IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: ANSAH, JSC (PRESIDING)

DOTSE, JSC

BAFFOE-BONNIE, JSC

BENIN, JSC

PWAMANG, JSC

CIVIL APPEAL
NO. J4/42/2018

28TH NOVEMBER, 2018

ADU BEDIAKO	…….	PLAINTIFF/RESPONDENT/RESPONDENT
VRS		
KWAME ACHEAMPONG	……..	DEFENDANT/APPELLANT/APPELLANT

DOTSE, JSC:-

William Shakespeare, that legendary and outstanding author of all times, in the Book of Macbeth, Act 1, Scene IV, attributed the following words to King Duncan who spoke in those glowing terms describing Macbeth after he won a battle on behalf of the Kingdom, oblivious of what actually lay in Macbeth's mind at the material time.

"There's no art to find the mind's construction in the face:

He was a gentleman on whom I built

An absolute trust."

There was indeed no process by which the Plaintiff/Respondent/Respondent, hereafter, Plaintiff would have known that his engagement with the Defendant/Appellant/Appellant hereafter Defendant who was reputed to be his friend at all material times would have become so tortious and rancorous later.

This relationship between the Plaintiff and Defendant in this case really gives proof to the above statement of Shakespeare, that there is indeed ***no process by which a person can determine the character of another by looking merely at his face alone.***.

FACTS

The Plaintiff who was at all material times ordinarily resident in France, returned to Ghana somewhere in 1996, acquired by lease dated 27th December 1996 a piece of land at Kokomlemle on the Newtown road from Vida Ayikailey Vanderpuje for a term of 35 years commencing from 15th January 1997 and in the process he and the Defendant became very close friends.

As a result of this relationship, the Plaintiff and Defendant engaged in series of business transactions which spanned a period of four (4) to five (5) years before matters came to a crescendo leading to the institution of the instant suit in the High Court by the Plaintiff against the Defendant in which he claimed the following reliefs against him:

1. "A declaration that the Plaintiff is the lessee of the piece of land described in the Statement of claim.
2. A declaration that the land was developed at the instance and with the resources of the Plaintiff.
3. An order for accounts
4. An order to pay to the plaintiff any outstanding amount with him with interest from the relevant date till date of payment at the prevailing bank rate.

5. An order of perpetual injunction to restrain the Defendant whether by himself or by his agents, servants, assigns or whosoever from renting or giving out stores in the building, using the building as security for a loan or other facility or dealing in any manner whatsoever with the land or the building on it.

6. An order for the return of the Plaintiff's belongings listed in paragraph 23 of the Statement of Claim or their current market value.

7. General damages."

The Defendant was not to be undone in this dispute. Upon service of the writ of summons and statement of claim on him, he filed a counterclaim against the Plaintiff in which he claimed the following reliefs:-

a. A declaration that the (defendant) is the sole legal and beneficial interest holder in the office complex erected on the basis of the lease agreement dated on the 27th December 1996.

b. An order that upon the due refund of the sum of ¢25 million to the Defendant by the Plaintiff which was the Defendant's financial contribution to the acquisition of the leasehold land, the Defendant conveys his interest in same to the Plaintiff.

c. An order of perpetual injunction restraining the Plaintiff, his agents, servants etc from interfering in the defendant's office project, or interfering with it's operations.

This suit has had a really chequered history as it has travelled twice through all the hierarchies of the Superior courts as follows:

FIRST HIGH COURT DECISION

On 9th February 2005, Appau J (as he then was) delivered judgment in the case as follows:-

"Since it was the acquisition of the plot that made it possible for the defendant to commence the project up to its present stage, it would be unfair and a complete travesty of justice for this court to declare any of the parties as the sole legal or beneficial owner of the project or office complex. Infact, both parties have equal shares or interest in the rent advances that the defendant took from the prospective tenants for the continuation of the project and are therefore joint owners of the project with equal shares. Notwithstanding the personal contribution made. If therefore any of the parties wants to pull out from the joint ownership of the project then the Land Valuation Board must be made to carry out a proper valuation of the whole project as at now, to determine the actual value of the project so that the interest of the party who wants to pull out is purchased by the other through an assignment.

Meanwhile, both parties are to take steps to have the land registered, rectified to include defendant's name as joint owners. ***Judgment accordingly entered in respect of reliefs 3 and 5 of the Plaintiff's claim and the defendant's counter claims dismissed.***" Emphasis

1ST COURT OF APPEAL DECISION

Following appeals and cross-appeals by both the Defendant and Plaintiff against the said judgment, the 1st Court of Appeal, coram: Owusu Ansah, Piesare and Apaloo JJA on the ***16 day of February, 2007*** remitted the case to the court below in the following terms:-

"Case is remitted to the court below (i.e. High Court, Accra differently constituted) ***to go into accounts and ascertain the respective contributions of the parties to this joint project and allow the higher contributor to buy out the other party. In the absence of an agreement the property shall be valued and sold, then proceeds shared in accordance with the proportions of the contributions of the parties. Court below to carry out****. There shall be no order as to costs."*

1ST APPEAL TO SUPREME COURT

The Defendant, feeling aggrieved with the decision, appealed against it to the Supreme Court on 9th March, 2007. It is certain that, this appeal to the Supreme Court did not see the light of day, as the case eventually was remitted to the High Court.

2ND HIGH COURT – CORAM: PATRICK BAAYEH J AND PETER DEI-OFFEI J

On 9th September 2009, Baayeh J, ordered the Defendant herein to file comprehensive accounts from 1999 to date of the order. He ordered the said accounts to be filed by 30th September 2009. Following disagreements on the accounts that were filed by the Defendant, Baayeh J, on 2nd of June 2010 in a Ruling on this matter ordered as follows:-

> *"I have taken a critical look at the accounts submitted by the defendant. I have also carefully considered the respective affidavits filed by the parties and also the arguments of both counsel.* ***In fairness to all the parties, it would be more transparent and alley the fears of all parties if evidence is taken on the accounts as well as the invoices submitted. In the circumstances this court will begin by taking evidence from defendant, then the Accountant who prepared the accounts. Thereafter Plaintiff would also have the chance to call one witness. The court will then be in a position to make a fair determination of each party's interest in the property. No orders as to cost."*** *Emphasis*

Peter Dei Offei J, later took over the conduct of this case from Baayeh J, in the High Court, Accra.

2ND HIGH COURT JUDGMENT

It is instructive to observe that, Peter Dei Offei J, on the 16th day of December 2013 premised his judgment in this case as follows:-

"This case has a chequered history with two previous judgments to rely on from both the High Court and Court of Appeal".

He then concluded the judgment as follows:-

"In the circumstance, finding any reliable manner of apportioning each individuals contributions is next to impossible. As such, I will in the circumstance invoke the equality is equity principle and order the property to be evaluated by the Land Valuation Board and the property shared equally as was originally advocated by the learned trial judge page 22 of *his judgment and which was affirmed by the Court of Appeal that:-*

"It would be unfair and complete travesty of justice for the court to declare any of the parties as sole legal or beneficial owner of the project or office complex."

Continuing further, the court directed as follows:-

This should be done by the Land Valuation Board within a maximum period of six months upon the Registrar of this Court appointing them to carry out that order of the Court." Emphasis

The court then proceeded to make some other consequential orders such as appointing the Registrar of the High Court as Receiver and Manager to be responsible for the property, collect rent from the tenants or prospective tenants from 1st January 2014 until the evaluation is completed and the property sold by public auction.

After sale, the court ordered that the proceeds are to be shared on the ***equality principle.***

The Defendant was also ordered to account for all rents collected by him from the years 2009 to December, 2013 and any surplus income is to be paid into court and shared equally to the parties by the Registrar.

Consistent with the specie of conduct of the Defendant, he again appealed against this decision to the court of Appeal on the 3rd of January 2014.

2ND COURT OF APPEAL DECISION – 30TH JULY 2015

The Court of Appeal, coram: Gyaesayor, Aduama Osei and Dzamefe JJA, on the 30th July 2015 per Dzamefe JA dismissed the appeal filed by the defendant in the following solemn words

> *"From the evidence before this court, both court experts testified to the effect that the figures given by the defendant were just too high. CWI said "professionally the figures were on the high side". That means he himself never believed those figures. The LVB were of the same view especially where they said the 40,000 blocks the defendant alleged used to construct the first floor was too high for that purpose. Also the figures the defendant gave as cost of materials for the job were all inflated. He was economical with the truth so far as his investment is concerned.*
>
> *We beg to disagree with the counsel that the trial Judge was under an obligation to appoint a new expert for a second opinion. We should not be oblivious of the fact that even if he appoints ten of them, he is not bound by their opinions. So why waste the courts time and also prolong unnecessary litigation. It is the duty of the court to end litigation and never to prolong same.* ***This appeal is hereby dismissed in its entirety." Emphasis***

William Shakespeare, again in the book of Macbeth, this time Act 1, Scene VII, in a soliloquy of Macbeth which to me epitomises vividly, the conduct of the Defendant throughout these proceedings, wrote of Macbeth as follows:-

> *"I have no spur*
>
> *To prick the sides of my intent,* ***but only***
>
> ***Vaulting ambition, which o'erleaps itself***
>
> *And falls on th'other"* **Emphasis**

We believe it was only vaulting ambition which led to the Defendant to appeal this Court of Appeal decision on the 6th day of August 2015 and additional grounds of appeal to this court on 27th of October 2015 as follows:-

"The part of the decision complained of is as follows:-

a. ***The whole decision***

b. *Other grounds shall be given on the judgment*

The Grounds of Appeal are:-

1. ***The Court of Appeal erred by departing from its own previous decision***

2. *Others shall be given on the receipt of the judgment*

Additional Grounds of Appeal

a. *That the Court of Appeal erred in concluding that the 2nd Trial Judge fully complied with directive of the 1st Court of Appeal in that although the 1st Trial Judge credited One Thousand Ghana Cedis (Gh¢1000.00) of the purchase price of the land to the Defendant the 2nd trial court credit the entire purchase price of the land to the Plaintiff basing its decision on the evidence of CW1 (Mr. Mamarrah).*

b. ***That the Court of Appeal erred in failing to rule that the 2nd Trial Judge did not comply fully with the directive of the 1st Court of Appeal on findings of fact.***

c. ***That the Court of Appeal erred in accepting the valuation of the evidence by the 2nd Trial Judge when such evaluation was based only on evidence against the Appellant and ignored evidence in his favour.***

d. *That the Court of Appeal erred by upholding the decision of the 2nd Trial Judge when same ignored the report of Architectural and Engineering Services Limited*

(AESL) which resulted in miscarriage of justice in so far as that report was also based on the valuation of the property more particularly where no reason was assigned for ignoring the report.

e. *That the Court of Appeal erred by accepting the 2nd Trial Judge holding that finding any reliable manner of apportioning each individual contribution is next to impossible contrary to the evidence before him without examining same which resulted in grave miscarriage of justice.*

f. ***That the Court of Appeal erred in upholding the discretion exercised by the 2nd Trial Judge to adopt the equity is equality principle on the ground that it was impossible to find a way of apportioning each individual's contribution without examining same to ensure that same was exercised judiciously more particularly when there were glaring figures on the record which could have been considered by the Trial Judge."***

EVALUATION OF THE GROUNDS OF APPEAL

Since we have laboured in setting out in some great detail the facts and chequered history of this case, we are of the considered opinion that, there is indeed no real need to detain ourselves any further in any lengthy evaluation and determination of the issues raised in this appeal.

What is clear throughout these proceedings is that, all the courts from the 1st High Court to the 2nd Court of Appeal have all confirmed the ***equality is equity principle in the sharing of the property.*** This we believe was based entirely on the evidence in the record of appeal which we have found has the basis to authenticate and vindicate this belief.

In evaluating this appeal based on the grounds of appeal in the original as well as additional grounds of appeal, we are of the considered opinion that, the cumulative effect of these grounds is mainly to attack the

1. Findings of the trial courts and

2. In effect whether the judgment of the court is against the weight of evidence.

This is so because, the combined effect of the grounds in additional grounds (c) (e) and (f) all amount to grounds attacking the findings of fact made by the trial courts and concurred in by the appellate courts.

The law is fairly well settled in a long line of established decided cases that, where findings of fact have been made by a trial court and these findings have been concurred in by the first appellate court, then the second appellate court would not interfere with these concurrent findings of fact unless it was established in clear and absolute terms that the said findings were perverse, or there was a blunder of error or critical piece of evidence either oral or documentary that had not been taken into consideration and that this had resulted into a miscarriage of justice.

See cases such as the following:-

1. *Achoro v Akanfela [1996-97] SCGLR 209*

2. *Koglex Ltd (No 2) v Field [2000] SCGLR 175*

3. *Gregory v Tandoh IV and Hansen [2010] SCGLR 971*

4. *Obeng v Assemblies of God Church, Ghana [2010] SCGLR 300, just to mention a few.*

All of the above cases have all established with clarity, that a second appellate court like this Supreme Court will only interfere with these concurrent findings on the above stated grounds. Applying ourselves to the above principles, we are firm in our opinion that the facts which have informed all the trial courts and the first appellate courts to endorse the equality is equity principle in the sharing of the disputed property has been well grounded. As such, we do not see any real and genuine basis to accept the invitation made to us to set aside these concurrent findings.

Secondly, we also observe that, the original grounds of appeal, and additional grounds (a) and (d) are all an attack on the record of appeal and by necessary inference, *"that the judgment is against the weight of evidence*."

We have indeed taken the entire record of appeal into consideration. In this regard, we are of the firm belief that, we have to be guided by the principle stated in the celebrated case of ***Tuakwa v Bosom [2001-2002] SCGLR 61***, which re-confirmed the principle that the court is entitled to consider an appeal as re-hearing when the omnibus grounds of appeal such as *"that the judgment is against the weight of evidence"* has been used. See also the cases of ***Akufo-Addo v Cathline [1992] 1 GLR 377, SC,, Sasu Bamfo v Sintim [2012] 1 SCGLR 136*** just to mention a few.

In this instant appeal, we realize that, the Defendant herein never used the magic words ***"judgment is against the weight of evidence."*** However, we are satisfied that, the principle encompasses all appeals as being by way of re-hearing as was stated in the case of ***Tuakwa v Bosom*** and stated earlier in the ***Akufo-Addo v Cathline*** line of cases thus: ***"an appeal is by way of re-hearing, particularly where the appellant alleges in his notice of appeal that the decision of the trial court is against the weight of evidence."***

From the combined effect of the grounds of appeal referred to supra, it is clear that, since an evaluation of the entire record of appeal shows conclusively that, what the Defendant requires is a re-hearing of the matter based on the evidence on record, we feel emboldened to look at the entire record, the lack of the use of the magic works ***"judgment is against the weight of evidence"*** notwithstanding.

Where from the grounds of appeal, it is clear that an appellant invites the appellate court to consider the appeal as a re-hearing based on the evidence such as in the instant case, an appellate court is obliged to consider the appeal as such.

Using that procedure, we are firm in our mind that, all the grounds of appeal that touch and concern these issues are worthless, baseless and without any merit and are dismissed accordingly.

We have accordingly perused the statements of case filed by learned counsel for the parties herein. We observe therein that, learned counsel for the Defendant has put a lot of emphasis on some of the findings of the first trial court, Appau J, (as he then was). What learned counsel has failed to realize is that, despite those findings, the decision of that court like all the others in the chain had been based on the equality is equity principle and supported by the evidence on record and the law. The value at the end of the day is the same.

What we observe is that, because of the close friendship that existed between the parties at all material times, they failed to take the necessary precautionary measures like reducing their transactions into a memorandum of understanding (MOU). This has also led them not to keep proper records for accounting purposes. Besides, from all the evidence both oral and documentary, the Defendant herein appears to us to be a dishonest person who took advantage of the generosity of the Plaintiff as well as his absence from the country at all material times.

CONCLUSION

Having taken all these factors into consideration, and taken a cue from the words of wisdom from Shakespeare in Macbeth referred to supra, we are of the view that the appeal herein lacks substance and merit and is dismissed in its entirety.

We accordingly affirm the judgment of the Court of Appeal.

V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

ANSAH, JSC:-

I agree with the conclusion and reasoning of my brother Dotse, JSC.

J. ANSAH
(JUSTICE OF THE SUPREME COURT)

BAFFOE-BONNIE, JSC:-

I agree with the conclusion and reasoning of my brother Dotse, JSC.

P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

BENIN, JSC:-

I agree with the conclusion and reasoning of my brother Dotse, JSC.

A. A. BENIN
(JUSTICE OF THE SUPREME COURT)

PWAMANG, JSC:-

I agree with the conclusion and reasoning of my brother Dotse, JSC.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

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