

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2024

CORAM: SACEY TORKORNOO (MRS.) CJ (PRESIDING)
BAFFOE-BONNIE JSC
PROF. MENSA-BONSU (MRS.) JSC
ACKAH-YENSU (MS.) JSC
GAEWU JSC

CIVIL APPEAL NO.

J4/01/2023

24TH JANUARY, 2024

MERCY KABUKIE TETTEHFIO PLAINTIFF/ RESPONDENT/APPELLANT

VS

GHANA HIGHWAY AUTHORITY DEFENDANT/ APPELLANT/RESPONDENT

JUDGMENT

ACKAH-YENSU (MS) JSC

INTRODUCTION

In the matter before us, the Plaintiff/Respondent/Appellant sought a profound alteration in the trajectory of her professional life by attempting to modify her declared retirement age. As we delve into the judgment, we shall navigate the intricacies of the arguments presented, the legal precedents invoked, and ultimately, the determination of whether such a modification aligns with the established legal framework.

The question for our decision in this appeal therefore is, which of the two lower courts came to the right conclusion on the evidence placed before them in the matter within the context of the relevant applicable law. This is because whereas the trial court accepted the case of the Plaintiff/Respondent/Appellant on the strength of the evidence before it, the learned Justices of the Court of Appeal upon a re-evaluation of the entire record and the applicable law unanimously arrived at their own findings that the trial Judge failed to appreciate that, on the preponderance of the totality of the evidence and the relevant applicable law, the Plaintiff/Respondent/Appellant who carried the burden of proof had failed to discharge that evidential statutory burden and the law.

In the circumstances, our duty in the determination of this appeal largely depends on our own re-evaluation of the record of appeal and the application of the relevant law by which we should arrive at our own conclusion on the evidence adduced by the parties. This would enable us justify where appropriate an interference with the decision of either of the two lower courts when satisfied from our consideration of the totality of evidence that, one of the verdicts was either unreasonable, perverse, or unsupported by the evidence and the law, such that our appellate interference would be authorized and justified.

It is thus instructive to refer to the decision of this Court in **Tuakwa v Bosom [2001-2002] SCGLR 61**, a classicus which justifies the interference by this Court in the decisions of lower courts which on the evidence on record and the law we consider inappropriate. In her statement on the law which authorizes the attitude of this Court, Sophia Akuffo, JSC (as she then was), held that: *"After reviewing the record, it was therefore our conclusion that on the preponderance of probabilities, the judgment of the trial judge in favour of the Defendant i.e. the Respondent was not supported by the totality of the evidence and the Court of Appeal erred in confirming the same without any scrutiny of the record"*.

This position has been reiterated in several subsequent cases including, **Osei (Substituted by Gilard) v Korang [2013-2014] 1 SCGLR 221 at 226 to 227**, where Ansah JSC, citing **Tuakwa v Bosom** (supra) with approval, said: *"It is trite learning that an appeal to*

this Court is by way of rehearing and the appellate court has the duty to study the entire record to find whether or not the judgment under appeal was justified as supported by the evidence on record. An appellate court is entitled to make up its mind on the facts and draw inferences to the same extent as the trial court could do”.

BACKGROUND FACTS

The Plaintiff/Respondent/Appellant (hereinafter called “Appellant”) issued a writ of summons against the Defendant/Appellant/ Respondent (hereinafter called “Respondent”) on 20th November 2014, at the High Court, Accra (Labour Division), claiming the following reliefs:

- “a. Declaration that Defendant’s act to force her to retire prematurely is unlawful and unconstitutional.***
- b. Declaration that Plaintiff’s actual date of birth is 21st May, 1956.***
- c. Declaration that Defendant’s letter dated 5th June, 2013 asking Plaintiff to proceed on compulsory retirement is void and of no effect and amounts to unfair termination and/or wrongful dismissal.***
- d. Declaration that the letter date 5th June 2013 is unconstitutional.***
- e. An order directed at Defendant to pay all salaries due the Plaintiff from, June 2014 to day of judgment.***
- f. An order of perpetual injunction directed at the Defendant, its agents, workmen, privies, assigns, staff etc. from ever asking her to proceed on compulsory retirement until 21st May, 2016.***
- g. An order directed at the Defendant to amend its records to reflect Plaintiff’s actual date of birth being 21st May, 1956.***
- h. An order directed at the Defendant to pay all salary arrears of the Plaintiff effective 21st May 2014 till date of judgment.***
- i. Interest on the salary arrears at current commercial bank rate.***
- j. Damages***
- k. Cost***

I. An order directed at the Defendant not to interfere with Plaintiff's work or conditions of service on the same grounds of date of birth until May 2016".

The Appellant averred that she was employed as a labourer at the Public Works Department (PWD) on 15th February 1975 and later transferred to the Ghana Highway Authority (GHA) in July 1975. The Appellant further averred that she indicated on the Personal Record Form, her date of birth as 21st May 1955 on the eve of her appointment. Subsequently, she filled other forms where 21st May 1954 and 1956 were stated as her dates of birth respectively. Although she was employed as a labourer she rose through the ranks to the position of Chief Accounts Officer.

The Appellant stated that her actual date of birth is 21st May 1956, and that the different dates on the other forms were not meant to deceive the Respondent. The Appellant also stated that her Birth Certificate which was issued in 1984 shows that the Appellant was born on 21st May 1956, and the same date of birth appears on her Passport issued on 15th February 1989, and her International Certificate of Vaccination issued on 6th December 1989.

The Appellant again stated that she took steps to amend the record with the Respondent when she realized the different dates of birth. She stated that she even wrote to the Respondent indicating that her actual date of birth was 21st May 1956. The Respondent, however, refused to amend the record without reason. The Respondent rather chose to maintain 21st May 1954 as her actual date of birth.

The Appellant averred that the Respondent's action was meant to forcibly retire her before her retirement age. The Respondent stopped paying her salary in May 2014 although she was still in the Respondents employment and continued with her duties.

The Respondent in its defence, contended that the Appellant voluntarily stated that her date of birth was 21st May 1954 on the Personal Record Form she completed. Furthermore, the

Appellant was a Senior Staff member, and the Conditions of Service for that category of staff required employees on first appointment to disclose their dates of birth. Once that date of birth was recorded, no change or amendment of the officer's age was allowed. The Appellant had completed a Personal Data Form and indicated that her date of birth was 21st May 1954. The Respondent also contended that the Public Works Department and Ghana Highway Authority were distinct entities.

TRIAL AT THE HIGH COURT

At the end of the trial, judgment was entered in favour of the Appellant against the Respondent, and Respondent was ordered to amend its records to reflect the Appellant's birth date of 21st May 1956. Respondent was further ordered to pay Appellant's salary arrears effective from 21st May 2014 to the date of judgment, with interest on the amount, and damages of GH¢5,000.00 for wrongful termination.

The Respondent being dissatisfied with the judgment of the trial court, appealed against the decision of the trial court.

JUDGMENT OF THE COURT OF APPEAL

At the Court of Appeal, the learned Judges came to the conclusion that the findings made by the trial High Court were not supported by the evidence on record. That, the trial Judge failed to apply the appropriate law to justify her conclusion. The Court of Appeal therefore set aside the judgment of the trial High Court. After a re-evaluation of the evidence on record, the Court of Appeal found and concluded that the Appellant was properly retired by the Respondent.

THIS APPEAL

The Appellant has appealed from the decision of the Court of Appeal on the following grounds:

- "a. That the learned Judges erred in fact and law when they held that the Plaintiff/Respondent's date of birth was 21st May 1954.***

- b. That the learned Judges erred in fact and law when they held that the Plaintiff's retirement was neither wrongful nor constituted unlawful termination.***
- c. That the learned Judges erred when they set aside the judgment of the trial court without considering the special circumstances and facts of the case.***
- d. Further grounds of appeal may be filed with leave of the Honourable Court".***

As aforesaid, the Appellant's case is that her date of birth is 21st May 1956 and not 21st May 1954 as is being contended by the Respondent. The Appellant contends further that her Birth Certificate, International Certificate of Vaccination (Yellow Card), and Passport, bear her actual date of birth (i.e. 21st May 1956), and are the only legitimate documents in proving Appellant's date of birth. Appellant relies on Section 25 of the Evidence Act (NRCD 323); that, facts recited in a written document are conclusively presumed to be true between the parties.

It is also the Appellant's case that the court below failed to consider the effect of Sections 34 and 11 of the Registration of Birth and Death Act, 1965 (Act 301). The Appellant asserts that the Court of Appeal could not have ignored the Personal Record Form from PWD since PWD and GHA are in effect the same company.

The Appellant argued that the Court of Appeal wrongly held that the retirement of the Appellant was not wrongful and amounted to unlawful retirement. The Appellant's argument is premised on the fact that although she had previously given notice to the Respondent as regards the inconsistencies on the record of her date of birth the Respondent failed to avail her the opportunity to explain. Rather the Respondent served her the letter to proceed on compulsory retirement on 21st May 2014. Hence, the Respondent's action was in violation of Section 4 of the Labour Act, 2003 (Act 651).

The Appellant argues further that Exhibit "8" (Article 2(c)) which required the Appellant to provide either a Birth Certificate, Statutory Declaration, or an Affidavit, to substantiate her date of birth on her Personal Record Form, was not complete. Furthermore, the Appellant refers to Regulation 53 of the Social Security Regulations and Section 8(3) of Act 301 to reinforce her submission that the law anticipates and recognizes genuine mistakes may be made in an attempt to comply with the law, and makes provision for necessary correction. Therefore Exhibit "8" cannot be sacrosanct as suggested by the Court of Appeal. Further, Exhibits "4" and "5" which the Respondent relied on at the trial, which in any case is inconsistent with Exhibit "8", is not the first record of the Appellant's date of birth in the Respondent's records. Exhibit "4" and the Service record card indicated that the Appellant's date of birth is 21st May 1955. Again, evidence on record indicates that the transfer of the Appellant from PWD to GHA is inconsequential especially since Appellant was not issued with a fresh appointment letter upon the transfer.

The Respondent, on the other hand, contends that the Appellant failed to substantiate her case but merely rehashed her pleadings at the trial. Furthermore, the record of the Appellant's date of birth with her former employer is 21st May, 1955, therefore the Court of Appeal was not wrong in finding that the Appellant deliberately wanted to change her date of birth to enable her extend her retirement age. Additionally, the Appellant had copiously admitted that Respondent's records bear three (3) different dates of birth: 21st May 1954; 21st May 1955; and 21st May 1956.

It is the Respondent's further contention that the Appellant had indicated that she was born in 1955, but subsequently obtained a birth certificate on 15th February 1984 which indicated that her date of birth as 21st May 1954. This was the premise on which other evidence of change of date of birth were made. The documents the Appellant tendered in evidence to support her case were acquired four (4) years after she had completed her last personal details with the Respondent. Hence the Respondent could not have relied on same.

The Respondent argues that although the Appellant stated on the Personal Data Form in 1980 that her parents had misplaced her Birth and Baptismal Certificates, when her father was being cross-examined, he stated that the Appellant obtained her Birth Certificate at Kokomlemle, and that they were washed away by flood.

DETERMINATION OF THE APPEAL

In the instant matter, the findings of the trial court were not concurred to by the Court of Appeal. This Court, as the final appellate court, therefore has the duty to scrutinize the record of appeal and determine whether the conclusions reached by the Court of Appeal or the trial court are supported by the evidence adduced at the trial.

In the case of **Duodu v Benewah [2012] 2 SCGLR 1306**, the Court held that:

"It is well settled that; an appellate court is entirely at liberty to review the evidence on record and find out whether the evidence supported the findings made by the trial court. The appellate court must not disturb the findings of the trial court if they are supported by the evidence The Supreme Court's duty as the final appellate court, is also to review the evidence on record to ascertain whether the findings were supported by the evidence on record, there being no concurrent findings of fact from the lower courts. And the duty of the Appellant is to demonstrate that the Court of Appeal was in error in reversing the findings of fact made by the trial judge".

See also **Adjetey Adjei v Nmai Boi [2013-2014] 2 SCGLR 1474 @ 1485**.

We note that grounds (a) – (c) all complain about the evaluation of the evidence by the Court of Appeal. We shall therefore analyse the said grounds together. In so doing, we reproduce the relevant statements of the Court of Appeal in the re-evaluation of the evidence adduced in order to determine whether it applied the relevant law in arriving at the respective statutory burdens of proof and of persuasion of the parties.

At pages 110-116 of the record, the Court of Appeal stated as follows:

"The Plaintiff in her evidence-in-chief stated that her records provides for three different birthdates ... they are: 21st May 1956; 21st May 1955; and 21st May 1954. The Plaintiff was first employed by the Public Works Department on 15th February, 1975 and her personal record disclose that she was born in 1955 The personal record of the Plaintiff was tendered as Exhibit "A3". The birth certificate of the Plaintiff which was obtained in 1984 and subsequently her Ghanaian Passport gave her birthday (sic) as 21st May, 1956 The Plaintiff under cross examination admitted that she filed her personal record with Public Works Department and give her date of birth as 1955. The Plaintiff further admitted that when she was transferred from Public Works Department to the Defendant establishment she filled her personal and gave her actual date of birth 21st May 1954 The personal record were in the Plaintiff's hand writing and she filled same on 28th May, 1980. The personal details were on two sheets of papers and in both cases the Plaintiff provides her date of birth as 21st May, 1954 ... I find that the Defendant did not alter the date of birth of the Plaintiff as the Plaintiff provides her date of birth (sic) of the Plaintiff as alleged by the father, it was rather the Plaintiff who lied on her personal record when she was transferred from the Public Works Department to Defendant's establishment

All the exhibits relied on by the Plaintiff were documents she procured after she had voluntarily filed the personal data with the Defendant

I find that the Plaintiff who wanted to change her date of birth to enable her to work in excess of the retirement age of sixty years. The Plaintiff filled her personal records with the Defendant on 28th May, 1980. On 15(sic) February, 1984, she obtained a birth certificate with her date of birth as 21st May, 1956. The other evidence of change of birth were premised on the birth certificate she procured barely four year after she had filled her personal record with the Defendant.

At the time Plaintiff was transferred to the Defendant, and being her first appointment with the Defendant she was required to fill a personal data records in accordance with the regulations of the Senior Staff Association. The conditions of service/regulations enjoined employees to provide their actual date of birth.

There is no ambiguity about the phrase "Every Officer shall, on his first appointment, disclose his/her age ..., the ordinary meaning is the person's first engagement with the defendant The regulations of the Senior Staff Association is one prevailing at the Defendant's establishment and cannot be over stretched to cover an officer's previous employer. The Plaintiff know she would not be allowed to change to subsequently change her date of birth which was provided by her in her own handwriting I find that the Plaintiff stated her actual date of birth on the personal data (sic) and is not true that her birth certificate was washed away by flood. The Plaintiff failed to procure photocopies of both the birth certificate and the baptismal certificate from the appropriate sources by the fact that they would expose her age that she wanted to change to enable work in excess of 60 years as prescribed by law".

The Court of Appeal relied on Sections 24, 25 and 26 of the Evidence Act (NRCD 323) in coming to the conclusion that the Appellant was estopped from adducing any evidence of her date of birth, contrary to the stated birth date of 21st May 1954 which she voluntarily gave to the Respondent.

The questions that come up in this appeal are: did the Court of Appeal err in law and fact in holding that the Appellant's year of birth is 1954? Was the Appellant's compulsory retirement by the Respondent wrongful?

A perusal of the record provides the requisite evidence in support of the fact that the Appellant willingly provided 21st May 1954 as her date of birth knowing very well what the consequences were. For the avoidance of doubt, the relevant evidence on record is hereby reproduced:

"Q. Aunty Mercy, as a veteran of Defendant (sic) Organisation you know that Defendant came into existence in 1974 as an Authority. Do you know that?

A. Yes my lord.

- Q. ... You know that the employees were guided by the Senior Staff Condition of Service and Collective Bargaining Agreement for seniors and juniors respectively.
- A. Yes my lord.
- Q. Yesterday, you admitted that that you filled a form in which you stated 21st May 1954 as your date of birth. Not so?
- A. Yes, my lord.
- Q. I am putting it to you that, that was your first record of your date of birth that you provided to the Defendant after you moved from PWD to the Defendant (sic) organization.
- A. No My Lord.
- Q. You remember that you furnished the Defendant with a copy of Labour Card in defence of your claim that you were born in a certain other year. You remember that?
- A. Yes my lord.
- Q. And the date on the Labour Card was 3rd February, 1974
- A. Yes my lord.
- Q. You also remember that the Labour Card showed your age as 20 years.
- A. Yes my lord.
- Q. So when we do a simple calculation, 20 years backwards from 1974 we get 1954. Not so?
- A. No my lord.
- Q. You will agree with me that you have a reputation of not being consistent with your date of birth.
- A. Yes my lord.
- Q. Many of your confidential reports bore different dates of birth.
- A. Yes my lord.
- Q. 1983 for example you gave your date of birth as 21st May 1951.
- A. My lord I do not know.

Q. In the following years 1985, 1987, 1993, 1994, 1996 and 2008 you stated that were born in 1955.

A. Yes my lord

Q. And in the year 2006, you stated that you were born on 21st May, 1994, Not so?

A. My lord I do not remember”.

The Appellant’s own evidence above indicates that she was not consistent regarding her date of birth so far as her record with the Respondents were concerned. This was not the only problem. The Appellant knew that as a Senior Member of Staff, the Conditions of Service and the Collective Bargaining Agreement (COS and CBA) were applicable to her employment. She is therefore deemed to know the effect of Article 2(g), which provides that:

“Declaration of Age – Every Officer shall, on first appointment, disclose his/her age and date of birth substantiated by either a birth certificate or a statutory declaration/affidavit sworn to by a person in the position in law to do so or other acceptable documentary evidence”.

The Appellant notwithstanding this, went ahead to state 21st May 1954 as her date of birth. The records also show that 21st May 1954 was not only provided by the Appellant as her date of birth when she first joined the Respondent’s organization (GHA) from PWD in 1975. She completed another Personal Form on 28th February 1980 which indicated that her date of birth was 21st May 1954.

In rebuttal of the Appellant’s case this testimony of the Respondent’s witness is relevant for effect:

“Q. What record or form has the conditions of service provided for to employees to be used to provide their details upon their engagement?

A. According to the conditions of service it is the Service Record Card but now we not use the Service Record Card any longer.

- Q. *But as at the time the Plaintiff was employed in 1974 was it still being used?*
- A. *My Lord the Service Record Card on the Plaintiff's file was that of Public Works Department and not Ghana Highways Authority.*
- Q. *And what is the date on the Service Record Card of the Plaintiff?*
- A. *My lord it was 1955.*
- Q. *Would you agree with me that, that was the first Form that was provided to the Plaintiff to provide her details?*
- A. *My Lord what I know is that when you come to Ghana Highway Authority you are given a Personal Detail Form to indicate your age and your date of birth. When the Plaintiff was given the Personal Details Form to indicate her age and date of birth what she wrote on the form was 21st May 1954.*
- Q. *Answer the question.*
- A. *Yes my lord since she was from the Public Works Department.*
- Q. *You agree with me that the conditions of service of the Defendant does not provide for any other Form that the employee should provide his or her personal details apart from the use of Service Record Form.*
- A. *Yes my lord.*
- Q. *Now as somebody in-charge of welfare if one of your colleagues or you have found that one of your colleagues has different dates of birth appearing on his or her record what should be the right thing to do?*
- A. *My lord when such a thing come to notice that is, when I am preparing their retirement letters or the person has petitioned and the petition is to do with the date of birth, what I normally do is to go through the file and check the first date of birth that the person indicated then when we take a decision we write to the petitioner and inform the petitioner of the date the authority accepted as the petitioner's date of birth giving reasons.*
- Q. *In addition to these exhibits, you also have in your possession exhibits 4, 5, 6, 7 and 8. Is that correct?*
- A. *Yes my lord.*

- Q. *And you decided to use the date of birth that appears(s) in exhibits 4 and 9 instead of 1 and 3, is that correct?*
- A. *Yes my lord.*
- Q. *Now look at your Witness Statement again and look at paragraphs 3 and 4. You said that your records (sic) Plaintiff had 6 different dates of birth. Is that correct?*
- A. *Yes my lord.*
- Q. *Can you confirm these dates of birth?*
- A. *21st May 1951, 1954, 1955 and 1956.*
- Q. *Under the circumstance, the Defendant herein unilaterally choose 1954 and not 1955 or 1956 to retire the plaintiff even under protest. Do you agree?*
- A. *My lord we relied on the first day of birth she had given and written herself".*

The evidence therefore supports the finding that the Personal Data Form completed by the Appellant when she first joined the Respondent's organization is dated 28th May 1980.

Sections 24 to 26 of the Evidence Act on conclusive presumptions provide as follows:

- "24 (1) *Where the basic facts that give rise to conclusive presumptions are found or otherwise established in the, no evidence contrary to the conclusively presumed fact may be considered by the tribunal.*
- (2) *Conclusive presumptions include, but not limited to those provided in sections 25 – 29.*
- 25 (1) *Except as otherwise provided by law, including a rule of equity, the facts recited in a written document are conclusively presumed to be true as between the parties to the instrument, or their successors in interest.*
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- 26 *Except as otherwise provided by law, including a rule of equity, when a party has, by his own statement, act or omission, intentionally or deliberately caused or permitted another person to believe a thing to be true and to act upon such belief, the truth of that thing shall be*

conclusively presumed against that party or his successors in interest in any proceedings between the party or his successors in interest and such relying person or his successors in interest”.

Applying the above presumption to the facts in the instant case, the Appellant will be presumed to know the effect of the Conditions of Service for Senior Staff, particularly Article 2(g). She nonetheless stated that her date of birth was 21st May 1954, in 1980. She is therefore estopped from denying same. The Respondent was bound by this date and they rightly retired the Appellant.

CONCLUSION

As already stated, it is now well settled that where a trial court that heard the evidence and has made findings based on the evidence and has come to a conclusion in a case, an appellate court ought not to disturb those findings except there is no evidence on the record to support the findings or that the reasons for the findings are unsatisfactory. An appellate court may also reverse the findings of a trial court where they are based on a wrong proposition of the law or rules of evidence, or where the findings are inconsistent with documentary evidence on the record. This principled approach flows from a rich line of decisions of the Supreme Court in cases such as **Achoro and Anor v Akanfela [1996-97] SCGLR 209; Okine (Decd) Re Dodoo v Okine [2003-2004] SCGLR 582; and, Koglex Ltd. (No. 2) v Field [2000] SCGLR 175.**

In all these cases, the guiding principle is that the appellate court has a duty to determine whether or not: (i) the findings of the trial court are perverse and cannot be reasonably supported by the mass of evidence on record; (ii) the findings could be inferenced from established facts and therefore the appellate court is equally in a vantage position, just as the trial court, to arrive at the more probable conclusion than those arrived at by the trial court and, (iii) the trial court applied the wrong principles of law to the evidence adduced.

Against this premise it is, to our minds, evident that the conclusion of the trial court is not consistent with the drift of the evidence on record and the applicable law. Upon our review of the entire record of appeal and having duly considered the submissions of both counsel, we are persuaded that the findings and conclusions reached by the Court of Appeal in its judgment dated 14th October 2021 do not warrant any interference by this Court. On the contrary, we are in agreement with the findings, reasons and conclusions arrived at by the Court of Appeal. We are of the view that the Court correctly applied the principles of evaluating the evidence and attached the correct probative value to the evidence adduced in relation to the party who carried the statutory burden of proof. The Judgment of the Court is hereby affirmed.

In the circumstances, the appeal fails and same is accordingly dismissed.

**B. F. ACKAH-YENSU (MS.)
(JUSTICE OF THE SUPREME COURT)**

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(CHIEF JUSTICE)**

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