IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA

CORAM: - SENYO DZAMEFE, JA (PRESIDING)

MERLEY A. WOOD (MRS), JA

OBENG-MANU JNR, JA

Civil Appeal No. H1/109/2019

18th June, 2020

ROSEMOND NORTEYE ---- PLAINTIFF/RESPONDENT

VRS

FRANK NORTEYE ---- DEFENDANT/APPELLANT

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JUDGMENT

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OBENG-MANU JNR, JA

"Let none presume

To wear an undeserved dignity.

O! that estates, degrees, and offices

Were not deriv'd corruptly, and that clear honour

Were purchased by the merit of the wearer.

How many then should cover that stand bare;

How many be commanded that command;

How much low peasantry would then be glean'd

From the true seed of honour; and how much honour

Pick'd from the chaff and ruin of the times

To be new varnish'd!"

This quotation is from **The Merchant of Venice** by William Shakespeare. Shakespeare was speaking through Arragon, a Spanish Prince, and one of the unsuccessful suitors for Portia's hand in marriage. *(Act 2 Scene 9)*

Through the character Arragon, Shakespeare mirrors human nature and life. Arragon talks about estates, degrees and offices.

In this appeal, it is a matter of estates.

This is an appeal from the judgment of the High Court, Land Division, Accra, dated 31st May, 2018. The Defendant/Appellant, dissatisfied by the judgment has appealed seeking the reversal of the judgment, and for judgment to be delivered in his favour.

The parties are brother and sister of the full blood. The Plaintiff/Respondent who shall hereinafter be called the Respondent is the older. She is the only sister among six siblings. She is the first born. The Defendant/Appellant who shall also be called the Appellant is the younger. The Respondent travelled to the United Kingdom some time in December, 2003 on a visitor's visa. Her visa expired when she overstayed same. She thus became an undocumented immigrant. The authorities of the host country will prefer to call her an illegal immigrant.

At the time the Respondent travelled, the Appellant was working with TV3 as a Programmes Manager. Appellant was earning GHC300 initially when he joined TV3 in 1997. As of 2005, which is the time material to this suit, the Appellant was earning around *"GHC400" plus* as his monthly salary. He was married with four children.

The Respondent had a daughter and a son. The son did not feature in this case. The daughter, known as Beverly Mbroh nee Amonoo, was PW1 in this case. The mother of the parties was down with stroke at all times material to this suit. The parties had a brother known as Theophilus Norteye @ Theo, who also featured in this suit. He was PW2.

It all started when a real estate company known as Commercial Investments Ltd. (CIL) was building houses and selling them on hire-purchase to interested parties. One Frank Doe, a former employee of TV3, and a friend of the Appellant had been employed by CIL. He was employed as Operations and Marketing Director. He visited his former colleagues at TV3. On that visit, he sold the idea of the estate houses his new employers were putting up for sale to prospective purchasers to his former colleagues. The terms of the contract of sale were quite attractive. An initial deposit of ₵10,000,000 (old cedis), now GHC1,000 would be made by a prospective purchaser (Scheme holder), for a three-bedroom house. Thereafter, monthly payments of the cedi equivalent of US$179.66 would be made over a period of 16-20 years. Somewhere along the line, the Scheme holder would be given occupation of the premises. Upon successful completion of payments, the title to the property would then be transferred by CIL to the Scheme holder, who now becomes the owner of the legal title.

The Appellant acquired two of these houses (three-bedroom) numbered 18 and 19 Fair Havens - East Legon Hills, Ashalley Botwe. He acquired one in his own name, and the other in the name of Respondent. The Respondent was at this time in the United Kingdom. The deposits for each were paid. Monthly payments were regularly made to service the mortgage value of the said two buildings. H/No. 18, Fair Havens - East Legon Hills, Ashalley Botwe which was acquired by the Appellant in the name of the Respondent, was, according to the Respondent, acquired for her. However, the Appellant disputes this and claims he acquired both houses for himself. Although H/No. 18 was documented in the name of the Respondent by Appellant himself, the Appellant claims he did so to avoid prying eyes of his co-employees at TV3. The Appellant asserts that all monies that went into the acquisition of property No. 18 Fair Havens, was from his own resources. He further claims that right from the inception of the acquisition of both properties, his intention was to acquire both for himself, the documentation of property No. 18 Fair Havens in the name of the Respondent notwithstanding. Lawyers will call this a "resulting trust".

The Appellant, at the same time as he was making monthly payments towards settlement of the hire-purchase price on the two properties, no. 18 and 19 Fair Havens, was also constructing another building at their hometown, Ada Foah. Thus, simultaneously, the

Appellant acquired and paid for three landed properties, albeit that the construction of each and payment therefor stretched over a period of time.

The Respondent, on the other hand, claims that she sent monies/remittances for the payment of initial deposit towards the acquisition of property No. 18, as well as money for the monthly payments from around March, 2003 until sometime after her arrival in Ghana in 2012.

The Appellant disputes this and contends that all those payments were made by himself from his personal resources. He added that he did not receive the alleged remittances respondent claimed to have sent to him. Appellant further contends that the Respondent was an undocumented/illegal immigrant in the United Kingdom from the time she arrived in the UK in 2003 until she returned to Ghana on 28th January, 2012, and could not have secured employment or worked to earn any 'meaningful' income which she could have sent to acquire the property in dispute.

The parties' sick mother died on 14th December, 2011. The Appellant sent an email on Christmas day, 2011 to the Respondent, informing her of their mother's demise, and the need for the Respondent to come home soonest. In the email, the Appellant requested that the Respondent *"should not forget to get those things that would be needed to get the body ready for burial. Shroud, oil, etc. those things you know would be needed..."* The reason the Respondent needed to come home was the fact that the elders of their family insisted that the Respondent, being the only daughter of the deceased, and being the eldest child, needed to be present at her mother's burial and funeral.

The Respondent flew back home. She arrived in Ghana on 28th January, 2012.

After her arrival, the Respondent was hosted in the said property no. 18 Fair Havens by the Appellant. The Respondent was informed by the Appellant that her house, numbered 18 Fair Havens, was the one behind where they lived. In actual fact, where they lived was rather the house numbered 18 Fair Havens. The Appellant had rented out H/No. 19 Fair Havens (which was his own) to tenants. Subsequently, Respondent realised the deceit and misrepresentation. She came to the realisation that the house in which she and Appellant

were living was indeed numbered 18 Fair Havens, which was hers. She demanded for the documentation on her property. The Appellant got angry and, for the first time, told Respondent that she owned no property, or at all. Both properties, according to the Appellant, were his own bona fide self-acquired properties. The Appellant evicted the Respondent from the property, i.e. H/No. 18 Fair Havens.

On 17th September, 2013, the Respondent issued a writ of summons claiming a declaration that the Plaintiff/Respondent is the true and lawful owner of the property in dispute, H/No. 18 Fair Havens, a further declaration that the Defendant/Appellant has no interest in the property, perpetual injunction, and an order for recovery of possession of the said property.

The Appellant counterclaimed for a declaration of title to and recovery of possession of H/No. 18, Fair Havens, East Legon Hills.

After trial, the Learned trial High Court Judge delivered judgment on 31st May, 2018 in which she dismissed the Defendant/Appellant's counterclaim and entered judgment for the Plaintiff in the following words:

"I therefore find that the Defendant has no legal or equitable right to property no. 18 Fair Havens, East Legon Hills, Ashalley Botwe - Accra. His possession of same is unlawful ab initio. In conclusion, Defendant's counterclaim is hereby dismissed. Judgement is entered for Plaintiff in the following terms;

1. *The Plaintiff is hereby declared the true and lawful owner of property with House No:18 Fair Havens, East Legon Hills, Ashalley Botwe-Accra.*
2. *I declare that the Defendant has no interest whatsoever in the above-mentioned property.*
3. *The Defendant and his agents are perpetually restrained from interfering with the Plaintiff's quiet enjoyment of the property the subject matter in dispute.*
4. *The Plaintiff is entitled to recover the said property from the Defendant.*
5. *It is further ordered that the Defendant and his family are to yield vacant possession of the property in a tenantable condition to the Plaintiff by the 31st of August 2018.*
6. *It is further ordered that the Defendant is to pay rent of One Hundred and Seventy Nine United States Dollars Sixty-six cents (US$179.66) or its cedi equivalent in Cedis at the*

prevailing exchange rate to the Plaintiff in respect of occupation and use of House No: 18 Fair Havens, East Legon from September 2013 to the date of vacation of the property by the Defendant or his agent."

It is against the judgment of the High Court that on 24th August, 2018, the Appellant filed a Notice of Appeal. On 14th May, 2019, this Honourable Court granted the Appellant leave to file additional grounds of appeal. The sum total of the Grounds of Appeal before this Honourable Court are as follows:

I. The judgment is against the weight of evidence

II. The trial judge erred in purportedly taking judicial notice of the employability of illegal migrants in the United Kingdom in favour of the Plaintiff/Respondent without additional inquiry to prove the fact.

III. The trial judge erred in her insufficient analysis of the evidence of the Defendant/Appellant which led to her finding that he failed to disprove the presumption that the Plaintiff/Respondent was the legal owner of the property in dispute.

IV(A). The Court erred in permitting the hearing of this suit when the writ of summons dated 17th September, 2013, having been signed in the name of a law firm, was a nullity ab initio.

IV(B). The Court erred in refusing to permit a forensic examination of exhibits being exhibit J, J1 and J2 per a ruling dated 16th May, 2017.

GROUNDS I AND III

Ground I: The Judgment is against the weight of evidence

Ground III: The trial judge erred in her insufficient analysis of the evidence of the Defendant/Appellant which led to her finding that he failed to disprove the presumption that the Plaintiff/Respondent was the legal owner of the property in dispute.

Where an appellant complains that the judgment is against the weight of evidence, he is implying that there were certain pieces of evidence on record, which if applied in his favour, would have changed the decision in his favour, or that, certain pieces of evidence have been wrongly applied against him that were not in his favour. The cases of **Tuakwa v. Bossom [2001-2002] SCGLR 61** and **Djin v. Musah Baako [2007-2008] SCGLR 686** are in point. In such circumstances, it is incumbent on such an appellant to demonstrate the lapses he complains about in the judgment.

Appellant's Counsel argued these two grounds together. He cited the case of **Gifty Avadzinu v Theresa Njoona [2010] 26 MLRG 105 at 108**, holding 2 thereof; which states that:

> "The law relating to the standard of proof in all civil actions without exception was stated to be proof on a preponderance of probabilities, having regard to section 11(4) and 12 of the Evidence Decree, 1975 (NRCD 323). This means that a successful party must show that his claim is more probable than that of the other."

In the case of **Asante Appiah v. Amponsah @ Mensa (2009) SCGLR 90 @ 98**, it was held that:

> "The law is well-established that where a party's claims are for possession and perpetual injunction, he puts his title in issue. He therefore assumes the onus of proving his title by a preponderance of probabilities, like any party who claims declaration of title to land."

In this case, both parties seek a declaration of title and perpetual injunction. The Plaintiff seeks recovery of possession.

The **Evidence Act, 1975 (NRCD 323)** defines the burden of producing evidence in section 11 and 12 as follows:

"11. Burden of producing evidence defined

(1) For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party..."

The Act further defines proof by preponderance of probabilities as follows:

"12. Proof by a preponderance of the probabilities

(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities."

(2) **"Preponderance of the probabilities"** means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence."

Learned Counsel for the Appellant submitted that the Learned Trial Judge's analysis of the evidence adduced by the Appellant was insufficient. He further submitted that the Learned Trial Judge's conclusion therefore does not bear out the oral and documentary evidence tendered.

Learned Counsel argued out these two combined Grounds of Appeal in subheadings numbered (a) to (e).

In subheading **(a)**, Learned Counsel for the Appellant tackled the issue of the **Respondent's earnings out of menial jobs in the United Kingdom**.

According to Learned Counsel, the Respondent's evidence that she reached the United Kingdom in 2003, and was able to send £3000 through her daughter to him for payment of instalments on the disputed house is implausible. He further contends that as an illegal and undocumented immigrant, the menial jobs that the Respondent claims she did are baseline jobs, lowest on the job scale. According to him, these attract minimum wage or close to that.

And in any event, the Respondent's evidence was to the effect that she got her menial jobs through an agency that called her as and when work was available.

Therefore, on an erratic availability of work, which, according to him, paid in the range between £4.85 and £5.05 per hour, there was no way the Respondent could have earned such a huge amount, taking into consideration, *"such statutory deductions under the United Kingdom law, such as National Insurance Contribution and tax, as well as rent, transport, feeding, and other bills"*.

Counsel also queried that the Respondent did not provide any evidence as to which agency she worked for.

In answering the last query as to which agency the Respondent worked for, the evidence of the Respondent was not to the effect that she was working for any agency. Rather, according to the Respondent, she got her menial jobs through an agency which called to notify her as and when jobs became available.

As to evidence of earnings on any jobs done through an agency, it is trite that such jobs as being engaged by a private individual to clean a house or an apartment for reward, is not done on documentary basis. The undocumented/illegal immigrant would go and clean, and is paid in cash, on the blind side of the authorities of the United Kingdom.

In the first place, the law is that undocumented/illegal immigrants are not to be offered employment. Learned Counsel for the Appellant himself has conceded that there are penal consequences for employers who employ illegal immigrants, and the consequences are as harsh as prison terms of five years, or huge fines. It is therefore strange that Learned Counsel would allude to *"statutory deductions under United Kingdom law such as National Insurance Contributions and tax".*

(b) Evidence of PW1 AND PW2 on receipt of £3000 from the Respondent

Learned Counsel for the Appellant argued that PW1, i.e. Beverly Mbroh nee Amonoo, who is the daughter of the Respondent, claimed to have received an amount of £3000 from a courier whose name she could not remember. However, she remembers clearly handing

over the said amount to the Appellant in the presence of PW2, Theophilus Norteye @Theo, who is a brother of the parties, and an uncle of PW1, and her late grandmother.

Learned Counsel claims that there is a contradiction in the evidence of PW2 to the effect that she received the money in the presence of PW2 and her late grandmother, and called the Appellant to inform him. Learned Counsel for the Appellant queried whether this suggests that the two events happened at the same time, or at different times.

With all due respect to Learned Counsel, it is quite difficult to fathom what kind of contradiction is contained in the evidence of PW2. All that PW2 told the court is that the money was routed through her by the Respondent, her mother, and upon instructions from her mother, it was eventually handed over to the Appellant. This handing over of the £3000 to the Appellant, was done by PW1 in the presence of her uncle, PW2, and her grandmother, who is also the mother of the parties. The fact that PW1 forgot the name of the courier who sent the money to her from her mother, in a one-off transaction, is not strange at all. And the fact that PW2, Theophilus Norteye, corroborated the handing over of the money, but not the other events, is neither here nor there. Witnesses swear to testify as to what they see with their eyes, and heard with their ears. They are not to testify as to what they did not see or hear; It is for those who saw and heard such events to come to court and testify to them.

As to the allegation that PW2 says he witnessed other payments of money to the Appellant, but fails to state the quantum of such monies, and the frequency of such amounts, the answer is, such monies were not routed through him; and, he may not, in the circumstances, know the quantum of such monies unless he was told by the Appellant who is the recipient. As to the frequency of such amounts, PW2 told the court what he knew.

Appellant's Counsel also raised an issue as to the credibility of PW1, i.e. Beverly Mbroh nee Amonoo, as regards Beverly's evidence regarding where she and her grandmother lived.

According to Learned Counsel for the Appellant, his mother, who is Beverly's grandmother, lived with them at the time Respondent travelled to the UK but Beverly was initially reluctant to admit this fact. The answer to this is simple. The evidence of Beverly

was that before her mother travelled to the United Kingdom in December, 2003, she left them (Beverly and her brother, children of Respondent) in the care of their grandmother at Labone in a house she rented for them. See page 44 of Vol 2 of the ROA.

According to Beverly, her mother was sending them money every month, and occasionally sending things to them. She further continued that her grandmother suffered a mild stroke not quite long after her mother left to UK. She suffered the stroke while she was at Ada Foah, her hometown, at a weekend while she was on a visit. At the time their grandmother suffered stroke at Ada Foah, she Beverly and her brother were in Accra. The Appellant called to inform Beverly that her grandmother had suffered stroke, and so he brought her to a hospital in Accra. It was when her grandmother was discharged that the Appellant took her to his house at South Labadi Estates. Since the Appellant had to go to work and leave the sick old lady behind all alone in the house, Beverly and her brother had to be shuttling from Labone to Appellant's house in South Labadi Estates to take care of the old lady until the Appellant closed and retuned from work. They would then trudge back to their rented house at Labone to ensure that their apartment would not be broken into and their property stolen. It was later when PW2, i.e. their uncle, Theo came to take their grandmother from Appellant's house to live with him, that they stopped going to the Appellant. There is therefore no contradiction here.

See paragraphs 4, 5, 6, and 7 of PW1's witness statement at pages 281-283 of Vol. 1 of the ROA.

Appellant contended that PW1's testimony that she attended meetings on the building project at Kama Conference Centre, allegedly as representative of her mother, cannot be believed because when asked as to who organised those meetings, she replied that she did not know.

In answer to this, the evidence on Record is to the effect that it was Appellant who made PW1, Beverly, sign documents as next-of-kin for the Respondent, and PW2, Theo to sign documents as guarantor of the Appellant as regards the property in dispute. See page 44 of the ROA.

It is further in evidence that it was the Appellant who took PW1, Beverly to attend meetings at Kama Conference Centre. The fact of attendance at meetings was not denied by the Appellant. And it is not strange that Beverly would not know who organised the meetings in the first place. See pages 284 to 285 of Vol 1 of the ROA and pages 49-51 of Vol 2 of the ROA.

On PW2, the Appellant states that:

> "PW2 testified in favour of his sister he claims supported him financially against a brother he plainly had issues with. His evidence should also not have been accorded much weight."

In answer to this, it must be noted that it is on record that the Appellant is at loggerheads with almost all his siblings, and also, members of his father's family. At the initial stages of cross-examination by Counsel for the Respondent at page 94 of Vol. 2 of the ROA, the Appellant shockingly had this answer to give.

> "Q. Do you know the plaintiff?
>
> A. Yes, my Lord.
>
> Q. How do you know her?
>
> A. I know the Plaintiff as my ***former sister***." (emphasis added)

At page 95, these questions were posed to the Appellant:

> "Q. How many siblings do you have?
>
> A. I have four brothers and a sister.
>
> Q. Are you the eldest?
>
> A. I am not.
>
> Q. Are you the youngest too?
>
> A. I am not.
>
> Q. Which of your siblings came to testify in your favour in respect of this case?

A. I am just opening my defence. None of them has come to testify for me. I do not expect any to testify for me."

At page 104 of Vol 2 of the ROA, the following cross examination questions were put to the Appellant:

"Q. You are in court with your father's relatives over a property?

A. That is not correct. I am not in court with my father's relatives over any property.

Q. This year, you have ever been in court with your father's relatives?

A. Yes, I have.

Q. And you also have had legal issues with the rest of your siblings in respect of your deceased mother's property?

A. That is correct, counsel coerced with my siblings, led them to prepare letters of administration without my consent, I got to know about it when they had cleared everything from the bank..."

From the above, it is clear that the Appellant, on his own admission, has issues with all his siblings over their deceased mother's property. He also has issues with his father's relations, and has taken them to court. He is not prepared to accept that the Appellant, who is his only sister of the full blood, and who is the first born of their parents, is his sister any longer. Indeed, he now describes the Appellant, with whom he bonded better than any of the other five siblings, as his ***former sister***.

It is therefore not strange that the Appellant will urge on this court not to accord much weight to the evidence of PW2, who, according to his evidence, is his sworn and avowed enemy.

(c) Excessive public knowledge of alleged remittances by the Respondent

The Appellant complained about the fact that funds remitted by the Respondent to him have become the subject of public knowledge, with so many testifying as to what they heard and saw. According to the Appellant, it would have been reasonable to expect that

receipt of such funds from his ***'former sister'*** would have been without fanfare as, at least at that time, they were relations. The Appellant lamented as to why financial transactions between brother and sister would not stay within the fold. Appellant further wondered why several persons were readily available every time the Appellant would have allegedly received money from the Respondent to go and make payments. According to the Appellant, the learned trial judge should have been careful in accepting such pieces of evidence from such people as factual.

The answer to this is that all those witnesses who came to testify; namely, PW3 - Josephine Lamquaye, PW4 - Numotey Tesia, PW5 – Edith Tettey, were mostly friends of the Appellant.

For instance, PW3, in her witness statement, which was adopted by the court as her evidence in paragraph 4 at page 328 of Vol 1 of the ROA:

> "I know the Defendant, Frank Norteye as the junior brother of Plaintiff from that time of our school days and in fact I became very close to him more than Plaintiff."

This fact was never denied by the Appellant during cross-examination.

At paragraph 16, this witness, who is so close to the Appellant, had this to say:

> "16. Defendant still came to our house after plaintiff had left for the UK. We became so close, he told and showed me things and monies his sister had sent and shipped from the UK to him. He had praised his sister on several occasions to me.
>
> 17. Defendant himself told me about their mum when she suffered from stroke, and how sister had sent boxes of pads and helping a lot for her care.
>
> 18. All these while, I knew Plaintiff cared for her mother, siblings and children. I never saw plaintiff's children living with defendant save only in the early months that their mum suffered a stroke and defendant told me he had asked plaintiff's children to stay in his house to care for their grandma.
>
> 19. Defendant never told me he was caring for plaintiff's children. As far as I know, plaintiff cared for her own children by sending them money and things all the time.

20. Sometime in 2005/2006, defendant as usual came to my house at Asylum Down. My late fiancé had come to me by then. Defendant then asked us to go with him somewhere. He drove us in his car to a site very far away. We were contemplating what was going on when we got there we saw so many uncompleted buildings, he took us to two of them and said one of the buildings is for him, and the other is for his sister. It was an offer from his company, TV3 to pay bit by bit so he helped the sister to acquire and buy one of the houses.

21. We were so happy for both of them, and he went on and asked me if I were to choose one which I would prefer. I said the front one, which is No. 18, he said the sister's one is the front house and his is the back house. Since that time, he picked me up to the site all the time and was with him and plaintiff's daughter, Beverly at the site one day when he took a picture of her in the front house to send to his sister for a progress report on the building.

22. My late fiancé was also a witness to all these. Plaintiff and I spoke about the project all the time ever since defendant showed us the project. She occasionally told me of monies she had sent to the defendant on this.

25. I remembered on one occasion when defendant came to my house and took me to an office at Dzorwulu junction. He told me plaintiff had sent him money, and he was going to pay for the mortgage for his sister. Both plaintiff and defendant told me she worked in the UK so I was not surprised about the amount of things and monies that came from the UK to the defendant."

This is the evidence of a very close friend of the Appellant. Indeed, she states without equivocation, that she was closer to the Appellant even than the Respondent, and this was never denied by the Appellant.

The evidence of PW4 also shows that that particular witness, Winfred Numotey Tesia, is also a good friend of the Appellant. The witness statement of PW4 which was adopted by the can be found at pages 332-333 of Vol 1 of the ROA. At paragraph 4, the witness had this to say:

“4. Defendant I know as Frank Norteye, a good friend and school mate, from when we were in Ada Secondary School.

5. I was not very close to Plaintiff since she does not stay at Ada much.

6. I had a very good relationship with defendant and most of his family members; brothers and mum so went with them to family gatherings, like weddings, engagements and naming ceremonies.

7. Defendant also sometimes invited me to his children’s PTA meetings at Achimota Junior High School where I went with him. I also used to visit him at his tv3 office sometimes.

8. Sometime ago in 2006/2007, I visited defendant Frank Norteye at his office at TV3 and he asked me to accompany him to pay for a house for his sister.

9. He told me he had helped his sister to purchase one of the houses his company had offered for sale. He then showed me an envelope with pound sterling, which he said was the money the sister had sent him for payment for the house which was on mortgage basis. He again said the sister had been so helpful to the family, so that was the only thing to do for her to say thank you. He never told me the amount that was sent to me. But was very happy with what he said he had done for the sister.

10. He drove me in his car to an office at Dzorwulu junction opposite Fiesta Royale Hotel. When we got to the second floor of the building he asked me to wait at the reception whilst he entered an office and returned later and said he had paid the money for the mortgage. After that we drove back and he dropped me off.

11. Also in November 2011 when Ada Secondary School celebrated its 50th anniversary which we all went because we were old students, one Ebenezer Adams who we normally called (E.B. or Chess) residing in the UK told me he was looking for defendant, Frank Norteye, and that his sister, the plaintiff, Rosemond Norteye had sent him money from the UK through him E.B. Later I saw Frank Norteye and told him Mr Adams (E.B.) was looking for him to give him the money sent by his

sister in the UK. There Frank Norteye told me he had already seen EB and collected the money sent to him for his sister in the UK."

It must be noted that during cross-examination, the Appellant never challenged this witnesses' assertion of his friendship with the Appellant right from school days till date. Moreover, the evidence the witness gave remained unshaken after failed attempts to discredit the evidence.

The last witness is PW5 - Edith Tettey. Her witness statement which can be found at pages 338-339 of Vol 1 of the ROA, was adopted as her evidence in chief. In paragraph 4, PW5 had this to say:

> "4. I know the Defendant Frank Norteye as Plaintiff's younger brother who was in school then, and often came to the plaintiff for financial assistance."

At paragraph 8, the witness continued that he went to the engagement and wedding ceremony of Plaintiff's Daughter, Beverly at H/NO. 18 Fair Havens.

> "9. About an hour or so afterwards, I was in the hall when defendant called me to the kitchen. While I was with him in the kitchen he informed me, without being solicited, that the house we were in was his, and the next one behind the kitchen is for plaintiff his sister, because he helped his sister to acquire and buy one of the estates.
>
> 10. I thanked him for the good thing he had done. All went on very well at the engagement until I left for my house.
>
> 11. Sometime in July 2013 plaintiff told me she had moved to East Legon to perch with a friend because Defendant was contesting the ownership of her house.
>
> 12. Sometime in October/ November 2013, I was in my house when I heard noises with the security at my gate so I went to see what was happening, there I saw defendant with a female in his car. And the security didn't want him to come in because it was a bit late in the evening."

Then, at paragraph 13, the witness had this to say:

> "13. On enquiring from him what his purpose was at my house, he responded that plaintiff was worrying him because she wants to claim his house. I was taken aback so I asked him which house. He then told me the house at Fair Havens, I then asked him "what did you tell me, didn't you say the houses are two (2), one is for your sister and that you helped her acquire and buy it? He tried to argue to convince me to say otherwise with a recorder of someone I didn't know. I responded that he was the very person who informed me the house was for his sister and that I was ready to testify to that anywhere. This response got him very angry and aggressive so I asked him out of my house."

The million-dollar question is, why would three friends of the Appellant, whom he himself had told the very pieces of evidence they came to testify to, fabricate lies and testify in favour of their friend's adversary? There is no reason why something of that nature will happen. A quote by Ian Fleming, a famous author, and creator of the movie character, James Bond, stated in the film *Goldfinger* settles this puzzle:

> "Mr Bond, they have a saying in Chicago; once is happenstance, twice is coincidence; a third time is enemy action."

Certainly, three friends testifying against the Appellant is too serious to be considered merely as happenstance or a coincidence. What they said must be considered as "enemy action"; hard facts.

(d) Actions by the Appellant in establishing the transactions

The Appellant sought to say that exhibit 3 series, being the documentation on the disputed house, with Commercial Investments Ltd. showed clearly that the name he earlier on put on the document was Frank Norteye, the first name of which he later cancelled and inserted on top of it, Rosemond.

According to the Appellant, this is a clear indication that he set out to purchase the property himself, but on second thought, decided to use the name of his sister, the Respondent. This, according to him, was because he had problems with the Ada Foah house.

People like Michael Agu, Aklie, and others had been so envious of his Ada Foah building plot which according to Appellant, he used his own hard-earned income to construct. He wondered why so much hatred and enmity.

The answer to this is that it is part of the argument of resulting trust which will be dealt with presently. The principle of Resulting trust has been rejected in this case as having been rebutted by sufficient evidence establishing that the true intention is otherwise.

(e) Discordant relationship between Respondent and his siblings

The Appellant is rehashing the bad blood between himself and his five other siblings in discussing paragraph (c), the issue of the discordant relationship between the Appellant and his siblings has been extensively discussed. The Appellant is inviting this Honourable Court to review the evidence as considered by the trial court, and come to the conclusion that the learned trial judge ought to have taken into consideration the fact that the Appellant's siblings were all at loggerheads with him, and therefore, were not likely to testify in his favour.

Appellant further invited the court to set aside the findings of the trial court based on the evidence given by PW2, Theophilus Norteye, who happens to be the only sibling apart from the Respondent to testify against him. The hope is that if this appellate court accepts the Appellant's invitation, it will automatically dovetail into the presumption of resulting trust, on which the Appellant is relying.

As mentioned earlier, the issue of the discordant relationship between the Appellant and his siblings has already been extensively discussed. It has been found that it was the Appellant, rather than his siblings, who has sown the seeds of discord among his siblings. The Appellant bitterly quarrels with all his siblings on flimsy grounds, and he has himself to blame if he now finds himself isolated from the familial fraternity.

Writ of Summons a Nullity?

The Appellant has attacked the jurisdiction of the trial court as a court of first instance to hear this case, and the jurisdiction of this court to rehear this matter as an appellate court.

The basis of the attack is the writ of summons which originated the suit in the trial court. He argued that the writ of summons was signed in the name of a law firm.

A perusal of the Record of Appeal, i.e. Vol. 1 page 2, shows that the Writ of Summons originating this suit was filed on 17th September, 2013. At page 2 of Vol. 1 of the ROA, there is a rubber stamp of the lawyers of the Plaintiff. It is the stamp of the law firm 'AYINE & FELLI', with their address as follows: NO. 3 MANGO STREET, EAST LEGON – ACCRA. TELEPHONE: 0302 542092.

There is a signature underneath this stamp. However, there is no name of any individual lawyer of the firm on the writ of summons. Nevertheless, there is a Solicitor's Licence Number – GAR 05800/13.

It must be noted that a Solicitor's Licence Number is referable to a human being. It is never referable to the law firm. Law firms are also registerable under the law at the General Legal Council. When registered, law firms are assigned distinct Chambers Registration Numbers. Lawyers who practice before the Law Courts of Ghana, both as Barristers and Solicitors, are by law, enjoined to practice from law chambers. And these law chambers are those that have been registered by the General Legal Council. The Chambers Registration Number is thus separate and distinct from the Solicitor's Licence Number.

There is the practice, very prevalent at the Bar, and especially in Accra, whereby, writs of summons, motion papers, and other applications, are stamped or endorsed only with the firm name of the lawyer who issued the writ or that particular process. This is not right because law firms are not entitled to practice law. It is the human beings who are members or pupils of those law firms, which are duly registered by the General Legal Council, that are allowed to practice law.

I agree with Appellant's Counsel that all such documents that do not bear the names of human beings who are lawyers, and who have been enrolled on the Roll of Lawyers, are therefore ineffective, and void ab initio. They will be struck out as such. And all subsequent documents that are based on such processes not signed by human beings who are lawyers, shall equally be declared null and void and of no effect.

Counsel for the Respondent has cited the unreported case of **Alhaji Abdul Rashid & 2 Ors. v Misener International Limited & 2 Ors, CA, Civil Appeal No. H1/40/2017** to buttress his arguments. This decision is right on point.

Now, the Alhaji Abdul Rashid case is a decision of this Court to the effect that a writ that originated the action was in the name of a law firm, but not a lawyer. This Court held that such a writ was incompetent, making any subsequent processes incompetent and therefore a nullity, leaving nothing before the court to be determined.

This scenario is akin to a situation in which a writ was issued and served without the signature of the lawyer who issued the writ. In the case of **Alfa Manufacturing Co, Ltd. v Nyamekeh [1981] GLR 470**, our martyr, Lady Justice Cecilia Koranteng-Addow J. of blessed memory, stated in holding one that:

> "...By virtue of Order 19, r. 4 [of LN. 140A] it was requisite that the statement of claim endorsed on the writ should be signed by the plaintiff or his solicitor. Since the copy of the specially endorsed writ which was served on the defendants was not signed, the endorsement did not bear all the marks prescribed by the rules and could therefore not be a statement of claim. In any case where the rule provided that the particulars of an endorsement should be signed, the name of the issuing solicitor printed at the space provided could not satisfy the provision under Order 19, r. 4 [of LN. 140A], neither would the printed name of the solicitor appearing on the writ, albeit at the same page as where the signature under Order 19, r. 4 should have appeared, be a compliance with the rule. R. v. Cowper (1890) 24 Q.B.D. 533, C.A.; Cassidy & Co., Ltd. v. M'Aloon (1893) L.R. Ir. 32 Q.B. & Ex. 368 and dictum of Lord Evershed M.R. in Fick & Fick Ltd. v. Assimakis [1958] 1 W.L.R. 1006 at p. 1009, C.A. applied."

Counsel for the Appellant rounded up his arguments with the following statement:

> "Relying on the above, we contend respectfully that this appeal is predicated on a nullity. The entire proceedings leading up to this appeal should therefore be expunged as being null and void..."

Had the Supreme (High) Court (Civil Procedure) Rules, 1954, LN. 140A remained, our rules of court till date, this conclusion of the Appellant would have been right. However, the rules of court have changed. We now use the High Court (Civil Procedure) Rules, 2004 (CI 47). Having regard to the change and the rules, this conclusion of the Appellant will have to be examined in the light of the definition of the term 'Writ of Summons'.

What then is ***"writ of summons"***?

A writ of summons as we know it now, has been defined in **Order 82 of the High Court (Civil Procedure) Rules, 2004 (CI 47)** as follows:

> "writ, **includes** a writ of summons and statement of claim, **or a petition in a cause or matter**"

A writ is described in **Order 2 rule 3 of CI 47** as follows:

> "Rule 3 - Contents of writs
>
> (1) Every writ shall be as in Form 1 in the Schedule and shall be endorsed with a statement of the nature of the **claim**, **relief** or **remedy** sought in the action."

Form 1 in the Schedule can be found at pages 274 to 275. At page 275, you find as a subheading "STATEMENT OF CLAIM".

Now, the words STATEMENT OF CLAIM on the writ at page 275 are referable to that part of Order 2 rule 3(1) of CI 47 which states that:

> *"... and shall be endorsed with a statement of the nature of the claim, relief and remedy sought in the action."*

This should not be confused with the statement of claim which is the first ***pleading*** in every action, and which can be found in **Order 2 rule 6 of CI 47**. Order 2 rule 6 of CI 47 states:

> "Rule 6 - **Writ and Statement of Claim**
>
> ***Every writ shall be filed together with a statement of claim as provided for in Order 2 and no writ shall be issued unless a statement of claim is filed with it.*"** (emphasis mine)

Talking about the statement of claim being the first document filed by way of pleadings in an action, **Order 11 rule 1 of CI 47** further explains what a statement of claim is as follows:

> "Rule 1 - **Service of Statement of Claim**
>
> (1) The plaintiff shall serve a statement of claim on each defendant at the same time as the **writ** or notice of the writ is served on that defendant."

This means that a writ of summons and the statement of claim under the regime of CI 47 are documents that are inseparable. They are not mutually exclusive, one of the other. Under CI 47, the two documents; namely, the writ of summons and statement of claim are composite and integral. The one has no life without the other. The two documents can only live in a special symbiotic relationship; without one, the other dies.

In this action, at page 3 Vol. 1 of the ROA, the Plaintiff filed a statement of claim together with the writ under Order 11 rule 1 of CI 47. At the end of this statement of claim at page 7, the same stamp of the law firm, "AYINE & FELLI" appears. The same Solicitor's Licence Number which is GAR05800/13 is also endorsed on the statement of claim. The same signature that was signed at page 2 also appeared at the end of the statement of claim on page 7. Significantly, the name, "KWESI BAFFOE INTSIFUL, ESQ." also appears there with "SOLICITOR FOR PLAINTIFF" endorsed beneath the Solicitor's Licence Number. This clearly denotes the fact that Kwesi Baffoe Intsiful is the author of the signature which appears on the writ of summons.

What can one make of the fact that under the current regime of CI 47, the two documents; namely, the writ of summons and statement of claim are composite and integral? The clear inference is that the two, i.e. the writ of summons and statement of claim are one document which must be read together. In our humble opinion, the name of Kwesi Baffoe Intsiful at page 7 of the record, which is the last page of the statement of claim, is also referable to the page 2 of the record, which is the reverse of the writ of summons, and which page bears the same signature and Solicitor's Licence Number, together with the law firm and all its particulars, except the name of the lawyer.

An expedition into the **High Court (Civil Procedure) Rules, 1954 (LN 140A)** to enquire into the nature of what a writ of summons and statement of claim were, will clarify the point we have made; that under the current regime of CI 47, the two documents are composite and integral. In contrast, the two documents under the regime of LN 140A were separate, severable, and mutually exclusive, one of the other.

Under LN 140A, there were two species of writs of summons: ***(a) the generally endorsed writ of summons***, and ***(b) the specially endorsed writ of summons***. The specially endorsed writ was one that must be accompanied by a statement of claim by virtue of the provisions of order 3 rule 6 of LN 140A. And the writ must be signed by the Plaintiff or his solicitor. A generally endorsed writ is issued under order 5 rule 4 of LN 140A. By virtue of Order 19 rule 4 of LN 140A, it was requisite that the writ should be signed by the plaintiff or his solicitor. However, the generally endorsed writ was not required to be accompanied by a statement of claim.

In this connection, under LN 140A, it was the norm that a generally endorsed writ would be issued alone without an accompanying statement of claim. To accompany a generally endorsed writ with a statement of claim was rather the exception to the norm. Thus, in the case of **Luguterah v Mensa-Entsi [1980] GLR 856** where in a libel suit the plaintiff issued and served the writ and the statement of claim at the same time, the defendant raised an objection to the issuance and service of both documents at the same time on the grounds that it gave the impression that the writ was a specially endorsed writ, which in a libel suit was not to be used.

In his ruling, Taylor J, sitting at the High Court, Tamale held at pages 858 -859:

> "...I think one aspect of the argument needs to be looked into. There is clearly no argument whatsoever advanced to show any irregularity or defect in the writ of summons. The main objection seems to be the circumstance **that in serving it, a statement of claim was also at the same time served, thus giving an impression,** *admittedly not unreasonable in the circumstance*, **that the writ be considered in the nature of a specially endorsed writ under Order 3, r. 6 (4) of L.N. 140A.** Even if the argument is a sound one, since the overriding motivation of the court is an anxiety

> that cases be dealt with on their merit for the purpose of dispensing justice to litigants, **I would have thought that the plaintiff would be inclined to ask for the statement of claim and not the writ of summons to be set aside if his argument is accepted.** By the argument advanced on this motion on notice, however, the defendant is asking that the writ of summons and the statement of claim be considered as null and void. I do not think that is permissible having regard to the provisions of Order 70, r. 1 of L.N. 140A." (Emphasis mine)

By this statement of Taylor J (as he then was), it is clear that the two documents, i.e. writ of summons and statement of claim were severable and one could live without the other. Under the circumstances, it became necessary that both documents which have separate identities were signed by the parties who issued them or their lawyers, before they could become effective either jointly or severally. A want of signature of the author on either document, be he a party or a lawyer representing a party, would be fatal to that errant party.

Under the regime of CI 47, the situation is different. The ***"writ of summons"*** as we knew it under LN 140A has evolved and mutated. The mutant writ of summons which we now find in CI 47 cannot stand on its own. It must be attached to a statement of claim in order to live. The two documents, i.e. writ of summons and statement of claim under CI 47, are in a special relationship which is simply a matter of life and death. One document simply cannot survive without the other. It is a situation the scientists call *obligate mutualism*.

There are several examples in nature, of this life-giving, mutually beneficial relationship between species. One is the *acacia ant* and the *acacia plant*. These two are described as nature's most compatible roommates. And they are so close they even share the same name. The acacia plant (*Acacia drepanolobium*) provides the acacia ant (*Pseudomermyx sp*) with food and accommodation. And in return, the ant acts as a security system, protecting the plant from potential predators. Research suggests that the ants pull their weight by helping to keep the tree disease-free. These ants are thought to play host to bacteria which prevent harmful pathogens from growing on the leaves of the acacia plant.

In obligate mutualism, one organism cannot survive without the other because both organisms are obligated or forced to rely on one another.

Another example is moths and Yucca plants. They are obligate, in that the moth larvae feed only on Yucca fruits, and the latter can develop only from moth-pollinated flowers.

Such is the relationship between the writ of summons and the statement of claim under CI 47. One cannot survive without the other; and it is the new normal.

Consequently, the signature of Lawyer Kwesi Baffoe Intsiful, on the Respondent's Statement of Claim which can be found on page 7 of the Record of Appeal, validates the omission of the name of the said lawyer on the reverse of the writ of summons at page 2 of the Record of Appeal. This is because the two documents are indeed one. In the circumstances, the hitherto two separate and independent documents, which are now one composite, integral, and inseparable documents, are valid by virtue of the signature of Lawyer Kwesi Baffoe Intsiful on the statement of claim at page 7 of the Record of Appeal.

Reliance was placed on the case of **Republic v. High Court, Tema, ex parte Owners of MV Essco Spirit [2003-2004] SCGLR 689**.

In that case**,** the Supreme Court per Dr Twum JSC stated that: "... a writ not authenticated by the signature of the plaintiff or his solicitor is a nullity."

With the utmost respect, that case is distinguishable from the present case. Besides, the statement is *obiter*. The issue before the Court in the Essco Spirit case had nothing to do with the authentication of a writ by the signature of the Plaintiff or his Solicitor. It was whether or not a writ of summons improperly indorsed could originate an action and thereby invoke the jurisdiction of the High Court. The improper indorsement in the Essco Spirit case was with a claim for an order that the defendant furnish security for such award as might be made against them in a pending arbitration in London. Based on this endorsement, the Plaintiff applied (in the High Court) for, and obtained an order of the arrest and detention of Defendant's vessel, the MV ESSCO SPIRIT until the Defendants had furnished security for the arbitration. This endorsement was held by the court to be in the

nature of interlocutory relief which could only be applied for at any time after commencing the action. It could not be the endorsement on the writ itself, and consequently, it could not properly invoke the jurisdiction of the court. The entire writ was quashed by certiorari in the Supreme Court.

At page 694 of the report, Dr Twum JSC held that:

> "The real issue was whether or not a writ of summons improperly indorsed according to the relevant rules of our High Court could originate an action and thereby invoke the jurisdiction of the High Court. To put it bluntly, is such a writ of summons not a nullity?... There was no cause of action to be tried by the court; no dispute, no controversy, nothing."

The court held at page 689 that an interlocutory injunction or other relief must not be endorsed on the writ of summons as the Plaintiff may apply for such relief at any time after commencing the action.

The Supreme Court has held in the case of **Comptroller of Customs and Excise v. Coker [1975] 2 GLR 418** at 421 that:

> "It is a well-established principle of law or procedure that every endorsement on a writ of summons must show the nature of the course of action against the defendant."

This was the reason why the writ of summons purporting to originate the case against the owners of the MV ESSCO SPIRIT was held to be null and void. The decision in the MV ESSCO SPIRIT is therefore distinguishable from the present case which involved the want of authentication of the writ of summons by the signature of the lawyer for the Plaintiff/Respondent.

<u>Resulting Trust</u>

The introduction to the Appellant's written submission broached the topic of a resulting trust, a presumption operating in favour of the Appellant until rebutted by the Respondent. The Appellant's Counsel cited the case of **Dyer v Dyer (1788) 2 Cox Eq. CA 92** whereat he quoted from the judgment of Eire CB at page 93 as follows:

> "The clear result of all the cases, without a single exception, is that the trust of a legal estate, whether freehold, or leasehold; whether taken in the names of the purchasers and others jointly, or in the names of others without that of the purchaser; whether in one name or several; whether jointly or successive-results to the man who advances the purchase-money."

According to the Appellant although he bought property No. 18 Fair Havens in the name of the Respondent, he did so upon a resulting trust unto himself. Thus, the documentation of No. 18 Fair Havens in the name of the Respondent notwithstanding, he the Appellant is the legal owner of the property.

The question is, has the Appellant been able to disprove the presumption that the Plaintiff/Appellant is the legal owner of the disputed property?

In answering this question, one would need to ascertain what ***"legal ownership"*** is.

According to **Black's Law Dictionary, 9th ed. at page 1214**, a legal owner is:

> "One who is recognised by law as the owner of something, especially, one who holds legal title to property for the benefit of another."

According to **B.J. da Rocha and Christian Hans K Lodoh, Ghana Land Law and Conveyancing, Anansesem Publications, Ghana 1995 at page 55:**

> "At English common law, the owner of the legal title was also the person entitled to its enjoyment. In other words, legal and beneficial ownership were inseparable. With the emergence of equity, and the emergence of the concept of the trust however, legal ownership and beneficial ownership could be separated and be vested in different owners. If land was conveyed to X in trust for Y, X was the legal owner, but because of the trust, Y was, in equity, the beneficial owner entitled to enjoy the

property according to the terms of the trust. Thus arose the distinction between legal ownership and equitable ownership."

In dealing with this subject, one would have to delve into the definition of what constitutes a ***'trust'*** and go further to find out what a ***'resulting trust'*** is.

For a definition of trusts, Maitland, in the course of his celebrated lectures on equity, over a century ago (at the beginning of the 20th century), admitted, when he came to deal with trusts that he did not know where to find an authoritative definition of a 'trust', in the following words:

> "No doubt, we should like to begin our discussion with a definition of a 'trust'. But I know not where to find an authoritative definition."

The above quotation can be found in **Maitland, Lectures of Equity, 2nd ed. Page 43**. It is also reproduced in **Modern Principles of Equity by AKP Kludze, 2014 edition, chapter 8, at page 261**.

Thereafter, Keeton has given a definition of trusts which is as follows:

> "All that can be said of a trust therefore is that it is the relationship which arises wherever a person called a trustee is compelled in equity to hold property, whether real or personal, whether by legal or equitable title, for the benefit of some persons (of whom he may be one, and who are termed *cestui que trust*) or for some object permitted by law, in such a way that the real benefit of the property accrues, not to the trustee, but to the beneficiaries or other objects of the trust."

See **G.W. Keeton, The Law of Trusts, 9th ed. Page 3**

Keaton's definition of trusts is substantially similar to that adopted in the *Restatement of The Law of Trusts* by the American Law Institute which reads:

> "A trust ... when not qualified by the word, charitable, resulting, or constructive, is a fiduciary relationship with respect to property, subjecting the person by whom the property is held, to equitable duties to deal with the property for the benefit of

another person, which arises as a result of a manifestation of an intention to create it."

See **Restatement of The Law of Trusts, 2nd ed. Page 6, para. 2**.

With these definitions in mind, it is clear that a trustee holds property for the benefit of another unless otherwise qualified by the words charitable, resulting, or constructive.

What then is a resulting trust?

According to Prof. Kludze in his book, **Modern Principles of Equity, 2014 ed. at page 272**,

> "*Resulting Trusts:* A resulting trust arises where the owner of property has conveyed it to another with the intention of creating a trust, but the beneficial interest returns or 'results' to the transferor because the trust has not exhausted the entire estate. Where property has been conveyed to trustees but the purposes of the trust do not exhaust the beneficial interest, the residue results to the transferor. If, for example, a settlor conveys property to a trustee for the benefit of A for life, then to X on attainment of 21, but X predeceases A while still under 21 years, then on A's death, the property will result to settlor. Again, if property is conveyed to a trustee to pay ₵1000 monthly today, but the income is ₵1,500 monthly, there would be a resulting trust of ₵500 monthly in favour of the settlor. If the settlor be dead, the benefit of the resulting trust enures to his estate."

In another definition, Philip H Pettit, in his book, **Equity and the Law of Trusts, 7th ed., Butterworths & Co. Publishers Ltd., 1993** in chapter 8 on resulting trusts, had this to say at page 128:

> "**1.** Transfer into and purchase in the name of another and related cases
>
> **A.** PURCHASE IN THE NAME OF ANOTHER OR IN THE JOINT NAMES OF THE PURCHASER AND ANOTHER
>
> Whenever a man buys either real or personal property and has it conveyed or registered, or otherwise put into the name of another, or of himself and another jointly, it is presumed that the other holds the property on trust for the person who

has paid the purchase money. The classic statement of the law is to be found in the judgment of Eyre CB in Dyer v Dyer..."

This is a statement that Counsel for the Appellant reproduced and made the basis of his submissions. However, counsel himself admitted that a resulting trust is a presumption which can be rebutted by evidence.

At page 129 of **Equity and the Law of Trust by Philip H Pettit**:

> "...Parol evidence is always admissible to establish who in fact advanced the money (Heard v Pilley (1869) 4 Ch App 548), and this is so, even though the consideration is expressed to be paid by the nominal purchaser. The fact of the advance must, of course, be satisfactorily proved by evidence (Willis v Willis (1740) 2 Atk 71), which may, however, be circumstantial evidence such as that the nominal purchaser had not the means to provide the purchase money (Willis v Willis supra)."

In the instant case, sufficient parol evidence has been led by the Respondent to show that she was the one who in fact, advanced the money through all five of her witnesses.

The Appellant, who counterclaimed, also became the Plaintiff vis-à-vis the Defendant in relation to property No. 18, Fair Havens. As such Plaintiff he had the obligation in law to establish by preponderance of probabilities that as the nominal purchaser, he had the means to provide the purchase money, and that that money was intended to be advanced by him in the character of a purchaser.

In the case of **Abed Nortey v. African Institute of Journalism & Communication [2014] 77 GMJ 1 @ p. 40**, the Supreme Court held that:

> "Without any doubt, a defendant who files a counterclaim assumes the same burden as a plaintiff in a substantive action if he/she is to succeed. This is because a counterclaim is a distinct and separate action on its own which must also be proved according to the same standard of proof prescribed by sections 11 and 14 of NRCD 323, the Evidence Act (1975)." **– Per Akamba JSC**

In the evidence-in-chief of the Appellant, he testified that at the time he purchased the property, he was working as the Programmes Manager of TV3. During cross examination, the Appellant admitted that he was earning GH₵400 plus. Listen to him at pages 107-108 of Vol 2 of the ROA.

"Q. How much was your salary when you started working at TV3?

A. I cannot really say.

Q. How much was your wife earning?

A. I do not know.

BY COURT: Can you give an idea of how much you were earning?

WITNESS: It will be around GHC300 now.

Q. And which year did you start working with TV3?

A. I started work with TV3 in 1997.

Q. What was your designation?

A. I was employed as a senior Executive in charge of programmes.

Q. As of 2005 how much were you earning from TV3?

A. Around GHC400 plus."

Apart from this income that he was earning, and he claims, there were other 'pluses' by way of unspecified income, which he claimed he earned during his time on his job as a Programmes Manager of TV3 Network, the Appellant did not disclose any other source of income to the Trial Court. However, there is evidence that the Appellant had a huge expenditure outlay; outflows from this income of *GHC400 plus* included the following.

a. The financing of a four-bedroom house at Ada Foah at all times material to this suit.
b. Monthly mortgage payments, or hire purchase payments on H/No. 18 Fair Havens, East Legon Hills, Ashalley Botwe.

c. Monthly mortgage payments, or hire purchase payments on H/No. 19 Fair Havens, East Legon Hills, Ashalley Botwe.
d. Payments for school fees of four of his own biological children; namely, Suzette, Queen Anita, Carole, and Duke Norteye.
e. Feeding of the said family as well as payment of utilities.

No evidence whatsoever was adduced by the Appellant in proof of additional income earned by the Appellant apart from his monthly salary.

However, on the evidence, the Appellant was paying on monthly basis, the cedi equivalent of US$179.66 apiece for the two properties, namely H/No. 18 and 19 Fair Havens, East Legon Hills. And each of the properties cost US$40,000. Furthermore, the Appellant was given between 16 and 20 years to effect full payment therefor on each of the properties. According to the Appellant, even though he documented H/No. 18, Fair Havens, in the name of the Respondent, it was done on a resulting trust to him, which means that the eventual benefit of the property came to him and not to the Respondent, in whose name the property was acquired.

In the words of Bassanio, in Act 1 Scene 1 of Shakespeare's The Merchant of Venice:

"Silence is only commendable
In a neat's tongue dried and a maid not vendible.
Gratiano speaks an infinite deal of nothing, more than
any man in all Venice. His reasons are as two grains
of wheat, hid in two bushels of chaff: you shall seek
all day ere you find them; and, when you have them,
they are not worth the search."

The Appellant is very verbose. He led copious evidence in chief. During cross-examination, he would talk at length. However, reasons he would assign are as worthless as *"grains of wheat, hid in two bushels of chaff: you shall seek all day ere you find them; and when you have them, they are not worth the search"*.

Having failed woefully, to adduce cogent evidence as to other sources of income apart from his monthly salary of *GHC400 plus* as Programmes Manager of TV3, the Appellant's claim to have been the one who advanced the monies to pay for at least property No. 18 Fair Havens, East Legon Hill, sinks in a quagmire of doubt.

The Respondent on the other hand, also owes an obligation to lead sufficient evidence to rebut the presumption of resulting trust.

At page 131 of Pettit's Equity and the Law of Trusts, the learned author had this to say in rebutting the presumption of a resulting trust:

> "C. REBUTTING THE PRESUMPTION OF A RESULTING TRUST
>
> 'Trusts', it has been said (per Lindley LJ, in Standing v Bowring (1885) 31 Ch D 282 at 289, CA), 'are neither created nor implied by law to defeat the intentions of donors or settlors; they are created or implied or are held to result in favour of donors or settlors in order to carry out and give effect to their true intentions, express or implied...' In practice, in this context, this means that the somewhat artificial and formal rule that the circumstances we have been discussing give rise to a resulting trust, only applies in the absence of sufficient evidence to the contrary. Accordingly, the presumed intention of a person who purchases property in the name of another, whether alone or jointly, that that other shall be a bare trustee for him, will not prevail if evidence establishes that the true intention is otherwise. The same is true where there is a voluntary conveyance or transfer which gives rise to a presumption of a resulting trust. Even parol evidence (Fowkes v Pascoe (1875) 10 Ch App 343) may suffice to establish that at the relevant time, the true intention of the person who provided that purchase money or transferred the property was that the person into whose name the property was conveyed or transferred solely or jointly with his own, should take some beneficial interest..."

There is evidence on record that the Appellant voluntarily informed the Respondent that he had acquired property No. 18, Fair Havens - East Legon Hills, in the name of the Respondent. During cross examination however, the Appellant tried to say that he

informed the Respondent six months after the mortgage arrangement. Hear him during cross examination at pages 110-111 of Vol 2 of the ROA:

> "Q. You indicated that you informed the plaintiff six months after the mortgage arrangement, is that correct?
>
> A. That is correct.
>
> Q. And you did that through email conversation?
>
> A. That is correct.
>
> Q. And you did that through exhibit 6, take a look at exhibit 6. This is the email in which you informed the plaintiff?
>
> A. That is correct."

In the course of this cross-examination, Counsel for the Respondent was able to demonstrate and prove to the Appellant that the American system of dating was applied on the emails, i.e. exhibit 6 and the rest. In consequence, the month comes first before the day and the year. The Appellant was forced to admit this scenario, and finally came to admit that it in fact never took six months before he informed the Respondent about the acquisition of H/No. 18 Fair Havens, East Legon Hills. Hear the Appellant during cross examination as appears at pages 111-112 of Vol Two of the ROA:

> "Q. Look at your exhibit 8, 8A, 8B, and exhibit 9 and tell the court how the date has been arranged on these exhibits.
>
> A. On the exhibit 8 series, the month comes first, followed by the day and the year. Likewise exhibit 9.
>
> Q. All these exhibits plus exhibit 6 came from you?
>
> A. That is correct.
>
> Q. Compare exhibit 6 and exhibit 3 and you will see that exhibit 3 is dated 29th April, 2005. Am I correct?
>
> A. Yes, My Lord.

Q. Between April 8th, 2005 and 29th April, 2005, could not have been six months?

A. Certainly not...”

It is clear that the Appellant was trying to be smart. He tried to use the fact of the American dating system to say that it took six months after he committed to the mortgage on the property before he informed the Respondent. But he was exposed. Indeed, it was never 8th August, it was rather 8th April.

The date in exhibit 6 is written 04/08/05, which in the American system, is April 8th, 2005. However, the Appellant sought to say that that date is 4th August, 2005, which was not the case. It is very clear that the Appellant is not a credible witness. He was a witness who had sworn to lie in furtherance of his case. Moreover, the Appellant himself voluntarily used the Respondent’s name to document property No. 18 after the parties had discussed the issue, and the Respondent had signified her approval.

The Appellant’s claim that he used the Respondent’s name for property No. 18 in order to avoid being talked about in the office is a clear afterthought. This is so because he himself admitted during cross-examination that there was no policy against him alone taking more than one property. Indeed, his own witness, and his sole witness, Fred Doe (DW1), also admitted that fact.

The said witness, who was formerly a co-worker at TV3, and who later went to work with Commercial Investments Ltd., had this to say during cross examination. At page 170 of Vol 2 of the ROA, the following ensued between Counsel for the Respondent and DW1, FRED DOE:

“Q. You will not deny that your company did not have any policy against any individual who wanted to buy more than one of the apartments, is that not so?

A. We had no restrictions about the number of properties anybody wanted to buy.

Q. And the company’s concern will be for the ability of such an individual to pay for the number of apartments he or she has applied for, is that not so?

A. Ours is a commercial business so strictly business, so ability to pay counted very much."

There is also evidence on record that it was the Appellant who brought in forms to be filled by Beverly Amonoo, daughter of the Respondent, and Theophilus Norteye, younger brother of both parties, as next-of-kin and guarantor respectively. However, those documents were subsequently clandestinely changed by the Appellant, using his network of friends at the offices of Commercial Investments Ltd. See page 284, paragraph 11, of Vol 1 of the ROA.

There is also evidence to the fact that the Appellant took their uncle, Okwei Norteye, who was the head of family, to the site to see the project, i.e. Plot No. 18, Fair Havens. At page 157-158 of vol 2 of the Record, this is what ensued between Counsel for the Respondent and the Appellant:

"Q. You admitted taking one Okwei Norteye to the site in dispute is that correct?

A. That is correct I took him to the house.

Q. At that time you were not in occupation. Is that correct?

A. That is not correct that time I was in occupation.

Q. And you told him one of the properties is for the plaintiff is that not so?

A. I did, and that was a result of a chat between us.

COUNSEL FOR PLAINTIFF: That will be all for the witness."

It is instructive to note that Okwei Norteye is an uncle to both parties. He was not called as a witness. However, the Appellant has unequivocally admitted telling their uncle that one of the two properties at Fair Havens belongs to the Respondent. It is strange that the Appellant would turn round to now assert to the contrary that both properties belong to him.

At page 353 of Vol. 1 of the Record of Appeal, the Appellant himself, at paragraph 39 of his witness statement, admits this fact. There is further evidence that the Appellant took

photographs of the property and sent same, via email, to the Respondent, while the Respondent was in London. In one of the pictures, the Respondent's daughter, Beverly Mbroh nee Amonoo, who testified as PW1, was posing in front of the disputed house. This photograph was emailed to the Respondent by the Appellant himself.

There is also evidence before the court that the real estate company, Commercial Investments Ltd, organised meetings for its scheme holdings. The Appellant would take the Respondent's daughter, Beverly (PW1) to those meetings. And Beverly was able to recount those meetings while she was being cross examined. The question posed by the Learned Trial Judge in the judgment is that if the property was truly the Appellant's and the Respondent had no interest in same, why did the Appellant have to take the Respondent's daughter to those meetings under the guise that she was representing her mother?

In the present case, the Respondent was in London, and the Appellant in Ghana. The Appellant saw the property in dispute and decided to acquire one for himself and another for the Appellant. He discussed with the Respondent who gave her approval. The Respondent advanced monies towards the purchase of the property for her. The Appellant, in putting up the deposit, and acquiring the property in the name of the Respondent, acted as a fiduciary, and had an obligation not to breach his duty or act in an unconscionable manner in dealing with the property. The Appellant in this case committed a breach of his duty as a fiduciary when he went back on his promise and claimed the property to be his.

In the case of **Bannister v Bannister [1948] 2 All ER 133**, it was held that:

> "Whenever a person who is under a fiduciary obligation, commits a breach of his duty or acts in an unconscionable manner in dealing with property a constructive trust is imposed by equity. Usually, such a constructive trust will be imposed on a person who goes back on his promises in circumstances in which it will be unconscionable to allow him to do so."

The behaviour of the Appellant in this case is clearly that of someone who has gone back on his promise to acquire a property for the Appellant. In the circumstances, it will be

unconscionable to allow him to do so. The Appellant is relying on resulting trust. Yet, sufficient evidence has been adduced to rebut the presumption of a resulting trust.

Under such circumstances, equity will impose another species of trust known as ***constructive trust***. A constructive trust arises by operation of equity where a fiduciary relationship exists. In the circumstances of this case, being a person in a fiduciary relationship, the Appellant will not be permitted to profit from his position as a constructive trustee. Therefore, instead of a resulting trust, which would have meant that the Appellant became the owner of the disputed property, equity has now imposed a constructive trust on the Appellant; and the Appellant now takes no benefit from the property.

The legal position as regards the disputed property is this. The property was acquired by the Appellant with money advanced by the Respondent. The Appellant has by subterfuge, obtained a certificate of occupation in his name, and is obviously on his way to obtaining a change of the name of the Respondent on the property into his own name. Equity will not allow such a situation to occur. This is because the Respondent who is under a fiduciary obligation has committed a breach of his duty, and has acted in an unconscionable manner in dealing with the property.

Equity has therefore imposed a constructive trust, and therefore, the Respondent becomes the equitable owner with the entitlement to the beneficial enjoyment of the property and all profits flowing therefrom. If however, the Appellant has not succeeded in effecting a change of ownership from the name of the Respondent into his name, then, in spite of the fact that the Appellant has obtained a certificate of occupation, he will not have the beneficial enjoyment of the property as equity has imposed a constructive trust on him.

In all this, the bottom-line is that the Respondent is fixed with legal ownership of the property which entails ownership of the legal title and also the beneficial entitlement to the enjoyment of the property.

In this connection, the evidence of DW1, Fred Doe to the effect that the only person Commercial Investments Ltd. knows is the person who contacted the company and applied

for the property, and not the person whose name is on the documents as the scheme holder, cannot hold water.

To a cross-examination posed to him at page 175 of Vol. 2 of the ROA, this is what DW1 had to say:

> "Q. Is it your position that the company will have to get clearance from the person who approached them first even though the documents are in the name of a specific applicant before your company will deliver?
>
> A. We have no way of knowing who is who. The only person we know is the person who contacted the company and applied for the property, and so we will not put ourselves in a situation which we could not justify.
>
> Q. And the only way the company would justify itself in the situation legally is to deliver to the name on the form as applicant. Is that not so?
>
> A. I am not legally trained so I am only explaining it the way I understood the procedure."

In the case of **Lysaght v Edwards (1876) 2 Ch D 491** and also **Lake v Bailys 1974 1 WLR 1073**, it was held that:

> "A constructive trust is also implied where a vendor sells property to a purchaser under a specifically enforceable contact. As soon as the contract is executed by the parties, the purchaser becomes the owner in equity and the vendor holds the property on a constructive trust for the purchaser. If for example, the vendor conveys the property to another, he is accountable to the purchaser for the purchase money. The constructive trust which arises out of the contract for the sale of land is of a special kind. The vendor has to manage and preserve the property until it is finally handed over to the purchaser..."

See page 57 of Da Rocha and Lodoh supra.

It is therefore clear that Commercial Investments Ltd. will be accountable to the Respondent if they hand over the property to the Appellant since they would be in breach of the constructive trust equity has fixed on them.

Forensic Examination

The issue of the trial court's refusal to permit a forensic examination of Exhibits J, J1 and J2 per a ruling dated 16th May, 2017 also came up. Exhibits J, J1 and J2 can be found at pages 487 to 493 of Vol. 1 of the ROA. The said exhibits are letters attached to the supplementary witness statement by Plaintiff filed on 2nd May, 2017 pursuant to leave granted by Her Ladyship, Justice Barbara N. Tetteh-Charway on 27th April, 2017. The Plaintiff sought to prove that she was taking care of the Defendant's children while she was in the UK, and after she returned to Ghana. She filed a supplementary witness statement to which were attached, letters purportedly written by the Defendant's four children, namely; Duke Norteye-Exhibit J, Queen Anita Norteye-Exhibit J1, Carol Norteye-Exhibit J2, and Suxette Norteye-Exhibit J3.

The Defendant/Respondent challenged the authenticity of the said letters. He therefore filed an application for an order for forensic laboratory examination of the said letters. In his affidavit in support, the Defendant/Appellant contended that, following an enquiry, his children had denied ever communicating with the Plaintiff/Respondent through letters during her sojourn in the United Kingdom. He denied the truth of the purported letters being the handiwork of his children, and according to him, it is the belief of his said children, which belief he also shared, that the purported letters are forgeries. The Plaintiff/Respondent was therefore throwing dust into the eyes of the Honourable Court. He therefore applied for an order of the trial court for the Ghana Police Service to conduct forensic laboratory examination of the purported letters to establish whether the handwritings which appear on the purported letters are those of his children. He felt this was very important on account of the fact that the contents of the said letters, among other things, support Plaintiff/Respondent's claim that the property in dispute belongs to her. He stated in paragraph 15 of his supporting affidavit that the children are not parties to this

suit, and there would be no chance of cross-examining the purported authors of the said letters during the determination of this suit. He finally urged the court to grant the application since the ends of justice would best be served if the forensic examination is conducted.

This application was moved on 16th May, 2017 before the trial court. Although counsel for plaintiff had not filed any affidavit in reaction to the application for forensic examination of the letters in question, the court denied the application. The reason assigned for the denial was that after carefully considering the Defendant's application, the court was of the view that to grant the application sought would cause undue delay in the prosecution of the matter. Furthermore, the admission of the letters into evidence would also complicate the issues before the court. The learned trial judge, in the circumstances, denied the application and proceeded to expunge the letters from the evidence before the court.

It is the appellant's case that the denial to order forensic examination occasioned substantial miscarriage of justice to him. According to him, the result of a forensic examination which he hoped would have gone in his favour by proving that the letters were forgeries, would have put the credibility of the Plaintiff/Respondent in issue. This would have cast a slur on the evidence she has given before the court, and that would have changed his fortunes in this case.

I shall preface my discussion of this issue with a quotation from Lord Salisbury, Prime Minister of the United Kingdom from 1895-1902. It illustrates the point that whenever questions of expert opinion arise, we must be slow to trust the experts. Lord Salisbury, in a letter written to Lord Lytton on 15th June, 1877, and reproduced by Lady Gwendolyn Cecil in her work, 'Life of Robert: Marquis of Salisbury, Vol Two Chapter 4 stated as follows:

> ***"No lesson seems to be so deeply inculcated by the experience of life as that you never should trust experts. If you believe in the doctors, nothing is wholesome; if you believe in the theologians, nothing is innocent; if you believe in the soldiers, nothing is safe. They all require to have their strong wine diluted by a very large admixture of insipid common sense."***

The Appellant's Counsel is complaining that by this ruling, a critical means for testing the credibility of the Respondent was lost, and this is detrimental to the case of the Appellant. For if it had been found by forensic examination that the letters were not the deed of the Appellant's children, that fact would have informed the Trial High Court in weighing the evidence in this case. Besides, the fear of undue delay of the trial expressed by the Learned High Court Judge, coupled with a further fear of complication of the issues, which was expressed, was not explained to inform the soundness of the ruling. According to counsel for the Appellant, as it panned out, the Appellant was short-changed by the ruling, and the search for truth should never have been sacrificed for time.

It must be noted however, that Appellant's Counsel conceded that the Learned Trial Judge had the power to exclude the evidence herein. Hear him at page 13:

> "Though it had the power to exclude the evidence herein concerned under section 52(a) of the Evidence Act, 1975 (NRCD 323), the result of a forensic examination could have assisted the case of the Appellant if found that the letters were not for the Appellant's children."

Section 52 (a) and (b) of the Evidence Act says:

> "The court, in its discretion may exclude relevant evidence if the probative value of the evidence is substantially outweighed by considerations of undue delay, waste of time, or needless presentation of cumulative evidence; or the risk that admission of the evidence will create substantial danger of unfair prejudice, or substantial danger of confusing the issues."

The Learned Trial Judge invoked the said two subsections of section 52 and rightfully exercised her power to exclude the evidence contained in the said letters by expunging them from the record and denying their reference to forensic examination.

Learned Counsel for the Appellant appears to be making fetish so much of the expert opinion of a document examiner who would have been called upon to state his opinion after a forensic analysis. It is Counsel's strong submission that the opinion of the expert

would have been the oracle that could have unravelled the credibility of the Respondent. This is not the case. Expert opinion is after all not binding on the court.

In the case of **Conney v Bentum-Williams [1984-86] 2 GLR 301**, it was held that:

> "(1) a handwriting expert was not required to state definitely that a particular writing was by a particular person. His function was to point out similarities or differences in two or more specimens of handwriting submitted to him and leave the court to draw its own conclusions. In other words, an expert in handwriting having examined, deciphered and compared the disputed writing with any other writing, the genuineness of which was not in dispute, was only obliged to point out the similarities or otherwise in the handwriting; ***and it was for the court to determine whether the writing was to be assigned to a particular person***. ***In the instant case, the report was supposed merely to assist the court in deciding the vital issue of whether or not the conveyance, exhibit C, was a forgery.*** And the trial judge was right in treating the evidence of the expert as a guide to arrive at his conclusion. However, ***the appellate court could itself examine documents in cases of disputed handwriting and form its own conclusion.*** After examining the disputed signatures and comparing them with those admitted by the defendant to be genuine, the court would conclude that they had all been written by the same person as rightly held by the trial judge, and the conveyance, exhibit C, could not in the circumstance be a forgery." (emphasis mine)

Moreover, a court is not bound to consider every piece of evidence adduced, except relevant ones. In the case of **Registered Trustees of The Catholic Church, Achimota Accra v Buildaf Ltd. & 2 Ors Civ. App. No. J4/ 25th June 2015 (Unreported)**:

> "There is the need to state clearly that when it comes to proof of an issue, it is not every piece of evidence that has been introduced into the case that the court is obliged to consider on arriving at a decision; the court is obliged to consider only relevant and material evidence that goes to establish the issue based on what is required by law to prove same. Thus, if a party introduces let's say twenty documents, it would not mean that a court should consider each of them even if it

> knows full well that ten of them are not helpful, nay, relevant to the determination of the issue at hand. Failure to consider such additional exhibits should not per se become the subject of attack against the judge." - Per Benin JSc.

In the instant case, it was the Respondent who sought the leave of the court to adduce those letters in evidence through a supplementary witness statement. This was to be additional evidence to the five witnesses she had already called to testify on her behalf. The Appellant denied the fact that it was his children who wrote those letters and sought a court order to refer those letters to a document examiner for forensic examination. That application was not resisted by the Respondent. Respondent was ready and willing to go into the arena of conflict with the Appellant and slug it out by having the letters examined by forensic experts.

However, the Learned Trial High Court Judge realised that a reference of these letters for forensic examination was going to unduly delay the trial of the case. It is well-known that the forensic laboratory is inundated with a lot of work, and such a reference, if made by the judge, was going to join a long queue and to await its turn. Besides, the case management conference had long been completed. These children of the Appellant, who were also the nieces and nephew of the Respondent were going to be placed in the line of fire between their two closest, living blood relations, whichever way the result of the forensic analysis would have gone. That would not have augured well for harmony. There was already enough bad blood amongst the generation of the siblings who were feuding in court. No useful purpose was going to be served by further poisoning the next generation of the family.

The Learned Trial Judge felt that she had enough evidence upon which she could form a reasonable opinion and determine the case one way or the other. She did not need the opinion of any expert which would not be binding on her anyway, as already mentioned in the case of Conney v Bentum-Williams cited above.

We find no merit in Grounds I and III and we accordingly dismiss both grounds of appeal.

GROUND II

The next ground of appeal argued by the Appellant is GROUND II. And the ground is to the effect that:

"The trial judge erred in purportedly taking judicial notice of the employability of illegal immigrants in the UK in favour of the Plaintiff/Respondent without additional inquiry to prove the fact."

The Appellant has impugned the decision of the Trial Judge to take judicial notice of the fact that illegal immigrants generally obtain employment and earn income which they are able to send back home to their relations. According to the Appellant, the learned trial judge was in error to have taken judicial notice of the fact that as an illegal immigrant, the Respondent could not have been employed to enable her earn such monies which she claims were sent to the Appellant. The basis of the Appellant's argument is the absence of payslips or some other form of documentary evidence which the Respondent failed to tender in the trial court to prove her employment and emoluments derived therefrom. The Appellant questioned the taking of judicial notice by the Learned Trial Judge in the circumstances.

It is interesting that the Appellant's Counsel who berated the Learned Trial Judge for taking judicial notice at page 10 of his written submission was emphatic that the Learned Trial Judge should have relied on payslips or some other form of evidence to prove the employment and emoluments derived thereof. Learned Counsel for the Appellant sharply contradicted this position when he himself quoted what he calls the Rules to Guide a Judge in the taking of Judicial Notice when invited to take judicial notice, or when he chooses to do so in the face of evidence before the court. He proceeded to quote **S.A. Brobbey** in his book, **Essentials of Ghana Law of Evidence** at page 104.:

> "...judicial notice is an acceptance by a judicial tribunal of a fact without proof, and the ground that it is within the tribunal's own knowledge: This is the meaning given to the term in An Introduction to Evidence by G.D. Noakes (4th ed.) at page 54. A typical example will be when a party sets out to prove that the sun rises from the east and sets in the west. That is a fact which is obvious and is known to everybody."

Counsel continued further to quote S.A. Brobbey at page 105 of the same book as follows:

> "In life, there are many things which are so obvious that the existence or truth is often taken for granted or subsumed. Because of that attitude towards those things, their particulars or details are not asked for and yet we proceed as if they are part and parcel of our lives and occurrence. The same attitude is taken by the law in respect of matters which are so obvious, common or notorious that they are also taken cognizance of without any requirement of their proof."

With these self-explanatory quotations from the eminent retired Supreme Court Judge, S.A. Brobbey, one wonders why Appellant's counsel was still expecting the Learned Trial Judge to have sighted payslips or some other form of evidence to prove the employment and emoluments derived out thereof by the Respondent before taking judicial notice of the fact that undocumented/illegal immigrants are employable.

It is trite knowledge that several Ghanaian immigrants live in the UK. Most of them are undocumented immigrants, otherwise known as illegal immigrants. The average extended family in Ghana has one or more of such undocumented/illegal immigrants living somewhere in Europe or North America.

Most of us in Ghana, including the judges, know that those our relations who live in the UK and elsewhere are undocumented or illegal immigrants. It is also a notorious fact that although they are undocumented immigrants, they manage to eke out a living by securing and doing menial jobs.

Learned Counsel for the Appellant cited the case of **Amoah v Arthur [1987-88] 2 GLR 87** to buttress his submissions on this point. He submitted that it has been held in that case, and also in the case of Tormekpey v Ahiable, [1975] 2 GLR 432, CA that illegally obtained evidence, or evidence of illegality cannot be relied on by the Court in support of a claim made with reliance on such illegal fact. He further submitted that however, the judicial notice taken by the trial judge on the employability of illegal immigrants in the UK to the rules of evidence and prayed that it be rejected.

I have looked at the two cases. Neither case is applicable to the principle that evidence of illegality cannot be relied on by the court.

In the case of **Amoah v Arthur [1987-88] 2 GLR 87**, the Court of Appeal held, allowing the appeal thus:

> "(1) to condemn a person on a ground of which no fair notice had been given might be as great a denial of justice as to condemn him on a ground on which his evidence had been improperly excluded. Since the plaintiff did not plead fraud as the basis of his claim, all evidence tending to prove fraud should not only have been rejected by the trial judge but should not have been considered at all. The trial judge therefore fell into very serious error when he rather used the finding of fraud as a ground to throw away the evidence of the defendant and his witnesses. That conduct occasioned a denial of justice to the defendant. Dam v. Addo [1962] G.L.R. 200, S.C. and Nti v. Anima [1984-86] 2 G.L.R. 134, C.A. cited.
>
> (2) If, as the trial judge found, exhibit 1 was a fraudulent document, then since the plaintiff assisted in bringing it into existence, he should be deemed to have been a party to fraud. Accordingly, he should not have been allowed to rebut the presumption of legality by asserting a fraud to which he had been a party.
>
> (3) The wrong assumption made by the trial judge that no person who had solemnly entered into a contract of sale of his land would subsequently repudiate the sale and contend that it was a pledge was highly prejudicial to the defendant for it made it absolutely difficult for the trial judge to consider the case of the plaintiff dispassionately and the defence objectively and thus led the judge to find excuses for conflicts in the evidence of the plaintiff and his witnesses which affected his credibility as to the true nature of the transaction with Y and also led the judge to reject almost every piece of evidence from the defence. Since the judgment proceeded on many wrong premises and the errors committed by the trial judge were such that the judgment could not be safely said to have been the result of a proper exercise of judicial discretion, the judgment would be set aside."

Clearly, the case of Amoah v Arthur here, cited by Learned Counsel for the Appellant is not applicable to this case at all. There was not in that case, any issue of illegally obtained evidence in the first place. The issues discussed in the three holdings reproduced above make this very clear.

In **Tormekpey v. Ahiable [1975] 2 GLR 432**, also cited by Learned Counsel for the Appellant, it was held that:

> "If inadmissible evidence had been received (whether with or without objection) it was the duty of the trial judge to reject it when giving judgment; if he had not done so, it would be rejected on appeal since it was the duty of courts to arrive at their decisions upon legal evidence only."

In the present case, no inadmissible evidence was received by the court below. Learned Counsel argued that under Ghana law, **Section 9(2) (a) and (b) of the Evidence Act, 1975 (NRCD 323)** provides that:

> "Judicial notice can be taken only of facts which are either:
>
> (a) so generally known within the territorial jurisdiction of the court, or
>
> (b) so capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned
>
> that the fact is not subject to reasonable dispute."

According to Counsel for the Appellant, the employability of illegal immigrants in the United Kingdom is not such a notorious fact capable of founding judicial notice. It is also a fact not generally known within the territorial jurisdiction of Ghana. It is an assumption, and therefore not notorious enough for a judge to take judicial notice of it. According to him, if a fact should be assumed, it is rather the fact that an illegal immigrant faces severe challenges for survival, including the difficulty or impossibility of finding employment.

Counsel conceded at page 11 of his submissions that if it may be the case that some illegal immigrants may find employment in certain jurisdictions, it is not a fact of so common knowledge for it to be true in the case of every illegal immigrant in the United Kingdom.

In answer to this, I shall simply say that Section 9(2)(a) says that judicial notice can be taken only of facts which are **so generally known** within the territorial jurisdiction of the court. Mark the words, "**so generally known"**. The Act did not say **"so generally practised"**. To many of us here in Ghana, we know the following although as a court of law we recognise the illegality of it, and we do not encourage our nationals to live as illegal/undocumented immigrants in other lands. In the same way, we will not wish to have illegal/undocumented nationals in Ghana:

i) that most of our relations who are living in the UK are illegal immigrants,
ii) that in spite of being illegal immigrants, they are able to find some form of employment,
iii) that they are employed mainly to do menial jobs,
iv) that they are able to remit money to us back home.

These facts are generally known to us here in Ghana. We are not required to *practise* these known facts here before the court will take judicial notice of them.

Ground II is therefore dismissed.

GROUNDS IV(A) AND IV(B)

Both said grounds of appeal sin against the provisions of **Rule 8(4) of the Court of Appeal Rules, 1997 (C.I. 19)** and are therefore rendered inadmissible. Rule 8(4) of CI 19 is to the effect that:

"(4) Where the grounds of an appeal allege misdirection or error in law, particulars of the misdirection or error shall be clearly stated."

The said last two grounds of appeal were framed as follows:

IV(A). The Court erred in permitting the hearing of this suit when the writ of summons dated 17th September, 2013, having been signed in the name of a law firm, was a nullity ab initio.

IV(B). The Court erred in refusing to permit a forensic examination of exhibits being exhibit J, J1 and J2 per a ruling dated 16th May, 2017.

It is clear that in both grounds the trial court was accused of having erred in a way. In both grounds, a careful reading thereof show that the basis of the error is legal and it was therefore incumbent on the Appellant to have particularised the error of law by specifying the subject of complaint. Regrettably, the Appellant did not do that.

In this connection, the law is that those grounds of appeal so couched, alleging error, especially of law, without setting out the particulars of error of law, are rendered inadmissible and will therefore not be considered by an appellate court.

The Supreme Court held in the case of **Dahabieh v. S. A. Tarqui & Brothers [2001-2002] 1 GLR 171, SC. holding 1**, that:

> "(1) the intention behind the requirement of rule 6 of the Supreme Court Rules, 1996 (CI 16) that where an appeal was on the ground of error of law, the appellant should specify the subject of the complaint in the ground of appeal and indicate the stage of the proceedings at which it was first raised was to narrow the issues on appeal and shorten the hearing. By specifying the error made by the lower court or by disclosing whether or not a point at issue had earlier on been raised, both the court and counsel for the respondent would be enabled to concentrate on the relevant parts of the evidence in the record of proceedings and not waste time on irrelevant parts of the evidence. Accordingly, since the appellant failed to indicate where the judgment of the Court of Appeal was wrong in law, that ground of appeal would be dismissed. Dictum of Kpegah JA (as he then was) in Zabrama v Segbedzi [1991] 2 GLR 221 at 226, CA approved.

On the same point, this Court also held in **Zabrama v. Segbedzi [1991] 2 GLR 221, CA. Holding 1**, and especially at pages 225-226 of the Report that:

> "(1) to state in a notice of appeal, as did the appellant's counsel, that "the trial judge misdirected himself and gave an erroneous decision" without specifying how he misdirected himself, was against the rules and rendered such a ground of appeal inadmissible. The implications of rule 8 (2) and (4) of the Court of Appeal Rules, 1962 (L.I. 218) was that an appellant after specifying the part of a judgment or order

> complained of, must state what he alleged ought to have been found by the trial judge, or what error he had made in point of law. It did not meet the requirement of those rules to simply allege "misdirection" on the part of the trial judge. The requirement was that the ground stated in the notice of appeal must clearly and concisely indicate in what manner the trial judge misdirected himself either on the law or on the facts. The rationale was that a person who was brought to an appellate forum to maintain or defend a verdict or decision which he had got in his favour should understand on what ground it was being impugned. Therefore as the ground of appeal alleging the misdirection failed to meet the required standard, it was clearly inadmissible."

The said grounds of appeal, i.e. contained in Grounds IV(A) and IV(B), are both inadmissible and incompetent, and are therefore dismissed.

In conclusion, the Appellant has not been able to convince us on any of the grounds of appeal for us to allow same. We therefore dismiss all the grounds of appeal argued and urged by the Appellant. We affirm the judgment of the trial High Court in its entirety. We award costs of GHC10,000 against the Appellant.

SGD

……………………………..

JUSTICE OBENG-MANU JNR

(JUSTICE OF THE APPEAL COURT)

SGD

I AGREE ……………………………………

JUSTICE SENYO DZAMEFE

(JUSTICE OF THE APPEAL COURT

SGD

I ALSO AGREE **………………………….**

JUSTICE MERLEY A. WOOD (MRS)

(JUSTICE OF THE APPEAL COURT)

Counsel:

Nathan P. Yarney, Esq. for Defendant/Appellant

Kwesi Baffoe Intsiful, Esq. for Plaintiff/Respondent