

Burden to overturn findings | Grounds to set aside | Civil standard of proof | Burden and legal presumptions |
 Rebutting legal presumptions | Title certificate presumption | Signature not ownership proof | Marital
 property claims | Equal access joint property | Right to sole ownership | Equitable share entitlement |
 Judgment upheld on error

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2024

**CORAM: PWAMANG, JSC (PRESIDING)
 LOVELACE-JOHNSON (MS), JSC
 PROF. MENSA-BONSU (MRS), JSC
 ACKAH-YENSU (MS), JSC
 ASIEDU, JSC**

**CIVIL APPEAL
NO. J4/47/2023**

28TH FEBRUARY, 2024

ELECTROLAND GHANA LIMITED PLAINTIFF/APPELLANT/APPELLANT

VRS

**1. MADAM PAULINA ADOMAKO DEFENDANT/RESPONDENT
 (OPERATING UNDER THE NAME
 AND STYLE OF BIGNMA ENTERPRISE)**

2. KINGSLEY ADOMAKO CLAIMANT/RESPONDENT/RESPONDENT

JUDGMENT

LOVELACE-JOHNSON JSC:

The designation of the parties at the trial court will be maintained in this appeal. The plaintiffs obtained a summary judgment against the defendant at the high court in this suit on 20th December 2017. The court delivered itself in part as follows:

"I will accordingly grant the application for summary judgment and further grant leave for the plaintiff to recover the GHc 1,004,747.70 together with interest at the commercial bank rate from January 2014 till date of final payment"

The court also assessed costs at 7% of the above sum.

The matter before us was activated by the attempt by the plaintiffs to execute the judgment by attempting to attach House No 04800375- 10 NNK 04, Ashalley Botwe in satisfaction of the judgment obtained.

One Kingsley Adomako (claimant) the husband of the Defendant, filed a notice of claim to the property in question. The plaintiffs in reaction filed a notice of dispute after which the claimant also filed an affidavit of interest.

The court ordered both the plaintiffs and the claimant to appear before it. After conducting a hearing into the matter, the high court made two findings to the effect that the property in question was solely owned by the claimant and also that until there is a divorce the property of a husband cannot be attached for the debt of his wife. Consequently the court ordered that the property in question be released from attachment.

Being dissatisfied with this judgment the plaintiffs filed an appeal to the court of appeal which dismissed the appeal and affirmed the judgment of the high court.

Still dissatisfied the plaintiffs further appeal to this court on a first ground that the judgment is against the weight of evidence.

By this ground they take on the onerous burden of attempting to set aside concurrent findings of fact made by the two lower courts. It is trite that to do this, they must demonstrate clearly that the judgments of these courts are wrong on the facts or law because

"(a) the court has taken into account matters which were irrelevant in law, (b) the court excluded matters which were critically necessary for consideration, (c) the court has

come to a conclusion which no court properly instructing itself would have reached and (d) the court's findings were not proper inferences drawn from the facts"

Amoah v Lokko & Alfred Quartey etc [2011] 1 SCGLR 505.

See also **Achoro v Akanfela [1996-97] SCGLR** and **Koglex Ltd (No 2) v Field SCGLR 175.**

The additional grounds of appeal before us are as follows

1. That the Court of Appeal erred when it held that the property in question was solely owned by the Claimant/Respondent/Respondent.
2. That the Court of Appeal erred when it affirmed the trial Judge decision that the principle of equal access to property acquired during the subsistence of marriage comes into play during the distribution of the matrimonial properties upon divorce or dissolution of the marriage.
3. That the Court of Appeal erred when it held that the equitable right the judgment debtor has in the Claimant/Plaintiff's property is not enough to warrant the property being attached for her judgment debt.

Regarding the main ground of appeal, what are the lapses in the judgment of the court of appeal, according to counsel for the plaintiffs, it being their duty to pinpoint such? **Djin v Musa {2007-2008} 1SCGLR 686** refers.

Will a correction of these alleged lapses lead to a change in the conclusions of the court of appeal such that judgment would be entered in their favour?

The short submission of counsel for the plaintiffs can be found at pages 29 and 30 of his statement of case. The crux of the submission is that had the trial court and court of appeal averted their minds to the claimant's admission that he acquired the property while married to the defendant and that she signed the indenture of the property as a witness in her capacity as his wife, in the absence of contrary evidence, they would

have held that the property was a marital one. Further that had the court of appeal considered the case of **Nana Kwame Twumasi v Naomi Osei** Suit No. H1/23/2018 delivered on 26/6/2019, it would not have found that a Land Title certificate and other documentation was sufficient rebuttal of the presumption that property acquired during a marriage is marital property.

The response of counsel for the claimant is that the plaintiffs have not established that the two courts below have committed any blunder or error which has resulted in a miscarriage of justice.

It is to be borne in mind that at all times the standard of proof in a civil matter is one of the balance of probabilities. This burden does not change even where a presumption in law come into play. The failure or success in rebutting a presumption in law is one of the pieces of evidence which a court will use to decide if a party has proved his overall case on the balance of probabilities so as to obtain a favourable judgment.

The issue here is the ownership of the property in question. The production of a land title certificate is a presumption of ownership raised by the claimant which like all presumptions is rebuttable. Counsel makes no reference to any pieces of evidence plaintiffs provided during the trial to rebut this presumption. The mere fact that the defendant, also the wife of the claimant, signed as a witness on the indenture of the property is actually evidence that she is NOT the owner of the property. It is true that in the circumstances of this case, coming by such evidence from the defendant would have been difficult but no attempt was made to do so to enable the trial court decide if the presumption had been rebutted. The plaintiffs failed to adduce any evidence to rebut or offset this piece of evidence under oath. A bare statement in a statement of case about the defendant not having shirked any marital duties etc is far from sufficient.

We are satisfied that the plaintiffs have failed to prove some blunder or error committed by the court of appeal in relation to the lapse raised by them under this ground of appeal, much less the occasioning of a miscarriage of justice. This ground of appeal fails.

The additional ground of appeal (a) in the record of appeal (ROA) to wit that the court of appeal erred when it held that the property in question was solely owned by the Claimant/Respondent/Respondent was not argued by counsel in his statement of case. Be that as it may that is a question which will be answered by the consideration of all the other grounds of appeal. We put on record that counsel for the claimant agrees with the position of the court of appeal.

A simple case of the execution of a judgment debt has taken on a completely different garb as a result of an attempt to consider it within a setting of matrimony and thus apply the law on divorce. This is especially unfortunate when the parties in matrimony do not seem to have any confusion about the ownership of the property. The plaintiffs are however determined to make the defendant a part owner, a defendant who is not a participant in the interpleader proceedings and so did not testify.

Pronouncements in case law on marital property referred to in this matter have all been made as a result of a wife claiming ownership of property either as a result of direct contribution to its acquisition or through her services in the home being quantified and considered as contribution towards the acquisition of the said property. No such claim is being made here so no evidence has been led to that effect except by the plaintiffs who know nothing about the circumstances of the marriage between the defendant and the claimant. This beggars belief. With the clear understanding that this matter is not a matrimonial cause by any stretch of imagination we proceed to consider the additional grounds of appeal filed.

In arguing ground (b) (which attacks the court of appeal's affirmation of the trial court's position that equal access to property acquired during a subsisting marriage comes into play only during the distribution of matrimonial properties upon divorce or dissolution of marriage), counsel sets out three issues he contends have to be answered. These are 1. Whether the property sought to be attached is a joint property. 2. Whether the interest acquired in jointly held property between spouses arise only upon divorce or dissolution of the said marriage 3. Whether a spouse's equitable right in a jointly acquired property can be attached in satisfaction of a judgment debt against the spouse.

All these issues sound interesting and would be worth discussing in the right context but the present context is not such. Firstly, the defendant in this matter is not claiming to be a joint owner of the property. Even if she is, there is not sufficient evidence on record to decide the issue one way or the other. The other two broad issues upon which counsel for the claimant expended so much energy in his statement of case are not relevant for the determination of this matter for the simple reason that in the circumstances of this case and in the absence of any relevant, substantial evidence to the contrary, the claimant's uncontroverted evidence that he solely acquired the property and his land title certificate gives him indefeasible title.

This dismisses the plaintiffs's ground of appeal (a) and we confirm the findings of the two courts below that the claimant is the owner of the property. The issue of an equitable right of the defendant to the property does not arise because she is making no such claim.

It is important to note that the statement attributed to the high court in ground (b) was preceded by the following statement *'I therefore find that in the absence of any evidence to show that the judgment debtor contributed to the acquisition of the attached property and the Claimant/Plaintiff is only a trustee....'*

This puts the finding in context. The affirmation of the court of appeal of this finding ***within this context is in order.*** The finding is not to taken as a general proposition on matrimonial property since the matter before us is not such. Counsel for the claimant makes reference to Article 22(3)(a) of the 1992 Constitution which states as follows

"spouses shall have equal access to property jointly acquired during marriage"

The emphasis here is 'property jointly acquired'. Seeing that Article 18 entitles each person to own property ***alone*** or in association with others, it goes without saying that a spouse can solely acquire a property within marriage. Counsel concludes that because the property was acquired during the marriage of the claimant and the defendant and the fact that the defendant signed as a witness on the indenture covering the property *"this goes to prove that the property was acquired with the contribution and knowledge of the defendant/judgment debtor and most importantly during the marriage."* See page 26 of counsel's statement of case.

Admittedly the property was acquired during the still subsisting marriage but the defendant signing as a witness is certainly NOT evidence that the property was acquired with her contribution.

There being no evidence or claim by the defendant to an equitable share in the property, it cannot be attached in satisfaction of a debt she has incurred.

By this finding we confirm the finding of the court of appeal on ground (c) that the property in question cannot be attached in satisfaction of the defendant's debt for the reason that **no such equitable right has been proved.**

This is what the court of appeal stated at page 114 of the ROA

*"Secondly they are not divorced for the wife to claim for any equitable right **if any** in the property.....We do not think that the equitable right the judgment /debtor **has** in the Claimant/plaintiff's property is enough to warrant the property being attached for her judgment debt"*

The difference in our reasoning for this finding is that we take the position that no such right was proved by evidence. This does not change our affirmation of the said finding, it being trite that even if the ratio of a judgment is erroneous, it will not be set aside if there is other sound basis to sustain it. See **Oppong v Vaughan-Williams [2015-2016] 1 SCGLR 781@ 784.**

In conclusion the present appeal fails as being completely without merit and is dismissed.

**LOVELACE-JOHNSON (MS)
(JUSTICE OF THE SUPREME COURT)**

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

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

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