IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2019

CORAM: YEBOAH, JSC (PRESIDING)

BAFFOE-BONNIE, JSC

GBADEGBE, JSC

APPAU, JSC

DORDZIE (MRS.), JSC

CIVIL APPEAL
NO. J4/01/2018

15TH MAY, 2019

1. NANA ASUMADU II (DECEASED)

(SUBSTITUTED BY NANA DARKU AMPEM (DECEASED)
(SUBSTITUTED BY EBUSUAPAYIN AMGO MENSAH)

2. NANA DANYI QUARM IV (DECEASED)

(SUBSTITUTED BY SAMUEL EKOBO ACQUAYE) …… PLAINTIFFS/RESPONDENTS/ APPELLANTS

VRS

AGYA AMEYAW …… DFENDANT/APPELLANT/RESPONDENT

JUDGMENT

YAW APPAU, JSC:-

This appeal hangs on a very thin legal thread. The issue involved is so narrow that it should not have attracted the copious submissions made by both counsel for the

appellants and the respondent in their over eighty (80) page statements of case filed on 15/05/2018 and 23/07/2018 respectively. Perhaps, the parties were lured into charting this course because of the manner in which the Court of Appeal dealt with the appeal before it.

It is trite learning that an appeal is by way of re-hearing. The rules of the Court of Appeal, 1997 **[C.I. 19]** are very clear on this. Rule 8 (1) of the said rules provides as follows: ***"An appeal to the Court shall be by way of re-hearing and shall be brought by a notice of appeal".*** This principle that an appeal is by way of re-hearing applies mutatis mutandis to this Court in the exercise of its appellate function as it does to the Court of Appeal. There are numerous authoritative judicial decisions of this Court on this as expressed in cases like **AKUFO ADDO v CAHTHELINE [1992] 1 GLR 377**; **TUAKWA v BOSOM [2001-2002] SCGLR 61; BROWN v QUASHIGAH [2003-2004] SCGLR 930 ARYEH & AKAKPO v AYAA IDDRISU [2010] SCGLR 891** and **DJIN v MUSAH BAAKO [2007-2008] SCGLR 686**, to mention just a few**.** This Court held in the *Tuakwa v Bosom case* (supra) that; ***"an appeal is by way of re-hearing, particularly where the appellant alleges in his notice of appeal that the decision of the trial court is against the weight of evidence".***

The previous decision of this Court in the *Brown v Quashigah case* (supra) to the effect that an appellant who appeals solely on the omnibus ground that; **'the appeal was against the weight of evidence'**, would not be permitted to argue points of law, was later re-addressed by this Court in a couple of authorities culminating in the recent unreported civil appeal decision with number J4/4/2019, dated 3rd April 2019 and titled **ATUGUBA & ASSOCIATES v SCIPION CAPITAL (UK) LIMITED & Another**. In this case, the Court, per Amegatcher, JSC made reference to its previous decision in **OWUSU-DOMENA v AMOAH [2015-2016] SCGLR 790** and re-stated the principle as follows: ***"Based on the exception given by this Court in the Owusu-Domena v Amoah case (supra), the current position of the law may be stated that where the only ground of appeal filed is that the judgment is against the weight of evidence, parties would not be permitted to argue legal issues if the factual issues do***

not admit of any. However, if the weight of evidence is substantially influenced by points of law such as rules of evidence and practice or the discharge of the burden of persuasion or producing evidence, then points of law may be advanced to help facilitate a determination of the factual matters..."

In the *Owusu Domena case* (supra), this Court, speaking through Benin, JSC held as follows: ***"The sole ground of appeal that the judgment is against the weight of evidence, throws up the case for a fresh consideration of all the facts and law by the appellate court..... The decision in Tuakwa v Bosom has erroneously been cited as laying down the law that , when an appeal is based on the ground that the judgment is against the weight of evidence, then, only matters of fact may be addressed upon. Sometimes, a decision on facts depends on what the law is on the point or issue. And even the process of finding out whether a party has discharged the burden of persuasion or producing evidence is a matter of law".*** The above dictum was a re-statement of the Court's position per Wood, JSC (as she then was) in **ATTORNEY-GENERAL v FAROE ATLANTIC CO. LTD [2005-2006] SCGLR 271**, where she stated: ***"It seems to me that in strictness, this common ground of appeal is one of law, for in essence, what it means, inter alia, is that, having regard to the facts available, the conclusion reached, which invariably is the legal result drawn from the concluded facts, is incorrect. The general ground of appeal is therefore not limited exclusively to issues of fact. Legal issues are within their purview".***

This recent authority in the *Atuguba & Associates case* (supra), defines the legal parameters of the exception laid down by this Court in the *Faroe Atlantic* and the *Owusu-Domena cases (supra)* with regard to the omnibus or general ground of appeal. Having been confronted with the sole ground of appeal that the judgment of the High Court was against the weight of evidence, the Court of Appeal was under a duty to re-examine the whole evidence on record and to come to a conclusion that the judgment of the trial court appealed against, was either supported or not, by the facts or evidence on record and the applicable law. But before it embarks on this judicial journey, the appellant must first

demonstrate to the appellate court the lapses in the judgment complained of, as was well stated in the *Djin v Musah Baako case* (supra). The question is; did the Plaintiffs (as appellants) and the Court of Appeal (as the first appellate court), discharge their required functions?

Genesis of the suit leading to this appeal

The original title of this suit was: **NANA ASUMADU II – ODIKRO OF DIASO (SUING FOR AND ON BEHALF OF THE ASONA ROYAL FAMILY OF DIASO) & Another Versus AGYA AMEYAW OF DIASO**. The original plaintiffs died in the course of the action and were substituted by the current Plaintiffs who are the appellants herein. The original Defendant Agya Ameyaw II, however, survived the suit and remains the Defendant and respondent in this appeal. The parties shall be referred to as Plaintiffs and Defendant respectively in this judgment.

On the 15th day of March 2002, the Plaintiffs issued a writ of summons against the Defendant in the High Court, Cape Coast claiming six reliefs. The High Court granted them judgment on all the six reliefs. Not satisfied with the decision of the trial High Court, the Defendant appealed against same to the Court of Appeal and succeeded. The Plaintiffs are before this Court praying us to reverse the decision of the Court of Appeal on the sole ground that the judgment of the Court of Appeal was against the weight of the evidence on record and to restore the judgment of the High Court. The undisputed facts that gave rise to the birth of the action culminating in this appeal are as follows: -

On the 10th of November 2000, the Defendant herein Agya Ameyaw II sued the original 1st Plaintiff Nana Asumadu II at the Cape Coast High Court claiming the following reliefs:

i. ***A declaration that Diaso village and surrounding lands and rivers belong to the Asenkye Stool;***
ii. ***Recovery of possession of and control over the said lands and rivers;***
iii. ***Perpetual Injunction.***

The suit was numbered L.S. 45/2000. When the 1st Plaintiff was served with the writ of summons, he failed to enter appearance to same as provided under the then rules of court; i.e. The High Court (Civil Procedure) Rules, 1954 L.N. 140A. The Defendant filed his statement of claim on 7th March 2001 and had same served on the 1st Plaintiff who again failed to respond to same. The Defendant then applied to the High Court for final judgment in respect of the second relief for recovery of possession and interlocutory judgment in respect of the 1st and 3rd reliefs for declaration of title and perpetual injunction, in default of appearance. The High Court, in compliance with the then rules of court (specifically Order 13 rr. 8 and 12 of L.N. 140A), entered final judgment against the 1st plaintiff in respect of the 2nd relief and interlocutory judgment against him in respect of the 1st and 3rd reliefs. The court then adjourned for the Defendant to call evidence in proof of his 1st and 3rd reliefs for declaration of title and perpetual injunction as stipulated under Order 13 r. 12 of L.N. 140A. The 1st Plaintiff was served with Entry of judgment and hearing notice but he failed to appear in court. Instead, he filed a purported appearance long after the entry of judgment against him without leave of court and without any attempt to set aside the judgment entered against him ex-parte. The court nullified, and rightly so, the late Entry of Appearance upon application by the Defendant on the ground that it was not warranted by the rules. The court, afterwards, took evidence from the Defendant (then Plaintiff) and his witness P.W.1. The court assessed the evidence before it and entered final judgment against the 1st Plaintiff (then Defendant) in favour of the Defendant on all his three reliefs.

About nine (9) months after the entry of judgment against the 1st Plaintiff in suit number LS. 45/2000 in favour of the Defendant, precisely on the 15th of March 2002, the 1st Plaintiff initiated the instant action, which is the subject of the appeal before us, in a representative capacity for and on behalf of his Asona Royal Family, together with the 2nd Plaintiff who claimed to be the overall head of the wider family, against the Defendant, seeking to have the judgment entered against the 1st Plaintiff and his family on 20th June 2001 set aside as having been obtained by fraud and misrepresentation. The Plaintiffs,

in addition, sought the same reliefs over which the High Court had earlier on entered judgment against them in Suit No. LS. 45/2000. The reliefs Plaintiffs claimed were:

a. **A declaration that the Judgment in respect of Suit No. LS. 45/2000 entitled Nana AGYA AMEYAW II vrs NANA ASUMADU II delivered on 20th June 2001 was obtained by fraud and/or misrepresentation;**

b. **A declaration that the claim by the Plaintiff in Suit No. LS. 45/2000 that Diaso village and surrounding lands and rivers belong to the Asenkye Paramount Stool is fraudulent and a gross misrepresentation of facts;**

c. **An order setting aside the judgment as well as the costs awarded in Suit No. LS. 45/2000, on grounds of fraud and gross misrepresentation of facts.**

d. ***Declaration of title to Diaso village and all surrounding lands and rivers, etc. which shares boundaries with the stools of Manso Nkwanta, Agyekan Manso, Denkyira Obuase and Sefwi-Anhwiaso;***

e. ***Recovery of possession of and control over the said lands and rivers; and***

f. ***Perpetual Injunction***

Hearing before the trial High Court

The nature of the reliefs sought by the Plaintiffs in this action as reproduced above was suggestive that, Plaintiffs were not in any way denying the fact that judgment had been entered against their family through the 1st Plaintiff by the High Court Cape Coast in respect of their reliefs **(d); (e)** and **(f)** since 20th June 2001. They also did not in any way deny the fact that at the time they instituted their action, the judgment in question had not been set aside and therefore was a living or subsisting judgment. Their only concern was that, that judgment in Suit No. LS. 45/2000 was obtained by fraud and misrepresentation. However, by their claims (**d); (e)** and **(f)**, Plaintiffs were inviting the

trial High Court to re-open the very matter over which judgment had been entered as far back as 20th June 2001 and re-hear the matter when the said judgment was lawfully obtained and had not been set aside. The trial High Court was hoodwinked by the Plaintiffs to re-open the closed case contrary to the decision in **BRUTUW v AFERIBA [1984-86] 1 GLR 25** where the Court of Appeal held at page 28 (holding 2) and rightly so, that: ***"In a suit charging fraud, it would be a clear impropriety for a plaintiff to re-open his case. Where a judgment was attacked for fraud, fraud only must be in issue for it was not a rehearing of the whole case".***

The Court of Appeal in the *Brutuw v Aferiba case* (supra) berthed its authority on the House of Lords' decision in **JONESCO v BEARD [1930] AC 298**, in which the House laid down the principle at pp. 300-301 that; ***"where a judgment is attacked for fraud, fraud only must be in issue and that it is not a rehearing of the whole case".*** Instead of concentrating on the major issue before it for consideration; i.e. ***"whether or not the judgment in Suit No. LS. 45/2000 was obtained by fraud and misrepresentation",*** the trial High Court re-opened the dispute over title and reversed its own decision dated 20th June 2001 as if it was on appeal before it. Regrettably, the trial High Court did not address the issue of fraud in anyway. The court only recounted the testimonies of the parties on the ownership of the land and concluded that since the 1st Plaintiff was the Odikro of Diaso he had ownership over Diaso lands. The trial court did not even consider the uncontroverted testimony before him that the Odikro stool of Diaso over which the 1st Plaintiff presided, was created by Defendant's Asenkye (Adonten) Royal family. Without making any findings of fact on the allegations of fraud and misrepresentation, the trial High court concluded by making the following order, which appears at page 520, (Vol. Two) of the record: *"The court will also make an order setting aside the judgment as well as the cost awarded in Suit No. LS. 45/2000 on grounds of fraud and gross misrepresentation".*

<u>Evaluation of the trial court's judgment</u>

The trial High court did not indicate anywhere in its judgment what constituted the fraud and misrepresentation which occasioned it to set aside the earlier judgment entered by a court of co-ordinate jurisdiction in Suit No. LS. 45/2000. The Plaintiffs did not prove any fraud perpetrated by the Defendant in obtaining the judgment in question against the 1st Plaintiff. They did not deny service on them of the writ and all the processes that preceded the entry of judgment in that suit. Their only contention was that when the 1st Plaintiff was served with the writ of summons, he was ill. They however, did not provide any evidence of proof of any such illness and even if they had done so, that alone was not enough to nullify the valid judgment entered against the 1st Plaintiff in his capacity as head of his family, in compliance with the rules of court. Again, the Plaintiffs did not deny that 1st Plaintiff entered late appearance to that writ without leave and made no attempt to set aside the said judgment. One of the allegations of fraud and misrepresentation Plaintiffs made against the Defendant in their claim was that the Defendant said in Suit No. LS. 45/2000 that, he was the Omanhene of Diaso when that was not so. Incidentally, nowhere in the testimony of the Defendant in that suit which appears at page 542 of the RoA did the Defendant claim to be an Omanhene. The totality of the Defendant's evidence on record was that he was the Occupant of the Adonten Division of the Denkyira Traditional Area but sometime ago; this division severed its relationship with the Denkyira Paramount Stool making them independent. The issue before the court then had nothing to do with chieftaincy and the trial court in Suit No. LS. 45/2000 did not determine any such issue in its judgment of 20th June 2001. The matter before the trial court was purely on ownership of Diaso lands, and there was nothing fraudulent about the testimony led by the Defendant, or at best, the Plaintiffs did not demonstrate any.

The claim also that the only witness the Defendant called in that suit was not the Abusuapanin of the Asenkye (Adonten) Royal Family so that amounted to a misrepresentation was not legally tenable. If the Plaintiffs contention was that the witness was not the Abusuapanin as he claimed, it was for them to have contested the matter for the trial court to make an informed decision on same. The 1st Plaintiff ignored the action. Even granted 1st Plaintiff was ill as they claimed, Order 12 r. 25 of the then rules of court,

L.N. 140A permitted him to be represented but he did not direct any representative to enter appearance on his behalf. The Order and rule in question provides: ***"In every cause or matter pending before the Court, in case it shall appear to the satisfaction of the Court that any plaintiff or defendant who may not be represented by counsel or attorney is prevented by some good or sufficient cause from attending the Court in person, the Court, may in its direction permit any servant, clerk, or the master or any inmate of the family of such plaintiff or defendant, who shall satisfy the Court that he has authority in that behalf, to appear for such plaintiff or defendant".*** See also page 31 of Enoch D. Kom's book; 'CIVIL PROCEDURE IN THE HIGH COURT', 1971 published by the Ghana Publishing Corporation.

Appeal before the Court of Appeal

The Defendant filed four (4) grounds of appeal before the Court of Appeal against the decision of the trial High Court. The major ground of appeal which the Court of Appeal should have concentrated on in determining the appeal was ground 3 which read as follows:

3. ***The learned trial judge misdirected himself on the law when he re-opened a matter earlier decided between the same parties by a court of competent jurisdiction. PARTICULARS OF MISDIRECTION: (a) In Suit No. LS. 45/2000, when judgment was delivered, the Plaintiffs herein neither applied for stay of execution nor appealed against the judgment; (b) Both the trial High Court and the Plaintiffs are estopped per rem judicatta from re-opening the case.***

However, the Court of Appeal was also led into committing the same error the trial High Court committed when, after having found that the case on appeal before it was premised on fraud therefore the issue to be considered must not go beyond the allegation of fraud,

proceeded further to determine issues concerning title to the land when there was already existing a legitimate judgment by a court of coordinate jurisdiction over those issues, which had neither been set aside nor appealed against in any way . In their copious submissions before this Court on the sole ground that the judgment of the Court of Appeal was against the weight of evidence, Plaintiffs wasted precious time advancing arguments on the reliefs concerning ownership of Diaso lands, when both the trial High Court and the Court of Appeal erred in going that length. This Court would not therefore waste time on those submissions but dismiss them as unwarranted.

In their brief submissions on the fraud allegation, Plaintiffs contended that the Court of Appeal erred when it required Plaintiffs to prove the alleged fraud to the criminal standard, given the circumstances of the case. According to Plaintiffs, section 13 (1) of the Evidence Act [**NRCD 323**], applies only to criminal offences but not civil wrongs like fraud founded in common law. So the fact that Plaintiffs proved their case on the fraud allegation on the preponderance of the probabilities was not fatal. This submission, which is legally flawed, was an admission that the Plaintiffs could not prove their allegation of fraud against the Defendant as required by law. This Court gave a fuller expression to section 13 (1) of our Evidence Act, 1975 [NRCD 323] in the *Aryeh & Akakpo v Ayaa Iddrisu* case (supra) when it held: ***"The rule in section 13 (1) of the Evidence Act, 1975 (NRCD 323), emphasizes that where in a civil case, crime is pleaded or alleged, the standard of proof changes from the civil one of the balance of probabilities to the criminal one of proof beyond reasonable doubt."*** The section itself reads: ***"In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond reasonable doubt."***

Is it the Plaintiffs' case, as canvassed in their statement of case that, 'fraud' does not constitute crime but 'forgery' does? We think this reasoning is flawed. The main issue involved in this action in the trial court was; ***"whether or not the judgment in Suit No. LS.45/2000 was obtained by fraud and misrepresentation".*** By this allegation, Plaintiffs were saying that the Defendant played fraud on the High Court in

obtaining the 20th June judgment. In law, fraud is a deliberate deception to secure unfair or unlawful gain, or to deprive a victim of a legal right. It is both a civil wrong and a criminal wrong. Fraud, be it civil or criminal, has one connotation. It connotes the intentional misrepresentation or concealment of an important fact upon which the victim is meant to rely, and in fact, does rely to the harm of the victim. It is therefore criminal in nature even where it is clothed in civil garbs. Having pleaded fraud, the particulars of which Plaintiffs provided under paragraph 6 of their statement of claim filed on 15th March 2002, which connotes imputation of crime on the part of the Defendant in obtaining the judgment, the law required Plaintiffs to establish that allegation clearly and convincingly and beyond reasonable doubt as contended by the Defendant in his statement of case. Plaintiffs, however, failed to do this. Even granted the standard was one on the preponderance of the probabilities, Plaintiffs still failed woefully in making that standard. The only allegation of fraud Plaintiffs made against the Defendant was that he claimed to be an Omanhene when he was not and again his only witness claimed to be the head of his family when he was not. Merely saying that the Defendant told the trial court lies in his testimony, without more, did not constitute fraud on his part in obtaining judgment. Did the Defendant do anything untoward to deprive the Plaintiffs from defending the action in any way? There was no such evidence. So wherein lies the fraud played on the Court in obtaining the judgment of 20th June 2001 as alleged by the Plaintiffs?

Notwithstanding this deficiency on the part of the Plaintiffs in establishing the allegation of fraud, the trial court, which failed to identify even a single element of fraud on the part of the Defendant in obtaining the judgment, nevertheless went ahead to erroneously set aside that judgment on grounds of fraud and misrepresentation. The facts on record do not permit the trial court to re-open the dispute over title to Diaso lands as the parties and the reliefs claimed were the same as those in Suit No. LS. 45/2000. The trial court should have identified the fraud allegation as the main issue in the matter before it and to address that issue only but it did not do so. It did not even make any finding of fact(s) on the fraud issue, which makes the trial court's judgment incurably bad.

The Court of Appeal rightly came to the conclusion at page 31 of its judgment, which appears at page 821 of the RoA that; ***"the reliefs claimed by the plaintiff indicate that they mainly wanted the judgment in Suit No. LS. 45/2000 set aside on the grounds of fraud and misrepresentation...."*** Again, the Court of Appeal agreed with and adopted its previous decision in the *Brutuw v Aferiba case* (supra) when it held at page 19 of its judgment that by the authority in *Brutuw v Aferiba*, ***"the learned trial judge should have determined the issue of fraud solely and not to have allowed the plaintiffs to re-open the whole case and to allow same parties to re-litigate the same subject-matter...The learned trial judge misdirected himself on the law as to what to do when plaintiffs evoked the court's jurisdiction to set aside a judgment allegedly obtained by fraud by not hearing the issue of fraud alone."***

The Court of Appeal recounted the legal principle as re-called above correctly, but failed to abide by it when it also went beyond the issue of fraud and considered all the reliefs claimed by the Plaintiffs in addition to the fraud, though it found the allegation of fraud not having been fully proven. We agree with the Court of Appeal that, the allegation by the Plaintiffs that the judgment in Suit No. LS. 45/2000 was obtained by fraud and misrepresentation, was not proved by them according to law. Having come to this conclusion, the Court of Appeal should have allowed the appeal on that point only and set aside the judgment of the trial court in its entirety without going into the other issues which, indubitably, are *res judicatta*. We accordingly dismiss the appeal.

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

GBADEGBE,JSC:-

I have had the opportunity of reading the judgment of my brother, Appau JSC in the matter herein with which I am in agreement but wish to express in my own words some

observations on matters of procedure relating to the obligation which a party who seeks to set aside a judgment on the ground of fraud assumes. From the record of appeal before us, it is plain that the parties and unfortunately the two lower courts did not advert their minds to the need for the matters alleged to be fraudulent to have had a decisive effect on the judgment which is being impeached in the action herein. Examining the matters alleged by the plaintiffs in their particulars of fraud, it is interesting to note that they related to matters pertaining to chieftaincy and or as the Court of Appeal described them incidents of causes or matters affecting chieftaincy and had nothing to do with the quality and nature of evidence that was the foundation of the previous judgment of Tweneboah Koduah J (as he then was). As the said particulars related to collateral matters, the action was to say the least in so far as the case of fraud asserted against the said judgment was concerned, a hopeless claim that ought in my view not to have proceeded to trial. Pausing here, reference is made to the case of Flower v Lloyd (1879) 10 Ch D 327, 334 wherein Baggallay LJ made the following statement, that is deserving of attention when a court is faced with a claim that seeks to impeach a judgment on grounds of fraud:

> *"…. I desire to reserve for myself an opportunity of fully considering the question how, having regard to general principles and authority, it will be proper to deal with cases, if and when any such shall arise, in which it shall be clearly proved that a judgment has been obtained by fraud of one of the parties, which judgment, but for such fraud, would have been in favour of the other party." [Emphasis mine*]

In my opinion, a close consideration of the judgment on which the action herein is based informs any reasonable mind that the matters alleged as being fraudulent related to matters that could not have been the foundation of the judgment on the question of ownership of land. Therefore, had the two lower courts rightly approached the matter, the case would have ended long before now, not to mention the unusual approach adopted by them in a claim which was in respect of a cause of action in fraud; that aspect

of the matter has been well expounded by Appau JSC and I do not desire to detain the court's precious time in again referring to same.

Then there is the issue of the alleged particulars of fraud which utilized among others words such as "fraudulently' and "misrepresenting", words which describe particular conduct which when proved may result in a finding of fraud by the court. Without going into what constitutes a good plea of fraud at law, I say without any hesitation that a party who pleads fraud as the foundation of his case cannot be permitted to aver in his pleading for that purpose the very technical term which he is required to particularize. The particulars of fraud pleaded by the plaintiffs in this action may be likened to a defendant who in giving particulars of negligence in a running down action uses and or employs the word" negligence" in setting out the particulars. Just as such a pleading is incompetent, so are the particulars of fraud set out in paragraph 6 of the amended statement of claim. A good pleader is required by the Rules to set out the facts, matters and circumstances relied upon to show that the party against whom the fraud is asserted had or was actuated by a fraudulent intention. The fraudulent conduct must be distinctly alleged and subsequently distinctly proved at the trial. The requirement of Order 11 rule 12 of the High Court (Civil Procedure) Rules, 2004, CI 47 regarding particulars is intended to have the acts said to be fraudulent stated fully and precisely with full particulars to enable the defendant to know the actual case that is made against him in order to respond thereto. See: (1) Lawrence v Lord Norreys (1890) 15 A C., 210; (2) Blay v Pollard and Morris [1930] 1 KB 628. It repays to add that intrinsic in a charge of fraud is dishonesty which must appear from the particulars provided under the Rules. See: Boyd and Forrest v Glasgow and South Western Railway Co [1915] SC 20. Indeed, in the case of Adumuah Okwei v Ashieteye Laryea [2011] 1 SCGLR 317, 324 this court speaking through Anin Yeboah JSC drew attention to these matters by way of guidance in actions by which parties seek to impeach judgments on grounds of fraud but unfortunately it appears that the principles enunciated therein were not taken into account in the appraisal and determination of the case on appeal to us in these proceedings. So settled is the practice

as regards pleading fraud that as far back as 1959, Ollennu J (as he then was) made the following observation in Randolph v Captan And Another [1959] GLR 347, 351, a case in which fraud was raised by a defendant in his defence to an action.

"But in all cases where fraud has been set up as an answer to a plea of *res judicata*, as well as others in which fraud is set up as a defence, the Courts have made it quite clear that the rules of pleading as regards fraud must be strictly adhered to. The allegation must be clear and definite (that is the nature of the fraud should be stated with certainty, and full particulars of it must be given) otherwise the Court should disregard it, and not permit any evidence to be led in proof thereof."

From the above exposition, having regard to the circumstances of this case, the plaintiff was required to provide the following particulars of the fraud that was alleged against the defendant:

(a) that the defendant on a given date in the course of testifying in the action made a false statement (representation) of a material fact in the action;
(b) That the defendant in making the statement knew that it was false;
(c) That the defendant intended to induce the court to act upon the false statement;
(d) That the court in its judgment acted upon the said false statement resulting in judgment being entered against the plaintiff to his detriment or prejudice.

It is important that the particulars show with specificity that in making the false statement to the court, the defendant intended to deceive the court- the element of dishonesty. The particulars of the alleged fraud provided by the plaintiff in this action quite clearly do not meet the strict requirements of pleading required by Order 11 rule 12 of CI 47. The particulars provided by the plaintiff in paragraph 6 of the amended statement of claim are not sufficient to raise a reasonable inference that the fraud alleged against the defendant is true. The failure of the plaintiff to properly plead the fraud alleged against the defendant was an irremediable failure that rendered the action one

that disclosed no reasonable cause of action. On this point, reference is made to the unreported judgment of this court in Ansong and Another v Ghana Airports Company, Suit Number J4/24/2012 dated 23, January 2013. In the course of the said judgment, Adinyira JSC observed as follows:

> *"The pleadings should show that the court was deceived into giving the impugned judgment by means of false case known to be false, or not believed to be true, or made recklessly without any knowledge of the subject. The pleadings however did not disclose any cause of action based on fraud."*

In the above decision, the Supreme Court upheld a decision of the Court of Appeal that had dismissed an action to set aside a judgment on the preliminary point of it constituting an abuse of process in light of the pleadings not measuring up to a case of fraud. Had the two lower courts adverted their minds to the content of a good pleading in an action based on fraud, I have no doubt in my mind that the action would have long been terminated before now. This brings up the question of our judges endeavoring to be on top of the dockets assigned to them; for without this our role as case managers would seriously be undermined with the consequential loss of time and energy being expended on matters that do not from the nature of the pleadings have to go through trial.

N. S. GBADEGBE
(JUSTICE OF THE SUPREME COURT)

YEBOAH, JSC:-

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

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

BAFFOE-BONNIE, JSC:-

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

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

DORDZIE (MRS.), JSC:-

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

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

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