IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA, A.D.2012

CORAM: ANSAH, J.S.C. (PRESIDING), J.S.C.

ADINYIRA (MRS), J.S.C.
DOTSE, J.S.C.
ANIN YEBOAH, J.S.C.
AKOTO-BAMFO (MRS), J.S.C.

CIVIL APPEAL

No. J4/53/ 2012

14TH NOVEMBER, 2012

ALHAJI LASISI TIJANI --- PLAINTIFF/RESPONDENT
/RESPONDENT

VRS

LT. COL. (RTD) THOMAS ACQUIE --- DEFENDANT/APPELLANT
/APPELLANT

J U D G M E N T

ANIN YEBOAH, JSC

On the 14/11/2012, we dismissed this appeal as unmeritorious and reserved our reasons. We now proceed to give our reasons for the dismissal of the appeal.

The plaintiff/Respondent/Respondent who for sake of brevity shall henceforth be referred to as the plaintiff commenced an action against the defendant/appellant referred to in these proceedings as the defendant.

The action was for: Declaration of title to house № 1.25, Tamale and for the usual ancillary reliefs of recovery of possession, mense profits, damages and perpetual injunction.

The basis for the action was that, on or about the 22nd of December 1988, the plaintiff bought the house in dispute from one Mad. Daiko Horgbayo Daitey whereupon she assigned all her interest in the house to the plaintiff.

It is not disputed that the said house was once the bona fide property of one Martey Korley Daitey the father of the plaintiff's vendor. In the Statement of claim, it was pleaded that the said Martey Korley Daitey who was a native of Big Ada at the time material to this action lived at Tamale. He once summoned his children and informed them of his willingness to relocate to his hometown and wanted to sell the house in dispute to enable him put up a house at Big Ada. He further made it clear to his children that if any of them could put up a house for him at Big Ada he would exchange the house in dispute for the Big Ada house.

By virtue of this offer, the plaintiff's vendor who was present at the meeting offered to put up the house at Big Ada for her father in exchange for the Tamale house which is the house in dispute. She proceeded to build the house at Big Ada to completion and same was handed over to her father whereupon her father also assigned her interest in the house in dispute to her.

In or about 1988 the said Mad. Dailo Horganyo Daitey assigned her interest in the house in dispute to the plaintiff by deed. The plaintiff thereupon requested the tenants to quit the premises and deliver up vacant possession. The tenants refused whereupon the plaintiff sued. The suit was initially against Madam Folo and Mary Donkor Tulashie

both of Tamale, who were directly related to the plaintiff's vendor and resisted all attempts by the plaintiff to take delivery of the property in dispute. The two defendants who were sued by the plaintiff were later substituted by the defendant herein who claims to be the uterine brother of the plaintiff's vendor.

The record of proceedings shows that the defendant herein was substituted for the original defendants in his capacity as the head of family. The case for the defendant also appeared simple as captured in his statement of defence and counterclaim and the evidence led in court. The statement of defence and counterclaim was amended several times at the trial court but the gravamen of his defence stood.

According to the defendant, the house in dispute was the self-acquired property of his late father, Martey Korley Daitey, a native of Big Ada. After the death intestate of the said Martey Korley Daitey the property in dispute, by the custom of Ada became family property to be enjoyed by his children. He further contended that his father at no point in time ever assigned or transferred his interest in the disputed house to the plaintiff's

vendor and that any assignment made by the said Martey Korley Daitey was allegedly made by the plaintiff's vendor when she visited her father at the hospital and procured his thumbprint to transfer his interest in the house in dispute. From the nature of the defence, it appeared that the defendant was alleging fraud against the plaintiff's vendor in respect of the transaction which assigned the disputed house to the plaintiff's vendor. Based on the allegations he proceeded to lodge a counterclaim for declaration of title, declaration that the purported transfer of the house by his late father to the plaintiff's vendor be declared null and void and for cancellation of the deed of assignment and other reliefs.

At the trial court, the issues involved appeared to be simple but in a case in which the defendant was alleging fraud perpetrated by the plaintiff's vendor, it was expected that the plaintiff's vendor should have been joined to the suit. However, the plaintiff's vendor was called as a witness for the plaintiff as PW1 at the trial court.

The defendant after giving evidence closed his case without calling further evidence. On record several documents were tendered by both parties to bolster their respective case. On 31/07/2009 the learned High Court judge at Tamale entered judgment against the defendant, dismissed his counterclaim and granted all the reliefs sought by the plaintiff.

The trial court considered the documentary evidence in detail, especially Exhibit "A" which was the title deed covering the house, the search certificate and other relevant document like Exhibit "I" [folio 12 a] from the Lands Commission, Northern Region, Tamale. The said Exhibit "I" contains all the available documents covering the disputed house which was in custody of The Lands' Commission, Tamale.

The defendant lodged an appeal against the decision of the High Court, Tamale to the Court of Appeal, Kumasi, on twenty-one grounds to seek the reversal of the trial court's judgment. He later filed nine further grounds of appeal some of them being clearly repetitive. The Court of Appeal in a well-reasoned judgment dismissed the appeal as without merits.

Before this court learned counsel for the appellant has argued five grounds of appeal to seek the reversal of the judgment of the Court of Appeal, Kumasi. The grounds of appeal are as follows:

(i) (a) The Court of Appeal misdirected itself by non-direction by failing to direct its attention to the issue of the equitable doctrine of "NOTICE" raised by the plaintiff/respondent/respondent and to determine the same upon the evidence in the Record of Appeal.

(b) The Court of Appeal misdirected itself by non-direction when they failed to direct their minds to the legal issue of whether or not Ex.2 Folio 12A, Statutory Declaration, is a conveyance capable of transferring title in land and to determine the same.

(c) The Appeal Court erred in law when, after the close of PW3's evidence in Accra they expected the Appellant to have led evidence to disprove that PW3 build a house at Big Ada for her father for 1.25, Tamale.

(ii) The Judgment is against the weight of evidence.

(iii) The Appeal Court failed to consider the case of the Defendant/Appellant/Appellant adequately.

(iv) The Appeal Court fell into the same errors as the trial court when they also held erroneously, that Ex.2 Folio 12A is one of the documents referred to in paragraphs13,14 and 15 of Defendant's Statement of Claim and Counter-Claim

In arguing the ground that the judgment is against the weight of evidence, learned counsel for the appellant copiously subjected the entire evidence on record to extensive review. He sought to draw this court's attention to discrepancies in the evidence of the plaintiff and his witnesses to submit that the evidence was unworthy of belief.

Indeed, the discrepancies complained of in our view were very minor and did not appear to discredit the plaintiff and his witnesses in any way. It has been the settled proposition of law, that, an appellant who complains that a judgment is against the weight of evidence assumes the burden to demonstrate that if the lower court had considered the evidence carefully it would have come to a different conclusion.

This is the second appellate court before which this ground has been canvassed to invite us to reverse the findings of facts made by the trial court and affirmed by the first appellate court, that is, the Court of Appeal. It has been said several times in civil appeals that the Supreme Court as a second appellate court should be slow in reversing findings of facts made by the trial court which were concurred in by the Court of Appeal. The onus is thus on the appellant to demonstrate clearly that the findings were perverse and unjustified. See OBENG V ASSEMBLIES OF GOD CHURCH, GHANA [2010] SCGLR 300, ACHORO V AKANFELA [1996-97] SCGLR 209 and others.

In this appeal, learned counsel in an attempt to demonstrate that the findings made by the High Court and concurred in by the Court of Appeal were perverse pointed out very minor discrepancies in the evidence which were clearly inconsequential and did not go to discredit the plaintiff and his witnesses in anyway whatsoever. To reverse concurrent findings of facts by virtue of very minor and irrelevant discrepancies in the evidence would be doing injustice to the two lower courts.

In this appeal, the crucial evidence on record was from PW3, Daiko Horgbayor Daitey and one Emmanuel Daitey who once acted as the caretaker of the house in dispute. These witnesses oral evidence was corroborated by the mass of documentary evidence from the official files of the Lands Commission, Tamale.

In our respectful view the learned trial judge's findings were amply supported by the evidence on record as he proceeded to give reasons for acceptance of one evidence against the other. See IN RE ARYEETEY (DECD) ARYEETEY V OKWABI [1987-88] 2 GLR 44 CA.

As the findings as to the grant to the respondent's grantor were supported by evidence, it would be wrong for us to set aside the judgment of the Court of Appeal on this ground which is clearly unmeritorious.

The second ground of appeal which was equally copiously argued states thus: "The Court of Appeal erred in law when after the close of PW3's evidence in Accra, they expected the appellant to have led evidence to disprove that PW3 built a house at Big Ada for her father for I. 25, Tamale. It has been said in several decided cases that in land cases the plaintiff who goes to court for declaration of title assumes the onus of proof. This is the principle of law but in course of the trial the evidential burden may

shift to the defendant. It is not the case that in every action for declaration of title the plaintiff must prove everything. The plaintiff must certainly prove his title and in some cases the mode of acquisition.

In this case there was no dispute that the respondent purchased the house from PW3 whose father built the house. PW3 gave evidence that she built a house for her father at Big Ada, in exchange for the house in dispute. This evidence on record was believed by a trial judge, that indeed PW3 built a house for her father at Big Ada.

The trial judge had discretion to accept or disbelieve that piece of evidence. Since that evidence was believed by the learned trial judge, and satisfactory reasons were given for accepting the evidence, the duty to disprove it was cast on the appellant to discredit this evidence of PW3 either through cross-examination or by any other evidence. For it is the law that in course of the trial the evidential burden which rests on party may shift to his adversary.

In any case, the law does not require a party to prove his case with absolute certainty in Civil Proceedings. A court must, however, satisfy itself that the evidence led on a particular issue is proved in accordance with the requisite standard required by law. In HAWKINS V POWELLS TILLERY STEAM COAL CO. LTD [1911] 1 KB 988 AT 996, Buckley LJ said:

> "When it is said that a person who comes to court for relief must prove his case; it is never meant that he must prove it with absolute certainty. No fact can be

proved in this world with absolute certainty. All that can be done is to adduce such evidence as that the mind of the tribunal is satisfied that the fact is so. That may be done either by direct evidence or by inferences from facts. But the matter must not be left to rest in surmise, conjecture or guess" [emphasis mine]

We have perused the evidence on record and found that both the trial High Court and the Court of Appeal were convinced that the grantor of the respondent (PW3), indeed put up a house at Big Ada in exchange for the house in dispute. The burden was squarely on the appellant to displace the findings which he could only do if he is able to point out any evidence which were led but not considered or that the two lower courts drew wrong inferences from admitted facts or relied on inadmissible evidence to enter judgment for the respondent. This, he has woefully failed to do in this second appeal. See OBRASIWA II & OTHERS V OTU & OR [1996-97] SCGLR 618

The other ground which was argued and demands attention is couched thus in ground 3(iv) – "The Appeal Court fell into the same errors as the trial court when they also held, erroneously, that EX2 Folio 12A is one of the documents referred to in paragraphs 13,14 and 15 of defendant's statement of defence and counterclaim"

Learned counsel for the appellant has attacked Exhibit 2 and its contents on several grounds. The argument canvassed under this ground of appeal appears to be a repetition of the arguments before the Court of Appeal. It must be pointed out that Exhibit 2 and its contents were the official records covering the disputed house which was in the custody of the Northern Region Lands' Commission secretariat.

It was not tendered by PW3 but by the officer from Lands' Commission. It contained all the transactions relating to the house in dispute. Learned counsel had the opportunity

at the trial court to subject the official (PW1) to extensive cross-examination if he so wished. In matters of this nature in which parties have put down all the contractual materials in the form of documents, the party who disputed the documentary evidence tendered without objection from him must demonstrate that the documentary evidence is not credible. Counsel for the appellant who was counsel at the trial court never objected to the tendering of any of the documents covering the transactions relating to the house in dispute.

Indeed the Conveyancing Act, 1973, NRCD 175 required the transactions in this case to be in writing. This was complied with to the letter and same was registered under the Lands' Registry Act, 1962 at the Lands' Commission, Tamale.

The Lands' Commission as a statutory entity is enjoined to register registrable documents relating to land as it did in this case. All the documents tendered from its custody never suffered from any legal defects whatsoever. It would therefore be wrong for a court of law to allow extrinsic evidence offered by the appellant to contradict the deed of assignment on the grounds that his late father's thumbprint was procured through illegal means by PW1 when no evidence was led on that to discredit the document. See DONKOR V MAYE KOM MEHWE ONYAME ASSOCIATION [2007-2008] SCGLR 179 and YAA KWESI V ARHIN DAVIS [2007-08] SCGLR 580. MONGANIE v YEMOH [1977] IGLR 163 CA

The burden of proof on the allegation touching on the thumbprint of the said Martey Korle Daitey was squarely on the appellant. The appellant called no evidence at the

trial court to compare the thumbprint of the deceased to corroborate the evidence of the appellant. Under the circumstances the learned trial judge was left unassisted to ascertain whether the allegation made by the appellant was true.

The evidence required to prove the thumbprint of the father of PW3 obviously should have come from someone to subject his thumbprints to forensic examination. That would have been the best evidence under the circumstances but the appellant merely repeated the allegations on oath without calling any evidence touching on the thumbprint. The law required more than mere allegations. See ZABRAMAH V SEGBEDZI [1991] 2GLR 221 CA.

Since no credible evidence was led to contradict the transaction transferring the house to PW3 the learned judge and the Court of Appeal were both right to dismiss the appeal on this ground.

Other grounds which were argued appear to be repetition of the first two grounds attacking the facts of the case. It appears learned counsel could not demonstrate that the findings were perverse.

It was for the above reasons that we dismissed the appeal on 14-11-12.

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

(SGD) ADINYIRA (MRS)
JUSTICE OF THE SUPREME COURT

(SGD) J. V. M. DOTSE
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