IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: YEBOAH CJ (PRESIDING)

PWAMANG JSC

AMEGATCHER JSC

OWUSU (MS.) JSC

TORKORNOO (MRS.) JSC

CIVIL APPEAL

NO. J4/46/2022

1ST JUNE, 2022

THE BIG BOYS COMPANY LIMITED ….. PLAINTIFF/RESPONDENT/ APPELLANT

VRS

ACCESS BANK GHANA LIMITED …... DEFENDANT/APPELLANT/ RESPONDENT/CROSS APPELLANT

JUDGMENT

OWUSU (MS.) JSC:

On 26th November 2020, the Court of Appeal, Accra, allowed the Defendant appeal in part and held among other things that:

"In conclusion, I hereby set aside the award of special damages made by the learned trial judge in favour of the Plaintiff/Respondent in the sum of USD 25,000 per day from the date of attachment of the machine i.e., 12 May 2016 to date of its released i.e., 15 March, 2017. In its place, I make an award in the nature of general damages in the sum of the cedi equivalent of USD 200,000.

I set aside the cost of GHc 80,000 made in favour of the Plaintiff/Respondent. In its place, I make an award of GHc20,000".

Dissatisfied with the decision of the Court of Appeal, the Plaintiff/Respondent appealed to this Court on the following grounds:

(a) The Judgment is against the weight of evidence.

(b) The reduction of the Judgment amount of USD 7.6 million to USD 200,000 amounted to grave or substantial miscarriage of justice.

(c) The Court of Appeal fell into an error and caused substantial miscarriage of justice when it held that the Plaintiff/Respondent did not prove the special damages claimed notwithstanding that the Plaintiff tendered the written contract as proof of the amount claimed daily as special damages.

(d) The reduction of the cost of GHc 80,000 awarded by the trial court by the Court of Appeal to GHc 20,000.00 was not commensurate with all the factors a judge must consider to award costs.

The relief sought from this Court is for the Judgment of the Court of Appeal dated 26th November,2020 to be set aside and the Judgment of the High Court dated 7th June 2019 to be restored.

On 17th February, 2021, the Defendant filed a Cross-Appeal against the Judgment of the Court of Appeal on the following grounds:

1. The award of the Ghana cedi equivalent of USD 200,000 as general damages in favour of the Plaintiff/Respondent is excessive and without basis.
2. The award of the general damages to the Plaintiff/Respondent/Respondent using the United States Dollars as benchmark is without any legal basis.
3. The learned judges erred when they failed to make finding of fraud against the Plaintiff/Respondent/Respondent.

Particulars of Error

The learned Judges erred when they failed to lift the corporate veil on the Plaintiff/Respondent/Respondent despite clear evidence that its directors at all material times knew that Rockshell International Limited has used the same crane as collateral for a loan from the Defendant/Appellant/Cross-Appellant.

In this appeal, the parties would be referred to by their designation at the High Court. Accordingly, the Plaintiff/Respondent/Appellant would be referred to as Plaintiff whilst the Defendant/Appellant /Respondent/Cross-Appellant would be referred to as Defendant.

Before dealing with the arguments canvassed in support and against this appeal, we would give a brief background of the case.

The Defendant in this case instituted an action against Rockshell International Ltd and obtained Judgment on 16th December, 2015. In an attempt to enforce the said Judgment, the Defendant caused to be attached certain properties of Rockshell International Ltd including a Mobile Crane 450 ton. The Plaintiff claiming to be the owner of the crane filed a Notice of Claim, claiming that, the crane belongs to it and not Rockshell International Ltd. The ensuing Interpleader suit went in favour of the Plaintiff

in this case and the crane the subject matter of the instant action was released to the Plaintiff. Having succeeded in the Interpleader suit, the Plaintiff mounted the present action claiming the following reliefs:

1. Special Damages of USD 25,000 per day, that is from May 12, 2016 to the release date Wednesday 15th March, 2017 (when the crane was under attachment) and the Plaintiff could not earn fees under the contract
2. Payment for the cost of any damage caused to the crane as a result of its non-usage during the period of attachment.
3. Costs of the action including counsel's fees set at the Ghana Bar Association Scale of approved fees.

The Defendant resisted the Plaintiff's claim and contended that, the latter's action has been brought in bad faith and as ploy to frustrate Defendant from recovery of the Judgment debt owed it by Rockshell International Ltd. This is because the Plaintiff and Rockshell International are owed by the same person, Dr Ras Tei, who is a director and shareholder in both companies. The defendant therefore maintained that, Plaintiff's action is seeking to perpetuate fraud on the court and the Defendant. Secondly, the crane was presented to the Defendant by Rockshell International as its property, when the latter requested for a credit facility and used it as a collateral. The Defendant consequently requested that the corporate veil of the Plaintiff be lifted. Thirdly, the Defendant averred, it has no relationship with the Plaintiff and counterclaimed as follows:

a) A declaration that Defendant is not liable to Plaintiff.
b) General Damages for the inconvenience caused the Defendant by Plaintiff.
c) Payment of Legal fees and other expenses incurred by the Defendant for the defence of this suit.
d) Costs.

At the trial, the Plaintiff testified through its representative James Andoh, its Commercial Manager. The Defendant also testified through its representative James Beligr, Head of Remedial Assets and called one witness.

At the end of the trial, the Defendant's counterclaim was dismissed and Judgment was entered in favour of the plaintiff on its first relief, to recover the sum of USD 25,000 per day from 12th March, 2016 to the 15th March, 2017 as special damages. Plaintiff's second relief was dismissed and cost of GHc80,000 awarded against Defendant.

Aggrieved with the Judgment of the High Court, the Defendant appealed to the Court of Appeal, which allowed the appeal in part hence the appeal and cross-appeal before us.

In arguing the appeal, counsel for the Plaintiff argued grounds (a), (b) and (c) of the appeal together. He referred us to Order 45 Rule 4 (1) of CI 47 which deals with Execution process and the Order of Attachment and he submitted that, the Defendant seized the Plaintiff's Crane, a property worth more than a million United States Dollars to satisfy its debt under one million judgment debt. Plaintiff sued the Defendant for the tortious act of wrongful seizure and won. Counsel for the Plaintiff continued that, at the material time that the crane was seized, it had a written contract with Rockshell International Ltd which was being performed. The seizure made it impossible for the contract to be performed. Consequently, the damages to be recovered should be the contract sum of USD 5 million being the amount covering 307 days that the Plaintiff could not earn under the contract due to the wrongful seizure. However, the Court of Appeal reduced the High Court award of USD 7.6 million to USD 200,000 as general damages without giving reasons or basis for the reduction. He continued that, the principle that must guide courts in awarding damages is "restitutio integrum", which principle was not applied in this case. In this regard, the

amount in the duly executed contract forms the basis for the tortious act is proof in law which is consistent with the Evidence Act, 1975 (NRCD 323), section 11 (1) thereof. Counsel for the Plaintiff therefore invited us to hold that, the Equipment Hire Agreement as captured at pages 187-188 of the record of appeal is proof for the award of general damages as well as special damages for the tortious act and the Court of Appeal decision created substantial miscarriage of justice to the Plaintiff and must be reversed by this Court. This is especially so because the Defendant knew the Crane did not belong to Rockshell International Ltd because the former waived an executed bill of sale over the asset which was allegedly pledged or mortgaged to it. Not having taken security on the crane, no valid charge was created on the Crane and the trial court found the seizure unlawful which should attract damages, which was rightly awarded to the Plaintiff. According to counsel for the Plaintiff, the Court of Appeal appreciated the facts and the law correctly as it made a finding of fact that no fraud was practiced on the Defendant as the latter failed in its duty to do due diligence in respect of the transaction between it and Rockshell International Ltd. This is because, the all-assets debenture was very clear as to the nature of "ownership" Rockshell International Ltd had in the Mobile crane as it was stated that it was the "Beneficial Owner". Therefore, the Defendant entered into the contract with its eyes open.

Counsel for the Plaintiff also had issues with the Court of Appeal's assertions that, no evidence was led at the trial court in the nature of comparative earnings of a machine of the type. Secondly, no particulars were given to indicate the damage specifically suffered by the Plaintiff. He therefore submitted that these assertions are erroneous. This is because the Agreement, Exhibit G formed the basis of the special damages which was endorsed and stated in the statement

of claim. The endorsement stated the amount claimed daily and the number of days. The Plaintiff also led evidence to establish the basis for the award of the special damages by the High Court, which award was wrongly reduced by the Court of Appeal. Counsel referred us to the case of **ACKAH v PERGAG TRANSPORT LTD & ORS [2010]** SCGLR 728, 736 on the allocation of the burden of persuasion and the burden of proof as stated in the Evidence Act, 1975 (NRCD 323). According to counsel for the Plaintiff, the Defendant did not plead a complete defence to the Plaintiff's case but rather filed a defence related to a non-party which pleading is inconsistent with Order 11 Rule 8 (1) of CI 47. Therefore, the Court of Appeal cannot fail to put reliance on the Equipment Hire Agreement. He referred us to the following cases to buttress his point:

1. **WESTERN HARDWOOD ENTERPRISE LTD v WEST AFRICAN ENTERPRISE LTD [1998-99] SCGLR 105**
2. **FENUKU v JOHN TEYE [2001-2002] SCGLR 985, 990 AMPIAH JSC, and**
3. **TAKORADI FLOUR MILLS v, SAMIR FARIS [2005-2006] SCGLR 882 holding (3).**

He concluded on this point that no corroboration was needed as the Equipment Hire Agreement tendered had sufficient details as it was captured in Plaintiff's pleadings as well as the witness statement. It is rather the Defendant who should have called evidence to contradict or rebut what was contained in the Hiring Contract which formed the basis of the claim and the award which they failed to do. Therefore, there was no need for secondly or corroborative evidence as held by the Court of Appeal. It is only oral evidence that needs corroboration. Counsel referred us to *section 7 (1), (3) and (4) of the Evidence Act* and the **case ADOM v. NTOW [1992-1993] GBR 1603 CA** as well as page 46 of *the Book, The Ghana Law of*

Evidence authored by Justice Ofori Boateng late JSC. Counsel for the Plaintiff therefore submitted that, the law is well settled that multiplicity of witnesses alone do not prove a case and that a single witness if credible and reliable is sufficient proof of any matter in issue.

4. Additionally, counsel submitted, the Court of Appeal wrongly applied the following cases

   a. **DELMAS AGENCY GH LTD v. FOOD DISTRIBUTION INTERNATIONAL LTD [2007-2008] SCGLR 748, 760**
   b. **YUNGDONG INDUSTRIES LTD v. RORO SERVICES & 2ORS [2005-2006] SCGLR 816 and**
   c. **BOGOSO GOLD LTD v. NTRAKWA & ANO [2011] 1 SCGLR 415.**

Consequently, the appeal must be allowed.

On ground D of the appeal in respect to the reduction of the cost of GHc 80,000 awarded by the trial court, counsel referred us to Order 74 Rule (2), (3), (4) and (5) of CI 47 and submitted that, the Court of Appeal had no justifiable basis to reduce the trial judge's costs awarded to the Plaintiff and same must be restored by this Court.

On the Defendant's Cross-Appeal, counsel for the Plaintiff on ground A of the cross-appeal urged us to dismiss same. His reason being that, the Court of Appeal should have upheld the Judgment of the High Court and not misled itself to state that the documentary evidence lacked corroboration and as such the special damages was not proved.

On ground B of the cross-appeal, counsel for the Plaintiff submitted that, same is without merit in the face of the many judicial decisions that awarded judgments in foreign currency, but payable in the Ghana cedis He referred us to cases like:

1. **SAM JONA v. LORD DUODU-KUMI[2003-2004] SCGLR 50**

2. **NOVA COMPLEX LTD v. GHANA PORTS AND HARBOURS AUTHORITY [2010] SCGLR 1**
3. **GHANA PORT & HARBOURS AUTHORITY & ANO v. NOVA COMPLEX LTD [2007-2008]SCGLR 806 and CITY & COUNTRY WASTE LTD v. ACCRA METROPOLITAN AUTHORITY [2007-2008] SCGLR 409, 416 in support of his point.**

On ground C which talks about the lifting of the corporate veil on grounds of fraud, counsel for the Plaintiff submitted that same is without merit. The is because, all the comments, deductions and inferences counsel for the Defendant stated as constituting fraud were acts of a particular director and not acts of the Plaintiff nor its directors. This is especially so when the said director was not sued or joined to this action, so that the director could defend himself. In any event counsel concluded, both the High Court and the Court of Appeal dismissed the allegation of fraud as not proved as no evidence was led that the two companies jointly committed fraud on the Defendant.

Based on the forgoing, counsel for the Plaintiff invited us to dismiss the cross-appeal.

In response to the above submissions, counsel for the Defendant on ground B of the appeal, referred to Rule 6 (5) of the Supreme Court Rules (CI 16) and submitted that, that ground of appeal is too general and vague. This is because that ground presupposes a mere mathematical reduction of the amount awarded from USD 7,000,000 to USD 200,000. He continued that the Court of Appeal rejected the entire award of the special damages to the Plaintiff as not proved. Counsel therefore invited us to strike out ground B as being too vague.

On ground A of the appeal, counsel for the Defendant observed that, ground C was argued under the omnibus ground and argued both grounds together. He then referred us to the cases of **DJIN v MUSAH BAAKO [2007-2008] SCGLR 689 and OWUSU DOMENA v AMOAH [2015-2016] SCGLR 790,792** and submitted that, these grounds are an invitation to this Court to go through the entire record of appeal to ascertain whether there are lapses or otherwise in the Judgment in contention. That is if the findings are supported by the evidence on record, or are based on the wrong proposition of law. He continued that, the Plaintiff's relief (a) endorsed on the writ and the statement of claim being special damages of USD25,000 a day from May 12, 2016 to the release date of the crane, 15th March, 2017 same ought to have been pleaded, particularized and at least disclosed the nature and extent of the damages claimed to enable Defendant response to same in accordance with the law. Counsel referred us to the case of **KLAH v PHOENIX INSURANCE** where this court distinguished special damages from general damages. Secondly, counsel argued, Exhibit G the contract of Hire tendered by the Plaintiff was insufficient to satisfy its evidential burden of proving the special damages of USD 25,000 per day as the contract is speculative and does not in any way show what the Plaintiff actually lost from the date of the attachment of the crane to the date it was released. Thirdly there is no certainty as to whether Rockshell International Ltd would have been able to perform the contract had the attachment not occurred. Lastly, the contract could have been terminated, frustrated (as in this case) or breached which could have affected the earnings per day to the Plaintiff. At best, counsel for the Defendant argued the contract merely shows what the Plaintiff was expected to receive (all things being equal) had the contract been performed by *ROCKSHELL INTERNATIONAL LTD.* Unfortunately, counsel argued, the contract did not show what was actually lost. Consequently, counsel submitted, the contract alone cannot be the basis of proof of Plaintiff's claim for special

damages. The Plaintiff should have adduced further evidence such as Bank statements, receipts to show how much the crane actually earns per day as special damages must be proved strictly. He referred us to the following cases to buttress his point:

1. **DELMAS AGENCY v FOOD DISTRIBUTION [2007-2008] SCGLR 749 and KWADJO v SPEEDLINE STEVEDORING CO LTD. [2017-2018] SCGLR 107,** especially in the face of the plaintiff's admission under cross-examination that, the crane suffers breakdowns. On counsel for the Plaintiff's submission that the Court of Appeal failed to uphold the sanctity and enforcement of contract by not relying on Exhibit G as proof of special damages, counsel for the Defendant submitted that, Exhibit G being a contract between Plaintiff and Rockshell International Ltd binds them only. The Defendant has nothing to do with the said contract and any attempt to compel the latter to pay the contract price in Exhibit G would be an attempt to enforce the contract against the Defendant and this sins against the doctrine of privity of contract. He concluded on these grounds that, the finding of the Court of Appeal that the Plaintiff failed to prove special damages is apt and was based on established principles of law regulating the grant of special damages and invited us not to interfere with this finding.

On ground D of the appeal, which is in relation to the reduction of the cost of GHc 80,000 awarded by the trial court by the Court of Appeal, counsel for the Defendant submitted that, the Court of Appeal found that, the trial judge applied the wrong principles as Plaintiff failed to prove its claim of special damages as there was no legal basis for it. The Court of Appeal was therefore justified by interfering with the award by reducing it to a lesser amount.

In respect of the cross-appeal ground A:

"The award of the cedi equivalent of USD 200,000 as general damages in favour of the Plaintiff is excessive and without basis".

On this ground counsel for the Defendant referred us to a portion of the judgment in contention where the Court of appeal held that the Plaintiff failed to prove special damages by leading evidence "in the nature of comparative earnings of a machine of the type in this case of and that the award of special damages by the trial judge in favour of the Plaintiff is problematic and it goes contrary to all known norms guiding the award of general damages". He then submitted that, the Court of Appeal after making the above statement then proceeded to award general damages assessed at the cedi equivalent of USD 200,000. According to counsel for the Defendant, this is excessive and without any basis as Exhibit G has been rejected by the Court of Appeal as insufficient to prove actual loss suffered by the Plaintiff. Furthermore, Exhibit G is completely irrelevant as its existence and terms could not have been within the reasonable contemplation of the Defendant at the time the crane was attached in execution of the judgment obtained against Rockshell International Ltd. He therefore submitted that, in the absence of proof of loss or damage suffered by the Plaintiff, the latter was only entitled to an award of nominal damages to compensate for the infringement of its right of possession of the crane. Counsel referred us to the case of **DELMAS AGENCY GHANA LTD v FOOD DISTRIBUTORS INTERNATIONAL LTD** supra to buttress his point. He therefore submitted that, the assessment of the Ghana cedi equivalent of USD 200,000 is excessive in the circumstance and disproportionate and astronomical to the alleged wrong said to have been committed against the Plaintiff. He referred us to this Court's decision in the case of **LIZORI LTD v BOYE & SCHOOL OF DOMESTIC SCIENCE & CATERING [2013-2014]** 2 SCGLR 889 and therefore this award of

USD 200,000 general damages cannot be said to be nominal and urged us to reverse same.

Ground B of the Cross-Appeal:

The award of general damages to Plaintiff using United States Dollars as Benchmark is without any legal basis.

The argument advanced in support of this ground is that, the fact that the judgment debt of USD 200,000 is to be discharged in the cedi equivalent does not change the foreign nature of the judgment debt and that there was absolutely no basis for the award of the damages in United States Dollars. Counsel referred us to the case of **NATIONAL INVESTMENT BANK LTD v SILVER PEAK LTD [2003-2004] SCGLR 1008**

On ground C of the Cross-Appeal:

The Court of Appeal erred when they failed to make a finding of Fraud against Plaintiff.

The argument in support of this ground is that, the Court of Appeal failed to appreciate the case of fraud against the Plaintiff and that is the Plaintiff through its directors was aware and had knowledge about the crane used as security for the loan. Therefore, the Plaintiff cannot hide behind the corporate veil to deny not having knowledge about the fact that Rocksell International Ltd used the crane as collateral for a loan from the Defendant in spite of Plaintiff having legal title of same. Besides the Plaintiff sat aloof and only decided to assert its legal right when the crane was attached in satisfaction of the judgment owed by Rockshell to Defendant. This counsel for Defendant argued smacked of dishonesty or improper conduct on the part of the Plaintiff and this constitute fraud and the latter is estopped from asserting any legal right to the crane. Consequently, he invited us to lift the corporate veil by virtue of the fraudulent and improper conduct of the Plaintiff. Based on the forgoing, counsel for the

Defendant invited us to allow the Cross-Appeal by setting as aside part of the Judgment awarding USD 200,000 to the Plaintiff.

At the heart of this appeal and cross-appeal is the attachment of the Plaintiff's Mobile Crane 450 ton and the award of damages to the latter. Both the High Court and the Court of Appeal came to the conclusion that, the said attachment by the Defendant of Plaintiff's crane in satisfaction of the judgment debt owe it by Rockshell International Ltd was unlawful. The reason being that, the crane is the property of the Plaintiff. This is what the trial judge said:

"I must observe that the conduct of the Defendant in relation to the transaction between it and Rockshell International was done haphazardly and without due diligence. If the Defendant had conducted a proper enquiry from the appropriate sources, coupled with some form of vigilance, it would have been clear to them that the crane did not belong to Rockshell International Ltd and would not have attached same". The trial judge concluded on his finding as follows:

"There was no legal basis for such an attachment of the crane. For the forgoing reasons, I find that the attachment of the Crane was unlawful and I so hold".

See page 286 of the record of appeal.

The Court of Appeal on its part held that:

"In the present case, Defendant/Appellant's act causing the Deputy Sheriff to attach the Plaintiff/Respondent's mobile crane constituted a tort for which the Defendant/Appellant was liable for an action in damages. The fact that Plaintiff/Respondent succeeded in recovering their crane in the interpleader does not foreclose their rights. The loss of earnings they suffered as a result of the attachment and detention of their income-earning is remediable by an action in tort for liquidated and unliquidated damages."

See page 543 of the record of appeal, the last paragraph.

We endorse these findings by both the High Court and the Court of Appeal as the findings are clearly supported by the evidence on record. Our reasons being that, at the High Court, the Plaintiff was able to prove its legal title to the Crane with documentary evidence and the crane was released to it. See the case of **FOSUA & ANOTHER v DUFIE & ANOTHER [2009] SCGLR 310, 311 holding (1)** where their Lordships held that:

"The law was settled that documentary evidence should prevail over oral evidence. Thus, where documents supported one party's case against the other, the court should consider whether the latter party was truthful but with faulty recollection.

Secondly, Exhibit E at page 52 of the record of appeal is the Order of the High Court releasing the crane to the Plaintiff. The Order reads:

"**RELEASE OF CLAIMANT'S PROPERTY**

Upon reading the Affidavit of MR JAMES ANDOH of House No. 4 Awo Abla Street, Nmai-dzor, Accra, filed on 2nd March, 2017 in support of Affidavit of Particulars of Claimants Claim Order 48 Rule6 (1) of CI 47 herein

AND UPON HEARING the submission of MR EMMANUEL GOKA Counsel for and on behalf of Claimant/Applicant herein: As well as MRS AKOSUA GYAMFI DWAMOARH, Counsel for Plaintiff/Judgment Creditor,

It is HEREBY GRANTED that the Court releases the mobile Crane 450 tons seized by the Court in satisfaction of a Judgment Debt between Plaintiff /Judgment/Creditor and Defendant/Judgment/Debtors herein forthwith.

GIVEN UNDER MY HAND AND SEAL OF THE HIGH COURT OF JUSTICE COMMERCIAL DIVISION, ACCRA,

THIS 15TH DAY OF MARCH, 2017

(SGD) MR EDWARD ASIAMAH BOATENG (REGISRAR)

This Order was signed by the High Court Judge, Doreen G. Boakye-Agyei (MRS) of the Commercial Court, Accra, in *Suit NO. BFS/71/2014 Titled*

ACCESS BANK GHANA LIMITED v ROCKSHELL INTERNATIONAL LIMITED& ANO.

Suffice to say that, the Defendant did not appeal against this Order and same is binding on it.

We now turn our attention to the Plaintiff's appeal. Grounds (a), (b) and (c) would be dealt together under the omnibus ground that, the judgment is against the weight of evidence. Having pleaded on the ground that, the judgment was against the weight of evidence, we are enjoined as an appellate court to go through the entire record to ascertain whether the evidence adduced at the trial and the law supported the findings of the court. See this Court's decision in the case of **OWUSU DOMENA v AMOAH [2015-2016] SCGLR 790, 792** holding (2) of the headnotes where their Lordships held that:

"Where the appeal was based on the omnibus ground that the judgment was against the weight of evidence, both factual and legal arguments could be made where the legal arguments would help advance or facilitate a determination of the factual matters".

So, the question is, in the context of the present case, what are the pieces of evidence wrongly applied against the Plaintiff or if applied in favour of the Plaintiff would have changed the decision in its favour? The plaintiff insists it proved special damages when it tendered Exhibit G, the "Equipment Hire Agreement". The Court of Appeal disagreed and held that the Plaintiff failed to prove its claim of special damages. This is what the Court of Appeal said:

"In this case, the Plaintiff's pleadings are very terse. The requirement of pleadings as relates to a Claim of Special damages were not met. There were no pleadings as regards damage specifically suffered. Nothing was particularized to indicate any damage specifically suffered by the Plaintiff. No evidence was led before the trial court in the nature of comparative earnings of a machine of the type in this case. This is by no means a basis of saying that the Plaintiff suffered no damage. However, the damage suffered by Plaintiff is anything but special. In this connection the award of special damages by the trial court made in favour of the respondent is problematic as it goes contrary to all known norms guiding the award of special damages. I will therefore interfere with that part of the Judgment of the trial court which awarded the Plaintiff/Respondent Special Damages. I consequently set aside the award for Special Damages made by the learned trial judge in favour of the Plaintiff/Respondent. In place thereof I shall make an award of the cedi equivalent of USD 200,000 by way of general damages as it is clear that the attachment of Plaintiff's Mobile Crane at the instance of the Defendant/Appellant was wrongful".

We agree with the Court of Appeal on the above reasoning except the quantum awarded as general damages. Exhibit G without more does not show how much Plaintiff lost when the crane was under attachment. At least Plaintiff should have called evidence to show how much was charged when crane of the type in contention is hired. As it stands, the Plaintiff's representative just mounted the witness box and repeated it averment on oath. See the case of **KWADJO v SPEEDLINE STEVEDORING COMPANY LTD, Civil Appeal No. J4/05/2017 dated 12th December, 2018 holding (1)**of the headnotes, where their Lordships held that:

"The Plaintiff's claim, for the value of the goods was a claim for special damages which the plaintiff had to prove strictly by credible evidence. It was therefore not sufficient for the plaintiff to merely repeat the bare assertions in plaintiff's pleadings and rely solely and heavily on the invoices for the purchases of the goods, which had nothing on them to show that the plaintiff had actually paid for the goods itemized on

them. Plaintiff having failed to produce the required evidence of such quality and credibility of the actual value of the goods, the plaintiff's claim must fail."

In the words of SOPHIA ADINYIRA JSC:

"Furthermore, the Plaintiff's claim for the sum of GHc 150,000.00 was a claim for special damages of the actual value of the goods which plaintiff had paid for before the damage. It is trite that a claim for special damages must be proved strictly. It was therefore not sufficient for the plaintiff to merely repeat the bare assertions in the plaintiff's pleadings and to rely sorely and heavily on the invoices, exhibit "A to E" which the Court of Appeal rightly rejected as not being receipts because there was nothing on these invoices to show that the plaintiff actually paid 71,050 euros for the goods itemized on these invoices (our emphasis)".

Relating the above case to the case under consideration, Exhibit G the Equipment Hire Agreement, under the subheading **PAYMENT**, it states:

"The Hirer shall make payment at the end of each month provided that the first four months' rent shall be used to defray expenses incurred by the Hirer on the plant (Equipment)".

The Plaintiff should have called Rockshell International Co Ltd to tell the Court the expenses it incurred by way of receipts on the former's Crane for the first four months. This was not done. Therefore, the Court of Appeal was right when it held that, the Plaintiff did not proof the special damages claimed. Grounds (a), (b) and (c) of the appeal fail and they are accordingly dismissed.

This brings us to ground (d) of the appeal in relation to the cost which was reduced by the Court of Appeal.

Counsel for the Plaintiff has submitted that, the Court of Appeal had no Justifiable basis to reduce the trial court's cost awarded and it must be restored.

With all due respect to counsel for the Plaintiff, we have already come to the conclusion that the Plaintiff did not prove its claim of special damages and thus is entitled to general damages which was varied downwards. It is only fair and reasonable to vary the cost awarded. This ground of appeal has not been made out and it is accordingly dismissed.

On the Defendant Cross-Appeal, ground A, we have already addressed it when we held that, Exhibit G the "Equipment Hire Agreement" tendered by the Plaintiff was not sufficient to prove the special damages claimed and we do not intent to re-visit that issue except the quantum which we think is excessive. We will therefore vary the award of USD 200,000 general damages to USD 100,000 as general damages having regards to the circumstances of the case. The Plaintiff did not tell the court the exact damaged caused to the crane. This is against the backdrop of the Plaintiff representative's admission under cross examination that the crane can break down. See page 208 of the record of appeal. In the case of **NATIONAL INVESTMENT BANK & WESTEC SECURITY v ROM ENGINEERING LTD [2015-2016] 1 SCGLR 766 769** holding (3), this Court had this to say:

"The award of general damages, though regulated by settled principles, like all acts of judicial discretion must be applied on case-by-case basis* (our emphasis). *In the instant case, it was clear that the plaintiff had exaggerated the extent of items removed from the factory premises and presented to the court with a version that was unreliable as was found in Exhibit B. On the whole, in the absence of cogent evidence of the materials taken by those who had broken into the factory premises, such as inventory which to be good, could not be limited only to that of July 2009, as there must be credible evidence of the machinery holding of the company over a period to establish the reasonable probability that, in the light of those inventories as at the date of the attachment, the extent of loss claimed to have been suffered by the plaintiff was more

likely to be true. That was the burden the plaintiff assumed having regard to the pleadings filed on its behalf, a burden which unfortunately was undischarged at the end of the trial. In the circumstances, the Court was of the view that the items alleged to be missing or removed were exaggerated. Accordingly, the Court would scale the award of GHc 300,000 down to GHc 100,000".

Ground A of the Cross-Appeal succeeds **in p**art.

In respect of ground B of the Cross-Appeal, which used the United States Dollars as Benchmark in the Judgment

We do not see any illegality here as this Court on numerous occasions had made awards in foreign currency to be paid in the cedi equivalent. See the following cases:

1. **CITY & COUNTRY WASTE LTD v ACCRA METROPOLITAN ASSEMBLY [2007-2008] 1 SCGLR 409 416 holding (8) thereof.**
2. **GHANA PORTS AND HABOURS AUTHORITY & CAPTAIN ZEIN v NOVA COMPLEX LTD [2007-2008] 2 SCGLR 806,812 HOLDING (9)** where it was held that:

"As a matter of pure common sense, the Plaintiffs the owners of the lost vessel are entitled to payment for some loss of profit. However, the award of US$ 1,700,000 based on the evidence, which the Court of Appeal in its wisdom has discredited is rather excessive. In the circumstances, having regards to the uncertainties in the Shipping industry and the vicissitudes of life, an award of US$ 900,000 would meet the justice of the case" (our emphasis).

Ground B of the Cross-Appeal fails and it is hereby dismissed.

This brings us to ground C of the Cross-Appeal.

The learned judges erred when they failed to make a finding of fraud against the Plaintiff/Respondent/Respondent.

To begin with, the Defendant, did not join Rockshell International Ltd nor its Managing Director to defend itself in this action. Secondly, the acts of a single Director should not be imputed to the company without ratification. Thirdly, the all-assets debenture presented to the Defendant was very clear as to the nature of "ownership" Rockshell International Ltd had in the Mobile Crane as it was stated that it was the "Beneficial Owner". But more importantly, the Defendant did not do due diligence in attaching the crane and both the trial court and the Court of Appeal made findings to this effect which findings are clearly supported by the evidence on record. We do not see any fraud to warrant the lifting of the veil of incorporation. Ground C of the Cross-Appeal also fails and it is accordingly dismissed.

In the result, the Plaintiff's appeal fails and it is accordingly dismissed.

The Defendant's Cross-Appeal succeeds in part. The USD 200,000 general damages awarded to the Plaintiff by the Court of Appeal is hereby set aside. The Plaintiff is awarded the cedi equivalent of USD 100,000 general damages for the unlawful attachment of its crane.

M. OWUSU (MS.)

(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH

(SUPREME JUSTICE)

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

N. A. AMEGATCHER

(JUSTICE OF THE SUPREME COURT)

G. TORKORNOO (MRS.)

(JUSTICE OF THE SUPREME COURT)

COUNSEL

E. S. GOKA ESQ. FOR THE PLAINTIFF/RESPONDENT/APPELLANT.

CHARLES TETTEY ESQ. FOR THE DEFENDANT/APPELLANT/RESPONDENT.