IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA

CORAM: HENRY KWOFIE, JA (PRESIDING)

ANTHONY OPPONG, JA

RICHARD ADJEI-FRIMPONG, JA

SUIT NO. H1/1/2022

DATE: 19TH JANUARY 2023

BARCLAYS BANK OF GHANA LTD. ... PLAINTIFF/APPELLANT

VRS.

1. **PROVEST EXPORTS GHANA LTD**
2. **DR. HENRY BRONYI-AMPONSAH**
3. **HENRIETTA COFIE. ..... DEFENDANTS/ RESPONDENTS**

J U D G M E NT

ANTHONY OPPONG, JA:

The Plaintiff bank granted loan facility to 1st defendant company on or about March 2007. The loan facility was guaranteed by the managing directors of 1st defendant company, namely, Dr. Henry Broni-Amponsah and Henrietta Cofie, the 2nd and 3rd defendants respectively. The amount involved was $415,121.25 and it was to be paid back within two years six months.

The plaintiff bank averred that as at 21st January 2011 the 1st defendant's total indebtedness to the plaintiff bank on which interest continued to accrue at the prevailing bank's lending rate stood at GH¢535,666.57

Despite demands made on defendants to pay, the default remained undischarged. Consequently, plaintiff bank sued the defendants jointly and severally for:

> "(i) *Recovery of the sum of GH₵535,666.57 being the balance outstanding on banking facilities granted by the plaintiff to the 1st defendant as at 21st January 2011 or in the alternative:*
>
> a. *Judicial sale of 2nd defendant's mortgage property situate at Ashalley Botwe*
> b. *Judicial sale of all properties both movable and immovable tangible and intangible identified as belonging to the 2nd and 3rd defendants by virtue of the guarantee they executed in favour of the plaintiff*
>
> *(ii) Interest on the said amounts at the prevailing Bank Lending Rate from 21st January 2011, up to and inclusive to the day of final payment*
>
> *(iii) Costs*

For the sake of convenience, the nomenclature of the parties at the trial high court is maintained in this appeal.

On or about 21st October 2011, the plaintiff bank filed an application for summary judgement against the defendants, contending that the latter had no reasonable defence to its claim.

The trial High Court entered summary judgment against the defendants whereupon the plaintiff filed entry of judgment (as amended) after trial. Consequently, the plaintiff applied for and obtained a writ of *fifa* and attached the properties of the defendants.

The plaintiff bank then filed a motion on 17th May 2014 for a reserved price of the attached mortgaged properties of 1st defendant for purposes of auction. The trial High Court granted the application on 22nd February, 2016 in spite of the fact that the 1st defendant had filed an affidavit in opposition wherein one Charles Tetteh, the manager of 1st defendant company had deposed that "*1st defendant has made a total of $341,989 payments to the plaintiff/applicant with the last payment being made on 11/5/2015"*

Consequently, the defendants filed a motion to set aside the attachment and the notice of public auction. This application was vehemently opposed per an affidavit in opposition filed on 13th December, 2016 found at page 116 of the Record of Appeal (ROA).

After the defendants filed a supplementary affidavit in support of the application to set aside the attachment, the trial High Court on 27th March 2017 granted the application; the trial High Court set aside the attachment and the notice of auction. The ruling of the trial High Court dated 27th March 2017 can be found at pages 133-134 of the ROA. The conclusion of the said ruling makes interesting reading and it goes "*In the circumstance I hereby set aside the attachment and the public auction order for the parties to* ***reconcile accounts as at May 2015*** *when the applicants made the payment of US$341,988.89 and the exchange rate at the time vis-à-vis the judgment sum of GH¢944,880.36 at the time"* (emphasis mine)

The plaintiff sought a review of this ruling and argued that there was the need for the court to appoint an independent party to examine and reconcile the accounts as a way of resolving what is owing, if any.

The trial High Court on 26th April 2017 granted the motion for review and ordered the appointment of the Deputy Director of Finance, Judicial Service, Mr. Charles Idun, as the independent referee to reconcile the accounts of the parties. The parties were accordingly ordered to file their respective instructions for the reconciliation exercise to be conducted by the independent referee.

Following the filing of their respective instructions, the independent referee carried out the exercise and came up with his report tendered into evidence as Exhibit CE1 which is at pages 211-219 of the ROA. The report, Exhibit CE1 concluded thus:

> *"At the end of the exercise the outstanding indebtedness of the defendants is in the sum of GH¢1,147,074.78 being the unpaid principal balance of the loan, accrued interest and the cost awarded as at May 2015 whereas the defendants had made payments within the same period amounted to US$346,157.80, meanwhile the exchange rate as at 14/5/2015 was quoted as US$3.92"*

It may be observed that converting US$346,157.80 into cedis using the US$3.92 exchange rate gives GH¢1,136,938,576 which shows an overpayment of GHC209,863.79

In a ruling of the trial High Court dated 5th March 2020, it was concluded that "*this clearly shows that per the Referee's computation the plaintiff took in excess GHC209, 863.79 which this court accordingly order the plaintiff to refund same to the defendants"*

The plaintiff bank being dissatisfied with the ruling dated 5th March 2020 filed the instant appeal on grounds that:

(i) The ruling is against the weight of evidence

(ii) The trial judge misdirected himself by ignoring the blatant infractions of his order by the Court appointed Expert and proceeding to endorse his report as the true state of the accounts between the parties.

By way of relief in this appeal, the plaintiff bank is seeking to wholly set aside the ruling dated 5th March 2020 and the aspect of this case remitted to the trial court to be tried de novo.

The second ground of appeal alleged misdirection by the trial judge but the plaintiff failed to satisfy the statutory requirement of providing particulars of the misdirection. Rule 8(4) of the Court of Appeal Rules, 1997 (C.I.19) provides that:

> "*where the grounds of appeal allege misdirection or error in law, particulars of the misdirection or error shall be clearly stated".*

We are of the view that the second ground of appeal is vague and ambiguous; not in compliance with the above Rule and same is inadmissible and accordingly struck out. (See **Zabrama v Segbedzi (1991)2 GLR 221)**

The plaintiff, under the general ground that the ruling is against the weight of evidence, is expected to demonstrate from the record that the ruling of the trial court is not supported by the evidence or there were pieces of evidence that were applied wrongly to the case of the plaintiff or there were pieces of evidence which, if applied in favour of the plaintiff's case would have changed the ruling in his favour.

It must be noted that this was not a case where an issue had been set down for the parties to prove or disprove. The scope of enquiry was limited to reconciliation of accounts of the parties after judgment had been delivered by the trial court.

The court appointed an expert to do the reconciliation of the accounts of the parties. The court expert carried out the exercise in accordance with the terms of the order.

Plaintiff has argued that the independent referee did not understand the order dated 27th March 2017 made by the trial court at all. According to the plaintiff, if the independent referee had understood the court he would not have used the cedi to the dollar exchange rate of May 2015, which was US$3.92 and applied or added it to the total sum of US$341,988.89 which the 1st defendant had paid over a period of time starting from January 2011 to May 2015.

The main argument of appellant has been that since the defendants paid the $341,988.89 by instalments spanning the period January 2011 to May 2015, it was wrong for the independent referee to have used the exchange rate that existed in May 2015. We do not agree with appellant. The independent referee had an obligation to conduct the exercise in accordance with the terms of reference as indicated by the court. It was the court that specified the exchange rate to be used in its order dated 27th March 2017.

It must be mentioned that the court's order of 27th March 2017 that directed the independent referee to use the exchange rate that prevailed as at May 2015 was not acceptable to plaintiff, yet plaintiff did not appeal against it and rather agreed to work with the independent referee on it.

In our considered view, having allowed the report to go in without objection coupled with the fact that the appellant did not find any fault with the order of reconciliation of the accounts of the parties with exchange rate at the time of payment of the $341,988.89 as ordered by the court, the instant appeal loses its merit.

At any rate, under Order 26 Rule 6 of the High Court (Procedure Rules) 2004, (C.I.47) the appellant could have applied to call at least one more expert if it had problems with the manner the court appointed expert carried out the work as ordered by the court.

By this appeal, the plaintiff expects this court to reverse the conclusion by the trial court in relation to the report submitted by the court expert. From the record the trial judge was satisfied with the report of the expert and decided to go by that. For this court to reverse the trial court, there must be compelling reason why the report of the expert ought not to have been followed and we find no such compelling reason.

In all the circumstances, we are of the firm view that there is no merit in the appeal especially in the light of the fact that litigation must have an end. Accordingly, the appeal is dismissed. Costs of GH¢10,000.00 in favour of Respondent.

SGD

.....

JUSTICE ANTHONY OPPONG

(JUSTICE OF THE COURT OF APPEAL)

SGD

I AGREE **.....**

JUSTICE HENRY KWOFIE

(JUSTICE OF THE COURT OF APPEAL)

SGD

I ALSO AGREE **.....**

JUSTICE RICHARD ADJEI-FRIMPONG

(JUSTICE OF THE COURT OF APPEAL)

<u>COUNSEL:</u>

EVANS DZIKUNU FOR PLAINTIFF/APPELLANT

BERNARD AGORTEY FOR DEFENDANT/RESPONDENT