IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: YEBOAH, CJ (PRESIDING)
GBADEGBE, JSC
MARFUL-SAU, JSC
OWUSU (MS), JSC
KULENDI, JSC

CIVIL APPEAL
NO. J4/61/2019

25TH NOVEMBER, 2020

IN THE CONSOLIDATED SUITS OF

MADAM EUGENIA AKUETTEH …… PLAINTIFF/RESPONDENT/RESPONDENT

VRS

1. KOFI BAAH & 67 OTHERS …… DEFENDANTS/APPELLANTS/APPELLANTS
2. ONAMROKOR ADAIN FAMILY ….. 1ST CO-DEFENDANT/APPELLANT/APPELLANT
3. JONAFOACO CO. LTD. ….. 2ND CO-DEFENDANT/APPELLANT/APPELLANT

AND

MADAM EUGENIA AKUETTEH …… PLAINTIFF/RESPONDENT/RESPONDENT

VRS

1. BEN AMOAKO ATTA & 11 OTHERS ….. DEFENDANTS/APPELLANTS/APPELLANTS
2. JONAFOACO CO. LTD. ….. 1ST CO-DEFENDANT/APPELLANT/APPELLANT
3. ONAMROKOR ADAIN FAMILY ….. 2ND CO-DEFENDANT/APPELLANT/APPELLANT

JUDGMENT

GBADEGBE, JSC:

My Lords, we have before us an appeal from the judgment of the Court of Appeal that affirmed the decision of the trial High Court in the above consolidated actions. The

sole ground of appeal before us is the general ground "*That the judgment is against the weight of the evidence*." As the relevant authorities on concurrent findings require us as the final appellate court to intervene in respect of such concurrent findings by the two lower courts only when such decisions are perverse or unreasonable, the question for our decision turns largely on the probative value of the evidence on which the decisions of the two lower courts is based. By the effect of the authorities, the appellants must demonstrate clearly that the factual determinations suffer from a misapplication of the relevant rules of evidence or glossed over vital documentary or oral evidence and or misread the evidence. See: **Gregory Tandoh v Hanson** [2010] SCGLR 970. Simply put, the effect of the evidence contained in the record of appeal should in the eyes of a reasonable tribunal point in a direction other than that accepted by the two lower courts. And in this regard, it is important to reiterate what the Court has repeatedly said that provided the decision of the two lower courts is supported by the evidence, we cannot interfere to substitute their decision with our own view of the facts on which their decision was based.

Before turning to consider the said ground of appeal, it is observed that notwithstanding the fact that the decision on appeal was from a consolidated matter, the right to appeal, to be good must be exercised separately in relation to each such suit. Although this is an important procedural point, we are of the opinion that as the parties have contested the appeals without adverting their minds thereto, it is of no consequence as to render the proceedings based there on improperly constituted such as to vitiate the appeal before us. In this regard, this observation is made for future guidance only.

Turning to the appeal, we have examined the record very carefully and attended to the respective submissions of the parties and reached the view that the decision of the learned justices of the Court of Appeal was carefully and thoroughly reached on the evidence in a manner that reveals a detailed evaluation and the consideration of the probabilities, which turn on the-case, so we are unable to reach a different decision on the appeal. It is significant to note also that while the sole ground of appeal relates to the determination of facts, much of the written brief of the appellants is devoted to a point concerning the non-determination by the trial court of an application for an

order of the court directing super-imposition of a plan used in a previous action on the disputed land. But the submission made to us cannot, from the record of appeal be correct; the said application was in fact determined by the trial court.

Regarding the written brief submitted to us by the defendants, we are of the view that it was essentially just an idle attack on the decision of the learned justices of the Court of Appeal. There was no point of substance made in the submissions to persuade us to reach a different view of the facts and it being so, we are of the opinion that the ground of attack directed at the judgment on appeal to us fails and same is rejected.

Before resting this short delivery, we observe that the time has come for this court in the exercise of its final appellate jurisdiction to pause and consider whether it is right for the learned justices to continue interrogating appeals from concurrent findings of fact in as much detail like the trial court and the intermediate appellate court. We think that where the two lower courts are agreed on the findings of fact then our jurisdiction in so far as issues of fact are concerned must be directed only at determining from the grounds of appeal whether from the nature of the attack, the point raised is such that it has the potential of dislodging the decision reached on the facts. For example, the ground of appeal raised against such concurrent findings should clearly identify specific errors committed in the process of the decision making such as failing to take crucial documentary evidence into account or applying the wrong standards of proof or misreading the evidence. It is, in our view not proper for us merely because the rules of the Court describe an appeal as a re-hearing to proceed with questions of fact as though we are courts of first instance. The court, it is hoped should focus on specific ground of appeal other than the general ground of *"the judgment is against the evidence."* Our jurisdiction in appeals is derived firstly from the Constitution and the Courts Act, so it is perhaps taking too narrow a view of the power conferred on us merely because of the characterization of the appeal process as a re-hearing to conduct what is essentially inquiring into every disputed fact that turns on a case.

In my view, section 34 of the Courts Act 1993, (Act 459) justifies a new path that would limit our consideration of appeals from concurrent findings to those which raise "substantial grounds of appeal" in accordance with the effect of the words contained in the enactment as follows:

> *"Where the Supreme Court considers that an appeal made to the Court is frivolous or vexatious or does not show any substantial ground of appeal, the Court may dismiss the appeal summarily without calling upon any person to attend the hearing."*

As parties to appeal proceedings are required to file their respective statements of case before us before the matter is fixed for hearing, we are of the opinion that the rule provides us with the opportunity to limit appeals from concurrent findings of the two lower courts to those which demonstrate lapses in the findings such that it can be said after reading the statement of case of the appellant that the decision on facts is plainly wrong. The terms *"frivolous and vexatious"* are not new to us, they have been used for several years to describe cases which disclose no merit and are bound to fail, so we should direct attention to the proper utilization of section 34 of the Courts Act in order to devote time to only appeals that raise arguable legal grounds of appeal evincing the potential of dislodging the effect of the concurrent findings of fact.

As the sole ground of appeal has been rejected by us, we proceed to dismiss the appeals of the defendants and affirm the decision of the Court of Appeal.

N. S. GBADEGBE
(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH
(CHIEF JUSTICE)

S. K. MARFUL-SAU
(JUSTICE OF THE SUPREME COURT)

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

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