

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: J4/38/2024

30TH APRIL, 2025

LARRY BLACKMORE PLAINTIFF/APPELLANT/APPELLANT

VRS

BERNARD KLUTSE DEFENDANT/RESPONDENT/RESPONDENT

JUDGMENT

KULENDI JSC.

INTRODUCTION:

1. For the purpose of this appeal, we shall refer to the respective parties by their original designations as in the High Court. The Plaintiff/Appellant/Appellant shall be referred to as Plaintiff whilst the Defendant/Respondent/Respondent shall be referred to as Defendant.

2. The Plaintiff is protesting the judgment of the Court of Appeal dated 27th July, 2023 by which the Learned Justices of the Court of Appeal essentially affirmed the judgment of the High Court dated 25th May, 2022 in favour of the Defendant. The notice of appeal was consequently filed on 19th September, 2023.

BACKGROUND

3. This appeal originates from an Amended Writ of Summons and Statement of Claim dated 8th July, 2011, whereby the Plaintiff sought the following reliefs against the Defendant:
 - a. A declaration of title to ALL THAT PIECE OR PARCEL of land in extent of 0.14 hectares (0.35 of an acre) more or less being parcel No. 626 Block 7 Section 180 situated at Kwabenya in the Greater Accra Region of the Republic of Ghana as delineated on Registry Map No. 006/180/1993 in the Land Title Registry, Accra, shows and edged with pink colour on Plan No. 42/2004.
 - b. Damages for trespass.
 - c. Recovery of possession.
 - d. An order of perpetual injunction restraining defendant by himself, his servants, agents, assigns, workmen and persons acting by or under the authority of defendant from interfering or entering the said land.
 - e. Cost

PLAINTIFF'S CASE:

4. In a 12 paragraph Amended Statement of Claim, which accompanied the said Amended Writ of Summons, the Plaintiff averred, among others, that in the year 2002, he purchased two (2) plots of land, situate at Ashongman Residential

Area, Accra, which is more particularly described in relief (a) supra, from Nii Iddrisu Aya Tettey. He alleged further that, after the said purchase, he caused the land to be registered at Land Title Registry and was issued with Land Title Certificate No. GA 22098 Volume 76, Folio 116 on the 20th of January, 2006.

5. According to the Plaintiff he, thereafter, took possession of the land and constructed a five-bedroom house thereon but without a perimeter wall around the house. The Plaintiff further contended that, the Defendant encroached on a portion of his land and started building a fence wall and digging a foundation on a portion of his land with speed. Consequently, Plaintiff reported the trespass to the Accra Metropolitan Assembly (AMA), who intervened and ordered the Defendant to stop work but to no avail. Instead, the Defendant ignored the warning by the AMA and resorted to building under the cover of darkness, to outwit inspectors from the city authorities. It was the case of the Plaintiff that, all efforts to stop the Defendant from continuing his trespass to, and activities, on his land proved futile and hence his institution of the action in the High Court on 28th August, 2011.

DEFENDANT'S CASE:

6. The Defendant on receipt of the Plaintiff's Writ of Summons and Statement of Claim entered appearance to the action and filed a Defence to same on 14th April, 2011. In a subsequent Amended Statement of Defence filed on 24th August, 2011, the Defendant denied the Plaintiff's claim and put him to strict proof of the averments contained in the Amended Statement of Claim. In particular, the Defendant averred that it is rather the Plaintiff who had encroached on Defendant's adjoining land. The Defendant averred that, he acquired two plots of land in 2009 from one Mr. Jacob Lamptey who had purchased the said land from Nii Iddrisu Ayaa Tettey, the Plaintiff's grantor.

7. The Defendant also gave the dimensions of his land as comprising ALL THAT piece of land situate at New Ashongman Residential Area bounded on the North East by Lessor's land measuring 212 feet more or less on the South East by proposed road measuring 70 feet more or less on the South West by Lessor's land measuring 212.2 feet more or less on the North-West by proposed road measuring 70.0 feet more or less containing an approximate area of 0.359 acre or 0.145 hectare more or less. It was his case that he had taken steps to commence registration of his land and had lodged all his documents with the Land Title Registration Department of the Lands Commission.
8. He concluded that the issue between the parties was a boundary dispute as opposed to who owns a particular piece of land and that the land he was developing is his own. Defendant urged that the appointment of a surveyor would resolve the matter as both parties purchased their lands from the same vendor. The Defendant therefore counterclaimed for a declaration of title to the land whose description he gave in paragraph 24 of his Amended Statement of Defence.

JUDGMENT OF THE HIGH COURT

9. Trial commenced on 12th March, 2021 with the Plaintiff calling one Eric Nyarko to testify on his behalf. (See page 427 of the Record of Appeal). After Plaintiff closed his case, Defendant testified by himself and also called his immediate grantors to also testify on his behalf. A surveyor was also appointed by the court to draw up a composite plan after which the said surveyor appeared to testify and was cross-examined.

10. After trial, the High Court in a judgment dated 25th May, 2022 dismissed the claim of the Plaintiff and granted the Defendant his counterclaim. The judge held in part as follows:

"On the totality of the evidence before the Court, the Plaintiff could not prove that the Defendant has trespassed onto his land and therefore his action fails and same is accordingly dismissed.

Conversely the Defendant was able to prove his Counterclaim and I accordingly enter judgment for him on his Counterclaim and make the following specific orders.

1. I decree title in the Defendant in the land he aptly described in paragraph (a) of his Counterclaim.

I also declare the Defendant to be the owner in possession of the land he described in paragraph (a) of his Counterclaim.

I grant perpetual injunction against the Plaintiff, his agents, assigns etc., from in any way interfering with the Defendant in his quiet enjoyment and possession of the parcel or plot of land he has described in paragraph (a) of his Counterclaim.

I award the sum of Ghs 50,000 by way of general damages to the Defendant and against the Plaintiff."

APPEAL TO THE COURT OF APPEAL

11. Aggrieved by the above decision, the Plaintiff appealed to the Court of Appeal. The Court of Appeal in its judgment of 27th July, 2023 affirmed the judgment of the High Court but varied the amount awarded as damages for trespass from ₦ 50,000 to ₦5,000.

12. The Court of Appeal held in part as follows:

"On the totality of the evidence presented by both parties, the Plaintiff has failed to present sufficient evidence for this Court to set aside the Judgment of the High Court and same is accordingly affirmed with the exception of ground (vi on the award of damages which succeeds in part. The award of damages for trespass in the sum of GH¢50,000 against the Plaintiff/Appellant is hereby set aside. In its place, nominal damages for trespass are assessed at GH¢5,000 against the Plaintiff/Appellant."

13. On 19th September, 2023, the Plaintiff filed an appeal to this Court to contest the concurrent judgment of the Court of Appeal.

GROUNDS OF APPEAL

14. The grounds of appeal canvassed in the Plaintiff's notice of appeal are as follows

- a. That the judgment is against the weight of evidence on record before the court.
- b. The learned judges of the Court of Appeal, with respect, erred in their interpretation of the composite plan/report and the evidence tendered by the Court appointed expert thereby leading to a wrong conclusion.
- c. The learned judges of the Court of Appeal, with respect, erred when they held that the Plaintiff/Appellant/Appellant (Appellant) trespassed on the land granted to the Defendant/Respondent/ Respondent.
- d. The Court of Appeal erred, with respect, when it failed to hold that the Respondent lacked capacity to defend a title over the land he was not granted.
- e. The Court of Appeal erred, with respect, when it upheld the correctness of the description of Defendant/Respondent/ Respondent's (Respondent) land as

contained in his Deed of Assignment but failed to hold that the land the Respondent occupies on the ground is completely different from the land described in his Deed of Assignment.

f. The Court of appeal erred in holding that Respondent's parcel on the ground was in conformity with what he was granted as such a finding was unsupported by the evidence on record.

g. The Court of Appeal, with respect, fell into an error when it found that DW2 was a common grantor and relied on her testimony as a common grantor to conclude that the site plans of the parties contained errors thereby leading to a miscarriage of justice.

ANALYSIS

15. From the submissions made by the Plaintiff in the Statement of Case in respect of the above grounds of appeal, it is evident that the general theme of Plaintiff's plaint is anchored on the testimony of the Surveyor (CW1) and the import and weight that ought to be put to the said testimony. This and the other grounds of appeal can be interrogated under the omnibus ground of appeal.

16. In this analysis therefore, we shall address the omnibus ground of appeal and in our analysis, deal with the import and weight of the testimony of the surveyor, among others. This is because, an analysis of the various grounds of appeal would invariably involve an examination of the evidence on record.

17. We note also that the decision appealed is a concurrent judgment. That being the case, we are guided by the several decisions of this court on concurrent findings, among which is the case of **Ntiri & Another v Essien & Another [2001-2002] SCGLR 451** where Bamford-Addo JSC said at page 459 as follows:

"where the lower appellate court had concurred in the findings of the trial court, especially in a dispute, (the subject matter of which was peculiarly within the bosom of the lower courts or tribunals,) a second appellate court would not interfere with the concurrent findings of the lower courts unless it was established with absolute clearness that some blunder or error which had resulted in a miscarriage of justice was apparent on the face of the way the lower tribunals had dealt with the facts.. The errors would include: an error on the face of a crucial documentary evidence; and a misapplication of a principle of evidence and; finally, a finding based on erroneous proposition of law such that if that proposition was corrected the finding would disappear. However, it was not enough that the blunder or error per se was established; it must further be established that the said error had led to a miscarriage of justice."

18. See also: Achoro v Akanfela [1996-97] SCGLR 209; Koglex Ltd (No.2) v Field [2000] SCGLR 175; Mondial Veneer (Gh) Ltd v. Amua Gyebu XV [2011] 1 SCGLR 466; NII AFLAH vs. BENJAMIN KWAKU BOATENG (CIVIL APPEAL NO. J4/80/2022, judgement dated 22ND MARCH, 2023);
19. Where an examination of the record shows that the findings of fact made by the trial court and affirmed by the 1st Appellate Court were amply supported by the evidence on record, a second appellate court must not interfere with such findings.
20. Having set out the above caution, we now proceed to examine the evidence and findings reached by the two lower courts and determine whether or not, as alleged by the Plaintiff, the findings are indeed perverse.

21. We note from that the pleadings that this case is in essence boundary dispute. The Defendant acknowledged this fact when he pleaded in paragraph 15 of his Amended Statement of Defence as follows:

"15.The Defendant further says that the dispute is not in respect of a particular piece of land contested by both parties but rather the boundaries of land respectively owned by both parties and the Plaintiff does not own the land being developed by the Defendant and was not granted that piece of land by the vendors.

22. It is therefore not surprising that the trial judge on 1st September, 2011 ordered parties to submit their site plans to the Regional Surveyor for a composite plan to be drawn in respect of the land. The Court ordered as follows:

"...It is further ordered that both parties submit their respective site plans to the regional surveyor of the survey and mapping division of Lands Commission for a superimposition which must be done within the next two months."

23. This survey was done and a report filed in court by a letter dated 3rd November, 2014 [See page 199A of the Record of Appeal] The Surveyor appeared in court on 14th November, 2014 to testify to the report. [see page 199C of the Record of Appeal.]

24. An optical evaluation of the composite plan shows that there is a disputed part of the land which is hatched black. The hatched portion of the composite plan shows that the Plaintiff's land as described on his site plan extends into the hatched portion of the disputed area. Conversely, the Defendant's land as shown on his site plan lies far away from the hatched portion. This was corroborated by the surveyor's testimony found at page 199E and 199F of the record of appeal as follows:

Q: Does the Defendant's site plan correspond to his actual land on the ground?

A: No, my Lord

Q: Can you explain?

A: My lord as I initially said, the land shown me by the Defendant is edged pink and that of his site plan is edged green so you see, looking on the composite plan that they do not correspond."

25. This means that whilst the Defendant on ground lays adverse claim to a portion of Plaintiff's land, the Defendant's site plan shows that Defendant's land is different from the hatched portion of land.

26. The testimony of the surveyor, as per the composite plan supports the fact that the land as appears on the site plan of the Plaintiff has been encroached upon by the Defendant.

27. Concerning the Plaintiff's land, the Surveyor testified on page 199G of the record of appeal as follows:

"Q: Per your own evidence it is also clear as you indicated to the Court that for the both parties (plaintiff and defendant), the physical situation of the land they are claiming respectively is not reflected by the site plan they gave you.

A: My Lord the plaintiff site plan is almost (about 90%) falls within what he showed on the land."

28. From the above testimony, it is evident that the Plaintiff's case per the evidence of the Surveyor was more probable than that of the Defendant.

29. What is more perplexing is that, the High Court despite the testimony and depictions on the composite plan, nonetheless proceeded to give judgment in favour of the Defendant for the land described in his counterclaim as follows:

"Conversely, the Defendant was able to prove his counterclaim and I hereby declare him to be the owner in possession of the land he so aptly described in relief (a) of his counterclaim." [see page 486 of record of appeal.]

30. Significantly, this description of the land in Defendant's counterclaim is the same as depicted on his site plan in his indenture and submitted to the surveyor for composite plan. The Defendant admitted these in his testimony which can be found at page 438 of the record of appeal as follows:

Q: You tendered "Exhibit 2" that is an Indenture dated 4/02/2011. Correct?

A: Yes.

Q: And in that "Exhibit 2", there is a site plan pictorially showing the land your acclaimed grantor granted to you, is that not the case?

A: Yes.

Q: You recall that the court ordered a composite plan to be prepared?

A: Yes.

Q: And in the preparation of the composite plan you presented "Exhibit 2" and the site plan so contained therein as evidence of your land?

A: Yes, that is correct but when the court ordered the surveyor to come and pick our lands the surveyor came out with a report that both the Plaintiff

and the Defendant's site plans were wrong because they were picked manually and not with any geodetic equipment that gives accurate positions of lands.

Q: You have counterclaimed for a declaration of title for a land described in the schedule to your defence and counterclaim as the land granted you by your grantor on which you have put your building. Correct?

A: Yes."

31. The evidence led at trial therefore demonstrates that Defendant's land as he describes in the counterclaim is at variance with the land he is laying a claim to. He himself admits as much at page 439 of the Record of Appeal during cross examination as follows:

Q: I am putting it to you that all the measurements in your site plan with regards to the cardinal points are different from those stated in your schedule attached to your statement of defence and counterclaim in the instant action.

A: I have already stated that there are errors in the site plans.

32. It is the Defendant's land, as described above, that the Surveyor found to be distinct and different from the disputed land when he testified at page 199E and 199F of the record of appeal as follows:

Q: Does the Defendant's site plan correspond to his actual land on the ground?

A: No, my Lord

Q: Can you explain?

A: My lord as I initially said, the land shown me by the Defendant is edged pink and that of his site plan is edged green so you see, looking on the composite plan that they do not correspond."

33. From the above analysis, it is evident that the trial court's grant of the counterclaim of the Defendant is problematic and poses a legal and factual challenge. Such a grant would only serve to embolden the Defendant to continue to occupy portions of the Plaintiff's land which on ground, he has trespassed even though the land granted to the Defendant and endorsed by the Court lies somewhere else.

34. The trial Court's grant of the counterclaim of the Defendant is even more challenging when one looks at the fact that the trial court came to a correct position in his analysis of the case that the Plaintiff was entitled to the land granted him by his grantors as follows:

"ISSUE (d) whether or not the Plaintiff does not own the land being developed. Again, as in my discussion relative to Issue (b) supra, I do not think that this issue also raises any challenges at all. The Plaintiff led cogent evidence, (including documentary evidence, for example his Land Certificate No. GA 22098 which was tendered in evidence without objection, accepted and marked as Exhibit "A"), to prove that he is the owner of the land he has described in his relief (a) indorsed on his Writ of Summons. I hold the humble view that a land certificate, is evidence (though a rebuttable one), that the holder of same is the owner of the land described in such a certificate and since no rebuttable evidence was led to counter this position, I hold that the Plaintiff is indeed the owner of the land he is developing. I therefore rule Issue (b) in favour of the Plaintiff and against the Defendant." [See page 478 of the record of appeal]

35. Having held that the grant made to the Plaintiff is proper and that Plaintiff is indeed owner of the land he is developing and that Defendant led no evidence to rebut the presumption of ownership created by the Plaintiff's land title certificate, it leaves much to wonder how the trial Court came by the determination that Plaintiff is, nonetheless, not entitled to a declaration of title to the very land over which the Plaintiff's Land Certificate covers.
36. Apart from the above, the evidence on record shows that the Plaintiff had his grant on 27th September, 2002. Plaintiff subsequently took steps to register his land and was issued with a land title certificate dated 20th January, 2006. Conversely, the Defendant's grant is evidenced by a deed of assignment dated 4th February, 2011. The Plaintiff instituted the action on 28th August, 2011 and coupled same with an injunction application to restrain the Defendant from carrying out any development on his land. Thus, even if the parties had a common grantor, the Plaintiff was earlier in time and his legal title had long been entered in the records of the Lands commission to serve as notice to the whole world of Plaintiffs ownership or interest.
37. A prudent purchaser would therefore have conducted searches on the land to ascertain the existence or otherwise of any 3rd party interest.
38. It is settled that where there is a prior interest that would be revealed by an appropriate search of the public records affecting land title, a subsequent purchaser is charged with constructive notice of such a prior interest even if he never actually conducts a title search. The Applicable law at the time of the acquisition of the land by Defendant was the PNDCL 152. Section 5 of Land Title Registration Law, 1986 (PNDCL 152) further affirmed in the case of **Ussher v Darko (1977) 1GLR 476** provides thus:

"Any person who acquires land or interest in land shall be deemed to have had notice of every entry in the land register which he was entitled to inspect at the time of the acquisition".

39. We further note that the Defendant sought to demonstrate that there was an error in the site plans of the parties but he failed to adequately substantiate same. Both DW1 (Defendant's immediate grantor) and DW2, the Queemother of Kwabenya, did not give any credible testimony that could be allowed to dislodge the documentary evidence on record.
40. The testimony of DW2 is not one which is credible or can be relied on in resolving the case between the parties as same is riddled with inconsistencies that renders same unreliable. At page 451 and 452 of the Record of Appeal, the following inconsistent testimony was given by DW2.

"Q: I am putting it to you that the land was granted to the Plaintiff by your family sometime in 2002 and that is why you met him on the land when you visited the land.

A: Since 2002, we have not seen the Plaintiff for him to tell us who specifically granted the land he claims.

Q: But you earlier told the Court that you went onto the land with the Plaintiff and his lawyer i.e., Lawyer Ampaw along with the Defendant.

A: I have not seen the Plaintiff before but I went to the land in the company of some members of my family, the Defendant and the Plaintiff's lawyer, Ampaw aforementioned.

Q: I am further suggesting to you that the said site plan of the Plaintiff superimposed on the ground along with the site plan of the Defendant show

clearly that the Defendant has in fact trespassed on a portion of the Plaintiff's land.

A: Before we went to the land for the surveyor to do the superimposition the Plaintiff had already walled his land. So, no one could enter his land but we wanted them to live in peace and that is why we went onto the land to settle the matter.

Q: I am putting it to you that the Plaintiff has a land certificate and therefore if there was any mistake in his site plan same would have been noticed during the preparation of the cadastral plan to issue out the land certificate.

A: I still stand by my evidence that the Plaintiff's site plan was not accurate.

...

Q: I am putting it to you that though you claim to be a principal elder of the Nii Odai Ntow Family, you did not sign either the Plaintiff's or the Defendant's Indenture.

A: This is the reason why I stated that before we visited the land the Plaintiff had already taken the land.

Q: What you have just told the Court is not correct.

A: Not correct. When we visited the land, we found that the Plaintiff had not built his house according to the measurement or the size of his land, but because we wanted peace to prevail between them, that is why we left the matter to remain like that."

41. From the above testimony, it is evident that DW2 could not have been deemed to be the common grantor of the Plaintiff and the Defendant. Although she claims she is a principal elder of the family, she did not author or sign any of

the indentures of the parties. She testified that she does not know and has not met the Plaintiff before. The court of appeal therefore erred in attaching so much weight to the testimony she gave and ascribing the position of "common grantor" to her.

42. In a similar fashion, DW1 sought to testify that there was an error in the assignment given the Defendant. He attributed same to the surveyor and the method used in making the site plans. The said surveyor was however not called to testify in the matter to clarify same. At page 446 of the record of appeal, DW1's testimony is recorded as follows:

Q: And your family sold to the Plaintiff his land, correct?

A: I heard of it and I also saw it.

Q: And you also sold part of your land to the Defendant,

correct?

A: Yes, I sold a portion of my land to the Defendant.

Q: And your family had a qualified surveyor, correct?

A: That is so.

Q: And it was this surveyor who used the tape to measure the land and showed Plaintiff his portion of the land, correct?

A: That is so.

Q: And this same surveyor also showed Defendant his portion of the land, correct?

A: That is so.

Q: You are not a surveyor, are you?

A: That is so, I am not a surveyor.

43. The above testimony cannot be given so much weight to obliterate the clear documentary evidence on record.

CONCLUSION:

44. Upon a review of the evidence on record, as well as the statements of case filed by counsel, we conclude that the findings by the High Court and Court of Appeal on the basis of which the claims of the Plaintiff were dismissed and the counterclaim of the Defendant upheld, cannot be justified having regard to the evidence on record. Consequently, the judgments of the High Court dated 25th May, 2022 and that of the Court of Appeal dated 27th July, 2023 are hereby set aside.

45. In their stead, we grant reliefs (a), (c), (d), and (e) endorsed on Plaintiffs Amended Writ of Summons and Statement of Claim as follows:

a) We declare that Plaintiff is the owner of ALL THAT piece or parcel of land in extent 0 14 hectares (0.35 of an acre) more or less being parcel No. 626 Block 7 Section 180 situated at Kwabenya in the Greater Accra Region of the Republic of Ghana as delineated on Registry Map No. 006/180/1993 in the Lane Tine Registry Accra, shows and edged with pink colour or plan No. 42/2004.

b) Plaintiff is entitled to a recovery of any portion of his land described above and covered by land title certificate number GA. 22098, Vol 76, Folio 116 dated 20th January, 2006 which said certificate contains the description of Plaintiff's land as recited in "1" above. In ordering for recovery of possession of Plaintiff's land, we have taken note of the strenuous efforts made by Plaintiff to cause Defendant to halt any development he wanted to undertake on the land in dispute. He filed an application for injunction on

28th March, 2011. Another application for injunction was filed on 15th August, 2011. A third application for interlocutory injunction was filed on 5th August, 2015. When the High Court dismissed his application for injunction on his 3rd attempt by a ruling dated 11th January, 2011, the Plaintiff appealed the ruling. Thus, Plaintiff made every lawful effort to ensure that Defendant did not develop any portion of his land pending the final determination of the suit and is consequently entitled both in law and equity to recover any such portions of his land currently under occupation by trespass of the Defendant.

- c) The Defendant, whether by himself, his agents, servants, workmen, assigns and person acting by or under the authority of the Defendant are further perpetually injuncted and restrained from entering, developing or interfering with any portion of the Plaintiff's land which is covered by land title certificate No.: GA. 22098, Vol 76 Folio 116 dated 20th January, 2006.
46. On the issue of trespass however, there is no clear evidence on record that shows that the Defendant had put up any structure on the disputed area which is hatched black on the composite plan. We shall therefore decline an award in damages for trespass as no proper evidentiary basis has been established by the Plaintiff to justify such an award.
47. Cost is assessed at Fifty Thousand Ghana Cedis in favour of the Appellant against the Respondent.

(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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