IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD 2019

CORAM: DOTSE, JSC (PRESIDING)

BAFFOE-BONNIE, JSC

BENIN, JSC

DORDZIE (MRS), JSC

AMEGATCHER, JSC

CIVIL APPEAL
NO. J4/72/2018

30TH JANUARY, 2019

OSEI YAW ANNING …… PLAINTIFF/ RESPONDENT/ APPELLANT

VRS

STANBIC BANK GHANA LTD. …… DEFENDANT /APPELLANT/ RESPONDENT

JUDGMENT

DORDZIE (MRS), JSC:-

FACTS:

The Appellant herein had been the customer of the respondent bank for a number of years and had been a beneficiary of loan and overdraft facilities from the respondent bank since 2006. The appellant at a point in time defaulted in the repayment of the loan facilities. On 4/11/2011 the respondent commenced an action against him for the recovery of:

(a) The sum of Gh¢ 336,186.55 being the outstanding balance as at 30/9/11 on a term loan the appellant obtained from the bank.

(b) The sum of GHc 316,325.65 being the outstanding balance as at 30/9/11 on an overdraft facility granted the appellant by the respondent. The respondent further prayed for interest on the sums claimed at the prevailing bank rate from 30/9/11 till date of judgment. This suit was commenced at the Commercial Division of the High Court, Kumasi and it is numbered BFS 29/2012.

The High Court presided over by Mensa-Homiah J, gave judgment in favour of the respondent for the recovery of the sums claimed. The said judgment is dated 20th June 2012. The appellant did not appeal against this judgment but instituted a fresh action in the Commercial Division of the High Court, Kumasi, this time presided over by Emmanuel Ankamah J. The said suit is numbered RPC 84/2014.

The appellant prayed for the following reliefs in suit N0 RPC 84/2014:

a) A Declaration that the judgment obtained by the defendant in suit No.BFS 29/2012 dated the 20th day of June, 2012 titled: STANBIC BANK GHANA LIMTED v OSEI YAW ANNING Trading under the name and style THE NEW CHAMPOIN ENTERPRISE was fraudulently and maliciously procured particularly as the plaintiff herein never obtained any overdraft facility of GHc 250,000.00 on 21st August, 2009 and a loan of 150,000.00 on the same 21st August, 2009 as was contended by the defendant during the trial in suit No. BFS 29/2012.
b) An order setting aside the said judgment obtained by the defendant and ALL consequential and incidental orders made thereon by the trial High Court judge in suit N0.BFS 29/2012.
c) An interim order restraining the defendant from in anyway whatsoever enforcing and or purporting to execute the final judgment delivered in suit No. BFS 29/2012 until the final determination of this suit and or otherwise expressly ordered by this court.
d) A declaration that any document executed by the parties herein to the effect that in August 2009 GH¢250,000.00 overdraft facility and GH¢150,000.00 loan facility totaling GH¢400,000.00 attracting 32.70% and 27% respectively were granted by

the defendant to the plaintiff was fraudulently executed as no such event ever occurred.

e) A declaration that the defendant had on the 20th day of June, 2012 fraudulently taken judgment for an amount of money more than it was entitled to in law in suit N0. BFS 29/2012.

The High Court presided over by Ankamah J entertained this suit and reversed the earlier judgment of the same High Court differently constituted, dated 20th June 2012 on ground of fraud.

The respondent dissatisfied with the judgment of E. Ankamah J appealed to the Court of appeal, Kumasi. The Court of Appeal allowed the appeal, set aside the judgment of Ankamah J and affirmed the 20/6/12 judgment of Mensa-Homiah J.

The appellant dissatisfied with the Court of Appeal decision is in this court praying that the Court of Appeal decision be reversed and Ankamah J's judgment of the High Court be restored.

The sole ground of appeal canvassed by the appellant is the omnibus ground that the judgment is against the weight of evidence on record.

It is trite learning that an appellant who relies on this ground of appeal has the duty to demonstrate to the appellate court that there are lapses in the judgment appealed against, correction of those lapses would tilt the scale of justice in his favour. See ***Djin v Musa Baako [2007-2008] 1 SCGLR 686.***

A lengthy statement of case was filed on behalf of the appellant but counsel for the appellant failed to address the lapses the appellant is complaining of in the judgment the subject matter of this appeal.

A preliminary issue which in our view ought to be addressed promptly is whether the writ placed before Ankamah J was competent and whether the High Court had the jurisdiction to entertain same. In the Ankamah J judgment, the judge made findings that the subject

matter of the suit before him was res judicata because the issues before him were determined in Suit N0.BFS 29/2012 by Mensa–Homiah J. He further commented that a dissatisfied party on the first court's decision on the issues before him could only have redress on appeal.

He however decided to entertain the fresh writ which reopens the matter because he alleged the 20th June 2012 judgment was obtained by fraud. How the trial judge came to this conclusion is illogical because it is part of his findings that the allegation of fraud by the appellant was never particularized in the pleadings before him. Fraud is a criminal offence therefore the law requires it is particularized by the pleadings and strictly proved. Order 11 Rule 8 (1) of the High Court (Civil Procedure Rules) 2004, C. I. 47 numerates fraud as one of the matters to be specifically pleaded mandatorily.

The trial judge having made a finding that Fraud was not particularized in the pleadings before him, it follows that he has no reason to retry issues which had already been determined by a court of co-ordinate jurisdiction. Circumstances that legally permit a court of coordinate jurisdiction to entertain a fresh action on an issue which would have been res judicata have been well established by case law. This court in ***DZOTEPE v. HAHORMENE III [1987-88] 2 GLR 681-712*** considered the issue and *held as follows****: "the settled practice of the court was that the proper method of impeaching a completed judgment on the ground of fraud was by action in which the particulars of the fraud must be exactly given and the allegation established by strict proof"***

In BRUTUW v. AFERIBA [1984-86] 1 GLR 25-41 The Court of Appeal also emphasized this position of the law and held: *"But in order to overturn a judgment of a court of competent jurisdiction on the grounds of fraud, the facts alleged to constitute the fraud must be proved to amount to fraud and constitute it. The judgments assailed would be automatically and effectively affirmed on failure to discharge that burden of proof*.

From the judgment of the Court of Appeal which is the subject matter of appeal before us, the court below carefully reviewed the evidence adduced at the trial and found that

the facts alleged to constitute fraud had not been proved to amount to fraud. The findings of the Court of Appeal specifically are as follows:

a) The particulars of fraud alleged in the suit before Ankamah J do not constitute facts that support the alleged fraud and do not give any ground to reopen the case already decided by Mensah - Homiah J.

b) The court further found that the pleadings do not disclose any cause of action and therefore the action should have been struck out.

c) It is a further finding of the Court of Appeal that the appellant failed to lead any credible evidence that the Mensah - Homiah J judgment was procured by fraud. The trial judge erred by relying on transactions relating to 2 cheques which were only questioned by counsel for the appellant through cross examination as evidence of fraud.

These finding in our opinion are well supported by the evidence on record, they are therefore sound and need not be disturbed.

The trial court upon discovering from the pleadings that the issues before him had already been determined by a court of co-ordinate jurisdiction, and that the allegation of fraud was not particularized, he should have exercised the powers given him by Order 11 Rule 18 (1) to strike out the action.

Aside the allegation of fraud by the appellant was not based on any new facts that were not available to him at the trial of suit N0 BFS 29/2012. The institution of a fresh suit is a clear abuse of the court process and that calls for the dismissal of the suit as vexatious and an abuse of process.

The appeal we find has no merit and must fail. The appeal is dismissed accordingly.

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

DOTSE, JSC:-

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

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

BAFFOE-BONNIE, JSC:-

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

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

BENIN, JSC:-

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

A. A. BENIN
(JUSTICE OF THE SUPREME COURT)

AMEGATCHER, JSC:-

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

N. A. AMEGATCHER
(JUSTICE OF THE SUPREME COURT)

COUNSEL

STEPHEN ALEWABA FOR THE PLAINTIFF/RESPONDENT/APPELLANT.

DR. POKU ADUSEI FOR THE DEFENDANT /APPELLANT/ RESPONDENT.