

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2025

CORAM: PWAMANG JSC

PROF. MENSA-BONSU (MRS.) JSC

KULENDI JSC

GAEWU JSC

DARKO ASARE JSC

CIVIL APPEAL

NO. J4/42/2024

2<sup>ND</sup> APRIL, 2025

- 1. AMA NYAME
- 2. ADWOA MMRA
- 3. KWAME BONAH
- 4. AKWASI MENSAH



PLAINTIFFS/ RESPONDENTS/APPELLANTS

VRS.

- 1. YAA ASANTEWAA
- 2. AKOSUA AMPOMAH



DEFENDANTS/APPELLANTS/RESPONDENTS

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JUDGMENT

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KULENDI JSC

INTRODUCTION:

1. This is an appeal against the unanimous decision of the Court of Appeal (Civil Division) dated the 9<sup>th</sup> day of March, 2023, which overturned the decision of the Circuit Court, Kumasi dated the 28<sup>th</sup> day of February, 2018.
2. For the purpose of this judgment, the parties shall retain their respective designations as they held at the Court of first instance. The Plaintiffs/Respondents/Appellants shall therefore be referred to as “the Plaintiffs” while the Defendants/Appellants/Respondents shall simply be referred to as “the Defendants”.

## **BACKGROUND:**

3. The factual antecedents that culminated into the instant suit are far from complex. The Plaintiffs issued a Writ of Summons at the Circuit Court, Kumasi on 21<sup>st</sup> March, 2014 seeking the following reliefs against the Defendants:
  - "a. An order of the court for the Defendants, their agents, children, family, or any other person in occupation assigns, Number Plot 35 Block B Atasomanso to give vacant possession of the said house
  - b. Recovery of possession of House Number Plot 35 Block 'B' Atasomanso, Kumasi.
  - c. An order of perpetual injunction restraining the Defendants House Number Plot 35 Block 'B' from interfering Atasomanso, Kumasi".
4. The averments upon which the Plaintiffs anchored the above reliefs are as follows; Plaintiffs' father by name Akwasi Agyapong who passed away on 15th January, 2000, in Cote D'Ivoire was the owner of House Number Plot 35 Block B, situate at Atasamanso. The late Akwasi Agyapong built the said house during his lifetime. After the death of their father, the Plaintiffs applied for Letters of Administration from the Circuit Court in respect of their father's estate and same was granted. They vested the property in issue in themselves and notified the Defendants to vacate the house as the

Plaintiffs had personal need of it. The Defendants however refused to vacate the property, hence the suit.

5. The Defendants entered appearance to the suit and filed a Statement of Defence and Counterclaim on the 20<sup>th</sup> day of May, 2014. The Defendants denied the ownership claims of the Plaintiffs. Contrarily, they contended that although the said house was indeed built by one Akwasi Agyapong, the said Akwasi Agyapong was not the father of the Plaintiffs but rather the 1<sup>st</sup> Defendant's uncle. According to the Defendants, the house was built by the said Akwasi Agyapong for his sister Adwoa Konadu and her children. Being one of the said children of Adwoa Konadu, the 1<sup>st</sup> Defendant asserted her claim to the property in dispute.
6. The 1<sup>st</sup> Defendant contended that her uncle commenced construction on the land but could not complete the project owing to his demise on 21<sup>st</sup> January, 2000. Following his death, Letters of Administration were obtained by his two wives and son. It was contended further that the 1<sup>st</sup> Defendant's mother took possession of the property and rented same to the Women Development Foundation without let or hindrance by the Plaintiffs after the project was completed by the 1<sup>st</sup> Defendant's brother. They further contended that the Plaintiffs were estopped from laying any adverse claims due to the lapse of time.
7. The Defendants also averred that they caveated against the Plaintiffs application for Letters of Administration, on the basis of the fact that the Akwasi Agyapong whom the Plaintiffs claimed to be their father was not in fact Plaintiff's father. The Defendants further contended that the Plaintiffs' father who was married to the 1<sup>st</sup> Defendant's mother was called Kwaku Tawiah aka "Woarabeba" and that he had never been known as Akwasi Agyapong as alleged by the Plaintiffs. Defendants thus alleged fraud against the Plaintiffs and particularized same. It was contended that Plaintiffs

misrepresented to the court that the name of their father was Akwasi Agyapong when they knew that their father was called Kwaku Tawiah a.k.a "Woarabeba". The 1st Defendant therefore counterclaimed for a declaration of title and recovery of possession. The 1st Defendant further sought an order for perpetual injunction against the Plaintiffs as well as damages.

#### **JUDGMENT OF THE CIRCUIT COURT:**

8. Trial commenced on 5th November, 2014 with the 1st Plaintiff giving testimony. After the 1st Plaintiff testified, Plaintiffs called James Kwame Tutu, Kofi Akyer and Micheal Dela Ahey to also give testimony in support of their case. On their part, the Defendants testified for themselves in the matter and also called Abena Amankwah, Akwasi Kyerepem and Kwabena Frimpong to also testify on their behalf.
  
9. At the end of trial, the Circuit Court on 28th February 2018, entered judgment in favour of the Plaintiffs as follows:

*"In the circumstances, I enter judgement for the Plaintiffs on their reliefs. An order of this Court is made for the defendants, their agents, assigns, children, family or any other person in occupation of House Number Plot 35 Block B Atasemanso to give vacant possession of the said house to the Plaintiffs. The Plaintiffs are to recover possession of House Number Plot 35 Block B Atasemanso, Kumasi. The defendants, their agents, privies and assigns are restrained by an order of injunction from interfering with House Number Plot 35 Block B Atasemanso, Kumasi. The Defendants Counterclaim is hereby dismissed. Cost of GH3000 against the Defendants."*

#### **JUDGMENT OF THE COURT OF APPEAL:**

10. Dissatisfied, the Defendants lodged an appeal at the Court of Appeal on the ground that the judgment was against the weight of evidence.

11. After considering the evidence on record, the Court of Appeal by a judgment dated 9th March, 2023 overturned the decision of the trial judge in favour of the Defendants and held, among others, as follows:

*"The decision dismissing appellants' counterclaim did not ride with the tide of the evidence. We uphold the appeal in reference to the counterclaim and set aside the judgment on the counterclaim. Judgment is hereby entered for appellants on the reliefs endorsed in the counterclaim.*

*a. It is hereby declared that title in the subject property being House Number Plot No 35 Block B, Atasomanso, Kumasi reside in appellants by descent through their late mother Adwoa Konadu.*

*b. An order for recovery of possession of property House Number Plot No 35 Block B, Atasomanso, Kumasi, is hereby granted in favour of the appellants.*

*c. An order of perpetual injunction restraining the respondents, their agents, servants, workmen, assigns and all those claiming through them from interfering with appellants' possession and enjoyment of the subject property is hereby issued.*

*Since respondents have not physically trespassed onto the subject property, we saw no justification in awarding damages for trespass."*

12. In coming to the above conclusion, the Court of Appeal made the following findings in favor of the Defendants which said findings were at variance with those of the trial Circuit Court:

a. Plaintiffs failed in their duty to establish that their father was called Akwasi Agyapong. Defendants on the other hand proved by (a) evidence, particularly that of DW3 who was fairly neutral (b) the funeral invitation card with the name and picture of their uncle (c) the burial permit and (d) receipts for payment of rates, that their uncle was indeed called Akwasi Agyapong. That was in addition to Plaintiffs' admission *sub silentio*, that Defendants' uncle was called Akwasi Agyapong

- b. Since it was Defendants' uncle who was called Akwasi Agyapong, and Plaintiffs failed to prove that their father was also called Akwasi Agyapong, all the exhibits including the allocation note and indenture with the name Akwasi Agyapong were referable to Defendants' uncle and not Plaintiffs' father. Plaintiffs merely engaged in identity theft for the purpose of appropriating for themselves the subject property
- c. Whereas Defendants established their root of title by calling a representative of the grantor stool to testify on the grant to their uncle, Plaintiffs left the proof of their father's acquisition in abeyance, in breach of their evidential burden worse still, they could not establish that the name Akwasi Agyapong appearing on the allocation note and indenture tendered by them was that of their father, and not appellants uncle.

#### **GROUNDS OF APPEAL:**

13. In the Notice of Appeal filed by the Appellant on 30<sup>th</sup> June, 2023, the following were canvassed as the grounds of appeal:

- a. That the Learned Justices of the Court of Appeal erred in law when they placed more weight on the oral evidence of the Defendants/Appellants/Respondents' proof of title and disregarded documentary evidence of proof of the Plaintiffs/Respondents/Appellants.

#### **Particulars of Error of Law**

- i. The Court of Appeal's decision accepting the oral evidence despite the existence of documentary evidence on the same issue was against settled precedent that documentary evidence takes precedence over oral evidence.

- b. That the Learned Justices of the Court of Appeal misdirected themselves on the issue of the capacity of the Defendants/Appellants/Respondents when they held

that Defendants/Appellants/Respondents had capacity to maintain the counterclaim.

### **Particulars of Misdirection**

- i. The Court of Appeal holding erroneously that the property devolved on the Defendants/Appellants/ Respondents when there was no evidence to show that the property belonged to their mother."
14. Although the Plaintiffs indicated on the face of their Notice of Appeal that they would file additional grounds of appeal, we do not see any such additional grounds filed nor leave obtained from this Court to file any additional grounds of appeal. We therefore deem the said indication to file additional grounds of appeal as abandoned.

### **RESOLUTION:**

15. In this case, we wish to remind ourselves of the time honoured principle of this court as a second appellate court when resolving appeals against decisions or judgments which are not concurrent. In a judgment of this court dated 1<sup>st</sup> February, 2023 in civil appeal No.: NO. J4/26/2020 entitled **Kwadwo Fosu vrs. Nana Osei Akoto VI**, which I had the privilege of authoring on behalf of the Court, this court stated thus:

*"In resolving this appeal, we are also mindful of the fact that the judgment of the Court of Appeal is not a concurrent one. Consequently, this court is at liberty to affirm either the findings of the High Court or Court of Appeal or in the alternative make its own findings where we are satisfied that it is in the interest of justice to do so. This position of the law is supported by a plethora of judicial decisions including the decision of Wood CJ in the case of CONTINENTAL PLASTICS ENGINEERING CO LTD V. IMC INDUSTRIES-TECHNIK GMBH [2009] SCGLR 298 at 307 wherein she stated as follows: 6 "An appeal being by way of rehearing, the second appellate court is bound to choose the finding which is consistent with the evidence on the [page 308] record. In*

*effect, the court may affirm either of the two findings or make an altogether different finding based on the record."*

16. In this appeal therefore, we shall examine the record of appeal and ascertain which of the findings of the lower court is justified having recourse to the evidence led viz-a-viz the applicable law. Where this court is unable to endorse either of the findings of the two lower courts, we may come out with our own findings.

17. On ground "a", the Plaintiffs have contended that the Court of Appeal erred in law when they placed so much weight on oral testimony as against documentary evidence. That the Court of Appeal's decision to accept the oral evidence despite the existence of documentary evidence on the same issue was against settled precedent that documentary evidence takes precedence over oral evidence.

18. The more accurate position of the law regarding the preference of documentary evidence over oral testimony was correctly stated in a judgment of this court dated 24th July, 2019 in Civil Appeal No.: J4/54/2018 entitled **Amidu Alhassan Amidu & Another vrs. Mutiu Alawiye & 6 others** as follows:

*"The settled rule of the law of evidence is, that where oral evidence conflicts with and is inconsistent with documentary evidence that has not been impeached on legal grounds or through cross-examination, then a court must prefer the documentary evidence to the oral testimony. See the case of NANA ASIAMAH ABOAGYE v.ABUSUAPANYIN KWAKU APAU ASIAM [2019] 128 G.M.J. 254. S.C."*

19. Thus, it is not every piece of documentary evidence that must be preferred over oral testimony. The documentary evidence that may be preferred over oral testimony must be one which is relevant, unbattered and unimpeached by cross-examination or other evidence on record. In this case however, the central issue for determination is whether

the identity of the Plaintiffs' father is the same as the 1<sup>st</sup> Defendant's uncle. The Plaintiffs could not produce any documentary evidence in relation to this issue.

20. The parties are ad idem on the fact that the property was originally acquired by one Akwasi Agyapong. Whilst the Plaintiffs say the said Akwasi Agyapong was their father, the Defendants deny and say that the Plaintiff's father was called Kwaku Tawiah a.k.a Woarabeba and that Akwasi Agyapong was 1<sup>st</sup> Defendant's uncle who had bought the land to build a house for their mother.

21. The Plaintiffs however admit that indeed, their father was nicknamed Woarabeba but that his name was Akwasi Agyapong and not Tawiah. At page 38 of the Record of Appeal the following ensued during cross examination of 1<sup>st</sup> Plaintiff:

*"Q: I am putting it to you that your father has never been known as Akwasi Agyapong*

*A: That is not correct Woara beba is his nickname*

*Q: I am further putting it to you that your father was called Kwaku Tawia a.k.a. "Woara beba" ...*

*A: Yes, that is Correct.*

22. The Plaintiffs testified that their father was called Akwasi Agyapong and that he died on 15<sup>th</sup> January, 2000 but yet could not lead any documentary evidence in proof of same. On the other hand, the Defendants tendered the obituary poster of the deceased Akwasi Agyapong in an affidavit filed by Akwasi Agyapong's son before the Circuit Court to caveat the grant of letters of administration to the Plaintiffs. On the said poster, the Plaintiff's were notably absent from the list of the children of Akwasi Agyapong. This evidence was yet again tendered at trial by the said son of Akwasi Agyemang, who was called by the Defendants at trial to corroborate their claim.

23. On the 8<sup>th</sup> of May, 2017, when he was called to give evidence in support of the Defendants' case, DW2, the son of the late Akwasi Agyemang, said as follows:

*"The Akwasi Agyapong on Exhibit "M" is my father Akwasi Agyapong. The address given on Exhibit "M" is AA4 Adiembra. I know that house. The house is my father's family house. My father while alive held the position of Abusuapanyin. My father succeeded Op. Kofi Ansah the head of family and my father became the head of family. Until my father's death, it was my father who was the head of family. I have in my hands Exhibit 3 and 3A, receipt and demand notice in respect of the property No.: AA4 Adiembra in the name of Akwasi Agyapong. The name on it is referable to my father Akwasi Agyapong. I have in my hands Exhibit D. The person in the photo is Op. Kwame Tawiah also known as Woarabeba."*

24. DW2 therefore gave documentary evidence of the fact that his father as Family Head had indeed executed documents using the Adiembra property address of No: AA4. This documentary evidence was not controverted under cross examination. Rather, an examination of Plaintiff's Exhibit M shows that the allocation note of the house in dispute bore the same house number as the house which the DW2's father usually endorsed as his address: *House No.: AA4 Adiembra.*

25. This lends more credence to the Defendants' case that their uncle, Akwasi Agyemang who in his lifetime used House No.: AA4 Adiembra as his address was the same person who owned House No.:35 Block B since the allocation note of House No.: 35 Block B also bore the same address as the family house of DW2's father.

26. Additionally, the evidence shows that the Plaintiffs application for letters of administration in respect of House No.: 35 Block B was caveated by the 1st Defendant. The only reason why the Court granted the letters of administration to the Plaintiffs in respect of House No.: 35 Block B was because, in the opinion of the Court, the House over which the Plaintiff sought letters of administration was described in the

application to be an uncompleted house whilst the house over which the 1<sup>st</sup> Defendant cavedated and opposed a grant of the letters of administration was described as a completed house. The consideration of the Court on the issue of the letters of administration can be found in the Plaintiffs' exhibit B which is the ruling of the Circuit Court coram His Lordship Amo Yartey sitting as additional Circuit Judge as follows:

*"The ruling complained of was delivered on 21/11/13. It is the case of the Applicant that she was not present on the said day let alone be heard. Strangely, there is evidence before me that the Applicant was present on the day in issue. She was the one who even told the court that the house which was gifted to the mother is completed one. The court therefore granted the application per the reason that the one stated per the inventory is an uncompleted house.* (emphasis ours)

27. From the above, it is evident that the application for letters of administration in respect of the property in dispute was challenged by the Defendants. The Plaintiffs only obtained letters of administration for the disputed house because they described same to be an uncompleted house in 2013 when they applied for letters of administration. From the evidence on record, it is clear that at the time of the application for the letters of administration, House No.: 35 Block B, was not an uncompleted building as was represented by the Plaintiff. If the judge was not misled into believing that the property described as "uncompleted one" was different from the one which the 1<sup>st</sup> Defendant as caveatrix described to be a "completed building", the judge would not have dismissed the caveat in the manner in which he did.
28. Additionally, the evidence clearly shows that the Defendants have been in occupation of the property since the year 2000 when the 1<sup>st</sup> Defendant's brother roofed the house. They even put tenants in the house to the knowledge of the Plaintiffs who did nothing. In fact, the Defendants commenced court proceedings as Landlords to eject a tenant from the House, all to the knowledge of Plaintiffs who did nothing for 14 years.

29. There was documentary evidence in the form of tenancy agreements and eviction proceedings tendered in proof of the long period of possession by the Defendants. The Defendants, having adduced evidence to establish that they exercised acts of possession over the property for more than 12 years and rented same out to tenants, the Plaintiffs cannot lay adverse claim to the property as the same would be statute barred. The period of undisturbed possession of the house by Defendants was admitted under cross examination by PW1 at page 108 of the record of appeal as follows:

*"Q: You agree with me that from the year 2000 till 2014 no demand was made in respect of this house from 1<sup>st</sup> Defendant's mother.*

*A: That's so.*

30. On the whole, the record is replete with evidence that the house in contention was indeed built by Akwasi Agyapong. Also borne out by the record is the impression that the said Akwasi Agyapong was however the uncle of the 1<sup>st</sup> Defendant and not the father of the Plaintiffs as contested in the suit before us.

31. The Court of Appeal was therefore right in concluding that, in comparison with the Defendants who provided credible and compelling evidence on their root of title, the Plaintiffs proffered zero evidence and therefore that the Trial judge erred on the facts in ignoring the clear state of the evidence and landing her decision on documents which did not tilt in anyway in favor of the Plaintiffs.

32. We note that the 2nd ground of appeal has to do with the capacity in which the 1<sup>st</sup> Defendant maintained the counterclaim. The 1<sup>st</sup> Defendant described herself as a daughter of Adwoa Konadu. The house in dispute was built for Adwoa Konadu and her children. Even though the title documents bore the name of Akwasi Agyapong, DW2, who is a son of Akwasi Agyapong mounted the box and testified to corroborate

the testimony that the house was built by his father for Adwoa Konadu and her children.

33. The Court of Appeal did not decree title in favour of 1<sup>st</sup> Defendant but rather, Adwoa Konadu and her descendants as same is supported by the evidence on record. Upon their mother's demise, the children held an equitable interest in the estate of their mother as beneficiaries. They could therefore maintain an action to protect the said interest and preserve the property against dissipation by third parties. Even though per her counterclaim, the 1<sup>st</sup> Defendant sought a declaration of title to the said property, the Court of Appeal did not grant the said relief in *stricto sensu*, but rather made a declaration of title to be vested in Defendants by reason of their being children of their late mother. Moreso, as between the Plaintiffs and Defendants, the evidence preponderated towards the Defendant's claim of right to the subject matter property.

### **CONCLUSION:**

34. It is for these reasons that on 2nd April, 2025, this Court by unanimous decision adjudged that the appeal against the judgment of the Court of Appeal dated 9<sup>th</sup> March, 2023, fails and is dismissed and the said judgment of the Court of Appeal of even date is affirmed. Cost was assessed at Ten Thousand Ghana Cedis (GH¢ 10,000.00) against the Appellants and in favour of the Respondents.

**(SGD.)**

**E. YONNY KULENDI**

**(JUSTICE OF THE SUPREME COURT)**

(SGD.)

**G. PWAMANG**

(JUSTICE OF THE SUPREME COURT)

(SGD.)

**PROF. H. J. A. N. MENSA – BONSU (MRS.)**

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