IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2025

CORAM: PWAMANG JSC (PRESIDING)

GAEWU JSC

ADJEI- FRIMPONG JSC

SUURBAAREH JSC

MENSAH JSC

CIVIL APPEAL

NO. J4/08/2025

12th NOVEMBER, 2025

ADOLPH TETTEH ADJEI ..... PLAINTIFF/RESPONDENT/RESPONDENT

VRS

1. ANAS AREMEYAW ANAS ..... 1ST DEFFENDANT/APPELLANT/APPELLANT

2. HOLY QUAYE ..... 2ND DEFENDANT

JUDGMENT

MENSAH JSC:

This case has had a very chequered history.

On record, the plaintiff/respondent/respondent herein [infra], simply referred to as the respondent, caused to be issued in the registry of the High Court [Land Division], Accra, a writ of summons, claiming the under-listed judicial reliefs against the 1st

defendant/appellant/appellant [referred to as the appellant] and the 2nd defendant, namely:

a. Declaration of title to all that piece or parcel of land in extent 2,00 acres (0.81 hectare) more or less and bounded on the North East by land measuring 267.4 feet more or less and on the South East by proposed road measuring 294.6 feet more or less on the South West by land measuring 296 feet more or less on the North West by land measuring 298.3 feet more or less and situate at East La Dadekotopon in the Greater Accra Region of the Republic of Ghana.

b. Damages for trespass to plaintiff's land described above.

c. Recovery of possession of the plaintiff's land aforesaid.

d. Perpetual injunction against the defendants, their servants, agents, assigns, workmen and all those claiming through them from entering on the subject land and carrying out any construction works on same or interfering with the subject land in any manner whatsoever or disturbing the plaintiff's peaceful occupation and possession of same.

e. Costs.

f. Any other relief(s) that this honourable court may deem fit.

Filed the same day alongside the writ, was a statement of claim that appear on ***pp 1-5 of Vol.1 of the record of appeal [roa].*** Additionally, there was filed, a motion for the interlocutory injunction against the defendants. See: ***pp 6-29 Vol. 1 [roa].***

The appellant and the 2nd defendant upon being served with the processes, entered a joint appearance through their lawyer, and filed a statement of defence. In response to

the motion for interlocutory injunction, the appellant and the 2nd defendant filed an affidavit in opposition as well as Counsel's statement of case containing his legal arguments in opposition to the application. See: ***pp 30-131.***

The statement of defence which the appellant filed, did not only substantially deny the claim of the respondent but also raised, *inter alia,* the propriety of the land title certificate the respondent acquired over the land, the subject matter of dispute. The appellant accused the respondent of obtaining the certificate through fraud and, therefore, counterclaimed as follows:

> *"a) a declaration that the Trust Deed of 10th April, 2002 and consent judgment dated 12 th July 2001* ***Suit No. L.353/97 titled Nii Kpobi Tetteh Tsuru III v Ato Quarshie & Ors*** *together with the terms of settlement dated 11th July 2001 which knowingly took over Ataa Tawiah Tsinaiatse land without their knowledge and/or consent were void, vitiated by and tainted with fraud.*
>
> *b) an order setting aside and cancelling the said judgment(s) or orders or terms of settlement, title documents, deeds, certificates and judgments, rulings, or orders founded there-on, or affected thereby,*
>
> *c) any other orders just and fair."* See: ***pp 150-155 Vol.2 [roa].***

The lower court in its Ruling delivered **15/05/2019** which appears on ***pp 142-147,*** dismissed the application for an order for interlocutory injunction and rather opted for an expeditious trial of the case. It is noted for the record that the appellant and the 2nd

defendant filed a motion for the dismissal of the suit on grounds of *estoppel per judicatam* founded, *inter alia,* on the judgment of Ofori Atta J. See: ***pp 30-131 Vol. 1 [roa]***.

The application was granted and the suit dismissed. However, upon an appeal by the respondent challenging the ruling of the High Court, the Court of Appeal set aside the ruling. The case was then remitted back to the High Court for re-trial and put before another judge. The judgment of the Court of Appeal appears on ***pp 4-24 Vol. 2 [roa]***

Issues for trial:

At the close of pleadings in the present case, issues that were agreed upon for the consideration of the lower court, and for trial, are reproduced here below:

1. Whether or not plaintiff, and or his grantor, the La Hillsview Development Ltd obtained a valid grant of the disputed land from the East Dadekotopon Development Trust.

2. Whether or not plaintiff has exercised rights of ownership and has been in effective possession of the disputed land over the years.

3. Whether or not defendants have unlawfully entered and occupied plaintiff's parcel of land registered under Land Title Certificate No. GA 464555.

4. Whether or not the Ataa Tawiah Tsinaiatse & Numo Ofoli Kwashie families owned and made a valid grant of the disputed land to defendant.

5. Whether or not plaintiff is entitled to his reliefs.

6. Any other issues arising out of the pleadings.

Judgment of the lower court:

After full trial of the case, the trial High Court delivered its judgment that went in favour of the respondent whilst the counterclaim the appellant mounted against the respondent, was dismissed.

Appeal to the Court of Appeal:

Dissatisfied with the decision of the trial High Court, the appellant appealed to the Court of Appeal on a number of grounds contained in his notice of appeal, listed here below:

1. That the judgment is against the weight of evidence.

2. That the learned trial judge erred in law when after making a finding that the parties to the consent judgment dated 12th July 2001 Suit No. L.353/97 titled Nii Kpobi Tettey Tsuru III vrs Ato Quarshie & ors had acknowledged the interest of the appellant's grantor in the subject land and were estopped thereby and yet proceeded to hold that the appellant was a trespasser which holding is contradictory.

3. That the learned trial judge erred in law when he held that because the parties to the consent judgment dated 12th July 2001 No. L 353/97 titled Nii Kpobi Tettey Tsuru III v Ato Kwashie & Ors had acknowledged the interest of the appellant's grantor in the subject land the inclusion of the appellant's grantor's land in the land designated as Trust land did not constitute fraud when the said issue had been previously determined and res judicata per the judgment of Justice K. A Ofori Atta in Suit No. BL 431/2006 which issue His Lordship tried to reopen.

4. The learned trial judge erred in law when he held that the consent judgment of the Court of Appeal Suit No. H1/175/2015 was not obtained by fraud when that matter and the parties were not before him and his attention had been drawn to a pending action before a court of coordinate jurisdiction in Suit No. GJ/444/2019 thereby attempting to overreach the outcome of that pending action.

5. That the learned trial judge failed to evaluate and appreciate the legal effect of the purported consent judgment that the plaintiff/respondent and his grantor so much rely on, on the title and interest of the appellant and his grantors as the same was totally ignored as if terms of settlement in those circumstances were a Surrender on the part of the defendant/ appellant's grantor.

6. That further and additional grounds of appeal shall be filed upon receipt of full records of appeal.

The Court of Appeal on 04/07/2024, by a majority decision of 2-1, dismissed the appeal the appellant launched against the judgment of the trial High Court. The judgment of the intermediate appellate court, both of the majority and the minority, appears on ***pp 188-273 Vol. 5 [roa].*** Whilst the majority decision appears on ***pp 188-230,*** that of the minority is at ***pp 230-273.***

Appeal to the Supreme Court:

Being dissatisfied with the judgment of the Court of Appeal, the appellant has further launched the instant appeal per a stated notice of appeal, the grounds of which are reproduced here below:

1. That the judgment is against the weight of the evidence on record.

2. That the lower court by its majority decision fell into error of law as regards their interpretation, meaning and legal effect of the terms of settlement/consent judgment of the Court of Appeal dated 27th April 2015 in Civil Appeal No. H1/175/2011 with respect to the legitimate interests of the parties thereto and their privies in terms of the applicable statute there in force [PNDCL 152] and case law.

3. That the lower court erred in law whereby its majority decision held to the effect that once the consent judgment of that court dated 27th April 2015 Civil Appeal No. H1/175/2011 remained valid plaintiff/respondent and/or his grantor had absolute right to or ownership of the entire land, the subject matter of that action.

4. That the lower by its majority opinion, erred in law when it placed the burden of proof of title on the appellant despite that the appellant had no counterclaim for a declaration of title to the disputed land but merely asserted his right derived through his grantor/family's long title/interest and possession at customary law for several years, as a defence.

5. That the lower court by its majority decision misdirected itself in law by relying on the doctrine of stares decisis as provided in article 136(5) of the 1992 Constitution whereas the judgment in question was a consent judgment that decided no question(s) of law that could operate as a binding judicial precedent.

6. That further and additional grounds of appeal shall be filed upon receipt of the full record of appeal.

So far, there is nothing on record in proof that further and/or additional grounds of appeal have been filed. Per the notice of appeal, the appellant prays the Supreme Court to set

aside or reverse the judgment of the Court of Appeal and sustain the appellant's appeal. Additionally, the appellant prays for any other relief the Supreme Court shall deem fit.

Key background:

To put the case in its proper perspective, having regard to its complexities and peculiarities, we chronicle the antecedents and events leading to the initiation of the present action; the trial of the case at the High Court; appeal to the intermediate appellate court and the filing of the instant appeal to the Supreme Court.

To begin with, sometime in the year, 2001 **Nii Kpobi Tetteh Tsuru III [erstwhile La Mantse]** locked horns with some defendants in litigation over a piece or parcel of land in a **Suit No. L353/97** titled **Nii Kpobi Tetteh Tsuru III v Ato Quarshie & ors**. The dispute was whether the strip of land at Tse Addo belongs to Lenshie and Amati Abonase Quarters or that the large tracts of land there belonged to the La Stool under the control of La Mantse, Nii Kpobi Tetteh Tsuru III. The dispute was, however, settled out of court and the trial court on **12/07/2001** presided over Ofoe J [as he then was] adopted the terms of settlement the parties filed as its consent judgment. See: ***pp 54-55 Vol. 2 [roa].***

By the terms of settlement, the parties resolved to create a **Trust** to manage the large tracts of land, the subject matter of that suit. Pursuant to the consent judgment, **the East Dadekotopon Development Trust [the EDDT]** was created under a deed of trust dated 10/04/2003 and registered under the **Trustees Incorporation Act, 192 [Act 106].** Per the terms of settlement, the Trust was charged with the commercial development of the land, by developing it into a modern township with infrastructure and amenities, for the mutual benefit of the people of La. The terms of settlement recognized the interests of Ataa Tawiah Tsinaiatse of Tse Addo and Kwade We families in portions of the said land, the extent of the land held by families were to be agreed upon and mapped out by the Trust and the said families.

Having been created, the **Trust [the EDDT]** applied for, and in **October, 2003** obtained a Land Certificate GA 19310 in respect of the land, the subject matter of the Trust. The extent of the Trust land was given as 2,154.8 acres [874.4 hectares] which land included portions of land that belong to Atta Tawiah Tsinaiatse and Numo Ofoli Kwashie. The families claimed the extent of their land as 808.644 acres. The application for the land title certificate was plagued by caveats filed by some interested groups including Atta Tawiah Tsinaiatse and Numo Ofoli Kwashie families. However, the caveats were subsequently withdrawn and they consented to the issuance of the land title certificate by the Lands Commission. Thereafter, in the year, **2007 EDDT** granted a portion of the land to the **La Hillsview Development Ltd** which in turn assigned a portion of its interest to the respondent herein.

It is noted that after the **EDDT** had secured the land title certificate, the appellant's grantors ie Ataa Tawiah Tsiniatse and Numo Ofoli Kwashie families mounted an action in the Accra High Court in a suit **No. BL 431/2006** titled **Edward Mensah Tawiiah & Ewormienyo Ofoli Kwashie v The Ag. Registrar of Lands & The Trustees, East Dadekotopon Development Trust.** The High Court presided over by Ofori Atta J, on 07/12/2010 entered judgment in favour of the families and declared, *inter alia,* that the land title certificate **EDDT** procured as tainted with fraud and therefore, null and void.

The **EDDT** dissatisfied with the judgment of Ofori Atta J., filed an appeal to the Court of Appeal. However, in the course of the court hearing the appeal, the parties decided to settle the matter out of court and did file terms of settlement which the Court of Appeal on **27/04/2015** adopted as its consent judgment. Subsequently, however, the Ataa Tawiah Tsinaiatse and Numo Ofoli Kwaswhie mounted a new suit in the High Court against one Edward Nsiah Akuetteh in **suit No. BMISC 720/2015** titled: **Daniel Ofoli Ewormienyo v Edward Nsiah Akuetteh** in respect of the disputed land. The case was put before **Abada J** who eventually set aside the consent judgment of the Court of Appeal on grounds of fraud.

Upon an application filed in the Supreme Court in a case titled: **The Republic v High Court, Probate Division; Exparte The Registered Trustees of the East**

Dadekotopon Development Trust (Daniel Ofoli Ewormienyo & Nsiah Akueteh – Interested Parties), Civil Motion No. JS/67/2019, the Supreme Court quashed decision of **Abada J** that set aside the consent judgment of the Court of Appeal. Subsequently, the respondent in the year, **2013** took a grant of the portion of the disputed land from **La Hillsview Development Ltd.** The land in question the respondent acquired measures 2 acres and is situate at Tse Addo. It is covered by a deed of sub lease dated **04/10/2013** and covered by land title certificate No. GA 46455 dated **26/02/2015** issued by the Lands Commission. It is alleged that the La Hillsview Development Ltd was granted portion of its land by the **EDDT.** The **EEDT** in **2007** registered its land and issued with land title certificate **No. GA26393.**

It is the case of the respondent that at the time he acquired his land in **2015** from the Hillsview Development Ltd that piece or parcel of land was bare, with no body in particular occupying it. According to the respondent, he went into quiet possession and occupation until some later when the appellant unlawfully trespassed unto it and begun construction activities thereon under extreme speed. The appellant, on the other hand, claimed that he acquired the land from the Ataa Tawiah Tsinaiatse and Numo Ofoli Kwashie families through the 2nd defendant.

Following the decision of the Court of Appeal that ordered the re-trial of the case, the appellant and the 2nd defendant filed in the Supreme Court, applications for judicial review in the nature of Certiorari to have it quashed, the decision of the Court of Appeal. Those applications were, however, struck out as withdrawn. See: ***pp 25-29 Vol.2 [roa].***

With the turn of events, the case was listed for hearing in the High Court after the appellant had on **12/06/2019,** filed his defence and a counterclaim. The appellant pleaded in his statement of defence, paragraph 4 that he obtained the disputed land by customary grant in the year, **2005** from the Atta Tawiah Tsinaiatse and Numo Ofoli Kwashie families of La, the *bona fide* owners of the larger land. According to the appellant, he went into immediate possession upon the grant and maintained his presence on the land.

In his defence, the appellant denied entire claims of the respondent and maintained that the respondent's title was tainted with fraud. As required by rules of procedure, the appellant particularized the allegation of fraud. On the basis of the allegation of fraud, the appellant in his counterclaim asked for nullification of the Court of Appeal's consent judgment of ***12/07/2001***.

The appellant further raised the issue of propriety of the land title certificate granted to the **EDDT** on the basis that at the time the Trust made a grant of the land to third parties, it did not have the full complimentary of all 8 Trustees stipulated under the Trust Deed. It was, therefore, the case of the appellant that at the time the Trust purportedly granted a portion of the land to the **La Hillsview Development Ltd** from whom the respondent took his grant, it operated without a properly constituted Trustees. The grant, according to the appellant, was contrary to **the Trustees (Incorporation) Act, 1962 [Act 106].**

Resolution of the present appeal:

We now proceed to consider the merit or otherwise of the appeal before us.

We take cognizance of the fact that this case is coming to this court on second appeal and also that the findings of fact the trial High Court [Land Division] made in its judgment delivered 04/05/2023, were affirmed by the majority decision of the first appellate court, the Court of Appeal. That being the case, the Supreme Court which is the second appellate court and the final court of the land, is guided by its hallowed principle that it must be slow in upsetting the judgment of the first appellate court except where the second appellate court was satisfied that the findings of fact were manifestly unsupportable and or unreliable, having regard to the evidence led on record or that the findings were perverse. Where from the verifiable evidence, the second appellate court has good grounds to depart from the findings of fact the trial court made and affirmed by the first appellate court, the Supreme Court as the second appellate court and the final court, has jurisdiction to do so. The legal proposition finds expression in the case,

Gregory v Tandoh & Hanson [2010] SCGLR 971 in which case the Supreme Court speaking through Dotse JSC propounded the law as follows:

> *"..... a second appellate court, like the Supreme Court, could and was entitled to depart from findings of fact made by the trial court and concurred in by the first appellate court under the following circumstances: First, where from the record of appeal, the findings of fact by the trial court were clearly not supported by the evidence on record and the reasons in support of the findings were unsatisfactory; second, where the findings of fact by the trial court could be seen from the record of appeal to be either perverse or inconsistent with the totality of evidence led by the witnesses and the surrounding circumstances of the entire evidence on record; third, where the findings of fact made by the trial court are consistently inconsistent with important documentary evidence on record; and fourth, where the first appellate court had wrongly applied a principle of law. In all such situations, the second appellant court must feel free to interfere with the said findings of fact to ensure that absolute justice was done in the case."*

The Supreme Court in re-echoing the principle of law stated supra in **Effisah v Ansah [2005-2006] SCGLR 943,** stated hereunder:

> *"It was a well settled that an appellate court has the right to interfere with the findings of a trial tribunal where specific findings of fact can properly be*

said to be wrong because the tribunal had taken into account matters which were irrelevant in law; or had excluded matters which were irrelevant in law; or had excluded matters which were crucially necessary for consideration; or had come to a conclusion which no court instructing itself in the law, would have reached; and where the findings were not inferences drawn from specific facts, such findings might be properly set aside.

As a corollary, a second appellate court had power to restore primary findings of fact and right conclusions which might have been unjustifiably set aside by a first appellate court."

Therefore, in appropriate cases, the appellate courts do interfere with findings of fact of trial courts; make their own findings of fact in substitution for those findings founded on error by the trial courts even where the first appellate court concurred in the findings of the trial court.

Now, to the substance of the appeal.

The law is certain that an appeal is by way of re-hearing the case. By law, the appellate court is enjoined to review the whole evidence led on record and to come to its own conclusion and to make a determination as to whether both on the facts and the law, the findings of the lower court were properly made and were supportable. Put differently, the appellate court is under legal obligation to examine the findings of the lower court or the trial court, and to determine on the evidence led on record, whether those findings are supportable in law.

We proceed to consider the present appeal **on the omnibus ground of appeal that the judgment is against the weight of evidence**. The appeal being a second appeal to this court, we are guided by the settled principle that the 2nd appellate court has to be slow in interfering with, or setting aside judgment of the trial court where it has been affirmed by the 1st appellate court. The exception, however, is where the second appellate court was satisfied that the findings of fact were manifestly unsupportable and or unreliable or that the findings were perverse. The omnibus ground of appeal throws

up the case for a fresh consideration of all the facts and the law applicable to the case. In that respect, the appellate court just like the trial court, has the duty to evaluate and assess the evidence led at the trial in order to determine in whole, in whose favour the balance of probabilities tilts.

Were the findings of fact the trial High Court which the Court of Appeal affirmed, manifestly unsupportable, unreliable or perverse?

One key finding of fact by the trial High Court which the Court of Appeal concurred, is that the respondent acquired his interest in the disputed land before the appellant did; that the respondent acquired his interest in the land on **4th October 2013** from the La Hillsview Development Ltd; Hillsview Development Ltd had earlier acquired its interest from **East Dadekotopon Development Trust [EDDT]** on **7th June 2007** and issued with a land title certificate. The appellant, on the other hand, had offered evidence that he initially acquired customary law grant of the disputed land after which the grant was subsequently formalized by a lease he obtained in **2013.** The appellant explained that he was unable to obtain a lease in **2005** because there were multiple litigation over the land.

The Court of Appeal preferred the story of the respondent to the appellant on account that the appellant was unable to prove the customary law grant he claimed was made to him earlier in **2005.** In its judgment of the majority decision that appears on ***p. 222 Vol. 5 [roa]***, the Court of Appeal stated that the respondent per his Reply and Defence to the appellant's Counterclaim, denied the alleged customary law grant. The court thus held that the appellant carried the burden to lead admissible and credible evidence to prove it but appellant was unable to do so. The first appellate court explained that there was no mention in the witness statement of the witness who testified for the appellant of any customary grant. The Court of Appeal held that conspicuously absent from the recitals in the lease document of **31st July 2013** was any customary law grant of the disputed land to the appellant in **2005**. The court thus disbelieved the appellant's customary grant, explaining that the customary grant should have been recited in the formal lease that was issued to the appellant in **2013.**

We have painstakingly studied the evidence led on record. From the available evidence, we think that this finding of fact by the Court of Appeal is perverse. There is ample evidence on record to sustain the appellant's pleading that before he was given the formal lease, he had earlier taken a customary law grant from his grantors, the Atta Tawiah Tsinaiatse and Numo Ofoli Kwashie families of La in **2005**.

Significantly, Atta Tawiah Tsinaiatse and Numo Ofoli Kwashie families [the appellant's grantors] were no parties to the initial suit **Nii Tetteh Kpobi Tsuru** mounted in a **Suit No. L353/97** titled **Nii Kpobi Tetteh Tsuru III v Ato Quarshie & ors**. Yet, there is that overwhelming evidence that when the parties in that suit set out to settle the case out of court, the interest of the appellant's grantors was recognized and taken into account in the terms of settlement. The terms of settlements the parties executed in **2001** were adopted as the consent judgment of the High Court presided over by Ofoe J. There was that acknowledgement because the parties in the suit knew that the appellant's grantors were in physical possession and occupation of their part of the larger land [the Trust land]. The larger whole of land in total is **874.434 hectares or 2154.7871 acres of land.** It is common ground that the terms of settlement which the trial High Court adopted as its consent judgment, gave birth to the Trust Deed. It is also material to point out that the 2nd terms of settlement that the Court of Appeal adopted, equally recognized the presence of the appellant's grantors on the land and their interest in the land.

There is that unchallenged evidence that upon the application by **EDDT** in about 2002 for registration of the Trust land and land title certificate, the appellant's grantors and other interested parties filed caveats against the application. Eventually, the families and the other interested parties were prevailed upon to withdraw the caveats for the smooth running of the trust on condition that they would be compensated. Accordingly, the caveats were withdrawn, as a result of which the land title certificate was issued to **EEDT** in the year, **2003**.

Insofar as the appellant's grantors continued to be on their portion of the land which is part of the larger whole ie t**he trust land**, the appellant's story that he took earlier

customary grant is more probable than the mere denial by the respondent of such customary grant. It is trite learning that customary grant knows no writing and takes effect in equity as soon as it is completed. Formalized documentation only comes in to add to the existing customary grant and does not take away anything from it or nullify it. See: **Brown v Quarshigah [2003-2004] 2 SCGLR 930.**

Another key finding of fact by the trial High Court which the Court of Appeal affirmed, is that the respondent's acquisition of the disputed land was valid. The Court of Appeal took the position that from the facts and decisions of Supreme Court, the appellant's grantors surrendered their land to **the EDDT,** which in turn granted a portion of the land to Hillsview Ltd from whom the respondent took his grant. The court went on:

> *"Having regard to the facts of this case and the decisions of the Supreme Court, the position that glaringly emerges is that the transfer of and registration of Ataa Tawiah Tsinaiatse and Numo Ofoli Kwashie Family lands to the East Dadekotopon Development Trust is valid, following the Consent Judgment of the Court of Appeal dated 27th April 2015. It is undisputed that plaintiff acquired his interest in the land on 4th October 2013 from Hillview Development Limited as per Exhibit A. Hillview Development Limited also acquired its interest in the land from East Dadekotopon Development Trust on 7th June 2007. Plaintiff tendered in evidence land certificate No. GA 46455 dated 25th February 2015 issued in his favour and a Deed of Sublease between La Hillsview Development Limited as sub-lessor and the plaintiff as the sub-lesee. The plaintiff led admissible and credible evidence on his acquisition and possession of the land....."* See: ***p. 218 Vol. 5 [roa]***

The first appellate court continued in its majority judgment at ***p. 219 Vol. 5 [roa]*** that at the time of acquisition by the Hillsview Development Ltd, the land had been transferred and registered in the name of East Dadekotopn Development Trust. The Land Certificate [Exhibit AAA 1] issued in favour of the East Dadekotopn Development Trust was signed on 2nd October 2003.

It cannot be wholly true that EDDT upon its creation, Ataa Tawiah Tsinaiatse and Numo Ofoli Kwashie Families unequivocally ceded or totally transferred their right and interest in their lands to the **East Dadekotopon Development Trust [EDDT].** Per contra, it was recited in the land title certificate **[Exhibit AAA 1]** that though **EDDT** was registered as an allodial owner of the larger land, its title and interest in the land was

> *".....subject to the reservations, restrictions, encumberances, liens, and interests as are notified by memorial undertaken or endorsed hereon, of and in ALL THAT piece or parcel of land in extent 874.434 hectares (2154.7871 acres) more or less being the remaining extent of land situate at La Kpeshie in the Greater Accra Region of the Republic of Ghana which said piece or parcel of land is more particularly delineated and edged blue on survey plan No. X2834....."* **[emphasis underscored]**

It is beyond dispute that the interest of those families was clearly an encumbrance on the alleged allodial interest of **EDDT.** Additionally, per the 1st terms of settlement, those parties whose lands was affected by the trust were to be compensated. In particular, the extent of the land Ataa Tawiah Tsinaiatse and Numo Ofoli Kwashie Families owned was to be mapped out and given 40 acres of land and additional 15 acres of land. However, there is no such evidence on record that the mapping out was done and or those families were ever compensated.. So, clearly, the finding of fact by the Court of Appeal that the appellant's grantors transferred their interest in the land without any reservation to the Trust is either perverse or inconsistent with the totality of the evidence led on record.

At this stage, we deem it appropriate to reproduce here below in *extenso* for purpose of clarity, the 1st terms of settlement that was adopted by High Court as its consent judgment. It reads:

"TERMS OF SETTLEMENT

The parties to this suit have decided to settle the matter amicably and peacefully in the interest of the development and progress of the La Township as follows:-

1. The parties shall within four weeks of this agreement being embodied in an order of the court, initiate measures to create a trust (hereinafter called "The Trust") for the purpose of taking over and managing the land, the subject matter of the said action in the manner hereinafter appearing.

2. The Trust shall have a board of Trustees constituted by four representatives from the La Stool and two representatives from the Lenshie and Nmati Sbonse Quarters with a Chairman selected by the Trustees from among their number. The Chairman shall hold office for two (2) years and shall be eligible for re-election.

3. The Trust shall be known as the East Dadekotopon Development Trust and shall have among its main objects the formation of a company limited by shares in accordance with the laws of Ghana, which shall engage mainly in the commercial development of the said land into a modern township with all modern facilities, infrastructures and amenities.

4. The said limited liability company shall be a joint venture company comprising the Trust and any other interested companies or organizations.

5. The Trust shall have the right to grant a lease of the said land or parcels of it to the said limited liability company or any other investors or developers which shall be granted a right of entry to the said land to enable it commence

development of the same while any documentation in respect of the developmental process thereof is in progress.

6. The profits accruing from the said joint venture company shall be disbursed in the following manner:-

   - 40% shall be paid into the LA DEVELOPMENT AND EDUCATION FUND (LADEF) to be set up by THE TRUST;
   - 25% shall be paid to LENSHIE AKOTSO;
   - 25% shall be paid to NMATI ABONASE AKUTSO and
   - The remaining 10% shall be paid to THE LA STOOL/LA TRADITIONAL COUNCIL.

7. The Trust and the joint venture company shall ensure that the said land is developed commercially for the welfare and benefit of all Lamei or citizens of the La Stool.

8. The parties hereto recognize the interests of the families of Ataa Tawiah Tainaiants, Tse Addo, Kwade We in portions of the said land.

9. The extent of the interests of such families shall be agreed upon and clearly mapped out by the parties hereto and the said families before the commencement of developmental constructions on the said land.

10. Any dispute arising out of this Agreement shall be referred to a joint arbitration team constituted by one representative each from the plaintiff and the co-defendants only whose award shall be by consensus.

11. Each party shall bear his own costs....." **[emphasis underscored].** See: ***pp 277-278 Vol. 3 [roa]***

It is noted on record that all the parties in the suit together with their respective lawyers appended their signatures to the terms of settlement, which terms of settlement Ofoe, J adopted as his consent judgment.

As a matter of emphasis, the **2nd terms of settlement** filed with the Court of Appeal and which the court adopted as its consent judgment, is equally reproduced here below in *extenso*.

"**TERMS OF SETTLEMENT**

WHEREAS

1. In 1997, Nii Kpobi Tetteh Tsuru III, the La Mantse, acting on behalf of the La Stool took legal action against the Lenshie and Nmati Abonase Quators of La respectively, claiming title to a large parcel of land situate behind the Ghana International Trade Fair, La in Suit No. L. 353/97. The High Court dismissed the suit before evidence could be taken. Being aggrieved by the said decision, Nii Kpobi Tsuru III appealed to the Court of Appeal.

2. On 13th May, 1998 the Court set aside the decision of the High Court, restrained all the parties from dealing with the land in one way [sic] and remitted the case back to the High Court for retrial (Civil Appeal No. 2/98).

3. During the pendency of the suit at the High Court, the La Mantse, Nii Kpobi Tsuru III, the Ataa Tawiah Tsinatse Family and the Numo Ofoli Kwashie Families of La executed a Deed of Confirmation and Surrender dated 18th February 1989 by which the La Mantse granted 620 acres of the disputed land to the two families without the knowledge of the Lenshie and Nmati Quarters of La.

4. When this came to the notice of the Lenshie and Nmati Abonase Quarters, they protested and threatened to cite Nii Kpobi Tetteh Tsuru III for contempt. The

three parties who executed the said Deed then executed a deed of Revocation on 10th July 2001, thereby revoking the grant of the 620 acres of the disputed land to the two families.

5. Subsequently, the parties – Nii Kpobi Tsuru III, representing the La Stool, Nii Odoi Tsuru I, representing the Lenshie Quarters and Nii Adjei Boahen II, representing the Nmati Abonase quarter of La amicably settled the case and filed a consent judgment which was adopted by the High Court on 12th July, 2001.

6. In the said consent judgment, the parties agreed to set up a Trust to take over the control and management of the disputed land for the benefit of the citizens of La. The parties also recognized the interests of the families of Atta Tawiah Tsinaiatse, Tse Addo and Kwade We respectively, in portions of the said land and authorized the Trustees to agree with the said families on the extent of their interests.

7. On 10th April 2002 Nii Kpobi Tettey Tsuru III, Nii Odoi Tsuru I and Nii Adjei Boahen as settlors, set up the East Dadekotopon Development Trust pursuant to the consent judgment and registered same under the Trustees (Incorporation) Act, 1962 (Act 106).

8. The Trust then applied for a Land Certificate from the Land Title Registry. Some persons caveated same including the Ataa Tawiah Tainaiatse and Numo Ofoli Kwashie families of La, acting per their lawful Attorney, Benjamin Tetteh Quaye. The Trust and all the caveators amicably settled the matter and on July 3, 2008 the Atta Tawiah Tainaiatse and Numo Ofoli Kwashie Families wrote to the Land Title Registry to grant the Land Certificate to the Trust to enable the Trust grant them a parcel of the land as agreed with the Trust.

9. Pursuant to the said agreement, the Land Title Registry issued land certificate No. GA 19310 dated 2nd October 2003 to the East Dadekotopon Development Trust.

10. Despite the above Agreement, the Ataa Tawiah Tsinaiatse and Numo Ofoli Kwahie Families of La in 2003 sued the East Dadekotopon Development Trust in the High Court, Accra claiming to 808 acres of the Trust land covered by the Land Certificate No. GA 19310 (Suit No. BL 431/2006).

11. On 7th December 2010 the High Court, Accra presided over by Justice K.A. Ofori-Atta gave judgment for the Ataa Tawiah Tsinaiatse and Numo Ofoli Kwashie Families. The Trust being dissatisfied with the said judgment appealed against same.

12. On 1st March 2011 the Court of Appeal stayed execution of the said judgment to enable the court determine the serious legal issues raised by the Trust in the Notice of Appeal.

NOW THEREFORE the Parties, in the spirit of reconciliation, peace and development have agreed to amicably settle the matter once and for all on the following terms:

(a) The Ataa Tawiah Tsinaiatse and Numo Ofoli Kwashie Families of La accept and recognize the title of the East Dadekotopon Development Trust covered by Land Certificate No. GA 19310 dated 2nd October 2003.

(b) Recognizing that the Families acting through their then Lawful Attorney Benjamin Tetteh Quaye leased a number of plots of the land granted them by the Trust to various persons pursuant to the earlier settlement in July 2003 which persons have already developed same, the Trust shall regularize the said

grants to the persons upon verification and proof provided the said grants do not compromise the approved layout of the area nor conflict with grants made by the Trust.

(c) In addition the Trust shall grant Fifteen (15) acres of the land to the Ataa Tawiah Tsinaiatse and Numo Families in accordance with the approved layout of the area and the development scheme of the Trust in full and final settlement of the case and any claims against the Trust in respect of the said land." See: ***pp 291-293 Vol.1 [roa].***

From the facts and evidence narrated supra, it is plainly obvious that the Ataa Tawiah Tsinaiatse and Numo Ofoli Kwashie families never surrendered their interest to the Trust. Both in the recital and in the main body of the terms of settlement the parties recognized the interest of the families in portions of the Trust land. Additionally, the settlors of the trust deed acknowledged the families per their lawful attorney, had prior to commencement of any commercial construction by the Trust, granted out portions of the families' land. This piece of credible evidence strengthens the appellant's customary grant. In the circumstance, we set aside the finding by the trial court and affirmed by the Court of Appeal that the families surrendered their land to the Trust. That finding was made in error.

It is material pointing out that the appellant has from the outset, challenged the propriety of the respondent's grant of the disputed land by La Hillsview Development Ltd. The appellant pleaded, and it was his case that at the time **the EDDT** granted a portion of the Trust land to **La Hillsview Development Ltd** from whom the respondent acquired his grant, there were no existing Trustees, properly so called. The appellant claims that at the time of the purported transfer of the trust land to Hillsview Development Ltd, the tenure of the trustees had expired and not reconstituted. Therefore, the grant to the respondent was procured fraudulently and was null and void.

The respondent's sublease appears on ***pp 14-21 Vol. Vol.3 [roa].*** The lease agreement entered between the **EDDT** and **Hillsview Development Ltd** purportedly transferred 5.08 acres or 2.05 hectares to **Hillsview Development Ltd.** See: ***pp 179-187 Vol. 3 [roa].*** The signatories to the lease agreement were **Seth M. Odoi** described as the Chairman of the EDDT (signing on behalf of the Trust) and **Harry H. Baiden** described as the Managing Director of Hillsview Development Ltd. Under the Trust Deed, eight (8) persons were appointed as Trustees of the Trust land. It was stipulated in the said Trust Deed that the trustees in managing the trust land, were to act jointly. The question then arises whether a sole person as **Seth M. Odoi** holding himself as the Chairman of EDDT could act or sign the lease agreement without the approval of the other Trustees. For purpose of clarity, we reproduce here below, the Trust Deed that reads in part:

"EAST DADEKOTOPON DEVELOPMENT TRUST

THIS TRUST DEED is made this 10th day of April Two Thousand and Two (2002) BETWEEN THE LA STOOL of La, Accra in the

Greater Accra Region of the Republic of Ghana represented by

NII KPOBI TETTEY TSURU III, *La Mantse (hereinafter referred*

To as ***THE FIRST SETTLOR*** *which expression shall wheresoever the context admits or permits shall include its successors and representatives) of the first part the* ***LENSHIE QUARTER*** *of La, Accra, represented by or acting through its lawful head and representative,* ***NII ODOI TSURU I*** *(hereinafter referred to as the* ***SECOND SETTLOR*** *which expression shall wheresoever the context admits or permits include its successors and representatives) of the second part and the* ***NMATI ABONASE QUARTER*** *of* ***LA,*** *represented by* ***NII ADJEI BOAHEN II*** *its Lawful head and representative (hereinafter referred to as the* ***THIRD SETTLOR*** *which expression shall wheresover the context admits or permits include its successors and representatives) of the third part:*

WHEREAS

(1) In the year 1997 a dispute arose between the La Stool on one side and the Nmati Abonase and Lenshie Quarters of La on the other side over a parcel of land situate and lying behind the Ghana International Trade Fair Centre, La, Accra, which dispute ended up in the High Court, Accra as Suit No. L 353/97

AND

(2) On the 11th day of July, 2001 the Parties amicably settled the matter on terms which were embodied in an order of court and agreed to set up Trust to take over and manage the said land for the mutual benefit of the citizens of La.

***NOW THEREFORE** in consideration of the said Agreement between the **LA STOOL, LENSHIE QUARTER AND NMATI ABONASE QUARTER** (hereinafter referred to as the **SETTLORS)** and of the agreement by the Trustees to be bound by the covenants, terms and conditions hereinafter set forth, the **SETTLORS** hereby grant, assign convey and set over to:*

(1) *MR ERNEST SILVANUS ODOTEI*
(2) *MR PETER TETTEH KPOBI*
(3) *MR CHRISTOPHER NAI AKOTIO-SOWAH*
(4) *MR JOSEPH NAI GOGO*
(5) *MR EDMUND TETTEH AKUETTEH*
(6) *MR REX-LAWRENCE TETTEH ADJETEY*
(7) *MR SETH M. ODOI*
(8) *MR DAVID L. LARTEY*

jointly as Trustees all that parcel of land lying situate and being at La behind the Ghana International Trade Fair Centre and bounded on the North by the Accra-Tema Railway line measuring 27400 feet more or less and containing an approximate area of 3048 acres more or less which land is more particularly delineated on the plan attached hereto and thereon edged pink showing the relevant measurements (hereinafter called the 'The Trust Land') to hold in trust and administer for the benefit of the citizens of La in accordance with the terms conditions and covenants of this Trust Deed....."

[emphasis added] See*: **pp 168-179 Vol.1 [roa].***

As regards how the Trust land was to be managed, it was stipulated in **Article 3(1)(a)** that the eight (8) persons whose names mentioned supra, shall constitute the first members of a Board of Trustees for the Trust. A member of the Board of Trustees shall hold office for a term of two (2) years subject to reappointment provided that the first Trustees or Charter Trustees shall hold office for an initial term of four (4) years.

By **Article 4(1) of the Trust Deed,** the Trustees are granted and shall have the power to retain, sell or otherwise dispose, invest, manage and protect the Trust lands and assets held by them to be exercised in their discretion in every respect the same as an absolute owner would be able to do. See: ***p. 174 Vol. 1 [roa].***

Now, **the Trustees (Incorporation) Act, 1962 [Act 106]** the statutory provisions under which the EDDT was formed and registered, makes the grant of certificate of registration of the Trust as a body corporate. It is provided in **Section 1(1) of Act 106:**

"(1) The trustees of an unincorporated voluntary association of persons or body established for a religious, educational, literary, scientific, sports, social, or charitable purpose shall apply, in the prescribed manner, to the Minister for a certificate of registration as a corporate body."

On the grant of the certificate, the trustees:

"(a) shall become a body corporate by the name described in the certificate, and

(b) shall have perpetual succession and an official seal, and

(c) shall have power to sue and be sued in the corporate name, and subject to the conditions and directions contained in the certificate, to hold and acquire land." **Section 4 of Act 106.**

As a general rule, trustees named under a trust shall act jointly and collectively. Where a trustee has acted alone, there must be evidence that the other trustees gave their approval to it. This legal proposition is in consonance with the principle the Supreme Court espoused in **Kumah v Koi Larbie [1991] 1 GLR 537** that reads:

"The rule was that in private trusts, all the trustees must unanimously concur in exercising any power under the trust. But that rule would not prevent a trustee from delegating his powers to two or more persons severally since each would fully represent the trustee and his act would in all respects be the act of the trustee. Again a discretion to be exercised by two or more trustees was properly exercised by one acting and the other or others approving and sanctioning what had been done."

There was patently no evidence before the trial court in **Kumah v Koi Larbie [supra]** that all the trustees concurred in the assignment to the plaintiff or that they had either delegated their powers or approved and sanctioned the assignment.

There is no evidence led on record in the instant case in proof that **Seth M. Odoi** who is the 7th trustee stipulated in the Trust Deed acted with the approval or received the approval of the other trustees to convey the land to Hillsview Development Ltd, portion of which was subsequently conveyed to the respondent by a sub-lease. We hold that had the lower courts applied their minds to the law, **the Trustees (Incorporation) Act, 1962 [Act 106],** they would have come to a conclusion different from what they did. Both lower courts erred in law by not applying their minds to Act 106. The finding

of fact was made in error as same in breach of statute. On the authorities, where a trial court that heard the evidence has made findings based on the evidence and came to the conclusion in a case, an appellate court is not required ordinarily, to disturb those findings except where there is lack of evidence to support the findings or the reasons for the findings are unsatisfactorily.

Our esteemed brother, Pwamang JSC stated in **Prof. Stephen Adei & Mrs Georgina Adei v Grace Robertson & Sempe Stool (Civ. App. No. J4/2/2015 delivered 10/03/2016 (unreported)** that an appellate court may reverse findings of a lower court where they are based on a wrong proposition of law or a rule of evidence or that the findings are inconsistent with documentary evidence on record. The law is fairly settled law that where the findings are clearly unsupported by evidence or where the reasons in support of the findings are unsatisfactory, the appellate court reserves the power to upset those findings of the trial court. See: **Kyiafi v Wono [1967] GLR 436 @ 466**.

Having regard to the principle of law stated supra, we hereby reverse all findings of the lower courts made in error in favour of the respondent because they are perverse and inconsistent with material oral and documentary evidence led on record. Accordingly, we set aside that finding of fact and strike down as invalid, the conveyance of the land title certificates issued to both the Hillsview Development Limited and the respondent. One cannot put something on nothing and expect it to stand. It shall surely fall. See: **McFoy v UAC [1961] All ER 1169 @ 1172**.

At the risk of sounding repetitive, there is ample evidence of the validity and sustainability of appellant's customary law grant in 2005 before it was formalized in 2013. All the ingredients of customary law grant were proved. The evidence established that even after the Trust was set up the appellant's grantors continued to be in physical occupation and possession of their portion of the land and permitted their lawful attorney to make grants of portions of the land. There is no contra evidence that the families were ever dislodged from their land or the extent of their land was mapped out as stipulated in the

trust deed. The appellant's grantors testified for the appellant that they first made a customary grant the disputed land to the appellant before it was subsequently formalized in writing. The respondent never led any evidence to contradict the appellant's story except his mere denial of the customary grant. That was insufficient to dislodge the story of the customary grant.

On the evidence, the respondent procured a formalized sub-lease from the La Hillsview Development Ltd in 2015 and had it registered and was issued with a land title certificate. Although the respondent succeeded in registering the grant with the Land Title Registry and obtained a land title certificate for it, the registration did not affect the appellant's earlier customary law grant. In **Anyidoho v Markham [1905] Ren. 318 FC,** [a case adopted and applied by the Supreme Court in **Brown v Quarshigah supra**] the principle of law was stated that a customary law transfer of land was unaffected by registration of any subsequent conflicting documentary conveyance. That was because an effective customary conveyance of land divested the grantor of any further right, title or interest in the land.

It is trite learning that in all civil cases including a declaration of title to land, a party wins on the preponderance of probabilities. Upon a proper evaluation of this case, the overwhelming established evidence is that whereas the Trust Deed that gave birth to the Hillsview Development Limited's acquisition of 2.00 acres of the trust land was invalid on the account that only the Chairman of the Trust conveyed the land to the Hillsview Development Limited instead of all eight [8] trustees, the appellant's grantor exercised their lawful right to convey the land, the subject matter of the dispute to the appellant. The registration of the land and land title certificate EDDT obtained did not override the pre-existing interests of others including the appellant's grantors.

Another point that has engaged our attention is the allegation that the respondent obtained his grant during the pendency of the suits in courts. Perusing through the records of appeal, it is obvious that in **2007** when the time Hillsview Development Ltd was issued with its land title certificate and in **2013** when Hillsview Development Ltd

granted a sub-lease to the respondent and in **2015** that the respondent procured his land title certificate, the parties were in court battling over issues in respect of the trust land in suit **No. BL 431/2006** titled **Ataa Tawiah Tsinaiatse & Numo Ofoli Kwashie families v EDDT & Ag. Chief Registrar** and the appeal from that judgment to the **Court of Appeal in Suit No. H1/175/2015.**

The law is that a party procuring a lease and a subsequent land certificate in circumstances when, on the evidence, he is aware of pendency of a suit over the disputed land may under certain circumstance amount to fraud. See: **Chellaram & Sons (Gh) Ltd v Halabi [1963] 1 GLR 214.** This court held the law in **Chellaram & Sons (Gh) Ltd v Halabi [supra] Holding 2** that:

> *"A voluntary conveyance pendente lite has on it the badge of fraud; secrecy is always evidence of fraud, though it is not itself conclusive; and a false statement of a material fact in a conveyance for valuable consideration showing part of the consideration for the transfer is also some evidence of fraud."*
>
> **[emphasis underscored]**

Awudu v Tetteh [2011] SCGLR 366 is the authority for holding that registration *per se* does not extinguish all other interests of third parties in a land. A registered interest in land may be defeated by underlying factors or equitable principles like notice, fraud or mistake. That is the reason for **Section 46(1)** and **Section 122 of the Title Registration Act, 1986 (PNDC Law 152]** that provided:

> *"46. Overriding interests*
>
> *(1) Unless the contrary is recorded in the land register a land or an interest in land registered under this Act is subject to any of the following overriding interests*

whether or not they are entered in the land register as may for the time being subsist and affect that land or interest:

(a) the rights of way, rights of water, profits or rights customarily exercised and enjoyed in relation to the parcel which are not recognised interests in land under customary law that were subsisting at the time of first registration under this Act;

(b) customary rights which were subsisting at the time of first registration in respect of concessions granted under the Concessions Act, 1939;

(c) natural rights of water and support;

(d) rights of compulsory acquisition, resumption, entry, search and user conferred by any other enactment;

(e) leases for terms of less than two years and not capable of extension to terms of two years or more by the exercise of enforceable options for renewal;

(f) rights, whether acquired by customary law or otherwise, of a person in actual occupation of the land except where enquiry is made of that person and the rights are not disclosed;

(g) subject to this Act, rights acquired or in the course of acquisition by prescription or under the Limitation Act, 1972;)

(h) charges for unpaid rates and any other moneys which without reference to registration under this Act, are expressly declared by an enactment to be a charge on land;

(i) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams created, constructed or laid in pursuance or by virtue of a power conferred by an enactment."

It was also provided in **Section 122 of PNDC Law 152** as follows:

"122. Rectification by Court

(1) Subject to subsection (2), the Court may order the rectification of the land register by directing that a registration where it is satisfied the cancellation or the amendment of the registration has been obtained, made or committed by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who has acquired a land or an interest in land for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought or had personally caused the omission, fraud or mistake or substantially contributed to it by an act, a neglect or default."

In our opinion, both conveyances of the land first, to Hills View Development and then from them to the respondent while there was litigation on the land were meant to overreach the Ataa Tawiah Tsinaiatse and Numo Families. Such transactions are viewed with suspicion by the law and would not be given priority over other interests in the land. The interest acquired by the appellant under customary law earlier in time prevails over the purported registration of the respondent pursuant to **Section 46(1)(f) of PNDC Law 152.**

Overall, we are satisfied that the appellant has shown a good cause why this court shall interfere with the findings of fact by the lower courts. In the circumstance, we dismiss the claims of the respondent and enter judgment for the appellant. However, we cannot grant the reliefs the appellant seeks per his counterclaim because those are live issues in

Suit No. GJ/444/2029 pending before a court of competent jurisdiction for hearing and determination.

Appellant's costs assessed at Ghc20,000.00

(SGD.) **P. BRIGHT MENSAH**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **G. PWAMANG**
(JUSTICE OF THE SUPREME COURT)

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

(SGD.) **R. ADJEI-FRIMPONG**
(JUSTICE OF THE SUPREME COURT)

CERTIFIED TRUE COPY
.....REGISTRAR
SUPREME COURT, ACCRA, G/R.
14/11/25

(SGD.) **G. S. SUURBAAREH**
(JUSTICE OF THE SUPREME COURT)

COUNSEL

DAVID K. AMETEFE ESQ. FOR THE 1ST DEFENDANT/APPELLANT/APPELLANT

EMMANUEL BRIGHT ATOKOH ESQ. FOR THE PLAINTIFF/RESPONDENT/ RESPONDENT

CERTIFIED TRUE COPY
.....REGISTRAR
SUPREME COURT, ACCRA, G/R.
14/11/25