IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD 2017

CORAM: AKUFFO, CJ (PRESIDING)
DOTSE, JSC
BAFFOE-BONNIE, JSC
GBADEGBE, JSC
PWAMANG, JSC

CIVIL APPEAL
NO. J4/49/2014

19TH DECEMBER, 2017

MRS. MARGARET MARY ADJEI	…….	PLAINTIFF/APPELLANT/APPELLANT
VRS		
THE ATTORNEY GENERAL	…….	1ST DEFENDANT/RESPONDENT/ RESPONDENT
THE EXECUTIVE SECRETARY LANDS COMMISSION	…….	2ND DEFENDANT/RESPONDENT/ RESPONDENT
PROF. KOJO SENANU	…….	3RD DEFENDANT/RESPONDENT/ RESPONDENT

JUDGMENT

AKUFFO, CJ:-

Brief Background of the Case

On 6th September 2005, the Appellant (hereinafter referred to as "the Appellant") commenced an action against the Respondents in the High Court, Land Division, Accra,

for a declaration of title to the land described in the writ of summons, and for other reliefs. In her Statement of Claim, the Appellant averred, among other things, that by an indenture registered at the Deeds Registry, Accra as number 840/1962, she was, as a subject of Osu, granted a large piece of land, of which the land in dispute herein forms a part, by Nii Noi Dowuona IV, the Osu Mantse at the time. Of particular significance are paragraphs 7 and 8 of the Statement of Claim, which are in the following terms:-

> "On 9th September 1964 whilst the Plaintiff herein, was in effective possession, an Executive Instrument No. 108 purported to have compulsorily acquired the land under subsection (1) of Section 7 of the Administration of Lands Act, 1962 (Act 123).
>
> "By virtue of the said Executive Instrument No. 108 dated 9th September 1964, the 2nd Defendant herein held itself out as having been vested with interests in the Plaintiff's land and proceeded to deal with the said land as if it had been vested in the President of the Republic of Ghana."

She contended that, as at the date of the said Executive Instrument, the land in dispute was not stool land but was rather her land, the Osu Stool having divested itself of the same by the grant made to her. She further contended, in effect, that, in any event, lands vested under section 7(1) of Act 123 were to be held in trust for subjects of the Osu Stool and for use in the public interest

Eventually, after the Appellant, as Plaintiff, filed an application for directions setting out certain issues, and 3rd Respondent herein (3rd Defendant in the said suit) filed two additional issues for legal argument. At the hearing of the application for directions, on 14th May 2007, the learned High Court Judge, Justice Ofori Atta, ordered that "issues A and B of the issues on the application and 1 and 2 of the additional issues be set down for legal argument", pursuant to Order 33(4). These issues were:

a. "Whether or not the Plaintiff is and has at all material times been the lawful owner of the disputed property.

b. "Whether or not the purported compulsory acquisition of the land in dispute through the Executive Instrument No. 108 dated 9th September 1964 succeeded in vesting the President of the Republic of Ghana with title in the said land, and

1. "Whether or not by E.I.108 Accra/Tema City Stool Land (Vesting) Instrument, 1964 (*hereinafter "E.I. 108"*) the said Executive Instrument vested all Stool lands and Public lands in the Accra/Tema areas and in the North Dzorwulu areas in the President, in trust for the State.

2. Whether or not the compulsory acquisition per E.I.108 of 1964 lapsed with the coming into force of the 1992 Constitution."

For ease or reference, the terms of Order 33(5) of the High Court (Civil Procedure) Rules, 2004 (C.I.47) are as follows:-

> *"Dismissal of action after determination of preliminary issue*
>
> *5. Where it appears to the Court that the decision of any question or issue arising in any cause or matter and tried separately from the main cause or matter substantially disposes of the cause or matter or renders trial of the main cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such judgment as may be just."*

The thrust of the Appellant's legal argument in the High Court was that E.I. 108 did not divest her of her title in the disputed land because, at the date of the Instrument, title to the said land had completely vested in her already and was no longer in the Osu Stool; in other words, by the date the Instrument came into effect, the land in dispute was private property rather than Stool land. In the said Legal Arguments, Counsel for the Appellant, argued further that, by the registration of indenture number 840/1962, her title to the said land was notified to the whole world, pursuant to sections 24 and 25 of the Land Registry Act, 1962 (Act 122), including the 2nd Respondent.

The crux of the 3rd Respondent's case, on the other hand, was that the government having compulsorily acquired the lands specified in the E.I. 108, of which the land in dispute forms a part, the Appellant's interest therein by the prior transaction with the Osu stool was extinguished and became vested in the President, on behalf of whom the 2nd Respondent acted to convey the land to the 3rd Respondent. The 3rd Respondent, therefore, submitted therein that "much as the Plaintiff acquired her land from the Osu stool in 1960 and had been in possession therefore, the Osu lands and the land upon coming into force of the 1992 Constitution and by E.I. 108, all such lands become vested in the President." (sic)

Ruling of the High Court, Land Division, Accra

On 2nd February 2009, the High Court, per His Lordship Justice F. K. Awuah, delivered its ruling and dismissed the action brought before it by the Appellant. The Court, in its decision, relied on the judgment of the Supreme Court in the reference matter of Nii Nortey Omaboe III v Attorney General and Lands Commission [2005-2006] SCGLR 579

In arriving at its decision the learned High Court Judge correctly observed that the main controversy is between the Plaintiff and the 3rd Defendant and it was "whether or not the land claimed by the Plaintiff , having been acquired prior to the Land Administration Act of 1962 and also EI 108 of 1964, the latter which gave effect to the vesting of the Dzorwulu stool lands in the President, the Plaintiff's land which she describes as private should be affected by these laws and therefore deprive her of her right to same." The learned Judge expressed the view that any attempt to exclude any portion of land covered by EI 108 on the grounds that the same is private or individual property "will lead to absurdity and anarchy". He did not expand on the manner in which such absurdity or anarchy would arise from the recognition of the alleged pre-existing interest. Rather, he concluded that in character, control and reality the Appellant's land cannot be described as private property, notwithstanding the pre-existing conveyance by way of a gift, the registration of the same or the issue of a Land Title Certificate, because the land is "intrinsically Stool Land". His Lordship found, further, that, even if the land had been private property, the same had been 'subsumed or ousted' by the effects of Act 123, according to whose preamble the Act is intended to cover Stool and other Lands. It is noteworthy that, apart from the fact that section 7(1) of Act 123 makes reference only to 'any Stool Land', in the schedule to the E.I. 108, mention is made only to 'stool lands', and one needs not lose sight of the title of the same.

The High Court Judge then held as follows:

> *"That by E.I. 108 the said Executive Instrument vested all stool lands in the Accra-Tema areas and in the North Dzorwulu as prescribed or delineated in the Survey plan, aforesaid with the President in Trust for the stool*.
>
> *"And that, by E.I.108, the compulsory acquisition of 1964 did not lapse with the coming into force of the 1992 Constitution."*

Judgement of the Court of Appeal, Accra

The Court of Appeal on 1st March, 2012 delivered its judgment, wherein it unanimously affirmed the decision of the High Court against which the Appellant appealed to this court on 14th May, 2012. The Grounds of Appeal may be summed up as follows:

a. The judgment is against the weight of the evidence.

b. The Court of Appeal erred in law when it relied on the provisions of E.I. 108 to divest the Appellant of her privately acquired land and vested the same in the Respondents.

Consequently, the Appellant prayed this Court for an order setting aside or reversing the judgment of the Court of Appeal and giving judgment in favour of the Appellant.

Appellant's Case and Legal Arguments Herein

Ground A

It is the case of the Appellant that, even though no evidence was taken at the High Court and it was agreed that the case be based on the determination of the preliminary issue pursuant to Order 33 Rule 5 Of C.I 47, there is on record Exhibit A, the indenture made between the Osu Mantse and the Appellant, in addition to the pleadings filed by the Appellant, which clearly showed that the land in dispute bore the features of a private land and not a Stool Land, and that the same was the Appellant's private land gifted to her by the Osu Stool in 1955, which gift was evidenced in writing by an indenture made in 1960, duly stamped in 1961 and registered at the Deeds Registry in 1962. The Appellant submitted that the Court of Appeal erred in law when it relied on the provisions of E.I.108 to divest the Appellant of her privately acquired land and vested the same in the Respondents.

The Appellant argued that the Administration of Lands Act, 1962 (Act 123) relates to Stool Lands and not Private Lands and, therefore, submitted that if there was any intention on the part of the government to acquire her land compulsorily, then it ought to have done so under the State Lands Act, 1962 (Act 125) and paid a fair and adequate compensation to her for the same, as required by the law.

The Appellant also submitted that, in any event, the land in dispute was not used for any public purpose, but rather it was given to another private individual thereby violating the provisions of Article 20 (1) (a) and(5) of the Constitution.

3rd Respondent's Case and Legal Argument

Ground A

In response to the first ground of appeal, the 3rd Respondent submitted that the ground is vague and misconceived. According to the 3rd Respondent no evidence was adduced by any of the parties in the proceedings before the High Court in respect of the subject matter in dispute, as the case was determined on preliminary legal arguments pursuant to Order 33. According to the 3rd Respondent therefore, it was dubious for the Appellant to allege that the judgment was against the weight of evidence.

Ground B

The 3rd Respondent submitted that, by virtue of Section 7(1) of the Administration of Lands Act, E.I. 108 was made to effectively and effectually vest all stool Lands in Accra-Tema areas and in the North Dzorwulu areas in the President. The said provision states:

> *"(1) Where it appears to the President that it is in the public interest so to do he may, by executive instrument, declare any Stool land to be vested in him in trust and accordingly it shall be lawful for the President, on the publication of the instrument, to execute any deed or do any act as a trustee in respect of the land specified in the instrument.*
>
> *"(2) Any moneys accruing as a result of any deed executed or act done by the President under subsection (1) shall be paid into the appropriate account for the purposes of this Act.*

The Respondent, argued, that Sections 10 (3) and (4), and 13 (1) of Administration of Lands Act, 1962 (Act 123) prescribes a mode for the Appellant to enforce her ownership right to the land in dispute or at best, lodge an appeal. According to the 3rd Respondent, since it is a principle of law that where a statute prescribes a particular procedure for the enforcement of an individual's rights, those specific procedures must be complied with, the Appellant cannot seek to exercise or enjoy those rights without application of such alleged procedures. The Respondent cited the decisions in the cases of Tularley v Abaidoo (1962) 1 GLR, 411, at page 417 and Awuni v WAEC [2003-2004] 1 SCGLR, and made elaborate arguments and submissions thereon in support his position.

Analysis

To begin with, it is quite patent that all parties concerned (as well as both the High Court and the Court of Appeals to some extent) totally misapprehended the scope and application of the State Lands Act, 1962 and the difference between that enactment and the Administration of Lands Act, otherwise the question of compensation and procedure for objecting to the application of either enactment would never have arisen in the matter. The Appellant's claim arose from the application of the Administration of Lands Act, particularly its enforcement by way of EI 108. That being so, the cases relied on by the 3rd Respondent and the application of the provisions of the Constitution were entirely irrelevant and immaterial. More importantly, it is rather unfortunate that the application of a wonderful, and normally efficacious, rule of procedure for effective case management should lead to the outcomes generated in this matter, which, if not corrected, might complicate our already fraught land title system.

It is clear from the record that the crux of the Appellant's claim before the High Court was that, by the time the provisions of EI 108 were enacted, she was already the bona fide owner of the property in dispute, having acquired the same by way of a valid gift from the Osu Stool, which acquisition was, subsequently, evidenced in writing by the indenture, made between the said Stool and herself and registered at the Deeds Registry as No. 840/1962. However, although the issues arising from this claim formed part of those set down by the original High Court Judge for legal argument, it was inexplicably (maybe caused by the 'red herrings' introduced by the 3rd Defendant before the High Court) side-lined in the ruling of the High Court Judge who finally dealt with the legal arguments. I have already set out the salient portions of utterances made by the learned trial judge. In the final analysis, the disposition of the matter on the basis of the effect of Omaboe III v A G et al., did not serve to dispose of the plaintiff's claim, as the conclusion still begged the question of whether at the time of the vesting of the Osu Stool lands in the government, the land in dispute was Stool land or Appellant's private land. In other words, under Ghanaian Law, did E.I. 108 extinguish the title she acquired under the indenture?

E.I. 108 specifically dealt only with Stool land, not all lands, in the demarcated area. Furthermore, there are no provisions in either the substantive Act or the Executive Instrument which could be construed as extinguishing previously existing legal or customary title in the area acquired and reverting the same to Stool land status for the purposes of vesting the same in the government. Certainly, there is no reason to give a retroactive effect to EI 108 so as to nullify existing legal rights and to hold otherwise would fly in the face of the most elementary laws of conveyancing and contract. It is interesting to note that in the case of Saaka v Dahali, [1984-86] 2 GLR 774, (wherein, the High Court, Tamale, at first instance, had held, inter alia, that a usufructuary

interest in land may be extinguished by EI 109 (similarly made under Section 7(1) of Act 123, vesting lands in the Northern Territories in the government)) the esteemed Taylor, JSC., delivering the judgment of the Court of Appeal, expressed himself thus, at page 781:-

> "… it is my view that the learned High Court Judge erred in law when he held that EI 109 operated to divest the plaintiff … of her customary title in the land.… The Executive Instrument cannot operate retrospectively to extinguish rights acquired in stool and skin lands before promulgation. The fundamental rule applicable to all statutes and statutory instruments is that prima facie they are prospective and unless by their specific terms or by necessary implication they have retrospective operation, they do not affect rights and obligations which have already crystallised at the time they became law."

I do not think that the definition of 'Stool Land' in Article 295 of the Constitution in any way affects this conclusion.

Conclusion

Consequently, we hold that, although E.I. 108 did, indeed, vest all Stool lands (public lands were not mentioned) in Accra and Tema in the President of the Republic of Ghana in trust for the Stool, at the time the said vesting occurred the Appellant was the owner of the land in dispute and, therefore, the said Instrument did not and could not operate to divest the Appellant of her interest in the land. Furthermore, the decision in the Omaboe II case dealt only with the issue of whether or not, with the coming into force of the Constitution, the vesting power embodied in EI 108 lapsed. Though the answer was 'no', and the same Instrument is still in effect, the Court also made it very clear that article 267(1) does not cover lands that were not Stool lands on the coming into force of the 1992 Constitution. The High Court Judge, therefore, erred in determining otherwise and the Court of Appeal erred in allowing such determination to stand.

As a footnote, I need to mention that on 18th October, 2017, when judgement was to have been delivered, this Court ordered that the Attorney General and the Lands Commission who had been previously struck out as Defendants in the matter by the High Court, be joined as Respondents since the core issue in this matter was one of public interest. Although they were directed to file legal submissions on the issue of the status of the Appellant's title as at the date of the enactment of EI 108, only the Attorney General did so in a very brief, and admirably candid, submission admitting that at the date the said Executive Instrument came into existence the land the subject

matter in dispute herein was not Stool Land but was rather the private property of the Appellant. We appreciate such candour on the part of the Office of the Attorney General whose primary function is to uphold all the Laws of the Republic of Ghana.

Consequently, the appeal herein succeeds, the judgement of the Court of Appeal is hereby reversed and the decision of the High Court entered the 2nd of February 2009 is hereby set aside. The Appellant's claim for declaration of title to the land described in her writ of summons issued the 6th of September 2005 is hereby granted. Consequently, we hereby order that the Appellant herein recover from the 3rd Respondent possession of the said land and that the Respondents, their agents, servants and assigns be and are hereby perpetually enjoined from interfering with the quiet possession and enjoyment of the said land by Appellant, her agents, servants, privies or assigns.

S. A. B. AKUFFO (MS)
(CHIEF JUSTICE)

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

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

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

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