IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA, GHANA- AD 2023

CORAM: HENRY A. KWOFIE, JA (PRESIDING)

ANTHONY OPPONG, JA

SOPHIA BERNASKO ESSAH, JA

SUIT NO. H1/12/2022

DATE: 23RD FEBRUARY, 2023

SIMON AVINU & 59ORS …PLAINTIFFS/RESP./CROSS-APPELLANTS

VRS.

1. **SEAWELD ENGINEERING LIMITED……1ST DEFT/APPELLANT/RES**
2. **SEADRILL GHANA OPERATIONS LTD….2ND DEFT/RESP./RESP.**

J U D G M E N T

ANTHONY OPPONG, JA:

For the sake of brevity, I will refer to the parties in this appeal the same way they were nomenclatured at the trial high court. That is the plaintiffs/respondents/1st to 59th plaintiff's cross-appellants will be referred to as plaintiffs; 1st defendant/ appellant/respondent will be referred to as 1st defendant and 2nd defendant/ respondent/respondent will be referred to as 2nd defendant.

The 1st defendant, a private employment agency registered and carrying on business in Ghana and 2nd defendants, an offshore oil and gas drilling company registered in Ghana and operating its business of offshore oil and gas drilling by way of exploration, entered into an agreement in the year 2013 by which the 1st defendant supplied skilled and technical workers like engineers, roughnecks, lead roughnecks, painters, welders etc. to work on the 2nd defendant's oil rig, the West Leo in Ghana's offshore oil and gas exploration and or extraction area.

According to the terms of the employment, the skilled labour workers supplied by 1st defendant to work on the 2nd defendant's oil rig, were to remain the employees of the 1st defendant and as such the 1st defendant was to be paid a determined amount of money for the services rendered by its employees by the 2nd defendant and the 1st defendant in turn would pay its employees. As a matter of fact, the 2nd defendant did not have control of the 1st defendant's employees except the right to inspect the work done by them so as to ensure that they have satisfied the standard of work in accordance with the tenets of the agreement. A copy of the said agreement was tendered in evidence as Exhibit 1 or SD1.

This 2013 agreement was extended or renewed to cover 2014 and 2015. In 2016, however, it was replaced by a new agreement which was also tendered in evidence as Exhibit 2 or SD2.

The plaintiffs, 59 of them, except the 60th, were the employees of 1st defendant who were engaged to work on the oil rig, West Leo of 2nd defendant. These plaintiffs were employed by the 1st defendant at various points in time and were given contracts of employment which were the "Terms and Conditions of Engagement" by the 1st defendant. These contracts of engagement were renewed on a yearly basis.

The plaintiffs, with the exception of the 39th were Fixed Term Contract Staff (FTCS) of 1st defendant and they unionized by the General Transport, Petroleum and Chemical Workers Union in 2009. However, in the year 2014 the 59 plaintiffs decided to join the Industrial and Commercial Workers Union (ICU) of the Trade Union Congress of Ghana (TUC). The ICU (the 60th Plaintiff) consequently became the mother Union of the 1st to 59th plaintiffs and officially became their mouthpiece.

Indeed, the 60th plaintiff sought to negotiate a collective bargaining agreement with the 1st defendant on behalf of the 1st to 59th plaintiffs when the 2014 employment contract with the 1st defendant came to an end. However, that task did not come to a successful end because the parties could not agree on the terms and conditions to be embodied in the collective bargaining agreement especially concerning the 13th month salary to be paid to the plaintiffs by the 1st defendant.

The 13th month salary had been paid to the plaintiffs in accordance with the contract with 1st defendant in the years 2013 and 2014 but in 2015, that term of the employment was removed from the contract by the 1st defendant. The deadlock arising from that removal of the 13th month salary by the 1st defendant culminated in an arbitration under the auspices of the National Labour Commission (NLM). Exhibit L, a Memorandum of Understanding (MOU), found at page 119 of Volume 2 of the Record of Appeal (ROA) shows that the 60th plaintiff (ICU) acting on behalf of 1st to 59th plaintiffs and 1st defendant agreed that the dispute over the claim and the denial of the 13th month salary should be resolved by submitting themselves to arbitration.

The outcome of the arbitration was that the plaintiffs were adjudged as entitled to the 13th month salary for the year 2015. In the arbitration award found at page 130 of volume 2 of the ROA (Exhibit N) it is clearly stated that:

> *"in the absence of any explicit and compelling evidence to justify non-payment of the 13th month salary to the complainants, the complainants (plaintiffs) are entitled to payment of the 13th month salary for the year 2015 as was included in the extended contract for the year 2016. No interest on the said salary is payable"*

It turned out that the appointments of the plaintiffs were immediately terminated by the 1st defendant in November 2016 when the labour supply contract between the 1st and 2nd defendant came to an abrupt end in the same month. With the termination of the appointments of plaintiffs, they had to be paid their severance packages. Plaintiffs were not satisfied as to the severance package paid to them by the 1st defendant. Consequently, some of the plaintiffs went to the office of 1st defendant to protest resulting in some damages caused to some scaffold platforms of the 1st defendant. Plaintiffs accused 1st and 2nd defendants of fraud, collusion and deception. Plaintiffs subsequently issued the instant writ of summons for the following reliefs:

a. *An order for the immediate payment of all their various entitlements following the termination of their employment;*

b. *An order for the enforcement of the arbitration award in favour of the plaintiffs pursuant to the National Labour Commission-initiated arbitration culminating in the said award dated the 28th day of December, 2016 to which both parties consented and actively participated;*

c. *An order that the 1st and 2nd defendants shall be jointly and severally liable for the payment of plaintiffs' gross consolidated "13th month" salary for 2015;*

d. *An order for the payment of the plaintiffs' gross consolidated 13th month salaries as part of their severance pay for 2016;*

e. *An order for the payment of the gross consolidated salaries for each year served as part of the plaintiffs' severance package;*

f. *An order for the payment of one (1) month gross consolidated salaries of each plaintiff as compensation in lieu of notice;*

g. *An order for the refund of the exaggerated amount of GHC2,750.00wrongfully deducted from the entitlements of 1st to 10th plaintiffs as the value of the ten (10) scaffold platforms allegedly damaged by the said 1st to 10th plaintiffs or in the alternative the assignment of their true value on the open market with a refund with plaintiffs;*

h. *A further order for the immediate delivery to the 1st to 10th plaintiffs of the ten (10) scaffold platforms since the latter have fully paid for their replacement value;*

i. *Damages for fraud, collusion and deception on the part of the 1st and 2nd defendants with intent to deny them of the payment of their due entitlements;*

j. *Interest on all payments due to the plaintiffs but which have remained unpaid to this day;*

k. *Costs including solicitor's fees being 10% of the total indebtedness of 1st and 2nd defendants to plaintiffs and*

l. *Any other reliefs found due.*

To this action, 1st defendant denied the charges and stated that at a meeting with plaintiffs in the year 2015 it informed plaintiffs that the payment of two months wage as the 13th month bonus at the end of 2014 was an error and that the 13th month salary should have been paid based on the basic salary of the plaintiffs. 1st defendant added that it made plaintiffs aware that it had no intention of paying the 13th month salary in the year 2015.

The impression created by plaintiffs that they have a collective bargaining agreement with 1st defendant was rebuffed by 1st defendant which insisted that they had no collective bargaining agreement with the plaintiffs and that the prevailing and valid agreement it had with plaintiffs was the 2016 terms and conditions of engagement.

1st defendant stated that when the terms and conditions of engagement with plaintiffs came to an end, it only did not terminate the appointments of plaintiffs but also calculated the severance packages of the plaintiff as per the terms in the 2016 contract. The severance package was calculated on one month's basic salary multiplied by the number of years served by the individual plaintiffs.

1st defendant stated that the plaintiffs, with the exception of few, did not accept the severance package and the plaintiffs in registering their protest of the package carried out an industrial action at the premises of the 1st defendant. During the

industrial action the 1st-10th plaintiffs destroyed scaffolding materials placed on the 1st defendant's compound and which was meant to be shipped to Mauritania by the 1st defendant for a pending job. The 1st defendant contended that the conduct of the said plaintiffs caused them to lose the job order to supply the scaffolds to a company in Mauritania. 1st defendant therefore counterclaimed for:

1. *An order that the 1st to 10th and 60th plaintiffs pay the sum of US$67,000 being the contract sum the 1st defendant would have made if the materials had not been destroyed by the plaintiffs*

2. *An order for the payment of the exact invoiced amount for the replacement of the scaffold from the supplier*

3. *An order that the 1st to 10th and 60th plaintiffs repay to the 1st defendant such sum as the court shall consider just*

The 2nd defendant on the other hand stated that it entered into two supply contracts with 1st defendant in the years 2013 to 2016 for the supply of labour to work on its rig, the West Leo. The 2nd defendant terminated its contract with the 1st defendant in 2016 and upon the termination it complied with all its obligations under the contract.

The 2nd defendant denied any wrongdoing on its part and described the allegations of fraud, collusion and deception made by the plaintiffs as scandalous. The 2nd defendant contended that plaintiffs had no cause of action against it and that they were not entitled to any reliefs they seek against them.

At the end of the trial of the case, the learned trial judge dismissed the counterclaim of 1st defendant and entered judgment dated 6th February, 2020 in favour of plaintiffs against the 1st defendant in the following terms:

a. *The 13th month salary as their consolidated gross for the year 2015 as awarded by the sole arbitrator on 28th December, 2016*

b. *The 13th month salary for the year 2016. This is to be calculated on their basic salary*

c. *One month salary for every year of service and this too is to be calculated on their basic salary*

d. *Payment of one month salary as compensation for the termination of their appointments in lieu of notice*

e. *Costs of 10,000 Ghana Cedis is also awarded to plaintiffs against the 1st defendant*

f. *The 47th plaintiff is to be paid his arrears of salary from October 2013 to September 2014*

g. *The 1st plaintiff is to be paid his overtime allowance for the 7 days he worked in 2016 at the hourly rate provided for in the 2016 Terms and Conditions of Engagement*

h. *For the needless litigation against the 2nd defendant, the court awards cost of GH ¢6,000.00 against the plaintiffs in favour of 2nd defendant.*

The 1st defendant was dissatisfied with the judgment and filed notice of appeal on 18th February 2020. The only ground of the appeal was *"the judgment is against the weight of evidence".* Although there was an intimation that further grounds might be filed upon receipt of the proceedings, no such further grounds had been filed.

The 1st to 59th plaintiffs were equally dissatisfied with parts of the judgment of the trial high court and so filed notice of cross appeal on the 4th May 2020. The parts of the judgement which had become the subject matter of the cross appeal were stated as:

i. *That part of the judgment which ordered that the end of contract bonus due the 1st and 59th plaintiffs/cross appellants should be based on their basic rather than their gross consolidated salaries for each year worked*

ii. *That part of the judgement refusing to award the plaintiffs interest on the monies found lawfully due them but wrongfully withheld by the 1st defendant/appellant*

iii. *That part of the judgment which awarded all the plaintiffs/cross appellants costs of GH¢10,000 only against the 1st defendant/appellant/respondent*

The grounds of the cross appeal were put thus:

I. *Having found that the 1st to 59th plaintiffs were lawfully entitled to the End of Contract Bonus as per their 2013, 2014, 2015 and 2016 Terms and Conditions of Engagement, the trial Judge erred in ordering that the payments due them should be based on one (1) month's basic pay per each year worked*

II. *The learned trial Judge erred in failing to realize and to hold that each of the 1st to 59th plaintiffs/cross appellants contracts of employment were yearly contracts which ended after every twelve months requiring the parties to re-negotiate and agree fresh contracts for the next and or following years and not single contract covering a period of years*

III. *The learned trial judge fell into error when she failed to order that interest be payable on all monetary or financial entitlements found lawfully due to the plaintiffs/cross appellants but wrongfully withheld by the 1st defendant/appellant*

IV. *The learned trial judge fell into error in awarding all the sixty (60) plaintiffs/cross appellants the wholly inadequate costs of GH¢10,000.00 only.*

Whilst 1st defendant sought, by way of relief, that the judgment of the trial court be set aside and judgment entered in favour of 1st defendant, the 1st to 59th plaintiffs sought the following reliefs from this court:

a. *An order reversing that part of the judgment of the lower court that the plaintiffs/ cross appellants' End of Contract Bonus shall be calculated based on their one (1) month's basic salaries for each year worked and replaced by an order that such entitlement shall be based on one (1) month's gross consolidated salaries for each year worked for years 2012,2013,2014 and 2015 but on one (1) month's basic salaries for 2016*

b. *An order for interest to be payable on all sums found due from the 1st defendant/ appellant to the 1st to 59th plaintiffs/ cross appellants but wrongfully withheld by the former*

c. *An order reversing the costs awarded and replacing same with an award of costs of at least GH¢10,000.00 in favour of each plaintiff/cross appellant against the 1st defendant/appellant*

What this court is required to do when an appeal is grounded on the judgment being said to be against the weight of evidence has been stated in a number of cases like **Tuakwa v. Bosom (2001-2002) SCGLR 61; Djin v. Baako (2007-2008) 1 SCGLR 1; Ackah v. Pergah Transport Ltd & Ors (2010) SCGLR 728 and Owusu Domena v. Amoah (2015-2016) 1 SCGLR 790.** In the case of **Republic v. Conduah; Ex parte Aaba (Substituted by) Asmah (2013-2014) 2 SCGLR 1032,** the Supreme Court summed up the principle underlying the requirement of an appellate court in an appeal where the ground is that the judgment is against the weight of evidence in the following words:

> *"the effect of an appeal on the ground that 'the judgment is against the weight of evidence' was to give jurisdiction to the appellate court to examine the totality of the evidence before it and come to its own decisions on the admitted and undisputed facts. In the instant case, (just as in this case) the appellant, by that ground of appeal, was implying that there were pieces of evidence on record which, if applied properly or correctly, could have changed the decision in his favour, or that certain pieces of evidence had been wrongly applied against him. The onus in such an instance was on the appellant to clearly and properly demonstrate to the appellate court the lapses in the judgment being appealed against"*

Before I take hold of the responsibility of reviewing the record to ascertain whether the decision of the trial high court is supported by the evidence on record or not, I feel impelled to comment on the submission of the learned lawyer for plaintiffs who audaciously stated that the 1st defendant's appeal had been struck out for non-compliance under Rule 20(2) of the Court of Appeal Rules, (C.I.19). On that premise, he proceeded to state that his written submission filed on the 24th January, 2022 pursuant to time extended by the court on the 19th January, 2022 addressed primarily the issues raised in the grounds of appeal specified in the cross-appeal. In effect the plaintiffs failed to comply with Rule 20(4) of C.I.19. That is to say the plaintiffs did not, by choice, contest the appeal of the 1st defendant as the written submission plaintiffs filed was not in answer to the written submission of the 1st defendant.

It must be pointed out that the appeal of 1st defendant was actually struck out on 30th November 2021 for non-compliance with Rule 20(2) of C.I. 19. On 30th May, 2022 however, the court, differently constituted, in Case No. H3/688/2022, relisted the 1st defendant's appeal and granted a further order directing the 1st defendant leave to file its written submission within 14 days with costs of GH¢3,000 to each of the plaintiffs against the 1st defendant. It is therefore clearly wrong if not misleading for plaintiffs' lawyer to create the impression that the appeal of 1st defendant does not exist on account that same has been struck out for want of prosecution. That stance taken by the plaintiffs is most unfortunate.

Nevertheless, the court will proceed to consider the appeal of 1st defendant and the cross appeal of the plaintiffs on their respective merits and demerits.

As noted earlier, the only ground of the 1st defendant's appeal is that the judgment is against the weight of evidence. Therefore, the question to ask is what are the lapses in the judgment that the 1st defendant has clearly demonstrated as to warrant the disturbance of the judgment or the setting aside of the judgment?

The first point raised by 1st defendant in its bid to overturn the judgment of the trial court related to what it termed capacity. The argument canvassed in this regard was that the 60th plaintiff, ICU, which claimed to have acted for and on behalf of the plaintiffs was neither a party to any agreement between any of the parties nor privy to any such agreement and so it lacked capacity to have brought an action against defendants. It is therefore observed that this point as argued by 1st defendant had nothing to do with the locus standi of 1st defendant; that is, the legal standing of 1st defendant to sue or the right of 1st defendant to bring an action, especially so when it is established on record that the 2nd defendant obtained its official collective bargaining certificate from the Chief Labour Officer under the Labour Act, 2003 (Act 651). What the 1st defendant is saying is that the 60th plaintiff either had no cause of action against the defendants or they were not necessary party to the suit.

It is worth considering that among the twelve reliefs plaintiffs sought against defendants, none of them can be said to be a relief claimed jointly with the 60th plaintiff. In other words, the 60th plaintiff did not make any claim by way of any relief as against the defendants. No wonder, in the judgment of the trial court, no award or relief was granted in favour of 60th plaintiff against the defendants. As a matter of fact, having regard to the peculiar facts of this case, particularly the fact that the 1st defendant and the 60th plaintiff could not succeed in coming out with a binding collective bargaining agreement and therefore there could not be a breach of any such collective bargaining agreement, the 60th plaintiffs can be said to be an

unnecessary party to the suit and the trial court could have relied on Order 4 rule 5(2) of the High Court (Civil Procedure) Rules, C.I. 47 and ordered the 60th plaintiff to cease to be a party as it is clear that the 60th plaintiff was improperly or unnecessarily made a party to the suit.

Accordingly, since this court is entitled to assume the powers of the trial court under Rule 31 of C.I. 19, the general powers of this court in dealing with appeals which says that:

> *"The Court shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the Court as a court of first instance*", the 60th plaintiff is hereby struck out as unnecessary party to this suit.

The 1st defendant argued that the award made by the sole arbitrator in respect of the payment of the 13th month salary and the trial judge concurring in that award is not supported by the evidence. This argument is unimpressive and it is rejected. As a matter of law, where parties who do not suffer from any disability or incapacity voluntarily submit themselves to arbitration and the matter is duly heard without any breach of the tenets of natural justice by a competent arbitrator and an award is made, such an award has the same effect as the judgment of the high court. See section 57(1) of the Alternative Dispute Resolution Act, 2010 (Act 798). An award of an arbitrator can only be impugned and indeed set aside or not followed by the high court only on valid stated reasons such as where the court finds that a party to the arbitration suffered from some disability or incapacity or where one party was not given notice of the appointment of the arbitrator or the dispute fell outside the scope of arbitration or where the arbitrator did not conform to the procedure agreed upon by the parties. Since the 1st defendant did not seek to attack the award on any of such

vitiating factors, his contention that the award should not be enforced but set aside appears misconceived.

The terms and conditions of employment of plaintiffs as workers and 1st defendant as employer find their explicit expression in Exhibit K elsewhere tendered as Exhibit 16. It is gleaned from the said documentary evidence that the terms and conditions contained therein governed the parties for the year 2016. By this contract of employment, clause 7.0, inter alia, stated that:

> *"Thirteenth month salary which shall be paid on the Basic Salary shall be accrued by the Client (2nd defendant) and paid by Seaweld (1st defendant). This shall be one month basic salary and shall be paid at the end of every calendar year on a pro rata basis".*

Regarding payment of severance package, the binding terms of employment agreed to and existing between plaintiffs and 1st defendant also encapsulated in documentary evidence, i.e. Exhibits K, the letter of appointment for the plaintiffs, also stated categorically at Clause 24.0 that:

> *"The payment of such severance shall be determined by the Client (2nd defendant) and will be based on each year of service and prorated. Severance shall be paid when the rig finally leaves the shores of Ghana. One month Basic Salary shall be paid as severance for each year of service worked".*

On the strength of this unimpeached documentary evidence alluded to supra, the trial high court can not be faulted for holding that plaintiffs' entitlement to the 13th month salary and severance package should be paid on the basis of their basic salary

as against their gross consolidated salary. This court endorses that conclusion of the trial court without any reservation whatsoever as that conclusion is amply supported by explicit documentary evidence on record.

It is heart warming to observe that the 1st defendant who attacks the judgment of the trial court on the sole ground that the judgment is against the weight of the evidence conceded in its written submission that:

> *"It is the considered view of the 1st defendant/appellant that the trial court was right in its judgment that the 13th month salary for the year 2016 is to be calculated based on the basic salary as this was in accordance with the evidence before the Honourable Court. The Plaintiffs/Respondents failed to discharge the burden of proof that their 13th month salary should be calculated on their gross salary. My Lord, it is also the humble view that the trial judge was right when she came to the conclusion that one month salary for every year of service should be calculated based on the basic salary"*

The court cannot agree more with the 1st defendant's submission. This takes us to the consideration of the cross appeal of 1st to 59th plaintiffs.

It is well established on record that the for the working period of 2013,2014 and 2015 the 1st to 59th plaintiffs and 1st defendants were bound by the same terms and conditions of employment whereby the agreement then was that the 13th month salaries were to be based on the gross consolidated salaries. However, in the working year of 2016, there was a change. This change is what plaintiffs appear to misappreciate. In 2016, it was clearly stated in the term and condition of employment that the payment of the 13th month salary will be based on the basic

salary as indicated earlier. It is for this reason that the learned trial high court judge pronounced in her judgment that both the 13th month salary and the severance package should be calculated according to basic salaries as against the gross consolidated salary that pertained in 2013, 2014 and 2015.

Therefore, the conclusion of the trial court that since the 2016 contract was what was prevailing when the plaintiffs' employment contract came to an end and that it is under the terms of this contract that plaintiffs' severance package ought to be calculated for the entire period of their work and furthermore, since this 2016 contract provided for plaintiffs' 13th month salary to be calculated on their basic salary and not their gross consolidated salary, the plaintiffs' severance package had to be calculated on their basic salary and not their gross salary for each year of service appears unassailable.

Plaintiffs however consider this conclusion erroneous. I fail to see any error. Plaintiffs have argued that each year's contract is separate and distinct from the other. That is quite correct. What this means is that the terms and conditions of the engagement in 2013 is different and distinct from that of 2014 and for that matter 2015 and 2016. If the contract had come to an end just as it happened in 2016, the applicable terms of the contract stated in the 2013 contract would have prevailed in which case the provision of payment of the 13th month salary would have been calculated on the basis of the gross consolidated salary as stated in the 2013 terms of engagement. The same can be said of 2014 and for that matter 2015. If so what prevents the same application in respect of the payment of the 13th month salary and the severance package to be calculated according to the basic salary as clearly indicated in the 2016 terms of engagement?

It follows that at the end of each year of contract, whatever were the terms of that expired year also expired and ceased to be applicable. I therefore do not share the view of the plaintiffs that the calculation of the 13th month salary for the years 2014 and 2015 should have been based on the gross consolidated salaries, while that of 2016 should have been based on the basic salaries. Rather, I share the view of the learned trial judge that the prevailing term of the engagement which was to the effect that the 13th month salary and the severance package be calculated on the basic salary. That is the prevailing and applicable term at the end of the engagement in 2016.

The next issue raised by plaintiffs in pursuit of their cross appeal hinged on interest; contending that 1st defendant having held unto the plaintiffs' justly earned monies for 5 years, that is, from 2016 to 2021 without any lawful justification whatsoever, then interest ought to have been ordered by the trial court. Plaintiffs referred to what Adzoe JSC said in the case of **IBM v. Hasnem Enterprises Ltd (2001-2002) SCGLR 393 at 411** that:

> *"where money is unjustly withheld, then the creditor must be seen to have been unjustly recompensed by the debtor to the unjust use of other people's money"*

The plaintiffs have not been able to bring their case to fall under the facts in the IBM case that attracted the said legal pronouncement by Adzoe JSC. In other words, plaintiffs have been unable to demonstrate that 1st defendant has unjustly withheld plaintiffs' entitlements in question. The record shows that as far back as March 2017, the various documents including documents with calculations of severance pay and terminal benefits for the plaintiffs had been processed and plaintiffs had been notified for payment, yet plaintiffs chose to resort to the instant litigation. In this

circumstance how can plaintiffs say the 1st defendant has unjustly withheld payments due them (plaintiffs)? The plaintiffs owed it as a contractual duty to themselves to have taken steps to mitigate the impact of their refusal to collect their money on themselves. I do not share the view that the trial judge erred in not awarding interest on the monetary awards determined in favour of plaintiffs.

It has been stated ad nauseum that costs are at the discretion of the court. Nevertheless, in civil litigation, some guidelines have been outlined in Order 74 of C.I. 47 to guide the court in assessing quantum of costs after trial. Legal practitioners in our jurisdiction have a duty under Order 74 Rule 2(1) of C.I. 47 to briefly address the court on the question of costs. They scarcely do at the trial courts; you scarcely see the question of costs addressed seriously in the final briefs of lawyers at the trial court. Even if they do, it appears to me that they do not do it in a way that depicts the expected standard.

Order 74 Rule 2(4) of C.I.47 provides that:

> *"In assessing the amount of costs to be awarded to any party, the court may have regard to*
>
> *(a) The amount of expenses, including travel expenses, reasonably incurred by that party or that party's lawyer or both in relation to the proceedings;*
>
> *(b) The amount of court fees paid by that party or that party's lawyer in relation to the proceedings;*
>
> *(c) The length and complexity of the proceedings;*

(d) The conduct of the parties and their lawyers during the proceedings and

(e) Any previous order as to costs made in the proceedings.

The plaintiffs are of the view that the GH¢10,000 costs awarded in favour of the plaintiffs against the 1st defendant was on the low side and that the GH¢10,000 awarded should be in favour of each of the plaintiffs. I tend to agree with the plaintiffs that the costs awarded in their favour was low but I do not share their view that the GH¢10,000 costs should have been awarded to each of the 59 plaintiffs. Having taken into consideration the factors enumerated under Rule 2(4) of Oder 74 of C.I. 47, the costs of GH¢10,000 will be set aside and substituted therefor is costs of GH¢30,000.

Subject to the variation of the costs, both the appeal and the cross appeal are of no merit and are accordingly dismissed. The judgment of the court below is hereby affirmed.

SGD

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JUSITICE 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 SOPHIA BERNASKO ESSAH

(JUSTICE OF THE COURT OF APPEAL)

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VICTOR ADAWUDU FOR 2ND DEFT/RESPONDENT

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