

IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA - AD 2021

CORAM: KWOFIE, JA (PRESIDING)

OBENG-MANU JNR, JA

KOOMSON, JA

SUIT NO. H1/196/2020

DATE: 15TH APRIL, 2021

RICHARD KWAME BANNI ... PLAINTIFF /RESPONDENT

VRS

1. ISAAC ACQUAYE PAPPOE

2. CALVARY BAPTIST CHRUCH DEFENDANT/APPELLANT

J U D G M E N T

KOOMSON JA:

This is an interlocutory appeal from the ruling of the Circuit Court, Amasaman dated 17th December, 2019. In the said ruling, the trial Circuit Judge dismissed the Defendant/Appellant's motion praying for an order to set aside the Plaintiff/Respondent's writ of summons and statement of claim on the ground that the value of the subject- matter of Plaintiff/Respondent's writ of summons is in excess of the monetary jurisdiction of the court below.

In this judgment, the 1st Defendant/Appellant shall be referred to as “the 1st Defendant” and the Plaintiff/Respondent also referred to as “the Plaintiff.

By a writ of summons and a statement of claim dated 18th July, 2019, the Plaintiff claimed against the Defendants the following reliefs:

- a. Declaration of title to the land described in paragraph 4 of the statement of claim.*
- b. Recovery of possession*
- c. Damages for trespass.*
- d. Perpetual injunction restraining Defendants from interfering with the peaceful enjoyment of Plaintiff's land by themselves, their agents, privies, assigns, workmen, etc.*
- e. Cost*

On the same date, the plaintiff filed on Application for interlocutory injunction. On 31st July, 2019, the 1st Defendant entered a Conditional Appearance through his lawyer. The 2nd Defendant also entered appearance through its lawyer on 2nd August, 2019 and filed s statement of defence on 9th August, 2019. The 2nd Defendant filed an affidavit in opposition to the injunction application on 12th September, 2019. On 16th September, 2019, the 1st Defendant filed a statement of defence and an affidavit in opposition to the application for injunction. On the 29th October, 2019 the 1st Defendant then filed an application for an order to set aside the Plaintiff's writ of summons and statement of claim on the ground that the value of the land the subject - matter of the Plaintiff's writ of summons is in excess of the monetary jurisdiction of the Circuit Court. This application was resisted by the Plaintiff.

In his affidavit in support, the 1st Defendant deposed that he engaged the services of an expert surveyor to value the land in dispute together with his carpentry workshop and (2) two-storey uncompleted showrooms structure on the land. The 1st Defendant deposed further that the value of the land was USD 60,200.00 with its cedi equivalent stated as GH¢329,000.00. The Plaintiff opposed the 1st Defendant's application on the ground that his claim was for the above land and not the structures on the land, which monetary value is within the jurisdiction of the Circuit Court. The Plaintiff further argued that the report presented by the 1st Defendant was self-serving since the Court had not ordered for the valuation of the property in dispute. The Plaintiff further argued that when the jurisdiction of a Court is challenged in terms of the value of the subject-matter of the suit, the proper thing to do was for the Court to take evidence and when it is satisfied that it has no jurisdiction, it will refer the matter to the Chief Justice for the suit to be transferred to the appropriate Court and not to be set aside or dismissed.

Although the trial judge in her ruling found that the application was not properly laid before the court, she nonetheless went ahead and considered same on the merits. In the end, the Court below dismissed the application in the following words:

“Based on the foregoing, the jurisdiction of the Circuit Court in land disputes is not limited in monetary terms. This court has jurisdiction in this matter, and I rule accordingly. The Application is dismissed.”

Dissatisfied with the ruling of the learned trial Judge, the 1st Defendant filed this interlocutory appeal with the leave of the Circuit Court, on the following grounds:

- a. *That the ruling is against the weight of the evidence.*
- b. *That the judge erred in law when she ruled that under section 42 (1) (a) (iii) of the Courts Act, 1993 (Act 459), the Circuit Court has jurisdiction to determine land matters irrespective of the value of the land.*

I would discuss the second ground of appeal out of turn. It is the argument of counsel for the 1st defendant that the combined reading of section 41(1) (a)(iii) and (3) of Act 459 as amended by the Court Amendment Rules, L.I. 2211, the Circuit court has monetary limitation on land matters for which the circuit court cannot entertain an action where the value of the land in dispute exceeds the monetary limitation imposed on the Circuit Court unless the parties mutually agree that the court should go ahead and hear the matter.

It is important to observe that counsel for the 1st Defendant committed, rather, a grievous error, when he relied on section 41(1)(a)(iii) of Act 459 instead of section 42(1)(a)(iii) of the said Act. This error appears in the written submissions filed by counsel for the 1st Defendant in this court on the 7th July, 2020. Counsel further relied on the case of Mr. & Mrs. AKOTO v. JOHN KADO & 3 ORS, dated 10/10/2020, a decision of this court in suit No. H1/285/2005. In that case, the Court of Appeal stated thus:

“From the reading of section 41(1)(a)(i) and (iii) and subsection (3) of the Act under reference, it is clear that the amount of ₦10m is not mentioned. The use of the words “where the amount claimed or the value of any land or property exceeds the amount or value specified in subsection (1) of this section (the emphasis is mine) can only refer to section 41 (1)(a)(iii) as well even though no figure is mentioned there. In interpreting this section, the whole of the section must be read

together or taken into consideration to arrive at the true intention of the framers of the law. If this is done then the submission of counsel for the Respondents cannot be accepted as the true and proper interpretation of section 4(1)(a)(iii) of the courts Act of 1993, Act 459, that there is no limitation whatsoever on the circuit court's jurisdiction with respect to ownership, possession, occupation and title to the land and for that matter the value of the property in dispute". See page 4 of the said judgment which appears at page 162 of the record of appeal.

It is my considered view that we are not bound by the decision of our esteemed Justices who delivered the decision in the case of Mr. & Mrs. AKOTO v. JOHN KADO & 3 ORS (supra) as the said decision was given *obiter*. It is observed that the relevant section of the Courts Act, 1993 (Act 459) as amended, that relates to ownership, possession, occupation and title to land, is the section 42 (1) (a) (iii) and (3) of the Act 459 as amended. For the avoidance of doubt the section is reproduced as follows:

"42 - Jurisdiction of Circuit Courts in civil matters.

(1) The civil jurisdiction of a Circuit Court consists of the following-

(a) Original jurisdiction in civil matters -

- (i) in personal actions arising under contract or tort or for the recovery of any liquidated sum, where the amount claimed is not more than ₦100 million;*
- (ii) in actions between landlord and tenant for the possession of land claimed under lease and refused to be delivered up;*
- (iii) in [causes and matters] involving the ownership, possession, occupation of or title to land;*
- (iv) to appoint guardians of infants and to make orders for the*

custody of infants;

- (v) to grant in any action instituted in the court, injunctions or orders to stay waste, or alienation or for the detention and preservation of any property the subject matter of that action or to restrain breaches of contract or the commission of any tort;*
 - (vi) in claims or relief by way of interpleader in respect of land or other property attached in execution of an order made by a Circuit Court;*
 - (vii) in applications for the grant of probate or letters of administration in respect of the estate of a deceased person, and in causes and matters relating to succession to property of a deceased person, who had at the time of his death a fixed place of abode within the area of jurisdiction of the Circuit Court and the value of the estate or property in question does not exceed ₦100 million, and*
- b) any other jurisdiction conferred by this Act or any other enactment.*
- 2) Where there is a dispute as to whether or not an amount of money claimed or the value of property in an action, [cause or matter] is in excess of the amount or value specified in subsection (1), in relation to that action, [cause or matter], the Circuit Court shall call evidence as to the amount or value, and if it finds that it exceeds the amount or value specified in subsection (1), the Circuit Court shall transfer the case to the High Court.*
- (3) Where the amount claimed on the value of any property*

exceeds the amount or value specified in subsection (1) of this section the Circuit court shall, notwithstanding that subsection, proceed to hear the case if the parties agree that it should do so.

Now, the section 42 (1) (iii) of Act 459 clearly does not provide for any value in respect of ownership, possession, occupation of or title to land. The section 42 (3) cannot therefore be stretched to cover all the sub-paragraphs under subsection (1) of the section 42. My understanding of the subsection (3) in relation to section 42 (1) of the Act is that, where a monetary value has been specified under 42 (1), then, there is a monetary limitation for which the subsection (3) will apply. However, where there is no monetary value as in 42 (1) (a) (ii) (iii) (v) and (vi), then the Circuit Court's jurisdiction is at large and not limited.

Furthermore, sight must not be lost to the wording of the subsection (3) so as to determine the context in which it has been used. The subsection (3) begins with the phrase " where the amount claimed or **the value of the property exceeds the amount specified**" (**emphasis supplied**), it is my considered view that the court should give the phrase its natural meaning as has been used in the provision of the statute: see **TUFFOUR v ATTORNEY- GENERAL [1980] GLR 637**. If the Legislature intended to place a limitation on the jurisdiction of the Circuit Court in relation to the ownership, possession, occupation of or title to land as provided for under 42 (1) (a) (iii), it would have specifically stated so. It appears that counsel for the 1ST Defendant in his attempt to persuade this court was in a haste and continued to commit more errors. Counsel submitted that the whole of section 41 of the Act 459 as amended by L.I 2211 must be read together to

ascertain the intention of the framers of the law and if so read together, it would be clear that there is a monetary limitation of Fifty Thousand Ghana cedi on the Circuit Court in matters involving ownership, possession, occupation of or title to land.

With all due respect to counsel for 1ST Defendant, this is a misconception. The section 41 simply provides that: “Without prejudice to subsection (3) of section 40, the Chief Justice, or a Justice of the Superior Court of Judicature nominated by the Chief Justice, may sit as a Circuit Court Judge.” The fact is that the amendment was in respect of section 42 but not 41. Again, the amendment related to the 42 (1) (a) (i) of the Act 459, which provided as follows:

“2. The Courts Act, 1993 (Act 459) referred to in these Regulations as the principal enactment is amended in subsection (1) of section 42 by the substitution for

(a) subparagraph (i) of paragraph (a) of

(i) in personal actions arising under a contract or a tort, or for the recovery of a liquidated sum of money, where the amount claimed does not exceed fifty thousand cedis; and

(b) subparagraph (vii) of paragraph (a) of

(vii) in applications for the grant of probate or letters of administration in respect of the estate of a deceased person, who had, at the time of death a fixed place of abode within the area of jurisdiction of the Circuit Court and the value of the estate or property does not exceed fifty thousand Ghana cedis;”

It is my considered opinion that the correct position of the law is as decided by this court in the case of **THE REPUBLIC v THE REGISTRAR, CIRCUIT COURT, AGONA SWEDRU; EX-PARTE, MOHAMMED**

MUSTAPHA; PAUL GAYINA & 2 ORS (INTERESTED PARTIES) [2012] DLCA 7752, where it was held that :

“The law has not fixed any ceiling for the Circuit Court in causes or matters involving the ownership, possession, occupation of or title to land and the High Court was right when it refused to quash the decision of the Circuit Court on that ground.”

This ground of appeal accordingly fails.

I now turn to the first ground, that is, “the judgment is against the weight of the evidence.”

An appeal is by way of rehearing and rehearing means having a look at and taking into consideration all the relevant evidence on record. The appellate court, so far as appeals are concerned, is virtually in the same position as if the rehearing were the original hearing and may review the whole case and not merely the points as to which the appeal was brought. **See MAMUDU WANGARA v GYATO WANGARA [1982/83] GLR 369; KOGLEX LTD (No. 2) v FIELD [2000] SCGLR 175.**

In the case of **REPUBLIC v CONDUAH (substituted by Asmah) [2013/2014] 2 SCGLR 1032**, the apex court, at the holding (2) of the report held that:

“(2) The effect of an appeal on the ground that “the judgment is against the weight of evidence” was to give jurisdiction to the appellate court to examine the totality of the evidence before it and come to its decision on the admitted and undisputed facts.

In the instant case, the appellant, by that ground of appeal, was implying that there were pieces of evidence on record which, if applied properly or correctly, could have changed the decision in his favour; or that certain pieces of evidence had been wrongly applied against him. The onus in such an instance was on the appellant to clearly and properly demonstrate to the appellate court, the lapses in the judgment being appealed against...”

In the instant case, the court, having analyzed the evidence on record and the submissions filed by the parties, is of the opinion that the matters which requires consideration under this ground of appeal have been given consideration under the second ground of appeal. The court is minded not to embark on a journey of repetition. It is my considered opinion that the trial Circuit Court Judge did not err when she concluded and held that “the jurisdiction of the Circuit Court in land dispute is not limited in monetary terms” and accordingly dismissed the 1ST Defendant’s application.

For the foregoing reasons, I find no merit in the appeal. Same is accordingly dismissed in its entirety.

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**GEORGE K. KOOMSON
(JUSTICE OF THE COURT OF APPEAL)**

SGD

I AGREE

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HENRY KWOFIE

(JUSTICE OF THE COURT OF APPEAL)

SUPPORTING JUDGMENT

OBENG-MANU JNR, JA

I have had the benefit of reading the lead judgment of my brother Koomson JA, in draft. I agree entirely with his reasoning and conclusion. I, however, wish to add a few words of my own.

My brother has fully set out the facts of this case in his judgment. I have nothing useful to add by way of the facts of this case.

On 22nd September, 1971, The Courts Act, 1971, (Act 372), received Presidential Assent after same had been passed by the Second Republican Parliament.

In the advent of the Fourth Republic, The Courts Act, 1971, (Act 372), was repealed. In its place, The Courts Acts 1993, (Act 459), was passed. The Long Title is as follows:

“AN ACT to incorporate into the law relating to the courts, the provisions of Chapter 11 of the Constitution; to provide for the jurisdiction of Regional Tribunals; to establish lower courts and tribunals, provide for their composition and jurisdiction; to consolidate and reenact the Courts Act 1971 and to provide for connected purposes”.

This Act received Presidential Assent on 6th July 1993.

Section 41 of Act 459 provides as follows:

41. (1) The jurisdiction of a Circuit Court shall consist of the following

(a) original jurisdiction in civil matters-

- (i) in all personal actions arising under contract or tort or for the recovery of any liquidated sum where the amount claimed is not more than c10,000,000.00
- (ii) in all actions between landlord and tenant for the possession of land claimed under lease and refused to be delivered up;
- (iii) in all causes and matters involving the ownership, possession, occupation or title to land;
- (iv) to appoint guardians of infants and to make orders for the custody of infants;
- (v) to grant in any action instituted in the court, injunctions or orders to stay waste or alienation of for the determination and preservation of any property the subject matter of that action or to restrain breaches of contract or the commission of any tort;
- (vi) in all claims for relief by way of interpleader in respect of land or other property attached in execution of a decree made by a Circuit Court;
- (viii) in applications for the grant of probate or letters of administration in respect of the estate of a deceased person, and in causes and matters relating to succession to property of a

deceased's property, who had at the time of his death a fixed place of abode within the area of the jurisdiction of the court and the value of the estate or property in question does not exceed c10, 000,000.00; and

- (b) any other jurisdiction conferred by this Act or any other enactment.
- (2) Where there is a dispute as to whether or not any amount claimed or the value of a land or property in any action cause or matter is in excess of the amount or value specified in subsection (1) of this section in relation to that action, cause or matter, the circuit court in question shall call evidence as to the said amount or value and if it finds that it exceeds the amount or value specified in subsection (1), it shall transfer the case to the High Court
- (3) Where the amount claimed or value of any land or property exceeds the amount or value specified in subsection (1) of this section, the Circuit Court shall, notwithstanding that subsection proceed to hear the case if the parties agree that it should do so
- (4) The Chief Justice may by legislative instrument increase or reduce the amount or value specified in subsection (1) of this section.

42. *“A person aggrieved by a decision or Order of a Circuit Court may subject to the provisions of this Act and rules of Court, appeal to the Court of Appeal”*

ACT 459 was further amended by the Courts (Amendment) Act, 2002, (Act, 620). The Long Title of this Amendment Act states as follows:

“AN ACT to amend the Courts Act, 1993 (Act 459) to abolish the Circuit Tribunals; to replace the Community Tribunals with District Courts; to clarify the provisions which relate to offer of compensation or restitution; to revise levels of jurisdiction of the Circuit and District Courts and to provide for purposes related to these.”

This Act received Presidential Assent on 13th April, 2002.

By this Amendment Act, the original Sections 41 and 42 of Act 459 were repealed. In their place, the following new Sections 41 and 42 were inserted.

41. *“Without prejudice to subsection (3) of section 40, the Chief Justice or any Justice of the Superior Court of Judicature nominated by the Chief Justice may sit as a Circuit Court Judge*

42. (1) *The Civil jurisdiction of the Circuit Court consists of the following--*

a) Original jurisdiction in civil matters—

- i. *In personal actions arising under contract or tort or for the recovery of any liquidated sum, where the amount claimed is not more than c100 million;*
- ii. *In actions between landlord and tenant for the possession of land claimed under lease and refused to be delivered up;*
- iii. *In causes and matters involving the ownership, possession, occupation of or title to land;*
- iv. *To appoint guardians of infants and to make orders for the custody of infants;*
- v. *To grant any action instituted in the Courts, injunctions or Orders to stay waste or alienation or for the detention or preservation of any property the subject matter of that action or to restrain breaches of contract or the commission of any tort;*
- vi. *In claims of relief by way of interpleader in respect of land or other property attached in execution of an order made by a Circuit Court*
- vii. *In applications for the grant of probate or letters of administration in respect of the estate of a deceased person and in causes and matters relating to succession of property of a deceased person who had at the time of his death a fixed place of abode within the area of jurisdiction of the Circuit Court and the value of the estate or property in question does not c100 million; and*

b) *Any other jurisdiction conferred by this Act or any other enactment.*

(2) Where there is a dispute as to whether or not any amount

claimed or the value of any property in any action cause or matter is in excess or amount or value specified in subsection (1) of this section in relation to that action, cause or matter, the Circuit Court in question shall call evidence as to the said amount or value and if it finds that it exceeds the amount or value specified in subsection (1) it shall transfer the case to the High Court.

(3) Where the amount claimed or the value of any property

exceeds the amount or value specified in subsection (1) of this section, the Circuit Court shall, notwithstanding that subsection, proceed to hear the case if the parties agree that it should do so.

(4) The Attorney-General may by legislative instrument amend

the amount or value specified in subsection (1) of this section”.

Counsel for 1st Defendant/Appellant in arguing the appeal in written submissions quoted extensively the provisions of section 41 (a) (i) and (iii) and relied on it as the basis of his arguments. As can be seen above, section 41 of Act 459, has been repealed. In its place, a new section 41 was reenacted by Act 620. This new section 41 has no bearing whatsoever on the civil jurisdiction of the Circuit Court. The new section 41 of Act 620 which replaces the original section 41 of Act 459 only provides for the Chief Justice or any Superior Court Judge nominated by the Chief Justice to sit as a Circuit Court Judge. In this connection, all the arguments canvassed by learned counsel for the 1st Defendant/Appellant in support of ground “B” fall flat. It is for this reason that we dismiss ground “B” on the grounds of appeal.

GROUND A of the grounds of appeal is to effect that the ruling is against the weight of evidence. The 1st Defendant/Appellant contends that upon being served with the writ of summons, he realized that the value of the

land in dispute was in excess of the monetary value of GH¢50, 000.00 conferred on the Circuit Court by law. He unilaterally commissioned a valuer to value the land together with the structures thereon, the value of the property came to USD \$60, 200.00 whose equivalent in Ghana Cedis is GH¢ 329, 000.00. To him, this amount is over and above the jurisdiction of the Circuit Court. Be that as it may, the law is clear that it is for the Court, *qua* court not the party, to call evidence to ascertain the monetary value of the land in dispute. In this connection, for the 1st Defendant/Appellant, to unilaterally cause a valuation of the land in dispute without involving the Plaintiff or the Court is contrary to the law and renders the valuation report unacceptable. The monetary value thus placed on the disputed land cannot therefore be acceptable to the Court or to the Plaintiff/Appellant. That unilateral valuation cannot therefore be used oust the jurisdiction of the Circuit Court.

The learned trial Circuit Court Judge was right when she held that under section 42 (2) and (3) of the Courts Act 1993 (Act 459) (as amended) there is no jurisdictional ceiling in causes or matters involving the ownership, possession and occupation of or titled to land. Although the learned trial Circuit Court Judge did not cite the Amendment Act by name i.e., Act 620, she did quote the correct provision i.e., section 42 which is the current enactment in force as opposed to section 41 which is the repealed section contained in Act 459. For this reason, we dismiss Ground A on the grounds of Appeal.

Learned counsel for 1st Defendant/Appellant cited the case of **MR and MRS Akoto vs John Kado and 3 ORS Civil Appeal NO H1/285/2005 (CA Unreported)** dated 10th July, 2008 to buttress his case. In particular he quoted the following passage from the judgment

“...From the reading of section 41[1][a] [i and iii] and subsection 3 of the Act under reference, it is clear that the amount of c10 m

mentioned in section 41[1][a][i] also refers to section 41 [1][a][iii] even though the figure of c10 m is not mentioned. The use of the words “Where the amount claimed or the value of any land or property exceeds the amount or value specified in subsection [1] of this section [the emphasis is mine] can only refer to section 41[1][a][iii] as well even though no figure is mentioned there. In interpreting this section, the whole of the section must be read together or taken into consideration to arrive at the true intention of the framers of the law. If this is done, the submission of the counsel cannot be accepted as the true and proper representation of section 41[1][a][iii] of the Courts Act of 1993, Act 459, that there is no limitation whatsoever on the circuit court’s jurisdiction with respect to ownership, possession, occupation and title to land and for that matter the value of the property in dispute.”

By provisions of Article 136(5) of the 1992 Constitution, the Court of Appeal is bound by its own previous decisions on questions of law. Article 136 (5) of the Constitution states that:

“136 (5) Subject to clause (3) of article 129 of this Constitution, the Court of appeal shall be bound by its own previous decisions; and all courts lower than the Court of Appeal shall follow the decisions of the Court of Appeal on questions of law”.

However, this clause is made subject to Article 129 of the Constitution. The relevant clauses of Article 129 of the Constitution are as follows:

“129. (1) The Supreme Court shall be the final court of

appeal and shall have appellate and other jurisdiction as may be conferred on it by this Constitution or by any other law.

(2) The Supreme Court shall not be bound to follow the

decisions of any other court.

(3) The Supreme Court may, while treating its own

previous decisions as normally binding, depart from a previous decision when it appears to it right to do so; and all other courts shall be bound to follow the decisions of the Supreme Court on questions of law.”

A combined reading of Articles 136(5) and 129 of the 1992 Constitution establishes a clear pattern of judicial precedent. Our apex court is not bound to follow the decision of any other court. While treating its own previous decisions as normally binding, it may depart from a previous decision when it appears to it a right to do so; and on questions of law, all other counts shall be bound to follow their decisions.

The Court of Appeal is therefore bound to follow the decisions of the Supreme Court on questions of law. The Court of Appeal is however bound to follow its previous decisions on questions of law. Where the previous decision of the Court of Appeal is not the *ratio decidendi*, the Court of Appeal will not be bound to follow it. For instance, if a *dictum* or *dicta* contained in a previous decision or judgment of the Court of Appeal is *obiter*, the Court of Appeal will not be bound to follow it.

The quotation from the case of **MR and MRS Akoto vs John Kado and 3 ORS Civil Appeal NO H1/285/2005 (CA Unreported)** cited above is not binding on this Court because it is *obiter*. In that case, the Appellant was one of the Defendants whose sibling sold a house to the respondents. The Appellant was one of the family members living in the house. When he was served with a notice to quit, he resisted it. Upon being sued in the Kumasi Circuit Court for among others recovery of possession, he resisted the claim and counter-claim for the following:

1. *A declaration that House NO Plot 11 Block X New Amakom EXT. Kumasi is family property and defendants are owners in possession.*
2. *An order cancelling or setting aside the purported assignment between William Frank Idun and Mr. and Mrs. Akoto dated 26-7-99 as null and void.*

The matter went through a full trial with the Plaintiff calling four witnesses. Each of the four defendants testified and they called two witnesses. At the end of the trial, judgment was entered in favour of the Plaintiffs for the reliefs endorsed on their writ of summons. The defendants were ordered to settle the water bill and any other outstanding utility bills. The counter claim of the Defendants was dismissed and the plaintiffs were awarded cost of c 2,000,000.00 m. The defendants appealed against the judgment and argued that as at the time of the delivery of the judgment of the Circuit Court, the upper limit of Circuit Court in land matters was c 10, 000,000.00 m. However, the land/house was sold to the defendants for c 85,000,000.00m which was clearly above the jurisdiction of the Circuit Court. They therefore contended that as there was nothing on the record to show that the parties agreed to expressly confer jurisdiction on the trial Circuit Court to try the case in spite of the value of the property which exceeded the jurisdiction of the court, the judgment ought to be set aside for lack of jurisdiction. Among the reasons for dismissing the Appellant's appeal are that:

"...First, even where there is absence of jurisdiction, the supervisory court still has a discretion to grant or refuse the remedy unless the Applicant establishes that he was unaware of the absence of jurisdiction in the inferior court and therefore did not raise objection thereto. [The emphasis is mine] Secondly, where excessive delay by the Applicant makes the proceedings brought oppressive and an abuse of the courts process, the

court can decline to exercise its jurisdiction over such proceedings”.

These were quoted from the Supreme Court case of **Ampofo vs Samanpa 2003-2004 SCGLR 1153**.

Continuing with the judgment, the Court of Appeal gave its main reason for dismissing the Appellant’s appeal as follow:

“.... Relating the case cited supra to the case under consideration, the Appellants in this case cannot say they were unaware of the absence of jurisdiction in the circuit court. This is more so when respondent only sued for the ejection and recovery of possession of the rooms being occupied by appellants and mesne profits. It was the appellants who counter-claimed for the ownership of the whole property. It would be an abuse of the court process to turn round and claim that the court did not have their consent to hear the claim they themselves took to it. This is so especially when one considers that a counterclaim is a fresh action. From the foregoing this ground of appeal fails and same is dismissed”.

Clearly therefore, this Court is not bound by the *obiter dicta* contained in its previous decision in **MR and MRS Akoto vs John Kado and 3 ORS Civil Appeal NO H1/285/2005 (CA Unreported)**.

We find no merit in the Appellant’s appeal and the same is accordingly dismissed.

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**JUSTICE OBENG-MANU (JNR), JA
(JUSTICE OF THE COURT OF APPEAL)**

COUNSEL:

PETER ANTONIO FOR 2ND DEFENDANT/APPELLANT

FITZ-WILLIAM BOATENG FOR 1ST DEFENDANT/APPELLANT