IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: ADINYIRA, JSC (PRESIDING)

DOTSE, JSC

BAFFOE-BONNIE, JSC

AKOTO-BAMFO, JSC

APPAU, JSC

CIVIL APPEAL

NO. J4/39/2017

21ST FEBRUARY, 2018

JULIUS SYLVESTER BORTEY ALABI ……. PLAINTIFF/RESPONDENT/APPELLANT

VRS

1. PARESH
2. DEE JAY
3. B5 PLUS COMPANY LIMITED ……. DEFENDANTS/APPELLANTS/RESPONDENTS

JUDGMENT

DOTSE, JSC:-

BRIEF FACTS

On the 2nd of August 2016, the Plaintiff/Respondent/Appellant, hereafter Plaintiff, filed an Interlocutory Appeal pursuant to special leave granted on 28/7/2016 against the

Ruling of the Court of Appeal duly constituted, dated 11th May 2016 which was a Ruling procured at the instance of the Defendants/Appellants/Respondents, hereafter Defendants with the following as the grounds of appeal:-

2. Part of the Ruling Complained of

The whole Ruling varying the order of the single Justice dated 12th April 2016.

3. GROUNDS OF APPEAL

a. The Court of Appeal erred when it relied on paragraphs **5, 7, 10, 14, 15** and **16** of Defendants affidavit in support to vary the order of the single justice on the ground only that Defendants raised the issue of jurisdiction.

b. In varying the order of the single Justice, the Court of Appeal erred in failing to consider adequately or at all, Plaintiff's affidavit in opposition on the issue of service of hearing notices on Defendants and of the conduct of Defendants prior to, and during, the trial at the High Court.

c. In ordering Defendants to pay Plaintiff's medical bills pending the hearing and determination of the appeal, the Court of Appeal did not appreciate the totality of the affidavit evidence before it and of the fact that there was nothing before the court to show that Plaintiff had any pending medical bills to be paid.

d. Having found that Plaintiff got injured whilst working for the Defendants, the Court of Appeal exercised its discretion wrongly in the award of only GH¢30,000.00 to Plaintiff in view of the evidence that had been led without opposition at the High Court of Plaintiff's condition and circumstances.

e. Additional grounds of appeal may be filed upon receipt of the record of appeal.

Being an interlocutory appeal, we will state bare and essential facts of this case.

The Plaintiff per his writ of summons claimed against the Defendants jointly and severally the following reliefs:

a. Special damages of GH¢19,490.00 being costs incurred by him as a result of injuries sustained due to Defendants negligence.

b. General damages

c. Cost of prosthetics estimated at $30,000.00
d. Interest on any sums awarded in favour of plaintiff up to date of final payment.

e. Costs including Solicitors fees

f. Further or other reliefs

In support of the above, the plaintiff averred that he commenced work at the 3rd Defendant's factory as a casual worker and his duty was to count and write down at any given time the number of roofing sheets produced by the machine. A few days after the plaintiff commenced the above work, he was instructed by the 2nd Defendant to pull out from the machine the roofing sheet which got stuck in the machine without any knowledge, training or expertise in the said job.

The plaintiff alleged that it was as a result of the negligence of the defendants that the machine **mashed** his hands, which conduct led to the severe amputations of all his ten fingers. A medical report upon his examination established his disability at 80%, disfigurement at 20% with post operative rehabilitation and physiotherapy virtually not possible.

The Defendants denied the claims of the plaintiff and averred that there was an operator of the Roller machine who normally was the leader of a team of 6 or 7 workers who operated the machine and that the 2nd defendant was not the leader of the team at the material time as alleged by the Plaintiff.

The defendants also denied Plaintiff's allegations of negligence, and emphasized that no one single worker was ever given the responsibility of counting roofing sheets and that the Plaintiff ignored instructions not to touch any roofing sheet that got stuck in the machine.

The Defendants however claimed that they paid all the medical bills of the Plaintiff including his weekly wages for sometime.

They contended that they would have continued to pay the Plaintiff if he had continued to report to the office of the 3rd Defendants. The Defendants further contended that they had initiated steps for the payment of the entitlements of the plaintiff under the Workmen's Compensation Act if he had co-operated with the 3rd Defendants. They therefore prayed the High Court to dismiss the Plaintiffs action.

DECISION OF THE HIGH COURT

We need to emphasise the fact that having completed the Pleadings, the case proceeded to trial. In view of the conduct of the Defendants during the hearing of the suit at the trial High court, we deem it expedient to quote in extenso the statement of the learned trial **Judge Bright Mensah J,** which actually epitomizes the behaviour conduct and attitudinal mind set of the Defendants to date.

> *"I need to put it on (sic) evidence that the defendants did not offer any evidence in rebuttal to the Plaintiff's evidence apart from the terse cross-examination of the Plaintiff by defence counsel, Mr. Victor Walenkaki. Counsel at a certain stage applied to the court and was granted leave to withdraw his representation.* ***In the result, the court ordered service of several hearing notices on the defendants****. The withdrawal of legal representation was also brought to the attention of the defendants through EMS courier services.* ***However, they elected to ignore them all and did not participate in the proceedings again even after counsel's withdrawal from the case.***

Ordinarily, where a court has taken a decision without due regard to a party who was absent at a trial because he was unaware of the hearing date that decision is a nullity for lack of jurisdiction on the part of the court. See ***Barclays Bank v Ghana Cable Co. [2002-03] SCGLR 1 and Vasque v Quarshie [1968] GLR 62. However, where the party affected was sufficiently aware of the hearing date or was sufficiently offered the opportunity to appear but he refused or failed to avail himself the court was entitled to proceed and to determine the case on the basis of the evidence adduced at the trial. See In re West Coast Dyeing Ind. Ltd; Adams v Tandoh [1987-88] 2 GLR 561." Emphasis***

We have verified the above statements from the record of appeal and are satisfied that all the above conclusions are factually correct. We have also verified and analysed the legal conclusions reached by the learned trial Judge in respect of issues arising where a court has taken a decision in a matter when a party although served has failed to appear or attend to the hearing notices.

Having verified all the above and found them to be factual and legal as well, it is not surprising that Bright Mensah J, the learned trial Judge delivered judgment in favour of the plaintiff in the following terms:

"Conclusion:

Having considered the evidence in its entirety, I hold that the Plaintiff has succeeded in establishing his case to the satisfaction of the court. Julius has suffered pain, acute deformed body/hands, physical incapacitation and loss of amenities, etc. ***The permanent disfigurement and incapacity shall continue to haunt him and deprive him of engaging in so many field activities as a school boy or young man.*** *He is equally permanently deprived of doing so many things that otherwise he would have done for himself without relying on someone else or with minimal assistance.* ***But I think the Plaintiff's***

present predicament shall surely be a scar on the conscience of the defendants.

I take into account, the nature and degree of the injuries sustained, the persistence of the pain, the length of time Julius has to be on admission and the period for which he underwent review. He has to undergo further surgeries but for lack of money.

Now, having regard to the peculiar determination of this case, the age of the boy, his future having been seriously jeopardized ***and impaired as a result of this cruel but preventable accident, I make the following awards:-***

General damages:

			GH¢
i)	*pain and suffering*	*-*	*1m*
ii)	*loss of amenities*	*-*	*0.4m*
iii)	*disfigurement and disability*	*-*	*3m*

Nominal/Special damages:

i)	*transport and other incidental expenses including someone attending to him in Korle Bu*	*10,000*
ii)	*cost of domestic services since September 2012 to date (upon his discharge from hospital in August 2012*	*7,600*
iii)	*US$30,000 needed to undertake myo electrical prosthesis*	

Judgment is therefore entered in favour of the Plaintiff in the total sum of GH¢4,417,600.00 and $30,000 with costs assessed at

GH¢100,000.00. *I recommend to Julius's uncle, Mr. Borlabi and his lawyer that the damages recovered shall be put in an investment account or invested in Treasury Bills for his benefits." Emphasis*

On the 6th day of November 2015, the Defendants appealed the judgment of the trial High Court to the court of Appeal. They also filed an application for stay of execution against the judgment of the trial High Court referred to supra.

On the 26th day of February 2016, the High Court, again presided over by Bright Mensah J, delivered a ruling on the application for stay of execution in the following terms:-

RULING OF HIGH COURT ON STAY OF EXECUTION

"BY COURT: RULING

This is an application for stay of execution of judgment of this court delivered on 30/10/2015 pending the final determination of an appeal filed by the Defendant/Applicant on 6/11/2015.

I need to emphasise that I have carefully studied the processes filed by the parties either in support of and against the grant of the application. I have equally given active consideration to the arguments of Counsel contained in their written submission filed with the court as ordered by the court.

Now, having regard to the peculiar facts of the case, I am persuaded to grant the application but upon these terms:-

i. The Defendant/J/Debtors shall pay into court for the benefit of the Plaintiff/J/Cr, half (1/2) of the judgment debt recovered in addition to the costs awarded.

ii. The Defendant/J/Applicant shall comply with the order (i) supra, within one (1) month from today.

iii. Upon the receipt of the money, the Registrar shall ensure that the uncle of the Plaintiff, Mr. Borlabi shall invest part of the amount in Treasury Bills in favour of the Plaintiff whilst applying the rest for his maintenance, education and medical bills.

To that extent the application is granted but I must add that order (iii) supra does not concern the Defendant/J/Debtor so much."

DECISION OF SINGLE JUDGE OF COURT OF APPEAL

Dissatisfied with the above Ruling, the Defendants repeated the application for Stay of Execution before the Court of Appeal. This repeat application was put before Honyenuga J.A, as a single Judge of the Court of Appeal. We quote verbatim, the entire decision of Honyenuga J. A, as single Judge of the Court of Appeal dated 12th April 2016.

"BY COURT: *Having heard both counsel in support and against the motion, I think that this is a proper case in which the application ought to be granted on terms.* ***Consequently, the Applicant is ordered to pay half of the total judgment debt including half of the costs to the Plaintiff/Respondent until the final determination of the appeal. There would be no order as to costs*****."*** **Emphasis**

The Defendants again dissatisfied with the above decision of the single Judge of the Court of Appeal, applied to the Court, duly constituted by a panel of three Justices, Coram: Mariama Owusu (Ms) Presiding, Agnes Dordzie (Mrs) and Kwofie, JJA's for a reversal of the decision of the single Judge.

DECISION OF COURT APPEAL DULY CONSTITUTED

The Court of Appeal, duly constituted, on the 11th day of May 2016, delivered a unanimous decision as follows:-

"We have read the motion paper and the supporting affidavit and the affidavit in opposition and ***we think the Justice of the case demands that we grant the application. We say so because per paragraphs 5, 7, 10, 14, 15 and 16 of the supporting affidavit, the applicants have raised the issue of jurisdiction (sic) goes to the very root of the case i.e., they were not served the hearing notice to attend court****. We think the applicant has raised special circumstances to warrant a variation of the order of the single Judge.* ***We have also noticed that the respondents got injured whilst working for the Applicants which fact is not in dispute.*** *In circumstances, we find it necessary to vary the orders of the single Judge.* ***The applicants have accepted to pay the medicals (sic) bills of the Respondent whilst the appeal is pending. They should do that looking at the plight of the Respondent. We think that justice of the case demands that the plight of the Respondent should be minimized whilst the appeal is pending. In the circumstances, the applicants should pay GH¢30,000.00*** *to the respondent pending the final hearing and determination of the appeal. To this extent, the order of the Single Justice is varied and the execution of the High Court is stayed subject to the payment of the GH¢30,000.00. There is no order as to cost." Emphasis*

This is the Ruling in respect of which the grounds of appeal referred to supra in the opening pages of this judgment relate.

STATEMENTS OF CASE OF THE PARTIES

We have critically perused the statements of case filed for and on behalf of the Plaintiff and the Defendants respectively.

After apprising ourselves of the Ruling of the Court of Appeal, as duly constituted, the grounds of appeal in respect of the said Ruling and the statements of case filed by learned counsel for the Plaintiff, Mr. Tony Lithur and for the Defendants, Frank

Asamoah of Minkah Premo and Co., we are satisfied that the issues for determination in this appeal are the following:-

1. Whether the Defendants herein per their affidavit evidence before the full bench of the Court of Appeal raised any genuine and arguable points of law in their grounds of appeal referable to the record of appeal to merit a reversal or variation of the orders of the Single Judge.

2. Whether or not in ordering the Defendants to pay the Plaintiffs medical bills totaling GH¢30,000.00, the full bench of the Court of Appeal exercised their discretion rightly having regard to the evidence on record.

PRELIMINARY LEGAL POINT

Learned Counsel for the Defendants, Frank Asamoah raised a preliminary legal point premised on Rule 15 (1) of the Supreme Court Rules 1996, C.I. 16.

The crux of this objection is that, by the provisions of the said Rule, the Plaintiff as an Appellant, is required to file a ***statement of case*** based on his grounds of appeal, within three weeks of being notified that the record of appeal is ready.

We have observed that, the Plaintiff has filed what he has titled ***"written submissions"*** instead of "***statement of case".***

Whilst conceding that learned counsel for the Defendants is right in his observation, his claim that non compliance with this procedural rule should result in the appeal being struck out is without any basis.

This is because even though strict compliance with the rules of procedure is desirable, the duty of the court is to ensure that substantial justice is done to all parties. In this respect, strict and mechanical application of the rules of procedure will amount to complying to form and not substance. In the premises where the Plaintiff has filed a process which albeit has been wrongly titled, the contents therein have satisfied the statutory requirements of Rule 15 (1) of C. I. 16. Since the value of what has been filed

is still the same as what is required of the plaintiff, we will dismiss this preliminary objection and proceed to deal with the appeal on its merits. See case of **Okofoh Estates Ltd. v Modern Signs Limited [1996-97] SCGLR 224**, holding 1, at page 230.

ISSUE 1

WHETHER THE DEFENDANTS HEREIN PER THEIR AFFIDAVIT EVIDENCE BEFORE THE FULL BENCH OF THE COURT OF APPEAL RAISED ANY GENUINE AND ARGUABLE POINTS OF LAW IN THEIR GROUNDS OF APPEAL REFERABLE TO THE RECORD OF APPEAL TO MERIT A REVERSAL OR VARIATION OF THE ORDERS OF THE SINGLE JUDGE

The resolution of the above issue will definitely encompass the determination of grounds (a) and (b) of the grounds of appeal referred to supra.

In order to put the matters in contention in this interlocutory appeal beyond per adventure, it is deemed necessary to set out the following paragraphs of the Defendants affidavit in support of their application for a reversal of the decision of the single Judge of the Court of Appeal as follows:-

5. "That we deny that we were negligent and or caused the injuries to Plaintiff and if we were offered the opportunity we would have established this fact.

Unfortunately we were denied our right to a hearing when we had no notice of the trial".

7. That the said judgment was obtained after evidence had been led by Plaintiff in **the absence of appellants who were not present at the trial because they did not have notice of the trial. Emphasis**

It is also worthy of note that, the notice of appeal which the defendants referred to in paragraph 6 of their affidavit in support reference exhibit B5P5 as the anchor of their case also been primarily premised on their being denied the opportunity to be heard.

In proof of this, they couched their first three grounds of appeal thus:-

1. "The learned Judge erred when he proceeded to give judgment **in spite of the fact that, 1st , 2nd and 3rd Defendants did not have notice of the hearing dates since they were not served with hearing notices.**

2. The learned Judge erred when he held that 1st, 2nd and 3rd defendants **had been served but refused to attend the trial in that Defendants were not served and or had notice of the hearing date.**

3. **The learned Judge erred when he proceeded to give judgment against 1st, 2nd and 3rd Defendant without giving them any opportunity.**

It is to be noted that, when applications for stay of execution are being considered with reference to stated grounds of appeal, the court must of necessity do some due diligence by reference to the record of appeal to verify the authenticity of the said grounds. It must be noted however that, we are by no means suggesting that such a court must turn such an application into an appellate court. We are however of the strong view that, one way of preventing parties from making frivolous, mischievous, unmeritorious, deceitful and baseless applications to the courts is for all courts to take some time to verify facts on the record of appeal.

For example, we are of the respectful opinion that the statement by the learned trial Judge in the judgment in the following terms was not made without any basis.

This is how he described the Defendants therein:-

> *"**In the instant case, the defendants were sufficiently aware of the hearing dates because they were variously served with hearing notices by EMS Courier service.** It shall therefore not lie in their mouth to complain of being unaware of whatever proceedings that did take place in their absence." Emphasis*

Further to the above, the Plaintiff swore to a detailed affidavit in opposition to the application for a reversal of the decision of the single judge in which he catalogued the chronology of events during the entire proceedings. Reference pages 248 through to 256 of the record.

We have verified all the above statements and found them to be true and in accord with the decisions of the trial Judge.

The Plaintiff deposed in paragraph 16 of his affidavit in opposition as follows:-

> *"Anyhow, I state that the fact that Applicants became aware that judgment in this suit was delivered on 28th October 2015 and filed a notice of appeal and an application for stay of execution at the trial High Court when, in fact, till date no Entry of Judgment has been filed by me or served on them is evidence of the fact that they had notice of every single proceedings in court but deliberately failed to attend upon the court. **My Counsel wrote to Ghana Post Company Limited to enquire about the trial Court's hearing notices which were ordered to be served on Applicants. The response from Ghana Post is attached hereto and marked as "Exhibit J15".** Emphasis

We have also perused this exhibit "J15" from Ghana Post and found that it is a letter authored by Bernard Yaw Atta-Sonno, General Manager of EMS/Parcels and Speedlink of Ghana Post and is to the following effect:-

> "Following the request for information on proof of delivery of court processes at B5 Plus Company Limited, Kpong-Tema, we wish to confirm the following:-
>
> 1. The Court Process (Hearing Notices) were delivered at the designated address provided, ***that is B5 Plus Company Limited Kpone Barrier, Tema.***
>
> 2. The Court processes were delivered and signed by Alex Amoako, at the office of B5 Plus Company Limited Kpone Barrier, Tema.
>
> 3. The mode of deliveries was through EMS dispatch rider.
>
> 4. Attached is the proof of delivery of the said processes."

We have indeed checked all these deliveries and are satisfied that the Defendants have really been served and were aware of all court proceedings but for reasons best known to them chose at the material time to be absent.

It is the above processes and procedures that the full bench of the Court of Appeal should have taken into consideration.

It is important to deal briefly with the submissions of learned counsel for the Defendants on the service of court processes and the reference to Order 7 r. 2 (1) and 5 (1) of the High Court (Civil Procedure) Rules 2004 C.I. 47 which deals with personal service and service on corporate entities.

It is quite clear that the general position of the rules of procedure referred to supra is that a court has no jurisdiction to proceed against a party who has not been served, and this principle has been thoroughly dealt with in the locus classicus case of **Barclays Bank of Ghana Ltd. v Ghana Cables Co. Ltd [1998-99] SCGLR 1**. A

writ has to be personally served on all defendants, unless otherwise provided by the Rules.

Similarly, the mode of service of a writ or court process on a body corporate such as the 3rd Defendants may be effected on the Chairman, the head of the corporate entity, Managing Director, Secretary, Treasurer or such other Senior Officer. Reference order 7 r. 5 of C. I. 47.

In this case, the Defendants were duly served, engaged Solicitors who acted and prosecuted the suit on their behalf. Later, the Counsel for the Defendants withdrew and notified the Defendants accordingly.

We have also noted the reference and reliance by learned counsel for the Defendant on Section 263 of the Companies Act, 1963 Act 179 which makes express provisions on how service is to be effected on a limited liability company.

From the record of proceedings in this case, the modus operandi of the Defendants and their Lawyers have been to treat with scorn and contempt processes served on them.

A typical example is the proceedings of 17th February 2015 which is on page 276 which speaks for itself.

Again there is ample proof that, the 1st, 2nd and 3rd Defendants have been either served through their Lawyers when they acted through them, or personally by the E.M.S Service as ordered by the court. Reference pages 277 to 301.

It is also instructive to observe that hearing notices have all been served on the Defendants personally as required under Order 7 r. 2 (1) and 5 (1) of C. I. 47.

We have also verified the dates of all the hearing notices and other court processes and confirmed that those were the relevant and material dates that hearing of the cases was conducted (*reference pages 209 – 224, just to mention some of the notices).*

Under these circumstances, we are of the view that cases like **Lagudah v Ghana Commercial Bank [2005-2006] SCGLR 388** and **Barclays Bank of Ghana Ltd. v Ghana Cable Co. Ltd**, already referred to supra does not apply.

We are therefore of the view that, if a party voluntarily and deliberately fails and or refuses to attend upon a court of competent jurisdiction, (such as the High Court which determined this case) to prosecute a claim against him, he cannot complain that he was not given a fair hearing or that there was a breach of natural justice.

The Defendants must be respected for making such a choice, but they must not be allowed to get away with it.

From the decision of the full bench of the Court of Appeal, it is thus clear that if the record had been thoroughly perused, they would have realized that no issue of jurisdiction arises and none can thus be raised. Similarly, there being ample proof that the Defendant treated the court processes with disdain and scorn, leading even to the withdrawal of their previous Solicitors, Mawuvenu Esq. respectively, with notices to them, but they did not bother to prosecute and or defend the action.

On the basis of the above analysis, grounds (a) and (b) of the appeal succeeds. In that respect, we conclude this aspect of the matter (on a caveat of without prejudice) by stating that, there being no verifiable grounds of appeal to be argued on appeal by the Defendants in respect of their spurious claims of breach of the rules of natural justice, there was thus no basis for the reversal of the decision of the single Judge.

ISSUE 2

WHETHER OR NOT IN ORDERING THE DEFENDANTS TO PAY THE PLAINTIFF MEDICAL BILLS TOTALING GH¢30,000.00, THE FULL BENCH OF THE COURT OF APPEAL EXERCISED THEIR DISCRETION RIGHTLY HAVING REGARD TO THE EVIDENCE ON RECORD

This will be based upon grounds (c) and (d) supra of the notice of appeal.

We have once again perused the statements of case of learned counsel for the parties in respect of the determination of the above issue. The determination of this issue actually admits of no controversy whatsoever. This is because, the full bench itself stated as follows:-

> "**We have also noticed that the respondent got injured whilst working for the Applicants which fact is not in dispute."**

The Court also recognised the need for the medicals of the Plaintiff herein to be paid as well as to minimize his plight. We have itemized the injuries sustained by the Plaintiff and the learned trial Judge made copious references to the evidence of PW1, Prof. Laing, a renowned Plastic Surgeon who treated Plaintiff, whilst he was on admission at Korle Bu.

The evidence of the Plaintiff as well as PW1 on the injuries and disability and permanent incapacity of the Plaintiff are really chilling and pathetic.

For example, there is this piece of statement in the Judgment of the trial Court to the following effect:-

> *"There is also that unchallenged evidence that as a result of the accident the Plaintiff lost all his 10 fingers. He cannot comb his hair, cannot brush his teeth, cannot bath well, cannot wash his things, cannot do most things as ordinarily any normal person could do. He cannot write properly neither can he also iron his clothes."*
>
> *Accordingly, he said further, his uncle has to employ somebody at a fee of GH¢200.00 per month for that person to assist him or do them for him.* His *pathetic story not denied or challenged by the defendants is that his mother died, when he was yet a toddler. His father also died through shock the next day upon hearing of the gruesome injury he added."*

The above are similar to what is described in ordinary Ghanaian parlance as "two troubles one God."

Can it be said that , based upon the above facts, and what the full bench itself recognised as the need to minimise the plight of the Plaintiff pending the appeal, the award for the payment of GH¢30,000.00 to the Plaintiff was the best exercise of discretion in the matter?

Warning ourselves of the principles upon which the exercise of a discretion by a lower court can be interfered with such as was stated in the case of **Ballmoos v Mensah [1984-86] 1 GLR 724-733 at 735,** where it was held that

> ***"The Court of Appeal would not interfere with the exercise of the trial court's discretion save in exceptional circumstances."*** *Emphasis*

See also cases of **Republic v Court of Appeal, ex-parte Sidi [1987-88| 2 GLR 170 at 181**, SC, per Francois JSC. We have also apprised ourselves of cases like the following relied upon by learned counsel for the Defendants:-

1. **Adu (per Attorney) v G.R.A [2013-2014] 2 SCGLR holdings 1, 2 and 3**
2. **Blunt v Blunt [1943] A.C 517 at p. 513**
3. **Dzobo v Agbeblewu & Others [1991[1 GLR 294**
4. **Djokoto & Amissah v BBC Industries Co. Ghana Ltd. & Anr. [2011] 2 SCGLR 825 at 826**
5. **KMK & Anor v A.D.B [2013-14] 2 SCG;R 1614 and finally**
6. **Re Bob Kwame and Co. Ltd, Gyingyi v Bernard & Anr. [1989-90] I GLR 37**

Based upon a review of all the above cases, we are of the considered opinion that, the full bench of the Court of Appeal did not exercise its discretion in the matter judicially. For example, based on the admitted facts of this case, it is clear that the amount of

GH¢30,000.00 as medical bills is not based on the record, but also seriously insignificant that it is tantamount to a drop in the ocean. This in our opinion amounts to exceptional circumstances warranting an interference with the exercise of discretion by the said court.

Grounds (c) and (d) of the notice of appeal therefore succeed.

In the circumstances, it is our view that the Court of Appeal did not exercise their discretion properly.

However, in setting aside that decision and allowing this appeal, we will be guided and also bear in mind the principles of law enumerated in the respected authorities already referred to supra and the following:-

1. **Joseph v Jebeille [1963] 1 GLR 387**

2. **Ballmoos v Mensah, already referred to supra, and**

3. **Dzotepe v Hahormene III [1984-86] 1 GLR 289 CA**

In this respect, taking all the surrounding circumstances into consideration, we allow the appeal, set aside the decision of the Court of Appeal duly constituted, and dated 11/05/2016 and instead restore the decision of the single Judge of the Court of Appeal, dated 12/04/2016 in it's entirety

The remainder of the judgment debt is stayed for three months from the date of this judgment unless within that period, the Defendants fulfill all the conditions of appeal and ensure that, the appeal record is transmitted to the Court of Appeal, failing which the order for stay lapses.

See **Dzotepe v Hahormene, and Adu v G.R.A,** supra.

The appeal therefore succeeds.

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

ADINYIRA, JSC:-

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

S. O. A. ADINYIRA (MRS)
(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)

AKOTO-BAMFO, JSC:-

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

V. AKOTO-BAMFO (MRS)
(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)

COUNSEL

SEFAKOR ADZO AKPABLA FOR THE PLAINTIFF/RESPONDENT/APPELLANT.

FRANK ASAMOAH WITH HIM MAAME BAIMIE ADU-AMOAH FOR THE DEFENDANTS/APPELLANTS/RESPONDENTS.