IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA AD 2015

CORAM: ATUGUBA JSC (PRESIDING)
ANSAH JSC
DOTSE JSC
ANIN YEBOAH JSC
AKOTO BAMFO (MRS) JSC

CIVIL APPEAL
NO.J4/35/2014

24TH JUNE 2015

HYDRAFOAM ESTATE LTD ... PLAINTIFF/APPELLANT/ APPELLANT

VRS

1. MR. KUMNIPA ... DEFENDANTS/RESPONDENT
2.MR. AGYEMAN /RESPONDENTS

JUDGMENT

DOTSE JSC:

This is an appeal by the Plaintiffs/Appellants/Appellants, hereafter referred to as the Plaintiffs, against the unanimous judgment of the Court of Appeal

rendered on the 31st day of October 2013 which dismissed the initial appeal lodged by the Plaintiff's against the decision of the High Court dated 27th May 2011 which also dismissed the Plaintiff's action and entered judgment for the 1st Defendant/Respondent/Respondent, hereafter referred to as the 1st Defendant, on his counterclaim as specified in the judgment therein of 27th May 2011.

From the above rendition, what strikes us in the face is the fact that, the Plaintiff's not only lost the case at the High Court, where judgment was entered on behalf of the 1st Defendant on his counterclaims as specified, but also lost their appeal against the High Court decision to the Court of Appeal. This in effect raises the legal principles involved where a party like the plaintiffs lost the case at both the trial court and the first appellate court which confirms in all material particulars, the findings of fact made by the trial court.

We will revert to the above issues at the tail end of our rendition in this case.

RELIEFS CLAIMED IN THE TRIAL COURT AND BRIEF FACTS OF CASE

By an amended writ of summons in respect of the writ filed on 24/6/2003 the plaintiff on 24th November 2004, pursuant to an order made on 3rd November 2004 amended their writ against the 1st Defendant in the following terms:

i. "Declaration of title to all that piece or parcel of land situate at OkpoiGonno, Accra covering an approximate area of 75.53 acres and bounded on the North West by Aviation highway measuring a total distance of 1525 feet more or less on the North East Central link road measuring a total distance of 280 feet more or less on the East by a proposed clinic and road measuring 2100 feet more or less on the South by an open space measuring 1650 feet more or less on the south East by an open space measuring 8500 feet more or less and on the West by the school measuring 1200 feet more or less.

ii. Recovery of possession of the said land trespassed on by the Defendant.

iii. Damages for trespass

iv. Perpetual injunction to restrain the Defendant whether by himself, his servants or agents or otherwise howsoever from entering or developing the said land.

v. Any further or other reliefs."

The 1st Defendant also counterclaimed against the plaintiff's the following reliefs"-

a. "General damages for trespass unto defendant's land as described in the schedule hereto.

b. Recovery of possession of his adjoining property now leased out to a third party and being used as car washing bay.

c. Perpetual injunction against further acts of trespass.

Schedule

All that piece and parcel of land situate at East Airport or Okpoi Gonno Accra, bounded on the North-West by the Aviation Highway measuring 199.5 feet more or less to the North-East by a private property measuring 105 feet to the South-East measuring 191 feet and South-West measuring 197 feet more or less more particularly demarcated by survey pillars SCCA G 13/01/1, SGGA G 13/01/2, SGGA G 13/01/3, SGGA G 13/01/4 and occupying an area about 0.46 acres or 0.18 hectare."

We have perused the entire appeal record, and found the rendition of the facts of the case as captured in the judgment of Kanyoke J.A, speaking on behalf of the Court of Appeal as detailed enough and accordingly quote same in support of our narration of the facts.

"The plaintiff/appellant is a limited liability company engaged in estates development. By its pleadings the company averred that by virtue of a lease dated the 25th November 1995, between it and one Alhaji Ibrahim Mensah Komieteh of Teshie the company as Lessee and Mr. Komieteh as Lessor acquired a large piece or parcel of land situate at Okpoi Gonno, Accra covering an approximate area of 75.53 acres. Ibrahim MensahKomieteh derived his root of title to the land on the basis of a Statutory Declaration. The company had been in quiet possession of the said land since it was demised to it without let or hindrance until the defendant/respondent wrongfully entered a portion of the land and wrongfully commenced the construction of a building thereon. The company averred that the defendant/respondent had failed to abate it's acts of trespass and to deliver up possession despite several warnings but rather wrongfully laid claim of title to that portion of the land. Consequently, on the 24th day of June 2003, the company issued a writ of summons against the defendant/respondent for the reliefs of declaration of title, recovery of possession, damages for trespass and perpetual injunction.

On his part the defendant/respondent resisted the action in a statement of defence and counterclaim. In the said statement of defence and counterclaim, the defendant/respondent averred that on the ***25th October, 1995****, he acquired two plots of land from messrs Jacob Bortey and George Bortey both of Nungua. He immediately took possession of same and proceeded to construct the foundation for his house where he currently lives. It was around that time that the plaintiff company appeared to commence the demarcation of a nearby site for its housing project.* ***According to the defendant/respondent, by 1997, he had completed his house and roofed same without any confrontation from the plaintiff company whose managing director and other employees used to pass in front of his said house every***

morning and evening on his or their way to and from their worksite. The defendant/respondent further averred that later, one day, the company's managing director came unto his (defendant's/respondent's) land to stop his workers by physically harassing them and also brought some soldiers wielding guns to prevent the workers from getting unto the land.

The company's managing director also removed or caused to be removed the roof of the defendant's/respondent's building which then exposed the electrical and other interior building materials to the vagaries of the weather and rain thereby causing loss of US$7,000.00 he spent in replacing those materials. The defendant/respondent further averred that the plaintiff/appellant also rented out his other or second plot to a car washer to operate a car washing bay. Accordingly, the defendant/respondent subsequently applied to join and did join that person as a co-defendant to the suit. " emphasis supplied

It must be noted that, both parties herein, to wit the Plaintiff's and the 1st Defendant testified. Whilst the Plaintiff's were represented by Ernest Akuako their Administrative Manager who testified on their behalf, and thereafter closed their case, the 1st Defendant testified on his own behalf and called D.W.1, Nii Alabi Gbele II, Chief of Sakumono as a witness. However, it is essential to note and observe that, the Court also called an expert witness C.W.I, Samuel Ofosu Ahenkora of the Survey Department who used the site plans of the parties to prepare a report for the court in addition to his viva voce evidence.

HIGH COURT JUDGMENT

The High Court on the 27th May, 2011 delivered judgment in which it dismissed the Plaintiff's action and entered judgment on behalf of the 1st Defendant's counterclaim as follows:

1. The first defendant's title is declared in the land on which he has put up his building.

2. The 1st defendant is also given title to the adjoining plot of land licensed to the 2nd defendant for the car washing business.

3. The 1st defendant shall recover possession of both plots of land.

4. The Plaintiff shall pay specific damages in the sum of $7,004 or its equivalent in GH¢ to the 1st defendant.

5. GH¢3,000 general damages for loss of use to the 1st defendant.

6. The Plaintiff, his agents and privies are restrained from interfering in the 1st defendants use of the plots of land described in the writ of summons.

7. Cost of GH¢500 against plaintiff.

APPEAL TO COURT OF APPEAL

As the Plaintiff's felt aggrieved by the decision of the High Court, they appealed against that decision to the Court of Appeal. However, the Court of Appeal, in a well thought out and reasoned decision delivered on its behalf by its President, Kanyoke J. A, on 31st October 2013, dismissed the appeal it its entirety.

APPEAL TO THE SUPREME COURT

Still undaunted, the Plaintiff's on the 28th day of November 2013 filed yet another appeal against the decision of the Court of Appeal to this Supreme Court, with the following as the grounds of appeal:

a. “That the Court of Appeal failed to appreciate that the Defendant’s exhibit ‘3’ not having been registered and fraudulently procured was defective in law and could not be relied on by the Court of Appeal to declare title in the land to the Defendant.

b. That the Court of Appeal erred in law when it held that the trial judge properly admitted exhibit ‘9’ in evidence on the basis of the fact exhibit ‘9’ was certified true copy and came from the Deeds Registry , a public office or entity.

c. That the Court of Appeal failed to appreciate that the burden of proof lies on the defendant in the light of paragraph ‘6’ of his statement of defence and counterclaim to prove that averment and his failure to do so disentitled him from relying on the doctrine of acquiescence.

d. That the Court of Appeal erred when it held that evidence on record amply supported the award made by the trial judge for the claim of USD7,000 by the Defendant as his expenditure in respect of the damaged electrical and other building materials including the cost of reroofing Defendant’s building.

e. That the Court of Appeal erred in law when it held that the trial judge was right, in relying on *Mensah v Ghana Commercial Bank* and coming to the conclusion that the grant of the land to Ibrahim Mensah Komieteh by the Teshie Mantse is therefore not the truth and the declaration in exhibit ‘9’ is false.

f. That the judgment of the Court of Appeal is against the weight of evidence.”

STATEMENTS OF CASE OF THE PARTIES IN THIS CASE

We have perused the erudite statements of case filed by the respective learned counsel in this appeal, for and on behalf of their clients.

Whilst appreciating the extent of work and knowledge that has been exhibited therein, we are however quick to observe that, in the case of the learned Counsel for the plaintiff most of the arguments proffered therein have been a rehash of the arguments that were stated in the Court of Appeal.
For example, we note and observe that, even in the formulation of the grounds of appeal, learned Counsel for the plaintiff has in some instances just substituted the words "trial court" that was used in the grounds of appeal at the appeal court for the words "the Court of Appeal" in the notice of appeal to this court.

In this respect, it is useful to point out some examples and make the necessary linkages therein.

Ground "a" of the grounds of appeal in this Court and referred to supra, had been couched in similar terms as "g" in the notice of appeal from the High Court to the Court of Appeal on page 159 as follows:-

> *"That the trial Judge erred in law by failing to make any finding of fact on the issue as to whether the Respondent's title deed tendered at the trial was dubious and fraudulently procured."*

In order to ascertain that the exhibit 3 mentioned by the plaintiff's in their ground "a" of the notice of appeal to this court is the same as ground "g" of the notice to the lower court just referred to supra, we wish to make a quick reference to the evidence in Chief of the 1st Defendant in support of same from the record of appeal.

This is what the 1st Defendant said:

> "I obtained a document from the people who sold the land to me. I have it here Tendered Exhibit 2, Land Owners Title Deed. I have my own Title Deed also here Tendered Exhibit 3".

Secondly, ground (b) of the grounds contained in the notice of appeal to this Court and referred to supra are the same as ground “b” of the notice of the grounds of appeal to the Court of Appeal which state as follows:-

> *“That the trial Judge erred in Law when he failed to appreciate that no evidence on Teshie Customary law had been adduced at the trial to support his finding that the statements contained in the statutory declaration of the appellant’s grantor affirming his ownership of the disputed land were false.”*

In the instant notice of appeal, learned counsel referred to exhibit “9” instead of the Statutory Declaration mentioned in the Court of Appeal. However, the value in both instances is the same. This is because, on page 234 of the appeal record, is the proof that the Statutory Declaration therein has been marked as exhibit 9.

The third and last example to be given by us just to make references to a few of the repetition and rehash of same arguments made in the court of Appeal is the comparison between ground “c” of the grounds in the notice of appeal to this court as referred to supra, and the grounds “d” and “f” of the notice of appeal to the Court of Appeal.

These read as follows:-

> (d)”That the trial Judge failed to appreciate that the Appellant had carried out it’s business of real estate department on the disputed land over a long period **without challenge** and sold several housing units to third parties, conduct evidencing exercise of ownership rights.”
>
> (f) That the trial Judge erred in law when he failed to appreciate that the Respondent could not rely on the equitable doctrine of laches, having been previously warned of the appellant’s adverse claim to title to the disputed land.”

The combine effect of the above two grounds of appeal in the Court of Appeal are the same as ground "c" of the grounds of appeal in this court.

Having pointed out at least four of similar grounds of appeal that had been argued and dealt with adequately in our estimation by the Court of Appeal, it is pointless for the same grounds of appeal in content to be reworded and couched to have the same effect and re-argued with greater force before us in this court.

Let us now consider in detail how the Court of Appeal disposed these grounds of appeal in their erudite rendition.

ADMISSIBILITY OF EXHIBIT 9, THE STATUTORY DECLARATION

The Court of Appeal rendered its opinion on why it agreed with the learned trial judge that exhibit 9 was properly admitted. They stated thus:-

Section 162 of NRCD 323 provides

> "162. A copy of a writing is presumed to be genuine if it purports to be a copy of the writing which is authorized by law to be recorded or filed and has in fact been recorded or filed in an office of a public entity or which is a public record, report, statement or data compilation, if
>
> a. An original or an original record is in an office of a public entity where items of that nature are regularly kept; and
>
> b. The copy is certified to be correct by the custodian or other person authorized to make the certification provided that the certification must be authenticated."
>
> "No where is it stated in Section 162 of NRCD 323 that it is the contents or statements in the writing which are presumed to be genuine. On the contrary, it is clear from the wording of Section 162

of NRCD 323 that it is the certified true copy of the writing, (or document) which is presumed to be genuine. In my view, Section 162 of NRCD 323 is only relevant for admission as evidence in litigation provided the writing is a certified true copy and emanates from a public officer or entity. The issue of whether or not the contents or statements in the writing are true or false is a matter of evidence. In the instant case, Exhibit 9 was a certified true copy and came from the Deeds Registry, a public office or entity. Exhibit 9 was therefore admitted in evidence. The contents or statements in the Statutory Declaration – Exhibit 9 are that the father of Alhaji Ibrahim Mensah Komieteh acquired the land measuring 75.53 acres including the disputed portion from the Teshie Mantse. But on the basis of the unassailed judicial decision of Ollennu J. (as he then was) in Mensah v Ghana Commercial Bank (supra) which has become part of the laws of Ghana by virtue of Article 11 (2) of the Constitution, 1992, it is now the law that Teshie lands belong to the quarters and that the Teshie stool has no land of its own and that therefore it is only the head of a quarter and his elders who can validly and customarily alienate Teshie land to anybody or entity in Teshie and not the Teshie Stool. Consequently, on the face of Exhibit 9, the statements therein that Komieteh's father acquired the land from the Teshie Mantse cannot be true without positive and credible evidence to the contrary since Teshie stool owned no land and could not therefore have granted the land claimed by the plaintiff to the father of Ibrahim Mensah Komieteh. It was therefore incumbent on the plaintiff to adduce sufficient and credible evidence or provide a contrary judicial decision to rebut or contradict the decision of Ollennu J (as he then was) in Mensah v Ghana Commercial Bank (supra) but the plaintiff failed to discharge this burden. The trial judge was therefore right, in relying on Mensah v Ghana Commercial Bank supra, and coming to the conclusion that *"the grant of the land to Ibrahim Mensah Komieteh by the Teshie Mantse is therefore not the truth and the declaration in Exhibit 9 is false"* without any further

evidence. The Plaintiff also failed to adduce evidence or provide any judicial authority to prove that rural lands situate outside the Teshie Township were not quarter lands."

As was stated earlier, we have perused the statement of case filed by both learned counsel. We observe that, learned counsel for the plaintiffs, Edward Sam Crabbe took great pains to explain the reasons why the decision in ***Mensah v Ghana Commercial Bank, [1957] 3 WALR 123*** should not be followed and that Jackson J (as he then was), in the Public Lands Ordinance and ***In the matter of Land acquired for the Service of the Gold Coast Colony and Ashanti, situate at Teshie – and Nii Afotey Adjin II, Nungua Mantse We, Nungua and 5 others,*** decided on 26th May 1925 should rather be followed.

We are aware of the Supreme Court decision in the case of ***Agyei Osae and Others v Adjeifio and others [2007-2008] SCGLR 499 at 507*** which was referred to this court by learned counsel for 1st Defendants, Hon. Ayikoi Otoo, where the Supreme Court speaking through Brobbey JSC stated conclusively on the history of the ownership position of Teshie Lands as follows;-

> *"To conclusively discuss these two issues, it will be useful to trace the history of what has now become known as Teshie Quarter Lands. Originally, the lands were Nungua Stool Lands but sometime in or about 1710-1715, the Founder of Teshie, Nii Okai Ngbashi, bought the land from Nungua. Several years after his death, the land was divided among the five quarters of Nungua namely:, The Krobo Quarter, The Agbawe Quarter, Klemusu Quarter, Gbugbla Quarter and Lenshie Quarter. In 1927 or thereabout, Nii Ashietey Akomfra shared the land amongst the various quarters.* ***The parties are adidem on this history."***

The parties therein in the above cited case both come from Teshie. The decision as to whether Teshie presently has stool lands or Quarter lands has been put to rest by the decision of the Supreme Court just referred to supra. The decision of Ollennu J, (as he then was) in the Mensah v G.C.B case has therefore been confirmed by the Supreme Court in contra distinction to that of Jackson J, (as he then was) in the case referred to supra.

On the basis of the above narration, we have no basis to depart from the decision of the Court of Appeal, referred to supra, that the Plaintiff's grantors could not have conveyed Teshie Stool lands to him as there was no such title in them to convey to the plaintiff's grantors.

Despite the submissions of learned counsel for the Plaintiff's on the subject matters raised therein, we have no sound reason to depart from the Court of Appeal decision and accordingly affirm it. In that respect, grounds, "b" and "e" of the grounds of appeal in this court are accordingly dismissed.

WHETHER 1ST DEFENDANT PROVED AVERMENTS IN HIS PARAGRAPH 6 OF HIS DEFENCE AND COUNTERCLAIM

The Court of Appeal also similarly made light work of the Plaintiff's grounds of appeal which are similar in content to ground "c" herein. This is what they said:

> *"It is further clear from evidence on record that the plaintiff was not able to counteract sufficiently the pleading and evidence of the defendant that the plaintiff per its Managing Director and other employees of the plaintiff were aware of the development of that portion of the land but did nothing about it initially.*
> *In the reply to the defendant's statement of defence and counterclaim the plaintiff did not specifically deny paragraph 6 of the said statement of defence and counterclaim averred as follows:-*
>
> *6." Defendant avers that by 1997 he had completed his house and roofed same without any confrontation from the plaintiff who passed*

the front of his house every morning and evening on his way to and from his nearby work site".

Under cross examination, the defendant denied being warned of the land by the plaintiff. According to him "The only time they (i.e the plaintiff said so was when they destroyed my roof") and that it was in 1997 after he had completed the building and roofed same in 1996 that the plaintiff removed the roof. See page 55 of the ROA. In his judgment, the trial Judge dealt with the issue of acquiescence on the basis of the pleadings and evidence led and relied on the case of ***Ramsden v Dyson (1866) L. R. 129****. The trial Judge believed the defendant that it was when he was fencing his plots that the plaintiff brought soldiers to level the ground.* ***It was the trial Judge who saw and heard the plaintiff's administrative manager and the defendant and was therefore in a better position to judge their demeanor in the box and decided to accept the version of the defendant.*** *We are in a disadvantaged position not having seen and heard them. The trial judge resolved the issue of acquiescence in favour of the defendant. In the light of the averment in paragraph 6 of the statement of defence and counterclaim, it was incumbent on the plaintiff to adduce sufficient and credible evidence to rebut those averments instead of merely denying them and failed to adduce such rebuttable evidence."Emphasis supplied*

Additionally, there is abundant evidence on record to establish the fact that the Plaintiff's indeed caused damage to the 1st Defendant's property after it had been roofed. This is how the 1st Defendant stated it in his evidence in chief.

"When I visited the land I saw that all the roofing tiles I had put had been removed and packed on the roof. I asked my friend what happened and he said the Plaintiff said the land was their property and so they removed the tiles. The rain damaged the roofing, tiling and the electricals I had done because it rained the whole weekend."

The 1st Defendant confirmed that, because his time to depart to the U. S. was due, he instructed that no charges be raised against the Plaintiff's.

The 1st Defendant also testified that anytime he decided to fence the other undeveloped plot, the Plaintiff would destroy it by using the military and police personnel. Again, there is evidence on record that, the only time the Plaintiff's asserted their ownership rights on the property was when they damaged the roof of the 1st Defendant's building even though they were aware he was developing same. It is in this respect that we appreciate the decision of the Court of Appeal and affirm same. The decision by the 1st Defendant to compensate the Plaintiff's was an apparent reaction to the frustration that he suffered in the development of the land at the hands of the plaintiff's agents.

This is because, the Plaintiffs should not have taken the law into their own hands but resort to the pursuit of their claims in a civilized manner as they later did in the law courts.

Furthermore, we have sighted Exhibits 4 and 4(a) which are all building permits from Tema Municipal Assembly and the Accra Metropolitan Assembly Whilst exhibit 4 is dated 15-10-1996, 4(a) is dated 7th February, 2002, and emanates from the AMA.

The 1st Defendant explained the circumstances surrounding the two permits, exhibits 4 and 4(a) as follows:

> *"I first got the building permit from Tema but later T. M. A. told me the land was rather in A. M. A. area so I had to go to A. M. A. for another permit and that is why I have two permits. I went to the land first before the Plaintiff."*

All the above pieces of evidence show that the Court of Appeal decision took into consideration all relevant evidence which proved that the conclusions reached by them was based on cogent and convincing evidence.

Even though we have taken into consideration the reference to us by Learned Counsel for the Plaintiff's, cases such as ***Nii Boi v Adu [1964] GLR 410 and Boateng v Ntim [1961] (Pt. 11) at 674*** we nevertheless are of the view that those cases cannot have the effect being imputed to them.

On the basis of the above we dismiss ground (c) of the grounds of appeal.

WHETHER TITLE WAS DECREED IN THE 1ST DEFENDANT ON THE BASIS OF HIS UNREGISTERED EXHIBIT 3

We again concur in the decision and conclusion of the Court of Appeal in ground (a) of the instant grounds of appeal, which are again similar in content to ground (e) of the Court of Appeal grounds of appeal which they dismissed in the following terms:-

> "*To me that is crooked reasoning and is clearly bereft of any legal and probative value. In any case, the trial Judge evaluated the rival claims of the parties and came to the conclusion that the defendant's claim of title to the disputed land was more reasonably probable of legal value than that of the plaintiff. I find nothing wrong with that finding and conclusion and have no cause to disturb it."*

The above statement is further supported by the 1st defendant's evidence on record where he stated as follows:-

> *"So I purchased two plots of land from the Nungua Stool".*

Later, during cross-examination, the 1st defendant explained the position further thus:-

> Q: I put it to you that the land is not Nungua Stool land.
>
> A: That is not true – It is for Nungua Stool.
>
> Q: So who sold the land to you?
>
> A: Jacob Bortey and others, but I do not know the others.

This matter was put to rest by the evidence of DWI when he stated as follows:-

> *"I know the first defendant in this suit. He has developed a portion of our stool land at Baatsona as his residence".*

Then under cross-examination, DWI confirmed the position as follows:

> Q: I put it to you that the land in dispute is not part of the Nungua stool land.

A: It is part of Nungua Stool land".

The 1st Defendant's case is very simple. He averred and testified that he bought the plots of land from Jacob Bortey and George Bortey, both of Nungua.

Indeed a perusal of exhibit 2 indicated that, Jacob Bortey and his brothers were granted a lease of the land in dispute by NII BORTRABI OBRONI II (Mankralo and Acting Nungua Mantse).

It therefore follows that, exhibit 3, only recites the root of title of the 1st Defendant to Jacob Bortey and by necessary implication to the Nungua Stool. The evidence of DWI was therefore spot on and in the right direction.

Based upon the above analysis, it is clear that the Court of Appeal did not declare title to the 1st Defendant based on unregistered exhibit 3. Rather, the Court of Appeal, by deductive reasoning and with clarity of thought, decreed title in the 1st Defendant, by considering all the evidence such as the inadequacy of Plaintiff's root of title in exhibit 9, which had been discredited, the conduct of the Plaintiff's in sitting by and allowing the 1st Defendant complete his building and taking the law into their own hands to destroy same. The Court of Appeal, in our opinion rightly applied equitable principles to decree title in the 1st Defendant.

In coming to the above conclusion, we took into consideration the decision in the cases of ***Asare v Brobbery [1971] 2 GLR at 366, Amefinu v Odametey [1971] 2 GLR 135 at 144, Hammond v Odoi [1982-83] 1215 and Nartey v Mechanical Lloyd [1987-88] 2 GLR 314,*** but regret that those cases have been wrongly applied to the circumstances of this case by learned counsel for plaintiff's.

What must be noted is that, both the trial court and the Court of Appeal did not decree title to the 1st Defendant on the unregistered title deeds.

WHETHER THE COURT OF APPEAL ERRED IN THE AWARD OF DAMAGES

In addressing submissions on why the Court of Appeal dismissed the Plaintiff's concerns on the award of $7,000.00 damages to the 1st Defendant, the Court of Appeal again stated emphatically as follows:-

"It seems to me that counsel for the plaintiff is still hunted by the rules regarding pleadings and has not awakened to the realization that recent judicial decisions have made inroads into the myth surrounding pleadings and have accordingly demystified that myth. For instance, it has long been the rule that fraud must be specifically pleaded and proved. But in the Supreme Court case of ***Amuzu v Oklikah*** *(1998-1999) SCGLR 144, Justice Atuguba JSC made this observations at page 183:*

"In this case fraud has not distinctly been pleaded as the practice requires. But in view, especially of the provisions of Section 5, 6, and 11 of the Evidence Act, 1975 (NRCD. 323) regarding the reception of evidence not objected to, it can be said that where there is clear but unpleaded evidence of fraud like any other evidence not objected to, ***the court cannot ignore the same, the myth surrounding the pleading of fraud notwithstanding…*** *In the context of equity, it can even be said that fraud relates to any colourable transaction and not necessarily fraud in its strict legal sense.*

In compelling circumstances, the courts have not allowed the rules of pleadings to stand in the way of justice."

The late Justice Aikins JSC (as he then was) expressed similar sentiments in the same case at page 157. See also the cases of ***Asamoah v Servandzie (1987-88) 1 GLR, S.C Atta v Adu (1987-88) 1 GLR 235 and Semorransinghe v Sbaiti (1977) 2 GLR 442, C.A.*** *In the instant case, it is conceded that the defendant did not specifically plead that the US$7000.00 he was talking about was special damages and did not specifically claim it in the counterclaim but he did plead that figure in the statement of defence and counterclaim. Thus, paragraph 8 therein averred as follows:-*

"8. In June 1997, the Plaintiff took the law into his hands and removed the roof of the defendant's building constructed at the cost of $10,000.00 which then exposed the electrical and other building materials interior to the vagaries of the weather and rain thereby causing defendant loss of over $7,000,00 being cost of electrical and other building materials interior."

We cannot but agree with the reasoning behind those powerful words. In our minds, there is abundant evidence on record from which the Court of Appeal came to the above conclusions. We therefore have no basis to depart from them. We however direct that the 1st Defendant be made to pay filing fees in respect of the amount of $7000.00 or its equivalent in GH¢. At the time the pleadings were filed, it was, *C.I. 55, Civil Proceedings (Fees and Allowances)* that was applicable.

However, since the 1st Defendant did not pay the appropriate filing fees at the time, and to serve as a deterrence to parties, the 1st Defendant will be ordered to pay the filing fees on the award of damages in this case on the basis of the schedule of fees specified under *Civil Proceedings (Fees and Allowances) (Amendment) Rules, 2014 C. I. 86*. Save as stated supra, ground d of the appeal herein is dismissed

WHETHER THE JUDGMENT OF THE COURT OF APPEAL IS AGAINST THE WEIGHT OF EVIDENCE AND THE APPLICATION OF THE PRINCIPLE OF CONCURRENT FINDINGS OF FACT BY TWO LOWER COURTS

Before we conclude this judgment, it is relevant and necessary for us to comment on the effect of the judgment of the High Court which was concurred in by the Court of Appeal, and now subsequently concurred in by this court.

We are of the considered opinion that, in cases such as the instant, where the findings of fact and the decision of the trial High Court have been concurred in by the Court of Appeal, i.e. the first appellate court, and subsequently concurred in by the second appellate court, which is this court, and there has been no real need to comment on any new point of

law, or make any notable pronouncement on any legal principle, there is no real need to write any lengthy judgment.

This is especially so, when the Court of Appeal judgment as is the case in this instance is so detailed and all encompassing that there is therefore no need to treat the same grounds which have so eloquently been dealt with and well analysed by the Court of Appeal. To do so will amount to a repetition which we dare say has been the case herein.

Indeed, there are a litany of cases decided by this court which confirm the fact that, where findings of fact had been made by a trial court and concurred in by the first appellate court, the second appellate court, (which is this Supreme Court) must be very slow in coming to different conclusions.

However, a second appellate court may if satisfied that there are strong pieces of evidence on the appeal record which appear manifestly clear that the findings of the trial court and the first appellate court are perverse depart from those findings and conclusions.
In the instant case however, it is clear that there are no such instances to justify a departure by this court from the findings of fact and decisions of the two lower courts.

The advantages that the trial court derived from the observations of the demeanour of the parties and witness which appeared before it, which phenomenon was not lost on the Court of Appeal which rightly commented positively on it in their rendition, must be taken into consideration by this court in the assessment of the evidence. In this respect, we find no compelling reasons to disturb the findings and conclusions reached by the trial Court and the Court of Appeal and accordingly concur in them. See the cases of ***Achoro v Akanfela [1996-97] SCGLR 209, Akuffo-Addo v Cathline [1992] 1 GLR 377 S.C cited, Obeng v Assemblies of God Church, [2010] SCGLR 300***, just to mention a few.

We are therefore of the considered view that, in order to reduce the burden on this court, in appropriate circumstances where the judgment of the trial court, and especially that of the appellate court, confirming the trial court decision have been well stated and elucidating enough, it is desirable for this court in affirming the Court of Appeal decision to do so in very few words. We hereby also dismiss the omnibus ground of appeal that the judgment of the Court of Appeal is against the weight of evidence.

CONCLUSION

In conclusion the appeal herein is dismissed in its entirety. The Court of Appeal judgment of 31st October, 2013 is affirmed save for the variation in the payment of appropriate filing fees on the equivalent in GH¢ on the $7000 pleaded in paragraph 8 of the Defence and Counterclaim of the 1st Defendant.

(SGD) V. J. M. DOTSE

JUSTICE OF THE SUPREME COURT

(SGD) W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO BAMFO (MRS)

JUSTICE OF THE SUPREME COURT

COUNSEL

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J. AYIKOI OTOO ESQ. FOR THE DEFENDANTS/RESPONDENTS/ RESPONDENTS .