IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2018

CORAM: ANSAH, JSC (PRESIDING)
ADINYIRA (MRS), JSC
BAFFOE-BONNIE, JSC
AKOTO-BAMFO (MRS), JSC
APPAU, JSC

CIVIL APPEAL
NO. J4/05/2017

12TH DECEMBER, 2018

ESSENEY SOCRATES KWADJO
(SUING PER HIS LAWFUL ATTORNEY
MR. ENOCH KESSINU) ..... PLAINTIFF/RESPONDENT/APPELLANT

VRS

SPEEDLINE STEVEDORING CO. LIMITED .... DEFENDANT /APPELLANT/RESPONDENT

J U D G M E N T

ADINYIRA (MRS), JSC:-

This is an appeal against a judgment of the Court of Appeal, Accra, dated 12 March 2015. The background facts to the appeal are that the plaintiff/respondent/appellant [Plaintiff] is a Ghanaian scrap dealer resident in Italy. In July 2011, he shipped a 40 foot container of vehicle spare parts to the Takoradi Port. The defendant/ appellant/ respondent [Defendant] was appointed stevedores of the cargo. During the process of

moving the cargo at the port the container fell heavily onto the deck of the vessel and got damaged along with some of its contents.

In negotiations after the accident, the defendant accepted responsibility for the loss and the plaintiff released the whole container to the defendant in return for payment of money as settlement for his loss. A dispute arose over the appropriate quantum to be paid to the plaintiff.

The plaintiff was claiming from the defendant GH¢ 150.000.00 as the value of the damaged spare parts, GH¢ 50,000.00 as anticipated profits, cost of air tickets to and from Italy to Ghana and damages for breach of contract and interests.

At the commencement of the trial, the defendant per its counsel informed the court that it would not contest the issue of negligence but contest the quantum of damages to be awarded to the plaintiff.

The trial judge entered judgment in favour of the plaintiff for an award of GH¢150,000 .00 as the value of the plaintiff's goods negligently damaged by the defendants, GH¢50,000.00 as anticipated profits; GH¢10,000.00 as nominal general damages for breach of contract and cost of GH¢5,000.00. The judge also ordered that 24% of the GH¢150,000.00 be deducted as proper duty payable on the goods imported into the country by the plaintiff.

The defendant being aggrieved appealed against the judgment of the High Court and on 12 March, 2015 the Court of Appeal allowed the appeal by varying the awards. The plaintiff being dissatisfied filed the instance appeal and pursuant to leave granted on 20 December, 2016, the following grounds of appeal were filed:

GROUNDS OF APPEAL

a. *The Court of Appeal erred in law when it held that Exhibits 'A '– 'E' were only invoices and therefore were not authentic to verify that the corresponding prices to the goods on the said invoice did constitute the actual price, when indeed the*

goods indicated on the invoices were all shipped to Ghana, and there was no other credible evidence to contradict the same.

b. *The learned Justices of the Court of Appeal erred in law and occasioned a grievous miscarriage of justice when they relied on Exhibit '3' as authentic when there was ample evidence on record to show that there were grave and obvious inconsistencies and contradictions on the information on the said exhibit.*
c. *The learned justices erred in law when they held that the value of the consignment was only nine thousand five hundred US Dollars (US$9,500.00) and by such holding allowed the defendant/Appellant/Respondent to benefit from its own negligence.*
d. *The learned Justices erred in law when they held that Mr. Herbert Agyapong, the original agent for the Plaintiff/Respondent/Appellant continued to be the agent for the Plaintiff/Respondent/Appellant even after the whole consignment had been transferred to the Defendant/Appellant/Respondent and they had taken over the goods as a consignee in all its respects.*

Consideration

GROUND A: ***The Court of Appeal erred in law when it held that Exhibits 'A' – 'E' were only invoices and therefore were not authentic to verify that the corresponding prices to the goods on the said invoice did constitute the actual price, when indeed the goods indicated on the invoices were all shipped to Ghana, and there was no other credible evidence to contradict the same.***

While Counsel for the plaintiff agreed with the learned justices of appeal that an invoice may generally not qualify for a receipt he however argued that the circumstances of the case and the explanations offered by the plaintiff at the trial was sufficient to sustain the finding of the trial court. Counsel submits that the defendants did not at any time put the plaintiff on notice that they disputed the contents or the value of the goods as evidenced by the bill of lading and the invoices. He argued that the defendants by their conduct accepted the value and cleared the goods and made an advance payment of GH¢30,000.00 and sold same. He submitted further that the defendants had the opportunity to examine and ascertain the value of the goods. Counsel further contended that the defendant knew the value of the goods as the parties entered into terms of settlement.

Counsel for the defendants responded that so long as the plaintiff seeks to recover the value of his goods, he could only be entitled to what he had declared by his agents or at best the reassessed value placed on the goods by CEPS.

We do not find any merit in the submissions by the plaintiff as he was put on notice from the commencement of the trial he had to prove the quantum of his claim. Furthermore counsel's insistence that the parties entered into terms of settlement in which they agreed on the value of the goods is misplaced. Both the trial and appeal courts were ad idem that settlement between the parties failed and the suit was referred for trial. In this case it was the plaintiff who bore the burden of proof and not the defendant to produce the required evidence of such quality of credibility of the contents and value of the goods short of which his claim may fail. See **sections 10 and 11 of the Evidence Decree** and **Ackah v Pergah Transport Ltd [2010] SCGLR 728**

Furthermore, the plaintiff's claim for the sum of GH¢150,000.00 was a claim for special damages of the actual value of the goods which he had paid for before the damage. It is trite law that a claim for special damage must be strictly proved. It was therefore not sufficient for the plaintiff to to merely repeat the bare assertions in his pleadings and to rely solely and heavily on invoices, Exhibit 'A'- 'E' which the Court of Appeal rightly rejected that they were not receipts as there was nothing on these invoices to show the plaintiff actually paid 71,050 Euros for the goods itemized on these invoices. It is pertinent to quote *in extenso* the reasoning of the Court of Appeal lordships per Kanyoke JA at pages 358 to 360 of the record of appeal [ROA]:

> *"There is clearly a difference and a distinction between an Invoice and a Receipt as known in the commercial world… In brief, an invoice provides or indicates evidence of a potential sale transaction only; on the contrary a receipt provides or indicates a completed sale transaction. But in some circumstances, an invoice may operate as an invoice as well as a receipt. It is a question of fact in each case whether a particular invoice also constitutes a receipt. For example, an invoice may also constitute a receipt where the word "PAID" is affixed to it or a*

"PAID STAMP" is put on it. In the instant case, it is true that all Exhibits A¹ to E¹ contain client code, the name and address of the plaintiff, an invoice number, date, mode of payment as well as vat information on them. But there is no express indication on any of them to show that the plaintiff did in fact pay for the goods or products listed on these invoices to indicate on a preponderance of the probabilities that the prices stated on each of these invoices were the actual prices the plaintiff paid for those goods or products… An invoice therefore does not constitute a final and completed sale transaction between the seller and the buyer; on the contrary a Receipt constitutes a final and completed sale transaction between the seller and the buyer... It is therefore my considered opinion that the trial judge erred grievously in law and fact when she treated Exhibits A¹ to E¹ as Receipts. That finding is not supported by these documents, i.e. Exhibits A¹ to E¹ or by any other evidence on the record. Apart from tendering and relying on Exhibits A¹ to E¹ to establish his case that he purchased the goods listed in these exhibits, the plaintiff adduced no other evidence, documentary or oral to prove that he actually paid for those goods at the price or prices indicated in those exhibits. For example, an examination of Exhibit B¹ reveals that the expression in that exhibit B¹ at page 181 of the ROA is "Total Payable: 2,460.00. Again, on Exhibit A at page 178 of the ROA has the expression "Total Invoice: 36,125.00." If the plaintiff actually paid 2,460.00 for the goods in Exhibit B¹, why was the word "Payable" used therein instead of the word "Paid". Similarly, if the plaintiff had actually paid 36, 125.00 in respect of the goods listed in Exhibit A¹, one would have expected the seller to write therein "Total amount paid: 36,125.00". In the light of the fact that all exhibits A¹ to E¹ are invoices and not receipts, the trial judge ought to have been circumspect and cautious and not speculative in treating them as receipts and thereby concluding that they provided credible evidence of the value of the goods in the damaged container totaling 70,000.00 Euros or the Cedi equivalent of Gh¢150,000.00."

We affirm the reasoning of the Court of Appeal in setting aside the award of GH¢150,000.00, as the invoices did not provide sufficient, strict and credible evidence that he actually did spend that amount of money to purchase and ship those goods to Ghana.

GROUND B: ***The learned Justices of the Court of Appeal erred in law and occasioned a grievous miscarriage of justice when they relied on Exhibit '3' as authentic when there was ample evidence on record to show that there were grave and obvious inconsistencies and contradictions on the information on the said exhibit.***

Counsel for the Plaintiff argues that at no point did the plaintiff authorise the agent to submit Exhibit 3 to the Ghana Link Network Services [GLNS] or to anyone else and that it was the agent who *suo motu* conjured a list of items and their corresponding prices. He argued further that the Court of Appeal ought to have accepted the values of the invoices rather than accept the value imposed by CEPS as there was evidence that GLNS and CEPS did a shoddy job.

We do not find any merit in this ground of appeal as the Court of Appeal did not say or make any finding that Exhibit 3 was authentic.

It was clear from the evidence on record that the clearing agent Herbert Agyapong was engaged by the Plaintiff to clear the container for him when it arrived at the Takoradi Harbour. The clearing agent was expected in the normal course of business to fill a pre-entry import declaration form on behalf of the plaintiff and present to the destination inspection company and then to CEPS for the correct duties to be assessed before the goods can be cleared.

It was clear from the plaintiff's own evidence that he told the clearing agent of the items in the container but did not tell the agent their value nor furnished him with the invoices. The question is how else was the agent to assess and declare the value of the items in the container without being furnished with documentation of their actual

prices? The clearing agent was bound to do a guess work or as is the common practice to under declare the value of the goods in order to attract low custom duties.

The clearing agent processed and declared the value of the plaintiff's goods as $3,339.00 on the Import Declaration Form, Exhibit 3, based on information contained in Exhibit 4, an invoice, prepared by the Mafer s. r.1., the consignor of the plaintiff, and presented it to the Ghana Link Network Services [GLNS]. When Exhibit 3 and 4 were handed over to Customs, Excise and Preventive Services [CEPS] by GNLS; CEPS reassessed the value of the goods at $9,885.75.

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The trial judge in examining Exhibit 3 found it to contain discrepancies and forgeries and rejected them and held that the plaintiff who said he did not instruct his clearing agent to place such value on the goods because that was not their value could disassociate himself from it.

However the Court of Appeal overturned this finding and held the plaintiff was to be fixed with liability with the fraud or forgery of his agent, as the agent was bound to make a false declaration regarding the value of the items plaintiffs has shipped without supplying him with any documentation to work on.

We affirm the Court of Appeal's decision on this issue as it is trite law that where an agent acts within the scope of his authority and commits fraud or forgery or any crime, he fixes liability on his principal even if committed for his sole benefit of the agent. **Akortsu v State Insurance [1972] 2 GLR 22**

From the foregoing, the appeal on ground B fails. For the same reasons we dismiss **GROUND D** of the appeal as the Court of Appeal's finding was not that the agency between the plaintiff and Herbert Agyapong continued after the goods were assigned to the Defendant.

GROUND C: ***The learned justices erred in law when they held that the value of the consignment was only nine thousand five hundred US Dollars (US$9,500.00) and by such holding allowed the defendant/Appellant/Respondent to benefit from its own negligence.***

This ground of appeal is rather a misapprehension by counsel of the rational for the award of the sum of $9,887.75 to the plaintiff. The sum of $9,887.75 awarded was not for the actual value of the goods which the plaintiff had failed to prove but as a reasonable compensation for his loss.

The Court of Appeal having found that the plaintiff had failed to strictly prove his claim for special damages of GH¢150,000.00 for the cost of his consignment went on to award him general nominal damages of $9,887.75 (the assessed value of the goods by CEPS) for his loss as there was sufficient evidence on record to show that he has lost property through the negligence of the defendant. The learned justices could have fixed the award of damages at $3,339.00 the value declared by the plaintiff's agent, they were however magnanimous in adopting the assessed value by CEPS.

We will dismiss this ground C of appeal.

From the foregoing the appeal fails in its entirety and is dismissed. Accordingly, we affirm the judgment and orders of the Court of Appeal.

S. O. A. ADINYIRA (MRS.)
(JUSTICE OF THE SUPREME COURT)

ANSAH, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira, JSC.

J. ANSAH
(JUSTICE OF THE SUPREME COURT)

BAFFOE-BONNIE, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira, JSC.

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

AKOTO-BAMFO (MRS.), JSC:-

I agree with the conclusion and reasoning of my sister Adinyira, JSC.

V. AKOTO-BAMFO (MRS.)
(JUSTICE OF THE SUPREME COURT)

APPAU, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira, JSC.

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

COUNSEL

D. K. AMELEY WITH HIM DESMOND SACKEY FOR THE PLAINTIFF/RESPONDENT/APPELLANT.

VICTORIA BARTH WITH HER BENEDICTA AKITA FOR THE DEFENDANT/APPELLANT/RESPONDENT.