IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL - A C C R A

CORAM:- JONES DOTSE, J.S.C. [PRESIDING]
ANIN YEBOAH, J.S.C.
GBADEGBE, J.A.

H1/71/08
24TH JULY, 2008

1. APOSTROPHES S.A.
2. WILLIAM STERNGERG } **… PLAINTIFFS/APPELLANTS**
3. MARGARET D'SOUZA

V E R S U S

1. COMMISSIONER OF CEPS] … DEFENDANTS/
2. C.E.P.S.] RESPONDENTS

J U D G M E N T

JONES DOTSE, JSC read the judgment of the court as follows:

By their writ of summons the Plaintiffs/Appellants hereinafter referred to as Plaintiffs claimed against the Defendants/Respondents hereinafter referred to as Defendants in the High Court Accra, Fast Track Division, the following reliefs:-

i. **$4,441,680.00 Four Million Four Hundred and Forty One Thousand, Six Hundred and Eighty US) dollars being market value of the goods fraudulently converted by the Defendants Servants and or agents in the course of their duty.**

ii. 6% Interest on the said sum from 8th November, 2000 to date of judgment.

The Defendants contested the suit and after trial, the Learned Trial Judge on 17th day of January, 2007 delivered Judgment in favour of the Defendants and stated in part thus:-

"…Well said, but what happened to CIF (Cost Insurance and Freight) on filling the IDF exhibit B, the consignee gave the CIF as $25,772.07 and this was re-assessed as $49,309.16 inclusive of import duty. So why should we be thinking of freight again in calculating the value of the goods. In any case the proper procedure was for the plaintiff to have particularized his claim under particular heads e.g. Purchase price insurance, freight, import duty etc and supported each head with acceptable evidence like documentary evidence as this would be akin to proving special damage. In the absence of this, the court has no reason to reject the value as stated on the IDF presented by his own consignee and which formed the basis of calculation of payable import duty plus an amount of money which the court assess as reasonable profit that would be derived from it.

And obviously, even granting that the purchase price was 1,000,000. French France i.e. 134,000 USD, the claim for 4,441, 680.00 USD, a whopping 3000% percent profit cannot be countenanced as

reasonable under any circumstances or in any forum. This court therefore proceeds to reject the claim of the plaintiff and holds that if the plaintiff is entitled to any claim at all, it should be based on the amount declared and which formed the basis of the calculation of the import duty payable i.e 49,306.16 USD plus reasonable profit.

But is the plaintiff entitled to his claim at all".

Continuing further and attempting to answer the above question, the learned trial Judge finally dismissed the plaintiff's claims in the following words:-

"On the contrary the defendants led evidence consistent with their pleadings that, the parties moved beyond the auction stage to a stage where an amicable settlement was brokered by DAN AGYEMANG a representative from CASTLE who had been so selected pursuant to a petition written by the 2nd plaintiff. The evidence as to where and how the settlement was brokered was given by Lawyer Tagoe and was corroborated in material detail by DAN AGYEMANG (THE FACILITATOR) and Lawyer Awoonor. From these three witnesses the conclusion was simple the settlement ended at the CEPS HEADQUARTERS with the decision that the goods are to be shared amongst the 2nd plaintiff and the consignee ALEX KOOMSON.

On the final release of the goods, the court notes that there were a lot of inconsistencies in the plaintiffs' evidence as to what happened at the BIRIM warehouse. On the other hand the evidence of the Defendants to the effect that on the conclusion of the settlement the CEPS official led the parties to the warehouse where the door was open for them to do the sharing was very much consistent with their pleadings and the court accepts that. This court therefore holds that the plaintiffs claim against the defendant fails. If the plaintiffs have suffered any loss it was inflicted on them by their consignee Alex Koomson and the defendants have nothing to do with it.

The plaintiffs claim against the defendants is dismissed with costs assessed at ¢5,000,000. emphasis mine.

I have had to quote in extenso from the judgment of the trial court to show the basis of the decision given by the trial court.

Aggrieved and dissatisfied with the above decision, the plaintiffs lodged an appeal against the said judgment on 16th April, 2007, with the following grounds of appeal.

GROUNDS OF APPEAL

1. The Judgment is against the weight of evidence.

2. The Learned trial Judge failed adequately or at all to consider the case for the plaintiffs.
3. Judgment is unsupported by evidence on record.
4. The learned judge misconstrued the import of the address of the plaintiffs counsel.
5. The learned judge wrongly misconstrued the purpose of an address.
6. The learned judge misconstrued the import of Bill of Lading in international trade.
7. The learned trial judge failed to appreciate the distinction between Bill of Lading (B/L) and Import Declaration Form (IDF).
8. The Learned judge woefully failed to appreciate the negotiability of a Bill of Lading.
9. The Learned judge erroneously misconstrued the market value of the goods and the purchase value.
10. The Learned judge misconstrued the law on auction of goods in the international trade.
11. The judgment is contrary to the principle in Quaye vs. Mariamu [1961] GLR 93.
12. The learned judge misapplied the principle in Tabury vs GCB [1980] GLR 90.

13. Additional grounds of appeal will be filed upon receipt of record of proceeding.

Since no additional grounds have been filed, I take it that the above 12 grounds are those to be dealt with.

Considering the grounds of appeal filed, it appears to me that, those grounds could have been subsumed under only three grounds namely:

1. Whether the judgment is against the weight of evidence or not.
2. The Rights of a holder of a Bill of Lading and or Import Declaration Form (IDF) as against the shipper to have the goods delivered to the exclusion of other persons.
3. Whether or not the learned trial judge misconstrued the relevant principles on assessment of damages when he assessed the value of the goods in this case.

FORMULATION OF GROUNDS OF APPEAL

Before I proceed any further, I would like to deal with the formulation of grounds of appeal in this court.

Rule 8 of the Court of Appeal Rules, 1997 C.I. 19 as amended by Court of Appeal (Amendment) Rules, 1998 C.I. 21 deals with Notice and grounds of appeal.

Rules 8 (2) (a) of C.I. 19 as amended states as follows:-

"The notice of appeal shall be filed in the Registry of the Court below and shall

(a) Set out the grounds of appeal.

Rule 8(4), (5) and (6) of C.I. 19 as amended by C.I. 21 provide further as follows:-

8(4) "Where the grounds of an appeal allege misdirection or error in law, particulars of the misdirection or error shall be clearly stated".

8(5) "The grounds of an appeal shall set out concisely and under distinct heads the grounds upon which the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively."

8(6) "No ground which is vague or general in terms or which discloses no reasonable ground of appeal shall be permitted, except the general ground that the judgment is against the weight of the 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 an application by the respondent."

Considering the grounds of appeal filed in the instant appeal against the Rules of the Court of Appeal just referred to supra, discloses serious breaches and or non-compliance with the said Rules of procedure.

For example, there is infact no difference in substance between the formulation of the grounds of appeal, in grounds 1, 2 and 3 supra. (Refer to them).

If the judgment is against the weight of evidence, what it actually means is that, the judgment cannot be supported having regard to the evidence on record, and that the judge did not in essence consider adequately the case for the party appealing.

Similarly, grounds 4 and 5 which deal with an address submitted before the court is misplaced. This is because an address submitted by counsel on behalf of his client at the close of the case does not form part of the evidence before the court. If anything, it only serves as a guide for the Judge to consider and appreciate the formulation of the facts and or law as the case might be. In any case, the decision of the judge is based on his own appreciation of the facts and law in the case and that right of the judge cannot be taken away from him.

In circumstances like the instant case, where learned counsel for the plaintiffs is of the opinion that the judgment is contrary to the principles in the case of QUAYE V. MARIAMU [1961] GLR 93 and TABURY v. G.C.B [1980]GLR 90 the principle of law so established by the cases should have been clearly stated.

If this had been done, the error of law or misdirection would have become clear and the particulars of the error or misdirection as appear apparent from the address of learned counsel or from the record would have been stated.

As matters stand now, the principles of law stated by the two cases referred to in the grounds of appeal are not known and clear. As a result, those grounds of appeal, namely grounds 11 and 12, are struck out as being vague and disclosing no reasonable ground of appeal.

Furthermore, grounds 6, 7 and 8 which all deal with Bill of Lading and or Import Declaration Form (IDF) could have been subsumed under one all encompassing ground of appeal as I have attempted to re-formulate above.

The Court of Appeal expressed worry and concerns in the unreported cases of (1) DASEBRE NANA OSEI BONSU II alias S.T. OSWALD GYIMAH **KESSIE … PLAINTIFF/APPELLANT**

VRS

AKWASI MENSAH & 3 OTHERS

…DEFENDANTS/RESPONDENTS

Suit No H1/131/2005, dated 13th July, 2006 CORAM: AKAMBA, J.A. Presiding, Dotse and Apaloo JJ.A. and KWAKU AHAMAH

VRS

PANDIT ADU

Suit No. C.A. 81/177/04 dated 10th December, 2004,

CORAM: ADINYIRA J.A. as she then was presiding, AKAMBA and DOTSE J.J.A.

In the Kwaku Ahamah vs Pandit Adu case, the court, whose unanimous decision was delivered by Dotse, J.A as he then was held in part as follows:-

> **"Rule 8 of the Court of Appeal Rules, 1997 C.I. 19 as amended by C.I. 21 deals with Notice and grounds of Appeal lodged in this court. Rules 8(4), (5) and (6) in particular deals with the contents of grounds of appeal and what is to be contained in the particulars of**

misdirection or error of law when these grounds are alleged. The Rules clearly provide that grounds of appeal which are vague or general and which disclose no reasonable ground of appeal shall not be permitted except the general ground that the judgment is against the weight of evidence".

Continuing further, the Court of Appeal, per Dotse J.A. held as follows:-

"**What Learned Counsel for Appellant in all Appeal cases must take note of is that, grounds of appeal must be formulated to comply with Rules 8(4), (5) and (6) of C.I. 19 as amended by C.I. 21.**

This procedure will ensure that counsel set out clearly and under distinct heads their grounds of appeal.

By this procedure, arguments would be specifically referable to the grounds of appeal and vague and inconcise grounds of appeal would therefore be clearly seen as inapplicable". Emphasis mine.

In the DASEBRE NANA OSEI BONSU II

VRS

AKWASI MENSAH & 3 OTHERS,

The Court of Appeal, per Akamba J.A, in his opinion in support of the lead judgment delivered by Dotse J.A. stated in part as follows:-

"I agree with my brother Dotse, J.A. on the outcome of this appeal and subject to what follows anon, the reasoning behind it as well. I propose to have a critical consideration of the twenty-five (25) or so grounds listed as additional grounds of appeal **with a view to demanding compliance with the rules of this court in this vital area of filing an appeal**.

In carrying out this undertaking, I am also mindful that the issues have been raised as a preliminary point by the defendant for determination by this court. A quick look at the so called additional grounds of appeal listed by the plaintiff reveals them as impulsive tabulations by the plaintiff or made without due regard or cognition of rule 8(4), (5) and (6) of C.I. 19 as amended by C.I. 21".

Continuing further, Akamba J.A stated as follows:-

> **"Rule 8(4) of C.I. 19 stipulates that where the ground of appeal alleges a misdirection or error of law, then the party is obliged to provide the particulars of the misdirection or error of law by clearly stating them to guide the court. The rules clearly require that grounds of appeal be fashioned out in concise language devoid of**

arguments and narrations. Furthermore, the rules forbid the use of vague and general terms."

I have decided to go this length to illustrate the fact that the practice whereby Appellants file grounds of appeal without due regard to the Rules of this court will no longer be tolerated.

Based on the above clearly stated principles of law, the decision to reduce the grounds of appeal filed in this case from twelve (12) to three (3) should be deemed to be in conformity with Rules 8(4), (5) and (6) of the Court of Appeal Rules, 1997 C.I. 19 as amended by C.I. 21

BRIEF FACTS

The facts in this case admit of no complexities whatsoever. The plaintiffs shipped six containers of exercise books from the port of Antwerp in October 2000 to the port of Tema. The consignee was a Company called MARANOBRA VENTURES LTD. For some unexplained reasons, the said MARANOBRA VENTURES were unable to clear the goods at the port after their arrival. As a result, the goods were put on unclaimed CARGO LIST (UCL) by the Defendants in accordance with custom procedure and regulations. This therefore meant that the goods were due for AUCTION.

The auction was duly advertised, but the goods were never auctioned on the due dates on which the advertised sales were to take place.

From the facts, it is clear that following the inability of the Defendants to auction the goods on the advertised dates, series of interventions were put in by not only the plaintiffs, but also by one ALEXANDER KOOMSON the Managing Director of MARANOBRA VENTURES (who were the consignees) who requested to have the goods released or sold to OMAN MANA ENTERPRISE.

This request was approved and 4 containers of the goods were disposed of to Oman Mana Enterprise, one container to MR. KOFI SAM and one to MR KWESI AGYEMAN SARKODEE.

Following a Petition by the plaintiffs about the conduct of the auction sales of the goods, a committee of Enquiry was set up to enquire into "MYSTERY over Goods at Customs, Excise and Preventive Service (CEPS)".

Four of the disposed off Containers of the goods were traced to a Bonded Warehouse at BIRIM MATCH FACTORY and were retrieved.

Following petitions by the plaintiff to the Government of the Republic of Ghana, one DAN AGYEMAN reputed to be a special assistant at the office of the President of the Republic of Ghana was nominated to facilitate an amicable settlement of the matter between the plaintiffs and their partner ALEX KOOMSON at the offices of the Defendants.

From the evidence on record, it appeared that the matter was resolved and that the parties were to share the goods.

Having read the appeal record, especially the evidence of EKOW NYAMEKYE AWOONOR, Reference page 108-114 and DAN AGYEMANG, Ref pages 116-121, I am at a loss as to why the Plaintiffs couched and presented their Statement of Claim in the manner they did.

I have been surprised at the contents of the Statement of Claim because nowhere in it did the plaintiffs make any reference to the petition they sent to the President's office which led to the involvement of DAN AGYEMAN, Dw4. in the case.

From the cross-examination of Dw4 by learned counsel for the plaintiffs at the time, PRINCE ASHIE NEEQUAYE, one gets the impression that

the plaintiffs did not deny the intervention of an officer from the office of the President of the Republic of Ghana in the person of Dw4, DAN AGYEMANG.

There is also no indication that the testimony of Dw4 about the amicable sharing of the goods and the resolution of the dispute at the meeting held at CEPS Headquarters was false.

It is trite learning that, cross-examinations are done to destroy the credibility of the witness, deny the evidence of the witness and or lay a foundation or basis for the case or put forward the side of the case for the cross-examiner.

I do not see any of the said principles at play during the cross-examination of Dw4 by Counsel for the plaintiffs.

Why should the plaintiffs remain mute even in their Reply when the Defendants had made copious references to the intervention of the said DAN AGYEMANG, Dw4.

As matters stand now, I am in complete agreement with the findings of fact, assessment and evaluation of same by the learned trial judge in his judgment, particularly on pages 172 to 175 of the appeal record.

In coming to this conclusion I am mindful of the long list of respected legal authorities which state that an appellate court should not interfere with such findings of fact unless it can demonstrate that the findings are perverse.

In the instant case, I am well fortified by the said authorities and hold that I am unable to differ from the findings of fact made by the trial court.

Cases which immediately come to my mind are the following:

1. POWELL

   VRS

   STREATHAM MANOR NURSING HOME (1935) AC. 243 – where it was stated that an appellate court should be reluctant to differ from the Judge who has seen and heard the witnesses and has the opportunity of watching their demeanour, unless it is clearly shown that he has fallen into error".

2. THOMAS

   VS

THOMAS (1947) I.A.E.R. 582 – where the dictum of Lord Sankey in the Powell case referred to supra was quoted with approval as follows:-

"The Judgment of a Judge who has heard and seen witnesses and has reached a conclusion or drawn an inference as to the weight of their evidence is entitled to great respect whether or not he comments on their credibility or says expressly that he prefers one to another.

3. ASANTE

VS

CFAO [1961] GLR P.C. 125

4. NTIRI & ANR

VS

ESSIEN & ANR [2001-2002] SCGLR 451

5. AKUFO-ADDO

VS

CATHLINE PART 3, [1992-93] GBR 937, at 983 per Osei-Hwere J.S.C.

6. See the Nigerian case of BASHAYA VS. STATE (1998) 4SCNJ 202 where the Supreme Court of Nigeria held as follows:-

"The duty of the appellate Court is to ascertain whether or not there is such evidence, upon which the trial court acted and once there is evidence the appellate court must not interfere with the trial courts decision".

7. See also the Gambia Supreme Court unreported case of GREEN GOLD LTD – (APPELLANT) VS KOMBO POULTRY FARM LTD – (RESPONDENT) CORAM: SAVAGE C.J, MAMBILIMA, TOBI, AND DOTSE J.J.S.C. and AGIM Ag. J.S.C dated 15th February, 2008 held per Mambilima, J.S.C as follows:-

"With regard to the findings of fact made by the High Court, it is trite law that an appellate court should not interfere with such findings of fact unless it can be demonstrated that the findings are perverse or are not supported by the evidence on record or are made on a misapprehension of facts.

From the above litany of very well respected judicial decisions, I find it difficult not to accept the findings of fact arrived at by the learned trial judge after he had so painstakingly reviewed, analyzed and evaluated the evidence on record.

Under the circumstances, it is my conclusion that the findings of fact arrived at by the learned trial judge are amply supported by the evidence and there is nothing extra ordinary to merit this appeal court varying those findings of fact.

This now leads me to the grounds of appeal which have been re-formulated supra as, in deciding that the findings of fact made by the learned trial judge are supported by evidence on record, I should not be misunderstood to mean that an appellate court does not have the power or right to set aside findings made by a trial court.

The position of the law is that an appellate court can set aside the findings of fact by a trial court where among others, the said findings are clearly unsupported by evidence on record or where the reasons in support of the findings are unsatisfactory.

The following cases support the above stated legal position

1. KGLEX LTD NO2.

   VS

   FIELD [2000] SCGLR 175 at 185

2. ACHORO

   VS

AKANFELA [1996-97] SCGLR 207.

This will now lead me to the grounds of appeal which have been reformulated as follows:

1. JUDGMENT IS AGAINST THE WEIGHT OF EVIDENCE

It is not in dispute in this case that the plaintiffs are the shippers of the goods contained in the six containers, whilst MARANOBRA VENTURES LTD are the consignees of the said goods.

On page 33 of the appeal record, William Henry Steinberg, the 2nd Plaintiff stated during cross-examination that one ALEXANDER KOOMSON is a Director of Maranobra Ventures and that he the 2nd Plaintiff is the other Co-Director of the said Company.

The 2nd Plaintiff further stated clearly that Mr Alexander Koomson owned the majority shares in the said MARANOBRA Ventures and that Mr. Koomson has 53.7% shares in that Company with the rest being owned by him.

It also has to be noted that, even though a limited liability Company has the legal responsibilities of a natural person of full age and capacity, that capacity cannot be exercised by the Company without the natural persons who own that Company or operate the business of the company.

What this means is that, for the said MARANOBRA VENTURES to undertake or exercise any of its stated objects, it must do so through its officers or agents whom it employs.

The 2nd Plaintiff also admitted the obvious, that the plaintiffs are the shippers whilst the said Maranobra Ventures are the consignees. Again the 2nd Plaintiff during cross-examination on page 34 of the appeal record in answer to a question which went thus, stated the obvious

Q. Do you know any reason why MARANOBRA failed to clear the goods.

A. I don't know why and I have been looking for Mr. Koomson and that is why we assumed that he was conniving with some of the CEPS Official.

Q. You are a director of the Company and therefore you should know.

A. No, I am Co-director that doesn't mean I have to follow the business everyday. I was in Europe at the time the goods arrived. Mr. Koomson should have cleared the goods, he did not do it, as a result thereof, it came on the uncleared Cargo list and it was gazette (SIC) for auction but it got never auctioned".

The finding by the learned trial Judge that the goods were not cleared and that led to their being placed on the uncleared Cargo list has been supported by the Plaintiffs own testimony.

I have apprized myself of the submissions of learned counsel for the parties in their statements of case filed before this court on all the issues raised therein.

It is in this respect that I fail to appreciate the submission that the Defendants should not have released the goods at anytime to Alexander Koomson. I think this statement is wrong.

This is because, the Bill of Lading in respect of the goods had been consigned to MARANOBRA VENTURES, a company in which Mr. Alex Koomson owned the majority shares.

Secondly, the 2nd Plaintiff himself testified that it was Mr. Koomson who should have cleared the goods, but did not do so.

Once the goods had been consigned to the Company and without the natural persons, the Company cannot perform its functions, it follows that it was the responsibility of the authorized and recognized officers

of MARANOBRA VENTURES led by Mr. Koomson who had this right and privilege.

If I may ask this question, with what document was the said Alexander Koomson required to clear the goods from the Port of Tema as was stated by the 2nd Plaintiff in his evidence?

I believe it must be the Bill of Lading that had been consigned to the Company of which Mr. Koomson was the majority shareholder.

I believe also that it is because of this very fact that the 2nd Plaintiff testified that he expected Mr. Koomson to have cleared the goods to prevent them being placed on the (U.C.L.).

If the above scenario is accepted which indeed is the situation, then the statement by learned counsel for the Plaintiffs in his written statement of case that

> "There is no evidence that Alexander Koomson was in possessing of a bill of lading in connection with the shipment of the goods"
>
> cannot be accepted as a correct statement of fact, taking into account the evidence on record.

Furthermore, if one considers the entire role played by DAN AGYEMANG which role was at the request of the 2nd plaintiff, then the failure of the plaintiffs to make full disclosure of the said evidence until it was raised by the Defendants smacks of bad faith.

I am also of the opinion that, if the plaintiffs were dissatisfied with the resolution of the dispute and the sharing of the goods by DAN AGYEMANG between the plaintiffs and Alex Koomson, nothing prevented the plaintiffs from going to court to put an injunction on the release of the goods. In any case the plaintiffs have had the services of competent and experienced legal representation in this case.

The presentation of the instant dispute, as if it was one between the plaintiffs and the defendants is uncalled for and very much regrettable.

This is because, if the plaintiffs consignee had cleared the goods on time, the Defendants who are a statutory creation would not have invoked their statutory powers and placed the goods on the uncleared Cargo list, thereby liable for auction.

What must be noted is that, it is the default of the consignee MARANOBRA VENTURES in clearing the goods on time that has

led to the Defendants imposing the appropriate sanctions as required by law.

From the evidence on record, I find that the Defendants acted within the power at their disposal and the Plaintiffs have not been able show to the satisfaction of the court, that the Defendants were arbitrary, capricious or vicious in their handling of the issues of the default of the consignee in clearing the goods.

This court is therefore unable to accept the contention that the Judgment is against the weight of evidence.

This then brings me to the resolution of ground two which deals with the BILL OF LADING.

I have tried to understand what really a Bill of Lading is. From the text books and the decided cases, I am of the opinion that the following is an apt definition of a Bill of Lading.

> "A Bill of Lading is a document giving title to the goods, signed by the Captain on his deputy or the shipping Company or its agent, containing the declaration regarding receipt of the goods (Cargo) the conditions on which transportation is made and the engagement

to deliver goods at the prescribed port of destination to the lawful holder of the Bill of Lading.

It must also be noted that Bill of Lading and other shipping documents are not negotiable unless they are expressly made so by the shipper.

It is usually made out to the seller and transferred by delivery and endorsement. The Bill of Lading to be tendered must be clean. A clean Bill of Lading does not bear any superimposed clause or annotation expressly declaring the defective condition of the goods and or the packing. It states that the goods were loaded on board the ship in apparent good order and condition. Where the Bill of Lading is claused and those clauses cast doubt on the apparent order and conditions of the goods on loading, it will not be a good tender.

A claused Bill of Lading contains additional clauses limiting the responsibility of the shipping Company"

Reference 2nd maritime Seminar for Judges in a paper by Alexander Williams, Director, Legal Department CAL Bank.

There is virtually no difference between the above definition and the one proffered by the learned trial Judge in his Judgment.

In the instant case, I have looked at the Bill of Lading on page 218, Exhibit "B" and the Import Declaration form Exhibit 'B1 – B3, pages 219 – 221 and I am satisfied that the Bill of Lading was really meant for MARANOBRA VENTURES, LTD, chapel Hill, P. O. Box 1467 Takoradi.

I am further satisfied that MARANOBRA were also stated therein to be notified as the consignee's in case of any eventuality. The document Exhibit 'B', is a document that passes title in the goods to the consignee, it has been signed by the carrier's agent, and contains a description of the cargo and of the conditions of the transportation and agreement that the goods were from the Port of Antwerp to be delivered to Port of Tema and is the original Bill of Lading, out of three.

This proves that, Exhibit 'B' is a document which satisfies the standard International definition of a Bill and must be treated as such.

In the case of ROBIN HOOD VRS. FARAH, [1963] 2 GLR 149, the Supreme Court held as follows:-

In a C.I.F (cost insurance freight) contract where the seller completely satisfies his part of the contract, that is to say, as soon as he

i) ships goods of the description contained in the contract,

ii) procures a contact of affeightment which is reasonable and usual in the trade and procures a bill of lading evidencing the contract of affeightment.

iii) covers the good with a policy of insurance upon terms current in the particular trade, and

iv) tenders all the relevant documents to the buyer, the incident to risk passes to the buyer upon shipment of the goods.

Thereafter the buyer will be under an obligation to pay even if the goods get lost in transit, or become damaged through any intervening circumstances.

In the case of TABURY VRS. GHANA COMMERCIAL BANK, [1980] 1GLR, it was held by Sarkodee J, "that the delivery of the Bill of Lading operated as a symbolical delivery of the Cargo, and whether property in the goods by the endorsement and delivery of the Bill of Lading would

pass, would depend upon the intentions of the parties that the property should pass".

After examination of the issues raised in the above authorities and the facts in this case, what remains puzzling is the exact relationship between the plaintiffs the shippers of the cargo, and MARANOBRA VENTURES, the consignees of the Cargo.

It is not exactly clear whether the relationship between the shippers and the consignees is that of seller and buyer.

What is deducible from the circumstances of this case however is that the consignees of the goods had the right to deal with the goods and that explains why he was able to put value on the goods by the declarations contained in the IDF. The said declarations formed the basis of the calculation of the duty that the Defendants exacted on the goods per the I.D.F that was submitted.

It must be properly understood that, the Defendants were only performing their statutory duties under the Customs, Excise and Preventive Service (Management) Act, 1993 PNDC Law 330, section (2) thereof enjoins the

Defendants to collect and account for the duties, taxes, revenue and penalties payable under the Act.

From the forgoing, it is my contention that MARANOBRA VENTURES remained throughout the transactions as the rightful claimants under the Bill of Lading and therefore the Defendant acted within their rights when they continued to deal with representatives of MARANOBRA VENTURES to wit, Alex Koomson and the plaintiffs on the other hand.

I cannot help but adopt the words of the Court of Appeal in the case of

ALFA ENTERPRISE

VRS

PAN AFRICAN TRADING CO.

[1979] GLR 571 where the case of SANDELS BROTHER

VRS

MACLEAN & CO, (1883) 11Q BD 327

Which was quoted with approval and this meets my commendation and adoption

Another case worth considering is the Supreme Court case of

KAGUIN ENTERPRISE (GHANA) LTD.
Vrs
UMARCO (GHANA) LTD. 2000 SCGLR 530

In the above case, the Bill of Lading inserted in the consignee's column the words **"TO ORDER"** instead of naming a particular institution, individual or body corporate.

It is also generally understood that, in the mercantile world in practice, when shippers intend to protect their interest when a consignment has not been paid for is to hold on to the commodity and allow it to remain their property by inserting in the consignee's column **"TO ORDER".**

In a dispute between the shippers and the consignee's who were mentioned in the **"NOTIFY"** column on the Bill of Lading, the Supreme Court by a majority decision of 4 to 1 held appropriately as follows:

> "As confirmed by section 61(e) of the Sales of Goods Act, 1962(Act 137) a bill of lading is the evidence of the title and of the goods shipped, and by its endorsement and delivery, the transfer of the possession and also of the property in the goods is effected."

In the instant case, the plaintiffs consigned the goods to **MARANOBRA VENTURES** and also mentioned them again in the NOTIFY column in the Bill of Lading.

The **KAGUIN Vrs UMARCO** case already stated supra has re-inforced my conviction that having divested themselves of title in the cargo to **MARANOBRA,** the plaintiffs cannot turn around and complain about the conduct of the defendants who only performed a statutory function.

The same point had earlier been stated by Amissah J.A as he then was in the case of

CILEV
Vrs
BLACK STAR LINE LTD
[1968]GLR 480 at 485-486 when he stated thus:

> "Where the person unto whom it is stated in this part that the goods are shipped differs from the one given in the "notify address", I cannot conceive the name given in the notify address being by any stretch of the imagination described as the consignee. It is a simple common sense that the consignee of goods is the person to whom the goods are sent and not necessarily the address to be notified of the arrival of the goods predestined port."

It is therefore clear that the plaintiffs have no claim against the Defendants

One thing which remains certain is that, the plaintiffs voluntarily appointed MARANOBRA VENTURES as its consignees. What informed this decision is not made clear. But what is clear is that, by that appointment as consignees, certain legal rights and responsibilities arise between the plaintiffs as the SHIPPERS and the said MARANOBRA VENTURES as the consignees, whether MARANOBRA paid for the cargo for which they have been made the consignees is not very clear.

All the same, once the Bill of Lading has been made in their name they have acquired certain prescriptive rights which have to be respected from the contract of sale.

It is against this background that the conduct of the Defendants, in dealing with Alexander Koomson, a majority shareholder and chief executive of Maranobra Ventures is be seen.

Thus, if the plaintiffs had any complaints, it is certainly not against the Defendants, but Alex Koomson and Maranobra Ventures.

My decision therefore is that, since MARANOBRA VENTURES remained the consignees of the cargo, the Defendants committed no malfeasance when they dealt with them as owners quo owners of the goods per ALEX Koomson.

Once the Bill of Lading had been declared valid, the interpretation put on it by the Defendants vis-à-vis the conduct of the Plaintiffs in opting for settlement during the dispute over the clearance of the goods further absolves the Defendants of any legal liabilities.

This brings me to the last ground of appeal, to wit the ASSESSMENT OF DAMAGES BY THE TRIAL COURT.

As a matter of procedure, it is my respectful opinion that, the learned trial Judge should have determined the issue of liability first before proceeding to the issue of assessment of damages.

This is because it is only when the issue of liability is determined that the question of how much the plaintiffs are entitled to will arise.

I believe this explains the rationale for the question posed by the learned trial Judge, after the assessment of damages to wit, "But is the plaintiff entitled to his claim at all"

Having held that the plaintiffs are not entitled to their claims as they have taken action against the wrong person, it follows mutatis mutandis that they are not entitled to damages.

And since I do not intend to put the cart before the horse, it will not be prudent to discuss any matter on the question of damages.

In the result, the appeal lodged against the Judgment of the High Court, Accra, Fast Track division, dated 17th day of January 2007 is accordingly dismissed. The Judgment of the trial High Court, of even date is hereby affirmed.

[SGD.] JONES DOTSE
JUSTICE OF THE SUPREME COURT

I also agree. **[SGD.] ANIN-YEBOAH**
JUSTICE OF THE SUPREME COURT

I agree. **[SGD.] S. GBADEGBE**
JUSTICE OF APEAL

COUNSEL- MR. EBOW QUASHIE FOR THE PLAINTIFFS/ APPELLANTS.

MR. EBOW PAITOO FOR THE DEFENDANTS/ RESPONDENTS.

~eb~