

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- A.D. 2025

CORAM: LOVELACE-JOHNSON (MS.) JSC

PROF. MENSA-BONSU (MRS.) JSC

KULENDI JSC

DARKO ASARE JSC

ADJEI-FRIMPONG JSC

CIVIL APPEAL

NO. J4/15/2023

16TH APRIL, 2025

GRACE AFRIYIE DEFENDANT/APPELLANT/RESPONDENT

VRS.

OSEI KWADWO PLAINTIFF/RESPONDENT/APPELLANT

JUDGMENT

KULENDI JSC.

INTRODUCTION

1. This is an appeal against the judgment of the Court of Appeal, Kumasi, Coram: Angelina M. Domakyaareh (JA), Alex B. Poku-Acheampong (JA), Samuel K.A

Asiedu (JA) dated 29th June 2022, which overturned the Judgment of the High Court, Coram John Bosco Nabarese (J), dated 28th June, 2018.

THE APPELLANTS CASE :

2. The Appellant commenced the suit in his capacity as the Customary Successor of Asare Bossman (deceased) and Frank Brobbey (deceased), for and on behalf of his immediate maternal family. Per his writ filed on the 24th of February, 2012, he argued that, being descendants of the late Yaa Konadu of Techimantia, he and his immediate maternal family were entitled to a disputed plot of land described as Plot No. DR 14 Techimantia together with the buildings lying thereon.
3. In his writ, the Appellant asserted that the land was originally acquired by one Opanin Asasensere who during his lifetime, made a customary gift of same to his son, the late Frank Brobbey. According to the Appellant, Frank Brobbey in turn offered '*aseda*' to Opanyin Asasensere in the presence of witnesses.
4. It is the Appellant's case that Brobbey developed a part of the land, constructing a Boys' Quarters and leaving the remainder undeveloped. Subsequently Frank Brobbey met his demise sometime in 1992. Having died intestate, his properties became family property and devolved to his immediate maternal family. The Appellant alleges that subsequently, one Asare Bossman, as customary successor, took over the control and administration of Frank Brobbey's estate which comprised of the Boys Quarters and the undeveloped portion of the land. The Appellant contended that during his lifetime, the said Asare Bossman managed the property for and on behalf of the maternal family.

5. The Appellant further alleges that in time, Asare Bossman began constructing storerooms on the vacant portion of the land, claiming it was for the benefit of the family. The Appellant asserted that during his lifetime the said Asare Bossman was additionally tasked with oversight, management and control of the family's cocoa farm at Bogoso, Wassa, for and on behalf of the family. When they enquired from him about the construction being undertaken on the land, he allegedly informed the Appellant's family that he was putting up storerooms on the land with proceeds from the family's cocoa farm at Wassa for the benefit and equal enjoyment of all members of the immediate maternal family.
6. The Appellant asserts that after Bossman's death sometime 2011, he (the Appellant) was selected as his customary successor and in the course of his duties in this regard, he discovered that the Respondent and her agents were carrying on with the construction on the land. When he confronted the Respondent about her activities, she claimed that her husband had purportedly purchased the land from the said Asare Bossman.
7. The Appellant however contended that the land is family property and could not have been lawfully transferred without the family's consent. Unable to secure an amicable settlement of the impasse with the Respondent, the Appellant took out a writ against the Respondent at the High Court, Sunyani, praying for the following reliefs for himself and on behalf of his immediate maternal family, being the descendants of late Yaa Konadu:
 - i. *A declaration that Plot No. DR 14, Techimantia with a building thereon is the property of the plaintiff's immediate maternal family; and an order of the court granting possession of same to the plaintiff and his immediate family*

- ii. A declaration that the purported sale/transfer of a portion of the said plot of land to the defendant by the late Asare Bossman, a deceased member of the plaintiff's said immediate maternal family, was/is wrongful and unlawful and same be set aside by the Honourable Court.*
 - iii. General Damages for trespass.*
 - iv. An order of perpetual injunction restraining the defendant, her agents, servants, workmen and assigns from howsoever interfering with the plaintiff and his immediate family's title and possession of the said plot of land*
- 8. At trial, the Appellant alleged that documents produced by the Respondent revealed an agreement between her husband, one Nana Kwaku Duah and Mr. Asare Bossman dated the 13th of April, 2007, in which Bossman purportedly retained one storeroom and one bedroom for a period of ten years before relinquishing the property entirely to the Respondent's husband. The Appellant contends that this agreement was invalid, as Bossman lacked the authority to alienate family property without the family's approval.
- 9. While the family initially sought an amicable resolution, the Respondent has persisted in asserting ownership of the disputed portion of the land, identified as the front part of Plot No. DR 14, or Plot No. 7, Block "S," adjacent to the Boys' Quarters.

THE RESPONDENT'S CASE:

10. The Respondent on the other hand asserts that the late Opanin Asaasensere gifted Plot No. DR 14 to all his children, including Frank Brobbey and Asare Bossman, also known as Kwaku Mframa. She did however acknowledge that Frank Brobbey

developed a portion of the land by constructing a Boys' Quarters. That notwithstanding, the Respondent maintained in her pleadings and at trial that Asare Bossman, as a co-beneficiary, exercised his right to the remaining undeveloped portion of the plot on April 13, 2007, when he transferred his interest in the undeveloped portion of land to her husband, Nana Kwaku Duah.

11. According to the Respondent, the Tano South District Assembly had re-designated the property as Plot No. 7, Block "S" Techimantia, as distinct from the portion of the plot of land on which the Boys Quarters was situate. Following the transfer, the Respondent contends that her husband assumed possession and immediately applied for and was granted a development permit for the plot. The said permit was issued in their daughter, Jennifer Fobi-Duah's name. According to the Respondent, her husband, utilizing his personal resources, invested in the construction of a one storey-building structure consisting of six (6) storerooms and six (6) bedrooms on the land. The Respondent emphasizes that she and her husband have since been in active possession of the property, maintaining control and fulfilling all related obligations.
12. The Respondent further contended that she personally supervised the construction of the building and averred that at no point during the project was she approached or challenged by the Appellant or any member of his family, even after the death of Asare Bossman. She maintained that her husband has consistently paid ground rent to the Administrator of Stool Lands in respect of Plot No. 7, Block "S."
13. Significantly, the Respondent argued that the transfer of the plot was executed with the knowledge and concurrence of the Appellant's family. This consent,

according to the Respondent is specifically evidenced by the fact that one Mr. Kwaku Addo, a principal member of the Appellant's family witnessed the deed transferring ownership of the land to her husband. She asserts that the Appellant's family raised no objections to the transaction during Bossman's lifetime or in the years following the transfer, further affirming the legitimacy of the transaction.

14. The Respondent maintained at the Trial Court that, given these facts, the Appellant was barred from claiming the property as family land. She contended that the Appellant's claim lacked merit and that the reliefs sought should be denied, as the property lawfully belonged to her husband and their family.

JUDGMENT OF THE TRIAL COURT:

15. Following the conclusion of the trial, the Trial High court gave judgment in favor of the Appellant. The court observed that the Respondent and her husband knowingly undertook construction on a plot of land that was clearly contested. In his judgment, the trial judge determined that the late Asare Bossman, whose authority the defendant relied upon, had no legal title to the property and, therefore, lacked the capacity to lawfully transfer or sell any portion of it.

16. Consequently, the court concluded that the principles of laches and acquiescence could not be invoked to bar the Appellant's family from asserting their rightful ownership. The court further noted that the Appellant and his family had neither remained passive nor had they, by their purported inaction, encouraged the Respondent and her husband to develop the land under any fraudulent pretense. On the contrary, the trial High Court found that the Appellant had actively opposed the Respondent's claim and taken appropriate steps to protect the family's interests.

17. On the evidence presented, the court determined that the Appellant had successfully met the required burden of proof on a balance of probabilities. The trial Court adjudged the Appellant and his immediate maternal family to be the lawful owners of the disputed property, now designated as Plot No. 7, Block "S," Techimantia, together with the structures erected thereon.
18. Regarding the alleged sale or transfer of the property by the late Asare Bossman to the Respondent, the Trial Court found the transaction to be unlawful, fraudulent, and without merit. In consequence, the Trial High Court judge set aside the purported transfer on grounds that same was procured by fraud. The court however acknowledged that the Respondent and her husband had been misled by Asare Bossman and had made significant investments in developing the property, in light of this, the court declined to award damages for trespass.
19. Furthermore, the Trial court denied the prayer of the Appellant for the grant of a perpetual injunction against the Respondent or her representatives to prevent further interference with the property. This decision was informed by the equitable consideration of the Respondent's financial contributions toward its development.
20. In its judgment, the court affirmed the Appellant and his immediate maternal family as the rightful owners of the disputed land and granted them possession. In consideration of the money expended by the Respondent in the construction of the building however, the Court ordered that the parties each be entitled to an equal share of the rooms in the building and further ordered that the Respondent would only be able to occupy these rooms as of right for 'some number of years.'

JUDGMENT OF THE COURT OF APPEAL:

21. Dissatisfied with the judgment and the consequential orders of the trial court, the Respondent filed an appeal to the Court of Appeal through a Notice of Appeal dated 23rd July, 2018 challenging the entire judgment and the consequential orders made by the trial court. The appeal was anchored solely on the ground that the judgment was against the weight of the evidence presented during the trial.
22. After evaluating the evidence on record, the Court of Appeal determined the appeal was made out and found in favor of the Respondents herein. The appellate Court concluded that the Appellant's family was precluded from asserting a claim to the disputed land. This was due to the fact that the land had already been leased to the Respondent and her husband by Asare Bossman, the customary successor with the consent and concurrence of one Kwaku Addo, a principal member of the Appellant's family, who testified as PW2 and that this was with full knowledge of the family.
23. The Court of Appeal also found that the Respondent had built on the land in full view of the Appellant's family without objections and therefore, the family could not now assert ownership or possession of the land.
24. The Court further determined that the land in question was indeed family property, consequently, the Court granted part of the first relief sought by the Appellant. The Court of Appeal also recognized the entitlement of the Appellant's immediate maternal family to the reversionary interest in the land. The Respondent's right to occupy and enjoy the property was affirmed by the Court of Appeal, subject to the terms of the Deed of Lease.

25. Additionally, the Court directed that the Respondent allocate one storeroom and one bedroom to the Appellant's immediate maternal family for a duration of ten years. This allocation was to be completed within thirty days from the date of the judgment, unless it had already been done. The Court dismissed the remaining claims for possession, damages, and injunction. In conclusion, the judgment of the trial court dated 28th June 2018 was varied in line with the Court of Appeal's conclusions on the evidence.

APPEAL TO THE SUPREME COURT:

26. Aggrieved with the judgment of the Court of Appeal, the Appellant, per a Notice of Appeal dated 20th September, 2022, filed the present appeal to this Court on the following grounds:

GROUND OF APPEAL

- (a) *The Court of Appeal erred when it failed to appreciate that on Defendant/Appellant's own showing Asare Bossman sold his interest in the vacant portion to Nana Kwaku Duah rather as beneficiary of gift from Opanin Asaasensere to his children not as trustee/customary successor of late Frank Brobbey.*
- (b) *The Court of Appeal erred by giving effect to a purported defective Lease allegedly made by the parties without the consent and concurrence of the Techimansta Stool.*
- (c) *The Court of Appeal erred when it misapplied Section 26 of the Evidence Act, 1975 (Act 323).*
- (d) *Judgment is against the weight of evidence.*
- (e) *Additional grounds of appeal will be filed upon receipt of the Record of Appeal.*

APPELLANT'S ARGUMENTS BEFORE THE SUPREME COURT:

27. By a statement of case filed on the 13th of February, 2023, the Appellant argues that the Court of Appeal's variation of the judgment of the High Court cannot be supported by the evidence on record. The Appellant contends that the Respondent in their Amended Defence to their case, failed to mount any 'real' challenge to the family's title over the land in question.
28. The Appellant asserts that the Respondent had maintained throughout the trial that Asare Bossman's interest in the property derived its roots from the fact that he was a co-beneficiary of the gift of the land from he and Frank Robbey's father, Opanyin Asasensere. Additionally, the Respondent had since the commencement of the suit strenuously denied that Asare Bossman dealt with the property in his capacity as customary successor of Frank Robbey. Consequently, the Appellant argued that the Court of Appeal, having found that the said Asare Bossman never had a personal interest in the property, ought not have proceeded to validate a purported lease which was predicated on a false claim of ownership.
29. The Appellant further argues that the Respondent and her husband failed to undertake any real due diligence over the true owners of the land before they committed financially to the purchase of the land from Asare Bossman. Despite the fact that the instant dispute pertained to matters that ensued between 2007 and 2012, the Appellant rather curiously reproduces sections 64(5) of the Land Act, 2020 (Act 1036) and suggests that the Respondent had an obligation not only to rely on Asare Bossman's occupancy of the property and control over same but that the Respondent and her husband bore an obligation to request for his title documents to investigate his root of title. Had this been done, the Appellant argues

that the defect in Asare Bossman's capacity to alienate the land would have been exposed and the Respondent would not have proceeded with the transaction.

30. The Appellant also argues that the receipts of payment tendered at trial did not add up to Twenty-Five Million Cedis (25,000,000.00 Cedis), but rather to One Million and Two Hundred Thousand cedis (1,200,000.00 Cedis).

31. The Appellant finally asserts that the Court of Appeal having affirmed their family's interest over the land, it was inconsistent for the same Court to deny them possession of their land especially when their title was never truly challenged by the Respondent and her witnesses in the course of the trial.

RESPONDENTS CASE BEFORE THE SUPREME COURT:

32. The Respondent, per her statement of case filed on 15th May, 2023, submits that the Appellant failed to discharge their burden of proof by adducing evidence that the building in question was constructed by Asare Bossman, using proceeds from the family Cocoa farm at Bogoso.

33. Furthermore, the Respondent contends that PW2, the brother of Asare Bossman admitted under cross-examination that the building was constructed by the Respondent and her husband. The Respondent further reiterated the arguments of estoppel which had been endorsed by the Court of Appeal to the extent that the family was aware of the Respondent's development of the land but failed to take any action to protect its interest in the land and only took action after the death of Asare Bossman, at which time, the building had been completed.

34. Additionally, the Respondent argued that the trial judge set up a case for the Appellant, different from that which had been presented to the Court, when it concluded that the agreement between Asare Bossman and her husband was unconscionable. She also contended that the said finding was not supported by any evidence on record. The Respondent asserts in her statement of case that the threshold set by the law for setting aside unconscionable contracts was not met by the Appellant. The Respondent finally submitted that the Trial Court's finding of fraud was unsupported by the evidence on the record and indeed that the Appellant failed to prove their allegation of forgery beyond reasonable doubt.

ANALYSIS:

35. The grounds of Appeal upon which the instant appeal is lodged has been enumerated above. We note that of the four substantive grounds of Appeal articulated by the Appellant herein, three of them concern an allegation of an error on the part of the Court of Appeal, in reaching its decision. As should be trite amongst practitioners any allegation of a commission of an error of law in an Appellant's grounds of appeal carries a corollary obligation under **Rules 6(2)f** of the Supreme Court Rules, 1996 (C.I. 16) to particularize the said error and expatiate on the details of the error. A failure to do so therefore will render a ground of Appeal alleging an error of law inadmissible.

36. For purpose of specificity, this rule is reproduced hereunder as follows :

Rule **6(1)** of the Supreme Court Rules, 1996 C.I. 16 -

(2) A Notice of civil appeal shall set forth the grounds of appeal and shall state :

(f) The particulars of any misdirection or error in law, if so alleged.

37. The underlying justification for Rule 6(2)(f) above of the Supreme Court Rules, 1996, C.I. 16 was expounded on by this Court in **Dahabieh v. Turquoi & Bros [2001 – 2002] SCGLR 498** at page 501 as follows:

"The intention behind rule 6 of the Supreme Court Rules, 1996 (C. I. 16) is to narrow the issues on appeal and shorten the hearing by specifying the error made by the lower court or by disclosing whether or not a point at issue had been raised. By that way, both the court and counsel for the respondent would be enabled to concentrate on the relevant parts of the evidence in the record of proceedings and not waste time on irrelevant parts of the evidences with respect to questions of law, it is necessary that the respondent and his lawyers know well in advance what points of law are being raised so that they may prepare their case and marshall their authorities; whilst an indication that the point of law was or was not raised in the court below may help the court resolve the issue faster. In the instant case, ground (1) of the grounds of appeal alleging that the judgment is wrong in law is in effect saying that there is an error of law in the judgment. If so, then rule 6 (2) required the appellate court to specify in the ground of appeal that particular complaint amounting to an error of law. Having failed to do so, ground (1) of the grounds of appeal is inadmissible"

38. Grounds A, B and C of the Appellant's Notice of Appeal portray errors which the Appellant alleges the Court of Appeal committed in the course of its determination of the case. A critical examination of these grounds would reveal that whilst grounds A and B border on allegations of factual errors and are therefore not

amenable to Rule 6(2)(f), ground C, alleging a misapplication of section 26 of the Evidence Act, is a purely legal ground and thus triggered the obligation on the part of the Appellant to particularize the said error. Having failed to undertake this crucial task, we are left with no option but to strike out the said ground as being non-compliant with the Rules of this Court.

39. On the basis of the foregoing, we shall proceed to determine the merits or otherwise of the instant appeal under the omnibus ground, which in essence, captures the matters implicated under grounds A and B of the notice of Appeal.
40. In the case of **Abbey & 2 Others vrs. Antwi [2010] SCGLR 17** at page 34 the venerable Dotse JSC, speaking for this Court held as follows:

"It is now trite learning that where the appellant alleges that the judgment is against the weight of evidence, the appellate court is under an obligation to go through the entire record to satisfy itself that a party's case was more probable than not."

41. Similarly, this Court reiterated this judicial duty in the case of **Tuakwa vrs. Bosom [2001-2002] SCGLR 61** per Sophia Akuffo, J.S.C. as follows:

"...an appeal is by way of a rehearing, particularly where the appellant alleges in his notice of appeal that the decision of the trial court is against the weight of the evidence. 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 analyse 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 amply supported by the evidence."

42. Cognizant of this duty, we shall proceed to scrutinize the respective arguments of the parties. To begin with, the Appellant rightly noted that the Court of Appeal failed to appreciate the fact that the Respondent had initially maintained that Asare Bossman, dealt with the property in his capacity as a co-beneficiary of the gift of the plot of the land from Opanyin Asasensere, and not as a customary successor. In her Statement of Defence filed on the 12th of October, 2015, the Respondent asserted that Asare Bossman was a beneficiary of a gift of Plot No. DR 14 which he gave to all his children.
43. At trial however, save the bare assertions of the Respondent and her witnesses, no corroborative evidence was led to support the claim of Asare Bossman being a co-beneficiary of the gift. We are however of the considered opinion that, notwithstanding Court of Appeal's omission to expressly point out the failure of the Respondent to establish the status of Asare Bossman as a co-beneficiary of the gift, the Court of Appeal nonetheless concluded that Asare Bossman had, at all material times, dealt with the land in his capacity as a customary successor and not as a co-beneficiary of any purported gift.
44. The Appellant makes much ado about this finding and suggests that the Respondent, having failed to prove their root of title, was not entitled to any other reliefs. We are unimpressed by this position and reject same wholly. For one, it is an undisputed fact which is acknowledged by both parties that the property which is the subject matter of the instant dispute was constructed by the Respondent and her husband. Indeed, this fact was copiously contended by the Respondent in her

pleadings and at trial, and same was admitted by the Appellant's witnesses under cross-examination.

45. Given the substantial resources which the Respondent and her husband had invested into the land, she made an argument to the effect that assuming arguendo, that their title in the land was defective, the inactivity of the Appellant's family, in the face of clear acts of possession and development by the Respondent and her husband, estopped the Appellant and his family from subsequently seeking to contest their interest in the land.

46. Indeed, a perusal of the exhibits attached indicate that lease agreement between the said Asare Bossman and the Respondent's husband was executed on the 13th of April, 2007. Almost immediately, the Respondent commenced construction of the land and has since completed a one-storey building 12 room structure on the land. At trial, the Appellant's attorney sought to suggest that they were convinced that the said property was being constructed by Asare Bossman himself for and on behalf of the family, and not the Respondent, and that it was only after Asare Bossman died and the Respondents persisted with construction that they came to uncover the fact that the Respondent's were behind the construction of the property.

47. A critical study of the record of Appeal however reveals that the lease in question was in fact executed by Asare Bossman together with Mr. Kwaku Addo, a principal member of the Appellant's family who the Appellant presented as their second witness at trial. At trial however, the said Kwaku Addo suggested first of all that he was an illiterate, that he did not sign any document but was called upon by Asare Bossman to merely thumbprint a document which authorized the

Respondent's husband to build a property on the family land for the collective enjoyment of the family. Significantly, however, he did concede that he had received a portion of the Twenty-Five Million cedis (25,000,000.00) paid by the Respondent's husband and had even urged Asare Bossman to share the remainder of the funds with the wider family.

48. At trial, the evidence of the said Kwaku Addo was riddled with contradictions and impracticalities. For instance, in his evidence in chief, he expressly indicated that he and Asare Bossman prepared the documents covering the transaction and in exchange received the money and drinks. Interestingly however, after already intimating his participation in the process of preparing the documents, he then, in an obvious attempt to save face with his family for his participation in signing the lease in favor of the Respondent, he turns around to claim that he did not sign the alleged document but thumb printed same because he is an illiterate.
49. The claim of his being an illiterate however begs the question of how an illiterate could have, together with the said Asare Bossman, prepared documents covering an alleged transaction. Furthermore, it was preposterous for the said witness to suggest that the transaction between Asare Bossman and the Respondent's husband was for the said Nana Kwaku Duah to construct building for the benefit of the Appellant's family and yet, it was the said Nana Kwaku Duah and not Asare Bossman, who was parting with consideration for the transaction.
50. In another breath, the same Kwaku Addo, sought to deny all together that there was any document which covered the Respondent's husband's activities over the land in question, and it was only after the lawyer for the Respondent drew his

mind to the contradiction in his responses, that he admitted to the existence of such documents:

“Q: The transaction concerning the land in dispute was reduced into writing?”

A: It was never reduced into writing

...

Q: You have just told the court that a document was executed in respect of the plot in dispute

A: That is correct.”

51. Similarly, in one breath the witness endorsed the date of the transaction as 13th April, 2007, however when the very same question was posed to him subsequently, he feigned ignorance and sought to suggest that he was unaware of the said date.

52. On the 23rd of May, 2017 the following exchange ensued at trial:

“Q: And Asare Bossman@Kwaku Mframa signed it

A: That is correct.

Q: That document was executed on 13/04/2007?

A: I will agree”

53. Significantly however, when this same question about dates was posed to the witness on the 5th of July, 2017, he roundly denied any knowledge of the date of the lease:

Q: The agreement concerning the land was between Asare Bossman @ Kwaku Nframa and Kwaku Duah?

A: That is correct?

Q: The lease agreement was made on 13/04/2007?

A: I do not know the date of the lease ?

Q: You were witness to the transaction?

A: That is so

54. At trial, the said witness, when confronted with the Respondent's lease rejected the said document and sought to argue that same was a forgery. The following exchange ensued under cross-examination.

"Q: Have a look at this document, is that the document that was exhibited.

A: That is not the document. The document was white in color.

Q: Do you know Kwaku Asare Bossman's signature ?

A: Yes, I can identify Kwaku Asare's signature

Q: There is a signature on it.

A: Kwaku Asare signature does not appear on the document that I am holding.

...

Q: You also have your signature on it

A: No, only my name that appears on the document.

55. Significantly, when the Appellant's witness was asked to furnish the Court with the copy of the alleged document he claimed to have thumb printed, he conveniently indicated that the said document had gone missing since the demise of Asare Bossman. An even more striking issue was teased out by Counsel for the Respondent in the following exchange with the witness under cross-examination.

"Q: Are you aware that after the death of Kwaku Asare Bossman there was a family meeting?

A: I am aware

Q: The Defendant was invited to this meeting ?

A: That is correct

Q: The meeting was in connection with the property in dispute?

A: That is so

...

Q: At the family meeting, the defendant produced a copy of the leased document?

A: That is correct

Q: The contents of the lease was read out to the hearing of all those present at the family meeting.

A: Yes, it was read out but not everyone heard it.

Q: You were present?

A: I was present

Q: You heard it when the content were read?

A: Yes”

56. It is worth noting that while a trial judge has the distinct advantage of directly observing a witness's demeanor and conduct in the witness box, an appellate court, which relies solely on the record of appeal, is not entirely deprived of the ability to evaluate a witness's credibility. The absence of face-to-face observation *per se* does not render appellate judges incapable of discerning whether a witness's testimony is reliable or otherwise. Notably, Sections 80 to 84 of the Evidence Act, 1975 (NRCD 323) are not provisions meant to be applied exclusively by trial courts; they equally guide appellate courts in their assessment of a witness's credibility based on the recorded evidence.
57. This Court has repeatedly held that minor inconsistencies or inaccuracies in a witness's testimony are not sufficient to undermine the judicial presumption of credibility accorded to that witness. Being human, a witness's testimony is not expected to meet a standard of mathematical or scientific precision.
58. In the case of **Effisah v Ansah [2005-2006] SCGLR 943** at page 948 this Court held that:

*“In the real world, evidence led at any trial which turned principally on issues of fact, and involving a fair number of witnesses, would not be entirely free from inconsistencies, conflicts or contradictions or the like. In evaluating evidence led at a trial, the presence of such matters *per se*, should not justify a whole rejection of the evidence to which they might relate. Thus in any given case, minor, immaterial, insignificant or noncritical inconsistencies must not be dwelt upon to deny justice*

to a party who had substantially discharged his or her burden of persuasion. Where inconsistencies or conflicts in the evidence were clearly reconcilable and there was a critical mass of evidence or corroborative evidence on crucial or vital matters, the court would be right to gloss over those inconsistencies."

59. Conversely however, in assessing the credibility of a witness, a Court shall attach little or no weight to the testimony of a witness that is riddled with material contradictions, irreconcilable inconsistencies, or clear fabrications that undermine the reliability of the testimony of the witness as a whole. While minor discrepancies do not necessarily render a witness's testimony unreliable, substantial contradictions on critical or core issues, particularly those touching on the substance of the case, must raise serious doubts about the witness's truthfulness.
60. Additionally, where, as in this instant case, a witness's testimony is majorly characterized by clear evasions, intentional obfuscation of critical issues and shifting positions or contradictions that are not reasonably reconcilable, such a witness proves himself or herself to be unworthy of credibility. Similarly, where a witness, under oath, attests to facts that are so implausible, unnatural or contrary to common sense, logic and/or human intuition, that no reasonable person would accept them as true, a Court shall be justified in discounting or disregarding such testimony.
61. The 2nd Appellant's witness asserted that the lease presented by the Respondent was a forgery, insisting that neither he nor Asare Bossman had any involvement in its preparation. He further alleged that the signatures appearing on the document were forgeries. Yet, under cross-examination, he conceded that he was

present at a family meeting where the Respondent produced this very document and read its contents aloud, including the portions bearing his own purported signature as well as that of Asare Bossman.

62. If indeed his signature had been forged, the natural and instinctive reaction of any reasonable person, upon being confronted with such a fabrication, would be one of immediate and unconditional repudiation. The natural impulse to protect one's name and integrity is innate and fundamental, just as a cry of distress is a call to rescue, the discovery of a forgery or an attempt of same, is a summons to denial. And yet, despite being faced with a document that, according to him, misrepresented both his own and Asare Bossman's intent, there is not a shred of evidence, either from the witnesses called by the Appellants or from the witness himself, that he (Kwaku Addo) voiced any objection, challenged the Respondent, or publicly disavowed the document as a falsehood.
63. Even more telling is the fact that, by the parties' own accounts, they continued to engage the Respondent in negotiations rather than promptly denouncing the alleged forgery. Their allegations of forgery only surfaced after the Respondent rejected their overtures and proceeded to occupy the property. Such conduct is entirely at odds with what reason, logic, and human instinct dictate. When weighed against the inherent implausibility of his position, the 2nd Appellant's witness's testimony collapses under the weight of its own contradictions.
64. Accordingly, we find his denial of involvement in the preparation and execution of the lease dated 13th April 2007 to be so implausible, unnatural, and contrary to common sense that no reasonable tribunal could accept it as true. We, therefore, reject his testimony in its entirety on this point.

65. It is not in dispute that the said Kwaku Addo was a principal member of the family. Indeed, he was described at trial as the brother of Frank Brubbey, Asare Bossman and the Appellant's attorney. By reason of the participation of the said Kwaku Addo, a principal member of the family in the execution of the lease, we are convinced that the grant of the lease to the Respondent's husband met the threshold required for the valid alienation of family property by a customary successor.

66. The venerable NA Ollenu, in his magnum opus entitled, "*The Law of Testate and Intestate Succession in Ghana [1966 Edition]*", at page 280, opined on the role of the customary successor under customary law and usage as follows:

"Again the successor owes a duty to both the immediate and the extended family not only to preserve the property, but as much as possible to improve it; he is therefore entitled to spend a portion of the income from time to time on the property. In short he owes the family, now living and yet unborn, a duty not to commit waste in respect of the family property, but rather to preserve and improve it. Therefore while the successor, continuing in office virtually has complete control and management of the property his dominion over it is subject to important limitation that he shall not, save with the consent and concurrence of the principal members of the family alienate, encumber or otherwise deal with the property to the detriment or injury of the family:

67. It is pertinent to note that, the legal imperative requiring the consent and concurrence of "principal members" does not inherently mandate a plurality of individuals in every case. In our view, the crucial factor is not necessarily the multiplicity of individuals designated as '*principal members*', but rather the fact that

the participation of such other person(s) so designated, was a prerequisite for the making of material decisions affecting the family.

68. In any case, assuming *arguendo*, that the said Kwaku Addo, did not in fact participate in the execution of the Respondent's lease and that the Asare Bossman forged his signature in his bid to give the lease an air of validity, it is established law that the alienation of family property by a head of family or customary successor, without the requisite concurrence of the family, is not void but voidable at the instance of the family, provided they act timeously.

69. This Court, in the case of **Dotwaah and Anor vrs. Afriyie [1965] GLR 257 SC**, at Holding 3 said thus:

"The head of family or the successor is an indispensable person in the alienation of family land; an alienation of family property by the head of the family or a successor, purporting to be with the consent and concurrence of the principal members of the family, is voidable at the instance of the family, if they act timeously; but a conveyance made by any other member without the head of family or the successor, as the case may be is void ab initio."

70. The evidence on record proves categorically that the Respondent was present on the land at all material times, constructing the property to the full glare of the public. Despite these overt actions, the family failed to take any concrete actions to contest her use of the land until 24th February, 2012, close to five years after the Respondent and her husband had expended considerable resources on the land.

71. We are of the considered opinion that, even assuming that the lease executed by Asare Bossman was devoid of the requisite familial consent, the rather belated

actions of the Appellant's family estopped them from mounting a challenge to the interest of the Respondent and her husband, several years after they had through their inactivity, urged the Respondent on in the construction of the property on the land.

72. In our evaluation of the record of Appeal, we encountered a rather curious occurrence which we consider pertinent to isolate for specific evaluation and determination. This is especially relevant given the notoriety of this posturing in our judicial culture. The issue concerns the rejection of a Deed of Lease sought to be tendered by the Respondent as proof of her husband's title in the land, subject matter of the dispute. To place this discussion in proper factual context, we shall briefly set out the factual antecedents that preceded the rejection of the said evidence.

73. On the 5th of July, 2017, Counsel for the Respondent sought to tender the lease agreement executed between the Respondent's husband and Asare Bossman through the Appellant's witness (PW2) Kwaku Addo. Counsel for the Respondent, in his bid to establish the requisite personal knowledge of the witness *vis a vis* the Deed of lease, alleged that the said lease had been witnessed by the said Kwaku Addo and offered to tender the lease through the said witness. Kwaku Addo on the other hand categorically denied witnessing the lease and alleged that the document had been forged. Consequently, the trial judge marked the lease agreement as rejected.

74. What we find particularly striking and indeed warrants critical commentary is the subsequent refusal of the trial judge to admit the same lease agreement when the Respondent herself took the witness stand and sought to tender it. The trial judge

reasoned that, having previously been rejected, the document could not be admitted into evidence at a later stage.

75. We are of the considered view that a nuanced distinction must be drawn between two categories of inadmissible evidence. The first encompasses evidence that is **inadmissible per se**, that is, evidence rendered inherently inadmissible by its very nature or substance, thus precluding its admission under any circumstance. The second category, however, pertains to evidence that is inadmissible not by virtue of any intrinsic inadmissibility, but rather due to **technical, procedural, situational, or momentary deficiencies** arising from the particular context in which it is initially presented.

76. It is pertinent to note that crucially, such deficiencies are not inherent and may be rectified as the circumstances surrounding the evidence evolve. In the latter scenario, once the underlying technical or procedural impediment has been resolved, whether through clarifying testimony, proper foundation laying, stamping, or the elimination of situational obstacles, the court must oblige a subsequent attempt to admit the said evidence.

77. This approach aligns with the overarching judicial objective of ascertaining the truth and ensuring that justice is not sacrificed at the altar of procedural technicalities.

78. In the present case, the Respondent's second attempt to tender the lease agreement through her own testimony should have been evaluated in light of the changed circumstances surrounding its admissibility. The initial rejection, predicated on the testimony of a witness who disclaimed involvement, was a procedural hurdle,

not an intrinsic defect of the document itself. By refusing to reconsider the document's admissibility despite the Respondent's direct testimony, the trial court risked elevating procedural rigidity over substantive justice.

79. While courts must vigilantly guard against the admission of inherently defective evidence, they must equally ensure that procedural rules serve as facilitators not impediments to the fair and just resolution of disputes. Evidence that is inadmissible solely due to a curable procedural defect should, upon the rectification of such defect, be admitted to aid the court in its ultimate quest for truth and justice.

CONCLUSION:

80. On the basis of our analysis and conclusions above, we find no reason to interfere with the findings, conclusions and orders of the Court of Appeal articulated in their judgment delivered on the 29th of June, 2022. Accordingly, on 16th April, 2025, we determined by a unanimous decision that this appeal fails and thereby affirmed the said judgment of the Court of Appeal dated 29th June, 2022 and dismissed the Appeal for want of merit. We assessed cost at fifteen thousand Ghana cedis (Ghc15,000.00) against the Appellant and in favour of the Respondent.

(SGD.)

E. YONNY KULENDI
(JUSTICE OF THE SUPREME COURT)

(SGD.)

A. LOVELACE-JOHNSON (MS.)
(JUSTICE OF THE SUPREME COURT)

(SGD.)

PROF. H. J. A. N. MENSA – BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)

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Y. DARKO ASARE
(JUSTICE OF THE SUPREME COURT)

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