IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DOTSE JSC (PRESIDING)
OWUSU (MS.) JSC
LOVELACE-JOHNSON (MS.) JSC
TORKORNOO (MRS.) JSC
PROF. MENSA-BONSU (MRS.) JSC

CIVIL APPEAL
NO. J4/10/2022

6TH JULY, 2022

GYADUDAT COMPANY LTD. …… PLAINTIFF/APPELLANT/APPELLANT

VRS

1. ALBERT OKPOTI BOTCHWAY
2. C. A. STEEL LIMITED
…… DEFENDANTS/RESPONDENTS/ RESPONDENTS

JUDGMENT

M. OWUSU (JSC):-

The issue for determination in this appeal borders on the legal maxim "Nemo dat quad non habet", that is one cannot give what he does not have or possess at the material time of the conveyance.

On the 20th April, 2018, the Court of Appeal dismissed the Plaintiff/Appellant's appeal and affirmed the decision of the trial court. In its judgment, the Court of Appeal held among other things as follows:

> *"From the evidence the plaintiff has failed to establish that it has valid title to the land. Its grantors have admitted the land is state land, they have no right to enter the land and make grants of same. The plaintiff in effect acquired nothing. The conclusion the trial judge came to is supported by the evidence on record.*
>
> *The appeal has no merit it is hereby dismissed".*

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

1. *The Court of Appeal erred in affirming the judgment of the High Court of Justice, Accra which was against the weight of the evidence adduced at the trial.*
2. *The learned trial Judge in the High Court of Justice, failed to evaluate the evidence adduced or to resolve the primary issues put before her and the Court of Appeal erred in upholding the wrongful conclusions she came to per her judgment.*
3. *The learned trial Judge in the High Court of Justice, occasioned a grave miscarriage of Justice to the case of the plaintiff when she wrongfully held that the grant of the disputed land by the Lands Commission to the 2nd Defendant during the pendency of the suit Number BL 90/2004 was lawful and the Court of Appeal erred in affirming the Judgment of the High Court premised on that wrong holding.*

The reliefs sought from the Supreme Court are:

i. *That the Judgment of the Court of Appeal which affirmed the Judgment of the High Court of Justice, Accra and the award of costs be reversed,*

ii. *That Judgment be accordingly be entered for the Plaintiff/ Appellant/Appellant for the reliefs sought by it in the High Court of Justice, Accra.*
iii. *Any further or other orders as the Supreme Court will deem fit to make.*

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

By its amended writ of summons, the Plaintiff Company claimed against the Defendants the following reliefs:

A. *A declaration of title to all that parcel of land the property of the plaintiff situates at South Legon, Accra containing an approximate area of 2.626 acres described more particularly in the accompanying statement of claim a portion of which land the Defendant has trespassed upon and caused damages to structures thereon.*
B. *Damages for trespass committed by the Defendants, their servants, agents, assigns and or workmen to the aforementioned land including consequential losses occasioned by the destruction of the structures on Plaintiff's land.*
C. *An Order of Perpetual Injunction restraining the Defendants whether by themselves, their agents' servants, assigns and or workmen from encroaching upon, entering, occupying or interfering in anyway with the Plaintiff's ownership and possession of the said land.*
D. *Further or other reliefs.*
E. *Costs*

In the 11 paragraph Statement of Claim which accompanied the Plaintiff's writ of summons, it averred that, it is the lawful owner of all that parcel of land situate at South Legon, Accra, having acquired same from the Osu Stool in January 2006. The Plaintiff averred further that, the said acquisition is documented in a conveyance dated the 20th of January, 2006 and executed between Nii Ako Norte IV, Osu Mankralo and acting Osu Mantse and the Plaintiff Company. It continued that, after the grant, the Plaintiff went into possession by putting a caretaker on the land. Thereafter, it built a fence wall and

security post on the land and has since occupied same without let or hinderance. The Plaintiff concluded that, the Defendants without any justification descended on the Plaintiff's property and demolished portions of the fence wall and security post on the claim that, 2nd Defendant was granted the land by the Lands Commission and a lease executed to that effect hence this action.

The Defendants in their amended Statement of Defence denied Plaintiff's claim and put the latter to strict proof of its averments. In particular, the Defendants averred that at the time of the alleged acquisition by the Plaintiff, the Osu Stool had no title to the land in dispute to transfer to the Plaintiff by virtue of the Colonial Government Compulsory acquisition of same in 1946. Consequently, the purported grant of the said land to the Plaintiff by the Osu Stool is null and void and conveyed no title to the Plaintiff. They continued that, 2nd Defendant acquired the said land in November 2010 from the Government of Ghana and registered and fenced same without any let or hinderance from anybody including the Plaintiff. The Defendants concluded that the Plaintiff is not entitled to its claim.

At the trial, the Plaintiff testified through its representative, Kwabena Nketia, the Director of Operations and called two witnesses. The Defendants also testified through 1st Defendant, the Managing Director of 2nd Defendant and called one witness. At the end of the trial, the Plaintiff's claim was dismissed. Dissatisfied with the decision of the trial court, the Plaintiff appealed to the Court of Appeal, which also dismissed the appeal as having no merit. The Plaintiff still not satisfied with the decision of the Court of Appeal is before the Supreme Court.

In this appeal, the Plaintiff/Appellant/Appellant would be referred to as Plaintiff and the Defendants/Respondents/Respondents as Defendants.

In arguing the appeal, counsel for the Plaintiff invited us to overturn the Judgment of the Court of Appeal as well as the findings made by the High Court and affirmed by the Court of Appeal. He referred us to the following cases:

1. **KOGLEX LTD (NO. 2) V. FIELD [2002] SCGLR 175;**
2. **GIHOC REFREGIRATION & HOUSEHOLD PRODUCTS LTD V. HANNA ASSI [2005-2006] SCGLR 458;**
3. **EFFISAH V. ANSAH [2005-2006] SCGLR 941**
4. **GREGORY V. TANDOH IV & HANSON [2011] 1 SCGLR 300 and**
5. **FABRINA LTD V. SHELL GHANA LTD,**

and submitted that, since an appeal is by way of rehearing, this Court has to satisfied itself that, the evidence on record supports the findings of both the trial Court and the Court of Appeal. He continued that, where the findings of the trial Court are clearly unsupported by the evidence on record or the reasons in support of the findings are unsatisfactory, or there is improper application of a principle of evidence, or where the findings are based on a wrong proposition of law, or where the finding is inconsistent with crucial documentary evidence on record, this Court can interfere with the said findings and depart from the findings of fact made by the trial Court and concurred by the first Appellate Court. Counsel referred us to the decision of this Court in the case of **EASTERN ALLOY COMPANY LTD V. CHIRANO GOLDMINES [2017-2018] 1 SCGLR 108** and invited us to interfere with the findings of the trial Court which findings were affirmed by the Court of Appeal.

On ground 2 of the appeal, counsel for the Plaintiff submitted that, the trial judge failed to properly evaluate the evidence adduced at the trial or make any proper findings of fact. This is because she excluded matters in the evidence of the parties and the witnesses which were critically necessary for consideration and in the process ended up drawing wrong inferences which were not supported by the facts. After quoting portions of the Judgment of the trial Court, he then submitted that, contrary to the learned trial judge's assertions, she did not evaluate the evidence that was adduced before her but rather dwelt on and relied extensively on the submissions made by counsel for the Defendants in his Written Address. By so doing, the trial judge ended up adopting those submissions and substituting them for findings of fact. In the process she drew wrong inferences all of which went against the Plaintiff and occasioned a substantial miscarriage of justice to the latter's case. In other words, the trial Judge simply abdicated her judicial responsibility

to evaluate the totality of the evidence or make primary findings of fact or make the right inferences.

On ground 3 of the appeal, counsel for the Plaintiff argued that, from the pleadings and evidence led, it was not in dispute that, the grant of the disputed land by the Lands Commission to the 2nd Defendant was made during the pendency of Suit No. BL 90/2004 between the Osu Stool and Lands Commission which case is still pending. He then posed the question whether the setting aside of the Injunction Order against the Lands Commission, means the defendant in the said suit was entitled under its Statutory function to make the grant to 2nd Defendant. He referred to the initial Order of Interim Injunction Exhibit 'G' dated 28-01-2008 as well as Exhibit '4' the Interlocutory Injunction dated 11-09-2008 and submitted that, in Exhibit 'G' the Lands Commission was restrained from leasing any part of the disputed land to individuals or companies to build private properties or for any purpose unconnected to the University College until the final determination of the suit. However, the impression was being created by the Defendants throughout its pleadings, testimonies and written address filed on their behalf that Exhibit 'G' was vacated and substituted with Exhibit '4'. Counsel then submitted that, that impression is not borne out by the evidence neither was it stated in Exhibit '4' that Exhibit 'G' was being set aside. Consequently, the restraint placed on the Osu Stool did not automatically lift the Injunction placed previously on the Lands Commission from leasing the land in dispute as the Defendants would have this Court to believe. Thus, Exhibit '4' which authorized Lands Commission to carry out its statutory function of managing the Land in dispute is being mischievously interpreted by the Defendants.

On the contrary, counsel for the Plaintiff submitted that, by Exhibit 4, the Court wanted to hold the balance evenly between the parties and did not envisage a situation where the land in dispute would be disposed of by the Lands Commission to the Defendant when the suit has not been finally determined. He conceded that, the Lands Commission is vested with powers by Article 258 (1) of the 1992 Constitution to manage Public Lands on behalf of the Government. However, counsel argued, it cannot be interpreted to mean that, even lands the subject matter of disputes in courts and under judicial consideration, they could be disposed of pending the final determination of the suit.

Consequently, the trial judge erred in holding that, the grant of the disputed land by the Lands Commission to the 2nd Defendant was lawful. He concluded on this ground that, this wrongful finding legitimatized that illegal grant and this has occasioned a grave miscarriage of justice to the Plaintiff and its grantor, the Osu Stool

On ground 1, which complained that, the Judgment is against the weight of evidence, counsel for the Plaintiff submitted that, irrespective of the conclusions reached by the trial Court and affirmed by the Court of Appeal, this Court is not precluded from reviewing the evidence and arrive at its own conclusion. He referred us to cases like; **THE REPUBLIC V. CENTRAL REGIONAL HOUSE OF CHIEFS, EX PARTE NANA EHUNNABOBRIM IDUN GYAN IX, Civil Appeal No. J4/11/2013; TUAKWA V. BOSOM [2001-2002] SCGLR 65 and BROWN V. QUASHIGAH [2003-2004] SCGLR 930** among others and invited us to consider comprehensively the entire evidence on record and come to a different conclusion on the matter. For instance, the cross examination of 1st Defendant and DW1 exposed them on the state of the land before the demolition exercise, the person who carried out the demolition and their foreknowledge of the pendency of the High Court case in suit No. BL 90/2004 and the grant of the 2005 Injunction Order. Secondly, the Lands Commission got the Injunction granted in 2005 set aside on the blind side of the Osu Stool. But more importantly, it is not in dispute that, the lands acquired under the Public Lands Ordinance, Cap 142 were not being utilized for the purpose for which they were acquired and by virtue of Article 20 clause 6 of the 1992 Constitution, the owners of the property immediately before the acquisition should be given the first option to acquire same. Therefore, this Constitutional provision creates a reversionary interest in the original owners of the land, the Osu Stool. Counsel for the Plaintiff therefore invited us to allow the appeal and enter judgment in favour of the Plaintiff for the reliefs sought in the High Court.

In response to the above submissions, counsel for the Defendants argued that, the primary issue for determination was the ownership of the disputed land for which Plaintiff claimed ownership. He continued that the Plaintiff was therefore obligated in law to lead cogent evidence to establish its title. However, from the record of appeal, the Plaintiff and its witnesses admitted that at the material time of the said grant, the land belonged

to the 2nd Defendant's grantor, the Government of Ghana and part of the said land was occupied by a government agency and not the Osu Stool, the former's grantor. This fortified the government's title to the said land. Counsel concluded on this ground that the Plaintiff was unable to discharge the evidential burden on it. Consequently, the trial Court decision on this issue was rightly affirmed by the Court of Appeal.

On the point that, the trial Judge failed to properly evaluate the evidence adduced at the trial, counsel for the Defendants submitted that the allegations that the trial Judge failed to make proper findings of fact or excluded matters in the evidence which were critically necessary for consideration and in the process ended up drawing wrong inferences which were not supported by the facts are completely unfounded. This is because, having found and affirmed the trial Court's decision that the Osu Stool had no title to give to the Plaintiff, the Court of Appeal disposed of the sole ground of appeal before it, which ground was that, the Judgment is against the weight of the evidence adduced at the trial. In doing so, the Court of Appeal also dealt with the two remaining grounds of appeal canvassed before this Court as grounds 2 and 3 of the appeal were not grounds filed before the Court of Appeal.

Secondly. Counsel argued, once the Court of Appeal determined that the Plaintiff's grantor had no title to give it, the determination of the two remaining grounds of appeal before this Court became unnecessary as their fate depended on which of the parties' grantor had title to the said land to give.

Thirdly, counsel for the Defendants submitted, since the Plaintiff's grantor at all material times had no title to give, it did not matter when the Lands Commission granted the said land to the Defendants. Consequently, no miscarriage of justice was occasioned to the Plaintiff's case by the Judgment of the trial Court.

But more importantly, counsel for Defendants submitted, the effect of the Order which restrained the Plaintiff's grantor, the Osu Stool from making grants of the Lands compulsorily acquired by the Government of Ghana and ordering the Lands Commission to resume its management function was to lift or vacate the earlier Order restraining the

said Commission. Therefore, the grant made to the Defendants after vacating the said Order cannot be assailed.

Based on the forgoing, counsel for the Defendants invited us to dismiss the appeal as all the grounds of appeal ought to fail and the Judgment of the trial Court and that of the Court of Appeal affirm by this Court.

In our introduction to this Judgment, we stated that, the main issue for determination in this appeal is hinged on the legal maxim "nemo dat quad non habet" meaning, one cannot give what he does not have or possess at the material time of the Conveyance. So, the question is, what are the pieces of evidence on record if applied in Plaintiff's favour would have changed the decision in its favour or the pieces of evidence wrongly applied against the Plaintiff? In this case it is not in dispute that, the disputed land is owned by the Government of Ghana. Plaintiff's grantor admitted this fact in cross examination when he testified before the trial Court.

X X X of PW1 by counsel for Defendants.

"Q. When did you say a Colonial Government Compulsorily acquire the South Legon lands?

A. 1946

Q. And according to you the purpose for which the land was acquired was for the development of a university. Is that not so?

A. That is so.

Q. And that the Government did not fully utilize the land for the purpose that it was acquired. That was your case?

A. That is so.

Q. So knowing that the Government of Ghana has acquired that land for the development of university and did not fully use it for that development,

what steps if any did your stool take before making grants to various grantees?

A. After the School was built, the rest became surplus land. The Osu Stool started granting it out.

Q. The Stool did not find it necessary to either petition the Government or find out from the Government whether indeed that land was a surplus or not, did it?

A. We did not".

See page 140 to 141 of the Record of Appeal.

From the cross examination and the answers of PW1, the Plaintiff's grantor admitted that the disputed land is for the Government of Ghana and not the Osu Stool. Clearly, the finding by the trial Judge that "I therefore find as a fact that the grant of the disputed land to the Plaintiff by the Osu Stool is null and void and conveyed no title whatsoever" is supported by the evidence on record. In its Judgment, the Court of Appeal also held that:" The question one would ask is whether the evidence the Plaintiff placed before the trial Court sufficiently discharged its burden of proof of title to the disputed land. Plaintiff's grantor's representative testified that the disputed land is government land acquired for the purpose of building university of Ghana. He continued to say that the building of the university has ended so the vacant land is surplus land and therefore the Osu Stool is selling the surplus. It is worth quoting the questions and answers of the Plaintiff's grantor in cross examination on this".

See page 409 of the Record of Appeal.

After quoting a portion of the cross examination of PW1, the Court of Appeal held as follows:

"*This is clear admission by Plaintiff's grantor, (Osu Stool) that at the time it made the grant to Plaintiff the land did not belong to the Osu Stool but the Government of*

Ghana. Not only that, the Osu stool further admitted they were aware that a government institution was in occupation of the land".

The Court of Appeal went on and held as follows:

"The Osu Stool, Plaintiff's grantor, by its own admissions has no title to the disputed land and could not have granted the Plaintiff what it does not have. The maxim "nemo dat quad non habet" (no one gives what he possesses not) applies in this case. The Osu Stool cannot give what it does not have, in effect the grant Plaintiff claims he got from Osu Stool is a nullity. It got nothing".

From the above quotations, the Court of Appeal came to the conclusion that, the Plaintiff failed to proof its claim of ownership to the disputed. Therefore, the High Court properly evaluated the evidence on record and came to the right conclusion which conclusion was rightly affirmed by the Court of Appeal. The law is that:

"Where the evidence of one party on an issue in a suit was corroborated by witnesses of his opponent, whilst that of his opponent on the same issue stood uncorroborated even by his own witnesses, a court ought not to accept the uncorroborated version in preference to the corroborated one unless for some good reason (which must appear on the face of the judgment) the court found the corroborated version incredible or impossible".

See the Supreme Court case of **ASANTE v. BOGYABI AND OTHERS [1966] GLR 232 holding (2)** of the headnotes.

Grounds 1 and 2 of the appeal fail and they are accordingly dismissed.

This brings us to ground 3 of the appeal. The complaint on this ground is that, the trial Judge occasioned a miscarriage of justice to the case of the Plaintiff when she wrongly held that the grant of the disputed land by the Lands Commission to the 2nd Defendant

during the pendency of Suit No. BL 90/2004 was lawful and the Court of Appeal also erred in affirming the Judgment of the High Court premised on that wrong holding.

Exhibit 4 is an Order for Interlocutory Injunction signed by E. AMOAKO ASANTE, Justice of the High Court, Accra, dated 11th September, 2008, in Suit No. BL 190/2004 titled Osu Stool per Nii Ako Nortei IV V. Lands Commission. The 3rd and 4th paragraphs of the Order read as follows:

> *"IT IS HEREBY ORDERED that the Plaintiff stool, its agents be and are hereby restrained from further dealing with the land in dispute of which the Lands Commission was managing on behalf of the government.*
>
> *IT IS FURTHER ORDERED that the Lands Commission be and is hereby authorized to carry out the said statutory function of managing the land in dispute the subject-matter of this action pending the final determination of the suit" (our emphasis).*

Counsel for the Plaintiff argued that, the Lands Commission is putting wrong interpretation on the above Order. We do not see any wrong interpretation being put on the above Order. This Order was made about fourteen years ago and the Plaintiff has not sought to have it vacated. Besides, the Order is in line with the functions of the Lands Commission as provided for in Article 258 of the 1992 Constitution of Ghana. Therefore, the grant made to the 2 Defendant by the Commission was lawful. Since the Plaintiff's grantor admitted in its evidence the disputed land is owned by the Government of Ghana, this complaint is misplaced to say the least.

Ground 3 of the appeal has also not been made out and it is accordingly dismissed.

From all of the forgoing, the appeal fails in its entirety and it is hereby dismissed.

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

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

A. LOVELACE-JOHNSON (MS.)
(JUSTICE OF THE SUPREME COURT)

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