IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF GHANA

ACCRA – GHANA

CORAM: ANIN-YEBOAH JSC (PRESIDING)

BAFFOE-BONNIE JSC

AKAMBA JSC

APPAU JSC

PWAMANG, JSC.

CIVIL APPEAL

NO: J4/21/2015

15TH MARCH 2016

ELOI KOFI MENSAH SIMMONS ---- PLAINTIFF/RESPONDENT

(SUBST. BY ALICE N. SIMMONS /RESPONDENT

AND ELOI KOFI SIMMONS)

VRS.

CATHERINE SIMMONS ---- DEFENDANT/APPELLANT

/APPELLANT

JUDGMENT

APPAU, JSC. :

My Lords, the appeal before this Court is a simple marital property case arising from a divorce petition which, regrettably, celebrated its 21st birthday of its life in the courts on 19th December 2015. Its court age is therefore twenty-one (21) years, two (2) months and twenty-five (25) days

as at today. The Petition was filed in the High Court on the 19th day of December 1994 by the man of the marriage; i.e. the husband.

The High Court delivered judgment in the case on 7th January 2008. The respondent (i.e. the wife) who is the appellant before us was not pleased at the way the trial court arrived at its decision. She consequently appealed against that decision to the Court of Appeal as was expected. However, almost two months after filing the notice of appeal, and before the parties could settle the conditions of appeal, the Petitioner/Respondent in the appeal (i.e. the man) died. He died on 22nd May 2010, (more than five years ago).

Considering the nature of the dispute which was on its journey to the Court of Appeal at the time of the Petitioner/Respondent's demise, any reasonable mind would have thought that the dispute would die naturally since pursuing it would be tantamount to flogging a dead horse. Strangely enough, the case survived the dead petitioner with the two children of the marriage being dragged into the case as substituted petitioners/respondents to replace their dead father in his marital war against their mother (the appellant).

The appeal failed when the Court of Appeal dismissed it. Still dissatisfied, the respondent/appellant/appellant (hereinafter simply referred to as 'appellant'), has come before us to re-consider her only ground of appeal, which appeared to be the same ground in substance in her first appeal before the Court of Appeal. I reproduce the two grounds below:

The only ground of appeal determined by the Court of Appeal was as follows; ***"The trial judge erred in law when he treated the proposals submitted without prejudice for consideration towards an amicable settlement as the basis for his judgment when there was disagreement on the said proposals".***

The ground of appeal before this Court after the first appeal suffered a setback is also as follows; ***"The Court of Appeal failed to pronounce on the paramount issue of whether or not the trial judge erred in law when he treated the proposals submitted without prejudice for consideration towards an amicable settlement as the basis for his judgment when there was disagreement on those proposals as a result of complete***

rejection of the proposals submitted on behalf of the appellant by counsel for the respondents".

From the facts on record, the appellant may appear unreasonable for pursuing the matter up to this level but events that would unfold later in the determination of this appeal would reveal the role both counsel have played in contributing to the protraction of this simple dispute, which falls into the category of cases the celebrated (Dr) Date-Bah, JSC described as *'love stories gone sour'* in the case of **ARTHUR (No 1) v ARTHUR (No 1) [2013-2014] 1 SCGLR 543 @ 549**.

Facts of the case

The original parties in this divorce action Eloi Kofi Mensah Simmons (deceased) and Catherine Simmons were ordinarily resident in London, United Kingdom. They met and later contracted a customary marriage in Accra in 1981. Two years later (in 1983) they converted the customary marriage into an Ordinance marriage in London and lived peacefully thereafter. About a decade or so after a presumed blissful marriage which was blessed with two children; a male and a female, differences, which are not uncommon in marriages, reared their ugly head in the marriage. The man re-located in Accra, Ghana in 1991 but the appellant decided to stay on in London.

Their differences escalated to a point of no return culminating in the present action which began in the High Court on 19/12/1994 and has survived up to this date. With this appeal, this Court has been called upon to put a sealing to its progress subject to a review if need be. The reliefs sought by the petitioner in the trial High Court were:

a) **That the marriage be dissolved;**
b) **That the custody of the two children of the marriage be given to the petitioner;**
c) **That the petitioner be given equitable share of all the marital properties, and**
d) **Any other order that the trial court thought the petitioner was entitled to.**

The petitioner attached a tall list of all the marital properties the parties had allegedly acquired jointly both within and outside the jurisdiction of this court; including even normal household chattels.

The appellant entered appearance to the petition on 23/12/1994. She filed a fifty-paragraphed answer to the petition with several sub-paragraphs, denying almost everything of substance in the petitioner's case bordering on the acquisition of those properties, but the existence of the marriage between them. She cross-petitioned for dissolution of the marriage as prayed by the petitioner. She accused the petitioner of cruelty. She also prayed for custody of the two children of the marriage, refund to her of monies petitioner owed her and a declaration that the petitioner had no share in the properties he described as marital properties.

The language used by both parties in their pleadings (particularly the petitioner), which ignited the hot exchanges between them as evidenced from the record, suggested the level of acrimony between the couple. It was so clear that the marital damage was so severe and grievous that it could not under any circumstances be repaired or healed in any way. The trial court per Agnes Dordzie, J (as she then was) therefore decided to dissolve the marriage in the middle of the hearing which commenced on 18/02/1997, leaving the ancillary relieves of the distribution of marital properties and the custody of the children to be determined by evidence.

After sometime, the trial judge advised the parties to attempt settlement when it became obvious that the only dispute between the parties was the ownership of only one house; i.e. the matrimonial home numbered: Hse No B. 835/25B, Kwashieman Motorway, Accra. This was because the children had by then attained the age of maturity and therefore could not be a subject of custody orders. The case thereafter went into abeyance for several years as the parties failed to return to court to announce the outcome of the settlement the trial court advised them to attempt. It was not until 6th June 2004 that the petitioner filed a 'Notice to Proceed', to revive the action which had gone stale for five (5) years.

On 27/07/2007; i.e. thirteen (13) good years after the institution of the action, the matter came before Lartey-Young, J. who happened to be the fourth judge to handle the petition. He also advised the parties to try an out

of court settlement of their differences. Upon his promptings, the parties put in proposals for an amicable settlement of the dispute. The appellant filed her proposals first which was responded to by the petitioner. The appellant's proposal for settlement which was filed on 29/09/2009 was as follows:

"PROPOSALS FOR SETTLEMENT

Pursuant to the Order of the Court dated the 24th day of July 2009, the Parties having acknowledged the fact that the only existing property is the House, we hereby make the following proposals to be considered as the terms of settlement.

(i) That the said House No B 835/25B situate at Kwashieman and with an attached plot be distributed equally between the Parties.
(ii) That the said property be enjoyed by the Parties during their lifetime.
(iii) That on no account shall the property be disposed of by any of the Parties' trustees, assigns or any legal representative by way of lease, mortgage or sale.
(iv) That the property be held in trust for the two children and their children and shall remain so even during the life time of the Parties"

Unfortunately, the proposal filed by the petitioner on 6/10/2007, which he titled as; **'Response to proposals for settlement presented by the respondent pursuant to a Court Order'**, turned out to be more of a diatribe than a simple proposal intended to bring to a peaceful and amicable end the dispute between the parties. Since it is quite verbose and unpalatable in some sense, we do not find it necessary to reproduce it in this judgment. It covers pages 239, 240 and 241 of the ROA.

While in substance, it tended to agree with the simple proposals suggested by the appellant, it was full of vitriolic attacks on the character of the appellant to the extent of even calling her a thief and suggesting that she was more or less a nonentity. It even went further to suggest that as the mother of the two children who laboured to give birth to them, the appellant did not like or love her own children as much as their late father (the petitioner) did. It was this thinking that moved counsel for the late petitioner/respondent, (hereinafter called 'respondent'), to regrettably

drag the two children of the marriage into their parents' marital dispute under a wrong nomenclature of "***judgment beneficiaries***".

The fact is that both parties had planned to build for their two children and had expressed this by agreeing that they were only trustees for their children, holding only life interest in the said property, which had been registered in the name of the first child. Both had indicated that none of them could dispose of the house in any way during their lifetime. With such an understanding, how could the children who have not as yet become owners, be pitched against their mother who still holds life interest in the whole property after the death of their father?

Such a display of bitterness and lack of trust would invariably infuriate the appellant and ginger her into not accepting any deal. And it is this conduct on the part of the respondent, which this Court wholly blames on his counsel or lawyer, with the greatest respect to her, that has carried this simple case this far.

Aside of the character assassination of the appellant by the respondent in his proposals, respondent agreed in substance that the disputed house was jointly owned by the two of them. He again agreed that as parents, they were holding it in trust for their two children and that they had only life interest in same for which none of them could dispose of it in any way during their lifetime. If the respondent had ended his proposals this way, that would have sounded the death knell of the case. Unfortunately, however, he didn't. He went further to suggest that he alone should be made to enjoy occupation of the house since the appellant had a house of her own somewhere else where she was living. To this end, he suggested that some relatives of the appellant who were occupying rooms in the disputed house at the pleasure of the appellant should be ejected from the rooms.

The High Court's determination of the two proposals submitted by the parties

After the filing of the two proposals, the trial High Court sat on the return date which was 30th October, 2009. Both the respondent and the appellant were present with their lawyers namely; Mrs M. Y. N. Achiampong for the

respondent and Charles Mbeah, Esquire for the appellant. This was what transpired in the trial court that day:

*"**BY COUNSEL FOR THE RESPONDENT:** We filed a proposal for settlement upon the Order of the court. But the response we received shows that we have not reached any solution.*

***BY COURT:** The two proposals have now been discussed with both parties and their counsel. The petition is adjourned for ruling on the proposal for settlement. Adjourned to 27/11/09 for Ruling at 10.00 am.*

(SGD) ……

JUSTICE OF THE HIGH COURT"

Though the record indicates that the trial court did discuss the two proposals with the parties and their lawyers, no record was made of the alleged discussions had. This Court could not therefore fathom what the trial court intended to rule on, on the next adjourned date as recorded. Incidentally, there is no record that the trial court did sit on the 27th of November 2009 as indicated. Rather, the record shows that the trial court sat on 19th February 2010; almost four months after the court had adjourned for ruling on the two proposals.

On this date, the trial court did not deliver a Ruling on the proposals as intimated on 30/10/2009. Rather, the trial court pronounced judgment in the matter bringing to a close the action before it. It is a four-page judgment. It is this judgment that lit the appeal flame that has kept burning up to date. It is therefore worth reproducing for a better appreciation of the judgment of this Court: -

"BY COURT:

JUDGMENT

The petition is for an order to: (a) Dissolve the marriage; (b) The custody of the two children should be given to the petitioner; (c) That the petitioner be given half share of all the properties acquired during the marriage since they were acquired jointly and (d) Any further order the court may deem fit.

The respondent also cross-petitioned for: (a) Dissolution of the marriage; (b) An order for the custody of the two children; (c) That all monies of the respondent which the petitioner took and pocketed same should be paid back to the respondent; (d) A declaration that the petitioner has no joint interest in the legally acquired properties of the respondent and (e) An order for account.

This suit was filed in 1994 and passed through protracted proceedings in other High Courts. The order for divorce was granted by one of the courts before the petition was transferred to this court in the year 2008. At that time the two children of the marriage had attained ages above twenty-two years. The issue of custody was therefore disposed of summarily because under the Children's Act they were disqualified to be children.

The only issue left for trial now was the distribution and settlement of properties acquired during the marriage.

After a protracted negotiation frustrated with acrimony but upon prompt (sic) by the court, counsel for both parties agreed to attempt a settlement. Counsel for the respondent filed a proposal which I wish to reproduce here:

(i) That the said house No. B.835/25B situate at Kwashieman and with an attached plot be distributed equally between the parties.
(ii) That the said property shall be enjoyed by the parties during their lifetime.
(iii) That on no account shall the property be disposed of by any of the parties' trustee, assigns or any legal representative by way of lease, mortgage or sale.
(iv) That the property be held in trust for the two children and their children and shall remain so even during the lifetime of the parties.

The petitioner's response as filed by his counsel is quite long to be reproduced verbatim. I will, however, make a summary of it.

(1) That the House No. B.835/25B is recognized as a joint matrimonial property though the respondent expended more of the cost.
(2) That the said property has been held in trust for the two children Alice and Kofi upon advancement.
(3) Petitioner agrees with paragraphs (ii) and (iv) of the proposal and wants the court to so declare that the property is jointly owned matrimonial property

and that it has been advanced to the children but reserving life occupancy for the parents.

(4) Since the marriage has been dissolved the couple cannot live together in the same house (which is not partitionable) and since the respondent has acquired another property solely for herself the petitioner alone should be given the right to live in the house for his life.

(5) All assignees or tenants of the house shall vacate it and give vacant possession for the petitioner only for his lifetime.

(6) Paragraph three of the proposal is agreed.

The court upon reading and comparing these proposals and responses shall make the judgment and orders:

(1) The House No. B.835/25B, Kwashieman is declared a joint matrimonial property of the parties.

(2) The said property shall be held by both parties in trust for their two children; Alice and Kofi only.

(3) Though the respondent shall be recognised as a joint trustee, the petitioner alone shall occupy it for his lifetime only because he is now aged and the respondent has a self-acquired residence and also doing a good business.

(4) The property shall never be disposed of by way of assignment, lease, mortgage or sale by any of the parties (trustees) or their legal representatives.

(5) All tenants, assignees or persons occupying the said property upon a grant by the respondent shall vacate it and give vacant possession to the petitioner to have sole and peaceful enjoyment during his lifetime.

(6) Each party shall pay his or her cost.

(7) It is ordered accordingly.

(SGD) MR. ISAAC LARTEY-YOUNG, J.

JUSTICE OF THE HIGH COURT"

Appeal by the wife (appellant) to the Court of Appeal

Not pleased with the disposal of the case in this manner, the wife filed an appeal against the judgment of the High Court to the Court of Appeal. Her only ground of appeal was that; ***"The trial judge erred in law when he treated the proposals submitted without prejudice for consideration***

towards an amicable settlement as the basis for his judgment when there was disagreement on the said proposals".

The appellant filed no further ground as intimated in her notice of appeal.

The crux of her arguments in the five-paged written submissions filed before the Court of Appeal was that the petitioner/respondent, having rejected the proposals filed by the appellant as the basis for the intended settlement, the parties had failed to reach a consensus on the settlement for which the court should have continued with the hearing of the case instead of foisting a judgment, which was not on the merits, on the parties.

As has been indicated earlier on in this judgment, the respondent did not survive the appeal. He died before the appeal record was transmitted to the Court of Appeal. His counsel therefore filed a motion to substitute him with his two children with the appellant. The trial High Court granted the application presumably because of the description given the children as; ***"judgment beneficiaries"***.

The children were neither the successors nor the joint family heads of their late father's family. There was no indication that their late father died testate and devised the said property to them as beneficiaries. However, counsel for the respondent swore to an unpleasant affidavit in support of the motion for substitution dragging the two children into the action. Some of the depositions were scathing attacks on the character of the appellant who is the mother of the two children sought to be introduced in the case as the new respondents. Others particularly; paragraphs 2, 6 and 9 were mis-statement of facts. The said paragraphs read:

"2. That I have the authority and consent of the children of the deceased petitioner ***in whom the trial judge gave judgment vesting the disputed house in them*** *and make the depositions herein which have come to my professional knowledge in course (sic) of my engagement.* {Emphasis added}

6. That despite the fact that the respondent had left the house for so long and has been staying in her own house for all these years whereas the petitioner who had no other house than the Kwashieman house had lived in same up to the time of the judgment, the respondent has appealed against the judgment

of the Court ***to invest the said house in the children after the expiration of the life interest given to the petitioner in the house****.* {Emphasis added}

9. That as required by law, the deceased ought to be substituted by a proper person(s) for the case to be determined and we believe that the proper legal persons to do so are the very children who are now adults, ALICE and KOFI SIMMONS ***into whom the judgment under appeal had vested the property."*** {Emphasis added}

The fact is that the trial High Court never at any time, vested the disputed house in the two children as paragraphs 2, 6 and 9 of the affidavit sworn to by counsel for the respondent herself and reproduced above, portrayed. The fact that the trial court directed that the late petitioner alone should occupy the house during his lifetime did not mean that the appellant has no interest in it for it to become the children's property outright after their father's death.

Black's Law Dictionary, (Ninth Edition) defines the word ***'vest'*** as: *"1. To confer ownership of property upon a person; 2. To invest a person with a full title to property; 3. To give a person an immediate, fixed right of present or future enjoyment* and *4. To put a person into possession of land by the ceremony of investiture.*

A ***'Vesting Order'*** is therefore; ***"a court order passing legal title in lieu of a legal conveyance".*** That was not the substance of the trial court's judgment that went on appeal to the Court of Appeal.

The trial court only grounded its judgment on the agreement by both parties to leave the disputed property for their children unencumbered after their death. The court then added its own orders which were to the advantage of the late respondent that the appellant did not agree to. These orders were that the respondent alone should occupy the matrimonial home for which the relatives of the appellant, who were then living in the house, were ordered to vacate same.

The answer of the respondent to the written submissions of the appellant was simply that a careful reading of the two proposals filed by the parties clearly showed that there was no disagreement between them that was why the trial court adopted the said proposals. She gave indications as to

why the trial court made the other two orders which the appellant did not agree to. These orders were;

i. *That the petitioner alone should occupy the matrimonial house for life since the appellant had another house of her own where she resides.*
ii. *That the relatives or tenants the appellant had placed in the matrimonial house must vacate it to give petitioner alone peaceful enjoyment of the house.*

It appears learned counsel for the respondent, with the greatest respect to her, does not appreciate the full import of the judgment of the trial High Court that was affirmed on appeal by the Court of Appeal.

I must emphasize that the trial court did not order the relatives of the appellant in the house to vacate the house so as to give vacant possession to the children of the marriage she had substituted as respondents in this appeal as counsel for the respondent contended in the last paragraph of her written submission in the Court of Appeal. (See page 289 of the ROA).The trial court never made such an order.

The trial court made the vacation order against the tenants placed in the house by the appellant to ensure that the petitioner, who was of age, would live peacefully without any disturbance till his death. This was because there was an unproven allegation that those relatives or tenants were creating nuisance in the house. However, with the death of the respondent, that order abated. The wife, who is the appellant and a joint owner of the property by the judgment of the trial court, has life interest in the property, which is her matrimonial property or home. She could deal with it in any way; the only exception being that she could not dispose of it since it reverts to her two children after her death.

This was the position, going by the judgment of the trial High Court, notwithstanding the fact that she has her own self-acquired property elsewhere. The property only passes to her children after her death but not after the death of the petitioner alone. It was this position, as envisaged in the judgment of the trial High Court that operated on the mind of the Court of Appeal to dismiss the appellants appeal without addressing distinctly the substance of the only ground of the appellant's appeal.

The Court of Appeal in its judgment of 11th April, 2013 delivered itself at page 4 of the judgment, which is at page 300 of the ROA, as follows:

"On the 22nd of May 2010 the petitioner/respondent passed away. One would have expected that with the demise of the petitioner/respondent at the ripe age of 80 years, the life tenancy granted him would have expired and <u>the respondent/appellant would have become a sole trustee for the property</u>. However, that sanguine expectation was not to be. The respondent/appellant did not find the path of peace to withdraw her appeal. The legal process therefore made it necessary to pitch the children against their mother in this ignoble struggle for property i.e. one house. The ground of appeal is not specifically against any of the orders made in the judgment. The appeal is merely against the procedure adopted in arriving at the judgment.

The relief sought from this court is; 'A reversal of the said ruling and orders made by the learned judge'. In my humble understanding it was the wish of the respondent/appellant that the parties should revert to the negotiating table. The very process which both counsel have demonstrated an inability to effect, for over fifteen years! The palpable acrimony which counsel for the parties have acquired from their clients culminated in an irreconcilable disposition which has persisted for the fifteen years.

What would then constitute a permanent practical and legal solution to this seemingly intractable problem? It is our considered opinion that it has never been the intention of the respondent/appellant to litigate with her own children over a piece of property which she has dedicated herself to protect for the benefit of these same children against older children of her erstwhile husband. In our considered view it will serve no purpose once the parties have agreed that the property was acquired during marriage to go back to the negotiation table for the following reason…" {Emphasis added}

The Court of Appeal then referred to the celebrated case of this Court on the distribution of marital properties delivered on 22nd February 2012; i.e. GLADYS MENSAH v STEPHEN MENSAH, which has been reported as **MENSAH v MENSAH [2012] SCGLR, 391** and other like cases and

concluded that by that decision, since the disputed property was acquired jointly during marriage it belonged to the two parties. There was therefore no need to send the parties back to the negotiating table as the appellant was advocating. It accordingly dismissed the appeal.

Further appeal by the appellant to this Court

The appellant was still not satisfied with the decision of the Court of Appeal and has come before us with this ground of appeal: ***"The Court of Appeal failed to pronounce on the paramount issues of whether or not the trial judge erred in law when he treated the proposals submitted without prejudice for consideration towards an amicable settlement as the basis for his judgment when there was disagreement on those proposals as a result of complete rejection of the proposals submitted on behalf of the appellant by counsel for the respondents".***

The gravamen of appellant's case as submitted in her seven-page statement of case filed on 24/12/2014 in support of the appeal before us is captured under pages 6 and 7 of the statement. I reproduce same below: -

"My Lords, the essence of justice is that where there is no peaceful resolution of the matters in controversy, the parties must be heard BEFORE an informed decision based on a proper evaluation of the parties' evidence is made. The respondent/appellant never insisted that the proposals for settlement having been abusively rejected, then the parties should revert to the negotiating table. With respect to the Court of Appeal, this was never her case.

What she has been insisting on is that once her simple straight forward proposals for an amicable settlement were rejected, and in such a vitriolic manner, then the only option left for the court was to proceed to take evidence and not to make the rejected proposals a basis for the judgment complained of, for she NEVER at any time waived her right to be heard.

It is submitted that the Court of Appeal's reference and reliance on the GLADYS MENSAH vr STEPHEN MENSAH case is unjustified, because that case nowhere laid the rule down that once it is a matter arising from a matrimonial cause, then NO EVIDENCE should be taken by the court.

It is submitted that the decision in MENSAH v MENSAH was ONLY arrived at after evidence was taken and reviewed.

It is submitted that the High Court committed a fundamental error which goes to the roots of judicial adjudication when suo motu, it decided to use the rejected proposals as the basis for judgment and the Court of Appeal in affirming this decision continued this fundamental error.

Yes, there was a lot of caustic and acerbic acrimony but this acrimony came mainly from one source, the Petitioner and his Counsel. However inconvenient, difficult or demanding a full trial would have been, that was the only course open to the court below, in view of the clearly intransigent position of the parties.

If the parties were NOT AD IDEM, then the Court had to listen to the whole evidence and make an informed decision on the evidence. This not having been done, then it is submitted that no trial took place and the judgment however called, cannot stand. ***A proper trial has to take place with everything being done according to the accepted rules.***

I therefore submit that your august Court sets aside the Judgment of the Court of Appeal and ***orders a retrial."*** {Emphasis added}

This has been the stance of the appellant long before the death of the Petitioner during the appeal and it is still her stance, for she is aggrieved because she was not allowed to give evidence. I submit accordingly…"

In our view, counsel for the respondents did not answer the arguments advanced by the appellant in her statement of case filed in this Court. She continued with her vitriolic attacks on the character of the appellant in her statement of case filed for and on behalf of the respondent and alluded to facts which were neither part of the judgment of the trial court nor that of the Court of Appeal. It is this wrong perception held by counsel for the respondent that has dragged this case this far. She stated in her un-paged Statement of Case filed on 21/1/2015 as follows: -

"My Lords, the present position of the children substituted respondents is that they are now full adults aged 32 and 30 years and both married and therefore capable of managing their own properties. Indeed being sent to London after their Senior Secondary School education at Achimota Secondary School, they have been able to work and school to graduate at the University with Kofi holding a Master's Degree and therefore praying this Honourable

Court to pronounce them as such and to order the appellant to remove her said imposed relatives in the Kwashieman house to give the children immediate vacant possession of same to manage same on their own…"

The fact is that, going by the judgment of the trial court which was affirmed by the Court of Appeal, the disputed matrimonial house only becomes the property of the two children substituted as respondents only after the death of their mother; i.e. the appellant but not otherwise. It is therefore wrong to put a twist on the disputed judgment and pitch the children against their mother in a dispute that did not concern them in the first place.

The law with regard to settlements and judgments arising therefrom

Though we do not agree wholly with the appellant that the original respondent Eloi Kofi Mensah Simmons rejected totally the proposals she filed in the court below on 29/09/2009, we share her concern that the procedure adopted by the trial High Court judge in arriving at his judgment of 19/02/2010 was unconventional.

There was no indication that both parties agreed on all the terms that the trial judge sifted from the two proposals which he based his judgment on. That is the very reason why the trial court could not describe its judgment as a 'Consent Judgment'. It was not a consent judgment because both parties did not consent to all the terms expressed in the judgment. If that was the case, then the trial court could not have foisted a judgment on the parties in the middle of the trial without hearing the case to its logical conclusion. On that score, the trial court did err as contended by the appellant in this appeal and in the Court of Appeal, and we so hold. In fact, the Court of Appeal should have allowed the appeal by setting aside the judgment of the trial High Court, which was not properly determined.

The law is clear that before a court of competent jurisdiction could enter judgment based on supposed terms of settlement by parties in an action, it must be made manifestly clear that the parties in the suit or action did fully agree to all the terms entered as judgment. That explains why judgments of this nature are termed as; "CONSENT JUDGMENTS".

A '**consent judgment**', in other words called '**agreed judgment**', is defined as: - *"A settlement that becomes a court judgment when the judge sanctions it. In effect an agreed judgment is merely a contract acknowledged in open court and ordered to be recorded, but it binds the parties as fully as other judgments. – Also termed consent judgment; stipulated judgment; judgment by consent…"* (See Black's Law Dictionary; Ninth Edition, page 918)

Normally, the agreed terms are signed by the parties in the suit or action and filed at the Registry of the court. When the terms are brought to the notice of the court, the court adopts them after having satisfied itself that both parties are agreeable to what has been filed as terms of settlement.

It must be noted, however, that it is not always the case that the parties must file the agreed terms at the Registry of the court before same could be adopted as consent judgment. Where the parties, in open court, agree on some terms to bring their dispute to a close, they can announce the said terms in open court for the court to record same as the basis for its judgment without necessarily tasking the parties to go and file them at the registry first before their adoption. This Court was clear on this in the case of **THE REPUBLIC v HIGH COURT, ACCRA; EX-PARTE; JOSEPH DANSO – APPLICANT; (NEW PATRIOTIC PARTY & 4 Others – INTERESTED PARTIES); Civil Motion No. JS/5/2015, dated 22/01/2015** per Gbadegbe, JSC.

In the above cited case, the High Court, coram Bright Mensah, J. entered a consent judgment when the parties in the action announced in open court that they had settled their differences without first filing any terms of settlement at the Registry of the court. The trial court only entered the agreed terms that were announced in open court in the court's record book. This Court refused to quash the said consent judgment when an application for judicial review in the nature of certiorari was brought to the Court on the grounds that the said terms were not filed before their adoption.

This Court, speaking through Gbadegbe, JSC, referred to Volume 26 of Halsbury's Laws of England (4th Edition), paragraph 52 at page 257 and held that; *"If either party is willing to consent to a judgment or orders against himself or if both parties are agreed as to what the judgment or order*

ought to be, due effect may be given by the Court to such a consent". It is immaterial whether the said agreed terms were first filed in the registry of the court or not.

The record before us does not indicate that, that was what happened in the trial High court with regard to this case. After realising that the parties were not ad idem with regard to the terms of settlement, the trial court should have advised them to go back to consider the positive aspects of the two proposals filed for them to reach an agreement or failing that, to have continued with the hearing of the case. Instead of doing just that, the trial court took it upon itself to pick the positive aspects of the two proposals and added two others suggested by the respondent which the appellant did not agree to, and entered that as the judgment of the court to the chagrin of the appellant who had not testified at that stage. That has been the beef of the appellant all along and the progenitor of the two appeals before the Court of Appeal and this Court.

It must be emphasized that in the two proposals filed by the parties in the trial High Court, both agreed that the disputed house was their matrimonial home and that it belonged to the two of them. This was the position notwithstanding the fact that the appellant claimed she built it from her own resources while the late petitioner claimed both of them contributed in acquiring it. Again, both agreed that they purportedly built it for their two children and that they only had life interest in it. This means that the property becomes that of the two children after both parents had joined their maker. However, the two parties did not agree to the other aspect of the trial courts judgment that permitted only the respondent to occupy the said house to enable him have his peace of mind till his death; a decision that was arrived at without a full blown trial as permitted under the law.

Though the Court of Appeal was right when it asserted that with the death of the petitioner (i.e. the man), the appellant (i.e. the woman) was the sole trustee of the disputed house which both of them agreed was intended for their two children after their death, it should nevertheless, have allowed the appeal by setting aside the judgment of the trial court which was arrived at not on the merits.

The appellant, aside of invoking our jurisdiction to set aside both decisions of the trial court and the first appellate court as being wrong in law, is also asking us to send them back to the trial court for a trial de novo. We accede to that request and order that the suit be remitted to the trial High Court for re-trial. We, however, advise the appellant Catherine Simmons to smoke a peace pipe with her only children with her deceased husband who were brought into this matter as substituted respondents after the death of the original respondent who happened to be their father, instead of dragging the matter further.

We want to take this opportunity to remind both counsel on the admonitions this Court, speaking through Dotse, JSC, made to legal practitioners in the cases of: **ASSEMBLIES OF GOD CHURCH, GHANA v RANSFORD OBENG & 4 Others [2011] 32 GMJ 132 - SC** and **MRS CHRISTIANA E. A. ABOAH v MAJOR KEELSON [2011] 37 GMJ 63 @ p.90 – SC**, on the use of intemperate, offensive, abusive and inappropriate language in processes like written submissions, affidavits, pleadings, etc., filed for the consumption of the Courts.

If both counsel had not been consumed by the emotions of their clients, which was mirrored in the various affidavits and submissions filed in the course of the trial, and had reflected on their duties as officers of the court who owe a duty to the State, society and the law in general aside of their duties to their clients, this case would not have reached this far.

Counsel should be reminded that it behoves on them as lawyers, to give good counselling to their clients so as not to drag them into unnecessary litigation. The decision to drag the children of the marriage into a dispute between their parents that began when they were minors, with the impression that the appellant was not fighting for their interest when that appears not to be the case, was in our view, abominable. This is because if not properly managed, this decision could mar the cordial and motherly relationship that exists between the children and their mother for life.

I hope this is not going to happen in this case since from the look of things, it was not the decision of the children to join in the fray to sort things out with their own mother over property, which the mother contributed immensely in acquiring for the sake of her children after her lifetime.

Clearly, it was the decision of counsel for the late respondent to drag the children into the fray. That explains why it was she who swore to the acerbic and acrimonious affidavit in support of the motion for substitution, which this Court thinks the children by themselves could not have done. This Court frowns upon such practice and would advise counsel to tread cautiously; particularly on matters that hinge on family disputes.

Appeal allowed on this score but without any order as to costs.

(SGD) YAW APPAU

JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE- BONNIE

JUSTICE OF THE SUPREME COURT

(SGD) J. B. AKAMBA

JUSTICE OF THE SUPREME COURT

(SGD) G. PWAMANG

JUSTICE OF THE SUPREME COURT

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