IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: ATUGUBA, JSC (PRESIDING)
BAFFOE-BONNIE, JSC
BENIN, JSC
APPAU, JSC
PWAMANG, JSC

CIVIL APPEAL
NO. J4/36/2016

7TH JUNE, 2018

1. MARY TSOTSO LARYEA
2. EMMA LARYEA
3. VERONICA LARYEA
4. JULIANA LARYEA
5. GRACE LARYEA ……. PAINTIFFS/RESPONDENTS/APPELLANTS

VRS

AMARKAI LARYEA ……. DEFENDANT/APPELLANT/RESPONDENT

JUDGMENT

PWAMANG, JSC:-

This case is about the ownership of House No. D453/3, Knutsford Avenue, Arena, Accra, which comprises a number of buildings. It was acquired by one Daniel

Maxwell Laryea who died in Accra in 1960. He was married to five wives and had sixteen children. The plaintiffs/respondents/appellants are his surviving female children and the defendant/appellant/respondent is the only available surviving male child of the deceased. They shall be referred to in this judgment as plaintiffs and defendant respectively.

The plaintiffs by a writ of summons and an accompanying statement claim filed in the High Court, Accra on 15th September,2010 claimed against the defendant for an order conferring common ownership of the property in dispute on all the surviving children of the late Daniel Maxwell Laryea. The case of the plaintiffs in the High Court briefly stated was that shortly after the death of their father, the most seniour male child called Amar Laryea presented an unsigned deed of gift of the property in dispute purportedly made by their father for signature by elders of the family. In the said deed of gift their father gifted the house to only his four male children to the exclusion of the others. According to plaintiffs, they the other siblings challenged the genuineness of the deed so the elders rejected it. This caused misunderstanding among the children but in the course of time the elders of the family amicably settled the dispute by arbitration. The arbitration concluded on the note that all the children should inherit their father so the buildings were shared among all the children. The plaintiffs said they took their parts as owners and have possessed same for over forty years without any challenge from their male siblings until the defendant herein, who is the last of the male children, resurrected the issue of the deed of gift and claimed that the house belonged to him alone. This was after two of the older male children had died in 1994 and 2003. Meanwhile, one of the male children had not been heard of since he travelled abroad in 1953.

Upon service of the writ and statement of claim on the defendant he filed a defence and counterclaimed for a declaration that he is the sole legal and beneficial owner of the property. He maintained that the deed of gift was genuine, valid and binding against the plaintiffs and that since he was then the only male child he was the sole owner of the property. He contended that since the death of their father the property had always been managed by the male children as owners but they paid

part of the rents received on the property to their female siblings out of affection and goodwill and not that they had a right to such rents. He denied that there was an arbitration at which the house was shared to all the children and insisted that plaintiffs were made aware of the deed of gift not long after the death of their father so if they had any challenges against it they ought to have sued long ago to set it aside. He argued that they were statute barred from challenging the deed of gift. According to defendant, in 2009 he decided to pull down the old structures and build a modern house on the land which would contain commercial and residential units. He discussed the matter with the plaintiffs and the tenants and requested them to vacate the house to give way for the development. He said out of goodwill, he paid monies to the plaintiffs to enable them relocate themselves. However, after receiving the monies they refused to vacate the house so in his counterclaim he prayed the court to eject the plaintiffs and all persons claiming through them and for other ancillary relieves.

In a reply to the defence and counterclaim, plaintiffs maintained that they occupied parts of the house and received rents as of right so the defendant was estopped by conduct, laches and acquiescence from claiming to be sole owner of the house.

After a full trial, the High Court in its judgment held that on the totality of the evidence there was a "thick cloud of suspicion hanging over the deed of gift" which was tendered in evidence as 'Exhibit 2' but concluded that since the plaintiffs did not plead that the document was forged and fraudulent and also they did not pray the court to set it aside, he had no jurisdiction to grant relief in respect of the deed. He however held that from the evidence, the male children and the defendant had waived their rights in respect of the property so he entered judgment for the plaintiffs. The defendant appelled against the judgment of the High Court and the Court of Appeal allowed the appeal. The Court of Appeal reasoned that the High Court by holding that the male children had waived their right to the property accepted the case of the defendant that by virtue of Exhibit '2' he was the rightful sole owner of the house. They further held that from the evidence the male children had been managing the property since the death of their father without accounting

to the plaintiffs so they could not be said to have waived their rights. In giving judgment for the defendant the Court of Appeal accepted his testimony that the plaintiffs were allowed to live in the house and given some of the rent payments as stipend because the male children considered them their sisters.

In the appeal before us the plaintiffs filed five grounds of appeal and we shall consider all of them together. It is well-settled that an appeal is a rehearing which means that the appellate court is in the same position as if the hearing were the original hearing and therefore it is required to analyse the whole record of appeal and satisfy itself that the conclusions both on the law and the evidence reached by the court whose judgment is appelled against are justified. If the appellate court comes to the conclusion that the findings of the court cannot be supported having regard to the evidence or if it concludes that the findings are based on a wrong principle of law or rule of evidence such that when that error is corrected the findings will ceased to exist, then the appellate court would set aside those findings**. See Koglex Ltd (No 2) v Field [2000] SCGLR 175** and **Nkrumah v Ataa [1972] 2GLR 13.**

We have perused the record in this case and read closely the statements of case filed by the parties and it appears to us that both the High Court and the Court of Appeal did not pay particular attention to the issues that were settled for trial in the case at the application for directions. Among the issues set down for trial we find two fundamental issues the determination of which ought to have conclusively resolved the dispute between the parties. They are; Issue II which was whether the deed of gift was genuine or not and Issue VI being whether the defendant is estopped by laches and acquiescence from claiming sole ownership of the house. We intend to consider the arguments of the parties on the basis of these two issues.

On the first issue we are of the opinion that though a cloud of suspicion hanged over the deed of gift, to use the words of the trial judge, there was not sufficient evidence to conclude that it was not genuine. Apart from the clumsy pleadings by the plaintiffs' lawyer on that aspect of their case, they did not lead evidence sufficient to impeach the deed of gift.

On the second issue, the case of the plaintiffs is that the male children accepted that all the children shall inherit their father so the house was shared among all of them and that they each enjoyed their parts as of right for over forty years. As part of the proof of the contention that they enjoyed the property as of right the 2nd and 4th plaintiffs testified that from the time of Amar Laryea, the oldest male child, though he arranged for tenants to rent their stores they were considered the owners and not Amar Laryea. These testimonies of the 2nd and 4th plaintiffs were not disputed and the question we ask ourselves is if the house was not shared among the children on what basis would 2nd and 4th plaintiffs have possession of stores in the house when the evidence is that they never lived in that house. As for the 1st and 3rd plaintiffs they have lived in the house since the death of their father and even when at a point in time they had to vacate for some renovation they were brought back and given rooms to live in after the works. In fact defendant in his evidence indicated that after his planned redevelopment, they would return to live in the house.

2nd plaintiff sought to tender a tenancy agreement she executed with a tenant arranged for her by Amar Laryea in 1990 but it was objected to by defendant's lawyer on the ground that it was not registered. The trial judge upheld the objection and rejected the document which was marked 'R1'. The trial judge clearly erred in rejecting that document and excluding it from the evidence because non-registration of an instrument relating to an interest in land does not make the document inadmissible in evidence. By the provisions of Section 24 of the Land Registry Act, 1962 (Act 122) non-registration makes a document relating to an interest in land invalid and that means that it does serve to create enforceable interests in land. However, such a document is admissible in evidence and its contents can be used as estoppel against persons who signed it. **See Donkor v Alhassan [1987-88] 2 GLR 253, and MaClean II & Anor v Akwei II [1991] 1 GLR 54.** As that document was wrongly excluded from the evidence we set aside the trial judge's ruling rejecting 2nd plaintiff's lease dated 1st January, 1990. We have noticed on the face of that Exhibit that it was not stamped in accordance with the **Stamp Act, 1965 (Act 311)** as amended, which was in force at the time it was executed. Since

we are exercising the powers of the trial court in determining the admissibility of the said lease in evidence as we are empowered to do by Article 129(4) of the Constitution, 1992, we shall have recourse to **Section 14(2) of Act 311** and admit the document in evidence subject to a direction that it shall be stamped in accordance with the Act within ten days of this judgment. See also the case of **Auntie & Adjuwoh v Ogbo [2005-2006] SCGLR 494.**

That lease which is now part of the evidence before the court is expressed to be made between 2nd plaintiff as "BENETICIAL OWNER" of STORE NO. C2 in House No. D453/3, Knutsford Avenue, Accra and one Joseph Baah as tenant for a period of 15 years. Amar Laryea, whom defendant says managed the property on behalf of the male children right from the death of their father, signed this tenancy agreement as the witness of 2nd plaintiff, the benefical owner of the store. Where a person signs a land document as a witness of a party who is described as owner of that property he is estopped from subsequently denying the title of that owner. See **Swiss African Trading Co Ltd v Aryee [1961] 1 GLR 185.** The defendant claims a joint interest with Amar Laryea so they are privies in interest and he is bound by the deeds of Amar Laryea. We are in no doubt that if this document had been admitted in evidence, the lower court would have held differently on the matter of whether the plaintiffs enjoyed their parts of the disputed property as owners or at the benevolence of their male siblings. In the circumstances the exclusion of the lease agreement of 2nd plaintiff occasioned a miscarriage of justice so the decision of the lower court may be reversed pursuant to **Section 5(3) of the Evidence Act, 1975 (Act 323).**

In our view, the evidence supports the case of the plaintiffs that the house was shared and they took their parts and possessed same as of right. From the evidence there were some sections of the house that were not in the possession of any of the children and it is these parts that were controlled and managed by the male children who shared the rents from those sections with the plaintiffs. That, in our opinion, gives the impression that those parts were being managed on behalf of all the children hence the sharing of the rents. It appears to us that it is the present

defendant who shortly before the suit was filed sought to change the status quo ante and revisited the issue of the legal rights of the male children granted by the deed of gift. This is where the plaintiffs' defence of laches against the defendant on his counterclaim deserves serious consideration.

Estoppel by laches arises where a party's legal right is infringed upon but for a reasonably long period he fails to protest leading the one who infringed upon the right to believe that he would never complain. In those circumstances equity would grant protection against such stale claims. In the case of **Wordie & Ors v Awudu Bukari [1976] 2 GLR 371** the Court of Appeal held that a period of thirty years over which a party slept on his legal rights was too long and refused to grant him recovery of possession of land adjudged to be his. Our view of the evidence in this case is that the rest of the children enjoyed their parts of their father's house as of right and until recently were led by the male children to belief that they would not insist on their rights based on the deed of gift. From 1960 when their father died to 2010 when defendant sought to resurrect his claim under the deed of gift is too long and equity will not allow such a stale claim.

In conclusion, though plaintiffs were unable to proof that Exhibit '2' is not genuine, the male children including the defendant have been guilty of laches and therefore defendant is estopped from recovering the property as sole owner. In the circumstances we allow the appeal. The house shall be commonly owned by all the children of the late Daniel Maxwell Laryea who survived him.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

ATUGUBA, JSC:-

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

W. A. ATUGUBA
(JUSTICE OF THE SUPREME COURT)

BAFFOE-BONNIE, JSC:-

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

BENIN, JSC:-

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

A. A. BENIN
(JUSTICE OF THE SUPREME COURT)

APPAU, JSC:-

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

COUNSEL

SOMUAH ASAMOAH WITH HIM MISS ABENA ADU AND MISS NANA KYEKYE DARKO FOR THE PAINTIFFS/RESPONDENTS/APPELLANTS.

PHILIP JIMANOR WITH HIM ETTA GYAMFI MENSAH FOR THE DEFENDANT/APPELLANT/RESPONDENT.