IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2019

CORAM: DOTSE, JSC (PRESIDING)
YEBOAH, JSC
BAFFOE-BONNIE, JSC
APPAU, JSC
PWAMANG, JSC
MARFUL-SAU, JSC
DORDZIE (MRS.), JSC

CIVIL MOTION
NO. J7/22/2018

27TH FEBRUARY, 2019

DANIEL OFORI ….. PLAINTIFF/APPELLANT/APPELLANT/APPLICANT

VRS

1. ECOBANK GHANA LIMITED ….. 1ST DEFENDANT/RESPONDENT/ RESPONDENT/RESPONDENT
2. SECURITIES AND EXCHANGE COMMISSION
3. GHANA STOCK EXCHANGE ….. 2ND & 3RD DEFENDANTS/RESPONDENTS/ RESPONDENTS/RESPONDENTS

RULING

DOTSE, JSC:- In this review application, the Applicant herein, who was the Plaintiff/Appellant/Appellant therein in Civil Appeal No. J4/11/2016 has prayed for a review of the judgment of the ordinary bench rendered on the 25th day of July 2018.

BRIEF FACTS

The facts of this case admit of no controversies whatsoever. In brief, the case of the Applicant is that, following confusion which involved 14, 130,000 CAL Bank shares in which the Applicant traded in through his Brokers, at the Ghana Stock Exchange, matters came to a crescendo as a result of which the Applicant issued a writ at the High Court, following inability to settle the confusion and or differences therein. It must be noted that, at the centre of the confusion was the question whether the trade in the 14, 130,000 CAL Bank shares between Applicant and the other sellers through their Broker, Databank, had been settled as at the time of the suspension or that it had failed completely.

Following the failure of the Securities and Exchange Commission the 4th Respondents herein who are the Regulators of the Ghana Stock Exchange to resolve the confusion, the Applicant exercised his rights in the High Court to resolve the differences between the parties**.**

The pith of the Applicant's case which he had maintained throughout the case is that, as at the time the trade was suspended it had settled and concluded, in that, by then the shares had been transferred into the name of the 2nd Defendant (William Oppong Bio who is no longer a party) and he had received payment. The Applicant contended further that, the transaction satisfied the rules of the stock exchange and was validly traded in.

Applicant contended further that, the funds covering the transaction which were lodged with 1st Defendant/Respondents herein had been given to him the Applicant and that he became the customer of the 1st Respondent bank in respect of those funds, hence, he initially sued the 1st Respondents alone for his funds before the Joinder of the other parties.

HIGH COURT DECISION

After trial, the learned High Court Judge in her judgment dated 16th September 2011 concluded that the trade did not conform to the rules of the Exchange in that there was no Delivery versus Payment as the payment and delivery of the share certificates were

not effected as at 11 am on the third day. The court held inter alia that, since the share certificates were not delivered before the suspension of the trade there was total failure of consideration so Applicant was not entitled to be paid.

APPEAL TO COURT OF APPEAL

An appeal by the Applicant against the High Court decision was also similarly dismissed by the Court of Appeal wherein the Applicant appealed to the ordinary Bench of this Supreme Court.

DECISION OF THE SUPREME COURT

On the 25th day of July 2018, the Supreme Court delivered judgment in favour of the Applicant. Whilst reversing both lower court decisions, the Supreme Court gave judgment in favour of the Applicant and concluded the matter in the following terms:-

> *"Consequently, plaintiff is awarded interest on the sum of GH¢6,160,240.00 to be calculated at the agreed rate of 30% per annum* ***from 2nd June, 2008 up to the date of the judgment of the High Court and at the bank rate prevailing at that date till final payment. Plaintiff is also awarded interest on the sum of GH¢7,600,00.00 at the prevailing bank rate of interest as at the date of the judgment of the High Court to be calculated from 2nd June 2008 to the date of final payment.*** *The interests are to be calculated at the rate of interest as at date of the judgment of the High Court because we are making the orders the High Court ought to have made in exercise of our authority under Article 129 (4) of the Constitution 1992.*
>
> *Relief (e) for an order of injunction would not serve any purpose for plaintiff and would be refused. Relief (g) is granted but relief (h) is struck out as redundant since Databank who were 3rd defendant were struck off as a party. Relief (i) is a claim for damages but plaintiff did not adduce any evidence in that regard. In his written submissions in the Court of Appeal he sought to rely on matters contained in an affidavit that was filed in reaction to a motion for leave to amend and prayed*

to be paid special damages of GH¢4,500,000.00. Special damages by the practice of the courts are required to be specifically pleaded and strictly proved. That affidavit was not tendered as evidence and subject to cross examination so plaintiff is not entitled to special damages. Nevertheless, he is entitled to nominal damages against the 1st defendant for breach of the contract of banker/customer as explained in the main body of the judgment. Nominal damages are such as the law would presume was suffered by the plaintiff and are said to be at large, meaning the quantum to be awarded is at the discretion of the court. See ***Tema Oil Refinery v African Automobile [2011] 2 SCGLR 907****. On the facts of this case, we award damages in the sum of GH¢100,000 in favour of plaintiff against 1st defendant. In conclusion, the appeal succeeds and is allowed." Emphasis*

References to Plaintiff and 1st Defendants, therein refer specifically to the Applicant and the 1st Respondents herein.

REVIEW APPLICATION

It is against the above orders specifically that the Applicant has invited this court to review part of the decision of the ordinary bench in the following terms as prayed for by the Applicant.

"Reviewing that part of the judgment of this Court dated the 25th day of July 2018 ***in terms of the period only for which the court ordered the payment by 1st Defendant / Respondent/Respondent/Respondent to /Plaintiff/Appellant/Appellant /Applicant of interest on the sums of:***

i. *GH¢6,160,240.00 out of the sum of GH¢13,762,240.00* ***at the agreed interest rate of 30% per annum from the 2nd day of June 2008 up until the date of the judgment of the High Court to wit; the 16th day of September 2011.***

ii. *GH¢6,160,240.00 from the* ***date of the judgment of the High Court to wit; the 16th day of September 2011 until the date of final payment.***

iii. ***GH¢7,600,000.00 at the prevailing bank rate as at the date of the judgment of the High Court to wit; the 16th day of September 2011 to be calculated from the 2nd day of June 2008 to the date of final payment." Emphasis***

SCOPE OF REVIEW APPLICATIONS UNDER RULE 54 (A) & (B) OF THE SUPREME COURT RULES, 1996 – (C.I. 16)

Mindful of the scope of the review jurisdiction of this court pursuant to Article 133 of the constitution and Rule 54 of the Supreme Court Rules, (C. I. 16) learned counsel for the Applicants, Thaddeus Sory, dealt at length on Rule 54 on the grounds for a review application. In this respect, after stating in very clear terms the circumstances under which the Applicant has invoked the review jurisdiction, learned counsel also provided the necessary legal support why the review application must succeed. In support of this review application, one Baffour Gyawu Bonsu Ashia, who described himself as a lawyer in the firm of Solicitors of the Applicant deposed inter alia to the following depositions in support of the review application which read thus:-

9. "That since the judgment of this Court and the orders made consequent thereto did not affirm the judgment of the court of Appeal or the High Court or both, **the orders of this Court are orders of this Court which take effect and are also enforceable as orders of this Court but not the judgment of either the court of Appeal or the High Court**.

10. That in any case, in the judgment of this Court, this Court found that Plaintiff **invested** the **sum of six million, one hundred and sixty two thousand, two hundred and forty Ghana Cedis (GH¢6,162,240.00) and not the sum of GH¢6,160,240.00 erroneously stated in the orders of the Court by way of a fixed deposit with 1st Defendant.**

11. That I repeat paragraph 10 above of my affidavit and depose further that **this court made the finding as to the agreed interest rate of 30% from a request to admit facts filed in the High Court which is exhibited hereto and marked B and which was responded to by 1st Defendant, which response is also exhibited hereto and marked C**.

12. That a reading of exhibit B attached hereto will confirm that Plaintiff requested that 1st Defendant admit that the aforesaid sum of GH¢6,162,240.00 be ***"invested"*** **on Plaintiff's behalf at the agreed rate of 30% in response to which the 1st Defendant unequivocally admitted by way of exhibit C that the aforesaid sum was to be invested at the agreed.**

14. **That indeed at all times material to the judgment of this court which took effect from 25/07/18 which is the date on which it was delivered**, I have been deprived, not only of the principal sum of GH¢6,162, 240.00 and the agreed interest accruing thereon but the **opportunity of further investing the aforesaid sum and its accruing interest on even more lucrative terms.**

15. That as agreed between 1st Defendant and myself, this court accordingly awarded interest on the sum of GH¢6,162,240.00 to be calculated at the agreed rate of 30% per annum from 2nd June, 2008 but specified that the period of the interest as agreed **apply only up to the date of the judgment of the High Court which is the 16th day of September 2011**.

16. That this Court therefore ordered that the interest rate applicable to the aforesaid sum of GH¢6,162,240.00 bear interest from the date of the judgment of the High Court, which is 16/09/18 at the bank rate prevailing at the time of the judgment of the High **Court (instead of the agreed interest rate till the date of final payment).**

21. That this court having established that in so far as the sum of GH¢6,162,240.00 is concerned, 1st Defendant and Plaintiff had agreed on an interest rate of 30% per annum, **this court ought to have applied the same interest rate until the date of final payment but not until the date of the judgment of the High Court.**

22. That with regard to the sum of GH¢7,600,000.00 this court ordered that 1st Defendant pay interest on the aforesaid sum at the prevailing bank rate as at the date of the judgment of the High Court which is 16/09/11 to be calculated from the 2nd day of June 2008 to the date of final payment.

23. **That the rules on interest also say that the rate of interest to be applied on a judgment debt is reckoned from the date when the order for payment of the interest was made but not any date prior to the date of the said order.**

24. That accordingly, **since the order for payment of interest on the sum of GH¢7,600,000.00 was made on 25/07/2018 which is the date of the judgment of this court, the applicable interest rate as prescribed by statute should be the prevailing bank rate as at the date of the judgment of this court but not that of the High Court dated 16/09/11." Emphasis**

In response to the said depositions, one Emmanuel Kofi Darko, who also described himself as a Lawyer in the firm of Solicitors of the 1st Respondents herein, swore to and

deposed to these facts in the following paragraphs in answer to the Applicants depositions which states as follows:-

8. "That I further repeat paragraph 7 above of my affidavit in answer to the instant application in response to paragraph 11 of Plaintiff's affidavit in support and state that the findings of the Court **in respect of the agreed interest rate of 30% was only made within the specific context and material facts of the contract between the parties.**

9. That in reaction to Paragraphs 12 and 13 of Plaintiff's affidavit in support of the instant review application, Defendant states that the admission of facts pertaining to the transaction can only be reasonably applied to the peculiar facts of the said transaction that being a fixed deposit with a 30% interest and that the duration of such an interest rate as agreed by the parties is only determinable and reasonably so within the confines of such a fixed period as specified by the contract.

12. That the extent to which an interest rate which is a fundamental term of a contract stretches or applies in terms of period or length of coverage as a primary rule is to be determined by the parties or this court on the account of such terms of the contract where such a contract is found to exist and **that a party cannot unilaterally recast the interest rate of such a contract by a court and less so through a review application.**

13. That the life span of the interest rate as reflected in the contract of the parties which plaintiff seeks to have applied in this court's orders is not consistent with the life span of the contract itself and that any support of this Honourable Court to such a construction would amount to redrafting the terms of the contract for the parties.

14. That the Defendant states that the life span of an interest rate for a fixed term investment agreement between **parties is determined by the duration fixed**

by the contract as such agreements are not contracts at large and Plaintiff's claim of duration of the interest in the instant application is palpably erroneous and outside the reach of the contract between the parties.

16. **That the admitted or agreed interest rate by the parties cannot be applied until the date of final payment having, account to the material facts of the fixed investment agreement between the parties and that the interest rate is only applicable within the reach and scope of the period fixed for the life of the investment contract."**

Learned counsel for the Applicant then referred this court to a litany of decided cases to justify why the review jurisdiction in the instant case must be exercised. Cases referred to include:-

1. **NDK Financial Services v Ahaman Enterprises Ltd & Others – Review Motion No. J7/4/16 dated 13th June 2016**
2. **Afranie II v Quarcoo [1992] 2 GLR 561**
3. **Ribeiro v Ribeiro [1989-90] 2 GLR 10**
4. **Glencore AG v Volta Aluminum Company Ltd. [2013-2014] 1SCGLR 473**

With the above rendition, learned counsel for the Applicants requested of this review panel to exercise our jurisdiction in their favour.

As was to be expected, learned Counsel for the 1st Respondents, Dr. Atupare of Kulendi@ Law, relied on a number of decisions from this court and argued that the instant application does not qualify for the exercise of our review jurisdiction.

Some of these cases are:-

1. **Mechanical Lloyd Assembly Plant Ltd vrs Nartey [1987-88] 2 GLR 598**
2. **Quartey v Central Services Co. Ltd [1996-97] SCGLR 398**
3. **Afranie v Quarcoo [1992] 2 GLR 591-592**

4. **Tamakloe v Republic [2011] 1 SCGLR 29 and**
5. **Internal Revenue Service v Chapel Hill Ltd [2010] SCGLR 827 at 850, 852-853, just to mention a few.**

SCOPE OF REVIEW APPLICATION IN THE SUPREME COURT

This court, has in the case of ***Arthur (No.2) v Arthur (No.2) [2013-2014] 1 SCGLR 569, at 579-580*** reviewed most of the cases referred to supra as well as the locus classicus decisions on the review jurisdiction of this court and came out with a road map that an Applicant for a review jurisdiction must satisfy to ensure a successful review application. The court stated in the above decision as follows:-

> ***"We are therefore constrained to send a note of caution to all those who apply for the review jurisdiction of this court under rule 54 (a) of the Supreme Court Rules, 1996 (C.I. 16), to be mindful of the following which we set out as a road map.*** *It is neither an exhaustive list nor one that is cast in iron such that it cannot be varied depending upon the circumstances of each case:*
>
> ***(i) in the first place, it must be established that the review application was filed within the time limits specified in rule 55 of CI 16, i.e. it shall be filed at the Registry of the Supreme Court not later than one month from the date of the decision sought to be reviewed.***
>
> ***(ii) That there exists exceptional circumstances to warrant a consideration of the application;***
>
> ***(iii) That these exceptional circumstances have led to some fundamental or basic error in the judgment of the ordinary bench;***
>
> ***(iv) that these have resulted into miscarriage of just (it could be gross miscarriage or miscarriage of justice simpliciter);***
>
> ***(v) the review process should not be turned into another avenue as a further appeal against the decision of the ordinary bench; and***
>
> ***(vi) the review process should not be used a forum for unsuccessful litigants to re-argue their case***

It is only when the above conditions have been met to the satisfaction of the court that the review panel should seriously consider the merits of the application." Emphasis

Applying the above road map it appears to us that, grounds (ii) (iii) and (iv) come into focus. This is because, from the depositions of the Applicant's Solicitors referred to supra in the affidavit in support, it is apparent that the cardinal points in this review application are the following:-

1. That this court's order that the 1st Respondents pay interest on the sum of GH¢6,160,240.00 instead of the sum of GH¢6,162,240.00 which is the correct figure, at the agreed interest rate of 30% per annum from 2nd June 2008 until the date of the judgment of the High Court, which is 11th September 2011 is per incuriam the Court (Award of Interest and Post Judgment Interest) Rules, 2005 (C. I. 52).
2. That the courts order that the 1st Respondent pay interest on the sum of GH¢6,162, 240 out of the sum of GH¢13, 762,240.00 at the prevailing bank rate from the date of the judgment of the High Court, to wit, 16/09/11 to the date of final payment is per incuriam the Court (Award of Interest and Post Judgment Interest) Rules, 2005 (C.I. 52)
3. Finally, that this courts' orders that, 1st Respondent pay interest on the sum of GH¢7,600,000.00 at the prevailing bank interest rate as at the date of the judgment of the High Court 16/09/11 to be calculated from the 2nd June 2008 to the date of final payment is also per incuriam C. I. 52.

Under these circumstances, we are of the opinion that it is necessary at this stage to refer in extenso to the relevant provisions of C.I. 52. Accordingly, we set out below Rules 1, 2 and 4 of the Court (Award of Interest and Post Judgment Interest) Rules 2005 (C.I. 52).

Rule 1-Order for payment of interest

1. "If the court in a civil cause or matter decides to make an order for the payment of interest on a sum of money due to a party in the action that interest shall be calculated

a. at the bank rate prevailing at the time the order is made, and

b. at simple interest

but where an enactment, instrument or agreement between the parties specifies a rate of interest which is to be calculated in a particular manner, the court shall award that rate of interest calculated in that manner.

Rule 2 – Post Judgment interest

2. (1) Subject to subrule (2) each judgment debt shall bear interest at **the statutory interest rate from the date of delivery of the judgment up to the date of final payment**.

(2) Where the transaction which results in the judgment debt is

(a) contained in an instrument,

(b) evidenced in writing, or

(c) admitted by the parties

and the parties specify in the instrument, writing or admission the rate of interest which is chargeable on the debt and which is to ran to the date of final payment, then that rate of interest shall be payable until the final payment.

Rule 4 – Interpretation of statutory rate

4. (1) In these Rules statutory rate of interest is the bank rate prevailing at the time the judgment or order is made by the court.

(2) Where there is doubt as to the prevailing bank rate, the 91 days Treasury Bill rate as determined by the Bank of Ghana shall be the prevailing bank rate." Emphasis

The cardinal point to note in the above rules, are that, the issue of payment of interest in a civil suit is a discretionary one for the court which the court makes as part of it's determination in the cause or matter. However, it is clear that once the decision is made to award interest, then it must follow the provisions contained in the Rules in C.I. 52 referred to supra.

There are various scenarios and or circumstances that demand different applications of the Rules as well as the rates of interest that should be imposed.

We have in this rendition considered the contending arguments of learned Counsel for the parties as well as their depositions referred to supra. We have also considered in detail the various decided cases on the subject-matter.

Under these circumstances, it is apparent that this court must assume jurisdiction in this review application and determine it on its merits.

It is interesting to observe that, in the Supreme Court case of ***NTHC Ltd v Antwi [2009] SCGLR 117, at 120-121*** especially the Editorial Note therein, the Supreme Court gave a decision in favour of the Respondent before the ordinary Bench, but that decision was reviewed by the Court upon an application by the Applicant therein. This is how the ordinary bench and the review decisions were reported.

"Per curiam. ***We consider that this case is an appropriate one in which to exercise the power to award interest in order to avoid a miscarriage of justice.*** *As the defendant company points out, there is danger of unjust enrichment*

on the part of the purchaser (i.e. the plaintiff) if the power to award interest is not exercised. Accordingly, whilst confirming the Court of Appeal's order of specific performance of the contract of sale, we also order, pursuant to rule 1 of C. I. 52, that the plaintiff should pay interest to the defendant company on the cedi equivalent of the price of US$70,307 from 1 August 2005 till today at the bank rate prevailing today. We do not consider that the neglect of the defendant company to furnish the plaintiff with the particulars of the bank account into which the price should be paid is sufficient reason for the defendant company to forfeit its entitlement to interest. That neglect was in the heat of a legal dispute which has only now been finally settled. Since specific performance is an equitable remedy, its enforcement should not lead to the infliction of hardship on the defendant.

Editorial Note: *The respondent, Yaa Antwi, subsequently brought a motion (CM J7/3/09) before the Supreme Court for a review of its decision given on 4 February 2009 as set out above – specifically on the issue of award of interest in favour of the appellant, NTHC Limited. On 8th July 2009 the Supreme Court (coram: Sophia Akuffo, Dr. Date-Bah, Sophia Adinyira, R C Owusu, Dotse, Anin Yeboah and Baffoe-Bonnie JJSC) unanimously granted the application for review in the following terms: "**That interest on the purchase price of the property, the subject-matter of the suit, be paid by the respondent (the applicant herein) up to the date of payment at the applicable Bank of Ghana dollar rate as at the date of such payment". Consequently, the Supreme Court vacated its previous order given on 4 February 2009 (as stated above) that interest be paid up to the date of judgment." Emphasis***

Again the Supreme Court in the case of ***G.P.H.A v Nova Complex Limited [2010] SCGLR*** at pages 5 and 7, the ordinary bench of the Supreme Court interpreted the remit of the Court (Award of Interest and Post Judgment Interest Rules, (C. I. 52) and provided relevant explanation in the Editorial Note therein on the scope of C. I. 52 as well as references to the ***NTHC Ltd v Antwi*** case already referred to supra as follows:-

(2) "The applicability of the Court (Award of Interest and Post Judgment Interest) Rules, 2005 (CI 52), to the facts of the instant case, being the relevant legislation applicable on the date of the judgment of the Supreme Court, i.e. on 15 November 2006, did not, contrary to the contention of the defendant-appellant, involve retroactivity; that legislation authorized the Supreme Court to award pre-judgment interest on the judgment debt adjudged by it. Post-judgment interest would then follow as a matter of law. The fact that the Supreme Court in the instant case chose to limit the period of the prejudgment interest awarded by it, so that it would terminate on the date of the judgment of the High Court, did not take away its statutory authority to award the said prejudgment interest rate. ***It was open to the Supreme Court to have decided that the interest payable by the defendant-appellant should be up to the date of the judgment of the Supreme Court.*** *The fact that the Supreme Court did not do so did not derogate from the applicability of CI 52 to its judgment, even though the enactment had come into force after the giving of the High Court judgment in the case.*

Per curiam. First article 107 is inapplicable to the facts of this case, since it refers exclusively to Parliament; whilst CI 52 is made by the Rules of Court Committee, pursuant to power conferred upon it by article 157 (2) of the 1992 Constitution…It is obvious from the express language of this provision that it has no application to this case. Second, the statutory power to award interest that was exercised by the Supreme Court in its order…was not deployed retroactively… When the Supreme Court decided on 15 November 2006 to award prejudgment interest on the sum representing the replacement value of the vessel, the subject-matter of the original suit in this case, ***it was in effect, exercising power under rule 1 of CI 52, which was in force then, although it did not say so expressly.*** *It was open to the Supreme Court to award interest from the date the cause of action arose up until the date of their judgment, pursuant to rule 1 of CI 52. The fact that the court, in*

exercising its discretion, limited the period for the payment of interest to end on the date the High Court gave its judgment does not convert its award into a retroactive award. This court has no power in this appeal to disturb that award by the Supreme Court. ***In our view, however, any post-judgment interest which is payable by operation of law under rule 2 (1) of C I 52 would become payable from the date of the Supreme Court's judgment and not that of the High Court.*** *Therefore the interpretation put by the Plaintiff-respondent on rule 2 (1) of C I 52 for the purpose of levying execution in this case was erroneous and should not have been supported by the Court of Appeal.*

Editorial Note. As rightly held by the Supreme Court ***"statutory rate of interest" as defined in rule 4 (1) of C I 52 should be applied in awarding post judgment interest rate on "the US dollar component of the judgment debt".*** *However, further attention is respectfully drawn to the provision in rule 4 (2) of C I 52, namely: "Where there is doubt as to the prevailing bank rate, the 91 days Treasury Bill rate as determined by the Bank of Ghana shall be the prevailing bank rate." For recent application of rule 4 (2) of C I 52:* ***see Da Costa v Ofori Transport Ltd [2007-2008] 1 SCGLR 602-at 609-610*** *cited by the Supreme Court in the instant case. Further attention may also be drawn to rule 2 (2) of CI 52 providing that "****the statutory rate of interest" shall be inapplicable "where the transaction which results in the judgment debt is (a) contained in an instrument, (b) evidence in writing, or (c) admitted by the parties and the parties specify in the instrument, writing, or (c) admitted by the parties and the parties specify in the instrument, writing or admission the rate of interest which is chargeable on the debt and which is to run to the date of final payment, then that rate of interest shall be payable until final payment."***

It should also be respectfully noted that the decision of the Supreme Court in ***NTHC Ltd v Antwi,*** *delivered on 4 February 2009 and cited by the Supreme Court in the instant case of* ***GPHA v Nova Complex Ltd,*** *was the subject-matter of a subsequent review application by the respondent in that case, Miss Antwi.* ***The review***

application was determined by the Supreme Court on 8th July 2009. On that date, the Supreme Court made a review order (which has been published as Editorial Note to the case of NTHC Ltd v Antwi [2009] SCGLR 117 at 121). *The review order was to the effect that* ***"interest on the purchase price of the property, the subject-matter of the suit, be paid by the respondent... up to date of payment at the applicable Bank of Ghana dollar rate as at the date of such payment." In effect, the Supreme Court, in granting the review application, vacated its previous order given on 4 February 2009 to the effect that interest be paid up to the date of judgment."***

From all the above decisions and the prevailing circumstances of this case, we are certain that, once our attention has been drawn to the fact that the parties had admitted 30% as the agreed interest rate it is that rate, that should apply in the calculation of interest between the parties.

Secondly, it is also certain, that, since it is this Supreme Court, which gave judgment in favour of the Applicant for the first time, it is the date of this Supreme Court decision that the interest rate should be referable to. This means that, the pre-judgment interest in this case ought to be paid up to the date of the Supreme Court judgment and post judgment interest at the statutory rate from the date of the Supreme Court judgment, which is 25th July 2018.

Thirdly, we are also certain that, in our judgment of 25th July 2018, instead of an amount of GH¢6,162,240.00, we inadvertently quoted or stated a figure of GH¢6,160,240. We hereby concede this point as well, and accordingly correct it in the review orders of this Court.

In view of the above decisions, our conclusions on this review application are as follows:-

CONCLUSION

We have carefully considered the merits of the instant review application. We have also considered in detail, the various depositions in the affidavits in support and in opposition.

We have also taken into consideration the various elaborate statements of case filed by the parties as well as all the exhibits and legal authorities referred to.

We have also satisfied ourselves that the applicable law in this review application is the Court (Award of Interest and Post Judgment Interest Rules, 2005 (C. I. 52).

Applying the facts of the instant application to the law inherent in the determination of this review application, we are of the view that the application for review be granted on the following terms:-

Having apprised ourselves that pursuant to the provisions in Rule 1 (1) (a) of C. I. 52, it is the date of the Supreme Court judgment which is 25th July 2018 that is the reference date of the applicable interest rate and not the date of the High Court judgment, which is 16th September 2011.

Accordingly, we review our decision of 25th July 2018 on this point as follows:-

1. That the 1st Respondents pay interest to the Applicant herein on the sum of GH¢6,162,240.00 out of the sum of GH¢13,762,240.00 at the agreed interest rate of 30% from the 2nd day of June 2008 up until the date of the Supreme Court judgment, to wit, the 25th day of July 2018.

2. **The 1st Respondents are to pay to the Applicant interest on the sum of GH¢6,162,240.00 out of the sum of GH¢13,762,240.00 at the statutory interest rate from the date of judgment of this court, (which is 25th July 2018 up to date of final payment.**

3. **That the 1st Respondents pay interest on the sum of GH¢7,600,000.00 at the prevailing bank rate as at the date of the judgment of the Supreme Court which is 25/7/2018.**

CLOSING REMARKS

We wish to caution all persons who enter into business/loan and or financial transactions to be mindful of the provisions of Court (Award of Interest and Post Judgment Interest) Rules, 2005 (C. I. 52). Furthermore, we also wish to remind all courts that there is some measure of discretion in the award of interests, and before a court decides to award interest, all the prevailing circumstances of each case must be considered on the merits critically before the decision is made.

Furthermore, we believe that, since 2005, the time is perhaps ripe for this C.I. 52 to be reviewed.

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

YEBOAH, JSC:-

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

ANIN YEBOAH
(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)

APPAU, JSC:-

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

Y. APPAU
(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)

MARFUL-SAU, JSC:-

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

S. K. MARFUL-SAU
(JUSTICE OF THE SUPREME COURT)

DORDZIE (MRS.), JSC:-

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

A. M. A. DORDZIE (MRS.)
(JUSTICE OF THE SUPREME COURT)

COUNSEL

THADDEUS SORY FOR THE APPLICANT.

DR. ATUPARE FOR THE 1ST RESPONDENT LED BY AMA AMPONSA.

NII O. BADOO FOR THE 3RD RESPONDENT.