

**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT**

**ACCRA - A.D. 2023**

**CORAM: BAFFOE-BONNIE JSC (PRESIDING)**

**OWUSU (MS.) JSC**

**PROF. MENSA-BONSU (MRS.) JSC**

**ACKAH-YENSU (MS.) JSC**

**ASIEDU JSC**

**CIVIL APPEAL**

**NO. J4/43/2022**

**21<sup>ST</sup> JUNE, 2023**

**YOO MART LIMITED        .....        PLAINTIFF/RESPONDENT/APPELLANT**

**VS**

**STANDARD CHARTERED BANK        .....        DEFENDANT/APPELLANT/RESPONDENT**

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**JUDGMENT**

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**OWUSU (MS.) JSC:-**

On 14<sup>th</sup> of February, 2019, the Court of Appeal allowed the appeal of the Defendant/Appellant and set aside the Order of the High Court dated 10<sup>th</sup> November,

2017 awarding interest to the Plaintiff/Respondent in respect of the sum of USD1,550,000.00 paid as consideration for the property purchased as having been made in error of both law and facts.

Dissatisfied with the decision of the Court of Appeal, the Defendant/Appellant appealed to the Supreme Court on the following grounds:

- I. *The Judgment of the Court of Appeal is against the weight of evidence on record.*
- II. *The Court of Appeal erred when they held that the Plaintiff /Respondent/Appellant was not entitled to interest on the sum of USD1,550,000.00 despite evidence of Defendant/Appellant/Respondent's failure to yield vacant possession to the Plaintiff/Respondent/Appellant*
- III. *The Court of Appeal erred in treating a Court Auction Sale as a Private Treaty between the parties.*
- IV. *The Court of Appeal misdirected itself on the issue of misrepresentation by the Defendant/Appellant/Respondent.*
- V. *Further or other grounds of appeal to be filed on receipt of the Record of Appeal.*

**The relief sought from the Supreme Court;**

*An Order reversing the Judgment of the Court of Appeal.*

At this stage it is noted for the record that no further or other grounds of appeal were filed.

Also in this appeal, the designations of the parties at the High Court would be maintained. Consequently, the Plaintiff/ Respondent/ Appellant will be referred to simply as Plaintiff and the Defendant/Appellant/Respondent as Defendant.

Before dealing with the arguments advanced in support and against this appeal, we will give the background of this case.

Per its writ of summons, the Plaintiff claims the following reliefs against the Defendant:

1. Compensatory Damages from the Defendant for failure to give Plaintiff vacant possession of the Odupongkpehe-Kasoa Warehouse originally belonging to Mass Projects Limited which Defendant put up for auction.
2. Mesne profits of USD 18,000.00 per month from 24<sup>th</sup> day of October, 2012 from the Defendant to the Plaintiff.
3. Interest on the mesne profit at the prevailing commercial bank rate from the 24<sup>th</sup> of October, 2012 to date of final payment.

In its amended Statement of Claim, the Plaintiff averred that, after the Defendant had obtained Judgment in an action at the High Court, it attached a “Warehouse Property” situate at Odupongkpehe-Kasoa belonging to Mass Projects Limited and sold same to the Plaintiff by Private Treaty. The Plaintiff averred further that, prior to the sale, the Plaintiff per its parent company Volta Capital Partners had expressed interest and made an offer for acquiring the property in the sum of USD 1,550,000.00 based on representations made by the Defendant. The Plaintiff continued that, under cover of a letter dated 15<sup>th</sup> November, 2012, the Defendant misrepresented to it that upon full payment, it will make arrangements for the Plaintiff to have vacant possession of the said warehouse.

The Plaintiff gave the particulars of misrepresentations as follows:

- a. The Defendant misrepresented to the Plaintiff in writing that upon proof of full payment to the Defendant, the court will issue eviction notice against the Defendant/Judgment Debtor forthwith when the latter knew or ought to have known that such an eviction order was not readily available.
- b. By the said written misrepresentation the Defendant succeeded in persuading an ensuring the transfer of funds from Plaintiff’s account with the Defendant Bank into its own account ostensibly for the full payment for the property.

- c. By the said misrepresentation the Defendant has benefited from the funds deducted from the Plaintiff's account and by that has been unjustly enriched since Plaintiff has not realized the purpose for the deduction from its account.

The Plaintiff concluded that, contrary to the understanding and arrangement to secure possession of the property on its behalf, the Defendant has failed to do so and has disabled the Plaintiff from realizing the purpose for which payment of the property was made. Consequently, the Plaintiff instructed its solicitors to demand the payment of USD 18,000 assessed rent for the period the property continued to remain in the possession of Mass Projects Limited hence this action.

The Defendant in its Statement of Defence denied Plaintiff's claims and averred that the property was sold under auction and not private treaty. The Defendant further denied making any misrepresentation to the Plaintiff. It continued that after the sale of the property, the Court granted the Plaintiff application for the delivery of the property to it. It is the case of the Defendant that it is rather Mass Project Limited that has disabled Plaintiff from having vacant possession of the property and the Court has been and continued to award the Plaintiff costs as compensation. The Defendant concluded that if the Plaintiff has difficulties with Mass Project Limited, it is at liberty to proceed against Mass Projects Limited as the Defendant has discharged its obligations to the Plaintiff and that the Plaintiff is not entitled to its claims.

At the trial, the Plaintiff testified through its Director. The Defendant also testified through its representative, the Senior Account Manager of the Bank at Accra.

The trial High Court in its Judgment made the following findings:

1. That the sale was by Private Treaty.
2. Applying the law on misrepresentation, the allegation of misrepresentation was not established.

3. The delay in getting vacant possession was not the doing of the Defendant as both Plaintiff and Defendant appeared as defendants in proceedings brought against them by Mass Projects Limited.
4. That Plaintiff was willing and continued with the transaction by making full payment after being informed that vacant possession would be given only by an Order of the Court.

After making the above findings the trial High Court came to the conclusion that, having received money from the Plaintiff who did not have access to the property and did not also benefit from the money paid, the Plaintiff is entitled to interest on the consideration paid. The High Court awarded Plaintiff interest on the sum of USD 1,550,000.00 at the prevailing Bank of Ghana dollar rate from 20<sup>th</sup> November 2012 to 26<sup>th</sup> December 2013. The High Court however refused Plaintiff's other claims.

Dissatisfied with the Judgment of the High Court, the Defendant appealed to the Court of Appeal which allowed the appeal.

In its Judgment, the Court of Appeal identified the main issue for determination before it to be whether the trial Judge was justified in law and on the facts, that is the evidence led at the trial in awarding interest on the sum of USD 1,550,000.00 paid by the Plaintiff to the Defendant as consideration for the property sold. It held among other things that;

*"The fact that it took some time after the payment of the consideration before the Plaintiff was given vacant possession should not be the basis for the Defendant being ordered to pay interest on money which rightly belonged to it."*

The Court of appeal therefore allowed the appeal and set aside the Order of the trial Court dated 10<sup>th</sup> November, 2017 awarding interest to the Plaintiff in respect of the sum of USD 1,550,000.00 paid as consideration for the property purchased as having been made in error of both law and facts.

In arguing the appeal, counsel for the plaintiff submitted that, the Court of Appeal misconstrued and misapplied the principle of the law on the main issue whether or not the Plaintiff was entitled to interest on the amount paid to the Defendant.

On ground 'I' of the appeal which states that:

*The Judgment is against the weight of evidence.*

Counsel for the Plaintiff argued that, it is settled that such a ground of appeal places the appellate Court in much the same position as the trial Court to review the entire record of appeal and evaluate whether it would reach a different conclusion from that of the trial Court. In other words, such a ground of appeal enables the Appellate Court to consider the entire record of proceedings at the lower court to ascertain if the trial Judge arrived at the correct conclusion upon applying the relevant law to the peculiar facts of the case. He referred to the cases of **DJIN vs. MUSAH BAAKO [2007-2008] SCGLR 684, 691 and ATTORNEY-GENERAL vs. FAROE ATLANTIC CO LTD [2005-2006] SCGLR 271** to buttress his point. Counsel then submitted that, both on the facts and the law, there is overwhelming evidence on record that the Justices of the Court of Appeal wrongly applied the law and arrived at the wrong conclusion. He therefore invited us to disturb this finding and the conclusion arrived at. He continued that; the Justices of the Court of Appeal failed to advert their minds to the basic legal principle that a party who has been unjustifiably kept out of the benefit of money owed him is entitled to interest for the period. Thus, a party who in an anticipation of the transfer of legal title to a property has advanced money kept and had been out of the benefit of any such money for a long period then such a person is entitled to compensation by way of interest for the period. He cited the case of **AKOTO vs. GYAMFI-ADDU & ANOR [2005-2006] SCGLR 1018** to buttress this point. Counsel then submitted that, the trial Judge found as a fact that the Plaintiff had been unjustifiably kept out of money due him for the relevant period, but the Court of Appeal ignored this finding which was the basis for the award of interest as

compensation. He concluded on this point that, there is no justification for the denial of the award of interest due the Plaintiff especially, having regard to C.I 52 which recognizes the economic and commercial fact that once money is due to a person but it is in the hands of another, the denial of the first-person access to his money has an economic cost. This cost will usually need to be compensated through the award of interest.

Based on the above analysis, counsel for the Plaintiff submitted that the Justices of the Court of Appeal erred when they refused to uphold the findings and Orders of the trial Judge as the award of interest on the sum held by the Defendant was justifiable. Additionally, the Plaintiff was able to establish that the sale was one of Private Treaty. That being the case, the Plaintiff ought to have been granted vacant possession immediately it advanced the full amount. Failure to do so occasioned a loss to the Plaintiff which can only be compensated by the award of interest. Consequently, ground I of the appeal ought to succeed.

In response to the ground, I of the appeal, counsel for the Defendant argued that, in determining whether the Judgment is against the weight of evidence adduced at the trial, this Court must analyze the entire record of appeal taking into account all the pleadings, affidavits, documents and submissions by both counsel in the record and the proceedings before the trial Court in order to ascertain whether the conclusion reached by the Court of Appeal is supported. He referred us to the case of **TUAKWA vs. BOSOM [2001-2002] 2 SCGLR 61**. Counsel then submitted that the argument of counsel for the Plaintiff that in anticipation of the transfer of Legal Title to the Property, it advanced money and has been kept out of the benefit of the money for a long period and as such is entitled by law or by the evidence to be compensated by way of interest for the period is neither supported by law or by the evidence on record. He continued that in Ghana interests are awarded by the Court on the basis of a) trade usage; b) Contract; c) Statute and d) a person who unjustifiably keeps the money of the other. Counsel for the Defendant referred to the case of *DELLE & DELLE vs. OWUSU AFRIYIE [2005-2006] 60* and the Book on

Practice & Procedure in the Trial Courts and Tribunals in Ghana (2<sup>nd</sup> Edition) by Justice S. A. Brobbey, paragraphs 950 and 951. Counsel continued that, in the present case, this Court can only set aside the decision of the Court of Appeal and affirmed the decision of the High Court if it can be established that the award of interest was based on the contract between the parties or the fact that the Defendant had unjustifiably kept money belonging to the Plaintiff. He then submitted that, from the record, it is evident that the nature of the sale and purchase of the property in issue cannot be the basis for the award of interest. This is because in the law of contract as soon as the purchaser pays for the goods or the property being offered for sale, the sale is concluded. Thus, in the context of this case, counsel argued, the sale was concluded when the Plaintiff transferred money to the Defendant and the latter and the Court issued the Certificate of Purchase of the Property to the Plaintiff. Consequently, there is no basis in law for the Plaintiff to be entitled to award of interest or mesne profit as the process of the delivery of the Property to the Plaintiff was through the Judicial Process.

Secondly, the Plaintiff failed to establish that the Defendant unjustifiably kept money owed to the Plaintiff, as the nature of the transaction is such that the Defendant became the legal owner of the money and the Plaintiff the legal owner of the Property sold. Therefore, there is no money due or owed the Plaintiff by the Defendant. The Plaintiff ceased to be the owner of the money it transferred same to the Defendant. So that, once the Plaintiff is not claiming that he did not get the Property, it cannot claim the money is being unjustifiably held by the Defendant. Accordingly, the said money was no longer that of the Plaintiff when it transferred same to the Defendant.

Thirdly, the trial Judge after evaluating the evidence on record concluded that the delay in giving the Plaintiff vacant possession could not be attributed to the Defendant.

Furthermore, the moment the Plaintiff transferred the money to the Defendant, the Plaintiff received legal title to the Property by the issue of Certificate of Purchase and the



Plaintiff lost all rights to the money. The fact that the Plaintiff had paid the money for the Property but had not obtained vacant possession to the said Property is not a legal basis to hold the Defendant liable to pay interest on the said money in the absence of fraud or misrepresentation on the part of the Defendant. On the contrary, the Defendant did not keep Plaintiff out of its money as the money no longer belonged to the Plaintiff neither did the Defendant keep the Plaintiff out of the Property as the delay was not attributed to the Defendant.

On the Court (Award of Interest and Post Judgment Interest) Rules, C.I 52, counsel for the Defendant submitted that same does not apply to the present case as the USD 1,550,000.00 was not due or owed the Plaintiff. The amount was paid to the Defendant to enable the Plaintiff acquire Legal Title to the Property.

Based on the forgoing, counsel for the Defendant submitted that the Judgment of the Court of Appeal is not against the weight of evidence. He therefore invited us to dismiss the appeal on ground I of the appeal.

Ground 'I' of the appeal states that:

*The Judgment of the Court of Appeal is against the weight of evidence on record.*

Both counsel for the Plaintiff and Defendant stated the applicable law correctly as to what is required of us as an appellate court. They also cited the relevant cases to support their respective position on the law.

In its Judgment, the Court of Appeal identified the issue for determination as, whether or not the award of interest on the consideration paid for the Property sold in this case is justified. It then held that:

*“As to whether there are factual basis for the award made, it is the view of this Court that, as the trial Judge had found that the appellant was not guilty of allegations of*

*misrepresentation in its dealings with the respondent and further that the appellant could not be blamed for the delay in granting vacant possession, the fact that it took sometime after the payment of consideration before the respondent was given vacant possession should not be the basis for it being ordered to pay interest on the money which rightly belonged to it (our emphasis)."*

We agree entirely with the Court of Appeal on the above statement. In Exhibit 'E' the Plaintiff was informed that an eviction Order will be obtained from the Court when full payment has been received by Standard Chartered Bank, the Defendant in this case. Exhibit 'E' is dated November 15, 2012. We will reproduce same for emphasis. The letter was addressed to the Managing Director, YOO MART LTD, 32 CRYSTAL HOMES, 4<sup>TH</sup> CIRCULAR ROAD CANTOMENTS, ACCRA. The letter reads:

*"ATTNT: SERGEL IUSHCHENKO,*

*Dear Sir,*

**RE: AUCTION SALE OF PROPERTY**

*We refer to the ongoing sale and purchase arrangement for the Odupongkpehe-Kasoa Property originally belonging to MASS PROJECTS LIMITED which Standard Chartered Bank put up for auction under a Court Order.*

*We wish to notify you that upon receipt of full payment for the Warehouse auctioned by Yellow House Mart on our behalf, Standard Chartered Bank will make the necessary arrangements for the eviction of any person(s) occupying the said property as soon as practicable.*

***Kindly note that we are in the process of preparing an eviction notice which can only be obtained from the courts*** (our emphasis again) *when we provide evidence that full payment has been received by Standard Chartered Bank. We therefore await your*

*authorization as soon as possible to transfer the remaining amount from Yoo Mart's account.*

*Thanks for your cooperation,*

*Yours faithfully*

*Signed*

*Signed*

*Fred Ebeneku-Anim*

*Estelle Djan*

*Manager, GSAM-Ghana*

*Area Head, GSAM/WA"*

Upon receipt of Exhibit 'E', the Plaintiffs ordered funds to be transferred from its account to the Defendant in a letter dated 19<sup>th</sup> November, 2012. Thereafter, the Plaintiff through its solicitors ANKAMAH & ASSOCIATES acknowledged in Exhibit 'G' that the Certificate of Purchase had been issued to it. Exhibit 'G' is dated 14<sup>th</sup> December 2012. Thus, upon the issuance of the Certificate of Purchase the Plaintiff became the owner of the Property whilst the Defendant became entitled to the consideration paid, that is the amount of USD 1,550,000.00. At this stage the Plaintiff did not have any interest in the consideration paid to be entitled interest on it. This is irrespective of whether the Plaintiff got immediate possession of the Property or not. We therefore hold that there was no factual basis for the award of the interest on the consideration paid for the Property. Had the trial Judge properly evaluated the evidence on record and the correct principle of law, it would have come to the conclusion that, the Plaintiff is not entitled to the award of interest on the consideration paid.

Ground I of the appeal fails and it is accordingly dismissed.

This brings us to Ground 'II' of the appeal:

*The Court of Appeal erred when it held that the Plaintiff/Respondent/Appellant was not entitled to interest on the sum of USD 1,550,000.00 despite evidence of Defendant/Appellant/Respondent's failure to yield vacant possession to the Plaintiff/Respondent/Appellant.*

The argument canvassed by the Plaintiff on this ground is that, if the Court of Appeal was of the opinion that the Agreement to immediately deliver to the Plaintiff the subject matter of the sale upon purchase does not amount to a contract, then the application of the law was misapplied by their Lordships. He continued that the terms of the sale were such that upon the transfer of the amount involved the Defendant was to deliver the subject matter to the Plaintiff immediately. Therefore, the failure of the Defendant to carry out the basic obligation brings the otherwise court sanctioned auction which the Defendant misrepresented to be a private sale into the purview of the award of interests simply because the Defendant had kept out the benefit of the monies on the property due it. Counsel concluded on this point that, the failure to deliver the Property to the Plaintiff as soon as payment was effected was unjustified and the simple remedy for the delay is compensation in the form of the award of interest on the sum kept by the Defendant to the disadvantage of the Plaintiff for one year. Therefore, the discretion exercised by the trial High Court Judge was fair. There was no basis for its disturbance by the Court of Appeal. He cited the case of **P.K. OWUSU TRADING AND CONSTRUCTION vs. EJISU-JUABEN DISTRICT ASSEMBLY (2018) DLCA 4942** and invited us to allow the appeal on this ground.

In response to Ground II of the appeal, counsel for the Defendant submitted that the issue of entitlement to the award of interest or otherwise was not before the Trial High Court either on the writ or in the pleadings. After referring to the Plaintiff's claims as endorsed on the writ of summons, argued that, having dismissed the Plaintiff's prayer for mesne profit, relief 3 endorsed on the Writ of Summons became moot and same ought to have been dismissed as that relief was predicated on the award of mesne profit and not the

consideration paid for the Property. He continued that from the pleadings and the evidence before the trial Court there was no mention or prayer for interest on the consideration paid. As a result, the award of interest was unjust denial of opportunity to the Defendant to respond to the issue of interest. Counsel for the Defendant cited the case **of HANNA ASI (NO.2) vs. GIHOC REFRIGERATION HOUSEHOLD PRODUCTS [2007-2008] 1 SCGLR 1** to buttress his point. Counsel for the Defendant concluded on ground II that what this implied was that the trial Judge was substituting a case for the parties which she cannot do and cited the case of **DAM vs. ADDO & BROTHERS [1962] 1 GLR 200 holding (2)** thereof.

Based on the forgoing, counsel for the Defendant submitted that the Plaintiff failed to lead evidence to sustain Ground II of the appeal as the trial High Court found as a fact that the Defendant was not guilty of misrepresentation in its dealing with the Plaintiff and the former could not be blamed for the delay in granting vacant possession to the Plaintiff. Therefore, the Court of Appeal was right when it held that the fact that it took some time for the Plaintiff to have vacant possession despite having paid consideration for the Property cannot be the basis in law to award interest on the money paid to the Defendant. He thus invited us to dismiss the appeal on this ground too.

In discussing ground I of the appeal, we pointed out the pieces of evidence on the record and demonstrated why the Plaintiff was not entitled to interest on the consideration paid to the Defendant in respect of the Warehouse at Odupongkpehe-Kasoa put up for sale. We perused the entire record of appeal and evaluated the pieces of evidence on record and have come to the conclusion that, the decision of the trial Judge in awarding interest on the consideration paid to the Defendant was clearly not supported by the evidence on record. Consequently, the case of **AKOTO vs. GYAMFI** cited by counsel for the Plaintiff should be distinguished from the case under consideration both on the fact and the law.

Secondly, from both the Writ of Summons and the Statement of Claim, the Plaintiff did not claim interest on the consideration paid to the Defendant for the Property purchased. Thus, the issue of being entitled to the award of interest or otherwise was not before the trial High Court Judge. What the Plaintiff claimed in relief '2' as endorsed on its Writ of Summons was Mesne profit of USD 18,000.00 per month from the 24<sup>th</sup> October, 2012 from Defendant to Plaintiff and as rightly submitted by counsel for the Defendant in its Statement of Case, once the trial Judge dismissed relief 2 of the Plaintiff's Writ which relief is in respect of the mesne profit, relief 3 which is interest on the mesne profit became moot and ought to have been dismissed. This is so because the prayer for interest on the mesne profit was predicated upon the award of mesne profit and not the consideration paid to the Defendant.

Thirdly, by awarding interest on the consideration paid to the Defendant, the trial High Court Judge was substituting a case for the Plaintiff. See the case of **DAM vs. J. K. ADDO & BROTHERS [1962]1 GLR 200**, where this Court held in holding (2) that:

*"A court must not substitute a case proprio, nor accept a case contrary to, or inconsistent with, that which a party himself puts forward, whether he be the plaintiff or defendant."*

Their Lordships held in holding (3) as follows:

*"The function of pleadings is to give fair notice of a case which has to be met, so that the opposing party may direct his evidence to the issue disclosed by them. To condemn a person on a ground of which no fair notice has been given may be a great denial of justice as to condemn him on a ground on which his evidence has been improperly excluded."*

Relating the case referred to supra to the case under consideration, since the issue of interest on the consideration paid to the Defendant by the Plaintiff was not in the latter's

writ or pleadings to enable the Defendant react to it, it was wrong for the trial High Court Judge to have awarded the Plaintiff interest on the consideration paid for the Property.

But more importantly, the trial High Court and the Court of Appeal having come to the conclusion, which conclusion, we endorse that:

- a. The Defendant in its dealing with the Plaintiff in respect of the Odupongkpehe-Kasoa Property was not guilty of misrepresentation.
- b. That the delay in giving vacant possession of the said Property to the Plaintiff cannot be attributed to the Defendant, there was no basis for the award of interest on the consideration paid to the Defendant.

Consequently, the award of interest on the consideration paid to the Defendant by the Plaintiff was made in error.

Indeed, the Court of Appeal in its Judgment rightly held in our view that:

*“On the issue of whether the award of interest on consideration paid for the purchase of the Property is legally justified, this court, upon a consideration of the submissions does not think so. In the first place in the law of contract, as soon as the purchaser pays for the goods or the Property being offered for sale, the purchaser becomes entitled to the goods purchased whilst the original owner becomes entitled to the money paid as consideration for the goods or the property.”*

We agree and endorse the above pronouncement by the Court of the Appeal. In the circumstance, ground II of the appeal fails and it accordingly dismissed.

The next ground of appeal is Ground ‘III’.

*The Court of Appeal erred in treating a court auction sale as private treaty between the parties.*

On this ground, counsel for the Plaintiff submitted that having established the fact that the sale was based on a court sanctioned auction, but the Defendant represented it was one by private treaty debited the Plaintiff's account without a knock down. The Plaintiff was entitled to immediate possession of the property, failure of which entitled the Plaintiff to the interest awarded. He continued that, what distinguishes the two types of sale i.e., private treaty and public auction is the presence of an auctioneer who puts up a property for sale subjects to bids made by the public. Counsel cited the case of *PITCHFORK RANCH CO. vs. BAR TL, 615 P 2d 541 (Wy)*. He concluded on this ground that in accepting the offer by the Plaintiff, the Defendant represented to the Plaintiff that it was selling the property that it had put up for sale. The Defendant never mentioned a public auction sale under the auspices of the court. Therefore, the representation was made to induce the Plaintiff to believe that the Defendant was directly in charge and in control of the sale of the Property when that was not so. Counsel for the Plaintiff argued that the Plaintiff never participated in any such auction. He quoted a lengthy cross-examination of the Defendant's representative and concluded on this ground that as the sale was at the time of accepting the offer to purchase the property, the Defendant never described to the Plaintiff that the sale was one of public auction. Therefore, it was the responsibility of the Defendant to yield vacant possession to the Plaintiff upon receipt of full payment. Counsel for the Plaintiff then submitted that, had the Justices of the Court of Appeal considered the sale as one under Private Treaty, they would have come to the conclusion that the Plaintiff was entitled to the award of interest and thus uphold the decision of the trial High Court. He therefore invited us to reverse the decision of the Court of Appeal.

In response to ground III of the appeal, counsel for the Defendant argued that, although the issue of whether the sale was by a court auction or private treaty was an issue before the trial court, it was never a ground of appeal before the Court of Appeal. As such the Court of Appeal was not called upon to decide that issue. He then submitted that having



failed to raise that issue before the Court below, it is not permitted to raise that issue before the Supreme Court. Counsel for the Defendant cited the case of *IN RE AWERE-KYERE (DECED); AWERE-KYERE vs. FOSTER & ANO. [2003-2004] 2 SCGLR 1050, 1052* to support his point. Secondly, counsel argued, though the trial Judge held that the sale was by private treaty, she did not base her decision on this point but rather decided the matter on the basis that the Plaintiff had paid money to the Defendant but had not benefited from the money paid. Counsel for the Defendant concluded on this ground that, the issue of whether the sale was by a court auction or a private treaty between the parties does not assist this Court in determining whether or not the award of interest in the circumstances of this case is supported by law and the evidence on record. He therefore invited this Court to dismiss ground II of the appeal.

Our reaction to this ground of appeal is that we have already held in Ground I of the appeal that from the evidence on record the sale in contention is a court auction sale. The letter from the Defendant to the Plaintiff Exhibit 'E', the heading is clear on this. Again the 1<sup>st</sup> paragraph alluded to this fact and it states:

“We refer to the ongoing sale and purchase arrangement for the Odupongkpehe-Kasoa property belonging to Mas Project Limited, which Standard Chartered Bank put up for auction under a Court Order” (our emphasis).

The last paragraph of Exhibit 'E' throws more light on the nature of the sale when it was stated that:

“Kindly note that we are in the process of preparing an eviction notice which can only be obtained from the courts when we provide evidence that full payment has been received by Standard Chartered Bank” (our emphasis again).

Plaintiff itself acknowledged this fact in its letter dated 14<sup>th</sup> of December, 2012 to the Defendant when it stated in the 1<sup>st</sup> paragraph thus:

*“Our client has fully paid for the warehouse auctioned by Yellow House Mart on 24<sup>th</sup> October, 2012 on behalf of Standard Chartered Bank and has been issued with a Certificate of Purchase”.*

See page 21 of the record of appeal. It is instructive to note that the letter mentioned above was written by Solicitors of the Plaintiff **ANKAMAH & ASSOCIATES LEGAL PRACTITIONERS & NOTARIES PUBLIC**.

It is true the trial High Court Judge found as a fact that the sale was by a Private Treaty. However, that finding is not supported by the evidence on record. We say so against the backdrop of the answers provided by the Plaintiff’s representative Mr. Sergei Iushchenko when he was under cross-examination:

*“Q: I further suggest to you that the Plaintiff (sic) aware of the court proceedings in respect of the challenges to the sale, was aware that the property could only be delivered to it after the Court had determined the matters in dispute.*

*A: We were told that the property can be delivered after the auction once all necessary legal documents are made.”*

The answer from the Plaintiff’s representative shows that the sale was by court auction. So, it is too late in the day for the Plaintiff to deny this fact. This ground of appeal has not been made out and it is hereby dismissed.

The last ground of appeal, Ground ‘IV’ is:

*The Court of Appeal misdirected itself on the issue of misrepresentation by the Defendant/Appellant/Respondent.*

The Plaintiff did not argue this ground in its Statement of Case. It is deemed to have been abandoned.

From all of the forgoing, there is no merit in the appeal and it is accordingly dismissed.

**M. OWUSU (MS.)**  
**(JUSTICE OF THE SUPREME COURT)**

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

**PROF. H. J. A. N. MENSA-BONSU (MRS.)**  
**(JUSTICE OF THE SUPREME COURT)**

**B. F. ACKAH-YENSU (MS.)**  
**(JUSTICE OF THE SUPREME COURT)**

**S. K. A. ASIEDU**  
**(JUSTICE OF THE SUPREME COURT)**

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**ELIKEM ADISENU-DOE ESQ. FOR THE DEFENDANT/APPELLANT/**

**RESPONDENT.**