IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA – GHANA A.D. 2014

CORAM: ATUGUBA, JSC (PRESIDING)
ADINYIRA (MRS), JSC
YEBOAH, JSC
GBADEGBE, JSC
AKOTO-BAMFO,(MRS) JSC

CIVIL APPEAL
No. J4/8/2013

19TH MARCH, 2014

1. ARMAR NMAI BOI ....
2. LARYEA NMAI BOI
3. TELEY NMAI BOI

PLAINTIFFS/RESPONDENTS/ RESPONDENTS

VRS

1. ADJETEY ADJEI ....
2. AMAR AMARTEY
3. AYORKOR KOMEY
4. ASHITEY
5. PATTERSON
6. MADAM KORKOI
7. ATAA KWASHIE
8. MADAM KAI ADJETEY
9. NAKO OCANSE
10. AUNTIE KORKOI
11. ATEI NYE
12. HAWA
13. MR. NORTEY KING

DEFENDANTS/APPELLANTS/ APPELLANTS

J U D G M E N T

SOPHIA ADINYIRA (MRS.) JSC:

This is an appeal from the judgment of the Court of Appeal, Accra dated 16 February2012. The Plaintiffs/Respondent /Respondent (Plaintiffs), began an action before The High Court Accra on 17 May 2007, against the Defendants/Appellants/Appellants (Defendants) jointly and severally for the following reliefs:

a) A declaration of title to all that piece or parcel of land situate lying and being at North Teshie and bounded on the North by one Mr. A. Laryea's land measuring 900 feet more or less on the South by A. Kanton's land measuring 900 feet more or less on the East by the Vendor's land measuring 400 feet more or less and on the Westby the Vendor's landmeasuring 900 feet more or less and covering an approximate area of 8.2 Acres.
b) Recovery of possession
c) Damages for trespass
d) Perpetual injunction restraining the Defendants, their servants, agents, workmen and all those claiming through them from entering on to the land in dispute and carrying out any construction works on

the land or interfering with the land in dispute in any manner whatsoever.

The Plaintiffs by their pleadings claimed that the land in dispute was acquired in their names by their late father in 1961 from Nii Klu Din the then acting Mankrado of Teshie and an indenture evidencing the sale was executed and registered as No. 3825/1985. They claimed they entered into possession and exercised acts of ownership over the land by fixing corner pillars and constantly weeding it and warding off trespassers.

The Plaintiffs stated further that they applied for and obtained a Land Title Certificate from the Lands Title Registry in 2007. They allege the Defendants have wrongfully entered portions of the land and have put up unauthorized structures and have refused to quit.

The Defendants denied the claim and countered that the land could not have been purchased in 1961 in the Plaintiffs' name as two of them were minors and one was unborn then. The Defendants claimed they acquired their lands from the Tsie We Family of the Kle Musum Quarter and they have been in undisturbed possession for periods over 12 years as a result the Plaintiff action was not maintainable by reason of laches and

acquiescence and the Limitation Decree, NRCD 54.They also pleaded that the Land Title Certificate was obtained by fraud and mistake.

The Plaintiffs in their Reply filed on 12 December 2007 stated in paragraph 4 that their late father sued the Defendants before the elders of the Kle Musum Quarter and then before the CDR in 1981 and in all these cases it was found that the Defendants have trespassed on their land.

The High Court upheld the Plaintiffs' claim and granted all their reliefs. The Defendants being dissatisfied filed an appeal before the Court of Appeal on the grounds that:

i. The learned trial Judge erred in failing to hold that the Plaintiffs' action is statute barred,
ii. The learned trial Judge failed to adequately consider the Defendants' case.
iii. The learned trial Judge erred in upholding the Plaintiffs' claim.
iv. The learned trial Judge erred in failing to hold that the Plaintiffs procured their Land Certificate through fraud.
v. The Judgment is against the weight of evidence.

The Court of Appeal only considered the first ground of appeal and held in favour of the Plaintiffs. The Court of Appeal went on to hold that the appeal

was unmeritorious and having come to that conclusion, it was unnecessary to discuss any of the other grounds of appeal.

The Plaintiffs have therefore filed this further appeal to the Supreme Court on the grounds that:

a) The Court of Appeal erred in holding that the Plaintiffs /Respondents' action was not barred by the Limitation Act, NRCD54.
b) The Court of Appeal erred in failing to make a determination on all the other grounds of appeal argued apart from the ground on limitation.
c) The Court of Appeal erred in failing to hold that the Plaintiffs /Respondents procured their Land Certificate through fraud.
d) The Judgment is against the weight of evidence.

From the grounds of appeal filed before the Court Appeal and repeated before us, as well as the statement of case of the parties, the salient issues that arise for the determination of the appeal before this Court are:

1) Whether the Defendants were in adverse possession for a period of over 12 years and as a result the Plaintiff's action is caught by the statute of limitation.

2) Whether the Land Title Certificate was obtained by fraud; and

3) Whether the Defendants are entitled to their counter claim.

The ground of appeal relating to adverse possession

Section 10of the Limitation Decree, 1972, NRCD 54 provides as follows:

"10. Recovery of Land

(1) A person shall not bring an action to recover a land after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to a person through whom the first mentioned claims to that person.

(2) A right of action to recover land does not accrue unless the land is in the possession of a person in whose favour the period of limitation can run.

(3) Where a right of action to recover land has accrued, and before the right of action is barred, the land ceased to be in adverse possession, the right of action does not accrue until the land is again taken into adverse possession.

(4) For the purpose of this Act, a person is in possession of a land by reason only of having made a formal entry in the land.

(5) For the purposes of this act, a continual or any other claim on or near a land does not preserve a right of action to recover the land.

(6) On the expiration of the period fixed by this Act for a person to bring an action to recover land, the title of that person to the land is extinguished.

(7) For the purpose of this section **"adverse possession"** means possession of a person in whose favour the period of limitation can run."

The Plaintiffs stated in Paragraph 5 of their statement of claim that:

"5. The Plaintiffs say that soon after the purchase they entered into possession and exercised overt acts of ownership over this land by fixing corner pillars thereon, constantly keeping it free of weeds and warding off trespassers."

The Defendants in Paragraphs 4, 5, and 6 of Amended Statement of Defence stated:

"4. Defendants deny paragraphs 5 of the statement of claim and say that after they had acquired their respective parcels of land from the Tsie We Family of the Kle Musum Quarter they have in undisturbed possession of same for periods ranging from 12 years and above.

5. Defendants say in further answer of the said paragraph 5 that they have all developed their lands without any let or hindrance and have been living thereon and have been paying bills in respect of same for several years on.

6. Defendants will therefore contend that the Plaintiffs' action is not maintainable by reason of laces and acquiescence and the Limitation Decree, NRCD 54."

The Plaintiffs in their Reply stated in paragraphs 4 and 5 that:

"4. The Plaintiffs deny paragraph 4 of the statement of defence and in reply say that during the lifetime of their late father he sued the Defendants in respect of this land. First before the elders of the Kle Musum Quarter and secondly the C.D.R during the time of the 1981 Revolution and in all these cases they found that their late father had a valid registered document covering the land and that the defendants were trespassers and should quit the land but they failed to quit the land and continued to stay there by force.

5. The Plaintiffs say further that the Kle Musum Wulomo or Fetish head also gave them notices to quit the land but they again failed to quit."

The Court of Appeal in dealing with this ground of appeal upheld the Plaintiff's plea of an arbitration award binding on the Defendants. The reasoning of Kusi Appiah JA delivering the judgment of the Court was:

"To resolve the issue whether or not the learned trial judge erred in law when he failed to hold that the Plaintiffs were caught by Section 10(1), (5) and (6) of the Limitation Act, I think it is necessary to examine the nature of the defendant's occupation on the disputed land. The crucial question is: Can the defendants' occupation on the disputed land amount to adverse possession? In this case the evidence on record indicates that the defendants were sued by the plaintiffs' late father in respect of the subject property before the Elders of Kle Musum Quarter and the CDR in 1981.

It is also not in dispute that in both cases the arbitrators found the defendants to be trespassers and ordered them to vacate the land but they failed so to do and continued to stay on the land by force.

Such occupation would not qualify as adverse possession. ...Consequently we hold that the legal rights the defendants were seeking to be protected under Section 10 (1) of the Limitation Act supra did not really exist. In the result, the contention of the defendant that the plaintiffs claim was statute barred was grievously misconceived and the trial judge was right in holding so."

It is true that until by length of time the Limitation Act shall have conferred title on a squatter, he may be turned out by a legal process. It is therefore incumbent on us as a second appellate Court to analyse the whole record of appeal, take into account the testimonies and all documentary evidence adduced at the trial, so as to satisfy ourselves that on the balance of probability the conclusions of the court below was reasonable or amply supported by the evidence. See **Tuakwa v. Bosom [2001-2002] SCGLR 61**.

The 2nd Plaintiff, Layea Nmai Boi who gave evidence for himself and on behalf of his two siblings did not give any evidence on the arbitration that they pleaded. It was David Nii Adjetey Adjei, PW1, who during cross-examination mentioned a case before a CDR. At page 35 of the record is the following excerpt:

"Q. The defendants have not trespassed on plaintiffs land

A. Plaintiffs' father told me some people had entered on his land and sent them to the CDR

Q. Were you present at the CDR

A. That is what he told me

Q. The defendants never appeared before any CDR

A. That is what the owner told me

Q. Did he tell you these are the defendants who[m] he sent to the CDR

A. I don't know.

Q. Your evidence is not true that the land is for the plaintiff

A. It is correct."

On the part of the Defendants, Sowah Nortey Kumah, the 13th Defendant who gave evidence for himself and the 12 other Defendants, denied being summoned for any arbitration. He said in his evidence in chief, at page 43 of the record of proceedings, categorically that:

> *"We have not been summoned before by the Kle Musum Quarter at (sic) CDR. No motion to quit has been served on us"*

This piece of evidence was unchallenged.

From the above excerpts it is clear that the Plaintiffs were unable to lead the needed evidence to prove the existence of a valid arbitration between their father and the defendants or their privies concerning their occupation of the land in dispute. PW1's account is mere hearsay; he did not even know

whether the defendants were the persons that the plaintiffs' father said he sued before the CDR.

We are therefore surprised by the conclusion reached by their learned lordships on this issue. What their Lordships referred to in their judgment as evidence is not evidence but the pleadings by the Plaintiffs in paragraphs 4 and 5 of their Reply referred to above; which even the Plaintiffs by themselves did not recite when giving evidence. It is trite law that pleadings are not evidence. To hold otherwise negates the requirements of proof as provided in the Evidence Act and the well-known cases of **Majolagbe vs. Labi [1959] GLR 190;** and **Zabrama v. Segbedzi [1991] 2GLR 221.**

The finding by the Court of Appeal is not supported by the evidence. In the circumstances we hold that the Court of Appeal erred in holding that there was a valid arbitration upon which they gave judgment for the Plaintiffs. We accordingly reverse that finding.

Having disposed of the issue on arbitration we now turn to the issue of adverse possession.Adverse possession must be open, visible and unchallenged so that it gives notice to the legal/paper owner that someone is asserting a claim adverse to his.

The Defendants by their pleadings and evidence said they were in effective occupation of the land in dispute. They have built houses and structures on the land in which they live and carry on their businesses respectively. They all claimed they acquired their respective parcel of land from the Tsie We family of the Kle Musum Quarter and have been in undisturbed possession from periods ranging from 12 years and above. DW1 Abraham Nmai Adjei gave evidence that the Tsie We family of Teshie gave the land to the Defendants.

The Defendants tendered some indentures and receipts of property rates and utility bills. In our view the only evidential value of the receipts and utility bills is to establish the residential addresses and occupation by the Defendants on the land in dispute. The indentures were also merely stamped and not registered. Hence the Defendants could not show any valid document of title to the land, except that they had customary grants from the Tsie We family and had been in uninterrupted occupation ranging over a period of 12 years.

The Plaintiffs on the other hand rely on an indenture Exhibit A and a Land Title Certificate No. GA. 20047, Exhibit B in proof of their ownership of the land. Even if, for purposes of argument, the Plaintiffs purchased the land in dispute in 1961, Exhibit A the indenture covering the sale, became effective when it was registered in 1985 [The genuineness of Exhibit A would be

determined later in the judgment] They were not in effective occupation apart from claiming they have put corner pillars on the land which they weeded at times and warded off trespassers.PWI said the land was bushy. From the period 1985 until 2007 when the Plaintiffs commenced their action the evidence shows the Defendants were in effective uninterrupted possession of a portion of the land in dispute.

Section 10 of the Limitation Act reflects substantially the provisions of English Statutes of Limitation and the common law. In **Treloar v. Nute [1977] 1 All ER 230 at 234** (cited by Atuguba JSC in **Djin v. Musah Baako [2007-2008] 1SCGLR 686 at 699)** Sir John Pennycuick stated thus:

> "It is in no doubt that under the 1939 Act as under the present law, *the person claiming by possession must show either (1) discontinuance by the paper owner followed by possession or (2) dispossession or, or as it is sometimes called 'ouster' of paper owner. Clearly possession concurrent with paper owner is insufficient.* On the other hand, where the other person claiming possession establishes possession in the full sense of exclusive possession that by itself connotes absence of possession on the part of the paper owner and I doubt if there is any real difference in the concept of taking possession and the concept of dispossession.
>
> The law as we understand it… is that if a *squatter takes possession of land belonging to another and remains in possession for 12 years to the exclusion of the owner, that represents adverse possession and accordingly at the end of 12 years the title of the owner is extinguished.* That is the plain meaning of the statutory provisions, which I have quoted and no authority has been cited to us. *The simple question is: did the squatter acquire and remain in exclusive possession?"*

In the circumstances assuming the Defendants' title is bad, their adverse possession of the land for a period of twelve years and over confers on them possessory rights by virtue of section 10 of the Limitation Act.

There is another issue that we have to deal with in relation to the Plaintiffs' contention that the Defendants were not in adverse possession. Counsel submitted that the Defendants erected their buildings on the land without obtaining building permits as required by Regulation 1 of the National Building Regulations 1995 L. I. 1630 as such the Defendants were in unlawful possession which cannot be validated by a defenseunder the Limitation Act.

We do not agree with this proposition as the failure to obtain a building permit before putting up a building has its own sanctions prescribed by law. On the facts of this case, we think the rights conferred by section 10 of the Limitation Act can be enjoyed by a person who remains in adverse possession of land over a period of 12 years irrespective of the fact that they entered the land and developed same without a building permit. The title conferred by the Limitation Act is prescriptive and is usually conferred on squatters who obviously cannot and would not apply for a building permit as their initial entry on the land is by way of trespass. Until by length of time the Limitation

Act shall have confirmed his title, the squatter may be turned out by legal process.

In our view the Plaintiffs were 'paper owners' who have been dispossessed by the Defendants who had built houses and were in effective and actual possession of a portion of the land. Some of the Defendants put up theirs as far back as 1959, 1971 1977, 1982, without let or hindrance from the plaintiffs. See page 39 of the record.

In terms of sections section 10(1) and (6) of the Limitation Act, 1972, (NRCD 54) an adverse possessor of land in relation to which the original owner's rights have been extinguished, gains a title equivalent to the title extinguished. See **GIHOC Refrigeration& Household Products Limited vs. Hanna Assi [2005-2006] SCGLR 459.**

Upon the evidence we find that the defendants having been in undisturbed possession of the land for a period of more than 12 years cannot be dispossessed by the Plaintiffs whose title has been extinguished by the operation of the Limitation Act. The Defendants are entitled to a declaration of possessory title. See GIHOC case **supra.**

We however declare that the possessory rights of the Defendants herein are restricted to only the portion that they have built on and occupied.

The interest acquired by prescription or the Limitation Act is an overridinginterest which is further protected under the **Land Title Registration Act, 1986, PNDCL 152.** See section 18of the Land Title Registration Act which provides:

18. Conclusiveness of the register.

1) The Land Register is conclusive evidence of the title of the proprietor of the land appearing on the register
2) *Subsection (1)* ***does not affect*** *a right or an interest in land acquired under the law relating to prescription or the Limitation Act, 1972,* but where title to registered land has been acquired under the law relating to prescription or the Limitation Act, 1972, *the registered proprietor shall hold the land on trust for the person who claim to have acquired that title.*[The emphasis mine]

Further,Section 46 (1) (f) and (g) of the same Act provides;

(1) Unless the contrary is recorded in the land register a land or an interest in *land registered under this Act is subject to any of the following overriding interests* whether or not they are entered in the land register as may from the time being subsist and affect that land or interest:

… … …

(g) *rights, whether acquired by customary law or otherwise, of a person in actual occupation of the land except where enquiry is made of that person and the rights are not disclosed;*

> *(f) subject to this Act, rights acquired or in the course of acquisition by prescription or under the Limitation Act. 1972.*[The emphasis mine]"

In **Klu v. Konadu Apraku [2009] SCGLR 741** at **746**, the Supreme Court held per Atuguba JSC that:

> "The trial judge found that it is the Plaintiff who put up the outhouse on the said land. In the circumstances, assuming his title from Nii Odai Ayiku IV the Nungua Manche is bad, yet his adverse possession of the said land for up to and even over twelve years confers on him possessory title by reason of the provisions in section 10 of the Limitation Act, 1972, NRCD 54. It should be noted that such acquisition of title prevails against a registered proprietor of land under the Land Title Registration Act, 1986, PNDCL 152, by virtue of section 18 (1) and (2) thereof."

Given the evidence on record, , we are of the view that the trial judge and the Court of Appeal erred in failing to hold the Defendants to be in adverse possessionfor more than a period of 12 years thus extinguishing the Plaintiffs' title if any in, the land in dispute.

From the foregoing we hold that the Plaintiffs' action is statute barred under Section 10(1) of the Limitation Act,1972, NRCD 54. The appeal succeeds on this ground.

The ground of appeal relating to whether the Plaintiffs procured their Land Title Certificate by Fraud and or mistake

Counsel submits that the Court of Appeal erred in failing to hold that the Plaintiffs procured their Land Certificate through fraud. He did not refer to the pleadings on mistake so we take it that he has abandoned that.

The Defendants pleaded in paragraphs 7, and 7(a) of their statement of defence that:

> 7. Defendants deny paragraphs 6, 11, 12, 13 and 14 of the statement of claim and say that Plaintiffs' application for registration of their land at the Land Title Registry and the Registration were all fraudulent.
>
> 7(a)
>
> PARTICULARS OF FRAUD
>
> 1) Failing to disclose to the Land Title Registry that the Defendants were in adverse possession of the land Plaintiffs were seeking to register.
> 2) Supporting the application for registration with a forged deed of sale.
> 3) Making the Chief Registrar of Lands and the Land Title Registry believe that the Plaintiffs have a registrable interest in the land occupied by the Defendants when indeed they have none.

Counsel submits that the indenture, Exhibit A that the Plaintiffs hold in respect of the disputed land that was used by them to procure the Land Title Certificate, Exhibit B. was a forged document. His reason being the Plaintiffs who on the face of the indenture were said to have executed the same on 22 December 1961 were either minors or unborn as at the date the said exhibit was executed.

Counsel for the Plaintiffs did not answer this point in his statement of case. In fact he could not as Laryea Nmai Boi, the 2rd Plaintiff's said in evidence that he was unborn then. He was born on 31 October 1964 and his elder sister was older than him by 5 years, so that the eldest of the Plaintiffs was 2 or 3 at the time Exhibit A was executed.

The evidence of the Plaintiff and PW1 that their father bought the land for them was accepted by the trial judge as an advance of a father to his children. This finding is an error in law, as on the face of the indenture, Exhibit A, the Plaintiffs were the purchasers who in 1961 signed and executed the document. Their father Ebenezer Nmai Boye only signed the jurat. This raises suspicion as the 2nd Plaintiff was not born and his siblings were at best toddlers in 1961 as according to his own evidence his elder sister is older by him by 5 years.

These matters smacks of a fraudulent manipulation of the process of obtaining a registered title to the land in dispute. The Plaintiffs even claimed the Plaintiffs father may have facilitated the fraud as he worked in the Lands Department then, but no evidence was led on that.

From the forgoing it is reasonable for this Court to infer that Exhibit A was obtained by fraud as the document could not have been executed in 1961 by the Plaintiffs. Fraud is well known to vitiate everything. Exhibit A is therefore declared a nullity. Accordingly the appeal succeeds on this ground.

The issue raised n this appeal is whether the Defendants are entitled to their counterclaim.

TheDefendants in their amended statement of defence counterclaimed for: 'An *order for the cancellation of Land Certificate No. GA 20047 issued in favour of the Plaintiffs by the Land Title Registry*."

Counsel submits that Exhibit A is fraudulent because it was not made by the Plaintiffs and as such the same could not be used to procure the Land Certificate.

Having made a finding that Exhibit A was obtained by fraud, this Court is duty-bound to quash whatever had been done on the strength of that fraud. See**In re West Coast Dyeing Industry LTD; Adams v. Tandoh [1984-**

86] 2 GLR 561 at 605; and **Frimpong v. Nyarko [1999-2000] 1GLR 429 at 437.**

The Land Certificate, Exhibit B that was issued by the Land Title Registry based upon Exhibit A, is also tainted, andhas to be set aside. **See Brown v. Quarshigah [2003-2004] SCGLR 930**and section 122(1) of the Land Title Registration Act, which provides:

122. Rectification by Court

> "(1) Subject to sub-section (2), the Court may order the rectification of the land register by directing that a registration where it is satisfied the cancellation or the amendment of the registration has been obtained, made or committed by fraud."

From the foregoing the Defendants are entitled to their counterclaim, accordingly the Court orders the Land Registrar tocancel the Land Title Certificate No. GA. 20047.

Obiter: By virtue of Section 18(2) of the Land Title Registration Act, had the Land Title Certificate been regularly acquired, the Plaintiffs would have held in trust for the Defendants the areas affected by the Limitation Act.

From the foregoing the appeal succeeds.

The judgment of the court of Appeal is reversed. The Plaintiff 's action is dismissed. Judgment is entered for the Defendants on their counterclaim.

(SGD) S. O. A. ADINYIRA (MRS)
JUSTICE OF THE SUPREME COURT

(SGD) W. A. ATUGUBA
JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

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