IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA, A.D.2013

CORAM: ANSAH J.S.C. (PRESIDING)
ANIN YEBOAH, J.S.C.
BAFFOE BONNIE, J.S.C.
GBADEGBE, J.S.C.
AKOTO-BAMFO (MRS)J.S.C.

CIVIL APPEAL
No. J4/27/ 2012

20TH FEBRUARY, 2013

MRS. ELIZABETH OSEI ... PLAINTIFF/
SUBSTITUTED BY RESPONDENT/
PORTIA GILARD APPELLANT

VRS.

MADAM ALICE EFUA KORANG ... DEFENDANT/
APPELLANT/
RESPONDENT.

J U D G M E N T

ANSAH JSC.

This is an appeal from the judgment of the Court of Appeal dated 7th April 2011, which dismissed the judgment of the trial court declaring that the matrimonial home of house number B/208, Anya Onyinase Kokoroko, New Gbawe, was built by the late husband of the plaintiff and retraining the defendant from removing the plaintiff from the said matrimonial home.

In the action at the High Court, the plaintiff claimed against the defendant the following reliefs:

"1 That the defendant be restrained from removing the plaintiff from her matrimonial, home.

2. A declaration that the matrimonial home situate at No. B/208 Anya Onyinase Kokoroko, New Gbawe, was built by her late husband."

The case of the plaintiff was that she married one Stephen Kwame Osei the late deceased son of the defendant and the couple put up the house in dispute but after his death the defendant moved in claiming ownership thereto. I shall give more details of her evidence later on in the course of this delivery.

The defendant on the other hand denied the claim by the plaintiff in her pleadings and asserted she put up the house and gave it to her son, the said Stephen Kwame Osei, to occupy on her license.

She counterclaimed for:

"a). A declaration the Defendant is the owner of H/No. B/208, Anya Onyinase Kokoroko by virtue of her having used her own money to purchase land on which she had used her own resources to construct a one storey building with an outhouse thereon.

(b) an order that the plaintiff and her late husband lived and occupied H/No. B/208 as licensees of the defendant.

(c). an order that the plaintiff be given three months to give absolute vacant possession of the said house to the Defendant."

The counterclaim was subsequently amended to read:

"a). A declaration that defendant is the owner of House No.B/208 by virtue of her having used her own resources to construct one story building, three shops and also an outhouse which outhouse she received financial support from her son Agyepong who lives in the United States."

After taking evidence, the trial High Court gave judgment in favor of the plaintiff on her claims and dismissed the counterclaim, but her judgment was reversed on appeal to the Court of Appeal. It is against this judgment that this appeal has been brought by the defendant on the grounds that:

"a). the judgment of the Court of Appeal is against the weight of the evidence on record.
b). The Court of Appeal erred in entering judgment for the defendant/appellant/respondent upholding the appeal of the Defendant/Appellant/Respondent and setting aside the judgment of the Trial Court.
c). The Court of Appeal erred in entering judgment for the Defendant/Appellant/Respondent on her counterclaim.
d). Additional grounds of appeal may be filed upon receipt of the Record of Appeal. (None has been filed before us)
For clarity in this opinion I shall hereinafter call the plaintiff the 'appellant', and the defendant the 'respondent'.
It is trite learning an appeal to this court is by way of a rehearing and the appellate court has the duty to study the entire record to find whether or not the judgment under appeal was justified as supported by the evidence on record. An appellate court is entitled to make up its mind on the facts and to draw inferences to the same extent as the trial court could do. See *Praka v Ketewa [1964] GLR 423 SC, Fofie v Zanyo [1991] 2 GLR 472 SC; Zakari v Barclays Bank; Tuakwa v Bosom [2001-2002] SCGLR 61 at 65; Sarkodie v FKA Co. Ltd [2009] SCGLR 65; Fosua v Adu-Poku [2009]SCGLR*; *Ago Sai & ors v Kpobi Tetteh Tsuru III [2010] SCGLR 762; Akuffo- Addo v. Cathline 1992]1GLR 377, SC ; Djin v Musah Baako [2007-2008]SCGLR 636;*

Tuakwa v Bosom (supra) stated the full import of a ground of appeal that the judgment under appeal was against the weight of evidence in the following words by Sophia Akuffo JSC:
"an appeal is by way of re-hearing where the appellant…alleges in his notice of appeal that, the decision of the trial court is against the weight of evidence. In such a case, … it is incumbent upon an appellate court to analyze the entire record of appeal take into account the testimonies and all documentary evidence adduced at the trial before it arrives at its decision, so as to satisfy itself that on a preponderance of the probabilities, the conclusions of the trial judge are reasonably or amply supported by the evidence."
It is the duty of a trial court to make its findings of facts and once that has been done, the appellate court is loath to disturb findings of fact by a trial judge who had the advantage of perceiving the witnesses before him as they gave evidence at the trial. That was unlike an appellate court which was not so advantaged. The case of *Nyame v Tarzan 1973 GLR 8, CA,* held that an appellate court is far more ready to reverse a decision of the trial judge in a

case which depends on inferences from admitted or undisputed facts. In the earlier case of *Azagba v Negov [1964] GLR 450, SC*, it was held that "where a case depends entirely on facts and a judge sitting as judge and jury has come to his conclusion on the facts, the appellate court is entitled to review the findings of fact, but will only disturb the finding if the conclusions drawn by the trial judge are unsound."

The principles upon which an appellate court will set aside findings of fact by a trial court are well known and summarized in *Koglex Ltd. (No. 2) v Field [2000] SCGLR 175, SC,* they are:

i. where the said findings of the trial court are clearly unsupported by evidence on record; or where the reasons in support of the findings are unsatisfactory: see Kyiafi v Wono [1967] GLR 463 at 466;
ii. improper application of a principle of evidence: see Shakur Harihar Buksh v Shakur Union Parshad (1886) LR 141 A7; or, where the trial court has failed to draw an irresistible conclusion from the evidence; see Fofie v Zanyo [1992] 2 GLR 475 at 490;
iii. where the findings are based on a wrong proposition of law; see Robins v National Trust Co. Ltd. [1927] AC 515, wherein it was held that where it was held that where the finding is so based on an erroneous proposition of law, that if that proposition is corrected, the finding disappears; and
iv. where the finding is inconsistent with crucial documentary evidence on record…..And every appellate court has a duty to make its own independent examination of the record of proceedings."

It is the duty of an appellate court to analyze the evidence before it and decide whether or not it supported the conclusions by the trial judge. If the conclusions were so supported, then the appellate court might be considered to have erred in setting the judgment of the trial court aside. The converse applies; in other words, if the conclusions were not supported by the evidence on record, then an appellate court was right in setting the judgment aside and an appeal to a second appellate court would by allowed.

The case for the plaintiff:

The respective cases of the parties may now be stated concisely at this stage. For the plaintiff, she stated she built the house in dispute with her late husband, who was the son of the defendant. The relationship between the plaintiff and defendant then was that of a daughter-in-law to mother-in-law.

Much obviously, from the record, the plaintiff did not provide any evidence on how she obtained title to the land on which the house was built.
She nevertheless gave evidence on how they built the house and called the mason to support her case. So did she tender evidence of receipts issued for the purchase of the materials for the construction of the house. The high point of her case was that she and her husband stayed in the house parts of which she built, till his death, after which the defendant move in to stay with her and attempted to oust her from it, asserting claim of ownership thereto.
However one looks at it, plainly speaking, this was a case of a claim against the estate of a deceased and the law was that such a claim should be scrutinized with the 'utmost suspicion' – see *In Re Garnett; Gandy v Macauley (1885) 31 CH. D. 1; Moses & ors v Anane [1989-90] 2 GLR 694, CA*. Brett M.R. said:
"The law is that when an attempt is made to charge a dead person in a manner, in which if he were alive he might have answered the charge, the evidence ought to be looked at with great care; the evidence ought to be thoroughly sifted, and the mind of any judge who hears it ought to be , first of all, in a state of suspicion; but if in the end the truthfulness of the witnesses is made perfectly clear and apparent, and the tribunal which has to act on their evidence believes them, the suggested doctrine [of corroboration] becomes absurd."
We shall comment on this statement later.
Until then we may set out the case the defendant presented to the court in defence to the claims by the plaintiff.
The case for the defendant:
The evidence by the defendant before the trial court was that she bought the land from her 'sister' Deborah Nyamah for ¢300,000.00 (three hundred thousand cedis as it then was, but now thirty Ghana Cedis, ¢30.00), and was issued with a receipt for the payment (see Exhibit 1) and an indenture drawn in favor of Deborah was given to the defendant upon the purchase. This was tendered in evidence as Exhibit 2. The defendant was supported to the hilt by 'sister' Deborah, the DW1. Having purchased the land, the defendant set herself out to build the house, using the DW3, Isaac Thompson, as her mason, the DW supplied trips of stone and sand for the construction.
The DW5, Elizabeth Adwoa Effah, a daughter of the defendant gave evidence which showed she was a cashier in her mother's shop who gave out money for the construction of the house, for which she recorded all such transactions for purposes of reconciliation of accounts.

That was the gist of the respective cases put before the trial court in support. From the totality of the pleadings and the evidence led, the pivotal issue was who owned the house in dispute – was it for the plaintiff or the defendant?
The strict rule in claims against a deceased's estate was re-stated with some modifications in *Kwabena Addo v Adwoa Anyowuo & ors 2006 6 MLRG 1* at 7 where this court held, per Twum JSC, that:
"The statement of Brett M.R. in re Garnett; Gandy v MacCauley (1885) 31 Ch, D 1 at 9, was not meant to be an absolute command. It cautioned that in the end if the truthfulness of the witnesses is made perfectly clear and apparent the tribunal will be entitled to act on their evidence.
Every judge ordinarily must warn himself in the context of the particular (case) and circumstances, how he should evaluate the credibility of any witness (care should be exercised in shifting the evidence but there is no valid reason why a judge should approach civil suit with 'utmost suspicion' whatever may have been the reason for the Master of Roll's statement. A judge should approach his task of evaluating the evidence with open mind. If he really views the evidence with 'utmost suspicion', he cannot deal with the case justly and fairly."

Whatever the statement meant in the latter part of the nineteenth century, 1885, might not wholly apply in Ghana today where section 80 of the Evidence Act 1975, NRCD 323, states how witnesses are evaluated for their credibility to be assessed. A statement that creates the impression that a claim against the estate of a deceased must be viewed with suspicion does not provide a useful criterion for assessing the credibility of witnesses in court in the administration of justice in our courts. However one looks at it, Brett M.R. did not say or was to be construed as meaning that the evidence in a case of a claim against the estate of a deceased person must be rejected outright on the ground of his death per se; I agree with him that in such cases the entire claim ought to be scrutinized meticulously and carefully weighed for its inherent probative value. Of course, that the person is dead and therefore cannot contradict, explain or give evidence on his version of the case may be considered.

Where in an action, the parties claim and counterclaim for declaration of title to the same piece of land, each party bears the onus of proof as to which side has a better claim of title against his/her adversary, for a counterclaimant is as good as a plaintiff in respect of a property which she/he assays to make his/her own. In this wise, it might be useful to state that the approach adopted and approved for resolving disputes of title to land has been stated

repeatedly in several judicial dicta in our reports and I wish to cite only one for example, namely. *Yorkwa v Duah [1982-83] GBR 278* CA, at p 281, where the learned Brobbey JA, (as he then was), stated:
"Firstly, this is a land case and therefore the plaintiff respondent must succeed on the strength of her own case…then there was the case of Nartey v Mechanical Lloyd Assembly Plant Ltd. [1987-88] 2 GLR 314 in which Adade JSC stated that a person who comes to court, no matter what the claim is, must be able to make a good case for the court to consider, otherwise he must fail… Lastly, in Odametey v Clocuh [1989-90] 1 GLR 14, it was held that if the plaintiff totally failed to make out a case for title to land, he could not rely on the weakness in the defence."
Prior to Yorkwa, it had been stated in *Rickets & Anor. v Addo & Ors.; Ricketts v Borbor (Cons.) [1975] 2 GLR 158,* that:
"The principle that in an action for a declaration of title, the plaintiff should not rely on the weakness inn the defence case but on the strength of his own case had its simplest application in the situation where a plaintiff could not on his own make out a case of his title at all and relied on the defects in the defendants case to justify his claim to title. However where the plaintiff could put forward some sort of claim to title, the principle then had meaning in practical terms if the defendant had some semblance of a claim to the land, e.g., by occupation or possession. Whatever the defects in the defendant's title, the plaintiff could not rely on them; he must rely on the superior strength of his own title. Therefore if the defendant's case was measured against the plaintiff's and the plaintiff's and the plaintiff's was found more probable, a determination which necessarily involved the balancing of the strength and weakness of the rival claims, the plaintiff's case had to be accepted. …..Kodilinye v Odu explained."

A party in an action in court bears a standard of proof which is the degree which the party must discharge the burden of persuasion on him-defined in Section 10 (1) of the Evidence Act, 1975, (NRCD) 323, as:
"(1) for the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal or the court."
Section 12 (1) of the Decree provided generally as follows:
"(1) except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities."
For a full explanation of the incidents of the burden of proof and allied matters, see sections 11, 12 (2) and 13 of the Decree, more fully explained in several judicial pronouncements in our reports.

In her effort to find which version preponderated more than the other as to who owned the house in dispute, the trial judge took the firm view that the defendant respondent teamed up with her children to 'cheat the appellant of a house she built with her deceased husband.' She found the witnesses called by the respondent unimpressive and attached no weight to their evidence, the reason being, inter alia, that they were her 'relatives'.

By proceeding that way, the trial judge misconceived the import of the evidence before her. Two reasons show that the judge erred in taking this line of reasoning. In the first place, it was not true that all the defence witnesses were her relatives. Even if they were, it would be wrong to disbelieve them on that ground alone (namely that they were her relatives); for that per se would not mean they were not to be believed on their evidence. For, it was in *Adai v Anane [1973] 1 GLR 144* that Osei-Hwere J (as he then was) held at page 150 that: 'a plaintiff in an action for a declaration of title assumes the heavy burden of proof and he does not discharge that onus by merely calling his relations to support his evidence.' This material holding by Osei-Hwere J, was, in my respectful view, stated rather too widely, and as was to be expected, was doubted by Edward Wiredu J (as he then was), in *Nkaeguo v Konadu [1974] 2 GLR 150.* The learned judge said:

"I therefore reject as untenable the argument founded on Adai's case (supra) against the testimony of the defendant's first witness *merely* because of the relationship with the defendant. To say that the evidence of such a vital eye-witness to the demarcation ….should not carry any weight with the court under the peculiar circumstances of this case is not only to make it impossible for the defendant to make out her case but also to deny her justice." Wiredu J went on to say:

"I doubt whether Adai's case cited by learned counsel for the plaintiff laid down any such principle of law that it is incompetent to prove a fact in issue by calling a relation. If it did then it is respectfully submitted that it is a dangerous principle and should be rejected because the position of each witness must be determined on its own peculiar facts."

The two decisions just cited are from the High Court, but with the greatest respect, I think Nkaeguo v Konadu (supra) is the more correct of the two views and I cast my preference for it and wish to state my approval of the Nkaeguo v Konadu (supra) case. It was the credibility of witnesses more than their relationship with their principals that counts.

We are fortified in taking this view for in Basare v Sakyi [1987-88] 1 GLR 313, CA, held that a court seeking to do justice could not without more,

disregard the evidence of a material witness solely on the basis that the witness was a relative of the party and as such had an interest in protecting the family's interest.

Thus the evidence showed the trial judge erred in finding that the defendant respondent called 'relatives' to give evidence to support her case. Some of her witnesses like the DW3, Isaac Thompson, the mason who built the house, and who supplied sand and stone for the construction of the house were not related to the appellant but were disinterested persons called to give evidence in support of her case.
The impression to draw was that the learned trial judge still clung to the view in Adai's case doubtful as it was, and used it to discredit the case of the defendant and entered judgment against her.

Even though the credibility or otherwise of a witness is within the province of the trial judge who saw the witnesses as they gave their evidence and was better positioned to assess their credibility, as observed earlier in this delivery, where the judge appeared manifestly to have considered what she ought not to have done, 'like that the witness is a relative of his/her principal', then she could scarcely be held to have properly utilized the advantage she had in the assessment of the witness and the weight to be attached to the probative value of the evidence and her finding of fact. In such a situation her finding of fact would be interfered with by an appellate court, for he/she misdirected himself/herself.

Effect of Evidence of possession:

In the present appeal the stark fact is that the appellant was in possession of the house just as was the DW6. Now in law, possession is nine points of the law and a plaintiff in possession has a good title against the whole world except one with a better title. It is the law that possession is prima facie evidence of the right to possession and it being good against the whole world except the true owner, he cannot be ousted from it. See *Summey v Yohuno [1962] 1 GLR 160, SC; Barko v Mustapha [1964] GLR SC 78.*
The evidence on record showed that the DW6, Francis Kweku Ansong, lived in the house after his mother the defendant blessed a room for him because she owned the house. The Evidence Act, 1975, NRCD 323 provided in Section 48 (2) that:
"(2) A person who exercises acts of ownership over property is presumed to be the owner of it."

Possession, cannot ripen into ownership no matter how long it had been held or had: see *Lartey v Hausa [1961] GLR 773, per* Ollennu J (as he then was).

The appeal can be dealt with properly under the first omnibus ground as above in ground (a), in respect of which the appellant castigated the Court of Appeal for concluding that "therefore in spite of the conflicting dates it is safe to find for the defendant/appellant that she personally acquired the piece of land on which the house is situate".

I am of the opinion that the case for the plaintiff was riddled with several pitfalls, or weaknesses. At this stage I may be permitted to recapitulate the evidence by the respondent, which found no favor with the trial court but which the Court of Appeal found otherwise. It was that she bought the land from her 'sister' Deborah Nyamah, for GH¢30.00 and was issued with both a receipt and an indenture which were tendered in evidence as exhibits 1 and 2 respectively. Exhibit 1 bore the date 24 February 1988, whilst exhibit 2 was dated 18 June 1988. According to the appellant, the evidence under cross-examination showed that she bought the land two years after moving into her Nima residence in 1991, meaning 1993. Secondly from the date on exhibit 2, the indenture, (18 July 1988), it meant when exhibit 1 was issued to the respondent, the indenture was not in existence and inferentially 'sister' Deborah did not have any land to give to the defendant appellant.
The respondent explained herself as to how that came to be – an earlier indenture bearing an earlier date was withdrawn and a new one substituted therefore; the later indenture bore a later date- 18 June 1988- later than the date on the exhibit 1. In the absence of any challenge to this evidence the trial judge ought to have considered it and refused to draw the inference she did that the DW1 had no land to give to the defendant when she purported to have done so. She drew wrong inferences from the evidence before her. It tainted her findings of fact that the case for the respondent was not impressive.
It could be said that, the appellant and the trial court for that matter, dwelt on the conflicts/inaccuracies on dates given by the respondent herein to support her acquisition of title to the land. The trial judge used these (contradictions, conflicts in dates and other inaccuracies) to reject the case of the respondent and to enter judgment against her.
The authority on the position is that:
"in the real world evidence led at any trial which turned principally on issues of fact and involving a fair number of witnesses, would not be entirely free from inconsistencies, conflicts or contradictions and the like. In

evaluating evidence at a trial, the presence of such matters per se, should not justify a wholesale rejection of the evidence to which they might relate. Thus, in any given case, minor immaterial, insignificant, or non-critical inconsistencies must not be dwelt upon to deny justice to a party who had substantially discharged his or her burden of persuasion. Where inconsistencies or conflicts in the evidence were clearly reconcilable, and there was a critical mass of evidence or corroborative evidence on crucial or vital matters, the court would be right to gloss over those inconsistencies." see *Effisah v Ansah [2005-2006] SCGLR 943*, per Georgina Wood CJ.
Also, in *Yamak v Yawson [1971] 2 GLR 465*, Edusei J, (as he then was) held that the defendant being illiterate, could not be held strictly to the evidence she gave about dates 'on which he started to receive rents.'
The trial judge in this appeal paid no regard to these principles of law in these cases.

Effect of evidence of receipts and other documents:
Apart from the dates on Exhibit 1, it explicitly said:
*"**RECEIPT***
RECEIVED FROM MADAM ALICE AFUA KORANG OF ACCRA AN AMOUNT OF ¢300.00 (THREE HUNDRED THOUSAND CEDIS BEING THE SELLING PRICE OF LAND SITUATE AT KOKROKO NEAR AWOSHIE IN THE GREATER ACCRA REGION OF GHANA.
THAT AS A RESULT OF THE SALE, I HAVE SURRENDERED THE INDENTURE AND SITE PLAN TO HER"
SIGN.
……".

The receipt was thumb printed by Madam Nyamah after the content had been read and explained to her and she seemed to have perfectly understood the contents. Exhibit 1 bore the fact ex facie, that it was dated 24 February 1988.
Exhibit 2 was the indenture made between Madam Nyamah described therein as the 'lessee' and the Gbawe Kwatei family the 'lessor' purported to demise the piece of land at Kokroko to the lessee Madam Deborah Nyamah, was dated 18 June 1988. A careful study of the evidence revealed that neither the defendant-appellant-respondent nor the DW1 Deborah Nyamaah did mention dates in their viva voce evidence in court; they simply gave evidence on the fact of purchase of the land in dispute and sale of same to the defendant for ¢300,00.00, very much agreeing with the content of Exhibit 1.

It was significant that Alice Afua Korang and Deborah Nyamaa gave evidence at the trial as the defendant and the DW1 respectively, and tendered the exhibits to support her case. She was fully corroborated by the DW1.

In her judgment the trial judge found that the indenture was registered as no AR 2084/88/7600/344/89, but that it was neither sworn nor deposed to, the oath of proof was missing, and for these and other reasons, she put no weight on exhibits 1 and 2. She found that the DW2 had no document on the land to give to the defendant when she sold it to the defendant. Defendant admitted the documents she had did not bear her name.

It is settled that receipts, building permits, building plans, title documents etc, etc, do not confer titles on their holders per se, are nevertheless strong acts of ownership. See *Kakraba v Kwofie v Kakraba [1966] GLR.229*

The alleged conflicts etc in their evidence were of no moment, least of all, of any telling effect on the evidence of the respondent and the trial judge erred in castigating the evidence in the exhibits and using them to give the judgment she gave.
The Court of Appeal wholly disagreed with the findings by the trial judge on the so-called inaccuracies and conflicts as to dates of events by the defendant-appellant. In the lead judgment by Ayebi JA, he said at page 262 of the record that “the defendant/appellant inspite of inaccuracies as to dates of events, has adduced credible evidence enough to displace the presumption that the plaintiff/respondent (appellant herein), occupies the house as an owner.” Kanyoke JA concurring, was of the opinion that the respondent did not aver anywhere in her pleadings how the land on which the disputed house has been built was acquired and who acquired it. On the contrary the respondent pleaded and testified on how and when she acquired the land on which the disputed houses were built. She also produced and tendered a document- Exhibit 1, to support her claim of title to the land. The learned judge conceded there were some unanswered questions about this document- Exhibit 1, - as was conceded by counsel, but he found that the evidence by the appellant (respondent herein) about how she acquired the land had not been seriously dented; Kanyoke JA went on to hold, rightly in my opinion, that the trial judge dwelt heavily on the weaknesses in the case of the defendant appellant to arrive at her judgment. He was of the view that in so doing the trial judge erred; he held if the weaknesses in the case of the

defendant were measured against the strengths of the case of the appellant's case supported by other pieces of evidence on record, the case of the defendant respondent was preferable to that of the (plaintiff) appellant.
He added that even if the exhibits were rejected for the reasons given by the trial judge, she would be held to have erred in so doing for the law was that those defects would not be fatal to the case of the defendant, for if she could nevertheless discharge the onus of proof on her by any other evidence *aliunde* the exhibits, her case could be held to have been sufficiently proved.
I am in entire agreement with the opinions by the Court of Appeal for, it was held in *West African Enterprise LTD. V Western Hardwood Enterprise LTD. [1995-96]1 GLR 155* at 166 per Acquah JSC (as he then was) thus:
"Now, when in a trial, any exhibit is found to be ineffective and invalid, as in the instant case, inadmissible, the court ought to consider further whether apart from that inadmissible exhibit, there is no other evidence and materials on record to sustain the party's claim. If there are other admissible evidence and materials on the record to sustain the party's claim then the court is duty-bound to consider those other matters. The inadmissible or invalidity of an exhibit does not mean the automatic failure of the party's claim unless from the pleadings and evidence that claim cannot be sustained on any other ground apart from that exhibit."

The Court of Appeal directed itself correctly on the principle of law in actions for declaration of title to land that a plaintiff must win his case on the strength of his own case and not on the weakness of the appellant's case. That the trial judge simply considered only the weaknesses in the appellant's case but not the strengths and weaknesses of the respective cases to find which of the rival cases weighed heavier than the other on all the evidence and to give judgment in favour of the side in whose favour the balance preponderated, she only weighed to case of the defendant and left that of the plaintiff not critically evaluated.

As an appellate court rehearing the case on appeal to it, we agree with the Court of Appeal that the defendant/respondent's evidence was the more probable of the rival versions that she had the means of acquiring the property in dispute and constructing the house. She led evidence through her viva voce and documentary evidence to support her case that she put up the house inn dispute.
Upon examining the totality of all the evidence on record, it became lucidly clear the Court of Appeal was right in giving the decision it did

and we affirm its decision to grant the appeal before it to reverse the judgment given in favor of the plaintiff on her claims and to substitute it with one of judgment for the defendant respondent before it.

It is the claim for the eviction of the plaintiff from the house within three months which has given me no small anxiety. We have already referred to the relationship between the parties herein namely, a daughter-law and a mother-in-law. It was needful that in matters of this nature, steps are taken to maintain the harmonious nature that should exist between them rather than to drive a wedge between them which ousting one from the house upon a victory in litigation in court, would most likely entail. There was evidence she put up parts of the house herself which she used as her hairdressing salon. It is for these considerations that we refuse to grant the order in the counterclaim in favor of the defendant- respondent to grant an order to evict the plaintiff from the house in dispute. If we may qualify this, it is that she lives there for life. This would mean the appellant succeeded on her claim (a) on her writ of summons.

In the result, we enter judgment affirming the judgment of the Court of Appeal to dismiss the plaintiff's claim in the High Court and dismiss the appeal before us. We therefore dismiss the appeal but in part.

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

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

(SGD) N. S. GBADEGBE
JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO-BAMFO (MRS.)
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