IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: YEBOAH CJ (PRESIDING)
PWAMANG JSC
OWUSU (MS.) JSC
HONYENUGA JSC
AMADU JSC

CIVIL APPEAL
NO. J4/56/2022

29TH NOVEMBER, 2022

MAJORIE ATSOI CODJOE ..... PLAINTIFF/RESPONDENT/APPELLANT

VRS

SAMUEL OKPOTI SOWAH ..... DEFENDANT/APPELLANT/RESPONDENT

JUDGMENT

OWUSU (MS.) JSC:-

On 13th December, 2018, the Court of Appeal, Accra, allowed the Defendant/appellant's appeal and granted his counterclaim. The Court held among other things that:

> *"The plaintiff is further estopped by her own statement and conduct in accordance with section 26 of the Evidence Act. Both sections 25 and 26 of the Evidence Act are*

conclusive presumptions and the plaintiff cannot resile from her own description of her land in Exhibit 'A'.

The Defendant's counterclaim is granted. We accordingly order for the recall and cancellation of the Land Title Certificate granted to the Plaintiff on 2nd May, 1988 with registration number 22B/1/26/1 contained in Volume 11 Folio 167 granted to the Plaintiff on grounds of fraud by the Lands Commission. We further order the Lands Commission to register the said land in favour of the Defendant.

We further set aside the award of damages as the record shows that the Defendant has not trespass unto Plaintiff's land. We set aside the judgment of the trial High Court dated 18th November, 2015 and further dismiss all the reliefs endorsed on the Plaintiff's writ of summons".

Dissatisfied with the decision of the Court of Appeal, the plaintiff/Respondent/Appellant mounted this appeal on the following grounds:

1. *The judgment of the Court of Appeal is against the weight of evidence.*
2. *The Court of Appeal erred in law when it set aside the trial judge's finding of fact that the plaintiff acquired the disputed plot in 1954 by customary gift.*

PARTICULARS OF ERROR:

a. *The Court of Appeal failed to apply binding authorities in cases such as*
   i. *DOVIE & DOVIE v ADABUNU [2005-2006] SCGLR 905;*
   ii. *BROWN v QUASHIGAH [2003-2004] SCGLR 930;*
   iii. *HAMMOND v ODOI & ANO. [1982-83] 2 GLR 1215*

3. *The Court of Appeal erred in law when it held that the site plan secured by the plaintiff in 1988 to obtain the Land Title Certificate was secured by fraud.*

PARTICULARS OF ERROR OF LAW:

The finding by the Court of Appeal that the 1988 site plan was fraudulently secured by the plaintiff to obtain the Land Title Certificate is not supported by the evidence on record.

The reliefs sought from the Supreme Court are:

1. An order setting aside the judgment of the Court of Appeal
2. An order restoring the Judgment of the trial High Court.

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

The plaintiff/respondent/appellant who would be referred to as plaintiff issued a writ of summons against the defendant/appellant/ respondent who would also be referred to as defendant claiming the following reliefs:

1. Declaration of title and an Order for the recovery of the land in dispute situate, lying and being at La, Accra in the extent of 0.098 hectare (0.243) of an acre described in paragraph 2 of the Statement of Claim.
2. An order directed at the defendant to remove all structures, serviceable and unserviceable vehicles and all metal scraps from the land in dispute.
3. Perpetual Injunction to restrain the defendant herein, his and each of their servants, agents, privies and assigns from dealing with the land in dispute in any manner whatsoever and from disturbing the plaintiff's quite enjoyment of same.
4. General Damages for trespass.
5. Costs.

The gist of plaintiff's case is that she is an indigene of Nmati Abonase Quarter of La, formerly Labadi, Accra and the disputed plot was gifted to her in 1954 by the then Shikitele of the said Quarter, Nii Okpoti Onten II with the knowledge, consent and concurrent of the principal elders of the Quarter. The plaintiff continued that, after the

said customary gift to her, Nii Okpoti Onten II died in 1954. In 1957, Nii Boi Osekere III who succeeded Nii Okpoti Onten II as Shikitele of Nmati Abonase Quarter of Labadi made a deed of gift in respect of the oral customary gift to her and she has remained in possession of the Plot until 2007 when defendant trespassed onto the land hence this action.

The defendant's case is that his grantor John Philip Odoi was granted the disputed land in 1956 and the latter registered same at the Deeds Registry. It is the case of the defendant that, his grantor died and the plot devolved unto his daughter Elizabeth Aryeley Nanka-Bruce. A vesting assent was made and the plot was vested in the said Elizabeth Aryeley Nanka-Bruce who in turn alienated same to the defendant and his predecessor. The defendant continued that they have been in possession of the said land for about fifty (50) years without any interruption. Defendant therefore counterclaimed for:

a. An order for the recall and cancellation of the Land Title Certificate granted to the plaintiff as same was granted by mistake.
b. An order to the Land Title Registry to register defendant's title to the land in dispute.

After a full trial, the trial High Court gave Judgment for the plaintiff for all the reliefs endorsed on her writ of summons. The defendant's counterclaim was dismissed as not proved.

Dissatisfied with the decision of the High Court, the defendant appealed to the Court of Appeal which allowed the appeal. The Court of appeal set aside the Judgment of the High Court together with the consequential orders and ordered the recall and cancellation of the Land Title Certificate granted to the plaintiff on grounds fraud by the Lands Commission. It further ordered the Lands Commission to register the name of the defendant in the former's Register hence the appeal before this Court.

In arguing the appeal, counsel for the plaintiff in his statement of case filed submitted that, the fundamental question this Court is required to answer is whether or not the

disputed plot is one and the same as that which was granted to the plaintiff by oral customary gift in 1954. He continued that, while the trial High Court answered this question in the affirmative, the Court of Appeal disagreed and answered it in the negative and held that the Plaintiff's Land Title Certificate was procured by fraud. Counsel argued that, the defendant's site plan predates that of his grantor Elizabeth Nanka-Bruce and the date of the Vesting Assent. He pointed out that the site plan of Elizabeth Nanka-Bruce was signed by the license Surveyor on 18th July, 2007 and that of the defendant by the same Surveyor on 10th July, 2007. But strangely both site plans were approved by the Regional Surveyor on the same day 20th July, 2007. This according to counsel for the plaintiff is inconsistent with the 14th August, 2007 date pleaded in paragraph 14 of the defendant's Amended Statement of Defence.

Secondly, the defendant's root of title is a nullity in that, it was purported to have been prepared in 1956 by a person who died in 1954 and allegedly executed on his behalf two years later. Therefore, the void instrument cannot be the basis of a transfer to Elizabeth Nanka-Bruce's father. Counsel for the plaintiff referred us to the case of **MACFOY v UNITED AFRICA COMPANY [1962] AC 152 PC.**

Thirdly, counsel argued, this Court has to determine which of the two conflicting findings of fact is supported by the evidence on record. He referred us to the unreported case of this Court **GUY NEE WHANG & ANO. v VANDERPUYE MANSION Civil Appeal No. J4/6/2015** dated 17th June, 2015 which held that:

> ***"An appeal being by way of rehearing, the Supreme Court being a second appellate Court is bound to choose the finding which is consistent with the evidence on record. In effect, this Court may affirm either of the two findings or make an altogether different finding based on the record".***

Further, the Court of Appeal ignored the central question, namely whose grant had priority but focused on the discrepancy between plaintiff's Deed of Gift and her Land Title Certificate to conclude that plaintiff had committed fraud when defendant's documents suffered from similar discrepancies. But more importantly, the defendant's site plan which

was prepared in 2007 is not exactly the same as the site plan contained in the title deed of John Philip Odoi. This is because while the land contained in the defendant's site plan has six sides, the one contained in his root of title has four sides unlike plaintiff's site plan which was prepared in 1957. Further the plaintiff went through the process as contained in PNDCL 152 to obtain her Land Title Certificate, that is a compulsory visit to the site by officials from Survey and Mapping Division of the Lands Commission on the proposed site for registration. A publication was placed in the newspaper to inform all interested parties and the whole world that the plot was about to be registered in a named applicant in 1988. No one protested to the registration. The Land Title Registry therefore issued plaintiff with her Land Title Certificate.

On the other hand, the defendant purportedly acquired his interest in the land by a deed of gift executed in 2007. This means that if the defendant has conducted a search at the Land Title Registry or the Deeds Registry, he would have been fixed with notice that the plot was already registered in the name of the plaintiff. Consequently, the defendant is not entitled to the protection the law affords an innocent grantee. Counsel for the plaintiff concluded on this point that, if the Judges of the Court of Appeal had adverted their minds to the Land Title Registration Law, 1986 (PNDCL 152) they would not have concluded that, the plaintiff acquired her title in the disputed plot by fraud. Flowing from this is the presumption of regularity. The officials from the Survey and Mapping Division visited the disputed land prior to the registration in 1988. Therefore, if the defendant or his predecessor in title were in possession as defendant claims, they would have noticed the Survey works. But there is no such evidence on record. This means that, the plaintiff has been in possession of the disputed land from 1954 and defendant trespassed onto it in 2007 or 2008.

On ground 1 of the Amended Grounds of Appeal, counsel for the plaintiff submitted that the trial High Court found as a fact that the disputed land was granted to the plaintiff in 1954 by the Shikitele of Nmati Abonase Quarter of La by customary gift. This finding, according to counsel is supported by the evidence on record. This is because the plaintiff's evidence on the gift which was not challenged was corroborated by PW1. Therefore, the Court of Appeal erred when it set aside the trial Judge's finding that the plaintiff had

priority of title as the latter's oral customary grant in 1954 predated defendant's alleged root of title. He referred us to the following cases to buttress his point:

1. **DOVIE & DOVIE v ADABUNU [2005-2006] SCGLR 905, holding (1)**
2. **BROWN v QUASHIGAH [2003-2004] SCGLR 930, holding (2)**

Counsel for the plaintiff concluded on this ground that, the holding by the Court of Appeal that the plaintiff is bound by the content of Exhibit 'A' that is the description contained in the Deed of Gift attached to it are quite technical and should not form the basis of a conclusive presumption as plaintiff led ample evidence that she knew her land and identified the disputed land as the one granted to her by oral customary grant in 1954. He therefore urged us to set aside the decision of the Court of Appeal and allow the appeal on this ground.

On ground 2 of the appeal:

Counsel for the plaintiff pointed out the following to show that the Court of Appeal erred in setting aside the trial Judge's finding that the plaintiff acquired the disputed plot in 1954 by customary gift

i. The inconsistencies in the defendant title deed; the site plan of John Philip Odoi contains 0.290 of an acre and has four sides. That of his daughter Elizabeth Nanka-Bruce contains an area of 0.243 acre and has six boundaries.
ii. Defendant's site plan pre-dates that of his grantor.
iii. The defendant also failed to call material witnesses in the person of Nii Okpoti Odoi the alleged founder of the garage some 50 years ago and the predecessor of the defendant. This witness it was alleged was paying rent to Elizabeth Nanka-Bruce. Counsel referred us to the case **of OPPONG v ANARFI [2011] 1 SCGLR 556 @566**

Defendant also failed to produce a single receipt to prove his claim that they have been on the land for 50 years and have been paying rent to his grantor, not even electricity or water bill.

On ground 3 of the appeal to the effect that, the plaintiff secured her Land Title Certificate by fraud in 1988. Counsel for the plaintiff referred us to *section 13 (1) of the Evidence Act 1975 (NRCD 323)* and the case of **FENUKU & ANO. v JOHN TEYE & ANO. [2001-2002] SCGLR 985** on the standard of proof required when an allegation of fraud is made in a civil suit. He submitted that the proof is proof beyond reasonable doubt. He then referred to the particulars of fraud as set down by the defendant in his amended Statement of Defence and submitted that, the latter has a duty imposed on him by the rules of evidence to lead credible evidence to prove his averment. This, according to counsel he failed to do even though those averments were denied by the plaintiff. Counsel continued that the plaintiff testified that she visited the site with the Surveyor. The presumption is that the visit took place during working hours that is from 8 am to 5 pm. If the defendant and his predecessor were present on the land, they would have seen the Surveyors. Secondly, the requisite publication was done in the newspapers. Based on the forgoing, counsel for plaintiff argued that, the basis for alleging fraud against plaintiff was not made out. It was therefore inaccurate for the Court of Appeal to hold that the defendant proved beyond reasonable doubt that plaintiff acquired her Land Title Certificate fraudulently. Consequently, the Court of Appeal erred when it held that fraud has been proved. According to counsel for the plaintiff, the net effect of all these pieces of evidence is that defendant's counterclaim was not proved.

Based on the above submissions, counsel for the plaintiff urged us to allow the appeal and set aside the Judgment of the Court of Appeal dated 13th December, 2018 and restore the Judgment of the trial High Court.

In response to the above submissions, counsel for the defendant narrated how his predecessor came to be on the disputed land about 50 years ago and remained in possession without any let or hindrance. He continued that the defendant obtained his grant from Mrs. Elizabeth Aryeley Nanka-Bruce sole surviving daughter of the late John

Philip Odoi. It was when defendant sought to register his document that to his dismay, he discovered that his land has been registered in 1959 in the name of plaintiff and Land Title Certificate issued in the latter's name since 1988. Counsel for the defendant argued that the plaintiff's action is statute barred and it sins against the Limitation Act 1972 (NRCD 54).

Furthermore, the plaintiff acquired her Land Title Certificate by fraud. This is because, the plaintiff has not disputed the defendant's claim as demonstrated in Exhibit 'A'. He submitted that, the issue this Court should determine is whether or not Exhibit 'A' is the same as the plot of land purchased by the defendant as contained in Exhibit CW6. He continued that the plaintiff's evidence is conflicting as to the description of the land in dispute visa vis the land contained in her Land Title Certificate and CW1 confirmed this. Therefore, the evidence of CW1 strengthens the defendant's case that the latter's land which is the subject matter of this suit is different from the land plaintiff is claiming. Thus, the plaintiff failed to prove the identity of the land she is claiming. This is because in Exhibit 'A' the plaintiff's Deed of Gift does not mention anyone as her boundary owner but in her evidence, plaintiff told the Court she shares boundary with Oko Nai. Counsel for the defendant therefore submitted that, the law is that where there is documentary evidence of a transaction as against oral evidence, the Court should lean in favour of the former. He referred us to the case of **YORKWA v DUAH [1992-93] I GLR 217**. He concluded on this ground that, the finding of fact by the trial Judge was not supported by the evidence on record and invited us to dismiss ground 1 of the appeal.

Secondly, defendant called one of her adjoining boundary owners in the person of Akwetey Amassah.

Thirdly, the defendant pleaded that the plaintiff's action is caught by the Statute of Limitation. This is because the defendant has been on the land for about 50 years and exercised acts of possession by setting up a fitting shop, electrical shops and spraying departments. Additionally, there is no evidence that the Land Title Registrar complied with Regulation 6 of the Land Title Registration Regulation 1986 (LI 1341) and this goes to the very root of the case. According to counsel for defendant, this evidence was not

discredited in anyway. Consequently, since plaintiff's action is statute barred, there is no need to go into the merit of the case.

On ground 3 of the appeal, counsel for the defendant referred to the particulars of fraud in his Statement of Defence and *section 13 (1) of the Evidence Act 1975 (NRCD 323)* and submitted that, the preparation of the plaintiff's site plan was done on the blind side of the defendant. This is because the defendant was in effective possession of the plot in dispute and this amount to fraud. Consequently, the plaintiff's Land Title Certificate was obtained by fraud. He referred us to the case of **ADWUBENG v DONFEH [1996-97] SCGLR 660.** Secondly, the non-compliance with Regulation 6 of LI 1341 was intentional and was done to overreach the defendant. He therefore invited us to dismiss the appeal on this ground as well.

Based on the forgoing, counsel for the defendant invited us to dismiss the appeal and uphold the Judgment of the Court of Appeal.

In this appeal, from the pleadings, the evidence of the parties on record and the submissions of both counsel in their statements of case filed, it is not in dispute that the plaintiff acquired her land by oral customary gift in 1954 from the then Shikitele of Nmati Abonase Quarter of La, Accra. Equally not in dispute is the fact that plaintiff registered her Deed of Gift in the Deeds Registry in 1957 after a publication and a subsequent gazette notification in 1959. The Court of Appeal acknowledged these facts in its judgment when it held that;

> *"The unassailable evidence on record is that the plaintiff had her customary grant in 1954 from the then Shikitele of the Nmati Aboanase (sic) Quarter of Labadi, Nii Okpoti Onten II who acted with the consent and concurrence of the elders of the said Quarter. The grant was reduced into writing in 1957 after the original grantor Nii Okpoti Onten II has died. The successor to Nii Okpoti Onten II by name Nii Boi Osekre III executed the customary Deed of Gift with the consent and concurrence of the appropriate elders of the Quarter. The Plaintiff's land was described in the Deed of Gift registered at Deeds Registry with No. 2361/1959 and dated 8th June, 1957 as*

piece and parcel of land at Labadi measuring 100 feet square and bounded on all sides by the property of the donor. The land covers an approximate area of 0.229 of an acre. The land is well delineated in the site plan attached to Exhibit 'A".

See page 339 of the record of appeal paragraph 1.

It is also a fact that plaintiff applied to the Land Title Registry to register her title and was issued with Land Title Certificate in 1988. In her judgment, the trial High Court found as a fact that the testimonies of the Expert Witnesses, there were more questions than answers which made their evidence not much weight to be attached to the crucial issues relevant to the determination of the suit. The law is settled that no document is necessary to effectuate customary grant given that, customary law knows no writing. See the case of **DOVIE & DOVIE v ADABUNU [2005-2006] SCGLR 905** where Their Lordships held in holding (1) of the report that:

"A conveyance made in accordance with customary law is effective from the moment it is made. A deed subsequently executed by the grantor for the grantee may add to, but it cannot take from the effect of the grant already made at customary law. The plaintiff could use the subsequent conveyance of 1961 only as document evidencing the grant completed under customary law. Therefore, the fact that the site plan annexed to the plaintiff's conveyance of 1961 could not align to the land on the ground could not affect the validity of the customary grant (our emphasis). The fact of the matter is that the plaintiff proved his customary grant, including the identity of the land, dehors the 1961 conveyance".

In holding (2) Their Lordships held that:

"An effective customary conveyance divested the grantor of any further right, title or interest in the land to convey or grant to a subsequent grantee. Consequently, when the Asere Stool through another chief purported to gift the land sold to the plaintiff in 1947 to the defendant's

grantor in title in 1954, the Stool had no interest, title or right to confer to her. Her subsequent deed of gift to the defendant was therefore a nullity."

In coming to this conclusion, the Supreme Court relied on the case of **HAMMOND v ODOI [1982-83]2 GLR 1215, 1304,** where Adade (JSC) as he then was held that:

"Where a prior customary grant can be established, no number of subsequent conveyances, registered or not can defeat the customary title. And in this case, the prior oral customary grant to the plaintiff was more than sufficiently established. Even if it were held to be otherwise, the admittedly prior possession of the land by the plaintiff, a subject of the stool, is enough to defeat any subsequent conveyance".

The cases cited supra are on all force with the case under consideration both on the facts and on the ratio. The defendant insists the plaintiff's land is different from his and counsel for the defendant spilled a lot of ink articulating this fact. However, the trial Judge who heard the parties and the witnesses found as a fact that the land in dispute is the same as the subject matter of the oral customary gift which was subsequently executed in favour of the plaintiff and registered at the Deeds Registry as No. 2361/1959. This finding is clearly supported by the evidence on record. For instance, the cross examination of CW1 David Doe who works with the Land Registration Division of Lands Commission, Accra as the Chief Recording Officer is clear on this. This is what transpired between him and counsel for the plaintiff:

X X X X of CW1 by counsel for the plaintiff.

"Q: Can you tell the court your background in terms of what you do at the Land Title Division?

A: The processing of applications for the preparation of Land Title Certificate on title to land among others.

Q: Are you aware that the defendant applied to become a registered proprietor of land.

A: Yes

Q: And you have his file with you as you sit there?

A: Yes.

Q: When did he apply?

A: 17/10/2007 at 10: 40 am

Q: Did the defendant apply in respect of a specific land?

A: Yes

Q: And that specific land is the subject matter in dispute.

A: Yes

Q: Has he been registered as the proprietor of the land in dispute from the file you have before you?

A: No because his Certificate is not being signed for some reasons.

Q: What are the reasons?

A: The Land Title Registry then wrote to Survey Department to prepare a parcel plan for the defendant. Survey Department wrote back to inform the Registry that the said parcel of land was already prepared for another applicant.

Q: Who is that applicant?

A: The applicant was the plaintiff herein. So, in effect, they can't prepare parcel plans for two applicants on the same land. The Land Registry wrote back to strongly request for the preparation of the said plan for defendant, explaining that the

Certificate of the plaintiff will be recalled for the plan inside that Certificate will be amended accordingly.

Q.: Was the Certificate of the plaintiff recalled and amended as you claim.

A: No, and because of that a certificate cannot be issued to any other person" (our emphasis).

The question to ask is, if the plaintiff's land is different from the disputed land, why has it not been possible to register defendant's land? In any event from the authority of **DOVIE & DOVIE v ADABUNU** supra, the plaintiff's oral customary grant in 1954 takes precedent over the grant of John Philip Odoi in 1956 in terms of priority. Secondly, once the grantor of the parties granted plaintiff's oral customary grant in 1954, on the principle of nemo dat quad non habet, the Nmati Abonase Quarter of La did not have any interest in the disputed land to grant. Had the Court of Appeal applied the above pieces of evidence on record and the law pointed out in this delivery to the plaintiff's case, they would not have reached the conclusion they did in the Judgment dated 13th December, 2018. See the case of **OWUSU- DOMENA v AMOAH [2015-20016] 1 SCGLR, 790 where the Supreme Court held in holding (2)** of the report that:

"Where the appeal was based on the omnibus ground that the judgment was against the weight of evidence, both factual and legal arguments could be made where the legal arguments would help advance or facilitate a determination of the factual matters".

Based on the forging grounds 1 and 2 of the appeal succeed and they are allowed.

This brings us to ground 3 which states that:

"*The Court of appeal erred in law when it held that the 1988 site plan was fraudulently secured by the plaintiff to obtain the Land Title Certificate was secured by fraud."*

On the issue of fraud, both counsel for the plaintiff and defendant stated the law correctly on the standard of proof required when a crime is alleged in a civil suit. They referred to *section 13 (1) of the Evidence Act 1975 (NRCD 323)* which provides as follows:

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

See also the case of **FENUKU & ANO. v JOHN TEYE & ANO. [2001-2002] SCGLR 985, where it was held in holding (5)**

> ***"The law regarding proof of forgery or any allegation of a criminal act in a civil trial was governed by Section 13 (1) of the Evidence Decree, 1975 (NRCD 323), which provided that the burden of persuasion required proof beyond reasonable doubt. In the instant case, even though the trial High Court Judge had examined the evidence before him and had come to a conclusion of his own on the issue of forgery, it seemed he had not adverted his mind to the standard of proof required under Section 13 (1) of NRCD 323 to prove forgery. The Supreme Court, by way of re-hearing, looking at the evidence adduced, was not satisfied that forgery had been established beyond reasonable doubt."***

Unfortunately, defendant did not prove the allegation of fraud. The defendant has alleged that plaintiff deliberately misled the Surveyors to draw the plaintiff's site plan to fall on defendant's land only when the latter was not around even though his workshop was visibly on the land for over 30 years. The defendant did not lead any evidence to prove this allegation. What is not in dispute is the fact that the plaintiff's Land Title Certificate was issued in 1988 and defendant applied for the registration of his land in 2007, nineteen (19) years after the plaintiff had registered her title. This can hardly be said the plaintiff was trying to overreach the defendant. On the contrary, if the defendant has conducted a search, he would have realized that the disputed land was encumbered.

The defendant also raised the issue of limitation. We do not see where this is coming from. The defendant applied for the registration of the disputed land in 2007. The plaintiff issued the present writ in 2011. From 2007 to 2011 is about four years. It is not up to twelve years to be caught by the statute of limitation. The conduct of the plaintiff after her oral customary grant, to the registration of her Deed of Gift in 1957, applying for the registration of her land title and acquiring her Land Title Certificate in 1988, she cannot be said to have secured her Land Title Certificate by fraud. Consequently, the allegation of fraud was not proved. The trial High Court Judge was thus right in coming to the conclusion that, the plaintiff did not secure her Land Title Certificate through fraud.

In coming to this conclusion, we are aware that defendant has maintained he has been in possession of the disputed land for about fifty years together with his predecessor paying rent to Elizabeth Aryeley Nanka-Bruce. The plaintiff denied this averment and defendant needed to prove this assertion in terms of proof as laid down in the case of **MAJOLAGBE v LARBI & ORS. [1959] GLR 190 195** the dictum of Ollenu J. when he held that:

> ***"Proof in law, is the establishment of fact by proper legal means; in other words, the establishment of an averment by admissible evidence. Where a party makes an averment, and his averment is denied, he is unlikely to be held by the Court to have sufficiently proved that averment by his merely going into the witness-box, and repeating the averment on oath, if he does not adduce that corroborative evidence which (his averment is true) is certain to exist ".***

In the context of this case, the defendant just mounted the witness box and repeated his averment on oath and this does not constitute proof in law. He failed to call his predecessor even though he promised to do so at the trial. He could not tender a single receipt evidencing the payment of rent to Elizabeth Nanka-Bruce. His so call boundary owner Akwetey Amassah, this witness turned out be someone who had also applied to register the disputed land in his name but failed.

From all of the forgoing, the plaintiff's appeal succeeds and it is hereby allowed. The Judgment of the Court of Appeal dated 13th December, 2018 is hereby set aside. In its place, the Judgment of the trial High Court dated 18th November, 2015 is hereby restored.

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

ANIN YEBOAH
(CHIEF JUSTICE)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

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

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(JUSTICE OF THE SUPREME COURT)

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