

IN THE SUPERIOR COURT OF JUDICATURE  
IN THE COURT OF APPEAL (CIVIL DIVISION)

ACCRA – GHANA

CORAM: SENYO DZAMEFE JA PRESIDING

P. BRIGHT MENSAH JA

BARTELS-KODWO (MRS) JA

SUIT NO. H1/163/2022

4<sup>TH</sup> MAY 2023

BETWEEN:

MERCY BLANC AIDOO ... PLAINTIFF/APPELLANT

vs

THE ADMINISTRATOR OF THE

ESTATE OF SELWYN OKOE BOYE ... DEFENDANT/RESPONDENTS

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JUDGMENT

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BRIGHT MENSAH JA:

This is an appeal from the decision of the High Court, Accra delivered 10/06/2019 in favour of the defendants/respondents herein referred to as the respondents, as against the plaintiff/appellant simply referred to as the appellant. The judgment of the lower court complained of, appears on *pp 77-87 of the record of appeal [roa]*.

Being dissatisfied with the judgment, the appellant has launched the present appeal per a notice of appeal filed which appears on *pp 233-235 [roa]*.

To appreciate the nature of the case and the conclusions the lower court reached we chronicle in brief, the facts and respective claims of the parties.

**BRIEF FACTS:**

On record, the appellant caused a writ of summons to be issued in the registry of the lower court against the respondents for the following judicial reliefs:

- i) An order directed at the defendants [*respondents*] to exhibit upon oath a true account of all the sums of money received by the defendants [*respondents*] as Administrators of the estate of Selwyn Okoe Boye.
  
- ii) An inventory of all the properties, moveable and immovable of the deceased which has come into their custody by reason of their administration of the estate of the deceased.

- iii) An order directed at the defendants [*respondent*] to distribute properties both moveable and immovable constituting the estate of Selwyn Okoe Boye according to PNDCL 111.
  
- iv) Distribution and delivery up of such properties as are due the plaintiff out of the estate of the deceased.
  
- v) Such other further reliefs as the court may deem just. See: *pp 1-3 [roa]*

The respondents upon entering appearance subsequently filed their statement of defence and counterclaimed against the appellant that runs as follows:

- a) Refund of the sum taken by the plaintiff [*appellant*] to the defendants [*respondents*] plus interest at the prevailing commercial rate from the date the said money was taken by the plaintiff till the final determination of the suit.
  
- b) An order of perpetual injunction restraining the plaintiff [*respondent*] from interfering with the administration of the estate of the

deceased.

c) Cost including the legal fees.

d) Any other costs as the court may deem fit. See: *pp 11-14 [roa]*

**Issues for trial:**

At the close of the pleadings, the under listed issues were filed for the consideration of, and determination by the lower court:

1. Whether or not the deceased at the time of his death was lawfully married to the plaintiff *[appellant]*.
2. Whether or not the deceased transferred the running of the business into the name of the plaintiff *[appellant]*.
3. Whether or not plaintiff *[appellant]* forged documents covering the business of her deceased husband.

4. Whether or not plaintiff [*appellant*] fraudulently invoiced and received from customers an amount of Four Hundred and Fifty Five Thousand Ghana Cedis (Ghc445,000).

5. Whether or not plaintiff is entitled to her claims.

**Judgment of the lower court:**

The case having gone through a full gamut of trial, the lower court rendered its judgment and concluded as follows:

*“Upon this case coming on for hearing and determination and at the end of the trial, I am of the firm view that the plaintiff has failed to prove her case on the balance of probabilities and I shall accordingly dismiss the plaintiff’s case in its entirety. I shall enter judgment for the defendants and grant all the reliefs endorsed on their counterclaim.”*

It is this decision of the lower court that the appellant has appealed against on a number of grounds, namely that:

1. The judgment was against the weight of evidence.

2. The trial judge erred in holding that there was no customary marriage between the plaintiff and the defendants' deceased father inspite of the clear evidence on the record such as the funeral brochure prepared by deceased's family and the admission by the defendants in their witness statements that there was a marriage but that it was dissolved without producing evidence.
  
3. The trial judge erred in holding that the plaintiff had forged the registration documents of Valendes Vengtures based only the fact that she was in possession of same despite the evidence on the record such as the fact that the defendants' deceased father was in the employment of the Ghana Revenue Authority and therefore it was he in whose interest the transfer would serve, the fact that since as a public officer he had a TIN number which would create problems for him if he did not change the registration into the plaintiff's name and get a new TIN number for Valendes Ventures and the fact that the defendants' deceased father used the purportedly forged registration certificate to apply for a loan for Diamond Capital.
  
4. The trial judge erred in holding that the plaintiff should refund the contract sum to the defendants when there was evidence on the record of the payment of monies to the suppliers of the materials in the contract.

5. The trial judge erred in totally ignoring the judgment of the Circuit Court, Accra, dated 6<sup>th</sup> September 2017 presided over by His Honour M.E. Essandoh attached as Exhibit E to the plaintiff's witness statement resulting in the plaintiff suffering double jeopardy.

6. Additional grounds to be filed upon the receipt of the record of proceedings.

So far no additional grounds of appeal have been filed.

**Resolution of issues the appeal raises:**

Before proceeding to discussing in detail, the merits or otherwise of the present appeal, it is material to point out that save the omnibus ground [ground 1], the other grounds of appeal learned Counsel for the appellant filed, did not comply with the mandatory rules of this court. Counsel has contended that the learned trial judge erred and or misdirected himself on the facts and the law. Yet, Counsel never gave particulars of such errors or misdirection as required by the rules. This is another way of stating that the appellant gave no specifics as regards the errors the learned trial judge is accused of committing. That sins against the **Court of Appeal Rules, 1997 [C.I 19], rule 8(4)** that stipulates:

*“(4) Where the grounds of an appeal allege misdirection or error in law, particulars of the misdirection or error shall be clearly stated.”*

Additionally, we hold the respectful view that the grounds of appeal are vague and argumentative, in clear violation or contrary to **rule 8(5) of C.I 19** that enacts:

*(5) The grounds of appeal shall set out concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively." [emphasis supplied]*

It cannot be over-emphasized that this court is vested with the power to strike out any ground of appeal that is vague or couched in general terms or where any ground of appeal or any part thereof is not permitted under the rules. See: **Rule 8(6) of C.I 19.**

It is important to reiterate that the common law courts have always frowned on non-compliance of mandatory rules. The Court of Appeal speaking through Kpegah JA (as he then was) in Zabrama v Sebgedzi [1991] 2 GLR 221 had propounded the law as follows:

*"The implication of these rules is that a plaintiff, after specifying part of the judgment or order complained of, must state what he alleged to have been found by the trial judge, or what error he had made in a point of law. I do not think it meets the requirements of these rules to simply allege misdirection on the part of the trial judge. The requirement is that the grounds of appeal must clearly and concisely indicate in what manner the trial judge misdirected himself either on the law or on the facts...... The*

*rationale is that a person who is brought to an appellate forum to maintain or defend a verdict or decision which he had got in his favour must understand on what ground it is impugned.” [emphasis added].*

Re-echoing the principle in *Dahabieh v S.A Turqui & ors [2001-2002] SCGLR 498 @ 504*, the case which turned on the interpretation of, *inter alia*, **rule 6(2)(f) of the Supreme Court Rules, 1996 (C.I 16)** which provision is identical with our rules ie **the Court of Appeal Rules, CI. 19, rule 8(4)**, the Supreme Court observed as follows:

*“..... Clearly the intention behind Rule 6 is to narrow the issues on appeal and shorten the hearing by specifying the error made by the lower court or by disclosing whether or not a point in issue had earlier on been raised. By that way, both the court and Counsel for the respondents would be enabled to concentrate on the relevant parts of the evidence in the record of proceedings and not waste time on irrelevant parts of the evidence. With respect to questions of law, it is necessary that the respondent and his lawyers know well in advance what points of law are being raised so that they may prepare their case and marshall their authorities.*

*Whilst an indication that the point of law was/or was not raised the court below may help the court resolve the issue faster”.*

Guided by the rules and case law, it goes without saying in the present appeal that save the 1<sup>st</sup> ground of appeal, the other grounds of appeal ie grounds (2) to (5) are liable to be struck down and we hereby strike down as improper, the impugned grounds of appeal for non-compliance and also in violation of **rule 8(4)&(5) of C.I 19**. However, to do substantial justice in the matter, we will go ahead to consider the appeal on that omnibus ground that the judgment is against the weight of evidence.

The Omnibus ground:

#### **THE JUDGMENT IS AGAINST THE WEIGHT OF EVIDENCE**

Now, to say that a judgment is against the weight of evidence implies invariably that the learned trial judge took into consideration, extraneous matters that were not relevant in law; excluded matters that were pivotal to be considered and that the lower court also failed to draw the proper inferences from the evidence led on record. See: *Agyenim Boateng v Ofori & Yeboah [2010] SCGLR 861*.

Explaining the essence of the omnibus ground that a judgment is against the weight of evidence, the Supreme Court per Akamba JSC postulated:

*“Under this ground of appeal the whole matter opens up for rehearing based upon the record of appeal. Thus the entire record of what transpired in the court of trial including testimonies, cross-examination, exhibits, accepted or rejected and indeed every and any documentary or other evidence adduced or rejected at the trial before the court arrived at its decision, will be open to the appellate court to examine to satisfy itself that on a*

*preponderance of probabilities, the conclusions of the trial judge are reasonably or amply supported by the evidence.”*

See: *F.K.A Co. Ltd v Nii Ayikai Akrama II & ors [2016] 101 GMJ 187.*

The principle was reiterated by Marful Sau JSC in *Martin Atuahene v Ghana Cocoa Marketing Board, Civ. App. No. J4/23/2018.*

Therefore, it is now settled law that the omnibus ground throws up the whole case for real assessment and analysis, for the appellate court to make inferences and come to its own conclusions as to where the balance of probabilities tilts.

In answering the critical question in the instant appeal as to whether the judgment of the lower court was against the weight of evidence, two (2) key issues emerge. These are:

1. whether the appellant was validly married to the deceased;
  
2. whether the appellant committed fraud when she allegedly forged documents covering the business of the deceased and succeeded in collecting an amount of Ghc445,000. at a time when he was dead.

Now, as regards the vexed issue as to whether or not the appellant was married to the late Selwyn Okoe Boye, it was her case that she is the surviving spouse. She sojourned to Switzerland and upon her return to Ghana, met the deceased and both were customarily married on 22/12/2007 in Accra, she claimed. To consummate the marriage,

the appellant moved into the matrimonial home at 18<sup>th</sup> Ebenezer Crescent, Mamprobi, Accra. The deceased had then registered a company under a sole proprietorship, trading under the name and style of Valindes Ventures. Since the deceased was at the time a public officer working with the Customs, Excise and Preventive Service he informed her it was illegal for him to engage in that private business. Accordingly, the deceased transferred the business into her name and permitted her to run it, the appellant insisted.

It needs reiterating that learned Counsel for the appellant in his written submissions has canvassed the point that the case of the appellant is anchored on the claim that she was a surviving spouse. The respondents never pleaded that the appellant was never married to the deceased or that she lived in concubinage with the deceased. Rather, they claimed that they were married but that they were divorced before the demise of their late father, Counsel maintained. In support, Counsel referred us to that assertion contained in the witness statement of 1<sup>st</sup> respondent, Selwyn Nii Lante Boye as appearing on *pp 31-33 [roa]* and that of 2<sup>nd</sup> respondent, Desmond Lante Boye on *pp 34-43 [roa]*.

On that score, Counsel has submitted on behalf of the appellant that the lower court erred in substituting a case *proprio motu* for the respondents. In support, Counsel relied on *Dam v Addo [1962] 2 GLR 200*.

Furthermore, Counsel referred us to the principle this court had established in *Tackie v Lamptey [2001-2002] 2 GLR 186* which principle runs as follows:

*“It was a flagrant violation of the judicial oath of a judge to do justice without favour or ill-will or affection for or against one*

*party, for a trial judge or court to put forward for a party a case*

*which the latter himself failed to put up.”*

Next, Counsel argued that upon demise of Selwyn Okoe Boye, his family that organized the funeral and prepared the funeral brochure recognized the appellant as the wife as contained in *pp 27AA – 27BQ [roa]*. To Counsel, therefore, all the incidents of a legal customary marriage to the appellant were satisfied and there was no evidence to the contrary that the deceased divorced her before his demise.

Is it indeed the case that the respondents did admit that the appellant was the surviving spouse of their deceased father?

Learned Counsel for the respondents, in contrast, has referred us to paragraph 2 of the appellant’s witness statement and submitted that the respondents denied the appellant’s averment that she was lawfully married to the deceased. By the denial, therefore, duty was cast on the appellant to prove that averment that she was married to the deceased which she failed to do. In support, Counsel relied on the principle of proof in law established in *Zabrama v Segbedzi [1991] 2 GLR 233* and *Majolagbe v Larbi [1959] GLR 190*.

Counsel again advocated that the appellant in proving that a customary marriage existed between herself and the deceased ought to have provided documents in the form of registration of the marriage, photographs or better still could have called witnesses to the marriage ceremony to testify. His argument was that it was not the children who must establish whether or not there was a customary marriage. In support of that proposition, Counsel referred us to *Ricketts v Addo [1975] 2 GLR 158*.

Counsel further argued that from the evidence, the relationship that subsisted between the appellant and the deceased was that of co-habitation which cannot lead to any inference that the parties were lawfully married. In support, he referred us to Quaye & ors v Quarcoo & anr [1987] JELR 364 HC and the decision of the Supreme Court in Marian Obeng Mintah v Francis Ampenyin – Civ. App. No. J4/18/2013 dated 25/03/2015 in which case the apex Court held that a concubinage relationship does not constitute or equate to a valid customary marriage.

It is worth noticing and material to point out that the appellant both in her pleadings and witness statement had asserted that she was lawfully married to the deceased. In paragraphs 1 and 2 of her witness statement in particular, she averred:

- 1. I know the defendants very well who live in Accra within the jurisdiction of this honourable court and are sons of my late husband Selwyn Okoe Oboye which he had with his first wife who predeceased him before he married me.*
- 2. I was lawfully married to the deceased and immediately after our marriage I relocated from Switzerland to Ghana and I moved to the matrimonial home to assume the role of a wife and mother to the defendants and their other siblings who the deceased had with other women."*

See: *pp 22-26 [roa] particularly, p. 22*

In response to the appellant's assertion that she was lawfully married to their deceased father, both respondents in their witness statements filed in the lower court were emphatic that that the appellant was not the surviving spouse of their deceased father. They claimed that she was the ex-wife at the demise of their father. In paragraph 4 of the witness statement of Selwyn Nii Lante Boye [1<sup>st</sup> respondent] as appearing on *pp 31 & 33 [roa]* he was emphatic that the appellant was his late father's ex-wife and that since there was no surviving spouse to his late father, the family nominated him and his brother, Desmond Lante Boye to apply for Letters of Administration. The 2<sup>nd</sup> respondent, Desmond Lante Boye equally repeated those averments in his witness statement. See: *p. 34 & p. 36 [roa]*.

The respondents having specifically denied the appellant's assertion that she was still married to the deceased at the time of his demise, the burden was cast on her to prove the contrary. A woman having been married to a man acquires a status symbol and that is a status *in rem*. That is to say that the status of the appellant being married gives notice to the whole world that she is permanently attached to a particular man. Therefore, no other man can lawfully contract another marriage with her whilst her marriage to her husband subsists.

Now, what are the incidents of customary law marriage?

To begin with, Ollenu J [as he then was] defined customary law marriage in *Yaotey v Quaye [1961] GLR 573* as a union of the man's family and the woman's family. It imposes rights and duties upon the two families. The woman's family gains the right to

perform certain rites in certain eventualities and the man's family also gains the right to perform certain rites in certain eventualities.

In Yaotey v Quaye [supra] the court identified 4 essential incidents of customary law marriage as:

1. *an agreement by the parties to live as man and wife;*
2. *consent of the man's family that he should have the woman to be his wife which consent must be actual/formal ie the family going to the woman's family to ask the woman's hand in marriage or informal/constructive where the man's family recognizes the woman as the wife of the man and admitting her and her family to performance of customary rites eg., performing rites in case of bereavement in the man's family;*
3. *consent of the family of the woman that she should have the man for her husband, the consent may be actual/formal ie where the family of the woman accepts drinks offered by the family of the man, or it may be constructive/informal and admitting the man and his family to perform customary rites for their family eg., funeral rites on occasion of bereavement in the woman's family;*
4. *consummation by co-habitation.*

The essential incidents enumerated supra were given a judicial endorsement in *Badu v Boakye [1975] 1 GLR 283*, the court noting that the presence of all four essentials must be real and not notional.

The golden thread that runs through the 4 incidents is that there must be consent between the man and a woman to live together as husband; their families must give consent to that union when the man's family has either formally presented drinks and/or made other presentation to the woman's family; the man's family permitting the woman's family to perform some rites eg during bereavement.

In this instant appeal, it is the appellant's case that the family accepted her to the extent that upon the demise of the deceased his family that organized the funeral acknowledged and held her out as a wife in the brochure prepared for the funeral. Although there is that evidence that the appellant's name and picture appear in the funeral brochure, we nevertheless agree with the lower court that funeral brochure does not necessarily make someone a wife. Once the assertion of lawful marriage to the deceased has been denied or challenged, she carried the burden to prove the contrary. That contention that the funeral brochure made her a wife runs contrary to settled principles or incidents of valid customary marriage stated supra.

Admittedly, there is the evidence that appellant lived with the deceased before his demise. But at the risk of sounding repetitive, and as a matter of emphasis, once her assertion that she was a wife and or a surviving spouse was challenged, the appellant carried the burden to prove the contrary. She should have, for eg., called witnesses either from her family or the family of the deceased who attended the marriage ceremony she claimed she was indeed married to the deceased. Alternatively, the appellant could have proved her assertion of being married by registration of the said

marriage in terms of the Customary Marriages & Divorce Registration Act, 1985 [PNDC Law 112].

In the final analysis, we hold that the appellant failed to prove that she was validly married to Selwyn Okoe Boye.

That leads us to discussing the issue whether the appellant perpetrated fraud.

The respondents had pleaded in paragraph 6 of their statement of defence that the appellant forged documents of their father's business to appear as though she was the owner of the business. Having done that they claim the appellant succeeded in fraudulently collecting cash, the sum of Ghc445,000 from some customers for work which the deceased had carried out before his demise. The respondents particularized the fraud as follows:

- a) the plaintiff [*appellant*] misrepresented to customers of the deceased business she was the owner of the said business;
- b) the plaintiff [*appellant*] forged documents of the said business and fraudulently opened bank account with her being the sole signatory;
- c) the plaintiff [*appellant*] invoiced and received from customers an amount of Ghc445,000. Four Hundred and Forty Thousand

Ghana Cedis.

- d) the plaintiff [*appellant*] forged signatures of the deceased and obtained benefits that should have accrued to the estate of the deceased.

On general principle, the court is not to find fraud unless particulars thereof has been distinctly pleaded and proved strictly, for a finding of fraud is not to be made without clear and cogent evidence upon it. See: *Thomson v Eastwood [1874-77] 2 AC 215 HL @ p.233* per Lord Cairns L.C.

So, whose burden is it to prove fraud?

The law makes it imperative for a party imputing fraud to prove it beyond reasonable doubt. For, it is provided in **S. 13 of the Evidence Act, 1975 [NRCD 323]** that in a civil litigation or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt. The question is whether the respondent and or witnesses were able to pass the litmus test as demanded by **S. 13 of the Evidence Act, 1975 [NRCD 323]**.

In view of the serious allegation the respondents in the instant appeal made imputing criminality that is to say, fraud against the appellant, the burden was cast on the former to lead evidence to prove it beyond reasonable doubt. See: *Okofoh Estates Ltd v Modern Signs Ltd & anr [1995-96] 1 GLR 310*.

In an attempt to prove those allegations of fraud, the respondents led evidence to show that the business in question was formed by their deceased father and registered as a

sole proprietorship in the year, 2006. They tendered in evidence a search report from the Registrar of Companies to show that as at 2018 the official at the Registrar-General's Department records still stood in the name of the deceased. Yet, according to the respondents, the appellant forged the documents of the enterprise and succeeded in collecting monies belonging to the deceased.

It has been submitted on behalf of the appellant that the trial court overlooked the judgment of an Accra Circuit Court that acquitted and discharged her on the charge of fraud. Counsel has, therefore, urged on us to take judicial notice of the judgment in terms of S. 9 of the Evidence Act, 1975 [NRCD 323] and to hold that the respondents were unable to prove fraud against the appellant.

Our simply reaction to Counsel's contention is that an appeal is by way of re-hearing the case. Therefore, this court has jurisdiction to look at the case as a whole and make its own inferences/deductions and to make a determination whether or not the appellant perpetrated fraud complained of. Additionally, the Circuit Court being a lower court in the hierarchy of the courts structure its judgment is not binding on this court. Indeed, it may be used as a fact and not necessarily establishing any rule of estoppel. For, the general rule is that the law does not prevent a judgment from being used as a relevant that from which the court may draw a conclusion in favour of the person who tendered it though not used as an estoppel. See: *Nana Akoto v Nana Kwesi Agyeman [1962] 1 GLR 524 SC @ 529.*

From the available evidenced led on record, it is not difficult to find fraud on the part of the appellant. The reasons are not far-fetched.

First, search report from the Registrar of Companies [Registrar-General's Department] tendered by the respondents as **Exhibit 1A** as appearing on *p. 39 [roa]* did indicate that

as at 18<sup>th</sup> April 2018 the enterprise, Valindes Ventures the deceased formed and registered still stood in the name of the deceased. The court witness from the Registrar-General's Department whose evidence appears on *pp 57-59* was quite emphatic that the document, **Exhibit 5** the appellant claimed was transferred into her name was fake. We reproduce here below, some excerpts of the evidence of CW1, Vincent Darku under cross-examination which are germane for our discourse:

*“Q. Since June 8, 2006 has there been any change in the sole  
Proprietorship.*

*A. Per our records there hasn't been any change of the said sole  
proprietorship.*

*Q. Look at Exhibit 1 which is the form 'A' of Valindes Ventures  
is it the same.*

*A. Yes my Lord, it is the true replica.*

*Q. Have a look at Exhibit 5, what does it say.*

*A. Exhibit 5 has the owner of the same business as Mercy Blanc  
Aidoo.*

*Q. Is it possible for one business to have the same form 'A' but*

*the business being owned by 2 different people in the case of sole proprietorship.*

A. *It is not and it is totally wrong.*

Q. *Is it correct to describe Exhibit 5 as a fake document.*

A. *Yes my Lord. I agree it is a fake document for the reason that before one transfers ownership that is sole proprietor to another person there is a form called Form D which states the processes of transfer of ownership from one person to another in this case we have the transferor and the transferee where the actual owner of the said business who happens to be the transferor transfer the business to the transferee in his life time. In the absence of that if the proprietor dies he dies with the business as well."*

**Exhibit 5** appears on *p. 43 [roa]*.

These were very material averments/evidence the court witness testified about but were not seriously challenged.

Besides, the enterprise in question was registered in 2006. Therefore, granted that it was so transferred into appellant's name when the evidence showed that the appellant met the deceased at the time he has earlier in time registered the business, it was not possible that the transfer will still bear same date as 2006. Indeed, the appellant under

cross-examination stated that the change or transfer was effected in April, 2012. She, however, made an admission under further cross-examination the date of the certificate of the business still remained 2006. The inconsistencies in the story of the appellant raises serious doubts in her case that the transfer was genuinely carried out by the deceased to her. That tilts the balance of probabilities of the case in favour of the respondents.

On the authorities, the law now appears settled that where there was a departure from pleadings at a trial by one party whereas the other's evidence accorded with his pleadings, the latter's, was a rule, preferable. See: *Appiah v Takyi [1982-83] GLR 1 CA.*

It is instructive to observe also that per **Exhibit 4**, the appellant collected an amount of Ghc444,980.00 from the GETFUND on **15/07/2014** at the time Selwyn Okoe Boye had passed on in **March 2014**. Once the appellant claims that deceased transferred the business into her name and was managing it by reason that the deceased at the time was a public servant, she remained his agent and or a trustee. Being an agent or trustee, the appellant was accountable to the owner of the business and upon his demise, his estate. For, the settled position of the law is that an agent/trustee was accountable to the principal including profits gained and even bribes the agent/trustee took in the course of his agency/trusteeship.

Significantly, the document **Exhibit 5** the appellant used to open an account with Universal Merchant Bank (UMB) was described as fake and the material was not seriously challenged. The branch manager of UMB, Mrs Love Dei who also gave evidence in the case on subpoena testified that the appellant opened an account in July 2014 with the bank for purpose of paying the cheque from GETFUND. The amount

involved was Ghc444,980.00. The evidence also established that the appellant took other monies from some customers of the business besides the one from the GETFUND.

The cumulative effect of fake nature of Exhibit 5 or the surreptitious transfer of the business of the deceased into the appellant's name; the use of Exhibit 5 to open an account with the UMB and above all, the appellant collecting such a huge sums of from GETFUND and other customers of the business without accounting to, or paying it into the estate of Selwyn Okoe Boye clearly established fraud against the appellant.

Overall, we hold that the appellant has made no sufficient case to invoke our jurisdiction to upset the judgment of the lower court. The judgment is supportable and is sound in law and on the facts. The appeal, therefore, fails and it is hereby dismissed as lacking any merit.

Respondents' costs assessed at Ghc10,000.

Sgd.

**P. BRIGHT MENSAH**

**(JUSTICE OF APPEAL)**

**sgd**

**I agree**

**SENYO DZAMEFE**

**(JUSTICE OF APPEAL)**

**sgd**

**I also agree**

**JANAPARE BARTELS-KODWO**

**(JUSTICE OF APPEAL)**

**COUNSEL**

**EDWARD ANOKYE FOR APPELLANT**

**THEOPHILUS TAWIAH FOR RESPONDENT**