THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2019

CORAM: DOTSE, JSC (PRESIDING)

YEBOAH, JSC

APPAU, JSC

PWAMANG, JSC

MARFUL-SAU, JSC

CIVIL APPEAL
NO. J4/10/2018

6TH JUNE, 2019

OLIVIA ANIM ..... PLAINTIFF/ APPELLANT/RESPONDENT

(SUING PER HER LAWFUL ATTORNEY DIANA MENSAH BONSU)

VRS

WILLIAM DZANDZI ..... DEFENDANT/RESPONDENT/APPELLANT

JUDGMENT

DOTSE, JSC:- This is an appeal from the judgment of the Court of Appeal *(Coram: P. K Gyaesayor, K.A. Acquaye, S. Dzamefe)* dated 12th March, 2015 where the court reversed the decision of the High court presided over by His Lordship Anthony Oppong J.

FACTS

The brief facts of the case are that, the Plaintiff/Appellant/ Respondent hereafter referred to as Plaintiff initiated an action per her lawful Attorney against the Defendant/Respondent/Appellant, hereafter, Defendant in the High Court, Accra on 20th October, 2010 for the following reliefs:

a) Declaration of title to the disputed land
b) Perpetual injunction restraining the Defendant from dealing in any way with the land including further development of the land
c) Recovery of possession
d) An order to demolish Defendant's structure on the land and surcharging Defendant with the cost
e) Damages for trespass
f) Cost
g) Any other order or orders this Honorable court may deem fit

THE PLAINTIFF'S CASE

It is the case of the Plaintiff that she acquired the land in dispute from the Ashale Botwe Family in 1988 and went into possession by occupying same over the years to prevent encroachment. The plaintiff then constructed a reservoir on the land and built a wall around the land. The Plaintiff states that the lessors delayed in preparing the indenture to the land but have recently prepared same which is dated 6th December, 2009. The Plaintiff states that the adjoining land belongs to her Attorney who is her mother and both were acquired at the same time and the attorney went ahead to develop her land and now lives there. The plaintiff claims that on or about 10th October, 2010 she noticed that the defendant was digging trenches in the nature of a foundation in complete disregard to the fact that there was a reservoir and a wall around it.

The Plaintiff protested immediately by among other things writing on the inside and outside of the wall that "*THIS LAND IS NOT FOR SALE"* but the defendant refused to heed the protest and in about six days developed the land within the wall to lintel level.

THE DEFENDANT'S CASE

It is the case of the Defendant that the disputed land was acquired from Beatrice M. Ogah, Andrews Kwesi Amanor, Caroline Amanor, Bether Amanor and Dorothy Amanor by an indenture dated 1st July, 2006. His grantors also acquired the land from Numo Nmashie family of Teshie who are the lawful owners of a large track of land including the disputed land. He registered his interest in the land and proceeded to develop it. It is the case of the Defendant that the disputed land forms part of a larger track of land in which the Supreme Court in the case of ***In Re Ashalley Botwe Lands; Adjetey Agbosu and Others vs Kotey and Ors (2003-2004) SCGLR 420*** declared Okpelor Sowa Din Family of Teshie as owners of the land.

It is the case of the Defendant that the grantors of the plaintiff are not the owners of the land and can therefore not make any valid alienation to the plaintiff.

HIGH COURT DECISION

The trial High court after hearing the case gave judgment to the defendant and assigned the following reasons:

The Plaintiff the court found out acquired the land in 1989 and this conclusion was drawn from exhibits B1 and D which show that the plaintiff bought the land in 1989 and made a final payment in 1994 and then the indenture was made in 2009.

On the issue of whether or not the Plaintiff was an innocent purchaser for value without notice, the court relied on the judgment in the case of *in* ***Re Ashalley Botwe*** Lands Supra and held that it operated as estoppels per Rem judicatam against the Plaintiff. The court cited the case of ***Attram vs Aryee (1965) GLR 341*** which is to the effect that *"a prior purchaser of land cannot be estopped as being privy in estate by a*

judgment obtained against the vendor commenced after the purchase". The court explained that the plaintiff bought the land in 1989 and the Ashalle Botwe judgment was in 2004 and in those circumstances, the Plaintiff cannot be regarded as privy in estate for the purposes of invoking estoppel per rem judicatam. The court however held that the fact remains that the Plaintiff derived her title from the Ashalley Botwe family who have not been adjudged as the owners of the land, and that the Plaintiff cannot be said to be a bonafide purchaser because she did not show any efforts made by her to investigate her root of title.

The court cited the case of ***West Africa Enterprises Ltd v Western Hardwood Enterprise Ltd (1995-96) 1 GLR 155*** where the court held that:-

> "*The Maxim was that a purchaser of land had no right to remain in ignorance of the fact that what he was buying belonged to someone other than the vendor. Accordingly, a purchaser of land who failed to conduct a thorough investigation into the vendor's title did so at his own risk, for he would be bound by all the equities."*

The court then held that the Plaintiff did not pay heed to this caution and she must suffer for it. The court then gave judgment to the Defendant noting that he proved to be better entitled to the disputed land than the Plaintiff. The Plaintiff's action was therefore dismissed.

APPEAL TO THE COURT OF APPEAL AND DECISION THEREIN

The Plaintiff being dissatisfied with the judgment of the trial court appealed to the Court of Appeal seeking an order reversing the judgment of the High Court.

On hearing the appeal, the Court of Appeal considered the Plaintiff's first ground of appeal which is that, the judgment is against the weight of the evidence on record. The court then stated the law which states that it is established that when such a ground is

raised in an appeal, it is *"incumbent on the appellate court to analyse the entire record of the appeal, take into consideration the testimonies and all the documentary evidence led at the trial before arriving at its own decision so as to satisfy itself that on the preponderance of probabilities, the conclusions of the trial judge are amply or reasonably supported by the evidence".* **Tuakwa vs Bosom [2001-2002] SCGLR 61.**

The court then found after reviewing the evidence that the Plaintiff had two documents exhibit B1 and D both in the name of the plaintiff and that the Defendant had none. The court noted that the fact that exhibit B and C being in the name of the Plaintiff's attorney was not fatal to the Plaintiff's case as noted by the trial court. The court also noted that the Plaintiff acquired her interest in 1989 whilst that of the Defendant was in 2010 and by the rules of priority of interest plaintiff's lease was earlier in time and took precedence over the assignment to the Defendant which was granted later than the Plaintiff.

On the issue of the identity of the land in dispute, the court noted that evidence need not be led when the identity of the land is not in issue. This is because both parties admitted that the land in dispute was walled at the time the defendant entered it. The court stated the legal principle as noted in the case of ***Fosua and Adu Poku vs Dufie (Deceased) and Adu-Poku Mensah (2009) SCGLR 310*** that, *"the settled law was that an appellate court would be slow to interfere with or set aside the findings so made unless the findings were perverse or not supported by the evidence on record."* The court found out that the findings of the trial court were not supported by the evidence and therefore departed from them. Ground one of the appeal therefore succeeded.

The court noted in ground 2 of the appeal that the trial court erred in relying on the judgment in the ***In Re Ashalley Botwe*** case to decree title in the Defendant's grantors the Numo Nmashie Family of Teshie. The Court of Appeal found that the Defendant's grantor was not a party to the suit neither did he testify or give any

evidence and there is nothing to prove that the defendant's grantors are the same as the Agbosu Freeman and Nmai Djorn family of Teshie. The trial judge therefore erred and misled himself to decree title on the Defendant based on the ***In Re Ashalley Botwe case***.

The court granted judgment to the Plaintiff on ground 2 citing the case of ***Klu vs Konadu Apraku (2009) SCGLR 741*** which notes that *"a purchaser of land is not estopped or affected by a judgment adverse to his vendor in proceedings commenced subsequent to the acquisition of title."* **The court noted that the Plaintiff from the evidence was in possession before the Defendant and they rejected the evidence of DW1 who stated that the fence was constructed by one Mr. Dsane or Alhaji Okine as neither of them claimed ownership of the land.**

The court therefore "declared title of the disputed plot in the Plaintiff and ordered perpetual injunction against the Defendant and also ordered that plaintiff recover possession of the disputed land and awarded general damages of GH¢10,000 for trespass against the Defendant. The judgment of the trial High Court was thus set aside.

APPEAL TO SUPREME COURT AND GROUNDS OF APPEAL

The Defendant dissatisfied with the judgment of the Court of Appeal, appealed to this Court on the following grounds.

i. That the judgment of the Court of Appeal is against the weight of the evidence
ii. The Court of Appeal erred in holding that the Plaintiff herein acquired the disputed land in 1989 and thereby misdirected themselves in holding that exhibit B and D corroborated the said acquisition
iii. That the Court of Appeal also erred in rejecting the evidence of DW1 and thereby misdirected itself in holding that Plaintiff entered the disputed land first and took possession by walling the land

iv. Additional grounds may be filed upon receipt of the Record of Appeal

ANALYSIS OF GROUNDS OF APPEAL

GENERAL PRINCIPLES OF LAW IN APPEAL HEARINGS

Before this court is an appeal from the judgment of the Court of Appeal dated 12th March, 2015 reversing the judgment of the trial court against the Defendant, and allowing the appeal of the Plaintiff. Three grounds of appeal have been stated above and it must be noted that no further grounds of appeal were filed after receipt of the Record of Appeal. It is trite learning that an appeal is by way of rehearing. And this has been explained in several decisions of this court. In the case of ***Praka v Ketewa [1964] GLR 423 (SC)*** where the distinguished Judge, Ollennu JSC explained that:

> *"It is true that an appeal is by way of rehearing, and therefore the appellate court is entitled to make up its own mind on the facts and to draw inferences from them to the same extent as the trial court could; but where the decision on the facts depends upon credibility of witnesses, the appeal court ought not to interfere with findings of fact except where they are clearly shown to be wrong, or where those facts are wrong inferences drawn from admitted facts or from the facts found by the trial court. Therefore if in the exercise of its powers, an appeal court feels itself obliged to reverse findings of fact made by the trial court, it is incumbent upon it to show clearly in its judgment where it thinks the trial court went wrong. It goes without saying that if an appeal court sets aside the findings of a trial court without good ground, or upon grounds which do not warrant such interference with the findings made by the trial court, a higher court will set that judgment aside."*

This sound legal principle has been developed over the years and reiterated in a number of decisions. In the case of ***Tuakwa vs Bosom*** supra the Supreme Court noted that it is

"Incumbent on the appellate court to analyse the entire record of the appeal, take into consideration the testimonies and all the documentary evidence led at the trial before arriving at its own decision so as to satisfy itself that on the preponderance of probabilities, the conclusions of the trial judge are amply or reasonably supported by the evidence".

Also see the cases of ***Achoro & Anr v Akenfela & Anr [1996-97]SCGLR 209, Koglex Ltd (No 2) v Fields [2000]SCGLR 175, Awuku Sao v Ghana Supply Co. Ltd. [2009] SCGLR 710, Gregory vs Tandoh &Hanson [2010]SCGLR971, Obeng v Assemblies of God Church Ghana [2010] SCGLR 300.***

In all these cases, the Supreme Court established the principles upon which an appellate court may depart from findings of fact of a lower or trial court.

In this final appeal, the first ground of appeal by the appellant is that the judgment is against the weight of evidence. In his judgment in the unreported Supreme Court case of ***Roland Kofi Dwamena v Richard Nortey Otoo Civil Appeal No J4/47/2018 dated, 8th May 2019*, Pwamang JSC noted that:-**

"In this final appeal by the 1st Defendant, the sole ground of appeal is that the judgment is against the weight of evidence. This ground of appeal is an invitation to the court to comb through the record that was placed before the lower court and decide for itself whether having regard to the evidence and the law relevant to the determination of the case, the lower court was right in its findings and conclusions." Also see the case of ***Akufo Addo v Catheline [1992] 1GLR 377 S.C.***

It has been noted in a number of decisions that, where an appeal is based on the ground that the judgment is against the weight of evidence, the appellant implies that there were certain pieces of evidence on record which if applied in his favour could have changed the decision in his favour or pieces of evidence were wrongly applied against him. The onus is on such an appellant to clearly and properly demonstrate to

the appellate court the lapses in the judgment being appealed against. See the case of ***Djin v Musa Bako [2007-2008] 1 SCGLR 686***. It is therefore the duty of the defendant in this case to demonstrate to this court the pieces of evidence that were wrongly applied against him in the lower court and for this court to also go through the testamentary and documentary evidence led at the trial and analyse same with the judgment and to come to its own conclusions.

DEFENDANT'S ARGUMENTS ON GROUND ONE

On ground one, it is the argument of the Defendant that the Plaintiff's grantor lost an action in the Supreme court in the In ***Re Ashalley Botwe*** lands supra and that the indenture signed in 2009 by Ebenezer Nikoi Kortey the Plaintiff's grantor had died at the material time.

It is also the case of the Defendant that the Oath of proof was not signed before a commissioner and finally, the signature of the Plaintiff who lives abroad was totally different from her signature on the Power of Attorney.

Defendant's counsel further submitted that, exhibit B which shows payments made for land purchased in 1989 bore the name of plaintiff's attorney who admitted in cross examination that she also bought land in the area. It is the argument of counsel for the defendant that plaintiff's attorney was trying to use her own documents to claim land that is not hers and that if there was a receipt in the name of the plaintiff why was it not tendered in evidence?

Counsel cited the case of ***Faibi v State Hotels Corporation [1968] GLR 471*** which noted that:-

> "*Where a party would not produce evidence which evidence is available and within his peculiar knowledge, it could be inferred in law that that evidence is against him".*

Exhibit C which is an indenture also bears the name of the Plaintiff's mother and it is the contention of Defendant's counsel that the Court of Appeal should not give any probative value to those documents. The Defendants also urge on this court to consider exhibit 2 which demonstrate their root of title and also cited the case of ***West African Enterprises Ltd v Western Hardwood Enterprises Ltd supra*** where the court stated that:-

> *"The maxim was that a purchaser of land had no right to remain in ignorance of the fact that what he was buying belonged to someone other than the vendor. Accordingly, a purchaser of land who fails to conduct a thorough investigation into the vendor's title did so at his own risk, for he would be bound by all the equities".*

Counsel for defendant further urged on this court to reverse the judgment of the Court of Appeal because the plaintiff could not discharge the burden of proving her title to the land citing the cases of ***Serwah v Kesse (1960) GLR 227; and Zabrama v Segbedzi (1991) 2 GLR 221***.

PLAINTIFF'S RESPONSE TO GROUND ONE

It is the case of Plaintiff's counsel that exhibits B and C which were issued in the Plaintiff's attorney's name were not fatal to the case as noted by the trial judge because Plaintiff tendered in exhibits B1 and D which were receipts of final payment and permission to enter the land respectively and both were issued in the name of the Plaintiff. Counsel for Plaintiff noted that it was exhibit 2 which was tendered in by the Defendant which should not have been taken into consideration as same was stamped on the face as withdrawn by the Land Valuation Division of the Lands Commission. He further noted that an examination of exhibit 2 reveals that even though it says that it

was being granted by four Assignors, it was only signed by one person thereby making the assignment incomplete. Plaintiff counsel also urged on this court to dismiss the appeal on the grounds that the Plaintiff's was first in time and that even a trespasser in possession can defend an action against any other person except the true owner. See the case of ***Mensah v Peniana [1972] 1GLR 337.***

It is also the contention of counsel for the Plaintiff that the decision ***In Re Ashalley Botwe case*** supra did not extinguish the plaintiff's interest in the land as held by the trial judge. Counsel noted that the correct position of the law was stated by the Court of Appeal in its judgment and this court should therefore not disturb it.

Even though there were some inconsistencies in some aspects of the Plaintiff's case, these are not fatal. For example exhibit B and C tendered in by the Plaintiff bore the name of the Plaintiff's attorney who is also her mother and who in her evidence admitted that she also purchased land from the plaintiff's grantors. The Plaintiff's attorney has actually developed her portion of the land and lives there. This evidence encouraged counsel for the Defendant to argue that the Plaintiff's attorney was trying to lay claim to the disputed land using her own documents and that the land in dispute was never granted to the Plaintiff. Convincing as counsel for the Defendant may sound, one cannot ignore the fact that further evidence was presented to show that at least there were some documents in the plaintiff's own name in the form of exhibit B1 and D. Exhibit B1 was a receipt of final payment issued in Plaintiff's name while exhibit D which was also issued in the name of the Plaintiff was a document granting her permission to enter the land. In our considered opinion, the Court of Appeal was therefore right in holding that exhibits B and C which were issued in the name of the Plaintiff's attorney was not fatal to the plaintiff's case.

The next thing to consider is the effect of the decision in the ***In Re Ashalley Botwe*** Case supra. It is the position of the Defendant's counsel that the decision in that case

automatically extinguished the plaintiff's interest in the land since the Plaintiff's vendors were declared not to be the owners of ***Ashalley Botwe*** lands.
It must be noted that this case was decided in 2004 fifteen years after the plaintiff acquired her interest in the land. Ollennu JSC in the case of **Attram vrs Aryee** Supra noted in Holding 3 that:-

> "*A prior purchaser of land cannot be estopped as being privy in estate by a judgment against the vendor commenced after the purchase."* This position was restated in the unreported case of ***The Registered Trustees of the Catholic Church vrs BUILDAF Limited and two others Civil Appeal No J4/30/2014 dated 25th June 2015 that*** *"a prior purchaser of land cannot be stopped as being privy in estate by a judgment against the vendor commenced after purchase."*

The trial court judge rightly stated the law on page 184 of his judgment when he said that *"in this case the plaintiff bought the land in 1989 and in 2004 when the Supreme Court gave judgment against plaintiff's vendor, plaintiff had already purchased the land long before the judgment was obtained. And in this circumstance, plaintiff cannot be regarded as privy in estate to that judgment."* He however held otherwise after making that sound statement of the law.

It is not in dispute that possession is key in an action for declaration of title to land. In the case of **Mensah vrs Peniana supra** the court noted in holding 2 that

> *"Proof of possession by a Plaintiff is sufficient to maintain an action for trespass against a Defendant who cannot prove a better title."*

In the unreported case of **Rosina Aryee vrs Shell Ghana Ltd & Anor Civil Appeal No J4/3/2015 dated 22nd October 2015 Benin** JSC enunciated the law on possession as follows:

"Possession in law is one of the most difficult and complex areas of law, hence the impossibility in placing it in a pigeon hole. It is normally determined from the facts of the case. We are concerned with possession of land in a city like Accra. We cannot lose sight of the numerous problems associated with land ownership in Accra. People who have gone through the process of acquiring land genuinely stand the risk of losing it if they fail to develop it immediately because of multiple sales or leases by the same vendor or lessor as the case may be. Hence, developments have been rushed through without building permits all because people want to protect their lands. So in order not to violate the laws of the land people have resorted to erecting temporary structures on the land to serve as visible sign to everybody who goes there to know that at least somebody is on the land. Needless to say squatters also take advantage to settle on unoccupied lands with kiosk and all sorts of temporary structures."

We could not agree more with Benin JSC speaking on behalf of the Court on the issue of possession. And as noted in the quote above whether one is in possession in law or not, depends on the facts of the case. In the instant case, evidence on record shows that the Plaintiff acquired the land in 1989 and we must say here that both lower courts made concurrent findings of fact that the Plaintiff acquired the disputed land in 1989. The trial court noted that

"in this case the plaintiff bought the land in 1989 and in 2004 when the Supreme Court gave judgment against plaintiff's vendor Plaintiff had already purchased the land long before the judgment was obtained. And in this circumstance, Plaintiff cannot be regarded as privy in estate to that judgment."

The Plaintiff built a wall around the disputed land and also constructed a reservoir on it. There is evidence that the land in dispute was walled which evidence is accepted by both parties.

A wall is not a natural feature of land. Defendant noted in his evidence that he acquired the land in 2010 a long time after that of the plaintiff. There was already a wall around the land when he acquired it. He did not inquire from the adjoining neighbors about the wall but rather relied on the testimony of DW1. Defendant would be fixed with notice of an interest in the land before he acquired his interest. See also the unreported decision of this court in Suit No. CA.J4/25/2012, dated 24/10/2018 intitutled ***Mfum Farms and Feedmill Limited v Agnes Gyamfua – Deceased substituted by Mrs. Lovia Opoku Bandoh*** where the Supreme Court, unanimously applied the above principle.

It is the case of the defendant that the plaintiff should have heeded to the principle of law decided in the case of ***West African Enterprises Limited vrs Western Hardwood Enterprises Limited*** supra. The same principle can be applied to the Defendant because he did not also make detail enquiries about the land he intended to develop when there were visible signs that the land is already in possession by another. The defendant admitted during cross examination that he did not know the Plaintiff's attorney who happened to be living in the adjoining land to the disputed land. This was corroborated by PW1 who said that the Plaintiff's attorney was his mother and they live in the house next to the disputed land. We do not believe that a search in the registry is the only due diligence to be carried out when one intends to buy a particular piece of land. Enquiries from the neighbors would go a long way to clear doubts and also to prove that due diligence was observed in investigating not only the root of title but also any interest in the land.

In the case of ***Brown v Quashigah [2003-2004] 2 SCGLR 930*** the court held thus:-

> ***"The burden must rest squarely on the vendor and the prospective purchaser to satisfy themselves that the land intended to be sold is available and vacant or not allocated. The principle of caveat emptor is***

still a postulate of our law. A prospective vendor or purchaser of land cannot shift on to the shoulders of the existing owner the burden of informing them of encumbrances, title or interest held by him. In many cases it will not even be enough to conduct a search at the Deed Registry or Land Title Registry. The Registrar will fail to disclose any interests in the land which have not been registered." Emphasis

From the above analysis, there is evidence that the Plaintiff acquired the land in her name; she was also in possession of the land before the Defendant acquired his interest, and that the Defendant was aware of a prior interest in the land before he proceeded to build on it.

The ***In Re Ashalley Botwe case*** supra did not deprive the Plaintiff of her interest in the land. This ground of appeal therefore fails.

DEFENDANT'S ARGUMENTS ON GROUND TWO

On ground two, learned counsel for the defendant noted that, there was no evidence on record for the court to hold that the plaintiff acquired the land in dispute in 1989. Counsel for defendant also noted that exhibit D seems to be a standard form which could be filled by anyone and also there was no site plan attached to the exhibit and the Court could therefore not rely on that exhibit to declare the plaintiff owner of the disputed land.

PLAINTIFF'S RESPONSE TO GROUND TWO

On ground two learned counsel for the plaintiff noted that both lower courts found as a fact from the evidence that the plaintiff acquired the land in 1989 and that the defendant acquired his interest in 2010, the Court of Appeal did not therefore misdirect itself in coming to the same conclusion.

It is the contention of counsel for the Defendant that there was no evidence on record for the Court to hold that the Plaintiff acquired the land in 1989. This cannot be said to be true. Exhibit B1 is a receipt indicating final payment made by the Plaintiff and it was

issued in 1994. Exhibit D is also a document issued in the name of the Plaintiff granting her permission to enter the land. It is not uncommon in land transactions for the parties to agree to sell and buy in one year and to conclude the transaction in another. The inconsistencies on the part of the Plaintiff and her attorney as to which year the land was acquired was therefore not fatal to her case.

The Defendants however, could not rely on exhibit 2 to claim title to the land in dispute because the Defendant was assigned the interest from four persons who acquired the land from Numo Nmashie Family of Teshie. However the evidence shows that only one person out of the four signed the deed of assignment. There was no evidence tendered to show that consent of the other three was given in that sale. In the absence of any further evidence, the assignment as noted by the Court of Appeal is incomplete and therefore transfers no interest to the defendant. The Court of Appeal did not misdirect itself but rather relied on the evidence on record. This ground of appeal also fails.

DEFENDANT'S ARGUMENTS ON GROUND THREE

On ground three, learned counsel for the Defendant noted that the court of appeal erred in rejecting the evidence of DW1 who testified that the wall was not built by the Plaintiff and urged this court to take all the evidence into consideration and allow the appeal.

PLAINTIFF'S RESPONSE TO GROUND THREE

On ground three, learned counsel for the Plaintiff noted that, the court took into consideration the testimony of PW1 a brother of the Plaintiff who testified to the fact that he was there when the wall was built and tendered in pictures to support his claim. The Court of Appeal did not accept the evidence of DW1 who said the wall was constructed by people who are not laying claims to the land. The court did not therefore err in rejecting the testimony of DW1.

Counsel for the Defendant is urging on this court to consider the testimony of DW1 who testified that the wall was not build by the Plaintiff as they claimed but that it was constructed by Mr. Dsane or Alhaji Okine. We need not to belabor that point. The Court of Appeal found and we agree that Mr. Dsane or Alhaji Okine are not claiming ownership of the disputed land, and that point is therefore immaterial to the determination of issues germane to this case.

They will have no reason to wall a piece of land that does not belong to them. The testimony of the Plaintiff's brother PW1 is more credible. The court of Appeal therefore did not err in preferring one testimony over another. This ground of appeal also fails.

It should also be noted that, once the identity of the land was not in dispute, issues relating to the identity of the land are immaterial and moot.

CONCLUSION

In the premises, the appeal herein against the Court of Appeal decision of 12th March 2015 fails in its entirety and is accordingly dismissed.
We accordingly affirm the Court of Appeal decision of even date, and enter judgment in favour of the Plaintiff on all her reliefs as granted by the Court of Appeal, and order the Plaintiff as the owner of the land described in *Schedule "A".*

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

YEBOAH, JSC:-

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

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

APPAU, JSC:-

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

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

PWAMANG, JSC:-

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

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

MARFUL-SAU, JSC:-

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

S. K. MARFUL-SAU
(JUSTICE OF THE SUPREME COURT)

COUNSEL

EMMANUEL DWAMENA ASARE FOR THE DEFENDANT/RESPONDENT/APPELLANT.
MARTIN L. KPEBU FOR THE PLAINTIFF/APPELLANT/RESPONDENT.