IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA, 2012

CORAM: DR. DATE-BAH JSC (PRESIDING)
ANSAH, JSC
DOTSE, JSC
BAFFOE-BONNIE, JSC
AKOTO-BAMFO,(MRS) JSC

CIVIL APPEAL.
No. J4/44/2012

4TH JULY,2012

SAANBAYE BASILDE KANGBEREE ... PLAINTIFF/APPELLANT/RESPONDENT
(SUING PER HIS LAWFUL ATTORNEY)
THERESA KANGBEREE

VRS

ALHAJI SEIDU MOHAMED ... DEFENDANT/RESPONDENT/APPELLANT
H/NO. 18/7
TANTRA HILL
ACCRA

J U D G M E N T

DOTSE: JSC

This is an appeal by the Defendant/Respondent/Appellant, hereafter referred to as the Defendant, against the Judgment of

the Court of Appeal delivered on 9th December, 2010 in favour of the plaintiff/Appellant/Respondent, hereafter referred to as the Plaintiff.

ACTION IN THE HIGH COURT

By his amended writ of summons, the plaintiff, who commenced the action through His Lawful Attorney THERESA T. KANGBEREE claimed the following reliefs against the the Defendant:

i. A declaration of title in favour of plaintiff against defendant for all that piece and parcel of land in extent 0.15 hectare (0.38 of an acre) more or less being parcel No.187 Block 24, Section 201 situate at South Ofankor in the Greater Accra Region of The Republic of Ghana and more also described at paragraph 2 of plaintiff's statement of claim.
ii. An order for recovery of possession of the land the subject matter of this suit from defendant.
iii. A declaration that the defendant has trespassed into plaintiff's land described herein.
iv. General damages in favour of plaintiff for the trespass committed by defendant on plaintiff's land.
v. An order that defendant demolish all and any structures constructed by defendant on the land.
vi. An order directed at defendant to defray all expenses incurred by plaintiff for purposes of demolishing the structures constructed by defendant on plaintiff's land.

vii. An order of perpetual injunction to restrain the defendant whether by himself/herself, servants, workmen or agents or otherwise from trespassing or otherwise undertaking any development of, dealing with or in any manner interfering with plaintiff's ownership of a right and as well as possession of the land the subject matter of this suit.

The Defendant, on his part as per his amended counterclaim, also sought the following reliefs against the plaintiff:

a) A declaration of title to all that piece or parcel of land situated, lying and being at South Ofankor, Accra containing an approximate area of 0.36 acre or 0.15 hectare more or less and bounded on the North West by vendors land measuring on that side 158.1 feet more or less on the North-East by a proposed road and measuring on that side 98.6 more or less on the South-East by vendors land measuring on that side 159.7 feet more or less on the South-West by vendors land measuring on that side 100.2 feet more or less which piece or parcel of land is more particularly delineated in the attached site plan.
b) An order for the Land Title Certificate No. GA 17008 dated 31st day of July 2008 in favour of the plaintiff herein be expunged from the records of the Land Title Registry.
c) An order to restrain the plaintiff from further disturbing the peaceful enjoyment of his land and property.
d) Damages for trespass.
e) Punitive damages for libel.
f) Damages for malicious prosecution.
g) Cost of this suit including legal fees.

During the course of the trial in the High Court, one ANDY AGBAKPE , described as a Senior Technical Officer of the Survey Department was called as a Court Witness. (C.W.1).

The Plaintiff's Attorney, Theresa Kangberee, and ISAAC SIAW ADU PW1 a licensed Surveyor testified for and on behalf of the plaintiff.

The defendant testified on his own behalf and in addition called one witness BISMARK ADJEI (DW1) who was described as an employee of the defendant, a mason by profession who worked on the development of the land in dispute for the defendant. He is also reputed to be an associate of the defendant of several years.

What were the salient facts upon which both parties relied on for the contest of the suit in the trial High Court? Let us briefly relate these facts as can be gleaned from the appeal record.

FACTS ACCORDING TO PLAINTIFF

According to the plaintiff, the land in dispute was conveyed to him by one Emmanuel Yaw Nkrumah on 8th August, 1988. It is significant to observe that Emmanuel Yaw Nkrumah himself obtained his conveyance from ANNA BENIEH YANNEY. Soon after obtaining his conveyance, plaintiff averred that he went into possession of the land, erected a fence wall on same and heaped sand and stones preparatory towards commencement of building.

The plaintiff also succeeded in registering his title documents evidencing the conveyance of the disputed land to him at the Land Title Registry on 31st July 2000 as Certificate No. G.A. 17008.

It was later that the plaintiff's Attorney who is his wife discovered that the defendant had commenced construction on the plaintiff's land and accordingly instructed the commencement of the proceedings in the High Court from which this Appeal emanates.

FACTS ACCORDING TO DEFENDANT

The defendant averred that he acquired the land in dispute from Mr. and Mrs. Marcus. The defendant claimed to have conducted a search in respect of the disputed land on 9th November, 2006 which disclosed that the land had been conveyed to his vendors, Mr. & Mrs. Marcus in 1989. After he purchased the land, the defendant claimed to have commenced occupation of same and has since developed the land to an appreciable level.

From the above facts, it is obvious that what the trial court should have enquired into from the very beginning was the priority of the title of the plaintiff and the defendant and thereafter those of their respective Vendors. Be it as it may, at the end of the trial, on the 31st day of October, 2008, Gyaesayor J.A, sitting as an additional High Court Judge, presiding over the Fast Track High Court, Accra delivered judgment in favour of the

defendant on his counterclaim and dismissed the plaintiff's action.

In an analysis of the reasons for the award of judgment in favour of the defendant, the learned trial Judge, delivered himself thus:

> "It is evident that plaintiff had not started the construction work on the land although he says in the evidence that he has put up a fence wall and a gate and done other acts to indicate that he was in possession.
>
> It was only bare assertion not supported by any evidence from independent source. This is more important because it is the defendant's case that the land which he has since developed by putting up "two boys quarters and occupied by members of his family was bare when he went there. Pictures exhibited by the defendant shows that he has put up a fence wall and has in fact roofed the main building. Of the two parties it is the defendant who is effectively in occupation of the land. Any attempt now to evict him from the land which he lawfully acquired shall result in untold hardship being visited on the defendant. The Land Title Certificate in possession of plaintiff does not cover the land occupied by the defendant and does therefore not confer an indefeasible title on the plaintiff is to deprive the defendant from to assert his title to the land. It covers an area found to be in a road and different from the land of the defendant."

"In the light of the evidence led before this court, the court finds the case of defendant more acceptable and I accordingly proceed to dismiss the plaintiff's claim and enter judgment for defendant on his counterclaim and hereby

"restrain the plaintiff, agents, servants, privies etc from interfering with defendant enjoyment of the land. I however refuse to award any damages for trespassing and malicious prosecution since I find no evidence to support those claims."

"There was an undertaking by the plaintiff to pay the expenses in the event of losing the case. No evidence has been led to show the extent of damages suffered by the defendant. In the circumstances, I shall only award cost of GH3,000 to the defendant."

The above constitute the salient parts of the High Court Judgment.

DECISION OF COURT OF APPEAL AND APPEAL TO SUPREME COURT

The plaintiff naturally felt grossly dissatisfied with the above judgment and successfully appealed against it to the Court of Appeal, which by a unanimous decision of the Court, CORAM:- Abban (Mrs) J.A. presiding, Kanyoke and Apaloo, JJA allowed the

appeal as per the judgment of the Court delivered by Kanyoke J.A.

It is this decision of the Court of Appeal that has been appealed against by the defendant to this court on the following grounds of appeal:

GROUNDS OF APPEAL

(a) The Judgment was against the weight of evidence as adduced.
(b) The Appeal Court erred in holding that the Survey Plan tendered by CW1 and CW1's evidence should have been rejected as being unreliable.
(c) The Appeal Court erred in holding that defendant/appellant's grantors had no interest in the land demised to defendant /appellant and consequently defendant /appellant's documents were null and void.
(d) The Appeal Court erred in holding that the defendant/appellant failed to prove his ownership of the land in dispute.
(e) Cost awarded was excessive.

Before we embark upon an analysis and evaluation of the arguments on appeal to this court, it is perhaps necessary to state that, quite apart from considering the priority of the title of the parties and those of their respective vendors which might prove crucial in the determination of issues raised in this appeal,

there is the need to also consider the arguments put forward by Counsel for the parties in their respective statements of case in support of the grounds of appeal referred to supra.

DEFENDANT'S ARGUMENTS

Since it is the defendant who is the appellant in this Court, it is prudent to begin with an evaluation of his arguments in support of his case.

The crux of the defendant's argument seems to be that, the Court of Appeal erred in rejecting the evidence of CW1 the Court appointed Surveyor. According to the evidence on record, it was this CW1` who testified that the plaintiff's land mainly falls within a road. C.W.1 again testified that the plaintiff's land is not the same land that is being occupied by defendant although he accepts that there is a slight overlap of the respective lands of plaintiff and defendant.

As a matter of fact, we are of the considered view that C.W.1's testimony was so confusing and incoherent that it is thoroughly unreliable. Furthermore, his testimony displayed a shocking shortfall in his professionalism.

Proof of the above assertion is discernible from C.W.1's own testimony after he tendered the plan.

In answer to a question as to what his findings were when he went to the land, this is what C.W.1 told the Court:

"My Lord on the composite plan, the land showed to me by Saanbaye is edged green on the composite plan and the land shown to me by Alhaji Muhamed is also edged green that means they show the same thing on the ground. C.W.1 continued his testimony after an interjection "is that so" in the following confused narrative:-

"My Lord the site plan of Saanbaye is edged blue on the composite plan. My Lord the site plan of Alhaji Mohamed is edged red on the composite plan. And my finding my Lord is that the green and the red shows the red conforms the green on the composite plan."

Q: "Say it again"

We believe the learned trial Judge himself must have realised the incoherence and inconsistency of the narrative to have asked for explanation. And this is what he got this time around.

"The red and the green they are the same thing. That shows that the red that shows the site of Alhaji Mohamed and the green which the two of them are claiming on the ground, the red conforms with the green"

References to Saanbaye are referable to the plaintiff whilst references to Alhaji Mohamed refer to the defendant.

In evaluating the evidence of this C.W.1 the learned trial Judge observed as follows in his judgment.

> **"The Court in compliance with issue in the summons for direction filed by the plaintiff referred the matter to the Survey Department to draw a composite plan for the benefit of the Court.**
>
> **Without wasting too many words on this matter, the Survey Department appointed one Andy Agbakpe a Land Surveyor with the Survey Department, Accra who is also a Senior Technical Officer to do the Survey. He visited the land with the plans submitted by the parties. According to him, the plan given him by the plaintiff is edged green and that showed to him by defendant is also edged green. In effect, the two persons were claiming the same piece of land on the ground. In his survey,**
>
> **"he prepared a composite plan, which shows that the defendant land is edged red on the composite plan and conforms with what is on the ground. He said "the green and the red shows the red conforms with the green on the composite land. In effect, the plaintiff land edged blue on the composite plan does not correspond to her plan submitted for the Survey. The land for plaintiff according to the findings of the Surveyor falls within a road and is not the land occupied by the defendant."**

If that is the understanding of the evidence of C.W.1 by the learned trial Judge, then what that means is that, the plaintiff's land is separate and distinct from the land upon which the defendant has built upon. In other words, it means the defendant has not committed trespass on the land claimed by the plaintiff. In effect, the defendant should not have been entitled to his counterclaim as claimed in the trial court.

However, as later events have proven, the same road reservation that plaintiff was reputed to be claiming has been plotted and reputed to have been registered for the defendant.

In otherwords, defendant anchored his arguments on the rejection of C.W.1's evidence by the Court of Appeal and also the rejection of the title of his vendors by the Court of Appeal as being flawed.

PLAINTIFF'S ARGUMENTS

The plaintiff on the other hand argued that his land title certificate which he produced and tendered constitutes prima facie evidence that he is the actual owner of the land in dispute. Therefore, the defendant can only assert title to the land in dispute if he is able to lead cogent evidence to rebut the plaintiff's claim of title to the land. But this the defendant has failed to do. The plaintiff therefore contended that the Court of Appeal was thus right in rejecting the C.W.1's evidence and that C.W.1's evidence that plaintiff's land falls in a road should be rejected

because as far as the Land Title Registration Act, 1986 (PN DCL 152) is concerned, the Survey Department is required and mandated to mark and delineate roads out of areas that are to be registered. There is therefore this presumption of regularity that the Survey Department in surveying the land of the plaintiff before the certificate was procured did its job properly. It is therefore incomprehensible for the same Survey Department to which C.W.1 belongs to turn around and state that the plaintiff's land as registered is a road, or to put it bluntly, that the plaintiff holds a land title certificate to a road as owner.

As far as we are concerned, it should have dawned on the learned trial Judge that the evidence of C.W.1 as it stood cannot be relied upon because not only did it lack clarity but it defied all logic and therefore, the Court should have turned elsewhere for evidence to base the Judgment upon. Fortunately, evidence abounds on the record from which the Court could have used to come to a proper, well considered and logical judgment which would have been in tune with sound and tested principles of law. This is what the Court of Appeal did.

What then are the Legal Issues that have to be considered in resolving this appeal?

Relating the legal issues raised with the grounds of appeal, the following issues stand out for determination.

1. Whether the Court of Appeal erred in preferring the root of title of the plaintiff as opposed to that of the defendant and

was therefore wrong in their application of the principle of "nemo dat quod non habet".

2. Whether or not the decision of the Court of Appeal not to rely on the survey plan tendered by C.W.1 as well as the rejection of the evidence of C.W.1 was wrong in law.
3. Whether the reliance the Court of Appeal placed on the Land Title Certificate procured by the plaintiff and tendered into evidence was wrong in law.

Before we proceed with the discussion on the legal issues, let us deal with one peripheral matter, and that is whether the parties are adidem on the identity of the land, i.e. the subject matter of the dispute.

IDENTITY OF THE LAND

The plaintiff's Attorney was certain in her evidence that it is the land the plaintiff bought from EMMANUEL NKRUMAH in 1988 that the defendant has trespassed upon and commenced building operations thereon.

According to the plaintiff, after purchase of the land, the documents of title were regularised at Lands Commission until they were perfected by the acquisition of the Land Title Certificate. Plaintiff then tendered the relevant land documents as exhibits, B, C, D1 and D2 respectively.

The evidence also indicated that after purchase of the land, the plaintiff erected a cement fence wall around the land, dug a tank,

heaped sand and stone and erected a metal gate to the wall fence.

It was thus very easy for the plaintiff's Attorney to determine later that the defendant had committed acts of trespass on the land they had purchased.

From the plaintiff's point of view the land he purchased is what the defendant has trespassed upon.

The evidence of C.W.1 really confirms the point that the lands are the same. But for the untenable position taken by the learned trial Judge, which saw him openly descend into the arena of the conflict on the side of the defendant, C.W.1 was clear the two lands are the same.

For example, how does one explain this statement from the learned trial Judge to the C.W.1.

> **"So are you saying that the plaintiff is trying to take away the defendant's land?"**

When C.W.1, answered that, that was not what he said, the learned trial Judge pressed further to know what he said or meant and this is what is captured on the record.

> **"What I am saying is that, what the plaintiff had shown on the ground the defendant had shown the same thing and the site plan the defendant had submitted confirms with what we have shown but**

the site plan the plaintiff had submitted moves away from what ……."

From the above testimony, it appears the C.W.1 was somehow certain about the identity of the land in dispute. His concern was not that the plaintiff's land is elsewhere, separate and distinct from that of the defendant.

His concern was that, part of the plaintiff's land overlaps that of the defendant and the rest has been taken over by a road. How he came by this piece of evidence has not been given and the source stated for it to be verified. In any case, the learned trial Judge himself appeared to have endorsed the serious misgivings that learned counsel for the plaintiff expressed about the competence of C.W.1 in the following statement which to us speaks volumes.

"If you go and there is another site plan somewhere, then you will come and ask us to stop then you go for another site plan we shall never finish. What I will do is that finish with him <u>if you like you can make another request for another surveyor to be appointed and I can consider it, but for now we are going to testify on what he has brought".</u>

This clearly marked the foundation for the second survey that was done by the plaintiff which was tendered by PW1 as exhibit E. the evidence of PW1 to our mind has cleared any doubts that one may have about the identity of the disputed land and the

contention that part of the plaintiff's land fell on a road. All these claims have been discounted by PW1 by his assertion that, for such claims to be credible, there must be a scheme that has to be used to give credibility to the road reservation theory. As things stand now, it remains a perception in the mind of C.W.1 and perhaps the learned trial Judge which has not become a reality. It must be noted that public roads are planned to form part of town, municipal and metropolitan planning schemes and these are always documented for planning and zoning purposes.

We will therefore hold and rule that the identity of the land is not in doubt.

CONDUCT OF SURVEY PLAN IN THE HIGH COURT

But we have some reservations about the conduct of the survey in the trial court. When the decision was taken to appoint a Surveyor to demarcate and delineate the land in dispute between the parties, the court should have given some guidance to the Surveyor by directing the parties and their counsel to file what is generally known as Survey Instructions. These instructions would have aided and limited the Surveyor on the scope of works he was to do.

This court, speaking with one voice through me in the unreported Civil Appeal No. J4/34/2011 dated 22 – 2 – 2012 entitled Salomey Shorme Tettey – Plaintiff/Respondent/Appellant

Nii Amon Tafo Co - Plaintiff/Respondent/Appellant

Vrs

Mary Korkor Hayford -

Defendant/Appellants/Respondents

Substituted by Stella Larbi

and Comfort Decker

CORAM: - Akuffo (Ms) JSC presiding, Date-Bah, Adinyra (Mrs) Dotse and Vida Akoto-Bamfo (Mrs) JJSC's stated the following as useful lessons to be adopted whenever Survey Instructions are ordered to be filed in the trial of land cases.

> **"We have perused the evidence and cross-examination of the Surveyor and come to the conclusion that if the parties had complied with the courts directive to file survey instructions perhaps the difficulties the Surveyor encountered with some of the questions put to him under cross-examination would have been averted.**
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> **- - - - - - - - - - - - -**
>
> **Secondly, what we have also deduced from this case is that, the failure by the parties to have filed survey instructions prevented the Surveyor from dealing with issues germane to the case when he went onto the land.**
>
> **- -**
>
> **Thirdly, the Surveyor would have been requested to indicate the portions of the land vis-à-vis the approved layout of the land from the relevant**

statutory town planning and or metropolitan Assembly.

Fourthly, all approved roads in the lay out as it affected portions of the land claimed by the parties should have been indicated by the Surveyor on the plan if the parties and or their counsel really wanted issues to be dealt with holistically."

The Court finally concluded this issue as follows:-

"It should thus be noted that, in view of the massive assistance that a court determining issues of title to land and other related and ancillary reliefs would derive from survey plans, care and some amount of professionalism should be exhibited by counsel whenever a Survey Plan is ordered in contested land disputes."

The above observations and guidelines become really relevant in the instant case where road reservation has been referred to as having taken a portion of plaintiff's land. If the Surveyor, C.W.1 had produced the scheme from which the plaintiff's land falls into a road reservation, perhaps the authenticity of the source of the scheme could have lent credence to the observation. But coming as it has from a Surveyor who did not even have any field notes to remind him of the observations, readings and recordings done at the site, albeit in the absence of the plaintiff, this conduct, has created doubts in his competence and has seriously discredited his work and testimony.

However, just as the Supreme Court was able to use other pieces of evidence on record after discounting the evidence of the Surveyor in the Salomey S. Tetteh case referred to supra and held that the defendants and not the plaintiff in the said case referred to supra, were the owners of the land, so also can this court find appropriate and relevant evidence on record to come to a definitive conclusion in this matter that one of the parties has a superior title to the other.

ISSUE NO.1

Whether the Court of Appeal erred in preferring the plaintiff's root of title.

1. The plaintiff and defendant have all established their root of title and by their pleadings and evidence that the land they claim is the same parcel of land. This is because whilst plaintiff traces his root of title from Charles Okai Botchway as is evident from exhibit D1, the defendant traces his root from Nii Amponsah Ankrah who made a statutory declaration dated 24 – 3 – 69 and then by a deed of conveyance dated 20 – 6 – 79 Charles Okai Botchway transferred that land to Mathew Allotey.

In this respect, the line of conveyance to plaintiff looks like this –

1. Conveyance from Charles O. Botchway dated 20 – 6 – 1979 to Mathew Allotey.
2. Conveyance from Mathew Allotey dated 5 – 8 – 1983 to Anna Benieh Yanney.

3. Conveyance from Anna Benieh Yanney dated 12 – 12 – 1986 to Emmanuel Yaw Nkrumah
4. Emmanuel Yaw Nkrumah is the plaintiff's vendor and he conveyed title to the plaintiff on 8 – 8 – 1988.

In respect of the defendant, the following are the records on the transfers of the root of title of his vendors.

(i) Statutory Declaration dated 24 – 3 – 1969 by Nii Amponsah Ankrah
(ii) Conveyance from Charles O. Botchway dated 20 – 6 – 1979 to Mathew Allotey.
(iii) Conveyance dated 5 – 8 – 1983 from Mathew Allotey to Anna Benieh Yanney.
(iv) Conveyance dated 10 – 11 – 1989 from Anna Benieh Yanney to Mr. & Mrs Marcus and Another.
(v) Transaction according to defendant in 1989 conveying the land from Mr. & Mrs Marcus and Yvonne Nuamah to him.

What is clear from the above extracts is that, whilst both parties had one root of title to start with and continued apace with this common denominator until the conveyance from Mathew Allotey to Anna Benieh on 5 – 8 – 1983, when the said Anna Benieh divested herself of title to Emmanuel Yaw Nkrumah who is the plaintiff's vendor on 12 – 12 – 1986, the conveyance to the defendant's vendor Mr. & Mrs Marcus was reputed to have been made by the same Anna Benieh on 10 – 11 – 1989.

The Court of Appeal had correctly stated the legal position of the above transactions and we could not agree more with Kanyoke J.A. when he summed it up in the judgment thus:-

> **"On the basis of the documentary evidence provided by exhibits D1 and I respectively and my finding that the parties were fighting over the same piece or parcel of land, the question is whether Anna Benieh Yanney having in 1986 conveyed or transferred her title or interest in the disputed land to Emmanuel Yaw Nkrumah – the appellant's vendor, she had any title or interest in that land again to convey or transfer to Mr & Mrs Marcus and Yvonne Nuamah the respondent's vendors in 1989? The answer is clearly in the negative. The principle of nemo dat quod non habet applied to prevent or prohibit or render null and void Anna Benieh Yanney from any further dealing with the land or anything that she did in respect of the land after 1986. In effect, in point of law, Mr. & Mrs Marcus, and Yvonne Nuamah got nothing from Anna Benieh Yanney on 10th November, 1989 in respect of the land in dispute and consequently had no title or interest in that land to convey to the respondent on 27th April, 2006. The respondent, (referring to the defendant herein) therefore got nothing in respect of the land in dispute from Mr. & Mrs. Marcus and Yvonne Nuamah by exhibit 2".**

This principle of nemo dat quod non habet operates ruthlessly and by it an owner of land can only convey title that he owns at the material time of the conveyance and since by the evidence on record, Anna Benieh Yanney, had divested herself of title in the same parcel of land to Emmanuel Yaw Nkrumah, the plaintiff's vendor on 12 – 12 – 1986, there was definitely no title left in her to convey to any other person, at the time the conveyance to defendants vendors was effected. The conveyance to the defendant's vendors and subsequently to the defendant herein are therefore null and void and of no effect.

On the operation of this principle of nemo dat quod non habet, see the following cases.

1. Bruce v Quaynor & Others (1959) GLR 292 at 294
2. Unreported Supreme Court consolidated Suit nos. 81/92 and L. 20/92 dated 16th march 2011 entitled Mrs. Christiana Edith Agyakwa Aboa Plaintiff/Respondent/Respondent v. Major Keelson (Rtd) Defendant/Appellant/Appellant and Okyeane Yima & Anor, Plaintiff/Respondent/Respondents v. Major Keelson Defendant/Appellant/Appellant.
3. Sasu v Amua Sakyi (1987-88)2 GLR 221 holden 7 at pages 241 per Wuaku J.A. as he then was.

It is thus clear that using this principle of nemo dat quod non habet alone, the Court of Appeal was right to have set aside the decision of the High Court and enter judgment for the plaintiff.

ISSUE NO.2

Whether or not the decision of the Court of Appeal not to rely on the plan was wrong in law.

By now, it is evident that the trial Judge had no basis to have ignored the credible and convincing evidence of the plaintiff based on his documentary materials of title and to have rather preferred the porous, weak, untested, inconsistent and contradictory evidence of a discredited Surveyor, which is what Andy Agbakpe, C.W.1 at the end of the day proved to be on record. There is also authority based on the decisions in the cases of Sasu v White Cross Insurance Co. Ltd (1960) GLR 1, and Darbah & Another v Ampah (1989-90)1 GLR 598 (CA) at 606 that a trial Judge need not accept the evidence given by an expert witness such as C.W.1.

From the commencement of the suit, the learned trial Judge should have been put on the alert that the defendant was bent on bulldozing his way and not conducting his affairs according to due process. Despite the fact that the suit was pending, and that an injunction application was pending against him, the defendant proceeded defiantly to complete the building regardless of the consequences. The Courts must not only frown upon such brazen display of wealth but deprecate it as well. Unfortunately, pronouncements from the trial court that because

the defendant had speedily completed the house he should be deemed as being in effective occupation is a dangerous precedent that should not be allowed to prevail.

Such a statement, has the tendency to aid the rich and wealthy in our Society who may decide to be unscrupulous in their conduct in related land transactions.

In the circumstances of this case, it is clear that not having pleaded the equitable doctrine or principle of bonafide purchaser for value without notice or the protection provided by and under the Land Development (Protection of Purchasers) Act 1962, (Act 2) the defendant cannot avail himself of these defences because of his conduct. He who comes to equity must come with clean hands is an equitable maxim. In our opinion, the conduct of the defendant is not deserving of the sentiments extended to him by the trial Judge. Even though the defendant made an attempt to challenge the plaintiff by alleging that his Land Title Certificate was procured fraudulently, the said attempt was a lame one since no particulars of the said fraud were particularised. In any case no evidence whatsoever was given which either directly or indirectly gave an inkling of any allegation of fraud in the procuration of the plaintiff's Land Title Certificate.

It is trite learning that for anyone to succeed with a serious allegation like fraud which has the tendency to vitiate acts done regularly, the particulars, which must be pleaded, must also be proven. In the instant case, not only were the allegations of fraud

not particularised, but they were also not proven. There is a presumption of regularity in law and this has been given statutory recognition in the Evidence Act 1975 (NRCD 323).

This means that, institutions of state like the Lands Commission, Survey Department and the Land Title Registry are presumed to conduct their affairs with a certain degree of regularity in line with the statutes that established them. Thus, unless there is strong evidence to the contrary, such a presumption should not be wished away.
The least courts of law can do is to ensure that institutions of state mandated to perform statutory duties are not unduly maligned by unsubstantiated allegations of impropriety.

It is in this respect that we believe the contention that the policy measures that influenced the passage of PNDCL 152 should have been considered by the trial court in its assessment of the claims by C.W.1 that plaintiff's land, which has a Land Title Certificate falls into a road. This is because PNDCL 152 mandates the Survey Department to earmark roads whenever the cadastral plan of Land Title Certificate's are being drawn up, to prevent people's land from falling into areas marked or zoned as roads from registering them as such. It would therefore be very strange and regrettable for this same Survey Department which has the duty to prevent people from registering title to road reservations to go ahead and register the plaintiff as the owner of a road. This view is bolstered by the fact that the composite plan prepared by C.W.1 and P.W.1 does not contain or show any road.

As a matter of fact, C.W.1 admitted during cross-examination that in conducting the survey work, he neither requested for nor referred to the plaintiff's Land Title Certificate. It is very interesting that a staff of the Survey Department would refuse to consider a plan attached to a land Title Certificate which by law is prepared by staff of the Survey Department. As we have laboured to point out in this judgment, the calibre of work done by C.W.1 in this case was nothing to write home about. It is therefore not surprising that, after the High Court judgment, the defendant had been able to register and replace the plaintiff as the owner of the so called "road land".

The publication in the Ghanaian Times of 9th October, 2010 which has been made available to the court and not denied by the defendant, means that the contents are correct and true.

The question that we would want answered is that, is the portion of the plaintiff's land which fell into a road now suitable for use and development and therefore registrable by the defendant?

Considering the work of C.W.1, we endorse the findings of the Court of Appeal that because his work was so perverse, inconsistent and contradictory, no useful purpose would be served in relying on it. The Court of Appeal was thus right in setting aside the findings made by the learned trial Judge in this respect, and find for the plaintiff that on a balance of probabilities, he is the owner of the disputed land.

ISSUE NO.3

Whether the reliance placed by the Court of Appeal on the Land Title Certificate and the plaintiff's root of title was wrong in law.

In order not to be repetitive because most of the salient points germane to this issue have already been discussed and dealt with, we will be very brief.

The contention here is that, by the mere fact that plaintiff has been able to produce a valid Land Title Certificate, and this constitutes a prima facie evidence of good title, the defendant needs to produce very cogent evidence to rebut this presumption. It is interesting to observe that learned counsel for the defendant in the face of all the proven facts and statutory provisions in PNDCL 152 still contends that the title of the plaintiff as provided under Sections 43(1) sub-sections (1)(2)(3) and (4) of PNDCL 152 is not sacrosanct and conclusive and that it can be impugned on grounds of mistake, fraud or some obvious misrepresentation.

One should not be making general comments in this case, but specific facts on record and referable to particular instances of mistake, fraud or misrepresentation that can impugn the validity of the Land Title Certificate of the Plaintiff. We have carefully studied this entire record and has not seen any such evidence. The Defendant woefully failed to produce any shred of evidence to establish any such contrary evidence.

What has to be noted is that, assuming the Defendant genuinely believed in the case he put forward at the trial Court, nothing

prevented him from calling any of his vendors to testify for him. This is because the Plaintiff has produced his Land Title Certificate and called a credible witness, P.W. 1 whose evidence we accept. On the other hand, D.W. 1 whose evidence the Defendant seeks to use in the case cannot be relied upon. Having filed a Counterclaim in the action, the Defendant and his legal advisers ought to have realized that he bore the same evidential burden as the Plaintiff bore at the commencement of the case. Having thus satisfactorily discharged this burden, the Plaintiff must be deemed to have established the basis for the grant of the reliefs he claimed in the Trial Court.

The Defendant has not been able to shed a shadow of doubt on the Plaintiff's Land Title Certificate, and once this is held to be regular and valid, the Court of Appeal was thus right in upholding its authenticity and validity.

CONCLUSION

On the whole, we find no valid or sound reason to disturb the well thought out and reasoned judgment of the Court of Appeal.

For the reasons stated above, we will dismiss this appeal as wholly incompetent and unmeritorious. The Appeal filed against the Court of Appeal Judgment of 9-12-2010 hereby fails. The Court of Appeal judgment of even date as well as its Orders contained therein are affirmed.

[SGD] J. V. M. DOTSE
JUSTICE OF THE SUPREME COURT

[SGD] DR. S. K. DATE-BAH
JUSTICE OF THE SUPREME COUR

[SGD] J. ANSAH
JUSTICE OF THE SUPREME COURT

[SGD] P. BAFFOE-BONNIE
JUSTICE OF THE SUPREME COURT

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