IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- A.D. 2021

CORAM: DOTSE, JSC (PRESIDING)
MARFUL-SAU, JSC
N. A. AMEGATCHER, JSC
LOVELACE-JOHNSON (MS.), JSC
PROF. MENSA-BONSU (MRS.), JSC

CIVIL APPEAL
NO. J4/22/2020

24TH MARCH, 2021

RICHMOND BOAMAH BERIMAH …… PLAINTIFF/RESPONDENT/RESPONDENT

VRS

1.	ALBERT NANOR	……	1ST DEFENDANT
2.	JANET OPOKU	……	2ND DEFENDANT/APPELLANT/APPELLANT
3.	PASTOR DAN CATO	……	3RD DEFENDANT/APPELLANT/APPELLANT

JUDGMENT

PROF. MENSA-BONSU, JSC:-

The events that have given birth to this case evoke the wise observation of the Scottish poet Sir Walter Scott,

"Oh what a tangled web we weave,

When first we practice to deceive."

This case involves a dispute about the ownership of landed property between a husband and wife and the social fallouts from the economic difficulties that have afflicted the nation over the past forty odd years, leading couples to adopt all manner of strategies, including 'distance marriages' to secure their economic well-being and the survival of their families. The cultural assumptions underlying notions of marriage in Ghana, in which a woman is dependent upon her husband, and the husband is the one who has the means to acquire landed property which may be held solely in his name, have come under some strain. In consequence of such assumptions, ownership of, and title to landed property held in the wife's name is seen as a deviation from the normal, and often interpreted through such cultural lenses as having been conferred by the husband. These assumptions have come under stress from several angles following the economic independence that many women now enjoy. Nowhere is this more evident than in the issues thrown up by the phenomenon of migrant workers involved in international migration. In this paradigm shift, the relationship between husband and wife is less one of hierarchical dependency and more of equal partnership. Usually in relationships involving "distance marriages' there is division of labour as the balance of economic power shifts to whichever party earns foreign currency, whilst physical representation in the jurisdiction is conducted by the one who is home-based. Such is the measure of trust that the "absentee spouse" must repose in the home-based one that there would be faithful execution of plans and projects agreed upon, that when this trust is abused or betrayed by either party, then many difficult issues arise.

Some of these old cultural assumptions have been brought to the fore by the facts of this case, giving rise to the difficulties that confronted the courts when a husband, upon divorce, brought this action in the High Court for, inter alia, a declaration to title of a house standing in the name of his wife, and upon the wife's counterclaim for declaration of title already standing in her name. Upon these simple facts, the difficulties in unravelling the true facts of the case have been tremendous, admittedly caused in no

small measure by the lack of candour of the parties, particularly the Plaintiff. These difficulties led the High Court to hand down a decision on 1st February, 2010, that dismissed the Plaintiff's claims as well as the Defendant's Counterclaims, leaving neither party the winner, and the landed property, therefore, "ownerless". Unsurprisingly, this decision immediately came under attack, requiring further intervention by appellate courts for the parties to be able to make sense of the outcome of the case. The wife filed an appeal against the dismissal of the Counterclaim but the husband did not cross-appeal. However, in a unanimous decision of the Court of Appeal, dated 6th June, 2013, the Court upheld the dismissal of the Counterclaim by the High Court, and proceeded to grant the reliefs which the husband had been unable to prove in the High Court, and to make further Orders accordingly. This decision of the Court of Appeal has resulted in the instant appeal before this honourable Court.

BACKGROUND

The Plaintiff /Respondent/Respondent (hereinafter 'Plaintiff') brought action in the High Court against his former wife, the 2nd Defendant claiming title to landed property acquired during the course of their marriage. The cast, in the ensuing drama, was made up of the following: Plaintiff was the husband; the 1st Defendant was a tenant to whom the property had been rented for a period of five years (however, there was sometimes confusion on the pleadings as to who was the 1st and who was the 3rd Defendant); the 2nd Defendant was the Wife; and the 3rd Defendant was the Wife's Attorney, who, having been given a Power of Attorney by the Wife, had, on the strength of that authority, signed the Tenancy Agreement on behalf of the Wife. On account of these facts, any mention of 'Defendant' would be a reference to 2nd Defendant, who, either by herself or through her Attorney, the 3rd Defendant may have done some act. However, where appropriate, the particular Defendant would be specified. The 1st Defendant dropped out after the trial court stage and so is of no moment in these appeals.

The Plaintiff commenced action in the High Court, Accra, on 16th June, 2008, for the following reliefs:-

"(a) A declaration that the plaintiff is the bonafide owner of House No. KW/B/7 (House No. 6 Kwabenya)

(b) An order terminating the purported Tenancy Agreement entered into between 1st Defendant as Attorney of 2nd Defendant and one Pastor Cato, 3rd Defendant.

(c) An order revoking or cancelling the purported registration of the alleged title of the 2nd Defendant in the Land Title Registry.

(d) A declaration that the Tenancy Agreement between the 1st Defendant and the 3rd Defendant is null and void and of no effect whatsoever.

(e) An order compelling the 1st [sic] and 2nd Defendants to give vacant possession of the property to the Plaintiff.

(f) An order compelling the 1st [sic]and 2nd Defendant to pay over to the Plaintiff all the rent paid by the 3rd Defendant in respect of his occupancy [The Plaintiff must have meant 2nd and 3rd Defendants and not 1st and 2nd Defendants.]

(g) An order for perpetual injunction restraining the 2nd Defendant her attorney, servants, assigns and all who claim through her from dealing with or interfering with the plaintiff's property the subject matter of the suit.

The 2nd and 3rd Defendants also **counterclaimed** for :-

"(a) A declaration of title to the said piece or parcel of land in dispute with building thereon consisting of all that piece of parcel of land in extent 0.10 hectare (o.24) of an acre more or less being parcel No. 21 Block 25 situate at Kwabenya in the Greater Accra Region of the Republic of Ghana aftersaid as delineated …

(b) Declaration that the 2nd Defendant herein purchased the piece or parcel of land in dispute from Kofi Kodua Sarpong for her own self as a self-acquired property covered by a Deed of Assignment witnessed by the Plaintiff herein as a witness and not as a party to the sale transaction.

(c) Declaration that the plaintiff herein is estopped per estoppel by conduct and estopped per deed from claiming interest in the piece or parcel of land in dispute

(d) General damages for trespass, intimidation, threats, convenience and embarrassment

(e) An order for perpetual injunction to restrain the plaintiff and his agents, assigns, heirs, workers, followers and privies from interfering with the land in dispute.

(f) An order for interest at the prevailing bank rate up to the date of payment"

The issues being thus joined, the matter came to trial. The Plaintiff alleged in his Statement of Claim that he was the owner of the property, having acquired it by assignment from his childhood friend a Dr. K.K. Sarpong, then Deputy Chief Executive of the Cocoa Board. The indenture was dated 30th December, 1996 and it was "signed" by 2nd defendant and witnessed by he, the Plaintiff. He stated that the time he took the assignment in his wife's name in December, 1996, she i.e 2nd Defendant, was outside the jurisdiction, having left Ghana to settle and work in Germany, at his instance. He further claimed that in 1998, his wife sold the property to him under a Sale Agreement dated 24th July 1998, and that the purchase was done and paid for by a loan he contracted from his employers, Cocoa Board under the Staff Housing Loan Scheme. The 2nd Defendant denied knowledge of any such sale transaction. Evidence was found that at the time of the supposed sale by 2nd Defendant and purchase by Cocoa Board on behalf of 1st Defendant, 2nd Defendant was not in the jurisdiction. The Witnesses to the signatures were one Abena Asafo-Adjei and Kofi Opoku, the deceased father of 2nd Defendant. The Plaintiff admitted cooking up the supposed indenture himself, in which he purported to transfer 2nd defendant's interest in the property to himself. Indeed, there was evidence that it was the third such document he created at the time, but his explanation was that he did not use the others "for anything". 2nd Defendant claimed that she while in Germany, she sent money to Plaintiff to build the property which was subsequently

registered in her name; and that as signatory to the conveyance as 'Witness', Plaintiff was estopped from claiming ownership of the property.

At the end of a lengthy trial at the High Court, the Plaintiff's case was dismissed. Surprisingly, the 2nd Defendant's Counterclaim was also dismissed. The High Court made the following Orders:

> *"1. The Plaintiff has failed to establish his right to reliefs of declaration of title and an order compelling the 1st and 2nd defendants to give vacant possession of property to the plaintiff and the right to rent paid by 1st defendant for the occupancy of property.*
>
> *2. The defence (2nd and 3 Defendants) have also failed to establish their right to the counterclaim for declaration of title to the property in dispute, and a declaration that 2nd defendant purchased the property from Dr. K.K. Sarpong. Similarly, they have failed to establish their right to reliefs 3, 4, 5, and 6 in the counterclaim.*
>
> *3. It is ordered that the Land Title Registry shall cancel the title to the disputed property, which it has wrongly registered in the name of the 2nd defendant.*
>
> *4. It is declared that the Tenancy Agreement between 1st and 3rd defendants is null and void.*
>
> *5. The 1st Defendant is a bona fide purchaser (tenant) for value without notice, he shall remain in occupation until the expiration of the term agreed on.*
>
> *6. No order as to cost."*

These Orders of the High Court, dismissing the Plaintiff's claims and the 2nd Defendant's Counterclaims all at the same time, created a measure of confusion, as it had the effect of leaving neither party as the owner of the property. Immediately thereafter, the Plaintiff filed for a Review of the judgment in the same High Court. The 2nd Defendant filed affidavit in opposition, but immediately proceeded to file an appeal at the Court of Appeal to contest the dismissal of her Counterclaim. There does not appear to be any further development with Plaintiff's request for Review on the record, but it must have been abandoned in favour of the appeal.

The Defendants filed as many as 20 grounds of Appeal to the Court of Appeal, including the omnibus ground of "The judgment is against the weight of the evidence." Seeing how many specific grounds had been filed, the omnibus clause must have been a mere precaution, but it ended up being the sole ground relied on by the Court of Appeal. The Court of Appeal clustered 18 of the 20 grounds of appeal as being determinable under the omnibus clause, "the judgment is against the weight of evidence" and thereby, disabled itself from subjecting the evidence to proper scrutiny.

Court of Appeal reproduced evidence of Mr. K.K. Sarpong

> *"'My house shares boundary with that particular house, the land on which the said house is situate was given by me to Boamah and during the construction of the house that was when I had started my own house and Mr. Boamah being my very good friend, in fact I will say my errand man when I was then the Boss of Cocoa Board and benefitted significantly. I gave him blocks, sand, cement and wood for roofing of the house and in fact during the final stages, all the inside works being wardrobes and kitchen fittings were paid by me …'*
>
> *According to Sarpong they found usage of the wife's name as the best and most convenient strategy. Hence the making of*

the transfer of his property in the 2nd Defendant's name and plaintiff presenting her as his vendor to the Cocoa Board".

It concluded *"So it is safe to make a finding that the property was transferred into the 2nd Defendant's name only for the purpose of enabling the Plaintiff to get funds to complete the property."* Having come to that conclusion, the Court of Appeal declared the Plaintiff owner of the property, asserting that the 2nd Defendant's contention that the property was given to her by way of advancement was "unsustainable", and had been rebutted. Therefore there was a resulting trust in favour of Plaintiff as beneficial owner. It, consequently, ordered the cancellation of the Land Title Certificate standing in the name of 2nd Defendant and made an order for recovery of possession to Plaintiff.

The Defendants have brought this further appeal to this honourable Court, virtually repeating all the grounds filed before the Court of Appeal, to contest the judgment of the Court of Appeal.

The Defendants/Appellants filed the following 19 grounds of Appeal, but ended up arguing 18 as the 19th ground envisaged the filing of further grounds of appeal. No further grounds were filed, consequently that ground must be struck off, leaving 18 grounds. It must be noted that some of the grounds, as set down sin against Rule 6(4) of CI 16 as amended which provides as follows:

"(4) The grounds of appeal shall set out concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal, without any argument or narrative,…"

As has been observed in a large number of cases such as *West Laurel Co* v. *Agricultural Development Bank* [2007-2008] 1 SCGLR 556; *Smith* v. *Blankson (substituted by) Baffor and Another* [2007-2008] 1 SCGLR 374 at p.381; *Gregory* v. *Tandoh IV and Hanson* [2010] SCGLR 971; and

International Rom Ltd (No1) v Vodafone Ghana Ltd & Fidelity Bank [2015-2016] SCGLR 1389, grounds of appeal couched in verbose or argumentative form sin against rule 6(4). As has been observed by Sophia Akuffo JSC (as she then was) in *Smith* v. *Blankson* (supra) at p.385, "It is not by lengthy words and paragraphs that a bad case can be transmuted into a good one. The only ends served by such protracted pleadings is to waste the court's time and, at times, confuse the issues…"

A failure to observe this rule may have serious consequences for the fortunes of an appeal as the offending grounds are liable to be struck out. Indeed, in *International Rom Ltd (No1) v Vodafone Ghana Ltd & Fidelity Bank* (supra), Akamba JSC speaking for the Court decided to deal decisively with these infractions against Rule 6(4) and stated at pp 1400-1401 as follows:

> *The governing statute or instrument for mounting an appeal to this court is the Supreme court Rules, 1996 (CI 16). Do the grounds stated (supra) constitute grounds of appeal as envisaged by our relevant rules i.e. under CI 16? … The first defendant's so called grounds of appeal juxtaposed with the above requirement reveals an obvious non-compliance with the rules of court. Undoubtedly, it is only in an atmosphere of compliance with procedural rules of court that there would be certainty and integrity in litigation. All the so-called grounds of appeal filed by the appellant are general, argumentative and narrative and to that extent non-compliant with rule 6(4) and 5 of the*

supreme court Rules, 1996, (CI 16) They are struck out.

In like manner we deprecate the practice of repetitive grounds couched with narrative. Fortunately, for the Appellant, this would not have any adverse consequences upon the appeal, and we accordingly strike out grounds 3, 4, 6, 8,10, 12,14,15,16 and 17,which could have been set down as one ground.

GROUNDS OF APPEAL

1. That the Honourable Court of Appeal erred when they failed to appreciate that once trusteeship or resulting trust is based on fiduciary relationship the acknowledged criminal conduct of the Plaintiff/Respondent could not create a relation of trust.

2. That the Honourable Court of Appeal as a Court of Equity and justice erred in failing to place proper premium on the criminal acts of the Plaintiff/Respondent such as manufacturing of several different types of Deed of Indentures where the same person was signing Deed documents for both seller and purchaser and witnesses in the same document.

5. That the Honourable Court of Appeal erred in failing to realize that the Plaintiff/Respondent who had been convicted already of contempt of court for his infractions over the same property in dispute could use the instrumentality of trust to compel the former wife to hold the property in dispute in trust for the Plaintiff/Respondent herein contrary to law, equity and good conscience.

7. That the Honourable Court of Appeal erred when they forgot to apply the recent Supreme Court case of Mensah vrs Mensah 2013 which made the wife a joint owner of any properties acquired in the course of marriage between two parties who had 3 boys one died remaining 2.

9. That the Honourable Court of Appeal erred in failing to realize that after the Plaintiff/Respondent had made written admissions that the property in dispute belonged to his former wife whose name bore ownership of the property, he should be estopped from changing his earlier declaration that the property belonged to Janet Opoku.

11. That the Honourable Court of Appeal erred when they ordered that completed registration of the house in dispute under the Land Title Registry which had been initiated by the Plaintiff/Respondent herein should be cancelled and changed in favour of the Plaintiff/Respondent herein.

13. That the Honourable Court of Appeal erred when they failed to realize that the long period of time the former wife Janet Opoku had occupied the property in dispute putting in her tenants should have persuaded the Honourable Court to let long possession reside in the 2nd Defendant/Appellant herein as bona fide owner of the property.

15. That the Honourable Court of Appeal erred when they failed to appreciate that the date of the CMB loan in 1998 shows that it had nothing to do with the acquisition of the property in dispute and that having the loan had nothing to do with the purchase of the property in 1994/96, the two are completely different transactions.

18. That the judgment is against the weight of evidence

Finding that some of the grounds were related and could be argued together, Counsel merged Grounds 1, 2, 3, 4, 5, 6, 11 and 13 and argued them as 1, leaving Grounds: 7, 8, 9, 10, 15 and 18 to be argued separately. However, a further examination of the substance of the grounds meant that grounds 12 and 14 could be added onto the cluster of grounds. This judgment would therefore treat the grounds of appeal in the same manner, and merge other related grounds as well..

The gravamen of the Defendants' complaint is that

> *"the substance of the Court of Appeal Judgment revolves around the concept of resulting trust and the presumption of*

advancement in relation to the facts of this case. The main issues in this appeal therefore are (1) whether a person can rely on an illegality and fraud to rebut a presumption of advancement and (2) whether the conduct of a purchaser not contemporaneous to the purchase of property works against or for him in rebutting the presumption of advancement.".

In response, the Plaintiff averred as follows in paragraph 1.9 of his Statement of Case :

With respect, Your Lordships, the issue therefore to be resolved in the appeal, as it was before the Court of Appeal, is the respective status of Exhibits 'A' and 'D'; and as succinctly put by the Court of appeal, as between the Plaintiff/Respondent and the 2nd Defendant/Appellant who owns the property?... It can be said that it was Exhibit "A" which gave rise to Exhibit "D". And the evidence is generously provided…"

The 2nd Defendant couches her appeal in the language of the grounds put before the court below. Unsurprisingly, the plaintiff prefers that the issues be viewed in the very narrow manner in which the Court of Appeal condensed all the grounds into one and proceeded to deal with same.

Ground 18.

It is trite law that when this omnibus ground " The judgment is against the weight of evidence" is pleaded, it offers an appellate court the opportunity to subject the entire record to fresh analysis since an appeal is by way of re-hearing. Therefore, even when the sole ground of appeal is couched in that form, the appellate court is enjoined to rehear the case, as a long line of cases on the powers of an appellate court establish. In the oft-quoted case of *Tuakwa* v. *Bosom* [2001-2002] SCGLR 61, Akuffo JSC (as she then was), held at p.65 that,

> *"an appeal is by way of a re-hearing particularly where the appellant, that is the plaintiff in the trial in the instant case, alleges in his notice of appeal that, the decision of the trial court is against the weight of evidence. In such a case, although it is not the function of the appellate court to evaluate the veracity or otherwise of any witness, it is incumbent upon an appellate court, in a civil case, to analyse the entire record of appeal, take into account the testaments and all the documentary evidence adduced at the trial before it arrives at its decision, so as to satisfy itself that on a preponderance of the probabilities the conclusions of the trial judge are reasonably or amply supported by the evidence".*

The point was further made in *Evelyn Asiedu Offei* v. *Yaw Asamoah Odehye Kwaku Gyapong* (Unreported); decision by Supreme Court, judgment delivered on 25th April, 2018 ([2018] DLSC 1. The Defendants' omnibus ground of appeal that the judgment of the Court of Appeal was against the weight of evidence adduced at the trial, opened the way for the Supreme Court to exercise its power of re-hearing the case. Speaking for the Court, Appau, JSC stated the law thus:

> *The authorities are legion that an appeal is by way of rehearing, particularly where the appellant alleges in his notice of appeal that the decision of the trial court was against the weight of evidence. In such a case, it is the duty of the appellate court to analyse the entire record of*

appeal, take into account the testimonies and all documentary evidence adduced at the trial before arriving at its decision, so as to satisfy itself that, on a preponderance of the probabilities, the conclusions of the trial judge are reasonably or amply supported by the evidence on record. And it is immaterial whether the appeal is a second one from the Court of Appeal to the Supreme Court. (Emphasis supplied)

Analysing the entire record means re-examining the facts and evidence on the record. However, it is not a carte blanche for an appellate court to do as it wishes. As the Supreme Court pointed out in *In re Bonney (Decd) Bonney* v. *Bonney* [1993-94] 1GLR 610, the Court per Aikins JSC stated at p 617 :

"Counsel has argued that an appeal is by way of rehearing and therefore the appellate court is entitled to make its own mind on the facts adduced and inferences from them. That may well be so. But what has to be borne in mind is that the appeal court should not under any circumstances interfere with the findings of fact by the trial judge except ***where they are clearly shown to be wrong, or that he did not take all the circumstances and evidence into account, or has misapprehended certain of the evidence, or has drawn wrong inferences without any evidence to support them or he has***

not taken proper advantage of his having seen and heard the witnesses*."* (emphasis added).

Thus a finding of fact as it affected the party who had appealed could not just be shunted aside, and on the ground that all the evidence was being analysed under the single omnibus ground, cause important facts pleaded to be overlooked. In consequence, even though the trial court found that the plaintiff had not been able to prove his case, the Court of Appeal analysed the facts as they pertained to the Defendant's Counterclaim and without a like effort in respect of the Plaintiff's evidence, dismissed Defendant's Counterclaim. If the trial court found that neither the Plaintiff nor the Defendant had met the burden of proof, then dismissing one party's case did not automatically give life to the other's case, without subjecting it to equal scrutiny.

The second appellate court's power to "re-hear" is further circumscribed if the two lower courts have made concurrent findings of fact. Thus the affirmation of the decision of the trial court in respect of Defendant's Counterclaim operated as concurrent findings which have to be treated with circumspection by a second appellate court. What are the powers of a second appellate court when the two lower courts have made findings of fact from which the court differs? Fortunately, this is also a position well-covered by authority; see *Achoro v Akanfela* [1996-97] SCGLR 209; *Koglex Ltd (No 2)* v. *Field* [2000] SCGLR 175; *Obeng* v. *Assemblies of God Church, Ghana* [2010] SCGLR 300; *Gregory* v. *Tandoh IV and Hanson* [2010] SCGLR 971; *Fynn* v *Fynn and Osei* [2013-2014 1 SCGLR 727. In *Koglex Ltd (No.2*) v *Field* (supra), Acquah JSC at p.185 stated the law in respect of instances where such concurrent findings may be interfered with. These are:-:

"(i) where the said findings of the trial court are clearly unsupported by evidence on record;

or where the reasons in support of the findings are unsatisfactory.

(ii) Improper application of a principle of evidence; … or where the trial court failed to draw an irresistible conclusion from the evidence …

(iii) Where the findings are based on a wrong proposition of law …

(iv) Where the finding is inconsistent with crucial documentary evidence on record.

The very fact that the first appellate court had confirmed the judgment of the trial court does not relieve the second appellate court of its duty to satisfy itself that the first appellate court's judgment is like the trial court's also justified by the evidence on record. For an appeal, at whatever stage, is by way of re-hearing and every appellate court has a duty to make its own independent examination of the record of proceedings"

Even more instructive, is the case of *Fynn* v *Fynn and Osei* (supra). In that case, the 1st Defendant, a husband, sold a store building to the 2nd Defendant, and the 2nd Defendant went into possession after she had paid the purchase price. A few months thereafter, the Plaintiff, wife of 1st Defendant, sued both defendants at the High Court for an Order for re-possession of the store claiming she was a joint owner with her husband

and that he had not consulted her in disposing of the property. The husband admitted these facts but failed to attend the trial. The 2nd Defendant contested the fact of joint ownership, claiming that after doing due diligence on the ownership of the property, there was no joint ownership disclosed. She therefore claimed protection as a "bona fide purchaser for value without adverse notice", and therefore counterclaimed for a declaration of title to the disputed property. Both trial High Court and Court of Appeal made concurrent findings in favour of 2nd Defendant (now Appellant) because the evidence showed that the husband had acquired the property by his sole effort. On further appeal by Plaintiff to Supreme Court, it was held dismissing the appeal that as a second appellate court, it would be slow to interfere with the concurrent findings of the two lower courts. As Georgina Wood CJ stated, quoting with approval Dotse JSC in *Obeng* v *Assemblies of God Church, Ghana*

> *"where findings of fact made by the trial court are concurred in by the first appellate court, the second appellate court must be slow in coming to different conclusions unless it is satisfied that there are strong pieces of evidence on record which are manifestly clear that the findings of the trial court and the first appellate court are perverse."*

Again at p 734, citing Dotse JSC in *Gregory* v *Tandoh IV and Hanson* (2010) SCGLR 971 at pp 986-987, she said further

> *"It is therefore clear that, a second appellate court, like this Supreme Court, can and is entitled to depart from findings of fact made by the trial court and concurred in by the first*

appellate court under the following circumstances: -

First, where from the record of appeal, the findings of fact by the trial court are clearly not supported by evidence on record and the reasons in support of the findings are unsatisfactory;

Second, where the findings of fact by the trial court can be seen from the record of appeal to be either perverse or inconsistent with the totality of evidence led by the witnesses and the surrounding circumstances of the entire evidence on record of appeal;

Third, where the findings of fact made by the trial court are consistently inconsistent with important documentary evidence on record;

Fourth, where the 1st appellate court has wrongly applied the principle of law (see Achoro v Akonfela) … the second appellate court must feel free to interfere with the said findings of fact in order to ensure that absolute justice is done in the case."

From these cases it is clear that even though the burden of this honourable Court as a second appellate court is increased when, to do justice, it must review the concurrent findings, there are good circumstances when that would be the only proper course.

ANALYSIS OF GROUNDS OF APPEAL

Grounds 1, 2, 5, 6, 11.

In sum, these grounds, read together, maintain that Plaintiff was using his own criminal acts of fraud and forgery to support his claim to the property.

In ground 1, Defendant contests the basis of the holding in the Court of Appeal that no advancement had been proved and so there was a resulting trust occasioned by the facts of the case.

ADVANCEMENT AND RESULTING TRUST

What are the principles of advancement and resulting trust? These principles sound in equity and come into play when there is evidence to the effect that a father or husband who had acquired property in the name of his child or wife meant it as a gift to that person. The rule is based on the obligation of a husband to provide for a wife or a father for his child, and the resulting relationship of dependency that is presumed to exist between a husband and wife or father and child; see *Bennet* v *Bennet* (1879) 10 Ch. D. 474. On account of the presumed dependency of a wife on a husband, it is not applied in the converse situation when the supposed gift moves from a wife to a husband or the child to a parent.; see *Harrison* v *Gray Jnr* [1979] GLR 330; In Ghana, it has been held not to extend to the gift of a man to his mistress, see *Ussher* v *Darko* [1977] 1 GLR 476.

'Advancement' is, however, a presumption that can be displaced by evidence, but the burden of displacing the presumption lies on the one who contests it. In *Richards (Juliana*) v *Nkrumah* [2013-2014] 2 SCGLR 1577 the applicability principle as between father and child was in issue. The facts were that in 1987, a father purchased a plot of land as trustee for and on behalf of three infant children. The transaction was evidenced by an indenture exhibited at the trial. The father later constructed a hotel and other developments on the land which he operated himself. Some years later, he married the Appellant. When the man died in 2005, the Appellant sought to list the hotel as part of his estate for Letters of Administration. The Plaintiff/Respondent claimed declaration of

ownership of the house vested in himself and his brother, but the Defendant/Appellant contended that by his conduct and other dealings with the property subsequent to the purchase, the presumption of advancement in favour of his infant children had been rebutted. Trial judge found for Plaintiff and Defendant unsuccessfully appealed to Court of Appeal. On further appeal to Supreme Court, the court, speaking through Akamba JSC, held dismissing the appeal that "the law is settled that when a father obtains a conveyance in the name of his child, the presumption is that of advancement in favour of such a child". Citing *Snell's Principles of Equity* (25th ed.) at p 168, he stated at p.1585 of the report,

> *"The acts and declarations of the parties before or at the time of the purchase, or so immediately after it as to constitute a part of the transaction are admissible in evidence either for or against the party who did the act or made the declaration subsequent acts and declarations are only admissible as evidence against the party who did or made them, and not in his favour."*

The court considered whether there was evidence to rebut the presumption of advancement, and quoting with approval *Sasu-Twum* v. *Twum* [1976] 1 GLR 23, restated the law that " *the party who disputed the presumption of advancement had the burden of rebutting that presumption, which rebuttal evidence "must be strong, such as a contemporaneous – not subsequent declaration or act of the father manifesting a clear intention that the child was to hold as a trustee*".

The principle, then, is that where a plea of advancement fails or is displaced, a resulting trust arises. The learned authors, Michael Haley and Lara McMurtry, in *Equity & Trusts*, Sweet & Maxwell, London, 2017, chapter 9, expound on the principles of advancement and the circumstances under which the presumption would be displaced and a resulting trust presumed. It is displaced where: (i) in the circumstances of apparent gifts, including where there is a voluntary financial contribution in respect of the acquisition of the property or a voluntary transfer of the property, there is no indication as to how the

equitable title is to be held; (ii) parties have contributed to acquire property and the contributor did not intend to make an outright gift of the contribution, but that they should hold a proprietary right proportionate to the value of the contribution; and (iii) where it cannot be established that the transferee was to hold the property beneficially, a resulting trust is implied by law to return the property to the transferor. This means that when a party successfully establishes by evidence, that although the property was acquired in the name of the child or wife it was not meant to be a gift to the person, but the intention was for the person to hold it in trust for the party who acquired it, then the party in whose name the property was acquired would be the legal owner, but holding it under a resulting trust for the beneficial owner, i.e. the party who acquired it.

The operation of the principle of 'resulting trust' is well explained in the case of *In re-Korangteng (Deceased); Addo* v *Korangteng* (2005-2006) SCGLR 1039. The facts were as follows: During their lifetime, two uterine brothers, Addo the senior, and Korangteng the junior brother, settled in Agona Swedru and Asamankese respectively, where they carried on their trading business. In 1971, Addo negotiated with United Africa Company (UAC) for the purchase of real estate at Agona Swedru. The property cost ¢9,000, and a receipt was issued in his name. In 1972, the parties entered unto a formal deed of assignment, but it was co-executed with the junior brother Korangteng, upon the election of Addo. The Deed of Assignment was subsequently registered at the Deeds Registry. Addo predeceased his junior brother Korangteng. After the death of Addo, his son, the Defendant, took over his father's interests. However, upon the death of Korangteng, Plaintiffs as administrators of his estate, sued the son of Addo for a declaration of ownership, an Order for account of all rents received by Addo's son and perpetual injunction. The Defendant pleaded that it was his father who was the real owner of the property, and that in his lifetime he had made a customary gift of the disputed land to him. The trial judge accepted the Defendants version of events as more credible than the Plaintiffs', and ruled in his favour. The Plaintiffs appealed and the Court of Appeal reversed the decision, holding that the Plaintiffs' account and witnesses, were more credible than Defendant's, and that the Deed of Assignment established Korangteng as

the owner of the disputed property. The Defendant brought this appeal to the Supreme Court, contending that upon a true construction of the documents, the junior brother held the legal title to the disputed property upon a resulting trust for Addo, the senior brother, as the beneficial owner of the property.

The Supreme Court held, dismissing the appeal, that the findings of fact as made by the trial judge, were inconsistent with the documentary evidence. Dr. Date-Bah, JSC, speaking for the Court, stated the law on resulting trust at p.1054 thus:

> *"In essence, a resulting trust, in this context is a legal presumption made by the law to the effect that where a person has bought property in the name of another, that other will be deemed to hold the property in trust for the true purchaser. It is a trust implied by equity in favour of the true purchaser or his estate, if he has died. The trust is regarded as arising from the unexpressed or implied intention of the true purchaser. … In the context of this case, the main factual precondition is proof that the beneficiary of the resulting trust advanced the purchase money for the transaction."*

He therefore concluded that on this view of the facts, a resulting trust could not arise since Addo was not the real purchaser, but merely an agent of the purchaser." Thus, there must be evidence that it was the person claiming the property who paid for the property, but that at his election, it was put into the name of the other party as legal owner.

From the authorities, it can be deduced that contrary to the conclusion of the Court of Appeal, the issue of a resulting trust does not even arise in the circumstances of the instant appeal. The Plaintiff admitted in his Evidence-in-chief that the property belonged to the Defendant as evidenced by Exhibit "A". Paragraphs 5-8 of the Plaintiff's Statement of Claim filed on 14th June 2008 strongly make the claim that she had, in fact, sold it to him as evidenced by Exhibit "D", the Agreement of Sale dated 24th July 1998. This claim

is repeated in the Plaintiff's Statement of Case to this honourable Court. At paragraph 1.5 Plaintiff stated: *"We humbly submit that the Ghana Cocoa Board having paid for the property it ceased to belong to the 2nd Defendant (Janet Opoku) and because the property of the plaintiff for whom the Cocoa Board bought the house."*

The Plaintiff thus bases his case on the sale by 2nd Defendant to him, and his own acquisition by purchase from her. Nothing could be more telling than this cross-examination of the Plaintiff:

> Q. The 2nd Defendant is saying that she became owner by virtue of an indenture dated 30th December 1996 and stamped etc.
>
> A. My Lord as at that date, she was the owner but transferred her interest to me on [sic] September 1998.
>
> Q. The 1st Defendant is saying that the 2nd Defendant is the owner because of the indenture of 30th December 1996, what do you say to that
>
> A. My Lord this is not correct because she has already transferred her interest to me since September 1998.
>
> ……. My Lord I was in US until when I came down I went to my house to find out who is staying there. My Lord I went there with my brother and then the brother-in-law of my wife to ascertain who is occupying the house and I met 3rd [sic]Defendant.
>
> Q. Now Mr. Barima, 1st Defendant is also saying that his occupation is lawful and proper in the premises what do you say to that?

A. My Lord he is not correct because my wife interest has been transferred since October 1998 and that is the reason why I am before you, My Lord.

Q. Now coming to 2nd Defendant case, 2nd Defendant is saying that she got the property or the grant from K.K. Sarpong who was given an earlier grant by one Odai Ntow family. What do you say to that or what do you know about that?

A. My Lord she did that in 1996 but after September 1998, she transferred her interest to me

Q. He (sic) is also maintaining that K.K. Sarpong transferred his interest to her and to no one else. What do you say to that?

A. My Lord she transferred her interest to me in September 1998"

Q. Mr. Barima 2nd Defendant is saying you were only a witness to the indenture between her and K.K. Sarpong. What do you say to that?

A. My Lord, Yes I was her witness but she later transferred her interest to me.

0n 6th February 2009, the Plaintiff gave Further evidence-in-chief and stated,

"*After I acquired the land from Kodua Sarpong in the name of my former wife, she later transferred the land to me by Sale Agreement.*

"Q. The transfer you are talking about was it in writing?

A. Yes my Lord it was in writing"

This sale and purchase is the strong pillar on which the Plaintiff's case leans, and so when the pillar crumbles, so must the case of the Plaintiff.

In paragraph 1.16 of the Statement of Case, the Plaintiff states; *"The Defendant/Appellants have been so incredibly inconsistent in their claim in respect of the property in dispute."* With respect, it is rather the Plaintiff who has been inconsistent in his claims. He bases his claim on Exhibit "A" and seeks to undermine what it says on its face by claiming he asked that it be conveyed in her name so that he could use it to raise a loan; He avers in that same paragraph" "*There is no dispute that the claim of the 2nd Defendant/Appellant to the property in dispute is based on the grant by Dr. K.K. Sarpong, PW1, to the Plaintiff/Respondent although made in the name of 2nd Defendant/Appellant and evidenced in Exhibit "A". My Lords this same 2nd Defendant/Appellant says she had nothing to do with the transaction which transferred property into her name.*" At the same time he maintains ownership because he bought it from her and paid for it as evidenced under Exhibit "D" and avers further

> *"Furthermore, the Defendant/Appellants have engaged in approbation and reprobation. (emphasis supplied) That the indenture Exhibit "A" as well as the sale Agreement Exhibit "D" "were executed without any participation whatsoever of the 2nd Defendant/Appellant is not disputed. However, even while relying on Exhibit "A" as giving her title to the disputed property the 2nd Defendant/Appellant is denying transferring her purported interest in the property to the plaintiff/Respondent Exhibit "D" because she did not sign the sale agreement and had nothing to do with it*".

Without even contesting the logic of the claim, is it not rather the Plaintiff who has "engaged in approbation and reprobation"? If a piece of property belongs to one, why should that person go to the lengths to which the Plaintiff went, in order to forge documents to prove a sale to him of that property? Since he claims to own it by purchase, when did he buy it? Was it when he claims to have acquired it from Dr KK Sarpong, or when he claims to have bought it from Janet Opoku with the loan from Cocoa Board? Both cannot be true.

Second, the Defendant has been consistent in her denials and when Plaintiff states that Defendant is relying on Exhibit "A" which she did not sign, but which was signed in her name, while impugning the genuineness of Exhibit "D" which she did not sign because she was not even aware of its existence, Plaintiff accuses her of "engaging in approbation and reprobation". On the evidence, the two documents were not signed by her for two reasons, that were both legally and factually different from each other. From the evidence, the Defendant plainly knew about Exhibit "A", and so there is nothing untoward about it if plaintiff signed in her stead as he could do so as her agent; but did she know about Exhibit "D"? Even if one extended the agency argument, could a principal instruct an agent to sign a document of which he or she is not aware? Could an agent fix a principal with liability for engaging in acts completely outside the scope of that "agency"? We think not. Thus when Plaintiff avers in paragraph 2.1.5 " *My Lords, if the process or transaction upon which 2nd Defendant/Appellant relies on her claim on the property never took place then her claim fails…."* , it is actually more applicable to his conduct. Exhibit "D" was not brought into existence by Defendant, nor by her consent or participation, and so the Plaintiff's efforts to "put something on nothing", must fail.

Again, the Plaintiff claimed that he acquired the property from his friend and classmate, but elected to have it assigned to his then wife. At the trial court, he tried to lead evidence to show that he owned the property. He produced a witness in the person of his friend and classmate as the one who gave him a piece of his land. The explanation of how the indenture came to be in the wife's name was that he wished to use it to procure a loan

under the Staff Housing Loan Scheme, and so it had to be in a name other than his. The witness, Dr. K.K. Sarpong confirmed that he had given the indenture for those reasons. The trial court was unimpressed by the evidence. The 2nd Defendant, the then wife, counterclaimed for a declaration of title. The trial court was unimpressed by that evidence, either. In consequence, neither claim was upheld, leading to the 2nd Defendant filing an appeal at the Court of Appeal to contest the dismissal of her counterclaim. In the Court of Appeal, the evidence was re-analysed and the counterclaim was again dismissed. In the course of reviewing the evidence, the Court of Appeal gave such credence to the evidence of Dr .K.K. Sarpong, that it would be necessary to examine some of his admissions. He stated that he worked at Cocoa Board from 1994-1997 when he took Study Leave. This means that by 1998 when Plaintiff was making up all those documents on the supposed Sale Agreement to secure the loan under the Staff Housing Scheme, Dr. K.K. Sarpong was on study leave, and possibly not in the jurisdiction. Cross-examined on 30th April 2009, he stated thus:

> *"Mr. Boamah was looking for a loan from the Ghana Cocoa Board part of our staff housing scheme* ***to complete the house.*** *The entire parcel of the land was in my name and therefore I decided to assist him by giving the portion on which* ***their house*** *is situated to them. As was required by Cocoa Board at the time, since I was the Deputy Chief Executive, I am very much aware; to get a loan you needed to have property either land or a house that you were ready to buy and the documents or proof of the existence of the house so that you could then access the loan. So what I did was to agree to do the indenture for that portion of the land to be able to take the loan. Mr. Boamah said he could not purchase his own property so, he requested that I do the indenture in the name of the wife to enable him buy from the*

*wife so that **they will use the money** to complete the house (emphasis supplied). That is exactly what happened."*

In the Evidence-in-chief and under cross-examination, Dr K. K. Sarpong persisted in using "give" to Plaintiff, but does not expatiate on the nature of the "give". He does not categorically state that it was a "gift" that he made to Plaintiff. Indeed, he suggests that the plan to take a loan from the Staff Housing Loan Scheme was the only reason he gave the indenture. That cannot be true. Does this mean that, but for the plan to make Plaintiff qualify for the loan, he would not have transferred his interest to him ever – even after development of the land had been begun? His explanation does not quite explain why he executed the indenture on the Assignment when he did, in the first place. On this score, the Defendant alleges that the land was paid for, and that she provided the money for payment through the purchase of a vehicle bought for three thousand "Dutch [sic] marks" and shipped to the Witness, the Benefactor. Although she has no "receipts" to show, she has powerful evidence to back her claim – the Plaintiff's own admission. Plaintiff admits asking her to send "three thousand Dutch [sic] marks (obviously meant "Deutch Marks", which was then the currency of Germany before it adopted the European currency 'Euro'), to the brother-in-law of Dr K.K. Sarpong in the Netherlands for the purpose of purchasing a vehicle to be shipped to him in Ghana. On his part, the Plaintiff admits that the arrangement for transferring the money from Germany to the Netherlands was made, but he does not explain the purpose for which that arrangement was made. In the mangled testimony of 3rd Defendant as Attorney of 2nd Defendant, the issue of the purchase of the car was misrepresented, and so discounted. Counsel for Plaintiff cross-examined 3rd Defendant, a stranger to the events and the relationship between the Plaintiff and Defendant, on his testimony that a car was allegedly sent by 2nd Defendant to the brother-in-law of Mr. K.K Sarpong. The cross-examination below plainly exhibits that confusion:

"Q. Have you seen any Bill of Lading on that so-called vehicle?

A. No. My Lord

Q. She also said in the statement that she also brought money in addition to the car.

Can you tell the court how much was brought and how it was brought? (Emphasis in original)

A. My Lord I cannot tell

The last answer was true, as indeed, no vehicle was shipped to Ghana by 2nd Defendant, because on the evidence, the transaction involved the provision of funds to a third party in a third country for the purchase of the vehicle and eventual shipment to Ghana. In the Plaintiff's Statement of Claim he admits to the transaction, In paragraph 3 of Plaintiff's Reply to the 2nd and 3rd Defendants' Statement of Defence, he averred thus"

"3. In reply to paragraph 10 of the 2nd and 3rd Defendants' Statement of Defence the plaintiff says that he financed the 2nd Defendant's travel to Germany in 1991 to the tune of eight hundred thousand cedis then, and when K.K. Sarpong needed to buy a vehicle from Holland through K.K. Sarpong's own brother-in-law, the Plaintiff asked the 2nd Defendant then a wife of the Plaintiff to transfer three thousand Dutch marks equivalent to eight hundred thousand cedis to Sarpong's brother-in-law. The Defendant therefore did not pay for the land in dispute in cash and in kind as averred by her."

However, because the evidence showed that the transaction alluded to was for transfer of money to the brother-in-Law of Dr. K.K. Sarpong to purchase a car for Dr. Sarpong in Netherlands, whatever the make of the car that was purchased would not be known to either the 2nd Defendant, or her Attorney 3rd Defendant.

Apart from this failure to identify the make of the car beyond 'saloon', the admission of Plaintiff supporting the payment the Defendant claimed to have made, was not undermined in any material sense. Admittedly, paragraph 10 of the Statement of Defence created the impression that a car was shipped to Ghana from Germany, but it was the clarification by the Plaintiff in his Reply that properly explained what had happened. It would seem that had counsel for the Defendant paid more attention to the pleadings, that line of questioning by counsel for Plaintiff would have been challenged. As things stood, Defendant's witness was allowed to answer questions that, truthfully answered, appeared to undermine his credibility. Was Plaintiff, on his pleadings, saying that because the "three thousand Dutch marks equivalent to eight hundred thousand cedis" was the same as how much money it cost him to finance her trip, the money was to reimburse him for funding her trip to Germany? Was the transaction meant as a gift to Dr K.K. Sarpong, who on Plaintiff's evidence had indicated he needed a car bought for him by his brother-in-law? If it was not a reimbursement to Plaintiff, but was sent to the Netherlands at his request anyway, then what was it sent for? The Plaintiff admits to asking her to engage in that transaction, but does not offer any credible basis for making that request to 2nd Defendant, while the 2nd Defendant does so. Of the two accounts, ie ithat of 2nd Defendant, as to her reason for sending the money to the brother-in-law of Dr K.K. Sarpong, and the Plaintiff's admission of the transaction done at his request, but for which he offered no explanation as to purpose, the version of 2nd Defendant sounds more credible. Be that as it may, the Court of Appeal relied on the answers to discredit the 2nd Defendant's story that she paid for the land "in cash and in kind". The land must have been paid for, if it was not a gift – and there is no evidence that it was, even if the assignor was a benefactor. Who paid for it?

Under grounds **2 and 5**, Defendant complains that the Court of Appeal failed to give proper consideration to the acts of Plaintiff which amount to criminal conduct in granting an equitable relief. She avers thus:

2. That the Honourable Court of Appeal as a Court Equity and justice erred in failing to place proper premium on the criminal acts of the Plaintiff/Respondent such as manufacturing of several different types of Deed of Indentures where the same person was signing Deed documents for both seller and purchaser and witnesses in the same document.

5. That the Honourable Court of Appeal erred in failing to realize that the Plaintiff/Respondent who had been convicted already of contempt of court for his infractions over the same property in dispute could use the instrumentality of trust to compel the former wife to hold the property in dispute in trust for the Plaintiff/Respondent herein contrary to law, equity and good conscience.

As to the moral quality of those acts, we cannot but agree with her. The maxim "He who comes to Equity must come with clean hands" is a maxim founded both on morality and common sense. A person seeking to benefit from his own wrongdoing should not be supported by a court to achieve that aim. On the evidence, Exhibit "D" on which the Plaintiff strongly relies as evidence of his purchase of property was a forgery. The plaintiff drew up at least three different versions of the Sale Agreement:

Exhibit 4 – Sale agreement between Plaintiff and 2nd Defendant This had a 'Gladys Opoku' as Witness for 2nd Defendant. It was signed by Plaintiff but with no name in the Witness column.

The stated purchase price was to **" be Twenty Million Cedis (¢20,000,000.00) of which the sum of five Million (¢5,000,000 by way of deposit now paid…".**

Exhibit 5 Another Purchase Agreement between Plaintiff and Defendant this time dated 2nd December 1997 and signed with a signature for 2nd Defendant with an "Abena K. Asafu-Adjei as witness. The Plaintiff had also signed but although there was the signature of a witness, it was by an indecipherable, but done under an official stamp "Cocoa Marketing Co. Ltd……Supervisor, Tema Port" also dated 2nd December 1997. Presumably that indecipherable signature belonged to that official.

Exhibit 6 Another Purchase Agreement between Plaintiff and Defendant. The date was 24th July 1998 and the address used for 2nd Defendant was – House No. KW/B/7 Kwabenya was the address. This one was witnessed by a K. Opoku whose address set down as: P.O. Box 50, Trade Fair, is the same as 2nd Defendant's address on the Building Permit application for the development of the property.

It would appear that Exhibit 6 was the one which eventually wound up being used for the loan application and recognized as Exhibit "D".

What does the criminal law say about documents produced in such a manner? The short answer is that a piece of writing or document is considered a forgery where such writing or document "tells a lie about itself" as to who made it, or altered it after it had been made; when it was made; and where it was made, with the intention that it should be believed as having been so made or altered. Sections158-164 of the Criminal offences Act, 1960 (Act 29), provide for this offence. Section 164 makes Special provisions with illustrations relating to forgery as follows:

> *"(1) A person forges a document if that person makes or alters the document, or a material part of the document, with intent to cause it to be believed*
>
> *(a) that the document or the part has been so made or altered by a person who did not in fact so make or alter it; or*
>
> *(b) that the document or the part has been so made or altered with the authority or consent of a person who did not in fact give the authority or consent; or*
>
> *(c) that the document or the part has been so made or altered at a time different from that at which it was in fact so made or altered.*

(2) A person who issues or uses a document which is exhausted or cancelled, with intent that it may pass or have effect as if it were not exhausted or cancelled, commits the criminal offence of forging the document;

(3) The making or alteration of a document or a part of a document by a person in the name of that person is forgery if the making or alteration is with any of the intents mentioned in subsection (1).

(4) The making or alteration of a document or a part of a document by a person in a name which is not the real name or ordinary name of that person is forgery if the making or alteration is with any of the intents mentioned in subsection (1).

(5) For the purposes of this section,

(a) it is immaterial whether the person by whom, or with whose authority or consent, a document or a part of the document purports to have been made, or is intended to be believed to have been made, is living or dead, or a fictitious person;

(b) a word, letter, figure, mark, seal, or thing expressed on or in a document, or forming part of, or attached to, the document, and a colouring, shape, or device used in the document, which purports to indicate the person by whom, or with whose authority or consent the document or the part has been made, altered executed, delivered, attested, verified, certified, or issued, or which may affect the purport, operation, or validity of the document in a material particular, is a material part of the document;

(c) "alteration" includes any cancelling, erasure, severance, interlineations, or transposition of or in a document or of or in a material part of the document, and the addition of a material part to the document and any other act or device by which the purport, operation, or validity of the document may be affected.

(6) This section applies to the forgery of a stamp or trade-mark in the manner in which it applies to the forgery of a document.

Illustrations

1. A endorses A's name on a cheque, meaning it to pass as an endorsement by another person of the same name. Here A has committed forgery.

2. A is living under an assumed name. It is not forgery for A to execute a document in that name, unless A does so with the intent to defraud, etc.

3. A with intent to defraud, makes a promissory note in the name of an imaginary person. Here A commits forgery."

These acts must be done with one of the following intents under section 159 as follows:

(a) with intent to defraud or injure another person, or

(b) with intent to evade the requirements of the law, or

(c) with intent to commit, or to facilitate the commission of, a criminal offence.

In *Okyere & Anor* v. *The Republic*. [2001-2002] SCGLR 833, the Appellants who had been convicted of forgery of a Will by the Ashanti Regional Tribunal, appealed against the

convictions first to the Court of Appeal where the convictions were affirmed, and then to the Supreme Court. In allowing the appeal, the Supreme Court, per Adzoe JSC at p837 stated that the conviction could not stand because,

> *"The prosecution under Act 29 s 159, must prove that the accused has made or altered a document or part of it with intent to make it appear as genuine and with the further intent to defraud another person or injure another person or evade the requirements of the law or commit a crime or facilitate the commission of a crime …..The definitions also indicate that two alternative intents are contemplated, and the presence of any one of them will constitute the offence of forgery. The intention must be to defraud or to injure another person. The intention to defraud implies the obtaining by false representation of some material or financial gain from someone, while the intent to injure may mean simply that some persons may act to his detriment or loss. … the Prosecution was unable to prove that the accused persons "made or altered the document, with intent that it would be accepted as genuine, knowing that someone is likely to act upon it to the prejudice of someone else"*

An intent to defraud is also explained under section 16. of the Criminal offences Act 1960 Act 29.

> *"For the purposes of a provision of this Act, where a forgery, falsification, or any other unlawful act is punishable if used or done with intent to defraud,* ***an intent to defraud means an intent to cause, by means of the forgery, falsification, or other unlawful act, a gain capable of***

being measured in money, or the possibility of that gain to a person at the expense or to the loss of any other person. *"*(emphasis added)

In this instance, the Plaintiff boldly states that he executed Exhibit "D" in order to qualify to obtain the loan under the Staff Housing Loan Scheme. Thus, in "manufacturing" Exhibits 4, 5 and 6, he was not engaged in a harmless enterprise, but one intended to deceive Cocoa Board and to cause it to grant a loan from its loan portfolio, and thereby deprive it of those loan assets. Should a document manufactured under such circumstances be recognized as genuine, because it was only used to perpetrate a fraud on Cocoa Board? Should a person who makes or "manufactures" documents of such legal import seek the aid of a court of Equity to accomplish the ends for which the forgery was perpetrated? When the Court of Appeal casually accepted the description "family arrangement" to cover what he had done, it did not advert its mind to the legal meaning of those acts both as regards the interest of Defendant and that of Cocoa Board. By those acts of forgery termed "family arrangements", Cocoa Board had been both deceived and defrauded of a part of its loan portfolio.

Further acts of forgery and fraud are admitted by the Plaintiff. How did Plaintiff manage to pick up a cheque from Cocoa Board in the name of 'Janet Opoku' unless he must have misrepresented to Cocoa Board that he had authority to collect a cheque on her behalf? Was the representation true, that he had such authority? Clearly not, as Defendant did not even know about the transaction. Again, how did Plaintiff manage to cash a cheque drawn on a Bank, in the name of Jane Opoku? Did he endorse the cheque to himself by representing to the Bank that the cheque had been so endorsed by Janet Opoku, when that claim was false? Was the 'endorsement' by a signature purporting to have been made by the said Janet Opoku? Certainly something untoward must have occurred or else no Bank, in the course of normal business, would permit a hefty cheque in one person's name (a female) to be cashed by another (a male).

The 2nd Defendant denies ever selling the property to Plaintiff or picking up a cheque from Cocoa Board cashing same and issuing a receipt.

"Q. Do you have evidence as to the payment for the property by you? ..what evidence do you have, evidence in the form of what?

A. Cocoa Board wrote a cheque covering with covering Letter and the receipt of payment from Janet Opoku"

These were all acts fraudulently executed in her name by Plaintiff. The Court of Appeal was in receipt of all this evidence but assented in the expression used by Plaintiff, that it was a "family arrangement". It is unconscionable that the Plaintiff should be supported by a Court of Equity to benefit from his own wrong in this manner. The most benign interpretation of "family arrangement" is that all those acts were done on account of securing "matrimonial property" and not otherwise. If Plaintiff believed the property had been acquired by him and given to his wife would he have maintained under cross-examination, that the Tenancy Agreement executed by 3rd Defendant for 1st Defendant under a power of Attorney from 2nd Defendant as "a fraudulent document because she transferred interest to me on September 1998 and therefore he has no right to enter into any Tenancy Agreement with anybody"? We think not. Having engaged in all these criminal acts, the Plaintiff cannot be allowed to seek any relief in a court of Equity.

Ground 7

7. *That the Honourable Court of Appeal erred when they forgot to apply the recent Supreme Court case of Mensah vrs Mensah 2013 which made the wife a joint owner of any properties acquired in the course of marriage between two parties who had 3 boys one died remaining 2*.

The Court of Appeal is criticized for having failed to apply a binding precedent of the Supreme Court in *Mensah* v. *Mensah* [2012] 1 SCGLR 391. This is not a fair criticism,

since that action was different in kind and quality from the instant one. *Mensah* v. *Mensah* was founded on a Divorce Petition in which the petitioner claimed an equal share of property acquired in the course of a marriage, whilst this case is based on a specific claim and counterclaim to singular ownership of particular property. Judging by the Defendant's own vigorous defence of her Counterclaim, and the Plaintiff's resistance to same, it lies ill in the mouth of the Defendant to make such complaint when she did not plead any but the most strident grounds of "It is mine. Give it to me!" If the Court of Appeal had made any such finding there would surely have been appeals and cross-appeals, because neither party adopted a posture on the pleadings that made it possible for any court, the Supreme Court inclusive, to make any finding of "matrimonial property".

Ground 9

> *9. That the Honourable Court of Appeal erred in failing to realize that after the Plaintiff/Respondent had made written admissions that the property in dispute belonged to his former wife whose name bore ownership of the property, he should be estopped from changing his earlier declaration that the property belonged to Janet Opoku.*

In setting out these grounds, the Defendant was seeking to invoke the doctrine of estoppel by conduct against the Plaintiff. Application of the doctrine has been put on a statutory footing under Section 26 of the Evidence Act 1975(NRCD 323)

ESTOPPEL BY CONDUCT

Under Section 26 of the Evidence Act 1975 (NRCD 323), it is provided as follows:

> "*Except as otherwise provided by law, including a rule of equity, when a party has, by that party's own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon*

that belief, the truth of that thing shall be conclusively presumed against that party or his successors in interest in any proceedings between that party or the successors in interest of that party in proceedings between

(a) The party or the successors in interest of that party and

(b) The relying person or successors in interest of that person.

The tenor of this provision is that a party must have conducted himself or herself in such a manner as to lead the other party into believing the existence of a state of affairs which that party was now seeking to deny. Equity would find it unconscionable that a person should benefit from having created the wrong impression, on which a party may have acted to his or her detriment, and then pulling back when the logical result of that impression created a consequence the party found inconvenient to accept. The principle was clearly set out and explained in *The Republic* v *Adamah-Thompson and Others, Ex parte Ahinakwa II (substituted by Ayikai) (No. 2)* [2013-2014] 2 SCGLR 1396. At p. 1423 Benin JSC explained the operation of the "*doctrine of estoppel by conduct, sometimes called equitable estoppel"* in this manner:

"*estoppel by conduct is a rule of evidence which a party may rely upon in a claim or defence in an action. Thus if it is raised on appeal there must be a factual basis present on the record which the appellate court could accept and found a decision thereon….*

"It is normally founded on fraud …There are five elements to establish in order to succeed in a claim founded on estoppel by conduct.

These are:

(i) the party alleged to be in breach must have made a representation which was false or must deliberately have concealed material facts;

(ii) the party making the representation knew it was false or that he acted negligently or recklessly in not knowing the falsity of the representation

(iii) the other party must have been led to believe the representation was true

(iv) the person who made the representation intended same to be relied upon; and

(v) the other person actually acted upon the representation and has suffered prejudice or loss that cannot be remedied unless the claim in estoppel succeeds"

Under this ground of appeal, as on her counterclaim, the Defendant has pleaded that the Plaintiff is estopped by his own conduct from claiming the property as his. Although the Plaintiff sought to prove that it was he who had acquired the property and then had it assigned in the name of 2nd Defendant, the 2nd Defendant insisted that even if that were so, he had, by his conduct over a number of years, led her to believe that the property was hers on grounds (i) (iii) (iv and (v) as set down by Benin JSC above. She led evidence to show that

1. Plaintiff executed the document in which 2nd Defendant was assigned title, with him signing as 'Witness';

2) He commenced Land Title Registration in her name;

3) Building and other Municipal Permits were in her name

3) Even though Plaintiff claimed Defendant had sold the property to him in 1998, Utility and property rates remained in her name as late as 2006; Questioned as to why this was so, his evidence-in-chief reproduced in his Statement of Case was thus:

> *"2.1.10 "Counsel Now 2nd Defendant is also saying that she had been paying property rate on the property to AMA since 2005 in her name. what do you say to that?*
>
> *Witness: My Lord we left here on 12th June 2003 and I left the house in the care of her junior sister and whiles I was in the US I was sending money home for payment of bills and other things, so maybe she decided to pay in her sister's name while I was not around.*
>
> *Counsel: She said the same thing about electricity bills and so on. What do you say to that?*
>
> *Witness: My Lord I was sending money for all those bills because when we went to the US for the four years, my wife never worked so there was no way she can send money down for payment of bills*.

This explanation by Plaintiff is not borne out by the evidence. All the documents on the land, including municipal permits and Utility Services were taken in the name of 2nd Defendant. The following documents were in the Defendant's name:

- One of the copies of Sale Agreement marked Exhibit D with LVB 8714/98 written on the top right hand corner had a Site Plan attached. It was headed "**Property of Mark Opuku, situate at East Kwabenya, Accra" and signed by M.K. Ayeko and dated 14th June 1995**". (emphasis added)

- Exhibit J Septic Tank Notes was approved by GDA (G a District Assembly as "BP GDA/KWA/574/97 of 14th May 1998 in the name of Ms Janet Opoku.

- Exhibit K - Application from Janet Opoku P. O. Box 50 Trade Fair to construct "A single story building on my plot of Land as per plans attached" Application No. 514/97, A fee of ¢10,000 on Receipt No. BP0036241 dated 19th April 1998 was paid.

- On 11th November 1997 on permit No. X/MIV/KWA/97/61 was issued to Ms Janet Opoku of Box 50, Trade Fair by Ga District Planning Committee to erect a one story residential building. Building permit was eventually issued being the date 14th May 1998 valid till 14th May 2003.

- Exhibit "6" – one of the Sale Agreement Indentures made by Plaintiff had a Site plan attached which was different from the first one marked as being for "Mark Opuku" (supra). This one was signed by H.E. Abruquah and headed "Property for Miss Janet Opoku situate at Kwabenya".

Naturally, Bills for payment and receipts of payments would be in the name on the document with which registration for the service was done, unless a specific request for change is made. By practice, this would be the case, never mind who made the actual payment. From all these statements, it is clear that the Plaintiff was less than candid when he sought to create the impression that the name on those receipts was wrong; and to put the responsibility of the "wrong name" on the receipts on the hapless sister who acted as caretaker of the property in the absence of the couple. It is therefore, an irrestible conclusion that either the plaintiff was unfamiliar with the modes of operation of these external bodies, or he was seeking to hide the state of affairs, because the truth was unhelpful to his case.

Further, in his answer, (supra), he adds that while he was in the US, his wife "never worked" and so she could not be sending money down for the payment of Rates, etc. "*My Lords*" Counsel for Plaintiff concludes, "*the above piece of evidence was never challenged in any way whatsoever".* This is patently untrue. The sister's evidence was that at all material times she believed she was taking care of her sister's property. In any case, the issues in this case arose long before the couple emigrated to the United States, so whether or not Defendant had a job in the U.S. was not material to the ownership of

title to the property. If anything at all, his continuing to pay Rates and other charges in his wife's name for up to eight years after he claimed she had sold the property to him goes more to strengthen the plea of estoppel by conduct, than otherwise.

4) 2nd Defendant's sister (Plaintiff calls her 'junior sister' but in her own evidence she describes herself as 'senior sister') was left in-charge of the property as caretaker when the couple emigrated to USA having won a Diversity Lottery Visa. She had lived with the couple before that time, and at all material times believed she was looking after her sister's property. How had the Plaintiff conducted himself in respect of the property, to give this impression to his sister-in-law? Even more curious would be the answer to the question, "How could the Plaintiff not know that the Witness, the sister of the woman he was married to, for some thirty odd years (1987-2007), was the elder sister of his wife?" On the evidence, this was a family who hailed from the same town as himself, and with whom he had associated closely in the past? The Plaintiff must have had a reason, which did not sit well with his case, to adopt this posture

5) Plaintiff did not appear to have any idea who was managing the property or what had happened to it after 12th June 2003 when they emplaned for the US. He stated that when he returned then he went to the house to "see who was there". It is surprising that the Plaintiff claimed he had been sending money to his sister-in-law for the payment of rates and utilities, but did not know who was living there. These, surely, cannot be the acts of the owner of a house?.

The 2nd Defendant argues that having been in possession that long, the court ought to recognize her as the owner of the property. Properly speaking, this is a claim based on "estoppel by conduct". Therefore, instead of treating it as a separate ground, it would find kinship with the list (supra) of acts that may found a claim in estoppel by conduct under the principles discussed herein.

Grounds 15

Under these grounds, the Defendant contests the claim of Plaintiff as to ownership, or even advancement. This calls into issue the evidence led in support of the counterclaim,

and make a recall of the facts necessary. The Court of Appeal began the analysis of the evidence purporting to support the Counterclaim thus:

> "*The Plaintiff worked with CMC 1981-2003 …It is not clear from the records what work the wife was doing at this time but her case was that she lived in Germany from 1993-1998. …How the 2nd Defendant started building in 1993 as she claimed when the property was transferred to her in 1996 would need some explanation".*

It is no surprise at all that, beginning on such a note of skepticism as to the Defendant's capability to acquire property, the court would conclude that the property belonged to Plaintiff although the trial court had not been able to accept and make such a finding. What was the evidence put forth by 2nd Defendant as proof of her claim?

The record is clear that the parties were married in 1987 until their divorce in about 2007. In 1991, i.e. four years after they were married, they, by mutual agreement, decided to have a "distance marriage", as the woman migrated to live (and obviously, work) in Germany. The man claimed, on his own evidence, that he bought her the ticket that took her to Germany. The husband and children remained in Ghana, and she came home to visit from time to time. These facts may sound strange to the ears of someone unfamiliar with the strategies for survival that many couples have adopted to beat Ghana's difficult economic circumstances, but were, and still are, not so unusual in Ghana. Here, a little contemporary social history on migration would provide some useful background to the otherwise "unusual story". See generally, Mariama Awumbilla, et al*, Migration Country Paper (Ghana)* Centre for Migration Studies, University of Ghana, 2008.

On account of severe economic and other conditions, many Ghanaians left the country, or citing political persecution, fled the country and sought political asylum in Europe and the US in the 1990s. Many Ghanaians found their way to European countries, particularly, Germany, Italy and the Netherlands where they earned a living performing mainly menial and blue collar jobs. So many were they, that some scholars have recommended that

they be considered as a full administrative Region of Ghana, since their numbers compare favourably with the populations of some of the administrative Regions in the country. See studies such as, Takyiwa Manuh, '*An 11th Region of Ghana*?' (2006). The Ghana Academy of Arts and Sciences, Inaugural Lecture Series, Accra, p.105. Many of those who went to Germany settled in the rich port city of Hamburg. They were the 'nouveau riche' of their class, to the envy and admiration of those they left behind. The exhibition of their new economic status led to the coining of the popular term 'Burgher', to describe a sojourner abroad who appeared to have lots of cash at his or her disposal. These ' migrant workers' sent remittances home to close relatives, some of whom may have funded their migration expenses, through friends and acquaintances who had reason to come home on vacation or other family emergencies such as the death of parents or siblings. So attractive was this lifestyle, that many flocked to the premises of embassies seeking visas, and this led to the booming of a new industry in the acquisition of visas, both genuine and fake, and the birth of the 'Visa Contractor'. The current migrant crisis in North Africa and in the Mediterranean Sea as a result of efforts by young West Africans to travel across the inhospitable Sahara Desert, in order to reach Europe is still on the World's agenda, and is in response to the desire of young West Africans to join their compatriots who took the migratory route and appear to have achieved economic success – never mind the reality.

When they desired to acquire landed property, which is the ultimate symbol of success in Ghanaian society, they often had to trust relatives or other third parties to assist them in undertaking the leg-work and other representational activities. It became a matter of some notoriety, that the trust reposed in relatives was so abused that a number of those who eventually found their way home after years of sojourn abroad, discovered to their dismay, that the money they sent home had been misappropriated or stolen by the people they trusted, and that there was no property standing in their name. Soon Money Transfer services as well as real Estate companies were born, whose prime target was the migrant workers, offering them protection for their remittances and security for the property they wished to acquire. The transformation of social life in Ghana by this migration trend of

the last forty odd years needs no argument, as the consequences are all around us in plain sight.

Thus, evidence of a couple who took a decision to join this migration train is not at all strange. What is strange is that a court in Ghana would disbelieve a 'migrant worker' who claimed to have sent remittances home; and demand proof of such remittances, presumably by production of receipts. Would a male 'migrant worker' not have been believed, even without receipts of remittances? We think so. In the trial court, the following exchanges took place when Dr K.K. Sarpong was cross-examined as to the Defendant's claim of sending remittances home to her husband and children:

> *"Q. Did you know that the 2nd defendant when he [sic] was in Germany was working and earning money in Germany*
>
> *A. I Suppose she was working*
>
> *Q. Do you know that the 2nd defendant was paying for everything including the construction of the house in Ghana by monies she was remitting down to Ghana.*
>
> *A. That one I disagree with you. It is not true because I gave lots of materials free of charge for the construction of the property.*
>
> *Q. Dr. what I am saying is that you are not in a position to know remittances which the 2nd defendant sent to the plaintiff*
>
> *A. I agree with you but it is also a fact that I gave those materials on the property and I did not take any money from him."*

Counsel then put it to him that Janet was remitting money but the Court said,

"**The details now of those remittances because you are alleging that, you have to establish it. … provide the details**" (Emphasis supplied).

It is unlikely that many such persons could produce receipts of any kind for remittances sent home.

Whatever, their situation, the Plaintiff and Defendant made the best of their situation and remained a couple; keeping the marriage going; and eventually emigrating to US on a Diversity visa. They had another child in the US although tragically, they lost their eldest child a few days after arriving in the US. The woman claimed that the property was acquired by her while she resided in Germany by sending remittances home, and that she paid for the land given to them by Dr. K.K.Sarpong.

Q. Dr. she is saying that she bought the land from you by a batter system by sending you a car and also paid some cash to you. What do you say to that?

A. She never sent any car to me. Never.

Q. Dr. the portion of land, part of which you gave to the 2nd Defendant, you yourself have you registered you interest in the land or you said you have a larger portion, have you registered it?

A. No, I have not."

He then explained that as a result of litigation between his grantors and the chief of Kwabenya he could not register his property beyond the "Yellow Card"

"Q. Now would you be surprised to learn that the plaintiff has given evidence in this court that it was a family

arrangement and everything was signed by him and then also signed for Janet

A. No I would not be surprised.

The Court of Appeal put a lot of store on the evidence of this witness, but as far as financial transactions between a husband and wife were concerned, he admitted he could not know. How could Dr Sarpong be privy to dealings between husband and wife, however close he was to them? How could he be so sure the Defendant remitted no funds to her husband? Contrary to what the Court of Appeal made of this evidence, it was not of much import, and proved nothing. As to funding the building of a house, it surely takes more than the donation of a few building materials ("blocks, sand, cement and wood") to put up property. At a minimum workmen and other professionals would have to be paid and so evidence from a man who has the experience of building a house and who claims to be a benefactor of Plaintiff, cannot establish or undermine any such evidence of financial outlay for the construction of a building. If Dr. K. K. Sarpong did not fund the entire project, then he could not, with any degree of confidence and credibility, assert that no one else provided the funds for putting up the building. This evidence was thus not worth much in terms of proving or disproving the "remittances".

The important aspect of this evidence, however, is that the construction of the house pre-dated the Indenture that he gave to his friend or "Errand man", as he himself described the Plaintiff, but in the name of the Defendant, the man's wife. The Plaintiff draws the court's attention, in paragraph 2.5.4 of his Statement of Case, to the *"notorious fact" of practice in the cities of Ghana that in 1998 when the Plaintiff/Respondent benefited from the Cocoa Board loan the house in dispute still needed "finishing up" or improvement and he applied the loan for that purpose".* By this statement, the plaintiff, in fact, concedes the fact that the building, however incomplete, was in existence before he applied for the loan. This is further buttressed by the testimony of Dr. K.K. Sarpong which is reproduced in the plaintiff's Statement of case, in paragraph 2.1.4 he restated his position thus, "*I have told the court the fact, there (SIC) were very good friends of mine. I knew Mr. Boamah* ***wanted a loan to complete the house****. (emphasis*

supplied) I was then Deputy Chief who was really in charge of this business. That is all I know and the document I gave was to facilitate that process". Exhibit "A", the Indenture dated 30th December, 1996 in which for ¢5 million old cedis the Assignor, Dr. K.K. Sarpong assigned his interest in a portion of the land obtained from the Odai Ntow family of Teshie to Janet Opoku, and which was stamped on 20th January 1997 at Land Valuation Board, also recites the following in its paragraph 5: "*The property consists of* ***land with building erected thereon*** *(emphasis supplied) as is more particularly described on the site plan…….".* The Indenture evidencing Sale Agreement between Janet Opoku of House No KW/B/7 Kwabenya and Richmond Boamah-Barimah of CMC, dated 24th July 1998 (now proved to be a forgery) also recites:

> *"Whereas…….*
>
> *2. The Vendor has put up a building on the said plot No. KW/B/7 Kwabenya and has offered to sell her interest in the said property for a consideration of the sum of ¢29m cedis the purchase price" purchaser under the agreement agreed to pay 24m cedis as purchase price and*
>
> *3. "The property consists of All that piece of land TOGETHER with* ***completed building*** *(emphasis supplied) situate and lying at Kwabenya-Accra contain an Approximate Area of 90 feet by 100 feet".*

It is thus clear from all these sources that there was a building on the land prior to 30th December,1996, and also prior to July 1998, when the Plaintiff purported to sell the property to himself. The evidence of subsequent activity in relation to the land does not settle the ownership question at all.

Concluding the analysis of the counterclaim, the Court of Appeal stated:

> *Indeed, the 2nd Defendant's counterclaim is for a declaration that the property is for her and that the Plaintiff should be estopped per deed from questioning the ownership of the property. On the evidence we find ourselves unable to so declare having found that the purchase of the land as evidenced in Exhibit A was by the Plaintiff in the name of the 2nd Defendant in circumstances that make the Plaintiff the beneficiary of the property. We therefore endorse the trial judge's findings refusing the 2nd Defendant her counterclaim claiming ownership of the property. In fact, the Record of Appeal supports a dismissal of the whole of the counterclaim of the Defendant as unsustainable*.

Having dismissed the 2nd Defendant's counterclaim in such copious terms, the Court of Appeal, without adverting to the dismissal of the Plaintiff's claims by the trial court, proceeded to confirm the trial court's order to the Land Title Registry, to cancel the certificate issued to 2nd Defendant. The question is whether the supposed weakness in the Defendant's counterclaim strengthened the plaintiff's claims such that there was no need to review the circumstances of the dismissal of the Plaintiff's claims and the denial of his reliefs. This mode of proceeding did great injustice to the case of the 2nd Defendant. The difficulty of the trial judge was obviously because neither party managed to make a singular and convincing claim to title of the property because of the history of the acquisition and its development. That posture, however, left the property "ownerless" and created the urgency of the Plaintiff to file for a Review of the judgment and the 2nd and 3rd Defendant for an appeal.

Judging by the posture and conduct of the Plaintiff, what is more likely is that the indenture (Exhibit A) was put in the name of 2nd Defendant because it was proof to her that her remittances were being used to acquire property for her; and Exhibit "D" was to quietly change ownership in favour of himself. Again, there is no hard evidence that the

money taken from Cocoa Board under the Housing Loan Scheme was in fact, invested in the property. In any case, having obtained the money on the blind side of the 2nd Defendant, it cannot be held against her, that she "sold her interest" to her husband and agent the Plaintiff. To hold otherwise would create a situation where women who are supporting their husbands and children as migrant workers would begin to demand receipts of remittances sent through family and friends. It is common knowledge that remittances are sent through family and friends, sometimes with unhappy consequences, leading to the growth in money transfer services. The courts of Ghana cannot be oblivious of these social developments and discount the story of a migrant woman only because she did not produce any receipts. At least she has one corroborated story of having to transfer "three thousand Dutch (sic) marks to Mr. Sarpong's brother-in-law for the purchase of a vehicle, at her husband's request. This story should at least be indicative of her financial capability while she sojourned in Germany

From the evidence, it is clear that the property became a convenient vehicle by which Plaintiff could deceive his employers and secure a substantial sum of money for his own purposes. This project, he proceeded to execute, when his boss alerted him to the possibility of using property to access a loan from his employers. It is unclear how much he still owes his former employers on the loan he took. The Plaintiff claims to owe his employers on the twenty-four million cedis housing loan that he took as he had not completed payment by 2009. He, however, stated that in 2003, he took all his 'End of Service Benefits' to finance himself and his family's emigration to US on a Diversity Visa. The Cocoa Board must run a strange system, if it does not keep track of loans contracted by its employees.

With the exception of grounds (d) and (f) of the counterclaim, the appeal of the 2nd Defendant is allowed. The judgement of the Court of Appeal is therefore set aside.

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(JUSTICE OF THE SUPREME COURT)

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