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

CORAM: ANSAH JSC (PRESIDING)
DOTSE JSC
GBADEGBE JSC
BENIN JSC
AKAMBA JSC

CIVIL APPEAL

NO.J4/16/2014

14TH JANUARY 2015

1.	**HARRIET MORRISON (NEE BAAH)**	**-**	**PLAINTIFFS/**
2.	**CHARLES CANTAMANTO BAAH (JNR)**		**APPELLANTS/**
			RESPONDENTS

VRS

1.	**REGISTERED TRUSTEES VICTORY BIBLE CHURCH**	**-**	**DEFENDANT/ RESPONDENT/ APPELLANT**
2.	**CHIEF REGISTRAR, LAND TITLE REGISTRY, ACCRA**	**-**	**DEFENDANT**
3.	**PERSONAL REPRESENTATIVES OF THE LATE CECILIA MORKOR BAA**	**-**	**DEFENDANT**

JUDGMENT

GBADEGBE JSC:

This is an appeal from the decision of the Court of Appeal that reversed the decision of the trial High Court in the matter herein. By the decision of the trial court proceedings in the action herein were terminated summarily with the plaintiffs' case being dismissed and judgment entered for the 1st defendant on its counterclaim. I have read the record of appeal in the matter herein and had regard to the respective briefs submitted to us by the parties through their counsel and in my thinking, the question for our decision today is whether in reversing the learned trial judge of the High Court, Accra, the learned Justices of the Court of Appeal correctly applied the settled principles of the court discernible from a collection of cases in applications brought under the rules of Court and the inherent jurisdiction to strike out pleadings and for stated reasons to either stay, dismiss, or enter judgment for a party to the proceedings in respect of which the objection has been taken to a defective pleading.

As the application was expressed in the notice of motion before the trial court to have been brought bothunder the rules of Court and the inherent jurisdiction, I commence my consideration by referring to the relevant provision of the High Court (Civil Procedure) Rules, CI 46 under which such an application is authorised. By Order 11 rule 18(1), it is provided thus:

> *"The Court may at any stage of the proceedings order any pleading or anything in any pleading to be struck out on the grounds that*

(a) It discloses no reasonable cause of action or defence or

(b) It is scandalous, frivolous or vexatious or

(c) It may prejudice, embarrass, or delay the fair trial of the action, or

(d) It is otherwise an abuse of the processes of the Court and may order the action to be stayed or dismissed or judgment to be entered accordingly"

The Court also has as part of its innate jurisdiction the power to exercise the same powers but while in its power derived from the Rules of Court it cannot have regard to affidavit evidence, in its inherent jurisdiction it is enabled to consider evidence placed before it by way of affidavits. There appears to be an overlap between Order 11 rule 18 of the High Court Rules and the inherent jurisdiction but as in proceeding under the inherent jurisdiction the court may have regard not only to the pleadings or indorsement but affidavit evidence, it can be said that the scope of that jurisdiction is wider.

A careful reading of the judgment that has been appealed to us compels me to the view that the learned Justices of the Court of Appeal substantially expounded the rules correctly when at page 275, the Court speaking through Ayebi J A posed for its consideration the question for its decision thus:

"*What is the proper approach then? The trial judge dismissed the suit because he was of the view that the action was frivolous and constitutes an abuse of the court's process. Indeed, under rule 18 of Order 11 which has been invoked,*

the trial judge in the exercise of his discretionary power is permitted to dismiss summarily an action which he considers frivolous or which constitutes an abuse the court's process. But before coming to this conclusion, the trial judge is enjoined to consider whether the case before him is one fit and proper to be so decided summarily. The issue to be decided in this appeal therefore is whether or not on the available evidence, the trial judge, procedurally is justified in deciding the case summarily.

I will therefore examine the practice and procedure under the rule invoked and the inherent jurisdiction of the court…."

In my opinion, the above approach as earlier said is substantially correct. For the time being, I shall pause with the consideration of what was missing from the approach of the Court of Appeal to which reference has just been made. It does also seem to me that not only did the learned Justices embark upon the right approach, but they reached the right conclusion that the case didnot come within the scope and extent of the rule regarding which the application was made to the trial court and consequently allowed the appeal. Accordingly, I agree with the conclusion reached by the learned Justices of the Court of Appeal when they observed at page 281 of the record of appeal that:

"We are therefore of the opinion that justice will be seen to be done when the matter is tried and pronounced upon."

Again, as by the decision I am about to give in the matter herein, the case has to be remitted to the trial court for a trial on the merits, I desire

to say nothing in respect of the substance of the case brought by the plaintiffs else it might prejudice a fair hearing. In a matter such as has unfolded before us, we should be careful to say no more than is sufficient for the purpose of our decision. In the opinion of the learned justices, the case though objectionable raised a case fit to be inquired into even if it was weak in nature as the procedure for striking out under the rules and indeed, the inherent jurisdiction and subsequently dismissing, staying and or entering judgment in the matter is sparingly used in plain and obvious cases only with the caveat that the Court is not authorised to drive a party as it were from the judgment seat. The rule is permissive and in my opinion does not justify the court embarking upon a detailed examination of the pleading in respect of which objection has been taken to determine if the case is likely to succeed. See: (1) **Goodson v Grierson** [1908] 1 KB 761; (2) **Ord v Ord** [1923] 2 KB 432.

I think what can be gleaned from the application that was made to the trial court, which unfortunately was acceded to by the learned trial judge is that the grounds on which the dismissal of the claim was sought were neither plain nor obvious and required the learned trial judge at that stage of the proceedings to reach a decision on the success of the case put forward by the plaintiff but that is not the intendment of the rule. I think that from a careful consideration of the action with which we are concerned in this appeal, the claim of the plaintiffs cannot be described as one that was bound to fail or was frivolous or vexatious and or one which the plaintiff cannot prove such as to have had it summarily determined without a full scale trial. See: (1) **Chatterton V Secretary of State for India in Council** [1895] 2 QB 189; (2) **Lawrence v Lord Norreys** (1890) 15 App Cas 210; (3) **Khan v Goleccha International Ltd** [1980] 2 All ER 259.

On the whole, I share the view expressed by the learned Justices of the Court of Appeal that the case of the plaintiff though expressed in unusual form and in some instances appeared incoherent and difficult to comprehend, raised a case regarding some out of court settlements between the parties that was fit to be investigated by the trial court. In my thinking, as the main relief which the plaintiffs sought from the court was the validity or otherwise of the said settlements turn on mixed questions of fact and law and there was on the pleadings before the trial court no admission of facts made by the defendant that would relieve the plaintiffs from proof of those facts, the Court was required to receive evidence on the alleged vitiating circumstances before deciding on the controversy before it more so when the defendant also sought a declaration of the validity of the settlements being impugned by the plaintiffs. As has been reiterated in several cases on the point, the procedure provided both under the rules and the inherent jurisdiction of the court was never intended to be applied to situations which were not obvious and require detailed argument to sustain them as can be observed from the hearing had in respect of the application whose grant by the trial court has resulted in the proceedings herein. Such an objection could have been raised as a point of law and argued under Order 33 rules 3 and 5 of the High Court (Civil Procedure) Rules.

My Lords, I now turn my attention to what I consider to have been glossed over by the learned Justices of the Court of Appeal. In applications that we are considering, the court must first be invited to strike out defective pleadings before proceeding to stay, dismiss or enter judgment accordingly. It appears from the application that was granted by the trial High Court that in the notice of motion invoking the

jurisdiction of the Court, no paragraph of the plaintiff's pleading was attacked for the purpose of it being struck out to enable the court to consider whether to stay, dismiss the action or enters judgment for a party to the proceeding. I think this was a serious procedural lapse that needs to be addressed for the purpose of future guidance as our Courts are beset on a daily basis with applications to strike out pleadings and terminate proceedings consequently. Then there is also the fact that contrary to the settled practice of the Court, the applicant did not indicate quite clearly what the grounds of the application were but only demanded from the court "**an order to dismiss plaintiff's suit and to enter judgment for 1st defendant in respect of the counterclaim……."**

The application, in my thinking did not come within the settled practice of our courts in such matters as provided for in Halsbury's Laws of England, Volume 37, (4th Edition) paragraph 436 at page 324 to which reference was made by the learned justices at page 277 of the record of appeal in the course of their judgment but which appears not to have impacted upon their decision in the matter. In as far as the application before the trial court was silent on these crucial matters, which appear from the practice of the Court to be necessary in such an application, I think that if the learned justices had applied their minds to those missing requirements, they would probably have refused the application without inquiring into the merits. In saying this, I do not disregard paragraph 19 of the applicant's affidavit in support of the application where for the first time in such a lengthy application some attempt was made to mention the grounds of the objection taken to the plaintiff's claim without any reference to either the pleading or indorsement in a manner that I

describe as vague and not sufficient for the purpose of satisfying the rule regarding striking out pleadings. The said deposition goes thus:

> *"That undoubtedly the clear and unambiguous terms of settlement adequately dealt with all the issues of controversy between the plaintiffs and defendants and that same is valid, unimpeachable and enforceable against plaintiffs who executed same on their own volition for which reason the present action is frivolous, abuse of legal process, vexatious and been commenced in bad faith."*

I do not think that the mere reference in what I consider to be an argumentative deposition to certain words in the said paragraph 19 without more will suffice for the purpose of the form and substance of the application and in any event, in making the application, the applicant is required to specify the said grounds in the body of the motion paper and not cause the respondent thereto and indeed the Court to search for the grounds from the affidavit in support of the application. As there was no demand to strike out any pleading of the plaintiffs, I am surprised that notwithstanding their subsistence the learned trial judge proceeded to enter judgment for the defendants on the counterclaim without any consideration being given to the issues raised in the respective pleadings of the parties on which as at the date the application was taken in the trial court there was by operation of the rules pleadings in the matter had closed and what was left was for directions to be taken on the issues joined between the parties to the action. I venture to say that in the circumstances of this case, the application before the trial Court seemed to have taken the form previously had and known as demurrers as it sought to have the action dismissed and judgment

entered on its counterclaim without reference to the preliminary requisite of a defective pleading which must first be struck out. Subject to these comments, the learned Justices of the Court of Appeal as earlier observed, expounded the applicable rules properly and in particular the questions to be considered at the hearing of applications both under Order 11 rule 18 of the High Court Rules and the inherent jurisdiction of the Court and indeed came to the right conclusion dismissing the application. I think that on the processes before them, they could not legitimately have come to a different conclusion.

For these reasons, the appeal herein is dismissed and the decision of the learned Justices of the Court of Appeal, which is on appeal to us, is hereby confirmed. Consequently, the application by which the action herein was sought to be terminated before the High Court, Accra, summarily is hereby dismissed.

(SGD) N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

(SGD) ***J. B. AKAMBA***

JUSTICE OF THE SUPREME COURT

DISSENTING OPINION

DOTSE JSC:

I have had the advantage to have read the opinion of my respected brother, Gbadegbe JSC speaking on behalf of the majority of this court. I have tried to adjust my understanding underlying the scope of the principles applicable when applications are brought under the rules of Court, in this instance, Order 11, rule 18 (1) of the High Court, (Civil Procedure) Rules 2004, C. I. 47 and the inherent jurisdiction of the court seeking to dismiss or strike out pleadings for stated reasons which have been so beautifully espoused by my brother Gbadegbe JSC, but am unable for the reasons stated hereunder to go along with the reasoning of the majority.

Indeed the Court of Appeal, whose judgment of 24th April 2012 reversed the trial High Court decision of 10th March 2010 in favour of the 1st Defendant/Respondent/Appellant, hereafter 1st Defendant, and against the Plaintiffs/Appellant/Respondent, hereafter, Plaintiffs, correctly stated the legal position per Ayebi J.A thus;

"What is the proper approach then? The trial Judge dismissed the suit because he was of the view that the action was frivolous and constitutes an abuse of the Court's process. Indeed, under rule 18 of Order 11 which has been invoked, the trial Judge in the exercise of his discretionary power is permitted to dismiss summarily an action which he considers an abuse of the Court's process. But before coming to this conclusion, the trial Judge is enjoined to consider whether the case before him is one fit and proper to be so decided summarily. The issue to be decided in this appeal *therefore is whether or not on the available evidence, the trial Judge, procedurally is justified in deciding the case summarily. I will therefore examine the practice and procedure under the rule invoked and the inherent jurisdiction of the court…"*

Like my brother Gbadegbe JSC, I agree entirely with the above exposition of the principle by the Court of Appeal. However, unlike my brother, I do not think the failure by the Court of Appeal to examine in detail the failure of the Applicant therein, herein 1st Defendant to indicate clearly the pleadings sought to be struck out is fatal to the merits of the appeal herein.

This is because, Order 11, rule 18 (1) of C. I. 47 states that, the court may at any stage of the proceedings order any pleading or anything in any pleading to be struck out on the grounds stated therein in the rules.

Pleadings is defined in Order 82 of the High Court, (Civil Procedure) Rules, 2004 as follows"-

> *"Pleadings means the formal allegations by the parties to a law suit of their respective claims and defences with the intended purpose of providing notice of what is to be expected at the trial."*

Comparing this definition with what the 1st Defendant applied for per their motion paper, which reads as follows:

> *"Notice of Motion*
>
> *Application for an order to dismiss the Suit, Order 11, r. 18 of C. I. 47 and under the inherent jurisdiction"* and in the body of the motion paper, the 1st defendants prayed the trial High Court for an order to dismiss the Plaintiff's suit and to enter judgment for the 1st defendant in respect of the counterclaim upon the grounds set forth in the accompanying affidavit.

The 1st Defendant, then set out in a 21 paragraphed affidavit, the basis upon which the application is being sought, together with exhibits numbering "A-I."

A close look at the application of the 1st Defendant and the affidavit including the exhibits gives the clearest indications that the Court is bound to look beyond the scope of the pleadings and consider the affidavit evidence.

However, it is also clear that, the reliefs upon which the plaintiffs mounted the instant action constitute the formal allegations by which they sought to conduct their case, and the defence of the 1st defendants constitute their defences by which notices were given to their respective opponents.

An application to dismiss the Plaintiff's case is in essence an application to strike out the Plaintiff's reliefs as an abuse of the court or disclosing no cause of action or as the case might be.

However, the Court of Appeal diligently considered all the contesting principles in this case as follows.

The Court of Appeal, after an exhaustive discussion of the scope of the application to dismiss/strike out pleadings under C. I. 47 and LN 140 A, stated emphatically as follows:-

"Thus apart from the two grounds permitted in the old rule, a court can also dismiss an action on the grounds that it is an abuse of the process of the court or that it may prejudice, embarrass or delay the fair trial of the action. So the practice and procedure under the new rule in C. I. 47 is not different from that under the old rule. And in the motion to dismiss the suit It is averred in paragraph 18 of the affidavit in support that Plaintiffs have no reasonable cause of action against the 1st defendant. Further in paragraph 19, it is averred that the action launched by the plaintiffs is frivolous, abuse of the legal process, vexatious and has been commenced in utmost bad faith. The two grounds as averred above are recognizable under both the old and new rules."

Continuing, the Court of Appeal, again speaking through Ayebi J.A, stated thus:-

"*Experience in our courts shows that litigation could be protracted and expensive. Thus when the rule is successfully invoked, the necessity of calling witnesses is dispensed with thereby reducing cost. The jurisdiction conferred on the Court under the rules is discretional and is exercised sparingly and only in exceptional cases."*

The Court then referred to a number of cases such as

1. **Appiah v Boakye [1993-94] 1 GLR 417 at 424**
2. **Dyson v A. G. [1911]1KB 410, at 418-419**

After considering all the legal principles involved in this case, the Court of Appeal delivered themselves thus:-

"As observed earlier on, the purpose of this suit is to set aside the terms of settlement and in it's place a new one negotiated between the parties. The grounds on which the plaintiffs seek to set aside the terms of settlement to repeat are (a) Shoddy and incompetent preparation, (b)Inadequate consideration c. undue influence and unconscionability of the bargain."

The Court of Appeal made light work of grounds (a) and (b) but stated in respect of ground (c) as follows:-

"But what of the ground of undue influence and unconscionability of the bargain? This ground must be viewed in relation to the allegation of the 2nd Plaintiff that 1st defendant prevented him from seeking independent advice from any source and that he was pressurized to sign the agreement on the date stated on it.

Undue influence/pressure is a matter of conduct of the party accused and cannot be determined from words as pleaded on affidavit evidence so also is the circumstances of the bargain cannot be determined from the expressed words in the agreement. As observed by Lord Denning in Lloyds Bank v Bundy [1975] Q.B 326 cited with approval in ***Attitsogbe v CFC Construction Company (W.A) Ltd & Read [2005-2006] SCGLR 858*** *one party can unintentionally or consciously exhibit such a conduct/behaviour which unknown to him is distressful to the other party."*

Based on the above and other considerations, the Court of Appeal concluded their judgment thus:-

"We are therefore of the opinion that justice will be seen to be done when the matter is tried and pronounced upon."

The appeal was therefore allowed and the trial High Court ordered to carry out a full trial.

It is against the said judgment that the 1st Defendants have appealed to this Court on the following grounds of appeal:

1. "That having regards to the pleading especially the particulars of undue influence and unconscionability pleaded by the Plaintiffs the honourable Court of Appeal erred in law when it held that there are triable issues for determination by the High Court.

2. That against the backdrop of the entire circumstances of the case the Court of Appeal erred when it held that Plaintiff's action discloses reasonable cause of action against 1st Defendant.

3. That the Court of Appeal erred in Law when it set aside the judgment of the High Court which was to the effect that Plaintiff's action is abuse of the legal process and frivolous.

4. The Court of Appeal erred when it failed to take into account the fact that Plaintiffs have by their conduct abused the legal process and therefore allowed the appeal and directed that the case should proceed to trial at the High Court."

From the above grounds of appeal, what is clearly discernible and stands out is whether or not the Plaintiff's action which was the subject matter of the application at the behest of the 1st Defendants, is one that can be said to be an abuse of the legal process and liable to be struck out or dismissed under the Courts inherent jurisdiction.

From the uncontroverted facts of this case, what stems out clearly is that since the death of C.C.K Baah, (deceased) on the 2/1/1972 the Estate of the said Deceased has known no peace. The Executors and the beneficiaries, including the wife Cecilia Morkor Baah also now Deceased and the children, some of whom are the plaintiff's herein, have been in and out of the courts in Ghana for considerable periods since 1972.

Facts of the Case

The 2nd Plaintiff approached the 1st Defendants and represented to them that he was the legal representative of the children of the late C.C.K Baah.

He further purported to be in a position to convey leasehold agreement on portions of land reputed to belong to the Deceased C.C.K. Baah. Following successful negotiations of a leasehold, the 1st Defendants entered onto the land only to learn that the widow of the Deceased Cecilia Morkor Baah also laid claims to the said parcels of land.

The 1st Defendants had to renegotiate with the said Deceased widow and succeeded in obtaining a Land Title Certificate in respect of the same parcel of land.

Infuriated and angered by the 1st Defendants conduct in obtaining a leasehold agreement from Deceased widow, the 2nd Plaintiff instituted a couple of suits against the 1st Defendants and the said Deceased widow claiming a declaration of title to the said parcel of land.

It was whilst the said suits were pending that an out of court settlement was embarked upon by the parties with their respective counsel in the driving seat.

However, as these discussions aimed at settlement had stalled, the parties therein, took the matters into their own hands and succeeded in settling the case. Terms of settlement were agreed upon and signed as a result of which valuable consideration was paid to the plaintiffs by the 1st Defendants which was duly acknowledged.

A week after the receipt of the consideration named in the terms of settlement, the Plaintiffs embarked upon the instant action against the 1st Defendants.

The Court of Appeal correctly described the reliefs the Plaintiffs claimed in the High Court in the following terms in the judgment.

"*But then, these reliefs are couched in long winding sentences to the point that they have become almost incomprehensible and contradictory."*

Based on the above observation, the Court of Appeal summarised these incomprehensible claims as follows:-

a. "A declaration of ownership to their father's property situated at Awoshie popularly referred to as Baah yard.

b. A declaration that the 1st defendant is estopped from denying their title and right to the said properties.

c. An order setting aside the terms of settlement executed between the 2nd Plaintiff and 1st Defendant on 8th April 2009 on the grounds of shoddy and incompetent preparation, inadequate consideration and undue influence and unconscionability.

d. An order that the parties enter into a new settlement on terms different from the old one; or

e. In the alternative, 1st defendant be ordered to pay compensation to the Plaintiffs based on a court ordered valuation report.

f. An order directed at 2nd defendant to re-register the Awoshie lands (Baah Yard) in the name of the appellants who will convey same to the 1st defendant.

g. An order directed at 1st defendant to pay arrears of rent to the Plaintiffs, and

h. General damages against the 1st defendant for the unlawful demolition of structures on plaintiffs land."

A critical study and analysis of the above reliefs and the Court of Appeal judgment which is on appeal before us clearly indicates that the basis for their reversal is that some triable issues have been raised and it was therefore wrong for the learned trial Judge to have summarily terminated the case.

In arriving at the decision I have taken in this appeal, I have considered the statements of case filed by both counsel for the parties in the case as well as taken into consideration the entire appeal record.

Even though the Plaintiffs have pleaded that the terms of settlement be set aside on grounds of duress and unconscionability among others they failed to provide the necessary particulars that the relevant rules of procedure require them to provide. See order 11 r. 8 (1) of C.I. 47 and cases like ***Hammond v Odoi [1971] 1 GLR 375 C.A,*** which was affirmed in [1982-83] GLR 129 by the Supreme Court which reiterated the fact that since pleadings are the very nucleus around which the conduct of civil cases revolves, failure to plead material evidence to be led is fatal to the success or otherwise of a claim.

In the instant case, the Plaintiff's failed to adequately set out any credible particulars in support of their claim of undue influence. See also ***Adjetey Agbosu & Others v Ebenezer Nikoi Kotey & Others [2006] SCGLR 2.***

I am also aware of the caution in several cases touching on the applicability of the scope of the rule that this jurisdiction must be exercised sparingly and with extreme caution and trepidation.

In ***Ghana Muslim Representative Council v Salifu [1975] GLR 246,*** the Court held that *" A pleading would only be struck out where it was apparent that even if the facts were proved the Plaintiff was not entitled to the relief he sought."*

The matter was put beyond doubt by the Supreme Court in the locus classicus decision in the case of Okofoh Estates Ltd. v Modern Signs Ltd & Another [1996-97] SCGLR, 236 at 238 as follows:-

"*My* **understanding is that, the purpose of the Order is to prevent claims which on the face of the pleadings disclose no cause of action or which is shown to be frivolous or vexations. Under the inherent jurisdiction of the court, on the other hand, the purpose is**

to give the court the power to use summary means to prevent abuse of its process".

The learned Author, Kwami Tetteh in his invaluable Black Book on Civil Procedure page 305, writing under the heading *"striking out defective endorsement or pleading"* stated thus:-

"***The court may strike out a pleading or averment at any stage of the proceeding and may order the action to be stayed, dismissed or may enter judgment.*** *The court may so act where the pleading discloses no reasonable cause of action or defence or is scandalous, frivolous or vexations, or likely to prejudge, embarrass or delay the fair trial of the action or* ***otherwise constitutes abuse of the process of the court."***

See cases like ***Okofoh Estates v Modern Signs Ltd***., already referred to supra, ***G.M.R.C v Salifu***, also referred to supra, **Harlley v Ejura Farms [1977] 2 GLR 179, Otema v Asante [1992] 2 GLR 105, Okai v Okoe [2003-2004] SCGLR 393** just to mention a few.

From the above expositions, it is clear that this procedure is unavailable where issues of fact and law or serious allegations of fraud would emerge for determination at the trial.

It can therefore be stated with clarity as the Learned Author Kwami Tetteh again stated at page 307 of his Black Book that, *"It follows from the above that where a cause of action or defence is disclosed, the action must not be determined summarily even if there is a strong suspicion that it cannot be substantiated, it must be determined at the trial."* See ***Harlley v Ejura Fams*** already refereed to supra.

The learned author, continued thus:-

"This court will not permit a plaintiff to be driven from the judgment seat, without considering his right to be heard, ***excepting in cases where the cause of action is obviously and almost incontestably bad." Emphasis***

See again ***G.M.R.C v Salifu*** already referred to.

However, I am of the considered view that if the Court of Appeal, had referred to their own observation that experience shows that litigation is

protracted and expensive in our jurisdiction, they would have observed that the Plaintiffs were doing just that.

Looking and taking into consideration all the relevant material before the High Court, it is certain that the Plaintiff's who went into the settlement with their eyes very widely opened with no clear disability stated or suffered by them, and having appended signature and collected valuable consideration cannot turn round and issue the impugned action against the 1st Defendants.

What did the learned High Court Judge decide which had been reversed by the Court of Appeal? Aduama J.A, sitting as an additional High Court Judge held thus:-

> *"I have read the processes in the suit and have heard Counsel in their submissions. I am satisfied that the grounds on which the Plaintiffs are seeking to set aside the terms of settlement are not grounds that can legally justify the setting aside of the terms. In my view, the Plaintiff's action is frivolous and constitutes an abuse of the Court's processes and I will grant the application and dismiss the suit."*

Indeed, it is the duty of a trial court not to be swayed by the reliefs a party claims before it to prevent that court from applying the procedure in Order 11 r. 18 of the C.I. 47 when it is apparent that is the most appropriate and swift procedure. For example, in the instant case, the fact that the plaintiffs have endorsed their reliefs with undue influence and unconscionability where it is apparent there is no shred of evidence to support it, should not lead a court to grant the plaintiffs mitigation or delay the judgment date.

It has become too fashionable these days, for able bodied persons who enter into contracts on their own free will and volition with no disabilities, to turn round and resile from those contracts after they have taken and enjoyed the benefits of those contracts.

In the instant appeal however, the facts of the case make it quite obvious that the Plaintiff's case is incontestably bad, and a gross abuse of the Court's process.

Having voluntarily agreed to settle the case with the 1st defendants with no clear and apparent disability or inducements proven or established, the Plaintiff's must not be permitted by this court to continue to litigate with the

1st Defendants by encouraging them to pursue their incomprehensible endorsement as it was ably described by the Court of Appeal.

Speaking for myself, I agree with the learned trial Judge and will accordingly allow the instant appeal and set aside the judgment of the Court of Appeal, and instead restore the decision of the High Court of 10th March 2010.

The appeal herein therefore succeeds.

(SGD) ***J. V. M. DOTSE***

JUSTICE OF THE SUPREME COURT

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