IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2016

CORAM: ANIN YEBOAH JSC (PRESIDING)

BAFFOE- BONNIE JSC

BENIN JSC

AKAMBA JSC

APPAU JSC

CIVIL APPEAL

NO.J4/38/2015

17TH FEBRUARY 2016

KWEINOR TEI KWABLA FORZE E …….. PLAINTIFF/APPELLANT/RESPONDENT
HEAD OF FAMILY TERKPANYA /RESPONDENT
MANYA H/NO. A/A/84. OLD NINGO.

VRS.

NENE KWAKU DARPOH …….. 1ST DEFENDANT/RESPONDENT /APPELLANT
H/NO. D/17A DAHWENYA /APPELLANT

THE LANDS COMMISSION ….. 2ND DEFENDANT
LANDS COMMISSION SECRETARIAT ACCRA

NUMO AWULEY KWAO …….. 3RDDEFENDANT/RESPONDEN
H/NO. D/24 PRAPRAM /RESPONDENT /RESPONDENT

JUDGMENT

YAW APPAU, JSC:

My Lords, the appeal before us is a progeny of a three-pronged action initiated by the Plaintiff Kweinor Tei Kwabla who described himself under paragraph 1 of his Statement of Claim as the head of the Forzie Family of Terkpenya, Old Ningo on whose behalf he sued. The endorsement on his writ of summons filed on 14/02/2007 was as follows:

1. Plaintiff claims against 1st and 3rd Defendants:
   (a) A declaration of title to the vast tract and parcel of land being, lying and situated at TERKPENYA in the Greater Accra Region containing an approximate area of 9404.28 acres more or less and which piece and parcel of land is more particularly described in paragraph 5 of the accompanying statement of claim.
   (b) An order for perpetual injunction to restrain 1st and 3rd Defendants, their agents, assigns, privies, workmen, labourers or any persons lawfully claiming through 1st and 3rd Defendants from having anything to do with the said land, more particularly entering thereto with the purpose of developing or alienating same or doing any act or acts detrimental to the right and interest of Plaintiff in the said land.
   (c) General damages for trespass.
2. Plaintiff claims against 1st and 2nd Defendants:
   (a) A declaration that the plotting of a Vesting Assent (made on the 24th day of February 2005 in the records of the Lands Commission (2nd Defendant) as No. V 4018 and registered as No. Ar. 3036/2005 made in favour of NENE KWAKU DARPOH and OTHERS is wrongful, null and void and of no legal effect whatsoever.
   (b) An order directed at the 2nd Defendant to expunge the registration of the said Vesting Assent from its records.
3. Plaintiff claims against the Defendants for:

(a) A declaration that a lease Agreement executed by Numo Awuley Kwao, the 3rd Defendant herein dated the 10th day of October 2004 plotted in the records of the Lands Commission (2nd Defendant) as No. V 5380 and registered as No. AR 7898/2005 is wrongful, null and void and of no legal effect whatsoever.

(b) An order directed at the Lands Commission (2nd Defendant) to expunge the said plotting and registration of the lease Agreement described above from its records.

All the three Defendants entered appearance to the Writ through separate legal representations. While the 1st and 3rd Defendants defended the actions against them, the 2nd Defendant (the Lands Commission), in its usual way of handling such legal suits against it, failed to defend the action. The trial High Court judge rightly commented on the conduct of the 2nd Defendant in his judgment of 27th October 2011 as follows:

"By way of preliminary remark, it must be noted that the 2nd Defendant (Lands Commission) did not participate in this case, quite apart from entering appearance. Perhaps, as has been their trademark in cases of this nature whereby they are being called upon to cancel and expunge title deeds, they cannot but wait to abide the outcome and the direction of the Court".

The above description of the conduct or usual practice of the Lands Commission in such matters is apt, as it always plays a neutral role after it has created a rift between rival claimants over lands in the exercise of its administrative and/or oversight functions relative to registration of title interests.

The pleaded case of the Plaintiff was that his family; i.e. the Forzie Family of Old Ningo were the beneficial and lawful owners of this large tract of land lying at a place commonly known and called Terkpenya. His forefathers acquired the said land through settlement over three hundred (300) years ago and had exercised ownership over same by the rearing of cattle and farming food crops on same. They had also established forty (40) settlements or sub-villages on portions of the land. He mentioned four (4) of such settlements as Akahie, Namoe, Mglame and Kpobino. Apart from the settlements, they had built a large Dam on the land and also had eight (8) shrines in some of the villages.

However, recently, his attention was drawn to a Vesting Assent made on 24th day of February 2005 and deposited in the records of the Lands Commission (2nd Defendant) as No. V 4018 and registered as No. AR 3036/2005 made in favour of Nene Kwaku Darpoh (1st Defendant) and others.

This Vesting Assent, according to him, was in respect of a portion of his said family land described under paragraph 5 of his statement of claim. He contended that neither his predecessors nor himself or any member of his family has granted any portion of the land to any person or group of persons to warrant the execution of the said Vesting Assent in favour of Nene Kwaku Darpoh (1st Defendant). The said Vesting Assent is therefore wrongful, null and void and of no legal effect whatsoever.

His further contention was that his attention was again drawn to a lease agreement executed by Numo Awuley Kwao (3rd Defendant) dated 10th day of October 2004 plotted in the records of the Lands Commission (2nd Defendant) as No. V 5380 and registered as No. AR 7898/2005, which is also in respect of a portion of his said family land. With regard to this lease also, neither his predecessors nor himself or any member of his family has ever executed any lease agreement or any document in favour of the 3rd Defendant Numo Awuley Kwao. The said lease agreement is therefore wrongful, null and void and of no legal effect. It is as a result of the above averments that he instituted this action against all three defendants claiming the reliefs as endorsed.

The 1st Defendant, who said he was the Chief of Dawhenya in his statement of defence filed on 14/02/2007, denied Plaintiff's claim against him. His pleaded case in brief was that the very land Plaintiff said belonged to his Forzie Family of Terkpenya, Old-Ningo, rather belonged to his family by name the Arden & Darpoh Family of Dawhenya of which he is the head. The 1st Defendant, who amended his statement of defence three times, described the land as forming part of Prampram lands, which shares boundary with Ningo at the Mile 30 post along the Accra-Aflao motor road. He counter-claimed for title to the same land as belonging to his Arden & Darpoh Family of Dawhenya who are natives of Prampram, damages for trespass and perpetual injunction restraining the Plaintiff, his agents, assigns, etc. from entering, using or in any way interfering with his family's ownership and possession or control of the said land, which he described as the Dawhenya/Ladoku lands.

In the subsequent amendments of his statement of defence and counter-claim, the 1st defendant changed the description of the land which he claimed belonged to his family twice. He again changed the name of the land from Dawhenya/Ladoku lands to Arden & Darpoh Family lands. This conduct of the 1st defendant in giving three separate descriptions of his so-called family land in his original statement of defence and counter-claim and subsequent amendments of same on 19/03/2009 and 10/02/2011, made the trial judge in his judgment at page 449 of the 'ROA' to comment thus:

"By 1st defendant's showing, their counter-claim initially related to 9,404.28 acres, the same size of land plaintiff claimed. By an amendment, 1st defendant shifted his claim to 2,616 acres and this size of the land claimed was further reduced to 2,434 acres. Quite clearly, 1st defendant exhibited uncertainty as to the size of the land he is claiming. As the hearing of the case proceeded, the 1st defendant could not stand the gaze of the incredulity of his counter-claim and so he kept on shifting the goal post to avoid failure".

The 3rd Defendant Numo Awuley Kwao who said he is the head of the Awuley Kwao Family of Miotso, Prampram also denied Plaintiff's claim in his statement of defence filed on 22/03/2007. He challenged Plaintiff's claim over portions of the land described in his statement of claim and claimed those lands as belonging to his family. Though he did not counter-claim, unlike the 1st defendant, he was certain about the portions of the disputed land that belonged to his family and gave instances of the exercise of overt acts of ownership and possession by his said family with the consent of the 1st Defendant, all of whom are natives of Prampram. He again made reference to the Jackson Report, which was published in the Gazette Extraordinary (No. 52) of 3rd August 1956, which demarcated the boundary between Ningo and Prampram as lying exactly at the Mile 30 post along the Accra – Aflao motor road. He later tendered this report in evidence in support of his case.

According to this report prepared by the Jackson Commission, which was commissioned by the Colonial Government to demarcate the boundaries between these two settlements including Shai, when a dispute arose as to wherein lies their respective boundaries, lands lying beyond the mile 30 post belonged to Ningo while those before mile 30 belonged to Prampram. A

greater portion of the land that plaintiff claimed in the action falls within the range of mile 22 and mile 30 along the Accra – Aflao motor road.

From the Jackson Report, that portion of the disputed land belonged to the people of Prampram so the 3rd Defendant's contention was that as a Ningo man, plaintiff could not claim those lands as belonging to his family. He also challenged 1st defendant's claim over the same land and contended that 1st defendant's family, which is from Prampram and moved to settle at Dawhenya only owns a small portion of those lands with the greater portion including the whole of Miotso, where the Central University is situated, being his family land.

So in effect, whilst the 1st and 3rd defendants, (all natives of Prampram) agreed with the Jackson Report on the correct boundary between the people of Ningo and the people of Prampram, which according to them was at the Mile-30 post on the Accra – Aflao motor road, they disagreed on the boundary between their respective families; (i.e. the Arden & Darpoh Family of Dawhenya and the Awuley-Kwao Family of Lower Prampram). This was because the 1st defendant had counter-claimed for title to all the lands claimed by the plaintiff, which invariably included 3rd defendant's family land.

So strictly speaking, this boundary issue between the 1st Defendant's Family and the 3rd Defendant's Family was not one of the issues set down for determination by the trial court as it never surfaced in their pleadings. The issues set down for determination in the trial court were as follows:

i) ***Whether or not plaintiff's ancestral family settled on the disputed land well over 300 years ago;***

ii) ***Whether or not 1st Defendant's family that is the Arden & Darpoh family acquired the disputed land by settlement many years ago.***

iii) ***Whether or not the plaintiff is entitled to his claim;***

iv) ***Whether or not the 1st Defendant is entitled to his counter claim;***

v) ***Whether or not the Jackson Report as published in the Gazette in 1956 affected plaintiff's family's occupation of the disputed land;***

vi) ***Whether or not plaintiff's family shares common boundary with Prampram beyond mile 30 or at the site earmarked for the construction of the National Olympic Stadium;*** and

vii) ***Whether or not the two vesting assents prepared by 1st and 3rd defendants are void and should be expunged from the record of the 2nd defendant.***

It was during the cross-examination of one of 3rd defendant's only witness and then the 1st defendants second witness that the issue of the boundary between the 1st defendant and the 3rd defendant cropped up coupled with the fact that 1st defendant had counter-claimed for title to the very land plaintiff was claiming, which as indicated above, happened to include 3rd defendant's family land. Had it not been that development, there would have been no contest whatsoever between the 1st and 3rd Defendants over their boundary as the dispute was mainly between Plaintiff as a Ningo man and the 1st and 3rd Defendants as Prampram men.

The Decision of the trial High Court on the respective claims of the Plaintiff and 1st Defendant

The trial High Court, in its judgment of 27th October 2011, found the Plaintiff's claim against all the defendants unproven. It accordingly dismissed same. In like manner, it found the 1st defendant's counter-claim against the Plaintiff as not worthy of credit and dismissed that also.

The main reason for dismissing 1st defendant's counter-claim was that he had failed to establish the limits of his boundary with the 3rd defendant not withstanding clear evidence on record that his family (i.e. 1st defendant's family) also has land within the disputed area. As for the 3rd Defendant, he did not counter-claim for title to the land he claimed belonged to his family, so there was no onus on him to establish anything as was decided by this Court in the case of ASANTE-APPIAH v AMPONSAH 'alias' MANSAH [2009] SCGLR 90.

Again, from the onset as could be gleaned from the pleadings and the issues agreed on for determination in the application for directions, no issue surfaced for determination concerning the boundary between his family and that of the 1st defendant's family.

The trial High Court, having dismissed all the claims of the Plaintiff against the three (3) defendants and the counter-claim of the 1st Defendant against the Plaintiff, awarded costs of GHc10, 000.00 in favour of the 3rd Defendant against the Plaintiff and another costs of GHc7,000.00 in favour of the 3rd Defendant against the 1st Defendant.

Plaintiff and 1st Defendant's appeals to the Court of Appeal

The Plaintiff, not satisfied with the judgment of the trial High Court, filed a notice of appeal against same to the Court of Appeal on 13/11/2011. The relief sought in the notice of appeal was to set aside the said judgment and enter judgment for the Plaintiff. The grounds of appeal, which were four in all, were:

a) *The learned trial judge failed to give any or adequate consideration to the case of the Plaintiff and thereby erred in law by giving judgment which is against the weight of evidence.*
b) *The learned trial judge misdirected himself on the issue of the burden of proof and thereby erred in law in imposing a higher standard of proof on the Plaintiff.*
c) *Having found that the land claimed by the 1st Defendant falls within the lands of the Plaintiff, the learned trial judge erred in law in not giving judgment for plaintiff as against the 1st Defendant.*
d) *The learned trial judge erred in law by failing to resolve the issues of dispute that arose between the Plaintiff and the 3rd Defendant.*

The 1st Defendant also filed a notice of appeal against the dismissal of his counter-claim on 12/12/2011. The relief he sought from the Court of Appeal was to reverse the judgment of the trial High Court and to enter judgment in his favour on his counter-claim. Like Plaintiff, his grounds of appeal were four and they were as follows:

1) *The judgment of the Court in relation to the 1st Defendant's counter-claim was totally against the weight of the evidence on record.*
2) *The learned trial judge did not adequately consider the case put forward by the 1st Defendant and the Court thereby erred in dismissing the 1st defendant's counter-claim.*
3) *The learned trial judge misdirected himself making wrongful evaluations and findings in respect of Exhibits 1 and 3D6 in favour of the 3rd*

Defendant to the detriment of the 1st Defendant. By so doing, the Court occasioned a grave miscarriage of justice to the 1st Defendant's case.

4) *The award of costs made in favour of the 3rd Defendant against the 1st Defendant was excessive.*

Both appellants; i.e. Plaintiff and 1st Defendant, lost their respective appeals before the Court of Appeal, which affirmed the judgment of the trial High Court in its entirety. The Plaintiff, realising that it was not worth climbing further the appeal ladder, succumbed to the decision of the 1st appellate Court and allowed sleeping dogs to lie undisturbed. He therefore did not appeal against that judgment. The 1st Defendant, however, thought it necessary to go on further. He therefore filed a notice of appeal on 14/07/2014 against the judgment of the Court of Appeal to this Court.

The relief sought by the 1st Defendant in his notice of appeal before this Court was for the judgments of the trial High Court and the Court of Appeal against him to be set aside and judgment entered in his favour on his counter-claim. The grounds of appeal were:

i) *The judgment of the Court of Appeal in dismissing the 1st Defendant/respondent/appellant's appeal is against the weight of evidence on the record.*
ii) *The Court of Appeal did not adequately consider the case put forward at the trial court by the 1st Defendant on record and therefore erred in dismissing the 1st defendant/respondent/appellant's appeal.*
iii) *The Court of Appeal did not adequately consider the evidence of the 1st defendant's witnesses on record and thus erred in its conclusion that the 1st defendant failed to describe the boundaries of his land.*

All three grounds of appeal basically fall under the first ground since 1st Defendant's contention was that both the trial court and the Court of Appeal did not adequately consider his testimony and that of his witnesses in arriving at their respective decisions; meaning the judgment was against the weight of evidence.

In such a situation, the authorities are legion that it is incumbent upon us to analyse the entire record of appeal, taking into account the totality of the evidence on record, both oral and documentary, so as to satisfy ourselves that

on the preponderance of the probabilities, the conclusions of the trial court and the 1st appellate court, are reasonably and amply supported by the evidence adduced at the trial. This is the principle laid down by this Court in several cases including: AKUFFO-ADDO v CATHERINE [1992] 1 GLR 337; TUAKWA v BOSOM [2001-2002] SCGLR 61; ACKAH v PERGAH TRANSPORT [2000] SCGLR 728; ARYEH v AYAA [2010] SCGLR 891.

Again, the circumstances under which a second appellate court like this Court may interfere with the concurrent findings of fact of two lower courts; (i.e. the 1st appellate court and the trial court), are well-established in a long line of cases. Some of these cases are: KOGLEX LTD (No. 2) v FIELD [2000] SCGLR 175; NTIRI v ESSIEN [2001-2002] SCGLR 459; ACHORO v AKANFELA [1997-97] SCGLR 209; SARKODIE v F.K.A. CO.LTD [2009] SCGLR 79; JASS COMPANY LTD. V APPAU [2009] SCGLR 265; GREGORY v TANDOH IV & HANSON [2010] SCGLR 971; MONDIAL VENEER (GH) LTD v AMUA GYEBU XV [2011] 1 SCGLR 466.

Wood, C.J. in the *Mondial case* (supra), cited with approval the dictum of Acquah, JSC (as he then was) in the *Achoro case* (supra) on the position of the law as follows: *"In an appeal against findings of facts to a second appellate court like… (the Supreme Court), where the lower appellate court had concurred in the findings of the trial court, especially in a dispute, the subject-matter of which was peculiarly within the bosom of the two lower courts or tribunal, this court would not interfere with the concurrent findings of the two lower courts unless it was established with absolute clearness that some blunder or error resulting in a miscarriage of justice was apparent in the way in which lower tribunals had dealt with the facts. It must be established; e.g. that the lower courts had clearly erred in the face of a crucial documentary evidence, or that a principle of evidence had not been properly applied; or that the finding was so based on erroneous proposition of the law that if that proposition be corrected, the finding would disappear……It must be demonstrated that the judgments of the courts below were clearly wrong".*

As the trial judge rightly asserted at page six (6) of his judgment which appears at page 442 of the ROA; *"the consideration of issues (i), (iii) (v) and (vi) relates to the determination of plaintiff's claim, to wit; whether or not the plaintiff has any title to the disputed land, whilst the consideration of issues (ii) and (iv) would relate to the determination of 1st defendant's claim, namely; whether or*

not the 1st defendant is entitled to his counter-claim, thus leaving issue (vii) namely, whether or not the two vesting assents are liable to be expunged from 2nd defendant's records for being null and void.

There was therefore no contest between the 1st Defendant and the 3rd Defendant in the trial court. At the end of the day, the trial court dismissed both plaintiff's claim and 1st defendant's counter-claim. The trial court did not grant plaintiff's request that the two vesting assents or leases of the 1st and 3rd defendants be expunged from the records of the 2nd defendant. The 1st defendant's vesting assent made on the 24th day of February 2005 as No. V 4018 and registered in the records of the 2nd defendant (Land Commission) as No. AR 3036/2005 therefore remain intact. The same applied to the 3rd defendant's lease agreement dated 10th October 2004 plotted in the 2nd defendant's records as V 5380 and registered as No AR 7898/2005.

The subsequent affirmation of the trial High Court's judgment by the Court of Appeal on the ground that 1st Defendant could not establish the boundaries of the land he claimed was relative to his counter-claim against the plaintiff but not a dispute between him and the 3rd Defendant as there was no such dispute to be determined by the two lower courts. That judgment did not therefore affect the 1st defendant's vesting assent. So clearly, there was no basis for the 1st defendant's appeal before this Court.

All the arguments canvassed by the 1st Defendant in this Court were just a repetition of his arguments before the 1st appellate court. In fact, he did not demonstrate in any way that the judgments of the two lower courts dismissing his counter-claim, were not supported by the evidence on record.

As was rightly asserted by the 1st appellate court per the judgment of Aduamah Osei, JA at page 802 of the RoA (Volume 2); there is no doubt that the 1st defendant's family owns some land in the disputed area. But as a claimant for declaration of title to land, his action could not succeed unless he leads sufficient evidence as to his title and as to the identity and limits of the land claimed by him: JASS CO.LTD v APPAU [2009] SCGLR 265; TETTEH & Anor v HAYFORD (Substituted by) LARBI & DECKER [2012] SCGLR 417; NORTEY (No. 2) v AFRICAN INSTITUTE OF JOURNALISM & COMMUNICATIONS & Ors. (No. 2) [2013-2014] 1SCGLR 703, apply.

Clearly, as the trial court rightly observed, which observation was concurred by the 1st appellate court, the 1st defendant woefully failed to clearly identify the limits or identity of the land he claimed in his counter-claim, including his boundaries with the 3rd defendant. In one instance, he described his land as sharing a common boundary with the 3rd defendant's family land around mile 27 or thereabout. In another instance, he described his family's land as lying between mile 22 and mile 30 where Prampram shares boundary with the Ningos. In yet another instance, he described his land as sharing boundary with the 3rd defendant's family at mile 30. His witnesses too did not help him on this his alleged boundary with 3rd defendant.

Aside of this failure to clearly identify his boundaries with the 3rd defendant, Exhibits 1, 8, and 8a, which were a court ordered plan and site plans respectively, did not help his case with regard to the correct boundaries of the land he claimed in his counter-claim.

A careful review of the whole record before the Court shows without doubt that the 1st defendant, with the kind of evidence led before the trial court, could not have succeeded on his claim for declaration of title to the land he variously described in his original and amended statements of defence and counter-claim as covering 9,404.28 acres in one instance, 2,615 acres in another instance and 2,434 acres in the last instance. The trial court and the 1st appellate court could therefore not be faulted in coming to that conclusion.

Since both lower courts were ad idem that the 1st defendant's family owns land in the disputed area; the only problem being that 1st defendant could not clearly identify same during the trial, with the dismissal of plaintiff's claim by the trial court and the Court of Appeal, nothing stops the 1st and 3rd defendants who are all natives of Prampram, from meeting to decide positively their boundary between mile 22 and 30, since the two appear to have been working in concert prior to the institution of the present action against them by the plaintiff. It was not for either the trial court or the Court of Appeal to set or demarcate their boundary as that was not an issue before the trial court.

We also want to point out that both the trial court and the Court of Appeal did not disregard the grants made by the 1st and 3rd defendants as recorded in the records of the 2nd defendant (Lands Commission). They (the two lower courts)

again did not state in any way that the vesting assents made in favour of the 1st and 3rd defendants and registered in the records of the 2nd defendant (Lands Commission) were not proper and therefore should be expunged from the records.

Again, the 3rd defendant has not laid claim or challenged grants made by the 1st defendant. He only challenged the 1st defendant's claim to all the lands lying between mile 26 and 30, which included Miotso. He did not say that the 1st defendant has no land in the area. It was the 1st defendant who did not describe properly the land he claimed belonged to his family with certainty and clarity as between him and the plaintiff, thus the dismissal of his counter-claim.

Also, the 1st defendant never made any claim against the 3rd defendant in his counter-claim so the trial court and the Court of Appeal could not have assumed that there was a dispute between the 1st defendant and 3rd defendant to be resolved. The appeal of the 1st defendant to this Court was therefore unwarranted and same is dismissed. The judgment of the Court of Appeal is accordingly affirmed.

Though Plaintiff did not appeal against the decision of the Court of Appeal affirming the trial High Court's dismissal of his claim, he also filed written submissions on 14/07/2015 as if he was an appellant. In his submissions, he was referring to the grounds of appeal that he filed in the Court of appeal as if they were grounds of appeal filed in this Court. We wonder how plaintiff managed to convince this Court to grant him extension of time to file a statement of case in support of a non-existent notice of appeal, since he claimed to have filed the statement of case pursuant to leave granted by this Court on 7th February 2015. As a non-party in the appeal before us, plaintiff's submissions as contained in his statement of case were a procedural aberration. Same is therefore struck-out from the records as unwarranted and a complete abuse of the Court's process.

By way of obiter, I wish to make the following suggestions:

Article 131 (1) and (2) of the Constitution, 1992, makes provision for the appellate jurisdiction of the Supreme Court in both Civil and Criminal matters. It reads:

"131 (1) An appeal shall lie from a judgment of the Court of Appeal to the Supreme Court:

(a) As of right in a civil or criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court or a Regional Tribunal in the exercise of its original jurisdiction; or

(b) With the leave of the Court of Appeal in any other cause or matter, where the case was commenced in a Court lower than the High Court or a Regional Tribunal and where the Court of Appeal is satisfied that the case involves a substantial question of law or is in the public interest.

(2) Notwithstanding clause (1) of this article, the Supreme Court may entertain an application for special leave to appeal to the Supreme Court in a cause or matter, civil or criminal, and may grant leave accordingly".

Part One, Section 2 (1) of the Courts Act, 1993 [Act 459] on the general jurisdiction of the Supreme Court also provides:

"By virtue of article 129 of the Constitution, the Supreme Court is the final court of appeal and has appellate and other jurisdictions conferred on it by the Constitution or by any other law".

Section 4 (1) and (2) of the Act goes on to replicate the provisions of the Constitution under article 131 (1) and (2) on the appellate jurisdiction of the Supreme Court.

By the provisions of the Constitution and Act 459 referred to above; particularly 131 (1) (a) of the Constitution, 1992 and Section 4 (1) (a) of Act 459, which give automatic right of appeal in respect of a civil action that commenced in the High Court, any party at all who loses his/her case in both the High Court and the Court of Appeal, can invoke the appellate jurisdiction of the Supreme Court no matter how frivolous and vexatious the appeal is; provided he/she satisfies the procedural requirements under rule 8 of the Rules and Procedures of this Court [C.I. 16), 1996.

Judging from the frivolous nature of some of the civil appeals that manage to reach this apex court, this particular appeal being one of such appeals, I think it

is high time the suggestion made by the eminent jurist, scholar and author Date-Bah (Dr), JSC on the automatic right of appeal to this Court at Chapter 12, page 254 of his recent invaluable book; 'REFLECTIONS ON THE SUPREME COURT OF GHANA', published by Wildy, Simmonds & Hill Publishing Company, London, England (2015), was given a reflective consideration. He wrote: *"Strategic considerations also suggest that the right of appeal to the Supreme Court should not be automatic. If appeals to the Supreme Court were to be made subject to the leave of the Court, this would enable a sieving process to ensure that only cases presenting substantial issues of law are allowed on appeal to the highest court of the land. Limiting the automatic right of appeal to the Supreme Court should not be regarded as short-changing those whose appeals terminate at the Court of Appeal. Not every appeal deserves to travel all the way to the Supreme Court before justice is done. Some appeals with simple points of law are best finally disposed of in the Court of Appeal. Reform of the law on this issue, therefore, deserves attention".*

The above are words of wisdom from a great jurist like Date-Bah (Dr), JSC, which need serious consideration and re-thinking.

Granted legislative reform to actualize such a suggestion would be a daunting task in the shortest possible time, I would suggest that, in order that precious man hours and labour of justices of this Court is not wasted on frivolous and vexatious appeals, the Records of Appeals (RoA) in respect of cases listed for hearing or determination by this Court be made available to the panel of judges a couple of weeks or a month before the date slated for hearing instead of the current practice whereby such records are submitted to judges only three or four days (including week-ends) prior to hearing dates .

This will enable the justices who are to hear these cases have ample time to digest the records properly before the hearing dates. So that those appeals which do not deserve adjournments for detailed written judgments to be delivered, could be given instant treatment in the form of dismissals. It will also reduce the load of cases that deserve written decisions. In this way, judges of this Court would be able to come out with quality judgments that would stand the test of time as the Court of last resort, taking cognizance of the fact that, in the absence of law clerks to assist in research work, judges have to labour to conduct their own research in the writing of resourceful judgments.

It will also contribute in no small measure, to reducing the number of undeserved review applications that parties who lose before original panels file in this Court, which have now become a norm and have assumed the character of another appeal hierarchy.

I hope this suggestion, which is made in good faith, would be given the needed attention.

(SGD) YAW APPAU

JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE- BONNIE

JUSTICE OF THE SUPREME COURT

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

(SGD) J. B. AKAMBA

JUSTICE OF THE SUPREM

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