**IN THE SUPERIOR COURT OF JUDICATURE**
**IN THE SUPREME COURT**
**ACCRA-GHANA**

CORAM: DATE-BAH JSC (PRESIDING)
DOTSE JSC
ANIN-YEBOAH JSC
ARYEETEY JSC
AKOTO-BAMFO (MRS) JSC

**CIVIL APPEAL**
***NO: CA J4/17/2010***
***1ST JUNE, 2011***

**PEARSON EDUCATION LIMITED - - - DEFANDENT/APPELLANT**

**VRS**

**MORGAN ADZEI - - - PLAINTIFF/RESPONDENT**

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**J U D G M E N T**

**DR. DATE-BAH JSC:**

**Introduction**

This case is of seminal importance in determining the reach of copyright law in Ghana. The appellant has resisted the respondent's claim of infringement of copyright with several defences, but the one which has attracted my attention most is that which asserts that the protection of copyright law does not extend to the facts

of this case, because what has been reproduced is no more than an idea. This defence raises for the consideration of this Court the essence of copyright law. What is the balance of interests that is struck by the Copyright Act 2005 (Act 690) in common with copyright legislation elsewhere? This is the fundamental question that this Court needs to address in this case. Copyright law endeavours to strike a balance between protecting the economic rights of owners of copyright and the need to encourage the free exchange and dissemination of ideas which is vital for the development and progress of any society. This is why section 2 of the Copyright Act 2005 provides as follows:

> **"Section 2—Ideas, concepts excluded from copyright**
>
> Copyright shall not extend to ideas, concepts, procedures, methods or other things of a similar nature."

This case, in my view, requires of this Court a clarification and application of the law relating to the scope of the law of copyright in Ghana and is not limited, as contended by the respondent, to a consideration of whether the findings of fact made by the learned trial judge are sustainable in the light of the evidence on record.

**The facts**

The facts of the case should be narrated next to enable an appreciation of the issues of law raised in the case. The respondent, who was the plaintiff in the trial court, is the author of a novel entitled: "Woes of the African Mother", (hereinafter referred to as "Woes") which was first published in August 1982. This novel was selected by the West African Examination Council as one of the prescribed texts for prose in the English Language paper for the academic years 2004 to 2006 for the Basic Education Certificate Examination ("BECE"). The respondent, in his action

commenced at the Commercial Division of the High Court, Accra, on 10th November 2005, claimed that, following a meeting of the Directors of the Ghana Education Service ("GES") on the literature component of the Basic School English Language examination, it was decided that Junior Secondary School I pupils should be examined for prose in, *inter alia,* the respondent's novel. A recommendation was therefore made that 450,000 copies of the respondent's novel at a unit cost of 20,000 cedis be ordered. The respondent's grievance was that the appellant had published a work entitled "Gateway to English for Junior Secondary Schools Pupil's Book 3", (hereinafter referred to as "Gateway") which included, as Appendix 6, a summary of the respondent's novel. The respondent averred that by including his work as Appendix 6 in its publication, the appellant had in effect rendered the recommendation by the GES to purchase 450,000 copies of his novel nugatory and therefore caused him great loss and damage.

Originally the respondent had brought action against the six authors of "Gateway", in addition to the appellant publisher and its local representative in Ghana. He discontinued the action against the authors, by a notice of withdrawal of suit filed on 16th February 2006, whilst the learned trial judge, subject to certain orders she made, dismissed the action against the local representative in her judgment after trial. The parties to the appeal before us are therefore the respondent author of "Woes" and the appellant publisher of "Gateway". The remedies claimed by the respondent in his amended Statement of Claim filed on 25th November, 2008 were:

a) "An injunction to restrain the Defendants from doing as regards the 1st, 2nd, 3rd, 4th, 5th, 6th Defendants by themselves or by their servants or agents or any of them or otherwise howsoever and as regards the 7th and 8th Defendants, whether by their directors, officers, servants or agents or any of them or otherwise howsoever, the following acts or any of them, that is to say: copying without the licence of the Plaintiff the work entitled "Gateway to

English for Junior Secondary Schools Pupil's Book 3" or any other reproduction or substantial reproduction of Plaintiff's work entitled "Woes of an African Mother" or authorizing any of the acts aforesaid or otherwise infringing the Plaintiff's copyright of the said work.

b) An injunction to restrain the 7th and 8th Defendants, whether by their directors, officers, servants or agents or any of them or otherwise howsoever, from doing the following acts or any of them, that is to say: possessing in the course of a business, selling by way of trade or exposing or offering for sale or distributing them to the Ministry of Education and Sports in the course of business without the licence of the Plaintiff any copies of the said work "Gateway to English for Junior Secondary Schools Pupil's Book 3" or any other reproductions of Plaintiff's said work.
c) An order for delivery up of all infringing copies of the Plaintiff's work as are in Defendants *(sic)* control, possession, power, custody, control or with the Ministry of Education and Sports.
d) An inquiry as to damages for infringement of copyright or at Plaintiff's option an account for profits.
e) An order for payment of all sums due found due upon taking such inquiry or account together with interests thereon from the date of infringement till date of judgment.
f) An Order for Costs."

On 27th July 2006, Mrs. Justice Gertrude Torkornoo gave judgment for the respondent, finding that the appellant had infringed the copyright in the respondent's work in the use of it within "Gateway" and that the use to which the respondent's work was put did not constitute a permitted use, and the mode of presentation did not constitute fair practice. Her Ladyship held that she could not restrain the appellant from including the respondent's work without his licence, since that edition of "Gateway" was already in print and use. Also, she held that she

could not restrain the appellant from copying the "Gateway", since the greater part of the book had nothing to do with the respondent's novel. But she did grant an injunction to restrain the appellant from reproducing the respondent's work, "Woes", in its capacity as a prescribed examination book in any subsequent edition or reprint of "Gateway" or any other book, without first obtaining the licence of the respondent. The learned trial judge refused to grant the order sought by the respondent for the delivery up of all infringing copies of the respondent's work, but decided that the respondent should be compensated for the blatant infringement of his copyright without just cause. In order to do this, she decided to conduct an inquiry into the appropriate quantum of general damages for the infringement of copyright that she had found. After dismissing an application by the appellant asking her to declare her court *functus officio* and without capacity to examine the question of damages further, the judge embarked on an inquiry, under Order 63 of the High Court (Civil Procedure) Rules 2004, CI 47, to establish the quantum of compensation to be payable to the respondent. She awarded the respondent damages of $50,000 and 650 million cedis and costs of 100 million cedis.

The appellant's appeal to the Court of Appeal from this judgment was dismissed. Hence, the present appeal to this Court.

The summary of the respondent's work in *Gateway* which was found to be in breach of copyright was the following:

> "**Summary of the** pl**ot**
>
> Fundamentally this novel is the story of a Ghanaian named Foli. He is the last-born child of poor parents, Adamu and Manssa. Adamu has a traditional outlook and is hostile to modern education; he is glad when his friend Togbe Koklo, a cattle owner, takes Foli on as a cattle herd. Foli meets the children of Togbe Koklo and envies them because they attend school in the city. He longs

to do the same. Fortunately he meets a white man, Mr. Daniels, whose company is building a new road, and Mr. Daniels pays for him to attend primary school. His father dies when he is writing his final exams. After obtaining his Primary School Certificate, Foli goes to Accra in search of work, and gets a job as a porter at the airport. This arouses in him the desire to go abroad. He meets another white man, Mr. Fields, who also seems to want to be Foli's benefactor. He promises to obtain a passport and visa for Foli so that Foli can go to the USA, and to take care of him there. He goes with Foli on a trip to the village and meets Foli's mother, who – with foresight – distrusts him.

Foli is just about to board the plane for the USA when he learns that Mr. Fields has been arrested as a gold and diamonds smuggler. Thanks to his connection with certain politicians, Mr. Fields is later released, but he is deported from Ghana. Foli realizes that Mr. Fields wanted to use him in his smuggling operations.

Meanwhile, Foli arrives in New York. Owing to what happened to Mr. Fields, he is completely stranded on his arrival. A fellow Ghanaian shelters him for a while, and he gets a series of low paid jobs. Life is not easy, partly because he does not have valid immigration papers, or a Green Card that would enable him to work legally. He is nevertheless able to save some money; and after some time buys a second-hand car, which he uses as a taxi. There are dangers in this job, especially from passengers who turn out to be criminals.

He also meets and falls in love with one Delali, a Ghanaian and a trainee nurse, who is being sponsored by a Ghanaian politician at home. She decides that she does not care for the politician any more, and she and Foli get married in church. The marriage is under some strain at first because Delali does not become pregnant; but at last she gives birth to a son, Kwabla.

Foli finds life even harder now that he has a wife and child to support. In his despair he is ready to commit suicide. Just in time, however, he accidentally comes across the will left by Mr Fields, who himself committed suicide. In it, Mr. Fields promises a handsome reward to anyone who finds it. Foli thus comes into $70,000. He begins to think that the best thing for him to do is return to Ghana and use the money to help his suffering fellow-citizens. To prepare himself for his return he enrolls for a leadership programme.

Delali is at first very hostile to the idea of returning home, and the marriage is again under strain. She gets him to go with her on a shopping spree as a way of trying to tie him down to the USA. When relatives of his in London all suddenly die and he has to spend a lot of money on funeral expenses, she compels him to spend more money on her too. Suddenly their financial situation is once more delicate. Then Delali herself unexpectedly receives a huge sum of money: her one-time sponsor, the politician – now dead – paid sums into her account, and she has only just become aware of it. The money was originally Ghanaian public money, and had been obtained by the politician through corruption. Foli lectures his wife on the importance of putting it back into Ghana, and she comes round to his point of view.

They therefore fly back to Ghana where they set up an agricultural business. Foli urges the youths he meets to stay at home and help to build the nation, instead of going abroad in the false hope of being able to enrich themselves. He employs many of them on his farm."

The learned trial judge did not find that the above summary copied the language of *Woes.* She said (at pp. 260-1 of the Record) that:

> "What the writer of the said Section A presents is an arrangement of the information and details of the expression of the Plaintiff's ideas in

the book 'Woes of the African Mother' in a brief, recapitulation of the book. Although as argued in the addresses of the 1st defendant, many sub themes of the book may not have been included in the summary, the summary definitely covers the details of the fundamental plot and does not include any original effort from outside the book as to make the second work any different in a substantial manner. And this is the reason why I totally differ with the 1st defendant's argument that summarizing the same story which is identified as a summary of that story does not constitute 'reproduction' as anticipated under Act 690. It is my firm assessment that even if the summary does not constitute copying as the dictionary meaning of reproduction directs, it constitutes restructuring, arrangement and adaptation of the same material to fit with the aims of Appendix 6 – providing a summary of the details of the book, notes and questions on the book as a set text for examination."

The Summary is followed by the following questions:

"**Discussion and opinion**

1. Did Foli go to secondary school? If not, why not?
2. Was Foli right in wanting to leave Ghana for the USA?
3. What kind of experiences did Foli have in the USA – good, bad, or a mixture of both?
4. What problems arose in the relationship between Foli and Delali? Name and discuss three."

**Grounds of appeal**

The appellant filed originally five grounds of appeal against the judgment of the Court of Appeal. These were:

i. "The holding that the summary of "Woes of an African Mother" in "Gateway to English for Junior Secondary Schools" was not a permitted use of the respondent's work is unsupportable in law.
ii. Their Lordships erred in omitting to make a determination on the appellant's additional grounds 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10.
iii. The holding that the issue whether the appellant infringed the respondent's copyright is a question of fact is unsupportable in law.
iv. Their Lordships' affirmation of the High Court judge's award of general and exemplary damages in favour of the respondent is unsupportable in law.
v. Their Lordships erred in not correcting the inconsistencies in the award and calculation of damages."

The appellant was granted leave to file the following additional grounds of appeal:

"**Ground ii**

Their Lordships wrongfully omitted to make a determination on the appellant's additional grounds 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10.

**Additional Ground B**

The Court of Appeal failed to address the import of the provision in section 2 of Act 690 that the respondent did not have copyright in the plot of *Woes of the African Mother* or a summary of it, as in *Gateway to English for Junior Secondary Schools.*

**Additional Ground C**

The Court of Appeal erred in not setting aside the erroneous holding in the trial court that the defendant wrongfully restructured, arranged and adapted the plaintiff's book, *Woes of the African Mother* in *Gateway to English for Junior Secondary Schools* when the plaintiff never put up such case.

**Additional Ground D**

The Court of Appeal erred in not setting aside the wrongful literary review of Gateway in purported determination of the issue of infringement of copyright.

**Additional Ground E**

The Court of Appeal erred in not setting aside the judgment of the trial court which was against the weight of evidence.

**Additional Ground F**

The Court of Appeal erred in not setting aside the purported inquiry as to damages.

**Additional Ground G**

The Court of Appeal erred in not setting aside the trial judge's purported correction of errors in the judgment during the pendency of the appeal to the Court of Appeal.

**Additional Ground H**

That the Court of Appeal erred in not setting aside the trial judge's award to the plaintiff, general damages of US$ 75,000 in addition to damages of c600,000,000 and costs of c150,000.

**Additional Ground I**

The Court of Appeal erred in not setting aside the damages of US$ 75,000 based on speculated sales of the appellant book in and out of Ghana.

**Additional Ground J**

The Court of Appeal erred in not setting aside the award of damages, which is unsupportable at law.

**Additional Ground K**

The Court of Appeal erred in not setting aside the costs awarded in the trial court as manifestly excessive."

**The Law**

It has been considered an axiom of copyright law, as applied in the United Kingdom of Great Britain and Northern Ireland and many other jurisdictions, that copyright protects the expression of an idea, rather than the idea itself. Thus, for instance, in *Donoghue v Allied Newspapers Ltd.* [1938] 1 Ch. 106 at p. 109, Farwell J said:

> "This at any rate is clear beyond all question, that there is no copyright in an idea, or in ideas. A person may have a brilliant idea for a story, or for a picture, or for a play, and one which appears to him to be original; but if he communicates that idea to an author or an artist or a playwright, the production which is the result of the communication of the idea to the author or the artist or the playwright is the copyright of the person who has clothed the idea in form, whether by means of a

picture, a play, or a book, and the owner of the idea has no rights in that product."

Similarly in *Hollinrake v Truswell* [1894] 3 Ch 420 at p. 424, Lord Justice Lindley said:

> "Copyright does not extend to ideas, or schemes, or systems or methods; it is confined to their expression; and if their expression
> is not copied the copyright is not infringed."

Ghanaian law, as usual, has been influenced by this English law. Accordingly, the appellant has endeavoured to construct a case based on this axiom of English and Ghanaian law. That case is founded on Additional Ground B. In my view, this ground needs to be considered first. This is because, if it is successfully established, there will be no need to consider the other grounds.

In the appellant's Statement of Case, it presents the pith of its argument on this issue as follows:

> "57. Under these Grounds, the appellant submits that the judgment of the trial court failed to address the import of the provision in section 2 of Act 690 that copyright does not extend to ideas, and that the Court of Appeal erred in not setting aside the judgment on that ground. The plot of a novel, such as *Woes*, was an idea that had no copyright protection under Act 690. Therefore the Summary could not *constitute* copyright infringement especially when it was neither alleged nor established that the Summary had plagiarized the plaintiff's linguistic style or presentation. The appellant argues that the Summary,

published purposely for education, did not infringe the plaintiff's copyright in *Woes.*

*No copyright in the plot of Woes*

58. In paragraphs 4 and 5 of his amended statement of claim (p 19) the respondent pleaded that the Summary was a substantial reproduction of *Woes*, particularized as "general similarity of the plot characterization and incidents in the two works and upon the similarity or identity of the words and phrases" (page 20). The main issue that fell for decision was whether *Gateway* merely summarized the plot of *Woes* or, whether in doing so, it plagiarized the literary presentation in *Woes*. Obviously the plaintiff did not establish the alleged "similarity or identity of the words and phrases" because there was none. The grievance of "general similarity of the plot characterization and incidents in the two works" also overlooked the position that there is no copyright in ideas."

In its Statement of Case, the appellant cites in support of its argument, Copinger and Skone James on Copyright, Vol. 1, 15th Edition, p. 26, para 2-06 as follows:

> **"No copyright in ideas.** Copyright is a property right. But copyright is concerned, in essence, with the negative right of preventing the copying of material. It is not concerned with the reproduction of ideas but with the reproduction of the form in which ideas are expressed. "Ideas, it has always been admitted…are free as air. Copyright is not a monopoly, unlike patents and registered designs, which are…The

position is that, if the idea embodied in the plaintiff's work is sufficiently general, the mere taking of that idea will not infringe. *If, however, the idea is worked out in some detail in the plaintiff's work and the defendant reproduces the expression of that idea, then there may be an infringement".* (Emphasis supplied.)

**61.** At page 371-372, paragraph 7-13ff the learned authors discussed the distinction between the reproduction of an idea and the reproduction of *the expression* of an idea:

> **"Ideas versus expression.** In dealing with the question of copying, there should be borne in mind the well established principle that there is no copyright in mere ideas, concepts, schemes, systems or methods. Rather, the object of copyright is to prevent the copying of the *particular form of expression* in which these things are conveyed. *If the expression is not copied, copyright is not infringed.* Thus to be liable, the defendant must have made a substantial use of the *form of expression; he is not liable if he has taken from the work the essential idea, for his own purposes.* Protection of this kind can only be obtained, if at all, under patent law or the law relating to confidential information. This principle finds expression in many of the cases, to the effect, for example, that *it is no infringement of the copyright on a literary or dramatic work to take its basic idea or plot…"* (Italics supplied)."

Thus this court needs to examine this issue of whether there can be copyright in a plot and whether the Summary was of only the plot of *Woes* or of more than that. It is, however, for the purpose of determining this case,

unnecessarily broad to assert the validity of the proposition that there cannot be copyright in a plot. What is clear from section 2 of the Copyright Act 2005 is that "ideas, concepts, procedures, methods or other things of a similar nature" cannot be the subject of copyright protection. This section needs to be interpreted for the purposes of this case. Does the "summary of the plot" (quoted above) come within the exclusionary notion of an idea or concept or is it a reproduction of an expressed idea?

Section 2 presents difficulties of interpretation relating principally to the level of generality of the ideas intended to be within its ambit. In this connection, it has been argued that though the orthodox view is that copyright can only be in the expression or form of ideas, rather than in the ideas themselves, a particular pattern or sequence of detailed ideas can be regarded as an expression of those ideas, such that any copying of the pattern can constitute an infringement of copyright. The following passage from Laddie, Prescott and Vitoria, The Modern Law of Copyright and Designs, 2nd Edition (Butterworths, 1995) pp. 61-2 illustrates this argument:

> "**2.75** A moment's thought will reveal that the maxim is obscure or, in its broadest sense, suspect. For example, in the case of a book the ideas it contains are necessarily expressed in words. Hence, if it were really true that the copyright is confined to the form of expression, one would expect to find that anyone was at liberty to borrow the contents of the book provided he took care not to employ the same or similar language. This is not so, of course. Thus, it is an infringement of the copyright to make a version of a novel in which the story or action is conveyed wholly by pictures; or to turn it into a play, although not a line of dialogue is similar to any sentence in the book. Again, a translation of a work into another language can be an infringement;

yet, since the form of expression is necessarily different – indeed, if it is turned into a language such as Chinese the translation will consist of ideograms – the only connecting factor must be the detailed ideas and information.

**2.76** Further, on consideration it will be perceived that any literary or dramatic work contains a combination of detailed ideas, thoughts or information expressed in a particular language or notation; and once it is conceded that the protection is not confined to the actual language or notation used, it must follow that what remains, and is protected, consists of the collection of ideas, thoughts or information."

If the argument presented in this passage is accepted, it would follow that the ideas which are excluded by section 2 of the Copyright Act 2005 from being copyrighted must be those of a general character, as distinct from the detailed pattern of ideas and thoughts embodied, for instance, in a novel. Thus, if a novel were couched in different vocabulary, reproducing all its ideas, thoughts, plots and action, but without replicating any of its original language or style, I do not consider that this would come within the ambit of the exclusion in section 2, although there would have been a copying of only its ideas and not its expression. In other words, the copying of the detailed substance of a literary work, without its particular linguistic or other form of expression, can constitute an infringement of copyright. In my view, what is intended to be included in section 2 are *general ideas, concepts, procedures, and methods* only, and not a detailed pattern of ideas. This is because of the reason earlier stated, namely that that detailed pattern can be regarded as constituting expression. The distinction between a general idea and a detailed sequence of ideas is therefore highly significant in this context.

The issue which arises from the discussion above is how to characterise the Summary contained in *Gateway.* Does it contain only a general idea or plot such as is outside the scope of copyright or is it a replication of the substance of such a detailed pattern of ideas as to take it outside the scope of the exclusion in section 2? In my considered view, the brief summary of the novel of 106 pages represents only the essence or the general idea underlying the novel. It does not constitute such a detailed pattern of its ideas that that pattern is in itself an expression of the ideas embodied in the novel. To my mind, therefore, the general idea summarised in *Gateway* comes within the exclusion in section 2 of the Copyright Act 2005 and is outside the zone of protection. Therefore the reproduction of that general idea in *Gateway* cannot constitute an infringement of copyright.

If one takes a detached look at this issue from the point of view of policy, it cannot be desirable or practical that, each time a novel is being subjected to literary criticism or discussion and the general idea it embodies is summarised, the author of the criticism has to seek the leave of the author of the novel before he or she can undertake such summary. That would stultify literary criticism and the study of literature. Accordingly, it is important that the concept of "general idea" outlined above is not defined or calibrated too narrowly. To this end, it is legitimate to interpret purposively section 2 of the Copyright Act 2005 to take account of the policy consideration identified above.

With my decision that what the Summary does is to replicate the unprotected general idea of *Woes*, all the remaining issues in this case fall away. This decision, however, is on a question of law and the respondent was incorrect to argue otherwise. In the first paragraph of the respondent's Statement of Case (which he erroneously calls "Written Submission"), he states that:

> "It is our humble submissions that a close review of the grounds of appeal filed by the Appellant questions essentially the findings of facts by the learned trail (*sic)* judge. Some of the grounds of appeal are couched in words to clothe them with questions of law when inherently these grounds are based on a challenge of the courts (*sic)* findings of facts. The Court of Appeal agreed that the trail *(sic)* judge had made the appropriate findings of fact supported by the evidence and the court was in position to overturn that decision on appeal (*sic)*."

What the respondent is referring to is the following passage from the judgment of Her Ladyship Henrietta Abban JA, in delivering the judgment of the Court of Appeal:

> "The Appellant/Respondent herein is seeking to challenge the finding of fact against him that Section A of the use of the "*Woes of the African Mother"* book is an infringement of copyright as envisaged by Act 690 of 2005.
>
> We agree with the learned trial judge that this is a finding of fact. In assessing the evidence presented (both oral and documentary), she came to the conclusion that *"Section A of Appendix 6 does not show any attempt to separate and examine the various constituent issues dealt with in Exhibit C in any manner nor does it attempt to explain or provide elucidation on any ideas or form of expression of the author in the book".* She went on further to expostulate thus, *"I have read through the material under examination set out in subsections 1, 2, and 3 of Section A of Appendix 6 and see no attempt to analyze the novel or interpret the Plaintiff's novel through the use of details substantially different from the Plaintiff's novel."*

> We are of the opinion that indeed the learned trial judge did an exhaustive examination of the case law and principles covering fair practice in evaluating what the appellant had done with the Respondent's work before concluding that the:
>
> *"the Defendant infringed the copyright in Plaintiff's work in the use of it within* ***"Gateway to English"*** *and the use to which the Plaintiff's work was put did not constitute a permitted use, and the mode of presentation did not constitute fair practice."*
>
> The learned trial judge found as a fact that there is no controversy about the Plaintiff's work being protected by the Copyright Act."

The learned Court of Appeal judge then proceeds to apply the "trite law" that where the trial judge's findings are supported by the evidence on record, an appellate court should not disturb those findings. The Court of Appeal, therefore, decides not to disturb the learned trial judge's findings of fact. By doing this, the Court clearly "failed to address the import of the provision in section 2 of Act 690 that the respondent did not have copyright in the plot of *Woes of the African Mother* or a summary of it, as in *Gateway to English for Junior Secondary Schools"*, which is the grievance set out in Additional Ground B. This grievance is indubitably well-founded and the Court of Appeal's error makes it inevitable that this appeal be allowed.

**Conclusion**

In my discussion earlier of section 2 of Act 690, I have demonstrated that there is a preliminary question of law which has to be established before any of the findings of fact which the learned trial judge purported to make can validly be made. I have found that what was replicated in the Summary was

only the general idea of the novel, which in terms of section 2 of the Act is excluded from copyright protection. Accordingly, the Court of Appeal was in error in failing to advert to this question of law. In my view, therefore, this appeal succeeds and the judgments of the courts below should be set aside. For the avoidance of doubt, the setting aside of the judgments of the courts below implies that they are no longer of value as precedents for the purpose of *stare decisis*. I have, therefore, decided there is no need to comment on any aspects of the legal arguments on the other issues raised in those judgments, even though I may not necessarily agree with them.

**DR. S. K. DATE-BAH**
**JUSTICE OF THE SUPREME COURT**

**JONES DOTSE JSC**

I have been privileged to have read the judgment delivered by my respected and distinguished brother, Justice Date-Bah JSC. I entirely agree with the reasoning and the conclusions reached in the judgment, and that is, the appeal herein is allowed on the more fundamental and core issue that the works complained of have been excluded under section 2 of the Copyright Act, 2005 Act 690.

Since section 2 of the Copyright Act, has specifically excluded ideas, concepts among others from Copyright, I entirely agree with Justice Date-Bah JSC that the fundamental and core issue which a court engaged in a copyright case has to consider is whether the works alleged to be in breach of the Copyright Act, are not excepted under section 2 of the Act. Since the plaintiff has failed to clear that initial hurdle, the appeal herein succeeds.

The judgment of the High Court, Accra dated 27th July, 2006 and that of the Court Appeal dated 30th July, 2009 are hereby set aside.

**JONES DOTSE**
**JUSTICE OF THE SUPREME COURT**

**ANIN-YEBOAH**
**JUSTICE OF THE SUPREME COURT**

**B.T.ARYEETEY**
**JUSTICE OF THE SUPREME COURT**

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