IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL (CIVIL DIVISION)

ACCRA – GHANA

CORAM: MARGARET WELBOURNE JA PRESIDING

P. BRIGHT MENSAH JA

BARTELS-KODWO JA

SUIT NO. H1/145/2022

23RD MARCH 2023

BETWEEN:

1. **THE ATTORNEY GENERAL … 2ND DEFENDANT/APPELLANT**
2. **LANDS COMMISSION … 1ST DEFENDANT**

vs

MERCEDES ADDY … PLAINTIFF/RESPONDENT

JUDGMENT

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BRIGHT MENSAH JA:

Undoubtedly, the instant appeal is in a very narrow compass. The fundamental issue it raises, is whether the lower court exceeded its jurisdiction when it allegedly granted an additional interest beyond what the parties in the case had agreed upon.

Background:

It is on record that on 17/09/2020, the plaintiff/respondent caused to be issued in the registry of the Accra High Court [Land Division], a writ of summons against only the Lands Commission [1st defendant] seeking the following judicial reliefs:

1. A declaration that the Accra Urban Transport Project PH 1 has affected plaintiff's 0.37 out of her 0.689 acre parcel of land at Pokuase ACP Junction near Amasaman in the Greater Accra Region of the Republic of Ghana.

2. A further declaration that the appropriation by Government of Plaintiff's 0.37 acre parcel of land at Pokuase ACP Junction for the Accra Urban Transport Project PH 1 constitutes compulsory acquisition of the said land.

3. A declaration that by virtue of article 20(2)(a)&(b) of the 1992 Constitution plaintiff is entitled as of right to the prompt payment of fair and adequate compensation, subject to valuation to assess the quantum of compensation payable.

4. A further declaration that the refusal of defendant-Commission to involve plaintiff's lawyer(s) in negotiating prompt payment of fair and adequate compensation for and on plaintiff's behalf is un-reasonable and unconstitutional.

5. An order for the prompt payment of fair and adequate compensation assessed in accordance with the valuation report dated December 2018 and which plaintiff presented to the Land Valuation Division of defendant-Commission for consideration and necessary action.

OR IN THE ALTERNATIVE

i. An order for payment of quantum assessed payable by the Valuer in the valuation report of December.

ii. Interest on whatever sum is certified fair and adequate

compensation assessable for payment.

Significantly, given the nature of the claims before the lower court, the court *suo motu* made on 04/11/2020 an order joining the Attorney General in the suit as the 2nd defendant. The order worth reproducing here below, reads in part:

> *"By court: x x x x x x*
>
> *From the reliefs being sought by the plaintiff, the court deems the Attorney General a necessary party and hereby joins the Attorney General as 2nd defendant to the suit.*
>
> *Plaintiff is to amend the title of the suit, the writ and the statement of claim and serve same on the Attorney.*
>
> *Suit to take its normal course."*

Pursuant to the order, the plaintiff/responded accordingly, amended the writ of summons and the statement of claim. Consequently, the Attorney General was properly made a party to the suit as the 2nd defendant.

<u>The proceedings in the court below on 19/05/2021:</u>

The background to the present appeal is described in the proceedings of the court below that took place on 19/05/2021, culminating in the consent judgment part of which is subject of the appeal. That day's proceedings concerned submission/proposal by learned Counsel for the plaintiff/ respondent to compromise his client's claims. Learned Counsel for the 2nd defendant/appellant then took his turn to address the lower court and made a counter offer to the proposal of respondent Counsel's submission/ proposal.

It is noted from the available record of appeal that the 2nd defendant/appellant herein after being served with the necessary processes defaulted in filing his statement of defence within the stipulated time as required by the rules of the court. In the result, the plaintiff/respondent applied for judgment in default of defence which application was opposed by the 2nd defendant/ appellant by the filing of an affidavit in opposition in addition to a statement of defence.

It bears stressing that on the hearing of the application for the default judgment, the lower court proposed to the parties to attempt settling the suit out of court. Although it does appear no settlement was effected, it is nonetheless worth noticing that in the course of the court's proceedings on the 19/05/2021, the parties through their respective lawyers compromised on the plaintiff/respondent's claim upon which the lower court entered a consent judgment. It is this part of the judgment that the 2nd defendant/ appellant complains about. In other words, the complaint is not about the entire judgment but a portion thereof. For purposes of clarity, we deem it not only appropriate but fair to reproduce here below, the consent judgment as well as the notice of appeal the 2nd defendant/appellant has filed.

First, the proceedings of the lower court recorded on 19/05/2021 that includes the consent judgment.

> *"Counsel for plaintiff says that he is willing to meet the defendants*
>
> *halfway on the offer made by them and has requested for four*
>
> *years interest with costs of 10%.*
>
> *Counsel for the 2nd defendant says that they have proposed to*
>
> *pay interest for one year and will leave the issue of costs to the*

discretion of the judge.

Counsel for the parties have thus agreed to a compromise and

ask the court to accordingly grant judgment.

***By court**: Judgment is granted in the plaintiff's favour for*

Ghc630,000.00, which is inclusive of the valuer's fees and one

year of interest. In addition, the defendants shall pay an extra

year of interest to the plaintiff.

Costs of Ghc40,000.00 in plaintiff's favour."

See: ***p. 105 of the record of appeal [roa]***

Now, per notice of appeal filed with this court on 01/07/2021, the 2nd defendant/ appellant complains:

1. That the learned trial judge acted in excess of her jurisdiction when she held that the defendants are to pay plaintiff one (1) year interest on the sum of Six Hundred and Thirty Thousand Ghana Cedis (Ghc630,000.00) instead of interest from the date of judgment to the date of final payment.

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

See: ***pp 116-117 [roa]***

So far, no additional grounds have been filed. Therefore, our discussion and consideration of the appeal shall be solely based on the only ground canvassed herein. As we proceed further, we shall address the 2nd defendant/appellant simply as the appellant and the plaintiff/respondent, the respondent.

The appeal:

At this stage, we proceed to analyze the arguments of Counsel *vis-a-vis* the consent judgment the lower court entered.

The settled position of the law is that an appeal is by way of re-hearing the case. The Court of Appeal Rules, **C.I 19** per **rule 8(1)** provides that any appeal to the court shall be by way of re-hearing. The phrase, ***"an appeal is by way of re-hearing"*** has been subjected to several judicial interpretation in a legion of cases. In ***Nkrumah v Ataa [1972] 2 GLR 13 Holding 4***, for eg., the court emphasized:

> *"Whenever an appeal is said to be 'by way of re-hearing' it means no more than that the appellate court is in the same position as if the rehearing were the original hearing, and the appellate court may receive evidence in addition to that before the court below and may review the whole case and not merely the points as to which the appeal is brought, but evidence that was not given before the court below is not generally received."*

Re-echoing the principle, the Supreme Court in ***Akufo-Addo v Catheline [1992] 1 GLR 377 @ 392*** stated the law as follows:

> *"It must be pointed out that the phrase does not mean that the parties address the court in the same order as in the court below, or that the witnesses are heard afresh. What it does however indicate is that the appeal is not limited to a consideration whether the misdirection, mis-reception of evidence, or other alleged defect in the trial has taken place,*

so that a new trial should be ordered. It does also mean, as pointed out by Jessel M.R in Purnell v Great Western Rail Co. [1876] 1 QBD 636 @ 640, C/A that the Court of Appeal is not to be confined only to the points mentioned in the notice of appeal but will consider (so far as may be relevant) the whole of the evidence given in the trial court, and also the whole course of the trial." **[emphasis ours]**

The settled rule, therefore, is that the appellate court is enjoined by law to scrutinize the evidence led on record and make its own assessment of the case and the evidence led on record just like a trial court. Where the court below comes to the right conclusion based on the evidence and the law, its judgment is not disturbed. The opposite is equally true and the judgment is upset on appeal where it is unsupportable by the facts and or the evidence. See: ***Nkrumah v Attaa (1972) 2 GLR 13 C/A***.

The rule is also that where the appellate court was obliged to set aside a judgment of a lower court, it must clearly show it in its judgment where the lower court went wrong. The rationale is to correct the lower court and that also serves as a guide to all lower courts to follow the decision of the higher court on questions of law.

Assailing the incorrectness of that part of the judgment or the order the lower court made, the learned State Attorney, Counsel for the appellant has vociferously canvassed the point the court acted in the excess of its jurisdiction when it awarded additional one year interest to the claim when the parties had already agreed on an interest to be awarded to the compromised claim. In support, Counsel has referred us to the dictum of Archer JA (as he then was) in ***R v District Magistrate, Accra; Exparte Adio [1972] 2 GLR 125 @ 132.***

Now, having regard to the peculiar facts of our present case and the offer learned Counsel for the respondent made and the counter offer the learned State Attorney on

the day in question before both lawyers compromised on the claims of the respondent, it cannot be put to any serious doubt that the learned trial judge exceeded her jurisdiction when she awarded additional interest when she did not have that power or discretion to do so.

Why do we say so?

To begin with, learned Counsel in agreeing to compromise on the claims has proposed to the court that the respondent was willing to take Ghc630,000.00 in addition to 4 years' interest on the principal amount proposed inclusive of the valuer's fees as well as costs equivalent to 10% of the principal sum. It is worthy to note that the learned State Attorney for the appellant made a counter proposal that is to say, they agree on the proposed sum of Ghc630,000.00 but shall pay one year interest instead whilst leaving the award of costs to the discretion of the lower court.

Significantly, pursuant to the counter proposal by the learned State Attorney, the learned trial judge proceeded to record the penultimate portion of the court proceedings preceding the entry of the consent judgment as follows:

> ***"Counsel for the parties have thus agreed to a compromise and***
>
> ***ask the court to accordingly grant judgment."*** [Emphasis added]

This portion of the courts notes is presumed to mean that the parties through their respective lawyers agreed that the consent judgment was for the sum of Ghc630,000.00 attracting one year interest thereon. The interest was to run from the date of judgment till date of final payment. Once the consent judgment was entered on 19/05/2021 it did follow logically that the compromised interest was also to run from that date. The only judicial discretion left for the lower court to exercise in the matter was the award of

costs. It is trite learning that the award of costs is at large and always at the discretion of the court. Thus, even if proposed, the court has that power to grant it or refuse to do so.

In the circumstances, I roundly agree with the submissions of the learned State Attorney the lower court exceeded its jurisdiction when it awarded one more year interest on the compromised claim notwithstanding the fact that it had already made an award of one interest as agreed as between the parties. The excess of jurisdiction, it cannot be over-emphasized, has occasioned a grave miscarriage of justice that ought to be corrected or set aside.

A court is said to have exceeded its jurisdiction when though it has the power to adjudicate an issue or a matter, it goes beyond that power to exercise some other authority or makes some orders or pronouncements not called upon to do and which may legitimately be described as extra judicial. In that case the court is said to be acting without authority.

It is matter of general importance to observe that Archer JA's dictum in ***R v District Magistrate, Accra; Exparte Adio (supra)***, was given judicial endorsement by the Supreme Court when the apex court adopted verbatim, the position of the law in ***Pobee Tutuhene Elect of Apam v Yoyoo [2013-2014] 1 SCGLR 208 @ 218*** as follows:

> *"…….[I]t is of vital importance to appreciate that when*
>
> *when the term 'excess of jurisdiction' is used it may meant that*
>
> *from the inception of the case, the court has no jurisdiction what-*
>
> *soever because the nature of the case or the value involved is*
>
> *beyond its jurisdiction. But it may also mean that although the*

court has jurisdiction to hear the case, the orders which the court can pronounce are restricted by statute. If an order is therefore beyond the powers of the court, it is perfectly correct to say that it has exceeded its jurisdiction."

It has been said, and we do acknowledge, that there are typically 3 circumstances in which the court might act beyond the limits of its power, namely:

(1) when the court has no power to deal with the kind of matter at issue;

(2) when the court has no power to deal with the particular person concerned, or

(3) when the judgment or order issued is of a kind that the court has no power to issue.

In constitutional law, a court's departure from recognized and established requirements of law, despite apparent adherence to procedural form, the effect of which is a deprivation of one's constitutional right is also termed *"excess jurisdiction"*.

It is a well-settled principle of law that certiorari will be granted to quash a decision of a court that has been made without jurisdiction or in excess of jurisdiction that makes the decision a nullity. See: ***R v High Court, Accra; Ex Parte Salloum [2011] 1 SCGLR 574***.

Guided by the principles stated supra, it goes without saying that the lower court exceeded its jurisdiction in our present case. In the circumstances, the appeal succeeds and it is hereby allowed in its entirety. The order of the lower court awarding additional one year interest on the compromised claim being a nullity is hereby set aside.

No order as to costs.

sgd

P. BRIGHT MENSAH

(JUSTICE OF APPEAL)

sgd

I agree **MARGARET WELBOURNE**

(JUSTICE OF APPEAL)

Sgd.

I also agree **JANAPARE BARTELS-KODWO**

(JUSTICE OF APPEAL)

COUNSEL

LEONA JOHNSON ABASSAH (PSA) FOR 2ND AND 3RD APPELLANT