IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2021

CORAM: APPAU, JSC (PRESIDING)
PWAMANG, JSC
DORDZIE (MRS.), JSC
LOVELACE-JOHNSON (MS.), JSC
AMADU, JSC

CIVIL APPEAL
NO. J4/23/2020

31ST MARCH, 2021

RUKAYATU USUMANU ..... PLAINTIFF/RESPONDENT/APPELLANT

VRS

ZONGO NAA KUN-GARI ..... DEFENDANT/APPELLANT/RESPONDENT AND 16 OTHERS

JUDGMENT

DORDZIE (MRS.) JSC:-

The subject matter of litigation which had culminated in this appeal is a house described as number E227/16 situate at Mamobi, Accra. (This was the numbering of the house at the time of commencement of the action). The property was originally owned by Abdulai Dagarti (deceased), he died on 23rd September 1981. The disputed property is being occupied by tenants who are the 2nd to 17th defendants/appellants/ respondents. There

is no dispute that until the death of Abdulai Dagarti the tenants were attoning tenancy to him.

The deceased Abdulai Dagarti had a sister, Hajia Hawawu who survived him. It is alleged Dagarti gifted this property to the surviving sister Hawawu. A sales transaction of the property was alleged to have gone on between Hawawu and the plaintiff/ respondent /appellant (hereafter I will refer to the parties as appellant and respondents). The appellant made attempts to recover possession of the property after the alleged sale. This attempt was resisted by the 1st respondent who is said to be the head of family of the deceased Abdulai Dagarti.

The appellant therefore instituted an action in the Circuit Court, Accra in November 2006 praying for the following reliefs:

1. Declaration of title to House N0. E227/16 Mamobi, Accra.
2. Recovery of possession of the said house and
3. Recovery of all arrears of rent and utilities.

The first respondent resisted the appellant's claims and maintained that the house was not sold, the appellant's claim of ownership of the property is fraudulent the property remains the property of the family of the deceased Abudulai Dagarti who died intestate.

The trial Circuit Court relied on a statutory declaration said to have been made by the deceased Abdulai Dagarti gifting the property to Hawawu to hold that Hawawu validly acquired the property and could sell same. The court therefore gave judgment to the appellant and granted her reliefs. The respondents dissatisfied, appealed to the Court of Appeal.

The Court of Appeal found that the main issue between the parties was the question of validity of the sale of House N0. E227/16 to the appellant. It found the sale was not valid, therefore declared the said sale null and void and set aside the judgment of the trial Circuit Court.

The appellant has appealed to the Supreme Court originally on the sole ground that the judgment is against the weight of evidence. Further grounds of appeal were filed on behalf of the appellant as additional grounds upon leave granted by the court on 2nd of June 2020. The additional grounds are:

1. "That, exhibit "B" (at page 114 of the record of appeal) being receipt obtained from Appellant's vendor Hajia Hawa Awu had cleared any doubts as evidence of Appellant's exclusive purchase of the property without any rival claim or challenge to the superior legal right of the Appellant, notwithstanding any oral statement claiming same right. Appellant cannot be said to have knowledge of the purported purchase by Suraju Abubakari nor did she engage in any illegality in the transaction.
2. The Court of Appeal erred in disregarding the authority of exhibit "C" (particularly at page 121-122 of the ROA) being evidence of the Customary Grant of the property by the Osu Mantse Nii Dowuona V in 1964, Abdulai Dagarti derived his ownership from the grant and therefore the right to dispose of it in the manner deemed fit and did so by gifting same to his biological and only surviving family member and uterine sister by a Statutory declaration (Deed of Gift) dated 1976 – Exhibit "D" at page 124 of the ROA, who in turn, sold it to the Appellant for 65 million old cedis - see exhibit "B" at page 114.
3. The Court of Appeal also erred in coming to their final decision against the Appellant by not considering that fact that Appellant was an innocent purchaser in good faith for value without notice of any illegalities in the transaction and/or even any judgment against her vendor long after her purchase of the property hence cannot be estopped."

The additional grounds 1 & 2 seriously offend Rule 6 (4) & (5) of the Supreme Court Rules, 1996 C. I. 16, these grounds are argumentative and narrative. They are also vague and general in terms.

Rule 6(4) & (5) of C. I. 16 provide: ***"4) The grounds of appeal shall set out concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal, without any argument or narrative and shall be numbered seriatim; and where a ground of appeal is one of law the appellant shall indicate the stage of the proceedings at which it was first raised.***

(5) No ground of appeal which is vague or general in terms or discloses no reasonable ground of appeal shall be permitted, except the general ground that the judgment is against the weight of evidence; and any ground of appeal or any part of it which is not permitted under this rule may be struck out by the Court on its own motion or on application by the respondent."

The rules of this court do not permit the additional grounds 1 and 2 in the form they have been framed by the appellant, we deem it appropriate to strike them out and they are hereby stuck out.

The original ground, that the judgment is against the weight of evidence, and additional ground 3 are the grounds to be considered in this appeal.

The original ground places the duty on us to re-hear the matter and come to our own conclusions as to whether the evidence on record supports the judgment of the first appellate court and whether the first appellate court rightly interfered with the findings of the trial court

The appellant to succeed on this ground of appeal equally has the duty to demonstrate to us that the findings of the Court of Appeal are unreasonable in view of the available evidence on record and this court ought to interfere with it to bring justice to her.

Submissions for and against the grounds of appeal

It is the argument of appellant's counsel that the Court of Appeal disregarded the effect of some documentary evidence. For example the customary grant of the property to Dagarti by the Osu Stool in 1964 which counsel described as exhibit C. The statutory declaration by Dagarti described by counsel as 'deed of gift' whereby Dagarti gifted the

property to Hawawu his sister. These documents, according to counsel could have tilted the balance of justice in favour of the appellant if the Court of Appeal had given consideration to them. Moreover, Counsel further argued, the Court of Appeal mistook some of the documentary evidence tendered by the appellant for others and that had led to the conclusions it came to.

It is a further submission of counsel for the appellant that the Court of Appeal having accepted that the letters of Administration granted Hawawu the vendor was validly obtained, the court should have considered her position as the administrator of Dagarti's estate therefore, she could sell the property. He based this argument on provisions of the Administration of Estate Act 1961, Act 63.

In arguing ground 3 of the additional grounds of Appeal, counsel maintained that appellant is a purchaser who had no notice of any fraudulent activity related to the property at the time of the purchase.

Counsel for the respondents in his submission urged us not to interfere with the findings of the court of Appeal because they are supported by the evidence on record. He further submitted that the documentary evidence produced by the appellant at the trial have contradictions and inconsistencies. So is the viva voce evidence of the appellant and her witnesses. The trial court erred in concluding that the property was validly sold to the appellant. The Court of Appeal was therefore justified in interfering with the findings of the trial court and setting aside its judgment.

In respect of the additional ground 3 it is the position of the respondents that the evidence on record by the appellant's own witnesses point to the fact that she was aware that the property had been sold earlier to PW2 Suraju Abubakari; therefore she cannot rely on the plea of innocent purchaser for value without notice.

Issues for determination

The main issues that stand out for determination by this court are:

1. Whether or not the appellant succeeded in proving her claims

2. Whether or not the appellant can succeed on her claim of innocent purchaser without notice

For the purposes of evaluating the evidence we would sum up the evidence adduced at the trial

Evidence of the Appellant:

The appellant was represented by her son Ahmed Osuman as her attorney at the trial. He gave a brief evidence which is mostly documentary in proof of the appellant's claims. Contrary to the averment in paragraph 4 of the appellant's statement of claim that she bought the property in April 2001, the evidence of her attorney has it that she purchased the property in 2000. The purchase price was 65 million in the old cedis which is GHS 6,500. A payment receipt was issued and was tendered as exhibit B. Other documents tendered by the appellant are:

a) exhibit C, a deed of assignment dated 2nd April 2001 executed between the appellant and Hawawu.
b) Exhibit D, a statutory declaration by Hawawu in support of transfer of ownership of the property to the appellant.
c) Exhibit E has three separate documents. It is the appellant's case that her vendor came by the property by virtue of a deed of gift in the form of a statutory declaration made by Abdulai Dagarti in 1976. The original of the said document she maintained was missing. The appellant therefore made a statutory declaration to this effect and attached the "deed of gift' and a site plan of the property to it. These were marked at the trial as exhibit E.
d) Exhibit F is Letters of Administration obtained by Hawawu as the personal representative of the late Dagarti.
e) Exhibit G is a lease agreement executed between the Osu stool represented by the then chief Nii Nartey Dowuona and Abdulai Dagarti dated 21st of June 1981.

The house according to the witness belongs to the appellant, therefore she is entitled to the reliefs.

One Memuna Iddrisu gave evidence as PW1 she said she is related to Dagarti and Hawawu and knows that Dagarti gave the property to Hawawu as a gift before he died. She claimed she represented Hawawu to sell the property to the plaintiff. Two other witnesses Suraju Abubakari and Alhaji Musa Ahmed gave evidence confirming that the house was sold to the appellant.

Evidence of the respondents

The first respondent is the family head of Abdulai Dagarti and Hawawu. He was represented by an attorney, Wing Commander Eric Darkura (Rtd). According to the respondent, when the family came to Dagarti's funeral, his sister Hawawu requested that the family allowed her to collect the rent on the disputed house. They later discovered that Hawawu obtained Letters of Administration in respect of Abdulai's estate without the knowledge of the family. The family instituted an action to set aside the grant of the Letters of Administration and the suit was still pending at the time he was giving evidence.

The family also got to know that the house had been sold to two different people. The family instructed a lawyer to write to Hawawu and Memuna's lawyer to protest against the sale. The letter of protest dated 12-12-2000 is in evidence as Exhibit 3.

According to the witness when the family got to know of the sale to the appellant they confronted Hawawu but she denied she ever sold the property. The witness further testified that the disputed house was never gifted to Hawawu. Exhibit E therefore is not a genuine document.

The witness tendered the proceedings from the Rent Tribunal in a case where Memuna i.e. PW1 acting as Hawawu's attorney sued the tenants for recovery of the rooms they were occupying. The said proceedings is Exhibit 4.

The exhibit was tendered by the witness in support of his testimony that prior to the sale of the property to the appellant the property had already been sold to two other people.

According to the witness the family instructed the tenants to continue to live in the house.

The 2nd respondent represented the 3rd to 17th respondents. She confirmed that they were tenants of the late Abdulai Dagarti. When he died they paid rents to the first respondent, Zongo Naa Kun-Gari. According to the witness Zongo Naa introduced Hawawu to them at the funeral of the late Dagarti and instructed that in his absence they should pay rents to Hawawu.

The reliefs the appellant is seeking in this suit include declaration of tile and recovery of possession. She is asserting title to the property by her claims, as such the burden falls on her to produce evidence, on the balance of probabilities establishing the following: a) Her root of title. b) Her mode of acquisition and c) various acts of possession. This is the present position of the law and the Supreme Court in several decisions had emphasized these ingredients of proof the law requires from a party who asserts title to a landed property. In the case of ***Mondial Veneer (Gh) Ltd. V Amuah Gyebu XV [2011] 1 SCGLR 466 t***he Supreme Court per Georgina Wood CJ held at page 474 of the report as follows: ***"In land litigation even where living witnesses who were directly involved in the transaction under reference are produced in court as witnesses, the law requires the person asserting title, and on whom the burden of persuasion falls ... to prove the root of title, mode of acquisition and various acts of possession exercised over the subject matter of litigation."***

The appellant admits in her evidence that her attempt to take possession of the property was resisted by the 1st respondent, therefore she obviously had not exercised any acts of possession.

The validity of the documentary evidence adduced at the trial as regards her root of title and mode of acquisition was strongly challenged by the respondents. The trial court therefore had the primary duty to thoroughly examine those documents and make definite pronouncement on their validity. This the trial court failed to do. The Court of Appeal therefore had cause to interfere with the findings and conclusions of the trial court. The Court of Appeal rightly found the documents presented by the appellant are not valid.

However in view of the submissions made by counsel for the appellant, alleging the first appellate court failed to evaluate the documentary evidence properly and therefore erred in their conclusion allowing the appeal, this court would have to critically re- evaluate the documentary evidence.

Counsel for the appellant's submission that the Court of Appeal mistook some of the documentary evidence for others is not an accurate statement so far as the documents are concerned. It is obvious counsel got a little confused with the numbering of the exhibits, he cannot be blamed for that because the record of proceedings being a photocopy has most of the numbering blurred and not very clear. This court is in possession of the originals of the exhibits tendered at the trial which have the numberings in red ink. The court is therefore in a position to clarify the position. The numbering of the exhibits as narrated in the evidence of the appellant at the opening of this judgment corresponds with what pertains in the original record of the court, and if counsel had taken close look at the evidence of the appellant he would not have had any problems accurately identifying the exhibits by the numbering.

The document marked exhibit C by the court's record is a Deed of Assignment between Hawawu and the appellant Rukayatu Usumanu dated 2nd April 2001 and tendered in evidence by the appellant's attorney on 12th of September 2007. Attached to this document is the site plan of the property and a copy of the Letters of Administration obtained by Hawawu. Exhibit C therefore, is not the customary grant obtained by Abudulai Dagarti. The Deed of assignment between Hawawu and the appellant exhibit C is found on page 118 -121 of the record of appeal. Page 122 of the records has what is being described as a customary grant by the Osu Stool to Dagarti made in 1964. In the original record of the court, it is not attached to exhibit C. The customary grant as per the document in page 122 of the record was executed by Nii Nortey Dowuona V, OSU Mantse and Abdulai Dagarti. Counsel for appellant's statement in his submission in respect of exhibit E is equally not accurate. We have sufficiently clarified the documents marked as exhibit E in the early part of this judgment.

It is obvious that there had been a miss-arrangement of some of the pages of the record of appeal but that has not resulted in any error on the part of the first appellate court. The Court of Appeal's reference to the exhibits is in line with the original copies of the exhibits on the record of appeal.

The documents the appellant presented in proof of her root of title are: i) The document described by the appellant as 'deed of gift' on the second page of exhibit E. ii) The customary grant documents ie exhibit G and iii) the document found on page 122 of the record.

In civil matters proof is by a preponderance of probabilities. ***Section 12 (2) of the Evidence Act, 1975 (NRCD323)*** defines preponderance of probabilities in the following words: ***"Preponderance of the probabilities means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence***."

A careful examination of these documents raises a great doubt regarding their validity. The 'deed of gift' was strongly challenged by the 1st respondent. He denied that a gift of the property was ever made to Hawawu by Abdulai Dagarti. Hawawu was only permitted to collect rents in respect of the property when Dagarti died. This was confirmed by the 2nd respondent, a tenant who said the 1st respondent, when he came to Dagarti's funeral had a meeting with them and introduced Hawawu to them to be paying the rents to, since he resides in Northern Ghana.

From the evidence the appellant herself does not seem to be sure whether the said 'deed of gift' was made and signed by Abdulai Dagarti.

The evidence of her attorney in cross-examination page 23-24 of the record of appeal goes this way:

"Q. Do you know when this house was allegedly given by Dagarti to Hajia Hawawu.

A. I do not know the specific date.

Q. How did you know Dagarti gave it to his sister

A. At the time she sold it to us she showed us a statutory declaration indicating she got it from Abdulai.

Q. Look at Exhibit 'E' is that the statutory declaration you are talking about.

A. Yes, My Lord.

Q. You tendered it, do you know the witnesses.

A. No, My Lord.

Q. According to you this Exhibit 'E' is the evidence of gift of the house in dispute to Hajia Hawawu.

A. Yes, My Lord.

Q. This was allegedly prepared in 1976.

A. Yes, My Lord.

Q: You cannot tell whether this document was in fact prepared and signed by Abdulai Dagarti

A: This is what I realize when I see the document.

The appellant's attorney looking at the statutory declaration termed 'deed of gift' admitted he cannot tell if the document was actually made and signed by Abdulai Dagarti. The other curious aspect of the appellant's evidence on this "deed of gift" is that she alleged the original is missing, she, the appellant made a statutory declaration to that effect and attached what she terms a copy. The owner of this "deed" being Hawawu at the time of the transaction, a declaration that the original is missing would have been made by Hawawu not the appellant. How the appellant got a copy of the alleged missing document raises an eyebrow. She did not offer any explanation to this in her evidence.

The customary grant document which Exhibit G confirms gave the year of the grant as 1964. However in the recitals of Exhibit G the year of the alleged customary grant is stated as 1962. What is more, it is not only the years of grant that are not consistent in

the two documents, the grantor in the document found on page 122 of the record is Nii Nortey Dowuona V, representing the Osu Stool. However the recitals of the confirmation lease document exhibit G reads "Whereas in the year 1962 Nii Adokwei Saka accredited caretaker of the Mamobi lands for and on behalf of the Osu stool granted and conveyed customarily unto the lessee herein"… The Lessee is Abdulai Dagarti. These grievous inconsistencies in the documents which are supposed to be Abdulai Dagarti's root of title knock out any credibility of the validity of those documents. Another observation that deepens the doubt of the validity of these documents is that the signature of Abdulai Dagarti differs on each of the three documents that he was alleged to have signed or thumb printed; the alleged 'deed of gift' which forms part of exhibit E, exhibit G and the document of the customary grant found on page 122 of the record.

Exhibit G which it is said confirms the customary grant to Dagarti gave the effective date of the lease as 1st of June 1981. Logically speaking, if the grant to Dagarti was to take effect from 1st June 1981, as indicated in exhibit G then, in 1976 he had no title or interest in the property to make a gift of.

A significant fact which we are mindful of is that at the time of hearing this case in the trial court Abdulai Dagarti and his sister Hawawu were both dead. Though the appellant had maintained Hawawu sold the property to her, there is evidence from the 1st respondent that when he confronted Hawawu when she was alive but on a sick bed about the sale of the house she retorted she did not know about any sale and if anybody says so the person is a thief. As a result he caused a lawyer to write exhibit 3 to the appellant.

In evaluating the evidence, especially the documents alleged to have been executed by the dead persons, the law enjoins us to exercise great care and examine these documents with suspicion. The age old principle that guards the courts in evaluating assertions made against dead persons is stated in the case of ***Garnett, In re; Gandy v Macauly(1885)31 Ch D 1 at 9, CA*** in the words of Brett MR as follows: ***"The law is that when an attempt is made to charge a dead person in a matter, in which if he were alive, he might have answered the charge, the evidence ought to be***

looked at with great care; the evidence ought to be thoroughly sifted, and the mind of any judge who hears it ought to be, first of all in a state of suspicion."

In the case of Mondial ***Veneer (Gh) Ltd***. Cited Supra, this court stated the principle citing Garnett, In re; Gandy v Macauly with approval and held, per Georgina Wood CJ (as she then was) that ***"Our jurisprudence has examined the approach courts must adopt when evaluating charges and assertions made against dead persons. We have firmly established the principle that real danger lies in accepting without questioning or close scrutiny, claims against a dead person. The caution that such claims must be weighed carefully is based on plain good sense and has consistently been applied in a number of cases including Fosua & Adu Poku v Dufie (Decd) Adu Poku Mensah [2009]SCGLR310, In Re Krah (Decd); Yankyeraah v Osei-Tutu [189-90] 1 GLR 638, SC and Tabiri [1987-88] 1 GLR 360, SC."***

The evidence of the appellant's two witnesses did not help the appellant's case any. They did not prove to be credible witnesses. Memuna Idrisu said she represented Hawawu in the sale transaction. She had previously instituted an action against the tenants at the Rent Tribunal seeking to eject the tenants. The proceedings of the Rent Tribunal is in evidence as exhibit 4, she was the complainant in the said proceedings. On the 14th of March 2001 she testified that the disputed property had been sold to Suraj Abubakari and she wanted the tenants ejected so that she could give the new landlord vacant possession. On 30th of April 2001 Suraj Abubakari also testified in the said proceedings. It will be worthwhile to quote his testimony. "I know the complainant in this case as well as respondent a tenant. Complainant in this case has disposed of the premises to me since December 2000. I have fully paid for it and I have been issued with the necessary documents. The reason for the purchase is to accommodate members of my family who have been displaced following an ejectment order by Rent Officer. Respondents must therefore quit to enable me obtain vacant possession."

The rent officer in his judgment stated that he was aware of Suraj's ejectment therefore his claim for need of the house was justified and granted the order for ejectment. It is

surprising appellant claimed she purchased this same property and called Suraj Abubakari as a witness to the sale.

When PW1 Memuna was confronted with this testimony in the proceedings in the circuit court she admitted she told the Rent Tribunal the house had been sold to Suraj Abubakari. That this same Memuna can genuinely sell the same property to the appellant claiming she represented Hawawu points to nothing but fraud. Meanwhile when Suraj Abubakari was confronted with his previous statement in exhibit 4 he vehemently denied he ever said the property was sold to him.

From the above analysis of the evidence we can safely conclude that the evidence the appellant placed before the court in proof of her title to the house is devoid of any credibility. The appellant has clearly failed to discharge the burden of proof required of her to succeed in the action.

On the second issue as to whether the appellant can succeed on the plea of innocent purchaser for value without notice or not, exhibit 3 throws the appellant's claim that she had no notice overboard. Exhibit 3 is a letter written by solicitors of the 1st respondent in reply to a letter written by the appellant's solicitor to the tenants to vacate the disputed premises because she had purchased it. The letter is dated 12th of December 2000 and it reads:

"Dear Sir,

ACQUISITION OF H/NO 21/6/MAAMOBI ACCRA

I am writing as Solicitor for Madam Hawawu and her family.

Your undated later on the above subject addressed to all tenants of H/No 21/6 Maamobi, Accra giving them notice to vacate the house has been referred to me with instructions to reply.

My instructions are that Madam Hawawu has not sold the house to your client, as claimed in your letter. Your notice to the tenants to quit is therefore untenable.

We have accordingly advised all the tenants in the house not to comply with your notice to them to quit."

It would be observed that though this letter served notice on the appellant that the sale is being challenged she went ahead and continued the transaction by executing documents of the sale after the letter just quoted was written to her lawyer. The payment receipt issued to the appellant is dated 1st June 2001 The deed of assignment exhibit C, between Hawawu and the appellant is dated 2nd of April 2001. The statutory declaration transferring the property to the appellant is dated June 2001.

The appellant definitely had notice of the respondent's position on the alleged sale yet she went ahead with the transaction. It lies foul in her mouth to plead that she is an innocent purchaser for value without notice. We find no merit in the appeal.

The appeal fails in its entity and it is hereby dismissed.

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

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