

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2024

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

CIVIL APPEAL
NO. J4/25/2023

24TH JANUARY, 2024

1. ADRIAN NII ODOI ODDOYE	}	PLAINTIFFS/RESPONDENTS/
2. LETICIA NAAMI ODDOYE	}	RESPONDENTS

VRS.

1. ROBERT BOSCO	1ST DEFENDANT/RESPONDENT
2. TOP KINGS ENTERPRISE LTD.	2ND DEFENDANT/APPELLANT/
		APPELLANT
3. REV. CHRISTOPHER OKPOTI	3RD DEFENDANT/RESPONDENT

J U D G M E N T

GAEWU JSC:

My Lords, on 24th January 2024, this court dismissed the appeal of the 2nd Defendant/appellant/appellant (hereinafter referred to as “the 2nd Defendant”) against the judgment of the Court of Appeal that had affirmed the judgment of the High Court dated 27th April 2018 in favour of the Plaintiffs/Respondents/ Respondents (hereinafter referred to as “the Plaintiffs”).

We reserved the reasons that informed our decision and I now proceed to set out the full reasons.

On 11th April 2012, the Plaintiffs took out a Writ of Summons from the High Court against the 1st Defendant/respondent (hereinafter referred to as "the 1st Defendant") and prayed for the following reliefs:

- "1. *Damages for trespass*
2. *An order of perpetual injunction to restrain the Defendant, his agents, privies and assigns from entering onto or in any way disturbing the Plaintiffs and their caretakers' possession of the land.*
3. *An order cancelling Land Certificate No. GA36749, Vol. 59, Folio 375, issued to the Defendant.*
4. *Cost including legal costs"*

The writ was accompanied by a statement of claim and the two processes were served on the 1st Defendant.

By an order of the trial High Court dated 6th June 2013, the 2nd Defendant, a grantee of the 1st Defendant was joined to the suit. By another order of joinder made on 15th July 2014, the 3rd Defendant was also joined to the suit. These joinders necessitated the amendment of the writ of summons and statement of claim by the plaintiffs to include the 2nd and 3rd Defendants to the suit.

The Defendants filed separate statements of defence and the 1st Defendant added a counterclaim for a declaration that he is the owner of "ALL THAT PIECE OR PARCEL OF LAND situate lying and being at Oyarifa-East (Accra) and bounded on the North by Lessor(s) land measuring 201.2, 173.3, 141.5, 192.4, 103.1 and 337.6 feet more or less on the East by Lessor(s) land measuring 415.9 and 311.8 feet more or less, on the South by the Lessor(s) land measuring 867.1 feet more or less, on the West by Lessor(s) land measuring 693.1 feet more or less and containing an approximate area of 7.83 acres or 3.13 hectares more or less.

The 3rd Defendant also had a counterclaim as follows:

- "1. A declaration of title to "ALL THAT PIECE OR PARCEL OF LAND situate lying and being at Oyarifa-East (Accra) and bounded on the North by Lessor(s) land measuring 201.2, 173.3, 141.5, 192.4, 103.1 and 337.6 feet more or less on the East by Lessor(s) land measuring 415.9 and 311.8 feet more or less, on the South by the Lessor(s) land measuring 867.1 feet more or less, on the West by Lessor(s) land measuring 693.1 feet more or less and containing an approximate area of 7.83 acres or 3.13 hectares more or less.*
- 2. A declaration of title to ALL THAT PIECE OR PARCEL of land situate lying and being at Oyarifa, Accra and covering an approximate area of 5.64 acres and bounded on the Northwest by the Agbawe Owusu We Family land measuring 420 feet more or less, on the Northeast by Agbawe Owusu We Family land measuring 575 feet more or less, on the Southeast by the Agbawe Owusu We Family land measuring 420 feet more or less and on the Southwest by the Agbawe Owusu We Family land measuring 575 feet more or less.*
- 3. A declaration that 1st Defendant is in breach of covenant against subletting without the consent of the vendor and consequently forfeits the parcel of land referred to in paragraph 2 herein.*
- 4. A declaration that the Plaintiffs' family were licensees on the disputed land referred to in relief 1 herein.*
- 5. A declaration that the purported Statutory Declaration by Plaintiffs mother dated the 7th day of September 2000 was fraudulent.*
- 6. A declaration that any attempt or purported attempt by Plaintiffs or their predecessors to register title to the disputed land, is fraudulent.*
- 7. A declaration that any transaction between 1st Defendant and 2nd Defendant without the consent of 3^d Defendant's family is void.*

8. *An order directed at the Land Title Division of the Lands Commission to cancel and expunge from its records any registration or plotting made to the name of Plaintiffs or their predecessor in respect of the parcel of land described in relief '1' herein.*
9. *An order directed at the Land Title Division of the Lands Commission to cancel and expunge from its record Land Certificate No. GA36749, Vol. 59 Folio 375 issued to the name of 1st Defendant herein.*
10. *Recovery of possession of the parcel of land described in paragraphs 1 and 2 herein.*
11. *General damages for breach of covenant against 1st Defendant.*
12. *An order of perpetual injunction restraining Plaintiffs and 1st and 2nd Defendants from having any dealings with the disputed parcels of land described herein.*
13. *Cost including solicitor's fee.*

The 3rd Defendant in his statement of defence and counterclaimed alleged fraud against the plaintiffs and stated the particulars of the fraud as follows:

1. Plaintiffs or their parents knew or ought to have known that they were granted a license to engage in agricultural activities on the disputed land.
2. Plaintiffs or their parents knew that they were not given any documents covering the disputed land as they were merely licensees authorised to carry out their agricultural activities such as the raising and rearing of livestock and farm animals.
3. That even if, without admitting same to be true, Plaintiffs have misplaced any purported documents covering the disputed land, Plaintiffs or their parents could have approached 3rd Defendant's family for the execution of such documents.

4. Plaintiffs or their parents failed to notify 3rd Defendant before taking any steps to register title to the disputed land.
5. Plaintiffs or their parents knew at all times material that they were only granted a license to engage in agricultural activities on the disputed land during the operation feed yourself era and nothing more.

The case proceeded to a full trial after pleadings closed. At the end of the trial, the High Court entered judgment in favour of the Plaintiffs on all the reliefs claimed against the Defendants and dismissed the counterclaims of both the 1st and 3rd Defendants.

Being dissatisfied with the judgment of the trial High Court, the 3rd Defendant on 26th June 2018 filed a Notice of Appeal against the judgment to the Court of Appeal. The 1st Defendant did not appeal but 2nd Defendant applied for a stay of execution against the judgment of High Court pending appeal. However, the only evidence of an appeal by the 2nd Defendant was a document marked Exhibit D.Y.1 headed Notice of Appeal attached to the affidavit in support. But that "Notice of Appeal" addressed to The Registrar, Court of Appeal, did not bear any filing stamp marks or receipt number to indicate that it was filed in any court registry. That notwithstanding, the records before us show that at the settlement of records of appeal before the registrar of the High Court on 5th June, 2020 at 1.00 pm, one Ralph Poku Adusei, Esq, of Zoe, Akyea and Co, was recorded as present as Counsel for the 2nd Defendant, with Naa Adjeley Dsane from Amenuvor & Associates as lawyer for the Plaintiffs. The 3rd Defendant who filed a Notice of Appeal in the registry of the High Court, as dictated by the Court of Appeal Rules, 1998 (CI. 19) was absent and was not represented by a lawyer.

The Registrar of the High Court proceeded to settle the records. Thereafter, the Record of Appeal was prepared and transmitted to the Court of Appeal. The 2nd Defendant filed written submissions in the Court of Appeal to which the Plaintiffs responded by also filing their written submissions. The 3rd Defendant did not file any written submissions.

In the Plaintiffs' written submission in answer to the 2nd Defendant's written submission to the Court of Appeal, the Plaintiffs' raised by way of preliminary point the following issues:

1. Whether or not the Court of Appeal had the jurisdiction to hear the appeal.
2. Whether or not there was an appeal properly so called before the Court of Appeal.

On the above preliminary points, counsel for the Plaintiffs argued that a careful reading of the ROA and the written submissions filed by the 2nd Defendant showed that the 2nd Defendant, did not properly file Notice of Appeal in compliance with the provisions of CI 19. He pointed to a ruling of the High Court dated 19th June 2018 on the record, which was in respect of the application for stay of execution by the 2nd Defendant, wherein the High Court Judge found as follows:

"The 2nd Defendant/Appellant attached a Notice of Appeal as Exhibit D. Y. 1. Exhibit D. Y. 1 has not been filed because it has no receipt stamp of the court on it indicating that it has been filed. Secondly, Rule 8 Order 2 (sic) specifically states that Notice of Appeal shall be filed in the court below, which is the High Court. Exhibit D. Y.1 has been addressed to the Registrar of the Court of Appeal. Applying the rules there is no valid Notice of Appeal pending and as such the application for stay of execution is dismissed".

The plaintiffs' lawyer therefore submitted that the written submissions filed by the 2nd Defendant ought to be disregarded since he had not appealed against the judgment of the High Court.

In the meantime, the 3rd Defendant who filed a Notice of Appeal properly in the case did not file any written submissions. Strangely enough, the 3rd Defendant was represented at the hearing of the appeal by his son but without any written submission in his name before the Court of Appeal. At the hearing of the appeal the parties relied

on their written submissions and the Court of Appeal adjourned to consider their judgment.

The judgment of the Court of Appeal was split 2-1 with the majority basing their decision on the preliminary legal points raised by the Plaintiffs. His Lordship Bright Mensah, JA, who read the majority decision posed the following question, whether the 2nd Defendant complied with the statutory procedure in filing his Notice of Appeal. This he answered, 'certainly not'! He then proceeded as follows:

"As observed elsewhere in this judgment, the document complained of was only exhibited to an application for stay of execution. The impugned Notice of Appeal never bears the filing stamp of the court or the bank clerk's stamp to indicate that fees was paid. In consequence, it is reasonable to hold that the 2nd Defendant never followed the standard practice to properly file his intended Notice of Appeal. The stamp on the document was rather that of a Commissioner for Oath's in proof that it was attached to the motion for stay of execution and marked as exhibits quite distinct from proper filing of a Notice of Appeal. That certainly cannot be said to be a Notice of Appeal properly filed. The lower court's observation that the document purporting to be a Notice of Appeal was not really filed in this case is a truism. It goes without saying, therefore, that the 2nd Defendant never filed, properly speaking, a Notice of Appeal to invoke the jurisdiction of this court to deal with his case and complaints he has against the judgment of the lower court.

Consequently, I find that 2nd Defendant never filed an appeal in this case and his right of appeal is foreclosed".

It is against this holding of the majority that the 2nd Defendant has appealed to this court on the following grounds:

1. The judgment of the Court of Appeal is against the weight of evidence.
2. The Court of Appeal misdirected itself when the court considered the preliminary objection raised in the written submission of the

Plaintiffs/Respondents/Respondents contrary to Rule 16 of the Court of Appeal Rules, 1997 (CI 19).

3. That the Court of Appeal misdirected itself in law when the court determined the appeal against the 2nd Defendant/Appellant/ Appellant on the sole ground of the preliminary legal objection raised by the Plaintiffs/Respondents/Respondents written submissions without going into the merits of the appeal.
4. The Court of Appeal misdirected itself on the facts when the court held that there was no valid Notice of Appeal filed by the 2nd Defendant/Appellant/Appellant in the registry of the High Court when there was evidence that the record had been settled by the Registrar and all parties based on a valid Notice of Appeal that had been filed by the 2nd Defendant/Appellant/Appellant.
5. The Court of Appeal misdirected itself on the facts and in law when it held that the Plaintiffs/Respondents/Respondents were able to prove their case on the preponderance of probabilities and were therefore entitled to judgment in their favour when they were unable to establish their root of title by proper evidence.
6. The Court of Appeal misdirected itself on the facts and the law when it held that the Plaintiffs/Respondents/Respondents were entitled to their claim when the Plaintiffs/Respondents/Respondents had failed to clearly establish the identity of the land over which the claim related.
7. Additional grounds of appeal may be filed on receipt of the Record of Appeal.

The first ground of appeal is the omnibus ground; the 2nd, 3rd and 4th grounds of appeal are on the lawfulness or otherwise of the preliminary legal point raised and argued in the Plaintiffs' written submission instead of complying with Rule 16 of CI 19; while grounds 5, 6 and 7 are on the facts, evidence and the law relating to the facts and

evidence led at the trial. Consequently, as the 2nd Defendant argued grounds 2, 3 and 4 first and together, the said grounds 2, 3 and 4 will also be discussed together since these have the potential to throw out further discussions of the other grounds of appeal.

Consideration of the Grounds of Appeal

2. The Court of Appeal misdirected itself when the court considered the preliminary objection raised in the written submissions of the Plaintiffs/Respondents/Respondents contrary to Rule 16 of the Court of Appeal Rules, 1997 (CI 19).
3. That the Court of Appeal misdirected itself in law when the court determined the appeal against the 2nd Defendant/Appellant/ Appellant on the sole ground of the preliminary legal objection raised by the Plaintiffs/Respondents/Respondents written submissions without going into the merits of the appeal.
4. The Court of Appeal misdirected itself on the facts when the court held that there was no valid Notice of Appeal filed by the 2nd Defendant/Appellant/Appellant in the registry of the High Court when there was evidence that the record had been settled by the Registrar and all parties based on a valid Notice of Appeal that had been filed by the 2nd Defendant/Appellant/Appellant.

Counsel for the 2nd Defendant in arguing grounds 2, 3 and 4 above, referred us to Rule 16 of CI 19 and submitted that it is very fundamental to note that counsel for Plaintiffs did not file any notice of preliminary objection in compliance with Rule 16 of CI 19 and therefore he was in clear breach of the said Rule 16 when he sought to argue the preliminary legal objection to the disadvantage of the 2nd Defendant contrary to the Rules and Practice of the Court of Appeal. Counsel for 2nd Defendant in support of his

argument referred us to a number of cases, albeit Court of Appeal cases as follows: **Yaya Addy (3rd Defendant/Appellant) and Nii Odartey III (2nd Defendant/Appellant) & Nii Okai Quaye Djanor (1st Defendant), v. Abbeyman Family Stool (2018)** unreported, CA, Civil Appeal No. H1/106/17 dated 17th May 2018; **Alfred Agbesi Woyome v. Attorney General** Civil Appeal No. H1/42/2017 dated 8th March 2018; **Nana Kodiawude v. Nana Ackakyi and Nana Azia Eiku IV (2018)** (CA) Civil Appeal No. H1/21/18 dated 28th November 2018; **Osei Bonsu II v. Mensah & ors. [2003-2005] 1 GLR 141; Barclays Bank Ghana Ltd v. Iva Yelipoie (2012) CA** Civil Appeal No. H1/86/2011 dated 13th December 2012; **Yaw Asamoah v. Opanin Kwame Sebewie (2015) (CA)** Civil Appeal No. H1/69/2014 dated 22nd December 2015.

Based on the above Court of Appeal cases, Counsel for the 2nd Defendant invites us to hold that the Court of Appeal misdirected itself in law when it considered the preliminary legal objection raised and argued in a written submission of the Plaintiffs contrary to Rule 16 of the Court of Appeal Rules 1997, (CI 19).

Counsel for the Plaintiffs in his argument in response to the submission of counsel for the 2nd Defendant on the preliminary points asserts that no appeal properly so called was filed for the Court of Appeal to assume jurisdiction to hear and decide the appeal of the 2nd Defendant.

Counsel submits that at the trial court, and at the application for stay of execution stage, the 2nd Defendant's attention was drawn to the fact that there was no Notice of Appeal filed against the High Court judgment, yet the 2nd Defendant took no remedial steps to correct the anomaly.

Rule 16 of Court of Appeal Rules, 1997 (CI 19) on Notice of Preliminary Objection as amended by CI 21, provides as follows:

*"1. A respondent who intends to rely on a preliminary objection to the **hearing of the appeal** shall give the appellant 'three clear days' notice before the hearing of the preliminary objection, setting out the grounds of*

objection, and shall file the notice in the Form 8 set out in Part One of the Schedule.

2. Where the Respondent fails to comply with subrule (1), the court may refuse to entertain the objection or may adjourn the hearing at the cost of the Respondent or may make any other appropriate order”.

Our emphasis is on the phrase ‘*hearing of the appeal*’. That is there must be an appeal filed and pending to be heard by the Court of Appeal.

So, what then is appeal? An appeal is a proceeding undertaken to have a decision reconsidered by a higher authority; especially, the submission of a lower court’s or agency’s decision to a higher court for review and possible reversal - **See Black’s Law Dictionary 9th Edn.**

In **Attorney- General v. Sillem (1864) 10H.L.C.704**, it was stated that an appeal is an application to set aside or vary the decision of another tribunal wrongly made. There is no inherent common law right to appeal. Such right as are available are creatures of statute.

The superior court of judicature comprising- the Supreme Court; the Court of Appeal; and the High Court and Regional Tribunal are creatures of the Constitution 1992 and/or statute. **See Article 126(1) of the Constitution 1992** and the **Courts Act, 1993 (Act 459)**. The various jurisdictions to hear and determine any cause or matter are therefore constitutionally and/or statutorily conferred.

Per Article 137 of the Constitution 1992, the Court of Appeal shall have jurisdiction throughout Ghana to hear and determine, subject to the provisions of the Constitution, appeals from judgment, decree or order of the High Court and Regional Tribunals and such other appellate jurisdiction as may be conferred on it by the Constitution or any other law. And except as otherwise provided in the Constitution, an appeal shall lie as of right from a judgment, decree or order of the High Court and a Regional Tribunal to the Court of Appeal. - See also **Section 11 of the Courts Act, 1993 (Act 459)**

as amended by the **Courts (Amendment) Act, 2002 (Act 620)** which has enhanced the Court of Appeal's jurisdiction to hear and determine appeals from a judgment of a Circuit Court, in a civil cause or matter.

The power to make rules and regulations for regulating the practice and procedure of all the courts in Ghana is vested in the Rules of Court Committee established under **Article 157(1) of the Constitution**. As a result, the Court of Appeal Rules 1997 (CI 19) was enacted to regulate the practice and procedure at the Court of Appeal and for invoking its jurisdiction to hear appeals conferred by Constitution and any other law.

Rule 8 of CI 19 on Notice and Grounds of Appeal provides that an appeal to the Court of Appeal shall be by way of rehearing and **shall be brought by a Notice of Appeal** in the Form 1 set out in Part 1 of the schedule and **the Notice of Appeal shall be filed in the Registry of the court below.**

From the provisions of Rule 8 of CI 19 therefore, it is imperative that the Notice of Appeal must be filed and in the Registry of the court below - High Court, Regional Tribunal, or the Circuit Court. To give further bite and authority to the provisions of Rule 8 of CI 19, the substantive statutory legislation, that is, the **Courts' Act 1993 (Act 459)**, which grants appellate jurisdiction to the Court of Appeal provides at Section 11(8) that:

"The Court of Appeal shall not entertain an appeal unless the appellant has fulfilled the conditions prescribed in that behalf by the Rules of Court".

The question to be answered therefore is whether the 2nd Defendant had filed a Notice of Appeal against the judgment of the High Court dated 27th April 2018 in strict compliance with the provisions of Rule 8 of CI 19.

We have perused the entire ROA and we have not seen any Notice of Appeal properly filed by the 2nd Defendant as mandated by Rule 8 of CI 19 and none has been pointed out to us. However, as noted earlier in this judgment, there is a purported Notice of Appeal attached to an affidavit of one Daniel Teye, a manager of the 2nd Defendant company in support of a Motion on Notice for stay of execution marked as Exhibit DY

1. The said Exhibit DY 1 has no filing stamp, bank stamp and other relevant markings to show that indeed it was a Notice of Appeal that had been filed at the Registry of the High Court. Indeed, the High Court had in its ruling dismissing the Motion for Stay of Execution determined that there was no valid Notice of Appeal filed. Significantly, the 2nd Defendant has not appealed against this ruling.

An appeal is a creature of the Constitution and/or statute and the Court of Appeal had no inherent jurisdiction to hear an appeal from a person affected by an adverse judgment if such a person failed to exercise her statutory right of appealing and doing so in the manner laid down by the law.

A person or a party who seeks to invoke the appellate jurisdiction of the court must strictly comply with the conditions set out in the enactment conferring the right as well as the Rules of Court governing appeals. - See **Nye v. Nye [1967] GLR page 78; Kramo v. Afriyie [1973] 1 GLR 9; Amponsah v. Minister of Defence [1960] GLR 140; Re Yendi Skin Affairs, Yakubu II v. Abdulai [1984-86] 2 GLR 226.**

In **Frimpong v. Poku [1963] 2 GLR 1 (SC)**, it was stated that:

"A right of appeal is always conferred by statute and when the statute conferring the right lays down the conditions precedent to the vesting of that right in a litigant, it is essential that those conditions must be strictly performed, otherwise the right does not become vested".

Also, in **Moore v. Tagoe (1934) 2 WACA 43 @ 43-45**, Lord Atkin stated as follows:

"It must be remembered that appeals in this country and elsewhere exist mainly by statute and unless statutory conditions are fulfilled, no jurisdiction is given to any court of justice to entertain them".

The Supreme Court has also stated in the case of **Sandem-Nab v. Asangalisa** [1996-97] SCGLR 302 as follows:

"...It must be appreciated that an appeal is a creature of statute ... where a right of appeal is conferred as of right or with leave, the right is to be exercised within the four corners of the statute and the relevant procedural regulations and rules as the courts will not have jurisdiction to grant deviations outside the parameters of the statute".

From the foregoing authorities the failure of the 2nd Defendant to cause to be filed for it a Notice of Appeal in the Registry of the High Court against the High Court's judgment dated 27th day of April 2018 but chose to attach and exhibit a Notice of Appeal to an affidavit of Daniel Teye in support of a motion on notice for stay of execution of the judgment is fatal to his appeal as there was no Notice of Appeal filed in strict compliance with Rule 8 of CI 19 which would have invoked the Court of Appeal's jurisdiction to hear and determine the appeal purported to have been filed by it. Thus, as the failure by 2nd Defendant to comply the mandatory provisions of Rule 8 of CI 19 is fatal to his appeal. Filing of a Notice of Appeal and in the Registry of the High Court is a statutory condition which must be complied with before the Court of Appeal may have jurisdiction to hear and determine any appeal, failure to comply with Notice of Appeal will leave the court with no discretion to make any determination in the matter.

We therefore agree with the majority decision of the Court of Appeal that the 2nd Defendant never appealed in the case and its right of appeal was therefore foreclosed.

An appellant may object to the non-compliance of a respondent's failure to comply with Rule 16 of CI 19 on Notice of Preliminary Objection if there was a regularly filed Notice of Appeal properly capable of invoking the jurisdiction of the Court of Appeal, not when there is no Notice of Appeal filed and the effect of the objection is to

challenge the jurisdiction of the Court of Appeal in the case. Therefore, the numerous Court of Appeal decisions cited by the 2nd Defendant are not applicable on the facts in this case.

The 2nd Defendant submits in the alternative, that assuming the Court of Appeal did not err in holding that there was no valid appeal by the 2nd Defendant before the Court of Appeal, the Court of Appeal ought to have relied on the validly filed Notice of Appeal by the 3rd Defendant and determined the case on the merits on the basis of the written submissions filed by the 2nd Defendant.

However, as we have already noted *supra*, the 3rd Defendant after filing his Notice of Appeal on 26th June 2018, did not take any step to get that appeal prosecuted. He did not attend the settlement of the records before the Registrar of High Court as required by Rule 11 of CI 19 and he did not fulfil the conditions imposed by the Registrar at the settlement of records. He also did not file written submissions in accordance with Rule 20 of CI 19.

In the circumstances, even though the 3rd Defendant sent representatives to the Court of Appeal when the case came on, they were to witness what was going on but not to participate in the proceedings. Clearly, the true legal position is that the Notice of Appeal filed by the 3rd Defendant did not ripe to invoke the jurisdiction of the Court of Appeal for the court to hear and determine 3rd Defendant's appeal.

The 3rd Defendant apparently abandoned his appeal and as there is no statutory or procedural provision referred to us that allows a non-party's written submission to be substituted and/or accepted in place of an appellant's failure to file a written submission, the Court of Appeal may not proceed to hear the appeal. In the Supreme Court case of **Agbeyevu v. Ocansey [2009] SCGLR 703 @ 708**, it was held that:

“Even though the 1992 Constitution and the Courts Act 1993 (Act 459), confer statutory rights on the appellant to appeal as of right, the statutory right to appeal is regulated by the Rules of Court out of which the conditions were imposed on him to fulfil. If on the facts an appellant has failed to comply with the rules regulating the appeal, irrespective of the statutory right conferred on the appellant by the 1992 Constitution and the Courts Act 1993 and notwithstanding the merits of the appeal, an appellate court will not proceed to hear the appeal”.

In conclusion, the Court of Appeal did not err when they considered the two preliminary points raised and argued by lawyers for the Plaintiffs in the written submission and determined the appeal. Furthermore, the Court of Appeal came to the correct conclusion on the legal points raised so we find no justifiable ground to disturb their decision.

Notwithstanding the fact that this appeal succeeds on the preliminary legal point raised, we have noted that the Court of Appeal went to great length and discussed the merits of the case itself and determined that the plaintiffs succeeded in proving their case on the preponderance of probabilities and were therefore entitled to judgment thereby affirming the judgment of the trial court as sound in law and supportable by the evidence.

We have perused the record of appeal, the facts, the pieces of evidence led at the trial and the applicable laws, and we uphold the majority decision of the Court of Appeal that the 2nd Defendant’s case is unmeritorious and ought to be dismissed.

Accordingly, the appeal against the judgment of the Court of Appeal dated 10th March 2022 is hereby dismissed.

E. Y. GAEWU
(JUSTICE OF THE SUPREME COURT)

**G. SACEY TORKORNOO (MRS.)
(CHIEF JUSTICE)**

**P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)**

**PROF. H. J. A. N. MENSA-BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)**

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**JUSTIN AMENUVOR ESQ. FOR THE PLAINTIFFS /RESPONDENTS/
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