IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DOTSE JSC (PRESIDING)
AMEGATCHER JSC
PROF. KOTEY JSC
TORKORNOO (MRS.) JSC
KULENDI JSC

CIVIL APPEAL
NO. J4/61/2022

14TH DECEMBER, 2022

JEANETTE HAYFRON-BENJAMIN ..... APPLICANT/APPELLANT
APPELLANT

AND

1. PRIME INSURANCE COMPANY LTD. ..... PLAINTIFF/RESPONDENT/
RESPONDENT/RESPONDENT

VRS

2. LANDS COMMISSION DEFENDANT

JUDGMENT

AMEGATCHER JSC:-

INTRODUCTION

On 14th December 2022, this court dismissed the appeal filed by the appellant against the judgment of the Court of Appeal dated 20th May 2021 which affirmed a ruling of the

High Court dated 31st July 2017, and reserved its reasons to be assigned not later than 25th January 2023. We, now, proceed with the reasons for our judgment.

BACKGROUND

The interesting facts of this case are as follows; on the 8th of June 2015, the plaintiff/respondent/respondent (hereafter referred to as the respondent) applied to the defendant for a parcel of land in any prime business district in Accra to put up its headquarters. After a series of meetings, the defendant issued an allocation letter which also contained an offer to the respondent. The respondent was allocated a parcel of land at North Ridge covering an area of 1.38 acres with a site plan attached to it.

By a letter dated 29th July 2015, the respondent accepted the offer and paid certain amounts as consideration in fulfillment of the requirements of the offer. When the Greater Accra Regional Lands Commission held its 38th regular meeting on 19th August 2015, it confirmed the allocation to the respondent and subsequently, issued a second offer to the respondent. This land allocated to the respondent is the subject matter of this dispute.

The twists following the allocation to the respondent then started. By a letter dated 7th December 2015, the Ministry of Water Resources, Works and Housing claiming to have a structure on the said land wrote to the respondent and demanded the payment of a replacement value of its bungalow assessed at GHC500,000.00. It appears because of the seriousness the respondent attached to the allocation of the plot, it paid this amount to the Ministry without any hesitation.

On 5th January 2016, the respondent applied for an official search at the Lands Commission. It confirmed that the land had indeed been allocated to the respondent. However, the defendant refused to execute a lease in favour of the respondent so the respondent commenced an action in the High Court for the following reliefs:

a. **An order requiring the Defendants to issue a lease in respect of the land covered by the allocation letter dated 23rd day of July 2015 to the Plaintiff the beneficial owner of the land;**

b. **Recovery of possession of the land covered by the allocation letter dated 23rd July 2015;**
c. **In the alternative to a) and b) above, an order to replace the land covered by the allocation with similar size at "any of the prime business district locations in Accra";**
d. **In the alternative to a), b) and c) above, the refund of One Million Two Hundred and Twenty-Four, Four Hundred and Forty-Five Ghana Cedis (GHC1,224,445.00) to the Plaintiff by the Defendant;**
e. **Interest on the amount of One Million Two Hundred and Twenty-Four, Four Hundred and Forty-Five Ghana Cedis (GHC1,224,445.00) from 18th day of August 2015 to final date of payment; and**
f. **Cost**
g. **Any other reliefs the Honourable Court may deem fit.**

The defendant was served with the respondent's writ of summons and statement of claim but it failed to enter appearance. The respondent, accordingly, applied for judgment in default of appearance. On 9th February 2017, the High Court entered an interlocutory judgment in favour of the respondent. After evidence to prove title was led, the High Court, again, on 31st July 2017, entered final judgment for the respondent and ordered the defendant to issue a lease of the 1.36 acres allocated land to the respondent and recovery of possession. After the judgment, the respondent then filed an application for leave to issue a writ of possession and served the appellant who was in actual physical occupation of the house located on the property in compliance with Order 43 rule 3.

The appellant alleged that the notice to her was the first time she was being served with a process of court regarding the property. The appellant then initiated another twist to the unfolding drama in this case. She first filed an affidavit in opposition against the application for leave to issue a writ of possession. Before the application could be determined, the appellant initiated another process. She filed a motion to set aside the High Court final judgment dated 31st July 2017 and an order for joinder. On 17th April 2018, the High Court dismissed the appellant's application on the grounds that she did not have locus standi and that, even if she did, the mode by which she commenced her

action was wrong. The High Court went ahead to grant the application for leave to issue a writ of possession. Dissatisfied with the ruling of the High Court, the appellant appealed to the Court of Appeal.

On 20th May 2021, the Court of Appeal unanimously dismissed the appeal and upheld the judgment of the High Court. It is from this decision of the Court of Appeal that the appellant has appealed to this Court on the following 17 grounds of appeal.

a) **The judgment is against the weight of evidence.**
b) **The learned judges erred in law when they held that the absence of a transfer order from the Chief Justice was an error that could be cured under order 81 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) when such error goes to the jurisdiction of the court.**
c) **The learned judges erred in law when they held that the rendering of a second judgment when a judgment had already been rendered was an error that could be cured under order 81 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) when such error goes to the jurisdiction of the court.**
d) **The learned judges erred in law when they held that the Appellant had not established a prima facie case of proprietary estoppel.**
e) **The Learned judges failed to appreciate that the Appellant's claim of a right of first refusal was not based in property law but rather on the principles of fairness enshrined in the Constitution.**
f) **The Learned judges failed to appreciate that the Respondents were not purchasers for value without notice and therefore were not entitled to an order for specific performance.**
g) **The Learned judges failed to appreciate that the Appellant's claim was essentially a claim against the Lands Commission in respect of proprietary estoppel and thus erred when they held that the Appellant was not a proper party or a party which should have been served with the Writ of Summons and Statement of Claim ab initio or at least joined as a party prior to trial or judgment.**

h) The Learned judges erred in upholding the ruling of the High Court that the Appellant did not have locus standi to join the suit or apply to set it aside.

i) The learned judges erred in holding that Mrs. Justice Barbara Tetteh-Charway was a relieving judge when there was no evidence of same and in fact, the evidence on record suggested that she was the substantive judge.

j) The learned judge erred in failing to appreciate that the judgment of the High Court was not a final judgment after trial but was a default judgment which ought to have been set aside on terms upon the application by an interested party or a party with an arguable claim or defense.

k) The learned judge erred in failing to appreciate that Mrs. Justice Rebecca Sittie had not been properly clothed with jurisdiction and thus erred in upholding a judgment made without jurisdiction or in excess of jurisdiction.

l) The learned Judges erred in holding that the appellant had used the incorrect procedure to apply to set aside the judgment when pursuant requirements of such procedure could be satisfied by a notice of application to all parties.

m) The learned judges erred in holding that the appellant had used the incorrect procedure to apply to set aside the judgment when an application pursuant to Order 4 rule 8 of C.I. 47 could be made on notice to all parties.

n) The learned judges erred in interpreting the provisions of Order 4 rule 8 of C.I. 47 too restrictively by construing the word "proceedings" too narrowly.

o) The learned judges failed to appreciate that the Appellant's claim was essentially a claim against the Lands Commission in respect of proprietary estoppel rather than through the Lands Commission, a party

to the suit, and thus a summons would not be required to set aside such judgment against the appellant.

p) **The Learned judges failed to appreciate that the peculiar and unusual circumstances of the case of the Appellant's claim rendered it necessary that the Appellant be granted a trial and therefore the upholding of the judgment of the High Court was unjust and inequitable.**

q) **The Appellant shall seek the leave of this Honourable Court to file further grounds of appeal when a certified copy of the record is available.**

APPELLANT'S CASE

The appellant averred that she is the occupant and lawful possessor of No.33 Sixth Avenue, North Ridge Accra, the subject matter of the dispute and has been in occupation since 1991. The appellant stated that it was the first time she was served with a process of court since the dispute between the respondent and the defendant Commission commenced, even though, they both knew she was in possession.

It is the appellant's case that when her late husband returned from exile in 1991 to take up the position of a Deputy Speaker of the Consultative Assembly, an arrangement was made and they were promised an entitlement to purchase any house they chose to live in. According to the appellant, they were shown houses at Cantonments and North Ridge, but they chose House No.33 Sixth Avenue, North Ridge Accra, and have been in occupation since then.

In 1999, the appellant formally applied to the Lands Commission to purchase the said property but did not receive any response. Several years later, she asked her son to enquire from the defendant commission and the report they received was that, although the land fell within the grant to the Railway Corporation and later assigned to the U.A.C, they did not have records on that particular plot and the building on it because it had been a bare land when it was originally leased. According to the appellant, she continued in occupation to the knowledge of the government but in 2008, she re-applied to the

defendant again for the purchase of the property. According to the appellant, that application is still pending.

It is the case of the appellant that sometime in 2015 an Executive of the respondent company visited the house on several occasions and had meetings with her son. Later, her son met with officials of the defendant Commission and apprised them, after which they followed up with a letter to the defendant. The appellant contends that, based on the promise made to her husband, she is a prior allocatee in possession of the land and that both the respondent and the defendant Commission were well aware of the circumstances regarding the property before the transaction with the respondent, yet they failed to disclose it to the court and fraudulently obtained judgment.

The appellant's case is that she was not informed of any proceedings regarding the property, nor was she served with an originating process by the parties who were aware of her occupation of the property. The appellant averred that she was a necessary party to the final determination of all matters regarding the property but she was never joined or served any process, save the writ of possession.

THE OMNIBUS GROUND OF APPEAL (GROUND A)

The first ground of appeal formulated by the appellant is that the judgment was against the weight of evidence. On the facts and peculiar circumstances of this case, this ground of appeal will be of no assistance to the appellant especially when the appellant was not part of the trial, did not offer any evidence, or cross-examined the respondent. We have said time and again that it will greatly assist justice delivery and save parties and their counsel precious time if they formulated specific grounds of appeal in interlocutory appeals and cases where no evidence was proffered to the omnibus ground which has become the hideout for parties who cannot specify the errors in the judgments they have appealed against-see **Fenu v Dredging International LTD [2017-2020] 2 SCGLR 125** and **Atuguba & Associates v Scipion Capital (UK) LTD [2017-2020] 2 SCGLR 196**. This appeal under consideration is no exception. Not surprisingly, the appellant could not identify and demonstrate to us the pieces of evidence on record which were

not considered or wrongly misapplied by the lower court judge which could have changed the decision in her favour. Instead, the appellant lumped the omnibus ground with ground I and ended up arguing ground I only. The appellant, therefore, failed to sufficiently discharge her obligation under the omnibus ground 'a'. In our opinion, the appellant abandoned ground 'a' of the grounds of appeal. We, therefore, strike out the omnibus ground as abandoned.

THE INVOLVEMENT OF THIRD PARTIES (STRANGERS) IN AN APPEAL

Grounds g, h, j, l, m, n and p essentially constitute the crux of this appeal and shall be discussed together.

In arguing ground G, the appellant contended that, she was not given sufficient notice to enable her to defend her interest in the property and that the trial judge misdirected herself when she granted leave to the respondent to issue a writ of possession without ascertaining whether all necessary parties had been issued with a notice. According to the appellant, as a matter of practicality, persons who are in actual possession of a property should be served with the processes of court regarding the property or at best, be joined to the action to enable them to defend their interests. Replying to ground 'g', the respondent countered that it complied with the rules when it applied for leave to issue the writ of possession and served the persons who were living on the property.

Next, the appellant argues grounds 'h', 'l', 'm' and 'n' together. According to the appellant Order 4 rule 8(1) of C.I. 47 mandates that in an action for the possession of immovable property, any person who is not a party to the action but is in possession may at any stage of the proceeding be ordered to be made a defendant. The appellant submits that apart from the fact that she was not notified about the pendency of the matter, the trial court also failed to join her to the suit when she applied for a Joinder. It is the position of the appellant that the trial judge erred in law and procedure when she dismissed her application on grounds that she did not have locus standi despite the fact that she is in possession of the property. The appellant's argument is that the phrase "at any stage of the proceeding" as found in Order 4 rule 8(1) of C.I. 47 does not have any qualification

and therefore applies even when judgment has been delivered. The appellant cited the English case of **Minet v Johnson [1860] 63 LT 507** in support of this and submits again that the Court of Appeal erred when it affirmed the trial court's decision that the appropriate cause of action for the appellant is the issuance and service of a writ on the parties.

In response to the appellant's grounds 'h', 'l', 'm' and 'n', the respondent argued that the appellant may assert a cause of action against the Republic whom she alleged to have made a promise to her husband but the appellant has not acquired any legal right in the land which entitles her to set aside the judgment. According to the respondent, the appellant is a mere licensee who is purporting to hold on to a promise to her husband to purchase the property. The respondent submits that the appellant has not provided anything to substantiate her alleged promise. The respondent argues further that, even if there was a promise, which they deny, considering the redevelopment policy by the Government of Ghana in 1999, the size of the land in dispute makes the story of the appellant more doubtful. The respondent further submits that if the appellant wanted to have the judgment set aside and to be joined as a defendant, she had to do so with the leave of the court or of the defendant. The respondent avers that the phrase "during proceedings" as found in Order 4 rule 8 should be understood in the context as meaning before judgment.

Lastly, in arguing grounds 'j' and 'p' together, the appellant averred that her long possession of the property in addition to her advanced age constitutes exceptional circumstances by which the judgment of the courts could be set aside, especially, so when the judgment in question is a default judgment. On grounds 'j' and 'p' the respondent submits that there is no evidence of any promise made to the appellant's husband or that the land was allocated to him. The respondent contends that the appellant and her family were licensees of the government of Ghana and their stay in the property does not change their status, regardless of the period. The respondent further argues that there is no obligation on the government to give any person who stayed on state land the first right of refusal.

The Courts have held that in an action for recovery of possession of immovable property, the presence of the occupiers was necessary to completely dispose of the matter. Order 4 rule 8(1) of C.I. 47 states thus:

> **"Without prejudice to rule 5, the court may in an action for possession of immovable property at any stage of proceedings order any person who is not a party to the action but who is in possession of the immovable property whether personally in possession or by tenant or agent, to be made a defendant".**

This rule envisages a situation where an action for possession of immovable property is pending or proceedings are ongoing and the court is made aware of a person in possession whose interest is likely to be affected. In that case, the rule gives discretion to the judge to make an order for such a person to be joined as a defendant. Where, however, final judgment (as against default or interlocutory judgment) has already been delivered in a case, proceedings would have been deemed to have ended and the matter concluded. See **In re Ntrakwa (Decd); Bogoso Gold Ltd v Ntrakwa [2007-2008] SCGLR 389** where this court held that once a final judgment was delivered, the court became functus officio and no longer had jurisdiction in respect of the matter before it. A final judgment, therefore, concludes a proceeding, and the mandate of the court is deemed to have expired even if an appeal is lodged against the judgment. The appellant argues forcefully that even after judgment, a person in possession of property could apply to have the judgment set aside on the authority of the English Court of Appeal case of **Minet v Johnson (supra).** We have looked at the ratio in Minet's case and is distinguishable from the facts of the current case and also the provisions in our Civil Procedure Rules. Minet's case is not a final judgment delivered by the court as it is in this case. Again, in Minet's case, the hurdle of locus standi which a prospective applicant must cross was not compromised. Such as applicant in actual possession can apply to set aside a default judgment that adversely affects him if he can demonstrate that he has or can acquire a locus standi to fight the judgment. Otherwise, if the application is to be based on the applicant's direct interest in the subject matter, then the law requires that he must

either do so in the name of the defendant with his leave or make the defendant and the plaintiff parties to a proceeding and ask for leave to intervene.

The appellant claims that she had no knowledge of the matter between the respondent and the defendant Commission and was never joined as a party to defend her interest although both parties knew of her occupation of the property. Again, she only became aware of the suit when the writ of possession was served on her. The service of the notice of the writ of possession on the appellant was consistent with Order 43 rule 3 of C.I. 47. By that provision, leave shall not be granted to the applicant seeking to enforce a judgment for possession of immovable property, unless it is shown that every person in actual possession of the whole or any part of the immovable property has received such notice of the proceedings as appears sufficient to enable the person to apply to the court for any relief which the person may be entitled.

It is the case, however, of the appellant that when she applied to set aside the default judgment and for leave to be joined as a defendant, the court dismissed her application and held that she did not have a locus standi. The trial court at the time of determining the proceeding was completely unaware of the interest of the appellant and did not deem it necessary to join her as a defendant. In our opinion, the failure on the part of the trial judge to join the appellant to the case did not disable her to exercise her jurisdiction to deal with the case before her. This is because Order 5 rule 1 of C.I. 47 states thus:

> **"(1) No proceedings shall be defeated by reason of misjoinder or non-joinder of any party; and the court may in any proceedings determine the issues or questions in dispute so far and they affect the rights and interests of the persons who are parties to the proceedings.**
>
> **(2) At any stage of proceedings, the court may on such terms as it thinks just either on its own motion or on application;**
>
> **(a) Order any person who has been improperly or unnecessarily made a party or who for any reason is no longer a party or a necessary party to cease to be a party.**

(b) Order any person who ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the proceedings are effectively and completely determined and adjudicated upon to be added as a party".

This rule vests a trial judge with the jurisdiction to either join or disjoin any person to proceeding pending. However, the failure on the part of the trial judge to add to or join the appellant as in this case to the original suit did not defeat in any way the proceeding before her. It is usually the practice that parties may on application join new parties to the suit or persons, not parties may apply to join the suit for the sole purpose of fulfilling the objects of Oder 5 rule 1, avoid multiplicity of suits and allow the court to completely and effectively determine all the issues in controversy. These interventions can only be initiated during the pendency of the action and not after judgment had been delivered. This is illustrated by cases such as In Re **Application for Joinder: Divestiture Implementation Committee, Applicants: Sam (No. 1) vrs. Attorney-General [2000] SCGLR 102, Ago Sai vrs. Kpobi Tetteh Tsuru [2010] SCGLR 762 and Ussher vrs. Darko [1977] 1 GLR 476 CA.**

On the other hand, in the absence of the joinder of all the proper parties, the trial court's jurisdiction could not be said to be lacking. In the instant case when the Court became aware of the appellant and of her interest, the final judgment had already been delivered. Consequently, the Court of Appeal rightly held in this case that, "at any stage of the proceeding" implies at any time during the pendency of the proceedings and not after judgment has been entered. Judgment is the final stage of and terminates proceedings. However, if an appeal has not been filed, or one filed but yet to be transmitted to the appellate court, a trial court is capable of entertaining any interlocutory application such as one to set aside a judgment under Order 36 rule 2 of C.I. 47 which states that:

"A Judge may set aside or vary, on such terms as are just, a judgment obtained against a party who fails to attend at the trial".

Such an application must be made by a party to the action who failed to attend court and must be filed within 14 days from the date the judgment is delivered. Who, then is a

party? According to the eleventh edition of the Black's Law Dictionary, "a party" to an action is:

> **"One by or against whom a lawsuit is brought; anyone who both is directly interested in a lawsuit and has a right to control the proceedings, make a defence, or appeal from an adverse judgment……a person who has been named as a party and has a right to control the lawsuit either personally, or, if not fully competent, through someone appointed to protect the person's interest. In law, all nonparties are known as 'strangers' to the lawsuit."**

It follows, therefore, that where the law makes mention of 'a party to an action' such person must have been named or added to the action as either a plaintiff or a defendant. A person who has not been so added or joined does not become a party for the purpose of that particular action. Third persons are only strangers capable of suing and being sued but do not qualify as parties to an action unless they are joined to the pending proceedings. Clearly, the appellant does not qualify as "a party" envisaged under Order 36 rule 2(1) since she was not a party to the action at the time.

Another concern of the trial court was that as a stranger to the action, the appellant had not properly knocked at the door of the court so as to allow her entry as a party because she came by way of a motion under Order 19 rule 1 of C.I. 47, which states that:

> **"Every application in pending proceedings shall be by motion."**

In this case, there was no pending proceeding because the matter had already been determined by the final judgment of the trial court. The courts have also held that there are only two ways by which a stranger to a judgment who is adversely affected may approach the court. In **Nantwi & Nantwi vrs. Amenya [2017-2020] 1 SCGLR 972**, the Supreme Court citing the dictum of Abban J. (as he then was) in **Gbagbo vrs. Owusu [1972] 2 GLR, 250** which categorised them as follows:

> **"The applicable procedure and practice to be employed by third parties (strangers or interveners) who have been adversely affected by judgments are as follows: 'It is well established that there are only two**

methods whereby a stranger to a judgment who is adversely or injuriously affected can set it aside. That is, he can obtain the defendant's leave to use the defendant's name and then apply in the defendant's said name to have the judgment set aside. Or where he cannot use the name of the defendant, he can take out a summons in his own name to be served on both the plaintiff and the defendant, asking to have the judgment set aside and for him to intervene…'*.*

The evidence is that the appellant intervened in the case by applying to the court by way of motion under Order 19 rule 1 of C.I. 47. It was for this reason that her application was dismissed. It was not that the doors were completely shut on the appellant. Rather, her application was incompetent. Her use of the wrong procedure of law does not operate retrospectively to regularize the correct procedure, no matter the levels of interest at stake. The route the appellant chose was clearly inappropriate, yet she decided to appeal against the decision. We find no merit in grounds 'g', 'h', 'l', 'm', 'n', 'j' and 'p' of the notice of appeal and are hereby dismissed.

JURISDICTION OF A VACATION JUDGE/RELIEVING JUDGE VIS A VIS SUBSTANTIVE JUDGE

Grounds 'b', 'c', 'i' and 'k' in summary deal with the power of the Chief Justice to appoint vacation or relieving judges for the courts and the jurisdiction of such judges in the absence of the substantive judges. The four grounds would be determined together.

Arguing grounds 'b' and 'c', the appellant contends that even though there is a presumption of regularity under section 39(1) and (2) of the Evidence Act, 1975 (NRCD 323), it is inapplicable where a question of jurisdiction arises. It is the submission of the appellant that Order 81 of C.I. 47 is not applicable to questions of jurisdiction or to irregularities or procedural errors that are so fundamental. According to the appellant, after the judgment rendered by Tetteh-Charway J. on 9th February 2017, there was no subject matter before Sittie J. to determine even if she was properly clothed with jurisdiction and therefore by doing so, it amounted to the rendering of a 'judgment upon a judgment'.

Responding to grounds 'b' and 'c', the respondent debunked the assertion of there being a judgment upon a judgment as alleged by the appellant and that, Tetteh-Charway J.'s judgment was interlocutory which meant that a final judgment was anticipated. It is the submission of the respondent that the appellant is assuming the role of the defendant when she has no right to raise arguments beyond her application.

For ground 'I', the appellant argued that contrary to the decision of the Court of Appeal, there is no evidence on record that Sittie J sitting at Court 10 was the substantive judge seized with the matter or that Tetteh-Charway J who delivered judgment on 9th February 2017 and sitting at Court 9 was the relieving judge. The appellant alleges that relieving judges of the High Court does not ordinarily sit in February, four months after the legal vacation has ended. The appellant further submits that there is nothing on record that shows that, Sittie J. sat as a vacation judge during the 2016 legal vacation nor was she absent for any reason when the matter was first heard by Tetteh-Charway J. Again, the appellant argues that there was also no order by the Chief Justice transferring the matter between the two courts. According to the appellant, if indeed Tetteh-Charway J. was sitting as a relieving judge, she could not have delivered judgment and further set down the matter for trial. It is the appellant's case that the absence of a transfer order by the Chief Justice is fatal to jurisdiction and therefore the Court of Appeal erred when it upheld the judgment of Sittie J. The appellant also contends further that even though the respondent had filed a witness statement, they waited until 7th June 2017 before entering interlocutory judgment and then 27th June 2017 to finally adduce evidence. The appellant argues further that, the High Court erred when it relied on documents submitted by way of a supplementary affidavit which was filed seven (7) days after the hearing had been concluded and the matter set down for judgment.

On ground 'k', the appellant submits that Sittie J. acted without jurisdiction when she heard the matter after a judgment had been given by Tetteh-Charway J. The appellant argues that the procedure for interlocutory judgment is only for unliquidated demands under Order 10 and Order 13 of C.I. 47 and does not apply to claims for possession of immovable property. Thus, since the judgment of Tetteh-Charway J. had not been set aside, Sittie J. did not have jurisdiction to deliver a judgment upon a judgment. The

appellant stated that the procedure used by the respondent which was allowed by the trial court was unknown to the rules and its consequent judgment is also a nullity. Relying on Order 31 rule 1(1) and (2), the appellant submits that the trial court acted in excess of its jurisdiction because the respondent's right to specific performance had not accrued at the time of her judgment. It is the case of the appellant that per the terms of the offer between the respondent and the defendant Commission, the respondent's right to specific performance only accrues when a lease is issued and since that had not been done at the time of the judgment, the respondent was not entitled to it.

In response to grounds, 'I' and 'k', the respondent argues that there was no record of who the substantive judge was but the issue was not raised before the trial judge who could have provided the answers. According to the respondent, the appellant asked insufficient questions when she conducted the search at the registry of the court. As they understand the practice the vacation judges are not relieving judges. However, relieving judges can perform the roles of substantive judges. According to the respondent, if the appellant had any questions about the jurisdiction of the court, she could have raised them during the trial.

The respondent further submitted that the initial order by Tetteh-Charway J. did not include the filing of an interlocutory relief and that, it was Sittie J. who requested the respondent to file a notice of an interlocutory judgment and have it served on the defendant before hearing its claim. It is the case of the respondent that no law was infringed by the filing of a witness statement before the filing of the notice of the interlocutory judgment as both occurred before the respondent mounted the witness box. The respondent argues that when the trial court demanded more legible exhibits, they chose the vehicle of supplementary witness statement but it was not adopted as evidence before the court, and also no question was raised about it by the appellant.

The respondent invited the court to take judicial notice of the practice where in an action for declaration of title, interlocutory judgments are entered before the plaintiff later proves his case. According to the respondent, nowhere in the rules is such a procedure provided for but if the judge for any reason requires the procedure to be applied in declaration of title cases and the plaintiff does not complain, that alone should not deprive

the court of jurisdiction. The respondent says these matters raised by the appellant are capable of being cured under Order 81 of C.I.47. The respondent argues that the issue raised on which court was seized with jurisdiction over the case was not raised by the appellant as a ground for setting aside the judgment at the lower court and, therefore, the appellant is precluded from raising same now on appeal.

Subject to Article 125(4) of the 1992 Constitution, the Chief Justice in his capacity as head administers and supervises the judiciary. As part of the administrative powers of the Chief Justice, he transfers judges as well as cases from one court to another. The Chief Justice may by order under his hand transfer a case from one judge to any other judge at any time or stage of the proceeding. This power can be exercised either on an application by any of the litigants involved or by the Chief Justice on his own. See section 104(1) of the Courts Act, 1993, (Act 459) and order 31 r 1 of C.I. 47.

A transfer order by the Chief Justice may be general or specific and must state the nature and extent of the transfer. The need for a transfer of a case from one court to another may arise when the presiding judge is indisposed, dies, retires, resigns, is removed, or is elevated to a higher court. Other reasons are for convenience's sake, disqualification on grounds of bias, or other circumstances. See; **Mahama vrs. Soli [1976] 2 GLR 99 and Republic vrs. High Court Judge (Fast Track Division) Accra; Ex Parte Quaye & Anor (Yovonoo & Others Interested Parties) [2005-2006] SCGLR 660.**

In the **Republic vrs. High Court Kumasi; Ex Parte Mobil Oil (Ghana) Ltd (Hagan Interested Party) [2005 – 2006] SCGLR 312 at 334-335**, the Supreme Court stated as follows:

> **"in the administration of justice in our jurisdiction, and I believe that to a large extent the same holds true for other jurisdictions, no one particular judge has exclusive monopoly or ownership over any given case. Thus, at the pre-trial stage in particular, a case may for any sufficient cause be taken away from a judge before whom it was pending. […] again, the chief Justice's power of transfer of cases under section 104 of the Court's Act, 1993 (Act 459), from one judge to**

another, a prerogative meant for the smooth and efficient administration of justice, cannot also be overlooked or treated lightly."

According to Order 31 rule 1 of C.I. 47,

"A Judge shall, if the Chief Justice so directs, hear and dispose of an application in a cause or matter which has been assigned to another Judge".

Under the Rules of Court, a judge would hear and dispose of any application in a cause or matter previously assigned to another judge if the Chief Justice so directs. The rules also enable the Chief Justice to appoint an "an application judge" to hear and determine interlocutory matters in substantive causes and matters pending before other judges. The transfer of cases from one judge or magistrate to another may be at any stage of the proceeding and by an order duly signed by the Chief Justice.

A distinction must, however, be made between the transfer of cases by the Chief Justice from one court or judge to another; and the assignment of new cases to judges to handle. For court administration and case management purposes, the practice of the court has been that, when newly commenced cases are filed at the Registry of the Court, the case is assigned to the various divisions of the court and/or to particular courts. Although all the judges at the same level of the hierarchy are ceased with jurisdiction to hear all the matters commencing at their levels, the specific court or judge to whom a fresh case is assigned and in modern times by the Case Distribution System hears the matter as the substantive judge. This does not mean that the jurisdiction of the other judges at the same level of the hierarchy is ousted.

When a substantive judge by any reason is indisposed, depending on how long the substantive judge may be away, another judge of the same level may be directed by the Chief Justice to take up the cases of the substantive judge, for relieving purposes. Relieving judges do not become substantive judges unless the transfer order expressly says so. Such relieving judges are capable of exercising the same jurisdiction as the substantive judge, including making orders and delivering rulings on applications argued before them.

In the **Republic vrs. District Court Grade 1, Korle Gonno; Ex Parte Amponsah [1992-93]** the Supreme Court explaining the role of a relieving judge held that:

> **"Where a magistrate or judge sits in another court on relieving duties, he has no jurisdiction to try any contested civil or criminal case. […] the duties of the magistrate on relieving duties cover hearing of uncontested civil or criminal cases as well as adjournments of cases."** [Emphasis added]

Brobbey, in the second edition of his book **PRACTICE AND PROCEDURE IN THE TRIAL COURTS AND TRIBUNALS OF GHANA** at page 633 commented on the rationale behind the decision above as follows:

> **"the reason given for this is that he is not the magistrate or judge appointed to that court. […] the duties include entering judgments in uncontested civil cases, convicting and sentencing accused persons who plead guilty to a charge […]"** [Emphasis added]

The implication here is that the fact that a relieving judge stepped in, while the substantive judge was unavailable does not automatically make the relieving judge the substantive judge.

From the submissions of the appellant, there is nothing on record that Sittie J. sitting at land court 10 was the substantive judge because the preliminary hearings and ruling were done by Tetteh-Charway J. sitting at land court 9. The submissions of both Counsel are that at the time the case commenced, Sittie J. was indisposed and for that reason, Tetteh-Charway J. sitting as a vacation judge was assigned the cases of land court 10.

We find the basis of the submission of the appellant to be that because there is no letter on the docket and the record of appeal from the Chief Justice appointing Tetteh-Charway J to sit as a relieving judge for court 10 cases and again transferring this case from Tetteh-Charway J to Sittie J. the two judges were not clothed with jurisdiction to sit and adjudicate on the matter. On the record the appellant conducted a search on 1st June 2018 seeking the following information from the registry of the court:

Q. Whether or not there was an Order of transfer made by the Chief Justice.

A. No

Q If so, when.

A. Nil.

This search was seeking information on the transfer of the case from Tetteh-Charway J to Sittie J. Admittedly the search is one way to seek information from the court. However, it is not every correspondence from the Chief Justice to the Judicial Secretary, the Judges, the Director of Court Services and the Law Court Complex Court Manager among other staff which is made public and placed on the court docket to form part of appeal proceedings. If the appellant felt strongly about the absence of administrative directives from the Chief Justice, she should have done more such as writing officially to the Judicial Secretary for confirmation rather than the terse search questions quoted above which did not establish any answers worth our consideration on the question of jurisdiction. The reason is that official acts of the Chief Justice are presumed to have been done and a person seeking to disprove they were done is required to produce concrete evidence to rebut the presumption. This, the appellant failed to discharge. We also note that administratively, transfer letters are not written to a substantive judge who is relieved temporarily by another judge and later resumes her role in her court.

On the basis of these facts, once the Chief Justice in the exercise of his administrative powers directs that a judge should sit as a vacation judge and assume the powers of the judge in that court, there would be no need for another transfer order to be made by the Chief Justice regarding each of the cases then pending before the substantive judge. Whether during the legal vacation or not, a relieving judge is seized with the jurisdiction as the substantive judge and can make among others interlocutory orders explained above by this court in the **Ex-parte Amponsah's case** (supra).

In our opinion, the argument by the appellant that there was no transfer order from the Chief Justice transferring the case to Sittie J. upon her return from sick leave and so Sittie J. did not have jurisdiction to continue the case is unconvincing and not the position of the law. When the case was assigned by the Chief Justice to Tetteh-Charway J, the substantive judge Sittie J. was indisposed, so Tetteh-Charway J. the relieving judge took

over and did her work. When she became well the substantive judge, Sittie J. resumed continuing her court cases assigned to her as the substantive judge. In our opinion, both Tetteh-Charway J and Sittie J were properly seized with the jurisdiction on the matter.

Another argument worth our consideration is that contrary to the appellant's assertion that the Court of Appeal erred when they held that the absence of a transfer order was an error curable under Order 81 of C.I. 47, what the learned judges actually referred to as being curable under Order 81 of C.I. 47 is what they termed 'judgment upon a judgment' and not the absence of a transfer order. This is stated at page 34 of the judgment of the Court of Appeal, which can be found at page 287 of the record of appeal as follows:

> **"Coming to the issue of the purported Sittie J's "judgment upon judgment" which counsel claim is unknown to the procedure rules, we think this by itself cannot void a whole judgment and its associated execution process. As contended by the Plaintiff's Counsel, this can be cured under Order 81 of C.I.47"**

Obviously, the appellant misunderstood this portion of the judgment. According to Order 10 rule 4 of C.I. 47:

> **"Where the plaintiff's claim against a defendant is for possession of immovable property only, and the defendant fails to file appearance, the plaintiff may, after the time limited for appearance, apply for judgment for possession of the immovable property and costs as against the defendant; provided that the plaintiff may proceed with the action against other defendants, if any, who have filed appearance".**

Consistent with this, when the interlocutory judgment was made in favour of the respondent on 9th February 2017, the court ordered the respondent to file a witness statement and attach all documents it intends relying on in proof of its claim because according to the court, final judgment cannot be entered based on bare averments made in the statement of claim.

In the case of **Wiredu vrs. Kobia-Amanfi [1991] 1 GLR 517-522,** the court in relying on Order 13 rule 12 of the then High Court (Civil Procedure) Rules, 1954 (L.N 140A) which is in pari materia with Order 10 rule 6(1) of C.I. 47 held that,

> **"a plaintiff was not entitled to judgment in default for a declaration of title without leading evidence. Consequently, the plaintiff in the instant case was not entitled to rely on the execution of the default judgment he had obtained earlier since he had been found not to have title to the disputed land. The defendant was therefore entitled to damages for the acts of trespass committed by the plaintiff who furthermore would be restrained by an order of perpetual injunction from interfering with the defendant's enjoyment of the land".** (Emphasis added).

The trial court, therefore, after assessing the evidence of the respondent found that the respondent had provided credible evidence in support of its case and ruled finally in the respondent's favour. These are the two judgments that the appellant makes reference to as "judgment upon a judgment" made in breach of the rules. Analysing critically the record of appeal, nowhere was any procedure of law infringed upon, neither was there a judgment upon a judgment as alleged by the appellant. Assuming there was any breach of law by the purported judgment upon a judgment, this was what the Court of Appeal said could be cured by Order 81 of C.I. 47. We agree with that position. Accordingly, these grounds of appeal fail and are also dismissed.

EFFECT OF FAILURE TO GIVE PARTICULARS OF MISDIRECTION & ERRORS OF LAW IN NOTICE OF APPEAL

Grounds 'd', 'e' and 'f' focus on equitable principles of proprietary estoppel, purchasers for value without notice, specific performance and constitutional fairness. As such they will be dealt with together.

In grounds 'd', é' and 'f' of her notice of appeal, the appellant alleges errors of law by the judges of the Court of Appeal and raises different points of law. It is pertinent to point out that issues of proprietary estoppel, right of first refusal, and purchaser for value

without notice are all points of law which should have been particularized under Rule 6(2) (f) of the Supreme Court Rules, 1996 (C.I. 16). The Rule states that:

> **"A notice of civil appeal shall set forth the grounds of appeal and <u>shall state the particulars of any misdirection or error in law</u>, if so alleged".** [Emphasis added]

In **Essilfie And Another vrs. Anafo VI And Another (1993-94) 2 GLR 1** this court distinguished between a breach of the rules by failing to give particulars of addresses for service of the parties and the legal effect of a breach of the rules by failure to particularise the errors of law in the notice of appeal in the following words at page 6:

> **"I would consider the failure to give these particulars as a mere technicality, which should not be used to preclude the plaintiffs from being heard on the merits of their appeal…….The plaintiffs should however not be heard on the particulars of misdirection or of error in law if any, which they may like to put up unless notice of these particulars has been given".**

See also this court's recent decision in **Adams Addy, Adu Akwaanor Vrs Solomon Mintah Ackaah [Civil Appeal No. J4/19/2021 dated 14th April 2021** (unreported)]

In this appeal, no particulars of misdirection or error of law had been set out in the appellant's notice of appeal as required by the rules. Furthermore, Rule 6 (6) does not allow an appellant without the leave of the Court to argue any ground of appeal that is not contained in the notice of appeal. Ground 'g' of the appeal although disguised is more of the particulars of ground 'd' than a substantive ground of appeal. Besides, the appellant failed to provide sufficient particulars and arguments in support of these averments. We, therefore, strike out those grounds and the portions of the statement of case which seek to introduce issues of proprietary estoppel, right of first refusal, and purchaser for value which all constitute points of law but which were without any particularization.

The final ground for consideration in the notice of appeal is ground 'o'. The appellant, however, failed to make any submissions in support of this ground. Our approach has always been that where a party fails to argue any ground stated in his notice of appeal

he is deemed to have abandoned that ground. Taking solace from the decision of this court in **Bonney vrs. Bonney [1992/3] GBR 779 at 786** the appellant has inferentially admitted that there was sufficient evidence on record to justify the conclusions and inferences drawn by the judges on this ground. Accordingly, it is deemed abandoned.

CONCLUSION

Appeals in this country with limited exceptions are filed as of right. Irrespective of the substance and merit of the decision of the lower courts parties nonetheless contest them. We have observed that even where the law appears to be settled on a subject and the court is not being invited to depart from a previous legal position, the phenomenon gradually creeping into the appellate right of appeal enshrined in the Constitution is resorted to by parties. Whatever may be the actual reasons for this, we find from the numerous appeals which have inundated the court with the heavy workload that the appeal process in a majority of cases is more of an avenue to save face rather than belief in the merits of one's case. Unfortunately, the court itself has failed to discourage the practice by the consideration given to such appeals and the award of minimal cost which do not compensate for the stress, actual expenses and resources fighting an appeal to the apex court. It is about time for the court to apply strictly the provisions of section 34 of the Courts Act, 1993, (Act 459) and to impose realistic costs for actual expenses, legal fees, time and delays as provided for in Order 74 of C.I. 47 to discourage the filing of frivolous appeals and to make parties think through their cases before rushing to court. Until then, the pressure on the apex court arising from the volume of appeals assigned to the court will continue and be counterproductive.

In this appeal, after a careful evaluation of the record of appeal vis-à-vis the arguments advanced by both parties in their statement of cases, it is our candid view that the Court of Appeal did not err when it affirmed the decision of the trial High Court in favour of the respondent. The two lower courts properly evaluated and applied the law and/or procedure before reaching their conclusion. The appellant could not put up any strong case to support her contention that the judgment is against the weight of evidence, let alone the other grounds. Even though learned counsel for the appellant made very

copious submissions in his elaborate statement of case, we do not find any substance worth any serious consideration in respect of the almost 16 grounds filed. The appellant failed to demonstrate which pieces of evidence if considered would inure to her benefit and possibly change the direction of the judgment. The appellant also failed to particularize the points of law raised in her notice of appeal. Having failed to demonstrate to the satisfaction of the Court that the concurrent judgments of the two lower courts were erroneous, we find no merit in this appeal. Accordingly, all the grounds and arguments are dismissed.

N. A. AMEGATCHER
(JUSTICE OF THE SUPREME COURT)

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

PROF. N. A. KOTEY
(JUSTICE OF THE SUPREME COURT)

G. TORKORNOO (MRS.)
(JUSTICE OF THE SUPREME COURT)

E. YONNY KULENDI
(JUSTICE OF THE SUPREME COURT)

COUNSEL

ALI GOMDAH ABDUL-SAMAD ESQ. FOR THE PLAINTIFF/RESPONDENT/RESPONDENT/ RESPONDENT.

ANDREW DANIELS ESQ. FOR THE APPLICANT/APPELLANT/APPELLANT.