IN THE SUPERIOR COURT OF JUDICATURE
SUPREME COURT OF GHANA
ACCRA

CORAM: ATUGUBA, JSC (PRESIDING)
DATE-BAH (DR), JSC
ANSAH, JSC
ARYEETEY, JSC
GBADEGBE, JSC

CIVIL APPEAL
NO. J4/9/2007
5TH MAY, 2O1O

AGYENIM BOATENG … PLAINTIFF/RESPONDENT/APPELLANT

VRS.

1. AKWASI OFORI
2. AKOSUA YEBOAH … DEFENDANTS/APPELLANTS/ RESPONDENTS

J U D G M E N T

ARYEETEY, JSC:-

In this judgment we would refer to the plaintiff/respondent/appellant as the plaintiff and the defendants/appellants/respondents as the defendants. By his writ of summons the plaintiff, who brings this action for himself and on behalf of his branch family originated by his grand-mother Akua Anokyewaa claimed for the following reliefs: *1. A declaration that H/NO. KO 47, Kumasi is the property of the entire Akua Anokyewaa family of Mpatuam. 2. An order of perpetual injunction restraining the defendants and*

all who may claim under them from interfering in any way or manner with the plaintiff's possession and control of H/NO. KO 47, Kumasi in his capacity of Head of Akua Anokyewaa family of Mpatuam. In line with his pleading and the evidence adduced on his behalf a brief background to his claim is as follows: His grand-mother, Akua Anokyewaa had four sons and three daughters. All of them are deceased. The sons were Kwame Akoh, Kwasi Nsiah, Kwame Amuzu and Kwasi Teppa. The daughters were Amma Biyaa, Akosua Ampoma and Akua Konneh. The plaintiff is the son of Akua Konneh and the defendants are great-grand-son and grand-daughter respectively of Amma Biyaa.

It is the position of the plaintiff that his late four uncles acquired real and personal properties all of which on their respective deaths intestate devolved absolutely on their immediate Akua Anokyewaa family. In 1934 or thereabout his late uncle Kwasi Teppa, in exercise of power of sale reposed in him as mortgagee-judgment-creditor purchased for himself and his brothers H/NO. KO 47, Kumasi but in the name of Kwasi Wono the most senior nephew. In 1943, also in exercise of a similar power of sale as mortgagee, his late uncle Amuzu purchased for himself and his brothers three cocoa farms and a compound house all at Biamusu but in the respective names of Yaw Krah, son of Akosua Addae, siser of Akua Anokyewaa, plaintiff herein and Kwasi Wono. In their life time his late uncles exercised absolute and unlimited rights of ownership over all properties they purchased in the names of their nephews as nominal purchasers who had nothing whatsoever to do with the said properties. Following the purchase of

H/NO. KO 47, Kumasi his late four uncles removed from Zongo, Kumasi to live in that house. Not until his appointment as customary successor and as head of Akua Anokyewaa family following the death of his last surviving uncle Kwame Amuzu, Kwasi Wono continued to live at Mpatuam and had nothing whatsoever to do with the said H/NO. KO 47. It is the contention of the plaintiff that Kwasi Wono, a member of Amma Biyaa's branch family, being a man of straw, died leaving no self-acquired property to his family. Following the practice by the Akua Anokyewaa's family of appointing the most senior member of that family as their family head, Yaw Donkor, also of Amma Biyaa's branch of the family was appointed as successor to Kwesi Wono.

When Yaw Donkor occupied the seat as head of the wider Akua Anokyewaa's family, in an application for Letters of Administration to administer the estate of Kwesi Wono separately from the properties of the wider family of Akua Anokyewaa, he listed H/NO. KO 47, Kumasi in the inventory thereof. The plaintiff registered his objection through a caveat since that house did not form part of Kwesi Wono's estate. Later the result of customary arbitration confirmed that H/NO. KO 47 did not form part of the estate of Kwasi Wono. When Yaw Donkor died the defendants objected to the plaintiff's appointment as customary successor and head of Akua Anokyewaa's family. Eventually the plaintiff was appointed head of Akua Anokyewaa's family and the first defendant was appointed successor to Yaw Donkor. After his appointment the first defendant applied for Letters of Administration in respect of the estate of Yaw Donkor and in attempt to vest H/NO. KO 47 in Amma Biyaa branch of the family, included the said

house in the inventory thereof. The plaintiff entered a caveat and the result is the present suit, principally to determine the ownership of H/NO. KO 47, Kumasi. The trial court gave judgment in favour of the plaintiff. The conclusion of that judgment which is at page 99 of the record of appeal is reproduced below as follows:

> "There is also evidence that both members of the Obiyaa and Kune branches of Anokyewaa family live in the disputed house. So that the plaintiff has successfully rebutted the presumption that Kwasi Wono is the legal as well as the beneficial owner. On the issue of advancement, my reaction is that it does not arise in uncle – nephew relationship. It stands with those *in locus parentis* to the child for example father and child. Secondly where it exists, it is rebuttable. From the evidence on record, Teppa, his wife and children were living in the disputed house as well as other family members. Therefore Teppa did not intend to gift KO 47, Kumasi to Kwesi Wono. *From the foregoing therefore, I find that Kwesi Wono was only a nominal purchaser of KO 47, Kumasi. The real owner -was Kwesi Teppa. That being the case, the defendants cannot say that the property is the self acquired property of Wono and that they as the immediate family should succeed. Kwasi Teppa and Amuzu were the children of Anokyewaa and they died intestate. Therefore I make a finding to that effect."* (The emphasis is mine.)

The defendants appealed and filed two grounds of appeal namely: (a) The judgment is against the weight of the evidence, (b) The judgment is wrong in law. The written submissions of counsel for both parties for obvious reasons dwelt mainly on the finding by the trial court that Kwasi Wono was nominal purchaser of the house in dispute. At page 145 of the record of appeal the majority judgment of the Court of Appeal reads as follows:

"The finding by the trial judge that Kwesi Wonoo was only a nominal purchaser of "KO 47" and the real owner was Kwasi Teppa was not founded on any solid evidence and even if evidence to that effect had been adduced before the trial judge, she ought to have concluded that the auction sale was voided by Kwesi Teppa as mortgagee exercising power of sale employing his nephew as his agent to bid and purchase the property. To the extent that the relief sought by the respondent was "a declaration that N/No. KO 47 is the property of the entire Anokyewaa family of Mpatuam," a relief that was answered in the affirmative by the appellants in their pleadings, I concede that the learned trial judge was right in entering judgment for the respondent in respect of that claim.

However, the question as I see it is, in what way may the judgment be interpreted as far as that claim or relief is concerned. Kwesi Wonoo was a member of the wider Akua Anokyewaa family and it being apparent that he died intestate, his wider family, in law, is entitled to succeed to his estate but the real issue in this case, in my view, is whether House No. K0 47 being the self acquired property of Kwasi Wonoo, the interest of the wider family was not postponed as there were in existence persons belonging to the immediate family of Kwesi Wonoo, the Akua Biyaa branch, those persons being the appellants herein. I think, the evidence and the facts in this case ought not to have been put in a strait-jacket as relating only to the issue of whether the House No. KO 47 is the property of the entire Akua Anokyewaa family.

The evidence went further than that to my mind, it was of crucial importance for the learned trial judge to have found and determined on the law and the facts that the said House No. KO 47 was the self acquired property of Kwasi Wonoo who took a lease of it in his name after it had been knocked down and purchased by him at an auction sale. If the learned trial judge had so found, she should not have agreed with the respondent that Kwesi Wonoo was only a nominal purchaser of the property. In conclusion, I hold that Kwasi Wonoo was

both the legal and beneficial owner of House No. KO 47 and on his death intestate, the persons entitled to succeed to that house are members of his immediate family"

At the close of pleadings the main and fundamental issue which could determine the outcome of the case is "Whether Kwasi Wono, now deceased, was the nominal purchaser of House No. KO 47, Kumasi". It is only in context of the resolution of that issue that the second issue for trial could be determined by the court. The second issue for determination by the court is "Whether or not House No. KO 47 is the property of the entire Akua Anokyewaa family of Mpatuam-Ashanti". It means when the court gives a decision as to whether Kwasi Wono was the real purchaser or a mere nominal purchaser of the house in dispute we would be left in no doubt as to the implication in a decision relating to the second issue as to whether or not the house in dispute is the property of the entire Akua Anokyewaa family. In her judgment the trial judge leaves us in no doubt as to her decision on the two issues. As a reminder we reproduce the relevant portion of part of her judgment which is quoted above.

> *"From the foregoing therefore, I find that Kwesi Wono was only a nominal purchaser of KO 47, Kumasi. The real owner was Kwasi Teppa. That being the case, the defendants cannot say that the property is the self acquired property of Wono and that they as the immediate family should succeed. Kwasi Teppa and Amuzu were the children of Anokyewaa and they died intestate. Therefore I make a finding to that effect."* (The emphasis is mine.)

From the decision of the trial court what becomes clear is that Kwasi Wono is adjudged a mere nominal purchaser of the house in dispute while Kwasi Teppa is pronounced the real owner. The trial court then further expressed the effect of its decision. That is, since the house in dispute was not the self acquired property of Kwasi Wono his

immediate family, that is Amma Biyaa's family should not succeed to that property. Upon the death intestate of Kwasi Teppa, the real owner of House No. KO 47, his self acquired property including the house in dispute becomes the property of the entire Akua Anokyewaa's family. We think this adequately disposes of the supposed ambiguity in the trial court's judgment in respect of the first leg of the plaintiff's claim which the majority judgment of the Court of Appeal commented upon.

It is the trial court that has the exclusive right to make primary findings of fact which would constitute building blocks for the construction of the judgment of the court where such findings of fact are supported by evidence on the record and are based on the credibility of witnesses when the trial tribunal has had the opportunity and advantage of seeing and observing their demeanour and has become satisfied of the truthfulness of their testimonies touching on any particular matter in issue. In the case of Cross v. Hillman Ltd. [1969] 3 WLR 787 at 798, C.A. Lord Widgery cautioned that an appellate court *"... which sees only the transcript and does not see the witnesses, must hesitate for a very long time before reaching a conclusion different from the trial judge as to the credibility and honesty of a witness".* The appellate court can only interfere with the findings of the trial court if they are wrong because (a) the court has taken into account matters which were irrelevant in law, (b) the court excluded matters which were critically necessary for consideration, (c) the court has come to conclusion which no court properly instructing itself would have reached and (d) the court's findings were not proper inferences drawn from the facts. See the case of Fofie v. Zanyo [1992] 2 GLR 475. However, just as the trial court is competent of make inferences from its specific findings of fact and

arrive at its conclusion, the appellate court is entitled to draw inferences from findings of fact by the trial court and to come to its own conclusions. See also Kofi (Oppong) v. Fofie [1964] G.L.R. 174, S.C.; Praka v. Ketewa [1964] G.L.R. 423, S.C.; Azagba v. Negov [1964] G.L.R. 450, S.C.; Asibey III v. Ayisi [1973] 1 G.L.R. 102. In Adorkor v. Gatsi [1966] G.L.R. 31 at 34, S.C., the Supreme Court summed up appellate powers as follows:

> "The law governing this is that while findings of specific facts are within the competency of the trial court alone, a finding of fact which is an inference to be drawn from specific facts found is within the competency of an appeal court no less than the trial court; in other words, an appeal court is in as good a position as the trial court to draw inferences from specific facts which the trial court may find."

What the Court of Appeal set aside in the Fofie v. Zanyo case (supra) were not inferences draw from facts but the very findings on specific facts of the trial judge. This court therefore ruled that since the conclusions of the trial court were supported by the evidence, most of which were supplied by the plaintiff and his witnesses there was no lawful warrant for the Court of Appeal to differ from the findings of the trial court.

Unfortunately what the Court of Appeal set aside in the instant appeal were not inferences drawn from the facts arrived at by the trial court but the very crucial finding of fact upon which its final decision was based. In coming to the conclusion that Kwasi Wono was a mere nominal purchaser of the house in dispute the trial court took into account the evidence adduced in support of the plaintiff's case to the effect that following the purchase of the house in the name of Kwasi Wono, he had nothing to do

with that house and he did not have the benefit of living in that house immediately. Right from the onset it was Kwasi Teppa, the real owner of the house in dispute who went to occupy the house with his brothers and their families. It was not until the Kwasi Wono became successor to the estate of Kwasi Teppa, his maternal uncle that he went to live in the house in dispute.

Now let us look at how the majority decision of the Court of Appeal dealt with the finding of fact by the trial court to the effect that Kwesi Wono was a mere nominal purchaser of the house in dispute. In the first place part of the majority judgment of the Court of Appeal quoted above intimates that "the finding … was not founded on solid evidence." It would be expected that the majority decision of the Court of Appeal would have gone on to demonstrate how wrong the trial court went in arriving at its decision that Kwasi Wono was a mere nominal purchaser of House No. KO 47, Kumasi, the real owner being Kwasi Teppa. However in conclusion, the majority decision of the Court of Appeal held that Kwasi Wonoo was both the legal and beneficial owner of House No. KO 47, and on his death intestate, the persons entitled to succeed to that house are members of his immediate family. Thus the Court of Appeal set aside the primary finding of fact, which the trial court arrived at in exercise of its exclusive jurisdiction without demonstrating how the trial court went wrong. In the case of Praka v. Ketewa [1964] GLR 423 this court held that where an appellate 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. In our opinion since the Court of Appeal did not demonstrate how the trial court went wrong in its decision to set aside the finding of the trial court that Kwesi Wono was a nominal purchaser that decision is without legal basis. For the reasons given in this judgement we allow the appeal, set aside the judgment of the Court of Appeal and enter judgment for the plaintiff.

B. T. ARYEETEY
JUSTICE OF THE SUPREME COURT

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