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.
AKOTO-BAMFO (MRS), J.S.C.

CIVIL APPEAL
NO.J4/11/2014

28TH MAY 2014

MURIEL VAUGHAN-WILLIAMS ... **PLAINTIFF/APPELLANT**
(PER HER LAWFUL ATTORNEY /**RESPONDENT**
MRS. ALICE AQUAYE)

VRS.

B. K. OPPONG .... **DEFENDANT/ RESPONDENT**
(SUBST. BY MRS. CECILIA OPPONG**)** /**APPELLANT**

JUDGMENT

ADINYIRA (MRS), JSC

Both the plaintiff-appellant-respondent (plaintiff) and the Defendant-respondent-appellant (defendant) claimed title to the disputed land situated at East Legon. The identity of the land was not in dispute. The trial judge resolved the rival claims in favour of the defendant on grounds, inter alia, that the defendant was able to establish his root of title through the La Klanaa Quarter that owns the lands at Oteele-Bawaleshie of which the land in dispute formed part. As to the issue of possession the trial judge held that the fact that the plaintiff acquired the land in

1974 and erected walls did not mean she was in effective possession as against the true owner as she was a mere squatter. The trial judge also held that the mere fact that the plaintiff has registered title deeds as against the defendant does not validate the illegality since registered documents does not confer state guaranteed title to the disputed land.

The Court of Appeal reversed the trial judge holding that on the evidence the plaintiff has been in long uninterrupted possession from 1974/75 until 1998, which is 23 years before Mallam Musa challenged her title. As to the 1991 judgment of the Circuit Court that the La Klanaa Quarter relied on to claim title to the land, the appellate court held it was given 17 years after the plaintiff had been in possession; and that by virtue of the operation of section 10 (6) of the Limitation Act, 1972 (NRCD54), any title it had was extinguished after 12 years. So the appellate court held that at the time Mallam Musa and subsequently the La Klanaa Quarter made their grants to the Defendant they had no title to the land. The Defendant in turn appealed to the Supreme Court from the judgment of the Court of Appeal on grounds which would be set out in full when being considered in the course of the judgment.

The Defendant submits that the Court of Appeal erred when it based its judgment on the Limitation Act which was not pleaded as required under Order 11 rule 8(1) of the High Court (Civil Procedure) Rules, 2004 C.I. 47

We are of the view that this case can be decided on other grounds as indeed in this court, no judgment is upset on the ground that its ratio is erroneous if there is another sound basis on which it can be supported -per Apaloo J.A as he then was in *Seraphim v Amua-Sekyi [1971]2 GLR 132 at 134*

Validity of the competing titles

There is no doubt as to the identity of the land the subject matter in dispute on which the Defendant has a completed house. It is clear from the evidence on record that the Plaintiff in 1974 obtained a lease from Nii Odae Ayiku IV the Nungua Mantse; and had registered her indenture at the Lands Registry in 1975. The land

was vacant and unoccupied and she enjoyed undisturbed possession for 24 years until the Defendant entered the land and rapidly put up a building on it.

The Defendant on the other hand has no registered document to the land he is laying claim. He conceded he made no search at the Land Title Registry to ascertain whether the land was encumbered. The evidence show that he first bought the land from Mallam Musah in September 1999, at a time that he knew his vendor is litigating with Plaintiff over title and recovery of the same land. He went for a fresh grant of the same plot from the La Klanaa Quarter which transaction is evidenced by an unregistered document dated 5 May 2004. This was after the Plaintiff has confronted Defendant, a Deputy Commissioner for Human Rights and Administrative Justice, in his office for trespass and an attempt at settlement had failed in 2002 and her counsel had subsequently written to warn the Defendant off the land by a letter dated 30 June 2003. He presented the documents for registration on 16 June 2004 and this was after he has been served with the writ of summons issued on 1 June 2004 and he had entered appearance on 10 June 2004.

The defendant pleaded in the alternative protection under the Land Development (Protection of Purchasers) Act, 1960, (Act 2); on the grounds that by the time the plaintiff confronted him, he had already completed the house. It is crystal clear from the evidence that the defendant was not an innocent purchaser as at the time he brazenly entered the land and rapidly built the house he did not hold any conveyance on the land. He was a trespasser and he knew there was adverse claim to the land and a pending suit in which the Circuit Court has restrained his vendor and all others claiming title through him from dealing with the land. It is obvious that the Defendant was trying to overreach the Plaintiff. Accordingly the Defendant is not protected by Act 2.

On the preponderance of the evidence and the law, we do not have any difficulty in holding that the Plaintiff has proved her title as best as one may in this country. The Plaintiff not only relied on her registered title but also relied on overt acts of ownership and possession and the efforts she made to resist encroachers The Plaintiff said in 1998 she saw someone laying a foundation on the land and when she raised an objection Mallam Musah claimed ownership of the land from the same vendor and sued her. She defended the action and on 8 May 2002 she obtained an order of interim injunction by the Circuit Court, Accra, restraining

Mallam Musa his assignees, agents etc from dealing with the land. From the record Mallam Musa has since abandoned the case. Her caretaker PW1 also tried to ward off the two sons of Mallam Musa when they forcibly entered the land and removed Plaintiff's corner pillars and was beaten up. Furthermore, the Plaintiff who resides in the UK did not acquiesce to Defendant's encroachment on the land when on a visit she discovered the Defendant was the culprit. She confronted the Defendant in his office, and he offered to replace the land but it did not materialize. She then got her solicitor to warn off the Defendant by a letter dated 30 June 2003 and when that failed she instituted this action.

In spite of this overwhelming evidence in support of Plaintiff's case, the trial judge found for the defendant because to him the Plaintiff and her witness were inconsistent in their evidence. The Court of Appeal upon examining the inconsistencies found by the trial judge held the inconsistencies were immaterial.

The Defendant contends in two of his grounds of appeal that the Court Appeal erred in upholding the appeal regardless of the inconsistencies in the evidence. The Defendant however concedes that some of the inconsistencies found by the trial judge in the evidence of the plaintiff and her witness PW1 could be trivial; but submitted that there were material inconsistencies in the evidence on the issue of possession.

The defendant submits that the only evidence that the plaintiff led on her alleged possession of the disputed land was the erection of a fence wall and there were inconsistencies between her evidence and that of her witness PW1 on the year the wall was constructed. He contends that evidence of possession is very crucial and therefore inconsistencies on such evidence cannot be said to be trivial.

We agree that evidence of possession is essential in a claim for trespass and recovery of possession, so there must clear and cogent evidence in support and not mere assertion. So we scrutinized the Plaintiff's evidence in chief on this issue found at page 101 of the record of proceedings (RoP) and reproduce the relevant excerpts:

> Q. After you had been granted this, what did you do on the land?
>
> A. I erected three round wall and a dwarf wall at the front

Q. Can you explain what this structure mean

A. I erected walls on three sides and a shorted (sic) one in front

Q. Do you recall which year you did the construction?

A Around 1994 and 1995

Cross-examination by Counsel for Defendant at page 105 of RoP:

Q. It is not true that in 1994 and 1995 you did construction on the land

A. It is not true, I erected a wall

We did the same with that of PWI refer and we reproduce the relevant excerpt from PW1's evidence in chief found at page 108of RoP:

> "I am a caretaker for Mr. Shamo Ocquaye that is where I live. The Plaintiff's land is just opposite where I live. Plaintiff appointed me caretaker.
>
> At the time I was appointed there was nothing on the land but before I met her she put a fence wall on the land. 3 sides of the wall were tall but the frontage had a dwarf wall. She called me and said she was not living here so I should take care of her land for her."

Cross-examination of PW1 by counsel for defendant, found on page 109 of RoP:

Q. For how long have you been living in East Legon?

A. In 1989

Q. Have you been living there all along at where you are?

A. Yes

Q. The wall you said has been built on the land, can you tell when?

A. In 1994- 1995

Q. In which year did you get to know the plaintiff?

A. In 1994-95 when she came to put up the fence.

From the above we find no inconsistency in Plaintiff's evidence. It was PW1, who though confirmed the wall was built in 1994-95 by Plaintiff; was inconsistent on whether the fence wall was built by the Plaintiff, before or after she appointed him caretaker. However we consider this discrepancy insignificant and irrelevant and we hold it did not in any way contradict the Plaintiff's evidence that she built the fence wall and she built it in 1994-95. Obviously it was these overt acts of ownership listed supra, that caused Mallam Musa to sue the Plaintiff in 1998 at the Circuit Court. As a court we must not dwell upon insignificant or non-critical inconsistencies to deny justice to a party who has substantially discharged her burden of persuasion. See *Effisah vs. Ansah [2005-2006] SCGLR 943 at 960* per Georgina Wood JSC:

> "In the real world, evidence led at any trial which turns principally on the 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 led 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 has substantially discharged his or her burden of persuasion. Where inconsistencies or conflicts in the evidence are clearly reconcilable and there is a critical mass of evidence or corroborative on crucial or vital matters the court would be right to gloss over these inconsistencies."

From the foregoing we hold that the Court of Appeal rightly held that the inconsistencies the trial judge identified in the evidence of the plaintiff and her caretaker PW1 are not on material evidence and as such cannot be used to impeach the credibility of the plaintiff and her witness and thereby reject her claim.

On the totality of the evidence we hold that the Plaintiff was able to discharge the burden placed on her to establish her title to the land the subject matter of the suit. The Court of Appeal rightly upheld the Plaintiff's claim.

From the foregoing we hold that the appeal fails. The appeal is dismissed.

The judgment of the Court is hereby affirmed.

(SGD) S. O. A. ADINYIRA (MRS)

JUSTICE OF THE SUPREME COURT

(SGD) W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE BONNIE

JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO BAMFO (MRS)

JUSTICE OF THE SUPREME COURT

COUNSEL

S. K. AMOAH ESQ. FOR THE DEFENDANT /RESPONDENT /APPELLANT.

GEORGE HEWARD- MILLS ESQ. WITH HIM CHRIS KING FOR THE PLAINTIFF/ APPELLANT/RESPONDENT.