

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE,  
COMMERCIAL DIVISION, HELD IN ACCRA ON FRIDAY THE 22<sup>ND</sup> DAY OF  
SEPTEMBER, 2023 BEFORE HIS LORDSHIP FRANCIS OBIRI 'J'.

SUIT NO. CM/RPC/0486/2018

OLD PARK ENGINEERING SERVICE - PLAINTIFF/RESPONDENT

VS

CASSEL ENERGY LIMITED & ANOR - DEFENDANTS/APPLICANTS

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**RULING**

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I have listened to the submissions by counsel for the Defendants and the Plaintiff. I have also gone through the documents filed in support and in opposition to the motion filed by the Defendants on 7<sup>th</sup> June, 2023 for the court to vary its orders in respect of the Reserved Price dated 7<sup>th</sup> February, 2023.

I have considered the antecedents of this case. The Plaintiff's counsel has informed the court that the Judgment Debt as at today, 22<sup>nd</sup> September, 2023 would be about USD5,000,000.00 which is about GH¢60,000,000.00.

In cases of an auction, after the Judgment Creditor has been paid and the State has received its 3% tax and the Auctioneer has also been paid the auctioneer's fees, the Judgment Debtor is given any amount which would be left.

It means that if there is any means by which the court can ensure that the attached property is sold far more than the judgment debt, the court must assist in that direction.

The Defendants have attached two valuation reports to their application as exhibits 'D' and 'E'. The two reports put the forced sale price of the attached properties at GH¢99,458,201.00. The two reports are from Assenta Property Consulting Limited and Quans Consult Limited. The two entities have been described in the reports which are exhibits "D' and 'E' as consultants, valuers etc.

These are experts in the field of valuation of properties. It is the law that a court is not bound by the evidence or opinion given by an expert such as a valuer. However, it is equally the law that a court should give good reasons why an expert opinion is to be rejected.

**See: TETTEH & ANOR V HAYFORD (SUBSTITUTED BY) LARBI & DECKER [2012] 1 SCGLR 417**

**SASU V WHITE CROSS INSURANCE CO. LTD. [1960] GLR 4 CA**

**DARBAH AND ANOTHER V AMPAH [1989-1990] 1 GLR 598 CA**

I do not have any reason to reject the opinion of the experts as stated in exhibits 'D' and 'E'.

The Plaintiff counsel's objection to the experts opinion is oral and not documentary unlike exhibits 'D and E'. The law is settled, that where oral evidence or averment conflicts with documentary evidence such as exhibits 'D' and 'E', the documentary evidence must prevail, where the documentary evidence is authentic and genuine.

**See: WOOD (SUBSTITUTED BY) ASANTE-KORANTENG v TAMAKLOE AND DERBAN [2007-2008] 2 SCGLR 852**

**FOSUA & ADU-OPOKU v DUFIE (DECEASED) AND ADU-POKU MENSAH [2009] SCLGR 310**

**ATADI v LADZEKPO [1981] GLR 218 CA**

**YORKWA v DUAH [1992-1993] GBR 278 CA**

**REPUBLIC v NANA AKUAMOAHA BOATENG II, EX PARTE DANSOA AND ANOTHER  
[1982-1983] GLR 913 SC**

**ABBEY AND OTHERS v ANTWI V [2010] SCGLR 17**

I also do not have power to place the Plaintiff counsel's oral submission over the documentary evidence by virtue of principle of stare decisis as the above cases have held in such conflict between oral and documentary evidence.

I am therefore of the view, that justice would be best served to the Plaintiff, Defendants and the State if the figures in exhibits 'D' and 'E' are adopted by the court. After all, if the properties are sold at a higher price, the state 3% will also increase.

From the above rendition, I think it would be in consonance with equity and good conscience to grant the application and same is accordingly granted.

The Reserved price which was made by this court on 7<sup>th</sup> February, 2023 is hereby varied. The attached properties should not be sold for less than **GHC99,458,201.00**. The auction sale should be done or take place within 30 days from today, 22<sup>nd</sup> September, 2023 and the highest bidder must pay the auctioned price within the time prescribed under the Auction Sales Act, 1989 (PNDCL 230), unless otherwise varied by the Court. I order accordingly. No order as to cost.

**SGD.**

**FRANCIS OBIRI**

**(JUSTICE OF THE HIGH COURT)**

**COUNSEL**

**FRED ASARE DANQUAH FOR PLAINTIFF/JUDGMENT CREDITOR**

**/RESPONDENT**

**MOSES BAAFI ACHEAMPONG HOLDING BRIEF FOR EDWIN LETSA KPEDITOR FOR  
DEFENDANTS/JUDGMENT DEBTORS/APPLICANTS**

## AUTHORITIES

1. TETTEH & ANOR V HAYFORD (SUBSTITUTED BY) LARBI & DECKER [2012] 1 SCGLR 417
2. SASU V WHITE CROSS INSURANCE CO. LTD. [1960] GLR 4 CA
3. DARBAH AND ANOTHER V AMPAH [1989-1990] 1 GLR 598 CA
4. WOOD (SUBSTITUTED BY) ASANTE-KORANTENG v TAMAKLOE AND DERBAN [2007-2008] 2 SCGLR 852
5. FOSUA & ADU-OPOKU v DUFIE (DECEASED) AND ADU-POKU MENSAH [2009] SCGLR 310
6. ATADI v LADZEKPO [1981] GLR 218 CA
7. YORKWA v DUAH [1992-1993] GBR 278 CA
8. REPUBLIC v NANA AKUAMOAH BOATENG II, EX PARTE DANSOA AND ANOTHER [1982-1983] GLR 913 SC
9. ABBEY AND OTHERS v ANTWI V [2010] SCGLR 17