

**ACCRA A.D 2024**

**13<sup>TH</sup> MARCH, 2024**

the learned Justices of the Court of Appeal upheld a judgment of the High Court which dismissed the Plaintiff's claim of beneficial interest as a shareholder in the 2nd Defendant.

## **BACKGROUND**

2. The antecedent contention which necessitated the disputations before the High Court and as can be gleaned from the respective pleadings of the parties are as follows:
3. The Plaintiff by an Amended Writ of Summons and Statement of Claim filed on the 25th January, 2013 averred that she is the Managing Director, majority shareholder and the registered secretary to the board of directors of the 2nd Defendant Company. She contends that at all times material, she was cohabiting with the 1st Defendant whilst also managing and in charge of the local running of the 2nd Defendant, including arranging for contracts in Ghana, the African region and related business transactions. According to the Plaintiff, the 1st Defendant, on the other hand, was resident in Italy and supplied goods ordered by 2nd Defendant while also visiting Ghana from time to time.
4. Per a deed of transfer dated 13th December, 2006 and stamped as LVB 5440A/9, 1st Defendant transferred 3,134,734.400 of 2nd Defendant's shares valued at GH¢ 31,347,344 to the Plaintiff. On 8th June, 2010, per another deed of transfer, 1st Defendant transferred to the Plaintiff an additional 153,601.99 shares of 2nd Defendant valued at GH¢ 153,601.99 out of 1st Defendant's shares. This made the Plaintiff the majority shareholder of 2nd Defendant.
5. The Plaintiff alleges that despite the on-going business of the 2nd Defendant and the proceeds accrued thereto, the bank accounts of the 2nd Defendant was always near empty as 1st Defendant regularly transferred all monies to his home country, Italy, where he is ordinarily resident. Objections raised to the money siphoning by the 1st Defendant went unheeded. Frustrated, Plaintiff in September 2011 asked that all assets of the 2nd Defendant be shared between the parties. 1st Defendant

aggrieved by Plaintiff's request, demanded for all title documents covering the assets of 2nd Defendant. It was alleged that the 1st Defendant threatened to unilaterally dispose of all assets of the 2nd Defendant without regard to the Plaintiff's interest. The Plaintiff contended that the acts of the 1st Defendant are oppressive. For all the years that Plaintiff worked for the 2nd Defendant, Plaintiff alleged that she received no salary and only paid herself paltry allowances. The Plaintiff therefore claimed against the Defendants as follows;

- a. Declaration that Plaintiff is the beneficial interest holder of 31, 347.04 shares in the Company as at 31/12/2009.
- b. Declaration that Plaintiff obtained an additional fifty percent of Defendants shares in their company Cottage Italia Industries Ltd by virtue of Deed of Transfer dated 8<sup>th</sup> June 2010, registered as No. LVB 13735A/10.
- c. Specific performance of the terms of the Deed of Transfer of One hundred and fifty three thousand six hundred and one Ghana cedis, ninety-nine pesewas shares in the undertaking called Cottage Italia Industries, (Gh) Ltd to Plaintiff.
- d. Declaration that 1st Defendant cannot unilaterally deal with 2nd Defendant company without reference to Plaintiff.
- e. Declaration that Plaintiff as a stipendiary officer of the 2nd Defendant company is entitled to remuneration to be determined by 2nd Defendant Company covering the period Plaintiff started working for the 2nd Defendant to date of commencement of this action.
- f. Accounts of the Company from 2001 to 2011.
- g. Perpetual injunction against 1st Defendant from unilaterally disposing of the properties of the company.

h. Legal Costs of this action.

i. In the Alternative, an order of specific performance of the agreement between the Plaintiff and 1st Defendant which is dated the 29th September, 2011.

6. The 1st Defendant per an Amended Statement of Defence and Counterclaim filed on 21st February, 2012 denied the material claims of the Plaintiff. It was contended that although the Plaintiff, at the time of the institution of the suit, was secretary of the 2nd Defendant, the board of directors of the 2nd Defendant had by a resolution dated 23rd January, 2012 removed her as secretary and the appropriate statutory notices served on the Registrar of Companies. The 1st Defendant stated that as a director of 2nd Defendant, he is not aware of the Plaintiff being his co-director. The 1st Defendant also further stated that he is the beneficial owner of all the shares of the 2nd Defendant. It was contended that 2nd Defendant was incorporated with 100,000,000 shares and subsequently, by a special resolution passed on 9th February, 2005, the authorized shares of the 2nd Defendant was increased to 10,000,000,000. The issued shares of the 2nd Defendant was 3,134,734,400. Subsequently, the issued shares of 2nd Defendant was reduced to 313,473. This reduction in the issued shares of the 2nd Defendant was without any special resolution and therefore illegitimate. 1st Defendant contended that he transferred Ten percent (10%) of his shares to Plaintiff and that "the transfer was made to reflect an interest of the Plaintiff for purposes of immigration requirement" but the said shares remain unpaid. It was also alleged that the share transfer received no board approval. Whereas the 1st Defendant admits the execution of the deed of transfer, by which the Plaintiff became the majority shareholder of the 2nd Defendant, the 1st Defendant contends that the 1st transfer was done to outwit the requirements of the law and the 2nd transfer was to create a facade to deceive that indeed Plaintiff was a majority shareholder. The motives for these transfers have been explained in paragraphs 26 to 44 of the Amended Statement of Defence and Counterclaim. It was contended that prior to the 2008 Presidential and Parliamentary Elections, one Don Arthur who was soliciting for funds for the National Democratic Congress (NDC) made a request on the 1st Defendant but the expectation of financial assistance was not met as 1st Defendant contributed a pittance of GH¢ 500.00. Having failed to support the NDC, and thereby causing their disaffection towards him, and with the NDC winning the 2008 Presidential Elections, 2nd Defendant became a target. It

was further averred that 1st Defendant was perceived to be a sympathizer of the New Patriotic Party (NPP) and therefore the 2nd Defendant was at risk of government interference. To insulate the company from the government interferences, the 1st Defendant transferred the majority of the shares to the Plaintiff to make good the impression that she held substantial stakes in the business. It was further contended that the Plaintiff and 1st Defendant had a collateral oral agreement that Plaintiff was to hold the shares as trustee for the 1st Defendant without any beneficial interest. The transfer, it was further contended, has not been approved by the board of directors. Indeed, the shares were to be returned to 1st Defendant once the political dust settled. No consideration has been paid for the shares. The 1st Defendant alleged that the conduct of the Plaintiff among others amounted to fraud and breach of trust. The particulars of fraud were pleaded as follows;

- a. Fraudulently representing to the 1st Defendant that members of government were out to subvert the 2nd Defendant company.
- b. Fraudulently misleading 1st Defendant to transfer shares to her knowing that she did not intend to respect the underlying collateral oral agreement which spelt out her trust arrangement in respect of 1st Defendant's shares.
- c. Fraudulently seeking to increase her shareholding when she had made no payment for those shares.

7. It was further contended that the instant suit was only intended as a blackmail to compel 1st Defendant to liquidate the 2nd Defendant company. Upon the above contentions, the 1st Defendant counterclaimed as follows;

- a. A declaration that the Plaintiff's conduct in seeking to lay claim to the shares subject matter of dispute, is tainted by fraud.
- b. A declaration that the Plaintiff holds the shares subject matter of dispute and any further property emanating therefrom which represents the said shares in trust for 1st Defendant.
- c. An order reversing the share transfer deed dated 13th December 2006 in favour of 1st Defendant.

- d. An order reversing the share transfer deed dated 8th June 2010 in favour of 1st Defendant.
- e. An order restoring the 1st Defendant as the sole shareholder.
- f. An order of Perpetual Injunction restraining the Plaintiff from dealing with the shares, subject matter of dispute in any manner whatsoever.
- g. Further or alternatively an order that Plaintiff accounts to the 1st Defendant for breaches of trust in respect of shares subject matter of this dispute together with such Orders, that the Plaintiff shall pay to the 1st Defendant such sums as are found due on the taking of the account.
- h. Damages for breach of contract and breach of trust.
- i. Interest on the said sum from the date of judgment until the date of final payment.

8. After the Plaintiff closed her case, a submission of no case was filed and the court dismissed the case of the Plaintiff in its ruling of 30<sup>th</sup> September, 2013.

9. The trial High Court held, among others, as follows:

"The Plaintiff claims to be the majority shareholder in the 2nd Defendant Company. She mainly relies on Exhibit P for this claim. Exhibit P is the deed of transfer by which 310,388.71 shares were said to have been transferred by the 1st Defendant to the Plaintiff. There again, it should be noted that transfer of shares is regulated by statute. It is so, also with the manner a company could increase and reduce its number of shares. The provisions in Section 57 of Act 179 are operative... I think the provisions are clear that before a company can increase, reduce or consolidate its shares, it must first of all amend its regulations. The reason should not be far-fetched. The regulation of the company makes provision for the number of shares and therefore if the number is to be altered then the regulations itself should first be altered. The Regulations of the 2nd Defendant Company is in evidence as Exhibit C. It is stated in Exhibit 'C; that the 2<sup>nd</sup> Defendant Company was

registered with 100,000,000 shares of no par value. There is absolutely no evidence that the regulation of the company has ever been altered. There could therefore not have been any valid increase or reduction in the shares of the company without due alteration and registration of a new regulation ...

In any case there is no evidence of the registration of the transfers in compliance with Regulation 8 (a) of Exhibit 'C' and Section 98 of Act 179.

Learned Counsel for the Plaintiffs contention that these statutory infractions should be ignored citing equity does not find favour with me. I have considered the arguments on both sides in line with the evidence and the law and I find once again that the Plaintiff has not made a case on this point for the 1st Defendant to answer."

10. An appeal by the Plaintiff to the Court of Appeal was dismissed. The Plaintiff has lodged this second appeal to contest the decision of the Court of Appeal and by inference that of the High Court.

## **GROUND OF APPEAL**

11. This appeal turns on the omnibus ground only, being that the judgment is against the weight of evidence.

## **RESOLUTION**

12. Before turning to resolve the appeal per the omnibus ground, we wish to rehash that pleadings in all cases are fundamental in our formal adjudication of matters. Indeed, a court exercising proper jurisdiction ought to be guided by the pleadings of parties so that the court does not, ordinarily, make an issue where the parties themselves have not made one. Pleadings are directional on the controversies and the material evidence that would be led at trial. It is for these reasons that the courts have long entertained judgments on admissions. This is because, once the pleadings of the parties do not put matters in dispute, a court of law ought to be careful not to embark on needless legal discourse with the much sought after judicial resources.

13. In this present case, we find that the parties themselves per the various pleadings filed, had delineated the boundaries of the dispute. It is worth pointing out that the 1st Defendant does not dispute the existence of the deeds of transfer of shares. Indeed, 1st Defendant's material denunciations have to do with the motive with which the said deeds of transfer were executed.

14. It is again worth reiterating that the incidence of proof in all civil matters generally lies with "he who alleges". In this case however, the 1st Defendant opted to make a submission of no case and therefore, did not lead any evidence by himself or through any person to substantiate averments that would otherwise have required proof in law. We further note that by settled practice and the law, the 1st Defendant was within his right to make a submission of no case and elect not to testify. Having so opted, no court could have compelled him to do otherwise but to assess the case on the strength of the evidence so far adduced. In *Armah v. Hydrafoam Estates Ltd* (2013-2014) 2 SCGLR 1551 at 1567, this Court speaking through Benin JSC held that:-

*"A Court has no duty to call upon any party to testify in the case; the court acts as an umpire and only hears such evidence as the parties will proffer; whether the parties will testify or not is none of the Court's business. Indeed for a court to insist that a party should testify will amount to the judge descending into the arena of conflict. After determining the triable issue/s the trial court leaves the field clear for the parties themselves to decide who will testify. We know of no law or rule which entitles a court to call upon a party to testify in the action. If such a law or rule does we would venture to say that it is inapplicable under our legal dispensation."*

15. In our evaluation of the evidence therefore, we are limited by the evidence led by the Plaintiff by way of evidence in chief and cross-examination.

16. Since the only ground of appeal canvassed by the Plaintiff before us is the omnibus ground, the reasoning of my Learned Sister Prof. Mensah Bonsu JSC in a judgment of this court dated 14th April, 2021 in Civil Appeal No. J4/31/2020 and titled *Ama Serwaa v Gariba Hashimu and Ano*. is worth re-echoing as follows;

*"[T]he appellant would be limited to making factual arguments and would not be permitted to argue any point of law". At p. 10, he clarified the exceptions set down*



*in the Owusu-Domena v. Amoah (supra) as follows: -"Based on the exception given by the court in the Owusu-Domena v. Amoah case (supra) the current position of the law may be stated that where the only ground of appeal filed is that the judgment is against the weight of evidence, parties would not be permitted to argue legal issues if the factual issues do not admit any. However, if the weight of evidence is substantially influenced by points of law, such as the rules of evidence and practice or the discharge of the burden of persuasion or of producing evidence, the points of law may be advanced to help facilitate a determination of the factual matters. The formulation of this exception is not an invitation for parties to smuggle points of law into their factual arguments under the omnibus ground. The court would, in all cases, scrutinize such points so argued within the narrow window provided".(emphasis supplied).*

17. From the foregoing, it is evident that having relied on the omnibus ground of appeal, the Plaintiff is estopped from discussing any point of law unless the said point of law is inextricably linked to a discussion of factual issues or matters.

18. We again wish to point out that this being a civil suit, the burden on the Plaintiff was to prove her case on the balance of probabilities. Recourse ought not be made to the Defendant's plea of fraud which would require a higher burden than exists in ordinary civil matters. This is because the Defendant who ought to substantiate such allegations by evidence elected not to adduce any. Those allegations therefore as far as this suit is concerned remain unproven averments unless it can be demonstrated to us that the proof of the said averments lie in the evidence of the Plaintiff and her witnesses by way of admissions.

19. We have reviewed the evidence on record viz-a-viz the relevant contentions as well as the decisions of the High Court and the Court of Appeal. It is apparent the decisions bordered on the status of the Plaintiff as a director and shareholder of the 2nd Defendant.

20. The claim of directorship by the Plaintiff was denied by 1st Defendant. We are of the opinion that, on the preponderance of probabilities, the Plaintiff provided enough evidence on record to prove, prima facie, that she was a director of the 2nd Defendant.

21. We do appreciate from the evidence that the Plaintiff was not always a director and secretary of the 2nd Defendant. In fact, from Exhibit C, it is obvious that the 1st Defendant and one Emmanuel Mainoo were the first directors of the 2nd Defendant. Emmanuel Mainoo additionally acted as Company Secretary. On 3rd January, 2005 however, Emmanuel Mainoo ceased to be a director and secretary of the 2nd Defendant. This fact is attested to by Exhibit 2, which was tendered at trial by the 1st Defendant's counsel through the Plaintiff.

22. Further evidence solicited through cross-examination of the Plaintiff on 25th February, 2013 affirms the above as follows:

"Q: Now Exhibit 2 which was shown to you earlier on stated that Mr. Emmanuel Mainoo will cease to be a director and secretary as of the date of Exhibit 2 which is 3rd February, 2005, is that correct

A: Yes"

23. Thus, from 3rd February, 2005, the 1st Defendant became the only director of the 2nd Defendant company. The appointment of the Plaintiff as secretary of 2nd Defendant is evidenced by a letter of acceptance dated 10th March, 2005.

24. There are also various audit reports of the 2nd Defendant in which the Plaintiff and 1st Defendant co-signed as directors. These audit reports were tendered in evidence without objection as Exhibits D, E and F. These were reports of financial accounts prepared for the years ending 31st December, 2008, 31st December, 2009 and 31st December, 2010. It is curious to know that the 1st Defendant who co-signed these audit reports with Plaintiff as directors never raised any issue to the description and signage of Plaintiff as director. We cannot help but reference sections 25 and 26 of the Evidence Act, 1975 (Act 323) as follow;

*25. Facts recited in written instrument*

*(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 document, or their successors in interest.*

*(2) Subsection (1) does not apply to the recital of consideration.*

*26. Estoppel by own statement or conduct*

*Except as otherwise provided by law, including a rule of equity, when a party has, by that party's own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon that belief, the truth of the thing shall be conclusively presumed against that party or the successors in interest of that party in proceedings between*

*(a) that party or the successors in interest of that party, and*

*(b) the relying person or successors in interest of that person.*

25. Thus, it lies foul in the mouth of the 1st Defendant to turn around and state that Plaintiff is unknown to him as a director. We cannot also gloss over the fact that Exhibit H which is an indenture dated July, 2009 between the trustees of the Kwaku Ofosehene Family of Aburi and the 2nd Defendant for the acquisition of 3.03 acres of land was co-signed by Plaintiff and 1st Defendant as directors of the 2nd Defendant Company. Indeed, in the said indenture, the Plaintiff who is described as a director signs before the 1st Defendant. Similar mention and reference can be made to an indenture dated 8th February, 2008 between the said trustees and 2nd Defendant herein in which Plaintiff co-signs with the 1st Defendant as directors of 2nd Defendant company for the acquisition of 4.6 acres of land at Aburi. Reference can also be made to Exhibit L, an indenture dated 11th October, 2008 between the Odiwii Agona Family of Aburi and the 2nd Defendant Company for the acquisition of 2.3 acres of land which is also co-signed by Plaintiff and 1st Defendant acting as directors for 2nd Defendant Company.

26. It is trite law that the facts cited in the documents referred above are, by the authority of section 25 of the Evidence Act supra, conclusively presumed to be true between the Plaintiff and 1st Defendant.

27. We are not unaware of section 181 (2) of the Companies Act, 1963 (Act 179), the applicable law at the material time, which stated as follows:

*"A person shall not be appointed a director of a company unless that person has, prior to the appointment, consented in writing to be appointed."*

28. Thus, the formal consent of the Plaintiff as a director prior to her appointment could also have been tendered at trial in proof of the Plaintiff's assertion that she was a director. However, it cannot be said that the failure to adduce any such written consent is fatal to the Plaintiff's case. This is because the burden which lay on the Plaintiff was one that required her to prove her case on the balance of probabilities. Proof in civil matters does not require a hundred percent accuracy or proof to a mathematical precision. A court in civil matters is not required to demand of a Plaintiff proof beyond reasonable doubt. Therefore, the question that ought to be asked is whether the Plaintiff adduced enough cogent, credible and reliable evidence which, prima facie, proves her claim of directorship? In accordance with the required standard of proof, we answer the above in the affirmative. This is especially the case because the 1st Defendant who put the Plaintiff's directorship in issue has on record co-signed various documents with the Plaintiff as a director.

29. The law is trite that where a court is faced with the option of choosing between documentary evidence and oral testimony, preference is always given to documentary evidence. That is to say, oral testimony cannot be admitted to contradict the terms of a document. In the judgment of this court dated 24th October, 2018 in Civil Appeal No.:J4/10, 2016 entitled ABOAGYE VS. ASIAM, Pwamang JSC rehashed the above principle when he said as follow;

*"The settled principle of the law of evidence is that where oral evidence conflicts with documentary evidence which is authentic, then the documentary evidence ought to be preferred over and above the oral evidence."* See also, FOSUA & ADU POKU VS. DUFIE (DECEASED) & ADU-POKU MENSAH [2009] SCGLR 310; AGYEI

OSAE V ADJEIFIO [2007-2008] SCGLR 499; REPUBLIC VS. NANA AKUAMOAH BOATENG II, EX-PARTE DANSOAH [1982-83] 2 GLR 913 SC.”

30. We further note that the Plaintiff testified at page 395 of the Record of Appeal concerning her directorship as follows:

Q: You have never been registered as a director of Cottage Italia

A: I have been registered as Director of Cottage Italia and I am sure that I have signed the document for it.

31. The above testimony of the Respondent was uncontroverted by way of cross-examination. The contention that the Plaintiff did not have any evidence in writing by which she consented to be a director of the 2nd Defendant company is not necessarily tantamount to a contention that the Plaintiff is not a registered director of the 2nd Defendant.

32. We note that per Section 172(2)(b) of Act 179, the written consent of a director prior to his or her appointment is served on the Registrar General as one of the essential prerequisites for the registration of a new director. The Plaintiff therefore could not be a registered director unless such a written consent was submitted to the Registrar of Companies.

33. We again note that the essence of the written consent as stated in Section 181(2) of Act 179 is to ensure that persons are not registered as directors of companies without their notice, knowledge or consent. In the circumstances of this case, evidence abounds that the Plaintiff is not merely an acclaimed director of the 2nd Defendant but her directorship is one acknowledged by the company as well as the company's only other director. As has been demonstrated above, it falls foul in the mouth of 1st Defendant who co-signed various indentures in the name of the company as well as various financial reports in the name of the company with the Plaintiff, to deny that Plaintiff was at any moment a director of the company.

34. Also, the Plaintiff's claim of being a shareholder of the 2nd Defendant Company was not disputed by the Defendant. In fact, when the Plaintiff contended in her statement of claim that she is a majority shareholder of the 2nd Defendant Company, the 1st Defendant admitted in a further Amended Statement of Defence and Counterclaim filed on 10th July 2017 at paragraphs 23, 24, 38, 39, 40 and 41 as follows:

*"23. Save that the 1st Defendant made a transfer of 31,347.04 (Thirty One thousand) shares to the Plaintiff, 1st Defendant says that same remains unpaid and that the transfer was made to reflect an interest of the Plaintiff for purposes of immigration requirements.*

*24. 1st Defendant further says that the said transfer is yet to be approved by the Board of Directors of the 2nd Defendant company.*

*38. The 1st Defendant says based on the representations made by the Plaintiff, he agreed to a scheme where the majority of shares in 2nd Defendant company will be transferred to the Plaintiff the effect of which was to make Plaintiff a seemingly majority shareholder.*

*39. 1st Defendant says that it was in these circumstances and against the relevant background that the Deed of transfer was prepared between him and plaintiff to insulate the company with underlying collateral oral agreement that the shares will be held by the Plaintiff as his trustee and that the said transfer was not to confer a beneficial interest in the Plaintiff who at all material times was dependent on the company for her livelihood and stay in the jurisdiction.*

*40. 1st Defendant says that the said transfer has not been approved by the Board of directors.*

*41. 1st Defendant says that the Deed of transfer of shares from the 1st Defendant to the Plaintiff provided the advantage of he not being publicly seen as a majority shareholder by the friends of Plaintiff in government as she could show to them the deed of transfer exhibiting her interest and thereby serve as an insulation for the company."*

35. From the above, the fact that deeds of transfer were executed in favour of the Plaintiff by the 1st Defendant by which majority of the shares in 2nd Defendant was transferred to Plaintiff is not in dispute. Therefore, since the parties by their pleadings have made these unambiguous admissions and circumscribed the boundaries of the dispute, the court as well as the parties are bound by these pleadings. It can never be the case that despite the evidence of transfer of shares patently admitted by the 1st Defendant to the Plaintiff, this Court would hold that no such transfer was ever made. This is especially the case where the 1st Defendant elected not to testify and to offer evidence to substantiate the motive of the transfer, which motive had been denied by the Plaintiff by way of a Reply and Defence to Counterclaim.

36. The unproven allegations of motive for the various transfers of shares by the 1st Defendant, to the extent that they amount to a contrivance, according to the 1st Defendant, to make misrepresentations on public records, deceive and mislead public officers and the public, confer benefits improperly and/or evade the requirements of law in Ghana, are to say the least, matters that no court should countenance, let alone give judicial blessing to, as a defence to the Plaintiff's claim to the contrary.

37. To do so, will amount to a Court endorsing and sanctioning recourse to a self confessed misrepresentation and deceit by its perpetrator, as a shield in terms of the 1st Defendant's defence and as a sword in terms of his Counterclaim. This Court, and indeed, no Court should countenance such conduct and schemes as a matter of law and public policy.

38. In the circumstances, having regard to the evidence of the deeds of transfer, the admissions in the pleadings, and the testimony on record, the conclusion that the Plaintiff is a shareholder of the 2nd Defendant, and a majority shareholder as such, is plausible, and we so hold.

39. We are again not unaware of the fact that the trial court as well as the first appellate court concerned themselves with matters of registration of the shares of the company.

40. We hold the view that the non-payment of consideration for shares subscribed to does not invalidate the transfer of such shares and for that matter a deed of transfer of shares relating thereto. (See **Adehyeman Gardens Ltd And Another v. Assibey [2003-2005] 1 GLR 391**). Thus, as between the Plaintiff and 1st Defendant, there was a valid deed of transfer of a part of the 1st Defendant's shares in the 2nd Defendant to the Plaintiff as the deeds of transfers of shares are valid and binding inter parties. By the 1st Defendant's own admission, in paragraphs 23 and 25 of his further Amended Statement of Defence and Counterclaim, which may be found at page 495 of the Record of Appeal, he initially transferred 31,347.04 out of his shares totalling 313,473 in the 2nd Defendant company to the Plaintiff. By this, the Plaintiff became a holder of 10 percent equity shares held by the 1st Defendant in the 2nd Defendant company. By the second deed of transfer, dated 8th June 2010, the 1st Defendant again transferred 153,601.99 out of his total shares of 310,388.7 shares to the Plaintiff. This translates into an additional 49.5 % of the shares of the 1st Defendant. Whereas the figures as to the number of shares held by 1st Defendant in the 2nd Defendant company are inaccurate as they do not reflect the actual number of shares acquired by the 1st Defendant in the 2nd Defendant company, the intention to transfer majority of the shares held by 1st Defendant to Plaintiff is an uncontroverted fact. Thus, in percentage terms the evidence adduced bears credence to the 1st Defendant's admission that indeed Plaintiff holds the majority of the shares in 2nd Defendant company. Arithmetically, the two transfers would entitle the Plaintiff to 59.5 percent of the total shares of the 2nd Defendant company.

41. Also, the 1st Defendant should not be made to resile from the deed of transfer only because of a misdescription of the number of shares. This is because, the misdescription aside, the 1st Defendant at all material times was aware of the percentage of the shares that he was transferring to the Plaintiff in order to have the Plaintiff appear, in the words of the 1st Defendant himself, "seemingly majority shareholder".

42. We note the Defendant's attempt to defeat the transfers of shares he made to the Plaintiff by his allegations from paragraphs 19 to 22 of his Further Amended Statement of Defence and Counterclaim that the various alterations of the authorized shares of the 2nd Defendant were "at all material times, illegitimate and unlawful" for want of special



resolutions approving such attempts to effect the alterations. However, having regard to the fact that per Exhibit C, the copy of the Regulations of the 2nd Defendant, which was tendered in evidence without objection and may be found from pages 612 to 618 of the Record of Proceedings, the 1st Defendant held Eighty-Six million shares in the 2nd Defendant at incorporation, together with one Emmanuel Manu who held Five-million shares. This shareholding of the 1st Defendant at incorporation represents approximately 95% of the issued shares of 2nd Defendant. Consequently, at all material times, the 1st Defendant held enough stock in the 2nd Defendant to be able to transfer 60% of the shares of the 2nd Defendant to the plaintiff as such, the failure of the attempts to alter the issued shares of the 2nd Defendant did not in any way invalidate the approximately 60% shares transferred by 1st Defendant to the Plaintiff. The allegation that the alterations were illegitimate and unlawful is in our considered view inconsequential to the validity of the transfer of shares which the 1st Defendant has made to the Plaintiff.

43. Additionally, we are of the opinion that the Deeds of Transfers of Shares, amount to evidence of valid transfers of shares and as such, the non registration of these transfers to the Plaintiff does not void the transfers. Significantly, the Annual Returns of the 2nd Defendant made up to 31st December 2009 submitted under the hands of both 1st Defendant and Plaintiff notified the Registrar of Companies that the 1st Defendant and Plaintiff held 282,126.6 and 31,347.4 shares respectively. It is noteworthy that their shareholdings sum up to 313,474 shares and that 31,347.4 is ten percent (10%) of the total shares of the 2nd Defendant company, and to which the first transfer of shares from the 1st Defendant to the Plaintiff relates. The Annual Returns which was tendered in evidence as Exhibit F, as already pointed out, is co-signed by both the 1st Defendant and Plaintiff and was tendered in evidence without objection. The parties, particularly the 1st Defendant, cannot resile from the content of Exhibit F which he co-authored and moreover, did not object to its reception into evidence at the trial.

44. Further the oral testimony of the Plaintiff on her initial acquisition of the ten percent shares in the 2nd Defendant company in 2006, which may be found at page 348 of the Record of Appeal, was not controverted under cross-examination. This is a clear case of oral evidence which corroborates and is consistent with documentary evidence and

consequently, must be held to sufficiently prove the issue in contention, in this case, whether or not the Plaintiff acquired shares in the 2nd Defendant and how many shares or what percentage of shares.

45. We are unable to appreciate the basis on which the trial court imported an issue of the non-registration of the shares acquired by the Plaintiff into these proceedings. From the pleadings and issues for trial there is no allegation in relation to the non registration of the shares claimed by the Plaintiff and/or a breach of Regulation 8 of Exhibit C, the regulations of the 2nd Defendant. Otherwise, any question of registration of shares would have had to be resolved in terms of sections 30, 32 and 98 of the Companies Act, 1963 (Act 179) and definitely not Regulation 8(a) of Exhibit C.

46. To put this in perspective, we shall examine the relevant parts of section 30, 32 and 98 of Act 179 which are as follows:

*"30 (2) Any other person who agrees with the company to become a member of the company and whose name is **entered in the register of members** is a member of the company.*

*(3) A member has the rights, duties and liabilities that are by this Act and the Regulations of the company conferred and imposed on members.*

*(4) In the case of a company with shares each member is a shareholder of the company and shall hold at least one share, and a holder of a share is a member of the company.*

*(5) Membership of a company with shares continues until a valid transfer of all the shares held by the member is registered by the company, or until all the shares are transmitted by operation of law to another person or forfeited for non-payment of calls under the Regulations, or until the member dies."*

47. Further, section 32 of the Act 179 states:

*"32. Register of members*

*(1) A company shall keep in Ghana a register of its members and enter in the register,*

*(a) the names and addresses of the members and, in the case of a company having shares a statement of the shares held by each member distinguishing each share by a number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member and of the amount remaining payable on the shares,*

*(b) the date at which a person was entered in the register as a member, and*

*(c) the date at which a person ceased to be a member.*

*(2) The entry required under paragraph (a) or (b) of subsection (1) shall be made within twenty-eight days of the conclusion of the agreement with the company to become a member or, in the case of a subscriber to the Regulations, within twenty-eight days of the registration of the company.*

*(3) The entry required under paragraph (c) of subsection (1) shall be made within twenty-eight days of the date when the person concerned ceased to be a member, or, if that person ceased to be a member otherwise than as a result of an action by the company, within twenty-eight days of production to the company of evidence satisfactory to the company of the occurrence of the event by which that person ceased to be a member, and all entries relating to that person may be deleted from the register after the expiration of six years from the date when that person ceased to be a member.*

*(4) Where a company has more than fifty members the register shall contain an index of the names of the members in a form that enables the account of each member to be readily found.*

*(5) An existing company shall, within twenty-eight days of the coming into operation of this Act, send to the Registrar for registration, notice in the prescribed form, of the place where its register of members is kept and a company shall within twenty-eight days of a change in the place at which its register of members is kept send notice of the change to the Registrar.*

*(6) A company shall not be bound to send notice under subsection (5) where the register has, at all times since it came into existence, or in the case of a register in existence at the*

*commencement of this Act, at all times since then, been kept at the registered office of the company.*

*(7) Where a company defaults in complying with this section, the company and every officer of the company who is in default is liable to a fine not exceeding twenty-five penalty units for every day during which the default continues.*

*(8) The company may arrange with any other person, to be known as the registration officer, for the making up of the register to be undertaken on behalf of the company by the registration officer at that officer's office; and if by reason of a default of the registration officer the company defaults in complying with this section or with section 33, the registration officer is liable to the same penalties as if the registration officer were an officer of the company and the power of the Court under subsection (4) of section 33 shall extend to the making of orders against the registration officer and the officers and employees of the registration officer."*

48. Finally, section 98 of Act 179 provides as follows:

*"98. Registration of transfers*

*(1) Subject to sections 99 and 100, a notice of a trust, express, implied or constructive or of any equitable, contingent, future, or partial interest in a share or debenture or a fractional part of a share or debenture shall not be entered in the register of members or debenture holders or receivable by the company.*

*(2) For the purposes of subsection (1), the company shall not be bound by, or be compelled in any way to recognise, any other rights in respect of a share or debenture except an absolute right to the entirety of the share or debenture in the registered holder; and accordingly until the name of the transferee is entered in the register in respect of the share or debenture the transferor, so far as concerns the company, remains the holder of the share or debenture.*

*(3) Despite anything contained in the Regulations of a company or in a contract, the company shall not register a transfer of shares or debentures unless a proper instrument of transfer duly stamped, if chargeable to stamp duty, has been delivered to the company.*

*(4) Subsection (3) does not prejudice a power of the company to register a person to whom the right to any shares or debentures has been transmitted by operation of law.*

*(5) Unless otherwise provided in the company's Regulations or the terms of the debenture, the company may refuse to register a transfer unless it is accompanied by the appropriate share certificate, debenture, or debenture stock certificate, or the company is bound to issue a renewal or copy of that certificate in accordance with subsection (2) of section 53 or 82.*

*(6) Transfers may be lodged for registration either by the transferor or transferee.*

*(7) Where a company refuses to register a transfer, the company shall, within two months after the date on which the transfer was lodged with the company, send to the transferee and transferor notice of the refusal.*

*(8) Where a company defaults in complying with subsection (3) or (7) of this section, the company and every officer of the company who is in default is liable to a fine not exceeding [five hundred penalty units]."*

49. We have extensively reproduced portions of sections 30, 32 and 98 of Act 179 in extenso to demonstrate that no provision of these sections is implicated in this suit, having regard to the reliefs sought, the pleadings of the parties, the issues set down for trial and the evidence adduced at the trial. Specifically, no issue is joined by the parties on the registration of the shares claimed by the Plaintiff and so a Court ought to generally assume that all requirements of the Companies Act, have been complied with. We therefore struggle to find the basis of the trial court's conclusion that the transfers claimed by the Plaintiff were not registered in compliance with section 98 of Act 179 and which was affirmed by the Court of Appeal.

50. Similarly, we find to be unsupported, the finding by the trial court that there is no evidence of registration of the transfers in compliance with Regulation 8(a) of Exhibit C. The said Regulation 8(a) of Exhibit C provides as follows:

*"The company is a private company and accordingly,*

- (a) the right to transfer shares is restricted in manner following, that is to say, the directors may, in their absolute discretion and without assigning any reason therefore decline to register any transfer of any share;*
- (b) the number of members and debenture holders of the company, exclusive of persons who are bona fide in the employment of the company and of persons who having been formerly bona fide in the employment of the company were while in such employment and have continued after the determination of such employment to be members or debenture holders of the company, is limited to fifty;*
- (c) Provided that where two or more persons hold one or more shares of debentures jointly they shall for the purposes of this regulation be treated as a single member; the company is prohibited from making any invitation to the public to deposit money for fixed periods or payable at call, whether bearing or not bearing interest."*

51. Clearly, Regulation 8(a) vests directors with a discretion to decline to register any transfer of shares, while 8(b) limits the number of members and debenture holders of a company to fifty (50), and 8(c) prohibits the company from making invitations to the public to deposit money. Therefore, it can be said without equivocation that this Regulation does not regulate the registration of a transfer of shares and consequently, even if a question of registration of the shares, the subject matter of this dispute was in issue, which is not, the Plaintiff cannot reasonably be expected to lead evidence of the registration of the shares acquired in compliance with Regulation 8(a). There is obviously no requirement of registration to be met.

52. We are therefore of the considered view that on the whole, the Plaintiff adduced sufficient evidence in proof of her claim of interest in the shares of the 2nd Defendant company. The reliefs sought by the Plaintiff are for the recognition of her shares by the 1st Defendant and for injunctive orders to restrain 1st Defendant from unilaterally disposing off the properties of the 2nd Defendant.

53. We are of the opinion that on the strength of the evidence adduced at trial by the Plaintiff, sufficient foundation or basis was laid for the 1st Defendant to proffer evidence in rebuttal to avoid findings in favor of the Plaintiff, against him (See section 17 of the

Evidence Act, 1975 NRCD 323). Consequently, both the trial High Court and the Court of Appeal erred in reaching conclusions which are against the weight of the evidence and thereby erred in law in upholding the submission of no case by the 1st Defendant. In the circumstances, having found that the Plaintiff has sufficiently proven her case, this Court, on Wednesday, 13th March 2024, granted the Plaintiff the following reliefs:

1. That the Plaintiff owns 59% of the shares of the 2nd Defendant company which said interest is based on the deeds of transfer of shares dated 13th December, 2006 and 8th June, 2010;
2. That the 1st Defendant cannot unilaterally deal with the business, including assets and funds of the 2nd Defendant company without reference to Plaintiff.
3. The 1st Defendant is hereby ordered to render accounts of his management of the 2nd Defendant company to the Plaintiff with effect from 10th October, 2011, when the instant suit was commenced before the High Court to the date of this order.
4. Consequent upon reliefs 1 and 2 above, the 1st Defendant is hereby enjoined from unilaterally dealing with the business, assets and/or funds of the 2nd Defendant without reference to the Plaintiff for as long as the Plaintiff remains a shareholder of the 2nd Defendant.

Save the above reliefs which we expressly granted, all other reliefs endorsed on the Plaintiff's amended writ of summons and statement of claim were dismissed. Cost was assessed at GH¢ 5,000.00 against the 1st Defendant in favour of the Plaintiff.

**E. YONNY KULENDI**  
**(JUSTICE OF THE SUPREME COURT)**

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

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

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

**S. K. A. ASIEDU**  
**(JUSTICE OF THE SUPREME COURT)**

**COUNSEL**

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JOHN ODURO TANOH**

**KWAME BOAFO AKUFFO FOR THE 1<sup>ST</sup> DEFENDANT/RESPONDENT/RESPONDENT**