

GHANA / JUDGMENT

TASSAH VRS ADZI & 4 ORS (J4/17/2024) [2024] GHASC 47 (23 October 2024)

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23 October 2024

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IN THE SUPERIOR COURT OF JUDICATURE IN THE SUPREME COURT ACCRA – A.D. 2024
CORAM: SACEY TORKORNOO (MRS.) CJ (PRESIDING) OWUSU JSC ASIEDU JSC DARKO ASARE
JSC ADJEI-FRIMPONG JSC CIVIL APPEAL NO. J4/17/2024 23RD OCTOBER, 2024 TASSAH TAPHA
TASSAH ... PLAINTIFF/APPELLANT/RESPONDENT VRS

1. NICHOLAS ADZI ... 1ST DEFENDANT
2. HAJIA ... 2ND DEFENDANT
3. IBRAHIM HUDU ... 3RD DEFENDANT/RESPONDENT/APPELLANT
4. SUWAYBA ADAM ... 4TH DEFENDANT/RESPONDENT/APPELLANT
5. AGRI-CATTLE ... 5TH DEFENDANT/RESPONDENT/APPELLANT LAKESIDE ESTATE LTD.

JUDGMENT

ASIEDU, JSC:

- [1] INTRODUCTION: Page 1 of 26 My lords, on the 13th November, 2020, the High Court delivered a judgment and dismissed the reliefs sought by the Plaintiff against the Defendants therein. The 3rd, 4th and 5th Defendants were given judgment on their counterclaim against the Plaintiff, including a declaration of title to the disputed land in the 5th Defendant; an order for recovery of possession of the said land and an order directed at the Plaintiff to remove any structure constructed by the Plaintiff on the land in dispute. The Plaintiff was also perpetually restrained from dealing with or interfering with 5th Defendant's land. Dissatisfied with the judgment of the High Court, the Plaintiff appealed to the Court of Appeal praying the Court of Appeal to set aside the judgment of the trial High Court. On the 30th March, 2023, the Court of Appeal delivered its judgment and reversed the judgment of the trial High Court. It is against the judgment of the Court of Appeal that the 3rd, 4th and 5th Defendants/Respondents/Appellants (hereinafter referred to as the Appellants) have launched the instant appeal to this Court. The Plaintiff/Appellant/Respondent would hereinafter be referred to as the Respondent.

- [2] THE NOTICE OF APPEAL: The grounds of appeal, by the notice of appeal filed on the 3rd May, 2023, are that: I. II. The judgment is against the weight of evidence on record. The Learned Justices of the Court of Appeal erred in holding that the Plaintiff/Appellant/Respondent is a bona fide purchaser for value when the Plaintiff/Appellant/Respondent had on the evidence, failed to conduct appropriate diligent searches at the time he purchased the land in dispute which had been registered in the name of the 5th Defendant since 1974. Page 2 of 26 III. The Learned Justices of the Court of Appeal erred when they held that the 5th Defendant/Respondent/Appellant registered its interest in the land after having obtained

judgment

in 2009 when the 5th Defendant/Respondent/Appellant in proof of its root of title produced documentary evidence that it acquired and registered its interest in the larger tract of land in January, 1974 and that the Judgment obtained in 2009 was a confirmation of ownership. IV. The learned Justices of the Court of Appeal erred when they held that the Plaintiff/Appellant/Respondent's continued stay on the land for nine (9) years gave him the protection under the law as owner of the land in dispute.

- [3] FACTS: The facts leading to the instant appeal are that the Respondent, by an amended writ and statement of claim filed in December, 2017, claimed against the Appellants the following reliefs: i. A declaration of title to and recovery of possession of all that piece of land situate, lying and being at Adenta, Accra and bounded on the north by a land measuring 139.5 feet more or less on the East by a house measuring 91.5 feet more or less to the South by a road measuring 131.9 feet more or less and to the West by a road measuring 90.1 feet more or less and containing an approximate area of 0.29 acre or 0.12 hectare more or less. ii. A declaration that the purported grant made by 5th Defendant [5th Appellant herein] to the 3rd and 4th Defendants [3rd and 4th Appellants herein respectively] is null and void and an order setting aside same. Page 3 of 26 iii. A declaration that the Plaintiff [Respondent herein] is a bona fide purchaser for value without notice; and further that the Plaintiff being in possession of the land has the right of first refusal to the purchase of the land. iv. An order of perpetual injunction directed at the Appellants, their agents, assigns, workmen or otherwise, howsoever described from assigning, transferring, annexing, or otherwise howsoever disposing of, developing or dealing in any way with the Plaintiff's parcel of land. v. General and special damages for trespass and costs. [3.1]. The 3rd and 4th Appellants filed their Statement of Defence and counterclaimed against the Respondent as follows:
- a. A declaration of title to all that piece or parcel of land measuring 0.28 acre situate at Lakeside Estate, Katamanso, Accra in the Greater Accra Region of Ghana which forms part of the 5th Appellant's land.
 - b. A declaration that the Respondent trespassed onto the 3rd and 4th Appellants' land.
 - c. An order for recovery of possession of 3rd and 4th Appellants' land described in (a) above from Respondent.

- d. An order of perpetual injunction restraining the Respondent or his assigns, agents etc. from interfering with the 3rd and 4th Appellants' land.
- e. General damages for trespass Page 4 of 26
- f. Costs [3.2]. The 5th Appellant also filed a Statement of Defence and counterclaimed against the Respondent as follows: (i) Declaration of title to all that piece or parcel of land situate, lying and being at Katamanso, Accra, containing an approximate area of 2911.53 and covered by Land Title Certificate No. TD0513 of which 0.29 acre being claimed by Respondent forms part. (ii) An order for recovery of possession of the land mentioned in (i) above. (iii) An order directed at the Respondent to remove any structure constructed by Respondent from 5th Appellant's land or in the alternative the 5th Appellant to remove same at the Respondent's cost. (iv) An order of perpetual injunction restraining the Respondent, his assigns, privies, agents and persons claiming title through him from interfering with the 5th Appellant's land.
- (v) General damages for trespass. (vi) Cost including the lawyer's fee. Page 5 of 26 [3.3]. The Respondent's case is that Respondent is the owner of the parcel of land in dispute. According to Respondent, he acquired the parcel of land in 2004 by lease from the Kplen We Family of La, Accra, for a term of 99 years. That the deed of lease was prepared for him in 2007 by his lessor. That before acquiring the parcel of land in dispute from the Kplen We Family, his enquiries revealed that owners of adjoining lands had all obtained their grants from the Kplen We family. Respondent says that he went into physical possession of the land in 2004 by putting up temporary structures on the land and planting crops thereon among others. That Respondent's subsequent searches in 2008 at the Lands Commission, the statutory body vested with the mandate to keep records of lands in Ghana, however, disclosed that the land so acquired by Respondent from the Kplen We family was registered in the name of one Land and Housing Limited. As a result, Respondent went ahead to regularize his acquisition of the land by attorning tenancy to the said Land and Housing Ltd. Respondent says that in or about 2013, it came to Respondent's notice, once again, that the 5th Appellant herein holds the legal title to the land. Nevertheless, attempts by Respondent to attorn tenancy to the 5th Appellant were unsuccessful due to 5th Appellant's sale of the same parcel of land to the 3rd and 4th Appellants herein. The Respondent pleaded that he was a bona fide purchaser for value without notice of 5th Appellant's adverse title to the land in dispute. 3rd and 4th Appellants denied the claims of the Respondent, and asserted their interest in the disputed land by a sub-lease they obtained from the 5th Appellant in March, 2014. 5th Appellant, on their part, confirmed that 3rd and 4th Appellants are 5th Appellant's grantees. 5th Appellant contended that 5th Appellant became legal owner of the disputed land in 1974 when a company called Black Watch Cattle Breeding Farms assigned its interest in the land to 5th Appellant, known formerly as Agri Cattle Limited. That in 1995, Agri Cattle Limited obtained a fresh lease from the Nungua Stool for a further term of Page 6 of 26 fifty (50) years over the same piece of land measuring 3865.46 acres. That in 1995, with the consent and concurrence of their grantor, Agri Cattle Limited changed the original use of

the land from agricultural purposes to the construction of houses for let and sale, and changed their name to Agri Cattle Lakeside Estate Limited. 5th Appellant further averred that in 1996, 5th Appellant acquired a Land Title Certificate No. TD 0513 over the land which had now reduced to 2,911.53 acres partly due to the compulsory acquisition of part of the land by the Government, under Executive Instrument (EI) 15. That it was part of the 5th Appellant's larger tract of land that 5th Appellant granted 0.28 acres, the land in dispute, to the 3rd and 4th Appellants.

- [4] JUDGMENT OF THE TRIAL HIGH COURT: At the end of the trial, the learned trial High Court Judge dismissed the claims of the Respondent, and granted the reliefs of the Appellants on their counterclaim. The High Court held that the evidence on record confirmed that the larger tract of land, including the portion in dispute, belongs to the 5th Appellant. That on the facts and evidence available, if the Respondent had been diligent in his searches, Respondent would have known that Respondent's grantor had no title to the land in dispute. Therefore, having failed to conduct a proper investigation of his grantor's root of title as expected of any prudent purchaser of land, Respondent could not take shield under the plea of bona fide purchaser for value without notice of 5th Appellant's title. Thus, the Respondent was fixed with notice of the 5th Appellant's ownership of the land in dispute.
- [5] JUDGMENT OF THE COURT OF APPEAL: On appeal, the learned Justices of the Court of Appeal acceded to the submissions of the Respondent, and set aside the judgment of the trial High Court. The Court of Appeal held Page 7 of 26 that on the facts and the evidence on record, the Respondent had taken satisfactory steps, including searches, to investigate the title of Respondent's various grantors. That although the Respondent could not produce the first of Respondent's searches in evidence, two subsequent search results from the Lands Commission had Respondent's second grantor, Land and Housing Limited, as registered owner of the land in dispute. Consequently, the Respondent had reasonable cause to believe that he was acquiring good title from the said Land and Housing Ltd. The Court further held that at the time 5th Appellant obtained judgment in 2009 declaring 5th Appellant as owner of the land in dispute, Respondent had acquired a vested right in the land in dispute. Accordingly, the said judgment could not now operate to extinguish Respondent's vested right in the disputed piece of land.
- [6] ARGUMENT OF APPELLANTS IN THIS COURT: In their statement of case filed on the 14th February, 2024, the Appellants' Counsel argued that the Court of Appeal erred in finding that 5th Appellant registered their interest in the disputed land only in 2009 after 5th Appellant obtained judgment in respect of the land. That on the contrary, 5th Appellant had long registered their interest in 1974, which registration constituted notice to the whole world, including the Respondent at the time the Respondent purported to acquire the piece of land in dispute. Accordingly, Counsel submitted that, the Respondent could not successfully raise the plea of bona fide purchaser for value without notice of the 5th Appellant's prior interest in the land. That the judgment of the Court of Appeal has occasioned the Appellants a grave miscarriage of justice. Therefore, Counsel prays this Court to set aside the judgment of the

Court of Appeal and restore the judgment of the trial High Court.

- [7] **ARGUMENT OF RESPONDENT:** Page 8 of 26 It has been submitted by Counsel for the Respondent, in his statement of case filed on the 15th March, 2024, that the Respondent's search at the Lands Commission showed Respondent's grantor, Land and Housing Limited, as the owner of the land in dispute as of the period between 2002-2009. That the Respondent properly relied on the said search result, and more particularly so when the search result was produced by the Lands Commission in the performance of its official duty. Counsel further submitted that subsequent searches revealed that the 5th Appellant obtained a judgment as owner of the land against Respondent's head lessors in 2016, long after the Respondent had acquired a vested interest in the land. Accordingly, the judgment obtained by the 5th Appellant subsequent to Respondent's acquisition of the disputed land could not extinguish the Respondent's right to the land. Counsel, therefore, prays this Court to affirm the judgment of the Court of Appeal.
- [8] **DETERMINATION OF THE APPEAL:** Grounds (I), (II) and (III) would be resolved together as they raise issues of evidence and, therefore, can conveniently be determined under the ground that the judgment is against the weight of evidence on record. By these grounds of appeal, the appellant has thrown an invitation to this Court to review the entire record of appeal to ascertain whether there are any relevant pieces of evidence on record which the Court below failed to properly consider in arriving at the judgment appealed against, or the Court below relied on inadequate or less probable evidence in arriving at the conclusions against the appellant which otherwise would have led to a judgment in favour of the Appellants. It is, therefore, the duty of the Appellants to clearly satisfy this Court on the wrong inferences drawn by the Court below from the evidence on record. *DJIN v MUSAH BAAKO* [2007-2008] SCGLR 686 Page 9 of 26 The Appellants have argued that the Court of Appeal erred in holding that the Respondent had made out a case of bona fide purchaser for value without notice of the 5th Appellant's adverse title. The position of the law is that a person cannot validly give something which they do not have. As a result, the law imposes a corresponding duty on a purchaser who sets out to acquire a property or an interest therein to conduct a diligent search in order to establish that the person or vendor who is parting with the property or interest therein, is the rightful person to do so. Otherwise, a purchaser would bear the brunt of acquiring a defective interest. However, equity would step in and protect a purchaser who, despite exercising reasonable diligence in the circumstance, innocently acquires a property or an interest therein for valuable consideration without notice of any adverse interest(s). A plea of bona fide purchaser for value without notice has been held to be an absolute and unanswerable defence if upheld by the court. Accordingly, a party who calls in aid the principle of bona fide purchaser for value without notice, bears the duty to adduce cogent evidence to satisfy the Court on the plea. *HYDRAFOAM ESTATES (GH) LTD v OWUSU* (per lawful attorney) *OKINE & Others* [2013-2014] 2 SCGLR 1117. In the case of *OSUMANU v OSUMANU* [1995-96] 1 GLR 672, the Court of Appeal stated the principle at page 680 of the report as follows: "Any intending purchaser of property is put on his inquiry to make such investigations as to title as would enable him to rely on the plea of

bona fide purchaser for value without notice. If he failed to make such inquiries, he acted at his own peril if subsequent events disclosed that there was a valid challenge to the title he acquired.” Page 10 of 26 The circumstances of each case would guide the court in making a determination whether a party has acted diligently. *BANK OF AFRICA LTD v GRACEFIELD MERCHANTS LTD & 2 Others (Mike Twum Barima & Another-Claimants)* [2019-2020] 2 SCLR 468 at 473. From the evidence on record, the Respondent obtained a deed of lease (Exhibit B at Page 75 of Volume 1 of the Record of Appeal) from the Kplen We Family of La in 2007. In fact, the Respondent averred at paragraphs 5 and 8 of his amended statement of claim, which can be found at page 50, volume 1 of the record of appeal, that he had acquired the land in dispute from the Kplen We family in 2004 and went into physical possession of the disputed land that same year. However, save the bare allegations by the Respondent that the Respondent’s searches revealed that the Kplen We family owned the land, the Respondent led no evidence on the nature of the said searches. There is also no evidence as to the mode of acquisition of the said land by the Kplen We family who are alleged to have leased out the land to the Respondent herein by the execution of exhibit B on the 5th day of January 2014. See page 75 volume 1 of the record. It, therefore, comes as no surprise when the Respondent switched attornment of tenancy from the Kplen We family to Land and Housing Limited following a search conducted at the Lands Commission (Exhibit D at Page 82 of Volume 1 of the Record of Appeal) by the Respondent in 2008. As earlier indicated, the Respondent had taken a lease from the Kplen We Family in 2007. The Court of Appeal made some observations on the evidence which are noteworthy. The learned Justices of the Court of Appeal stated in the judgment (At pages 47 to 48 of Volume 2 of the ROA) that: “On the face of the evidence adduced before the Trial Court as contained in the record of proceedings, Plaintiff/Appellant [Respondent herein] could not produce any official search conducted at the Lands Commission before dealing with the Kplen We Family. It is worth Page 11 of 26 noting that if the Plaintiff/Applicant (sic) [Respondent herein] had conducted a search before dealing with the Kplen We family, he would have found that the Kplen We family had no registered interest in the land, notwithstanding information he gathered from his neighbours who claimed to have acquired their land from his grantor. That notwithstanding, an analysis of the searches conducted by the Plaintiff/Appellant being Exhibit D dated May 2008 and Exhibit F dated July 2017 shows that the registration of Agric Cattle Lakeside Estate Ltd. occurred after judgment had been entered in its favour and which judgment was dated 3/7/2009 in a suit numbered A.L 83/2007. Exhibit D couldn’t have contained information on events that occurred in 2009 when judgment was entered in favour of Agric Cattle Lakeside Estate Limited and no number of searches conducted at the Lands Commission could have revealed that. Both searches reveal that Land & Housing Limited acquired a leasehold interest in August 2002. Thus, the only reliable source of information Plaintiff/Appellant could have relied on in both 2004 and 2008 would have been Exhibit D.” (Emphasis).

- [9] The above observation by the Court of Appeal, makes it imperative to reproduce the relevant content of Exhibit D, a search conducted by the Respondent at the Lands Commission in 2008. Exhibit D (At page 82 of Volume 1 of the ROA) contains the following information: “ORIGINAL NO. O/S. 12132/2008 SEARCH IN THE LANDS COMMISSION Page 12 of 26 The search applied for against the land edges red on the plan attached has been made with the following result:
1. (Whole Site)
 - a. The site is not State land. It however affects: -
 - b. Lease dated 8/10/1970 From: Nii Ayiku IV To; Black Watch (Cattle Breeding Farm)
 - c. Agreement dated 18/10/1974 From: Black Watch Farm Limited (Black Watch Cattle Breeding Farm) To: Agric Cattle Limited.
 - d. Consent to Assignment dated 6/2/1974 From: Black Watch Farm Limited To: Agric Cattle Limited.
 - e. Lease dated 17/0/2002 From: Numo Nii Amisah Nikoi & Others To: Land & Housing Limited.” (Emphasis) Exhibit F, another search conducted by the Respondent at the Lands Commission in 2017 (At page 88 of Volume 1 of the ROA), shows the following: “ORIGINAL PVLMDGAOS105422017 SEARCH IN THE LANDS COMMISSION The search applied for against the land edges red on the plan attached has been made with the following result:
 1. (Whole Site)
 - a. The site is not State land. It however affects: -
 - b. Lease dated 8/10/1970 From: Nii Ayiku IV To; Black Watch (Cattle Breeding Farm) Page 13 of 26
 - c. Agreement dated 18/10/1974 From: Black Watch Farm Limited (Black Watch Cattle Breeding Farm) To: Agric Cattle Limited.
 - d. Consent to Assignment dated 6/2/1974 From: Black Watch Farm Limited To: Agric Cattle Limited.
 - e. Lease dated 17/0/2002 From: Numo Nii Amisah Nikoi & Others To: Land & Housing Limited.
 - f. Judgement dated 3/7/2009 in favour of Agric Cattle Lakeside Estate Ltd. (Suit No. A.L 83/2007).
 - g. Lease dated 19/11/2012 From: King Odaifio Welentsi To: Agric Cattle Lake Side Estate Estate Ltd.
 - h. Judgement dated 7/7/2006 in favour of Agric Cattle Lakeside Estate Ltd Against Dr. Nii Kpobi Tetteh Tsuru III (La Mantse) & Others. (Suit No. A.L 83/2007). i. Judgement dated 22/7/2016 in favour of Agric Cattle Lakeside Estate Ltd Against John Offei Armah & Ashalley-Botwe Family. (Suit No. BL 313/2005). (Emphasis) In the light of the content of Exhibit D, as shown

above, the conclusion reached by the Court of Appeal would have been based on a wrong inference from the evidence that the 5th Appellant's interest in the disputed land was not revealed by Exhibit D. This error, quite understandably, may have been due to the fact that the 5th Appellant's present name, "Agric Cattle Lakeside Estate Ltd", appears nowhere on Exhibit D. However, it is not in contention that the 5th Appellant changed their name in 1995 from Agric Cattle Limited to Agric Cattle Lakeside Estate Ltd. For instance, in paragraph 10 of the 5th Appellant's statement of defence and counterclaim filed at the trial High Court on the 6th February, 2018, the 5th Appellant averred as follows: Page 14 of 26 "10. The 5th defendant [5th Appellant herein] says that in the same year 1995, with the consent, agreement and full knowledge of the Nungua Stool, Agri Cattle ltd changed the original use of the land from agricultural purposes to construction of houses for let or sale and subsequently changed its name to Agri Cattle Lakeside Limited." The 5th Appellant went ahead to recount the title certificates obtained by the 5th Appellant in respect of the land in dispute and how the certificates have been changed and replaced due to subsequent developments such as the change of 5th Appellant's name. These crucial averments made by the 5th Appellant in their statement of defence and counterclaim, were not controverted or seriously contested by the Respondent in his reply filed on the 13th February, 2018 (At pages 67 to 68 of Volume 1 of the ROA). These, in my humble view, are very key pieces of evidence which, with the greatest respect, escaped the learned Justices of the Court of Appeal. A fortiori, Exhibit D rather appears to lend more credence to the 5th Appellant's version of the rival accounts as chronicled in 5th Appellant's pleadings thus making 5th Appellant's story more probable (5th Appellant's Statement of Defence and Counterclaim can be found at pages 62-64 of Volume 1 of the ROA). What Exhibit D rather denotes is that as of 2004 when the Respondent alleges to have taken possession of the land in dispute, a search at the Lands Commission would have disclosed the 5th Appellant's interest in the land which 5th Appellant had acquired in 1974. In fact, Exhibit D disclosed the registered interest of the 5th Appellant, albeit in a different name, yet the Respondent closed his eyes to that fact. Further enquiries on Exhibit D would have invariably led the Respondent to the 5th Appellant. Based on these, it is my humble view that the trial High Court was right in holding that a prudent purchaser seized with Exhibit D would have been curious to ascertain how the transactions or registered interests affecting the disputed land suddenly transitioned from "Consent to Page 15 of 26 Assignment dated 6/2/1974 From: Black Watch Farm Limited To: Agric Cattle Limited., to "Lease dated 17/8/2002 From: Numo Nii Amisah Nikoi & Others To: Land & Housing Limited". But the Respondent opted to stay in ignorance of this rather vital piece of information contained in Exhibit D disclosing the 5th Appellant's prior registered interest in the disputed land. In the case of *BOATENG v DWINFUOR* [1979] GLR 360, the Court of Appeal stated in holding (3) of the Report that: "The general principle of equity was that a purchaser was deemed to have notice of all that a reasonably prudent purchaser would have discovered. Thus, where the purchaser had actual notice that the property was in some way encumbered, she would be held to have had constructive notice of all that she would have discovered if she had investigated the incumbrance." Exhibit D which was tendered at the trial by the Respondent herein rather portends strong evidence of the fact that the land in

question has been in the possession of 5th Appellant who traced its title thereto through Black Watch (Cattle Breeding Farm) to Nii Ayiku IV representing the Nungua Stool. Why was the Respondent prepared to abandon Nii Sowah Okataban II representing the Kplen We Family of La from whom he allegedly acquired the land as far back as 2004 and run to Land & Housing Limited because of the presence of the name of Land & Housing Limited on the said exhibit D who are alleged to have taken a lease from Numo Nii Amisah Nikoi and Others on 17th August 2002 but ignored the 5th Appellant who traced their title to the land from 1970? The Respondent says that before he allegedly acquired the land from the Kplen We family his enquiries revealed that all the boundary owners also acquired their land from the same Kplen We family. Yet none of the alleged boundary owners was invited by the Page 16 of 26 Respondent to testify to this allegation by the Plaintiff/Respondent. It is our view that testimonies from these boundary owners was necessary if the Respondent wants this court to have a legal basis to believe his story on the acquisition of the land in question. In the words of Lamptey JA (as he then was) in *Darke and Another vs. Dei XI and Another* [1991] 2 GLR 112 at page 148 of the report: “It is good law that in proving title to land it is necessary to call boundary owners to testify on one’s behalf. Evidence of boundary owners is therefore crucial and material evidence which a trial Court must always have before it in such cases.” The Respondent’s failure to invite the boundary owners to testify on his behalf has the effect of causing his averment to remain unproven and thus incapable of belief by the court. The learned Justices of the Court of Appeal further observed (At page 48 of Volume 2 of the ROA) as follows: “It is worth noting, however that the Plaintiff/Appellant [Respondent herein] ought to have been more diligent and probed further into the root of title of Land & Housing Ltd, particularly how Numo Nii Amisah Nikoi & Others acquired title to lease same to Land & Housing Ltd. It is important to reiterate that in 2004 when Plaintiff/Appellant [Respondent herein] purchased the land in 2004 from the Kplen We Family and then obtained an indenture covering the transaction in 2007 after completing payment, the Kplen We Family had no registered interest in the land as per Exhibit D and F, and a search conducted in 2004 could have revealed this. Even though there is no evidence on record that Plaintiff/Appellant [Respondent herein] conducted further enquiries to ascertain the veracity or otherwise of the interest of Land & Housing Limited in the land in dispute beyond the search results, having found from a search from Lands Commission that they were rather at the material time the registered Page 17 of 26 owners of the land, that by itself does not prove that the Plaintiff/Appellant did not purchase the land in good faith and with notice of a defective title of his grantor or he had actual or constructive notice that Land & Housing Limited was not the true owner. Land administration in Ghana would be at risk if prospective purchasers of land cannot rely on searches from Lands Commission.” The above observation by the Court below, in one breadth appears to suggest that the Respondent had not been diligent from the inception of Respondent’s dealings with the disputed land. In another breadth, it appears to suggest that the Respondent was entitled to assume, on the face of Exhibit D, that Land & Housing Ltd was the registered owner of the disputed land. In my humble view, first, Exhibit D, on its face, provides no sufficient basis for the Respondent to have properly assumed that Land and Housing Ltd had a better title to the disputed land against the 5th Appellant.

Moreover, to go by that argument would be to accord every search report a sacrosanct and conclusive status. It has been settled that a search report did not provide conclusive proof of title. In *BUILDAF LTD & OTHERS v CATHOLIC CHURCH* [2017-2020] 1 SCGLR 1143, this Court, speaking through Benin JSC, stated at page 1163 of the Report as that: “A search report is indicative of the situation of the land in question as the Lands Department has it at the date of the search, but its credibility can be impugned in judicial proceedings so when it succeeds, the court would be at liberty to reject it.... The court was merely saying and rightly so that they did not provide conclusive proof of title.” In *BROWN vs QUARSHIGAH* [2003-2004] SCGLR 930, It was expressed at page 954 as follows: Page 18 of 26 “The principle of caveat emptor is still a postulate of our law. A prospective vendor or purchaser of land cannot shift onto the shoulders of the existing owner the burden of informing them of encumbrance, title or interest held by him. In many cases it will not even be enough to conduct a search in the Deeds Registry or the Land Title Registry. The Register will fail to disclose many interests in land which have not been registered.” Even though a search at the Lands Commission is a significant due diligence step to be taken by a prospective purchaser of land in Ghana, the tenor of the above authorities is that a search report cannot be the last stop of a prospective purchaser in every case. Moreover, information contained in a search result, in circumstances as this one, should put a prospective purchaser on further enquiry. Exhibit D revealed the 5th Appellant’s prior registered interest in the disputed land. This constituted sufficient notice to the Respondent, and the Respondent should have investigated further to unveil the source of the 5th Appellant’s registered adverse interest in the land. It is, therefore, my humble view that having failed to do this, the Respondent would be held to have been properly fixed with notice of 5th Appellant’s adverse interest in the disputed land. *OSUMANU v OSUMANU* (SUPRA). The Respondent cannot remain in deliberate ignorance of the presence and possession of the 5th Appellant on the land in question since 1970 as shown by his own search reports exhibits D and F herein and say that he is a bona fide purchaser of the land in question. He might have given value for the alleged acquisition but certainly the acquisition was not made bona fides in the face of the presence of the 5th Appellant in particular on the land. The presence of the 5th Appellant on the land particularly by virtue of the registration of its interest in the land is sufficient notice to the whole world including the Respondent and he is therefore fixed with notice of the interest of the Appellants in the land in question with the result that he could not have legally and bona fide acquired the Page 19 of 26 land in question in view of the prior acquisition by these persons. It was therefore wrong for the Court of Appeal to ignore the possession and title of the Appellant to the land in question and state that the Respondent was a bona fide purchaser just because one of the persons from whom he allegedly acquired the land had its name on the search reports tendered in evidence. A critical review of the search reports reveal that title to the land in question flowed from Nii Ayiku IV in 1970 to Black Watch (Cattle Breeding Farm) which later became known as Agric Cattle Limited. It was in the year 2002 that one Numo Nii Amisah Nikoi popped up to make a grant to Land & Housing Limited. There is no evidence whatsoever of the transfer of the land by Agric Cattle Limited to the said Numo Nii Amisah Nikoi to enable him make a grant to the said Land & Housing

Limited. Further, the title of Agric Cattle Limited continued to be recognised by the Lands Commission through to Agric Cattle Lakeside Estates Limited to date. There is no evidence of acquisition by either Numo Nii Amisah Nikoi or Land & Housing Limited of the land in question to enable them lease same out to the Respondent. It has also been argued by Counsel for the Appellants that the learned Justices of the Court of Appeal erred when they held that the 5th Appellant only registered 5th Appellant's interest in the disputed land after the 5th Appellant obtained a judgment in 2009. Indeed, it shows on Exhibit F that the 5th Appellant registered a judgment given in 5th Appellant's favour in 2009. It is also noteworthy that the registration of this judgment was an addition to or an extension of earlier registrations, as shown by Exhibit D, made by 5th Appellant. Therefore, the evidence on record would not support the finding by the Court of Appeal that the Respondent could only have had notice of the 5th Appellant's Page 20 of 26 adverse interest after the 2009 judgment was registered subsequent to the Respondent's grant from a third party. Based on these pieces of evidence, the argument that the 2009 judgment cannot operate retroactively to extinguish the Respondent's allegedly acquired interest in the disputed land, would not arise. This principle would apply in favour of a proprietor or purchaser who has properly and innocently acquired an interest prior to the judgment obtained by a person making the adverse claim. *BUILDAF LTD & OTHERS v CATHOLIC CHURCH (SUPRA)*. Again, the totality of the evidence on record has sufficiently rebutted any presumption of regularity on the part of the Lands Commission in entering a registration of an interest in the disputed land for Lands and Housing Ltd. The evidence on record confirms that the 5th Appellant has a good title to the land in dispute, and importantly, that at the time Lands and Housing Ltd, the Respondent's grantor, registered an interest in the land, the 5th Appellant had a validly registered and subsisting adverse interest in the disputed land, notice of which was brought to the Respondent through Exhibit D. Accordingly, grounds (I), (II) and (III) of the grounds of appeal succeed. [10]. In ground (IV) of the grounds of appeal, it has been submitted on behalf of the Appellants that the learned Justices of the Court of Appeal erred when they held that the Plaintiff/Appellant/Respondent's continued stay on the land for nine (9) years gave him the protection under the law as owner of the land in dispute. On the issue of the Respondent's physical possession of the disputed land, the learned Justices of the Court of Appeal concluded (at page 62 of Volume 2 of the ROA) as follows: "However, from 2004 to 2012 or even 2013, when 5th Defendant [5th Appellant herein] became aware of Plaintiff/Appellant's [Respondent herein] presence on the land or when its officers notified Plaintiff/Appellant of 5th Defendant/Respondent's title to the land is Page 21 of 26 less than 12 years, however you look at it. The Trial court was right when the Court held that Plaintiff/Appellant cannot take advantage of section 10 of the NRCD 54 and thus acquired no title by virtue of any adverse possession." My Lords, by this conclusion, what the learned Justices of the Court of Appeal did was to affirm the trial High Court's finding that the Respondent could not successfully establish Respondent's plea of adverse possession in terms of the Limitation Act, NRCD 54 even if time was to be reckoned from 2004, when the Respondent went into physical possession of the disputed land, to the year 2013 when the 5th Appellant challenged the Respondent's title. Section 10 of NRCD 54 which was reproduced at page 57 of the

judgment states as follows: “Section 10 of the Limitations Act, 1972, (NRCD 54) provides that: ‘(1) No action shall be brought to recover any land after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to some person through whom he claims, to that person.

- (6) On the expiration of the period fixed by this Decree for any person to bring an action to recover land, the title of that person to the land shall be extinguished.” It was, however, concluded against the 3rd and 4th Appellants that they were not entitled to their counterclaim against the Respondent. The Court of Appeal found that at the time 3rd and 4th Appellants, husband and wife, acquired the plot of land in dispute from the 5th Appellant, the Respondent had established physical presence on the land. Accordingly, the 3rd and 4th Appellants were put on enquiry by the Respondent’s presence on the land. Therefore, having failed to conduct investigations, such as a search at the Lands Commission, to ascertain the nature of the Respondent’s adverse interest in the land, the 3rd and 4th Appellants acted at their own peril when in the full glare of the Respondent’s Page 22 of 26 presence on the land, the 3rd and 4th Appellants proceeded to purchase the land in dispute from the 5th Appellant. Having reached the conclusion that the Respondent was a bona fide purchaser for value without notice of 5th Appellant’s adverse title, the effect of the Court of Appeal’s decision on the 3rd and 4th Appellants was that the title acquired by 3rd and 4th Appellants from the 5th Appellant was subject and inferior to that acquired by the Respondent. This conclusion reached by the Court of Appeal was wrong in law in that the Respondent did not trace his root of title to the 5th Appellant but rather to the Kplen We family of La and subsequently to Land & Housing Limited both of whom have been shown not to have title to the disputed land. It means therefore that, the 3rd and 4th Appellants whose grantor, the 5th Appellant herein, had title to the land, validly acquired their land from the rightful owner and can therefore not be deprived of their title and ownership of the land in question. As held by the Court of Appeal, and rightly so in my humble view, possession within a period less than 12 years does not ripen to adverse possession in terms visualized by section 10 of NRCD 54. [11]. This court has in numerous cases asserted its power to reverse a judgment of the first appellate court where the said judgment was arrived at either without due attention being paid to relevant evidence adduced before the trial court or where the wrong principles of law was applied or where relevant principles of law was misapplied by the first appellate court among others. See *In re Bonney* (dec’d); *Bonney v Bonney* [1993-94] 1 GLR 610 SC; *Gregory vs Tandoh* [2010] SCGLR 975 and *Koglex Ltd. (No. 2) vrs Field*

- [2000] SCGLR 175, among others. Page 23 of 26 [12]. CONCLUSION Considering the facts, evidence and the overall circumstances of the instant appeal, it is my humble view that the Respondent has failed to discharge the burden of proof required of him so as to succeed on a plea of bona fide purchaser for value without notice. The Respondent woefully failed to prove his title to the land in dispute. Respondent’s claim endorsed on his writ of summons is dismissed. The appeal therefore succeeds and is hereby allowed. The Judgment of the Court of Appeal dated the 30th March, 2023 is hereby set aside. In its

stead, the judgment of the High Court is hereby restored. In consequence we grant the 3rd and 4th Defendant/Appellants' counterclaim in respect of the 0.29 acres of land in dispute which forms part of the piece and parcel of land belonging to the 5th Defendant/Appellant situate, lying and being at Katamanso in the Greater Accra Region of Ghana, containing an approximate area of 2911.53 acres covered by Land Title Certificate No. TD 0513. (SGD) S. K. A. ASIEDU (JUSTICE OF THE SUPREME COURT) (SGD.) G. SACKY TORKORNOO (MRS.) (CHIEF JUSTICE) (SGD.) M. OWUSU (JUSTICE OF THE SUPREME COURT) Page 24 of 26 (SGD.) Y. DARKO ASARE (JUSTICE OF THE SUPREME COURT) CONCURRING OPINION ADJEI-FRIMPONG, JSC: I wholly concur in the lead judgment that this appeal must succeed. Regrettably, the learned justices of the Court below misdirected themselves on two critical findings which steered them into error. First, it was not the case that the 5th Defendant/Respondent/Appellant (5th Defendant) registered its interest in the subject land in 2009. The registration which constituted notice to the whole world actually, took place in 1974. Second, on all the evidence considered including the fact stated above, Plaintiff/Appellant/Respondent (Plaintiff) could not have passed the test of a bonafide purchaser for value without notice. His claim therefore was to fail. The evidence on record sufficiently supported the holding of the learned trial judge that the 5th Defendant's counterclaim was established. In dismissing the appeal, I, for the avoidance of doubt re-state and affirm the judgment on the counterclaim as decreed by the learned trial judge at Page 334 of the Volume 1 of the Record of Appeal as follows:

1. Declaration of title in favour of 5th Defendant to all that piece of land situate, lying and being at Katamanso, Accra containing approximate area of 2911.523 acres and Page 25 of 26 covered by Land Title Certificate No. TD 0514 of which the 0.29 acre being claimed by the Plaintiff forms part.
2. An order in favour of 5th Defendant, for recovery of possession of the land as described in (1)
3. An order directing the Plaintiff to remove any structure constructed by him from the land.
4. An order of perpetual injunction restraining the Plaintiff, assigns privies, agents and persons claiming through him from interfering with the 5th Defendant's land. (SGD.) R. ADJEI-FRIMPONG (JUSTICE OF THE SUPREME COURT) COUNSEL BABONYIRE ADAFULA ESQ. FOR THE PLAINTIFF/APPELLANT/RESPONDENT WITH SAMUEL SEDEGAH. SETH AGYAPONG-MENSAH ESQ. FOR THE 3RD, 4TH & 5TH DEFENDANTS/ RESPONDENTS/ APPELLANTS. Page 26 of 26

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Prepared on 26 October 2026 · Esheria