IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: BAFFOE-BONNIE JSC (PRESIDING)
PROF. KOTEY JSC
LOVELACE-JOHNSON (MS.) JSC
AMADU JSC
PROF. MENSA-BONSU (MRS.) JSC

CIVIL APPEAL

NO. J4/23/2022

16TH NOVEMBER, 2022

1. PAPA YAW SIRIBOE
2. PAPITA SIRIBOE

……. PLAINTIFFS/RESPONDENTS/APPELLANTS

VRS

AGNES AMPONSAH ……. DEFENDANT/APPELLANT/RESPONDENT

JUDGMENT

LOVELACE-JOHNSON (JSC):-

The designation of the parties at the High Court will be maintained in this appeal.

The facts of this matter are not complicated. It is a fact that though differently described, the parties are laying claim to the same piece of land, described as plot No K 21, by both of them, even if with a slight variation in size (0.31 as opposed to 0.37 of an acre). It is also a fact that while the plaintiffs found their title to the land on a grant

by the Anona Royal Family of Apremdo in the year 2014, the Defendants found their title on a lease in the year 2011 from the Government of Ghana, the land the subject matter in dispute, according to them, being State land.

See the writ of summons, statement of claim and statement of defence and counterclaim at pages 1-4, and 9-10 of the Record of Appeal. (ROA)

The issue at the core of this dispute, as rightly stated by the Court of appeal in its judgment found at page 401 of the ROA and reproduced in the Statement of Case of counsel for the plaintiffs, is

"whether the disputed land is state land vested in the President in trust for the people and managed by the Lands Commission or whether it constitutes private property validly conveyed to the Respondents as part of their Grantors' ancestral lands"

The trial High Court found for the plaintiffs and stated in its judgment at page 252 of the ROA that

"The evidence supports a finding that the plaintiffs were in possession of the land at the [sic] the defendant went unto it. Given the plaintiffs' prior possession, the law protects them against all except one who could prove superior title. The defendant has not proved a superior title. The plaintiff thus succeeds in proving ownership against the defendant and so I declare"

Upon appeal by the defendant, the Court of Appeal took the position that the evidence led during the trial

"clearly preponderate in favour of the Appellant's version that the disputed land constitutes state land which has been validly conveyed to her by the Lands Commission under Lease dated 24th August 2012." See page 414 of the ROA

It is their dissatisfaction with the resolution of the core issue earlier stated in the above manner by the Court of Appeal that has led to the plaintiffs launching the present appeal to this court.

In sum, the complaints by the plaintiffs per their eight grounds of appeal found at page 419 of the ROA are that the Court of Appeal did not consider their case, erred on who carried the burden of proving that the disputed land was State land, misconstrued and misapplied the presumption of regularity, erred on the import it put on exhibit D and misapplied the dictum of a case it relied on to arrive at its judgment.

These complaints which in effect allege both errors of law and fact can be discussed under the first ground which is the omnibus one that the judgment is against the weight of evidence seeing that this omnibus ground permits the court to consider both such allegations in the process of rehearing a matter which is on appeal.

Reference is hereby made to the case of

Owusu-Domena v Amoah [2015-2016] 1 SCGLR 790 @ 799 among a host of others decided by this court.

The plaintiffs seek from this court a reversal of the Court of Appeal Judgment and an entry of judgment in their favour.

Are these complaints borne out by the record and will the correction of these lapses, if borne out, change the finding of the Court of Appeal in re the ownership of the disputed land?

The statement of claim of the plaintiffs states at paragraphs 1, 2 and 4 as follows:

1. The plaintiffs are residents of Takoradi and the Lessees of Plot No. K21 situate and lying at Takoradi-Beach Road (Kokompe) Takoradi and encompassing an area of 0.31 acres.

2. The plaintiffs aver that they acquired the said lease from the Anona Royal Family of Apremdo as epitomized by Ebusuapanyin Alfred Kweku Mensah Jnr sometime in November 2014

4. The plaintiffs aver that their grantor's title to the land is traceable to a judgment of the High Court, Sekondi in Suit No E1/60/04 titled Nana Egodzi Essuon III vrs Nana

Gyan Kofi IV stamped as LVB-WR.469A/11 as well as Minutes of Meeting held on 8th April 2014 and Letter dated 26th March 2014, from the Ministry of Defence releasing Kokompe (Etuakrom) lands to the Plaintiffs' grantors as original owners of the said land.

The defendant counterclaimed after relying on paragraphs 1 to 10 of her statement of defence. Her paragraphs 3 and 4 state as follows

3. The defendant says in further denial of the said paragraphs of the statement of claim that she is the owner of the subject matter plot No K21, Superior Residential Area (Discove Hill), Takoradi. The plot measures approximately 0.37 of an acre.

4. The defendant states that the area is noted as state land and by a deed of lease dated 24th August 2012 made between the Government of Ghana acting by the Lands Commission, Sekondi, as lessor and the defendant as lessee, the defendant was granted a lease of the subject matter plot No, K21, Superior Residential Area (Discove Hill), Takoradi for a period of 99 years commencing from the 1st of July 2011. The deed is plotted/registered in the records of the Lands Commission as Document No. 2629/12 and at the Deeds Registry as Deed No 3691.

As stated earlier, while the trial high court found that the plaintiffs proved their title through that of their grantors, the court of appeal found otherwise.

From the evidence on record which of the parties was able to prove their ownership of the disputed land in accordance with **sections 10,11,12 and 14 of the Evidence Act, 1975 Act 323**?

The court of appeal was of the opinion that the Defendant successfully proved that the land in question was a State land on the basis of the evidence of DWI, a subpoened official of the Lands Commission, (and thus a disinterested witness) who testified that the disputed land had been acquired under the Takoradi and Town acquisition Ordinance and also that there was evidence of payment of ground rent and other charges by the defendant per their records. Most importantly, the court applied the presumption of regularity of the performance of an official duty to wit *"Omnia*

praesumuntur rite et solemniter esse acta donec probitur in contrarium" now codified under section 37 (1) of the Evidence Act to hold that this acquisition had been properly done.

The defendant also tendered exhibit 1, the lease entered between her and the State through its agent, the Chairman of the Western Regional Lands Commission.

The court stated that the plaintiffs did not lead any evidence in rebuttal of this presumption so it stood unrebutted and thus to the benefit of the defendant as proof of her title to the land. The trial judge had many misgivings about the evidence of DW1 which had nothing to do with his credibility as a disinterested witness from the office representing the State in leasing of State lands. His misgivings had to do with the failure to produce evidence of the acquisition or, as he put it "demonstrating the law that enabled the acquisition". He was unhappy that no record of the Lands Commission on the acquisition was produced and stated without any basis evident from the record that he doubted if such a record existed.

There being a presumption of regularity of the acquisition by the State covered by an existing ordinance, a failure to tender the said ordinance did not affect its existence and effect as part of the laws of the country.

Contrary to what Counsel for the Plaintiffs states in his statement of case to wit "*….it is for the one who relies on it to prove that what was done was presumably regular and with due formality",* in a civil matter where the standard of proof is preponderance of probabilities, it is actually the one aggrieved by the official act who has to rebut it. See sections 20 and 21(a) of the Evidence Act where it is stated as follows

20. A rebuttable presumption imposes upon the party against whom it operates the burden of producing evidence and the burden of persuasion as to the non-existence of the presumed fact.

21. (a) a rebuttable presumption requires the tribunal of fact to assume the existence of the presumed fact unless and until the party against whom the presumption operates proves the non-existence of the presumed fact is more probable than its existence.

The plaintiffs therefore bore the burden of leading evidence to rebut this presumption of regularity created in favour of the defendant by for example producing evidence that no such ordinance existed. The record does not show evidence of any such rebuttal.

We are of the opinion that the conclusion by the court of appeal that the disputed land is State land is in accord with the evidence led and the law. The dictum of **Dotse JSC** in **Seidu Mohammed v Saanbeye Kangbere** was exactly on point and so was properly applied by the court.

The plaintiffs' grantor had testified that his family's ownership of the vast plot of land into which the disputed land fell had been confirmed by a judgment of the court of Appeal which they tendered as exhibit C1. He had stated that after this judgment, a meeting had been held with the Ministry of defence which had control of the land about its release to their family. Exhibit D the minutes of that meeting was tendered in evidence.

We shall quickly deal with the import, if any of this case, stated in paragraph 4 of the statement of claim of the present case. The first point to note is that, contrary to what the court of appeal stated at page 413 of the ROA to wit

"The said judgment therefore simply dismissed the claim of the Respondent's Grantor's opponents' claim for declaration of title to the land in dispute in that suit, nothing more",

none of the parties sought a declaration of title to the disputed land therein. See page 269 of the ROA where the reliefs sought by the plaintiff therein are reproduced. The trial court was mindful of this. At pages 275 of the ROA, the court carefully stated as following

"Neither party claimed declaration of title to the land in controversy land

At page 280, it also stated as follows after examining the evidence

"Indeed I make bold to find and hold that Plaintiff, on the evidence before the court, did not prove the element of possession as he was bound to do in order to succeed in an action for trespass.

On the other hand the evidence of the Defendant, even if it were based on the testimony of DW1 alone ***would <u>have been</u> sufficient to establish, on the balance of probabilities, that his family's assertion of ownership and possession of Adakope land was more probable than not"***

That was it. The court did not declare the plaintiffs' grantors owners of the land the subject matter of the alleged trespass even if it was the same as the current subject matter in dispute or the current one forms part of it.

Not unsurprisingly therefore, the court of appeal in exhibit C1 stated as follows

"As the Respondent too did not counterclaim, there was no burden on him to prove his title to the land. All he needed to do was to prove on the balance of probabilities that he was in possession of the land as opposed to the Appellant to be able to ward of (sic) a claim of trespass against him. We are satisfied from the evidence on record that the Respondent met this burden of proof."

Such a conclusion can surely not be the basis of a claim of title to the land under discussion. This Court of appeal judgment, exhibit C1, like the trial court judgment, exhibit C, did not purport to find that the Plaintiffs' grantor had such title to this land however it is connected to the current case.

The other basis of the plaintiffs' grantor's title to the land is exhibit D which was discussed at length by the court of appeal at the last but two paragraph of page 10 to

the second paragraph of page 15. Surely this was evidence that the case of the plaintiffs' was discussed contrary to the complaint in one of the grounds of appeal.

The trial Court had taken the position that a portion of land- site C2- was released to plaintiffs grantors, and this implied that they were the original owners before the military acquired it. See page 246 of the ROA.

After a thorough consideration of the contents of exhibit D, the court of appeal came to the conclusion, and rightly in our considered opinion, that nowhere in that exhibit was the disputed land actually released to the grantor of the plaintiffs, even assuming the Military had the right to do so on the strength of exhibit C1 which allegedly declared them the owners (and we have found that the said exhibit did no such thing).

The trial judge's said position was not supported by the evidence on record.

We hold the opinion that, the alleged release of land being one of the bases upon which the trial court found that plaintiffs' grantors had title in the disputed land, the finding that there was no such release means the said grantors had no title to transfer to the plaintiffs. Nemo dat quod non habet.

It is clear from all the above that as between the claim of the plaintiffs and the counterclaim of the defendant, it is the latter who has been able to prove the right of her grantor (the State) to the disputed land albeit by the unrebutted presumption of regularity.

We are also in agreement with the court of appeal that the military are not vested with any power to release State land which they no longer have use of to the original owners, a position this court has already had occasion to emphasise in the case of **Dakpem Zogobu-Naa Henry A. Kaleem v Lands Commission, Northern Region & 2 Ors. Civil Appeal No J4/17/2020** cited at page 411 of the ROA.

Counsel for the Plaintiffs has cited a court of appeal decision in which that court stated that The Lands Commission cannot alienate public land which is occupied or managed

by a governmental body or Agency. We find no such complaint against the State by any such agency in this matter. Had the lease to the defendant amounted to such an alienation, it would not cure the absence of title in the plaintiffs' grantor and so cannot inure to their benefit

Save the Court of appeal's wrong statement that the plaintiff's grantors had sought a declaration of title in the case covered by exhibit C, we have found no lapses in that court's judgment which warrants it being set aside. The plaintiffs' have failed to meet the yardstick set by this court in the case of

Djin v Musah Baako [2007-2008] SCGLR page 686 @ 691

where it was stated in part that

"It has been held in several decided cases that where an…..appellant complains that the judgment is against the weight of evidence, he is implying that there were certain pieces of evidence on record which if applied in his favour, could have changed the decision in his favour, or certain pieces of evidence have been wrongly applied against him. The onus is on the appellant to clearly and properly demonstrate to the appellate court the lapses in the judgment being appealed against"

We find that the plaintiffs complaints that their case was not considered by the court of appeal, that the burden of who carried the burden of proving that the disputed land was State land was wrongly apportioned, that the court misconstrued and misapplied the presumption of regularity and the dictum of Dotse JSC in the **Seidu Mohammed** case (supra) are all **not** borne out by the evidence on record.

In conclusion we affirm the position of the court of appeal by which the findings and conclusions of the trial court, including the award of damages were set aside. The present appeal fails in its entirety.

A. LOVELACE-JOHNSON (MS)
(JUSTICE OF THE SUPREME COURT)

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