IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2024

CORAM: OWUSU (MS.) JSC (PRESIDING)
LOVELACE-JOHNSON (MS.) JSC
PROF. MENSA-BONSU (MRS.) JSC
ASIEDU JSC
KOOMSON JSC

CIVIL APPEAL
NO. J4/20/2022

13TH MARCH, 2024

AFARE APEADU DONKOR ..... PLAINTIFF/ RESPONDENT/ APPELLANT

VS.

1. ECOBANK GHANA LIMITED
2. EDC STOCKBROKERAGE LTD } **DEFENDANTS/APPELLANTS/ RESPONDENTS**

JUDGMENT

KOOMSON JSC:

This is an appeal against the judgment of the Court of Appeal dated 22nd December, 2020 allowing the appeal against the judgment of the High Court which held that the Plaintiff/Respondent/Appellant (hereinafter referred to as Plaintiff) was entitled to an amount of Six Million Seven Hundred and Seventy Thousand Four Hundred and Forty Ghana Cedis (GH¢6,770,440.00) as special damages for unlawful retention of the

Appellant's shares by the Defendants/Appellants/Respondents (hereinafter referred to as Defendants).

FACTS

On 27th May 2008, Mr. William Oppong Bio sought to buy the listed shares of Mr. Daniel Ofori in Cal Bank Ghana Ltd. Funding for the acquisition by Mr. Oppong was through a loan facility from the 1st Defendant. The Plaintiff had agreed to use his shares also in Cal Bank as collateral to secure the repayment of the loan facility granted to Mr. Oppong Bio. Thus, the Plaintiff deposited the share certificate in respect of his 18,120,000 shares with the 1st Defendant and kept by the 2nd Defendant. The share sale transaction between Mr. Daniel Ofori and Mr. Oppong Bio was suspended by reason of a Bank of Ghana directive to the Ghana Stock Exchange dated 30th May, 2008. The said suspension was subsequently lifted but the share sale transaction could not resume because Mr. Oppong Bio claimed to be no longer interested. The parties contended that the trade had failed by virtue of the Ghana Stock Exchange Rules. Mr. Oppong Bio by a letter dated 11th June, 2008 to the 1st Defendant and purportedly cancelled the loan facility. The 1st Defendant by a letter dated 16th June, 2008 accepted the revocation of the loan facility by Mr. Oppong Bio and refunded the facility-processing fee. Thus, the Plaintiff also wrote to the 1st Defendant and demanded for a return of his shares which was used as security for the loan facility.

Pursuant to the sale, the 1st Defendant had already issued three bankers draft in favour of Mr. Daniel Ofori for the amounts of GH¢400,000.00, GH¢7,200,000.00 and GH¢1,296,807.50 to SG – SSB, Zenith Bank Ltd and Data Bank Brokerage Ltd respectively. As at the time of the issuance of the cheques, the account of Mr. Oppong Bio had been credited with the loan facility.

The 1st Defendant on receipt of the BOG directive stopped the payment of the drafts but the SG – SSB draft was paid. Aggrieved by the decision of the 1st Defendant, Mr. Daniel Ofori sued the 1st Defendant and four Others including Mr. Oppong Bio claiming that the trade did not fail and therefore he was entitled to the consideration for the shares.

The Plaintiff relying on the fact that the loan transaction between the 1st Defendant and Mr. Oppong Bio had failed, also requested for the return of his collateral (ie listed shares). The Plaintiff actually **commenced Suit No. AC 234/2010; Afare Apeadu vs. Ecobank Ghana Ltd & EDC Stockbrokerage,** where the Court held that the 1st Defendant had no authority or legal right to hold on to the Plaintiff's shares as security after the cancellation of the loan facility. Thus the 1st Defendant's continued hold over the Plaintiff's shares was unlawful and the Court ordered a release of the Plaintiff's share certificate.

The claim of the Plaintiff is that the delay in the release of his shares from the date of demand had reduced the value of his shares by the time the shares were eventually released to him. As at September 2011 when the shares were released to him, the price of the shares had dropped from GH¢0.78 to GH¢0.28. The Plaintiff thus sued the Defendants for the loss in value of the shares owing to the unlawful retention of the shares by the Respondents.

The High Court presided over by Adjei Frimpong (as he then was) delivered judgment that the loss in value of the Plaintiff's shares was a direct consequence of the Defendant's unlawful withholding of the Plaintiff's shares and gave the sum of GH¢6,770,440 as special damages.

The Court of Appeal on 20th December, 2020 overturned the decision of the High Court and dismissed the claims of the Plaintiff. Plaintiff dissatisfied with the decision of the High Court has filed the instant appeal.

GROUNDS OF APPEAL

By an Amended Notice of Appeal dated 29th November, 2021, the Plaintiff appeals against the Court of Appeal decision on the following grounds:

a. Judgment is against the weight of evidence

b. That the learned justices of the Court of Appeal in determining the appeal misdirected themselves when they held that the foundation upon which the Respondent hinged his plaint for special damages has been swept away by the decision of the Supreme Court in the case of Daniel Ofori vs. Ecobank & Others (Civil Appeal No. J4/11/2016) and dated 25th July, 2018.

PARTICULARS OF MISDIRECTION

i. The facts of the two cases i.e. the Daniel Ofori case supra and the instant matter are different

ii. There was no ratio in the Daniel Ofori case supra which is applicable to the instant matter and thus, not binding on same.

iii. The failed share transaction was not only basis on the withholding of the Appellant's shares by the Respondent was held to be unlawful

c. That the learned justices of the Court of Appeal misdirected themselves on the principles governing the award of damages with respect to the tort of conversion when they held that the Appellant was not entitled to same because he had failed to demonstrate the foreseeability of the damages awarded by the trial court.

APPEALS GENERALLY

An appeal is by way of rehearing and where an Appellant alleges that the judgment of the court below is against the weight of evidence, the appellate court is enjoined to analyse the entire Record of Appeal considering the case of the parties, their testimonies and any documents tendered in support of the case. In civil cases, the Court then evaluates to determine whether on the preponderance of probabilities, the Court below ought to have arrived at the decision given. See the case of **Tuakwa v Bosom (2001 – 02) SCGLR 61**.

Benin JSC in the case of **Owusu – Domena vs. Amoah (2015 – 16) 1SCGLR 790** stated that:

> ***"We are of this Court's decision in Tuakwa v. Bosom (2001 – 02) SCGLR 61 on what the court is expected to do when the ground of appeal is that the judgment is against the weight of evidence. The decision in Tuakwa v Bosom, has erroneously been cited as laying down the law that, when an appeal is based on the ground that the judgment is against the weight of evidence, then, only matters of fact may be addressed upon. Sometimes, a decision on the facts depends on what the law is on the point or issue. And even the process of finding out whether a party has discharged the burden of persuasion or producing evidence is a matter of law. Thus when an appeal is based on the omnibus ground that the judgment is 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."***

GROUNDS I & II

While treating grounds I and II together, we will deal with ground II first because in our view, if the Court of Appeal did not misdirect itself on the ambit and application of this Court's decision in **Daniel Ofori vs. Ecobank & Others (Civil Appeal No. J4/11/2016) dated 25th July, 2018**, then the other grounds need not be considered and the appeal would be dismissed.

A careful scrutiny of the judgment of the Court of Appeal shows that, the learned justices were of the opinion that the decision of this Court in **Daniel Ofori vs. Ecobank & Others (Civil Appeal No. J4/11/2016) and dated 25th July, 2018** had direct consequences on their judgment. Guided by the judgment, the Court of Appeal held as follows:

> ***"This approach is the only way to abide by the decision of the Supreme Court and not appear to differ from the opinion of a court for which we are bound by its decision. Grounds 1, 2 and 3 together with the binding***

decision in the Daniel Ofori case in Suit No. J4/11/2016 dated 25th July, 2018 upon which we have received further submissions are enough to dispose of this appeal in favour of the Appellants. In the end we allow the appeal and wholly set aside the decision of the Court below and its award of special damages of GHc6,770,440 as well as cost of GH¢20,000.00".

In the view of the Court of Appeal, the foundation upon which the Plaintiff maintained the action against the Defendants had been swept away by the decision of the Supreme Court in **Daniel Ofori vs. Ecobank & Others (Civil Appeal No. J4/11/2016).** In the **Daniel Ofori** case, the High Court had earlier declared that the sale of shares to Oppong Bio had failed. Learned justices of the Court of Appeal reasoned that based on the failed trade, the loan transaction between Oppong Bio and the 1st Defendant had been cancelled. A cascading effect was that no loan facility existed for the Plaintiff's shares to continue to be used as security.

Learned Counsel for the Plaintiff in this appeal argues that the Court of Appeal erred in holding that the decision of this Court in the **Daniel Ofori** case was binding on it. Counsel argues that the Court in holding that the **Daniel Ofori** case was binding on it did not rely on the ratio decidendi of the case but rather an erroneous assumption that the factual underpinnings of the Plaintiff's case at the High Court was hinged on the judgment of the High Court in the **Daniel Ofori** case. The Court of Appeal claiming that the **Daniel Ofori** case was binding on it did not rely on law but rather facts and this finding is faulty because a demonstration by the Plaintiff that its case at the High Court was not based on the High Court's decision in the **Daniel Ofori** case automatically vitiates the judgment of the Court of Appeal. Whether a decision of a superior court is binding on a lower court is a question of law and not fact.

For the Defendants, Counsel states that the genesis of the whole case stems from Mr. Daniel Ofori deciding to sell his Cal Bank shares to Mr. Oppong Bio and the Plaintiff

agreeing to use his shares as collateral for the loan facility. It is because Mr. Oppong Bio considered the share sale transaction to have failed and for the reason he decided not to purchase them any longer, that had caused all these issues which have necessitated all these court actions. The Plaintiff had relied on the decision of the High Court in the **Daniel Ofori** case that the share sale transaction had failed and for that reason the Defendants could not hold on to the shares as security for the loan. It therefore lies foul in the Plaintiff's mouth that the **Daniel Ofori** case has no bearing on the instant case.

Article 129(3) of the 1992 Constitution provides that ***"The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears to it right to do so; and all other courts shall be bound to follow the decisions of the Supreme Court <u>on questions of law</u>."*** It is not in doubt that it is questions of law that are binding on the lower courts and not a superior court's findings of fact.

Dotse JSC in the case of **Republic vs. National House of Chiefs; Exparte Krukoko II (Enimil VI, Interested Party) (2008 – 09) 1 GLR 385** in respect of article 129(3) held that:

> ***"In effect, the application of this principle admits of no discretion whatsoever on the part of the courts lower to the Supreme Court. Whilst the Supreme Court itself is not bound to follow its previous decisions (although in practice it does to a large extent) all other courts must interpret the law to be what the Supreme Court states it to be, this is a mandatory requirement on all the courts lower down the hierarchy of courts to the Supreme Court. This will mean that, the Court of Appeal, High Court, Regional Tribunal, circuit court, district courts and all lower adjudicating tribunals to wit, family tribunal, juvenile court, judicial committees of the National House of Chiefs, regional houses of chiefs and also of the divisional and traditional councils established under the Chieftaincy Act 2008, (Act 759) are bound to follow it.***

The principle is based first of all on the relevant likeness of the previous decisions or the relevance of the principle of law decided in the previous case and the instant one. If, however, there is no likeness between the two, then there is no need to consider whether the previous one should be followed or not. It is the art of following the decision in the previous case or being able to distinguish the principle of law decided in the previous case from the one before the court, that will determine its applicability."

For the Plaintiff, it is only the ratio decidendi of a case from the superior court that is binding on the lower court. Charles Crabbe JA in **Annous v Appoh [1980] GLR 883–914** on ratio decidendi of a case held that: ***"I appreciate that what is important, as far as the parties are concerned is the decision of the court. But I appreciate more than what is required of this court, and for that matter of all other courts of competent jurisdiction, is the weight that can be attached to the judgment of the court... That judgment is incomplete without a ratio decidendi, that is to say, "the general principle which runs through the case and governs the decision of it, Illumination in these courts can only come by a process of analysis and synthesis of our judgments. And that is dependent upon the ratio decidendi of our judgments."***

See also the statement of the Late Cecilia Koranteng-Addow J. in **Republic vrs. Director of Prisons & Anor. Ex Parte Shackleford (1981) GLR 554 at 564** on ration decidendi being**:** ***"it is the reason or principle on which a question before a court has been decided, which is binding as a precedent. It is the ratio decidendi of a judgment of a superior court which sets a precedent for itself or inferior courts to follows".***

This Court speaking through Pwamang JSC in the **Daniel Ofori** case held that:

"...The comprehensive explanation of the rules of our Exchange above shows clearly that the notion bandied about by the defendants of simultaneous Delivery Versus Payment in reality does not pertain in the Ghana Stock Exchange. We still go by the manual system where the settlement of a trade is a three-day process in the course of which securities may be transferred by close of day T+1 and payment delivered on day T+3. Our system of DVP is therefore sequential though one is dependent on the other. Simultaneous DVP in the real sense requires the use of computers, a CSD and a different legal regime that accords validity to electronic transfer of shares. The literature shows that our model of DVP is what pertains in most developing securities markets. So yes, the receipt evidencing the registration of the shares in the name of the buyer may be handed over on day T+3 but ownership of the shares would have passed to the purchaser under the general Company Law provisions the moment the buyer's name is entered in the register and by rule 69 of the rules of the Exchange, the shares would have been deemed delivered.

Thus, on the issue of whether there was Delivery versus Payment in this case, we answer in the affirmative. The shares were delivered to the 2nd defendant in accordance with the rules of the Exchange and payment received within those rules so the trade was consummated and settled in accordance with the rules of the Exchange before the letter of suspension by the Exchange was received by the broker. It must be noted that under the circumstances in this case, the suspension took effect from the time the letter of the Exchange was served on the broker because even an order of injunction by a court of law takes effect only upon service on the person sought to be restrained or brought to his attention. The 4th defendant's Director-General purported to be applying the rules of the Ghana Stock Exchange but it appears he had in mind the rules of some other exchange which has rules that give validity to dematerialized

shares and electronic transfers of shares. His conclusions were at variance with the rules of the exchange he superintends and the relevant laws of Ghana so his directives would be set aside."

This Court determined that within the Rules of our Exchange, the sale between the Mr. Daniel Ofori and Mr. Oppong Bio had settled. The shares had been delivered to Mr. Oppong Bio in accordance with the Rules of the Exchange and payment received within the same Rules. Thus, the transaction had been consummated. Where was this payment for the shares emanating from? Is it not the same loan facility that was being granted by the 1st Defendant to the Mr. Oppong Bio which had been purportedly cancelled on the back of a failed/frustrated transaction prior to the decision of this Court?

In Suit No. AC/234/10; **Afare Apeadu Donkor vs. EDC Stockbrokerage Limited & Ecobank Ghana Ltd**; which the Plaintiff assert is the foundation of the instant action, the learned high court judge held that:

"Issue five is whether it is lawful for the bank to exercise a lien over the plaintiff's pledged shares despite the suspension of the share sale transaction and the cancellation of the loan facility for which the shares were pledged?... At this point, the question to ask is, if the loan was cancelled, what was the withheld security securing...? What was the lien for?...

... As already found, no loan exists to warrant 2nd Defendant's claim to Plaintiff's shares as collateral security. I therefore order the 1st Defendant to transfer custody and management of the shares to Databank Brokerage Limited on behalf of the Plaintiff"

In commencing the instant action, the Plaintiff in his Statement of Claim pleaded as follows:

"6. Plaintiff avers that sometime in May 2008 he asked 1st Defendant to use the shares as collateral for a loan facility (hereinafter, the

"Loan") being granted by the 1st Defendant to Mr. William Oppong Bio, a businessman based in Accra (hereinafter Oppong Bio)

7. Plaintiff avers that for that purpose, he deposited the certificate representing the shares to the 1st Defendant as security for the Loan.

8. Plaintiff avers that the 1st Defendant's loan to Oppong Bio was for the purchase of shares held by Mr. Daniel Ofori in Cal Bank Ghana Limited.

9. Plaintiff avers that the purported sale of shares by Mr. Daniel Ofori to Oppong Bio was suspended pursuant to a directive from the Bank of Ghana and the Ghana Stock Exchange dated 30th May, 2008 requesting that the sale of the shares be put on hold. The High Court has in Suit No. BFS 545/08 intituled Daniel Ofori vs Ecobank, William Oppong Bio & Others (hereinafter the 'Ofori Case') declared the purported sale, a failed trade and a frustrated contract. (emphasis supplied)

10. Plaintiff avers that consequent upon the suspension order directed by the Bank of Ghana, 2nd Defendant being an institution regulated by the Bank of Ghana put a hold on the loan transaction.

11. Plaintiff avers that as a result of the suspension order which in effect failed the trade as confirmed by the High Court in the Ofori case, Oppong Bio instructed the 1st Defendant to cancel the loan" (emphasis supplied)"

At the High Court, the learned judge held that***: "<u>The plaintiff's case put simply is that when the share trade failed</u> and the loan transaction became aborted, he demanded the return of his shares...".***

In the light of the Plaintiff's own pleadings, Counsel for the Plaintiff is being disingenuous when he argues that the decisions (both High court and Supreme Court) have no bearing or significance on the determination of this appeal. At the High Court, the decision of the High Court in the **Daniel Ofori** case was specifically pleaded at paragraph 9 of the Statement of claim as justification for the contention that the share sale transaction between Daniel Ofori and Oppong Bio had failed. Indeed, from the Plaintiff's own showing in paragraphs 9 – 11 of the Statement of claim, the cancellation of the loan facility was not an isolated act but rather on the basis that the transaction had erroneously been suspended and had not settled.

Until this Court's decision in the **Daniel Ofori** case, all parties had labored under the erroneous impression that the transaction had been suspended and the Lower Courts were of the opinion that the share sale transaction had failed. Decisions taken by Oppong Bio, the 1st Defendant and Plaintiff herein were on this erroneous assumption of a failed/suspended transaction.

If the High Court in the **Daniel Ofori** case had found that the share sale transaction had been consummated and payment made by the 1st Defendant within the Rules of Exchange as established by this Court, the Plaintiff would not have been successful in the instant case at the High Court as the Court of first instance.

In our opinion, the decision by this Court in the **Daniel Ofori** case is automatically binding on the Court of Appeal to the extent that consummation of the share sale transaction between Mr. Daniel Ofori and Oppong Bio cannot be divorced from the loan facility between the 1st Defendant and Oppong Bio. The transactions are intrinsically connected that the decision of this Court resurrects the purportedly cancelled loan transaction. Having

determined that the transaction was settled in the **Daniel Ofori** case, it is the funds from the loan facility from the 1st Defendant that invariably would be used to pay Daniel Ofori for the sale of his shares.

The Court of Appeal, therefore, did not err in holding that this Court's decision in the **Daniel Ofori** case is binding on it and has an effect on the determination of the appeal. We agree with the Court of Appeal that, based on this Court's decision in the **Daniel Ofori** case, the Plaintiff would not be entitled to a release of share certificates which would have served as the collateral for the loan facility and consequently not entitled to the damages sought in this case for unlawful retention of shares.

CONCLUSION

We find no merit in this appeal and accordingly dismiss the appeal in its entirety.
The judgment of the Court of Appeal dated 22nd December 2020 is hereby affirmed.

G. K. KOOMSON
(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)
(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS.)
(JUSTICE OF THE SUPREME COURT)

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