

IN THE COURT OF APPEAL
ACCRA - GHANA, A.D. 2004

CORAM - OMARI SASU, JA (PRESIDING)
OWUSU-ANSAH, JA
J.A. OSEI, JA

SUIT NO. H1 /3/2004
22ND JANUARY, 2004

K.T.B.A. GHANA LTD. ... **RESPONDENT\RESPONDENTS**

V E R S U S

STATE INSURANCE CORP.
GH. LTD. ... **DEFENDANT\APPELLANTS**

J U D G E M E N T

OMARI SASU JA:

This is a case in which the Plaintiffs\Respondents (who shall henceforth be referred to simply as “The Respondents”) sued the Defendants\Appellants (who shall henceforth be referred to simply as “The Appellants”) in the High Court, Accra in August 2002 for the following reliefs:

- “ (a) Recovery if an amount of ₦553,908,500.00.
- “ (b) Interest on the said amount from 1st April 2001 to date of Judgement
and
- “ (c) Costs.”

According to the Respondents, the sum claimed represented the balance of the price of playing cards sold to the Appellants at an agreed price of _____ Costs.”

According to the Respondents, the sum claimed represented the balance of the price of playing cards sold to the Appellants at an agreed price of €30,000.00 per pack for

which the Appellants had paid a deposit and were to pay the balance within six months from 1st September 2000 but which the Appellants had defaulted to pay.

On their part the Appellants pleaded that the Respondents merely offered the consignments of cards for sale to the Appellants.

In the course of the negotiations the Respondents and the Appellants Managing Director had fraudulently collected to increase the purchase price from the initial offer of ¢10,000.00 per pack to ¢10,000.00 per pack to ¢30,000.00 per pack for this, the Appellants repudiated the contract, and counter-claimed for the return of the deposit paid to Respondents with interest therein.

On 21st August 2002 the Respondents applied to the High Court for summons for summary judgement under **ORDER 14 RULE I OF L. N. 140 A of 1954 as Amended by L.I 1129**

The High Court heard and received legal arguments from the litigants herein after which the court entered summary judgement in favour of the Respondents and against the Appellants because the court felt that the allegation of fraud pleaded by the Appellants had not been particularised.

It is against this decision dated 28th November, 2002, that the Appellants have appealed.

GROUND OF APPEAL

These are:

- (a) The trial Judge erred in dismissing the Appellants allegation of Fraud summarily
- (b) The trial Judge erred in holding that the allegation of fraud by the Appellants was not sufficiently particularised.
- (c) The trial Judge erred in not granting the defendant leave to defend the action and
- (d) The trial Judge erred in granting the application for summary judgement on a contract which the parties never concluded.

I shall deal with grounds (a) to (c) together since each of these grounds has the allegation of FRAUD as its fulcrum. Thereafter I shall deal with ground (d) separately.

GROUND (a), (b) & (c)

The rules of practice governing pleadings where fraud is alleged is **ORDER 19 RULE 6** of LN A of 1954 which reads:

- “ In all cases in which the party pleading
“ relies on any misrepresentation, **FRAUD**, breach of trust, wilful default, or circle
“ influence, and in all other cases in which particulars may be necessary beyond
“ such as are exemplified in the forms aforesaid, particulars (with DATES and items if necessary), shall
“ be granted in the pleading:.....(emphasis is mine).

In our case the Appellant pleaded in his

STATEMENT OF DEFENCE AND COUNTER-CLAIM as follows:

- “ The Plaintiff (Respondent) and the defendants (Appellants) Managing Director, fraudulently increased the cost per pack to ₦30,000.00 for which they signed The agreement pleaded in paragraph 3 of the Statement of Claim and obtained From defendants the payment, as alleged in paragraph 5.”

PARTICULARS OF FRAUD

“Conspiring with the defendants said Managing Director to inflate the price per pack of the cards from ₦10,000.00 to ₦30,000.00 for the benefit of either or both the Plaintiff and the Managing Director.”

Our case-law is replete with commentaries on LN 140A 1954 Order 19 Rule 6 which We are called upon to examine and it is now trite law that whoever alleges fraud in his pleadings against his adversary the legal duty to supply requisite particulars of the alleged fraud to repute illustrations.

Sufficient, however, to the case of **RANDOLF VRS. CAPTAIN & ANOR.**

[1959] GLR 347 where Ollenu J. (as he then was) observed at p. 352 of the Law report that “The provisions of this rule requiring particulars of fraud (to be supplied) is mandatory. Rules 7 & 8 of Order K give the person again when it is pleaded to the right to apply 2 other persons and better statement of the nature of the fraud and the particulars of it. But if the party pleading\alleging fraud falls in the first to state the nature of it claiming, instance on to live same particular of it, his opponent excuse his right to call
“

I would also mention the Court of Appeal case of

HEWARD MILLS VRS. HEWARD MILLS [1992] 1GLR 165 in which the English case of **D.H. LAWRENCE VRS. NORREYS [1890]** 15 Appeals cases 210 (House of Lords]

Was cited. In that case it was held:

“In such an action general averments of fraud are not sufficient in
“ The statement (pleading) must contain precise and full allegations of
facts and circumstances leading to the reasonable inference of
frauding.....

In our case the Appellants are in their statement of claim par. As follows:

“Order 19 & 6.....does not deny
that such particulars shall be pleaded in any particulars form. The form is
referred to the pleading.....”

This statement is only at best at half past from the rate refers then 11 dates and items if necessary.” Should be pleaded and in own case the appellant should have supplied dairies and place of the alleged fraud instead of daily in general.

Apart from using synonyms what was stated as particular of focard were but mere repetition of the allegation of fraud.

It is my candid view therefore that that learned trial judge was right when he held that the Appellants had failed to supply/..... particulars of the alleged fraud.

The grounds of Appeal in frauding [a] [b] & [c] accordingly fail

Ground [d] - alleges that the trial Judge gave judgement on a contract which had never concluded.

This is not borne out by the record for there was a contract after which Respondents supplied goods to the Appellants who received same and made part-payment for same. This ground of Appeal also fails.

In the result, I find and hold that the present appeal lacks merit and the same is dismissed.

The Judgment of the court below affirmed. Judgement is accordingly entered for the Respondents and against the Appellants. There shall be an order for costs in this case in favour of the Respondents.

Asare Dan Kuma for Plaintiff/Respondent prays for.

The Judgment of the court below affirmed. Judgement is accordingly entered for the Respondents and against the Appellants. There shall be an order for costs in this case in favour of the Respondents.

Asare Dan Kuma for Plaintiff/Respondent prays for ¢10 million costs.

Joainto for Appellants offers ¢10 million costs.

BY COURT - The Plaintiff/Respondent is fined ¢8 million cost.

**OMARI-SASU
JUSTICE OF THE APPEAL**

I agree.

P.K. OWUSU-ANSAH
JUSTICE OF APPEAL

I also agree.

J.A. OSEI
JUSTICE OF APPEAL

Judicial Training Institute