IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: YEBOAH CJ (PRESIDING)
PWAMANG JSC
DORDZIE (MRS.) JSC
AMEGATCHER JSC
AMADU JSC

CIVIL APPEAL
NO. J4/41/2020

27TH APRIL, 2022

SENATOR HOTEL GHANA LIMITED ..... PLAINTIFF/RESPONDENT/ RESPONDENT

VRS

NANA ERNEST AIDOO ..... DEFENDANT/APPELLANT/ APPELLANT

JUDGMENT

AMADU JSC:-

(1) This appeal is from the judgment of the Court of Appeal which affirmed the judgment of the trial court except a variation of the quantum of general damages awarded to the Plaintiff/Respondent.

(2) In the High Court Kumasi, the Plaintiff/Respondent/Respondent *(hereinafter referred to as the "Plaintiff")* claimed from the Defendant/Appellant/Appellant *(hereinafter referred to as the "Defendant")* the following reliefs:-

a) *An Order for the recovery of an amount of Sixty-Four Thousand Ghana Cedis (Ghc64,000.00) being rent arrears from May to December, 2014.*

b) *Interest on the said amount at the prevailing bank rate from December, 2014 till date of final payment.*

c) *An Order for the recovery of an amount of Fifty-Eight Thousand Ghana Cedis (Gh58,000.00) being the cost of the Plaintiff's properties which were destroyed by the Defendant.*

d) *An Order for the recovery of an amount of Twenty-five Thousand One Hundred and Eighteen Ghana Cedis Thirty-two Pesewas (Ghc25,118.32) being the cost of electricity bills consumed by the Defendant from January, 2013 to December, 2014*

e) *General damages for loss of customer due to the destruction of hotel records by the Defendant".*

(3) **PLAINTIFF'S CASE IN THE HIGH COURT**

The Plaintiff's case in the High Court was that,on 1st January, 2013, it entered into a written agreement with the Defendant whereby it'shotel premises was rented out to the Defendant at a monthly rent of Ghc8,000.00 for a period of Twenty-Four (24)months ending 31st December, 2014. It was agreed that all rents due were to be paid into Plaintiff's account with United Bank of Africa (UBA) per the terms ofagreement. The Plaintiff asserted that the Defendant was to pay all taxes and utility bills on the use of the premises but he defaulted in paying eight months' rent amounting to Ghc64,000.00 and also left unpaid electricity bills in the sum of Ghc25,118.20. The Plaintiff further asserted that after an inventory was taken, it turned out that the Defendant destroyed

property belonging to the hotel with an estimated cost of Ghc58,000.00. Hence the Plaintiff's action in the High Court.

(4) **DEFENDANT'S CASE**

In his defence, the Defendant asserted that he took over the running of the hotel premises in March 2013 but there was no agreement that payment of the rent was to be made to a UBA bank account as alleged by the Plaintiff.The Defendant asserted further that the Plaintiff opened a second account with UBA bank and made the Defendant the ***"sole signatory"*** even though the Plaintiff's Managing Director also had access to that account. The Defendant averred further that Plaintiff's Managing Director received payments from him without issuing receipts and so from January 2014 he decided to deposit the monies directly into the Plaintiff's account. It was the Defendant's case that the Plaintiff issued twelve (12) receipts to cover the earlier payments it made. The Defendant asserted that he continued to pay the rent until June 2014 and further that with respect to the unpaid electricity bills, when he took over the premises, pre-paid meters were in use, but the Plaintiff unilaterally caused them to be replaced with post-paid meters having made false reports to the Electricity Company of Ghana. The Defendant further alleged that unpaid electricity bills were cooked up to his detriment. According to the Defendant, the Plaintiff's actions interfered with the running of the business and therefore the Plaintiff had no reasonable cause of action against him.

(5) **ISSUES FOR TRIAL**

At the trial court, the following issues were set down for determination:-

"1. Whether or not the agreement was made on 1st January, 2013.

2. Whether or not Plaintiff had access to the account at United Bank of Africa (UBA) to which the Defendant was the sole signatory.

3. Whether or not the Defendant made direct payment to the Plaintiff before reverting to the UBA account.

4. Whether the Defendant is liable to pay rent for the period May,

2014 to December, 2014.

5. *Whether the Defendant left arrears of Electricity Bills.*

6. Whether or not the Plaintiff interfered with the Defendant's running of the hotel.

7. Whether the Plaintiff is entitled to the reliefs as endorsed".

(6) **JUDGMENT OF THE HIGH COURT**

At the end of the trial, the High Court resolved the issues set down in favour of the Plaintiff having found that;both parties in their witness statements admitted that they executed a contract on 1st January, 2013. The trial court alsocame to a conclusion from the totality of evidence that the agreement between the parties actually commenced on 1st January, 2013 as the Defendant also commenced payment of rent at the end of the first month from the date of the agreement. The trial court further held that it was Frank Asamoah *(Plaintiff's Director)* who personally made a request to UBA bank to open a second account with the Defendant as the sole signatory by an application to UBA bank dated 19th February, 2013. Further that from the evidence on record, the account was not opened for the sole purpose of payment of rent accruing from the running of the hotel.

(7) The trial courtthen concluded that the Defendant was right in stating that even though he was in control of the Plaintiff's hotel the Plaintiff's director, Frank Asamoah, still had access to the account of the hotel with UBA bank. With respect to the Defendant's liability to pay rent from May 2014 to December 2014, the trial court held that having examined Exhibit 'L' as a whole, it found that the Defendant cumulatively made payments of rent up to the end of May, 2014 in the sum of Ghc104,000.00.

(8) In conclusion trial court held that per the evidence in Exhibit 'L', the Defendant's answers while under cross-examination to the effect of making payments of Ghc19,000.00into the Plaintiff's UBA bank account cannot be correct. The trial court found on the evidence that the Defendant had failed to prove that it indeed

made these payments either by cash or cheque. The trial court finally held that the unpaid rent which the Defendant is under an obligation to settle is for the period 30thJune 2014 to 31st December, 2014 i.e., a period of seven months at Ghc8000.00 per month which summed up to Gh56,000.00.

(9) The trial court found that it was not in dispute that at the time the Defendant took over the Plaintiff's hotel per Exhibit 'A' pre-paid meters were in use but the same were replaced by post-paid meters by the Electricity Company of Ghana (ECG) in the course of the two-year agreement. Based on the evidence adduced, the trial court came to the conclusion that in order to do substantial justice, the Defendant will be ordered to pay two-thirds of the electricity bills on each of Exhibit 'H' series while the remaining one-third would be borne by the Plaintiff to cover the period 01/01/2015 to 09/01/2015. The trial court then concluded that to arrive at the outstanding bills, the balance brought forward on each bill will be deducted from the total amount payable. The trial court on the evidence further concluded that contrary to the allegation by the Defendant, there was no interference in the Plaintiff's director's inspection of the premises without the knowledge of the Defendant nor the subsequent request to remedy any defects in the hotel. The trial court found in favour of the Plaintiff and entered judgment in the Plaintiff'sfavour. On appeal to the Court of Appeal, the 1st appellate courtupheld the judgment of the trial court save the downward variation as aforesaid of the quantum of award of Ghc10,000.00 in general damages to Ghc5,000.00.

(10) The Defendant dissatisfied with the judgment of the Court of Appeal, has appealed from that decision to this court on the following grounds:

"i. The judgment was against the weight of evidence.

ii. The Plaintiff/Respondent/Respondent did not prove the amount he claimed or for which he was given.

iii. The Learned Court of Appeal Judges erred when they awarded nominal damages of Ghc5,000.00.

iv. The Learned Court of Appeal Judges erred in allowing the interest on Ghc47,420.00 from December 2014 to the date of final judgment.

v. *The Learned Court of Appeal Judges erred in allowing the sum of Ghc24,227.64 as arrears of electricity bills on post-paid meters and up to 31st December, 2014.*

vi. The Learned Court of Appeal Judges erred in allowing costs Ghc6,000.00 against the Defendant/Respondent/Respondent".

(11) **DEFENDANT'S ARGUMENT**

From an examination of the Defendant's statement of case, his counselelected not to argue grounds (iii), (iv) and (vi) set out in the notice of appeal. They are therefore deemed as abandoned and accordingly struck out. What remains of the Defendant's appeal for consideration is therefore the determination of the omnibus ground of appeal which encompasses the Defendant's ground (v) argued together with ground (ii) which merely raises a question of proof and not different from a consideration of the omnibus ground. We cannot also gloss our eyes over the inelegant manner in which the Defendant's counsel elected to identify the grounds of appeal in the statement of case different from how they were set out in the notice of appeal filed on 30/1/2019.This situation results in conceivable confusion when reference is made to a particular ground of appeal.

(12) Having said that, since the determination of all the issues arising from the grounds(i), (ii) and (v) addressed by the Defendant will invariably involve the determination of the proper or improper evaluation of the evidence by the two lower courts before arriving at the conclusion that on the balance of the probabilities the Plaintiff is entitled to judgment as per the claim, this appeal will therefore be determined substantially under the omnibus ground that the judgment is against the weight of evidence. The settled principle by this court as expounded through a rich line of case law authority requires the court to determine from the concurrent judgments of the two lower courts the following:-

a. ***Whether the findings of the trial court as affirmed by the Court of Appeal are perverse and cannot be reasonably supported by the mass of evidence on record.***
b. ***Whether the findings could be inferences from established facts and therefore this court is in a vantage position just as in a trial courtand the Court of Appeal to arrive at more probable conclusions than those arrived at by the trial court.***
c. ***Whether the trial court had applied the wrong principles of law to the evidence adduced.***

(13) In the instant case, the judgments of the two lower courts being concurrent, the Defendant who is the Appellant has the burden to discharge by clearly pointing out the errors in the findings of the trial court from the evaluation of evidence on record and the application of the relevant law on the evidence adduced having anchored his appeal substantially on the omnibus ground by arguing grounds (i) and (ii) together while ground (v) clearly raised the issue of the standard of proof which is also dependent on a re-evaluation of the entire evidence as established by settled case law authority.

(14) It has been held by this court per Amegatcher JSC in the case of **Atuguba & Associates Vs. Scipion Capital (UK) Ltd., Holmen Fenwick Willin LLP[2019-2020] SCLRG 55,** at page **65,** while referring to the earlier decision of this court in **Owusu-Domena Vs. Amoah[2015-2016] SCGLR 790**,on the scope of the omnibus ground of appeal that: *"Based on the exception given by this court in the **Owusu-Domena Vs. Amoah** case (supra) the current position of the law may be stated that where the only ground of appeal filed is that the judgment is against the evidence, parties would not be permitted to argue legal issues if the factual issues do not admit of any. However, if the weight of evidence is substantially influenced by points of law, such as the rules of evidence and practice or the discharge of the burden of persuasion or of producing evidence, then points of law may be advanced to help facilitate a*

determination of factual matters. The formulation of this exception is not an invitation for parties to arguepoints oflaw when making their arguments in relation to matters of facts under the omnibus ground. The court would, in all cases, scrutinize such points so argued within the narrow window provided."

(15) The instant appeal falls within the ambit of the above statement on the position of the law.Thus, having argued the omnibus ground together with ground (ii) and abandoned the grounds of law though ground (v) was argued separately, being a ground the determination of which turns on the evidence, the Defendant may address the court on legal points only when the said legal points relate to the evidence on record. The Defendant's dutyunder the grounds addressed therefore, is to persuade the court that the two below courts failed to properly evaluate the evidence on record, or that they arrived at the wrong conclusion on the basis of the evidence.This point has been restated by this court per Dordzie JSC in the unreported case of **Rukayatu Usumanu Vs. Zongo Naa Kun Gari&16 Others Civil Appeal No. J4/23/2020,** dated 31st March 2021. There, Her Ladyship reiterated the settled legal position as follows:-***"The original ground (omnibus ground) that the judgment is against the weight of evidence . . . places the duty on us to re hear the matter and come to our own conclusions as to whether the evidence on record supports the judgment of the first appellate court . . . The Appellant to succeed on this ground of appeal, equally has the duty to demonstrate to us that the findings of the Court of Appeal are unreasonable in view of the available evidence on record and this court ought to interfere with it to bring justice to her".***

(16) For the Defendant to succeed on these grounds therefore, he has the duty to demonstrate that the affirmation of the trial court's findings by the Court of Appeal are unreasonable in view of the available evidence on record and therefore this court ought to interfere with those findings.Additionally, as this court has held that where an Appellant relies on the omnibus ground, it opens

the appeal up for reconsideration, this appeal is a rehearing and this court is required to evaluate the entire evidence on record. This principle is firmly restated in **Sarpong Vs. Google Ghana & Another[2017-2018]2 SCGLR 839** at **843**whereAdinyira JSC citing with approval **Tuakwa Vs. Bosom [2001-2002] SCGLR 61**restated the principle as follows:- *"Once the whole judgment is called into issue, then we must analyze the entire record and take into account all the pleadings, affidavits, documents and submissions by both counsel in the record of proceedings before this court can find out whether the conclusion by the Court of Appeal can be supported".*

(17) **THE DEFENDANT'S ARGUMENTS**

The Defendant attacks as erroneous the award of Ghc56,000.00 (less Ghc8,500.00) being monies accepted by Plaintiff as deposit into the account of Miklin Hotel for the benefit of the Defendant which the Plaintiff claimed to have refunded but failed to adduce any evidence in proof of in order to reduce Defendant's liability to the sum of Ghc47,5420. Whereas from the evidence the period determined as unpaid monthly rents was from June 30th to December 31st2014, the Defendant on the contrary submits that he made payment for rent for the tenure of the agreement spanning a period of Twenty-Four (24) months. Flowing from this, the Defendant takes issues with the finding of the two lower courts that the monthly rent payments he made were solely through the UBA bank account of the Plaintiff.

(18) The Defendant argues that on a proper evaluation of the evidence, the two lower courts ought to have found the Plaintiff in breach of the management agreement for Plaintiff's Director accessing the Plaintiff's UBA bank account while the assets of the hotel were under the management of the Defendant. It is further submitted by the Defendant that if the evidence on record were properly evaluated, the two lower courts ought to have held that all deposits into the Plaintiff's UBA bank account should be to the benefit of the Defendant.

(19) It is trite law that a party who asserts has the burden to discharge by leading the required evidence in proof. In **Ackah Vs. Pergah Transport [2010] SCGLR 728**at **736**this court per Adinyirah JSC held *inter alia*that: **" *it is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that the quality of credibility short of which his claim fails".*** See also **Nortey Vs. African Institute of Journalism and Communication & Others [2013-2014]1 SCGLR 703**where this court pronounced on the statutory provisions of that Sections 10(1) and (2) and 11(4) of the Evidence Act 1975 (NRCD 323).

(i) Section 14 of the Evidence Act 1975 (NRCD 323) provides that:

"except as otherwise provided by law unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting".

(ii) Section 11(1) of the Evidence Act 1975 (NRCD 323) also provides that: ***"the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue".***

(iii) Under Section 10 of the Act, **". . .*the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of tribunal of fact or the court*"**.The Defendant therefore has the duty to point out with particularity the pieces of evidence the two lower courts inappropriately overlooked or wrongly considered in arriving at their findings and conclusions to enter judgment against him in favour of the Plaintiff.

(20) As aforesaid, the Defendant assails the trial court's award as affirmed by the Court of Appeal for the recovery of the sum of Ghc56,000.00 being monthly rent under the management agreement and determined by the trial court as remaining unpaid less the sum of Ghc8500 being the total sum deposited into

the UBA bank account for the Defendant by Miklin Hotel which Plaintiff claims to have refunded without any proof. This covers the period of 30th June to 31stDecember 2014 which stands affirmed by the two lower courts. The Defendant sought to argue that whereas the agreement was entered into in January 2013, its implementation commenced in March 2013. This position was held as untenable by the evidence of payment of rent commencing in January 2013 as there is no reason to make any finding to the contrary.

(21) In proof of the Plaintiff's case, PW1 had testified that he paid cash to the Plaintiff on behalf of the Defendant. From Exhibit '2' series, the payment commenced in January 2013. The Defendant confirmed the payments but observed that payments for January to April were not acknowledged with receipts. It is the case of the Defendant that dates and amounts on the receipts did not correspond with the dates of payments as appears on Exhibit 'L', the statement of account regarding the Plaintiff's UBA account. The Plaintiff offered the explanation that the Defendant never informed him of the payments made and when it became aware of the payments, the bulk receipts issued could not reflect the exact dates for the payments.

(22) At page 13 of the Defendant's Statement of Case the Defendant questioned the Plaintiff's conduct and embarked on an interrogatory thus: "***why would the Respondent issue receipts dated 23/05/2013 for the full sum of Ghc8000 for the month of April 2013 when he had only receive payment for Ghc5000 which had been made on 9th May 2013. Further if no payment were made in the month of June, July and August 2013 for the months of May, June July August 2013 (because according to the Respondent, the next payment from 9th May 2013 was 9th August 2013) why would the Respondent issue receipts dated 28/06/2013, 19/07/2013, 26/07/2013 and ……"***

(23) In paragraph 7 of the Defendant's Statement of case, he averred that it was not until the 11th of March 2014 that the Plaintiff's Managing Director issued 12

receipts to cover previous payments made after persistent demands. The Plaintiff in its reply at page 12 of the record averred by paragraph 6 that while it admits paragraph 7 of the Statement of Defence the receipts that were issued were in respect of payments made from January 2013 to December 2013 and further that, all those payments were made through the Plaintiff's UBA bank account.While under cross-examination by counsel for Defendant, the Plaintiff testified that, the Defendant paid monthly rent covering a period of only one year three months i.e. from January 2013 to April 2014. In arriving at the quantum of monthly rent payments made by the Defendant, the two lower courts accepted thepayments made through the Plaintiff's UBA account per Exhibit 'L'as the payments made by the Defendant in satisfaction of the monthly rents for the term.

(24) The Defendant takesissues with this finding made by the two lower courts and submits that it made direct payments into the Plaintiff's account by cash and cheque. Further that, the initial payments made by cash were not receipted for by the Plaintiff. To this end, the Defendant called in support Plaintiff's testimony at page 201 of the record of appeal and paragraph 25 of its witness statement at page 203 of the record which was to the effect that the Defendant made full payment of the monthly rent for January 2013 to April 2014. The testimony was that at the initial stages of the agreement, the Defendant made payment of rents in cash and thereafter, by cheques before making payments through the bank account of the Plaintiff. It is the Defendant's argument that at page 306 of the record, the Plaintiff agreed that the Defendant paid thirteen (13) monthly payments of rent through the bank. The question that arises per the Plaintiff's own testimony which is central to the Defendant's case is at what stage was rent paid by cash, cheque and through the Plaintiff's bank accounts?

(25) Further, and for emphasis, the Defendant relates the Plaintiff's case to that of the latter's averments in paragraphs 5 and 6 of the reply at pages 12 and 13 of the record that all payments were made through Plaintiff's UBA bank

account.The Defendant also relies on thetestimony of PW1 Anthony Kwabena Ramos. At paragraph 12 of his witness statement, he testified at page 209 of the record that he received rent on behalf of the Plaintiff in cash for the first two months followed by cheques and thereafter by direct payment into Plaintiff'sbank account. Besides, at page 306 of the record, the witness testified under cross examination that he received rent for January to June 2013 and paid same to the Plaintiff. However, it was the Defendant who made direct payment into the Plaintiff's UBA bank account. The Defendant submits therefore that the two lower courts erred in failing to admit the rents made for the months as testified to by the PW1 in his favour.

(26) The position of the settled law is to prefer the evidence of a party which is corroborated by his opponents' witness when that of his opponent on the same issue stands uncorroborated. This position of the law was restated in thecase of**Met Capital Limited Vs. Guaranty Trust Bank[2021] GMJ 682 at 699**. See also **Asante Vs. Bogyabi[1966] GLR 232 Tsirifo Vs. Dua VIII [1959] GLR 63 at 63-65**. **Yaw Vs. Domfeh[1965] GLR 418.**In the instant case, the two lower courts found that on the balance of probabilities, the Defendant had failed to establish that he made payments for the full Twenty-Four (24) months of the agreement. Since from the evidence the Plaintiff's position that he issued receipts on all cash payments was not discredited and the two lower courts having taken those receipts into account regardless of the oral evidence of PW1,Exhibit 'L', the bank statement bears more authentic documentary evidence of payments made by the Defendant.

(27) **THE PLAINTIFF'S RESPONSE**

It is the case of the Plaintiff that even thoughthere was no agreement between the parties herein that payments were to be made through the Defendant's account at UBA bank, there is evidence on the record that apart from payments that the Defendant made in cash to the Plaintiff, all other payment were made by the Defendant through that account.The Plaintiff argues that there was no

intention nor agreement that the Defendantwould run the Plaintiff's UBA bank account and it is for this reason that the Plaintiff decided to open another account with the Defendant as the sole signatory for the operation of the business but same could not materialize.

(28) The Plaintiff submits that there is no evidence on record toshow that thepartieschanged theonly signatory to the existing account from that of the Plaintiff's Director to the Defendant which would have suggested that the parties intended not to give the Plaintiff access to the account. For this reason, the Defendant's argument that the trial court and the learned justicesof the Court of Appeal ought to have come to the conclusion that the parties intended that the Defendant's Director was not to have access to the account has no evidential basis.The Plaintiff submits further that the inconsistencies in the record of appeal are minor and are reconcilable and do not go to the root of the case. The Plaintiff thus contends that it will be unjust for this court to reject the evidence of the Plaintiff based on these minor inconsistencies.

(29) The Plaintiff argues further that there are no inconsistencies in its evidence during the cross-examination that the Defendant paid three month's rent in cash. That, the record clearly shows that even though a cheque payment was made by theDefendant same was made through the bank account as it has been recorded in Exhibit 'L' that on the 9th day of May, 2013 the Defendant made payment in the sum of Ghc5,000 with Cheque Number 019839.The Plaintiff argues that the Defendant made full payment of rent for a period of one year and three months which was for the period between January, 2013 to April, 2014 although payments were not made consistently. Further that the three months payment was made in cash to its Director, Frank Asamoah, and the others were made through its accounts at UBA bank. The Plaintiff argues further that this piece of evidence is corroborated by DW1, the Defendant's witness (Mercy Ampofo) in paragraph 8 of her witness statement. The Plaintiff has urged this court to

accept its corroborated evidence over the uncorroborated evidence of the Defendant.

(30) The Plaintiff further submits that those payments which were made through the hotel's account reflected on the Statement of Account (Exhibit 'L') It asserts that the Defendant did not deny the fact that he did not make full payment for the contract period. On the contrary the Defendant admitted that he only paid rent for some months only. The emerging issue was that while the Plaintiff asserts that the Defendant paid rent up to April, 2014 and therefore claimed rent from May 2014 to December 2014, the Defendant on the other hand in his admission was not consistent with the period for which he paid rent.

(31) According to the Plaintiff nowhere in Exhibit 'L' has it been recorded that an amount of Ghc19,000.00 was deposited into the account. The Plaintiff contends that the Defendant failed to lead cogent evidence to prove the said payment by tendering in evidence of a copy of the pay in slip at the time of the alleged payment. It is in this regard that the Defendant's case of paying Ghc19,000 into the Plaintiff's account after 30th June, 2014 was rejected by the trial court which finding was affirmed by the Court of Appeal.

(32) The Plaintiff submits that although there are discrepancies in the dates and amounts on the receipts it issued to acknowledge payments by the Defendant in cash, (Exhibit '2' series), it does not mean that the dates on the receipts refer to different payments other than that in Exhibit 'L' and the three months' rent paid in cash because it is on record that both parties admitted that the receipts were issued more than a year after payment was made. It is the case of the Plaintiff that Exhibit 'L' shows that the account was not dormant and same was being run by the Plaintiff's Director before and during the pendency of the agreement. The only occasion that the Defendant had anythingto do with the account was when he deposited rent into same as shown on Exhibit 'L'. There is however nothing on record which shows that the account was being operated by the Defendant. The Plaintiff contends that since there was no agreement between the parties

that the Plaintiff's director will not have access to the account coupled with thefact that the account was being operated by the Plaintiff a legal entity, it is presumed that all deposits made into that account were for the benefit of the Plaintiff and not the Defendant.

(33) From an examination of the record of appeal, we have not found any condition or term in the agreement that gives the Defendant exclusive control over the Plaintiff's UBA bank account. The Defendant has also not demonstrated any activity on his part concerning Exhibit 'L' which will result in a presumption that it was within the thinking of the parties that the Defendant will control the said bank account. Therefore, by merely asserting that it was wrongful for the Director of the Plaintiff to access the UBA bank account is not sufficient enough for this court to depart from the findings of the two lower courts. The settled law is that in civil cases, the burden of producing evidence was not static but shifted from party to party at various stages of the trial. See **In Re Asahalley Botwe Lands; Adjetey Agbosu & Ors. Vs. Kotey & Ors**. **[2003-2004] SCGLR 420**.Therefore, ifit was the thinking of the Defendant that he should have been in exclusive control of the bank accounts, then he assumed the burden of proof to discharge on that assertion.

(34) We also find that the Defendant did admit owing the Plaintiff and this is evidenced per Exhibit '7' found at page 151 a response to Exhibit 'D' dated 30th June 2014 written by W. Kusi Legal Consult on behalf of the Plaintiff demanding payment of rent which was in arrears from March 2014, which has neither been denied nor discredited by the Defendant.

(35) It is now well settled that where a trial court that heard the evidence and has made findings based on the evidence and had come to a conclusion in a case and same affirmed by the 1st Appellate Court, the second Appellate Court ought not disturb those findings except there is no evidence on the record to support the findings or that the reasons for the findings are either perverse,

unsatisfactory and result in manifest injustice because they are contrary to the evidence.This court may also reverse the concurrent findings of a trial court and Court of Appeal where they are based on a wrong proposition of the law or rules of evidence or where the findings are inconsistent with documentary evidence on the record. This principled approach flows from a rich line of decisions of this court in cases such as **Achoro And Anor. Vs. Akanfela [1996-1997] SC GLR 209, Okine (Decd) Re: Dodoo Vs. Okine[2003-2004] SC GLR 582 And Koglex Ltd. (No.2) Vs. Field[2000] SC GLR 175.** In all these cases,the guiding principle is that, this Court has a duty to determine whether or not: (i) the findings of the trial court are perverse and cannot be reasonably supported by the mass of evidence on record; (ii) the findings could be inferences from established facts and therefore this court is equally in a vantage position just as the lower courts to arrive at the more probable conclusions than those arrived at by the trial court and Court of Appeal.

(36) In the instant case, in the discharge of its duty aforesaid, this court examined from the entire record; (a) the evidence before the trial court which it relied upon in making findings and orders in favour of the Plaintiff which the Court of Appeal affirmed (b) whether the trial court accepted or rejected any evidence upon the correct perception; (c) whether the trial court approached the assessment of the evidence before it and properly placed the correct probative value thereon (d) whether the trial court properly weighed the evidence of either side having regard to the burden of proof and of persuasion particularly on the Plaintiff who succeeded in its claim and (e) whether the trial court appreciated on the preponderance of the evidence which side had discharged the statutory burden.

(37) Against this premise, it is to our minds evident from the findings of the trial court which the Court of Appeal affirmed that not only did both courts review the evidence adduced thoroughly, they made findings on all the averments on which issues were joined and applied the relevant law properly. The reasons given for

those findings are logical and cannot be faulted. The decision to prefer the Plaintiff's case to that of the Defendant is on firm ground. We have no reason to disturb or those findings and conclusions of the Trial Court as well as the orders which gave effect to them in the judgment. In the result, all the grounds of appeal argued by the Defendant fail and are accordingly dismissed.

CONCLUSION

(38) In furtherance to the dismissal of the appeal, we notice however that in arriving at its conclusion, the Court of Appeal interfered with the award of general damages by the trial court by reducing the quantum from Ghc10,000 to Ghc5,000.00. In doing so, the Court of Appeal did not give any satisfactory reasons for reducing the quantum of the award. Being an exercise within the discretion of the trial court, in the absence of any compelling reasons in the judgment on appeal we are unable to affirm the position of the Court of Appeal. We accordingly reverse it and restore the award of general damages in the sum of Ghc10,000.00 made by the trial court. Save this variation, we find no merit in this appeal. We accordingly dismiss same.

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

ANIN YEBOAH
(CHIEF JUSTICE)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

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