IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA AD. 2012

CORAM: AKUFFO (MS) JSC (PRESIDING)
DATE-BAH JSC
ANSAH JSC
DOTSE JSC
AKOTO-BAMFO (MRS) JSC

CIVIL APPEAL
No: J4/10/2012

9TH MAY,2012

KWAKU BONSU ..... APPELLANT

VERSUS;

AMA AGYEMANG ..... RESPONDENT

J U D G M E N T

DR. DATE-BAH JSC:

The issues raised by this appeal are principally those of law, although there are also some issues of fact. The principal legal issue raised is: when may the remedy of specific performance, which is usually available in relation to contracts for the purchase of land, be withheld from a purchaser of land? The settled conventional

position of the law is that, upon breach of a contract for the sale of land, the primary remedy available to the innocent party is specific performance, although this is a discretionary equitable remedy. The facts of this case require this court to inquire into the circumstances in which this settled view of the law will be departed from. Courts in common law countries have relied on a limited range of grounds in the exceptional cases where the remedy of specific performance has been denied to a purchaser of land. The judgments in the Court of Appeal in this case raise the issue whether any of these grounds is applicable on the facts here.

The facts

The plaintiff in this case sued the defendant, claiming an order of specific performance of an agreement reached between him and the defendant on or around 3rd October 2007 in respect of land situated at Achimota, next to the Accra Motorway Extension. He also claimed an injunction restraining the defendant from selling the land in dispute to any third party pending the final determination of the suit.

After a full trial, the learned trial High Court Judge, her Ladyship Novisi Aryene J, upheld the claim of the plaintiff and, in a judgment of 5th November, 2010, granted him an order for specific performance of the contract for the purchase of the land in dispute which she held had been proven on the evidence.

The defendant appealed to the Court of Appeal, which set aside the order for specific performance and instead awarded the plaintiff damages. The plaintiff, being dissatisfied by that outcome, has appealed to this court for redress. In his Notice of Appeal, the plaintiff states that his complaint is in respect of: "That part of the judgment reversing the High Court's judgment for a decree of specific performance and thereby substituting an award for damages." The plaintiff's original grounds of appeal are as follows:

I. "The part of the judgment complained of is against the weight of the evidence on record.
II. Further grounds of appeal will be filed upon receipt of the record of appeal."

The plaintiff has subsequently filed the following additional grounds of appeal:

(a) "Having found that a valid enforceable contract existed between the Appellant and the Respondent for the sale of the specific parcel of land which is the subject of litigation between the parties, the Learned Justices of the Court of Appeal erred in law when they failed to grant an order for the specific performance of the contract for the sale of the said land although in all the circumstances of the case the Respondent's failure to convey the land could, contrary to the position of the Learned Justices, not be adequately compensated for in damages in favour of the Appellant.

(b) The Learned Justices of the Court of Appeal erred in law by not taking into consideration certain relevant portions of the Record of Appeal especially the Notice of Payment Into Court which appears at page 367 (T) of the Record of Appeal and even before the Defendant filed her Appeal against the Judgment of the High Court on 12/11/2010 as appears at page 368 of the Record of Appeal and thereby disabled themselves from giving the Plaintiff/Respondent/Appellant the Relief of Specific Performance he had sought for in his action against the defendant and which Relief he properly deserved; that the Learned Justices of the Court of Appeal also erred in law by failing to observe and give due weight to the Notice of Payment made into Court by the Plaintiff/Appellant as appearing at Page 367(U) of the Record of Appeal, and thereby further disabled themselves from doing justice to the Plaintiff/Appellant herein.

(c) The learned Justices of the Court of Appeal erred in law when they glossed over the crucial fact that at all material times, the Defendant/Respondent in this Appeal who had pleaded illiteracy and undue influence and absence of contract between her and the Plaintiff/Appellant herein was not entitled to rely on the alternative plea, if any, with respect to the adequacy or sufficiency of consideration, and accordingly she did not and could not have given any credible evidence as to the adequacy or sufficiency of consideration, and the learned Justices erred further in treating the

admitted payment made by the Plaintiff as inadequate or insufficient when the Plaintiff never denied the price of the land or refused to pay same at any time."

On appeal, the Court of Appeal confirmed the main findings of fact of the learned trial judge. Both the judgments of Ofoe and Dzamefe JJA accepted the finding by Aryene J. that there was a written contract between the parties in terms of a written receipt that the defendant had given the plaintiff and rejected the defendant's testimony whose purpose was to resile from the deal. A review of the record of appeal reveals that there was adequate evidence on record to support this concurrent view of the courts below and their findings should be accepted by this Court as well.

However, the Court of Appeal denied the plaintiff the remedy of specific performance. Ofoe JA said (at p. 557 of the Record):

> "Should we impute fraud to the defendant such that the court will be promoting fraud if we do not order specific performance of the contract looking at the circumstances of each case? It is worth noting that jurisdiction of the court in specific performance is based on the inadequacy of the remedy of damages at common law and so it follows that as a general principle of equity will not interfere where damages at law will put the plaintiff in a position as beneficial to him as if the agreement for the sale of the property had been specifically performed. Recognizing highly that the remedy of specific performance is discretionary and this discretion is to be exercised judicially according to well settled rules or principles, and guided by the facts and circumstances of this case we come to the conclusion that it would not be fair and just to grant the decree of specific performance in favour of the plaintiff. We think that an award of damages will be sufficient and full compensation in lieu of the order of specific performance."

Ofoe JA reaches this conclusion as a result of his earlier thinking aloud on this issue as follows (at p. 553 of the Record):

> "It has always been a dominant principle that equity will only grant specific performance if under all the circumstances it will be just and equitable so to do. Land it has been recognized because it is of fixed location and that no two lands are the same is of special and unique value and therefore ordinarily damages are not regarded as an adequate substitute for the right to acquire it. In the NTHC case His Lordship Date-Bah recognized this principle when he stated at page 130 that "however, the question is framed, though, there is little doubt that contracts for the sale of land qualify for the remedy, ceteris paribus". This recognition I believe is because of the accepted principle that land is of special value. What has been agitating my mind in application of this principle of specific performance, as it relates to land, is this special attribute that is given to land such that remedy in damages is found not satisfactory compensation to a plaintiff who has entered into a contract for the purchase of land and the defendant seeks to resile from the contract. Damages are found not adequate remedy specific performance is normally ordered against the defendant. Why should land be given such special value and uniqueness as to invoke a rule that in all cases reasonable damages as compensation cannot be satisfactory where the defendant evinces the intention not to perform his part of the contract specific performance would have to be ordered? Shouldn't each case be examined within its circumstances whether damages should not be an adequate remedy in such land transactions?"

It is thus Ofoe JA's challenge of the orthodox legal position which leads him to the conclusion expressed in the earlier quotation from his judgment. The issue is whether the position he takes is justified in law. Equally, there is need to determine whether Dzamefe JA was also right when he agreed with him in the following terms (at p. 575 of the Record):

> "The trial judge exercised her discretion to order the decree of specific performance. However I think in fairness and with the greatest respect to the trial judge that discretion was not just since damages in this case could adequately compensate the respondent in the circumstances."

We will accordingly next examine the law on specific performance of contracts for the sale of land in order to determine whether this position of the learned Justices of Appeal is correct or erroneous.

The law on specific performance of contracts for the sale of land

The position of English law which has been adopted and followed in this jurisdiction as well is that specific performance is the primary remedy available for breach of a contract to sell land. The courts will not refuse to grant the remedy in relation to land simply because it is claimed damages would be an adequate remedy. Although more generally in relation to the remedy of specific performance, there is a requirement that damages must be inadequate before an order for it is granted, the law presumes, in relation to land, that damages are an inadequate remedy. This position of the law is in part the result of history. Early in the history of equity, most petitioners who sought the exercise of this equitable jurisdiction claimed specific performance of contracts to sell land. As these petitions succeeded, they became the building blocks for the legal proposition that specific performance, although a discretionary remedy, is usually available to enforce contracts for the sale of land. This presumptive availability of specific performance in relation to contracts for the sale of land is often expressed in terms of the uniqueness of land as a subject-matter of a contract and therefore the inappropriateness of monetary compensation as a remedy for breach of such a contract. In *Adderley v. Dixon* (1824), 1 Sim. & St. 607, 57 E.R. 239, Sir John Leach, V.C., stated (at p. 240):

> "Courts of Equity decree the specific performance of contracts, not upon any distinction between realty and personality, but because damages at law may not, in the particular case, afford a complete remedy. Thus a Court of Equity

> decrees performance of a contract for land, not because of the real nature of the land, but because damages at law, which must be calculated upon the general money value of land, may not be a complete remedy to the purchaser, to whom the land may have a peculiar and special value."

The traditional English view on this matter would appear to be that land is deemed to be unique and there is no need to inquire into the uniqueness of specific parcels of land. The English courts have, therefore, tended to grant specific performance of contracts for the sale of land as a matter of course, unless there is a reason for denying equitable relief. The rationale for this approach is that land is considered to be inherently unique and therefore specific performance is responsive to this attribute of it in ensuring that a purchaser gets what he contracted for and not an inadequate monetary substitute. In *Sudbrook Trading Ltd. v Eggleton* [1983] 1 AC 444 at 478, Lord Diplock explained this approach of the law as follows:

> "Since if they do not acquire the fee simple they will not have to pay that price, the damages for loss of such a bargain would be negligible and, as in most cases of breach of contract for the sale of land at a market price by refusal to convey it, would constitute a wholly inadequate and unjust remedy for the breach. That is why the normal remedy is by a decree of specific performance by the vendor of his primary obligation to convey, upon the purchaser's performing or being willing to perform his own primary obligations under the contract."

In Ghana, Amissah JA, sitting in the High Court, expressed a view to the same effect in *Ahumah v Akorli (No. 2)* [1975] 1 GLR 473 at 479, where he stated:

> "But what is the agreement arrived at between the parties which this court is asked to enforce specifically? It is an agreement over the transfer of land against the fulfillment of a condition. Agreements involving land have been held to be eminently suitable for enforcement by this equitable remedy, it often being impossible to put the injured party into a comparable position by the award of damages as compensation."

Thus, specific performance is the usual remedy where a purchaser of land proves breach of a contract for the sale of land, though the grant of specific performance is never automatic and the courts have always preserved the integrity of their discretion to grant or refuse the remedy. The discretion is, however, exercised according to well-established rules. Specific performance cannot be whimsically denied. On this point, an English judge, Astbury J., said, in *Holliday v Lockwood* [1917] 2 Ch 47 at 56-57:

> "The next question is whether I ought to allow the defendant's counterclaim for specific performance. The result of the authorities is stated in Fry on Specific Performance, 5th ed. p. 19: "If the defendant [to a specific performance action] can show any circumstances dehors, independent of the writing, making it inequitable to interpose for the purpose of a specific performance, a Court of Equity, having satisfactory information upon the subject, will not interpose…. But of the circumstances calling for the exercise of this discretion, the Court judges by settled and fixed rules; hence the discretion is …. judicial …. The mere hardness of the results will not affect the discretion of the Court."

Accordingly, what this Court needs to examine is the legitimacy of the grounds on the basis of which the Court of Appeal denied the remedy of specific performance to the plaintiff on the facts of this case.

The Court of Appeal's reasons for departing from the traditional perception of the law.

Ofoe JA expressed his grounds for departing from the law expounded above as follows (at p. 554 of the Record):

> "Whether damages are an adequate remedy should be a question of fact in each particular case. ICF Spring, in his book, The Principle of Equitable Remedies, 3rd Edition at page 1 said:

> "The principles of equity should be widely understood and that they should not ossify, but as in the past, should be fruitful and receive new applications where appropriate."

It is this thinking that in my view should be guiding the courts in the grant or refusal of equitable reliefs and support reviewing of the rules that govern grant of specific performance in land purchase transactions. Whether land should be given such special attribute as to defy damages as adequate compensation and therefore demand for the order of specific performance should be granted should be governed by the evidence and the circumstances of the case. Each case should be examined within its circumstances whether specific performance should be ordered in such breaches of contracts relating to land purchases. It should be a matter of evidence whether the land in dispute should be accorded that uniqueness such that damages may not be an adequate compensation."

Ofoe JA's view of the law is profoundly subversive of a settled area of the law that impinges on the proprietary rights of many. His view would make the equitable title that purchasers of land are usually presumed to acquire after contract but before conveyance very precarious. The notion of an equitable title after contract is predicated on the availability of the remedy of specific performance and the maxim "equity regards as done that which ought to be done." To remove the right of purchasers of land, subject to the usual limits and factors affecting equitable relief, to the remedy of specific performance would be quite radical and, in our view, unjustified. The replacement of the qualified entitlement to specific performance with a factual investigation each time as to the uniqueness or not of a particular parcel of land would generate great uncertainty in land purchase transactions, in our view quite unnecessarily. The desirability of ensuring that the principles of equity should not ossify cannot justify overturning a settled rule that has provided predictable guidance for decades to purchasers of land.

Ofoe JA in fact admits that the land the subject-matter of this suit had a special value when he said (at p. 555 of the Record):

> "Now in the case before us the evidence is clear that the plaintiff was clear in his mind where he wanted the land and the purpose why he wanted this particular land. In such a situation to give this land its special value because there can be no two such lands should be non controversial."

In spite of admitting this traditional justification for the grant of specific performance, he argues against its grant, contending that the decision whether or not to grant the remedy is subject to other equitable considerations such as fraud, undue influence, unfairness or hardship. The learned Justice of Appeal does not find any of these factors to be established on the facts of the case. He nevertheless continued that (at p. 556 of the Record):

> "Where none of these equitable discretionary matters prevail then even if there is inadequate consideration, specific performance may be granted by the court. The parties agreed to the price of one Billion cedis for this land. A total of 4,000 dollars (1000, 1000 and 2000) and 2m cedis were paid in installment. What did the defendant use this money for? The plaintiff in his evidence said she said she was going to use it for some documentation and for his son who had been involved in an accident with a Mercedes Benz. The trial judge found that she used it for documentation at the lands commission. I have looked at the price of the land and the payment in driblets of this 4,000 dollars and further read the receipt whether there was any agreement on how the one Billion Cedis should be paid and when it was supposed to be paid. Clearly absent was when and how the money was to be paid. And there was no evidence throughout the trial that the plaintiff was ready and willing to honour his part of the agreement i.e. pay the balance of the 1 billion. Indeed there is no evidence the defendant had fulfilled or substantially fulfilled his side of the contract. Would it be fair to order this land to be given to the plaintiff only because he has paid this fraction of the selling price?"

We believe that the learned Justice of Appeal fell into error in this passage of his judgment. Once the trial court and the Court of Appeal accepted that a valid and enforceable written contract had been entered into for the sale of the land at an

ascertained price, specific performance became available in relation to it. Although the contract was executory, in the sense that neither party had yet performed his or her obligations under it, the mere exchange of promises was enough to make the agreement binding, according to standard common law doctrine. It was not necessary for the contract to have spelt out how the purchase price was to be paid. The effect of an order of specific performance would not be to hand over the land to the purchaser for only a fraction of the selling price. The order would compel the parties to fulfill their obligations under the contract. Thus the purchaser would have to pay the purchase price in full in exchange for a conveyance of the interest in the land to him by the vendor. Indeed, as the plaintiff/appellant points out in his Statement of Case and which seems to have escaped the attention of the Court of Appeal, the appellant had already paid the full purchase price into court before the hearing of the appeal by the Court of Appeal. Furthermore, since the case of the defendant/respondent, which was disbelieved by the courts below, was to deny that she ever entered into a contract with the plaintiff, the issue of whether the plaintiff was ready and willing to honour his part of the agreement was not one which loomed large in their relationship.

In the appellant's Statement of Case, he makes the following cogent points:

> "The Court of Appeal had not found any fraud or undue influence on the part of the plaintiff. It was not the case that the defendant had demanded full payment of the price of the land and the plaintiff had refused or failed to pay. Under normal conveyancing, full payment for land is settled at the execution of the Deed of transfer/Completion of the sale and purchase or as agreed by the parties. Since the defendant had changed her story as to how the agreement had come about and the Court had found her untruthful and unreliable, it would be wrong to use the non-payment of the full amount as a basis for refusing to grant specific performance as if the fault was that of the plaintiff. In any case, the Plaintiff made it clear in his Pleadings and evidence that the Defendant having informed him of the offer letter from the Lands Commission, he stood ready to make good the outstanding payment. The Defendant chose to avoid the Plaintiff. When

> the trial Court gave its judgment the plaintiff did pay the amount into Court. Indeed the Court had found that inadequacy of the amount paid for the land was no ground for refusing to order specific performance. In fact, that issue did not arise on the facts of this case."

Accordingly, we find that the reasons preferred above by Ofoe JA for refusing to grant the order of specific performance are not persuasive.

The final reason given by Ofoe JA for denying the grant of the remedy of specific performance was that it would not be fair and just to do so. He appears to link the fairness and justice to the adequacy of damages as an alternative. The passage in which he makes this linkage (at p. 557-8 of the Record) has already been quoted above. Dzamefe JA (*supra)* relied on a similar ground of unfairness linked to adequacy of damages to deny the remedy. This issue of the adequacy of damages as an alternative to specific performance has already been dealt with above, where we have endeavored to demonstrate that reversing the presumption that specific performance is the normal remedy for breach of a contract for the sale or purchase of land is likely to cause turbulence in a settled area of the law and undermine the orthodox learning that between contract and conveyance the purchaser of land has an equitable title.

Conclusion on specific performance

In our view the decision of the Court of Appeal to reverse the decision of the learned trial judge to grant an order of specific performance and to substitute an award of damages in its place was erroneous and should be overturned. We would restore the order of the learned trial judge that the contract held by both her and the Court of Appeal to exist between the plaintiff and the defendant should be specifically enforced.

The rejection by the Court of Appeal of the further payment of two thousand dollars

In arguing his original ground of appeal, that the judgment of the Court of Appeal was against the weight of evidence, the plaintiff asserts that the rejection by the learned Justices of Appeal of a payment of two thousand dollars he had made to

the defendant had occasioned him a miscarriage of justice. The passage in Ofoe JA's judgment complained of by the plaintiff is the following (at p. 441):

> "There is dispute how much was paid and when. The trial judge found that in all 6,000 dollars and GH 200 was paid to the defendant of which 4,000 dollars was receipted. She rejected the defendant's claim that she was given 4,000 dollars and not 6,000 dollars. Exhibit A is the receipt for the 4,000 dollars. She rejected the defendant's evidence that the sale was conditional on the consent of some named family members of hers. With these pieces of evidence she concluded that there was a contract between the parties for the sale of land to the plaintiff. Reading the record of appeal there is no evidence that will entitle us to interfere with these findings of the trial court, except as to that relating to the 6,000 dollars. It is the plaintiff who on the pleadings has the duty to prove the total payment of 6,000 dollars as he alleged. His evidence on this payment found at pages 63 and 64 of the appeal record, in my view fell short of establishing such payment. In his evidence he testified to first payment of 1,000 dollars, a second payment of 1,000 dollars, followed by payments in cedis. Then a subsequent payment of 2,000 dollars. Simple arithmetic adds these up to 4,000 dollars. His witness, Mr. Koomson's evidence was not consistent he could only establish his knowledge of payment of 1,000 dollars. We will therefore set aside the trial courts finding of the payment of the 6,000 dollars and in its place accept 4,000 dollars."

The finding of the learned trial judge which was thus set aside was expressed as follows by her (at p. 354 of the Record):

> "The fourth installment was paid to the defendant in her house. Plaintiff testified that on receipt of the offer letter from the Lands Commission, Defendant invited him to her house on 1st November, 2007 and after informing him about the offer letter, demanded a further sum of $2,000 which he paid. This evidence was confirmed by Koomson. It is significant to note that neither plaintiff nor PW1 was challenged on the payment of the additional $2,000.

On authority of Fori v Ayirebi [1966] GLR 627, that when a party had given evidence of a material fact and was not cross-examined upon, he need not call further evidence of the fact, I find that defendant demanded and was paid an additional $2,000."

The plaintiff, his Statement of Case, complains that the Court of Appeal should have deferred to the trial court which had observed the demeanour of the defendant and her witnesses before making the finding of fact which the Court of Appeal purported to disturb.

There was certainly evidence on record on the basis of which the trial court could reasonably have made the finding that it made. The plaintiff points out in his Statement of Case the following testimony. In the plaintiff's examination-in-chief, he answered his lawyer's question as follows (at p. 92 of the Record):

"A: My lord I had already given her Four thousand and after she had received the offer letter from the Lands Commission it was then that she called me together with her Agent that we should meet in her house and that I should bring Two Thousand Dollars because after all she had the Offer Letter so I should bring some more money to her and that was Two Thousand Dollars that I added in her residence in the presence of her Agent Kojo Koomson.

Q: Now this Two Thousand Dollars I assumed was paid after the preparation of the receipt?

A: Yes my lord."

Under cross-examination by Counsel for the defendant, the plaintiff had the following to say (at pp. 104-5 of the Record):

Q: Mr. Bonsu you told this court that the defendant was being evasive after the offer letter had been made, is that not so?

A: Yes my lord.

Q: I am suggesting to you that the defendant was never evasive because there was no need to be evasive.

A: My lord the last time that I went to the residence she called me, the defendant called me together with her Agent Koomson, so we went there, in fact when I went there Koomson was already there, so it was there that she informed the two of us that she had received the offer letter and that she needed money as she called me on the phone, so when I was going I went there with two thousand dollars that was what she demanded and I sent it to her in the presence of her agent Mr. Kojo Koomson."

In the evidence-in-chief of Mr. Koomson,PW1, he said at (pp.114-115 of the Record):

Q: Now are you good enough to tell the court the sum of money or the various sums of monies, if any, that Mr. Bonsu paid to Ama Agyemang?

A: My lord right before me Mr. Bonsu gave her an amount of One thousand Dollars. So my lord later he paid some by instalments and the whole amount came to Four Thousand Dollars.

Q: Apart from these Four Thousand Dollars was there any amount which was to pay to your knowledge?

A: My lord on 1st November Ama Agyemang called me and told me that she had got the Premium Letter and that I should inform Mr. Bonsu to come and see her.

Q: Now did you inform Mr. Bonsu?

A: Yes I told him.

Q: And what did Mr. Bonsu do?

A: My lord, Mr. Bonsu and I went to Ama Agyemang's house.

Q: Did you meet Ama Agyemang?

A: Yes my lord

Q: When you got there what happened?

A: My lord, she told us that God has been gracious to us and God has answered her prayers and that she has got the premium letter and Mr. Bonsu should give her some amount of money so right there Mr. Bonsu gave her Two Thousand Dollars.

Q: Now do you know whether these monies were receipted?

A: My lord for the first four thousand dollars Mr. Bonsu took a receipt but with the later payments he receive no receipt because I was there as a witnesses."

The above extracts from evidence given by the Plaintiff and his witness indicate that there was evidence on record to support the finding of fact made by the learned trial judge on the issue of the payment of the additional $2,000. The Court of Appeal was thus not justified in reversing her finding of fact. We would accordingly restore her finding of fact on the issue of whether a further $2,000 was paid by the plaintiff to the defendant.

General Conclusion

To sum up, we would reverse the decision of the Court of Appeal to deny the plaintiff the specific performance ordered by the learned trial judge and to find that he had not made an additional payment of $2,000 beyond the payment evidenced in writing. We would thus restore in full the judgment of the learned trial judge.

DR. S. K. DATE-BAH

JUSTICE OF THE SUPREME COURT

CONCURRING OPINION

DOTSE JSC:

I have been privileged to have read the scholarly judgment of my respected brother Dr. Date-Bah JSC. Even though I agree in the conclusion that the Court of Appeal judgment be reversed and set aside and the High Court judgment be affirmed and restored, I make the following observations of my own.

It is instructive to note that the learned Justices of the Court of Appeal did not differ with the learned trial Judge on her findings of fact. Infact, the Court of Appeal agreed with all the findings of fact made by the learned trial Judge on the substantial issues germane to the case.

There are settled legal principles upon which an appellate court which seeks to depart from findings of fact made by a trial court must follow. These have been stated in a litany of cases such as:

1. **Achoro v Akanfela [1996-97] SCGLR 209**
2. **Fosua & Adu Poku v Dufie (Deceased) and Adu Poku Mensah [2009] SCGLR 310 at 313**
3. **Gregory v Tandoh IV and Hanson [2010] SCGLR 971**

From my examination of the evidence on record, I am of the considered view that there being no justification for the Court of Appeal to depart from the said findings, and none whatsoever have been given, the

decision of the Court of Appeal to nonetheless depart from those findings in the face of overwhelming evidence to the contrary is mind boggling.

It is therefore clear that the decision of the Court of Appeal to set aside the order for specific performance and instead award damages in the sum of GH¢3000.00 has not been well made out.

It must therefore be noted that, appellate courts must be very circumspect in departing from the findings of fact made by trial courts and unless the said findings are perverse or are manifestly outrageous and cannot be supported having regard to the evidence on record, the safest route is to abide and accept the findings made by the trial Court.

In the instant case, it is difficult to appreciate why the learned Judges of the Court of Appeal decided to go off at a tangent and brought in extraneous matters like considerations of fraud, undue influence, unfairness and hardship when it was clear from the record that all these had not been proven.

It is for the above and other reasons stated in the lead judgment of my respected brother Dr. Date-Bah JSC that I agree that the decision of the learned trial Judge be restored and same is accordingly affirmed for the grant of the remedy of specific performance.

[SGD] J. V. M. DOTSE

JUSTICE OF THE SUPREME COURT

[SGD] S. A. B. AKUFFO (MS.)

JUSTICE OF THE SUPREME COURT

[SGD] J. ANSAH

JUSTICE OF THE SUPREME COURT

[SGD] V. AKOTO-BAMFO (MRS.)

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