IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA AD 2015

CORAM: WOOD C J(PRESIDING)

DOTSE JSC

ANIN YEBOAH JSC

GBADEBE JSC

BENIN JSC

CIVIL APPEAL

NO. J4/58/2013

3RD JUNE, 2015

CELESTINE KUAGBENU : PLAINTIFF /APPELLAT/RESPONDENT

VRS.

CECILIA SPENCER : DEFENDANT/RESPONDENT/APPELLANT

JUDGMENT

GBADEGBE JSC:

This is an appeal from the decision of the Court of Appeal by which the previous decision of the trial High Court in the action herein was reversed and judgment entered for the plaintiff (the respondent herein) against the defendant (the appellant herein). In these proceedings, the appellant seeks a reversal of the decision of the Court of Appeal, and as the said decision had earlier on reversed that of the trial court, the question for our decision is whether the judgment of the Court of Appeal is supported by the admitted evidence on the record. In

particular, we are required to determine if the decision of the trial High Court has suffered from a wrong conclusion on the effect of the evidence and or was perverse or unreasonable. As our task is in the nature of a re-hearing, we are carefully to review the evidence contained in the record of appeal for the purpose of determining whether the appellant's complaint to us based on the grounds of appeal contained in the notice of appeal by which these proceedings were initiated are well made out.

In their decision, the learned justices of the Court of Appeal faulted the learned trial judge for acting on impressions allegedly made by him at an inspection of the locus to determine the question as to which of the rival versions placed before him was more probable. An examination of the record of appeal before us reveals that beyond the said impressions which apparently tilted the learned trial judge's opinion in favour of the appellant's case, the effect of the evidence pointed to the conclusion reached by the learned justices of the Court of Appeal at pages 247 – 248 of the record of appeal that the space between the contesting parties is the road which unfortunately had been fenced by the appellant in an apparent exercise of her right of ownership to the property. The evidence also established that the appellant had occupied a larger area than that contained in her site plan. As the evidence on the record pointed to these clearly established facts, it is right to say that in the absence of any legitimate reason that might preclude the trier of fact from accepting them, the respondent herein had satisfied the evidential burden placed on her under the Evidence Act, (NRCD 323) and was entitled to judgement.

Although the learned trial judge appeared to have acted upon impressions gathered by him at the inspection of the locus to come to a different conclusion the record of appeal is silent on any such inspection. Indeed, even though the record of appeal shows that the matter herein was adjourned on two occasions namely 28 July and 08 August 2008, for a visit to the locus in quo, no such inspection ever took pace. The effect of the absence of any such inspection compels us to the inference that the learned trial judge had acted on extraneous and indeed, inadmissible evidence in preferring the case of the appellant to that of the respondent. When the said illegal evidence is expunged from the record of appeal, as indeed the learned justices of the court below were entitled to do by virtue of the rules of evidence and in particular section 8 of the Evidence Act, 1975, (NRCD 323), we are left on the crucial issue of fact which the trial court had to determine regarding the location of the disputed land with the

evidence of the surveyor from the Town and Country Planning Department and that of the town planning officer. The pieces of evidence testified to by these independent witnesses were derived from documents which were undisputed and tended to render their evidence quite worthy of belief. Further, the unchallenged pieces of evidence testified to by the said persons dealt with matters in the realm of specialised knowledge, and had the mark of reliability. As the reliance placed on his own impressions by the learned trial judge was for the very clear reasons stated by the Court of Appeal in error, the irresistible conclusion is that the respondent's land did not fall within the road as alleged by the appellant and that the appellant had not only transgressed the limits of her own land but also occupied an area that properly speaking was a road reservation. We venture to say that the said error by the learned trial judge was an instance of justice that had miscarried and required to be corrected.

On these facts, the learned justices of the Court of Appeal were right to have interfered and substituted the proper findings for that of the learned trial judge. In our opinion, having excluded that illegal evidence from the record of appeal, it was reasonable for the learned justices to conclude in view of the statutory requirements on the burden of proof contained in sections 10 to 15 of the Evidence Act, 1975 (NRCD 323),that the plaintiff had succeeded in satisfying the court that the version of the matter placed by her before the court was more probable than its non-existence; for which reason she was entitled to have the decision of the trial High Court to the contrary set aside as having been made unreasonably and or perversely. See: Barclays Bank Ghana v Sakari [1996-97] SCGLR 639

For the above reasons, the appeal herein fails and we proceed to dismiss it. The result is that the decision of the Court of Appeal dated 23 March 2011 is hereby affirmed and the plaintiff's claim as endorsed on the writ of summons is hereby granted.

Accordingly, we award to the respondent the sum of GH¢5000.00 being damages for trespass.

(SGD) N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT

(SGD) G. T. WOOD (MRS)

CHIEF JUSTICE

(SGD) V. J. M. DOTSE

JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

COUNSEL

B. B. QUAYE ESQ. FOR THE DEFENDANT/RESPONDENT/APPELLANT.

SAMUEL CODJOE ESQ. (WITH HIM JAMES MENSAH KULLEY FOR THE PLAINTIFF/ APPELLANT/RESPONDENT .

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