IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- A.D. 2021

CORAM: DOTSE, JSC (PRESIDING)
BAFFOE-BONNIE, JSC
MARFUL-SAU, JSC
DORDZIE (MRS.), JSC
AMEGATCHER, JSC

CIVIL APPEAL
NO. J4/64/2018

29TH JULY, 2021

NANA OBIRI BOAHEN ……. 1ST DEFENDANT /APPELLANT/APPELLANT

VRS

GOLDEN AGE COMPANY ……. PLAINTIFF /RESPONDENT/ RESPONDENT

JUDGMENT

DORDZIE (MRS.) JSC:-

Facts

The appellant herein Nana Obiri Boahen maintains he obtained judgment from the High Court Wenchi in the case numbered E1/4/06 titled Nana Obiri Boahen v Elder Kyere & Others dated 11/3/2011. The subject matter of that suit consists of three separate pieces of farmlands situated at Dominase on Abesim Stool land, Asufufu/Adomako on the Sunyani Stool land and Dominase on Abesim land. Appellant claims he is the owner of

these farmlands. In the execution of the said judgment, the appellant entered and pulled down buildings on the plot of land that is the subject matter of this dispute, erected pillars, demarcated it into building plots which he had let out to developers who are busily developing same. These developers are the 2nd 3rd and 4th defendants in this suit at the trial court. The Respondent herein who claims ownership of the subject land sued the appellant in the High Court Sunyani claiming the following:

a) "A declaration that plaintiff is the bona fide owner of the Plot No. 27, Block 'A' Sector 4, South New Town, Sunyani which share boundary in the North-West, North, North-East with a road and South-East with a road and a lane, South, South-West with road, West with road junction.
b) Recovery of possession of the land described in paragraph (a) Supra.
c) General damages for trespass
d) An order of the court to compel defendants to demolish any structure or buildings defendants have unlawfully erected on said plot.
e) An order of injunction to restrain defendants, their agents, assigns, workmen, labourers etc. from dealing with plot No. 27 Block 'A' Sector 4, South New Town, Sunyani in any manner whatsoever."

The High Court found as a fact that the pieces of land for which the 1st defendant/appellant obtained judgment in suit No. E1/4/06 in the High Court, Wenchi, are differently located from the plot of land forming the subject matter of the present suit, and plot No. 27 Block A Sector 4 South New Town does not form part of the properties affected by the said judgment. The High Court, Sunyani, further found that the plaintiff/Respondent had successfully proved its title to the land it claims in the suit and therefore gave judgment to the plaintiff/Respondent granting all its reliefs in the writ of summons.

The appellant aggrieved appealed to the Court of Appeal. The Court of Appeal affirmed the findings and judgment of the High Court and dismissed the appeal.

The appellant dissatisfied further appealed to this court praying that this court reverses the judgment of the Court of Appeal and all the consequential orders.

Grounds of Appeal

The appellant filed as many as 10 grounds of appeal and 2 additional grounds, these are:

a) "The judgment delivered by the Court on 28th day June, 2017 was against the weight of evidence adduced in court by the parties during the trial of the case at the lower court.
b) The learned judges were wrong when they refused the 1st defendant/appellant/appellant's appeal.
c) The 2nd witness for the plaintiff admitted under cross-examination that, the very land which the plaintiff was laying claim to, belongs to Madam Yaa Twenewaa. To that extent, the learned judges were wrong when they failed to place probative value on the evidence of the plaintiff's second witness.
d) The failure of the learned judges to consider critically, the legal effect of Exhibit "C9" on the plaintiff's case resulted in substantial miscarriage of justice.
e) The failure of the learned judges to consider critically the legal effect of Exhibit "F" – which was tendered by the plaintiff's counsel through the 1st defendant resulted in substantial miscarriage of justice.
f) The learned judges were wrong when they failed or refused to consider critically the issue of estoppel raised by the 1st defendant in both his statement of defence, cross-examination and examination in chief.
g) The learned judges erred in law when they failed to consider adequately the legal effect of the TERMS OF SETTLEMENT entered into between the lands commission and the 1st defendant.
h) Having regard to the judgment of the High Court, Wenchi and subsequent processes served on the agents of the plaintiff in Suit N0: E1/4/06 titled: Nana Obiri Boahen v Elder Kyereh and Others, the plaintiff/respondent/respondent was estopped from initiating the present action/suit.

i) The refusal for the appointment of expert opinion by the Court was wrong which said refusal has resulted in substantial miscarriage of justice in the light of judgment in Suit No: E1/4/06 titled Nana Obiri Boahen v Elder Kyereh and Others.

j) Additional grounds of appeal shall be filed upon the receipt of the record of proceedings."

Additional Grounds of Appeal

a) The Court of Appeal judges were wrong when they held that the issue of incompleteness of Records of Proceedings was inconsequential, and that position has resulted in substantial miscarriage of justice to the 1st Defendant/Appellant/Appellant.

b) Both the Court of Appeal and the High Court were bound by the Supreme Court decision in Benjamin Quarcoopome Sackey v Issaka Musah, Suit NO J4/25/2014 delivered 21st October, 2015 and others decided authorities, including Nana Otual Antwi Boasiako v Nana Adjei Panin, Suit N0 Adjei Panin Suit N0: J4/33/2012 judgment delivered on 26/11/2014, Supreme Court in respect of surveying of disputed lands. Such failure resulted in substantial miscarriage of justice to the 1st defendant/Appellant/Appellant.

c) The grant of award of damages in favour of the Plaintiff/Respondent/Respondent by the High Court which was affirmed by the Court of Appeal was wrongful in law and same also not maintainable in law.

We observed that the original grounds of appeal basically are the same grounds canvassed in the first appellate court particularly grounds (a) (c) (d), (e), (f), (g), (h) and (i).

Ground (c) was struck out by the Court of Appeal as narrative and argumentative, however the appellant has repeated the said ground verbatim; this is not prudent on the part of the appellant. We cannot entertain the said ground for the same reasons. Ground (c) of the grounds of appeal is hereby struck out. Additional grounds (b) and (c) sin

against Rule 6 (2) (f) and 6 (4) of the Supreme Court Rules, 1996 C. I. 16, Additional ground (b) is narrative and argumentative. The additional ground (c) failed to particularize the errors of law alleged, these additional grounds are equally struck out.

Grounds (f), (g), (i) and additional ground (a) we would describe as very frivolous and vexatious. The reasons for saying so are demonstrated below:

Ground (f) for example reads:

"The learned judges were wrong when they failed or refused to consider critically the issue of estoppel raised by the 1st defendant in both his statement of defence, cross-examination and examination in chief."

The court of appeal devoted the greater part of its judgment to critical consideration of the issue of estoppel per rem judicatam raised by the appellant as his defence to the suit. This runs through pages 478 to 489 of the record. In concluding the critical exposition of the law on this doctrine and its application to the appellant's defence the learned jurists of the court of appeal commented on the same complaint the appellant raised against the trial judge, that, he failed to consider the doctrine of estoppel raised in his defence at the trial. The Court of Appeal per Ayebi JA remarked as follows, "I have already referred to the basis of the judgment of the trial judge. The complaint that he failed to critically consider the appellant's plea of estoppel per rem judicatam is without foundation. He considered the plea on the basis of the subject-matter."

A quote from the judgment of the Court of Appeal on page 488 of the record demonstrates the frivolity of grounds (g) and (i):

"We must also dismiss ground (i) of the appeal because as I have determined, the kind of opinion the appellant expected the court expert to place before the court has been provided by PW1. Again since it is our determination that the disputed plot is not affected by the Wenchi High Court judgment, the compromise reached with the appellant by the Lands Commission in the Terms of Settlement filed, is irrelevant to the respondent's claim."

In respect of additional ground (a) the Court of Appeal rightly reprimanded the appellant on his complaints about the record of proceedings. After he as the appellant and a legal practitioner had accepted the records as complete when he was served with Form 6; he cannot be heard complaining about the record of proceedings. The court further said the matters he was raising were not of substance and would not affect the merits of the appeal, (see page 471 of the record).

The appellant has every right to appeal against a judgment he is dissatisfied with, however litigation is expensive, other parties are involved, the court, its officers and time are involved, therefore it is expected that an appeal to the highest court of the land is approached with some seriousness and not with so much frivolity. It appears some of these grounds brought before us were filed without any careful reading of the judgment being appealed against. It is more of a concern when the appellant herein is a senior lawyer, and an officer of this court. Repeating these grounds of appeal to this level is a deliberate attempt to simply protract litigation unnecessarily. We frown on such conduct.

a) The grounds worth considering in this appeal are original grounds (a) (b) (d) and (e). Grounds (d) and (e) can be sub-sumed under the omnibus ground (a). Essentially, therefore, the ground worth considering in this appeal is the omnibus ground (a) which says- "The judgment delivered by the Court on 28th day June, 2017 was against the weight of evidence adduced in court by the parties during the trial of the case at the lower court."

The determination of ground (a) determines ground (b) which says the Court of Appeal was wrong in dismissing the appellant's appeal.

The decisions of the two lower courts are concurrent; therefore, we would be cautious in our approach in considering these grounds making sure we do not interfere with the concurrent findings of the lower courts unjustifiably. It has been well established by many decided cases of this court that the second appellate court would only interfere with concurrent findings of the lower courts where it is clear from the record, that such findings are not supported by the evidence or that the findings are perverse. In the case of

Achoro and another v Akanfela and another [1996-97] SCGLR 209 at page 214 this court per Acquah JSC held as follows: ***"Now in an appeal against findings of facts to a second appellate court like this court, where the lower appellate court had concurred in the findings of the trial court, especially in a dispute, the subject matter of which is peculiarly within the bosom of the two lower courts or tribunals, this court will not interfere with the concurrent findings of the lower courts unless it established with absolute clearness that some blunder or error resulting in a miscarriage of justice, is apparent in the way in which the lower tribunal 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 properly been applied"*** See also the cases of ***Gregory v Tandoh VI & Hanson [2010] SCGLR 971; Obeng v Assemblies of God Church, Ghana [2010] SCGLR 300***

The appellant in his submission in support of ground (a) made reference to cases of this court underlying the above stated principle of law and argued that the judgments of the two lower courts are perverse, wrong and not borne by the record. The appellant, to succeed in this appeal, ought to demonstrate that indeed the judgments of the two lower courts are perverse; whether he had been able to successfully discharge that responsibility is the main issue of determination before us.

Our primary duty therefore is to examine the record to be satisfied that the findings of the lower courts are supported by the evidence on record. For as rightly stated per Acquah JSC in ***Koglex Limited (No 2) v Field [2000] SCGLR 175 at page 185, "The very fact that the first appellate court had confirmed the judgment of the trial court does not relieve the second appellate court of its duty to satisfy itself that the first appellate court's judgment is, like the trial court's, also justified by the evidence on record."***

An appropriate review of the record would involve considering the total evidence laid before the trial court by the parties; we would therefore briefly summarize the case of each party at the trial.

Respondent's case:

By the averments in plaintiff/respondent's amended statement of claim, the disputed land numbered Plot No 27 Block A, South New Town, Sector 4 Sunyani, was originally acquired by a company known as Little Saints Educational Complex from Lands Commission; (Land Commission manages lands for the Sunyani Stool). A lease dated 8/07/98 was executed between the parties. The lease, which is registered, was for a period of 50 years. The purpose of the acquisition by Little Saints Educational Complex was to set up a school. It therefore started developing the land. In 2007, Little Saints Educational Complex decided to assign the unexpired term of the lease to the plaintiff. A deed of assignment dated 6/02/07 was executed between Little Saints Educational Complex and Golden Age Company, the respondent herein.

The respondent company was represented in the suit by its managing director Eric Kwasi Yeboa; he gave evidence on behalf of the company. In proof of the company's title to the land, he tendered the lease of its grantor, which is the root of title, as exhibit A. The deed of assignment to the company he tendered as exhibit B. The respondent gave description of its land as situate in South New Town Sunyani, it is 5.6 acres in size and it is bounded on all sides by roads. It is plotted and numbered as Plot No 27 Block A South New Town Sector 4 Sunyani. The plot is zoned purposely for schools. According to the witness, upon acquiring the land the company went into possession and took the necessary steps to obtain the required approval and permit to build. It therefore made payments to the requisite government institutions such as the Lands Commission, the Stool Lands Secretariat and the District Assembly for the purpose. The respondent acquired the necessary approval and permit to build, and was able to build two big hostels for students. The witness tendered in evidence receipts of the said payments. They are in evidence as the Exhibit C series. It is the respondent's case that whiles it was in possession, the appellant, in 2013 engaged a surveyor, entered the land and demarcated

it into residential plots. Respondent's representative said he reported the matter to the police, at the police station, the appellant served him with an entry of judgment; claiming he had obtained a judgment which declared him (the appellant) the owner of the disputed plot of land. However, when he studied the entry of judgment the appellant served on him it showed that the judgment he obtained was in respect of lands at Abesim Dominase, Asufufu and Adomako. These plots of land are quite a distance from his land. The appellant's judgment therefore does not affect respondent's land. The witness further stated that despite this, the appellant and his grantees have continued with their acts of trespass on plot No 27. To support respondent's evidence that the properties are different and are far away from each other, A Town Planning officer gave evidence as PW1. He tendered the planning scheme of South New Town, Sector 4 Sunyani where the disputed land is situate as Exhibit D. He identified the disputed land on the scheme and confirmed that the respondent company applied to the Town Planning Department to develop the land and no other person had applied to develop the said land. He further tendered the master plan of Sunyani as Exhibit. E and demonstrated where the various plots, that is the plots the appellant claims he obtained judgment on; and the disputed plot fall in the master plan of Sunyani. Confirming that the plot in dispute does not fall within the area appellant's judgment cover.

Appellant's case

The appellant contended the case alone in the High Court. The rest of the defendants in the trial court, the 2nd, 3rd, and 4th defendants did not participate in the trial though they filed a statement of defence. At the close of his evidence at the trial, the appellant announced to the court that the rest of the defendants were his agents and therefore his evidence covered them. The trial court did not accept that prayer therefore disallowed it.

The appellant's case essentially is that he bought a large track of farmland in 1995 from a family whose name he did not disclose but said the said family heads are Opanin Boye and Opanin Kofi Alex of Sunyani. The large track of land he acquired included the disputed land.

It is worth noting that in his pleadings and evidence, the appellant only described the land he is claiming as his to be a vast track of farmland that includes the disputed land. He did not produce any evidence of the transaction he had with the family in respect of the large track of land he claimed he acquired apart from the mere assertion that he acquired the land. The stance the appellant took is that, the judgment he obtained from the Wenchi High Court is his evidence of ownership and he tendered the judgment as exhibit 2.

The appellant's defence to the action is that by virtue of the judgment he obtained from the Wenchi High Court, the respondent is estopped per res judicata from instituting this action.

The crucial issue joined between the parties therefore was whether the plot in dispute forms part of the land described in the Wenchi judgment.

The judgment from Wenchi court describes the land the appellant claimed in that suit as follows-

(1) All that piece and parcel of farmland lying situate and being at Dominase on Abesim Stool land and which said farm land shares common boundary with the farmland of Opanin Kwadwo Asante, Opanin Kwesi Yeboah, Opanin Kuden Sarbi, Nii Opanin Damoah, Papa Abdulai and Opanin Abuu

(2) All that piece and parcel of farmland lying and situate and being at Asufufu/Adomako on the Sunyani Stool land sharing common boundary with the building plot of Akil, a dried up stream and a cottage.

(3) Farmland lying situate and being at Dominase on Abesim land which said farmland shares common boundary with the farmland of Opanin Kojo Baah and Nana Obeng.

Analysis of the evidence

Exhibit A the lease between the Lands Commission and Little Saints Educational Complex was registered with the Deeds Registry Sunyani in 1998. The site plan attached to this

document clearly shows the location and the dimension of the plot in dispute. Exhibit B, which is the deed of assignment to the respondent bears the Lands Registry's stamping number and has a site plan that gives the same location as the site plan attached to the mother document.

Exhibits D and E settled the issue of the location of the disputed plot and the location of the farmlands in the Wenchi judgment. We have carefully studied these two documents and have come to the following conclusions:

The location of the disputed plot is clearly demarcated in exhibit D (the planning scheme of South New Town) and zoned as educational area.

Exhibit E the master plan of Sunyani Township clears every doubt regarding the location of the disputed plot vis–a-vis the area exhibit 2, the judgment from Wenchi High Court covers. The master plan exhibit D gives a clear picture of the locations of Abesim Dominase, Asufufu and Adomako. From the master plan, Dominase Abesim is very far from South New Town where the disputed land is located, so is the area described as Asufufu. The Northen part of the area described as Adomako may be said to be close to South New Town, however an existing major road demarcates these two areas; PW1 said this road is a ring road. The plot in dispute is embedded almost in the middle of the area described as South New Town and is not close to the demarcating major road. It is therefore very unreasonable to argue that the disputed area falls within the area described as Adomako. Similarly, it does not in any way fall within the areas described as Asufufu and Dominase Abesim.

The judgment, exhibit 2, which is the only evidence the appellant clings to, to come this far in litigation in this suit does not cover the disputed plot. The findings of the trial court which was quoted by the first appellate court demonstrates that exhibit 2 is not of much probity value. (See page 467-468 of the record)

The Court of Appeal in its judgment emphasized that the trial court effectively dealt with the issue of estoppel and said at page 467-468 of its judgment (referring to the judgment of the trial court) that-

"From pages 14 to 16 of the judgment …. the trial judge determined issue (c), that is whether the reliefs the 1st defendant sought in the Wenchi High Court affects the plot in dispute, he acknowledged the fact that a valid judgment which settled all the issues between the parties debars any of the parties from re-litigating the same matter in future action; he observed that the plaintiff fiercely contested the claim of 1st defendant that the disputed plot is situated at Adomako/Asufufu and is affected by the judgment of the Wenchi High Court; that the judgment shows that on 15th December, 2011, the trial judge de-suited 27 other defendants and ordered hearing notice to be served on the Lands Commission; the judgment to all intents and purpose is a default judgment because the defendants did not attend the trial; he referred specifically to the case of **Conca Engineering (Ghana) Ltd. vrs Moses [1984/86) 2 GLR 319**, which advocated that the validity of default judgments to operate as res judicata or estoppel should be limited and **In Re Ashalley Botwe Lands [2003/04] SCGLR 420,** which deprecated the practice of making orders against beneficiaries who were not parties to an action and the fact that the 1st defendant picked and choose what to present to the court of the Wenchi High Court proceedings thereby disabling him from knowing everything about that trial. Finally, he observed that there is nothing in the Wenchi judgment, which shows that Asufufu/Adomako has another name called New Town South, Sunyani."

The court of Appeal went further to quote the conclusion the trial court came to thus-

> "I attach great weight to the evidence of PW1 who is the statutory officer responsible for planning of Sunyani. In their records, the Asufufu/Adomako the first defendant referred to is not known to their office. He tendered in evidence the landscape of Sunyani Township. They are the statutory body in charge of planning the town. The 1st defendant cannot say he knows the geographical dimensions better than him.
>
> Looking at the numerous unanswered questions, I do not think the judgment of the learned judge Wenchi affects the disputed land."

This is a demonstration that both courts below made good expositions of the law on the doctrine of estoppel per res judicata and concluded that the doctrine is inapplicable in the circumstances of this suit.

From the analysis above the location of the disputed plot and the fact that the said plot does not form part of the areas the Wenchi High Court judgment cover, puts to rest the question whether the doctrine of estoppel per res judicata is applicable in this case or not. We do affirm the decisions of the two lower courts, that doctrine in not applicable in the circumstances of this case.

The land the subject matter of the present suit is not identical with the land in exhibit 2. The issues for determination in the present case differ from the issues decided in exhibit 2; above all, that the parties are not the same, throws the defendant's plea of estoppel overboard. (See the cases of ***Cobblah v Okraku [1961] GLR 679; In Re Mensah; Mensah & Sey v Intercontinental Bank [2010] SCGLR 118)***

Proof of title to the disputed land

The respondent whose prayer in the suit is declaration of title successfully proved its root of title through exhibits A and B. The Exhibit C series is a proof that the respondent had been put in effective possession by the various institutions responsible for doing so, the Lands Commission, the Assembly and the Town and Country Planning Department, Sunyani. As against this is the appellant's mere assertion that he owns large tracks of land which includes the land in dispute. His trump card is the default judgment exhibit 2. It is worth noting that the trial court in its judgment pages 356 & 357 of the record lamented that the appellant did not place before the court the total proceedings of the judgment he was relying on to plead estopped per res judicata. Parties i.e. 27 defendants in that suit were de-suited by the High Court in Wenchi. The lands Commission was the only defendant called upon to defend the suit and yet judgment was entered against the 27 defendants who were de-suited.

The Court of Appeal in its judgment (page 487 of the record) commented on the unconvincing nature of appellant's evidence on the identity of the farmlands he claimed

he obtained judgment on. This is what the court said: "It is recalled that at the trial, appellant confessed that he did not know the acreage of his land. He also struggled to admit that he had no documents on his land. As I noted earlier, he was not able to cause the judgment in his favour to be plotted by the lands Commission. In these circumstances, it is not surprising that the appellant was not able to show to the court, the location and extent of his land on the plans tendered by PW1."

Proof in a civil matter is on the preponderance of probabilities.

Section 12 (2) of the Evidence Act, 1975 NRCD 323 defines

proof by a preponderance of the probabilities as follows:

(2) "Preponderance of the probabilities" means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence.

The evidence on record on proof of the respondent's claim of title to the disputed land is very convincing and the two lower courts did not mince words in their findings on that. The appellant's evidence on the other hand, which is exhibit 2, points to one fact, which is that the pieces of land he is laying claim to are different from the subject matter of this suit. His plea of estoppel per res judicata is defeated on the same fact that, the subject matter of the Wenchi judgment on which the plea is based is different from the subject matter of the present suit.

As earlier stated this court will not interfere with concurrent decisions of the two lower courts unless it is established clearly that there had been an error in the findings of the lower court that had resulted in miscarriage of justice

The findings of the courts below and the conclusions reached are perfectly supported by the evidence on record. We have no reason to disturb same. The appeal has no merit it is hereby dismissed in its entirety.

A. M. A. DORDZIE (MRS.)
(JUSTICE OF THE SUPREME COURT)

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

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