FIN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF GHANA

ACCRA – GHANA

CORAM: ANIN-YEBOAH JSC (PRESIDING)

BAFFOE – BONNIE JSC

AKAMBA JSC

APPAU JSC

PWAMANG JSC

CIVIL APPEAL

NO: J4/29/2015

15TH MARCH 2016

1. SAMUEL OBLIE	**PLAINTIFFS/APPELLANTS**
2. CHRISTOPHER OBLIE	**/APPELLANTS**
3. MENSAH OBLIE	
VRS.	
TETTEH LANCASTER	**DEFENDANT/RESPONDENT**
	/RESPONDENT

JUDGMENT

YAW APPAU, JSC:

Under customary law, which is part of the common law of Ghana, it is axiomatic that it is the Head of Family who has capacity to sue and be sued in matters concerning family property. The only exceptions to this rule have been well-established in the cases of

KWAN v NYIENI [1959] GLR 67 @ 68; AMPONSAH v KWATIA [1976] 2 GLR 189; YORMENU v AWUTE [1987] 1 GLR 9; IN RE ASHALLEY BOTWE LANDS; ADJETEY AGBOSU & Others v KOTEY & Others [2003-2004] 1 SCGLR 420 @ 423; MANU v NSIAH [2005-2006] SCGLR 25 and IN RE NEEQUAYE (DECD); ADEE KOTEY v KOOTSO NEEQUAYE [2010] SCGLR 348.

This Court in the IN RE ASHALLEY BOTWE LANDS case cited (supra) explained the principle as follows: "the general rule recognised in Kwan v Nyieni, namely, that the head of family was the proper person to sue and be sued in respect of family property was not inflexible. There are situations or special circumstances or exceptions in which ordinary members of the family could in their own right sue to protect the family property, without having to prove that there was a head of family who was refusing to take action to preserve the family property. The special or exceptional circumstances include situations where: (a) a member of the family had been authorised by members of the family to sue; or (b) upon proof of necessity to sue".

This case presents a disturbing picture of three brothers who decided to resort to the courts to protect a so-called family land but were not ad idem as to who out of the three was to represent them in the family suit. They therefore decided to initiate a joint action in their names; viz. Samuel Oblie (1st Plaintiff), Christopher Oblie (2nd Plaintiff) and Mensah Oblie (3rd Plaintiff).

Paragraphs 1, 2 and 3 of their Statement of Claim filed on 8/8/2001 read as follows:

"1. 1st Plaintiff is the Head of the Asua We Family of Oyarifa and La.

2. 2nd and 3rd Plaintiffs are principal members of the Asua We Family.

3. The Plaintiffs bring this action for themselves and on behalf of the Asua We Family."

Though the 2nd and 3rd Plaintiffs admit that the 1st Plaintiff is the Head of their family, they all decided to join in the action as plaintiffs instead of allowing him alone to represent the family in the action. However, as time went by, one of them; i.e. Mensah Oblie who is the 3rd Plaintiff, dismantled the trinity and engaged the services of a separate lawyer to represent him alone in the same suit but based on the same pleadings filed by the three jointly. He did not assign any reasons for doing so.

After engaging a separate lawyer, he attempted unsuccessfully, to dislodge his eldest brother Samuel Oblie who is the Head of Family from his family seat by filing a motion in the trial High Court through his new lawyer that the 1st Plaintiff had been removed as the head of family and he had been appointed by the family in his place as the Acting Head of Family. This move or attempted 'coup d'état', was scuttled by the 1st and 2nd plaintiffs who vigorously opposed the application. Their opposition compelled the 3rd Plaintiff to withdraw his application.

Notwithstanding the fact that the 3rd Plaintiff withdrew the application and maintained his position as a principal member of the family, he stuck to his lawyer and conducted the case separately from his two elder brothers with whom he initiated the joint action; a step, which invariably did not help the course of the Plaintiffs who are the appellants herein, as would be unfolded later in this judgment.

As the records show, all the three brothers gave separate testimonies instead of allowing just one of them to testify on their behalf. This, in the end, sowed the seeds of destruction of their case as they seriously contradicted themselves in their testimonies in support of their pleaded case. They subsequently lost in the trial High Court. They appealed against the decision of the High Court to the Court of Appeal and lost the second time. They are now before us seeking a second re-hearing of the case they have lost on two occasions.

Facts of the case

By their writ of summons filed on 8th August 2001, the Plaintiffs sued the Defendant who is of the Abentia We Family of Oyarifa, in the High Court, Accra. Their claim was for:

1. Declaration of title to a parcel of land situate at AyiMensah described in the Statement of Claim;

2. Recovery of possession of the said land;

3. Perpetual Injunction; and

4. Damages for trespass.

Their pleaded case in brief in their original Statement of Claim was that the disputed land, which forms part of Agbawe Quarter lands, was founded by their predecessors; i.e. the Asua We Family of Oyarifa and La. Sometime later, the Defendant's great-grandfather married one Adjeley Medda who was the sister of their great-grandfather. Their great-grandfather, as a result of the marriage between his sister and defendant's great-grandfather, permitted defendant's great-grandfather to farm on the disputed land in consideration of token yearly dues which he observed.

After the death of Defendant's great-grandfather, defendant's family maintained possession of the land as their tenants. Though Plaintiffs' family has terminated the tenancy of defendant's family, defendant has refused to give up possession of the land and is laying adverse claim to the land. Defendant has even threatened to kill any member of Plaintiffs' family who dares to enter the disputed land. They therefore commenced this action claiming the reliefs as endorsed on the writ of summons as quoted above.

Plaintiffs later amended their Statement of Claim to read that though the Asua We Family forms part of the Agbawe Quarter, the disputed land belonged exclusively to the Asua We Family but not the Agbawe Quarter as they originally pleaded since it was founded by their predecessors of the Asua We Family.

The defendant denied plaintiffs claim in an Amended Statement of Defence and Counter-Claim filed on 27th February 2009. His contention was that the disputed land was granted to his family (i.e. the Abentia We Family, which forms part of the Abafum Quarter of La) by the entire Kpobi We Family within the Agbawe Quarter of La some two hundred (200) years ago.

The basis of the grant was that his great-grandmother called Adjeley who hailed from the Kpobi We Family of the Agbawe Quarter, married his great-grandfather who is of the Abentia We family. It was as a result of the marriage that the Agbawe Quarter granted the land to his family, which has remained in their possession for the past two hundred (200) years. He gave a description of the land in his possession for and on behalf of his family. The boundaries mentioned differed from that of the plaintiffs.

Defendant maintained that his family has remained in undisturbed possession of the disputed land until somewhere in the year 2000 when the 1st Plaintiff trespassed onto same and resorted to intrigues to wrestle the land from him. He denied that his family is on the land as tenants of the Plaintiffs' family. He counter-claimed for title to the land he is in possession of, general damages for harassment and trespass and perpetual injunction.

Judging from the totality of the pleadings before the trial High Court, there was no doubt that the major issues for determination by the trial court were: -

(1) Whether or not the land was granted to the defendant's family by the Kpobi We Family within the Agbawe Quarter or by the Asua We Family also within the Agbawe Quarter and;

(2) Whether or not it was a customary grant or an agricultural tenancy as both parties contended alternatively.

After the testimony of the surveyor who was appointed by the trial High Court to survey the disputed land, whose report the

trial court disapproved, plaintiffs further amended their Statement of claim by changing and re-naming some of their alleged boundary owners. Each of the three Plaintiffs testified after which they called two witnesses. The 3rd Plaintiff testified first, led by his lawyer. The 1st and 2nd Plaintiffs also testified separately in that order also led by their lawyer. They contradicted each other materially as to;(1) the root of their family's title to the land (2) the length or period of defendant's family's occupation of the land, (3) the boundary owners and (4) the extent or size of the disputed land.

The 3rd Plaintiff who was the first to testify on 10th March 2008 contended in his evidence in-chief that the land originally belonged to the La Mantse and that it was the La Mantse who granted it to his family; i.e. the Asua We family about one hundred (100) years ago as at the time he was testifying. However, during cross-examination, he changed this position and said the La Mantse granted the land to his family about fifty (50) years ago from the date he was testifying.

He contended further that the defendant's family was occupying just one plot of land measuring 80 feet by 100 feet and that he was the caretaker of the disputed land for and on behalf of the La Mantse. Again, the names the 3rd Plaintiff mentioned as boundary owners of the disputed land were different from those mentioned in the Amended Statement of Claim as well as those mentioned by the 1st and 2nd Plaintiffs in their testimonies.

The 1st Plaintiff on the other hand said his Asua We Family started farming on the land in the year 1205 and they have continued to possess same up to date. This calculates to a period of over eight hundred (800) years. According to him, defendant's family was occupying just about two (2) acres of the land but he did not know when the defendant's ancestors started farming on same.

During cross-examination, he admitted that his family never objected to the defendant's family's occupation of the land for the

several years that they have been farming on same. He explained, however,that the land has now become a residential area so it is his family which has to benefit from the sale of the plots that is why they now want to re-claim the land.This testimony goes to confirm defendant's claim that it was recently (around the year 2000) that plaintiffs started their interference in his quiet enjoyment over the disputed land.

The 2nd Plaintiff on the other hand said the La Mantse has nothing to do with the disputed land as it were his ancestors who were hunters that acquired the land in its original state. He could, however not tell when his family acquired the land but said the disputed land covers an area of sixty (60) acres while the total acreage of Asua We Family lands in Oyarifa is two hundred (200) acres.

Defendant, on the other hand, was consistent as to how his family came by the land. According to him, it was a customary grant made to his family by the Kpobi We Family within the Agbawe Quarter when his great-grandfather married his great-grandmother from the Kpobi We Family of the Agbawe Quarter over two hundred (200) years ago. According to him, before the grant was made to his family, the land was part of Kpobi We Family land within the Agbawe Quarter but plaintiffs want to use their wealth to wrestle the land from his family.

The trial High Court, on 30th July 2010, dismissed Plaintiffs' claim and granted judgment to the Defendant on his counter-claim.On 24th January 2011, Plaintiffs sought leave of the trial High Court for extension of time to appeal against the decision of the court tothe Court of Appeal. The application was granted and on 2nd February 2011, plaintiffs filed their Notice of Appeal, which contained eight (8) grounds of appeal numbered (a) to (h), including the omnibus ground; i.e. "The judgment is against the weight of evidence". The plaintiffs argued only three (3) out of the eight (8) grounds of appeal; namely grounds (a), (b) and (d). These were:

"(a) The judgment is against the weight of evidence;

(b) The learned judge erred in ruling on matters which were neither set down for trial nor disclosed by the pleadings: –

(i) Limitation

(ii) The Kpobi We Family a non-party

(d) The learned judge erred in declaring title for the defendant in spite of the indefinite description of the land he claimed."

The Court of Appeal dismissed all the grounds of appeal but the one that touched on the Limitation Act. It then affirmed the judgment of the trial High Court. The plaintiffs are here again on a second appeal against the judgment of the Court of Appeal.

The original grounds of appeal filed in this Court were three, namely -

a. The learned justices erred in dismissing the appeal and in effect confirming the defendant/respondent's counter-claim for declaration of title inspite of clear evidence in the record of the following: - (i) the defendant/respondent never made a sole personal claim of title over the land in dispute; (ii) the court could not have conferred absolute title to the defendant/respondent whose evidence is to the effect that his family was granted only possessory farming rights, the duration notwithstanding;

b. The learned justices erred when having found that the land in dispute belonged to the Agbawe Quarter failed to rule that the defendant/respondent never acquired a valid grant by virtue of evidence in the record that his family acquired land from Kpobi We family.

c. The learned justices, having found that the land in dispute is Agbawe Quarter land should have ruled in favour of plantiffs/appellants who are the Agbawe members and accordingly persons with better claims to Agbawe lands than the defendant.

However, plaintiffs/appellants/appellants sought leave of this Court on 3rd February 2015 to amend the notice of appeal with the addition of two more grounds. These grounds numbered, 'd' and 'e' are:

d. The learned justices of the Court of Appeal erred in law in failing to consider and review adequately or at all the evidence of the defendant/respondent/respondent relating to his counter-claim.

e. The learned justices of the Court of Appeal erred in law in dismissing plaintiffs/appellants/appellants ground of appeal (d) submitting the indefinite description of defendant/respondent/respondent's land without any consideration whatsoever of it.

They prayed this Court to set aside the judgment of the Court of Appeal and grant the reliefs they claimed in the trial High Court.

In their written submissions filed on 23rd February 2015 pursuant to leave granted by this Court on 3rd February 2015, plaintiffs/appellants/appellants argued or made submissions in respect of only three out of the five grounds of appeal reproduced above. The grounds argued were (a), (d) and (e), while grounds (b) and (c) were abandoned. Grounds (a) and (d) were canvassed together while ground (e) was given a separate consideration.

For the purposes of this appeal, the plaintiffs/appellants/appellants would be referred to as 'Plaintiffs' while the Defendant/respondent/respondent would maintain the title 'Defendant'.

This Court has established on the authorities of ACHORO & Another v AKANFELA & Another [1996-97] SCGLR 209 and then KOGLEX LTD (NO. 2) v FIELD [2000] SCGLR 175 @ 176-177 that; "in an appeal against findings of facts to a second appellate court like…[the Supreme Court[, where the lower appellate court had concurred in the findings of the trial court, especially in a dispute, the subject-matter of which was peculiarly within the

bosom of the two lower courts or tribunals, this court would not interfere with the concurrent findings of the two lower courts unless it was established with absolute clearness that some blunder or error, resulting in a miscarriage of justice, was apparent in the way in which the lower tribunals had dealt with the facts".

Acquah, JSC (as he then was) gave four instances where such concurrent findings may be interfered with in the Koglex case cited supra. These are:

(i) Where the said findings of the trial court are clearly unsupported by evidence on record; or where the reasons in support of the findings are unsatisfactory;

(ii) Improper application of a principle of evidence; or where the trial court has failed to draw an irresistible conclusion from the evidence;

(iii) Where the findings are based on a wrong proposition of law; and

(iv) Where the finding is inconsistent with crucial documentary evidence on record.

So as the authorities have firmly established, the very fact that the first appellate court had confirmed the judgment of the trial court does not relieve the second appellate court of its duty to satisfy itself that the first appellate court's judgment is, like the trial court's, also justified by the evidence on record. This is because, an appeal, at whatever stage, is by way of rehearing. It is therefore the duty of every appellate court to make its own independent examination of the record of proceedings.Our primary duty, therefore, is to determine whether the findings of the trial court, as affirmed by the first appellate Court, are supported by the evidence on record.

Plaintiffs' submissions on grounds of appeal

Basically, all the three grounds of appeal canvassed by the Plaintiffs in their written submissions are grounded on findings of facts. On grounds (a) and (d), plaintiffs contended that it was wrong for both the trial High Court and the Court of Appeal to grant defendant the reliefs he claimed in his counter-claim when his case was that his family was only granted farming rights over the land but not an absolute grant. Again, defendant counter-claimed for title to the disputed land personally while his evidence was that it was for his family. It was therefore wrong for both the trial High Court and the Court of Appeal to decree judgment in his favour as owner.

Another issue raised by plaintiffs is that the Court of Appeal erred in its evaluation of the evidence on record when it said plaintiffs could not give even a single instance of any customary tenancy performances made by defendant's family to their family when during cross-examination of 3rd plaintiff, he mentioned the existence of such customary performance.

On ground (e), plaintiffs' case was that both the trial Court and the Court of Appeal erred in granting defendant judgment in respect of land which defendant could not definitely describe. They argued that while defendant's site plan over the land differed from the boundaries shown to the Surveyor on the ground as produced on the composite plan, four other names appear on the plan as owners of the land in question together with defendant, but defendant alone has counter-claimed for title to the land without indicating which portion exclusively belonged to him.

Defendant's submissions in answer

In his response to the above submissions, defendant stated that his case, which the trial court and the Court of Appeal found more probable than that of the plaintiffs' was that the land in his possession was granted to his family by the Kpobi We family within the Agbawe Quarter over two hundred (200) years ago but not the Asua We family. So granted that it was a farming right

which has metamorphosed into an absolute right as the plaintiffs are contending, which he denied anyway, it does not affect the plaintiffs who are of the Asua We family. Defendant referred the Court to the testimony of PW2; i.e. plaintiffs' own witness during cross-examination by defence counsel, which I recall below:

"Q. You know as a fact that the defendant as well as his ancestors and members of his family have been cultivating the land in dispute the past two hundred years.

A. I know they were farming on Kpobi We land for two hundred years and not on Asua We land".

After giving this answer, PW2 went further to say that the dispute arose because the defendant left the Kpobi We land and trespassed onto Asua We land.

The fact is that PW2 was trying to be more catholic than the Pope when his testimony suggested that the dispute between the parties is about their boundary when that is not the case of plaintiffs who called him to testify for them. Plaintiffs are claiming the whole land as theirs because they (i.e. Asua We) but not Kpobi We, gave it to defendant's family. They are not saying that the defendant has trespassed onto their land from Kpobi We land as P.W.2 tried to impress on the trial court.

Defendant contended further, inter alia, that plaintiffs failed to lead any historical evidence in support of Asua We Family's claim of title to the land. Again they failed to describe the identity of the land as they seriously contradicted each other in their testimonies on their boundary owners. He prayed the Court not to disturb the findings of the trial court and the first appellate court since their findings are supported by the evidence on record.

Evaluation of the submissions by both Parties

Both the trial court and the Court of Appeal were ad idem that plaintiffs could not establish their claim of title to the land they described variously as belonging to them. This Court cannot fault

the trial court and the first appellate court on their evaluation of plaintiffs' testimonies.

On defendant's counter-claim, plaintiffs' contention that the defendant counter-claimed for title to the land personally while his evidence was that the land belonged to his family, is not borne out from the facts on record. Defendant has been consistent that the disputed land, which he described in his amended statement of defence and which he is in possession of, belonged to his family. He never at any time claimed it as his personal land.

From the records, he only made a site plan of it and used some members of his family as title holders. That alone does not take away the legitimacy of defendant's claim that the land belonged to his family. He testified as to how the land came into his possession as pleaded under paragraphs 1 to 6 of his amended statement of defence which appears at page 313 of the ROAas follows: -

"1. The defendants deny paragraphs 1 to 17 of the averments contained in the statement of claim and will put plaintiffs to strict proof of the averments therein contained.

2. The defendant in further denial of plaintiffs' claim says that the land in dispute was granted to defendants Abentia Family some two hundred (200) years ago by the entire Kpobi We within the Agbawe Quarter of La."

3. The defendant says further that the basis of the grant was that defendant's great-grandmother Adjeley hailed from Kpobi We within the Agbawe Family and married from Abentia We within the Abafum Quarter of La.

4. The said Yomo Adjeley gave birth to Numo Tetteh Korsorko of the Abentia We of La who started farming the disputed land some two hundred (200) years ago.

5. After the death of Numo Tetteh Korsorko, the land devolved upon Numo Addo Tsuru, then to Numo Sowah Ankrah, Numo Nyanto, Ago and finally to the defendant herein.

6. The defendant will contend that until a year ago when the 1st plaintiff trespassed unto the land, nobody had disturbed his family's quiet enjoyment of the land in dispute since the grant some 200 years ago…"

The fact that defendant never said in his counter-claim that he was counter-claiming for and on-behalf of his family is immaterial. According to paragraph 5 of his statement of defence, he is on the land by virtue of succession. He was never questioned or challenged on this. Plaintiffs even admitted that fact. In paragraph 9 of both their original and amended statements of claim, plaintiffs pleaded expressly that; "the defendant is in possession of this parcel by reason of succession to this tenancy at will made to his great grand-father". {Emphasis added}.

While they admitted that defendant was on the land by succession, their contention was that the grant he succeeded to was one of agricultural tenancy between their Asua We Family and defendant's family, an assertion they could not establish in their testimonies. Any claim that the defendant makes in respect of the land he is in possession of is therefore for himself and on-behalf of his family on whose strength he is in occupation and for which he was dragged to court.

On the strength of the principle laid down by this Court in the; In Re: Ashalley Botwe Lands case (cited supra), the defendant has capacity to counter-claim for title as he did since he was in possession of the land and was sued in his capacity as the successor to his predecessors who had been farming on the disputed land for over two hundred (200) years; a period plaintiffs appear to acknowledge.

As the trial High Court and the Court of Appeal rightly concluded, plaintiffs did not lead any evidence to establish that

defendant's family were their agricultural tenants for the over 200 hundreds years that they had occupied and possessed the land exclusively. It was only during cross-examination of the 3rd plaintiff that he told the court in an answer that the tribute defendant's family had been paying to his family as an agricultural tenant was an annual supply of cassava and corn plus one shilling. This fact was denied by the defendant but plaintiffs gave no further testimony to establish it.

They admitted that defendant who is said to be over seventy (70) years and has been in possession of the land for several years, has never paid any tribute to their family. It is incredible that the 3rd plaintiff who said the disputed land belonged to the La Mantse and that he was the caretaker for La Mantse, could turn round to say that defendant's family were paying tribute over the land to the Asua We Family. From when did they start paying and when did they stop? No evidence was led to that effect.

Plaintiffs' further contention was that the defendant could not clearly describe the land he is claiming in his counter-claim; nevertheless the trial court and the Court of Appeal granted him judgment. They want this court to reverse that decision.

What the plaintiffs are contending by this argument is that if they could not establish their claim to the land because of the inconsistencies in their testimonies, then defendant too could not establish his counter-claim since he also could not properly describe his land. So in effect, they want the defendant's counter-claim too to be dismissed to score it a draw.

There is no dispute to the fact that the defendant is in possession of the land which he has described in his statement of defence and for which he has counter-claimed for title. The plaintiffs themselves pleaded under paragraph 9 of their amended statement of claim that the defendant came to possess the land through succession from his predecessors. They pleaded further that defendant has been jealously guarding this land with a gun

and has even threatened any of the plaintiffs with death in case they entered the land.

The question is; what land were the plaintiffs talking about in their pleadings if defendant is not certain about the land he is claiming in his counter-claim?

The Court of Appeal held and rightly so in the case of SAH v DARKU [1987-88] 1 GLR 123 @ 125 that; "if the court could ascertain from the evidence that there was land sufficiently identified by the defendant as being in dispute between him and the plaintiffs in respect of which the court could give effective judgment, the counter-claim could not be thrown out merely because the description of the land was not specifically pleaded".

Though there were some few inaccuracies in the description of defendant's family land as shown on the site plan he presented, that alone could not defeat his counter-claim. The trial court that heard viva voce from the defendant observed that the defendant was firm and candid with his answers during cross-examination demonstrating that he had no desire or intention to harness more land than what was in his possession.

Though it is true, as was contended by plaintiffs in their written submissions, that possession cannot ripen into ownership no matter how long it had been as was held by Ollenu, J (as he then was) in LARTEY v HAUSA [1961] GLR 773, the law is that possession is nine points of the law. In the words of Ansah, JSC in the case of ELIZABETH OSEI v MADAM ALICE EFUA KORANG [2013] 50 GMJ 26 – SC,"a plaintiff in possession has a good title against the wholeworld except one with a better title. It is the law that possession is prima facie evidence of the right to possession and it being good against the whole world except the true owner, he cannot be ousted from it".

This Court expressed the same position in the case of SUMMEY v YOHUNO & Others [1962] 1 GLR 160. In holding (3) of the said judgment, this Court held that; "the plaintiff being in continuous and undisturbed possession of the land, cannot be ousted by a

defendant who sets up a bogus or fictitious title to the same land: meliorest conditio possidentis ubi neuter ius habet".

The standard of proof in civil cases including land is proof on the preponderance of the probabilities. Sections 11(4) and 12(1) of the Evidence Act, 1975 [NRCD 323] and the decisions of this Court in ADWUBENG v DOMFEH [1996-97] SCGLR 660; SARKODIE v F.K.A. CO LTD [2009] SCGLR 65; ASANTE-APPIAH v AMPONSAH [2009] SCGLR 90; YAA KWASI v ARHIN DAVIES [2007-2008] SCGLR 580, etc. are emphatic on that.

It was not plaintiffs' case that the defendant has left the land granted to his family and trespassed onto theirs. Their claim is that defendant's family was their tenants and since the area has now become residential, they have revoked the tenancy agreement. The subject-matter is not therefore one of boundary. The issue is whether or not the land that the defendant's family has been farming on for ages and which defendant continues to farm on was a customary grant to them by the Kpobi We Family with the concurrence of the Agbawe Quarter or an agricultural tenancy granted them by plaintiffs' Asua We Family. The identity of the land defendant is in possession of is therefore certain.

In his testimony during cross-examination, the 3rd plaintiff admitted that the land in possession of the defendant and over which he has counter-claimed for title was given to defendant's family by the Agbawe Quarter but not Asua We as they claimed. I quote below the question and answer:

"Q. I put it to you that because of her customary marriage to a man from Abafum Quarter of La, that was why the Agbawe Family gave the land to the husband.

A. It is true."

The above testimony of the 3rd plaintiff during cross-examination goes to confirm defendants claim while it completely destroys their case.

As indicated earlier, plaintiffs' original Notice of Appeal contained eight (8) grounds of appeal. They however argued only three (3) grounds and abandoned five (5). Their contention before us in their written submissions was that grounds c, e, f, g and h which they never mentioned in their submissions before the Court of Appeal were subsumed under ground 'a' so it was wrong for the Court of Appeal to say that they abandoned them. This argument is quite interesting.

Throughout their submissions in the Court of Appeal, plaintiffs never indicated anywhere that they were arguing grounds a, c, e, f, g. and h together because they were related. They never mentioned grounds c, e, f, g and h at all in their written submissions so how could plaintiffs say that the said grounds presented self-explanatory and complete arguments by themselves? How could the grounds, standing on their own without any meat added to them be arguments in themselves?

If plaintiffs knew the said grounds touched on the weight of evidence adduced at the trial, then why make them separate grounds of appeal without saying anything about them. The fact that plaintiffs never mentioned the said grounds in their written submissions meant they had abandoned them. The Court of Appeal was therefore right in reaching that conclusion.

The appeal before us is clearly unmeritorious and same is dismissed.

(SGD) YAW APPAU
JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE- BONNIE
JUSTICE OF THE SUPREME COURT

(SGD) J. B. AKAMBA
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