IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2024

CORAM: LOVELACE - JOHNSON JSC (PRESIDING)

KULENDI JSC

GAEWU JSC

KWOFIE JSC

DARKO ASARE JSC

CIVIL APPEAL
NO. J4/07/2024

4TH DECEMBER, 2024

CAPT. THERESA ASANTE (RTD) ... PLAINTIFF/RESPONDENT/APPELLANT

VRS

1. **ATTORNEY GENERAL & MINISTER OF JUSTICE**
2. **CHIEF OF DEFENCE STAFF BURMA CAMP … DEFENDANTS/RESPONDENTS/ RESPONDENTS**

J U D G M E N T

KWOFIE JSC:

This an appeal by the plaintiff/respondent/appellant (hereinafter referred to as the plaintiff) against the decision of the Court of Appeal allowing in part the appeal from the judgment of

the High Court, Accra (Industrial and Labour Division) dated 30th November 2018. The judgment of the Court of Appeal against which this appeal was brought was delivered on 3rd March, 2022.

Dissatisfied with the decision of the Court of Appeal, the plaintiff/respondent/appellant filed a Notice of Appeal to this apex court dated 26th April, 2022.

Grounds of Appeal before the Supreme Court

a) *The judgment is against the weight of evidence*
b) *The Court of Appeal erred when it rejected the trial court's finding that the current medical condition of the plaintiff is as a result of the military training she underwent at the Ghana Military Academy*
c) *The Court of Appeal erred when it set aside the award of GH¢300,000 as compensation to the respondent for being without basis*
d) *The Court of Appeal erred in law when it held that the plaintiff/respondent/appellant was not entitled to enjoy service gratuity or pension under the Armed Forces (Amendment) Regulations, 1992, (LI 1546)*
e) *The Court of Appeal erred when it varied the cost awarded respondent from GH¢20,000 to GH¢10,000.*

The relief sought from this apex court was for the reversal of the judgment of the Court of Appeal dated 3rd March 2022 and for the judgment of the High Court (Labour Division) to be restored.

Before proceeding further, we deem it necessary to set out the background to this case. The plaintiff by a writ of Summons filed at the High Court, Accra (Industrial and Labour Division) claimed against the defendants the following reliefs:

a) *An order directed at the defendants to reimburse plaintiff for all medical bills and/or expenses incurred from January, 2014 for life*
b) *Lump sum compensation for disability occasioned by and/or during military service*
c) *Military Pension*
d) *Such further orders as the Court may deem fit*

It was the case of the plaintiff in pleading that she was admitted to the Ghana Military Academy (GMA) on 9th September 1983. Plaintiff averred that during the training at the GMA, and while undergoing physical training, she had a heavy fall and reported sick, complaining of back pain. She was granted seven (7) days complete bed rest and was treated with pain killers to lessen the pain.

Plaintiff successfully graduated from GMA thereafter and carried out her duties in the Ghana Armed Forces (GAF). However, in 1986, her back pain re-emerged, and she was referred to a surgeon for diagnosis, and consequently put on medication, but the pain persisted. She was subsequently referred to a neurosurgeon for expert management. After various laboratory investigations and X-rays, she was managed on neuro drugs and physiotherapy exercises. Plaintiff asserts that her condition did not improve despite all that was done and her condition continuously deteriorated.

It is plaintiff's further assertion that she took her various promotion examinations and passed. However, while waiting to be promoted to the rank of Major, she was issued with a Release Letter in October 1993. She averred that a Medical Board was convened five (5) days after the issuance of her Release Letter. The findings of the Board revealed that she had developed cervical spondylosis, degenerative changes in the lumber vertebrae, and possible spinal cord prolapse. On account of this, the plaintiff was honourably released from the GAF on 4th November 1993, only four months, five days away from being promoted to the rank of Major.

Plaintiff asserted further that since her release from the GAF, she had been put on various medications and had undergone various laboratory tests culminating in a Laminectomy and Discectomy of L4-L5 surgery. Plaintiff asserted that she is still on medication, physio exercise, and lumber cosset to support her spine. That, she continues to suffer pain, weakness and numbness on the right part of her body, which is incapacitated.

By letters dated 7th September 2010, 26th January 2012, and 24th February 2012, plaintiff petitioned the 2nd Defendant for financial support in meeting her medical bills. By a letter dated 27th April 2012, 2nd defendant restated plaintiffs entitlement as a Retired Military Officer to free Armed Forces Medical care for life. She continued to enjoy medical care from the Military until late January 2014 when the 37 Military Hospital refused to pay for an amount of GH¢587.00 presented by plaintiff, being the cost of drugs she purchased. This refusal was brought to the attention of the 2nd defendant who requested reimbursement of the said amount to the plaintiff, but the request was not acceded to. Plaintiff subsequently demanded reimbursement of medical expenses incurred from July to December 2014, which said request was also refused.

It is the case of the plaintiff that she is currently unemployed and continues to accumulate medical expenses and finds it difficult to settle same. As of December 2014, her medical expenses amounted to GH¢3,154.00. Plaintiff asserted that she is entitled to free Armed Forces Medical Care for life as a retired Military Officer. She asserts further that but for her medical condition, she would have continued to serve GAF until her retirement on pension.

Defendants, on the other hand, contended that as a Short Service Commission Officer of GAF, the defendant's release was occasioned upon completion of her ten (10) years' service. That as a result of the plaintiff's ill-health, she was absent from work on several occasions on excuse duty, and also worked half day on weekdays. She was therefore unfit and ineffective at work

for about seven (7) years due to continuous poor health. It was defendant's further contention that factors such as physical and medical fitness are taken into consideration in the promotion of officers. Hence the plaintiff's application for an extension of her employment was not approved on medical grounds.

Defendants also averred that as a Senior Short Service Commission Officer, the plaintiff was entitled to receive free medical care, but the implementation of this right depended on the availability of funds. That, in the past, the GAF reimbursed the plaintiff and several other veterans for medical expenses they incurred, when it had sufficient funds. Defendants contended that the respondent was not entitled to any of the reliefs she was claiming.

Judgment of the High Court

After a full trial, the High Court granted the plaintiff a lump sum compensation of Three Hundred Thousand Ghana Cedis (GH¢300,000.00) for disability occasioned during military service and the defendant was ordered to reimburse the plaintiff for all medical bills and/or expenses incurred from January 2014 for life. The plaintiff was also awarded cost of Twenty Thousand Ghana Cedis (GH¢20,000). The trial Court however dismissed the plaintiff's claim for pension from the Ghana Armed Forces.

Dissatisfied with the judgment of the High Court, the defendants appealed against the decision to the Court of Appeal.

Judgment of the Court of Appeal

The learned justices of the Court of Appeal partly affirmed the decision of the High Court. They affirmed the decision of the High Court ordering the defendants to reimburse the

plaintiff's medical expenses from January 2014 for life, but set aside the order of the High Court awarding the plaintiff compensation of Three Hundred Thousand Ghana Cedis (GH¢300,000.00) for disability on the ground that there was no evidence on the record to support the finding by the Court below that the plaintiff was entitled to compensation. The Court of Appeal also reduced the cost of Twenty thousand Ghana Cedis (GH¢20,000.00) awarded by the trial court to Ten Thousand Ghana Cedis (GH¢10,000)

The plaintiff, also dissatisfied with the judgment of the Court of Appeal has appealed to this apex court on the grounds already set out in this judgment.

Arguments in respect of the plaintiff's grounds of appeal

The plaintiff argued grounds (a), (b) (c) and (d) together

The plaintiff submitted that the trial judge in her judgment found that the current medical condition of the plaintiff is as a result of the military training she underwent at the Ghana Military Academy but this finding was rejected by the Court of Appeal on the basis that the trial judge relied on information extraneous to the evidence on record in arriving at that finding. Counsel invited this Court to take judicial notice of the fact that the Ghana Military Academy (GMA) follows strict guidelines for enrolment into the Military and except a person is medically fit by military standards he/she will not be enrolled for training.

Counsel referred to Regulation 6(4) of the Armed Forces Regulation (Administration) Vol. 1 of 1960. He submitted that the plaintiff was medically fit prior to her enlistment into the Military Academy up to the point where she sustained a nasty fall during her training in 1983 immediately after which the plaintiff reported the serious back pains to her bosses at the Academy where she was granted 7 days complete rest and treated with pain killers.

Three years after the fall, the back pains resurged and she was referred to a surgeon and later put on medication. The plaintiff underwent various laboratory investigations and x-rays and physiotherapy exercises. The plaintiff managed the situation throughout the period she was in the Army until she was released.

The plaintiff submitted that her case is one of causation. Her case is that the heavy fall she sustained during her military training resulted in injury and her condition deteriorated leading to her current medical condition. She submitted that the burden on the plaintiff was to demonstrate that her present medical condition is as a result of the fall she sustained during her training.

Counsel submitted that some medical conditions degenerate overtime and that the same area ie. her back which was affected by the fall was the same part of the body which resulted in the persistent pain throughout her military career. She added that this evidence was not controverted. Counsel submitted that there is a nexus between the plaintiff's fall during her training and her present condition and referred to the case of **Asante vs. Scanship Ghana Ltd (2013-2014) 2 SCGLR 1296 at 1297**. He submitted that the Court of Appeal erred in setting aside the GH¢300,000.00 awarded as compensation to the plaintiff.

Arguments of Defendants in Response to plaintiff's submissions

Counsel for the defendants has argued that the Court of Appeal did not err when it rejected the trial court's finding that the current medical condition of the plaintiff is as a result of the military training she underwent at the Ghana Military Academy.

Counsel submitted that it is not in issue that the plaintiff had a fall during her training at the Military Academy and subsequently, complained of back pain and was granted 7 days bed rest and treated on pain killers to reduce the pain.

He submitted that as the Court of Appeal rightly stated, the issue however is whether or not the current or present medical condition of the plaintiff, is as a result of the fall she had during the military training she underwent at the Ghana Military Academy. He added that the burden of persuasion and proof as well as the burden of producing evidence on this issue is solely on the plaintiff to discharge. Counsel referred to section 10(1) and Section 11(1) of the Evidence Act 1975 (NRCD 323) and the case of **Duah vs. Yorkwa (1993-94) GLR** and submitted that the plaintiff failed to discharge the burden on her. Counsel narrated the plaintiff's case from the time of her fall during training at the Military Academy up to her commissioning as an officer up to her release from the Military and her evidence that since her release from the Service she has been on various medication and has undergone various laboratory tests culminating in a laminectomy and Discectomy of L4 – L5 surgery.

Counsel for the defendants submitted that the plaintiff has failed to provide any medical evidence or report to prove that her present condition is as a result of the fall she had over thirty years ago during her military training.

With regard to the plaintiff's contention that the Court of Appeal erred in stating that she was not entitled to military pension, the defendants argued that the plaintiff was not entitled to raise that issue in this apex court because the issue of the plaintiff entitlement to pension was not a ground of appeal at the Court of Appeal and the plaintiff is therefore not entitled to raise same at this apex Court.

Determination of the Appeal by the Supreme Court

The plaintiff has argued that the judgment of the Court of Appeal was against the weight of the evidence led at the trial. The appeal to this apex Court is by way of rehearing and the settled jurisprudence on the principle that an appeal is in the nature of a rehearing, is that this second appellate court has a duty to examine and scrutinize the entire record to determine whether the pieces of evidence both oral and documentary including exhibits, oral and written submissions of counsel on record support the decision of the first appellate court. In doing so, this Court as the second appellate Court can draw its own inferences from the established facts and could vary or set aside the judgment of the first appellate court or affirm same. See the case of **King vs. Gyan (2017-2020) 1 SCGLR 912** and **Koglex Ltd. (No. 2) vs. Field (2000) SCGLR 175.**

There are numerous decisions in support of the principle that an appellate court should not interfere with findings of fact made by trial courts and that the only occasion it would do so was if there was no evidence in support of that finding, or that the preponderance of evidence weighed heavily against the finding or that inferences from the findings were wrong. See, for example, **Atadi vs. Ladzekpo (1981) GLR 218,** In **re Ashalley Botwe Lands; Adjetey Agbosu and Others vs. Kotey & Others (2003-2004) 1 SCGLR 420 at 447** and **In re Yendi Skin Affairs; Yakubu II vs. Abdulai (No. 2) (1984-86) 2 GLR 239**.

Applying the legal principle established by these authorities that I have referred to, I think the Court of Appeal was right in setting aside the findings of the trial court to the effect that the plaintiff's current conditions was as a result of the injury occasioned by the fall she sustained in 1983 while undergoing military training at the Ghana Military Academy (GMA).

The fundamental issue for determination in this appeal is whether or not the Court of Appeal was right in setting aside the compensation of GH¢300,000.00 awarded the plaintiff by the trial court. In her judgment, the trial judge stated as follows:

> *"Although cervical spondylosis is caused by degenerative changes in the vertebrae and intervertebral discs as a result of ageing, it can also occur due to injury to the back. Considering the injury sustained by the plaintiff and the events that followed, it is most probable that her fall in 1983 during Service set in Motion the current state of the plaintiff. These pieces of evidence point to the high probability that the current medical condition of the plaintiff is as a result of the military training she underwent at the Ghana Military Academy (GMA) and I find so as a fact"*

Upon reviewing the evidence on record, the learned justices of the Court of Appeal found as follows:

> *"We find no medical evidence on record to support this finding of the trial judge and we are therefore unable to align ourselves with the said finding and accordingly reject same."*

The plaintiff has argued that the learned justices of the Court of Appeal were wrong in rejecting the trial judge's finding that the current medical condition of plaintiff is as a result of the military training she underwent at the Ghana Military Academy.

The evidence on record shows that the plaintiff had her Military training at the Ghana Military academy and in the course of the training in 1983 fell and sustained an injury which injury or condition has deteriorated leading to her current medical condition. The plaintiff, having positively asserted the link between her present condition and the fall she had in training in 1983, the burden of persuasion and the burden of producing evidence is therefore solely on the plaintiff. One would have thought that the plaintiff would have tendered or presented a Medical report to prove the link between her present condition and the injury she sustained over thirty years ago since she herself stated that her case was one of causation. In the case **Ackah vs. Pergah Transport Ltd. & Others (2000) SCGLR 728 at 736** this Court stated per Adinyira JSC as follows:

> *"It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility, short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary and things (often described as real evidence) without which the party might not succeed to establish the requisite degree of credibility concerning a fact on the mind of the Court or tribunal of fact such as a jury. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence, a reasonable mind could conclude that the existence of the fact is more reasonable than its non-existence"*
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> See also **Majolabi vs. Larbi (1959) GLR 190**; and **Zabrama vs. Segbedzi (1991) 2 GLR 221. CA.**

According to the plaintiff, after the fall in 1983 she was referred to a surgeon for diagnosis and put on medication but the pain resurged. She was subsequently referred to a neurosurgeon and was managed on neuro drugs and physiotherapy exercise, but her condition did not improve. She testified that she was referred to a Medical Board and the findings of the Medical Board revealed that she had developed cervical spondylosis, degenerative changes in the lumber vertebrae and possible spinal chord prolapse. The plaintiff, to support these assertions, tendered a Medical report dated 19th October 1993 from East Legon Medical Centre and Pain Clinic. It is worth noting that this Medical Report dated 19th October 1993 was issued ten (10) years after the alleged fall at the Military Academy. As the learned justices of the Court of appeal correctly noted, this Medical Form appears to be recommending the procedures the plaintiff needed to undergo, but not the cause of her medical condition.

Indeed, in the response from the Ghana Armed Forces to the plaintiff's "Petition for Assistance," it was stated that it was stated that the Medical Board that assessed her condition

did not notice any disability in any part of her body and therefore did not recommend any form of compensation for your client"

The plaintiff did not lead any evidence to challenge or contradict the finding of the Medical Board of the Ghana Armed Forces that they did not notice any disability in any part of her body as a result of which the Medical Board did not recommend any form of compensation for her.

In the face of this evidence, the trial judge in her judgment stated as follows:

> *"although cervical spondylosis is caused by degenerative changes in the vertebrae and intervertebral discs as a result of ageing, it can also occur due to injury to the back. Considering the injury sustained by the plaintiff and the events that followed, it is most probable that her fall in 1983 during Service set in motion the current state of the plaintiff. These pieces of evidence point to the high probability that the current medical condition of the plaintiff is as a result of the military training she underwent at the Ghana Military Academy (GMA) and I find so as fact"*

The learned justices of the Court of Appeal after reviewing the evidence stated that "there is no medical evidence on record to support this finding of the trial judge and we are unable to align ourselves with the said finding and accordingly reject same."

Having perused the record of appeal and reviewed the evidence on record both oral and documentary, it is difficult to appreciate the basis of the plaintiff's criticism of the Court of Appeal. We agree entirely with the learned justices of the Court of appeal that there was no basis whatsoever for the trial judge's finding that the current medical condition of the plaintiff is as a result of the military training she underwent at the Ghana Military Academy (GMA).

In respect of the award of compensation of Three Hundred Thousand Ghana Cedis (GH¢300,000.00) the evidence shows that upon being released at the expiration of her 10-year contract of employment as a Short Service Commission Officer, the plaintiff applied to the Ghana Armed Forces for an extension of her Short Service Commission but this was refused. She subsequently petitioned to the Commission on Human Rights and Administrative Justice (CHRAJ) to be allowed to continue working at the Ghana Armed Forces but this was also refused.

The records further show that although the plaintiff passed her promotion examination from Captain to Major, she did not qualify by time for promotion to the rank of Major. Per the Military Regulations Article 13.33(a) of the Armed Forces Regulation Vol.1 (Administration) an officer requires at least five years seniority at the rank of Captain before qualifying to be promoted to the rank of Major. However, by the end of her ten (10) year career, plaintiff had only obtained four-year seniority at the rank of Captain and therefore she did not qualify by time for promotion to the rank of Major. The record shows that the plaintiff's contract with the Ghana Armed Forces was not renewed and she was honourably released from the GAF under Article 206.51 and 206.55 of the Armed Forces Regulations Vol. III (Finance) and was entitled to Short Service Gratuity and not Military Pension. At the Court of Appeal, the plaintiff did not appeal against the High Court's finding that she was not entitled to military pension.

Indeed, the trial High Court judge found as a fact and concluded that the plaintiff had failed to establish that she was entitled to military pension.

Inspite of the express finding that the plaintiff was not entitled to Military Pension, and no evidence having been led by the plaintiff to show that she was entitled to any form of compension and no link having been established between the plaintiff's fall in Military training in 1983 and her present condition, the learned trial judge stated in her judgment thus:

> *"Although, there is no report to the effect that the plaintiff's injury has permanently disabled her and the percentage of her disability ought to be assessed at 100 percent, the plaintiff is entitled to some compensation for the injury she sustained during service leading to the degenerative disease, cervical spondylosis. Over time, the organs will only increasingly deteriorate. I had the opportunity to observe the plaintiff's condition each time she appeared in court. This injury continuously affected plaintiff's health"*

The trial judge then concluded

> *"from my discussion above in respect of lump sum compensation for disability, she is awarded compensation in the sum of Three Hundred Thousand Ghana Cedis (GH¢300,000.00) for disability occasioned during military service. This amount the court deems fair and reasonable"*

In her statement of case, counsel for the defendant has submitted that the trial High Court did not place and record how she arrived at the amount of GH¢300,000.00 as compensation to the applicant and describes the sum of GH¢300,000.00 as amazing.

In respect of the award of compensation of GH¢300,000.00 to the plaintiff, the learned justices of the Court of Appeal stated as follows:

> "*However, even though the learned trial judge concluded that the respondent (plaintiff) had failed to establish that she was entitled to military pension, she nonetheless ordered payment of GH¢300,000.00 as compensation to respondent (plaintiff) .....*
>
> *Furthermore, the learned trial court did not place on record how she arrived at the amount of GH¢300,000.00; it appears quite arbitrary ..... In our view, there is no evidence on*

record to support the finding by the court below that the respondent (Plaintiff) is entitled to compensation in the sum of GH¢300,000.00 or at all. No medical reports nor hospital records! With all due respect to the learned trial judge, she is not in a position to determine the extent of injury by merely seeing or observing the respondent in person. More importantly, the GAF Regulations are very clear on the circumstances under which compensation may be paid and how the quantum of compensation is to be calculated. In the circumstances, we are of the considered opinion that the award of GH¢300,000.00 as compensation to the respondent is without basis and consequently set same aside."

We have gone through and analysed the evidence on record and indeed agree with the Court of Appeal that the award of the sum of GH¢300,000.00 by the trial judge as compensation to the plaintiff was not only arbitrary but was baseless and was not supported in anyway by the evidence on record and same was rightly set aside by the Court of Appeal.

Grounds a, b, c and d of the appeal fails and are dismissed.

In respect of ground (e) of the appeal, counsel for the plaintiff argued that the Court of Appeal erred when it varied the cost awarded the respondent (plaintiff) from GH¢20,000.00 to GH¢10,000.00

Counsel submitted that an appellate court will not interfere with a trial court's exercise of discretion unless it is shown that it was exercised on wrong or inadequate material, gave weight to irrelevant or unproved matters, omitted to consider relevant matters or manifest injustice was committed and referred to the case of **Sappor vs. Wigatap Ltd. (2007-2008) SCGLR 676** and **Owusu vs. Owusu-Ansah (2007-2008) SCGLR 70.**

Counsel also referred to Order 74 of the High Court (Civil Procedure) Rules 2004 (C.I.47) and submitted that the Court of Appeal was unjustified in interfering in the exercise of discretion

by the trial court considering that the Court of Appeal failed to demonstrate that the trial court failed to exercise its discretion in line with Order 74 of C.I.47.

It suffices to say that indeed the award of costs is discretionary. The trial court awarded cost of GH¢20,000.00 in favour of the plaintiff without stating the basis for the award of that sum. It is to be noted that the appeal of the defendants succeeded in part but the Court of Appeal did not award any cost in their favour. It should be noted that cost follows the event and the defendant's appeal having succeeded in part, they were entitled to cost. The Court of Appeal in seeking to do justice, instead of awarding costs in favour of the defendants, chose to vary the cost of GH¢20,000.00 awarded the plaintiff at the trial court and reduced same to GH¢10,000.00. In our view the reduction or variation of the cost did not cause any injustice to the plaintiff. Ground (e) of the appeal fails and is dismissed. On the whole the appeal of the plaintiff fails in its entirety and is dismissed.

(SGD.) **H. KWOFIE**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **A LOVELACE-JOHNSON (MS.)**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **E. YONNY KULENDI**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **E. Y. GAEWU**

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