IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA, A.D.2012

CORAM: DR. DATE-BAH, J.S.C. (PRESIDING)
ANSAH, J.S.C.
ANIN YEBOAH, J.S.C.
GBADEGBE, J.S.C.
AKOTO-BAMFO (MRS),J.S.C.

CIVIL APPEAL

No. J4/32/ 2011

12TH DECEMBER, 2012

RICHARD OSAE DUODU …… PLAINTIFF/RESPONDENT/APPELLANT

VRS.

NANA AMA BENEWAH …… DEFENDANT/APPELLANT/RESPONDENT

J U D G M E N T

ANIN YEBOAH ,J.S.C

My Lords, this appeal before us is against the judgment of the Court of Appeal, Accra which on 3rd of August 2012 reversed the judgment of the High Court, Accra. We have been invited to allow the appeal and restore the judgment of the learned trial judge.

The facts of this appeal appear not to be in serious controversy. The plaintiff, on 25/08/2004 sued the defendant who is the respondent herein for a declaration of title to a parcel of land at Accra. Other reliefs which were ancillary were also sought against the respondent.

In a nutshell, his case was that the land in dispute was sold to him by one Emmanuel Roger Amudzi in 2004. The said Emmanuel Roger Amudzi had obtained his grant from one Carl Reindorf.

Thereafter he had his title registered at the Lands Commission Secretariat after he had conducted a search which revealed that the original owner of the land was the Reindorf family of Accra which conveyed the land to his grantor. It was in course of developing the land that the respondent herein laid claim to the land alleging that she was the owner of the land by purchase from the same Reindorf family in

2003 and that one Carl Reindorf executed the deed on behalf of the said family as its legal representative.

The respondent went further to plead that the grantor of the plaintiff, the said Emmanuel Roger Amudzi, forged the signature of the said Carl Reindorf to get the document of title duly registered. The respondent, armed with this serious allegations of fraud pleaded the particulars as in paragraph 14 of the statement of defence as follows:

> 14. In answer to the arguments in paragraph 7 of the Statement of Claim, the defendant says that the said document has been fraudulently procured as his grantor forged the signature of Defendant's grantor.
>
> **PARTICULARS OF FRAUD**
>
> That the plaintiff's grantor, Emmanuel Amudzi did forge the signature of defendant's grantor, legal owner of the land and succeeded to register same and therefore states that the said document is a nullity and transfers no title.

The respondent then proceeded to lodge a counterclaim for declaration of title and other reliefs for the same parcel of land claimed by the plaintiff. The suit at the trial court suffered several interlocutory

applications which appear not to be necessary for determination of this appeal.

At the application for directions stage, however, the respondent who alleged fraud raised an issue calling upon the court to appoint a forensic expert to examine and report on all the relevant documents in connection with the case to assist the trial court to determine the issue of forgery. Based on this issue the trial judge made an order for examination by the forensic expert of all the relevant documents. The order was complied with and the said Carl Reindorf offered specimen signatures for examination.

At the trial court, the expert witness (CWI), gave evidence and made it clear that exhibit "A" which is the title deed transferring the land in dispute by Carl Reindorf to Emmanuel Roger Amudzi, was not genuine as the signature of Carl Reindorf was forged. Parties and their witnesses gave evidence without any application to join any of their respective grantors as expected in such a case. As misjoinder or non-joinder of any party does not affect an action the trial court was bound to determine the rights of the two parties before it. However, on 20/12/2007, the learned trial judge delivered his judgment in favour of the plaintiff on the grounds that at the time the plaintiff purchased the

land he was unaware of any fraud and declared the plaintiff as a bona fide purchaser for value without notice.

It is significant to note that even though fraud was pleaded and proved by the forensic expert and other corroborative evidence on record the trial judge invoked the defence of bona fide purchaser for valuable consideration and dismissed the claim. The Court of Appeal, however, reversed the judgment of the trial court and entered judgment for the respondent and granted the reliefs sought on the counterclaim which had also been dismissed by the learned trial judge.

This appeal before us is at the instance of the plaintiff seeking a reversal of the judgment of the Court of Appeal and restoration of the judgment of the High Court.

My Lords, before us, this appeal has been argued on two main grounds. The first ground seeks to attack the Court of Appeal for reversing the findings of the learned trial judge.

In my opinion, the learned judges of the Court of Appeal were merely reviewing the evidence to find out whether the findings made by the trial court were supported by the evidence on record. It is settled law by a long line of authorities like AKUFFO-ADDO V CATHELINE [1992]

1GLR 337 SC, AGYENIN-BOATENG V OFORI & YEBOAH [2012] SCGLR 861, ACKA V PERGAH TRANSPORT LTD [2010] SCGLR 728 and OBENG V ASSEMBLIES OF GOD CHURCH, GHANA [2010] SCGLR 300 that an appellate court is entirely at liberty to review the evidence on record and find out whether the evidence supported the findings made at the court below. Its duty as an appellate court is not to disturb those findings if they are supported by the evidence.

In this case the material evidence appears to be documentary and therefore the Court of Appeal as an appellate court was at liberty to review the evidence and find out whether the inferences drawn from the mass of documents were right. Our duty as the final appellate court is to also review the evidence to ascertain whether the findings made were supported by the evidence as from the record there are no concurrent findings of facts from the two lower courts. The duty of the appellant herein is to demonstrate that the Court of Appeal was in error in reversing the findings of facts made by the trial judge as settled on authority of DJIN V MUSAH BAAKO [2007-8] SCGLR 686. In rather lengthy submissions learned counsel sought to justify the trial judge's findings. The evidence on fraud in my view was overwhelming. How it was ignored by the learned trial judge is incomprehensible. As pointed out the learned trial judge in our respectful opinion failed to appreciate

the fact that fraud, which was established by both oral and documentary evidence, was sufficiently proved as required by section 13 of the Evidence Act, NRCD 323 of 1975. The Court of Appeal after reviewing the evidence was therefore right in allowing the appeal on that grounds. We have not been convinced by the submissions on the first ground that the Court of Appeal was in error. We therefore find no merit on this ground of appeal that the judgment was against the weight of evidence.

The next ground argued extensively touched on the fact that the appellant was unaware of any transactions on the land adverse to her interest and therefore was a bona fide purchaser for value without notice.

This plea raised at the trial court formed the basis of the trial judge's judgment and was thus discussed extensively by the Court of Appeal which cited all the local cases on the subject like: YEBOAH V AMOFA & ORS [1997-98] IGLR 674, OSUMANU V OSUMANU [1995-96] IGLR 672, TOURE V BAAKO [1993-94] IGLR 342 and others. It found from the evidence that the plea of bona fide purchaser for valuable consideration which was raised by the appellant was not proved as the onus was squarely on her. The Court of Appeal found as a fact that the title of the

appellant was clearly tainted by fraud in Exhibits "CWA" and "A" which formed her root of title, and proceeded to say as follows:

> "From the evidence on record, Carl Josiah Reindorf's signature was forged on Exhibits "A" and "CWA" and therefore fraudulent. The title of the respondent being defective and swept out by fraud, the respondent's vendor had no title to convey to him Exhibit "E" the indenture between him and the respondent because it is fraudulent. The trial judge was therefore palpably wrong when he stated that fraud vitiates everything and yet went ahead to decree title to the respondent"

By finding as a fact that there was clear evidence of fraud which vitiated the transaction out of which the appellant derived her title, the onus was thus on the appellant to demonstrate to this court where the Court of Appeal went wrong in not upholding the plea. We have not been convinced by the evidence and the submissions on this point as the appellant failed to demonstrate where the Court of Appeal failed to apply the law rightly against her. Indeed, the evidence rather showed that the appellant was not diligent in the whole transaction.

A bona fide purchaser for valuable consideration assumes the burden of proof of the plea. The oft-quoted case of PILCHER V RAWLINS [1871-

72] 7 LR Ch App 259 has settled this issue long ago. James L J said at page 269 in the case as follows:

> "Such a purchaser when he has once put in that plea may be interrogated and tested to any extent as to the valuable consideration which he has given in order to show the bona fides or mala fides of his purchase and also the presence or the absence of notice; but when he has gone through the ordeal and has satisfied the terms of the pleas of purchase for valuable consideration without notice then according to my judgment this court has no jurisdiction whatever to do anything more than to let him depart in possession of that legal estate, that legal right, that advantage which he has obtained whatever it may be" (Emphasis ours)

It follows that the plea must be established by the party putting forward the plea. As the evidence on record established conclusively that there was clear case of fraud, which if the appellant had been diligent he could have discovered as a prudent purchaser during the transaction, the Court of Appeal was right in rejecting the plea, which was inapplicable under the circumstances.

The last ground argued related to award of damages. As this appeal

fails on the other grounds we think the award of damages by the Court of Appeal was proper given the fact that the respondent was denied his right to possession of the land.

The appeal is thus dismissed as unmeritorious.

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

(SGD) DR. S. K. DATE-BAH

JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

(SGD) N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT

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

JUSTICE OF THE SUPREME COURT

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