IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: PWAMANG JSC (PRESIDING)
DORDZIE (MRS.) JSC
AMEGATCHER JSC
PROF. KOTEY JSC
AMADU JSC

CIVIL APPEAL
NO. J4/52/2022

29TH JUNE, 2022

KOJO BAAH
(SUBST. BY JENNIFER BAAH) } **PLAINTIFF/RESPONDENT/RESPONDENT**

VRS

1. GHANA WATER COMPANY LTD.
2. CHINA GERZOUBA GROUP } **DEFENDANTS/APPELLANTS/APPELLANTS**

JUDGMENT

AMADU JSC:-

1) This appeal emanates from the judgment of the Court of Appeal dated 29th November 2018 which affirmed wholly the judgment of the trial High Court.
2) In the High Court Accra, the original Plaintiff/Respondent/ Respondent *(now substituted and hereinafter referred to as the "Respondent"*) took out a writ against

the Defendants/Appellants/Appellants *(hereinafter referred to as the "Appellants")* for the following reliefs:-

"a) A declaration that Defendants' action of siting pylons and high tension cables on and over Plaintiff's property being and situated at Wedokum near Dodowa without Plaintiff's consent constitute trespass to Plaintiff's property.

b)A declaration that Defendants' action of situating pylons and high tension cables on and over Plaintiff's property, an area not acquired, marked or zoned for such purpose and their attendant health risks constitute nuisance to Plaintiff and his family.

c) Damages for nuisance and or trespass to Plaintiff's land.

d) Perpetual injunction on Defendants, workers, servants and agents preventing same from carrying out live operation on the high tension cables over Plaintiff's property.

In the alternative.

e. An order for Defendants to value the property and purchase the property from Plaintiff at the open market value.

f. Cost including solicitor's cost".

The Appellants filed a joint statement of defence and contested the Respondent's action.

3) At the end of the trial, the High Court found in favour of the Respondent by granting reliefs (a) and (b) but refused reliefs (d) and (e). However, in terms of relief (c) the court proceeded to award in favour of the Respondent as follows:- ***"Special Damages to encompass compensation as contained in the Plaintiff's Valuation Report tendered as Exhibit "S" valued at Seven Hundred and Seventeen Thousand, One Hundred and Twenty Ghana Cedis (Ghc717,120.00)". The trial court also granted the declaratory reliefs sought as per costs of Thirty Thousand Ghana Cedis (Ghc30,000.00).***

4) On appeal to the Court of Appeal, the Court of Appeal affirmed the judgment of the trial court albeit for different reasons. The instant appeal is from the judgment of the Court of Appeal to this court by notice filed on 5th August 2018 upon amended grounds of appeal filed on the 9thday April 2018 formulated as follows:-

"1. The Judgment is against the weight of evidence adduced at the the trial.

2. The lower court erred by failing to adequately consider the case of the Defendants.

3. Costs granted by the court after trial is excessive.

4. The trial court erred when it awarded special damages and compensation against the Defendants without any legal basis when the Plaintiff did not ask for these reliefs."

CASE OF THE RESPONDENT

5) In the Statement of Claim, the Respondent averred that he was the owner of a piece or parcel of land measuring approximately 0.34 acres lying and situated at Wedokum, the south-eastern part of Dodowa in the Greater Accra Region which he purchased from one Gideon Ayiku Akrofi, and that a deed of transfer was executed in his favour on 19th May, 2009. He further averred that upon acquisition of the land, he constructed a single storey five-bedroom residential facility thereon where had been living with his family.

6) The Respondent asserted that sometime in June 2012, the Appellants and their agents begun erection of pylons on his property and despite several attempts to have them move their pylons further away from the property, the Respondents failed to do so. He asserted further that the high voltage electric power and the pylons posed a health risk to him and his family. The Respondent alleged that, by a letter dated 8th November 2012, addressed to the Appellants, he informed the Appellants about the nuisance and the inconvenience being caused by their actions and requested them to either abate the nuisance or he would offer the property up

for sale to the Appellants and be compensated, in order for him to relocate to a more secure place. The Appellants neither replied to the letter nor take any action to address his concerns.

7) The Respondent alleged that he sent repeated demand letters to the Appellants on the issue yet there was no response from them until 24th February 2013, when the 1st Appellant acknowledged receipt of the letter dated 4th January 2013 and advised the Respondent to contact the General Service Manager of the 1st Appellant for an inspection of the property. According to the Respondent, after the inspection aforesaid, the 1st Appellant wrote a letter to the Lands Commission for a valuation of the property to be carried out but this request was never done and there being no communication from the 1st Appellant, the Respondent commenced the action claiming the reliefs endorsed on the writ of summons.

8) Upon entry of appearance to the writ, the Appellants filed a joint defence. In their defence, the Appellants admitted to the construction of the pylons but denied that they overhung the Plaintiff's property. They further denied the pylons posed a health risk to the Respondent and asserted that they were prepared to subject Respondent's claim to a health risk assessment to determine if there was any health hazard resulting from the positioning of the Appellants' pylons. Not having addressed the Respondent's concerns, the trial court found in favour of the Respondent and entered judgment accordingly against the Appellants which was affirmed by the Court of Appeal.

9) **APPEAL TO THIS COURT-APPELLANTS' CASE**

It their statement of case in this court, the Appellants' counsel elected to argue grounds (a), (c) and (d) together. The Appellants have invited this court to take another look at the facts on record to ascertain whether the conclusions arrived at by the Court of Appeal are borne out of the evidence on record. In arguing the above grounds compositely, the Appellants contended that the pylons were not erected on the Respondent's property and that the Respondent admitted this fact

during cross examination. The Appellants' counsel further submitted that there is a vast difference between 33 kilovolts and 161 kilovolts cables which constituted the basis of the Respondent's concern. The Appellants have referred to the letter from Ghana Grid Company Ltd. (GRIDCO) dated 7th October 2015, to support this assertion. They contended that the cables that strung over the Respondent's property are of 33 kilovolts and not 161. Therefore, no consequential health hazard results as contended by the Respondent.

10) The Appellants further contended that the lower courts wrongly accepted and applied the Volta River Authority (VRA) Transmission Lines Protection Regulation (1967) (L.I.542) and had ignored the technical evidence given by GRIDCO. They submitted that the Respondent's evidence that he had vacated the house was contradicted by the valuer from Architectural and Engineering Services Co. Ltd. (AESL) who revealed that the house was inhabited at all material times during the litigation. The Appellants thus surmised that if the lower courts had properly applied the evidence on record, it would have found in favour of the Appellants that there was no apparent harm, danger or injury as has been alleged by the Respondent.

11) On ground (b), the Appellants submitted that the Court of Appeal Erred when it affirmed the award of special damages to the Respondent when there was no claim for special damages. They submitted that what the Respondent claimed was for ***"an order for Defendant to value the property and purchase the property from Plaintiff at open market".*** It was therefore wrong for the two lower courts to substitute what the Respondent had sought for, with an order for damages in the form of compensation based on the open market value of the property. The Appellants further argued that once the two lower courts ordered for the payment of the open market value of the property, they ought to have made a consequential order for the sale and purchase of the property in favour of the Appellants.

RESPONDENT'S CASE

12) The Respondent in her statement of case submitted that as held by the two lower courts, the cables overhung the property and proceeded to quote portions of the cross examination as well as the pleadings on record where this fact was established. The Respondent submitted further that this fact was admitted by the Appellants' witness in his testimony. The Respondent relied on the latin maxim "*cuiusest solum, eiusest us que ad coelom et ad inferos"* which means ***"whoever owns the land, it is theirs up to heavens and all down the hell".*** By reason of this maxim, the Respondent contended that any interference with any part of the Respondent's property, be it in the airspace or beneath the soil unless as regulated by law, is actionable. It was further argued by the Respondent that the Right of Way (ROW) distance of 15m for 161 KV cables and 7.5m for 33 KV cables is not warranted as long as there has been trespass on the Respondent's property.

13) In her statement of case, the Respondent referred this court to some aspects of the submission of the Appellants which were not contained in the record of appeal. These were the submissions with respect to an application for an interlocutory injunction that was determined at the trial court. She also mentioned that a cross examination of a valuer which the Appellant made reference to should also be disregarded as they do not form part of the record before the court.

14) On the second ground of appeal therefore, the Respondent argued That, at the trial court, both the Respondent and the valuer led sufficient evidence as to the value of the property at the time the trespass occurred and same revalued sometime in 2016. The Respondent submitted further that the valuer explained during cross examination that the essence of compensation is restitution, so the rationale behind the valuation was to put the owner back to the position he was as much as possible.

15) It is further argued for the Respondent that, the fact that the Respondent did not specifically seek for specific damages will not warrant the assertion that damages in the form of compensation could not as appropriate be granted by the court. The Respondent further argued that the award of compensation was borne out of the evidence adduced at the trial and that, there was no travesty of justice as alleged by the Appellants. The Respondent concluded by urging this court to dismiss the appeal and further prayed that the court exercises its discretion under Rule 23 of C.I. 16 *(as amended)* to order that interest be paid on the value of compensation from the date of judgment.

DETERMINATION OF THIS APPEAL

16) We shall consider the merits of all the grounds argued together and Determine them compositely since they invariably allege an improper evaluation of the evidence on record. It is settled that, where an Appellant alleges that a judgment is against the weight of evidence, it is an invitation on the appellate court to *inter alia* rehear the appeal by a process of revaluation of the evidence on record with the view to determining whether or not the findings and conclusions reached by the trial court or the Court of Appeal as the case may be are consistent with the totality of the evidence on record. This court in **INTERNATIONAL ROM LIMITED VS. VODAFONE GHANA LIMITED & ANOR. Suit No. J4/2/2016**, per Akamba JSC dated **6th June 2016 per Akamba JSC** said this about the omnibus ground of appeal: ***"This appeal being premised upon the contention that the judgment is against the weight of evidence, among others, is a call on us to rehear this appeal by analyzing the record of appeal before us, taking into account the testimonies and documentary as well as any other evidence adduced at the trial and arriving at a conclusion one way or the other. This is the import of the numerous decisions of this court on the point. Notable among these are Tuakwa Vs. Bosom (2001-2002) SCGLR61; Djin Vs. Musah (2007-2008) 1 SCGLR 686. In the Djin case (above), this court***

per Aninakwa JSC at page 691 of the report held that when an Appellant complains that the judgment is against the weight of evidence, "he is implying that there were certain pieces of evidence on the record which, if applied in his favour, could have changed the decision in his favour, or certain pieces of evidence have been wrongly applied against him. The onus is on such an Appellant to clearly and properly demonstrate to the appellate court the lapses in the judgment being appealed against."

17) The trite principle on the law of evidence is captured in the Latin maximas follows:- "*semper necessitas probandi incumbitei qui agit"* which means ***"the necessity of proof always lies with the person who lays the charges"***. Under the Evidence Act, 1975 (NRCD 323), a person who alleges a fact will assume both the evidentiary burden and the burden of persuasion. Sections 11(1) and (4) of the Act provide respectively as follows:-

(4)". . .the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue."

(11) ". . .the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence."

18) Furthermore, the parties to a civil suit carry a burden to prove their Cases on the preponderance of probabilities in order to satisfy the court, as required by rules of evidence that they were either entitled to the claim or defence they have asserted in their pleadings. Thus, in **TAKORADI FLOUR MILLS VS. SAMIR FARIS (2005-2006] SCGLR 882 at 900**, this Court captured the trite position of the law relating to the burden of proof as follows:- ***"To sum up this point, it is sufficient to state that this being a civil suit, the rules of evidence require that the Plaintiff produces sufficient***

evidence to make out his claim on a preponderance of probabilities, as defined in Section 12(2) of the Evidence Decree, 1975 (NRCD 323). Our understanding of the rules in the Evidence Decree, 1975 on the burden of proof is that in assessing the balance of probabilities, all the evidence, be it that of the Plaintiff or the Defendant, must be considered and the party in whose favour the balance tilts is the person whose case is the more probable of the rival versions and is deserving of a favourable verdict."

19) Similarly in **GIHOC REFRIGERATION & HOUSEHOLD VS. JEAN HANNA ASSI (2005-2006) SCGLR 458**, this Court held on the statutory burden that: ***"Since the enactment therefore, except otherwise specified by statute, the standard of proof (the burden of persuasion) in all civil matters is by a preponderance of the probabilities based on a determination of whether or not the party with the burden of producing evidence on the issue has, on all the evidence, satisfied the judge of the probable existence of the fact in issue… Hence, by virtue of the provisions of NRCD 323, in all civil cases, judgement might be given in favour of a party on the preponderance of the probabilities…"*** It has also been held in the case of **SUMAILA BIELBIEL (NO.3) VS. ADAMU DRAMANI & ATTORNEY-GENERAL [2005-2006] SCGLR 458** that: ***"The distinction between the two burdens of proof, namely the "burden of producing" as defined in Section 10(1) and the "burden of producing evidence" as defined in Section 11(1) of the same Act, is important because the incidence of the burden of producing evidence can lead to a defendant acquiring the right to begin leading evidence in a trial, even though the burden of persuasion remains on the plaintiff. Ordinarily the burden of persuasion lies on the same party as bears the burden of producing evidence."***

20) In the instant case, the Appellants have invited us to have a second

look at the evidence at the trial and identify the pieces of evidence which according to the Appellants, were not taken into consideration or those that were taken into consideration which the court ought not to have done so, and which in either case, the two lower courts ought to have come to a different conclusion if the evidence was properly evaluated. The Appellants have further argued that the positioning of the cables do not interfere with the Respondent's property and therefore, there has not been any trespass to the Respondent's property as alleged.

21) From our own evaluation of the evidence, the evidence on record is not supportive of the Appellants' assertions. The documentary evidence per Exhibits "B", "C", "D" and "E", pictures tendered at the trial, reveal that the cables strung across the Respondent's property. The Appellants in their pleadings denied that the cables hung over the property of the Respondent. However, under cross examination, the Appellant's own witness admitted that the cables strung over the Respondent's property, though he suggested that it passed over an uninhabited portion of the property. Further that, at the time of laying the cables, there was no fence wall to indicate that the Respondent's property was proximate to the path of the cables. In his academic work ***"Introduction to the Law of Torts in Ghana"*** Professor Kofi Kumado states at page 56 as follows:-"*For every man's land is in the eye of the law, enclosed and set apart from his neighbour's; and that, either by a visible and material fence, as one field is divided from another by a hedge;* ***or, by an ideal invisible boundary, existing only in the contemplation of the law, as when one man's land adjoins to another's in the same field"*** *(Emphasis Mine).*

22) Therefore, the fact that the Appellants did not see any physical wall Did not mean that the Respondent did not own the land trespassed upon. As has been quoted above, the boundary of the property need not necessarily be a

physical wall or fence. It could be an invisible boundary as long as his neighbours or the law recognises their respective boundaries. To prove this, the dimensions of the Respondent's land were adequately described and the site plan was attached to the valuation report, Exhibit "P". The Appellants' witness having admitted under cross examination the dimensions of the Respondent's land, the issue of the total area covered by the Respondent's land with or without a fence was not in dispute and was never an issue arising from the pleadings.

23) Further, it is not for the Appellants to determine which part of the Respondent's property is habitable or inhabitable. As long as it is established that the entire property belongs to the Respondent, any encroachment on any part thereof however little, would be in breach of the Respondent's quiet enjoyment of the property. Indeed, it would be absurd to argue that by reason of the Appellants' cables stringing over part of the Respondent's property, the Respondent should be limited to enjoyment of only the portion of her property where the cables did not traverse.

24) Furthermore, the contradictory position of the Appellants on this Fact inures to the benefit of the Respondent. The settled law is that where the evidence of a party or his witness corroborates that of the opponent, the court ought to make a finding in favour of the party who benefits from the contradictory evidence. Once there is an admission that the cables strung over a portion of the Respondent's property, whether habitable or not, a cause of action arose. By this admission alone, the position of the law is that, the adversary need not adduce any further evidence to prove the same fact that has been admitted by his opponent. It has been held in the case of **IN RE ASERE STOOL; NIKOI OLAI AMONTIA IV (SUBSTITUTED BY TAFO AMON II) VRS. AKOTIA OWORSIKA III (SUBSTITUTED BY LARYEA AYIKU III) (2005-2006) SCGLR 637** as follows:- **"*Where an adversary has admitted a fact advantageous to the cause of a party, the party does not need***

any better evidence to establish that fact than by relying on such admission, which is an example of estoppel by conduct."

25) Consequently, the admission of the Appellants' witness during his Testimony that the cables strung over the property of the Respondent is enough to draw a conclusion on this fact. That notwithstanding, as pointed out earlier, pictures of the cables and the building were tendered in evidence which clearly reveal that the cables overhung the property of the Respondent. This puts the fact of nuisance and trespass to rest. We find therefore that, indeed, the cables strung over the Respondent's property and consequential liability arises against the Appellants.

26) The next question to ask is ***"whether the fact that the cables string over the Respondent's property per se constitute trespass?*** The learned authors of **"Tort Law- Text and Materials, 3rd Edition"** Lumey and Oliphant in their book stated at page 637 as follows:- **"*Liability in private nuisance arises only when the conduct of the Defendant amounts to an unreasonable use of land in that it causes an unreasonable interference with the claimant's use of land.*** Prof. Kofi Kumado in his book ***"Introduction to the Law of Torts in Ghana"*** at page 62 states as follows: ***"The law grants a reasonable airspace above the land to the person in possession of the land. It is trespass to violate the allowed airspace above the ground".*** Reasonable airspace in this context as defined in **BERNSTEIN OF LEIGH VS. SKYVIEWS GENERAL LTD. (1978) Q.B. 479**is: ***"the right of the owner of land in the airspace above his land is restricted to such height as is necessary for the ordinary use and enjoyment of his land and the structures on it.*** He continues further at page 63 that: ***"From these two cases (i.e. Kelsen's & Ellis), it is clear that to violate someone's airspace is trespass whether the violation is permanent or temporary."***

27) Therefore once there is a finding by this court of the violation of the boundary rights of the Respondent without permission, this act constitutes trespass and we so find. The situation is compounded for the Appellants when in their own Exhibit "2", they admitted that any human activities that could lead to health and safety concerns within the Right of Way (R.O.W) are prohibited. As a requirement of statute, human activities as much as possible are prohibited within proximate distances of the Right of Way (ROW). How is the Respondent expected to enjoy his property when activities within a certain perimeter of the property are prohibited?

28) The Appellants have urged upon us certain proceedings which apparently occurred in the trial court, differently constituted. Those proceedings, are not borne out of the record of appeal. Counsel for the Respondent has objected to our consideration of this part of the submission as it does not arise from the record of appeal. We agree with counsel for the Respondent on this position. What the Appellant sought to do was to introduce of fresh evidence. **Rule 76 of the Supreme Court Rules, 1996 (C.I.16)** provides that:

"(1) A party to an appeal before the Court shall not be entitled to adduce new evidence in support of his original action unless the Court, in the interest of justice, allows or requires new evidence relevant to the issue before the Court to be adduced.

(2) No such evidence shall be allowed unless the Court is satisfied that with due diligence or enquiry the evidence could not have been and was not available to the party at the hearing of the original action to which it relates.

(3) Any such evidence may be by oral examination in Court, by

an affidavit or by deposition taken before an examiner as the Court may direct". See the case of **POKU VRS POKU (2007-2008) SCGLR 996.**

29) As already observed, the evidence commented upon and urged upon us by the Appellants is not part of the record of appeal. In the circumstances, we reject that part of the Appellants' submission. Accordingly, those submissions on pages 4 to 5 of the Appellants' statement of case as well as references to same are rejected and hereby struck out. In the result, after our consideration of the grounds of appeal compositely discussed, the said grounds being unmeritorious are hereby dismissed.

30) The second ground of appeal is that the Court of Appeal erred when it accepted and ordered the valuation of the Respondent's property and payment of the value by way special damages but was silent on the consequential ownership of the property. The Respondent had sought that the Appellants be ordered to purchase the property at the current market value as the property was no longer habitable. The Appellants have argued that the Respondent did not seek for special damages from the trial court. However, the trial court on its own awarded special damages in Respondent's favour and which award was affirmed by the Court of Appeal. They further argued that it was wrong for the two lower courts to grant such relief which the Respondent did not specifically seek. The Appellants further argued that the two lower courts erred when they accepted the value of the property in the sum of Seven Hundred and Seventeen Thousand, One Hundred and Twenty Ghana Cedis (GH¢717,120.00)and awarded that sum to the Respondent without a consequential order for the Respondent to transfer the property to the Appellants.

31) In response, the Respondent argued that the valuer, PW1 adduced oral and documentary evidence with respect to the value of the property and in that testimony the value of the property was stated at Seven Hundred and Seventeen Thousand, One Hundred and twenty Ghana Cedis (GH¢717,120.00). The Respondent further argued that once trespass was established by the trial court, neither the trial court nor the Court of Appeal erred in awarding special damages. The Respondent further contended that on the principle of doing substantial justice, the court may grant reliefs not sought for. To that extent, there was no error on the part of the trial judge to warrant the order of this Court to overturn the decision of the trial court as affirmed by the Court of Appeal.

32) As accurately referred to by the Court of Appeal, this court in **HANNA ASSI VS. GIHOC REFRIGERATION & HOUSEHOLD PRODUCTS LTD. (NO. 2) (2007-2008) SCGLR 16 at 17** held *inter alia* that:- ***"In the instant case, the majority of the ordinary bench erred in affirming the decision of the Court of Appeal which had held that in the absence of a counterclaim, the trial court had no jurisdiction to grant the reliefs of declaration of title and recovery of possession of the disputed property to the Defendant, the applicant. Those reliefs were clearly established on the evidence. In such a situation, the essential consideration was whether there was surprise or unjust denial of opportunity to meet the matters concerned".*** Similarly, in **MULLER VS. HOME FINANCE CO. LTD. (2012) 2 SCGLR 1234,** this Court held that: ***"The Supreme Court would, to a large extent, agree with the Court of Appeal observation that it was not the duty of the trial court in civil cases to make the case for the parties; and that the duty of the trial court was to enter judgment for the party what it had asked for and not to give him what the court thought he needed. However, it was fairly now established that on the***

principle of doing substantial justice, the court might, in some circumstances, grant a party reliefs not asked for, provided the grant of that or those reliefs would help achieve substantial justice to the case and bring litigation to an end between the parties".

33) To avoid multiplicity of suits and to do substantial justice, a court has the inherent power to grant to a party, a relief not specifically sought for and endorsed on a party's writ of summons and statement of claim as long as the court can glean from the pleadings and evidence that, that party is in the interest of justice and in ensuring ***"judicial economy"*** entitled to those other reliefs not specifically sought for. There is therefore nothing erroneous when the Court of Appeal affirmed that the Respondent was entitled to full compensation as awarded.

34) Having so found, the next but critical issue to determine is how the two lower courts accepted one of the three (3) valuation reports tendered in evidence when all were prepared by the same valuer. The first valuation report prepared in November 2012 placed the value of the property at Three Hundred and Forty-Four Thousand, Five Hundred and Twenty Ghana Cedis (GH¢344,520.00). The second, which was prepared at the time of instituting the action put the property at Five Hundred and Thirty Thousand Ghana Cedis, Four Hundred Ghana Cedis (GH¢530,400), while the third valuation which was done some time in February 2016 stated the value of the property Seven Hundred and Seventeen Thousand, One Hundred and twenty Ghana Cedis (GH¢717,120.00). The Valuer indicated that the initial valuation of Three Hundred and Forty-Four Thousand, Five Hundred and Twenty Ghana Cedis (GH¢344,520.00) was the market value. However, the second valuation, Exhibit "P" was carried out with the view to seeking compensation which accounted for the variation in the figures. He also stated that Exhibit "S" was done to reflect the value of the property as of the year 2016.

35) The valuer further testified that since in compensation valuation,

Several factors are taken into consideration other than just determining the open market value of the property. Therefore, the valuation for compensation purposes would be higher than that of determining an open market value. The trial court thus awarded compensation to the Respondent with the aid of only one of the valuation report tendered by the Respondent. While we find that the trial judge did not err in choosing one of the three valuation reports tendered by the Respondent at the trial, we find however that, the trial judge's failure to give reasons for choosing the highest quantum of valuation by an expert which was affirmed by the Court of Appeal is on the authorities erroneous. We are aware that while a trial court is not bound to accept the evidence of an expert witness, it is obligated to give reasons for accepting or rejecting same whether wholly or partially.

36) In the instant case both the trial court and the Court of Appeal while not in error for relying on one of the valuation reports, ought to have placed on the face of their respective judgments the reasons for preferring one valuation report over the other. As aforesaid, while the settled law is that a court is not bound to adopt the evidence of an expert witness, reasons ought to be given for the rejection or acceptance of the expert evidence and this must be apparent on the face of the record. This position of the law was reiterated by this court in **THOMAS TATA ATANLEY KOFIGAH & BILOLA ROSE ATANLEY KOFIGAH VS. KOFIGAH FRANCIS ATANLEY & REV. FATHER ATSU, SUIT NO. J4/05/2019**dated 22nd January, 2020 where this Court held *inter alia* as follows: ***". . .Particularly, where two experts give contrasting opinions, such as we have in this case, the judge is to decide which expert opinion she prefers and assign reasons for the preference"*.**

37) Similarly, in **MFUM FARMS & FEED MILL LTD. VS. MADAM AGNES GYAMFUAH, SUIT NO. J4/25/2017 DATED 24TH OCTOBER, 2018,** this court held that:- **"*In coming to this understanding, we are not unaware***

of the legal position stated in a good number of respected judicial decisions that, a court is not bound by the evidence by the evidence relating to an expert's opinion such as the surveyor given in this case.

In the instant case, we find no reasons in the judgments of the two lower courts why they preferred the highest valuation in the sum of **Sven Hundred and Seventeen Thousand One Hundred and Twenty Ghana Cedis (Ghc717,120.00)** per Exhibit "S". While we find from the conclusion of the Appellants' statement of case that, they do not have an issue with the order for the compensation to be paid, we notice that they are aggrieved with the failure to order a transfer of the interest in the property in their favour. From the record of appeal, Exhibit "P" was prepared in July 2014 which is contemporaneous with the time the writ of summons was issued on 10th January, 2014. On the balance of the probabilities, Exhibit "P" is more reflective of the value of the property. The value of the property per Exhibit "P" is **Five Hundred and Thirty Thousand Ghana Cedis, Four Hundred Ghana Cedis (GH¢530,400.00).**This figure is in our view a more probable reflection of the value of the property as at the time the action was commenced. We therefore reject the adoption of Exhibit "S" by the two lower courts which was prepared much later in time during the pendency of the action and which the valuer had testified was for the purpose of claiming compensation.

CONCLUSION

14) In conclusion, the appeal by the Defendant/Appellant/Appellant against the judgment of the Court of Appeal dated 29thNovember, 2018 succeeds in part. This means that the judgment of the Court of Appeal which affirmed the decision of the High Court is hereby varied by the setting aside of the quantum of damages awarded in favour of the Plaintiff/Respondent/Respondent by the substitution therefore of an amount of **Five Hundred and Thirty Thousand Ghana Cedis, Four Hundred Ghana Cedis (GH¢530,400.00)** as damages for trespass to the Respondent's house. We make a further order that the

damages ordered shall be paid not later than one month of this order, and upon payment, the Plaintiff/Respondent/Respondent shall yield possession of the house to the Defendants/Appellants/Appellants.

I. O. TANKO AMADU
(JUSTICE OF THE SUPREME COURT)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

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

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