IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD. 2025

CORAM: PWAMANG JSC PRESIDING

PROF. MENSA-BONSU (MRS) JSC

KULENDI JSC

GAEWU JSC

DARKO ASARE JSC

CIVIL APPEAL
NO: J4/01/2024

25TH JUNE, 2025

DR. OSBERT NYARKO ADJEI …. PLAINTIFF/APPELLANT/RESPONDENT

VRS

DANIEL MCKORLEY …. DEFENDANT/RESPONDENT/APPELLANT

JUDGMENT

KULENDI JSC.

INTRODUCTION:

1. We have before us an appeal against the judgment of the Court of Appeal dated the 29th of June, 2022 wherein the Court of Appeal coram: Dennis Adjei, Bartels-Kodwo JJA. (as they then were); Eric Kyei Baffour J.A, reversed the decision of

the High Court delivered on the 17th of July, 2019 coram: His Lordship Justice Anthony-Oppong.

2. For ease of reference, we shall maintain the original designations of the parties and refer to them as Plaintiff and Respondent respectively.

PLAINTIFF'S CASE

3. By an amended Statement of Claim filed on the 25th of April, 2016, the Plaintiff averred that around 30th of September, 2006, he obtained a leasehold interest for Ninety-Nine (99) years in respect of two plots of land measuring 0.553 acres, granted by Nii Sodjah Obodai, acting in his role as Acting Chief of Mpehuasem, situated at East Legon Extension, Accra. This leased property was identified by the Plaintiff as Plots 1 and 35.

4. The Plaintiff claims that construction commenced at both ends of these two plots, intentionally leaving the central portion undeveloped, earmarked specifically for the future construction of a medical clinic. Subsequently, the Plaintiff alleges that the Defendant unexpectedly entered the land and initiated the construction of a fence wall around this central section. The Plaintiff's attempts to prevent the encroachment resulted in his lodging a report at the Legon Police station, ultimately culminating in the arrest of the Defendant's workers.

5. According to the Plaintiff, efforts by the police to mediate and resolve the dispute proved unsuccessful. Furthermore, the Plaintiff states that during proceedings at the Police Station, an indenture was presented bearing the Defendant's name, purportedly indicating his ownership of the disputed property.

6. The Plaintiff contests the authenticity of this indenture, alleging fraud under multiple particulars articulated in paragraph 9a of his Statement of Claim, that:
    i. Nii Sodjah Obodai expressly denied ever executing such an indenture in favour of the Defendant.
    ii. Emmanuel Torgbor, purportedly a witness to the execution of the indenture by Nii Sodjah Obodai, denied having witnessed any such transaction.
    iii. The signature purportedly belonging to Nii Sodjah Obodai on the Defendant's indenture was forged.
    iv. A Police forensic examination further confirmed that Nii Sodjah Obodai could not have executed the indenture relied upon by the Defendant.
    v. The indenture lacked any signature or identifying mark of the purported witness to the transaction involving Nii Sodjah Obodai.
    vi. Emmanuel Torgbor, holding proprietary interests in the land, maintained that he was the only person authorized to facilitate any purchaser's introduction to Nii Sodjah Obodai for signing indentures and stated unequivocally that after facilitating the Plaintiff's indenture, he never introduced any other party, including the Defendant, for the same parcel of land.

7. Based on the foregoing, the Plaintiff regards the Defendant's entry and subsequent fence wall construction as trespassory and an infringement upon his ownership and possessory rights over the land. Consequently, he has initiated legal action against the Defendant, seeking the following remedies:
    a. A declaration affirming his title to the disputed land.
    b. An order for recovery of possession.
    c. Punitive and exemplary damages for trespass.

d. Mesne profits.
e. A perpetual injunction restraining the Defendant, whether by himself or his assigns, servants, and agents, from interfering with the Plaintiff's ownership, occupation and use of the land.

DEFENDANT'S CASE:

8. Conversely, the Defendant asserts that he originally acquired a 0.30 acre parcel of land, situated at East Legon Extension, Mpehuasem, Accra, from the Numo Nimashie family of Teshie, Accra. This transaction was documented through a lease dated 17th March, 2003, executed between Nii Adjei Nkpa IV, then Head of the Numo Nimashie family, and the Defendant.

9. Following this acquisition, the Defendant claims he entered possession by placing construction materials, including sand, stones, and sandcrete blocks, onto the property with the intent to build a fence wall and a residential structure. This activity drew the attention of the Sanshie family from Mpehuasem, who approached the Defendant and requested documentation of his ownership, asserting their own claim to the land.

10. Upon reviewing the Defendant's lease document from March 2003, the Sanshie family unequivocally informed him that the land did not belong to the Numo Nimashie family and subsequently halted the Defendant's ongoing development efforts. Faced with these assertions, the Defendant conducted a land search, which confirmed that the property was neither state-owned nor recorded in any prior transactions.

11. Based on legal counsel's advice, the Defendant then re-acquired the land from the Sanshie family, formalized by a lease dated 16th January, 2006 at which point all the construction materials he had originally deposited on the land were

stolen. At this point, however, the Defendant lacked the financial resources to commence development, though he periodically visited the property and observed no encroachments, except the construction of a multi-storey building on its southeastern boundary.

12. In 2014, when the Defendant resumed development by erecting a fence wall, his workers were arrested at the instigation of an individual, later identified as the Plaintiff's caretaker, and were detained at Legon Police Station. Amidst these proceedings, the Plaintiff and his caretaker demolished the fence wall, prompting the Defendant to file a complaint of unlawful damage with the police. The Defendant subsequently rebuilt the fence wall prior to the initiation of this lawsuit by the Plaintiff.

13. Additionally, the Defendant challenges the validity of the Plaintiff's indenture dated 30th September 2006, alleging it was fraudulently procured. Specifically, the Defendant points out that although the indenture claims to have been executed on 30th September 2006, the accompanying site plan was prepared in July 2007, creating a chronological impossibility.

JUDGMENT OF THE HIGH COURT:

14. The High Court, on the 17th of July, 2019, ruled in favour of the Defendant, primarily on the basis that the Power of Attorney executed by the Plaintiff, who resides in the United States, in favour of Fiifi Aggrey was found to be defective. The Court determined that this Power of Attorney was irregularly notarized and witnessed by the same individual, Shirley Cappiello, highlighting, in its view, that a notary public cannot simultaneously act as a witness and notarize the document.

15. Consequently, the High Court entirely rejected the testimony and evidence presented by the Plaintiff's appointed attorney. Furthermore, the Court scrutinized the testimony given by two additional witnesses introduced by the Plaintiff, Detective Simon Nyarko and Superintendent Godwin Lavoe, both of whom provided evidence regarding allegations of forgery concerning the Defendant's indenture. The Court found their testimonies to be self-serving and unreliable, assigning minimal evidentiary value to their statements.

16. Additionally, the High Court noted procedural irregularities, emphasizing that, given the initiation of civil proceedings, the appropriate action would have been for the Plaintiff to seek a Court order appointing an expert to investigate the forgery claims, rather than independently involving the Police to secure evidence favourable to his case.

17. Moreover, the Court held that even if the forgery were proven, there was insufficient evidence demonstrating the Defendant's complicity in the alleged forgery. As such, the Court concluded that any established forgery would not implicate or bind the Defendant legally. Dissatisfied with the judgment, the Plaintiff has subsequently filed an appeal at the Court of Appeal.

JUDGMENT OF THE COURT OF APPEAL:

18. In a unanimous decision delivered on 29th June, 2022, the Court of Appeal, per Justice Kyei Baffour J.A., overturned the judgment of the High Court.

19. Regarding the issue of the alleged defective Power of Attorney, the appellate court clarified that no rule of law prohibited a notary public from simultaneously witnessing the signature of the principal and notarizing the

document itself. Consequently, the Court found the contested Power of Attorney to be valid and properly executed.

20. Furthermore, the Court of Appeal held that the Defendant had constructive notice of the Plaintiff's possession and significant developments on the disputed land. It noted that the Plaintiff had openly and publicly exercised continuous acts of possession and occupation, including construction activities extending across both sides of the land. In the Court's assessment, such visible acts of possession constituted a compelling basis, nine-tenths of the law, establishing the Plaintiff's entitlement to the property, particularly in the absence of credible contradictory evidence.

21. The appellate court also reversed the High Court's attribution of minimal weight to the testimonies presented by the Plaintiff's witnesses. Specifically, the Court underscored that Superintendent Godwin Lavoe had provided expert testimony pursuant to section 112 of the Evidence Act, and therefore, his evidence could not be lightly discarded. Moreover, the Court of Appeal noted the High Court's error in failing to adequately consider the explicit statement by Nii Sodjah Obodai given to the police, disavowing execution of any indenture in favour of the Defendant.

22. Based on the foregoing premises, the Court of Appeal overturned the decision of the High Court and entered judgment in favour of the Plaintiff.

GROUNDS OF APPEAL:

23. On the 23rd of September, 2022, the Defendant filed a further appeal to this Court, canvassing the following grounds:

i. The judgment is against the weight of evidence adduced on the record.

ii. The Court of Appeal erred when it held that a notary public can witness the execution of a power of attorney and at the same time notarize the same power of attorney.

iii. The Court of Appeal erred when it failed to properly consider the forensic report tendered in evidence as Exhibit "F".

iv. The Court of Appeal erred when it sought to rely on the weakness of the Appellant's case in the absence of a counterclaim by the Appellant.

PLAINTIFF'S ARGUMENTS BEFORE THE SUPREME COURT:

24. The Plaintiff commenced his arguments with a defence of the Court of Appeal's determination that the notary public could in fact perform the dualized role of witnessing the Power of Attorney and notarizing the document. Firstly, the Plaintiff argued that having fulfilled the requirement of having the power of attorney attested by one witness, the said instrument met all the formal and essential validity criteria prescribed under the Power of Attorney Act, 1998 (ACT 548).

25. He urged on us comparative jurisprudence from New York which suggested that even there, the state in which the instant power of attorney was executed, the notary public was not precluded from witnessing an instrument he/she had notarized, with the exception being in cases where the notary public is named an alternate agent or where the notary public had an interest in the subject matter.

26. Alternatively, the Plaintiff submitted that, having been executed outside Ghana, the validity of the Power of Attorney ought to have been determined by the *"locus regit actum"* which was the law of the place where the instrument was executed.

27. Additionally, the Plaintiff submitted that even if the Court were to render the Power of Attorney (Exhibit A) inadmissible, the Court could still rely on the evidence of the Plaintiff's attorney as evidence given by a witness, as opposed to evidence given by the Plaintiff. He submitted that the admissibility or otherwise of the Power of Attorney did not affect the attorney's competence to give evidence in support of the Plaintiff's case.

28. In concluding this point, the Plaintiff finally contended that if the Court were to find the Power of Attorney inadmissible and proceed to strike out the evidence of the Attorney on account of that finding, grave injustice would have been occasioned the Plaintiff's case as he would not have been given a fair hearing.

29. Addressing Ground Three of the Notice of Appeal the Plaintiff maintained that the High Court, as the Court of Appeal had held, erred when it placed scant weight on the Police Forensic report tendered in support of the Plaintiff's case, especially at a time when the High Court had itself dismissed an earlier application by the Plaintiff for the appointment of a police forensic expert to assess the documents for fraud. The Respondent averred that the forensic report had been conducted without the active participation of the Defendant because the Defendant had refused a police invitation to assist with investigations.

30. The Plaintiff argued that the issue of forgery was beyond the common experience and competency of the Court and therefore, the evidence proffered by PW2, speaking to the police forensic report, fell within the scope of section 67 as expert testimony.

DEFENDANT'S ARGUMENTS BEFORE THE SUPREME COURT:

31. The Defendant argues that contrary to the position adopted by the Court of Appeal, a notary public cannot on the one hand witness the signature of a principal to a Power of Attorney and thereafter notarize the agreement in his or her professional capacity as a notary public as to do that would be an attempt to authenticate his or her own signature as witness and would therefore breach the natural justice rule of nemo judex in causa sua.

32. The Defendant acknowledged that the Supreme Court on 21st April, 2021 with Suit no. J4/49/2020 the case of **Florini Loca vrs. Samir & Anor** had determined that a power of attorney that was witnessed and commissioned by a commissioner of oaths was valid. However, the Defendant argued that whilst a notary public was not disqualified from acting as a witness to a power of attorney, he cannot do both at the same time and therefore the notary public in such an instance ought to be put to his election as to what role he would want to perform, whether to witness or notarize.

33. Furthermore, the Defendant argued that his indenture was never submitted to Superintendent Godwin Lavoe, the forensic examiner, to examine the signature endorsed thereon to confirm if same had been forged. He argued that the said Superintendent Godwin Lavoe had confirmed under cross-examination that he had not been given the Defendant's indenture to examine to establish whether the signature of Nii Sodjah Obodai had been forged. Significantly, the

Defendant argued that the expert evidence was not binding on the High Court and that in the face of such uncertainty as to whether the forensic examiner had even examined the Defendant's indenture, the Court was within its jurisdiction to disregard the findings of the examiner and make its own findings.

34. Furthermore, the Defendant asserts that the Court of Appeal failed to properly assess the fraud perpetuated by the Plaintiff which was exhibited by the fact that the site plan attached to the Plaintiff's witness statement bore a date of 10th July, 2007 even though the Plaintiff's indenture was prepared on 30th September, 2006. The Defendant argued that the fact that the site plan was prepared after the date of the execution of the purported indenture went to prove that the indenture was fraudulently acquired.

35. Finally, the Defendant argues that the Power of Attorney was unstamped when it was presented before the Court and therefore was inadmissible.

ANALYSIS

36. We shall begin our analysis by resolving the competing arguments concerning the validity of the power of attorney, which constitutes Ground (ii) of the appeal.

37. The ground is stated as follows:

> *"The Court of Appeal erred when it held that a notary public can witness the execution of a power of attorney and simultaneously notarise the same power of attorney."*

38. This ground is pivotal since, at the trial stage, the Plaintiff did not personally testify but rather relied upon evidence adduced through an attorney appointed by the said power of attorney. This document was executed by the Plaintiff in

the United States and was witnessed and subsequently notarized by a notary public in that jurisdiction.

39. The trial judge declared the power of attorney invalid, reasoning that the notary public had improperly served in a dual capacity, first witnessing and then notarizing the document. Consequently, the trial judge excluded the entirety of the evidence provided by the Plaintiff's attorney from consideration in the judgment.

40. However, the Court of Appeal reversed this finding, upholding the validity of the power of attorney, and thus considered the attorney's evidence in arriving at a judgment favourable to the Plaintiff. In this instant appeal, the Defendant yet again contends that the power of attorney was invalid and urges this Court to similarly exclude all evidence provided by the Plaintiff's attorney. He asserts that this exclusion will result in a judgment in his favour.

41. It is pertinent to note at the outset that the Defendant, in his written submissions, concedes that per this Court's decision dated 21st April, 2021, in Suit No.: J4/49/2020 titled **Luca and Another v. Samir and Others**, the current legal position is that a notary public, akin to a commissioner for oaths, is qualified to witness a power of attorney. This ruling effectively supersedes the earlier decision in Asante-Appiah, relied upon by the trial judge.

42. In the case above referenced, this Court, speaking through the erudite Pwamang JSC. said as follows:

> *"Though Act 549 does not require a power of attorney to be made in any particular form, it must not be made under oath, but then nothing in the Act debars the making of a power of attorney under oath. From the judgment of the*

Court of Appeal in Asante-Appiah v. Amponsah it does appear that the power of attorney in that case was not made under oath and that the commissioner for oaths was not performing his normal function of administering an oath but acted as a witness, just as any person could do so it is difficult for us to understand why it was said he could not be the attesting witness to the execution of the instrument.

By that decision the court appears to imply that if the instrument had been signed by anyone else, no matter who, provided she signed against the designation "witness" that would have satisfied the provision. But the purpose of the presence of the witness is to attest to the due execution of the instrument, therefore, in our view, a commissioner for oaths is even better qualified to witness and attest a power of attorney than a person who cannot be easily traced and whose credibility cannot be vouched for. A commissioner for oaths performs his duties on pain of clear legal sanctions and it is easy to trace her in case there is a dispute about the due execution of the power of attorney. In our opinion, the Court of Appeal did not correctly decide the issue of the validity of the power of attorney in Asante-Appiah v. Amponsah and when the case came before this court on appeal the court regrettably did not thoroughly consider the full ambit and purpose of the Act as a whole before endorsing the view of the Court of Appeal. That holding, in our clear thinking, is not right and just having regard to the purpose and plain meaning of the provisions of Act 549 as a whole. If our decision in Asante-Appiah v. Amponsah has been interpreted as disqualifying a commissioner for oaths from acting as a witness to a power of attorney, or to mean that a power of attorney cannot be validly constituted by a statutory declaration sworn to before a commissioner for oaths, then we hereby depart from that decision pursuant to Article 129(3) of the Constitution."

43. Despite this concession, the Defendant further argues that for a foreign-executed power of attorney to be admissible in Ghanaian proceedings, it must be notarized. In support of this contention, he cites Justice S.A. Brobbey's authoritative text, "*Practice and Procedure in the Trial Courts and Tribunals of Ghana*" where the illustrious author and eminent jurist stated at page 309 of the book as follows:

> *"The practice in Ghana courts is that where the power of attorney is from a foreign country but to be used in Ghana, it should be notarized by a notary public."*

44. Admittedly, that requirement of the law was also stated by Hayfron-Benjamin, JSC in his opinion in the case of **Hussey v Edah [1992-93] GBR 1703** where the venerable judge opined as follows:

> *"A power of attorney was a formal document by which one person, usually called the principal or donor, divest to another, usually called the attorney or donee, authority to represent him or act in his stead on certain purposes spelt out in the document.* ***If such a power was for use abroad it ought to be authenticated by a notary public****. A power of attorney might be terminated as provided therein or upon the completion of its object or by death.* ***The power of attorney made by the plaintiff's siblings in the Republic of Togo required notarial authentication for its efficacy for use in Ghana.****"*

45. Therefore, the Defendant submits that since the notary public in the United States acted solely as a witness and not explicitly in their official notarial capacity, the document lacked proper notarization. As a result, he maintains that the power of attorney is invalid and, consequently, all evidence adduced by the Plaintiff's attorney must be disregarded.

46. To begin with, it bears emphasizing that a notary public is legally authorized to authenticate the execution of important documents, ensuring their validity and authentication. The cardinal function of a notary public is to verify the identities and signatures of individuals signing these documents, confirming that they do so willingly, freely, and with a clear understanding of the implications of their actions.

47. The 9th edition of the Black's Law Dictionary defined a notary public as,

> *"an individual appointed by the state and vested with the authority to administer oaths, certify documents, verify the authenticity of signatures, and perform certain official functions in commercial transactions, including the protest of negotiable instruments"*

48. Significantly, **N.Y. Executive Law § 135 (McKinney 2024)** captioned "*powers and duties; in general of notaries public who are attorneys at law*", the relevant law that governed the duties of a power of Attorney in New York stipulates as follows:

> *"§ 135. Every notary public duly qualified is hereby authorized and empowered within and throughout the state to administer oaths and affirmations, to take affidavits and depositions,* ***to receive and certify acknowledgments or proof of deeds, mortgages and powers of attorney and other instruments in writing;*** *to demand acceptance or payment of foreign and inland bills of exchange, promissory notes and obligations in writing, and to protest the same for non-acceptance or non-payment, as the case may require, and, for use in another jurisdiction, to exercise such other powers and duties as by the laws of nations and according to commercial usage, or by the laws of any other government or country may be exercised and performed by notaries public,*

provided that when exercising such powers he shall set forth the name of such other jurisdiction..."

49. The Plaintiff has passionately urged that we adopt the New York position which permits an individual to perform the dual function of both a witness and a notary. We are however of the considered view that our local laws neither contemplate nor endorse this dual capacity.

50. Section 1(2) of the Power of Attorney Act, 1998 (Act 549) expressly requires that where the donor of the power signs the instrument personally, the execution must be attested by at least one witness. This witness requirement is a distinct procedural safeguard aimed at ensuring independent attestation of the donor's voluntary execution of the instrument. This safeguard would be defeated if the same individual who witnesses the execution simultaneously acts as the notary for the same document, thereby certifying their own act of attestation.

51. We are of the considered opinion that it is a better practice to have separate individuals for each role at the same time and in respect of the same document. Needless to say, this will ensure impartiality and avoid potential conflicts and legal challenges to the document, given that notaries are presumed to be impartial witnesses to the signing or acknowledgment of a document, their impartiality would be compromised if the same notary acted as a witness to the same document at the same time. This is more so in circumstances where the document's validity may be challenged in the future.

52. For instance, if the notary's signature as a witness is later disputed, that would obviously put the validity of the notarization itself into question. Accordingly, we are of the considered view that it is against both best practice and sound

policy that an individual should act both as a witness and a notary in respect of the same document at the same time.

53. Furthermore, the Plaintiff in his written submission before this Court conceded that the Power of Attorney that was tendered at the Trial High Court, was indeed unstamped. He nonetheless urged section 5(1) of the Courts Act on us which enjoins Courts from overturning decisions on the basis of the erroneous admission of evidence unless the said admission resulted in a substantial miscarriage of justice.

54. Whilst we can sympathize with the Plaintiff on the fact that the issue of stamping, as he has fiercely argued, was never broached on trial or even on appeal before the Court below, we are nonetheless constrained to agree with the Defendant on his contention that the said Power of Attorney, being unstamped as at the time of its reception into evidence, was inadmissible.

55. In a judgment dated the 22nd of March, 2022 with Suit No.: J4/80/2023, entitled **Nii Aflah vrs.Benjamin Kwaku Boateng**, a judgment which I had the privilege of authoring, this Court decided as follows:

> *"It is obvious from the language of section 14(2) of Act 311, from which this Court in the Amonoo vrs. Dee and Mary Tsotsoo cases, purported to derive a discretion to 'admit subject to stamping', that the said section 24(2) does not bear out such discretion either in its express words and/or inferentially …*
>
> *The wording of section 14(2), irrespective of the obviously well-intended policy considerations that must have motivated the Court in the Amonoo vrs. Dee and Mary Tsotsoo cases, does not admit of an interpretation that vests a discretion in a trial court and for that matter an appellate court, to admit or affirm the admission of an unstamped, or improperly stamped document in evidence, prior*

to stamping whether in pursuance of the ends of ordinary justice or in obedience of the statute as claimed in the Amonoo vrs. Dee case. The language of Section 14(2), like its reenactment in Act 689 makes stamping and or the payment of the penalty a precondition or condition precedent to admission in evidence of any document or instrument liable to stamping."

56. On the basis of the foregoing, we find that the admission of the Plaintiff's unstamped Power of Attorney into evidence by the Court of Appeal was in error and same is hereby rejected.

57. But that does not end the matter because the evidence led by the Plaintiff's attorney, even in the absence of the power of attorney, was largely on matters that he personally perceived and as the Plaintiff has rightly submitted, such evidence is admissible even in the absence of a valid power of attorney.

58. The Plaintiff has relied on the case of **Adjeifio v Mate Tesa [2013-2014] 2 SCGLR 1537** in which this Court upheld the practice whereby the Court of Appeal made use of the testimony of a co-plaintiff who did not have capacity as a party but had personal knowledge of the facts involved in the case.

59. From the evidence on record, it was apparent that Mr. Fiifi Aggrey, who testified as the Plaintiff's attorney, was acutely familiar with the prevailing facts of the case. His personal experience and perception of the relevant facts to which he testified ensures that his testimony, despite the rejection of the unstamped power of attorney, remained admissible and capable of be assigned probative value because it complied with section 60 of the Evidence Act, 1975 (NRCD 323) which makes personal knowledge, a precondition to giving evidence in Court.

60. For instance, at page 12 of volume 2 of the Record of Appeal the said Fiifi Aggrey, under cross examination, demonstrated his personal knowledge of the facts involved in this case as follows;

> *Q. Because you did not know about the transaction (alleged sale of the land) to the plaintiff at the time it took place, you would not know whether at the time the land was encumbered or not?*
>
> *A. Yes. When transactions took place I was not there but that land I knew was not encumbered. It was vacant.*
>
> *Q. How do you know?*
>
> *A. I know that territory very well and in the middle where they encroached we had a tree under which our workers used to sit to rest when on break.*

61. Additionally, in further cross examination he gave personal testimony of details about the construction by the Plaintiff of structures on the land in dispute and the trespass by the appellant, the report made to the police and an application for interlocutory injunction.

62. Clearly, the attorney was qualified to testify on these matters that he said he personally witnessed. In the circumstances, his evidence will not be discarded but will be admitted and evaluated.

63. The first and third grounds of appeal submitted by the Defendant, to the extent that they related to issues pertaining to the evaluation of evidence, shall be discussed jointly;

    i. *The judgment is against the weight of evidence*
    ii. *The Court of Appeal erred when it failed to properly consider the forensic report tendered in evidence as ExhibitF*

64. The Defendant's principal contention under these grounds is that the forensic report tendered by the Plaintiff was inherently self-serving, given that the Defendant was not involved in the process of examination and investigation from which the report emerged.

65. He argues that the proper legal course, had the Plaintiff genuinely intended to obtain a fair and impartial forensic analysis, would have been to involve both the Court and the Defendant in the conduct of the exercise. In the absence of such procedural fairness, the entire undertaking, according to the Defendant, was fatally tainted by bias.

66. He further submitted that the forensic examiner, under cross-examination, conceded that the Defendant's lease document was never submitted for inspection and therefore did not feature in the body of material examined in reaching the forensic conclusions. Lastly, the Defendant maintained that, notwithstanding the expert qualifications of PW2, the Court was not bound to adopt his findings.

67. Having carefully reviewed the record of appeal, we find ourselves unable to accept the arguments advanced by Counsel for the Defendant. The evidence of PW1, Detective Sergeant Simon Nyarko, who was subpoenaed to testify, was categorical: the Defendant declined to honour an invitation by the police to appear at the station, respond to the allegations, and assist in the investigative process.

68. Moreover, following the commencement of the suit, the Plaintiff brought a formal application for the appointment of a forensic expert, which the Defendant vociferously opposed partly on account of the fact that the Plaintiff

had already tendered the instant forensic report. Fortified by the Defendant's objections, the Trial High Court ultimately refused the application, holding that it would amount to an unnecessary duplication of evidence, as the forensic report in question had already been attached to the Plaintiff's witness statement and was intended to be tendered.

69. It is a well-established principle of law that a party who deliberately declines to participate in a process that may affect their interest cannot later assail the outcome on the ground that they were denied a hearing. A fortiori, having refused to cooperate with the police investigation and subsequently opposing the subsequent application for the appointment of a forensic examination, the Defendant cannot now credibly impugn the validity of the process or the conclusions reached.

70. Furthermore, we are unconvinced by the attempts by Counsel for the Defendant to impugn the forensic investigation by contending that Spt. Godwin Lavoe, PW2, the forensic expert, did not have the Defendant's lease instrument with which to conduct the examination. In his evidence before the High Court the said witness identified the signature page of the Defendant's lease instrument as "Exhibit M3" which he concluded as bearing a forged signature of Nii Sodja Obodai. Again, it is clear from Exhibit N, found at page 184 of Volume 2 of the record of Appeal, the request for information tendered without objection by PW1, that the document referred to as Exhibit B (*which was later tendered in Court and marked as Exhibit M3*) was extracted from the lease of the Defendant and indeed a cursory glance at the said exhibit would equally confirm its identity as the signature page of the Defendants lease.

71. Whilst we certainly agree with the Defendant's contention that the Court is not bound by the determinations and/or conclusions of an expert witness, we cannot also not discount the fact that by reason of the esoteric nature of such testimony, it cannot be discounted or ignored except for stated cogent reasons. [***See cases of Fenuku v. John-Teye [2001-2002] SCGLR 985; Hayford v. Tettey (substituted by) Larbi & Decker [2012] 1 SCGLR 417***]

72. On the basis of the foregoing, we find no merit in this ground of the Defendant's appeal and dismiss same in its entirety.

73. Under the final ground of appeal, the Defendant contends that the Court of Appeal erred in relying on the weaknesses of his case in the absence of a formal counterclaim. With respect, this contention misconceives the nature of the evidentiary burdens in civil litigation and the role of the court in disputes involving competing claims of title.

74. First, the mere fact that a party is designated as a defendant does not relieve them of the evidential burden to substantiate factual assertions advanced in rebuttal of the plaintiff's case. The Evidence Act, 1975 (NRCD 323) is instructive in this regard. Section 14 provides that:

> *"Except as otherwise provided by law, unless and until it is shifted, a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting."*

75. Similarly, Section 17 of the Act states:

"Except as otherwise provided by law, the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof."

76. These provisions make it clear that a party who asserts a positive defence, particularly a claim of ownership to land, is required to lead evidence in support of that assertion, regardless of whether they have filed a formal counterclaim.

77. Furthermore, in land litigation, the principle emerging from cases such as **Hanna Assi (No 2) Vs. Gihoc Refrigeration & Household Products Ltd (No2) [2007-2008] SCGLR** is that the resolution of competing claims over land and the grant of consequential or ancillary relief does not strictly depend solely on the formality of pleadings.

78. Where both parties assert rights over the same parcel of land, the court is necessarily called upon to determine whose claim is superior and even in the absence of a formal counterclaim by the defendant, title may be declared in him if the balance of probabilities preponderates in favour of the defendants claim. In cases such as these, the defendant is effectively making a positive claim to title and bears the corresponding evidential burden to prove it.

79. In light of the foregoing, the Defendant's complaint under this ground is without merit. The Court of Appeal did not err in evaluating the strength of the Defendant's case on its own terms, notwithstanding the absence of a counterclaim. The law imposes an obligation on any party asserting title to lead sufficient evidence to establish it, and the Defendant, having failed to discharge that burden, cannot shield himself behind procedural formalities. This ground of appeal is accordingly dismissed.

80. The Defendant has sought to argue that the indenture of the Plaintiff bore a site plan which was dated about a year after the indenture was executed. We find these contentions uncompelling and untenable. To begin with, the Plaintiff's attorney, when questioned under cross examination as to the reason why the site plan bore a later date than the indenture, satisfactorily explained that the earlier site plan had certain anomalies that required correction and hence the need to replace same. In any case, the very same grantors who the Defendant claims to have derived his title from, expressly affirmed the authenticity of the Plaintiff's indenture and interest over the land before the police. Exhibits K and L are statements given to the police by Mr. Ayiku Emmanuel Torgbor and Nii Sodjah Obodai respectively.

81. These documents were tendered without objection by Counsel for the Defendant, and the content of these documents was to affirm the grant made to the Plaintiff over the land in dispute. This acknowledgment, by the undisputed owners of the land in question, commands more probative weight than any perfunctory anomalies which the Defendant may have noticed with the Plaintiff's deed.

CONCLUSION:

82. It is for the foregoing reasons that on the 25th of June, 2025 we dismissed the appeal in its entirety for lacking merit. Save the rejection of the Plaintiff's Exhibit A on the grounds canvassed above, we accordingly affirm the judgment of the Court of Appeal dated 29th June, 2022. We award cost of Twenty Thousand Ghana cedis (GHS 20,000.00) against the Defendant.

(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.)
(JUSTICE OF THE SUPREME COURT)

(SGD.) E. Y GAEWU
(JUSTICE OF THE SUPREME COURT)

(SGD.) Y. DARKO ASARE
(JUSTICE OF THE SUPREME COURT)

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E. BARIMA MANU ESQ. FOR THE PLAINTIFF/APPELLANT/RESPONDENT WITH HIM ROBERT KWAME DAPAAH ESQ.