IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: BAFFOE-BONNIE JSC (PRESIDING)

OWUSU (MS.) JSC

TORKORNOO (MRS.) JSC

ACKAH-YENSU (MS.) JSC

ASIEDU JSC

CIVIL APPEAL

NO. J4/70/2022

22RD MARCH, 2023

EMBALINKS TELECOM SERVICES LTD. …….. PLAINTIFF/RESPONDENT/ APPELLANT

VRS

CAL BANK LTD. …….. DEFENDANT/APPELLANT/RESPONDENT

JUDGMENT

ACKAH-YENSU (MS) JSC:-

INTRODUCTION

This appeal has arisen as a result of a dispute over the computation of the actual indebtedness of a customer to a bank. Nowadays, it is not uncommon for debtors to seek the intervention of the courts to avoid valid transactions entered into with creditors. The timing of such interventions, often during a default, is strategic with obvious motives. However, the courts cannot intervene unless there are vitiating circumstances like unconscionability, mistake, or fraud.

Indisputably, while borrowers are usually persons in great need and will often succumb to whatever terms of the agreement entered into with lenders, the law has carved a balancing mechanism to sustain the social significance of the bank-customer/borrower-lender relationship. There are several occasions where the courts have opened up agreements entered into between a bank and its customer and reviewed or modified same for being unconscionable. Other times, the courts find that the customer seeks to hoodwink the bank by adopting various strategies to dishonor payments on facilities they have taken benefit of. The instant appeal follows the conundrum confronting the banking industry following this trend.

In this judgment, we shall refer to the parties by the same designation as at the trial court, as Plaintiff and Defendant. The Plaintiff's dissatisfaction with the banker-customer relationship that exists between her and the Defendant Bank compelled the initiation of the suit at the trial court. That suit, was for *inter alia* reliefs against the payment of alleged unconscionable interests/penal charges pertaining to financial facilities the Plaintiff took benefit of, from the Defendant Bank. The trial court upheld the claims of the Plaintiff and entered judgment in its favour. That judgment was, however, reversed on appeal by the Court of Appeal. Being aggrieved with the judgment of the Court of Appeal, the Plaintiff has appealed to this Court. Our duty, as the final appellate court is to review the evidence

on record to ascertain which of the decisions is the right one, there being no concurrent findings by the two lower courts.

BACKGROUND FACTS

On the 28th of March 2016, the Plaintiff caused to be issued a writ of summons against the Defendant for the following reliefs:

> *"1. A declaration that the interest/penal charges clauses contained in the facility agreement between the parties is unconscionable.*
>
> *2. An order setting aside the said interest/penal clauses in the said facility agreement.*
>
> *3. An order for the re-calculation of interest in the facility agreement on the basis of fairness, reasonableness and equity"*

The Plaintiff's case is that, sometime in 2013, it obtained a bank guarantee and a credit facility in the sum of One Million Ghana Cedis (GH¢1,000,000.00) from the Defendant Bank. Plaintiff averred to several challenges in operating the credit line facility, including payment of undue interest in instances where funds could not be transferred into the account on weekends and on days the Bank was not operating. Defendant Bank, therefore, advised Plaintiff to convert the Credit facility into an overdraft facility, which was done. In 2014, the overdraft and the bank guarantee were increased to One Million, Five Hundred Thousand Ghana Cedis (GH¢1,500,000.00).

The Plaintiff claims that after paying over One Million, Seven Hundred Thousand Ghana Cedis (GH¢1,700,000.00), the Bank still insisted that the Plaintiff was indebted to them in the sum of over Five Million Ghana Cedis (GH¢5,000,000.00). Upon careful scrutiny, Plaintiff observed that there were inbuilt charges, both standard and penal, which were unconscionable.

Plaintiff met with officials of the Bank who advised the Plaintiff to apply for the overdraft facility to be converted to a medium-term loan. Such conversion would make specific the principal sum and interest. This, Plaintiff claims, the Defendant Bank failed to do with the result that the interest continued to swell to about Eight Million Ghana Cedis (GH¢8,000,000.00).

Defendant on its part denies Plaintiff's claims, insisting that the transaction was not unconscionable nor were there any harsh and excessive built-in interest and penal charges. Defendant maintains that the Plaintiff had overdrawn the facility to the tune of Seven Million, Eight Hundred and Sixty-Nine Thousand, Nine Hundred and Sixty-Seven Ghana Cedis, Six Pesewas (GH¢7,869,967.06). Thus, Plaintiff was still indebted to the Bank.

FINDINGS BY THE TRIAL COURT

On 28th February 2020, the High Court, Sekondi, entered judgment in favour of the Plaintiff holding that the interest/penal clauses in the agreement were unconscionable. The trial court made the following consequential orders:

> *"1. The defendant bank shall release forthwith all title deeds, collaterals used in securing the loan agreement by the plaintiff company.*
>
> *2. Relief 3 has become moot since the evidence is that as at the start of the year, 2015 the plaintiff's balance on their account has 0.00.*
>
> *Plaintiff's costs assessed at GH¢40,000.00".*

In arriving at its decision, the trial court made the following findings of facts:

1. **That, there was no evidence on record to support the Defendant's claim that it charged VAT on services rendered to Plaintiff, in terms of any receipt or invoice.**

There was also absent, any evidence of any payments of VAT to Ghana Revenue Authority by Defendant in respect of the alleged services rendered. It was therefore unlawful for Defendant to keep the sum of GH¢8,610.09 as VAT deductions.

2. **Some requests/applications of Plaintiff allegedly made to the Bank, for e.g., to draw down on credit facility, were all prepared by the Bank officials and on the Defendant Bank's letterhead (Exhibit "4"). A letter purportedly written by the Plaintiff was received by the Bank and stamped on 03/11/2013 which was a Sunday (Exhibit "2").**
3. **The penal interest in addition to the normal commercial bank interest charged on the amount lent is harsh and excessive or extravagant and contrary to what was stipulated in the Facility Agreement (Exhibit "1"); same therefore is unconscionable.**
4. **The principal loan sum has been paid for because by the Defendants' own statement of account, by the start of 2015, the Plaintiff had 0.0 balance and there is no evidence that the Plaintiff was granted a further facility. The continued charge of interest is thus unlawful.**

JUDGMENT OF THE COURT OF APPEAL

As aforesaid, on appeal, the Court of Appeal reached a different conclusion on the facts and reversed the decision of the trial court. The Court of Appeal came to the following conclusions:

1. **Plaintiff sat by and allowed a full-scale plenary trial to be conducted with extensive evidence being adduced upon the alleged impugned Statement of Defence without raising timeous objection. The attack against the Statement of Defence being void (for being indorsed by an expired solicitor's licence) is insensitive to current jurisprudence on the subject.**

2. **On the finding that the loan sum had been paid the Court of Appeal found that Exhibit "7", the statement of account which was relied on by the trial Judge in concluding that it began with a zero balance at that column, had no date, no details, and had no entries defining what that balance signified.**
3. **Right after the 0.0 balance, there were subsequent entries on the days following which contained a debit balance. And even after the 0.0 balance, the Plaintiff continued to make payments to the Bank.**
4. **Exhibit "23", the Plaintiff's own letter, admitted and acknowledged Plaintiff's indebtedness to the Bank of an amount of GH¢8,289,022.40.**
5. **The claim that the Defendant Bank had failed to pay over the VAT deductions to the Ghana Revenue Authority was a material fact which required strict proof, but the Plaintiff failed to prove same. That burden could have easily been discharged by putting some official communication from the Ghana Revenue Authority before the Court to establish conclusively that the deductions had not been paid to the Authority as required by law, but regrettably the Plaintiff failed to so discharge.**
6. **The facts on record show no slightest indication that any terms and conditions were unfairly imposed on the Plaintiff Company or that the Plaintiff showed any disagreement of the terms and conditions attached to the facility it obtained from the Defendant Bank. The Plaintiff which wholeheartedly agreed to the interest rates as well as compounding of same, appreciated fully the nature and import of the transaction before it willingly contracted with the Bank as a free agent, not disadvantaged nor lacking understanding.**
7. **The Plaintiff did not indicate, either by way of its pleadings or any evidence at the trial, the basis of its allegations that the rate of interest stipulated in the Facility Agreement had been inflated or was otherwise harsh and excessive.**

APPEAL TO THE SUPREME COURT

Dissatisfied with the decisions of the Court of Appeal, the Plaintiff has appealed to this Court by Notice filed on 14th January 2022, on the following grounds:

"A. The Court of Appeal erred by basing its decision on an Exhibit which had been discredited under cross-examination at the trial.

B. The Court of Appeal erred in its conclusions on the legality of the V.A.T. Law.

C. The Court of Appeal erred in its interpretation of the Bank Statements tendered in evidence by the Defendant at the trial.

D. The Court of Appeal mis-applied the ratio of the Supreme Court's decision in the case of THE REPUBLIC VRS THE REGISTRAR & PRESIDENT OF THE NATIONAL HOUSE OF CHIEFS, KUMASI & ANOR: EX PARTE EBUSUAPANYIN KOJO YABOAH [2018] 126 GMJ 1.

E. The judgment is against the weight of evidence led at the trial".

Whereas the Plaintiff gave notice of its intention to file additional grounds of appeal upon receipt of the full record of appeal, no additional grounds had been filed.

CONSIDERATION OF THIS APPEAL

We shall proceed with our consideration of this appeal in the manner as argued by the Plaintiff beginning with ground "D", which is to the effect that: "***The Court of Appeal misapplied the ratio of the Supreme Court's decision in the case of THE REPUBLIC VRS THE REGISTRAR & PRESIDENT OF THE NATIONAL HOUSE OF CHIEFS, KUMASI & ANOR: EX PARTE EBUSUAPANYIN KOJO YABOAH [2018] 126 GMJ 1".***

The premise of this ground is the Plaintiff's objection to the Amended Statement of Defence filed by the Defendant at the trial court. The objection we observe, was never raised at the trial court, but raised for the first time on appeal at the Court of Appeal. Put differently,

the defectiveness or otherwise of the Statement of Defence was never an issue before the trial court. Plaintiff's attack against the Statement of Defence is that the Solicitor's licence number indicated on the said Statement of Defence had expired at the time it was filed. This, according to the Plaintiff, is sufficient evidence that at the time of filing the Defence, Counsel for the Defendant had not renewed his Solicitor's Licence.

Counsel admitted as follows: *"The Supreme Court in the said case correctly stated that where a process is filed without a solicitor's licence number, and it is averred that the solicitor who filed the process has no licence it is up to the person so averring to prove that indeed and in fact there is no current solicitor's licence. However, in this case the lawyer who filed the process has stated his solicitor's licence number on the process. The solicitors licence number is stated as WR 14331/17. From the face of the document, which was filed in 2018, the licence had expired as same expires on the 31st of December each calendar year. Nowhere has it been alleged that the said Statement of Defence filed was not the act or deed of the said lawyer. Nowhere has it been alleged that the solicitors' licence number is a mistake. We are not alleging anything. We are only relying on their own document".*

Counsel then refers to the case of **Republic v High Court (Fast Track Division) Accra: Ex Parte Teriwajah & Korboe [2012-2014] 2 SCGLR 1247** and concludes that: *"Having thus filed a process with an expired Solicitors Licence, the said process is a nullity …"*

Without a doubt, the Solicitor's Licence number referred to by the Plaintiff is what appears on the Amended Statement of Defence filed on behalf of the Defendant. On its face, one may infer that it relates to the previous year. That, however, remains an inference. It is important to observe that a first Statement of Defence was filed on behalf of the Defendant on 6th June 2016. That Defence was signed by the Legal Department of Cal Bank Ltd. The Plaintiff applied to the Court per its Counsel to strike out that Statement of Defence on the

basis that it was signed by a person unknown to the Legal Profession Act, 1960 (Act 32) since the Legal Department of Cal Bank was not a licensed lawyer. The court below upheld the submission and did strike out the Statement of Defence. Pursuant to the leave of the trial court, an Amended Statement of Defence was filed. The Plaintiff challenged the propriety of this Statement of Defence. In fact, the Plaintiff did not file any Reply to the Statement of Defence, and at all times accepted the regularity of same.

The issue of whether it was defective or not was also not an issue for trial. The issues settled for trial were:

> *"a. Whether the interest/penal interest clauses contained in the facility agreement is unconscionable.*
>
> *b. Whether the interest/penal clauses in the facility agreement ought to be set aside.*
>
> *c. Whether there should be a recalculation of interest in the facility agreement".*

Looking at the substance of the objection, it will clearly warrant adducing and receiving positive evidence to decide. Therefore, not having made this an issue and thus having allowed the Defendant's Solicitor to proceed with the trial, the Plaintiff cannot be heard on appeal for the first time, that the Defendant's Counsel was not licensed for that year of practice. Accepting Plaintiff's supposition will mean that it does not matter that the said Solicitor has renewed his licence but in so far as he mistakenly indicates the old Solicitors' Licence number on the process, it renders the Defence a nullity. Such thinking is not legally tenable and does not pursue the substance of the law. The law, as provided for under Section 8 of Act 32 is that:

> *"A person other than the Attorney-General or an officer of his department shall not practice as a solicitor unless he has in respect of such practice of valid annual licence issued by the General Legal Council to be known as "a Solicitor's Licence" in the form set out in the Second Schedule to this Act".*

The issue therefore is, was Defendant's Counsel issued with a Solicitor's Licence at the time he filed his Amended Statement of Defence? This issue, however, was never an issue for trial as aforesaid, and so the necessary evidence in proof of same was not considered. Plaintiff acquiesced and now seeks to adopt unpleasant technicalities to obviate justice.

It must be restated that the endorsement of the Solicitor's Licence on court processes is not a legal requirement within the meaning of Section 8 of the Legal Profession Act, 1960 (Act 32). The endorsement of an expired licence number will only raise rebuttable presumption that the lawyer who filed the process may not be eligible at the time. This is merely presumptive because an expired licence may have been endorsed in error. Without provoking the issue of eligibility of the Defendant's lawyer to file the Amended Statement of Defence at the trial court, the Plaintiff could not be heard to raise it for the first time on appeal at the court below nor in this Court because proof of same would be required by adducing fresh evidence.

We cannot but adopt and agree with the pronouncement of the Court of Appeal that:

> *"Apart from the fact that the Plaintiff had sat by and allowed a full scale plenary trial to be conducted with extensive evidence being adduced upon the basis of the alleged impugned Statement of Defence without timeous objection, we think that learned Counsel for the Plaintiff's attack against the said Statement of Defence appears insensitive to such current decisions as* ***The Republic v The Registrar & President of National House of Chiefs, Kumasi & Anor; Ex Parte Ebusuapnyin Kojo Yaboah [2018] 126 GMJ 1 at 36,*** where Appau JSC delivered himself as follows: *"The second was the argument on the non-endorsement of the appellant's lawyer's Solicitor's Licence on the Motion Paper, which we dismiss as having no merit in the wake of our decision in* ***Republic v Court of Appeal; Ex Parte Dakpema-Zobognaa & Others (Lands Commission – Interested Party) –***

Unreported Judgment of the Supreme Court dated 5th June 2018. In that case, we endorsed the Court of Appeal's decision that the mere non-endorsement of appellant's lawyer's Solicitor's licence on the motion paper did not render the application a nullity. For the respondent to succeed on such a point, he should establish that at the time the motion was prepared and filed by counsel, he had no Solicitor's licence to practice as a lawyer".

The above case was cited with approval by Dordzie JSC in the case of **Juliana Amoakohene v Emmanuel K Amoakohene,** where Her Ladyship held *inter alia* as follows:

"Ground (a) has no merit. It is the position of this Court in the above cited case that the mere non-endorsement ***(and for that matter the erroneous endorsement)*** *of solicitor's licence is a statement that required proof. The issue was not raised in the trial court where evidence could have been led to establish the alleged facts. Ground (a) therefore is dismissed as unmeritorious". (The emphasis is mine).*

There is clearly no misinterpretation of the judgment of the court below as alleged by the Plaintiff. On the contrary, the Court of Appeal rightly refused to swim in the river of technicalities as urged on them by the Plaintiff. This ground of appeal is completely meritless and same is accordingly dismissed.

Although the Appellant has in its written submission argued grounds (a), (b) and (c) separately, we shall deal with them compositely. In our view, the said grounds of appeal can be conveniently dealt with under the omnibus ground of appeal that, the judgment appealed from is against the weight of evidence adduced at the trial.

By anchoring this appeal on the omnibus ground, what the Plaintiff contends is that the court below did not properly evaluate the evidence adduced at the trial and thus

occasioned substantial miscarriage of justice to it. The Court, in such circumstances, is enjoined to carefully examine the record to right any such wrongs committed by the court below as regards the evaluation of the record of appeal. See the often-cited case of **Tuakwa v Bosom [2001-2002] SCGLR 61.**

This is in line with the general principle of law that an appeal is by way of rehearing. There is a host of jurisprudence on this point, that an appeal at whatever stage is by way of rehearing as every appellate court has a duty to examine the relevant pieces of evidence on the record including the exhibits, oral or written submissions of counsel, to ascertain whether the trial court or the first appellate court below was justified in arriving at its conclusions in the judgment. See **Agyenim-Boateng v Ofori and Yeboah [2010] SCGLR 861.** In that regard, this Court can draw its own inferences from the established facts, and in arriving at its decision this court can affirm the judgment of the trial court or the Court of Appeal for different reasons or vary it.

Plaintiff first took issue with the documentary evidence of the Defendant which Plaintiff claims were contradictory of each other. Plaintiff's Counsel submitted that Exhibit "23" which was authored by the Plaintiff on 6th February 2015 was amazingly reviewed by the Defendant Bank per its own stamp on the 15th of February 2016 and that, under cross examination, it was exposed that same was fraudulently procured by the Defendant Bank. As to where and how the said Exhibit "23" was exposed as fraudulently procured by the Bank and discredited under cross-examination, Plaintiff failed to walk the Court through and point out such fraud as alleged. The basis of the Plaintiff's submission stems from the unsupportable finding by the trial court that, since the Plaintiff's account opened with a zero balance, Plaintiff was not indebted to the Defendant Bank. This finding was however rightly reversed by the Court of Appeal as the Plaintiff's own documentary correspondence affirmed otherwise.

Exhibit "23" is a letter dated February 2015 and authored by the Plaintiff to the Defendant Bank (page 166 of ROA). Whether or not the Bank received the said letter a year after it was authored does not detract from the fact that the said letter was authored by the Plaintiff. The Plaintiff also failed to impeach the fact of its authorship. The material portions of the said letters reads:

"Dear Sir

REQUEST TO RESTRUCTURE THE OVERDRAFT FACILITY INTO A LONG TERM LOAN FOR SEVEN (7) YEARS

The board and management of EmBALinks Telecom Service wishes to humbly request the Bank (sic) the current overdraft facility with a current balance of GH¢8,289,022.50 into a long term loan for a period of seven years.

Currently the company pays monthly interest of GH¢212,130.05 on the overdraft and this has (sic) the existing working capital of the Company.

In view of this we seek the assistance of the bank to treat this request with all the needed support since further interest on the overdraft will put the company in a serious financial difficulty.

Kindly find attached seven (7) years cash flow for your attention.

Counting on usual assistance.

Thank you".

The exhibit clearly authored by the Plaintiff is to the effect that it owes the Defendant Bank the sum of GH¢8,289,022.50 as at February 2015. This tacit admission cannot therefore be eroded by Plaintiff.

In fact, Plaintiff's monument of non-indebtedness arises from the statement of account (Exhibits "7" and "22"). According to the Plaintiff, per the Defendant's own statement, the opening balance is zero. Therefore, since this statement does not indicate any other figure, it supports the finding by the trial court that the Plaintiff was not indebted to the Defendant Bank. As already found however, Plaintiff's own Exhibit "23" acknowledged its liability to the Bank. Moreover, as rightly found by the Court of Appeal, the 0.0 balance was updated with no further attributes to make meaning out of same. Immediately beneath this item was the sum of -GH¢3,764,988.04 a debit balance, which gives credence to the contention of the Defendant that the Plaintiff was still indebted to it (Exhibit "7", page 99 of ROA).

The Court of Appeal painstakingly and properly examined and interpreted the statements on record. Therefore, the submission by Counsel for Plaintiff that: *"The Court of Appeal failed to give any meaning to the zero but went far afield to the other figures in the Bank Statement to mean that once other figures were shown in the bank statement it meant the Plaintiff was still indebted to the bank. A look at Exhibit 7 at page 99 clearly shows a balance stated at zero. Then beneath same is the sum of 3,764,988.04 which the Court of Appeal rather prefers to rely on. With the greatest of respect to the learned Justices of the Court of Appeal, in such a Statement of Account figures cannot just appear from a vacuum"*, is not supported by the evidence. Significantly, the Plaintiff also failed to give any contrary view of those figures yet expects the Court to construe the 0.0 balance appearing on the first column as if it is not indebted to the Defendant Bank.

As variously stated in this judgment, the Plaintiff's own documentary evidence exposes it. The statement of account cannot always be sacrosanct of its content. Other pieces of evidence, such as Exhibit "23", when read together with the conduct of the Plaintiff, as well as the Plaintiff's own silence in his pleadings that it had cleared its indebtedness to the Defendant leads to the irresistible conclusion that the Plaintiff is still indebted to the Defendant.

The Plaintiff's next attack is that the Court of Appeal got it wrong in its conclusion on the legality of the Value Added Tax (VAT) Law. That ground of appeal, standing alone, clearly is vague. However, we shall consider the substance of the submission on this since VAT is paid to the Government for services rendered, in the absence of any service so rendered, Plaintiff could not have legitimately been charged. Furthermore, the Defendant had failed to prove that it had paid the said VAT deductions from the Plaintiff's account in the sum of GH¢45,509.03 to the Ghana Revenue Authority (GRA).

At the trial court the trial Judge found that the deductions from the Plaintiff's account being VAT charges on services rendered had not been paid to GRA, hence the Defendant was liable to refund same. The Defendant disputed this, yet failed to lead any evidence for any service that was rendered in that regard.

Interestingly, the court below took the view that the Plaintiff was under evidential obligation to have solicited for records from GRA to substantiate its claims that the Defendant had failed to pay the said VAT. With much deference to the learned Justices of the Court of Appeal, they misallocated the burden of proof in that regard. The Plaintiff, who was asserting the negative, cannot be invited to prove a positive. The Court of Appeal expressed itself as follows:

"From the record of appeal, it was the Plaintiff's complaint that the Defendant had made certain illegitimate deductions from its account with the pretext of paying same over the Ghana Revenue Authority but failed to do so.

"From the record of appeal, it was the Plaintiff's complaint that the Defendant had made certain illegitimate deductions from its account with the pretext of paying same over to the Ghana Revenue Authority but failed to do so.

The claim that the Defendant Bank had failed to pay over the said VAT deductions to the Ghana Revenue Authority was a material fact which required proof. Since this was a positive assertion made by the Plaintiff, one would have expected more cogent and concrete proof to establish on a balance of probabilities that the said deductions were not paid over to the appropriate tax authorities.

The burden the Plaintiff could easily have discharged by putting some official communication from the Ghana Revenue Authority before the Court to establish conclusively that the said deductions made by the Defendant Bank had not been paid to the Authority as required by law.

Regrettably, the Plaintiff failed to adduce any such evidence, save to rely on the fact that the Defendant had failed to issue it with a VAT invoice following those deductions being made from its account.

From the record of appeal therefore, it seems to us that the Plaintiff did not even begin to discharge the evidential threshold required to establish that the Defendant Bank had failed to pay the said VAT deductions to the appropriate office."

Clearly, the Plaintiff, having denied any such payments to GRA, and having also denied any legitimate VAT deductions from its account, the burden of proof shifted to the Defendant to prove that; first, it had rendered some services to the Plaintiff which warranted the charge of VAT; second, that the said VAT summed up to GH¢45,509.03; and finally, that the amount had been duly paid to GRA.

Strikingly, the Defendant could not produce any VAT invoice to cover the supposed service rendered which culminated in a charge of GH¢45,509.03 VAT. The Defendant could also not produce any evidence to substantiate the point that the supposed sum had been paid to GRA. The conclusion on a balance of probabilities is that the Defendant had illegitimately deducted the sum of GH¢45,509.03 from the Plaintiff's account and ascribed same as VAT. We shall therefore reverse the Court of Appeal's order for refund of the said amount back to the Plaintiff. It needs further mention that since VAT is paid to the State, should GRA find the said amount to have been incurred, they are empowered by the law to recover same.

Finally, the Plaintiff maintained its previous contentions from the trial court through the Court of Appeal that the very bank statement (Exhibit "7") relied on by the Defendant stated a zero balance, hence, Plaintiff is not indebted to the Defendant. Unfortunately, the documentary evidence on record does not lend support to the simplistic interpretation urged on the Bank Statements. As already found, the Plaintiff has admitted per Exhibit "23" that it was indebted that much to the Defendant. It is baffling why the Plaintiff will commence the action not against any such principal debt, but interest and penal charges. The inference is clear, that there is no dispute about the principal indebtedness hence questioning only the interest and the alleged penal charges.

As already observed, nowhere in the statement of claim did the Plaintiff plead that it was not indebted to the Defendant. Plaintiff rather contended that it had paid over GH¢2,755,593.01 to the Defendant Bank and hence it will be unconscionable to pay the over 8 million Ghana Cedis. It is in recognition of this that the Plaintiff pleaded in paragraph 19 of the Statement of Claim that; *"it would only be reasonable, just and fair to permit a recalculation of all sums paid on this facility and freeze all interest charges since September 2015".* How then can Plaintiff now claim that it was not indebted to the Defendant only because the opening balance is alleged by it to be 0.0. If that meant it was not indebted to the Defendant Bank was the case, why was Plaintiff also effecting payments to the Defendant Bank? Plaintiff definitely knew of its liabilities.

CONCLUSION

On the whole, we find the Plaintiff's conduct unsavory and seeking to avoid payment of its just debts to the Defendant. The Plaintiff's ploy in this appeal was simply to rely on technicalities and expected us to wipe its monumental debt on that alter of technicalities. Unfortunately, the technical points were not weightier to supplant the well-reasoned judgment of the Court of Appeal. The appeal is clearly unmeritorious, and we dismiss same, save the order for the refund of the illegitimate VAT deductions.

B. F. ACKAH-YENSU (MS.)

(JUSTICE OF THE SUPREME COURT)

P. BAFFOE-BONNIE

(JUSTICE OF THE SUPREME COURT)

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(JUSTICE OF THE SUPREME COURT)

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