IN THE SUPERIOR COURT OF JUDICATURE
THE COURT OF APPEAL,
ACCRA – A.D. 2004.

Coram: R.C. Owusu, J.A. Presiding.
Nana Owusu-Ansah, Justice of Appeal.
J.B.Akamba, Justice of Appeal.

HI/176/2004.
29TH OCTOBER 2004

A.C. International Ltd, Accra. Plaintiffs/Respondents.

Vs.

Edlund Mining Ltd, Prestea. Defendants/Appellants.

JUDGMENT.

AKAMBA, J.A.: The Respondents herein issued a writ of summons on 6/11/2002 in the High Court Sekondi as plaintiffs, claiming against the Appellants herein as defendants the following reliefs:

" (i) Recovery of salaries, allowances and expenses incurred on behalf of the defendants for various services defendant contracted plaintiff to execute for her, or in the alternative,

(ii) An order for the sale of the defendants' plant and machinery out of which plaintiff would be paid for all the services rendered on behalf of the defendant.

(iii) Damages for breach of contract.

(iv) Costs."

The Respondents as plaintiffs filed their statement of claim on 15/11/2002, in which they particularized the nature of the salaries, allowances and expenses claimed in their writ of summons. In the aforesaid statement of claim the plaintiffs averred that both plaintiffs and defendants are companies incorporated under the laws of Ghana. Sometime in September 2001 the defendant company engaged the services of the plaintiff company for the establishment of its operations in Ghana. The shareholders of the defendant company are Swedish and they are represented in Ghana by one Lennart Edlund who cannot speak or write English hence he depended to a large extent on the plaintiff company for all its operations in Ghana. It was therefore in the circumstances enumerated in the statement of claim that the plaintiff company incurred the expenditures for which they claim as per their writ of summons.

The defendant company denied the plaintiff company's claims and counterclaimed for an order restraining the plaintiff company from interfering with the use of the equipment of Defendant Company as well as loss of use of the said equipment from 1st August 2002 to 6th November 2002. According to the defendant company, there was an agreement between the two companies for the exploration of gold in the Prestea area. Furthermore, save that the defendant company's representative, Lennart Edlund partially spoke English, the defendant company denied that they depended absolutely on the plaintiff

company for all their operations in Ghana. According to them, one Christian Akunnor who was a Director of the defendant company assisted their representative.
The High Court after hearing evidence from both parties, entered judgment on 28th July 2003 in favour of the plaintiff company. The defendant company (hereinafter referred to simply as the appellant), who is dissatisfied with the trial court's decision, filed the following grounds of appeal: -

(a) The learned trial judge erred in not dismissing the Plaintiff's action for failure to comply with a statutory precondition for the issue of the Writ of Summons, i.e. the payment of the appropriate filing fees.
(b) The learned trial judge erred in not dismissing the plaintiffs claim after having found that the plaintiff had deliberately omitted to state the quantum of his liquidated claims in the endorsement of his writ of summons and rather particularized same in his statement of claim thus amounting to fraud.
(c) The judgment is against the weight of evidence.
(d) Additional grounds would be filed upon receipt of the record of proceedings.

No additional grounds having since been filed this appeal will be disposed off based upon the afore-listed grounds filed per the notice of appeal of 6th August 2003. I will also follow the same sequence as that adopted in the appellant's statement of case in resolving this appeal.
The first two grounds of appeal are founded on common grounds and I propose to deal with them together. The appellant contends that the trial judge erred in not dismissing the plaintiffs' action for failure to comply with statutory precondition for the issue of the writ of summons i.e. the payment of the appropriate filing fees. Secondly, the appellant impugns the judge's failure to dismiss the plaintiff's claim after finding that the plaintiff had deliberately omitted to state the quantum of his liquidated claims in the endorsement of his writ of summons and rather particularized same in his statement of claim thus amounting to fraud. I dare say that the trial judge rose to the occasion in dealing with the issues under consideration and delivered himself quite satisfactorily concerning the legislations governing the conduct complained of. The judge found that both parties had violated the rules by paying inappropriate fees. This is the finding that the trial judge made:

"On *the other hand, the Defendants also in their counterclaim did not particularize the loss of use of their equipment which they allege the plaintiffs made use of. If you consider the fact that the plaintiffs just as the defendants had been able to compute and state the exact figures which they claim against each other ; then it beats my imagination why they all refused to claim the liquidated amounts in their writ of summons in the case of the Plaintiffs and in the counterclaim in respect of the Defendants. I am inclined to believe that it is basically to prevent the payment of the appropriate filing fees that Counsel for the parties intentionally drafted the reliefs in such a way that they would not have to pay what they are expected to pay as is required by law. In this regard, the Plaintiffs are the more guilty party. …….It is therefore the view of this court that the plaintiffs, and for that matter the parties intentionally denied the state, the needed revenue. This conduct is in flagrant violation and breach of L.I.1540 Civil Proceedings (Fees and Allowances) Amendment Rules, 1992." [See page 119 to 120 of Appeal Record]*.

It is thus obvious that the trial judge found the appellants herein just as blamable for the misconduct of not subjecting his action to the payment of the appropriate fee as the respondents did and yet the appellants are here raising the respondents' breach as most grievous whilst suppressing their own misconduct. It is pertinent to remember that the appellants had also filed a counterclaim to the respondents claim as pointed out by the trial judge. Be that as it may, I propose to look at Order 68 as it deals with non-compliance with the rules and the legal consequences flowing there from. Order 68 as amended by L.I.1540 provides as follows:

"(1) The fees payable in respect of the matters specified in Part III, IV, and V of Appendix M shall be as prescribed therein. Such of the fees as are payable in a cause or proceeding shall be paid by the party concerned and may afterward be recovered as costs if the court shall so order,
(2) The Court may on account of the poverty of any person, or for other sufficient reasons, to be stated in the minutes, dispense, if it sees fit, with the payment of any fees."

The afore-quoted rule does not contain a penalty clause to deal with its breach. What this therefore means is that any question of breach would thereby be considered under the general provisions provided for non-compliance with any of the rules in L.N.140A. Order 70 of LN 140A is the relevant provision dealing with non-compliance with the rules. Meanwhile counsel for the appellant urged that when the trial judge made the finding that the appropriate fee had not been paid, that meant that the writ of summons could not or was not properly issued and if it was purportedly issued, the court did not have jurisdiction to entertain the action. Counsel further stated that Order 68 rule 1 was a mandatory provision and as such its breach rendered the whole proceedings void. As to the contention that Order 68 rule 1 was a mandatory provision whose breach rendered the whole proceeding void, suffice it to say that whatever compulsion was introduced by the said rule 1 was equally toned down by rule 2 wherein the trial judge has been given a wide discretion in the matter including dispensing with payment of any fees at all in certain circumstances. It is also true to say that order 68 is not complete in itself on the question of what happens in the event that a party does not fully comply with this order. Order 70 supplies the needed answer. In fairness therefore to Counsel for the appellant, let me set down Order 70 here below as a basis for properly appreciating the arguments. It enacts:

"70 (1) Non-compliance with any of these Rules, or with any rule of practice for the time being in force, shall not render any proceedings void unless the Court or Judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or as amended, or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit.
(2) No application to set aside any proceedings for irregularity shall be allowed unless made within reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity.
(3) Where an application is made to set aside proceedings for irregularity the several objections intended to be insisted upon shall be stated in the summons or notice of motion.

(4) When a summons is taken out to set aside with costs any process or proceeding for irregularity and the summons is dismissed generally without any special direction as to costs, it is to be understood as dismissed with costs."

My understanding of Order 70 is that it is invoked by an application either by summons or notice of motion specifically to set aside for non-compliance and not to raise it for the first time before an appellate tribunal as a ground of appeal simpliciter. (See **The Supreme Court Practice, 1997, page11**). By virtue of Order 70 rule 2, applications to set aside for non-compliance should be made within reasonable time. A party cannot therefore sleep over objectionable matters and even take his own steps after becoming aware of these irregularities and expect to be taken seriously. Worst still, if the party is equally blamable for the same lapse as in the instant appeal, he cannot expect to obtain the aid of the law on his side. Remember also that the discretion to set aside for such irregularity is vested in the trial judge. In the instant appeal, the appellant has not shown that the trial judge failed to exercise his discretion according to law. It is apparent that the issue of inadequate fees was raised for the first time in an affidavit in opposition sworn on 20th November 2002 by David Anthony Nicol-Sey, one of the directors of the appellant company. (See page 28 of the record). This is a far cry from the requirement that such objections should be by summons or notice of motion.

In spite of the averment in paragraph 20 of the aforesaid affidavit in opposition in which the issue of inappropriate fees paid by the respondent was raised, the appellant took his own steps in the proceedings as though nothing was amiss. The appellant not only matched what he complained about, he also failed to initiate the proper action provided under order 70 to ventilate his misgivings. Despite this lapse in procedure, the trial court gave due consideration to the issue and arrived at a meaningful conclusion which cannot be faulted.

It is pertinent to note that Order 70 of LN140A conforms to the old English position that obtained under the corresponding Order 70 rule 1 of R.S.C 1883. **The Supreme Court Practice 1997** states of the 1883 English rule (and therefore of our rule too) that it 'sought to provide that non-compliance with any of the rules should not of itself render any proceedings void unless the court should so direct, but that they might be set aside wholly or in part as irregular or amended on such terms as the court might think fit. Nevertheless the decisions under the rule preserved the distinction between a non-compliance such as rendered the proceedings a nullity (in which case the court had no discretion but to treat them as a nullity and set them aside) and a non-compliance which merely rendered the proceedings irregular) in which case they remained valid and the court had a discretion what order to make in the circumstances). It was held, indeed, that the Order did not apply to the former class of case but only to the latter.' It is refreshing to note one such decision of our courts that preserves this distinction. In **Mosi v. Bagyina (1963) 1 G.L.R. 337, S.C, Akuffo-Addo J.S.C.** (as he then was) at page 346 said of the Order 70 thus:

"*Order 70, it should be noted, is headed 'Effect of non-compliance,' and the provisions thereof are applicable only to a case of irregularity, often called 'a mere irregularity,' arising out of failure on the part of a party to comply with some specific rule as opposed to an irregularity in the court doing something which has no warrant in law or in the rules of procedure. The former irregularity which does not render void any proceedings*

based thereon, but which is merely voidable, is capable of being waved, and setting aside any order arising out of such an irregularity is a matter for the court's discretion, whereas the latter class of irregularity renders void any order or judgment emanating therefrom, and setting aside such an order or judgment being ex debito justitiae a court or a judge has no discretion in the matter but is under a legal obligation to set it aside,"

Upjohn L.J. in In re Pritchard (decd.) Pritchard v Deacon (1963) Ch. 502 @523 CA ,stated of Order 70 thus:

" *the law when properly understood is that Order 70 applies to all defects in procedure unless it can be said that the defect is fundamental to the proceedings. A fundamental defect will make it a nullity. The court should not readily treat a defect as fundamental and so a nullity, and should be anxious to bring within the umbrella of Order 70 when justice can be done as a matter of discretion."*

Obviously in the instant appeal the appellant complains about inadequate or non payment of the appropriate court fees which brings this matter under the first category of the **Mosi v Bagyina** analysis i.e failure to comply with a specific rule. This makes the lapse voidable and capable of being waved because it is not fundamental and the trial judge has the discretion to set it aside or not. For good reasons the trial judge chose not to set aside the writ. Indeed the trial judge entered a conditional judgment for the plaintiff, the condition being that the plaintiff pays the filing fees on the judgment debt before going into execution which condition has long been complied with. I have already stated that the trial judge discharged himself very well of the issue and I can only but endorse the decision arrived by the court. I find no merit whatsoever in these two grounds and I accordingly dismiss same.

The appellant has also raised an omnibus ground of appeal namely that the judgment is against the weight of evidence. This ground, as gleaned from the written submissions made on behalf of the appellant, impugns the awards entered by trial judge. When an appellant claims that the judgment of the trial court is against the weight of evidence, there is a presumption that the judgment of the court below on the facts is correct and the appellant assumes the burden of showing from the evidence that it is indeed against the weight of evidence. See **Ampomah v Volta River Authority (1989-90) 2 GLR 28**. The introductory to the appellant's written submission on this ground sums up his complaint. It states: "A summary of the awards made in favor of the plaintiff appears on page 141 of the record and we wish to submit that those awards are, in the main, not supported by the evidence." The underlying principle in determining a ground of appeal that attacks a finding of fact is that which has been amply stated by **Acquah, JSC (**as he then was) in **Barclays Bank (Gh) Ltd. vs Sakari (1996-1997) SCGLR 639 @ 650** as follows: " *It is trite law that an appellate court .....cannot set aside findings of fact if the findings are based on the demeanour of witnesses. But where the findings are based on undisputed facts and documents, as in the instant case, the appellate court is in decidedly the same position as the lower court and can examine those facts and materials to see whether the lower courts' findings are justified in terms of the relevant legal decisions and principles."*

Azu Crabbe, JSC (as he then was) in an earlier decision in **Nyame vs Tarzan Transport Co. and Anor. (1973) 1 GLR 8,** captured the principle in the following words: *"(1)An appellate court is loath to disturb a finding of fact by a trial judge who has had the advantage of observing the demeanour of witnesses, their candour or their partisanship and all the incidental elements which make up the atmosphere of an actual trial. But it is far more ready to reverse his decision in a case, which depends on inferences from admitted or undisputed facts.*
(3) There is a distinction between pure conjecture and reasonable inference. A conjecture may be plausible but it is of no legal value, for its essence is that it is a mere guess. An inference in the legal sense on the other hand, is a deduction from evidence and if it is a reasonable deduction it may have the validity of legal proof"
Guided by the afore-indicated principle, I propose to deal with each of the awards granted by the trial court in the same order as the appellant unfolds them. The appellant's opening attack under this rubric is on the award of US ($6000) six thousand dollars in favour of the respondent company. This is what the plaintiff said in his evidence in chief to ground the trial judge's eventual award: "*In respect of the expenses involved in clearing the equipment in the third batch, the plaintiffs had to pay for it……..I paid a total of 6000 US dollars and it includes transportation from the port to the site and outstanding medical bills for Lennart Edlung. When the equipment of the defendants arrived, they were sent to the plaintiffs site because we had a contract with the defendants at the time."* (See page 42 lines 25 to 45 of the appeal record). The appellant's position on this claim of 6000 dollars, as with others made by the plaintiff/respondent, was one of complete denial of indebtedness. This position is captured in the appellant's line of cross-examination. The cross-examination of Christian Daniel Akunnor, the plaintiff'/respondent's representative after his evidence in chief, highlights the point. On page 53 line 46 to Page 54 line 6 the following dialogue is recorded:

"Q. *The total convertible currency in USD for use of defendant's equipment is $1,900,000 US dollars.*
A. I have not used any machines, and I don't know about the exchange rate.
Q. I put it to you that you don't have any claims against the defendants.
A. We have claims against the defendants and that is why we are in court here."
(Underlined for emphasis).

Certainly the last suggestion in the afore quoted dialogue disputes any indebtedness on the part of the (defendant) appellants, which warrants that the plaintiff would do more than his mere assertions in the witness box that he paid a total of six thousand dollars covering transportation and medical bills. Obviously transportation charges and medical bills are transactions that are capable of proof by the production of relevant documents such as invoices or receipts. It would have been unnecessary to furnish any documents in proof of these claims if the defendant had not denied the claims as he did. However, in the light of the denial, no matter how generalized it might be, the respondent was obliged to introduce further evidence in proof of his claim which he failed to discharge. (See s.11 (1) of NRCD 323.) There was therefore no sufficient evidence upon which the trial judge could enter judgment for the six thousand dollars ($6000) as he did. Accordingly, I find the award of $6000 unwarranted by the evidence and same is set aside.

The next award that the appellant is dissatisfied about is the award of ten million cedis (c10,000,000) for costs incurred in locating and digging up a buried excavator on the plaintiff/respondent's land by the defendant. At page 43 line 15 to 22 of the record the plaintiff testified in support the claim as follows:

"*The Defendant also buried an Excavator on the plaintiffs' concessions and the plaintiffs tried to locate and retrieve the buried excavator on the site and this they did for 3 days without any success. The estimated cost of locating and digging the buried excavator is based on 20 days work is assessed at 11,000 US dollars."*

It is apparent that the excavations to unearth the buried excavator had not been completed at the time that the plaintiffs' representative Christian Daniel Akunor testified in this suit on 9th December 2002. I hold this view because of the uncertain and speculative tone in the figure in the testimony quoted supra. The figure is based on an estimated cost of 20 days of work which even puts the figure at ($11,000) eleven thousand US dollars. Why an estimate if the work were actually done? The trial judge must have found the eleven thousand ($11,000) US dollars outrageous and therefore unacceptable hence he reduced it to ten million (¢10,000,000) cedis. It is not the case that the estimated figure of eleven thousand US dollars ($11,000) was urged without a challenge. From the testimony of the defendant appellants' representative, Lennart Edlund, he made it clear that he buried the excavator because it obstructed the activities of the local community and being, according to him a scrap, he caused it to be buried.

On the specific claim this is what he said:

"Q. Plaintiff's contend that it will take 20 days to locate the buried Excavator and that it will cost 11,000 USD.

A. It is not correct, and I have not hired plaintiffs to look for the excavator at all."

The plaintiff respondent company did not provide a basis for its claim for ($11,000) eleven thousand US dollars besides merely speculating that it would take some 20 days to locate the buried excavator. It is worth remembering that the appellants were on the (plaintiff) respondent's land with the latter's consent pursuant to an agreement {Exhibit 4A) for the appellants to exploit for gold in the respondent's concessions.

If the appellant's actions ran contrary to the agreement, their attention should have been formally drawn to them for appropriate remedies to be provided under the agreement. There is no evidence on record to this effect. This sudden slap of eleven thousand US dollars ($11,000) claim certainty sounded inordinate hence the trial judge's dilemma resulting in it being slashed to ten million (10, 000,000) cedis. The ten million cedis award is not in the nature of a claim for a completed action but an anticipated action. This being the case, the trial judge had no business awarding the ten million cedis as cost for something yet to be undertaken. The deductions from the facts before the trial judge do not warrant the grant. The trial judge could not base his award on mere conjecture as was the case here, for as Lord Wright correctly stated in **Caswell v Powell Duffryn Associated Collieries Ltd (1940) AC 152 @ 169 HL** which case was cited with approval in **The State v Ali Kassena (1962) 1 GLR 144 @ 149** : *"There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. In some cases the other facts can*

be inferred with as much practical certainty as if they had actually been observed. In other cases the inference does not go beyond reasonable probability. But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture."

Accordingly the award of ten million (¢10,000,000) cedis is set aside for being based on conjecture. It is noteworthy that the trial court deemed it proper to direct the appellants to take steps within one month to unearth the excavator they admit burying failing which the respondents could take appropriate steps to excavate same and to submit their expenses to the appellants for payment. We endorse this directive.

Another award the appellants are displeased about is the award of three thousand US dollars ($3000) to the plaintiff/respondent for services rendered by PW2 to the appellant. PW2 is Hans Boderstrom, a geologist based in Sweden. He is one of four directors of the plaintiff/ respondent company, the rest being Christian Akunnor, Peter Eriksson and Miss Nana Erlandson. PW2 was employed to undertake the prospecting for Edlund who would pay him for his services. According to PW2, the appellant agreed to pay him five thousand dollars but this has not been honoured to date despite repeated demands. In view of Edlund's refusal to pay him whilst in Ghana, PW2 repeated his demand in Sweden where they both hail from. Edlund was invited by PW2's father who intervened in the matter, wherefore he agreed to pay. Pw2 said he decided to waive off two thousand dollars ($2000) of the amount leaving three thousand which gesture has not been reciprocated by Edlund. What is obvious from the above transaction is that the contract of service was entered between PW2 and Edlund, a fact which prompted PW2 to seek his father's intervention to resolve the issue between him (PW2) and Edlund. The fact of the private contractual relationship thus established between PW2 and Edlund is not in doubt at all. The respondent company was not privy to this contract nor was Akunnor in any capacity. PW2's contractual duties were towards Edlung and vice versa and it is they alone who can sue between themselves or through their Attorneys. It is therefore most unusual that the plaintiff/respondent would seek to sue the appellant herein to enforce a contract entered between PW2 and Edlund to which they were not privy. There is also no indication that the respondent acted as guarantors of the contract transaction in question between PW2 and Edlund. A contract of guarantee is "essentially an unconditional undertaking to pay a specified amount to a named beneficiary, usually on demand, and sometimes on the presentation of certain specified documents. They range in type from an undertaking to pay the beneficiary on simple demand, or on demand coupled with a statement by the beneficiary that the person at whose request the bond was issued (the account party) is in default (a 'demand guarantee') to an undertaking to pay only upon proof of default by the account party, such as the production of an arbitration award or judgment in favour of the beneficiary, or a signed admission of default by the account party". - See **Law of Guarantees, 3rd Edition by Geraldine Andrews Q.C. and Richard Millett, page 477**. The debt of (US) three thousand dollars ($3000) arose out of the contractual relationship between the PW2 and Edlund. Any enforcement of the rights and remedies arising from that contract can only be initiated by and between the same parties the exception being if

there was a contract of guarantee. In the absence of any such contract of guarantee or any appropriate authorization, the present claim seemingly on behalf of PW2 or to satisfy or indemnify payments purportedly made by them in satisfaction of the said debt cannot be supported. The respondent company has not shown that it had an obligation to make payments of the debt owed by Edlund to PW2 which enabled it to claim same from the appellant. The respondent consequently has no locus in enforcing the rights of PW2 accruing out of his contractual relationship with the appellant company. I will without more, set aside the award of three thousand dollars ($3000) as being unwarranted by the evidence.

The appellant's final mount is against the trial judge's award of two thousand (US) dollars ($2000) to the respondents for the use of the latter's pick-up truck. To better appreciate this ground of appeal, it is refreshing to recount the findings of the court as obtain on page 138 lines 4 to 44 of the record of proceedings as follows:

"What I have found out after examining the bits and pieces of evidence on this matter are that

(i)That Lennart used this pick-up before the arrival and clearance of his Luxury Opel Fontera.

(ii)On occasions, this pick-up was used to transport staff who worked for the Defendants from Accra to Prestea and back.

(iii) This pick-up was also used to cart fuel and other lubricants to and from the stations to the site. Even though the defendants have Dumpers, notice is taken of the fact that Dumpers cannot be used to transport these materials over long distances.

(iv) That, initially, the parties did not intend the use of this pick-up to attract any payment.

I am inclined to so believe because of the relationship that existed between the parties prior to the signing of Exhibit 4A and after.

It appears that it is only after the relations have turned sour between the parties that the plaintiff has made these claims.

I have also not been impressed about the legitimacy of the claims of 125 USD per day for 180 days. This is definitely on the high side and I reject them.

If plaintiff had wanted this court to be convinced, it should have led more cogent evidence than was led, e.g. the vehicle log book if any or details of the mileage that the vehicle covered after it was put at the disposal of the defendant. Again there is no indication as to whether the said pick-up was exclusively used by the defendants or was used interchangeably by the plaintiffs and the defendants. I think the latter situation must have been what really happened. What then if any are the plaintiffs entitled to on this head of claim?

There is danger of being arbitrary in assessing how much the plaintiffs are entitled to. However, taking into account my findings that the defendants at least for some limited duration between 30/12/2001 to mid January 2002 and on other occasions when PW2 and Tristal Pearson were in the country used this vehicle, I think a sum of 100 USD a day for a total of 20 days only making a grand total of 2000 USD two thousand US dollars."

The findings of the trial judge above quoted reveal another dilemma that the judge found himself in view of the lack of any evidential basis to sustain the respondent's claim on this head. The judge was pushed into juggling to determine what appropriate grant if at all, to the respondent. The fact of the matter is that in the light of the judge's own findings, the respondent was not entitled to any claim or relief under this head so long as he (respondent) had failed to prove an essential element, that is to say that the parties had intended all along that there would be payment for the use of the pick-up and perhaps, how much. The respondent cannot unilaterally determine or impose a fee or charge for the use of the pick-up upon the abrogation of their agreement Exhibit 4A without any evidence that the decision was agreed between the two parties or even communicated to the other and a response indicated. No. The court cannot be a forum for enforcing any arbitrary initiatives such as the trial court was saddled with. The proper inference that the trial judge should have drawn was that the respondent was not entitled to any award under this head. Accordingly we find merit in this ground of appeal and allow it. The award of two thousand dollars in favour of the respondent is hereby set aside as being unwarranted by the evidence.

In the overall, save that grounds (a) and (b) fail for being without merit, ground (c) succeeds and is allowed. The awards entered in favour of the respondent are hereby set aside. We order each party to bear his own costs in view of the circumstances of this case.

J.B.AKAMBA.
Justice of Appeal.

OWUSU, JA - I have read the judgment of my brother before hand and I am in agreement with him that the appeal be dismissed on grounds (a) and (b).

On ground (c) i.e. "The judgment is against the weight of evidence," I am also of the same view that the Plaintiff led no evidence in proof of the various sums of monies claimed by the company. It was not enough for Daniel Akunnor to have mounted the witness box and repeated what he has put down in his statement of claim without legal proof of same.

See the case of **MAJORLAGBE VRS. LARBI & 6 ORS. {1959} GLR 190.**

That ground of appeal succeeds as indeed there is no evidence in support of the Plaintiff's claim for the various sums of monies in the light of the Defendant's denial of any indebtedness on their part.

On the claim for USD 3,000,000.00, I associate myself with the reasons assigned by my brother for disallowing it.

R.C. OWUSU
JUSTICE OF APPEAL

OWUSU-ANSAH, JA - I share the views expressed by my learned colleagues. There is nothing that can usefully be added. I agree to the judgment of the Court.

P.K. OWUSU-ANSAH
JUSTICE OF APPEAL

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