IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA

CORAM: BROBBEY, JSC (PRESIDING)
ANSAH, JSC
OWUSU (MS), JSC
YEBOAH, JSC
ARYEETEY, JSC

CIVIL APPEAL
NO. J4/13/2010
29TH JUNE, 2010

EDWARD AWUKU (SUBSTITUTED BY
MRS. DINAH AWUKU)
C/O SENA CHAMBERS
1ST FLOOR TOTAL HOUSE, LIBERIA ROAD
ACCRA ... 1ST CLAIMANT/APPELLANT/
APPELLANT

VRS

1. BRYNE YAW ATTIGAH ... 2ND CLAIMANT
2. EMMANUEL KOFI TETTEH
C/O CONCA ENGINEERING
NIMA HIGHWAY, MAMOBI
ACCRA ... 3RD CLAIMANT/RESPONDENT/
RESPONDENT

J U D G M E N T

ANSAH, JSC:-

This is an appeal from the judgment of the Court of Appeal, coram, E.K. Piesare (presiding), S.K. Marful Sau and Mariama Owusu JJA, dated 13th March 2008, in

which the court dismissed the appeal against the judgment by the High Court which had set aside the judgment of the trial Land Title Tribunal.

It is against this judgment that the present appeal has been brought to us on the following grounds of appeal, namely that:

"i) The Court of Appeal misdirected itself and caused a substantial miscarriage of justice when it held that the grant to the appellant was null and void because the caretaker of Osu stool lands had no authority to grant Osu stool land when the case of the Appellant was that the caretaker in his position as an agent of the stool granted the land to Appellant's grantor which grant was ratified/endorsed concurrently with the execution of the document by his principal the then Osu Mantse Nii Dowuona V.

ii) The Court of Appeal misdirected itself in giving effect to the unregistered title of the Respondents when there was clear evidence on record that the Appellant had a prior registered document of title.

iii) The Court of Appeal failed to take recognizance of the legal effect of the fact that at the time of the purported grant by the Osu Stool to the Respondent the Appellant, a subject of the stool had been in effective occupation of the land and therefore there could be no alienation of the land without his consent and concurrence.

iv) The Court of Appeal misdirected itself in giving effect to the cancellation by the Land Title Registrar of the land title certificate duly obtained by the Appellant prior to the reference of the dispute to the Land Title Adjudicating Tribunal, when the enabling statute did not give the Land Title Registrar power to do so *suo motu*.

v) Further grounds of appeal would be filed upon the receipt of the Record of proceedings."

None has so far been filed, despite this intimation.

Before delving into the merits of the appeal I have decided to give a resume of the facts that culminated in the appeal. They were that following conflicting claims by the 1st, 2nd and 3rd claimants to the area in dispute, the

Chief Registrar of Lands referred the case to the Land Title Adjudicating Committee Tribunal, Accra, for adjudication under Sections 22 and 23 6 (b) of the Land Title Registry Law, PNDCL 152. On the evidence the land in dispute was at Maamobi which was indisputably on Osu Stool lands. There is no dispute by the parties about this fact.

The claim of the first claimant was that his uncle Charles Gilbert Noi granted the land to him in 1975. The uncle had himself obtained a grant of the land from Nii Kpakpo Adokwei Saka, the care-taker of Maamobi lands. Charles Noi's conveyance was confirmed in 1966 by Nii Dowuona V the then Osu Manche. The 1st claimant (appellant herein) claimed he leased the land to one Daniel Ofori in 1978 and an indenture was issued but the transaction did not materialize for Daniel Ofori never went to occupy the land nor even paid for it. After this the 3rd claimant/appellant sought and obtained permission to park his vehicle on the land.

The second claimant based his claim of title to the land on the strength of a conveyance from Nii Dowuona the Osu Manche, to his father, Emmanuel Yao Attigah, who also conveyed his interest to the 2nd claimant by a conveyance dated 16th November, 1973. During the construction of the Nima Highway the Government compulsorily acquired a portion of his land for the construction. By his claim he sought to recover the portion that was not covered by the acquisition.

On the part of the 3rd claimant/respondent, he said he entered the land in 1974 when it was vacant and has since then been in quiet and peaceful occupation there of.

It was in 1981 when he approached Nii Nortei Owuo III the Osu Manche (as he then was), for a grant of the land from him, but before he could succeed in the enterprise, he was destooled. In 1986 he succeeded in getting a grant from Nii Ashong Omaboe, the then Osu Manche.

In brief then it was these competing claims that were sent to the Land Title Tribunal for adjudication.

At the end of the trial, the Tribunal gave judgment in favor of the 1st and 2nd claimants, which judgment was later reversed on appeal by the High Court. The 3rd claimant appellant was dissatisfied with the verdict and appealed to the Court of Appeal. The result was that the Court of Appeal affirmed the decision by the High Court and as stated already, the 1st claimant appealed to this court on theg rounds aforementioned.

The first ground of appeal is of crucial importance for counsel spilled a lot of ink on it and in my opinion rightly so. In fact right from the Tribunal, the High Court the Court of Appeal, the unequivocal legal point was that the acquisition by the first claimant was fouled by the fact that his grantor was a caretaker of Maamobi lands who *ipso facto* lacked the requisite capacity to grant what he purported to do. Equally, his benefactor the first claimant appellant took nothing in law on the *nemo dat* rule.

The law on the capacity of a caretaker to grant Maamobi lands has been well settled in *Odoi v Hammond [1971] 1 GLR 375* Azu Crabbe J.A. (as he then was) held at page 382 that:

"It is now common learning in the country that in an action for a declaration of title to land the onus is heavily on the plaintiff to prove his case and he cannot rely on the weakness of the defendant's case. He must indeed

"show clear title": per Yates Ag C.J. …. For a stool or family to succeed in an action for declaration of title it must prove its method of acquisition conclusively, either by traditional evidence or by overt acts of ownership exercised in respect of the land in dispute." Despite the clarification in subsequent cases on the nature and quality of the burden of proof on a plaintiff in an action for a declaration of title to land as epitomized in our Evidence Decree 1975, NRCD 323, what the learned judge said is the law applicable today.

In *Odoi v Hammond* (supra), the Court of Appeal referred to the evidence by the plaintiff in support of his case that the land in that dispute was at Kotobaabi and belonged to the Nii We family 'absolutely' but there was no evidence as to how that family became the owners of that land. The trial judge

had found that the allodial title to the whole of Kotobaabi had been vested in the Osu Stool, and the Court of Appeal upon analyzing the evidence, concluded that plaintiff could only pretend to have acquired an absolute title because his grantors, the Nii We family, had no power to transmit it to the plaintiff. The reason was that it had been decided in *Akwei v Awuletey [1960] GLR 231, S.C* that the Maamobi-Kotobaabi-Dzorwulu lands were part of Osu stool lands and the Osu Mantse was the proper authority to grant them. In the result, the grantees took nothing for their title was null and void. It is significant to observe that *Odoi v Hammond* was affirmed on appeal sub nom *Hammond v Odoi [1982-83] GLR 1215, SC*.

It is significant to note also that the facts in the present appeal bear some close resemblance to those in *Odoi v Hammond* (supra). In this appeal the root of title of the first claimant/appellant was that the grant was by the caretaker of the Maamobi lands, Nii Kpakpo Adokwei Saka and not the Osu Manche, the authority with the capacity to grant such lands. The High Court, held the grant by or through Nii Saka was null and void, a fact affirmed on appeal by the Court of Appeal.

The statement of case by the appellant in support of ground one of appeal was substantially an admission of the weight of authority in *Akwei v Awuletey* (supra) that Maamobi is part of Osu stool lands and the Osu Manche is the proper authority to alienate it. In the *Odoi v Hammond* cases the appellate courts gave their imprimatur to it. Just as the grant of Osu stool land by a person other than the Manche was declared null and void, so did the Court of Appeal in this case affirm the legal point that the grant by the caretaker of the Maamobi lands, was equally null and void. (I must make bold to declare that a grant by a mere caretaker of Stool lands *is* null and void).

A cursory reading of the submissions by the appellant on ground one of appeal reveals that counsel did not fail to recognize the weight and authority in *Akwei v Awuletey (supra)* and *Hammond v Odoi* (supra) cases and I fully endorse the stand by counsel. But counsel went beyond this recognition and made a bold

attempt to whittle down the authority to suit modern trends. To quote the *ipsissima verba* of counsel, he said:

"It has been stated ad nauseam throughout the history of the matter that the grant by the caretaker of Maamobi lands to the Appellants uncle was void because he had no power to grant Osu Stool lands. The prior grant being invalid it could not be cured by the confirmation of the Osu Mantse. The reasoning behind this is the celebrated case of ***Akwei v Awuletey [1960] GLR 23*** and others such as ***Hammond v Odoi [1982] GLR 1215*** in which this Honorable Court held that the proper person to alienate Osu Stool lands was the Osu Mantse. Ever since that ratio burst on the judicial firmament it has been religiously followed and tenaciously applied by the courts as regards alienation of Osu Stool lands with the courts fiercely resisting any arguments which seek to distinguish and or challenge the applicability of this ratio.

"Society is dynamic and fifty years thereon one wonders whether this ratio is still relevant/applicable especially in view of the very pertinent issues raised by the instant appeal. Must justice be sacrificed on the altar of strict adherence to what we may call the status quo of judicial reasoning and thereby cause great hardship and fairness to the Appellant? We think not and it is our humble prayer that this honorable court may be emboldened to make that distinction today."

Counsel for the respondent rejected the call by counsel for the appellant. He submitted that the issues raised by the appeal, just like the two cases upon which they were decided, are so settled that any attempt at their reversal would result in a social upheaval. That made the call by the appellant unwarranted.

The appellant did not mince his words when he pointed out a reason why the principles in *Akwei v Awuletey* (supra), ought to be reconsidered, namely, by the principle of agency by which the acts of an agent could be adopted or ratified by his principal.

It was clear that *Akwei v Awuletey* (supra) decided that "**only the Osu Mantse and his elders including the quarter headmen could grant".** Thus stated, it is unnecessary to widen the scope of who qualify to grant Osu

lands besides the Osu Mantse and his elders for, the term very often has been used to include his agents, successors, privies and assigns. The scope of those who may grant portions of Osu Stool lands is wide enough to include the Osu Manche, and his elders including quarter headmen and caretakers. A reading of the cases will mean then that it is when the caretaker acts alone without the knowledge, consent and concurrence of the Osu Mantse, or when the Osu Manche acts alone without his elders including the quarter headmen that the grant would be declared null and void. The other debilitating factor is where the grantor was neither an Osu Manche, or his elder or quarter headman.

There is much virtue in maintaining the status quo in an area of human endeavor as volatile and pregnant with danger, disquiet, chaos and confusion as land acquisition, use and alienation, in Ghana as a whole and Accra in particular. Nothing should be done to give the faintest impression that virtually anybody can do anything with land acting all alone. There ought to be orderliness in this area otherwise people like the so-called land-guards would begin to also grant stool lands in Accra and elsewhere just to compound the problem on hand..

Already there are enough conditions on how an agent's acts may validly be adopted or ratified by his principal. *Malm v Lutterodt [1963] 1 GLR 1 S.C* laid down the conditions which must be satisfied; the court said:

"To constitute a binding adoption, or ratification of acts done without previous authority, (1) the acts must have been done for, and in the name of the supposed principal; and (2) full knowledge of them, and unequivocal acknowledgement after knowledge, must be proved; or else the circumstances must warrant the clear inference that the principal was adopting the acts of his supposed agent whatever their nature and culpability. Ratification must be evidenced by clear adoptive acts or by acquiescence."

I have read the whole evidence provided by the appellant, including the unchallenged oral evidence and the documentary evidence in Exhibit A2, to offer the proof that the Osu Manche Nii Dowuona V ratified or adopted the grant of the Maamobi land to Charles Gilbert Noi, the uncle of the appellant, by Nii

Kpakpa Adokwei Saka the caretaker of the Maamobi lands, the same day as Exhibit A2 was made. A careful reading of A2 reveals it was made by Nii Saka as the 'donor' but not in the name of the Osu Manche so that he could ratify it later. That meant the transaction between Nii Saka and Charles Gilbert Noi was not adopted or ratified properly so as rectify the anomalous situation. It remained the acts of the caretaker of Maamobi lands purporting to grant Osu Stool lands to Charles Gilbert Noi. He lacked the capacity to do so and nothing passed or was received legally under the transaction; the Court of Appeal was therefore right in concluding as it did in its judgment that following *Hammond v Odoi [1982-83] 1 GLR 1215*, only a valid customary grant could be confirmed in writing by the same grantor or his successor. It remained solid. I affirm the decision by the Court of Appeal that the caretaker/headman of Maamobi lands had no authority to grant Osu Stool land, unless the Osu Mantse adopted or concurred in the grant later upon knowing the true facts. The Court of Appeal affirmed the court's finding that that requisite condition was not satisfied. Consequently, ground 1 of appeal fails and is accordingly dismissed.

I must remark that I am not enthused by the invitation by counsel for the appellant to question or reject the authority in *Akwei v Awuletey [1960] GLR, or, Odoi v Hammond [1971] 1GLR 385* and *Hammond v Odoi [1982-83]1 GLR 1215, SC*, for counsel did not provide any satisfactory reason to convince me enough to do so. Where judicial authorities are so well settled by repeated use and application and has indeed been followed in the courts over a long period of time, then it is not enough to rob it of efficacy just because of its age or that time had come to question its ratio or be rejected. I am not advocating they must be followed slavishly; the facts and circumstances and the justice of each particular case notwithstanding. I only say it required a strong reason for so questioning the authority. I reject the invitation by counsel for the appellant with the greatest respect for it is a sure recipe for chaos and confusion in land acquisition, use and alienation.

The evidence offered by the appellant to establish or prove his root of title was hinged on Exhibits A2, the grant from appellant's uncle to him appellant, and also Exhibit B, the grant from the caretaker which on the evidence was not properly adopted by the Osu Manche, to the appellant's uncle. The lower courts herein, namely the Land Title Adjudication Committee Tribunal, the High Court and the Court of Appeal held both exhibits were null and void. In this appeal the appellant did not succeed in turning the scales in his favor. The result was that the grant was null and void ab initio; nothing could ever be founded on it for in law you cannot put anything on nothing and hope it to remain there it will fall; also, "Ex nihilo nihili fit" (nothing comes out of nothing). The maxim of old is still good and applies to this appeal. I believe I state the law correctly that where an appellant's title was derivative, he ought to demonstrate that the predecessor in title held a valid title which he could pass to his grantee, for if the foundation was tainted the superstructure was equally tainted.

It was incumbent on counsel who invited this court to go the way of an iconoclast and pull down one of the pillar and foundation of Osu customary land law to show a strong and cogent reason why it should be so.. Counsel did not show in any way that the authorities he cited have fallen into desuetude or are so moribund that they ought not to be followed for they are no longer good law. On the contrary the view is that they are not to be given their quietude for they remain of much abiding value.

Ground 2 of appeal is of no much significance, for even if the appellant registered his document of title, registration per se does not confer title on a person; this now trite learning. It is the underlying facts that matter. Here in this appeal, the evidence shows that the title of the appellant was null and void and in that state, no amount of registration will save it and clothe it with validity. Accordingly ground two of appeal is dismissed.

Ground 3 did not fare any better. Even though the appellant occupied the land in dispute as subjects of the Osu stool, the grounds thereof were proved to be null and void, it was not valid enough to be labeled effective occupation which

was necessary to make it legally inviolable. That I believe is the true meaning of the principle in *Ohimeng v Adjei [1957] 2 WALR 275,* which held that a stool subject has a determinable interest in stool land and *Total Oil Products v Obeng & Manu [1962] 1 GLR 228* cited by the appellant in his submissions. The latter case decided *inter alia,* that a stool cannot alienate land in the possession of a stool subject without the consent of the subject. That ground of appeal is also dismissed.

Ground 4 must be dismissed in only a few words. The evidence shows that the Land Title Registrar was right to have cancelled the land title certificate when he discovered it was null and void. He so could cancel it even suo motu.

For all the foregoing all the grounds of appeal are dismissed and the judgment of the Court of Appeal is hereby affirmed. The appeal is dismissed.

J. ANSAH
JUSTICE OF THE SUPREME COURT

S. A. BROBBEY
JUSTICE OF THE SUPREME COURT

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