**IN THE SUPERIOR COURT OF JUDICATURE**
**IN THE SUPREME COURT OF GHANA**
**ACCRA- GHANA, A.D.2014**

**CORAM: ATUGUBA, J.S.C. (PRESIDING)**
**ANSAH, J.S.C.**
**ADINYIRA (MRS), J.S.C.**
**BAFFOE-BONNIE, J.S.C.**
**V. AKOTO-BAMFO (MRS), J.S.C.**

**CIVIL APPEAL**
**NO.J4/24/2014**

**28TH MAY 2014**

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| **ADDAE AIKINS**<br>C/O ROBERT FRANK ANSAH<br>BOX 05, 1516, OSU-ACCRA | **....** | **PLAINTIFF/APPELLANT /APPELLANT** |
| **VRS** | | |
| **DANIEL DAKWA**<br>WEST LEGON, ACCRA | **....** | **DEFENDANT/RESPONDENT /RESPONDENT** |

# JUDGMENT

## ATUGUBA, JSC

In this case the plaintiff/appellant/appellant hereinafter referred to as the plaintiff sued the defendant/respondent/respondent hereinafter referred to as the defendant, in the Land Division of the High Court, Accra for

(a) Declaration of title to land
(b) Recovery of possession of land lying at Dzorwulu, Accra as described in the schedule.
(c) Damages

In the schedule, the land is described as

> "All that piece or parcel of land situate at Dzorwulu, Accra and bounded on the North West by proposed road measuring 87 feet more or less, on the South East by vendors land measuring 85 feet more or less, on the North East by stool land measuring 60 feet more or less, on the South West by a measuring 20 feet more or less and covering an approximate area of 0.09 acre and is more particularly delineated on the site plan attached hereto and therein shown edged pink together with all appurtenances"

The plaintiff who was resident in Canada claimed to have acquired the land from Ernest Augustt, whose grantor Rebecca Ashiokai Nortey was granted the same by the Osu Stool in December 1961. The land was subsequently reduced in size by the Dzorwulu-Achimota road construction from 0.23 acres to 0.09 acres.

The defendant, for his part, claimed that he acquired his land, 0.17 acres, in or about 1984 from Mannan Mills who obtained the same also from the Osu Stool in July 1961.

As to these respective claims the trial judge distinctly found as quoted by the Court of Appeal per Ayebi JA at p.362 of the Record of Appeal as follows:

> "**I find from the evidence on the issue that the plaintiff and the defendant's piece of land evolved from two different grants separately made originally by the Osu Stool to two different grantees and further that the particular piece of land on which the defendant has put up the two storey building of 16 shops was the land he purchased from the**

**original grantee of the Stool, Mary Maanan Mills. The plaintiff's claim for title, in so far as it relates to that piece of land in possession of the defendant accordingly fails and I so hold**".

**The Appellate Judgment**

The Court of Appeal critically examined the findings of the trial judge with regard to the parties' competing claims to the disputed land at pp.371-372 of the Record of Appeal as follows:

"It is thus seen that Madam Mills's acquisition was earlier than Madam Nortey's by just six months. *And in the description of Madam Nortey's land, it is stated that she shared a common boundary with Madam Mills in the south. It is not* shown on the evidence where the Dzorwulu-Achimota road passed. But *it is clear from the despcription that the two women were neighbours from the onset. However while Madam Nortey lost a portion of her land that of Madam Mills remained intact.*

It is therefore crucial to determine that location of the land the plaintiff acquired from his vendor Ernest Augustt. The plaintiff set this issue down for determination when he posed the question whether or not the land of the defendant as per his grantor's document fell into the land acquired by the state and was taken over by Achimota to Dzorwulu motor road. I noticed counsel for plaintiff did not address the issue at all.

But then the trial judge painstakingly determined it from page 22 of the judgment and arrived at the conclusion I quoted at the beginning of this judgment. The site plans in the documents of Madam Mills (Exhibit 2) and Madam Nortey (Exhibit C) were drawn to the same scale. In Exhibit 2, *the grid line number 119100 passed through Madam Mills'* parcel of land. *Similarly the same grid line passed through defendant's land in the site* plan in Exhibit 1.

Taking Exhibit C, Madam Nortey's document for purposes of comparison, the 0.23 acre land the Osu Stool gave her, lies between the grid lines 39000 and 37000. *The 0.09 acre of land plaintiff acquired in 1984 from Ernest Augustt was what was left of this 0.23 acre of land so located.* For unexplained reasons, the grid line number 119100 passed through plaintiff's land as depicted on the site plan. And *the size of the land which is only 0.09 acre appeared to be the same as defendant's 0.17 acre land.*

This comparison shows that plaintiff cannot claim the disputed land as the remainder of Madam Nortey's land he acquired from Mr. Ernest Augustt. If this particular piece of land was identified to the plaintiff on the ground then he was misled into committing trespass against the defendant. In Exhibit E1, the composite plan drawn up by the surveyor for the Land Title Adjudicating Committee, it is shown that the grid line number 119100 passed through the land belonging to Madam Nortey and Madam Mills. I have my doubts that the surveyor was given Madam Nortey's document to work with. If he had that document, the conclusion he arrived at would have been completely different. *As concluded by the trial judge the issue of title to the same piece or parcel of land does not arise as between the two parties. That conclusion as I have demonstrated is amply supported by the evidence on record. We will not interfere with it*."(e.s)

This assessment of the evidence is buttressed by the clear fact that both parties claim that DW1, Shaibu Osumanu was a caretaker of the land for each of them though in his Reply the plaintiff initially denied that DW1 was a caretaker of the land. However DW1 was emphatic that he has been the sole caretaker of the land, initially for the defendant's grantor and later (since 1984) for the defendant himself and that only these persons have been in active developmental occupation of the disputed land, until the plaintiff's claim thereto in 2007.

Although there were a few slips in the evidence of DW1, they are technical in nature and consistent with the simple status of an illiterate long-standing caretaker of land. The discrepancies in the documentary evidence were also meticulously examined by the Court of Appeal and rightly held to be immaterial.

**Conclusion**

Although the appellant relied on other grounds of appeal we think that they can compositely be disposed of under the first ground of appeal, namely "The judgment of the trial High Court was against the weight of the evidence on record and their Lordships in the Court of Appeal erred in concluding that the said judgment was supportable by the evidence on record."

It is trite law that where an independent witness supports one party's case as against the other, that should, in the absence of strong reasons to the contrary settle the matter, See *Akoto II v. Kavege* (1984-86)2 GLR 365 C.A. A court has power to uphold but not to pervert justice. Consequently where the evidence in a case clearly supports a party's case a court is bound *ex debito justitiae* to give judgment in his favour, see *Hijazi v Oppong* (1965) GLR 558. Such was the defendant's case in this case. It is also settled that concurrent findings of fact should not in the absence of certain categorised exceptions, in short, for compelling reasons, be disturbed. See *Adu v. Ahamah* (2007-2008)1SC GLR 143.

For the foregoing reasons the appeal is dismissed.

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

**(SGD) J. ANSAH**
**JUSTICE OF THE SUPREME COURT**

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

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

**(SGD) V. AKOTO BAMFO (MRS)**
**JUSTICE OF THE SUPREME COURT**

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