IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2021

CORAM: APPAU, JSC (PRESIDING)
PWAMANG, JSC
LOVELACE-JOHNSON (MS.), JSC
HONYENUGA, JSC
AMADU, JSC

CIVIL APPEAL
NO. J4/12/2021

24TH NOVEMBER, 2021

SAVIOUR CHURCH OF GHANA ..... PLAINTIFF/RESPONDENT/RESPONDENT

VRS

1. ABRAHAM KWAKU ADUSEI
2. JACOB ASIRIFI SNR.
3. ENOCH OFORI **... DEFENDANTS/APPELLANTS/APPELLANTS**
4. SETH DWUMFOUR
5. DANIEL MENSAH

JUDGMENT

MAJORITY OPINION

PWAMANG JSC:-

INTRODUCTION

My Lords, this case is not as complicated as it has been presented in the statements of case of the parties since key aspects of the matters in contention have over the past twenty years been settled by final decisions of the courts below us. However, this appeal appears to me to be the first time the facts and applicable law concerning Saviour Church of Ghana will be considered by the apex court. Because the litigation concerning the church seems to be recurring, the judgment we give in this case ought to clarify and settle all issues in dispute between the parties and be devoid of ambiguity. This way, we shall hope to stem any future attempts to re-open this matter on a claim that an aspect of the differences between the parties was not resolved, as is being urged on us in this case.

BACKGROUND OF THE CASE

My Lords, in the course of this judgment, it shall shortly become plain that when everything in this suit is stripped to the bare bones, it is a dispute about which of the two factions of Saviour Church of Ghana is the successor to the Saviour Church of Ghana founded by the late Opanyin Samuel Brako, who was succeeded by Opanyin Isaac Asirifi alias "Dadeako," with headquarters at Osiem in the Eastern Region of Ghana. Is it the Elias Asirifi Asante Faction represented here by the plaintiff/respondent/respondent, or the Abraham Kweku Adusei Faction represented by the defendants/appellants/appellants. For that reason, I shall refer to the parties as "the Elias Asirifi Faction" or "the plaintiff" and "the Abraham Adusei Faction" or "the defendants". The two Factions emerged following the death of Opanyin Isaac Asirifi in 1997 due to causes that are not relevant for our purposes here, leading to series of court cases between them. The cases were consolidated and heard by Gbadegbe J (as he then was) who identified the main bone of contention between the factions to be which faction was the authentic successor to the original church. In the final judgment of the High Court, Gbadegbe JA,(who had by then been elevated to the Court of Appeal bench and was sitting as an Additional High Court judge)dated 10th June, 2003, which was affirmed by the Court of Appeal in their judgment dated 26th February, 2004, it was decided that it is the Abraham Adusei Faction that is

the successor to the original church and that the Elias Asirifi Faction had broken off from the main church and were conducting themselves as a separate entity and no longer belonged to the original church. Gbadegbe JA (as he then was) held as follows at page 4 of his judgment;

"I must say that initially when I read through the several pleadings I conceived of my task in a different perspective in terms of what the parties were claiming and the court's decision thereon but having listened to the evidence and read the same patiently and carefully, I see that my task is lightened by the fact that the evidence on both sides of the divide leave them in no doubt that following the differences which provoked the actions herein the parties herein have for some time now operated differently each with a General Superintendent. Whiles the plaintiffs have accepted the leadership of Abraham Edusei the defendant have accepted that of Elias Asirifi one of the surviving children of the deceased General Superintendent, Opanyin Isaac Asirifi. That this is so is clearly borne out by the evidence and accepted by both parties to the actions herein….. Clearly, in my opinion from the moment that the defendants perhaps out of deference to their conscience and religious beliefs decided to have a new leader in the person of Elias Asirifi they had parted ways from the group, which is led by Abraham Edusei. In my thinking, the defendants by their decision to appoint a new leader and operate separately from the existing church had broken away and cannot continue thereafter to be regarded as members of the Saviour Church of Ghana…..It would appear from the evidence that as a result of the break its members have had nothing to do with the plaintiffs to the extent that its members who held offices that required them to report to the headquarters at Osiem but who are now in the breakaway church have not since done so for reasons which are quite obvious."

My Lords, if the Elias Asirifi Faction had continued on their separate path into the Lord's vineyard and intensified their evangelical activities to win lost souls into their fold as a

separate church, this litigation would have long ceased. Unfortunately, as we have seen in many cases of church schism in Ghana, the litigation between the factions dragged on. The Gbadegbe JA's judgment aside, the other previous cases on Saviour Church of Ghana that are of immediate interest to us in this appeal are a contempt case that went before Asiedu J (as he then was) and another suit that was heard by Ofori Atta J. What happened was that after the Gbadegbe JA/Court of Appeal judgment, the Elias Asirifi Faction who lost did not further appeal to the Supreme Court but in 2007 they went to the Companies Registry to register as a company limited by guarantee adopting the name "Saviour Church of Ghana". This was notwithstanding the fact that Gbadegbe JA at pages 7 to 8 of his judgment granted an order of perpetual injunction against the Elias Asirifi Faction who were defendants in that case when he ruled as follows;

"The evidence before me discloses a certain characteristic of the entity so registered namely its headquarters, which is at Osiem in the Eastern Region of Ghana. It also has a group of persons who are registered as trustees for the purpose of holding land in succession to the first registered trustees of the Saviour Church of Ghana. These attributes in my view are possessed by the entity represented by the plaintiffs herein and I hold that the description Saviour Church of Ghana relates to them and not the defendants.

Having so found, I think that since that entity was in existence prior to the time of the breakaway of the defendants and its members worshipped from the various places of worship in dispute the legitimate inference to be drawn from the admitted evidence is that they belong to the plaintiffs and as such notwithstanding the right to freedom of worship enshrined in the 1992 Constitution, the rights of the lawful owner thereto must be protected by the grant of the injunction sought in respect of the .....Accordingly, I grant an order of perpetual injunction against the defendants, their agents, servants and the like from interfering with the right of the members of the Saviour Church of Ghana to worship in the various places of worship in dispute."

When the Abraham Adusei Faction became aware of the registration of their name by the Elias Asirifi Faction in the Companies Registry, they mounted contempt proceedings against the leaders of the Elias Asirifi Faction for undermining the judgments of Gbadegbe JA and the Court of Appeal. The contempt case was heard by Asiedu J who in a judgment dated 4th February, 2010 found the respondents guilty of contempt of court and imposed a fine on them. They paid the fine without appealing. The next step of the Elias Asirifi Faction was to file a fresh suit seeking to set aside the judgment of Gbadegbe JA alleging that it was obtained by fraud. The Abraham Adusei Faction resisted that action and took an objection on procedural grounds that the suit was an abuse of the process of the court. That case went before Ofori Atta J who dismissed the objection and proceeded to hear and determine the case. The defendants promptly filed an interlocutory appeal against the dismissal of their objection and they were successful at the Court of Appeal which by a unanimous decision written by Dordzie, JA (as she then was), set aside the writ of summons in the case. It was after all this that the Elias Asirifi Faction filed the instant suit using their incorporated entity as the plaintiff.

THE CASE IN THE HIGH COURT

In its statement of claim, the plaintiff presented itself as a church established in 2007 operating throughout Ghana separately and distinctly from the original Saviour Church of Ghana of which the defendants are the registered trustees. The impression is given that the defendants only recently interfered with their religious and spiritual activities hence the suit in court to restrain them. This style of beclouded pleading that obfuscates the actual plaint can confuse the court if care is not taken. This is how the plaintiff pleaded their case;

"STATEMENT OF CLAIM

1. The plaintiff is a religious body, which is a company limited by guarantee incorporated under the laws of Ghana on 6th February 2007, whose nature of business spiritual church are planting, worship of the Lord in spirit and in truth, among others.

2. The plaintiff has branches across the length and breadth of Ghana.

3.The board of directors of the plaintiff are:

a.Ella Asirifi Asante

b.Moses Adjei Kum

c.Peter Kwabena Adjei

d.Matthew Adjei Mensah

e.Emmanuel Dadzie

4.The Defendants are the registered trustees of Saviour Church of Ghana with the sole purpose of holding property in that name. Most of the Defendants reside in Osiem.

5.Indeed the Defendants are not a religious body and cannot function in that capacity.

6.The Plaintiff is the only legal entity recognized by the laws of Ghana to run churches.

7.The Defendants have exceeded their legal mandate and have been using the name of the Plaintiff to do church activities contrary to law.

8.By this illegally, the Defendants are running churches and even plan a convention in the name of the Plaintiff.

9.Unless restrained by the court, the Defendants will use the name of the Plaintiff to deceive the whole world and to achieve their own illegal ends.

10. By reason of the matters aforesaid, the Plaintiffs claim against the Defendants jointly and severally for:

i.A declaration that the Plaintiff is the only one legal entity by that name, who is permitted by law to run churches and to do religious and spiritual activities.

ii.An order for perpetual injunction restraining the Defendants, their agents and assigns from using the name Saviour Church of Ghana for any spiritual and religious activities.

iii.Any further order(s) as the justice of this case demands.

iv.Costs, including lawyer's professional fees.

Going by the above pleadings, the plaintiff admits that the defendants are the "registered" trustees of Saviour Church of Ghana. This registration that was initially done under **Cap 137** has legal effect under the **Trustees Incorporation Act, 1962 (Act 106)**which replaced Cap 137 and is the subsisting legislation on trustees incorporation. The plaintiff says the defendants are not a religious body but admits that they are running churches and are planning a convention except that in the opinion of the plaintiff the defendants are by that engaging inan illegality. The plaintiff however does not plead the particulars of the law that the defendants are in breach of by operating as a church. The company does the unusual thing of setting out in its claim the names of its directors who in fact are the leaders of the Elias Asirifi Faction. This way the directors are personally associated with the suit and become privies of the plaintiff.

In their defence and counterclaim, the defendants state that their right to operate as Saviour Church of Ghana as against the plaintiff and its directors and associates was resolved in the judgments of Gbadegbe JA, the Court of Appeal and Asiedu J and that the plaintiff was only seeking to re-litigate concluded matters. They said that the registration of plaintiff by its directors in the name "Saviour Church of Ghana" was fraudulent and contemptuous so it ought to be cancelled. They averred that the plaintiff had no reasonable cause of action against them. But, in reply to the defence the plaintiff said their plaint in this case is different from those in the earlier cases. At paragraph 9 of their reply the plaintiff stated as follows;

"In answer to paragraphs 16, 17, 18 and 19 of the statement of defence and counterclaim, the plaintiff avers that all the decisions emanating from the Superior Courts of Judicature never determined *the fundamental issue of this plaint as to whether Saviour Church of Ghana has been duly incorporated under the laws of Ghana to conduct religious, spiritual and/or church business."* (Emphasis supplied).

In the reply the plaintiff did not deny that the issues arising from their Faction breaking away from the defendants' church have been settled by three superior courts and those decisions are binding on it. In substance, the new issue from the plaintiff's point of view

was whether the defendants could conduct religious business using the registration under Act 106 and if the defendants were not in breach of the laws of Ghana by doing so. The follow up issue from the pleadings would then be, even if the defendants were in breach of any law, whether that gave a cause of action to the plaintiffs who were no longer members of the defendants' church. What the pleadings portrayed was that the plaintiff herein and the Elias Asirifi Faction are one and the same so the two issues stated above ought to have been set down for legal argument and that should have disposed of the plaintiff's claims since no law was stated to be violated by the defendants' exercise of their constitutionally guaranteed right of association and worship. That was not done and the case made by the plaintiff was tried by adduction of evidence. It was at that stage that the plaintiff presented their actual fundamental plaint which turned out to be completely different and contrary to their pleadings.

At page 354 of vol 2 of the Record of Appeal (ROA) the following occurred when Mr Peter Kwabena Adjei, Director of plaintiff, who testified on behalf of the plaintiff was cross-examined by the defendants' lawyer;

Q. It means that your church you registered was established in 2007?

A. ***That is not true. The church was not established in 2007 but rather registered in 2007 because that was the church Opanyin Isaac Asirifi was General Superintendent*** before he handed over to Eliah Asirifi Asante.

In fact, at page 360 vol 2 of the Record the plaintiff's same witness openly denied that they have formed a separate church. He was asked;

Q. It is you and your group who have rather formed a church, the defendants have not formed any church they are only continuing the church left behind by Isaac Asirifi and that is why you had to do a new registration in 2007.

And he answered thus;

A. ***That is not correct because "Saviour Church of Ghana" is a spiritual church.***

From the above, it is made clear that the church the plaintiff referred to in their statement of claim is not a church they have founded with branches but they meant the original church which according to Gbadegbe JA the defendants succeeded to as their church. So, after exiting the church in 1997 and operating as a separate faction and being recognized as such in the judgment of Gbadegbe JA, the Elias Asirifi Faction are again contending against the defendants that the very same original church belongs to them.

Though Gbadegbe JA had held that the properties of the church are to be owned by the defendants and granted an order of perpetual injunction against the Elias Asirifi Faction, in their evidence in this case they still laid claim to the name and properties of the original church.

At page 364 the following ensued when defendant's counsel cross-examined plaintiff's representative;

Q. I am putting it to you that your entity which *is* (sic) called Saviour Church of Ghana has nothing to do with the defendants' church.

A. That is true. Currently we do not have anything to do with the defendants church but ***they have our properties in their possession and they are also using our name.*** We were all in the same church but they went to form their own church "The Saviour Church of Ghana."

The matter of the defendants registration of the name "**The** Saviour Church of Ghana" which was done in 2012 does not appear anywhere in the statement of claim or reply of the plaintiff but they managed to introduce it into evidence and tried to make a meal of it. The plaintiff's own pleading was that the defendants are operating as "Saviour Church of Ghana" and not "**The** Saviour Church of Ghana". The defendants explained in their evidence that in 2012 they bought a bus which they went to register in the name of the church at the Drivers and Vehicle Licensing Authority (DVLA) but the officer directed them to register with the Companies Registry for a Tax Identification Number (TIN) and it was in order to get the TIN that they were given the name "**The** Saviour Church of Ghana". After registering the bus with that name they have never used the name for any other

purpose. So from all intends and purposes, the defendants never operated as a church in the name "**The** Saviour Church of Ghana" and the plaintiff led no scintilla of evidence to support the statement that the defendants left the original church and formed a new church. How the defendants could be said to have left their church when they were actively operating under the name "Saviour Church of Ghana" which has been held to belong to them in the judgments of Gbadegbe JA and Asiedu J is for us to see when we fully review the evidence *in fra.*

Whilst the evidence in the very first set of consolidated cases had established that the plaintiff faction operated from their headquarters in the Central Region, in their testimony in this case they denied that they are a church whose headquarters is in the Central Region. This denial was because they wanted to present they the Elias Asirifi Faction as the original church and no longer a Central Region based rebel group. The following cross-examination of the plaintiff's representative took place at page 357 vol 2 of the Record;

Q. And your lawyer described your church as having its headquarters located at Gomoa Nyanyono in the Central Region?

A. That is how the lawyer described the headquarters but that was not how we presented it (sic) to him.

At page 362 of the ROA the following cross examination of the plaintiff representative took place;

Q. The present action that you have brought is one of the ploys you want to use to bring back issues that have been long determined by the Superior Courts of Ghana.

A. That is not correct. ***One of the reasons for coming to court borders on the fraud case which went in our favour in procuring the High Court and Court of Appeal judgment. When we secured the judgment we were looking forward to also get the orders and because we did not get those orders that is why we are in court.***

All the above quoted evidence exposes the actual motive for the filing of this suit by the Elias Asirifi Faction to be a recapture of the name, branches and properties of the original church from the defendants. The evidence also puts beyond doubt that the plaintiff herein is one and the same as the Elias Asirifi Faction in all the earlier cases on Saviour Church of Ghana.But the question is, if the mere registration of the name "Saviour Church of Ghana" under the Companies Act, 1963 (Act 179) could magically capture for the plaintiff the branches and properties of Saviour Church of Ghana as it existed and operated in 2007 when the registration was done, why did the plaintiff need to sue the defendants? They of the Elias Asirifi Faction did not rejoin the Abraham Adusei Faction to be in the same church after the 2003/2004 judgments so this case called for a critical examination of the legal basis on which the plaintiff would be entitled to the reliefs sought against the defendants.

JUDGMENT OF THE HIGH COURT

The judgment of the trial judge dwelled mainly on the defences pleaded by the defendants without any review of evidence led by the plaintiff. From page 38 of his judgment, the trial judge discussed at length the case put forward by the defendants that the registration of the name "Saviour Church of Ghana" by the plaintiff's directors was fraudulent. It was in concluding on that issue that the trial judge suddenly switched and held that the defendants abandoned their rights upheld in the 2003/2004 judgments so they are estopped from claiming rights to the name and branches of the church. This was a complete surprise in the case and was at variance with the case presented by the plaintiff itself in their pleadings. This is what the trial judge said at page 45 of his judgment when concluding his consideration of the issue fraudulent registration of the defendant's name by the directors of plaintiff.

"There is evidence before me that the High Court judgment (Gbadegbe JA's) was delivered on the 10th of June, 2003. I therefore wonder why the defendants refused/neglected to exercise their rights under the judgment to recover the above items but rather chose to allow the plaintiffs to use same to the knowledge of the whole world. ***I hold that the conduct of the defendants***

***clearly ratified the position of the plaintiff church assuming they even perpetuated fraud on the defendants and I hold same as such*. I further hold that the registration of the defendant church as "The Saviour Church" contrary to the judgment of the High Court, exhibit 5 which stated that there must be only one "Saviour Church" amounts to the formation of a new entity different/distinct from "Saviour Church".**

These two names mentioned by the judge are not the names in the evidence but he appeared to be referring to the names the were mentioned in the evidence but he did not say anything about the pleadings and evidence that the defendants operated their church in the name "Saviour Church of Ghana" and not "The Saviour Church of Ghana". The trial judge next considered the argument of the defendants that the plaintiff's continuous use of the name "Saviour Church of Ghana" despite the decision of Gbadegbe JA that there is only one Saviour Church of Ghana represented by the defendants and their conviction for contempt of court by Asiedu J, were in recurrent contempt of court. He dismissed that argument on a technical ground, reasoning that the contempt jurisdiction of the court can only be invoked by application under **Order 50 of the High Court (Civil Procedure) Rules, 2004 (C.I.47)** and not otherwise.

The judge then addressed the issue whether the plaintiff had a reasonable cause of action at all to begin with. By **Order 11 Rule 18(2) of C.I 47**, in considering whether a party's case discloses a reasonable cause of action or not, which can be at any stage in the proceedings, the court shall confine itself to the pleadings and no evidence whatsoever shall be admissible. Contrary to that rule, the trial judge did not look at the pleadings at all but rather based on the evidence, and held that the plaintiff had a cause of action against the defendants. He made reference to the case of **Prophetess Thane II v Prophet George [1977] 1 GLR 467** and stated that it is authority for two churches to be allowed to operate with similar names as the tort of passing off applies only in respect of economic undertakings.

But as I have pointed out copiously from the testimony of the plaintiff's witness, this case is not about two separate churches using the same name or similar names. The plaintiff's

witness was clear that they have not formed a separate church and that there is only one Saviour Church of Ghana, the one Issac Asirifi was General Superintendent over, except that he claimed Isaac Asirifi handed over to Elias Asirifi Asante whereas the defendants maintain that he handed over to Abraham Adusei.As the plaintiff's representative said under the cross examination I have quoted above;

"…….***The church was not established in 2007 but rather registered in 2007 because that was the church Opanyin Isaac Asirifi was General Superintendent before he handed over to Eliah Asirifi Asante."***

He also said the following;

Q. It is you and your group who have rather formed a church, the defendants have not formed any church they are only continuing the church left behind by Isaac Asirifi and that is why you had to do a new registration in 2007.

And he answered thus;

A.That is not correct because "Saviour Church of Ghana" is a spiritual church.

In the case of **Bimpong-Buta v Attorney-General [2003-2004] SCGLR 1200**, the plaintiff filed a case seeking interpretation of the Constitution, 1992 in relation to his tenure of office as Director of Legal Education (Director of the Ghana School of Law) which had been terminated and Mr Kweku Ansah-Asare appointed in his place. The court held that when his reliefs are taken together with his written submissions, his actual case was one of unlawful dismissal and not for interpretation of the Constitution. At page 1222 of the Report Akuffo, JSC (as she then was) said as follows;

"All in all, the reliefs claimed, the pleadings, and the submissions filed in this matter amply demonstrate that the plaintiff/s action is no more than an ordinary civil suit splendidly arrayed in constitutional clothing."

The nature of a case presented in court is not determined by only the words of the pleadings but by a combined assessment of the import and substance of the reliefs sought, the pleadings and the evidence, where evidence has been adduced. The plaintiff

in its relief (ii) prays for an injunction restraining the defendants from use of the name Saviour Church of Ghana which the defendants have been using all along. This relief combined with the plaintiff's testimony that they have not formed a new church and that the name, branches and properties of the original Saviour Church of Ghana belong to them, demonstrates abundantly that this case is about who succeeds to the original church and not about two churches.

Then, in **Anin v Ababio [1973] 1 GLR 509,** a case that in essence was for declaration of title to land as stool property against a chief who had abdicated was said to be a chieftaincy cause. The High Court overruled an objection to its jurisdiction over the case and in holding (3) of the Head note explained as follows;

"(3) The declaration sought by the plaintiff, being coupled with a claim for an order of injunction and accounts, amounted to a claim for recovery or delivery of property. The essence of the matter, however, was whether the recovery or delivery raised primarily issues which called for the adjudication of matters in connection with the abdication or installation of a chief within Act 372, s. 113 (1) (d). In determining this the court should be guided by the judicial interpretation put on earlier statutes which were in pari material, and which was to the effect that a claim for a declaration of title to land even against a stool which might lay claim to such land as stool property did not oust the jurisdiction of the courts within the limitation imposed by sections 52 and 113 (1) (d) of Act 372. The plaintiff's action accordingly was purely for a declaration of title and even though this might be in consequence of his abdication there was no issue raised as to make the recovery or delivery of the property an issue in connection with his abdication or the installation of the defendant."

After all that was said by the witnesses and the judgments and documents tendered in the trial the High Court judge made the following final orders in his judgment;

"1.This court decrees that the plaintiff is the only legal entity by that name which is permitted by law to run churches and do religious and spiritual activities.

2.This court further grants an order of perpetual injunction restraining the defendants, their agents and assigns from using the name Saviour Church of Ghana for any spiritual and religious activities.

3.I further grant plaintiff custody of all their branches in the country."

Whichever way these final orders are interpreted, the trial judge reversed the judgments of Gbadegbe JA and the Court of Appeal and undermined the finding of contempt of court against the plaintiff's directors. By restraining the defendants from the continued use of the name "Saviour Church of Ghana" by which they have always operated the judge overturned the decisions of Gbadegbe JA, the Court of Appeal and Asiedu J. The plaintiff never led any evidence of branches they own in the country and did not endorse their writ of summons and statement of claim with any substantive relief touching on any branches of the defendants church; e.g, declaration of title or ownership, but the trial judge *suo motu* granted the plaintiffs an ancillary order against the defendants and in favour of the plaintiff for custody of branches of Saviour Church of Ghana. That order arguably entitles the plaintiff to recover possession of all branches of the defendants church in the country from them. The impression is now being given that the trial judge's custody order can only be in respect of branches the plaintiff controls. But how can that be when they did not provide evidence of any branches they control but in their testimony they referred to the branches and properties of the defendants as their own. A judgment in their favour is capable of being construed as upholding their claim that the name, branches and properties of Saviour Church of Ghana now belong to them. It was the defendants who admitted that the plaintiffs are intransigently holding onto three of their branches despite the judgments of the courts so why should the trial judge grant such a loose order against the defendants which can be interpreted to cover all branches of the defendants' church? The confusion that will engulf the church through out its branches in the whole country if this custody order is to be executed is anyone's guess. The defendants were obviously dissatisfied with this judgment and they appealed against it to the Court of Appeal.

JUDGMENT OF COURT OF APPEAL

By a split decision, the Court of Appeal dismissed the appeal filed by the defendants and upheld the judgment of the trial judge but on substantially different grounds. The majority of the Court of Appeal held, contrary to the trial judge, that the judgments of 2003/2004 do not even constitute res judicata in the present case reasoning that the parties were not the same neither were they privies, and that the issues raised were different. But as has been shown from the pleadings and evidence, the plaintiff itself did not deny that the parties and subject matter of the previous cases and this one are the same. The plaintiffs on their part submitted in the Court of Appeal that the court should even disregard the findings and conclusions in the Gbadegbe JA judgment all together for the reason that by the judgment of Ofori Atta J dated 23rd November, 2012he set aside the judgment of Gbadegbe JA as having been obtained by fraud. The majority agreed with the plaintiff and held that the Dordzie JA judgment that set aside the writ of summons in the case that went before Ofori Atta J was delivered on a date after Ofori Atta J delivered his final judgment, so Ofori Atta J's judgment prevailed until formally set aside on appeal.

The minority judgment traced the history of the case from the 2003/2004 judgments to date and took the view that it is all about control of the Saviour Church of Ghana which issue was resolved in favour of the defendants in the earlier decisions and those decisions are binding on the plaintiff. He disagreed with the trial judge that the defendants did not take steps to stop the plaintiff from using its registered name as directed by Asiedu J. He pointed out that after the Asiedu J's judgment, the plaintiffs engaged the defendants in different suits to which they had to be responding. To him, the plaintiffs were in recurrent contempt of the 2003/2004 judgments so they are not entitled to judgment. He accordingly set aside the judgment of the trial court and granted the defendants counterclaim holding that the registration of plaintiff was fraudulent.

APPEAL TO THE SUPREME COURT

The defendants have further appealed to this court and filed thirteen grounds of Appeal in all but I do not intend to consider the grounds one by one as there is a lot of repetition of issues in the grounds as set out. I shall consider the arguments of the parties under the three issues below which cover all the grounds of the appeal;

(i) Whether the judgment of the Court of Appeal in Civil Appeal No. H1/33/2011 delivered on 6th December, 2012 prevails over the judgment of Ofori-Atta J delivered on 23rd November, 2012.

(ii) If the judgment of Gbadegbe JA dated 10/6/2003 and of the Court of Appeal dated 7/11/2004 are still valid, together with the judgment of Asiedu J, whether they constitute res judicata in this case.

(iii) Whether or not the judgment is against the weight of the evidence.

RETROSPECTIVITY OF DECISIONS OF COURTS.

On issue (i), Mr Yaw Oppong Esq, of learned counsel for the plaintiff, has argued from paragraphs 92 to 97 of its statement of case in this appeal that the judgment of the Court of Appeal was overtaken by the completion of the case in the High Court by Ofori Atta J so it has no effect on that judgment. He concedes that the Court of Appeal set aside the interlocutory ruling of Ofori Atta J dismissing the objection but Counsel submits that that decision cannot retrospectively nullify the proceedings before Ofori Atta J that were undertaken and concluded before the Court of Appeal decision. Counsel alludes to Article 107 (b) of the Constitution, 1992 that disallows retrospective legislation and says that by parity of reasoning, court decisions ought not have retrospective effect.

To accept what the plaintiff is saying about the decision of the Court of Appeal being of no effect because it was delivered after the judgment of the High Court will mean that whenever there is an interlocutory appeal, then there must be stay of proceedings otherwise the appellate court is wasting its time. That can never be the law. If the very foundation of a suit is challenged by an interlocutory application and the court dismisses it and proceeds, the effect of a successful interlocutory appeal is that the court ought not to have proceeded with the case and the appeal court's decision takes effect as from the date the lower court dismissed the application. To hold otherwise would nullify the potency of appellate courts decisions on interlocutory appeals even if they are in respect of the competence of the proceedings appealed from.

In the case of **Hansen v Ankrah [1987-88] 1 GLR 639** the plaintiff brought an action in court for an order for his head of family to account for compensation he collected in respect of the state's acquisition of their family's land. The defendant raised a preliminary objection to the action on the ground, that by the decided cases on customary law, a head of family was not accountable in court to members of the family. The trial judge dismissed the application and proceeded with the case. The defendant filed an interlocutory appeal before the Court of Appeal who upheld the appeal and dismissed the whole suit and quashed the proceedings. On further appeal to the Supreme Court the propriety of the order of the Court of Appeal dismissing the whole case was raised and in answer Sowah, JSC (as he then was)speaking for the majority said as follows at pages 666/667 of the Report;

"It is true that the origin of this appeal emanated from an interlocutory application of which notice had been given by the defendants. Paragraph 8 of the defence reads: "The defendants will contend that they are not accountable to the plaintiff in respect of the several matters alleged in the statement of claim." Subsequently the defendants by counsel raised the preliminary objection; an objection which went to the root of the plaintiff's action; if it had succeeded the substratum of the action would have disappeared completely and nothing would be left before the court to proceed with. In the event it failed and an appeal was lodged. The Court of Appeal allowed the appeal and held that the defendants were not accountable in court to the plaintiffs. In my view, that was the end of the proceedings and the action. The Court of Appeal was right in dismissing the whole action."

It appears that the Counsel for the plaintiff has failed to take particular note of the nature of the order made by the Court of Appeal regarding the case Ofori Atta J purported to determine. The Court of Appeal ordered as follows;

"We find it appropriate in the circumstances to exercise the powers conferred on this court by Rule 31(a) of C.I.19 and order that the fresh writ issued by the respondent in the High Court (the said writ being the real question in

controversy between the parties) be dismissed on grounds of abuse of the court process."

The effect of this order is to deny Ofori Atta J jurisdiction since the writ of summons by which his jurisdiction was invoked was set aside and it is trite that an act by a court without jurisdiction is void.

As to the issue of the legality of the Court of Appeal giving retrospective effect to their judgment, which was grounded on an objection based on a rule of procedure, the plaintiff's counsel, with due regard, has got it all wrong. In the interpretation of statutes there is no presumption against retrospective effect of legislation on matters that relate to procedure and evidence. For, it is well established that a party has no vested right in procedure and a statute that changes the procedure for conducting proceedings in court is presumed to have retroactive effect on pending proceedings unless there is an express provision in the new statute limiting its effect to only new matters. In the case of **C.O.P v Akyeampong [1963] 1 GLR 402,** the Supreme Court at pages 406 to 407 quoted and relied on the following principles as stated in **Halsbury's Laws of England, Vol. 36 (3rd ed.), page 426, para. 647:**

"The presumption against retrospection does not apply to legislation concerned merely with matters of procedure or of evidence; on the contrary, provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament." It continues at pages 426–427:

"It is presumed, moreover, that procedural statutes are intended to be fully retrospective in their operation, that is to say, are intended to apply not merely to future actions in respect of existing causes, but equally to proceedings instituted before their commencement."

For that reason, the Court of Appeal could say in the case of **R. T. Brisco v Amponsah (1969) CC 100** at Holding (3) that;

"Since L.I.618 which amended L.I. 218 was procedural L.I, 618 should be construed as retrospective."

But when the law talks of retrospectivity, court judgments and orders are even in a different class of their own. In the first place, court judgments are by their nature generally retrospective since in any judgment the rights and liabilities of the parties are determined with reference to the date the cause of action accrued, which usually precedes the filing of the case while the judgment is delivered at a much later date. See; **Ansah-Addo v Addo [1972] 2 GLR 400, CA**. In Ghana, some cases take up to twenty years before final judgment is given by the Supreme Court but the rights and liabilities of the parties determined in such judgment would be as of the date the cause of action accrued prior to the filing of the case in the court of first instance. Secondly, a court is permitted to give retrospective effect to its judgment by antedating it. **Order 41 Rule 5 of C.I.47** is as follows;

Date of judgment or order

5. (1) A judgment or order of the Court or of a referee *takes effect from the day of its date.*

(2) Such a judgment or order shall be dated as of the day on which it is pronounced, given or made, *unless the Court or referee orders it to be dated as of some other earlier or later day, in which case it shall be dated as of that other day.*

So, the effective date of a judgment or order of a court is not necessarily the date it is delivered or pronounced. The court has authority to antedate the effectiveness of its judgment or order or to post-date it. From the words used in the order I have reproduced above, it cannot be doubted that the Court of Appeal intended their order to have effect as from the date on which the writ of summons was filed in the High Court and they had power to do so. Consequently, the Dordzie JA panel of the Court of Appeal acted within the law in setting aside the writ of summons and with it all proceedings taken by Ofori Atta J.

BINDING PART OF THE JUDGMENT OF THE COURT OF APPEAL

On this issue of whether the judgment of the Court of Appeal prevails over the earlier judgment of Ofori Atta J, Mr Addo Atua Esq, learned counsel for the defendants in their statement of case refers to Article 136 (5) of the Constitution which provides as follows;

"(5) Subject to clause (3) of article 129 of this Constitution, the Court of Appeal shall be bound by its own previous decisions; and all courts lower than the Court of Appeal shall follow the decisions of the Court of Appeal on questions of law."

Counsel then argues that the High Court and the Court of Appeal in this case were bound to follow the Court of Appeal decision of 6th December, 2012 by Dordzie JA that set aside the writ and nullified the judgment of Ofori Atta J. To be fair to the High Court judge in this case, he complied with this constitutional provision by ignoring the Ofori Atta J's judgment in his analysis of the case. It is rather the majority of the Court of Appeal who may be said to have breached the provision of Article 136(5) by effectively departing from their own earlier binding decision. But, Counsel for the plaintiff contends that the decision of 6th December, 2012 was not one on a question of law so it was not binding on the majority in this case and that it is only decisions on questions of law that are of binding effect. Counsel is partly right but not wholly so, because in the circumstances here the question that was decided by the Dordzie, JA panel of the Court of Appeal related to jurisdiction, which is a question of mixed law and fact and the legal considerations there are different from where a lower court is dealing with a finding of pure fact by a higher court.

In **Republic v High Court, Accra; Ex parte Darke XII [1992] 2 GLR 688,** the jurisdiction of High Court, Ho presided over by Francois J to entertain a land case that was alleged to be a stool land boundary dispute was raised before the Court of Appeal on the grounds that, before the High Court gave its judgment, the Stool Lands Boundary Settlement Decree (NRCD 172) had come into force and it denied jurisdiction to the High Court in matters involving stool land boundary disputes. The Court of Appeal dismissed

that ground of the appeal holding that the lands involved in the case, the Peki-Avetile lands and Tsito-Awudome lands, were private family lands and not stool lands so the High Court had jurisdiction to hear the case. After their judgment, one of the parties commenced a new suit at the High Court and contended that having regard to the nature of land holdings in the area, the lands were stool lands and the case before Francois J was a stool lands boundary dispute so the High Court should set aside the judgment of Francois J for want of jurisdiction on account of the provisions of NRCD 172. Omari-Sasu J, sitting in the High Court, Accra disregarded the decision of the Court of Appeal, which held that the lands were private family lands, and set aside the judgment of Francois J holding that the lands were stool lands and the case was a stool lands boundary dispute. In the Supreme Court it was argued that Omari-Sasu J was not bound by the decision of the Court of Appeal on the status of the lands at Peki-Avetile and Tsito-Awudome because the Court of Appeal decision was not on a question of law but fact. Dismissing that argument on behalf of the majority of the Supreme Court, Adade, JSC said as follows at 713 of the Report;

"The question that arises is that, after the decision on the issue, could either party go back to the High Court to relitigate the same issue? The answer, in principle, is "No!" The Court of Appeal heard the appeal in the normal course of the exercise of its appellate jurisdiction; it was properly seised with the whole appeal, clothed with full powers and jurisdiction to make pronouncements therein, including but not limited to, correcting errors both of law and of fact committed by the court below. Within the plenitude of these powers, the Court of Appeal made certain pronouncements. ***These pronouncements are binding on the High Court as well as the Court of Appeal itself.*** *If any of the pronouncements should happen to displease any of the parties, the course for relief lies upwards, to a higher forum, not downwards to the High Court. It is not for the High Court to subject a ruling of the Court of Appeal, on an issue of law,* ***or of mixed law and fact****, in the exercise of its appellate jurisdiction, to scrutiny, and approval or disapproval. Respect for the hierarchical order of the courts of this country cannot be suffered to be subverted."* (Emphasis supplied).

In this case, the competence of the High Court presided over by Ofori Atta J to hear and determine the case was pronounced upon by the Court of Appeal in the proper exercise of their authority over decisions of the High Court. The Court of Appeal held that the suit Ofori Atta J purported to determine was not properly constituted so he had no jurisdiction to hear it. If the plaintiffs/respondents therein felt aggrieved by that decision, it was for them to appeal to the Supreme Court but not to ask the same Court of Appeal, though differently constituted, to set it aside. The Court of Appeal in this second case erred by refusing to be bound by the decisionof Dordzie JA which was on a question of mixed law and fact so their holding giving life to the judgment of Ofori Atta J is void and isaccordingly set aside. Besides the authority of **Ex parte Darke XII (supra)**, the majority in the Court of Appeal in this case clearly misunderstood the principles of law that governed the appellate jurisdiction exercised by the Dordzie JA panel and fell into error so their holding that the judgment of Ofori Atta J was effective is hereby set aside on that ground too. The judgment of Gbadegbe JA confirmed by the Court of Appeal has not been set aside and those judgments are subsisting and of full effect.

RES JUDICATA EFFECT OF GBADAGBE JA'S AND ASIEDU J'S JUDGMENTS

In respect of the question whether these earlier judgments apply as res judicata in the present case, Counsel for the plaintiff again argues strenuously at paragraph 108 of his statement of case that the subject matter of the Gbadegbe JA judgment was an entity called "The Saviour Church of Ghana" and not "Saviour Church of Ghana" so the majority in the Court of Appeal did not err in refusing to rely on the findings in that judgment. This submission is in plain error because there is no doubt that this issue about an entity called "**The** Saviour Church of Ghana" only came up after 2012 when that name was registered at the Companies Registry and not earlier. At page 7 of his judgment Gbadegbe JA held as follows;

"These attributes in my view are possessed by the entity represented by the plaintiffs herein and I hold that the description *Saviour Church of Ghana* relates to them and not the defendants." (Emphasis supplied).

Gbadegbe JA described the church he recognized as belonging to the defendants in the paragraph above as "Saviour Church of Ghana" and not "**The** Saviour Church of Ghana" with the grammatical definite article "The" with capital "T" forming part of the name. I will therefore without hesitation dismiss this argument of the plaintiff.

On a more substantial point of law, counsel for the plaintiff at para 86 of his statement of case correctly argues,that where after a judgment between parties facts evolve that lead to a new cause of action, then a new suit may be filed as an exception to the principle of res judicata. He further says that where the parties and issues in the new case are different then res judicata would not apply. Counsel then submits as follows;

> **"This new situation then constitutes a new cause of action which overtakes res judicata principle. More so, every finding in the earlier judgment would not operate as res judicata. Only an issue directly and substantially decided in the earlier suit would operate as res judicata. The present action which is the subject matter of this appeal seeks to protect the valid registration of the plaintiff entity. Nowhere does it relate to the previous actions as contended by the respondents. In fact, the plaintiff was not and has not been a party to any of the suits referred to. Neither has it been in litigation except for this present appeal. There is no doubt that the principle of res judicata cannot apply."**

However, these submissions by counsel are hanging in the air and do not relate to this case that is before us. The very plaintiff Counsel is referring to in its evidence, which I already quoted supra, directly and openly identified itself with one of the disputing parties in each of the earlier cases and also revealed that the purpose of the instant suit is about the name, branches and properties that the earlier cases held to belong to the defendants herein. This iswhat was said during cross examination of the plaintiff's representative;

Q. I am putting it to you that long ago ***your group*** was ordered per the judgment of Gbadegbe JA to return all properties belonging to the Defendants's church to them and

through your then lawyer Mrs. Philippa Amable you complied and returned some of the properties.

A. ***That is true. It was after we detected fraud that we went*** back to the High Court which the judgment has been (sic) set aside.

Q. I am putting it to you that ***every time your group goes to court you change your reliefs that you are seeking against the defendant.***

A. ***Every case that we file before a court*** has its associated reliefs.

The cross examiner says of the plaintiff that "your group" was ordered in the Gbadegbe judgment to handover properties and the plaintiff's representative admits their being parties in that case and says yes it is "we" who were so ordered in the Gbadegbe judgment. Then he says; "every time your group goes to court" and the plaintiff appropriates the earlier cases by answering "every case we file". So in plain words the plaintiff admitted that it is the same as the Elias Asirifi Faction in all the earlier cases so Counsel should not conjure a case to pull wool over the eyes of the court.

Counsel's sophistry in arguing that the plaintiff sued only to protect its valid registration as a legal entity is farcical because I have in this opinion demonstrated from the testimony of the plaintiff's representative that the real purpose for filing this case was to take from the defendants the name, branches and properties of the original church. The plaintiff representative stated in his testimony that they sued not for a church formed in 2007 but for the old Saviour Church of Ghana. I shall repeat his answers in cross examination for emphasis;

Q. It means that your church you registered was established in 2007?

A. That is not true. The church was not established in 2007 but rather registered in 2007 because that was the church Opanyin Isaac Asirifi was General Superintendent before he handed over to Eliah Asirifi Asante.

"…..One of the reasons for coming to court borders on the fraud case which went in our favour in procuring the High Court and Court of Appeal judgment. When we secured the

judgment we were looking forward to also get the orders and because we did not get those orders that is why we are in court."

"…Currently we do not have anything to do with the defendants church but they have our properties in their possession and they are also using our name…."

In **Ansah-Addo & Ors v. Addo & Anor AND Ansah-Addo & Ors v Asante (Consolidated) [1972] 2 GLR 400** at page 406 Apaloo, JA said as follows;

> *"With great respect to the learned judge, I think he disposed of the serious issue of estoppel per rem judicata in too cavalier a manner. The judgment of 1959, was a judgment inter parties and the elementary rule which governs the applicability of that plea, is that it estops the parties to the proceeding in which it is given and their privies."*

There is enormous evidence on the record that make it as plain as daylight that the plaintiff is a privy of the Elias Asirifi Faction in the earlier cases and that the subject matter, cause of action and issues are the same in the Gbadegbe JA and Asiedu J judgments. The leaders of the Elias Asirifi Faction who are directors of the plaintiff have their names boldly set out in the statement of claim as privies to this suit.

Interestingly, it is being suggested that Gbadegbe JA did not restrain the Elias Asirifi Faction from use of the name "Saviour Church of Ghana". I find this difficult to take because Gbadegbe JA restrained the Faction from interfering with the rights of worship of the Abraham Adusei Faction whom he recognized as the rightful successor to the name, branches and properties of Saviour Church of Ghana. How then can the Elias Asirifi Faction operate a church in the name "Saviour Church of Ghana" but be said not to interfere with the rights of worship of the Abraham Adusei Faction? In any event, the fact of the matter in this case is that the plaintiff has stated in evidence that its use of the name "Saviour Church of Ghana" is in reference to the defendants' church and not a separate church. That is why they were rightly convicted for contempt of court and they suffered their punishment without complaining so it is too late in the day for a defence to be put up for them when they did not even appeal against the conviction.

Consequently, the doctrine of res judicata applies with full force in this case on the bases of the earlier judgments of Gbadegbe JA, the Court of Appeal and Asiedu J and the High Court lacked jurisdiction to reverse those decisions by restraining the defendants from use of their name and divesting them of their branches. In **Basil v Honger (1940) 4 WACA 569 at 572 Coussey JA** said as follows;

> *"the plea of res judicata prohibits the court from enquiring into the matter already adjudicated upon. It outs the jurisdiction of the court".*

It is a cardinal principle of law that it is in the public interest that there must be an end to litigation and that is the policy underpinning the doctrine of res judicata.

JUDGMENT AGAINST THE WEIGHT OF THE EVIDENCE

The final ground on which I am considering this appeal is the omnibus ground; the judgment is against the weight of the evidence. In the unreported judgment of the Supreme Court in **Evelyn Asiedu Offei v Yaw Asamoah, CAJ4/64/2016 dated 25th April, 2018,** Appau, JSC speaking on behalf of the court summarized the authorities on the ambit of this ground of appeal as follows;

> *"In the recent case of OWUSU-DOMENA v AMOAH [2015-2016] 1 SCGLR 790, this Court explained further its earlier decision in Tuakwa v Bosom (supra) when it held that: - "The sole ground of appeal that the judgment is against the weight of evidence, throws up the case for a fresh consideration of all the facts and law by the appellate court". Benin, JSC speaking for the Court at page 799 of the report stated as follows: - "We are aware of this court's decision in Tuakwa v Bosom [2001-2002] SCGLR 61 on what the court is expected to do when the ground of appeal is that the judgment is against the weight of evidence. The decision in Tuakwa v Bosom, has erroneously been cited as laying down the law that, when an appeal is based on the ground that the judgment is against the weight of evidence, then, only matters of fact may be addressed upon. Sometimes, a decision on facts depends on what the law is on the point or issue. And even the process of finding out whether a party has discharged the burden of persuasion or producing evidence is a matter of law. Thus when the*

appeal is based on the omnibus ground that the judgment is against the weight of evidence, both factual and legal arguments could be made where the legal arguments would help advance or facilitate a determination of the factual matters". His Lordship referred to the decision of this Court in ATTORNEY-GENERAL v FAROE ATLANTIC CO. LTD [2005-2006] SCGLR 271 at p. 306 per Wood, JSC (as she then was) for support."

In their judgment in this case the Court of Appeal simply accepted the findings of the trial court on the evidence but did not discuss the findings they agreed with so my consideration of this ground of appeal will deal more with the findings made by the trial court. At page 45 of his judgment the trial judge stated what can be said to be his legal justification for giving judgment in favour of the plaintiff to be as follows;

""There is evidence before me that the High Court judgment (Gbadegbe JA's) was delivered on the 10th of June, 2003. I therefore wonder why the defendants refused/neglected to exercise their rights under the judgment to recover the above items but rather chose to allow the plaintiffs to use same to the knowledge of the whole world. I hold that the conduct of the defendants clearly ratified the position of the plaintiff church assuming they even perpetuated fraud on the defendants and I hold same as such. I further hold that the registration of the defendant church as "The Saviour Church" contrary to the judgment of the High Court, exhibit 5 which stated that there must be only one "Saviour Church" amounts to the formation of a new entity different/distinct from "Saviour Church".

As to what constitutes the evidence on the record the judge was referring to, he said as follows;

"Looking at the evidence on record I hold that assuming the defendants had any interest in the use of the name "Saviour Church" at all, per their conduct they slept on same since equity aids the vigilant and not the indolent. For instance paragraphs 11 and 12 of the witness statement of the defendant read;

'11. The plaintiffs are only using a former branch of the defendants church (originally at Mankong Junction) and have a few expelled and break away members (who used to worship with defendants) mainly at Kenyasi and Juansa in the Ashanti Region.

12. All facilities and land being used by the plaintiff's members are properties of the defendants, which the plaintiff has refused, failed and/ or neglected to return to defendants notwithstanding clear and unambiguous orders of the Superior Courts of Ghana.'

There is evidence before me that the High Court judgment was delivered on the 10th day of June 2003. I therefore wonder why the defendants refused/neglected to exercise their rights under the judgment to recover the above items but rather chose to allow the plaintiff to use same to the knowledge of the whole world."

In effect, this was a finding that the defendants acquiesced in the Elias Asirifi Faction's interference with their rights as the judge clearly acknowledged that the judgment of 10th June, 2003 upheld the rights of the defendants as against the plaintiff to the name, branches and properties of "Saviour Church". The key question is, does what is quoted from the defendants' witness statement amount to refusal/neglect to exercise rights under the judgment? The evidence before the trial judge was that the defendants are in control of the branches of the church throughout Ghana and that they exercise ownership over the landed properties of Saviour Church of Ghana including those at Osiem, the medical centerof the church and the various schools operated by the church. The same plaintiff at paragraphs 4 and 7 of its statement of claim stated that the defendants at the time of filing this case were registered trustees of "Saviour Church of Ghana" and were actively operating as a church in that name. So, by plaintiffs own admission, the defendants carry out their church activities under the name "Saviour Church of Ghana" so how can they double speak and say the same defendants have left Saviour Church of Ghana? The undisputed evidence on the record is, that during the pendency of this suit, the defendants, operating their church as "Saviour Church of Ghana", were going to

celebrate their 90th Anniversary in that name and the plaintiff applied ex parte for an order of interim injunction to restrain them.

The terms of the order of the court at page 144 volume 1 of the ROA stated as follows;

"IT IS HEREBY ORDERED that the Defendants, their agents and assigns are hereby restrained from using the name Saviour Church of Ghana to celebrate the 90th Anniversary of the Saviour Church of Ghana at Osiem..."

The celebration went off anyway because the Abraham Adusei Faction were not served. The defendants continued to use the name "Saviour Church of Ghana" for their religious activities while the case was pending. On 16th July, 2018 the following cross examination of the defendant took place at page 379 of the ROA vol 2;

Q. You together with the defendants organized a convention for Saviour Church of Ghana in February this year; not so?.....

A. It was in the month of March and June.

Q. The convention was for Saviour Church of Ghana?

A. Yes my Lord. We were the ones who organized it.

In 2009 the defendants filed the case of contempt of court against the Elias Asirifi Faction for registering their name Saviour Church of Ghana. So, when did the defendants abandon their name or other rights under the Gbadegbe JA judgment to warrant the trial judge making a finding of acquiescence against them?The plaintiff's own witness admitted in his evidence that after the judgments of 2003/2004 they were made to surrender the centers of worship belonging to the defendants to them on the advise of Lawyer Philippa Amable and the defendants have since been in control of the branches and properties. I will repeat the evidence of plaintiff's representative again:

Q. I am putting it to you that long ago your group was ordered per the judgment of Gbadegbe JA to return all properties belonging to the Defendants's church to them and

through your then lawyer Mrs. Philippa Amable you complied and returned some of the properties.

A. That is true. It was after we detected fraud that we went back to the High Court which the judgment has been (sic) set aside.

How can there be acquiescence when the judgment of Gbadegbe JA had been enforced against the Elias Asirifi Faction as their witness admitted?

In their evidence in court the defendants denied ever carrying out any religious activities in the name "**The** Saviour Church of Ghana" and explained that they have always been "Saviour Church of Ghana" but the name "The Saviour Church of Ghana" only came about in 2012 when they were directed to obtain a TIN in order to register a bus for the church at DVLA. The plaintiff led no evidence of one church activity the defendants carried out in the name "**The** Saviour Church of Ghana" so the fact that such a name was registered at the Companies Registry is of no relevance whatsoever to the claims of the plaintiff.

It is therefore a perverse finding which is directly contradictory of the evidence and admissions by the plaintiff for the trial judge to use the obstinacy of the plaintiffs in holding onto three insignificant branches of the defendants' church to conclude that the defendants slept on their rights. That finding cannot be justified under any principle of law and is hereby set aside.

On point of law, this ground of estoppel by acquiescence was not one of the grounds upon which the plaintiff pleaded its case and the principle of law is that estoppel ought to be pleaded unless clear and convincing evidence on it is led without objection. The finding of the court was contrary to the case presented by the plaintiff in its pleadings. In the Supreme Court case of **Dam v Addo & Sons [1962] 2 GLR 200** at page 203 Adumua-Bossman, JSC stated the salutary principle against the injustice in a court accepting for a party a case contrary to his pleadings in the following words;

"This acceptance in favour of a party of a case different from and inconsistent with that which he himself has put forward in and by his pleadings, has been consistently held to

be unjustifiable and fundamentally wrong both by the English superior courts and our local superior courts."

But estoppel by acquiescence in law is usually applied as a shield and not a sword as the trial judge used it in this case. There is no iota of evidence that after the judgment of 2003 that upheld the rights of the defendants to Saviour Church of Ghana, the plaintiff that was incorporated in 2007 subsequently acquired any entitlement to the branches from the defendants by any means known to law. As for the registration of the name at the Companies Registry, that by itself cannot make the plaintiff the owner of the branches and properties of defendants. If I am customarily married to my wife for twenty years and have children with her but have not registered the marriage, can a neighbour who knows that she is my wife but admires her and goes to obtain a marriage certificate with her name come and claim that my wife and children belong to him? This is a simple illustration of the case the plaintiff brought to court. It is a ludicrous claim and ought not to have been entertained by the High Court and Court of Appeal.

In the case of **Amuzu v Oklikah [1997-98] 1 GLR 89,** the respondent who had full knowledge that his friend had bought an uncompleted house at Mpehuasem, Accra (now a part of East Legon) from the original owner and that the friend was in possession and was actively completing the house, passed behind the back of his friend to buy the same land with the uncompleted building from the same original owner. The appellant had not been given a conveyance but only a contract of sale and did not have his name registered at the Lands Registry. However, upon the second sale, the vendor executed an indenture for the respondent who quickly had it registered at the Lands Registry under the **Land Registry Act, 1962 (Act 122)**. Armed with the registration, the respondent went to take over the uncompleted house under construction from the appellant and he resisted him. The respondent sued in court for declaration of title and possession of the property and won in the Circuit Court and in the Court of Appeal but both courts were reversed by unanimous decision of the Supreme Court which held that the registration of the property by the respondent when he had notice of the interest of the appellant was fraudulent so it could not prevail over the equitable interest of the appellant though

unregistered. The Court of Appeal had observed that the conduct of the respondent was fraudulent but felt constrained by Section 24(1) of Act 122, which in their view was clear in its intendment to accord priority to registered deeds over unregistered ones, so they held for the respondent. But the Supreme Court unanimously disagreed with them that in the face of the clear fraudulent conduct the court was powerless. Aikins JSC said as follows at pages 109 to 110 of the Report;

"The court of equity would go to the extent of tackling this issue (the fraudulent conduct) much more seriously. It would not permit a statute to be used as an instrument of fraud or inequitable conduct, and would strive hard to interpret the statute in a way as would do justice. Equity would further invoke its wide jurisdiction to grant relief against fraud, even though this meant "decorously disregarding an Act of Parliament": see Megarry & Wade, Law of Real Property (2nd ed) pp 554-555."

The facts of **Amuzu v Oklikah (supra)** fit harmoniously into this case. The Elias Asirifi Faction is well aware that the defendants are the registered trustees of Saviour Church of Ghana and are operating as a church in that name but because they claim that registration under the Companies Act is required for an entity to operate as a church (which is fallacious anyway) they went behind the back of the defendants to register their church and now come to court seeking orders to take it over. A court of equity ought not to allow such a case to stand in court. Even in **Amusu v Oklikah** where a statute stipulated that priority be given to the registered interest over the unregistered one, the court did not permit it on account of the notice the registered interest holder had of the interest of the unregistered person and the apparent fraudulent manner the party went about his registration. Having regard to the totality of the evidence in this case, the Court of Appeal committed a grievous error by confirming the judgment of the High Court and I hereby set aside their judgment.

DEFENDANTS' COUNTERCLAIM

What remains is a consideration of the counterclaims of the defendants. The defendants claimed for cancellation of the registration of the plaintiff on the ground that the registration of the name was fraudulent and it amounts to recurrent contempt of the High Court judgment of 2003/2004 and of Asiedu J of 2010. The trial judge, without saying so directly, impliedly agreed with the defendants, but refused to grant them relief on the allegation that they were estopped by acquiescence from seeking the relief on ground of the fraud. But I should think that a counterclaim being an action on its own, what the defendants did by their counterclaim in this case was to sue for a cancellation of the registration. As for the Court of Appeal, the majority digressed from the view of the trial judge and held that; **"There is no evidence on record from the office of the registrar-general to show that the said registration was obtained by foul means. The defendant/appellant being the author of that allegation ought to have called evidence in support of its case that the registration was obtained by fraud. On the contrary, the appellant rather abandoned its claim and registered another name."**

Whether the registration of the plaintiff which was in 2007 was induced by fraud or not has nothing to do with the registration of another name similar to "Saviour Church of Ghana" by the defendants in 2012. The testimony given by the plaintiff in this case has made it plain that the intention of the Elias Asirifi Faction in registering the plaintiff as a corporate entity with the name "Saviour Church of Ghana" was in order to deprive the defendants of their rights to the name, branches and properties of their church that the defendants were declared to be entitled to in the judgment of the High Court dated 10th June, 2003. The registration was not for the purpose of bringing into being a new and distinct entity for religious activities as it outwardly appeared but it was done to supplant and sequestrate the already existing Saviour Church of Ghana from the defendants. The representative of the plaintiff said so in this cross examination;

Q. It means that your church you registered was established in 2007?

A. That is not true. The church was not established in 2007 but rather registered in 2007 because that was the church Opanyin Isaac Asirifi was General Superintendent before he handed over to Eliah Asirifi Asante.

In **Dzotope v Hahormene III (No 2) [1984-86] 1 GLR294** Edusei JA said the following about what constitutes fraud at page 300 of the Report;

"In Kerr on Fraud and Mistake (7th ed.) at p. 1 appears this statement: "Fraud in all cases implies a wilful act on the part of any one, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled to."

The facts of this case answer exactly to this definition of fraud. After the registration of the name "Saviour Church of Ghana" the Elias Asirifi Faction brought this suit stating a different set of facts in their statement of claim in order to conceal their real motive and then when they entered the witness box, they revealed their actual objective in registering the name; to wrestle from the defendants ownership of their church. When the plaintiff sued in court it pleaded its casein a sly manner hoping to mislead the court for it to view this case as unrelated to the previous cases that decided that Saviour Church of Ghana belongs to the defendants. That is surely inequitable means to deprive the defendants of their rights that have been upheld in three superior courts' judgments.It is clear to me from the evidence of the plaintiff that the intention for the incorporation of plaintiff was not to bring into being a new entity that would engage in religious and spiritual activities of its own but it was part of the inequitable strategies for taking over defendants church from them.At page 301 of the Report Adusei JA added as follows;

"Undoubtedly fraud is a conduct which vitiates every transaction known to the law."

Consequently, since the registration of the plaintiff under Act 179 was for a fraudulent purpose, the registration is vitiated by the fraud and must be unraveled by the court by an order setting same aside. The incorporation of the plaintiff is hereby set aside on grounds of fraud and the Registrar of Companies is hereby directed to cancel the registration.

The defendants also counterclaimed for an order of perpetual injunction restraining the plaintiff, its followers, privies and all who claim through or by them from holding themselves out as members of Saviour Church of Ghana with Headquarters at Osiem and anywhere in Ghana. From the foregoing lengthy consideration of the matters arising in this case, such an order is deserving and I hereby grant it but with a proviso, that the defendants are at liberty, in the spirit of Christ-like reconciliation, to readmit any member of the Elias Asirifi Faction back into Saviour Church of Ghana on terms determined solely by the defendants.

CONCLUSION

In sum, the appeal succeeds and is accordingly allowed. The judgments of the High Court dated 7th November, 2018 and of the Court of Appeal dated 23rd January, 2020in this case are hereby set aside. All the reliefs claimed by the plaintiff are dismissed. The counterclaim of the defendants is granted on the following terms; The registration of the plaintiff is hereby cancelled and the Registrar of Companies is ordered to cancel and expunge from her records Certificate of Incorporation No G. 19,550 dated 7th February, 2007 in the name "Saviour Church of Ghana" on grounds of fraud. The plaintiff, its directors and their privies and associates are perpetually restrained from holding themselves out as having anything to do with Saviour Church of Ghana, except that the defendants on terms set by them alone may readmit any member of the Elias Asirifi Faction back into Saviour Church of Ghana in the spirit of reconciliation.

My Lords, to decide this case in any other way will be to reward the Elias Asirifi Faction for their contumacy in rejecting the decisions of the superior courts of our dear nation on Saviour Church of Ghana and set a bad precedent of impunity for disrespect of judgments of the courts. Parties that come to court must realise that they may not like the some final decisions in their cases but they must accept such adverse decisions of courts since there are no lawful alternatives to this reality in a modern state.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

LOVELACE-JOHNSON (MS.) JSC:-

I agree.

A. LOVELACE-JOHNSON (MS.)
(JUSTICE OF THE SUPREME COURT)

HONYENUGA JSC:-

I agree.

C. J. HONYENUGA
(JUSTICE OF THE SUPREME COURT)

DISSENTING OPINION

APPAU JSC:-

By a majority decision of the Court of Appeal dated 23rd January 2020, the first appellate court affirmed the decision of the trial High Court delivered on 7th November, 2018 in favour of the Plaintiff/Respondent/Respondent (hereinafter referred to as Respondent) against the Defendants/Appellants/Appellants (hereinafter referred to as Appellants). Dissatisfied with the decision of the Court of Appeal, the Appellants mounted this second appeal before this Court. The appeal, per the Notice of Appeal dated 26th March 2020, is founded on as many as thirteen (13) grounds, most of which I find quite repetitive and verbose. I, however, deem it necessary to reproduce all of them, which I have doneverbatim below:

a. *The learned Justices of Appeal (Majority), like the Learned Trial Judge, erred in law when they affirmed the decision of the Learned Trial Judge despite the Writ of Summons being a nullity by reason of a brazen failure to endorse the "nature of the claim, relief or remedy" thereon and thus conferring no jurisdiction proceeded and granted the reliefs on him and based on the writ of summons without the mandatory endorsement;*

b. *The Learned Justices of the Court of Appeal (majority) committed an error of law and a grave miscarriage of justice when it endorsed the conclusions of the Learned Trial Judge which were largely wrong;*

c. *The learned Justices of the Court of Appeal (majority) misdirected themselves and caused a substantial miscarriage of justice thereby when it erroneously affirmed, contrary to the relevant laws, facts and overwhelming evidence on record, the decision of the Learned Trial Judge in dismissing the Counterclaim of the Appellants herein-*

Particulars of misdirection:

Agbevor J.A. delivering the majority judgment stated at page 26 of the judgment as follows:

"In my view the Learned Trial Judge had sufficient reason to dismiss the Counterclaim filed by the defendant since sufficient evidence was not produced in support".

d. *The Learned Justices of the Court of Appeal (majority) also further misdirected themselves and caused a substantial miscarriage of justice thereby when despite the relevant applicable law, facts and "compelling evidence" of the appellants on record; it erroneously and unjustly dismissed the Appellants' appeal-*

Particulars of misdirection:

Agbevor J.A. in the majority judgment stated at page 26of the Judgment as follows:

"My view is that the Judgment of the Court below was according to law and should be allowed to prevail".

e. *That the judgments of both the Trial Court and the Court of Appeal are contrary to law, i.e. the 1992 Republican Constitution and the principle of stare decisis;*

f. *The Learned Justices of Appeal (majority) erred when it affirmed the erroneous decision of the Learned Trial Judge, totally ignoring the import and ratio in the judgment of Gbadegbe JA (as he then was) in Suit No. FTHR 13/2001 (Exhibit 5) which was affirmed by the Court of Appeal in Civil Appeal No. HI/30/2004 (Exhibit 6), as well as the Court of Appeal in Civil Appeal No. HI/33/2011 on the same subject-matter between the parties and proceeded to hold that the* ***"Plaintiff is the only legal entity by that name which is permitted by law to run churches and do spiritual activities";***

g. *The Learned Justices of Appeal (majority) misdirected themselves when they affirmed the erroneous decision of the Learned Trial Judge which was based on a clear and woeful failure to properly appreciate the Trustees Incorporation Act, 1962 (Act 106) and the case of* ***"Ghana Muslim Representative Council vrs Salifu*** *in relation to the facts and evidence on record in respect of the matter;*

h. *The Learned Justices of the Court of Appeal (majority) also erred when it endorsed the erroneous decision of the Learned Trial Judge which, despite acknowledging the ruling of Asiedu, J in which he convicted and punished the Plaintiff's directors for contempt for the fraudulent and unlawful registration of the Plaintiff in (Suit No. AP116/2009) Exhibit 7, he gave judgment to Plaintiff on a claim based on such unlawful registration;*

i. *The Court of Appeal (majority), fell in error when it affirmed the erroneous decision of the Trial Court in which, despite making a finding that the Plaintiff had "committed fraud in its registration", it still proceeded to enter judgment in Plaintiff's favour;*

j. *The Learned Justices of the Court of Appeal (majority), erred in affirming the erroneous judgment of the Trial Court which was based on a failure to properly and adequately evaluate the clear and more compelling evidence adduced by the Defendant/Appellant/Appellants herein by wrongfully entering judgment in favour of Plaintiff/Respondent/Respondent;*

k. *The Learned Justices of Appeal (majority) erred and occasioned a substantial miscarriage of justice thereby when despite his acknowledgment of the fraudulent and unlawful registration of Plaintiff as well as the conviction and punishment thereafter, he made various erroneous pronouncements in his judgment and failed to appreciate the relevant applicable laws, facts and evidence on record establishing that the Plaintiff had no capacity to have instituted the action, which is a progeny of this Appeal;*

l. *The Learned Justices of Appeal (majority), erred and caused a substantial miscarriage of justice by endorsing the judgment of the Trial Court in which there was a failure to properly and adequately consider the principles of "res judicata" and "estoppel" in the face of overwhelming evidence on record and proceeded to make erroneous findings on matters conclusively and previously adjudicated upon between the Parties on the same subject-matter and affirmed by a Superior Court;*

m. *The Judgment is against the weight of the evidence on record.*

The Appellants filed no further grounds of appeal as they suggested in their Notice of Appeal. I am quite certain that counsel for the appellants realized the repetitive nature of some of the grounds of appeal and decided finally to lump some of them up in his written submissions, as outlined in his Statement of Case filed on 15th January, 2021. Counsel for the Appellants stated at page 20-21 of their written submissions as follows:

"With your permission, My Lords, we would now commence to tackle the grounds of Appeal as indicated supra. We would, with respect not deal with the Grounds in the sequence as filed. We would merge those grounds, which in our humble opinion, are inter-related or overlap with some Grounds".

With this statement, Counsel for the Appellants merged the thirteen (13) grounds of appeal into four groups with some still overlapping. The four groups were: 1. Grounds (a), (h) and (k); 2. Grounds (h), (i) and (k); 3.Grounds (b), (c), (d), (f) (g), (i), (j), (l) and (m) and finally 4.Ground (e).Counsel for the Respondent Church, responded to the arguments of the appellants in the same sequence in which they presented them. Before

I attempt any resolution of the grounds, I would first give a historical gist of the case leading to the appeal.

The directors of the Respondent Church namely; Elias Kofi Asante, Moses Adjei Kum, Peter Kwabena Adjei, Mathew Adjei Mensah and Emmanuel Dadzie and the Appellants herein, namely; Abraham Adusei, Jacob Asirifi Snr, Enoch Ofori, Seth Dwumfour and Daniel Mensah, once belonged to one church called; **"The Saviour Church of Ghana"**, founded by the late Opanin Samuel Brako at Osiem, Akim-Abuakwain the year 1924. When the founder Opanin Samuel Brako died, one Isaac Asirifi assumed leadership role in the Church until he also died in 1997.The trustees of the church were registered under the Trustees Incorporated Act, 1962, [Act 106] and a Certificate was issued to that effect under the Land (Perpetual Succession) Ordinance CAP. 137. The Certificate, which is in evidence and appears at page 292 of the record of appeal (RoA, Vol. 2), is headed:

"LAND (PERPETUAL SUCCESSION) ORDINANCE; CAP.137 – THE REGISTERED TRUSTEES; <u>THE SAVIOUR CHURCH OF GHANA</u>".

The Certificate reads:

"IT IS HEREBY CERTIFIED that the Trustees of the Saviour Church of Ghana are registered as a Corporate body in accordance with the provisions of the Land (Perpetual Succession) Ordinance Cap 137.

Dated this 12th day of January 1962.

Signed: MINISTER RESPONSIBLE FOR LANDS."

The death of Isaac Asirifi in 1997 brought fractions into the existing Saviour Church founded by Opanin Brako, leading to series of litigations between some of the leading members of the Church in the courts. The church, as a result, broke into two irreconcilable camps; one headquartered at Gomoa Nyanyano and headed by one of the directors of the Respondent herein by name Elias Kofi Asante and the other headquartered at Akim Osiem (the original birthplace of the Church) and headed by the 1st Appellant herein Abraham Adusei. The various litigations culminated in a consolidated suit in the High

Court (Fast-Track Div.) Accra titled: **"Suit No. FTHR 13/2001; THE REGISTERED TRUSTEES OF SAVIOUR CHURCH OF GHANA v KOFI ELIAS ASANTE & Others (CONSOLIDATED)".** It was a consolidated suit made up of six (6) different actions or writs initiated by various members of the original Saviour Church against each other. The suit travelled to the Court of Appeal and, in between this period and thereafter, there were other actions; including motions in the High court over aspects of the case. This consolidated suit, which both parties copiously referred to in their arguments, was tried by Gbadegbe, JA (as he then was), then sitting as an additional High Court Judge.

In his judgment, the then learned justice of appeal sitting as an additional High Court judge, found as a fact that at the time the parties were before the court, the original Saviour Church founded by Opanin Brako had broken into two irreconcilable camps, to the knowledge and acceptance of the parties. One faction was led by one Abraham Adusei and the other faction by one Elias Kofi Asirifi Asante as recalled supra. The learned judge expressed this position in his judgment as follows:

"I must say that initially when I read through the several pleadings, I conceived of my task in a different perspective in terms of what the parties were claiming and the court's decision thereon, but having listened to the evidence and read the same patiently and carefully, I see that my task is lightened by the fact that the evidence on both sides of the divide leave me in no doubt that the following differences which provoked the actions therein, the parties herein have for some time now operated differently each with a General Superintendent. Whiles the plaintiffs have accepted the leadership of Abraham Adusei, the defendants have accepted that of EliasAsante, one of the surviving children of the deceased General Superintendent, Opanin Isaac Asirifi. This is so clearly borne out by the evidence and accepted by both parties to the actions herein".{Please see page 302, Volume 2 of RoP – emphasis added)

From the trial court's position or perspective, the main issue in all those actions was not in respect of who was to be the General Superintendent of the Saviour Church founded by Opanin Brako as the facial value of the suits tended to portray. According to the

learned trial judge, Gbadegbe, JA, since Elias Kofi Asante had broken away with his faction and established at Nyanyano, Mankrong Junction, he was no more a member of The Saviour Church of Ghana founded by Opanin Samuel Brako with its headquarters at Osiem. The court held:

"In my thinking, the defendants by their decision to appoint a new leader and operate separately from the existing church, had broken away and cannot continue thereafter to be regarded as members of The Saviour Church of Ghana". (The defendants referred to above were the directors of the Respondent herein)

Having settled on this issue, the trial court, per Gbadegbe, JA (as he then was), then moved on to the next issue, which was; **"Which of the two factions of the Church called The Saviour Church, i.e. the Adusei faction and Elias Asante faction, is a successor to the church whose incorporation was in evidence as Exhibit Y?".** This church, whose incorporation was in evidence as Exhibit 'Y', was the one whose trustees had been registered under the Trustees Incorporation Act, 1962 **[Act 106].** Since both factions were operating under the title or name; **"Saviour Church of Ghana"** at the time of litigation, the second issue the trial court was called upon to resolve was: **"Which of the two factions was the successor to the Saviour Church founded by Opanin Brako and registered under the Trustees Incorporation Act, 1962, [Act 106]?**

The trial High court concluded that the Adusei faction was the true successor of the Saviour Church registered under the Trustees Incorporation Act, [Act 106]. However, since the Elias Asante faction had a constitutional right to operate a church in a name of their choice, it could not stop it from operating as a Church in that name. The court therefore ordered the Elias Asante faction to return certain items of worship belonging to The Saviour Church to the Adusei faction with the exception of those properties (i.e. church buildings and homes) in which they were worshipping and living. The court said the Elias Asante faction had acquired interests in those properties and that same could not be taken away from them. Thereafter, the Elias Kofi Asante faction of the Saviour Church continued to operate their church as 'Saviour Church' with headquarters at Gomoa

Nyanyano, separate from the Adusei faction, The Saviour Church with headquarters at Osiem. This is because; the Gbadegbe court did not order the Elias Asante faction to stop operating as a church in that name. The trial court referred to the Court of Appeal case of **PROPHETESS THANE II v PROPHET GEORGE [1977] 1 GLR 467** to support its conclusion.

In the *Prophetess Thane II case* (supra), the respondent in the appeal sued the appellant at the High Court and sought to restrain the appellant from using the words; **"TWELVE APOSTLES"**, as part of the name of his church, which had broken away from the original Twelve Apostles Church. The respondent again sought to retrieve certain items which were given to the appellant as insignia of office during his ordination. The High Court granted the Respondent's prayers but on appeal, the Court of Appeal held that the appellant was pursuing his lawful spiritual rights and could not be lawfully restrained from the use of the name "Twelve Apostles Church". The Court held that no copyright was vested in the respondent by the mere use of the name "Twelve Apostles". In the words of the Court of Appeal, the Constitution guarantees freedom of religion to all persons and no one can be deprived from worshipping in a name he or she wants to, unless and until it infringes on another's rights. The trial High Court per Gbadegbe, JA was not oblivious of this legal position and therefore did not make any order to restrain the Elias Asante faction from worshipping in the name **'Saviour Church'**.

Notwithstanding this position, Elias Kofi Asante and the others appealed against the judgment of the trial High court to the Court of Appeal. In dismissing the appeal whilst affirming the decision of the trial High Court, the Court of Appeal held as follows:

"By way of a brief comment, the evidence was overwhelming that the registered trustees on record are of only The Saviour Church of Ghana, the respondents in this appeal, thus fortifying the finding of the trial court that there is only one true Saviour Church of Ghana and Adusei is the leader. We affirm the findings that the registered trustees of The Saviour Church of Ghana under the Trustees Incorporated Act of Ghana, 1962, Act 106 were the

respondent church. There was no error by the trial judge in his interpretation and inferences from that law.

A luscious bone of contention between the parties was whether the appellants, having seceded from the church, were entitled as of right to continue to possess the buildings on the church's compound. It must be noted that the evidence was plain that though the buildings were on the church compound, the members who occupied them acquired them single-handed. The trial judge did not mince his words when he refused to make an order for the church to take over their ownership for to do so would violate the members' freedom to worship and own property. In other words, even if they broke away from the church, they could own, possess and enjoy their self-acquired properties on the compound. He founded his reasoning on Article 18(1) of the Constitution, 1992..." {Emphasis added}

The Court of Appeal also found that, though the original church had broken into two camps, the Adusei faction was the successor to the original Saviour Church of Ghana founded by Opanin Brako with Adusei as its General Superintendent. The Court of Appeal however, affirmed the decision of the trial High Court to the effect that the Elias Asante faction, which had its headquarters at Gomoa Nyanyano, Mankrong Junction, could not be stopped from occupying and operating their church activities in the properties they possessed as demanded by the Adusei faction. The status quo in place at the time of the litigation and thereafter therefore remained intact even after the decision of the Court of Appeal in 2004, with Elias Kofi Asante running his rival Saviour Church with headquarters at Gomoa Nyanyano, Mankrong Junction and the Adusei faction running The Saviour Church of Ghana with headquarters at Osiem, in the Eastern region.

This affirmation by the Court of Appeal in its judgment was expressed in the following words: **"We, after considering the evidence, are satisfied that Adusei was the elected leader of the Church. At the highest, Elias was the one whom the Spirit had wanted to choose as the leader. Things did not go quite the way he had expected with the result that Adusei is the General Superintendent of the**

church with its headquarters at Osiem, whilst Elias operates at Nyanyano or Mankrong Junction" – { *See the first paragraph of page 325 of the RoA Vol. 2*}.

In fact, there was no explicit order from either the trial High Court per Gbadegbe, JA or the Court of Appeal, restraining the Elias Asante faction from operating a church under the name, **"SAVIOUR CHURCH"**. What the trial court per Gbadegbe, JA (as he then was) and the Court of Appeal, per P. K. Twumasi; Julius Ansah and P.K. Owusu-Ansah, JJA, said was that: the Adusei faction was the successor to The Saviour Church of Ghana with headquarters at Osiem and that Adusei and the others whose names appeared on the writ were the registered trustees of that church. However, the Elias Asante breakaway faction with headquarters at Gomoa Nyanyano, Mankrong Junction, could not be stopped from operating their church as they had the constitutional right to do so. The Elias Asante faction therefore continued to exist as Saviour Church after the judgment of the Court of Appeal in 2004.

Three years after the decision of the Court of Appeal in the consolidated suit, exactly on 6th February, 2007, the Elias Asante faction applied to the Registrar Generals Department for the incorporation of their religious body by name **'Saviour Church of Ghana'**, as a company limited by guarantee under the laws of Ghana. The names listed as directors of this new religious body were: Elias Asirifi Asante, Moses Adjei Kum, Peter Kwabena Adjei, Mathew Adjei Mensah and Emmanuel Dadzie. After due diligence, the Registrar Generals Department effected the registration and issued a Certificate to the company to commence their church business in the name; **"SAVIOUR CHURCH OF GHANA"**.

It must be emphasized that there is nothing before the courts to show in any way that in their application for registration of the new religious body as **"Saviour Church of Ghana"**, the directors intimated in any way that it was **The Saviour Church of Ghana** founded by the late Opanin Brako and registered under the Trusteeship Incorporation Act, Act 106, which they were registering. The Court of Appeal had already held that, that faction was led by OpaninAbraham Adusei as its General Superintendent. In fact, from the records, the church called **'Saviour Church of Ghana'** registered by Elias Asante and others under the Company's Act, (now Act 992 of 2019), was a completely

new company with new directors. It had nothing to do with **The Saviour Church of Ghana** registered under the Trusteeship Registration Act.

About three years after the registration of the Respondent in this appeal, the Trustees of the Saviour Church of Ghana led by one Jacob AsirifiSnr, filed a motion in the High Court praying the court to commit the directors of the Respondent herein to prison for contempt of court. The ground for the application was that the directors of the Respondent Church had flouted the orders or judgments of both the High Court and the Court of Appeal. According to them, the respondents in the application, sought to undermine the judgments of the two lower courts when they went ahead to register a company limited by guarantee under the name, **'Saviour Church of Ghana'**. According to them, the registration of a new religious body by the name **'Saviour Church of Ghana'**, undermined the judgment of the High Court per Gbadegbe, JA as affirmed by the Court of Appeal, since it constitutes a willful disobedience and violation of the judgments delivered by the courts, and hence contemptuous. They annexed the said judgments to their application as Exhibits **'C'** and **'D'** respectively.

Though the directors of the Respondent herein strongly opposed the application, the trial High Court, presided over by S.K.A. Asiedu, J, (as he then was), found them guilty of contempt. The court held: ***"From the evidence before me as a whole, I find that the actions of the Respondents complained of by the applicants are indeed contemptuous of the High Court and the Court of Appeal. I therefore find the Respondents guilty of contempt and I accordingly convict them".*** The court went further: ***"Once the registration has been done by the Respondents, the applicant may take steps to vindicate their rights under the judgments".***

Clearly, the committal of the directors of the Respondent by Asiedu, J for contempt was because, they had caused to be registered a church by name **'Saviour Church of Ghana'**, i.e. Respondent herein. The court said it was sentencing the respondents to enter into a bond as punishment because they were partially blamable for the registration. According to the court, though the directors of the Respondent church were misled by the Registrar General's Department to effect the registration when in an answer to a

query, the Department answered that the name 'Saviour Church' did not exist on their records and therefore had not been registered, *they had knowledge of the judgments of the two lower courts and should have obeyed them.*{Emphasis added)

In fact, I have pondered over this decision of Asiedu, J (as he then was) several times and I still cannot come across any basis for finding the directors of the Respondent herein guilty of contempt for registering a company under the name **'Saviour Church of Ghana'**. The fact is that, the Registrar General's Department never, on any occasion, misled the directors of the Respondent herein, because as it truly advised or responded, as at the time the Respondent Church had applied for registration through their lawyer, no company had been registered with the Department or under the Company's Act under the name **'SAVIOUR CHURCH OF GHANA'**. What confounds me more is the allegation that the directors of the Respondent herein flouted the orders of the High Court per Gbadegbe, JA (as he then was) as affirmed by the Court of Appeal. The question is; which orders of Gbadegbe, JA did the directors of the Respondent church flout?

The trial High Court per Gbadegbe, JA only made findings of fact to the effect that the Adusei faction was the true successor of The Saviour Church founded by the late Samuel Brako with its headquarters at Osiem. This was the finding that was affirmed by the Court of Appeal. No speaking order or orders were made by any of the two lower courts after the said finding, restraining anybody from the use of the words; **'SAVIOUR CHURCH'**. This Court, in the case of **REPUBLIC v HIGH COURT ACCRA; EX PARTE LARYEA MENSAH [1998-99] SCGLR 360** has held that; ***"a person commits contempt and may be committed to prison for willfully disobeying an order of court requiring him to do any act other than payment of money or to abstain from doing some act; and the order sought to be enforced should be unambiguous and must be clearly understood by the parties concerned. The reason is that a court will only punish as contempt, a willful breach of a clear court order requiring obedience to its performance. In the instant case, the judge confused findings of fact with specific orders meant to be obeyed. It is the final order of the court, i.e. the enforceable order, which should be considered in deciding***

whether contempt had been committed or not. Therefore for the acts of the applicant to amount to contempt of court, he must be found to have been guilty of willful disobedience or to have willfully violated the court's specific order. Agbleta v The Republic [1977] 1 GLR 445, CA and Kangah v Kyere [1979] GLR 458, CA cited"

Also, in the case of **REPUBLIC v SITO I; EX-PARTE FORDJOUR [2001-2002] SCGLR 322**, this Court affirmed that position when it held that the essential elements of the offence of contempt of court, particularly based on disobedience of a court order were;

(i) there must be a judgment or order requiring the contemnor to do or abstain from doing something;

(ii) it must be shown that the contemnor knows what precisely he is expected to do or abstain from doing;

(iii) it must be shown that he failed to comply with the terms of the judgment or order and that his disobedience was willful. As stated in the case of Collins v Wayne Iron Works 76 US 24 (1910), the order must be "as definite, clear and precise in its terms as possible, so that there may be no reason or excuse for misunderstanding or disobeying it."

In all these decisions, the paramount consideration was that; there must be an unambiguous order, as definite, clear and precise in its terms as possible, which must be clearly understood by the parties in contradistinction to mere findings of fact.

In the case that led to the conviction of the directors of the Respondent Church for contempt of court by Asiedu, J (as he then was), neither the trial High Court, nor the Court of Appeal made any orders restraining the Respondent's directors from operating a church in the name **'Saviour Church of Ghana'**. Again, the courts never ordered the directors of the Respondent church not to register the church they were operating in that name, since from the evidence on record, the existence of that faction of the Saviour

Church had already been acknowledged by the courts with the admission that there existed two factions of the Saviour Church. What the courts said was that the Abraham Adusei faction was the successor to the church founded by Opanin Brako whose trustees had been registered under Act 106.That was a mere finding of fact but not an explicit or unambiguous order directed to anybody to be obeyed, failure of which would constitute a willful disobedience of a court order.

Again, the Respondent Church was not registered as a continuation of the Saviour Church founded by Opanin Brako. When the Respondent was conducting a search at the Registrar General's Department prior to its registration, its lawyer wrote a letter to the Department titled; **"REGISTRATION OF SAVIOUR CHURCH OF GHANA"**. The letter indicated the headquarters of the Church in contention. The letter states; ***"We act as Solicitor for the Saviour Church of Ghana with its headquarters located at Gomoa Nyanyano in the Central Region"***. If the directors of the Respondent Church ever said in a press release that their church was the successor of the original church founded by Opanin Isaac Asirifi that statement had no basis as there is nothing on record to show that the late Opanin Isaac Asirifi ever founded any church. The church which the Abraham Adusei faction succeeded to was originally founded by the late Opanin Samuel Brako but not the late Opanin Isaac Asirifi. That church was not registered under the Company's Act. It was its trustees who were registered under the Trustees (Incorporated) Act, 1962 [Act 106]. So even, if the directors of the Respondent ever said anywhere that they were the successors of the church of the late Isaac Asirifi, that statement was false since Isaac Asirifi never founded any church. That statement cannot therefore ground a contempt charge since it did not breach any court order. In fact, the committal of the directors of the Respondent Church on a charge of contempt of court by Asiedu, J (as he then was) after the registration of the Respondent Church, was wrongful and misplaced as it was not established in any way that they had committed any contempt of either the trial High Court or the Court of Appeal. That ruling was therefore given per incuriam, notwithstanding the fact that the directors of the Respondent herein never appealed against same.

In the per incuriam ruling, the trial judge, Asiedu, J (as he then was) stated the following: ***"Once the registration has been done by the Respondents, the applicant may take steps to vindicate their rights under the judgments".*** The applicants referable in the above statement by Asiedu, J, were the trustees of The Saviour Church of Ghana led by Abraham Adusei. The question is; what rights did the Appellants in this case, who were the applicants in the contempt application, derive from the judgments of the two lower courts, which they had to vindicate per Asiedu, J (as he then was) in his judgment? In actual fact, they did not derive any other right from the two judgments apart from the right that they were the successor to the Saviour Church founded by the late Opanin Brako with headquarters at Osiem. The courts never decreed anywhere that they were the only religious body that could use the name 'SAVIOUR CHURCH' and for that matter, the directors of the Respondent Church could not use that very name to worship. So the best the Adusei faction could do was to also go to the Registrar General's Department to also register their faction of the church, which they did under the appropriate name; **"THE SAVIOUR CHURCH OF GHANA"**. This they did on the 14th day of August, 2012, two years after the ruling of Asiedu, J, with Abraham Adusei and Enoch Ofori as the directors.

Though during the trial, the Appellants tried to deny this fact of the registration of their faction with the name **"The Saviour Church of Ghana"**, the Respondent was able to demonstrate that this registration did take place. On the 6th day of November, 2012, **"The Saviour Church of Ghana",** headed by Abraham Adusei**,** was given a certificate to commence business under that name as a religious body limited by guarantee. So in effect, there are now in existence two separate churches operating under the name Saviour Church of Ghana. The first, which was registered in 2007 is; **"SAVIOUR CHURCH OF GHANA"**(Respondent herein) with Elias Kofi Asirifi Asante and others as directors and then the second one registered in 2012 as; **"THE SAVIOUR CHURCH OF GHANA"** with Abraham Adusei and Enoch Ofori as directors. The two churches, which exist independently of each other, are not the same and there is no doubt about this fact. Demonstrably therefore, it was totally wrong on the part of Asiedu, J (as he then was) to

commit the directors of the Respondent to payments of fines for contempt of court when no contempt was satisfactorily proved or established by the Appellants against them.

The genesis of the suit giving rise to this appeal

On the 18th day of January, 2013, the Respondent herein issued a writ of summons against the Appellants herein in their individual capacities as registered trustees of **The Saviour Church of Ghana** with headquarters at Osiem. The reliefs sought were mainly two, namely:

1. **A declaration that the Plaintiff (i.e. Respondent), is the only legal entity by that name, who is permitted by law to run a church and do religious and spiritual activities and;**
2. **An order for perpetual injunction restraining the defendants (i.e. Appellants herein), their agents, etc. from using the name 'Saviour Church of Ghana' for any spiritual and religious activities.**

Respondent prayed for any other relief or orders that the trial court may deem fit to make. It is this action that has culminated in this appeal.

The statement of claim that accompanied the writ of summons was quite brief and straightforward. In an epitome, its import was that; Respondent was a religious body registered under the laws of Ghana on 6th February, 2007 as a company limited by guarantee. It had branches all across the country and had its board of directors whose names were given under paragraph 3 of the statement of claim. It is the only religious body that can run church activities under that name. The Appellants on the other hand were the registered trustees of **The Saviour Church of Ghana, Osiem.** As registered trustees, the Appellants were not a religious body with legal authority to do church activities. However, the Appellants were conducting religious activities under the name **'Saviour Church of Ghana'** and were planning a convention in the name of the

Respondent. Respondent therefore prayed the court to stop the Appellants from deceiving the whole world that they were **'Saviour Church of Ghana'**.

The Appellants, who were the Defendants, denied the Respondent's claim. The Appellants in their statement of defence filed on 4th April, 2013, recounted the history behind the establishment of the Saviour Church in 1924 and the split that occurred in the church in 1997 after the death of its then leader Opanin Isaac Asirifi, as already explained above. Appellants made mention of the litigations in the trial High Court and the Court of Appeal and how they went in their favour. Appellants submitted that the registration of the Respondent (Plaintiff) in 2007 was fraudulent and counterclaimed against the Respondent for the following:

a. **A declaration that by virtue of the decisions or judgments in the High Court and Court of Appeal referred to supra, the Respondent is estopped from relitigating the issue of ownership and control of the Saviour Church of Ghana;**
b. **A declaration that the registration of the Respondent in 2007was fraudulent and void;**
c. **An order cancelling the said registration for fraud;**
d. **Damages;**
e. **An order of perpetual injunction restraining the Respondent and its followers from holding themselves out as members of the Saviour Church of Ghana with headquarters at Osiem and anywhere else in Ghana;**
f. **An order that the directors of the Respondent Church are in recurrent contempt of the High Court and the Court of Appeal by their continuous reliance on the fraudulent registration and;**
g. **An order punishing the said directors for contempt of court.**

At the close of pleadings, the Respondent as Plaintiff, set out four issues for determination whilst the Appellants as Defendants/Counterclaimants, set out eight issues for

determination. The trial court, in its wisdom, set down ten issues for determination. These were:

1. ***Whether the Plaintiff is a religious body;***
2. ***Whether the purported incorporation of the Plaintiff on 6th February 2007 was fraudulent and deceitful;***
3. ***Whether the said incorporation was contemptuous of the Superior courts of Ghana, to wit the High Court and the Court of Appeal;***
4. ***Whether the issues of the true origin, identity, status, role and leadership of Saviour Church of Ghana had been previously adjudicated upon by the High Court and Court of Appeal and therefore those issues are res judicatta;***
5. ***Whether the Plaintiff can re-litigate those issues in any other form;***
6. ***Whether the Plaintiff has any reasonable cause of action against the defendants;***
7. ***Whether the directors of the Plaintiff are vexatious litigants and ought to be barred from instituting any further frivolous action against the defendants and their church;***
8. ***Whether the directors of the plaintiff ought to be punished for contempt of court for their continuous reliance on the registration of the plaintiff;***
9. ***Whether or not the defendants, as the Registered Trustees of theSaviour Church of Ghana, can legally run churches and engage in religious and spiritual activities;***
10. ***Whether or not the Defendants are running churches and carrying on other religious activities in the name of the Plaintiff.***

The trial High Court found as a fact that the Respondent was a registered religious body and that there was nothing fraudulent about its incorporation. The court added that having gone ahead to register their faction as **"The Saviour Church of Ghana"** about five years after the registration of the Respondent church as, **"Saviour Church of**

Ghana", the Appellants had acquiesced or accepted the existence of two separate churches operating under the name **"Saviour Church".**

I cannot conjecture how the trial High court could be faulted for this finding, which is supported by the facts on record. As the trial judge rightly said, if indeed the Gbadegbe Court and the Court of Appeal did make any order against the directors of the Respondent for the use of the name **'Saviour Church'**, then they should have taken steps to enforce that order but not to go and register another church. But because there was no such order, they did the needful by also registering their faction which they called; **"The Saviour Church of Ghana",** in conformity with the name of the very church they succeeded to, which is completely different and distinct from the Respondent **"Saviour Church of Ghana".**

Having dismissed the allegation of fraud in the registration of the Respondent, the trial court dismissed in totality the counterclaim of the Appellants and gave Respondent judgment in the following words: ***"This court decrees that the plaintiff is the only one legal entity by that name which is permitted by law to run churches and do religious and spiritual activities. This court further grants an order of perpetual injunction restraining the defendants, their agents and assigns from using the name 'Saviour Church of Ghana' for any spiritual and religious activities. I further grant plaintiff custody of all their branches in the country..."***

The Appellants appealed against this judgment to the Court of Appeal on six grounds but lost in a split decision. The main grounds of appeal, inter alia, were:

1. ***The judgment was against the weight of evidence;***
2. ***The learned judge erred when he entered judgment in favour of Plaintiff/Respondent despite the clear and more compelling evidence led by the Defendants/Appellants.***
3. ***The learned trial judge erred when he ignored the import and ratio in the judgment of Gbadegbe, JA in suit no. FTHR 13/2001, which was***

affirmed by the Court of Appeal by holding that the Respondent was the only legal entity by that name that was permitted by law to run a church and do spiritual activities;

4. ***The learned trial judge also erred when in spite of the ruling of Asiedu, J, in which he convicted and punished the Plaintiff's directors for contempt for the unlawful registration of the Plaintiff in Suit No. AP116/2009 (Exhibit 7), he gave judgment to Plaintiff on a claim based on such unlawful registration.***
5. ***That in the face of the judgments of the Superior Court in Exhibits 5, 6 and 7, the learned trial judge was palpably wrong and misdirected himself in granting the reliefs claimed by the Plaintiff.***
6. ***The learned trial judge erred when after making a finding that the Plaintiff has committed fraud in its registration he still went ahead and entered judgment in Plaintiff's favour.***

The Court of Appeal, in a majority decision, affirmed the judgment of the trial High court. The Court of Appeal found that the Respondent was properly and lawfully registered and that there was nothing fraudulent about Respondent's registration. The Court of Appeal, like the trial High Court, did not find as proven, the allegation of fraud in the registration of Respondent. The Court of Appeal again found that the directors of the Respondent did not willfully disobey any court order so their conviction for contempt by Asiedu, J was wrongful. The Court of Appeal stated; ***"the trial judge in convicting them found that the respondent acted on the advice of the Registrar General and that they did not willfully disobey the orders of the Superior Courts as alleged".***

The Court of Appeal also dismissed the argument by the Appellant that the judgment of Gbadegbe JA and the subsequent decision of the Court of Appeal on same, operated as *res judicata* with regard to the action initiated by the Respondent in the trial High Court. The Court of Appeal found and rightly so that the Respondent had never been a party to any of the six suits that were consolidated for determination by Gbadegbe, JA. It must be emphasized that the Respondent is separate from its directors. If its directors or some

of them were involved in any of the previous suits as consolidated, that had nothing to do with the Respondent as a separate legal personality – {See **SALOMON v SALOMON & CO. LTD [1897] AC 22; NANA YAA KONADU v ALHAJI ABDUL RASHEED [2020] 170 GMJ, 405 @ 418 - SC}**. The Court of Appeal accordingly dismissedthe *res judicata* claim and rightly so.

I, however, disagree with the finding of the Court of Appeal that, the judgment of Ofori-Atta, J, delivered on 23rd November, 2012, had dealt a fatal blow to the decision of Gbadegbe JA as affirmed by the Court of Appeal. In my view, the judgment of Ofori Attah, J was a nullity as the writ with the accompanying statement of claim in that suit was later set aside by the Court of Appeal per Mariama, Acquaye and Dordzie, JJA, in an appeal against the refusal of Ofori Attah, J to have same set aside before he delivered his judgment. The judgment of Ofori Attah, J therefore had no foundation.

The Court of Appeal also affirmed the dismissal of Appellant's counterclaim and held as follows, per Agbevor, JA: ***"In my view the learned trial judge had sufficient reason todismiss the counterclaim filed by the defendant since sufficient evidence was not produced in support. My view is that the judgment of the court below was according to law and should be allowed to prevail..."***

It is for the above judgment, as summarized above, that the present appeal is before us. As the Court of Appeal rightly found, the genesis of the suit culminating in this appeal was the registration of the Respondent as a Company Limited by Guarantee on 6th February, 2007. The Appellants' contention is that the registration of the Respondent was fraudulent and contemptuous as it defied the orders of the High Court as affirmed by the Court of Appeal. In their submission, Appellants stated; ***"it is the fraudulent and deceitful registration after the judgment of Gbadegbe JA, as affirmed by the Court of Appeal, that evoked the Contempt Proceedings before Asiedu, J (as he then was)".***The Court of Appeal therefore erred in affirming the decision of the trial High Court which dismissed the claim of fraud against the Respondent.

Clearly, the Appellants' in their written submissions, relied greatly on the wrong conviction of the directors of the Respondent for contempt of court by Asiedu, J, which conviction I have demonstrated above, was wrong and *per incuriam.* They againrelied on the erroneous reasons supporting the dissenting opinion of the learned justice of Appeal, Surrbarreh, JA. I now proceed to determine the grounds of appeal in the order in which the Appellants presented them.

GROUNDS (a), (h) and (k)

Though Appellants indicated that they were arguing grounds (a), (h) and (k) together, eventually, they argued only ground (a) under this group of grounds. Ground (a) was that the writ was a nullity for the failure of the Respondent to endorse on same the nature of the reliefs being sought. The writ did not therefore confer any jurisdiction on the trial High Court and the Court of Appeal to uphold reliefs based on same. The two lower courts therefore erred in granting Respondent's reliefs instead of striking out the case.

A careful evaluation of the evidence on record portrays, without any doubt whatsoever that, Appellants conceived this ground of appeal in reliance on the erroneous observation made by the minority justice of Appeal, Surrbarreh, JA who dissented in the judgment. Without any prompting from anybody, since it was never the case of the Appellants that Respondent's writ of summons was not properly endorsed throughout the trial to the appeal stage, the minority Justice of Appeal made this observation, albeit erroneously, in his dissenting judgment:

"***By way of preliminary point, I want to state that the Respondent failed to endorse on its writ of summons, the reliefs being sought in the action since the reliefs are contained or found in the statement of claim, See the provisions of Order 2 rule 3(1) of the High Court Civil Procedure Rules 2004 [CI 47]….***"

After citing a few authorities on case law to support this procedural rule, the learned justice concluded as follows: ***"In the instant case, the Respondent failed to endorse the claim, relief or remedy sought in the action on the Writ of Summons. This requirement being mandatory rendered the Writ a nullity and***

the trial judge was not clothed with jurisdiction to deal with the matter. In fact, there was nothing before him as the failure to endorse on the Writ the relief, claim or remedy, rendered it null and void. The trial judge therefore undertook an exercise in futility. This should dispose of the appeal but out of abundance of caution, I shall consider the appeal on its merits."

It is interesting to note that the Appellants herein, never raised any issue with regard to the propriety of Respondent's Writ of Summons throughout the trial in the trial High Court and even in their grounds of appeal and submissions before the Court of Appeal, until the minority Justice of appeal, suomotu, raised it in his dissenting judgment. From the records, there is no doubt that Appellants knew all along that Respondent's Writ of Summons was properly endorsed that is why they raised no issue with it. The records before us show clearly that Respondent's writ of summons in the trial High court had an endorsement which can be seen at page 1A of Volume One of the RoA. The law permits the courts to draw the attention of parties in litigation to legal issues not addressed by the parties but which the courts consider paramount in the consideration of the issues before the court and invite submissions from parties on the said issues if the courts intent to rely on such issues in the determination of the matters before them – {***See Rule 8 (9) of the Court of Appeal Rules, 1997 [C.I. 19] and Rule 6 (8) of the Supreme Court Rules, 1996 [C.I. 16]***}

From the Respondent's explanation in its statement of case, the Appellants knew all along that the writ was properly endorsed. However, the Record of Appeal (RoA) placed before the Court of Appeal, did not, through the inadvertence of the Court Registry, have that portion or page of the writ of summons containing the endorsement or reliefs sought; i.e. page 1A of Volume One of the RoA. If the minority Justice of Appeal thought this was a serious lapse which could have had an impact or a devastating effect on the appeal, he should have drawn the attention of his colleague panel members of the Court to it for the Court of Appeal to direct or order the parties to address it on it because, the Appellants never raised any such issue anywhere in the appeal. This Court has delivered several authoritative decisions on this issue including the recent cases of: **OWUSU DOMENA v**

AMOAH [2015-2016] I SCGLR 790 and ASAMOAH v OFFEI [2018-2019] 1 GLR 655; [2019] VOLUME 1, GLR 138 at p. 141. See also ANKUMAH v CITY INVESTMENTS CO. LTD [2007-2008] 2 SCGLR 1064 at p. 1065

Quite apart from the error of the minority Justice in failing to draw the attention of the parties to his observation before relying on same to determine the appeal, he himself stated in his judgment that the reliefs the Respondent was claiming were stated in the Statement of Claim that accompanied the writ but not endorsed on the writ. Even granted that was the case, the authorities are clear that "*defects in a writ of summons could be cured by reading the writ together with the accompanying statement of claim since under Order 82 of the High Court Civil Procedure Rules, 2004 [C.I. 47], a writ is defined to include a writ of summons and a statement of claim together in order to achieve the objective of the Civil Procedure Rules, C.I. 47 as provided under Order 1 rule 1(2)"* –See the cases of: **HYDROFOAM ESTATES (GH) LTD v OWUSU (per Lawful Attorney) OKINE [2013-2014] 2 SCGLR 1117** and **BANDOH v APEAGYEI-GYAMFI [2018-2019] 1 GLR 299**.

The law is settled that a writ includes a writ of summons and a statement of claim so the absence of a relief in an endorsement on a writ of summons does not destroy the sanctity of the writ as the reliefs could be deciphered from the accompanying statement of claim. It is the law that a statement of claim is an expanded form of a writ of summons, so whatever relief that is prayed for in a statement of claim is equally as good as a relief sought for in an endorsement on the writ, if not better.

Appellant again raised another technical issue in his written submissions which he did not formulate as a ground of appeal and urged the Court to declare the action giving rise to this appeal as void and therefore a nullity. The argument was that the writ of summons was not signed by an individual lawyer with a practicing licence but by a law firm. Quite apart from the paucity of reasoning behind this submission, this issue was never raised by the Appellants in their pleadings throughout the trial and again was never raised as a ground of appeal in the appeal before us. Under the rules, a party shall not, without the leave of this Court, argue or be heard in support of a ground of appeal that is not specified

as a ground of appeal in the notice of appeal – ***{Rule 6(6) of [C.I. 16]}.*** I do not think it is worth wasting precious time on this technical ground which I find quite unmeritorious. I therefore dismiss ground (a).

GROUNDS (h), (i) & (k)

The next group of grounds of appeal that Appellants argued was grounds (h), (i) and (k). Grounds (h) and (k) were exported from the first group of grounds. These grounds hinged on the alleged fraud committed by the Respondent during its registration. The gravamen of the arguments of the Appellants in support of this group of grounds was that, notwithstanding the judgments of the trial High Court per Gbadegbe, JA (as he then was) sitting as an additional High Court Judge, as affirmed by the Court of Appeal, declaring the Adusei faction as the proper successor to The Saviour Church of Ghana founded by Opanin Samuel Brako in 1924 at Osiem and the conviction of the Directors of the Respondent for contempt of court by Asiedu, J (as he then was) for having registered the Respondent, the Respondent was still operating a church in the name 'Saviour Church of Ghana', thus committing a recurrent contempt for which the Court of Appeal should not have affirmed the High Court judgment dated 7th November, 2018.

It is significant to note that the primary discussion on this group of grounds centred substantially on the registration of the Respondent Church; i.e. **"SAVIOUR CHURCH OF GHANA".** Having considered in totality the submissions of Appellants and the Respondent on this issue of fraudulent registration as alleged by the Appellants, I am ad idem with the Respondent that the arguments in support of this group of grounds too are baseless. As the trial High Court rightly found and which finding was affirmed by the Court of Appeal in majority, the Appellant could not, in any way, establish any fraud on the part of the Respondent or anybody, in the registration of the Respondent Church throughout the trial. I wish to emphasize that the registration of Respondent was done by its Directors. If therefore, any fraud was allegedly committed during its registration, that allegation must be made against the said Directors who did the alleged fraudulent registration but not the entity registered, which has assumed the character of a corporate being.

Respondent did not register itself. It was registered by its Directors. The Appellants have neither made any case nor instituted any action against the Directors of the Respondent for perpetrating fraud in the registration of the Respondent. The Appellants only filed a motion praying the trial High Court per Asiedu, J, to commit the Directors of Respondent for contempt of court for disobeying the orders of the High Court, per Gbadegbe, JA. I have already demonstrated in detail (supra), and convincingly, the wrongfulness of Asiedu, J's decision in committing the Directors of the Respondent to the payment of fines for contempt of court, when in fact and indeed, they neither breached nor disobeyed any orders of the High Court per Gbadegbe JA as prayed for by the Appellants herein in that contempt application. During the trial in the trial High Court, the Appellants did not produce any evidence of fraud against the Respondent as a legal entity apart from contending that its Directors were committed for contempt. If the Directors of the Respondent were committed for contempt for defying a court order, how can that constitute fraud on the part of the Respondent in its registration?

It appears to me that the Appellants and the learned trial judge Asiedu, J (as he then was), misconstrued the decision or judgment of Gbadegbe, JA as affirmed by the Court of Appeal in 2004. As the Respondent rightly recounted in its written submission, the Church whose Trustees were registered under the Trustees (Incorporation Act), 1962 [Act 106] and which the trial High Court per Gbadegbe, JA ad the Court of Appeal said had been succeeded by the Appellant's faction was **"The Saviour Church of Ghana"** but not **"Saviour Church of Ghana".** For purposes of emphasis, I wish to refer to portions of the said judgment and the Appellants' own Exhibits 1 and 2 which they tendered in evidence during the trial. At page 6 of the judgment which appears at page 304of the record (RoA Vol. 2), Gbadegbe, JA wrote: ***"In my thinking, the defendants by their decision to appoint a new leader and operate separately from the existing church, had broken away and cannot continue thereafter to be regarded as members of <u>The Saviour Church of Ghana"</u>.*** On the same page, the judge wrote: ***"In my opinion, having regard to these acts that do not derive their legitimacy from the Constitution and are accepted practice of <u>The Saviour</u>***

<u>Church of Ghana</u>, the next issue common to the actions before me is which of the two factions is a successor to the church whose incorporation is in evidence as Exhibit 'Y'".

More compelling on this issue is the following statement of the trial judge (Gbadegbe, JA) at page 305 of the record (RoA Vol. 2). It reads: ***"I must pause here to say that in this contest, there is no denial by the defendants that it is only the plaintiffs' faction which has had its trustees registered according to law. I say so because the evidence discloses without any shadow of doubt that the two factions are operating under the name 'Saviour Church'. By the said incorporation, the church whose name is mentioned therein, 'The Saviour Church of Ghana', has acquired in the words of section 1(4) of Act 106, Trustees Incorporation Act, 1962, a body corporate by the name described in the Certificate and shall have perpetual succession and a common seal..."***

He then continued on the same page: ***"It also has a group of persons who are registered as trustees for the purpose of holding land in succession to the first registered trustees of The Saviour Church of Ghana".***

Ironically, the Certificate issued to the Appellants' church after registration under Act 106, which the Appellants tendered in evidence during the trial as Exhibit '1', and which I have referred to supra in this judgment, is headed: **"LAND (PERPETUAL SUCCESSION) ORDINANCE CAP 137 – THE REGISTERED TRUSTEES, <u>THE SAVIOUR CHURCH OF GHANA</u>"**. Again, the document which the Appellants tendered in evidence as **Exhibit '2'** during the trial, which was said to be the Constitution of their church is headed; **"THE CONSTITUTION OF <u>THE SAVIOUR CHURCH OF GHANA</u>. 1961" -**{See pages 278 and 279 of the record (**RoA, Vol. 2**)}.The sub-heading of this Constitution reads: **"Constitution and Bye-Laws of <u>The Saviour Church of Ghana</u>".** It commences; "The Church known as **<u>'The Saviour Church'</u>** or (GyidiNkwagyesom)".

The first issue for determination by the trial High Court presided over by Gbadegbe, JA (as he then was) was; Whether or not the Plaintiffs were the Registered Trustees of **<u>The</u>**

Saviour Church of Ghana. At the end of the trial, the trial court found as a fact that both the Appellants' faction and the Respondent faction were all operating differently as churches under the name 'Saviour Church of Ghana' with one headquartered at Osiem in the Eastern Region and the other headquartered at GomoaNyanyano, Mankrong Junction in the Central Region. The court again found as a fact that the rightful successors to the original church founded by Opanin Samuel Brako and registered under Act 106 with headquarters at Osiem; i.e. **'The Saviour Church of Ghana'**, were the Appellants' faction.

Apart from ordering the directors of the Respondent to return certain items of worship to the Appellants' faction, the court did not make any order with regard to the church buildings and properties under the care and possession of the Respondent faction on the ground that any such thing would infringe on their constitutional right to operate as a religious entity. The trial High Court knew that the Elias Asante faction, which registered the Respondent, was operating a church in the name Saviour Church. The trial High court did not make any direct or indirect order restraining the directors of the Respondent from using the name 'Saviour Church' or worshipping in the name Saviour Church. It again did not make any order against the directors of the Respondent from registering a church in the name 'Saviour Church of Ghana'. It only said the Appellants were the successors to the church by name; 'The Saviour Church of Ghana'.

By the decision of the Court of Appeal in the *Prophetess Thane case* (supra), the trial High Court could not have made any such order so it did not attempt to do so. After that decision, the directors went to register their church which they named **'Saviour Church of Ghana'**, which is quite different from the Appellants' church **'The Saviour Church of Ghana'.** Five years after the registration of the Respondent; i.e. in 2012, the Appellants also went to register their faction under the Companies Act, named **'The Saviour Church of Ghana"** in accord to the judgment delivered in their favour by Gbadegbe, JA. This was in addition to their earlier registration under the Trustees Act, Act 106 for which they were issued with a certificate (Exhibit 1) referred to supra. The crucial question is; if the Respondent had usurped the name of the Appellants church as

they claimed, why did they not take any action against the Respondent's directors but instead went to register their faction in a different name?

The truth is that, the name of the church which the Appellants registered under the Company's Act as **'The Saviour Church of Ghana'** is the very church over which they obtained judgment before Gbadegbe, JA. That Church is not the same as the Respondent church which is; **'Saviour Church of Ghana'**. I do not find any merits in the arguments canvassed by the Appellants under this group of grounds and I dismiss same accordingly.

GROUNDS (b), (c), (d), (f), (g), (j), ((l) and (m)

Appellants, in their written submissions, argued all eight grounds grouped as above under the omnibus ground, i.e. both judgments of the trial High Court and the Court of Appeal were against the weight of evidence adduced at the trial. The law is settled that where an appellant alleges, especially before a second appellate court like ours, particularly in a concurring judgment that a judgment is against the weight of evidence, an onerous duty is cast or imposed on the appellant by law to demonstrate where the appellate court went wrong. The main reason why the Appellants are contending that the judgments of the two lower courts are against the weight of evidence was that: **(i)** The suit before the trial High Court which culminated in this appeal was *'res judicata'* and also **(ii)** The action was an *abuse of the judicial process*.

According to them, it was *'res judicata'* and *'an abuse of the judicial process'* because Gbadegbe, JA as affirmed by the Court of Appeal, had dealt with the same issues raised in this case for which the trial High Court and the Court of Appeal should have dismissed the action in limine, as the Court of Appeal did in the Ofori Attah case. Appellants revisited the arguments heretofore made on the alleged fraudulent registration by virtue of Gbadegbe, JA's judgment and the fact that the issues raised herein were *res judicata* and should not have been re-opened. Appellant referred to Ofori Attah, J's judgment which the Court of Appeal made mention of and contended that contrary to the decision of the Court of Appeal, Ofori Attah, J's judgment never overturned Gbadegbe, JA's judgment.

I have already dismissed the efficacy of Ofori Attah, J's judgment in this appeal since in my view; it has no bearing whatsoever to this case. It appears the Appellants relied heavily and entirely on the dissenting opinion of Surrbarreh, JA to buttress their appeal. I am, however, of the view that Surrbarreh, JA, misconstrued the real facts before him and based his decision entirely on the per incuriam ruling of Asiedu, J. in which he committed the directors of the Respondent for contempt of court for incorporating the Respondent. I want to be categorical that the issue of *'res judicata'* does not arise at all in the case on appeal before us. As the Court of Appeal rightly captured in their judgment, the Respondent herein has never been a party to any of the suits that were consolidated into the suit heard by Gbadegbe, JA as an additional High Court Judge. The Appellants are equating the Directors of the Respondent in Suit No.FTHR13/2001, heard by Gbadegbe, JA, to the Respondent herein.

Before a plea of *'res juducata'* can be upheld as a defence in a claim or on an issue, it must be demonstrated that;**(i)** there has been an earlier decision on the claim or issue, **(ii)** the earlier decision was a final decision and was given on the merits and **(iii)**the determination involved the same parties, or parties in privity with the original parties – {See Black's Law Dictionary, Ninth Edition, by Brian A. Garner, page 1425. See also the decisions of this Court in (1) **NANA BRAFO DADZIE II v JOHN ARTHUR &13 Others [2017-2018] SCLRG 222;** (2) **INRE SEKYEDUMASI STOOL; NYAME v KESSE 'alias' KONTO [1998-99] SCGLR 476; (3) DAHABIEH v S. A. TURQUI& Bros [2001-2002] SCGLR 498; PRAH v AMPAH [1992] 1 GLR 34}.**

On this *res judicata* issue, the Court of Appeal at pages 23 to 25 of its judgment which appears at pages 66-67 of the record (RoA, Vol 3) stated as follows:

"Other pertinent issue raised by the appellant is 'res judicata'. It has been argued that the judgment of the High Court delivered by Gbadegbe and the subsequent appeal operated as res judicata against the plaintiff/respondent.The title of the consolidated suit is Registered Trustees of the Saviour Church vrs Kofi @ Asante. This was FTHR 13/2001. It is the case

of the appellant that the parties in the present suit are the same as those who appealed in the case before Gbadegbe, JSC.

The Plaintiff/Respondent was not a party to any of the suits referred to. It has not been in litigation except in this case the subject matter of this appeal. For res judicata to apply, the judgment sought to be relied on as between the parties or their privies and on the same facts in a judgment which was final. In the instant case, the plaintiff/respondent is a separate legal entity from its directors having acquired the status of a person under the Companies Code, upon registration as a company limited by guarantee.

The issue between the plaintiff/respondent and the appellant is different from that which was earlier determined by the court. It was not about the leadership of the church but about whether the Plaintiff/respondent has properly applied for and obtained the blessing of the Registrar of Companies to use the name 'Saviour Church'. This issue between the parties has never been adjudicated upon by any court of competent jurisdiction to enable the doctrine of Res Judicata to be invoked as a shield."

What the Court of Appeal stated as quoted above represented the true state of affairs so where did the Court of Appeal go wrong in making that statement? The three conditions for invoking the issue of estoppel are that;

(i) The same issue must have been decided in the earlier case;

(ii) The judicial decision in the earlier case must have been final; and

(iii) The parties in the current case must be the same parties in the earlier case or their privies.

Appellants could not satisfy the above conditions in establishing *res judicata* against Respondent's action. The fact is that the judgment of Gbadegbe, JA and the pursuant appeal did not have any impact on 'Saviour Church of Ghana', i.e. the Respondent as a church. The judgment was in respect of the successor of 'The Saviour Church of Ghana'. It cannot therefore operate as *res judicata* vis-à-vis 'Saviour Church of Ghana'. In fact,

the Appellants tried to mislead this Court when they asserted that both the trial High Court and the Court of Appeal ignored clear evidence of *res judicata* and *estoppel*. In the *Prah case* (supra), Benin J. (as he then was) held as follows: ***"where the issues and/or causes of action raised in the two suits were entirely dissimilar, estoppel would not be appropriate."*** Also, as was held by my able brother Pwamang, JSC in the case of **MRS AHADZI, PIONEER MALL LTD v BOYE SOWAH, (SUBSTITUTED BY SAMUEL NORTEY, NII NORTEY ADJEIFIO, NUMO ADJEI KWANKO II)**, an unreported judgment of this Court dated 21st March 2019 and numbered J4/33/2018; ***"...in law a party who seeks to rely on res judicata is required to plead and prove the elements of the res judicata..."*** The learned Justice then referred to the elements as stated by Acquah, JSC (as he then was) in the *In Re Sekyedumase case* (supra).

The trial High Court presided over by Gbadegbe, JA (as he then was) sitting as an additional High Court Judge, never tried any matter involving the Respondent in this case. The case Gbadegbe, JA's court determined was in respect of the successor to The Saviour Church of Ghana founded by Opanin Samuel Brakoh in 1924 and registered under Act 106 but not 'Saviour Church of Ghana' registered under the Companies Act in 2007. The arguments advanced by the Appellants on these grounds do not hold water and I dismiss them entirely.

GROUND (e)

The last ground the Appellants argued, i.e. ground **(e)** was to the effect that the judgments of both the trial High Court and the Court of Appeal were contrary to law; i.e. the 1992 Republican Constitution and the Principle of *Stare Decisis.* In their written submissions, Appellants summed up the reason behind their appeal on this ground in their opening page as follows:

"My Lords, with respect, by the Principle of *stare decisis*, judicial precedents are to be respected and followed by the hierarchy of Courts. We would

respectfully refer to article 136 (5) of the 1992Constitution relative to the Court of Appeal on this.

Article 136 (5) states that:

"Subject to clause (3) of article 129 of this Constitution, the Court of Appeal shall be boundby its own previous decisions; and all courts lower than the Court of Appeal shall follow the decisions of the Court of Appeal on questions of law".

It thus stands to reason that the various attempts by the learned High Court Judge in seeking to wrongly overturn decisions on this issue from Superior Courts, and which decisions are binding on him, are erroneous to the extreme, we submit and thus unlawful".

According to Appellants, the subject matter in dispute in this case has been litigated upon over and over again, culminating in the consolidated suit before Gbadegbe, JA (as he then was), sitting as an additional High Court Judge. The judgment of Gbadegbe, JA was affirmed by the Court of Appeal so the learned trial Judge in this case was not permitted by law to entertain the matter evoking this appeal since he was bound by the decision of the Court of Appeal. In Appellants' view, the suit was caught by the principle of *res judicata* and *estoppel* and also by the principle of *stare decisis*.

I do not think it is worth wasting precious time on this ground as I have already demonstrated above that the suit determined by Gbadegbe, JA and affirmed by the Court of Appeal coram: Twumasi; Ansah and Owusu-Ansah, JJA, was completely different from the one resulting in this instant appeal. The suit heard by Gbadegbe, JA, which was filed in 2001 that went on appeal for determination on 24th March, 2004 was titled: **THE REGISTERED TRUSTEES OF THE SAVIOUR CHURCH v KOFI ELIAS ASANTE & OTHERS (Consolidated**). The suit in dispute and instantly on appeal before us is titled: **SAVIOUR CHURCH OF GHANA v ABRAHAM ADUSEI & 3 OTHERS.**

In respect of the first suit, the main issues before the trial High court were: **(i)** which of the two factions in the disintegrated church called the Saviour Church of Ghana founded by Opanin Samuel Brako in 1924, was the true successor of the original SaviourChurch and **(ii)** whether or not the plaintiffs in that case were the true registered trustees of that church. Another issue that arose from the pleadings but which the trial judge Gbadegbe, JA refused to determine for reasons given above was, which of the two General Superintendents of the two factions, Elias Asante and Abraham Adusei, was the General Superintendent of the original church. Gbadegbe, JA found as a fact that the plaintiffs who sued as trustees of the Saviour Church of Ghana were indeed the trustees of that church. It again found that the plaintiffs' faction, also known as the Adusei faction, was the true successor of the original Saviour Church founded by Opanin Samuel Brakoh. However, the trial High Court Judge recognized the existence of the Elias Asante faction of the Saviour Church, which had its headquarters at Mankrong Junction, Gomoa-Nyanyano. He therefore declined to make a determination on who, among the two General Superintendents was the General Superintendent of the original church since, according to him, the original church had broken into two irreconcilable camps to the acceptance and acknowledgment of its members with each worshipping in its own rights as a religious body. It was this judgment which the Court of Appeal coram; Twumasi, Ansah and Owusu-Ansah affirmed on 26th March, 2004.

The suit which gave rise to the instant appeal has as the plaintiff, a church lawfully and successfully registered in 2007; three years after the decision of the Court of Appeal in the first suit, which goes by the name **'Saviour Church of Ghana'**. Though it has as its directors some of the defendants in the first suit, it is a completely different and separate legal entity from its directors and recognized under our Company Act, Act 992. The subject matter of the suit was for a declaration that it was the only legal entity by that name; i.e. **'Saviour Church of Ghana'**, not '**The Saviour Church of Ghana',** permitted by law to do religious and spiritual activities. It also sought for an order restraining the trustees of **'The Saviour Church of Ghana'** at Osiem (Appellants

herein), from using the name **'Saviour Church of Ghana'** for any spiritual and religious activities.

From the explanation given above, I do not see any link in the two cases. The judgment the trial High Court gave in this case was that the Plaintiff, i.e. **'Saviour Church of Ghana',** was the only legal entity by that name, which was permitted by law to run churches and do religious and spiritual activities in that name. That conclusion, in view of the overwhelming evidence on record, cannot be faulted. The trial High Court then went ahead to restrain the defendants who have been acknowledged as the trustees of **'The Saviour Church of Ghana'** registered under Act 106 and lately under the Company's Act in 2012, from using the name **'Saviour Church of Ghana'**, for any spiritual and religious activities. I do not think the trial High Court, in its reference to **'Saviour Church of Ghana'**, meant **'The Saviour Church of Ghana'**, of which the Appellants herein are trustees and over which the Gbadegbe, JA's judgment was centred. These facts are very clear, unambiguous and distinctly supported by the evidence on record.

The principle of *stare decisis* is simply; ***"the doctrine of precedent, under which a court must follow earlier judicial decisions when the same points arise again in litigation"*** – {Black's Law Dictionary, 9th Edition, by Brian A. Garner, page 1537}. Appellants are relying on article 136 (5) of the Constitution, 1992 to give meaning to the assertion that the two lower courts (High Court and Court of Appeal), violated article 136 (5) of the Constitution, 1992, when the said courts failed to rely on the previous decision of the Court of Appeal on the very issue that came before them, leading to this appeal. However, the discussions above show clearly that the matter before the two lower courts in this appeal was completely different from the one before Gbadegbe, JA as affirmed by the Court of Appeal in 2004. I therefore find the arguments in support of this ground hollow and dismiss same.

The Appellants sought seven (7) reliefs in their counterclaim numbered (a) – (g) and prayed this Court to grant same after reversing the concurrent judgment of the two lower courts. The reliefs were:

(a) A declaration that by virtue of the judgment in the case referred to in paragraph 4 (i.e. the Gbadegbe, JA judgment) and the subsequent Court of Appeal Judgment in Civil Appeal No. H1/30/2004, the Plaintiff (i.e. Respondent)is estopped from re-litigating the issue of The ownership and control of the Saviour Church of Ghana;

(b) A declaration that the registration of the Plaintiff in December 2007 if fraudulent and void;

(c)An order cancelling the said registration for fraud;

(d) Damages;

(e) An order of perpetual injunction restraining the Plaintiff, its followers, privies and all who claim through or by them from holding themselves up as members of The Saviour Church of Ghana with Headquarters at Oseim and at anywhere in Ghana;

(f) A declaration that the Directors of the Plaintiffs are in recurring contempt of the High Court and the Court of Appeal by their continuous reliance on the fraudulent registration; and

(g) An order punishing the said Directors for contempt of Court.

It is clear from the analysis made in this judgment that none of the reliefs sought by the Appellants in their counterclaim as recalled above can succeed. With regard to relief **(a)** the instant action by the Respondent was not in respect of the ownership and control of **'The Saviour Church of Ghana'** with headquarters at Osiem. It was in respect of the right of **'Saviour Church of Ghana'** with headquarters at Gomoa Nyanyano, as distinct from The Saviour Church of Ghana' with headquarters at Osiem, to operate and run a church and religious activities in that name. The Gbadegbe JA judgment and the resultant appellate decision affirming same did not therefore operate as a bar against the Respondent from pursuing its action.

With regard to reliefs **(b)** to **(f),** the Appellants could not lead any evidence, as demonstrated above, that the registration of the Respondent in December 2007 was fraudulent. The findings by the trial High Court as affirmed by the Court of Appeal on this

cannot also be faulted. Since fraud in the registration of the Respondent was not established in any way by the Appellants during the trial, this Court cannot order the said registration to be cancelled as prayed for by the Appellants. Again, the Appellants have not suffered any damages or injuries by the mere registration of the Respondent Church as a religious body so they cannot be entitled to any form of damages. In a like manner, the Respondent and its members or followers cannot be restrained from holding themselves out as members of **'Saviour Church of Ghana'** with headquarters at Mankrong-Junction, Gomoa Nyanyano, as found and acknowledged by both the trial High Court presided over by Gbadegbe, JA and the Court of Appeal that heard the appeal in 2004.

So whilst the Appellants' church is known as **'The Saviour Church of Ghana'** with headquarters at Osiem as found by Gbadegbe, JA and the Court of Appeal in 2004, the Respondent church is **'Saviour Church of Ghana'** with headquarters at Gomoa Nyanyano, Mankrong Junction, separate and distinct from Appellants' church. Also, Appellants' reliefs **(f)** and **(g)** praying for the committal of the Directors of Respondent for contempt cannot hold, since apart from the fact that they committed no contempt in registering their faction as **'Saviour Church of Ghana'**, they are not parties in this action. The directors of the Respondent are distinct from the Respondent and cannot be punished for the acts of the company until the corporate veil is lifted – **{See MORKOR v KUMAH (No. 1) [1999-2000] 1 GLR 721**and the ***Nana Yaa Konadu case*** **cited supra}.**

As the Court of Appeal rightly held, the learned trial judge had sufficient reason to dismiss Appellants' counterclaim since they did not lead sufficient evidence to support any of the reliefs sought therein. I therefore dismiss the appeal in its entirety save that the Appellants can operate religious activities in the name of their church, **'The Saviour Church of Ghana'** led by Abraham Adusei, which church is separate and distinct from, **'Saviour Church of Ghana'** led by Elias Kofi Asirifi Asante.

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

AMADU JSC:-

(1) I have had the privilege of reading in draft the opinion of my brother Pwamang JSC for the majority and the dissenting opinion of my brother Appau JSC in this appeal. I am in agreement with the dissenting opinion that this appeal must fail and ought to be dismissed for the following reasons.

(2) In their statement of case, the Appellants addressed grounds "H", "I", "K" together as they constitute the core complaint of the Appellants in this appeal. The said grounds have been set out in the notice of appeal as follows:-

(h)The Learned Justices of the Court of Appeal (majority) fell in error when it affirmed the erroneous decision of the Trial Court in which despite acknowledging "the Ruling of Asiedu J. in which he convicted and punished the Plaintiffs directors for contempt for the fraudulent and unlawful registration of the Plaintiff in (Suit No.AP116/2006)Exhibit "7",he gave Judgment to Plaintiff on a claim based on such unlawful registration.

(I)The Court of Appeal (majority) fell in error when it affirmed the erroneous decision of the Trial Court in which despite making a finding that the Plaintiff had "committed fraud in its registration" it still proceeded to enter judgment in Plaintiffs' favour.

(k) The Learned Justices of Appeal (majority) erred and occasioned a substantial miscarriage of justice thereby when despite his acknowledgement of the fraudulent and unlawful registration of Plaintiff as well as the conviction and punishment thereafter, he made various erroneous pronouncements in the Judgment and failed to

appreciate the relevant applicable laws, facts and evidence on record establishing that the Plaintiffs had no capacity to have instituted the action, which is a progeny of this Appeal.

(3) Whereas these grounds are clearly not concise as indeed they are, argumentative and narrative in formulation, contrary to the provision of Rule 6(4) ofC.I.16 which regulates procedure in this court, in order not to throw the Appellants out of court on grounds of technicality, I will nevertheless deal with the merits of the arguments there under in the determination of the issue(s) arising there from. Under the said grounds, the Appellants assail the decision of the Court of Appeal for acknowledging the contempt ruling of Asiedu J.*(as he then was)* which convicted and punished the Respondent's directors for what the Appellants describe as fraudulent and unlawful registration of the name of **"Saviour Church of Ghana"** at Registrar General's Department under Act 179 while at the same time affirming the judgment of the Trial Court which provoked the appeal.

(4) From an examination of the record, the conflicts between the parties either in their present form or otherwise has witnessed a multiplicity of suits and decisions. A critical look at the instant appeal *vis avis* the pleadings, testimonies, and documentary evidence on record reduces the central issue for determination in this appeal to the question of the propriety of the Respondent's use of the name "**Saviour Church of Ghana".**

(5) The adherents of the Appellants' and Respondent's factions were all members of **"The Saviour Church of Ghana"** until the Respondent's faction broke away from the church. "**The Saviour Church of Ghana"** was registered and certified on 22nd January, 1962 under Cap 137 while the Respondent's faction after the breakaway registered the name **"Saviour Church of Ghana"** in 2007 under Act 179. In 2012 the Appellants re-registered the name **'The Saviour Church of Ghana** under Act 179.

(6) What has provoked the present action is the Appellants' claim that in the earlier judgments of the High Court per Gbadegbe JA *(as he then was sitting as additional High Court Judge)*and of the Court of Appeal in Suit No.H1/33/2011 the Respondent had been restrained from using the name '**Saviour Church of Ghana'**. In addition, there is a complaint by the Appellant that in the ruling of Asiedu J *(as he then was)* in the contempt application brought against the Respondent's directors the latter were found liable, convicted and punished by the court for fraudulently registering the name '**Saviour Church of Ghana'** at the Registrar General's Department. The Respondent denied these assertions as contrary to the evidence adduced and on the record as well as the judgments under reference.

(7) The Appellants posit that both lower Courts having acknowledged the ruling of Asiedu J *(as he then was)* in which he found the directors of Respondent liable for contempt of court for what the Appellants described as the fraudulent and unlawful registration of the Respondent church, the Court of Appeal could not on a *volte face* dismiss the counterclaim of the Appellants and affirm the judgment of the Trial Court and thereby upholding the case of Respondent. The Appellants submit further that, the situation has occasioned a substantial miscarriage of justice to them. According to the Appellants, when there was no doubt that in the contempt proceedings, the High Court found the conduct of the Respondent's directors as contemptuous, they the Respondents ought to have been non suited and their action dismissed.

(8) The Appellants further argue that the Trial Judge was confronted with the Judgment of Gbadegbe J.A*(as he then was)*and of the Court of Appeal both of which held that there exists one **"Saviour Church of Ghana"** which is the Appellants church, the Respondents having seceded from the said church. Further that, the Respondent had been restrained from worshiping in all places belonging to the said church. However, the Trial Court took into consideration a statement

in the ruling of Asiedu J.*(as he then was)* where he said *inter alia* that: ***"once the registration has been done by the Respondent the Applicant (Defendants) in the case may take steps to vindicate their rights under the judgment .."***

(9) In effect, the Trial Court had formed the opinion that the Appellants had failed to take advantage of the invitation by the Court to vindicate their rights if any and held the Appellants to have been estopped by conduct from complaining having allowed the Respondent to register their name at the Registrar General's Department. The Trial Court cited the cases of **Motor Parts Trading Co. Vs. Numo[1962] GLR 156, Pastor Yaw Boateng Vs. Kwadwo Manu [2008] 3 GMJ 1 SC And Kwame Appiah Poku Vs. Kojo Nsafoa[2010] 29 MLRG 135 S**C in support of its conclusion. Therefore, by failing to take appropriate legal steps but rather proceeded to re-register their church in 2012 as **"The Saviour Church of Ghana"**;the Trial Court took the view that while ordinarily the principles of *res judicata* would have caught the Respondent in the instant suit, the Appellants had slept on or waived their rights. The Trial Court cited the case of **Assaduah Vs. Arhin Davies[2013-2014]2SCGLR 1459** to buttress the point.

(10) The majority of the Court of Appeal held that having registered the name of the church at the Registrar General's Department and upon the issuance of a certificate to commence business on the 7th day of February 2007, the Respondent became a company limited by guarantee under the statute then in force (Act 179) and could therefore sue and be sued. Consequently, the veil of incorporation not having been lifted, any action ought to have been brought against the company itself and not against the directors. See **Morkor Vs. Kuma (No.1)[1999-2001] 1 GLR 721**where this court expatiated on the parameters for the lifting of the veil of incorporation.

(11) The majority of the Court of Appeal therefore affirmed the decision of the Trial Court that the Appellants had sat on their rights. Further that, there was no evidence before the court that the Respondent did engage in any fraudulent means

in the registration of their name. The majority of the Court of Appeal thus refused to interfere with the findings and conclusion of the Trial Court which it thereby affirmed.

(12) **THE RESPONDENT'S ARGUMENTS**

The Respondents contested the case of the Appellants on the issue of fraudulent registration of the name "**Saviour Church of Ghana"**. In exacting a high standard of proof from the Appellants to sway the argument in their favour, the Respondent relied on Section 13 of the Evidence Act 1975(NRCD 323)regarding proof of crime contending that the charge of fraud required proof beyond reasonable doubt as held in **Feneku Vs. John Teye [2001-2002] SCGLR 1003**. The Respondent submits that the Appellants had failed to discharge the evidential burden of proof on the allegation of fraud.

(13) I have painstakingly examined the entire evidence as required in the pursuit of rehearing the entire case as any appeal demands. In the case of **Aryeh & Akakpo Vs. Ayaa Iddrisu**[**2010] SCGLR 891 at 903** this court held per Brobbey JSC that: ***"the rule in Section 13(1) of the Evidence Act,1975 emphasizes that where in a civil case, crime is pleaded or alleged the standard of proof changes from civil one of the balance of probabilities to the criminal one of proof beyond reasonable doubt".*** In **Chitty on Contracts General Principles Sweet & Maxwell25th Edition** paragraph 411**,** page 226, fraud is defined in the following words:"***the common law relating to fraud was established by the House of Lords in Derry Vs. Peek[1889] L.R.14, APP CAS.337, [1889]5 T.L.R.*** **625.*****It was there decided that in order for fraud to be established it is necessary to prove the absence of an honest belief in the truth of that which has been stated; in the words of Lord Herchell: "fraud is proved when it is shown that a false representation has been made (1) knowingly or (2) without belief in its truth or (3) recklessly, careless whether it be true or false. The converse of this is that however negligent a person may be, he cannot be liable for fraud provided that***

his belief is honest; mere carelessness is not sufficient, although gross carelessness may justify an inference that he was not honest."

(14) From the evidence on record, the Respondent conducted a search per their lawyer at the Registrar General's Department and procured the confirmation that the name "**Saviour Church of Ghana"** was available and therefore acted on the advice of the Registrar General. In my view, both lower courts glossed over the significance of the documentary evidence tendered by the parties as forming the fulcrum of the Appellants' case. The law has long been settled in cases such as **Atadi Vs. Ladzekpo [1981] GLR 218 CA,** and the **Republic Vs. Nana Akuamoah Boateng II Ex-parte Dansoah [1982-83] 2 GLR 913 SC** that, documentary evidence must always prevail over oral evidence as it is the best evidence.

(15) The certificate confirming the registration of the Appellants' "**The Saviour Church of Ghana**" in 1962 and that of the Respondent **"Saviour Church of Ghana**" in 2007 were both before the two courts. Nothing in the ruling of Asiedu J.*(as he then was)* supports the Appellants' contention that the Respondent's directors were committed for contempt for the fraudulent registration of their church. My understanding of the *raison d'etre* in the ruling which committed the Respondent's directors for contempt is not because of the registration of **"Saviour Church of Ghana"** but rather for conduct inconsistent with the earlier judgments against them with respect to their claim of being adherents the Appellant's faction.

(16) In the said ruling of Asiedu J.*(as he then was)*, he took cognizance of the fact that the Respondent's directors acted on the search results of the Registrar General's Department. However, since much of the contest revolved around the judgment of Gbadegbe J.A *(as he then was),* I have taken a critical look at the said judgment which has been trumpeted by the Appellants as establishing finality in the fact that the Respondent's faction having seceded from the Appellants' church, it is the Appellants who are the successors in title of the founder of the church Opanin

Kwadwo Asirifi. At page 233 of Vol.3 of the record, Gbadegbe J.A *(as he then was)*stated thus: ***"It would appear from the evidence that as a result of the break its members have had nothing to do with the Plaintiffs to the extent that its members who held offices that required them to report to the headquarters at Osiembut who are now in the breakaway church have not since then done so for reasons which are quite obvious… I must pause here to say that in this contest there is no denial by the Defendants that it is only the Plaintiff's faction which has had its trustees registered according to law; I say so because the evidence discloses without any shadow of doubt that the two factions are operating under the name Saviour church. By the said incorporation the church whose name is mentioned therein, the Saviour Church of Ghana has acquired in the words of Section 1(4) of Act 106 Trustees incorporating Act 1962a body corporate by the name described in the certificate and shall have perpetual succession and common seal, and power to sue and be sued in such corporate name.*** His lordship further held that although the registration was done under the previous legislation that is Cap 137, the new law has saved all previous instruments made under the repealed law. The position of the Learned Trial Judge quoted above is a judicial confirmation of the propriety of the registration of the Plaintiff/Respondent's **"Saviour Church of Ghana".**

(17) At the Trial Court, the Appellants per their statement of defenceand counterclaim averred in paragraph 4(b) that "***The Saviour Church" was established in or about 1924 by one Opanin Samuel Brako an illiterate farmer at Osiem aforesaid and have always had its headquarters at Osiem where most of the Trustees and National Officers reside".*** At page 292 of the record, there is evidence of the registration of Appellants under the Land Perpetual Succession Ordinance dated 12thday of June 1962.The registered name of the Appellants' church is "**The Saviour Church of Ghana".** Notwithstanding the effect of this

certification, the Appellants in consistently registered under the Religious Bodies Registration 1989 (PNDCL 221).At page 297 of the record, there is a certificate issued by the National Commission on Culture dated 20thNovember 1990 in the name of is "**Saviour Church of Ghana"** which in my view cannot co-exist with their certified name with the prefix **"The".**

(18) It is noteworthy from page 198 of the record that, in the year 2012,the Appellants chose tore-register their name as **"The Saviour Church of Ghana**" same as was certified in 1962 under Cap 137.On the other hand, the Respondent had registered the name **"Saviour Church of Ghana".** The certificates of incorporation at pages 191 Exhibit "A" and page 126 Exhibit "B"*(Vol.1 of the record)* attest to same. At page 97 of the record, there is the response to the search conducted by the Respondent's solicitors at the Registrar General's Department on the status of **"Saviour Church of Ghana"** which stated; ***"The church does not exist on record and therefore has not been registered".***

(19) From the above, I find that the name registered by the Appellants in 1962 is **"The Saviour Church of Ghana"** and the same name was re-registered in 2012 while the name registered by the Respondent in 2007 is **"Saviour Church of Ghana"**. The two names are different and unless otherwise proved under an appropriate cause of action in a claim of they being confusingly similar, the Respondent's name was properly registered in accordance with law. There is no evidence whatsoever that, the Respondent registered its name fraudulently as alleged and argued by the Appellants.

(20) From my understanding of the ruling of Asiedu J. *(as he then was),*he did not make any finding that the registration of the Respondent as "**Saviour Church of Ghana"** in 2007 was fraudulent. As it stands there is no court decision that the registration of the Respondent at the Registrar General's Department is fraudulent. What the Respondent's directors were found liable for was for claiming that as a breakaway church they were the successors to the church founded by Opanin Kwadwo Asirifi. This claim was contrary to the decisions of the High Court and the Court of Appeal. Thus, even though the Respondent's directors were held liable

for the complaints put up by the Applicant in the contempt proceedings, I cannot accept the construction that the ruling relates to the propriety of the registration of the Respondent's church.

(21) The name registered by the Appellants in 1962 under Cap137 and reregistered in 2012 is "**The Saviour Church of Ghana"** while the name of the Respondent Church is "**Saviour Church of Ghana"**. As aforesaid, the two names are not the same and there is no claim nor proof that they are confusingly similar which requires an action at common law for passing off where the Appellants apart from the burden of proving deceptive similarity would have been required to prove confusion to the public and the likelihood of injury to their reputation and goodwill in the use of the name **"Saviour Church of Ghana"** by the Respondent. The reliance on the allegation of fraud against the Respondent was however totally unproven.

(22) The grave men of the Appellants' case is that the Learned Trial Judge erred in dismissing their counterclaim and that same was erroneously upheld by the majority decision of the Court of Appeal. The counterclaim of the Appellant at page 2 of Vol.3 of the record was set out as follows:-

"a) A declaration that by virtue of the judgment in the case referred to in paragraph 4 and the subsequent judgment of the court of appeal in Civil Appeal No. HI/30/2004 the Plaintiffs are estopped from relit gating the issues of the ownership and control of the savior church of Ghana .

b) A declaration that the registration of the Plaintiff in December2007 is fraudulent and void.

c) An Order cancelling the said registration for fraud.

d) Damages.

e) An Order of perpetual injunction restraining the Plaintiff its followers privies and all who claim through or by them from

holding themselves up as members if the Saviour Church of Ghana with headquarters at Osiem and at anywhere in Ghana.

f) Declaration that the Directors of the Plaintiff are in recurring contempt of the High Court and Court of Appeal by their continuous reliance on the fraudulent registration.

g) An Order punishing the said Directors for contempt of court".

(23) At page 244 of the record the issues for determination were settled as follows:-

"1. Whether or not Plaintiff are the registered trustees of the Saviour Church of Ghana.

2. Whether the various church missions comprising the land, compound places of worship equipment and all paraphernalia for worship are the property of the Saviour Church

3. Whether the Defendants have set up their own rival Church with its headquarters at Mankrong Junction in the Central Region

4. Whether Defendants are entitled to live on and worship at the various compounds of the Saviour Church of Ghana and use or keep possession of the churches facilities as of right".

(24) In the judgment of Gbadegbe JA *(as he then was*)it was held that there was only one true Saviour Church which is the Appellants' faction. The court proceeded to order the breakaway faction to return all properties belonging to the said true church. Essentially, the Learned Trial Judge found that the Respondent's faction*(Respondents)* had seceded from the main church. On appeal to the Court of Appeal, the decision of Gbadegbe J.A *(as he then was)* was upheld. However, it is significant to note that from the concurrent judgments of the High Court and Court of Appeal, there was no determination of the propriety or otherwise of the registration of the Respondent church which lawfully exists and remains **"Saviour Church of Ghana".** Consequently, I find the Appellants grounds of appeal as wholly misconceived.

(25) **RES JUDICATA**

At page 54 of the Appellants' statement of case the issues of *res judicata, stare decisis* and estoppel were raised. The Appellants submitted that; ***"We further also submit that on the strength of the evidence on record the judicial decisions about nine in all on this issue, the Court of Appeal in the light of the record ought not to have glossed over the issue of res judicata and estoppel. If they had appreciated and considered fully the incontrovertible and overwhelming evidence on record to the effect that the Respondents were "vexatious litigants" having engaged in six suits, two on appeal and one involving their conduct on contempt arising out of the fraudulent registration of their entity and sheer defiance of the orders of the Court of Appeal, the majority would have been left with no other alternative than to upturn the erroneous decision of the Learned Trial Judge and rather moved with their Learned Brother in the minority and in consequence would have granted the reliefs in the counterclaim of the Appellants herein".***

(26) In my view, if it were evident that the decision of Gbadegbe J.A. *(as he then was)* specifically restrained the Respondent from using the name "**Saviour Church of Ghana"** then the Respondent could not be clothed with capacity to commence the action as they could not thereby have properly invoked the jurisdiction of any court with the endorsement, **"Saviour Church of Ghana".** From my examination of the evidence on record, I do not find any basis for the suggestion that the issue of difference in respect of the two names "**The Saviour Church of Ghana" and "Saviour Church of Ghana"** arose as a result of the registration of the name by the Appellant in 2012. As aforesaid, in the judgment Gbadegbe J.A *(as he then was)* His Lordship referred the Plaintiff/Respondent as the entity whose trustees were registered according to law and further held that by the said in corporation, it has acquired in the words of Section 1(4) of Act 106, the Trustees Incorporating Act 1962 a body corporate by the name described in the certificate and shall have perpetual succession and common seal and the power to sue and be sued.

(27) The Court of Appeal affirmed the decision of the High Court per Gbadegbe J.A *(as he then was)* that the Adusei faction was the successor to **"The Saviour Church of Ghana"** with headquarters at Osiem and that Adusei and others whose names appeared on the writ were the trustees of the church. Therefore, the Elias Asante faction could not be stopped in operating their church as they had the constitutional right to do so. Thus, contrary to the contention of the Appellants, the issue of pronouncement on the propriety or otherwise of the name **"Saviour Church of Ghana"** has never been determined by any court of law.

(28) From a critical examination of the formulation of the counterclaim of the Appellants, I cannot construe same as an action in passing off which case, the Trial Court would have been called upon to determine whether on the facts, evidence and the relevant law, the names being used by the Appellant on the one hand and Respondent on the other are confusingly similar. I find that of all the cases that have been instituted previously, it is only the suit culminating in this appeal where for the first time the issue of the name of the Respondent's church has arisen on an allegation of fraud which failed for want of proof. Even then, in those earlier suits, it is the directors of the Respondent who were sued in their individual capacities. The registered entity limited by guarantee has a personality of its own and is not the same as the directors or trustees. Until the veil of incorporation is lifted and a case established against the legal entity, no plea of *res judicata* will ordinarily succeed.

(29) The settled law is that for a plea of *res judicata* to succeed, not only must the parties and issues already determine by a Court of competent jurisdiction be the same but the previous decision(s) must apply to every point which properly belonged to the subject matter of the litigation and which the previous parties exercising reasonable diligence ought to have brought forward for determination at the time. For failing to bring forward the issue of the propriety or otherwise of the Respondent's name of **"Saviour Church of Ghana"** for determination as required by law, the Appellants cannot benefit from the generosity of this court in

availing them with reliefs founded on an allegation of fraud which on the evidence at the trial failed.

(30) In the case of **Nyamaah Vs. Amponsah, [2009] SCGLR 361,** which is instructive in the determination of the instant appeal, this court unanimously allowed an appeal in part. In so doing, the court berated the attitude of the Trial Court in the judgment giving rise to the appeal. This court held *inter alia* in holding (1) as follows:- ***"It is the duty of a Trial Court to make pronouncement on the reliefs that a party seeks. Therefore the Trial Court is to ensure that the issues it sets down for determination would aid it in making justifiable decisions on the reliefs sought. Consequently, a judge who makes an order for relief not sought for by a party, can be held to have exercised an irregular jurisdiction".*** In the instant case, the Trial Court having followed this direction, there is to my mind no justifiable basis to grant the Appellants the reliefs founded on the allegation of fraud which they failed to prove as it was not supported by the documentary evidence on record.

(31) In conclusion, I find no merit in this appeal as the Appellants are not deserving of any relief which will have the effect of granting to them the remedies they failed to prove in the Trial Court and affirmed by the Court of Appeal. To do otherwise will occasion a substantial miscarriage of justice to the Respondent. For the above reasons, and the fuller reasons of my brother Appau JSC, I too will dismiss the appeal.

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

COUNSEL

ADDO-ATUAH ESQ. FOR THE DEFENDANTS/APPELLANTS/APPELLANTS.

YAW OPPONG ESQ. FOR THE PLAINTIFF/RESPONDENT/RESPONDENT.