# IN THE SUPERIOR COURT OF JUDICATURE
# IN THE SUPREME COURT
# ACCRA AD 2015

**CORAM: ANSAH JSC (PRESIDING)**
**DOTSE JSC**
**ANIN YEBOAH JSC**
**BAFFOE-BONNIE JSC**
**AKOTO-BAMFO (MRS) JSC**

**CIVIL APPEAL**
**No.J4/37/2014**

28TH MAY 2015

**NII KOFI LA FAMILY - - - PLAINTIFF/RESPONDENT**
SUING PER THEIR LAWFUL ATTORNEY **/APPELLANT**
ANYETEI NUNOO

**VRS**

**THE ATTORNEY GENERAL - - - DEFENDANT/APPELLANT**
**/RESPONDENT**

# JUDGMENT

## ***ANSAH JSC***:

***Introduction and facts of the case:***

This is an appeal against the judgment of the Court of Appeal, (Civil Division), Accra, dated, 16th January, 2014, which dismissed the judgment of the High Court, Accra.

**2**) The reliefs which the plaintiff sought from the High Court at the trial were for:

*"a) Declaration of title to all that piece of land situate and lying at La in the Greater Accra Region and bounded at the North by Nii Manley Osokrono's land measuring 186.21 ft. from SGE 13/73/20 to 15/73/21,105. 44 ft from SGCAJ 316/08/4 to SGGAJ 316/08/5, on the North East by Burma Camp measuring 196.49 ft from SGG316/98/5 to SGGAJ316/08/6, 115.50 from SGGAJ 316/08/7 to SGGAJ 316/08/7 to SGGAJ 316/08/8, to 133/.47 ft from SGGAJ 316/08/8 to SGGAJ 316/08/9 to SGGAJ 316/08/10,809.4 ft from SGGAJ 316/08/11 from SGGAJ 316/08/to 12 11 7.1 ft from SSG216/08/13 to SGGAJ 316/08/14 on the West by the Kotoka International Airport measuring 21.445.6 from GCAA 38,400 ft from 316/08/3 to GCAA38,400.6 ft from GCAA 38,400 ft from GCAA 42,399.8 ft from GCAA 47,799 ft from GCAA43400 ft from GCAA44,799 ft from GCAA 4799.7 ft from GCAA 46,400 ft from GCAA to GCAA47 and covering an approximate area of* ***136.39 acres****. (emphasis supplied in bold)*

*ii). A declaration that Certificate No. 404/1944 did not reflect the true positions of the boundaries on the land.*

*iii) An order to compel the Land Registry No 404/1944 to reflect the true positions of the boundaries on the land"*

***The defendants appearance, amended statement of defense and counterclaim*** :

*"i. Declaration to all that piece of land containing an approximate area of* ***5.6 square miles*** *situate in the Accra District of the Eastern Province of the Cold Coast colony the boundary whereof commencing at pillar marked GCG 74 at the North Western corner of the existing aerodrome for 6338.5 feet on a bearing of*

*900.00 to a pillar marked GCC 79 and thence for 7393.5 feet on a bearing of 1800.00 to a pillar marked GCG 8.2 and thence for 2091.2 feet on a bearing of 2800.00 to a pillar marked GCG 83 and thence for 2091.2 feet on a bearing of 1910.10 to pillar marked GCG 63 and thence pens on a bearing of 1910.10 for approximately 3058.8 feet and thence on a bearing of 940.08 for approximately 2;122 feet to a pillar marked GCSEP. 1/35/98 and thence on a bearing of 940.08 for 4093.6 feet to a pillar marked GCSEP 1/35/97 and thence on a bearing of 2700.00 to a point on the Eastern edge of the Accra-Dodowa road in the Southerly direction to the point commencement be the same several dimensions little more or less as the boundary is shown edged with pink color on a plan numbered* ***x1840*** *(emphasis supplied in bold) and attached hereto.*

*II. Perpetual injunction restraining the plaintiffs, their agents, servants or assigns from entering and interfering with the defendants right to the peaceful use of the land for security purposes in the public interest."*

***Issues settled for trial:***

At the close of pleadings the parties settled the following issues for trial:

*"1Whether or not land has been acquired by Government.*

*2 Whether or not compensation has been paid to the land owners.*

*3 Whether or not plaintiff is entitled to the claim."*

***Judgment by the trial court***: At the end of the trial at the High Court, Accra, the judge found in his judgment on the evidence led before him that, the plaintiff family's land had been wrongfully taken over by the military and no compensation had been paid to the family except for £30 paid for 18 acres of land. The trial judge found that the land in dispute, was for the plaintiff's family; he dismissed the counterclaim by the defendant, and further awarded costs of GH ¢1,000.00 for the plaintiff.

The defendants were aggrieved by the judgment of the High Court and appealed to the Court of Appeal which on 16th January 2014, allowed the appeal, set the judgment of the trial High Court aside and entered judgment for the defendant and upheld its counterclaim, but made no order as to costs.

***Appeal to the Supreme Court:***

The plaintiff was dissatisfied with the judgment of the Court of Appeal and appealed to this court on the grounds that:

"a. The judgment is against the weight of evidence on the record.

b. The Court of Appeal erred when it concluded that the present case lends itself to the application of certain presumptions of law even though the evidence on record suggests the contrary.

c. The Court of Appeal erred when it resorted to use of presumptions of law to enable it rely on a plan which was not in evidence and so ascribe validity to rejected evidence.

d. The Court of Appeal erred when it unjustifiably concluded that the Lands Department and the Military had negotiated for the land, a subject matter of dispute out of ignorance/mistake contrary to the findings of fact made by the trial judge.

e. The Court of Appeal erred when it proclaimed and rejected evidence of CW1 & CW2 of the trial court valid contrary to the findings made by the trial court.

f. The Court of Appeal erred when it sought to interpret plan Y575 to mean plan X1840 contrary to evidence on the land certificate.

g. The Court of Appeal erred when it gave judgment on a counterclaim which was not proved in the trial.

h. Further grounds to be filed upon receipt of the Record of Appeal."

Despite the receipt of the record, the appellant has filed no further grounds of appeal, as he intimated.

By this appeal, the appellant sought a reversal of the judgment of the Court of Appeal, while that of the trial High Court was restored.

***Ground (A) of appeal:*** ***There is not a dearth of authority on this omnibus ground of appeal that the judgment is against the weight of the evidence on record such as was contained in Ground (a) of appeal before us.***

This court stated in ***Bosom v Tuakwa [2001-2002] SGGLR 61*** at 65 that:

"Furthermore, an appeal is by way of a re-hearing particularly where the appellant, that is the plaintiff in the trial court in the instant case, 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 not the function of the appellate court to evaluate the veracity or otherwise of any witness, it is incumbent upon an appellate court in a civil case 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 more amply supported by the evidence"

See also ***Bonney v Bonney*** **(1992-93) GBR 779** which reiterated these principles of law;

In considering the first ground of appeal before us, I shall analyze the entire record of appeal to see from how far the evidence on record supported the conclusions made by the courts; I set out the respective cases by the parties at the trial:

***The case of the plaintiff at the trial:***

It was that the plaintiff/respondent/appellant family, (I shall hereinafter call it as the plaintiff-appellant family), was a subject of the La Stool which had been in possession of the land in dispute until when in 1944 the Colonial government compulsorily acquired 136.39 acres or 5.6 square miles of the appellant family land for the construction of an extension to the aerodrome, for which compensation of £30.00 (thirty pounds) was paid to the La Stool, the **allodial** owners of the land, for the stool family, (the *usufructuary* holders), for 18 acres of land affected by the acquisition. Thereafter, plaintiff's family has been in possession of the remaining area of land measuring 136 acres, which was unaffected by the acquisition.

The plaintiff further stated the Military expressed an interest in acquiring the remaining land but that was not made possible due to the frequent changes in government. The La Stool executed Exhibit ***B***, a deed of surrender, in favor of the plaintiff, but the military was not able to acquire the remainder of the land because it was not able to establish any correspondence between the Ministry of Defense, Lands Commission, and the plaintiff family, concerning the amount to be paid for the remaining 136 acres of

land belonging to the said family, appellants herein. The Government, represented by the Lands Commission, assessed the value of the remaining land at ¢64,000.00 (sixty four thousand cedis), but this sum of money has not been paid as yet. Nothing has been done to acquire the land legally and the plaintiffs continued to carry out their farming activities on the land; they led evidence that they are the owners of the land in dispute.

***The case of the defendant/Appellant/Respondent:***

It was that the Government compulsorily acquired the land in dispute and tendered the certificate of acquisition in evidence at the trial, marked as Exhibit ***1***; it was further stated that the land so acquired, was part of the Aerodrome extension acquisition. It measured **5.689 square miles or 3,548.246 acres**, which was registered under a Certificate of title with the Deeds Registry as No. 404/1944 and £8,540 was paid to the La Mantse, £1,283,11.8d paid as compensation for crops, huts and cattle kraal, thus making a total of £9,824.8.8d paid for the acquisition of the land.

All these facts were admitted by the defendant in his amended statement of defense and counterclaim filed on 2-3-11.

At the trial, (during cross-examination), the defendant, respondent herein, admitted not being able to show demarcations of the acquisition on the ground, as pillars marking them, had disappeared due to recent developments on the grounds. Simply put, the defendant could not identify the land acquired for the extension of the aerodrome.

***Order for the drawing of the plan of the land:***

In the course of the proceedings, when the trial court ordered a composite plan of the area of land acquired by the Government, among others, to be made; the evidence revealed that the survey was done without any visit to the land, but was rather made in the office; the plans and a report thereon, were tendered in evidence as ***CW1 and CW2***. How the courts treated these exhibits in their judgments will be considered presently in this opinion.

*Judgment of the trial court, and appeal to the Court of Appeal:*

At the end if the trial, the High Court entered judgment in favor of the plaintiff, and found that the plaintiff's family's land had been wrongfully taken over by the military

who did not make any payment to the family except paying £30 (thirty pounds) for only 18 out of 136.39 acres of land in dispute; the defendant was aggrieved with this judgment and successfully appealed against it to the Court of Appeal, where judgment was entered for the defendant and its counterclaim upheld.

In ***Tuakwa v Bosom [2001-2002] SCGLR 61***, this court considered a ground of appeal that a decision of a trial court was against weight of evidence and held at page 65 that

*"in such a case although it is not the function of the appellate court to evaluate the veracity or otherwise of any witness, it is incumbent upon an appellate court, in a civil case, to evaluate the veracity in a civil case, to analyze the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial before arriving 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." See also Bonney v Bonney 1992 GBR 779, re-emphasizing these points of law.*

**case for the plaintiff:** I shall consider and apply these principles in my opinion in this appeal and state that the plaintiff appellant gave evidence by his pleadings and evidence on the acquisition of title to the area of land they claimed declaration of title to and stated that: his family acquired the land when it was gifted to them as a reward for the assistance they gave the La Stool family which emerged victorious in a war between a combined force of **Akuapems, Akims and Fantes**; they continued to possess and use the land as owners until 1944 when the Colonial Government acquired the land by virtue of the Public Lands Ordinance, 1876, (Cap 134). The then Colonial Government paid compensation to the La Stool. The plaintiff appellant received £30.00 (thirty pounds) for the La Mantse, Adjei Onano V, for only 18 acres of land, leaving 136.89 acres unpaid for. After the acquisition, the plaintiff's family continued to be on the land.

The trial judge referred to evidence in correspondence tendered in evidence in the exhibit ***D*** series at the trial, and other documents on their acquisition of the land they laid title to, and, found that:

"I have no iota of doubt in my mind that the plaintiff's land, the subject matter in dispute, no compensation had been paid to the family.

Also, there is no doubt that the said land belongs to the plaintiff family, appellants herein. The Lands Department which is the repository of all Land transactions in the country, acknowledged that it, and recognized the plaintiff's family as the owners of the land in dispute. The Ministry of Defense never said the land belongs to another family nor it has been acquired for them already."

***The case of the defendant at the trial:***

The defendant on the other hand, pleaded they owned the land they claimed; they pleaded and led evidence in support that the State owned the 5.689 square miles of land covered by the Certificate of Title registered in 1944 for which compensation had been paid for already. The Certificate of Title was registered as No. 404/1944 for extension of the existing airfield; it was also submitted that legally, the Certificate of Title constituted sufficient proof of statutory ownership of the land it covered, without any further assurance; for all this the trial High Court held that the land in dispute had not been acquired by the Government because compensation had not been paid to the land owners and the plaintiff entitled to his claims.

In an action for declaration of title to land, plaintiff bears the onus of proof of the ownership of the land claimed by him. He ought to prove how he acquired title to the land. The defendant counterclaimant in this appeal also bore the onus to prove he was entitled to the declaration of title to the piece of land they claimed.

The plaintiff argued grounds ***'b'*** and ***'c'*** of appeal (above), together in his statement of case.

In this appeal, the Court of Appeal set aside findings of facts made by the trial court and substituted them by its own facts. The practice in law is that when an appeal was lodged against the judgment of the Court of Appeal to a second appellate court like this court, then this court is obliged to reconsider all the evidence led on record and arrive at its own facts. This principle of law was supported by ***Akuffo Addo v Cathline [1992] 1 GLR 377,*** where the court said at 394 that:

*"since the courts have made different findings of facts based on the same evidence, I do not suppose this court can be denied the right to make its own assessment of the case as a whole. It is not only sensible thing to do but it is a matter of judicial obligation embedded or rooted in rules having force of statutes."*

The appellant submitted that the trial court found that the plaintiff had led credible evidence on how the family acquired the land in dispute from the La Mantse and tendered exhibit *B, (the indenture, also called the surrenderer/beneficiary),* from the *allodial* title holder, to wit, the La Mantse; he also led evidence to show that the acquisition made in 1944, affected only 18 acres of land for which a receipt was issued to show that only £30.00 (thirty pounds) was paid to the family. Exhibit '***B',*** dated 20th June 1985, and Exhibit '***C',*** dated 19th November 1946, were tendered in evidence to support these facts. Exhibit '**C',** was an ancient document which *ipso facto* proved itself by the operation of law. I quote exhibit '***C'*** in full hereunder as follows:

***"Exhibit C"***

***LET ALL MEN KNOW today that I, NII ANYATEI ONANO V, La Mantse, known in private life as Mankata Odoi Sowah, have come to agreement with NII ANYATEI JONKA lawful representatives of Nii Kofi-La Family of La Abese to pay an amount of £30.00 (thirty pounds), being full payment of his family land affected by Airport extension acquisition after the initial demand of £60:00 (sixty pounds), had been dropped by the family after intensive negotiations since the land affected, is only 18.0 Acres***."

Exhibit '***C'*** was signed by Nii Anyetei Jonka as head of the Nii Kofi-La family, Nii Adjei Onano V as the Mantse of Labadi, and witnessed by certain personalities described on the face of the exhibit as principal members of family.

The plaintiff also led evidence to show efforts by the Government to acquire the remaining parcels of land at North of Arakan Barracks, for the Ghana Army. There were negotiations for that purpose between the Government/Army and the family confirmed by the evidence tendered at the trial marked as the exhibit ***D*** series. Even though the plaintiffs' family still farmed the land, the Ghana Army was given permission to use the land for their training activities and it was for these reasons that the trial judge found that the land in dispute belonged to the plaintiff's family.

*Grounds **'b',*** and ***'c'*** *of appeal:*

It is trite learning that a finding of fact by a trial court could be set aside or disturbed on appeal only if the facts or findings were not supported by the evidence on record. In this appeal, the appellant submitted that, the Court of Appeal never made any finding of fact even though the appeal before it was a rehearing; the court only based itself on presumptions of regularity of official acts, which in law are at best, rebuttable presumptions. They are covered by section 37(1) of the Evidence Decree, 1975, NRCD 323, (now Act) fully quoted hereunder, as follows:

*"(1) It is presumed that official duty has been regularly performed."*

As stated, section 37 (1) of the Evidence Act, (supra), creates a presumption which can be rebutted by other credible evidence on the record. After all, *rebuttable evidence* means, according to *Black's Dictionary of Law, Eighth edition,* at page 1224; an inference drawn from certain facts that establish a prima facie case, which can be overcome by the introduction of contrary evidence.

In his '*The Ghana Law of Evidence'* by J. Ofori-Boateng, the learned author, an eminent jurist, and a retired Justice of the Supreme Court, wrote at page 26 that: "rebuttable presumptions arise when *a preliminary fact* has been established and the law provides that on the establishment of that preliminary fact, some conclusions should be drawn…..but in a rebuttable presumption, the conclusion required by law to be drawn after the proof of the necessary preliminary facts, is deemed to be only prima facie. This is to say, as provided by section 20 of the Decree (now Law), which says that

*"A rebuttable presumption imposes upon the party against whom it operates the burden of producing evidence, to establish to the court that the presumed conclusion does not exist."*

This presumption is rendered with flourishes in *'Latinism'* as *"Omnia praesumuntur rite et solemniter esse acta donec probitur in contrarium",* literally meaning*: "All things are presumed to have been* done *regularly and with due formality, until the contrary is proved."*

The Court of Appeal said of this presumption that: *"I do not think the absence of evidence on record as to when, how, why the words were inserted leaves the position helpless. By section 37(1) of the Evidence Act, 1975, NRCD 323, an official duty is presumed to have been regularly performed and there is also the Latin maxim "omnia praesumuntur rite esse acta", which expresses in summary form, the principle that*

*where there is proof of the performance of an official act, until the contrary is proved*, that act is presumed to have been done in compliance with the necessary formalities and the person who did it is presumed to have been duly appointed. A presumption of an even greater relevance in the present case, is that if a deed contains an alteration or insertion, …. then it was made before execution…"

"Also the Latin maxim …which expresses in summary form the principle that where there is proof of the performance of an official act, until the contrary is proved, that act is presumed to have been done in compliance with the necessary formalities and the person who did it is presumed to have been duly appointed**."**

The Court of Appeal went on to state that: "A presumption of an even greater relevance in the present case is that which states that if a deed contains an alteration or insertion, it is presumed that the alteration or insertion was made before execution…A*s* stated above, the Certificate of Title, Exhibit 1, is an ancient document and it proves itself. The presumption that an insertion in the deed was made before the Certificate of Title was executed on 1st September, 1944, and by virtue of, section 37(1) of NRCD 323, or on the principle of "omnia praesumuntur, esse rite acta" … it is presumed to have been regularly made.

The reasons given by the Court of Appeal for making that presumption were that the certificate was tendered through an official of the Survey and Mapping Division of the Lands Commission, and produced from official and proper custody. In the circumstances, as there was no evidence to the contrary of these facts, it raised the presumption that the insertion was made regularly or was made after execution of the certificate. The words: *"See plan no. Y575",* ex facie the certificate of title were very much a part of the certificate whose validity was acknowledged as an ancient document.

The Court of Appeal proceeded from there to consider that the boundary of the acquired land was shown edged with pink color on a plan marked numbered X1840, thereto, followed by the words "See Plan No. X575". It construed these words to mean, to find the plan numbered X1840, (attached thereto), or the land that it identifies, you must look for the plan numbered Y575. In other words, if you see Plan No Y575, you have found the land that plan numbered X1840, identifies. According to the Court of Appeal, it meant then that the trial court erred when it found that the use of plan number Y575 was *a void enterprise not backed by any mandate*. That was because the

trial court ordered for the superimposition of the plans in the summons for directions in the following terms:

*Order for the composite plan: At the summons for directions stage the tria;l court ordered that:*

"The Regional Director, Survey and Mapping Division of the Lands Commission, Accra is to draw a composite plan and show the following:

a) The land covered by the Government acquisition for the Airport.

b) The plaintiff should also show the land that they claim is not covered by the Government acquisition.

c) The land that the plaintiff claims to be covered by the Government acquisition".

By these directions at the summons for directions, the trial court erred very much when he held that there was no direction for the enterprise to be carried out. I agree with the Court of Appeal when it concluded that there was authority given to the witness who produced and tendered the report on the survey in evidence as exhibits CW1 and CW2. The Court of Appeal said after studying the exhibits it found that: "On Exhibit CW1, I find from the legend that the land for the Aerodrome extension is edged with **blue** color, while the land claimed by the Nii Kofi-La family is edged with **red** color. All that part of the vast edged red on the exhibit which has been hatched with **blue** color falls within the land acquired in 1944 for the aerodrome extension." For which reason, the enterprise was not void, as held by the trial court. In the circumstances, the Court of Appeal was right to have used the presumptions provided by the law referred to and applied in the circumstances. Consequently, due to what I have said above, grounds 'b', 'c' and 'e' of appeal are dismissed.

At the trial the burden fell on the plaintiff and the defendant, who sued or counterclaimed respectively, for a declaration of title to the piece of land they claimed, to prove on the preponderance of the probabilities, the mode of acquisition of the area in dispute.

I have quoted section 137 of the Evidence Act NRCD 323, on rebuttable presumptions and now I wish to state further that for its full effect and explanation, I further quote section 20 of the Decree, (now Act), hereunder that: *"A rebuttable presumption*

*imposes upon the party against whom it operates, the burden of producing evidence and the burden of persuasion as to the non-existence of the presumed fact."*

In this appeal, the plaintiffs' evidence established that the defendant made efforts to acquire the land but did not succeed, for, they did not pay the requisite amount of compensation for the acquisition.

In his judgment, the learned trial judge said, after dismissing the defendant's counterclaim, that: "Further, I hold that, the plaintiff's family's land had been wrongfully taken over by the military. No compensation had been paid the family except for the 18 acres which was £30. It is my considered opinion that the land in dispute covering an approximate area of 136.39 acres is adjudged to be for the plaintiffs family."

***J*udgment of the Court of Appeal**: On appeal against the judgment of the High Court, the Court of Appeal considered the judgment of the trial court to be wrong, allowed the appeal before it and set it aside, and entered judgment for the defendant in favor of its counterclaim. In the unanimous judgment of the Court, the learned Aduama Osei JA wrote that: "After a full consideration of the judgment of the trial Court, I am clear in my mind that it was wrong and I consider this a proper case for the substitution of conclusions made by the trial court with those of the appellate court. I will therefore allow this appeal and set aside the judgment of the trial court. The claim of the respondent is hereby dismissed and judgment is entered in favor of the appellant on his counterclaim."

The issue then was which could be more right than the other on the issue of whether or not any compensation was paid for the acquisition of the land in dispute.

The trial court found no compensation had been paid for the acquisition of the land; but the appellate Court of Appeal found otherwise. The Court of Appeal made no express finding for or against the allegation that the Government made any payment for the acquisition of the land in dispute or any part thereof. However the evidence on record in exhibit `***C' (supra),*** showed an amount of £30 (thirty pounds) was paid for the acquisition of land for the extension of the aerodrome.

At the Court of Appeal, the finding by the trial court that the Military had wrongfully taken over the respondents, (appellant herein), land was attacked by counsel for the

appellant who contended that a certificate of title issued and signed by the Registrar and a judge of the Superior Court, was conclusive proof of the State's ownership of the land covered by the certificate. The composite plan ordered by the court also showed that the land in dispute fell within the land covered by the certificate of title.

The defendant respondent submitted that there were two inconsistencies in the case of the appellants which he explained was due to two different site plans tendered in evidence. None of them conformed to the schedule to the deed of surrender in evidence; the schedule was planned about ten years after the date of execution of the deed itself. The other criticism was the reference to farming activities being carried out on the land in dispute cited as an act of ownership of the land in dispute. Reference was made to the fact that people farm on lands they do not own, or, occupy vacant public lands without any interference by or from the rightful owners, or any adverse claims being made despite the duration of the adverse possession and so even if the possession was a criminal activity under the Public Lands (Protection) Act, 1974, NRCD 240, (an Act to provide for the protection of public lands and for relevant matters,) section 2 of which provided that:

**"2 Unlawful occupation of public land.**

A trespasser who, without reasonable excuse the proof of which lies on the trespasser, occupies or encroaches on or interferes with a public land, commits an offence and is liable on summary conviction to a term of imprisonment not exceeding three years, or to a fine not exceeding seven hundred and fifty penalty units."

In other words, activities like unlawful occupation of public lands are criminalized and upon conviction by a court of competent jurisdiction, are punishable by fines being imposed on guilty ones.

***Ground 'e' of appeal: The composite plan in exhibits CW1 and CW2*:**

The issue thrown out by this ground of appeal was: as between the decisions of the trial court and the Court of Appeal which was more supported by the evidence in its findings on the validity of these exhibits?

I must observe firstly, that these exhibits were ordered by the trial court but when tendered in evidence at the trial they were rejected for the reasons that pertain to their usefulness; the plan was prepared by superimposing the site plan for the 136.39 acres

claimed by the plaintiff appellant in their statement of claim on the larger 5.6 square miles claimed by the defendant respondent.

It was also submitted by the respondent that the land acquired in 1944 was declared to be for the plaintiff at the trial, and the legal effect thereof was to effectively revoke the Certificate of Title issued by the Executive, an act that was made without jurisdiction to do so in law; reference was made in connection herewith to the case of **Republic v High Court, Accra; ex parte Attorney General (Titriku I & Others interested parties) [2007-2008] SCGLR 665,** where this court held in the classic words of the inimitable Dr Date-Bah JSC that:

*"(1) the High Court being a court of general jurisdiction, has jurisdiction to construe the two impugned legislative instruments being ordinary legislation, namely, the Local Government (Dangme District Assembly) (Establishment) Instrument, 1989 (LI 1490) and and the Local Government (Manya Krobo District Assembly) Establishment Instrument,1989 (LI 1492). However, under article 130 (1)(b) of the 1992 Constitution, even when ordinary legislation is involved it is the Supreme Court and not the High Court which has has exclusive jurisdiction in "all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under the constitution."*

Applying the authority in the case last cited to the facts in this appeal, I believe in law, the trial High Court Judge lacked jurisdiction to challenge or do anything to suggest a challenge to the authority and efficacy of the Land Title Certificate issued by the government to acquire the land in question in 1944.

Grounds **(*b*)** and **(*c*)** of Appeal stated above, were argued together and the Court of Appeal held that the findings by the learned High Court judge were not supported by the evidence on record.

When these grounds of appeal are examined properly, the evidence of the plaintiff was that the Certificate of Title registered as No. 404/1944 affected only 18 acres of plaintiffs land but when the family attempted to register the remaining 136.39 acres it was told that was part of the 1944 acquisition and this gave rise to the action before the High Court, now on appeal before this court.

The dominant issue in this appeal and indeed even the whole trial is, could that be true?

The Court of Appeal held that the findings of fact by the trial court were not supported by the evidence on record, for when examined as properly as they should, it would be found that the assertions by the appellant (plaintiff at the trial court), were not proved on the preponderance of the balance of the probabilities; the reason being that, (1): there were conflicts in exhibit ***B***, the deed of surrender; (2) no reference to an earlier grant by the 'surrenderor' made in favor of the 'surrenderee', (3) nor any mention made in the recitals of the Deed that an earlier grant had been made of the land. Also, (4) the deed was executed in 20th January 1985, between Nii Anyatei Kwakwranya II, La Mantse (also called The Surrenderer/grantor in exhibit B), and Nii Annan Ashong, head of head of Nii Kofi-La family of La, but the site plan attached to it was prepared on 2nd April 2004, that was more than a year after the execution of the deed. (5) It was also alleged there were conflicts in the deed on the description of the land in the schedule (to the deed), and the description of the boundaries of the land; and further (6) the deed of surrender was a six sided piece of land measuring 136.39 acres; but the appellants' site plan was 10 sided and interestingly also measured the same 136.39 acres. There were discrepancies to the deed as compared to the site-plan, making it impossible to calculate its size. These conflicts operated against raising the presumption by the Court of Appeal.

There were certain facts made quite clear or put beyond any controversy in the trial of this suit. One of them was that in 1944, the Colonial Government compulsorily acquired a piece of land under the Public Lands Ordinance 1876, Cap 134, for public use, and for which a Certificate of Title was issued.

### *The legal effect of a Certificate of Title:*

By the provisions of Cap 134, a Certificate of Title has certain legal consequences flowing from it, notable, among them being that once it was issued, it conferred an absolute and indefeasible right to the land referred to in the certificate, against all persons free from all adverse or competing rights, titles, interests and claims. The mere production thereof before any court constituted an absolute bar or an estoppel against any proceedings before a court, casting an impregnable torpedo against any such claims and actions in respect of the land so acquired, or, in dispute. Reference is made to sections 12(1) and (2) of the law in Cap 134, reproduced hereunder as follows:

"The Commissioner of Lands on behalf of the Governor, shall at any time on production in [the] Supreme Court of a conveyance to any lands or at any time after the date of

the service and publication of the notice mentioned in sections 5 and 6, upon proof of such service and publication, be entitled to receive a Certificate of Title to the lands described in the said conveyance or notice which certificate may be in the Form ***C*** of the Schedule and shall have the following effects and qualities:

(1) The certificate shall not be questioned or (made) defeasible by reason of any irregularity or error or defect in the notice, or want of notice, or of any other irregularity, error or defect in the proceedings previous to the obtaining of such certificate.

(2) It shall confer to the Governor to whom such certificate shall be given, and on every succeeding Governor for the time being in trust for Her Majesty for the Public Service of Gold Coast, an indefeasible right to the lands comprised or referred to therein against all persons, and be free from all adverse or competing rights, titles, trusts claims and demand whatsoever."

In **In Re the Public Lands (Leasehold) Ordinance and In Re land acquired at Accra for Public Works Department workshop; Osu Mantse and others (claimants) [1959] GLR 163,** Ollennu J (as he then was), considered the effect of the law on the acquisition of lands under the law in (cap 134) and held that: "Under Section 11 of the Public Lands Ordinance, the acquisition operates to 'bar and to destroy all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever of and in the lands" acquired; claims and demands whatsoever of and in the lands" acquired; and in virtue of section 12, a Certificate of Title issued by the Court issued in respect of the lands acquired, confers upon the Governor-General to whom it is issued an absolute and indefeasible right to the lands…free from demands whatsoever." Similarly, section 10 of the Public Lands (Leasehold) Ordinance provides that a Certificate of Title granted by the Court under that Ordinance shall "confer upon the Governor-General … an absolute and indefeasible right to the land,… free from all adverse or conflicting rights, interests, trusts, claims and demands whatsoever."

There was evidence on record that the land in dispute was covered by a 'Certificate of Title', numbered 404/1944; the Certificate of Title to the land in question, marked Exhibit 1 at the trial, was tendered in evidence by Peter Opoku, a Principal Staff Surveyor of the Lands Commission, which, covered an area of 5.6 square miles.

The trial court made the following orders in the course of the trial that: The Regional Director Survey and Mapping Division of the Lands Division, Accra is to draw ***a Composite Plan*** and show the following:

**"a. the land covered by the Government acquisition for the airport;**

**b. the plaintiff should also show the land that they claim is not covered by the government acquisition**

**c. the land that the plaintiff claim to be covered by the Government acquisition."**

The Regional Director Survey and Mapping Division of the Lands Commission Accra, the representative of the Regional Surveyor, tendered the composite plan in evidence as CW1 and CW2, for the report and plan respectively. In assessing the weight to attach to these exhibits the trial judge observed that the regional director admitted under cross examination that he did not go to the field but did the work assigned to him in his office and also that pillars marking the boundaries on the land had all been removed due to development works going on, in the area.

The learned trial judge discussed the maps tendered before him and after digressing into other matters, referred to the demarcations by both parties on their claims and counterclaims respectively; Exhibit B, was for the plaintiff and Exhibit 1, the defendant. He observed that exhibit 1 quoted a plan numbered X1840 and carried or bore an inscription ***'See plan no. Y 575'***, on its face. The trial judge observed or confessed he did not have the benefit of looking at this document, plan number Y575, for the reasons that it was not tendered in evidence and so no evidence was led on it. He expressed surprise that the representative of the Director of Survey could still purport to use this exhibit to do the super-imposition he was requested by the court to do. To the trial court, if the witness had encountered any difficulty in discharging the assignment entrusted to him, he could have come back to the court for further directives; but there was no evidence he did so. This failure attracted a sharp rebuke and a disapproval by the court expressed in the *'ipsisima verba'* of the court that: "What he did as best can be described as a void enterprise not backed by any mandate."

There can be little or no doubt that for a plaintiff or a counterclaimant to succeed in an action for a declaration of title to land, 'it is his/her first duty to clearly show the area

of land to which his claim/counterclaim relate'; see *Gawu III v Ponuku [1960] GLR 101 at 103; Kwabena v Atuahene [1981] GLR 136 at 144; Nyikplorkplo v Agbodotor [1987-88] 1 GLR 165, CA; Anane v Donkor [1965] GLR 188 at 192,* where Ollennu JSC stated the rational for that holding – so that an order for possession can be executed without difficulty …

Thus in actions for declaration of title to lands, charts, maps, surveys and plans, play pivotal roles in determining issues at stake, for they are presumed to be authentic, and section 153 of the Evidence Act provided that:

"153. All maps, or charts made under the authority of a public entity, and not made for the purpose of any litigated questions, are presumed to be authentic and correct."

In this appeal the trial judge made the order for the plan for the area in dispute to be made for the court as indicated by the respective parties. The plans were made and tendered in evidence as CW1 and CW2; however they were rejected by the judge for reasons stated by him.

The Court of Appeal held that contrary to what the trial court found, the land covered by the Government acquisition was shown on the composite plan and was described on the Certificate of Title as plan No.Y575 and as such the witness acted within his mandate when he used plan no Y575 for the superimposition and therefore the outcome was so valid and regular as it could be used in determining the issue whether or not the certificate of Title issued in 1944, that was to say CW1, covered the 136 acres of land tendered before the trial court; and therefore trial court erred in rejecting what he ordered to be done for him. The appellate court then accepted the plan and report in Exhibit CW1 and CW2.

For this reason the Court of Appeal found for itself that the land claimed by the appellant fell within the acquired land; hence the appellant was by virtue of the Land Title Certificate it held, entitled to the protection afforded by the Public Lands Ordinance, to wit, **"freedom from all adverse or competing rights titles interests trusts claims and demands whatsoever".**

### *Grounds 'e' and 'f' of appeal:*

Exhibits CW1 and CW2 were the report on the composite plan by the Director of Surveys prepared from the Aerodrome Extension plan number Y575 with LS NO. 481/144, with the results according to the legend on CW1, that:

**"1 The boundary edged BLUE is the Aerodrome Extension; (belonging to the Ghana Armed Forces)**

**2 The boundary edged GREEN is registered by Dade Kotopon Trust;**

**3 The boundary edged RED is the Nii Kofi-La Family plan;**

**4 The area hatched is the portion in conflict with the aerodrome Extension."**

It ought to be borne in mind that the trial court rejected the report and the composite plan of the surveyor, that was to say, CW1 and CW2. The argument made was that the trial court rejected CW1 and held that the military had wrongfully taken over lands belonging to the plaintiff.

At the Court of Appeal counsel for the respondent argued that the plan used to represent the land acquired in 1944, was made after the acquisition and the Certificate of Title had been issued after the acquisition, so it could not be used to support the attempt to extend the area acquired to cover the family land. However, the Court of Appeal did not find any favor with that submission, for, the court did not find anything unusual about the Certificate; rather, the Court found that the title certificate was validly and regularly made and exhibit plan Number Y575 was used in preparing Exhibit CW1.

In the result, the Court of Appeal was right in accepting and drawing inferences from exhibits CW1 and CW2 and the appeal on ground '*e*' is dismissed.

We have to consider under this ground of appeal, the interpretation the Court of Appeal gave to plan Y575 and plan X1840 on the land certificate.

I, at this stage, refer to comments made on grounds *(b)* and *(c)* above in relation to the maps in exhibits CW1 and CW2 already and with that I do not think the submissions on these grounds of appeal have any merits in them. Those grounds of appeal are accordingly dismissed as lacking any merit.

The first appellate Court made an express finding of fact that from the exhibit before it, apart from a small portion of the land on the south-west, the land claimed by the Nii Kofi-La family, falls within the acquired area. The appellate Court of Appeal held that there was no basis for contending that unlike the plaintiff, appellant at the Court of Appeal, the defendant at the trial, was not entitled to protection under the provisions

of the Public Lands Ordinance. Section 12 (2) and (4) (supra), were referred to in support of these legal inferences.

**CONCLUSION**: After considering the appeal on its merits, the court of Appeal held that the conclusions by the trial court in its judgment were wrong; in my view, there could be no doubt the appellate court was right in its conclusions. We affirm the judgment by the Court of Appeal and dismiss the claims of the appellant, plaintiff at the trial High Court; we enter judgment in favor of the defendant, respondent at the Court of Appeal, on his counterclaim.

The Appeal is dismissed.

**(SGD) J. ANSAH**

**JUSTICE OF THE SUPREME COURT**

**(SGD) V. J. M. DOTSE**

**JUSTICE OF THE SUPREME COURT**

**(SGD) ANIN YEBOAH**

**JUSTICE OF THE SUPREME COUR**

**(SGD) P. BAFFOE BONNIE**

**JUSTICE OF THE SUPREME COURT**

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

**JUSTICE OF THE SUPREME COURT**

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