IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: YEBOAH CJ (PRESIDING)

BAFFOE-BONNIE JSC

PWAMANG JSC

PROF. KOTEY JSC

OWUSU (MS.) JSC

AMADU JSC

PROF. MENSA-BONSU (MRS.) JSC

CIVIL MOTION

NO. J7/19/2023

15TH FEBRUARY, 2023

EXPOM GHANA LIMITED ….. PLAINTIFF/RESPONDENT/APPELLANT/ RESPONDENT

VRS

VANGUARD ASSUARANCE CO. LTD. …... DEFENDANT/APPELLANT/ RESPONDENT/APPLICANT

RULING

PWAMANG JSC:-

The grounds upon which this application for review has been brought as set out in the statement of case of the Applicant and argued in court are that;

a) The majority failed to consider the evidence in the record which showed that the respondent at the trial failed to prove the value of the materials destroyed by the fire,

b) The majority failed to exclude from the quantum of damages awarded for materials destroyed, the quantity of materials that were found in the Thonket case to have been fermented or expired at the time of the fire,

c) The majority failed to interpret the Watchman's warranty clause in the contract that was held by them to be in force at the time of the fire, and

d) The award of €400,000.00 as cost of removal of debris from the fire was a basic and fundamental error since the contract of insurance in force at the time of the fire did not cover the cost of removal of debris.

We have listened to the lawyers of the parties and read closely the processes filed in this application for review and we have formed the opinion, that apart from ground (d) stated above, the rest of the grounds are inviting us to re-hear the appeal but a review is not an appeal.

At Ground (d) the applicant alleges that the court made an inadvertent slip in making an award outside the terms of the insurance contract the parties entered into. Accordingly, we have taken a look at the contract documents that both parties are agreed were what they signed. We have noticed, that whereas in the first contract of insurance, debris removal was one of the interests insured against, when the contract was renewed to cover the period 20th November, 2009 to 20th November, 2010, removal of debris was not stated as one of the interest insured against. As the fire occurred on 10th May, 2010, it means that at that time debris removal was not covered under the policy. Therefore, the award of €400,000.00 against the Applicant in respect of debris removal was plainly a basic mistake. This inadvertent error has occasioned a miscarriage of justice to the applicant so there is a need to review that part of our decision.

In the circumstances, we review the decision of the court given on 25th May, 2022 and set aside the award of €400,000.00 as cost of debris removal.

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH

(CHIEF JUSTICE)

P. BAFFOE-BONNIE

(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY

(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)

(JUSTICE OF THE SUPREME COURT)

I. O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS.)

(JUSTICE OF THE SUPREME COURT)

COUNSEL

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RESPONDENT.

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