IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DORDZIE (MRS.) JSC (PRESIDING)
AMEGATCHER JSC
OWUSU (MS.) JSC
TORKORNOO (MRS.) JSC
PROF. MENSA-BONSU (MRS.) JSC

CIVIL APPEAL NO. J4/49/2022

27TH JULY, 2022

NII FOSTER
(AMENDED TO READ)
NII LANTEI LAMPTEY ……. DEFENDANT/APPELLANT/APPELLANT

VRS

SHADRACH SOSSOU KEDE …… PLAINTIFF/RESPONDENT/RESPONDENT

JUDGMENT

AMEGATCHER JSC:-

FACTS

This is an appeal from the judgment of the Court of Appeal dated 28th July 2021. Per their pleadings, the respondent is a self-employed Ghanaian and lives at Ashongman Estates, a suburb of Accra. The appellant is a royal of the Nsakina stool and the current chief of Nsakina. It is the case of the respondent that sometime on 12th April 2006 he negotiated and acquired a parcel of land at Nsakina from the then chief of Nsakina who later gave him an indenture evidencing the transaction. The

respondent avers that he remained in uninterrupted peaceful possession until January 2012 when he started the construction of his three-bedroom private residence and reached lintel level by August 2015. By this time, he had been in possession for nine years and some months.

It is the case of the respondent that the appellant who has a relationship with the royal family of Nsakina entered his land in August 2015 and with the assistance of thugs caused massive destruction of the building valued at Ghc74, 614.40. The respondent reported this wrongful damage of his property to the police and also to the royal family who promised to resolve the matter but after waiting for some time without any resolution he decided to go to court to claim Ghc100, 000.00 damages for the destruction and perpetual injunction to restrain the defendant from interfering with his rights and quiet enjoyment of the property.

After service of the respondent's writ and statement of claim, the appellant filed his defence denying any knowledge of the land, the grant of any land to the respondent as well as leading thugs to destroy the respondent's property or ordering or supervising any person to carry out that destruction of respondent's property. The appellant further denied any knowledge of any complaint about the destruction of property lodged against him at the police station. He also denied any knowledge of any meeting or settlement of the issue between the royal family and the respondent and put the respondent to strict proof of all the averments in his statement of claim.

On 29th November 2016, the respondent applied for leave to amend his writ of summons and statement of claim. Leave was granted to the respondent on 8th December 2016 and he was ordered to file his amended writ and statement of claim within one week. There is no indication in the ROA that the pursuant amended writ and statement of claim were filed. However, because of the references made to the amended pleadings by the trial court and the intermediate appellate court, the panel followed up with the registry of the Court which later furnished us with copies of the amended writ and statement of claim filed on the same day the application was granted i.e. 8th December 2016 at 1:40 pm. Being an official record of the Court, we shall accept the filed copy and treat the amended writ and statement of claim as duly filed. However, counsel for the appellant has stated in his supplementary

statement of case that the appellant was not served with the amended writ and statement of claim. We have seen an official search conducted by counsel for the respondent on 20th December 2016 at the registry of the High Court as part of the ROA at page 22. The following questions and answers are captured between counsel for the respondent and the registrar of the High Court:

a) Whether or not the Court granted the Plaintiff leave to amend the Writ of Summons and Statement of Claim. **Yes**
b) If so when? **8/12/16**
c) Whether or not Defendant has been served with the Amended Writ of Summons and Statement of Claim. **Yes**
d) If so when? **14/12/16**
e) Whether or not Defendant has filed Amended Statement of Defence.
   No indication on the docket.

It is clear from this official search that the appellant was served with the amended statement of defence on 14th December 2016 but he chose not to file any amended defence in answer to the facts pleaded. If this were not the case we are sure the appellant would have been the first to challenge the search result and its inclusion in the ROA. We are, therefore, enjoined by law to accept the official record from the registry of the High Court as conclusive of the facts stated in the document. In this regard, facts pleaded in the amended statement of defence that have not been specifically denied or under the general traverse shall be taken as admissions.

HIGH COURT PROCEEDINGS

The High Court Accra on 5th December 2018 gave judgment in favour of the respondent against the appellants for declaration of title to the property, recovery of possession, damages amounting to Ghc74, 614.41 with interest, and costs. The appellant was dissatisfied with the judgment of the High Court but missed the window provided to file an appeal as of right within the first three months under Rule 9 (1)(b) of the Court of Appeal Rules 1997 (C.I. 19).

On 23rd May 2019, a little over five months after the High Court judgment, the appellant filed an application for an extension of time within which to file an appeal out of time to the Court of Appeal. This application was heard and granted by the High Court on 12th July 2019. The High Court gave the appellant 14 days within which to file his notice of appeal. The appellant complied with the order and filed his notice of appeal on 17th July 2019.

PROCEEDINGS AT THE COURT OF APPEAL

The appeal was subsequently listed before the Court of Appeal and written submissions were filed by the parties. In its judgment dated 28th July 2021 the Court of Appeal disposed of the appeal on the technical point i.e. whether there was a valid appeal before it. According to the Court of Appeal, the legal point on the status of the appeal was so obvious from a perusal of the Record of Appeal (ROA) that it had no choice but to rest its decision on that point. The Court of Appeal then proceeded to review the rules and concluded that the appellant's application for an extension of time within which to appeal was argued and granted on 12th July 2019, and the notice of appeal was filed on 17th July 2019. These dates, according to the Court of Appeal, were all outside the second three months window within which leave was required to file the appeal. On that basis, the Court of Appeal came to the conclusion that at the time leave was granted and the appeal was filed, the appellant was out of time. The Court of Appeal, therefore, struck out the appeal as incompetent. It was from this decision of the Court of Appeal that the appellant appealed to this court on a number of grounds.

GROUNDS OF APPEAL TO THE SUPREME COURT

The appellants filed the following grounds of appeal:

1. That their Lordships of the Court of Appeal erred in their interpretation of Rule 9 (1) 4 and 7 of C.I. 19 in the computation of period for extension of time to appeal and thereby misdirected themselves to hold that the notice of

appeal filed on 17-07-2019, (pursuant to leave of the trial High Court dated 12-07-2019) was out of time.

2. The Court of Appeal erred when they failed to appreciate that the application for extension of time filed on 23-05-2019, was within the stipulated six (6) months period as envisage (*sic)* by Rule 9 (1) 7 of C.I. 19.
3. The Court of Appeal erred in setting aside the trial High Court's order for extension of time to appeal, granted on 12-07-2019, and thereupon held that the said notice of appeal filed on 17-07-2019 was a nullity.
4. The judgment is against the weight of evidence.
5. Further grounds may be filed upon receipt of the records.

On 10th May 2022, the appeal was listed for hearing. After adopting the statement of case filed by the parties we adjourned the appeal for judgment. In the course of the consideration of the appeal, we discovered that the appellant had consistently stated that the name assigned to him in the writ and pleadings is not his real name. He stated his real name as Nii Lantei Lamptey and his chieftaincy title as Nii Odartei IV. We also discovered that the submissions of the parties were confined to the procedural matter regarding the time limit within which to appeal which formed the basis of the Court of Appeal decision. For judicial economy and to save the parties from excess expenses in going back and forth within the court's hierarchy, we exercised our powers under Article 129 (4) of the Constitution, 1992, and invited the parties to appear before us on 15th June 2022 for further directions in this appeal. By consent of all the parties, we ordered the appellant's name on the record to be amended to read Nii Lantei Lamptey. We also ordered the parties to file additional statements of case based on the grounds of appeal filed at the Court of Appeal so that we can dispose of every matter arising from this appeal in one judgment. The parties complied with the order and filed their additional statement of case arguing the merits of the appeal.

CONSIDERATION OF THE APPEAL BEFORE THE SUPREME COURT

The appeal to this court is limited to the technical disposal of the appeal by the Court of Appeal i.e. that there was no valid appeal before the court from the High Court's decision. The five grounds of appeal filed are so related that they will be considered together to wit: The Court of Appeal erred in their interpretation of Rule 9 (1) 4 and 7 of C.I. 19 in the computation of the period within which to apply for an extension of time to appeal and thereby erred in setting aside the High Court's order for extension of time to appeal on the basis that it was out of time.

At pages 224-225 of the ROA, the Court of Appeal reviewed the important dates in the trajectory of this case as follows:

"**Having perused the written submissions of counsel for both parties in this case, I have decided to rest the decision in this appeal on a legal point which is so obvious from a perusal of the record of appeal touching on the propriety of the appeal before this court having regard to rule 9 of the Court of Appeal rules 1997 (C.I. 19) dealing with the time limit for filing appeals. The record of appeal shows that the judgment of the High Court the subject of appeal was delivered on 5th December 2018….On the 12th of July 2019….the learned High Court judge heard arguments for and against a motion for extension of time within which to file appeal out of time and granted the application and ordered the defendant/appellant to file the notice of appeal and the necessary documentation within 14 days. On 17th of July 2019 the defendant/appellant filed the Notice of Appeal……pursuant to the leave granted by the High Court on 12th of July, 2019**."

After this review, the Court of Appeal then proceeded to interpret the rules at page 225 of the ROA in the following words:

"**By a simple computation of time, it is obvious that even as at the 12th July 2019 when the High Court granted the defendant/appellant extension of time to appeal, the appellant was already out of time having regard to the fact that the judgment of the High Court the subject of the appeal was**

delivered on 5th December 2018 a period of more than seven months before the extension of time was granted by the High Court."

The Court of Appeal then concluded at page 231 based on its understanding of the rules as follows:

"**Accordingly, the order extending the time within which to appeal is hereby set aside and the notice of appeal having been filed outside the six (6) months period was a nullity and confers no jurisdiction on this Court to determine the appeal**."

It would be appropriate to reproduce the exact text of the relevant rules so as to determine whether the interpretation given by the Court of Appeal accords with the law.

9. Time limits for appealing

(1) Subject to any other enactment for the time being in force, no appeal shall be brought after the expiration of-

(a) twenty-one days in the case of an appeal against an interlocutory decision;

or

(b) three months in the case of an appeal against a final decision unless the court below or the Court extends the time.

(2) The prescribed period within which an appeal may be brought shall be calculated from the date of the decision appealed against.

(3) An appeal is brought when the notice of appeal has been filed in the Registry of the court below

(4) No application for extension of time in which to appeal shall be made after the expiration of three months from the expiration of the time prescribed by this rule within which an appeal may be brought.

(7) Notwithstanding rule 28 of these Rules, no application shall be made to the Court for extension of time within which to appeal after six months from the date of the decision appealed against.

There is no doubt that the time limit prescribed for appealing against a final decision of the High Court to the Court of Appeal as of right is three months in the first instance from the date the decision was rendered. After three months, a dissatisfied person who wishes to appeal has another window. That can only be exercised with the leave of the Court and that right is limited to an application for an extension of time being filed within the second window of three months. The rule clearly states that after the expiration of the second three months or six months from the date of the trial court's judgment no application for an extension of time could be brought. At what stage, then, could an application for extension of time be regarded as valid having regard to rule 9 of C.I. 19? The Court of Appeal took the view that the application for an extension of time must be argued and granted before the expiration of the second three month window. We have examined the rules and do not agree with the interpretation put on the provisions of Rule 9 by the Court of Appeal. The operating phrase we find relevant in sub-rules 4 and 7 is that no application for an extension of time within which to appeal shall be made after six months or after the expiration of the second three month window. The rule is clear. It is an application which should not be filed and not that arguments cannot be made when an application is pending or the court cannot hear and make an order once an application is pending. In our view what is important is the filing of an application for an extension of time before the six month window closes. The time fixed to move and rule on applications in our courts is beyond the control of litigants.

Interestingly, this Court has had an opportunity to determine a similar procedural time limit which came before it a decade ago. That is the case of **Halle & Sonns SA v Bank of Ghana & Warm Weather Enterprise Ltd [2011] 1 SCGLR 378.** In that case, following a failed export and import of fish from a Norwegian firm to a Ghanaian company the Norwegian firm sued and had summary judgment in its favour by the High Court on 15th May 2001. On 7th November 2001, a week before the expiry of the six months window, the Bank of Ghana which was sued as 2nd

defendant filed a motion for an extension of time within which to appeal against the grant of the summary judgment. The Ghanaian company also filed its application for an extension of time on 14th November 2001, a day before the expiry of the six months window. Both the Bank of Ghana and the Ghanaian company moved their applications on 5th March 2003, about one and half years after the High Court summary judgment. The extension of time was granted, each given seven days within which to file the appeal. They filed their notices of appeal on 10th March 2003. On 30th November 2006, the Court of Appeal allowed the appeal, set aside the summary judgment, and granted the defendants unconditional leave to defend the action. The plaintiff, the Norwegian firm appealed to the Supreme court against the judgment of the Court of Appeal arguing that at the time the Court of Appeal allowed the appeal and granted the defendants leave to appeal, they were irredeemably out of time in the sense that the determination by the Court of Appeal was made outside the six months' time permitted by the rules, so the right to appeal had been extinguished.

The Supreme Court per Sophia Adinyira JSC held at page 393 as follows:

"**The expression an application 'shall not be made' to the Court for extension of time as used in rule 9(7) of the Court of Appeal Rules, 1997 (C.I. 19), is not synonymous with the expression 'no application shall be moved or heard' after the six months limitation period. It is our considered view that an extension of time made by a court after the prescribed six months limitation period for filing an appeal under rule 9(7) is permissible and within the discretion of the court only where the application upon which the extension was granted was filed within the six months period. Otherwise, there would be a great deal of injustice to parties where applications are brought rather tardily though within the prescribed time. Not forgetting the slow pace at which cases move in our courts due to various inhibitions. There is no provision in the Court of Appeal Rules, 1997 (C.I. 19), prohibiting an applicant from moving an application filed within time after the expiration of the six months period. The determining factor in the circumstances is when the application was**

made. An application obviously must first be made before it can be moved for determination by a court……It is our thinking then that since it is the application that must be made within the six months period and not the determination of it, any application that is filed any time within the six months period ought to be moved and determined on its merit at any time, though expeditiously."

It is evident from the interpretation given in this judgment to the relevant rule on the extension of time within which to appeal that the Court of Appeal got it wrong and erred when it used the dates the application was argued and granted as the basis for calculating the second three month window. The fact that the Supreme Court had given its interpretation of the Rule as far back as 2011 shows that the Court of Appeal decision was given per incuriam as it failed to follow a decision of a higher Court which was binding on it.

Accordingly, we allow the appeal and set aside the judgment of the Court of Appeal dated 28th July 2021 and restore the Appeal filed against the judgment of the High Court on 17th July 2019.

The way is now clear for us to consider the merits of the appeal filed to the Court of Appeal as the second component of this judgment. We are exercising the powers of the Court below under article 129 (4) of the Constitution, 1992 which vest this Court with all the powers, authority, and jurisdiction vested in any court established by this Constitution or any other law when hearing and determining any matter within its jurisdiction.

GROUNDS OF APPEAL BEFORE THE COURT OF APPEAL

The appellant filed five grounds of appeal challenging the legal and factual basis of the judgment delivered by the High Court. These grounds are as follows:

1. **That the learned Judge erred when she misdirected herself and held that the Defendant failed to discharge the evidential burden placed on him.**

2. **The learned trial Judge erred when she held that on the totality of the evidence the Defendant has failed to lead sufficient evidence to avoid a ruling against him.**

3. **That the learned Judge erred in holding that the Defendant was seen at the site on the day of demolishing.**

4. **That the learned Judge misdirected herself by relying on Plaintiff's witness to find that Defendant demolished Plaintiff's alleged building.**

5. **That the Judgment is against the weight of the evidence.**

Arguing grounds 1 and 2, the counsel for the appellant submits that the appellant testified that he had not engaged any person or group of persons and personally had nothing to do with the alleged destruction caused to the respondent's property and therefore since he did not counterclaim in the said suit, the holding by the trial judge that he failed to discharge the evidential burden to avoid a ruling against him was wrong. Counsel further submits that the finding by the trial judge that the appellant did not produce any documentary evidence in support of his assertion that his father, Nii Odartey III had suffered a stroke, died in 2007, and was buried in 2008 was an error and contrary to section 128 (2) of the Evidence Act because the person he testified about was his blood relation, which is an exception to the hearsay rule. According to counsel, the respondent who was the plaintiff at the trial and asserted that his grantor died in 2014 also did not produce any documentary evidence in support of that but the trial judge did not find anything wrong with the respondent's failure to support his assertion with documentary proof.

On grounds 3 and 4, the appellant's counsel submits that the trial judge erred in relying on the evidence of PW1, Kwame Ganyehia to conclude that the appellant was the one who demolished the respondent's uncompleted building on the land. In the

first place, according to counsel, the plaintiff was not present on the land and secondly, the evidence adduced by the witness who testified on that issue for the respondent was hearsay and unreliable because the witness said he saw the bulldozer raze the respondent's building and when he asked the people around they pointed out the appellant and gave his name as Nii Forster. The witness was, however, unable to mention the persons who allegedly pointed out the appellant.

In his response, counsel for the respondent on his part submits that what the learned trial judge observed was the appellant's claim to be Chief of Nsakina but never called any of his elders of the Royal Family to corroborate his testimony. The judge, according to counsel did not pronounce on the appellant's capacity as Chief of Nsakina as alleged by the appellant.

On grounds 3 and 4, counsel submits that the respondent discharged the burden of proof placed on him by calling a witness who was present and witnessed the demolition of the property by the appellant. Counsel for the respondent, therefore, submits that the trial judge never misdirected herself when she concluded on the basis of the sufficient evidence adduced by the respondent and his witness that it was the appellant who was at the site on the day of the demolition and upon his orders pulled down the building.

Counsel finally submits that the appellant has not pointed out any shortcomings in the judgment of the trial court and also has not been able to demonstrate that the findings made by the Court were not supported by the evidence. Counsel, therefore invited the court to dismiss the appeal.

CONSIDERATION OF THE GROUNDS OF APPEAL

Grounds 1 and 2 were argued together. We intend to consider the grounds in the same way they were presented to us by counsel. The grounds attack the trial judge for misdirecting herself by holding that the appellant had failed to lead sufficient evidence to discharge the burden placed on him and thereby avoid a ruling being made against him.

At pages 189-190 of the ROA the trial judge found as follows:

"Defendant has denied the plaintiff evidence and consistently stated that his father Nii Odartey III passed on in 2007 and was buried in 2008…….Defendant has not produced an iota of evidence to support his evidence even though he said those documents are available to him……The court therefore cannot find in favour of the Defendant in those circumstances."

She then continued at pages 190- 191 of the ROA, that:

"Plaintiff has led sufficient evidence which tilted the balance in his favour and the Defendant has woefully failed to discharge the evidential burden placed on him……..It is indeed a surprise that in the course of the trial, Defendant who claims to be Chief of Nsakina with his elders never called any elder of the Royal family to support or testify on his behalf and/or corroborate his story that Nii Odartey III died in 2007 and was buried in 2008. Nobody from Nsakina Royal Family or any King Maker accompanied the Defendant to Court to support him."

Based on these findings, the trial judge concluded at page 192 that:

"The court therefore finds that on the totality of the evidence the Defendant has failed to lead sufficient evidence to avoid a ruling against him. The court finds for the Plaintiff who has led cogent evidence in support of his claim."

Is there any legal basis for these findings and the conclusion reached by the trial judge? This calls for an examination of the legal burden placed on parties to land litigation in this jurisdiction.

Our understanding of the law is that the burden of proof is always put on the plaintiff in land cases to satisfy the court on a balance of probabilities that he has legal title to the land which is valid as against the whole world. A defendant who did not counterclaim in a dispute over land bore no burden to prove or establish his title to any area of the land. If he is in possession of the land or claims ownership of it, it

is sufficient for the defendant to plead the facts establishing his possession or ownership in his defence and lead evidence in support of it. The defendant's failure to lead any evidence will not relieve the plaintiff of the time-tested burden placed on him to establish his title on the balance of probabilities. On the other hand, if the defendant counterclaims, then he equally bears the same standard of proof that will be used in evaluating and assessing the case of the plaintiff against the defendant. The evidential burden is not static and may shift to the defendant or plaintiff depending on who asserts the positive on an issue in contention.

This court in a plethora of decisions has succinctly explained the onus of proof in land cases. These have become so notorious that no useful purpose would be served in reproducing those long lines of cases in every judgment of the court on land litigation. Suffice to say that the case of **Jass Co Ltd v Appau [2009] SCGLR 265 at 270-271** adequately captures the thinking of the Court over the years.

Dotse JSC speaking on behalf of the court re-echoed the evidential burden in such land litigation as follows:

"We wish to observe that, the burden of proof is always put on the Plaintiff to satisfy the court on a balance of probabilities in cases like this. Thus, if in a situation, the defendant has not counterclaimed, and the Plaintiff has not been able to make out a sufficient case against the defendant, then his claims will be dismissed. See case of ***Odametey v. Clocuh [1989 -90] 1GLR, 15*** *holding 1…… Thus, whenever a defendant also files a counterclaim, then the same standard or burden of proof will be used in evaluating and assessing the case of the defendant just as it was used to evaluate and assess the case of the Plaintiff against the defendant. In the instant appeal, the defendants counterclaimed and this meant that they also assumed the position of Plaintiff in respect of their counterclaim. Having thus dismissed the claims of the Appellants, the learned trial judge in our view proceeded to evaluate the case of the Respondents in respect of their counterclaim using the time-tested principles enunciated long ago in* ***Majolagbe vs. Larbi [1959] 1 GLR 190, at 191.****"*

Again, a plaintiff who does not claim title but rest his reliefs on possession and perpetual injunction needs to prove his title to the land. This is captured in **Asante-Appiah v Amponsa Alias Mansah, [2009] SCGLR 90** where **BROBBEY JSC** articulated the principle as follows**:**

"*The law is well established that where a party's claims are for possession and perpetual injunction, he puts his title in issue: He thereafter assumes the onus of proving his title by a preponderance of probabilities, like any party who claims declaration of title to land. There are numerous authorities on these, including* Adwubeng v. Domfeh [*1996-97] SCGLR 660,* Ebusuapanin Yaa Kwesi v. Arhin Davis *(2006) 2 GMLR50 and the old case of* Kponuglo v. Koddadja *(1933) 2 WACA 24. On the basis of that principle, the law required that the appellant should have led evidence to establish his own claim that he single-handedly and exclusively bought the disputed property. In other words, by operation of the law, the onus was on the appellant to have established his title."*

In this appeal, the respondent who was the plaintiff at the trial court narrated in his claim and evidence how he negotiated and acquired the land from the Chief of Nsakina on 12th April 2006. According to him he went into possession and started construction of his private residence in 2012 after obtaining the necessary building permit from the Ga West Municipal Assembly. He tendered his indenture given to him by his grantor with a site plan as Exhibit A. When questioned under cross-examination whether he knew that the alleged grantor was terminally ill by 2005 and a caretaker chief was in place at the time he allegedly purchased the land so the grantor could not have made the grant to him, he answered that he heard the grantor was ill but did not know who the caretaker chief was. In his Reply, the Respondent stated that it was a brother of the appellant who granted the land to him.

It must be pointed out that the appellant at the trial court did not counterclaim for title or recovery of possession against the respondent. In fact, the appellant consistently asserted that he did not know where the land was, had never been there, and had not dealt with the land or granted the land to any person. Thus,

apart from asserting that the Chief could not have granted the land to the respondent because of the health status of the Chief at the time of the alleged grant, the appellant never claimed ownership of the disputed land. That stand by the appellant placed the onussquarely in the hands of the respondent to discharge the evidential burden of ownership and title to the land.

To discharge that burden, the respondent tendered Exhibit A, the indenture and site plan evidencing title to the land. An examination of Exhibit A revealed that it had not been stamped in accordance with section 32 (6) of the Stamp Act, 2005 (Act 689) before it was tendered in evidence at the trial. Respondent under cross-examination also admitted that he had not registered the land in his name. Since a land instrument ought to be stamped prior to being tendered in court, and must also be registered to confer the legal title on the proprietor of the land, the evidence shows that in this suit, the respondent did not prove legal title to the land in issue.

From the evidence, it is our opinion that the respondent failed to discharge the evidential burden placed on him to establish legal title to the land. He, however, proved possessory title until his possession was disturbed. This, therefore, places an evidential burden on anyone who deemed it appropriate to disturb the respondent's possessionthat respondent's presence should not be protected by law.

It must also be noted that the appellant never claimed ownership of and title to the land in issue – a critical position required if appellant was in anyway urging that this land belonged to him or his people.

DESTRUCTION OF RESPONDENT'S PROPERTY

This will lead us to grounds 3 and 4 which fault the trial judge for misdirecting himself by relying on the respondent witness, PW1 to hold that the appellant was seen at the site of the demolishing and did demolish the respondent's uncompleted building.

The allegation that it was the appellant who organized thugs to destroy the uncompleted building of the respondent was strenuously denied by the appellant

who put the respondent to strict proof. To prove this assertion, the respondent testified that on 22nd August 2015, the appellant who had a relationship with the Royal family of Nsakina unlawfully trespassed on the land and with the assistance of thugs demolished the entire building at the lintel level without any just cause and began erecting a fence on the land and constructed a single room. He testified that he spent an amount of Ghc74, 614 on building materials such as cement, stones, sand, water, nails, wood, and workmanship to Masons, Carpenters, Steel benders, and labourers. He exhibited some receipts of purchases and payments made to workers. He stated that he lodged a complaint against the appellant at the Amasaman Police Station for wrongful damage to his property. According to the respondent, the Royal Family pleaded with him to hold on while they resolved the matter peacefully but after two weeks when nothing was happening he filed this action because the family told him the appellant was being stubborn, intransigent, and uncooperative in the proposed settlement.

Under cross-examination again at page 69, he was asked if he knew the appellant by the name Nii Forster. His answer was he got to know him when this matter arose. Again, on whether he was present when the building was being razed down by a bulldozer, the respondent admitted under cross-examination at page 77 that he was not present but someone saw what went on and informed him the appellant was present and gave orders to the operator to demolish the building. That, someone, turned out to be PW1, Kwame Ganyehia.

The evidence of PW1 in support of the respondent's case is also revealing. At paragraph 4 of his witness statement, PW1 testified as follows:

"On 22nd August, 2015 around 6:30 am, I saw a Bulldozer with people on the Plaintiff's land and they razed Plaintiff building down and when I enquired from them, they told me that the Defendant had sent them to raze it down."

According to PW1 he quickly called the Plaintiff but his phone was not going through and upon his return home, called to inform him of what he had seen earlier during the day.

Under cross-examination, the following is the dialogue between PW1 and counsel for the appellant at page 84 of the ROA:

Q Mr. Kwame prior to the incident of the bulldozer raising (*sic*) the Plaintiff's property down do you know the Defendant Nii Forster personally?

A No my Lord

Q You have also not seen him on the land before not so?

A Yes my Lord.

Q So who were the people who told you the Defendant was the person who told them to raise (*sic*) the building down?

A My Lord in the morning when I got there I met some people there watching what was going on, so I asked and they pointed at him that it is he Nii Forster who said the building should be pulled down.

Q Who were the people who told you mention their names?

A My Lord I can't mention any name because the people there were many and the scene was also at the roadside where many people pass by.

Q So you are telling the court you don't know the person who told you personally that it was the defendant who asked them to pull down the property?

A No my Lord.

Again, at pages 85-86 of the ROA, the following dialogue is recorded between PW1 and counsel for the appellant:

Q So it is your case that you did not see the Defendant with the bulldozer on the day the Plaintiff's building was raised (*sic*) down?

A My Lord he was at the site that was why he was pointed out that he asked them to pull the property down.

Q Did you know the Defendant in the township?

A No my Lord……

Q Then how did you get to know that he is called Nii Forster?

A My Lord as I told the court earlier that when I got there and asked and he was pointed out to me I ask of his name and the one who pointed him out mentioned it to me.

In this appeal, despite the evidence of the respondent and his witness that the appellant was the one who on the 22nd August 2015 unlawfully trespassed unto the respondent's land and with a bulldozer and the assistance of thugs razed the respondent's entire building at the lintel level and began erecting a fence and a single room on the land, the appellant in his statement of defence and witness statement just put in a bare denial without more. At this stage after the evidence of the respondent witness connecting him to the demolishing, the evidential burden shifted to the appellant to lead sufficient evidence to satisfy the court that he was not at the site including calling corroborative evidence from witnesses who knew where he was at the material date and time of the demolition. The appellant failed to lead this evidence.

The other defence the appellant put up was that he had wrongfully been described as Nii Forster and at page 64 of the ROA, gave his real name as Nii Lantei Lamptey and his Chieftaincy name as Nii Odartei IV. However, when he opened his defence at page 89, the appellant admitted from a question by the Court that he used to be known as Nii Forster but no longer uses the name. This is what transpired.

BY COURT: Witness statement of the defendant filed on April 24th 2017 adopted as his evidence in chief. You mentioned your name as Nii Odartei IV, the name of the defendant on the docket is Nii Forster, do you know that person?

A: My lord I am the same person but I am no longer addressed by that name Nii Forster.

This admission of the appellant that he was once known as Nii Forster changes the dynamics in the evidence adduced from PW1 because as the Chief in the area, he is

deemed to be known by the residents in the community. His office at Asoredanho where he sells land to the prospective purchasers is known by the residents as well as the respondent. Hence, the mention of his name and identification by the residents who were present when the demolition was going on could not be a mistake. This is how the learned trial judge captured the destruction after reviewing the evidence at page 186 of the ROA:

"The said structure in Exhibit 'C' and 'C1' shows the Plaintiff's building had been demolished by the Defendant with Bulldozer without opportunity to the Plaintiff with so much impunity. Exhibit 'E2' shows the Plaintiff's bare land and in Exhibit 'C' and 'C1' show Plaintiff building was raised (*sic*) down by the Defendant and subsequently the Defendant sold the Plaintiff's land to another purchaser who had walled it and put up a single room on the Plaintiff's land as shown in Exhibit 'E' and 'E1'…….Kwame Ganyehia, enquired to know on whose order the Plaintiff's building was demolished and he was informed that Defendant, the new Chief of Nsakina ordered the demolition of the Plaintiff's building."

Further at page 188 of the ROA, the learned trial judge concluded that:

"This is not the case that Plaintiff and his witness knew Defendant prior to the incident. Indeed, Defendant was present and ordered demolition of the Plaintiff building. Being the new Chief of Nsakina and caretaker of Odartey family land as Defendant claims. Defendant did not only know Plaintiff's building but he also ordered his thugs to raise it down. This took place in the light of day and by the roadside. Defendant was well known to the people who were witnessing the demolition of Plaintiff's building and they pointed out Defendant to Kwame Ganyehia and mentioned his name when he enquired."

The trial judge cannot be faulted for coming to this conclusion based on the traditional position and the identity of the appellant within the Nsakina community.

We, therefore, confirm this finding by the trial judge and place the destruction of the uncompleted building of the respondent at the doorstep of the appellant.

Damages

On the damages to be paid to the respondent, the learned trial judge after her review of the evidence awarded him Ghc74, 614.41 as the cost of the respondent's building razed down by the appellant with interest from 22nd August 2015 till date of payment. This relief is a claim for special damages and unlike general damages, such a claim is exceptional in character and should be specifically pleaded, particularized and proved in evidence.

This court has followed suit the principles enunciated under the common law in the award of special damages in several decisions. A few of such recent decisions are **Eastern Alloys Company Ltd v Chirano Goldmines [2017-2018] 1 SCLRG 308; Kwadjoe v Speedline Stevedoring Co Limited [2017-2018] 2 SCLRG 101** and **Essuman v Aboso Goldfields Ltd [SC 2019]**

So serious is the law regulating special damages that failure to even particularize it has consequences. Thus in the case of **Ilkin v Samuels [1963] 2 All ER 879, 886** and **Hayward and Another v Pullinger and Partners Limited [1950] 1 All ER 581, 582** and concurred in by the learned authors of Atkin's Court Forms, 2nd Edition, Volume 32 the legal position is stated as follows:

> **"Where, however, the plaintiff claims that he has suffered special damage, such damage must be alleged with particulars in his statement of claim, or he will not be permitted to lead evidence of it at the trial."**

In this case the respondent did not particularize the damages in his pleading. He was able to establish though that he has suffered loss i.e. damage to his uncompleted building. He is, therefore entitled to an award of general damages for the loss established. Having regard to all the circumstances and the evidence adduced, we shall assess the general damages due the respondent at Fifty Thousand Ghana Cedis (Ghc50, 000.00).

THE LAW ON POSSESSION:

The position of the law is that a party who is in possession of land would have his possessory title protected as against any trespasser and the whole world except the true owner. Such a person is entitled to the protection of the courts against all those who cannot prove a better title. See the cases of **Nartey v Mechanical Lloyd Assembly Plant Ltd [1987-88] 2 GLR 314, SC and Odametey v Clocuh [1989-90] 1 GLR 14, SC.**

In this appeal, though the respondent did not prove that he is entitled to declaration of legal title to the land in dispute he, nevertheless led sufficient evidence to support his possessory title. The evidence before us reveals that since 2006, the respondent had been in unchallenged possession of the property and had proceeded to erect a three bedroomed residential accommodation until it was demolished by the appellant without any provocation in 2015. The appellant, from the evidence is not claiming any competing title, ownership, or possessory title to the property from the respondent. This is evident by the fact that the appellant did not counterclaim or lead evidence about his ownership to the land. The respondent's possession is, therefore good against the whole world but for the rightful owner who alone can dislodge the respondent from the land.

Based on the evidence before us, and for the reasons stated above the appeal is allowed in part.

The High Court's grant of legal title in the disputed property to the respondent is hereby set aside. We grant the respondent possessory ownership of the said property.

We further set aside the High Court's award of GHC 74,614.4 plus interest to the respondent; instead, we award him general damages, which we assess at GHC50,000.

N. A. AMEGATCHER

(JUSTICE OF THE SUPREME COURT)

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

G. TORKORNOO (MRS.)
(JUSTICE OF THE SUPREME COURT)

PROF. H.J.A.N. MENSA-BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)

OWUSU (MS.) JSC:-

On 5th December, 2018, the High Court, Accra in its Judgment held as follows:

"The Court therefore finds that on the totality of the evidence the Defendant has failed to lead sufficient evidence to avoid a ruling against him.

The Court finds for the Plaintiff who has led cogent evidence in support of his claim. Judgment for the Plaintiff.

(a) Title is declared in favour of the plaintiff in respect of the disputed plot of land as contained in the Indenture between Nii Odartei III, Chief of Nsakina and Shadrach Sossou Kede dated the 19th day of December, 2011.

(b) The Plaintiff is to recover possession of the said land.

(c) The Defendant, his agents, servants, privies, workmen and assigns are perpetually restrained from disturbing the Plaintiff of his possession and enjoyment of the said land.

(d) Recovery of GH₵74,614.41 being the cost of the Plaintiff's building raised down by the Defendant and interest thereon from the 22nd August, 2015 till date of final payment.

(e) Costs of GH₵6.000.00 in favour of the plaintiff".

Dissatisfied with the decision of the High Court, the Defendant appealed to the Court of Appeal on the following grounds*:*

1. *That the learned Judge erred when she misdirected herself and held that the Defendant failed to discharge the evidential burden placed on him.*
2. *That the learned trial Judge erred when she held that on the totality of the evidence the Defendant has failed to lead sufficient evidence to avoid a ruling against him.*
3. *That the learned Judge erred in holding that the Defendant was seen at the site on the day of the demolition.*
4. *That the learned Judge misdirected herself by relying on Plaintiff's witness to find that Defendant demolished Plaintiff's alleged building.*
5. *That the Judgment is against the weight of evidence.*
6. *Further grounds may be filed upon receipt of the record.*

It is noted for the record that no further grounds of appeal were filed.

On 28th July, 2021, the Court of Appeal struck out the Appeal as being incompetent as in its view, it was filed out of time and thus a nullity hence the appeal before the Supreme Court.

In this supporting opinion, the parties would be referred to by their designations before the trial Court. Accordingly, the Plaintiff/Appellant/Appellant would be referred to as Plaintiff and the Defendant/Respondent/Respondent also as Defendant.

Before going into the arguments advanced in support and against this appeal, I will give a brief background of the case.

By his amended Writ of Summons and Statement of Claim, the Plaintiff claimed against the Defendant the following reliefs:

(i) Declaration of title to the land described in paragraph 3 of the Statement of Claim.

(ii) Recovery of possession and perpetual injunction against the Defendant, his agents, assigns, privies and any other person claiming through him.

(iii) Recovery of cost of damage and interest on the GH₵74,614,41 from August 2015, till date of final payment.

(iv) Damages for trespass and cost including solicitor's fee.

The Defendant upon service of the Plaintiff's Writ and Statement of Claim filed a Statement of Defence denying Plaintiff's claim and inviting the Court to dismiss the Plaintiff's claim as being frivolous as he does not know the Plaintiff.

At the trial, the Plaintiff testified and called one witness. Defendant also testified and did not call any witness.

At the end of the full trial, the trial Court found for the Plaintiff. The Defendant appealed to the Court of Appeal who struck out his appeal as being incompetent hence the appeal before the Supreme Court.

In arguing the appeal, counsel for the Defendant argued grounds (1) and (2) of the appeal together. He then stated that, the Defendant at the trial testified that he had nothing to do with the alleged destruction caused to the Plaintiff's property and that he has never personally engaged any person or group of persons whatsoever to cause damage to Plaintiff's alleged structure on the disputed land. Counsel continued that, the Defendant prior to the institution of the suit has been the Chief of Nsakina since 2008. It is the case of the Defendant that his predecessor and father Nii Odartei III took ill and became incapable of performing his duties as the Chief. Thus, the kingmakers made him the caretaker Chief by virtue of a power of attorney dated August 10th, 2005. Counsel for the Defendant then submitted that, the Defendant did not counterclaim in this suit and as such, the holding that he failed to discharge the evidential burden on him to avoid a ruling against him was wrong. Counsel also complained about the finding of the trial Judge that, the Defendant did not produce any documentary evidence in support of all the claims he made in his Defence. Counsel submitted that this is wrong in view of Section 128 (2) of the Evidence Act, 1975 (NRCD 323) as the Defendant is a blood relation, a biological son of Nii Odartei III. This is because Section 128 (2) of the Evidence Act creates an exception to the hearsay rule. Additionally, counsel for the Defendant argued, the Plaintiff also never

produced any documentary evidence to prove that the said Nii Odartei III died in the year 2014. Counsel referred to the following cases on the burden of proof:

1. **ACKAH v PERGAH TRANSPORT LTD[2010] SCGLR 728, 736**
2. **ARYEE v SHELL GHANANLTD & ANO. [2017-2020] SCGLR 721, 733**
3. **ARMAH v HYDRAFOAM ESTATE (GH) LTD [2013-2014] SCGLR 1555**
4. **IN RE ASHALLEY BOTWE LANDS; ADJETEY AGBOSU v KOTEI [2003-2004] SCGLR 420** among others.

He then submitted that, even where a party did not testify at all and only relied on the testimony of the Court appointed witness, that party succeeded. What is important is that, the Court considered that evidence credible.

On grounds (3) and (4) of the appeal which were also argued together, counsel for the Defendant submitted that, the trial Judge misdirected herself in relying heavily on the testimony of the Plaintiff's witness PW1 to hold that, Defendant was seen on the land when the demolition was being carried out. Counsel quoted a portion of the witness statement of PW1 and submitted that, at the time of filing the said statement, it was hearsay and in complete contrast with his testimony in the witness box. Secondly, the testimony of PW1 is hearsay evidence apart from being unreliable because the source of that evidence is not known. Consequently, the finding by the trial Judge that the Defendant was seen on the land on the day the alleged destruction was carried out is not supported by the evidence on record.

On ground (5) of the appeal, counsel for the Defendant referred to Section 12 (1) of the Evidence Act and the cases **of REPUBLIC v CENTRAL REGIONAL HOUSE OF CHIEFS & OTHERS; EX-PARTE GYAU IX (ANDOH X INTERESTED PARTY) [2013-2014] SCGLR 845; AKUFO ADDO v CATHERINE [1992] IGLR 377; ABBEY v ANTWI V [2010] SCGLR 17, 20 and ARYEH & AKAKPO v AYAA IDRISSU [2010] SCGLR 891-894.** He then submitted that there were a lot of findings of fact made by the trial Court which were not supported by the evidence on record and these findings led the trial Judge to absurd conclusion against the Defendant. Counsel for the Defendant therefore invited this Court to reverse same.

Based on the forgoing, counsel for the Defendant invited this Court to analyze and evaluate the evidence on record in its entirety as the Judgment is against the weight of evidence adduced at the trial. This is because the trial Judge failed to take into account certain pieces of evidence on record particularly the evidence of PW1 which she heavily relied on. He therefore invited this Court to allow the appeal.

In response to the above submissions, counsel for the Plaintiff on grounds (1) and (2) of the appeal invited this Court to dismiss the appeal as same is frivolous. He argued that the finding by the trial Judge that the Defendant who claims to be the Chief of Nsakina with elders never called any elder of the Royal family to corroborate his testimony before the Court that his predecessor and father Nii Odartei III died in 2007 and was buried in 2008 and therefore could not have granted the disputed land to the Plaintiff is correct.

On grounds (3) and (4) of the appeal, counsel for the Plaintiff submitted that the trial Judge never misdirected herself when she found as a fact that the factual evidence adduced by the Plaintiff and his witness that the Defendant was at the site on the day of the demolition and upon his orders, Plaintiff three (3) bedroom house was pulled down without authority. The reason being that the Plaintiff did not witness the demolition, but called an important and necessary witness, PW1 who saw and witnessed the demolition of Plaintiff's property. He continued that, PW1 was subjected to rigorous cross examination but was not discredited in his testimony. Therefore, the trial Judge was convinced the existence of this fact was more probable than its non-existence as PW1 was so consistent in his testimony. Secondly, the Plaintiff tendered Exhibit D8, Exhibit B as well as Exhibit Ain support of his case. Thirdly, the Defendant who said he was at a Traditional Meeting at Akumajey on the day of the demolition did not call anyone to confirm his attendance at the said Meeting at Akumajey on the day in question. He also did not challenge the Plaintiff on the expenses the latter incurred on his three (3) bedroom house built to lintel level.

On ground (5) of the appeal, counsel for the Plaintiff referred to cases like **CHO SEN LIN v TONADO ENTERPRISE LTD [2006] 6 MLR G 131 and MARGARET MARY ADJEI v THE ATTORNEY GENERAL & 2ORS [2012] 50**

GMJ 198. He then submitted that an appellant who appeals on the ground that the Judgment is against the weight of evidence assumes the burden to show from the evidence on record the lapses in the Judgment. Counsel for the Plaintiff submitted that, in the instant appeal the Defendant has not pointed to any of the short comings in the Judgment and thus has woefully failed to show that the trial Judge took into account matters which were irrelevant in law or the trial Court excluded matters which were critically necessary for consideration before the Judgment. On the contrary, counsel argued, the findings of fact made by the trial Judge were indeed supported by the unchallenged evidence of the Plaintiff and his witness as well as the exhibits on record. He therefore invited this Court to dismiss the appeal and affirm the Judgment of the trial Court.

The time lines for bringing this appeal had been effectively addressed in the lead Judgment by my respected brother and I do not intend to revisit same.

In his submissions on grounds (1) and (2) of the appeal, counsel for the Defendant argued that, the Defendant did not counterclaim in this suit and as such, the holding by the trial Judge that, he failed to discharge the evidential burden on him to avoid a ruling against him was wrong. With all due respect to the counsel for the Defendant, the burden of proof in a case is not static or fixed but it shifts from party to party depending on the issues asserted or denied.

In the case of **IN RE ASHALLEY BOTWE LANDS; ADJETEY AGBOSO & OTHERS v KOTEY & OTHERS [2003-2004] SCGLR 420, 425-426** holding (5) their Lordships held that:

"The Court of Appeal erred in holding that the defendants had no obligation to prove their defence. Under the evidence Decree, 1975 (NRCD 323), the burden of producing evidence in any given case was not fixed, but shifted from party to party at various stages of the trial, depending on the issue(s) asserted and or/denied. The trial Judge, therefore, had rightly held that the evidential burden fell on the defendants to lead credible evidence to displace the effect of their admission of the plaintiffs undisputed possession of the disputed land. Consequently, under sections

14 and 48 of the Evidence Decree, 1975 (NRCD 323), a rebuttable presumption of ownership was raised in favour of the plaintiffs. The defendants must lead credible evidence to displace such presumption with a view to avoiding a ruling against them on the ownership."

In the words of Brobbey JSC

"The effect of sections 11 (1) and 14 and similar sections in the Evidence Decree, 1975 may be described as follows: A litigant who isa defendant in civil case doesnot need to prove anything; the plaintiff who took the defendant to court has to prove what he claims he is entitled to from the defendant. At the same time, if the court has to make a determination of a fact of an issue, and that determination depends on evaluation of facts and evidence, the defendant must realize that the determination cannot be made on nothing. If the defendant desires the determination to be made in his favour, then he has the duty to help his own cause or case by adducing before the court such facts or evidence that will induce the determination to be made in his favour. The logical sequel to this is that if he leads no such facts or evidence, the court will be left with no choice but evaluate the entire case on the basis of the evidence before the court, which may turn out to be only the evidence of the plaintiff. If the court chooses to believe the only evidence on record, the plaintiff may win and the defendant may lose. Such loss may be brought about by default on the part of the defendant. In the light of the Statutory provisions, literally relying on the common law principle that the defendant does not need to prove any defence and therefore does not need to lead any evidence may not always serve the best interest of the litigant even if he is a defendant".

Relating the case cited supra to the case under consideration, what is not in dispute in this case is the fact that Plaintiff is in possession of the disputed land. The evidence of PW1 is clear on this when he said he visited the land several times with his father as the latter was the one constructing the building for the Plaintiff. This piece of evidence was not challenged in anyway Secondly, Exhibit B, B1 to B3 from

the Ga West Municipal Assembly, that is the building permit dated 22nd May 2013 supports this fact.

A person in possession of land is presumed to be the owner and is entitled to be protected by law in that possession against all save the true owner. In the context of this case, that rebuttal evidence was not adduced by the Defendant, hence the trial Judge's finding that:

"It is indeed a surprise that in the course of the trial, Defendant who claims to be the Chief of Nsakina with his elders never called any elder of the Royal family to support or testify on his behalf and/or corroborate his story that Nii Odartei III died in 2007 and was buried in 2008".

It is the Defendant who introduced the issue of his father's death in 2007 and was buried in 2008. Defendant even went further to state that, all documents confirming his death are still available. From the rendition by Brobbey JSC in the In Re Ashalley Botwe case supra, the evidential burden of the death of Nii Odartei III, his burial and the documents which support same were introduced by the Defendant and he needed to prove same which he failed to do.

Consequently, the finding by the trial Judge is correct as same supported by the evidence on record.

This brings me to ground (3) and (4) of the appeal, whether the Defendant was seen at the site on the day of the demolition. The complaint under these grounds is that the evidence of PW1 is hearsay.

Section 118 (1) (a), (b) (ii) provide s as follows:

(1) "Evidence of a hearsay Statement is not made in admissible by Section 117 if:
(a) The statement made by the declarant would be admissible had it been made while testifying in the action and would not itself be hearsay evidence and
(b) The declarant is

(ii) a witness, or will be a witness testifying, subject to cross examination concerning the hearsay statement".

Relating the above provision to the instant case, PW1 Kwame Ganyehia told the Plaintiff what he saw and heard on the day of the demolition. Plaintiff called PW1 as a witness who repeated what he saw and heard on the day of the demolition. PW1 was extensively cross examined by counsel for the Defendant but was not shaken at all under cross examination, Additionally, PW1 testified before the Court that, his father was the one constructing Plaintiff's three (3) bedroom house and he had visited the land on several occasion with his father. PW1 also emphasized that, it was the Defendant who ordered the demolition of Plaintiff's structure on the day of the demolition. This is what he said under cross examination.

"Q. So who were the people who told you the Defendant was the person who told them to raise the building down.

A. My Lord in the morning when I got there, I met some people there watching what was going on, so I asked and the pointed at him that it he Nii Foster who said the building should be pulled down."

The answer from PW1 on the identity of the Defendant was confirmed by the latter when he admitted in his evidence that he is Nii Foster. This is what he said when he was in the witness box.

"By Court: Witness statement of the defendant filed on April 24th 2017 adopted as his evidence in chief. You mentioned your name as Nii Odartei IV, the name of the defendant on the docket is Nii Foster, do you that person.

A. My Lord I am the same person but I am no longer addressed by that name, Nii Foster."

The Plaintiff in his evidence also said he met the Defendant personally at the Police Station when he lodged a complaint against the Defendant. The Police gave them a date to report to the Police Station but the Defendant failed to report.

The trial Judge who heard and saw PW1 believed him as against the Defendant who said he was at a traditional meeting at Akumajey on the day of the demolition, but failed to call anyone to corroborate his story. On the balance of probabilities, the

findings by the trial Judge are supported by the evidence on record and we do not intend interfering with the said findings.

Ground (3) and (4) of the appeal have not been made out and they are accordingly dismissed.

Ground (5) of the appeal is that the Judgment is against the weight of evidence adduced at the trial.

Flowing from the analyzes done under grounds (1), (2), (3) and (4) of the appeal, the pieces of evidence on record were correctly evaluated by the trial Judge for the following reasons:

1. The Defendant failed to discharge the evidential burden that at the time the disputed land was granted to the Plaintiff his father was dead.
2. The Plaintiff was in possession of the land and had built a three-bedroom house to the lintel level. The expenses incurred and the receipts tendered were not challenged in anyway.
3. That the person who caused the destruction or authorized the demolition was the Defendant based on the evidence of PW1.

From all of the forgoing, the appeal should fail.

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

COUNSEL

RAYMOND AFAWUBO ESQ. FOR THE PLAINTIFF/RESPONDENT/ RESPONDENT.

ANDREW K. VORTIA ESQ. DEFENDANT/APPELLANT/APPELLANT.