IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA – GHANA

A.D. 2022

CORAM: *V. D. OFOE, JA (PRESIDING)*

MERLEY WOOD (MRS.), JA

ERIC BAAH, JA

SUIT NO.: HI/222/2021

DATE: 8TH JUNE 2022

EBENEZER OBENG DOMPREH - PLAINTIFF/APPELLANT

VRS

ANGLOGOLD ASHANTI GHANA (LTD) - DEFENDANT/RESPONDENT

JUDGMENT

V. D. OFOE

The plaintiff/ appellant who we will refer to in this judgment as the plaintiff sued the defendant in the trial High Court claiming by his writ of summons issued on the 21st of October 2015 the following:

a. ***Recovery of cash the sum of GH¢3,654,000.00 being cost of the construction of six fish ponds stocked with fish as well as expected income from the fish ponds as at October 2012.***

b. ***Interest on the said sum of GH¢3,654,000.00 at the prevailing commercial Bank Lending Rate from October 2012 until final date of payment***

c. ***General Damages for trespass***

The basis of his claim in substance is that after he had borrowed monies at 25% interest and successfully built 6 fish ponds in Obuasi, specifically Adansi Diawuoso before 1st May 2012, one Andy, an officer of the defendant company accompanied by a surveyor and his team on the direction by the defendant carried out survey of crops and structures in the area for compensation to be paid to persons who will be affected by mining operations of the defendant company. As part of this exercise the defendant indeed took over his fish ponds. He was requested by a staff of the defendant company to submit estimates for the compensation payment. He did that but the defendant has refused to compensate him despite the intervention of the Ministry in charge of Mines. Plaintiff provided the particulars of his claim. We will reproduce them as pleaded. In paragraph 5 of his pleadings he has the following

PARTICULARS

a. "Cost of Acquisition of land and 2 bottles of Schnapps - GH¢10,000.00

b. Construction of 6 fish ponds at GH¢3,500.00 - GH¢21,000.00

c. Preparation for stocking of fish

i. Liming and its transportation - GH¢700.00

ii. Manuring and its transportation - GH¢300.00

d. Stocking Catfish Fingerlings in 6 Fish Ponds;

Stocking catfish fingerlings @ 3,000 pieces per

Pond – 18,000.00 pieces at GH¢1.00 per unit cost - GH¢18,000.00

e. Stocking Mixed Sex Tilapia Fingerlings in 6 fish ponds;

i. Stocking of mixed sex tilapia fingerlings

At 30kg per pond – 3,000 pieces

ii. Quantity of mixed sex tilapia fingerlings used

- *18,000 pieces*

iii. Cost of mixed sex tilapia fingerlings per kg GH¢6.00

iv. Total cost of mixed sex tilapia fingerlings - GH¢1,080.00

f. Transportation of Tilapia and Catfish Fingerlings

v. Transportation of Mixed Tilapia Fingerlings -GH¢400.00

vi. Ice cubes, Polythene bags, Oxygen, Rubber bands - GH¢200.00

vii. Transportation of Catfish fingerlings - GH¢400.00

g. Feed and Feeding of Tilapia and Catfish Polyculture System

Local formulated feeds were used in feeding the fishes in the ponds

Total cost of GH¢280.00 per month for 5-months - GH¢1,400.00

h. Labour

Four (4) Employees @ GH¢200.00 per person for 5 months - GH¢4,000.00

GRAND TOTAL COST OF PRODUCTION FROM _____

1ST MAY, 2012 TO 30TH SEPTEMBER, 2012 - GH¢57,500.00

Then in paragraph 10 of his pleadings he has the following

i. ***Quantity of Tilapia stocked - 18,000 pcs***

Average weight at one (1) year - 500g

Total weight of Tilapia @ 1 year - 9,000kg

One (1) kg of Tilapia - GH¢8.00

TOTAL Returns on Tilapia = GH¢72,000.00

ii. ***Quantity of Catfish stocked - 18,000 pcs***

Average weight at one (1) year - 3g

Total weight of Catfish @ 1 year - 54,000kg

One (1) kg of Catfish - GH¢8.00

TOTAL Returns on Tilapia = GH¢732,000.00

iii. ***Production of Catfish fingerlings – 9,000 females (Production) x 250 pieces each***

= 2,250,000 pieces @ GH¢1.00 per fingerling

. Average weight per one – 100 gms

iv. ***Production of Mixed Sex Tilapia – 9,000 females (Production) x 100 pieces***

each = 900,000 pieces @ GH¢1.00 per fingerling

. Average weight per one – 167 gms

= GH¢ 900,000.00

Total expected Catfish/Tilapia Fingerlings –

GH¢3,150,000.00

GRAND TOTAL OF RETURNS ON TILAPIA

AND CATFISH - GH¢3,654,000.00

The plaintiff insists that he is entitled to these amounts.

In paragraph 18 of the pleadings he averred

> ***"18. The findings of the Mineral Commission disclosed that the plaintiff's fish pond were located outside the defendant's mining lease. The defendant therefore trespassed".***

His contention her is that his fish ponds did not fall within the concession of the defendant. Defendant therefore committed trespass to his land.

The defendant does not deny the existence of the plaintiff's fish ponds. Its case is that after meeting the community, including chiefs and persons who will be affected by the mining operations in the area, they agreed on a cut off date of 30th June 2012. Their inspection team however noticed the plaintiff had hurriedly constructed the ponds to

fall within the cut off date to enable him unjustifiably claim compensation from the defendant. In other words the pond was constructed speculatively to enable plaintiff claim compensation from the defendant. It is for this reason they were not ready to compensate the plaintiff. They maintain that the plaintiff's pond was in their concession and therefore committed no trespass to plaintiff's land as the plaintiff contends. Also denied is the plaintiff's claim that their officer requested the plaintiff to submit estimates which they received to form the basis for compensating the plaintiff. As regards the job itself the defendant does not deny working also outside their concession but they did that after engaging the allodia owners of those lands i.e. the Dompoase Divisional Council and the elders of the Diawuoso community. The company couldn't therefore had trespass unto any persons land.

Reading paragraph 5 and 7 of their defence the defendant was very clear in denial of the plaintiff's paragraph 5 and 10 which provided the particulars of his claim quoted above.

In all 16 issues were set for trial but the trial judge with the following reasons accepted two (2). He stated:

> ***"As earlier stated many of the issues raised are irrelevant and do not go to the core of what the court is called upon to make a determination on. Indeed it is the policy of the law that only those issues which are germane to the determination of a case which must be decided by the court and not irrelevant issues although the parties might have led evidence on them".***

Relying on the case of ***Domfe vrs Adu (1984-86)1GLR653*** he continued

> ***"… The rule establishes further that the trial judge was not required to make findings of fact in respect of irrelevant matters on which the parties had led evidence when such findings would not assist in the determination of the issues***

involved in the case. Applying the above stated principles to the instant case, my view is that the germane issues for determination in this case which can be gathered from the pleadings and the evidence offered in this case are primarily only two"

Accordingly he set

1. Whether or not the plaintiff constructed the fish ponds before May2012 or around September 2012 "on the land" the defendant's own witness testified he was asked to stop because it was speculative and
2. Whether the plaintiff is entitled to his claim as endorsed on the writ of summons

as the issues worth his attention.

After both parties had testified with their witnesses the trial judge found it more probable on the evidence that the plaintiff constructed the fish ponds before May 2012 within the operational area of the defendant and that was before the defendant's cut of date June 30, 2012. He thus rejected the defendant's contention that the fish ponds were constructed by the plaintiff purposely to claim compensation from the defendant.

There was this disagreement between the parties whether an officer of the defendant company requested the plaintiff to submit estimates to him for the purpose of compensation payment. Plaintiff insisted that the defendant's officer Mr Elton after visiting the fish pond site and making the appropriate verification told him to submit his estimates of the loss to be incurred when the defendant takes over fish pond site. He accordingly prepared the estimates and submitted same to the officer. The defendant denied this story of the plaintiff. The trial judge was however convinced on the evidence that the defendant's officer did ask for the said estimates and same was given to him.

As regards the monetary claim of the plaintiff the trial court accepted the evidence based on exhibit A that the plaintiff did pay the amount of GH¢10,000.00 evidenced on that receipt for the land on which he constructed the fish pond and therefore deserved refund. Exhibit A is the lease document plaintiff had from his lessor. He accepted also the expenditure of GH¢19,080.00 made by the plaintiff in purchasing fingerlings for the fishpond. This expenditure is evidenced by exhibit C. He however rejected expenditures stated on exhibit B made by the plaintiff in respect of monies he claimed he borrowed to start the fishpond business. They were rejected with the reason that the amount mentioned as loan could have been taken for any other business and not the fish pond business. To the trial judge there was no nexus between the loan and the fishpond it was not save to accept that expenditure as credible evidence in support of that claim. Also rejected was estimated expenditures mentioned in exhibit E. Exhibit E contains estimates with same particulars as pleaded in paragraph 5 and 10 of the statement of claim (quoted above) It will make our opinion clearer if we quote in extensor the reasoning of the trial judge in this area of his judgment. This is a critical area for the plaintiff's case. At page 23 of his judgment found at page 21 of the record of appeal he stated

> ***"My findings above notwithstanding, can it really be said that the plaintiff has established on the balance of the probabilities his claim in terms of the sum endorsed on the writ? In my view, while I have no problem relying on exhibits A and C in my assessment of the plaintiff's claim I have difficulty accepting exhibits B and E in assessing plaintiff's claim. The manner of preparation of exhibit E in particular weakens the probative value as a document which this court should accept as relevant and reliable. Save the fact that it has September 30, 2012, there is no indication that it was the document submitted to Mr Elton.***

For instance if it was a copy submitted, why was it not stamped? Also, there is no indication as to how the plaintiff arrived at the figures stated thereon. In simple terms am unable to accept same as a copy of the estimates submitted to the defendant company through Mr Elton. I am of the view that exhibit E fails to meet the accepted legal threshold and reliability for same to be accepted by this court because it is simply a self- serving document and therefore place no weight on it".

Plaintiff's financial claims hinged mainly on exhibit E. Having discounted and discredited this exhibit but have found that the plaintiff indeed constructed a fish pond which was destroyed by the defendants, just that he failed to lead sufficient evidence in support of the claim, the trial judge proceeded on the basis of equity and good conscience to award him general damages as compensation for the loss. He was clear in his judgment that the award was not for trespass since to him the defendant was a concession owner with license to work within the concession and therefore cannot be liable for trespass. The compensation he awarded was under the following heads:

1. ***Payment on the money spent to acquire the land- Exhibit A***

   GHC 10,000

2. ***The payment of the money on exhibit C- GHC19,080.00***

3. ***GHC10,000 for one fish pond. Therefore the six ponds total-GHC60,000.00 as general damages for the destruction of the ponds***

The plaintiff is aggrieved at the rejection of exhibit E and the awards made to him by the trial court and has appealed to us praying we set aside the judgment and enter judgment in his favour. The grounds of appeal are:

"a. The judgment is against the weight of evidence

b. The court erred when it established as a fact that the plaintiff's act was not speculative yet it failed to award him his relief on cost of production as well as the estimated income on his project

c. The court erred by establishing that plaintiff's fish ponds were located within the defendant's mining concession

d. The court erred by saying that there is no indication as to how plaintiff arrived at the figures stated in exhibit E thereby denying him of his reliefs"

Before proceeding we remind ourselves of our duty in this appeal which statutorily is a rehearing demanding that we analyze the whole of the appeal records taking into consideration both oral and documentary evidence adduced at the trial and having regard to the relevant laws as applied to the evidence to satisfy ourselves the trial judge came to a right decision. And where an appeal contains the ground that the judgment is against the weight of evidence a duty is cast on the appellant to demonstrate from the evidence adduced at the trial that the trial judge failed to apply the evidence properly and that had occasioned a miscarriage of justice. The case of ***Tuakwa Vrs Bossom (2001-2002) SCGLR61*** explains this principle. We may refer also to other cases like ***Abbey vrs Antwi (2010) SCGLR 17, Brown vrs Quarshigah (2003-2004) SCGLR 930.***

In appeal situations it is also necessary to bear in mind that findings of fact made from evidence adduced at the trial by the trial court demands utmost respect and should be interfered with only where it is not supportable by the evidence on record. For further expatiation of this principle we refer to few cases of ***In re Okine (Decd) and Another vrs***

Okine & Another (2003-2004) SCGLR 582, Agyenim Boateng vrs Ofori & Yeboah (2010) SCGLR 861, Koglex Ltd (No 2) vrs Field (2000) SCGLR 175.

We may now consider the appeal beginning with the hearing of submissions of the parties presented by their respective counsel

Arguing the grounds of appeal that the judgment is against the weight of evidence, counsel for the plaintiff submitted that there is adequate evidence for a finding that the estimates, exhibit E, was requested for by Mr Elton and same was handed over to him. Since the trial judge came to that same conclusion it was erroneous on his part to have denied the exhibit its credibility. Counsel further questioned the basis of the trial judge's description of exhibit E as self-serving document not worth any consideration. He argued that apart from the document not a self-serving document because it was tendered in evidence and the other party had the opportunity to test its credentials in cross examination, it is not the law that where a document is found to be self-serving that alone should be sufficient reason for denying it credibility and giving it no weight in assessing evidence. Concluding his submissions on this ground of appeal counsel queried what the trial judge meant by the exhibit E failed to meet the acceptable legal threshold and reliability for same to be accepted. It is the view of counsel that the plaintiff pleaded and particularized the special damages sufficiently as demanded by the rules of court it was erroneous for the trial judge to have refused to grant the claims as endorsed on the writ, particularly when the defendant in cross examination did not deny the contents of exhibit E which formed the basis of plaintiff's claim.

Reacting to these submissions of counsel for the plaintiff, counsel for the defendant concentrated on the failure of the plaintiff to prove the particulars of special damages he sought from the trial court. Tersely stated it is his submission that the plaintiff, even

though had pleaded and particularized his claims for the damages, led no evidence to substantiate his claims. To counsel therefore, the trial judge did not err in his judgment refusing the plaintiff his claims as endorsed on the writ. Some of the few cases he relied on for his submission on this point are ***Kubi & others vrs Dali (19884-86) GLR 501, Hasnem Enterprises Ltd vrs Electicity Corporation of Ghana(1992)2 GLR 250,***

Responding to the submissions on the issue of exhibit E being self serving counsel disagreed with the submission of the plaintiff's counsel that the exhibit was a court document that had gone through cross examination and therefore not self serving. In his view it is not a testimony in court but an out of court statement made by the plaintiff which he tendered in evidence to support his claim. It is a document prepared by the plaintiff himself for the purpose of projecting his interest. Such a document, counsel contended, is therefore a self-serving document the trial judge was entitled to deny it any weight.

There is this ground of appeal raised as to where exactly the fish ponds of the plaintiff is located. Were they located within the defendant's concession or outside it? It is counsel for the plaintiff's argument that the evidence was clear that the fish ponds fell outside the concession of the defendants and that this fact was admitted by the defendant's own witness Mr John Obuobi Agyei and confirmed in by the report submitted by the minerals Commission. It was wrong therefore for the trial judge to make a finding that the ponds fell within the operational area of the defendant company and therefore the defendant cannot be held for trespass unto plaintiff's land.

The defendant's counsel on his part lends support to the findings of the trial judge that the fish ponds fell within the operational area of the defendant. He relied on the cross examination results of the defendant's witness Mr John Obuoba Agyei for his

submission that the activities of the defendant was both within and outside the concession area the trial judge was right in his findings that the plaintiff's fish pond fell within the operational area of the defendant. A further submission of counsel was that the plaintiff was challenged on the pleadings and therefore tasked to establish by evidence that his ponds were outside the concession area of the defendant but he failed meet this challenge. Counsel argued further that since it is an action relating to land the plaintiff on the authorities like ***Nortey vrs African Institute of Journalism and Communications (No 2) (2013-2014) SCGLR 703*** was bound to lead evidence to establish the identity of land he is claiming and this includes the boundaries.

Finally argued by counsel for the plaintiff is the ground of appeal (b) which is to the effect that the court erred when it established as a fact that the plaintiff's act was speculative yet it failed to award him his relief on cost of production as well as the income on his project. It is the contention of counsel that since the trial judge found for the plaintiff that there was nothing speculative in the construction of the ponds what should necessarily follow was granting his claim on cost of production and income. The trial judge erred in refusing these awards to the plaintiff.

Reading the record of appeal, particularly the pleadings of the parties and exhibits tendered in the trial, one is tempted to believe that the plaintiff was making his claim for compensation under the processes provided for under the Minerals and Mining Act, Act 730. In fact his witness statement particularly from paragraph 14 to 24 attests to this fact. But in his paragraph 18 quoted above he appears to be making a claim in the tort of trespass contending that his fish ponds which were destroyed by the defendant were not located within the defendant's concession. The trial judge on the evidence found that the ponds fell within the operational area of the defendant and rejected the plaintiff's claim to trespass. We have read the records and we are inclined to endorse the

findings of the trial judge that the ponds were within the operational area as testified to by defendant's witnesses Nana Ampofo Bekoe and John Obuobi-Agyei. Read within the totality of the record of appeal, the effect of their evidence, which we accept, was that there was the concession granted the defendant but surrounding this concession were areas which in keeping with the environmental laws the Environmental Protection Agency directed the defendant to clear of debris (tailing materials) and this was part of the mining activity and mining area. The plaintiff's ponds therefore need not fall within the concession of the defendant for it to be part of the mining area-the operational area of the of the defendants-as found by the trial judge for compensation to be paid him like all other persons affected by the mining of the defendant in the area. It is not surprising that in the report from the Minerals Commission to the Minister of Lands and Natural Resources the report stated in part, found at page 60 and 61, as follows

> ***"iii. The assessment was being carried over a general area required to be cleaned of some waste rock debris deposition along the banks of the Pompo River over the years.***
>
> ***iv. The fish ponds were located in part of AGA's general environmental liability area where waste rock debris, allegedly deposited on the banks of River Pompo, were being cleaned; hence the need for the payment of compensation to all identified surface right owners"***

By this report the fish ponds were located within the defendant's general environmental liability area where there were waste rock debris. Our view on this issue is that the claim to trespass was properly rejected by the trial court.

Plaintiff maintains firmly that a Mr Elton visited his pond site and requested him to submit estimates of the cost he will incur when the pond sites are taken over by the

defendant. According to plaintiff he did submit these estimates as requested by Mr Elton. This was denied by the defendant. Exhibit E was the said estimates. Plaintiff's counsel contended in his submission that the trial judge appeared contradictory in his findings whether there was any such estimates submitted to Mr Elton. What was the nature of contradiction counsel has identified. At page 261 the trial judge stated

"I am persuaded and do accept and prefer the plaintiff's evidence to that of the Defendant and hold that an officer of the defendant requested the plaintiff to submit estimates to him and the plaintiff did"

Elsewhere he stated

"Save for the fact that it has a date of September 30, 2012, there is no indication that it was the document submitted to Mr Elton. For instance if it was a copy submitted, why was it not stamped?"

It is these coming from the trial judge that counsel alleges the inconsistency.

On reading the relevant parts of the record of appeal and these quoted words of the trial judge we find the contention of counsel for the plaintiff on this issue of inconsistency misconceived. As quoted from page 261 what he found was that there is no indication that the said exhibit E was what was submitted to Mr Elton because there was no stamp on it that will show that it was a copy given to Mr Elton. That is different from his conclusion that the plaintiff was asked to submit the estimates and he did

We however disagree with the trial judge on his allusion to photocopy and absence of stamping as some of his reasons for rejecting the exhibit E. The records disclose clearly that the plaintiff did submit his estimates to Mr Elton on his request. Since it was the plaintiff who submitted copy of his estimates to Mr Elton we do not see where absence of stamping on exhibit E comes in here for the trial judge to have that as one of his

reasons for rejecting the document. We understood the stamping to be the stamp of the defendant company. The evidence is not that the plaintiff is contending he had exhibit E from the defendant company for absence of its stamp on the exhibit to raise a reliability issue. He was contending that exhibit E is a copy he submitted to Mr Elton. We are of the view the trial judge erred in his views on this aspect of his assessment of the evidence as regards exhibit E.

There has been contending positions in respect of self-serving evidence creating the impression such evidence is of no value in a trial it should not engage the attention of the court. It was even contended that it is inadmissible. We are of the view that apart from such evidence being admissible it cannot be branded of no evidential value until its place within the entire evidence led in the proceedings is considered. Declaring a document as self-serving and on that basis alone rejecting it as valueless will be a questionable approach in assessing evidence. That a document is self serving alone is not sufficient reason for rejecting it as document without value. Indeed in the ***Agbosu & Others vrs Kotey & others (2003-2005) 1 GLR 685*** where a statutory declaration was found to be self serving the court stated that such a document is of no probative value where the facts contained in them are challenged or disputed and that the statutory declaration contained the facts which may be used to prove their title but it did not per se, whether the document was registered or not.

But it is necessary to have in mind that the trial judge had other reasons for finding exhibit E not reliable. One and very critical, in our view, is how the plaintiff came by exhibit E? How did he arrive at the contents of exhibit E? We do not see any admissibility problem with exhibit E as mentioned earlier in this opinion. It is the weight to attach to it that should engage us in this appeal. There is no doubt from the evidence of the plaintiff that exhibit E which he submitted to Mr Elton were estimates of

his expected compensation. Being estimates I believe it will be strange for the plaintiff to expect payment in total of these estimates. Unless it is his contention that the defendant's compensation assessment processes concluded and accepted to pay him all the estimates in exhibit E and therefore the defendant is estopped from denying liability for the whole estimated amount, the plaintiff has a duty to convince this court to order payment of the whole of the amount on exhibit E to him. In this judgment we have accepted that he indeed submitted exhibit E to Mr Elton but that alone should not qualify plaintiff for the payment of the whole amount on exhibit E. In any case the defendant refused to pay him the said amount and he has entered the court compensation assessment system requesting for the payment.

The trial judge stated in respect of the claim on the writ from page 261 to 262

> ***"From my evaluation of the evidence therefore, whilst it is my finding that the plaintiff has discharged his burden of proof and the evidential burden in the context of his claim that his constructed fish ponds were destroyed as a result of the project embarked upon by the defendant in my respectful view he has failed in totality discharging the burden that the defendant is liable to pay the amount stated on the writ of summons as the claim"***

He continued

> ***"But does the above findings mean that I should wring my hands in despair and lament that because the plaintiff failed to establish the figures endorsed on the writ of summons he should go home empty handed even though I have found that his six fish ponds which were constructed before the cut off date set and therefore ought to be compensated for same? I think equity and conscience dictate that I should not do so. It bears stressing that though this court is a***

court of law, it is also a court of equity. As explained by Abban JA (as he then was) in Domfe vrs Adu (supra) @ 666, where he judge sits as a court of law, he also sits as a court of equity and conscience"

He then proceeded to award the plaintiff general damages as compensation as follows:

"1. Payment of the money spent to acquire the land GH¢10,000

2 . The payment of the amount on Exhibit C-GH¢19,080.00

3 . GH¢10,000.0 for one fish pond. Therefore the six ponds total-GH¢60,000.00 as general damages for the destruction of the ponds

Total = GH¢89,080.00"

As rightly submitted by counsel for the defendant the plaintiff failed totally in leading evidence to establish the specific claims he made based on exhibit E expenditures. It is worth noting that all he claimed on exhibit E was pleaded in paragraph 5 and 10 of his pleadings but was denied by the defendant. By the defendant's denial the legal position called on the plaintiff to lead evidence in support of his claims in that exhibit which are in the nature of special damages. All the plaintiff did was to mention them in his witness statement and that was all. The situation he created in that posture in the trial was akin to just repeating what one has stated in his pleadings without further corroborative evidence, a practice castigated in the cases of ***Majolagbe vrs Larbi (1959) GLR 190 and Zabrama vrs Segbedzi (1991) 2 GLR 221***

Being special damages, apart from pleading the claims specifically he had the duty to lead cogent evidence of how he came by the claims which by their nature were capable of positive and strict proof. Undoubtedly on the evidence, he has been in the fish pond business for sometime, and in fact an award winner in the field. Therefore providing

specific supporting evidence of the specific claims which are in the nature of special damages he made in his pleadings and exhibit E, should not have been difficult for him to meet in honour of cases like ***Zabrama vrs Segbedzie (1991) 2 GLR 221, Majolagbe vrs Larbi (1959) GLR 190, Boham vrs Evonna (1992) 1 GLR 287*** which demand providing evidence to strictly proof claims to special damages made before the court. Having failed we are in agreement with the trial court, that Exhibit E cannot form the basis for awarding plaintiff his claims endorsed on the writ. To contend, as counsel for the plaintiff does in his submissions before us, that there was no cross examination of the plaintiff to challenge the contents of exhibit E and therefore exhibit E should have been accepted for what it contains is a submission difficult to endorse because it fails to appreciate the import of case law on the subject. The Supreme Court case of ***Ladi vrs Giwah (2013-2015) 1 GLR 54*** and several others draw our attention to limitations on the general principle that uncross examined evidence will be accepted as unchallenged. Some of the exceptions are that it cannot amount to admission if the witness has had notice to the contrary beforehand. In the case of ***Dzaisu vrs Breweries Ltd (2007-2008) SCGLR 539 at 547*** the Supreme Court had this to say:

> ***"We are not impressed by this argument as the principle that when a party fails to cross examine on an issue the issue would be ruled against him is not an inflexible rule. It is trite law that a bare assertion by a party of his pleadings in the witness box without proof did not shift the evidential burden onto the other party…."***

That is exactly what the plaintiff did just relying on his witness statement that contains his expenses without any further evidence in support of the expenditures even though he was challenged on the pleadings calling on him to proof the alleged expenditures narrated in exhibit E.

Counsel for the plaintiff's next challenge to the trial judgment was that having found that the plaintiff's act of constructing the pond was not speculative, the trial judge erred in failing to make any awards under the heads of loss of income and production cost. What we understood the plaintiff to be asking for is sufficiency of the award. The plaintiff's claim before the court was for cost of production and total returns (which is the same as estimated income). To say that the trial court failed to award him cost of production and estimated income raises the question what then did the trial judge award with the GH¢10,000.00? This amount no doubt on the records is to meet the two heads-cost of production and estimated income on the project. It is therefore not curate for counsel to claim that the plaintiff was not awarded anything for cost of production and estimated income. On examining the claim of the plaintiff, same as particularized on exhibit E, we came to the conclusion that there is the need to investigate this claim of insufficiency of the award made by the plaintiff since the trial judge did not give any indication how he came by the award. The plaintiff claims GH¢57,500 as cost of production but failed to lead evidence in support. We went through the process of establishing an operative fish pond to shape our mind on assessing the award the plaintiff made whether it was an appropriate award to make in the circumstances of this case. Under cost of production we started from construction of the ponds itself. The ponds will have to be prepared with liming and manure for the arrival of the fish. After buying the fingerlings they have to be transported to site. In the ponds the fishes will have to be fed by labourers through a period of growth. These processes will have to be done for all the 6 ponds. GH¢10,000.00 compensation for all these processes we find exceedingly low, particularly when it is an amount that is also to take care of estimated income. The plaintiff has a total of GH¢3,654,000.00 as estimated income. When this figure is compared with the cost of production (GH¢57,500) we have no doubt it is

excessive and not an acceptable figure to use as a guide. How can cost of production be GH¢57,500 and estimated returns be GH¢3,654,000. You put in GH¢57,500.00 and reap GH¢3,654,000.00? On careful consideration of the figures and putting ourselves within the economic realities we think a figure of GH¢100,000.00 should be sufficient award to replace the GH¢60,000 awarded the trial judge in total. We vary this figure guided by the authorities of ***Bressah vrs Asante (1965) GLR 117, Karam vrs Ashkar (1963) 1 GLR 138 Standard Chartered Bank vrs Nelson (1998-99) SCGLR 810*** which permits an appellate court to interfere with the trial award if the award is too low or too high.

From the foregoing opinion we conclude that except for the award which we varied under grounds of appeal (b) the appeal fails.

(SGD.)

V. D. OFOE

[JUSTICE OF APPEAL]

MERLEY A. WOOD (MRS.), (JA), I agree *(SGD.)*

MERLEY A. WOOD (MRS.)

[JUSTICE OF APPEAL]

ERIC BAAH (JA), I also agree *(SGD.)*

ERIC BAAH

[JUSTICE OF APPEAL]

COUNSEL*:*

MARTIN KPEBU FOR PLAINTIFF/APPELLANT

GOLDA DENYO WITH PAPA KWESI ANAN ANKOMAH FOR DEFENDANT/ RESPONDENT