IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2018

CORAM: ANSAH, JSC (PRESIDING)
ADINYIRA (MRS), JSC
BAFFOE-BONNIE, JSC
AKOTO-BAMFO (MRS), JSC
APPAU, JSC

CIVIL APPEAL
NO. J4/21/2017

12TH DECEMBER, 2018

NANA ANTI OWUSU
(SUING FOR HIMSELF AND ON BEHALF OF SARAH
NAANA KWANSIMAN - MINOR) ……. PLAINTIFF/RESPONDENT/RESPONDENT

VRS

ALHAJI ABDUL AZIZ
alias PAPA WALA ……. DEFENDANT/APPELLANT/APPELLANT

JUDGMENT

APPAU, JSC:-

The major issue for determination in this appeal, notwithstanding the number of grounds of appeal filed by the appellant herein, has to do with the ownership of a piece or parcel of land forming part of land commonly known and described as Otinshi Lands, which the Supreme Court in a related case, described as Otinshie Village lands. Each of the parties

herein laid adverse claim to the very land in dispute through their claim and counterclaim. The issues which the parties therefore settled on with the trial court for determination during the trial were as follows:

1. *Whether or not plaintiff's grantors have valid title to the land described as Otinshi Lands;*

2. *Whether or not the subject-matter forms part of Otinshi Lands.*

3. *Whether or not plaintiff's grant was fraudulent;*

4*. Whether or not plaintiff's registered document was fraudulent;*

5*. Whether or not plaintiff demolished defendant's property; and*

6. *Whether or not plaintiff had capacity to sue****.***

The other issue that arose from the counterclaim of the defendant but which was not made part of the agreed issues, though considered by the trial court was; *whether or not the defendant was entitled to his counterclaim*.

Facts:

The case, which has travelled from the High Court all the way to this apex Court commenced in 2007. The brief facts of it are that the respondent herein was the plaintiff in the trial court and would hereinafter be referred to as 'plaintiff', whilst the appellant was the defendant and would maintain the title 'defendant' throughout. In 1995, one Krampah Kyem, an assignee of the Osae and Effutu or Bedzin families, made a grant of a portion of part of the Otinshi lands assigned to him by the said families to the plaintiff and her daughter by name Kwansima. It was the plaintiff who purchased her young daughter's plot for her in addition to his. Though plaintiff said the grant was made to him in 1995, he managed to register the lands in 2005. In the same year, i.e. 2005, he constructed a fence wall around the plot measuring about 0.54 acres, deposited 3,000 sandcrete blocks and 4 trips of sand on same. In 2006 the defendant, without any notice to him, went and placed land guards and licensees on the land and demolished his fence

wall. All efforts to eject defendant from the land proved futile so he resorted to this action in 2007.

The defendant's defence as pleaded was very simple. According to him, the land in dispute, which he admits is part of Otinshi lands, did not belong to the Osae and Affutu families who were the assignors of plaintiff's assignor. The assignment to the plaintiff was therefore fraudulent. According to him, he initially had a grant of the land from the Numo Nmashie family of Teshie which he knew to be the owners of the land in 1994. He immediately built a house and fenced it. In 2001, he got to know that the land did not belong to his original grantors and that the Court of Appeal had declared the Tsie We family and Kle Musum Quarter of Teshie as the owners of Otinshi lands so he went there to attorn tenancy to them and did obtain a new lease from them. He also counterclaimed for title to the very land. There is therefore no doubt to the fact that both parties were laying their various claims of title to the disputed land which, from their pleadings, was the same land (i.e. Otinshi land) which they said they acquired from the Osae family and the Tsie We/Kle Musum Quarter respectively.

The battle between the grantors of the two parties herein; i.e. the OSAE FAMILY and the TSIE WE/KLE MUSUM QUARTER

While the plaintiff and defendant in this appeal were fighting over the disputed land in the trial court, their so-called allodial title owners and grantors; i.e. the Osae familiy and the Tsie We/Kle Musum Quarter, were also fighting over the allodial titleship over the whole of Otinshie lands (which included the disputed land). This case under reference, as noted above, travelled up to the Supreme Court. In the defendant's own words, it was when the Court of Appeal declared Tsie We/Kle Musum quarter as allodial owners of the land on 15th July 2005 that he rushed to them to attorn tenancy to them as his new grantors. This was what the defendant pleaded under paragraphs 4 and 5 of his Amended Statement of Defence filed on 14/2/2013 pursuant to leave granted by the trial High Court on 12/2/2013:

"4. Defendant says that he was initially granted the land in dispute in 1994 by the Numo Nmashie family of Teshie. He immediatey built a house and fence round it. Defendant would tender pictures of the house at the trial.

5. It later came to defendant's attention that the Tsie We family/Kle Musum quarter of Teshie headed by Numo Adjei Kwanko II the Osabu and Ayiku Wulomo of Teshie has been declared owners of the land by the Court of Appeal in Suit No CA 22/2001. Defendant approached the Tsie We/Klu Musum quarter to attorn tenancy to Tsie We family and was therefore given indenture by the Tsie We family/Kle Musm quarter of Teshie."

The Osae Family, however, did not end the matter there and appealed further to the Supreme Court against the decision of the Court of Appeal which the defendant relied on in this case in the trial court. Before the Supreme Court delivered its final decision on the matter between the Osae Family and the Tsie We/Kle Musum quarter as to who held the allodial titleship to the Otinshi lands on 7th May 2008, it first made certain undisputed factual findings on three main issues, with reference to the decision of this Court in the case of **AKWEI & Others v AWULETEY & Others [1960] GLR 231 at page 236.** I call them undisputed because none of the parties controverted these facts. These were:

- ***Quarter lands are lands within the quarter of a town.***
- ***Outskirt lands are lands which are immediately adjacent or contiguous to a quarter land.***
- ***Rural lands, like all other Osu lands, are neither quarter nor outskirt lands.***

The Osae Family who were the appellants in the case had invited the Supreme Court to hold that Otinshi lands were rural lands for which reason the Osae Family held absolute title over those lands. The Tsie We/Kle Musum quarter, on the other hand, invited the Court to hold that Otinshi lands were quarter lands, the absolute titleship of which rest with the Tsie We/Kle Musum Quarter of Teshie. On the 7th of May 2008, the Supreme Court overturned the decision of the Court of Appeal and held in part that: ***"...the***

ancestor of the Osae family exercised his inherent right and formed the village of Otinshi out of the then Teshie land and thereby created allodial title. That was before quarter lands were created in Teshie. There was no evidence by which it could be said that the allodial title to Otinshi would be converted into usufructuary title or that it was limited only to the areas they had actually reduced into their possession. The conclusions of the Court of Appeal on this issue were not therefore supported by the evidence on the record.'

The Supreme Court then went ahead to hold that Otinshi village lands including its farmlands, possessions; cemetery, etc. belonged to the Osae Family as allodial owners but not the Kle Musum Quarter and that Tsie We/Kle Musum quarter had no lands at Otinshi. Based on the above decision of the Supreme Court, the trial High Court, after properly analyzing the totality of the testimonies before it and in compliance with article 129(3) of the Constitution, granted plaintiff judgment on his claim and dismissed defendant's counterclaim. The defendant felt dissatisfied with the judgment of the High Court and appealed against same to the Court of Appeal on eight (8) grounds.

Appeal to the Court of Appeal

The appeal was filed on 26th March 2014 and the grounds of appeal were eight in all which I do not find necessary to repeat here. The Court of Appeal lived to its duty as a rehearing court and considered all the grounds canvassed by the parties vis-à-vis the evidence on record. The Court of Appeal found no merits whatsoever in the appeal and dismissed it in its entirety by affirming the decision of the trial High Court. The Court of Appeal, after tackling each issue raised in the appeal and particularly on the general ground that the judgment was against the weight of evidence, held: ***"Looking at the evidence on record as a whole, the trial judge properly evaluated the evidence on record and his findings of fact are clearly supported by the evidence on record....It is for these reasons that the appeal fails in its entirety and it is accordingly dismissed".***

The defendant has exercised his constitutional right and climbed further up to this Court and this makes his appeal one against the concurrent findings of two lower courts; in this case the High Court and the Court of Appeal. The consequences of such an appeal are notorious to be repeated here as there is ample judicial authority from this apex court on the requirements of the appellant and the duty of the Court in handling such appeals. See the notorious cases of this Court in: **1. ACHORO & Another v AKANFELA & Another [1996-97] SCGLR 209; 2. GREGORY v TANDOH IV & HANSON [2010] SCGLR 971; 3. FRABINA LTD v SHELL GHANA LTD [2011] 1 SCGLR 429; 4. AWUKU-SAO v GHANA SUPPY CO LTD [2009 SCGLR 710; 5. JASS CO LTD v APPAU [2009] SCGKR 265; 6. KOGLEX (No.2) v FIELD [2000] SCGLR 175**

In brief, the principle governing such appeals as laid down by this Court in all the cases referred to above, including a host of others not mentioned here, which we quote from the *Achoro v Akanfela case* supra is that: ***"in an appeal against findings of fact to a second appellate court like ...(the Supreme Court), where the lower appellate court had concurred in the findings of the trial court, especially in a dispute, the subject matter of which was peculiarly within the bosom of the two lower courts or tribunals, this Court would not interfere with the concurrent findings of the two lower courts unless it was established with absolute clearness that some blunder or error resulting in a miscarriage of justice , was apparent in the way in which the lower tribunals had dealt with the facts. It must be established, e.g. that the lower courts had clearly erred in the face of a crucial documentary evidence, or that a principle of evidence had not been properly applied; or, that the finding was based on erroneous proposition of law that if that proposition is corrected, the finding would disappear...It must be demonstrated that the judgments of the courts below were clearly wrong."*** We did emphasize in these decisions that this demonstration of the wrongness or otherwise of the two concurrent judgments is the task of the one who makes that assertion and that is the appellant who, in the instant case, is the defendant.

<u>Appeal before the Supreme Court</u>

The defendant's grounds of appeal in this Court were as follows:

a. ***The Court of Appeal erred in law by failing to hold that the plaintiff's action against the defendant was statute barred.***
b. ***The Court of Appeal erred in declaring plaintiff and his grantors owners of the land in dispute even though the government had acquired same at the time of the grant to plaintiff.***
c. ***The Court of Appeal erred in law by failing to cancel the certificates of the plaintiff obtained during the pendency of the instant case.***
d. ***The Court of Appeal erred in refusing to grant the counterclaim of the defendant.***
e. ***The judgment is against the weight of evidence.***

Though the grounds of Appeal the defendant filed before the Court of Appeal were eight in all and those filed before us in this appeal are five, they almost cover the same issues. There is no mark difference between them. We have taken the pains to properly peruse the submissions made by both the defendant and the plaintiff in this appeal vis-a-vis the evidence on record and to us, the defendant, in fact, did not make any new impact in this appeal but rather reargued the same points he argued before the Court of Appeal, which the Court of Appeal took time to consider before dismissing them.

The defendant did not convince or satisfy us that the trial High Court and the Court of Appeal did make any legal or factual errors which, if corrected, would unsettle their findings and make him the victor in the case. For instance, the question of the Limitation Act, (Act 54) which the defendant raised and which the Court of Appeal excellently dealt with and dismissed in its judgment at pages 729 – 734 of the RoA, does not come in at all in this case. From the record, the defendant never had any legal right over the disputed land and still has none for him to continue a fight he could never win.

What is more interesting in this appeal is the defendant's futile attempt to introduce a new suggestion and argument that the Otinshi lands which the Supreme Court declared the grantors of plaintiff (the Osae family) as the allodial owners, was different from the

Otinshi land in dispute between him and the plaintiff. Having realized that he had no strong grounds to stand on in respect of the alleged errors of law on the part of the trial High Court and the Court of Appeal, the defendant introduced an argument in his statement of case which was never one of his grounds of appeal before us though it was a ground of appeal in the Court of Appeal which the Court of appeal considered and dismissed. This was his ground **(d)** in the Court of Appeal but not a ground before us. It read:

"The trial judge erred in fact and in law by holding that the land in dispute forms part of the land the Supreme Court adjudged to belong to the Osae family in the Dr Osae's case".

When the Court of Appeal dismissed this ground of appeal together with the others, the defendant did not repeat it before us. It is therefore not a ground of appeal before us but it appears a greater portion of defendant's submissions in his statement of case filed on 12/01/18 was on this ground. He stated at page 13 and 14 of his '39 page' statement of case which he filed on 12/07/18 the following:

"6.5 Our submission is that the conclusion reached by the Court of Appeal that this Court had declared the land in dispute as belonging exclusively to plaintiff's grantors is erroneous. The reason for which we submit is that the Supreme Court only declared part of the Otinshie lands as belonging to the Osae family. This declaration was limited to their ancestral building, farm lands, cemetery and more.

6.5 Defendant on the other hand obtained his tile from the Kle Musum quarter. Our submission is that the Kle Musum quarter land does not form part of the Otinshie village lands declared by this Court to belong to the Osae family.

6.6 In this regard, our submission is that the crucial question that ought to have been determined by the High Court and the Court of Appeal was whether the land in dispute fell within the specific area, extent and boundaries of the

land declared by this Court in favour of plaintiff's grantors. The Court of Appeal's decision to endorse the judgment of the High Court oblivious of the issue as to whether or not the land in dispute fell within the area of the land, the subject matter of this Court's judgment is therefore a major ground upon which we have faulted the judgment of the Court of Appeal."

Apart from the general ground that the judgment was against the weight of evidence, the defendant did not, as he did in the Court of Appeal, raise any ground of appeal before us with regard to the identity of the land over which he is litigating with the plaintiff, which ground the Court of Appeal rightly dismissed. He therefore does not deserve an answer from us since it is not a question of law which he could raise before us even if it was not one of the grounds of appeal. But for obvious reasons, we shall provide an answer as the argument lacks any merit whatsoever.

From the beginning of the trial between the parties, there had never been a dispute between the parties with regard to the subject-matter they were litigating over. On19/09/2007 when the plaintiff sued the defendant, the major relief he was seeking was for a declaration of title to all the piece or parcel of land situate and being at **Otinshie, East Legon, Accra** measuring 0.54 acres which the plaintiff said the defendant had trespassed onto. On 22/10/2007, the defendant filed a Statement of Defence to the action and counterclaimed for title to the same piece of land. Paragraph (a) of defendant's counterclaim read: **"Declaration of title over the land in dispute".** The parties later amended their pleadings but that did not change the subject matter of the suit.

The question is; which was the land in dispute? It was nothing but the land over which the plaintiff had sued the defendant, which was that part of Otinshi land measuring 0.54 acres. It was therefore a portion of Otinshi Lands over which the grantors of each of the parties were in court sorting out who owned the allodial titleship and therefore could make grants of same since the year **1989.** So when the parties went to court in **2007** over their acquisitions, they were all relying on the success or otherwise of their various

grantors. Both parties were praying that their grantors would win to save their acquisitions so when the grantor of the defendant won on Appeal he quickly run to him to attorn tenancy in 2005 and was granted a new lease which he tendered in evidence as Exhibit '12', during the trial to support his case. All this while the defendant was relying on a lease obtained from someone who had no title to the land; i.e. the Numo Nmashie family so in effect; he had no valid title to the land at the time.

However, upon further appeal to the Supreme Court against the judgment of the Court of Appeal, this Court over-turned the Court of Appeal's decision and held that Otinshi lands are not quarter lands but rural lands belonging to the Osae family and that the Kle Musum quarter had no land at Otinshi. With the trend of affairs, the defendant is now trying to shift the goal post by saying that the Supreme Court did not describe the specific Otinshi lands which belonged to the Osae family and that there are other Otinshi lands which do not belong to the Osae family, an issue which never cropped up in any of the two litigations. The defendant has tried all means in his argument to rewrite or redefine the judgment of this Court between the grantors of the parties when there is no review before us on this issue. We shall therefore dismiss the appeal with the words this Court used in allowing the appeal of the plaintiff's grantors in part as quoted by the Court of Appeal at pages 739 and 738 of the RoA:

"The plaintiff/respondent/appellant argued that the Otinshie land could not have been part of Kle Musum quarter land. They based their argument on the assertion that Otinshie land existed before the various quarter lands were created and further that the first settler, their ancestor, was from the Krobo quarter. The issue then is who had title to Otinshi lands; Krobo quarter, Kle Musum quarter or it is the case that Otnishe is Osae family land and if so, what is the nature of the title held on Otinshie land?

While the plaintiff invited the Court to hold that Otinshie village was rural land for which reason the Osae famlily holds absolute title, the defendants invited the Court to hold that Otinshie village lands are quarter lands and the Kle

Musum quarter holds the absolute title…From the record, the Otinshie village was in existence and occupied by the plaintiffs before the creation of quarter lands out of the then Teshie Stool Land. It is also not in dispute that the ancestor of the plaintiffs who founded Otinshi was from Teshie for which reason he was entitled to build and farm on any unoccupied portion of lands belonging to the Teshie Stool. Since the founder of the village of Otinshie did not come from Kle Musum quarter, Kle Musum quarter should have no claim or right in any form to Otinshi village lands…"

If there are other Otinshi lands elsewhere which the defendant knows belongs to his grantors the Tsie We/Kle Musum quarter, then that has never been a subject of litigation between any of the parties. What the Supreme Court said was that Tsie We/Kle Musum quarter has no lands at Otinshi, period. We are bound by that our decision as we have no reasons whatsoever to depart from it. The defendant therefore has no case at all and his appeal must fail. The decision of the Court of Appeal is accordingly affirmed.

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

ANSAH, JSC:-

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

J. ANSAH
(JUSTICE OF THE SUPREME COURT)

ADINYIRA (MRS), JSC:-

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

S. O. A. ADINYIRA (MRS.)
(JUSTICE OF THE SUPREME COURT)

BAFFOE-BONNIE, JSC:-

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

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

AKOTO-BAMFO (MRS), JSC:-

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

V. AKOTO-BAMFO (MRS.)
(JUSTICE OF THE SUPREME COURT)

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