**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT**

**ACCRA – GHANA**

**CIVIL APPEAL**
**NO. J4/37/2016**
**27/07/2016**

**CORAM: ATUGUBA JSC (PRESIDING)**

**BONNIE JSC**

**BAMFO JSC**

**BENIN JSC**

**APPAU JSC**

**HAJIA AKWELEY AMUDALATU OPARE ADDO**

**VRS**

**BABA BIDARI**

**APPAU, JSC:**

The appellant before us was the plaintiff in the trial High Court whilst the respondent was the defendant. On 14th November 2008, the appellant sued the respondent in the trial High Court claiming inter alia; a declaration of title to a piece of land at Derby Avenue described in the endorsement of the writ of summons and recovery of possession of the said land. The appellant succeeded on his claim in the trial court but subsequently lost in an appeal lodged by the respondent against the judgment of the trial court at the Court of Appeal. The appeal before us is a manifestation of the appellant's displeasure with the

decision of the 1st appellate court, for which she is inviting our opinion on the matter.

The pleaded case of the appellant in the trial court was very brief. According to her, by a conveyance dated the 5th day of July 2007 made between her as purchaser and Mr Ken Brookman-Amissah, (the lawful attorney of the Administrators of the Estate of Stephen Coleman) as vendor, she acquired the property, part of which is now in dispute. The property in question adjoins a piece of land owned by the respondent's family of which respondent is the head. The respondent's family has a storey building on their land, which contains a number of stores including the encroached portion, from which respondent enjoys rent from the tenants occupying the said stores. Since she had intentions to reconstruct the purchased property, she appointed professionals to survey the land after purchase, to confirm her boundaries and to ensure that any renovations or reconstruction that she would carry out eventually, would not affect the respondent's adjoining land.

When the surveyors she appointed embarked on the assignment, they informed her that the defendant's family, in the construction of their stores, encroached on her land by the following margins; 19 ft. in the North, 50 ft. 1 inch in the West, 19 ft. in the South and 43 ft. in the East. She drew the respondent's attention to this fact and suggested the appointment of a neutral surveyor from the Survey Department to re-survey the land to confirm or deny this finding, but the respondent refused the request or suggestion. She went ahead to register her land as surveyed by the surveyors she appointed. On the 6th day of May 2008, she was issued with a Land Title Certificate No. GA 26540 to cover the re-surveyed land. She therefore took this action to claim the reliefs as endorsed on the writ of summons.

The respondent denied ever encroaching on appellant's land as pleaded. His case was that his family has been an adjoining neighbour of appellant's grantor for the past seventy (70) years without any dispute between them. According to him, somewhere in the year 1957, both the appellant's grantor and his family leased their respective adjoining lands to Richard Hassan Jojo and Wafick Hassan Jojo for a period of fifty (50) years. The said lessees constructed one storey building containing a number of shops on the two adjoining lands; with appellant's grantors having a number of shops on their portion and the respondent too having a number of shops on their portion, with a defined boundary. The lessees operated these shops from 1958 to 1969 when they

decided to leave the country. When they were leaving, they assigned the respondent's portion of the property to one Baah Sackey and others while appellant's grantors; i.e. Coleman's section, was assigned to one Wiafe for the remaining number of years of the lease, which was to expire in 2007.

Respondent contended that his family never had any dispute with appellant's grantors until 2007 when appellant purchased the Coleman's portion of the property. Again, when the appellant embarked on the survey of the land she purchased for which she procured the Land Title Certificate dated 6th May 2008, she never informed his family before the measurements were taken. Any land certificate obtained without any notice to his family was therefore fraudulently procured, since that venture was contrary to the Land Title Registration Act, 1986 [**PNDC Law 152**].

Respondent contended further that since his family and appellant's grantors knew their respective boundaries before Ken Brookman-Amissah sold Coleman's portion to the appellant in 2007, the appellant is estopped from changing the boundaries of the two adjoining properties. Again, appellant's action was caught by section 10 of the Limitation Act, 1972 [**NRCD 54**], granted what she is contending is true. He prayed the trial court to dismiss appellant's action as same was vexatious and calculated to harass his family.

The trial High Court which heard the matter found for the appellant and granted her all the reliefs claimed. Not satisfied with that decision, the respondent appealed against same to the Court of Appeal. The Court of Appeal, in a well-reasoned judgment dated 17th July 2014, upheld the respondent's appeal and reversed the judgment of the trial court. It accordingly, ordered the Land Title Registry to cancel the Land Title Certificate No. GA 26540 granted the appellant on the 6th of May 2008.

The appellant filed six (6) grounds of appeal before this Court. They are:

a. *The Court of Appeal erred when it held that the respondent procured her Land Title Certificate fraudulently and declared it invalid and ordered the Land Title Registrar to cancel same.*
b. *The Court of Appeal erred when it held that the respondent's action is caught by the Limitation Act and the action is therefore statute barred.*

c. *The Court of Appeal erred when it held that the period for adverse possession started to run when the Jojo brothers left Ghana and not when the fifty (50) year lease granted the Jojo brothers expired.*
d. *The Court of Appeal erred when it held that respondent's predecessors-in-title were caught by laches and acquiescence and thus lost any right to re-assert ownership of the land in dispute.*
e. *The Court of Appeal erred when it held that respondent purchased the building or shops and not the land on which the building is situate.*
f. *The judgment is against the weight of evidence.*

The appellant, in her written statement of case filed on 29/02/2016, argued grounds (b), (c), & (d) together, then each of (e), (a) and (f) separately. The respondent's statement of case in answer also followed the same pattern.

We have meticulously considered the submissions of both parties, vis-à-vis the judgments of the trial High Court and the Court of Appeal from which this appeal emanated. We hold the view that the Court of Appeal has, in a brilliant fashion, exhaustively dealt with the facts and the law raised for determination in this appeal in its judgment of 17th July 2014 and nothing substantial has been urged on us by the appellant to justify our interference with it.

The crux of the matter before the trial court was; what property did the appellant purchase from the lawful attorney of Coleman? Was it a bare land or an already developed property? How many stores did Coleman's tenants control at the time of the sale of Coleman's portion to the appellant?

The facts on record do not support appellant's pleaded case that she bought land adjoining respondent's property from Coleman's attorney and when she surveyed same, she discovered that the respondent's family in constructing their stores on their portion, had encroached on the land she purchased. The facts of the matter are that respondent's family did not construct the stores by themselves. The stores were constructed by the original lessees of both the appellant and the respondent; i.e. the Jojo brothers as far back as 1957. It was one long storey building containing a chain of stores constructed on the two separate adjoining lands belonging to the appellant's vendors and the respondent's family. From the record, there is a thick wall demarcating their boundary indicating the number of stores that each of the original owners was entitled to.

When the original lessees; i.e. the Jojo brothers, were compelled to leave the country as a result of the Aliens' Compliance Order, they did not lease the whole block of stores to only one person. They made separate leases or assignments. The portion belonging to appellant's vendor, i.e. Coleman, was assigned to one Wiafe while the defendant's portion was assigned to one Baah Sackey and others. When the original fifty-year lease therefore expired, the respondent's family took action against Baah Sackey and others to claim the reversionary interest whilst Coleman also claimed his from Wiafe and the others. This testimony was not challenged.

Granted that the Jojo's made a mistake in setting up the boundary between the two separate lands after constructing the stores, the original owners never complained with each having advanced knowledge of the number of stores each was entitled to. If the stores in possession of appellant's vendor were identifiable and these were the ones appellant purchased in 2007, then why is it that the appellant now wants to reset the boundary between her vendor and the respondents?

As the Court of Appeal rightly concluded, the appellant's predecessor in title had slept on whatever right appellant is now claiming, for the past fifty years if indeed he had any right at all. Appellant cannot therefore make a new site plan after her purchase and incorporate two additional shops belonging to the respondents' family into the site plan made by her without any input from the respondent.

We agree with the Court of Appeal that the trial High Court erred when it decreed judgment in appellant's favour on all her reliefs. The findings made by the first appellate court, for which the appellant is seeking our intervention, were appropriate and unblemished. There is therefore no justification on our part to disturb these findings. We accordingly dismiss the appeal and affirm the judgment of the Court of Appeal in its entirety.

**(SGD) Y. APPAU**

**JUSTICE OF THE SUPREME COURT**

**(SGD) W. A. ATUGUBA**

**JUSTICE OF THE SUPREME COURT**

**(SGD) P. BAFFOE-BONNIE**

**JUSTICE OF THE SUPREME COURT**

**(SGD) V. AKOTO-BAMFO (MRS)**

**JUSTICE OF THE SUPREME COURT**

**(SGD) A. A. BENIN**

**JUSTICE OF THE SUPREME COURT**

**COUNSEL:**

**PHILIP JIMANOR FOR THE PLAINTIFF/RESPONDENT/APPELLANT.**

**BABA AVIO FOR THE DEFENDANT/APPELLANT RESPONDENT, WITH HIM COL. MAHAMA IDDRISU (RTD).**