorious and there is no dearth of authorities. In Abua v. Keelsen; Yima v Keelsen(Consolidated Supreme Court, Suits No. 81/92 and L.20/92, 16 March 2011 unreported cited with approval in Tetteh (substituted by) Larbi & Decker [2012] 1 SCGLR 417 at page 431, this court stated the principle as follows:-

"It can thus be safely concluded that the principle nemodat quod non habet applies whenever an owner of land who had previously divested himself of title in land previously owned by him to another person, attempts by a subsequent transaction to convey title to the new person in respect of the same land cannot be valid."

There is also overwhelming evidence that at the time of the grant to the appellants in exhibit D and E dated 17th September 2007 and 29th June 2007 respectively, Akweinas Farms had earlier granted the same land to the respondents in exhibit 2 dated 15th June 2002. It is clear that the transaction between the appellants and Akweinas is caught by the

principle of nemodat quod non habet and therefore Akweinas Farms sold nothing to the appellants and the appellants also bought nothing. No title was passed to the appellants.

It is also our finding which is supported by the record of appeal that the appellant knew of the earlier grant and registration of the respondents' grant before they got their grant from the Akweinas Farms. Indeed section 24 (1) and 25 of the Land Registry Act, Act 122 states:-

> "24 (1) Subject to subsection (2), an instrument other than a will or a Judge's Certificate first executed after the commencement of this Act, shall not have effect until it is registered.
>
> 25 (2) The registration of an instrument constitutes actual notice of the instrument, and of the fact of registration of all persons and for all purposes as from the date of registration unless otherwise provided in an enactment."

There is no doubt that the appellants registered their grant in 2007 that is Exhibits D and E while the respondents registered theirs in 2005 exhibit 2 both under Act 122 having been granted the land in 2002. By the provisions in section 25 (1) of Act 122, the registration of the respondents which predates that of the appellants constituted actual notice of registration of their instruments.

In Amuzu v. Oklikah [1998-99] SCGLR 141 (1) this court held that the Land Registry Act, 1962 (Act 227), did not abolish the equitable doctrine of notice and fraud neither did it confer on a Registered instrument a state guaranteed title. Consequently, a later instrument could only obtain priority over an earlier one by registration under section 24(1) of Act 122 if it was obtained without notice and fraud of the earlier unregistered instrument.

In the instant case, since the appellants have admitted that they had actual notice that the land was encumbered, the appellants would be held to have constructive notice of the earlier grant and registration.

On possession and occupation of the land, it is our considered view that the Judgment of the Court of Appeal on page 375 of the record of appeal adequately dealt with the question of possession as follows:-

> "The law is that although possession may be nine tenth's the law no matter how long it is, it usually cannot ripen into ownership. It is clear that in order to prove their title to the disputed land on the balance of probabilities the plaintiffs needed to prove more than possession. They had to prove their right of title and mode of acquisition."

The said judgment is sound law for it is trite that possession cannot ripen into ownership if a better title is proved. In Osei (substituted by) Gillard v. Korang [2013 – 2014] 1 SCGLR 221 at 234, this court held that: -

> "Now in law, possession is nine-tenths of the law and a plaintiff in possession has a good title against the whole world except one with a better title. It is the law that possession is prima facie evidence of the right of ownership and it being good against the whole world except the true owner he cannot be outsted of it. See Summey v. Yohuno [1962] 1 GLR 160 SC and Barko v Mustapha [1964] GLR 78 SC."

See also Lartey v Hausa [1961] GLR 773 where Ollenu J (as he then was held that possession cannot ripen into ownership no matter how long it had been held or had.

Further Section 48(2) of the Evidence Act, 1975 (NRCD 323) treats ownership or possession of properties as a rebuttable presumption and provides:

> "A person who exercises acts of ownership over property is presumed to be the owner of it."

The respondents proved a better titleby proving their counterclaim that their title predates that of the appellants and in this respect possession does not arise. We therefore agree and adopt the findings of facts and the reasoning of the trial court and the first appellant court.

Further, the appellants' pliant is that the Judges of the Court of Appeal failed to give adequate consideration to exhibit N which authorized Akweinas Farms to change the user of the land to residential. Exhibit N is the Memorandum of Understanding which was executed between the Akweinas Farms and the Ablekuma Mantse to change the original user of the land from agricultural purposes to that of residential.

Counsel for the appellants submitted that the purpose of the subject matter being for agriculture, the respondents could not have validly acquired same before 2005 from the Akweinas Farms. We think that this pliant of the appellants could be answered by reference to Exhibit 3. Exhibit 3 is a letter dated 13th February 2002 from the Ga District Assembly and addressed to the Regional Lands Officer, Accra. For ease of reference we would reproduce the said letter as follows;-

> "AKWEINASESTATES ABLEKUMA
>
> PLAN NO. TGP/GD/AKWEI/EST/ABLE/2002/1B
>
> AUGUST, 2002
>
> REZONING FARMLAND TO RESIDENTIAL USE
>
> Please find attached Two (2) copies of the above scheme for your records and necessary action.
>
> The area which was requested for rezoning from Farmland to Residential use by Akweinas Farms Company had already been schemed for residential purposes and approved as the Ablekuma Residential Area as far back as 1990.
>
> The Revised Scheme therefore supplements and supercedes schemes already in use, please.
>
> (KENNETH KISSEH)
>
> SECRETARY
>
> GA DISTRICT PLANNING COMMITTEE
>
> THE REG. LANDS OFFICER,
>
> LANDS COM. SECT.
>
> ACCRA.

We agree with the submission of learned Counsel for the respondents that Exhibit 3 reveals that as far back as 1990 the land had been rezoned for residential purposes and that Exhibit N was only signed to reaffirm the contents of Exhibits 3. We find no merit in this pliant by the appellants as there is abundant and satisfactory evidence on record that they failed to prove their title on the balance of the probalities.

We would consider the issue of fraud as arisen from the record of appeal. The learned trial judge at page 241 of the record of appeal made findings of facts as follows: -

> "….I have carefully considered the totality of evidence led and I am not convinced the plaintiffs processed their Land Certificate by fraud. This is because the evidence led does not meet the high standard of proof required to establish same. The evidence led indicated that the plaintiffs may have been negligent or reckless in not undertaking the necessary search and due diligence required when acquiring land in Ghana in view of the nature of land issues arising in the country. I therefore find as a fact that the plaintiffs did not process their Land Certificate by fraud."

In conclusion, the learned trial Judge at page 245 ordered the Land Certificates of the appellants to be cancelled as follows: -

> "…I am of the opinion that since the defendants herein are the owners of the land in dispute or have title to it in the interest of all the parties and justice that both Land Title Certificates issued to the plaintiffs herein be cancelled. It is therefore ordered that both land Certificates that is Exhibits F and G be cancelled." (Emphasis mine)

Moreover, at page 382 of the record of appeal, the Court of Appeal made findings and conclusions thus:-

> "I am satisfied beyond reasonable doubt that the plaintiffs got their certificates by fraud. I find that … the trial Judge therefore erred in ordering the cancellation of the certificate on the grounds that it is in the interest of the parties and justice to do so. I am however satisfied that fraud is supported by the evidence on record so the trial Judge's order to cancel the two certificates is upheld but on the ground of fraud. …I

am satisfied, that at the very least, the said certificates were issued by mistake. That is a lawful ground for cancelling them."

What is fraud?

Wood JA (as she then was) in Good Shepherd Mission v Sykes &ors [1997-88] 1 GLR 978-99 CA defined what constitutes fraud and cited two distinguished English textbook writers, D. L. Mcdonnel and J.G. Monroe in their book Kerr on Fraud and Mistake (7thed) and defined fraud as follows:-

> "Fraud in the contemplation of a civil court of justice may be said to include properly all acts, omissions, and concealment which involve a breach of legal or equitable duty trust or confidence, justly reposed, and are injurious to another or by which an undue or unconscient advantage is taken of another. All surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered as fraud. Fraud in all cases implies a wilful act on the part of anyone whereby another is sought to be deprived, by illegal or inequitable means of what is entitled to."
>
> In sum, Kerr, the learned author stated that fraud in all cases, implies an act on the part of anyone, whereby another is sought to be deprived, by illegal or inequitable means, of what he was entitled to.

The Blacks Dictionary (9th ed.) also defines fraud thus:-

> "A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment."

While a mistake is defined as

> "An error, misconception, or misunderstanding: an erroneous belief."

Under our law, an allegation of fraud whether civil or criminal requires proof beyond reasonable doubt. Section 13(1) of the Evidence Act, 1975 NRCD 323 provides:-

> "(1) in any civil or criminal action the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond reasonable doubt."

In SasuBamfo v Sintim [2012 1 SCGLR 136 a civil case, it was alleged that some lands had been acquired fraudulently by the use of documents. The Supreme Court held on the facts of the case in holding 3 that: -

> "The law regarding forgery or any allegation of criminal act in civil trial was governed by section 13 (1) of NRCD 323 which provided that the burden of persuasion required was proof beyond reasonable doubt."

See also Fenuku v John Teye [2001 – 2002] 1 SCGLR 136.

From the allegation of fraud and the particulars provided, can it be said that the respondents succeeded in proving fraud beyond reasonable doubt with respect to the two Land Title Certificates Exhibits D and F. Since fraud connotes a serious offence the authorities held that it vitiates everything. In Frimpong v. Nyarko [1998-99] SCGLR 734 at 743, Acquah JSC (as he then was and of blessed memory) stated succinctly thus:-

> "Fraud is well-known, vitiates everything, and when a court of law in the course of its proceedings, has cause to believe that fraud was committed, it is duty bound to quash whatever has been done on the strength of that fraud."

Further in Mass Projects Ltd (No2) v Standard Chartered Bank (No. 2) [2013 – 2014] 1 SCGLR 309 holding (4) this court held that because fraud vitiates every conduct, an allegation of fraud, if proven and sustained, would wipe and sweep away everything in its trail as if the thing had never existed. See also in re West Cost Dyeing Industry Ltd; Adams Tandoh [1984-86] 2 GLR 561 at 605.Dzotepe v Hahormene III (No.2) [1984 – 86] 1 GLR 294 and others.

In the instant case, a perusal of the particulars of fraud as appear on page 78 of the record of appeal and the evidence on record, the assessment, findings and conclusions of the High Court and the first appellate court, leave us in no doubt that fraud was committed by the appellants. It is on record that originally the appellants used their grants from the Oshiuman family and registered same Exhibits A and B and upon realizing later that Oshiuman did not have title to the land in dispute, they went to regularize their title with Akweinas Farms the rightful owners of the property. The point is that the appellants

although knew through their searches like Exhibit H that the land belongs to Akweinas Farms, yet they took their grant from Oshiuman family who had no title to the land. Further the appellants after registering the land acquired from Akweinas Farms the rightful owners, Exhibit D and E knowingly procured their Land Title Certificates Exhibits F and G using the documents from the Oshiuman family who had no title. It is also on record that the appellants admitted this fact during cross-examination of the 1st appellants at page 162 of the record in extensor supra.

Further, it is trite that registration per se does not confer title on a person but rather the underlying facts. In Awudu v. Tetteh [2011] 1 SCGLR 366 this court held that even if the appellant had registered his document of title, registration per se does not confer title, it is the underlying facts that matter. The evidence in that appeal was that the title of the appellant was null and void and in that state no amount of registration would save it and clothe it with validity. In this respect, the Land Title Registrar was held to be right to have cancelled the Land Title Certificate when it was discovered that it was null and void. This case signifies that registration alone does not matter but the underlying factors or equitable principles like notice, fraud, mistake and knowledge of omission are contributory factors

It is our candid opinion that the appellants had prior knowledge of the respondents' prior registration under the Lands Registry Act, 1962, Act 122, but went ahead to register the land and obtained Land Title Certificates under the Land Title Registration Act, 1986, (PNDCL 152) with the intention of overreaching the respondents and depriving them of their land. This in our candid opinion satisfies the definition of fraud in Amuzu v Oklikah (supra) which dealt with notice and fraud under the Land Registry Act 1962, Act 122. It is trite that registration under Act 122 is tantamount to registration of instruments and registration under PNDCL 152 is registration of title. The Land Title Registration Act makes the Land Certificate prima facie unimpeachable title to land but it is subject to equitable doctrine seven in the provisions in the Act itself. In Ahadzi & Another v. Sowah & 2 others [2019-2020] 1 SCLRG 79 holding (5), this court clearly stated the law thus:

> (5) The plaintiffs acquired indefeasible titles to the land which is the subject matter of dispute pursuant to section 43 of the Land Title Registration Act, 1986 (PNDCL

152). It is only upon proof of the exceptions under the law, such as mistake or fraud which would defeat the plaintiffs' titles."

Section 122 (1) and (2) of the Land Title Registration Act, 1975, PNDCL, 152 provides:-

"(1) Subject to subsection (2), the court may order the rectification of the land register by directing that a registration where it is satisfied the cancellation or the amendment of the registration has been obtained, made or committed by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who has acquired a land or an interest in land for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought or had personally caused the omission, fraud or mistake or a substantially contributed to it by an act, or neglect or default."

Section 43 (1) of PNDCL 152 makes registration indefeasible on the production of the land title certificate as an absolute defence to any adverse claim. However, section 122 (1) and (2) supra empowered courts to set aside registered titles on stated grounds such as fraud, mistake or omission. See Brown v Quarshigah [2003-2004] 2 SCGLR 930. It is clear that although the appellants acquired an indefeasible title their acts constituted fraud and therefore their title is set aside as null and void. In the instant case, we are satisfied that the appellants procured their land title certificates fraudulently and that fraud was proved beyond reasonable doubt. The learned trial Judge was right in cancelling the said land title certificates but the grounds of; "in the interest of the parties and justice" does not arise. We would also agree with the conclusion of the 1st appellate court that the certificates be cancelled but not on the ground of mistake. It is settled law that an appellate court can affirm the decision of a lower court which is correct but founded on wrong reasoning. See MensahLarkai v. AyiteyTettehQuarcoo (Consolidated) [2009] SCGLR 621, Abaka v Atubrah [1963] 1GLR 456, 464.

It is noteworthy that the blame of fraudulently procuring land title certificates by the appellants would not have arisen but for the greed and avarice of both the Akweinas Farms and the Ablekuma Mantse who having earlier knowingly divested their interests in the land

to the respondents, shut their minds and eyes and granted the same land to the appellants. This act of the said two persons is reprehensive and must cease. Fortunately, the new Land Act, 2020, Act 1036 has criminalized such double transfer of interest in land and it is hoped this would curb such incidents.

All the grounds of appeal are hereby dismissed.

The principle is firmly established that a second appellate court such as this honourable court would not interfere with the findings of fact made by a trial court and confirmed on an appeal by a first appellate court. A second appellate court would overturn such findings and conclusions only in exceptional cases. In Achoro v Akanfela [1996-97] SCGLR 209 in holding (2) thus:-

> "this court would not interfere with the concurrent findings of two lower courts unless it was established with absolute clearness that some blunder or error resulting in a miscarriage of justice, was apparent in the way in which the lower tribunals had dealt with the facts. It must be established eg. that lower courts had clearly erred in the face of a crucial documentary evidence, or that a principle of evidence had not been properly applied; or that the finding was so based on erroneous proposition of law that if that proposition be corrected the finding would disappear… It must be demonstrated that the judgments of the courts below were clearly wrong."

See also other respectable decisions like Obrasiwa II v Otu [1996-97] SCGLR 618; Obeng v Assemblies of God Church, Ghana [2010] SCGLR 300 at 322-323; Gregory v Tandoh IV & Hansen [2010] SCGLR 971 at986-987 Awuku Sao v Ghana Supply Co. Ltd [2009] SCGLR 710, Fynn v Fynn [2013-2014] 1 SCGLR 727, Holding (1), Tamakloe v GIHOC Distilleries [2018 -2019] 1 GLR 887 Holding 4.

In the instant case, the concurrent findings were not perverse. They were amply supported by the record and consistent with the totality of the evidence. No miscarriage of justice had been occasioned by those findings and conclusions and therefore we would not interfere with them.

In conclusion, the appeal fails and it is hereby dismissed as without merit. The judgments of the High Court and the Court of Appeal dated the 11th day of August, 2015 and the 14thday of January, 2019 respectively are hereby affirmed.

C. J. HONYENUGA
(JUSTICE OF THE SUPREME COURT)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

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

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

PROF. H. J. A. N. MENSA-BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)

COUNSEL

FELIX NANA OSEI ESQ. FOR THE PLAINTIFFS/APPELLANTS/APPELLANTS.

A.K. BANNERMAN-WILLIAMS ESQ. FOR THE DEFENDANTS/RESPONDENTS/ RESPONDENTS.