



On 26, April, 2000, **NHYIRA NKA NYAME ENTERPRISE**, per its Manager, filed Notice of Claim, at the High Court, Sunyani, Brong Ahafo, claiming ownership to all the goods in the store attached by the Deputy Sheriff, High Court, Sunyani. It also claimed for the loss of forty thousand deutch marks which were allegedly taken away in the course of the execution, and the seizure of the goods in the store.

On or about the 6 June, 2000, one Moses Kwabena Ankama of Drobo, too, filed Motion of Claim to H/No. 58 Drobo, attached in the execution.

The Respondent per his Solicitor Kwame Asiedu Basoah, Esq., disputed the title of the Claimant to the house.

In the litigation that followed, the trial judge consolidated the two claims and tried them together, summarily, a practice permissible by Order 57 rule 8 of the a LN 140A.

At the end of the trial, the Court dismissed the claim of Mose Kwabena Ankama to the house No. 58 – Drobo, but remained silent about the claim of ownership to the goods seized at the store.

The Appellants became aggrieved by and/or dissatisfied with the ruling of the trial Court and have filed the instant appeal.

The appeal was originally filed on two (2) grounds with an intimation to file additional grounds on the receipt of the records of proceedings.

The two original grounds are:-

- “(1) The Honourable Court erred when he (sic) dismissed the claims of the Claimant/Appellants when the Plaintiff/Respondent had already sold items in the store of the Appellant which sale the Honourable Court had declared Null and Void.
- (2) The Honourable Court erred when it declared that H/No. Q.58 is not jointly owned by Job Addai Amanfo, Moses K. Ankama and Felicia Adjeiwaa.

The Appellants later filed two (2) additional grounds, the first of which does not merit any reproduction here. The said ground of the appeal is an attack on Deputy Sheirff for procedural irregularities committed by him in the course of the execution processes.

The purpose of an appeal has always been to correct wrongs committed by the trial Court. The wrongs committed by the Deputy Sheriff in the course of his official duties cannot constitute grounds of appeal.

Additional ground 2 states:-

“That the Honourable Trial Judge misdirected himself when he ordered that items which were sold, and converted into Cash should be used to offset the judgment debt after the Court had declared the sales to be a nullity amounted to approbating and re-probating.”

This ground like original ground 1 in the notice of appeal is vague.

The instant appeal is against the decision “of the High court contained in the judgment/order of His Lordship Justice P.K. Gyaesayor sitting at the High Court Sunyani, dated the 29<sup>th</sup> day of August, 2001.....”

Nowhere in the said judgment/decision, did the trial judge make any reference or at all to the goods in the store or make the kind of declaration he is alleged to have made.

Rule 8 (6) of the Court of appeal Rules 1997 (C.I. 19) does not permit any ground of appeal which is vague to be admitted as a ground.

The said rule states: “No ground which is vague or general in terms or which discloses no reasonable ground of appeal shall be permitted, except the general grounds that the judgment is against the weight of evidence, and any ground of appeal or any part of the appeal which is not permitted under this rule may be struck out by the Court of its own motion or on application by the respondent.”

I find the two (2) grounds to be vague and, therefore, caught by Rule 8(6), of C.I. 19 and I dismiss same.

This then leaves me with the original ground 2 to grapple with – i.e.

“The Honourable Court erred when it declared that the H/No. Q, 58 is not jointly owned by Job Addai Amanfo, Moses K. Ankama and Felicia Adjeiwaa.” Dismissing the Interpleader claim for the house, the trial Court held:-

“The lease in respect of the house, the subject-matter of dispute is in favour of Plaintiff – Job Addai in this interpleader. The mortgage with the Bank is also executed by the same Plaintiff. These are some of the

reasons among others for which the Interpleader filed should be dismissed. The case of Plaintiff that the house is jointly owned by him and others is to prevent the judgment/Creditor from enjoying the fruits of the judgment.” The trial judge went on further to state –

“The evidence from the legal adviser of the Bank having regard to Exhibits tendered by him confirms that the house is for Plaintiff alone.”

These are strong and positive findings of the trial Court. They are not controverted by the appellants. The decision is therefore, well supported by the evidence.

It will also be observed that even the 2<sup>nd</sup> Defendant/Judgment/Debtor, the sole owner of H/No. Q. 58, having at the material time divested his legal interest in the house to Ghana Commercial Bank under the Deed of Mortgage dated 18<sup>th</sup> day of May, 1995, retained only an equitable interest in the house to boast of.

The remarks by the trial judge that the appellants claim to jointly own the house is to prevent the Judgment/Creditor from enjoying the fruits of the judgment echoed the sentiments and admonition expressed by the Supreme Court in the case of **AKROFI VRS. OTENGE {1989/90} 2 GLR p. 245** thus:-

“It could be all too easy for Judgment/Debtors to hide behind members of their families to frustrate the execution of judgment against them. Accordingly where an action was brought by a head of family on behalf of the family for a declaration of the family’s title to a property sold in execution of a judgment obtained against a member of the family and for setting aside the sale, the Courts must look at the evidence with extreme caution.

A high degree of proof must be looked for albeit on the balance of probabilities.”

I am not persuaded that the appellants in this appeal managed the level of standard of proof envisaged by the Supreme Court in **Akrofi v.Otenge**.

And I find myself completely in agreement with the strong and positive findings of the trial judge.

For these reasons and others I dismiss the appeal.

**(Sgd.) R.T. ANINAKWAH  
JUSTICE OF THE SUPREME COURT**

I agree.

**(Sgd.) V. AKOTO-BAMFO  
JUSTICE OF APPEAL**

I agree.

**(Sgd.) A. ASARE KORANG  
JUSTICE OF APPEAL**

**COUNSEL – PETER DEI OFEI FOR CLAIMANTS/APPELLANTS.  
AYITEY ARMAH TETTEH FOR K. ASIEDU BAESOAH FOR  
RESPONDENT.**

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