IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

KUMASI, A. D. 2022

CORAM:

ANGELINA M. DOMAKYAAREH (MRS.) J A (PRESIDING)

ALEX B. POKU-ACHEAMPONG, J A

SAMUEL K. A. ASIEDU, J A

CIVIL APPEAL NO.: H1/95/2021

DATE: 28TH NOVEMBER, 2022

CHANCELLOR OPPONG KYEKYEKU KOHL - PLAINTIFF/APPELLANT

H/NO. B. A. 76 BANTAMA, KUMASI

VRS.

CONSOLIDATED BANK GHANA (CBG) - DEFENDANT/RESPONDENT

NSUASE ADUM BRANCH, KUMASI

J U D G M E N T

DOMAKYAAREH (MRS.), JA:

[1] This judgment is in respect of the substantive appeal in this case. Per the Notice of Appeal filed on 9th April, 2021, the appeal is against the Ruling of the Circuit Court, Kumasi, dated 19th March, 2021. In this judgment, for ease of reference, the Plaintiff/Appellant will be referred to as the Appellant while the Defendant/ Respondent will be referred to as the Respondent.

[2] On the 26th of May, 2022 this Court delivered a Ruling overruling a Preliminary Legal objection raised by the Respondent herein to the hearing of this appeal on its merits. The facts and the trajectory of this case are sufficiently stated in the said Ruling with **Suit No. H1/95/2021 dated 26th May 2022 (Unreported).** The facts therein and the trajectory of the case will be repeated in this judgment as same also form the foundation of this judgment.

[3] The Appellant issued a Writ of Summons from the Registry of the Circuit Court, Kumasi on 30th May, 2019 against the Respondent Bank herein, claiming the under listed reliefs: -

RELIEFS:

1. An order to compel the Defendant to pay the remaining balance of Plaintiff's interest amount of **GH¢32,493.2** of his one year investment of **GH¢198,000.00** at interest rate of **27%** per annum with Defendant which commenced on 4th April, 2018 and matured on 4th April, 2019.
2. Interest on the said remaining balance of Plaintiff's interest amount of **GH¢32,493.2** from 5th April, 2019 till date of final payment at the prevailing bank rate.
3. Damages for breach of contract.
4. Costs of this suit.

THE CASE OF THE APPELLANT:

[4] The salient facts of the Appellant's case as deduced from his Statement of Claim and Reply to the Respondent's Statement of Defence are that on 4th April, 2018, he made a one year Fixed Deposit investment in the sum of **GH¢198,000.00** with the erstwhile Beige Bank Ltd. at an interest rate of **27%** per annum. The said investment which was to mature on 4th April, 2019

and at the agreed interest rate, would have yielded an interest of **GH¢53,460.00.** The Beige Bank Ltd. agreed to pay the principal sum invested together with the accrued interest on the maturity date.

[5] On the 1st of August, 2018 however, the Respondent Bank herein legally took over the management of the Beige Bank Ltd. The Appellant averred that, having taken over the management of the Beige Bank Ltd. as aforesaid, the Respondent Bank failed to pay the sum due to him on the maturity date of the investment on 4th April, 2019. The Appellant further averred that, on 25th April, 2019 the Respondent herein paid the sum of **GH¢185,282.96** into his Bank Account in satisfaction of the principal of his investment which the Respondent said was **GH¢168,000.00** and interest of **GH¢17,282.96** calculated on the said principal of **GH¢198,000.00** at the interest rate of **27%** per annum from 4th April, 2018 to 31st July 2018.

[6] It is the case of the Appellant that the Respondent reduced his investment from **GH¢198,000.00** to **GH¢168,000.00** because on 19th December, 2018, the Respondent gave him **GH¢30,000.00** upon his request which was to be deducted from his investment money. The Appellant avers that the Respondent Bank cheated him in the calculation of the interest and contended that if the calculation was properly done, he would have been entitled to **GH¢215,282.96** instead of the **GH¢185,282.96** credited to his Bank Account. Per the Appellants calculation, the Respondent Bank owed him a difference of **GH¢32,493.20** on his investment of **GH¢198,000.00.**

[7] A series of correspondence between the Appellant and the Respondent Bank with some of them involving the Solicitors of the Appellant could not resolve the matter to the satisfaction of the Appellant. This is because the Respondent herein said it would use the interest rate of **13%** per annum to calculate the interest on the Appellant's investment from 1st August 2018 to 4th April, 2019 which would yield **GH¢16,285.98.** The Appellant averred that upon his instructions, his Solicitors wrote on two occasions to the Respondent to pay the said amount of **GH¢16,285.98** to the Appellant while they pursued the outstanding balance but the Respondent failed to honour that demand. **T**he Appellant then commenced the instant action against the Respondent claiming the sum of **GH¢32,493.20** being the balance of the interest on

his investment of **GH¢198,000.00** at the interest rate of **27%** per annum and the other reliefs endorsed on his Writ of Summons as afore indicated.

THE CASE OF THE RESPONDENT:

[8] In its Statement of Defence, save that the Respondent agreed to pay the principal and the interest at the rate of **13 %** from 1st of August, 2018 on the Appellant's investment upon maturity, the Respondent basically denied the claims of the Appellant. The Respondent averred that it was set up as a ***'bridge institution'*** by the Bank of Ghana (BoG) pursuant to the provisions of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) to assume ***selected assets and liabilities*** of a number of defunct banks including the Beige Bank Ltd. It is the case of the Respondent that the Beige Bank Limited, remains to date an extant corporate entity, which is currently under the able management of ***Mr. Nii Amanor Dodoo***, albeit without authorization from the BoG to carry on the business of banking.

[9] The Respondent further averred that the actions that occurred on 1st August, 2018 which culminated in the collapse of the Beige Bank Limited and ushered in the Respondent Bank, did not amount to a merger, amalgamation or takeover of the management of the erstwhile Beige Bank Limited by the Respondent Bank. The Respondent Bank emphasised that by way of its operations, management and legal personality, it remains a totally independent and distinct entity from the Beige Bank Limited (under Receivership). It is the case of the Respondent that in spite of its mandate to assume ***selected assets and liabilities*** of the erstwhile Beige Bank Limited, it (the Respondent) was not required to assume the imprudent practices of assigning huge interest rates, ***inter alia,*** to Fixed Deposits; a practice that eventually led to the collapse of the Beige Bank Limited.

[10] The Respondent also further averred that to the extent that it is an entirely distinct entity from the erstwhile Beige Bank Limited, it is not under any obligation to apply the rate of 27% that the erstwhile Beige Bank Limited applied to its Fixed Deposit. The Respondent therefore contended that in the light of the above the Appellant's demand that his investment be calculated at 27% instead of the 13% currently being applied by the Respondent across all its Fixed Deposits is irregular. The Respondent further contended that in the light of its position

as stated above, the Appellant's insistence for a rate of 27% to be applied to his Fixed Deposit can only be justified if the Appellant seeks to enforce that right against the Beige Bank Limited through the Receiver who is clothed with full capacity under Act 930 to act as the sole representative, manager and shareholder of the erstwhile Beige bank Limited.

[11] The Respondent is emphatic that it does not reside with the Appellant to demand the rate of **27%** to be applied to his Fixed Deposit when it is apparent that, that right is only exercisable and enforceable against the Beige Bank Limited (under Receivership) and not the Respondent Bank with whom he has no contract. The Respondent also contends that if the Appellant wants to insist on enforcing the full terms of the Fixed Deposit made with the Beige Bank Limited, the proper quarters for him to seek to redeem his funds is from the Receiver of the erstwhile Beige Bank Limited who till date remains bound to the full extent of the Fixed Deposit Agreement executed between the Appellant and the Beige Bank Limited (under Receivership).

[12] The Respondent referred to the occurrence of two critical events, namely, the revocation of the Banking Licence of the Beige Bank Limited by the Bank of Ghana on 1st August, 2018 and placing it under receivership and the Appellant himself making a partial redemption of **GH¢30,000.00** out of his principal investment sum of **GH¢198,000.00** on 19th December, 2018 prior to the full maturity of the investment thus reducing his principal investment amount to **GH¢168,000.00.** The Respondent said that these two events fragmented the timelines and the interest for the computation of the full entitlement of the Appellant's claim for the full duration of his investment from 4th April, 2018 to 4th April, 2019.

The Respondent gave a detailed chronological reconciliation of the critical events indicated above and the resultant fragmentations, which yielded an interest of:

- **GH¢17,282.00.00** for the period **4th April, 2018 to 1st August 2018** calculated at **27% p. a**. on the principal of **GH¢198,000.00.**
- **GH¢9,943.40** for the period **1st August 2018 to 19th December, 2018** calculated at **13%** on **GH¢198,000.00** and
- **GH¢6,342.58** for the period **19th December 2018 to 4th April 2019** calculated at the interest rate of **13%** on the new investment principal of **GH¢168,000.00.**

[13] The Respondent stated that arising from the above reconciliation exercise, it paid the sum of **GH¢185,282.96 (the principal sum of GH¢168,000.00 plus interest of GH¢17,282.00)** to the Appellant on 25th April, 2019, The outstanding balance of interest payment therefore due to the Appellant as per the Respondent's calculation is **GH¢16,285.98 (GH¢9,943.40 plus GH¢6,342.58)** The Appellant has refused to accept this amount in final settlement of what is due him. It is therefore the position of the Respondent that if the Appellant insists on the rate of 27% p.a. on his investment of **GH¢198,000.00,** then he ought to sue the Receiver of Beige Bank Limited and not the Respondent as already indicated above.

PROCEEDINGS AT THE TRIAL COURT:

[14] After several legal gymnastics, the Respondent filed an Application on Notice on **17/2/20** to dismiss the suit with a supporting affidavit to the effect that, as stated in its Statement of Defence, it was not the right party to be sued. The Appellant, a non-lawyer who litigated in person, opposed this application very strongly and was emphatic that he had rightly invoked the jurisdiction of the court. Among several other reasons proffered by the Appellant, he asserted that there was no statutory proscription that stated that an already existing contract interest rate between him and the Beige Bank Ltd could be substituted with a new interest rate as that would be contractually unlawful. The Appellant further contended that the Receiver was only charged to trace the assets and liabilities of the defunct banks and that the Bank of Ghana approved the Purchase and Assumption Agreement between the Receiver and the Respondent Bank for those banks. Therefore, there was no evidence that it was the Receiver who should directly be involved in paying customers of the respective banks but the Respondent Bank through its respective Branches.

DECISION OF THE TRIAL JUDGE:

[15] The Trial Circuit Judge, granted the Application by the Respondent Bank on 19th March, 2021 and dismissed the Appellant's suit.

In dismissing the Appellant's' suit, the trial judge held that in accordance with **Section 127 (3) (b) and (k) of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930)** the Receiver appointed by the Bank of Ghana to resolve the pressing banking challenges of the Banking Sector clean-up was the proper person to be sued and not the Respondent herein. For purposes of clarity, we reproduce the relevant provisions of the said Section 127 of Act 930, which deals with the general powers of the Receiver, verbatim:

"General powers of receiver

127. (1) On the appointment of the receiver, the receiver shall be the sole legal representative of the bank or specialised deposit-taking institution, and shall succeed the rights and powers of the shareholders, the directors and the key management personnel of the bank or specialised deposit-taking institution.

…

(3) The rights and powers of the receiver include

(b) managing, operating and representing the bank or specialised deposit-taking institution;

…

(k) initiating or defending the bank or specialised deposit- taking institution in any legal proceeding,"

[16] The Appellant was aggrieved and dissatisfied by the Ruling of the trial judge and hence he launched the instant appeal on 09/4/2021 by filing a Notice of Appeal in which he complained of the whole Ruling. The Appellant relied on essentially seven grounds of appeal as listed hereunder.

GROUNDS OF APPEAL:

a. The Honourable trial court erred in law for not taking into account the issue of estoppel when there was evidence that Defendant had made part payment of Plaintiff's investment of **GH¢185,282.96** as stated in **paragraph 27 (vii)** in its statement of defence on 25th April, 2019 and that aside had admitted in **paragraph 27 (viii)** of its statement of defence that the outstanding balance that it owes to be paid to Plaintiff is **GH¢16,285.96;** so did the Defendant admit in **paragraph 27 (v)** of its statement of defence that it allowed Plaintiff to withdraw **GH¢30,000.00 on 19th December, 2018.**

b. The Honourable trial court erred in law when it showed its open bias in favour of the Defendant for ignoring or neglecting Plaintiff's motion on notice for final judgment based on admission pursuant to **Order 23 rule 6 (2) of the High Court (Civil Procedure) Rules 2004 (C. I. 47)** filed on **13th March, 2020** and instead of allowing the Plaintiff to move it rather smartly covered it and ordered the parties to file their respective addresses or submissions if any, notwithstanding the failure of Defendant to respond to it.

c. The Honourable trial court erred in law when it ignored or failed to make pronouncement in its Ruling that Defendant had used **27%** interest rate per annum as agreed and contained in Plaintiff's contract with the erstwhile Beige Bank to calculate interest on his investment from **4th April, 2018 to 1st August, 2018** as stated in **paragraph 27 (ii)** of the Defendant's Statement of Defence and that it was the Plaintiff's reluctance to acquiesce in the arrangement for Defendant to use **13%** interest rate per annum to calculate part of his investment interest that has prompted the Defendant's policy to shirk its responsibility towards Plaintiff by disclaiming liability.

d. The Honourable trial court erred in law when it misdirected itself in its Ruling that it was rather the Receiver who should have been sued by the Plaintiff after Defendant had conspicuously shouldered all the responsibilities in his pleadings and had made part payment of Plaintiff's investment to him, undoubtedly Defendant's current position of shirking its responsibility is an afterthought and inconsequential.

e. The Honourable trial court erred in law when it overlooked the rules of Court when the Defendant could not file conditional appearance and a subsequent motion particularizing in

detail why it could not be held liable to Plaintiff's suit but rather the receiver yet wrongly supported the Defendant after admission of liability and at the stage when Defendant had declined to file its witness statement.

f. The Learned Judge erred in law when it showed high dosage of bias and real likelihood of bias and as a result after her ruling, when Plaintiff virulently challenged the non-justification of the cost prayed for by counsel for the Defendant and subconsciously realizing that the Ruling should have been the other way round waived cost.

g. The Ruling is against the weight of evidence adduced at the trial.

h. Additional grounds of appeal will be filed upon receipt of the record of proceedings.

[17] We place on record that no additional grounds of appeal have been filed nor did the Appellant seek any leave of the court to file any additional grounds of appeal. We also place on record that in **Civil Motion No. H3/205/2021 titled Consolidated Bank Ghana Ltd v. Chancellor Oppong Kyekyeku Kohl dated 26th October, 2021 (Unreported)** this Court struck out Grounds (a) to (f) of the Grounds of Appeal upon application by the Respondent for offending against Rule 8(6) of C. I. 19. The said Rule 8 (6) of C I 19 provides as follows:

8. Notice and grounds of appeal

"(6) No ground which is vague or general in terms or which: discloses no reasonable ground of appeal shall be permitted, except the general ground that the judgment is against the weight of the evidence; and any ground of appeal or any part of the appeal which is not permitted under this rule may be struck out by the Court of its own motion or on application by the respondent."

This means that only Ground (g) of the grounds of Appeal i.e., the Omnibus ground of appeal that the Ruling is against the weight of evidence adduced at the trial remains to be considered in the determination of this Appeal.

RELIEF SOUGHT FROM THIS COURT:

[18] The Appellant is seeking for the Ruling of the trial Circuit Judge dated 19th March, 2021 to be set aside and judgment entered in his favour based on the contract agreement made between Appellant and the erstwhile Beige Bank Ltd. which according to him, the Respondent

legally took over and also, that the Respondent has admitted liability in its Statement of Defence.

PRELIMINARY LEGAL OBJECTION:

[19] At the hearing of this appeal, counsel for the Respondent served notice of the intention of the Respondent to rely on a preliminary legal objection pursuant to Rule 16(1) of the Court of Appeal Rules, 1997 (C. I. 19). The said Rule 16 (1) directs thus:

"16. Notice of preliminary objection to be filed

(1) A respondent who intends to rely upon a preliminary objection to the hearing of the appeal shall give the appellant three clear days' notice before the hearing of the preliminary objection, setting out the grounds of objection, and shall file the notice specified in Form 8 in Part I of the Schedule"

As indicated supra, this Court overruled the Preliminary Legal Objection on the 26th of May, 2022 per its **Ruling in Civil Appeal No. H195/2021 tilted Chancellor Oppong Kyekyeku v. Consolidated Bank Ghana (CBG) dated 26th May, 2022 (Unreported.)**

CONSIDERATION OF THE SOLE GROUND OF APPEAL:

That the Ruling is against the weight of evidence adduced at the trial.

The Rules of court and binding judicial authorities inform us that every appeal is by way of rehearing. Thus the appellate court is placed in the same position as the trial court to critically examine the whole record and evaluate the whole of the evidence given at the trial so as to come to its own conclusions and findings. See Rule 8(1) of the Court of Appeal Rules, 1997 (CI 19) and the oft cited cases of

PRAKA V KETEWA [1964] GLR 423 SC

NORTEY (No. 2) V. AFRICAN INSTITUTE OF JOURNALISM AND COMMUNICATION & OTHERS (NO. 2) [2013 – 2014] 1SCGLR 703

Again, the Supreme Court, the Apex Court of the land, has held in a litany of cases that where an appellant complains that a judgment is against the weight of evidence, he/she is implying that there were certain pieces of evidence on record which ought to have been applied in his

favour and that if they were so applied, would have changed the decision in his/her favour or that certain pieces of evidence have been wrongly applied against him/her which should not have been the case under the normal circumstances. The onus then is on such an appellant to clearly and properly demonstrate to the appellate court the lapses in the judgment being appealed against. See the oft cited cases of

DJIN V. MUSAH BAAKO [2007 – 2008] SCGLR 686

TUAKA V. BOSOM [2001 – 2002] SCGLR 61 64-65

AKUFO ADDO V. CATHELINE [1992] 1 GLR 377.

We shall be guided by the above dictates in the consideration of this appeal.

SUBMISSIONS BY THE APPPELLANT:

[20] The Appellant has submitted that the finding by the trial Court that the Appellant should have sued the Receiver is not supported by the evidence on record. His case is that the management of the Beige Bank Ltd was handed over to the Respondent Bank because the Receiver was temporarily appointed to trace the assets and liabilities of the defunct banks including the Beige Bank Ltd. The Appellant further submitted that after assuming the management of the Beige Bank Ltd, the Respondent Bank paid a total sum of **GH¢ 215,282.96** of his investment to him and further admitted per paragraph 27 (viii) of the Respondent's Statement of Defence found at page 20 of the Record of Appeal that the outstanding interest to be paid to the Appellant amounted to **GH¢ 16,285.98.** We must point out right away that the position of the Appellant that the Respondent assumed the management of the Beige Bank Ltd upon the revocation of its banking Licence is not supported by the law. This will be demonstrated in the course of this judgment.

[21] The Appellant submitted that on **13/3/2020** he filed a Motion on Notice for judgment based on the admission by the Respondent. See pages 65 to 67 of the ROA. The Appellant argued that ***"the trial court instead of allowing the Plaintiff/Appellant to move it rather smartly covered it up (sic) what would have given justice to the Plaintiff/Appellant and ordered the parties to file their respective addresses or submissions if any, notwithstanding the failure of the Defendant (Respondent herein) to respond to it."*** The Appellant contended that if the trial

court had entered judgment against the Respondent based on its admission, the outstanding balance would have been **GH¢ 16,207.22.** The Appellant then forcefully stated that the evidence on record estops the Respondent from denying that it owes the Appellant **GH¢ 16,285.98.**

[22] The above statement by the Appellant is not entirely borne out by the Record. It is true that the Appellant filed the said Motion for judgment based on the admission by the Respondent as indicated supra. However the Counsel for the Respondent had earlier on, filed a Motion on behalf of the Respondent on **17/2/2020** praying the trial Court to dismiss the Appellant's suit. (See pages 57 to 64 of the ROA.) The Record shows that, on 4th May, 2020, Counsel for the Respondent referred to this earlier Application and submitted that the Appellant's Application for Judgment based on the admission by the Respondent cannot be dealt with until their Application to dismiss the suit is determined. Counsel informed the trial court that this was the reason why the Respondent had not filed an affidavit in opposition to the Appellant's Motion. Counsel also indicated the intention of the Respondent to file an Affidavit in Opposition depending on how the Respondent's Application would go. The Respondent then moved its Application which the Appellant said he was opposed to vehemently. The court then adjourned the case to 26/06/20 for its Ruling. (See pages 75 to76 of the Record of Appeal.)

[23] We find that the trial court was right in considering the Application filed on behalf of the Respondent first because quite apart from that Motion having been filed earlier in time, the life of the Appellant's Application depended on the outcome of the Respondent's Application. If the Respondent's Application was granted, then the Appellant's Application would be dead on arrival. On the other hand, if the Respondent's Application was refused, then the Appellant would have the chance and the right to move his Motion. As it turned out, subsequently, on 19th March, 2021, the Court granted the Application by the Respondent and dismissed the suit. (See pages 121 to 125 of the Record of Appeal). It is this state of affairs that has culminated in the instant appeal before this court.

[24] The Appellant also made copious submissions based on the Law of Contract simpliciter. The Appellant argued that the Agreement between him and the erstwhile Beige Bank Ltd had Terms and Conditions which were interpolated in a Certificate that served as the Memorandum of Understanding between the parties. It is the case of the Appellant that the Respondent herein took over the said Agreement and used the **27%** interest rate per annum stated in the Agreement to calculate part of the Appellant's investment interest and then resorted to a policy ***"to cheat"*** the Appellant by using **13%** interest rate per annum to calculate the other part of the Appellant's one year investment with the Respondent. The Appellant contended that an Agreement once entered into binds the parties and cannot be reviewed without the two parties agreeing to that. The Appellant further stated that a party to a contract cannot review an agreement after the expiry of the Agreement as the Respondent attempted to do. The Appellant also contended that the interest rate of **13%** was to be used for ***"fresh"*** customers and could not legally be used to disturb an already existing contract/agreement as in the Appellant's scenario. The Appellant further submitted that the Respondent's argument that the Receiver was the right party to be sued was an afterthought when the Respondent failed to convince him to accept the 13% interest rate.

It is the further case of the Appellant that the evidence shows that the Respondent definitely breached the Appellant's Agreement and ***"only played antics on the trial court or it engaged in legal Coriolanus to cheat the Plaintiff/Appellant which the trial Court wrongly supported."*** The Appellant therefore contended that the Ruling of the trial judge having totally run against the tide of the evidence on record ought to be set aside.

[25] The Appellant's arguments based on contract shows that he was relying on the seventeenth century law of contract where contracts were deemed to be absolute as laid down in the ancient case of **Paradine v Jane (1647) 82 ER 897** where parties were held to be absolutely bound by their contracts. Being a non-lawyer, the Appellant is probably oblivious that shortly thereafter, this absolute doctrine/rule of contract law underwent several revisions even at common law to the extent that several exceptions have been carved out to the said rule

of absolute contract. There is the doctrine of Frustration of Contract where for instance a contract between parties can be deemed to be frustrated by Government, Administrative or Legislative intervention. (See **page 391** et seq. of **CONTRACT AND SPECIFIC RELIEF, Eleventh Edition by the Learned Author AVTAR SINGH and published by the Eastern Book Company.** Also, in the case of **BARCLAYS BANK (GHANA) LTD *V* SAKARI [1997-98] 1 GLR 746 SC** ACQUAH JSC (as he then was) had occasion to elucidate on the doctrine of frustration. He said:

"The doctrine of frustration is one of the simplest concepts in the law of contract. But like any simple concept, its application is not as simple as it is understood. In Ghana the doctrine involves a mixture of common law rules and statute (i.e. the Contracts Act, 1960 (Act 25)). The common law rules determine when frustration can be said to have occurred, while Part One of Act 25 deals with the consequences of frustration. Briefly, frustration occurs where an external event of some kind, which is not the responsibility of either party, renders further performance of a contract impossible: … or radically different from what had been contracted for … it was held that the essence of frustration is that **it should not be due to the act or election of the party.**

In this case, the Bank of Ghana, by an administrative action which it was empowered to do under the law, revoked the banking Licence of the Beige Bank Ltd which legally altered the contractual relations between the Beige Bank Ltd. and its customers. The Government of Ghana also set up the Respondent Bank and handed over some of the assets and liabilities of the Beige Bank Ltd to it. All these interventions altered the contractual relations between the Beige Bank Ltd. and its customers within the meaning of Frustration of Contract. The legal effect of these interventions by the Government and the Bank of Ghana will be expatiated on in due course in this judgment.

[26] The Appellant also relied on the 1992 4th Republican Constitution to bolster his case. The Appellant contended that for the Respondent to say that he the Appellant should forfeit his accrued right under the Agreement offends Article 107 (b) of the 1992 Constitution which

abhors retrospectively or retroactively applying laws to adversely affect a person's accrued right. Article 107 (b) of the 1992 Constitution provides as follows:

107.

Parliament shall have no power to pass any law –

…

(b) which operates retrospectively to impose any limitations on, or to adversely affect the personal rights and liberties of any person or to impose a burden, obligation or liability on any person except in the case of a law enacted under articles 178 0r 182 of this Constitution.

There is no issue of the retrospective or retroactive application of the laws of Ghana in this matter brought by the Appellant. The Bank of Ghana acted under powers conferred on it by the **Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930)** to revoke the Banking Licences of the Defunct Banks. The title of the Act clearly shows that it was passed in 2016. The Appellant commenced his one year Fixed Deposit Investment with the defunct Beige Bank Ltd. on 4th April, 2018. By that time, Act 930 was already in existence so the Appellant was bound by its provisions when he decided to subscribe to banking products of the erstwhile Beige Bank Ltd. It cannot therefore, by any stretch of imagination, be said that a 2016 law has been retroactively applied to a 2018 transaction.

[27] The Appellant further submitted that as Article 1(2) of the 1992 Constitution makes it "supremo" over any other law in Ghana to the extent that any law inconsistent with any provision of the Constitution is null and void, and therefore, any purported statutory proscription of his accrued right is also null and void. Article 1(2) of the 1992 Constitution provides that:

"1. …

(2) The Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void."

Artice1 (2) is clearly not applicable to the circumstances of this case. The Appellant's foundation for this argument is that a piece of Legislation has been retroactively applied to him which action is prohibited by the 1992 Constitution. As explained above, there has not been any retroactive application of any law to the Appellant and therefore there is no inconsistency anywhere. This matter is so plain that no Constitutional Interpretation arises for the matter to be referred to the Supreme Court pursuant to Article 130 of the 1992 Constitution. This is what Article 130 of the Constitution says:

"130.

(1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in -

(a) all matters relating to the enforcement or interpretation of this Constitution; and

(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution.

(2) Where an issue that relates to a matter or question referred to in clause (1) of this article arises in any proceedings in a court other than the Supreme Court, that court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court.

See **ADUAMOA II and others V ADU TWUM II [2000] SCGLR 165 at 167** where ACQUAH JSC (as he then was) posited thus:

"… the original jurisdiction vested in the Supreme Court under articles 2 (1) and 130(1) of the 1992 Constitution to interpret and enforce the provisions of the Constitution is a special jurisdiction meant to be invoked in suits raising *genuine or real* issues of interpretation of a provision of the Constitution; …

The jurisdiction is not meant to usurp or to be resorted to in place of any of the jurisdictions of a lower court. In other words, where our said jurisdiction has been invoked in an action which properly falls within a particular cause of action at a lower court, this court shall refuse to assume jurisdiction in that action, notwithstanding the fact that it has been presented as an interpretation or enforcement suit or both, …"

Also see the following two cases decided under the 1969 Constitution of the public of Ghana.

In the case of **REPUBLIC v. MAIKANKAN AND OTHERS [1971] 2 GLR 473 at 478 SC,** BANNERMAN CJ (as he then was) stated the position of the law as follows:

"We wish to comment that a lower court is not bound to refer to the Supreme Court every submission alleging as an issue the determination of a question of interpretation of the Constitution or of any other matter contained in article 106 (1) (a) or (b). If in the opinion of the lower court the answer to a submission is clear and unambiguous on the face of the provisions of the Constitution or laws of Ghana, no reference need be made since no question of interpretation arises and a person who disagrees with or is aggrieved by the ruling of the lower court has his remedy by the normal way of appeal, if he so chooses. To interpret the provisions of article 106 (2) of the Constitution in any other way may entail and encourage references to the Supreme Court of frivolous submissions, some of which may be intended to stultify proceedings or the due process of law and may lead to delays such as may in fact amount to denial of justice."

Again, in the case of **REPUBLIC V ASIAMAH [1971] 2 GLR 478 at 481-482 SC,** BANNERMAN CJ (as he then was) reiterated the position thus:

We wish to stress that it is not every submission in a trial that an issue is a question or matter relating to the interpretation of any provision of the Constitution that has to be referred to this court for determination under article 106 of the Constitution. Where the language of the article in question is clear and unambiguous no question of interpretation arises to warrant a reference. The submission may well relate to no more than a proper application of the provision to the facts or issues, and this is a matter which the trial court has jurisdiction to determine. … If in the opinion of a court, the question or matter relates to an interpretation of a provision which is not relevant to the issues in the case, or which does not affect the decision of the case, no reference should be made to this court, however interesting the point of law raised, for no useful purpose will be served in so far as the particular trial is concerned and any delay thus caused by such reference will be quite unnecessary."

(Article 106 of the 1969 Constitution is in pari materia with Article 130 of the 1992 Constitution.)

[28] The Appellant also berated the Bank of Ghana for its role in the saga that befell him. He said it was the same Bank of Ghana that licensed the erstwhile Beige Bank Ltd, authorized the Respondent herein to take over the Beige Bank Ltd and also appointed the Receiver to trace the assets and liabilities of the defunct bank. The Appellant stated that it could conveniently be deduced that the Bank of Ghana colluded with the Receiver to unjustifiably deprive customers of the interest on their investments.

[29] The Appellant's submission as stated above is based on a misunderstanding of the circumstances of this case. Even though the Bank of Ghana licensed the defunct Beige Bank Limited to carry on the business of banking, it never authorized the Respondent herein to take over the Beige Bank Ltd. The evidence on record is that the Government of Ghana established the Respondent Bank herein to **act as a *bridge bank* pursuant to section 127 (11) of Act 930 to assume some of the Assets and liabilities of the defunct banks.** The Bank of Ghana appointed a **Receiver** for the defunct banks whose duties under the law, include taking over the management of the defunct banks and not merely to trace the assets and liabilities of the

defunct banks as stated by the Appellant. See the **Circular/Press Release** issued by the Bank of Ghana on 1st August, 2018 at pages 60 to 63 of the Record of Appeal. The concept of a bridge bank and the powers of a **Receiver** will be explained very shortly.

[30] The Appellant concluded his submissions by stating that the fact that the Respondent paid him the sum of **GH¢ 215,282.96** and also admitted liability for the sum of **GH¢ 16,285.98** shows that the Respondent was the right party to be sued. The Appellant dismissed the arguments by Counsel for the Respondent at the trial court as largely academic without any lawful basis and prayed this court to overturn the Ruling of the trial court for "its inability to knack the law" which has resulted in a miscarriage of justice.

[31] A careful scrutiny of the law applicable to the facts of this case as indicated above has exposed the apparent logical submissions by the Appellant to be largely false/hollow. We agree with the submissions of Counsel for the Respondent as will be demonstrated hereunder.

SUBMISSIONS ON BEHALF OF THE RESPONSENT:

[32] In addressing ground (g) of the grounds of appeal counsel distilled five core issues arising therefrom having regard to the facts of the case and the applicable law. It is the submission of counsel for the Respondent that a clear understanding of the legal basis of the Bank of Ghana and the exercise of its functions leads to the irresistible conclusion that the Appellant does not have a cause of action against the Respondent because the suit and the reliefs he sought are proscribed by statute and for that matter, the Ruling of the trial Judge ought not be disturbed. We agree with counsel for the Respondent.

[33] Counsel started by outlining the powers of the Bank of Ghana to appoint a Receiver for banks and the legal consequences thereof. It is trite knowledge that the Bank of Ghana is a creature of the 1992 Constitution as per Article 183(1) thereof. Article 183(1) of the 1992 Constitution is reproduced verbatim as follows:

"183.

(1) The Bank of Ghana shall be the Central Bank of Ghana and shall be the only authority to issue the currency of Ghana."

Pursuant to the said Article 183 of the Constitution, the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) was passed to empower and enable the Bank of Ghana to perform its constitutional functions effectively. Under Section 3 (1) of Act 930, **"The Bank of Ghana shall have overall supervisory and regulatory authority in all matters relating to deposit-taking business."**

Section 4 (5) of Act 930 defines deposit-taking business in these terms:

"4. Deposit-taking business.

(1) …

(5) For the purpose of this Act, deposit-taking business means the business of

(a) taking money on deposit and making loans or other advances of money; and

(b) financial activities prescribed by the Bank of Ghana for purposes of this definition."

Under Section 3 (2)(e) of Act 930, "**the Bank of Ghana is (also) responsible for**

***(e)* dealing with unlawful or improper practices of banks and specialised deposit-taking institutions."**

[34] Section 123 of Act 930 deals with the powers of the Bank of Ghana to mandatorily revoke the licence of a bank and initiate receivership.

Section 123 (1), (2) and (3) of Act 930 empower the Bank of Ghana thus in the performance of its functions:

"123. (1) Where the Bank of Ghana determines that the bank or specialised deposit-taking institution is insolvent or is likely to become insolvent within the next sixty days, the Bank of Ghana shall revoke the licence of that bank or specialised deposit-taking institution.

(2) The Bank of Ghana shall appoint a receiver at the effective time of revocation of the licence under subsection (1).

(3) The receiver appointed under subsection (2), shall take possession and control of the assets and liabilities of the bank or specialised deposit-taking institution."

Pursuant to its power under the said section 123 of Act 930, the Bank of Ghana on 1st August 2018 revoked the Banking licence of Beige Bank Limited together with other banks in what is termed as the Banking Sector Clean-up. On the same day, the Bank of Ghana granted a Universal Banking licence to Consolidated Bank Ghana Limited (CBG) established by the Government of Ghana, the Respondent herein pursuant to section 127 of Act 930 to act as **a bridge Bank "to assume some of the assets and liabilities of the defunct banks"** which include the Beige Bank Ltd. (see P62 of the Record of Appeal). On the same day, the Bank of Ghana also appointed **Mr. Nii Amanor Dodoo of KPMG as the Receiver** for the banks whose Licences had been revoked including the Beige Bank Limited. This was stated in the Circular/Press Release issued by the Bank of Ghana on 1st August 2018 referred to earlier on in this judgment.

[35] In expatiating on the legal effects of the revocation of banking licence and the appointment of a receiver for the defunct banks, counsel pointed out that an entity has to be a body corporate in the first instance registered under the Companies Act, 2019 (Act 992) before it can be licensed to carry on the business of deposit taking. See Section 4(1) of Act 930 which provides for this prerequisite as follows:

"4. (1) Subject to this Act, a person shall not carry on a deposit-taking business in or from within the country unless that person is a body corporate formed under the laws of this country."

It therefore means that revoking the licence of a deposit-taking Institution does not take away its corporate existence under the Companies Act 2019, (Act 992).

[36] Counsel also pointed out the **legal effect** and consequences of the appointment of a Receiver. Section 123(3) of Act 930 quoted supra directs that the Receiver **"shall take possession and control of the assets and liabilities of the bank or specialised deposit-taking institution."**

The Bank of Ghana Circular/Press Release referred to supra stated that the Respondent assumed **some of the assets and liabilities** of the five banks whose Licences were revoked

which means that not all their assets and liabilities were assumed by the Respondent. Therefore, it is the Receiver who took possession and control of the assets and liabilities that the Respondent did not assume pursuant to Section 123(3) of the said Act 930. Also section 127(1) of Act 930 provides that **"On the appointment of the receiver, the receiver shall be the sole legal representative of the bank or specialised deposit-taking institution, and shall succeed the rights and powers of the shareholders, the directors and the key management personnel of the bank or specialised deposit-taking institution".** Therefore the Receiver is the only person who can act in the stead of the banks whose Licences were revoked and in terms of Section 127(3)(k) of Act 930, the powers of the Receiver include **"initiating or defending the bank or specialised deposit- taking institution in any legal proceeding."** The law thus prescribes that it is the Receiver who must be sued in any legal proceeding involving a bank or a specialised deposit-taking institution whose banking licence has been revoked. This re-emphasizes the fact that the corporate existence of the defunct banks remained intact despite the revocation of their banking Licences since it goes without saying that a non-existent person/legal entity cannot sue or be sued.

[37] Counsel for the Respondent also submitted that the CBG Ltd. should not have been made a party to the suit on account of Section 127(3)(a) and (b) of Act 930 which provide that:

"The rights and powers of the receiver include

(a) taking possession of the books, records, and assets of the bank or specialised deposit-taking institution;

(b) managing, operating and representing the bank or specialised deposit-taking institution:

Since it is the Receiver who takes over possession of the books etc. of the defunct banks and also manages them etc. it follows that the Receiver is the one who ought to be sued and not the Respondent. Counsel submitted that the proper party to sue ought to be Beige Bank Ltd (in Receivership). It would have then been the duty of the Receiver to defend such a suit.

[38] Counsel further submitted that the Respondent herein has a separate and distinct legal personality from that of the defunct Beige Bank Ltd (in Receivership) and that since the Appellant invested in the Beige Bank Ltd., at the time CBG was not yet in existence if the Appellant wants to enforce the full terms of his investment agreement with the Beige Bank Ltd. as he is claiming in this suit, then it is the Beige Bank Ltd. (In Receivership) that he ought to sue for the action to be defended by the Receiver.

RESPONDENT AS A BRIDGE BANK:

[39] Section 127(11) of Act 930 **defines a bridge bank** to mean **"an institution established by the Government or the Bank of Ghana for a temporary period for the purpose of resolving a bank or specialised deposit-taking institution in distress."** Counsel submitted that the Respondent upon the instructions of its Regulator continued the viable and necessary operation of the Beige Bank Ltd in accordance with Section 127 (11)) of Act 930; and that in so doing, the Respondent was not a participant in the arrangements that took place between the Bank of Ghana, the Receiver and the customers of the banks in distress nor did the Respondent become the agent of the Receiver. The Respondent, being a bridge bank only served as a channel through which the Bank of Ghana and the Receiver paid monies to selected customers of the defunct banks and could therefore not be sued in respect of matters arising therefrom. On the contrary, the Receiver per Section 126 (1) and (2) of Act 930 is the agent of the Bank of Ghana since **"(1) The receiver shall act in accordance with the directives, instructions, and guidelines given by the Bank of Ghana in the course of the liquidation (and)**

(2) The receiver shall be accountable only to the Bank of Ghana for the performance of duties and the exercise of powers as a receiver."

WHETHER THE APPELLANT IS ENTITLED TO RECEIVE 27% RATE OF INTEREST AFTER THE APPOINTMENT OF THE RECEIVER FOR BEIGE BANK LTD.

[40] The first relief claimed by the Appellant was the remaining balance of his amount of **GH¢32,493.20** from the Respondent Bank. Counsel submitted that even if the suit were

maintainable, the Appellant is not automatically entitled to the said sum. Counsel relied on Sections 128(b), 130(2) and 130(3) of Act 930 in support of the above position. These subsections provide as follows:

"128 When a receiver has taken possession of a bank or specialised deposit-taking institution,

(b) the calculation of interests and penalties against the obligation of the bank or specialised deposit-taking institution shall be suspended and no other charge or liability shall accrue on the obligations of the bank or specialised deposit-taking institution"

"130 (2) A liability shall be deemed due and payable and interest shall cease to accrue as from the date of the appointment of the Receiver"

"130 (3) An unmatured liability shall be discounted to its present value at the rate of interest determined by the Bank of Ghana"

From the above provisions of Act 930, it is absolutely clear without a shadow of doubt that upon the appointment of the Receiver on 1st August, 2018, the liability of the Beige Bank ltd. to the Appellant became due and payable; the calculation of interest on the investment by the Appellant ceased or became suspended by operation of law; and whatever new rate of interest that will be applied is determined by the Bank of Ghana (in this case 13%) in accordance with powers vested in it by law.

[41] Counsel then contended that if the Appellant had any challenge to the Bank of Ghana exercising its powers under Section 130 (3) of Act 930 to reduce his interest rate of 27% per annum with the defunct Beige Bank Ltd. to 13% per annum (the prevailing Treasury Bill rate) with the Respondent Bank, then the Appellant's cause of action lay against the Bank of Ghana and not the Respondent herein. Section 3 of the **BANK OF GHANA ACT, 2002 (ACT 612**) lists the Objects of the Central Bank in these terms:

"(1) The primary objective of the Bank is to maintain stability in the general level of prices.

(2) Without prejudice to subsection (1) the Bank shall support the general economic policy of the Government and promote economic growth and effective and efficient operation of

banking and credit systems in the country, <u>independent of instructions from the Government or any other authority.</u>" (Emphasis added).

Based on the legal provisions relied on by counsel for the Respondent and cited supra, the Appellant does not have the statutory right to demand the payment of the balance of the interest on his investment at 27% per annum and by implication, the outstanding amount of GHc32,493.20 claimed by him from the Respondent.

[42] What the Appellant is seeking to do by this suit is to invite the court to condone and indeed endorse his breach of the Statute Laws of Ghana as pertains to the operations of the Bank of Ghana. However, no court, and we repeat, no court has the power to exempt anybody from compliance with the laws of Ghana or obedience to same.

See **THE REPUBLIC V HIGH COURT (FAST TRACK DIVISION), ACCRA; EX PARTE NATIONAL LOTTERY AUTHORITY (GHANA LOTTO OPERATORS ASSOCIATION AND & INTERESTED PARTIES) [2009] SCGLR 390** where ATUGUBA JSC (as he then was) stated the position of the law thus **at page 397:**

"It is *communis opinio* among lawyers that the courts are servants of the Legislature. Consequently, any act of a court that is contrary to statute …, is unless otherwise expressly or impliedly provided, a nullity. "

DATE-BAH JSC (as he then was) also stated thus **at page 402:**

"No judge has authority to grant immunity to a party from the consequences of breaching an Act of Parliament. … The judicial oath enjoins judges to uphold the law, rather than condoning breaches of Acts of Parliament by their orders."

Again, in **NETWORK COMPUTER SYSTEMS LTD V. INTELSAT GLOBAL SALES & MARKETING LTD. [2012] 1 SCGLR 218** ATUGUBA JSC (as he then was) had the opportunity to restate the position thus **at page 230:**

"A court cannot shut its eyes to the violation of a statute as that would be very contrary to its *raison d'etre*. If a court can suo motu take up the question of illegality even on a mere

public policy grounds, I do not see how it can fail to take up illegality arising from statutory infraction which has duly come to its notice."

Counsel submitted that once the reduction in the interest rate payable is permissible by law under Act 930, the Appellant, by issuing the Writ against the Respondent herein, acted contrary to the provisions of statute law and therefore ought to be non-suited by the court.

WHETHER THE TRIAL CIRCUIT COURT HAD JURISDICTION TO ENTERTAIN THE CASE:

[43] Counsel for the Respondent contended that the trial Circuit Court had no jurisdiction to entertain the action because under Section 42 of the Courts Act, 1993 (Act459), the circuit court does not have the jurisdiction to entertain suits that in essence, challenge the exercise of constitutional and statutory discretionary powers by a person or authority, in this case, the Bank of Ghana or the Receiver.

We note that the suit before the trial Circuit Court was against the Respondent herein for among other reliefs, a liquidated sum of GH¢32, 493.20 which falls within the Jurisdiction of the Circuit Court and not against the Bank of Ghana or the Receiver even though the Appellant mentioned their names to make out his case. The issue of whether the Circuit court therefore has jurisdiction to entertain suits that challenge the exercise of constitutional and statutory discretionary powers is therefore moot as it did not arise in the circumstances of this case. Such an issue was never even set down for trial at the Application for Directions stage. (See page 44 of the Record of Appeal and the case of **REPUBLIC V ASIAMAH** cited supra.

WHETHER THE APPELLANT IS ENTITLED TO THE PAYMENT OF GH¢16,285.98 BASED ON ADMISSION BY THE RESPONDENT:

[44] Every appeal is by way of rehearing. As a function of rehearing this appeal, we find that there is evidence on record to support the fact that the Respondent has admitted that it owes the Appellant the said sum of **GH¢16,285.98** being the outstanding interest on the Appellant's Investment Deposit calculated at the interest rate of **13%** per annum on the investment sum of **GH¢168,000.00.** The evidence on record is that on December 19, 2018, the Appellant withdrew **GH¢30,000.00** out of his initial investment of **GH¢198,000.00.** He cannot therefore insist that

the interest on the unmatured principal should be calculated on the initial investment sum of **Gh¢198,000.00** whether using the rate of 27% or 13%. Again, the evidence on record on the part of the Respondent is that it offered the said amount of **GH¢16,285.98** to the Appellant in full and final settlement of its liability to the Appellant but he refused to accept same, insisting instead that he was entitled to **GH¢32,493.20** being the balance of the interest calculated at the rate of 27% per annum on his said initial investment. The Appellant on his part, stated that he caused his Solicitors to write to the Respondent to pay him the said amount of **GH¢16,285.98** based on the admission by the Respondent while they try to resolve the balance of **GH¢16,207.22** but the Respondent refused to do so. The Appellant did not also get the opportunity to move his Motion for judgment based on the admission of the Respondent because the suit was struck out by the trial Circuit Court.

[45] As a function of rehearing this case, we hereby order the Respondent to pay the Appellant, the said sum of **GH¢16,285.98** together with interest thereon at the prevailing commercial bank rate from 4th April 2019 (the maturity date of the investment) to the date of payment in full and final satisfaction of the obligations of the Respondent under the investment agreement between the Appellant and the defunct Beige Bank Ltd since there is evidence to support same on the record. We note that the essence of the trial court's judgment is that if the Appellant insisted on the application of the 27% interest rate per annum on his investment, then by the operation of law, the Respondent was not the right party to sue as indicated supra. **The Appellant is not entitled to the balance of GH¢16,207.22 that he is claiming as that amount is proscribed by law.**

[46].Subject to the above variation, the appeal is hereby dismissed and the judgment of the Trial Circuit Court dated 19th March, 2021 is hereby affirmed.

(SGD.)

ANGELINA M. DOMAKYAAREH (MRS.)

JUSTICE OF APPEAL

(SGD.)

I agree **ALEX B. POKU-ACHEAMPONG**

JUSTICE OF APPEAL

(SGD.)

I also agree **SAMUEL K. A. ASIEDU**

JUSTICE OF APPEAL

COUNSEL:

For the Plaintiff/Appellant – IN PERSON

ADJEI BEDIAKO with AKUA NYANTEKYIWAA SARPONG for the Defendant/Respondent.