IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA, GHANA

CORAM: DATE-BAH JSC (PRESIDING)
ANSAH JSC
DOTSE JSC
BONNIE JSC
BAMFO(MRS) JSC

CIVIL APPEAL
J4/23/2012

6TH JUNE 2012

AFRICAN AUTOMOBILE LIMITED ... PLAINTIFF/APPELLANT/ APPELLANT

VERSUS

THE ATTORNEY-GENERAL ... DEFENDANT/RESPONDENT

RESPONDENT

J U D G M E N T

DR. DATE-BAH JSC

This is an action brought by a car dealer in respect of outstanding sums owed it for the servicing of the motor vehicles of the Ministry of Information. While the fact of the plaintiff's services having been rendered to it was admitted by the Ministry, there was an issue as to the exact sum due and the interest rate to be applied in relation to the unpaid indebtedness.

The plaintiff in its Statement of Claim, filed on 31st January 2008, averred that, by a letter of 27th January 1997, it had accepted the Ministry's request for a credit facility and entered into an agreement with the defendants regarding the sale and servicing of motor vehicles by it. This averment was denied by the defendant when he eventually filed his Statement of Defence, on 10th July 2008, after succeeding in setting aside a judgment in default of defence, which had meanwhile been entered against him. After the close of pleadings, the two issues set down for trial were:

1. "Whether or not Plaintiffs and Defendants have any credit agreement with any mode of calculating interest upon default.
2. Whether or not Defendants are indebted to Plaintiffs."

At the trial before the learned trial High Court Judge, Her Ladyship Justice Torkornoo of the Commercial Division of the High Court, evidence was heard from the plaintiff's witness and a referee who had been appointed, during the pre-trial settlement stage of the proceedings, by the Court to enquire into the accounting differences between the parties. However, the defendant offered no evidence and did not participate in the trial, although he had notice of it.

In her judgment after the trial, the learned High Court judge held that the plaintiff had failed to prove the terms of any credible agreement with the Ministry which should lead to the sum claimed. In the plaintiff's writ, its claim was for "recovery of the sum of GH 14,174,693.12 being outstanding sums owed Plaintiff as at 31st January 2008" and interest on the sums from date of judgment until date of final payment. Lecturn

At the trial, one Harrison Teye testified for the plaintiff that it had sold motor vehicles to the Ministry and provided it with after sales service. He indicated that the sale of motor vehicles was for cash, while the after sales service was on credit basis covered by an agreement. He claimed that the credit facility agreement was in writing and the Ministry had accepted it. He tendered this alleged credit facility agreement into evidence as Exhibit A. He also tendered as Exhibit B an alleged acceptance of the credit facility agreement by the Ministry. Exhibit A is a letter dated 25th March 1991 addressed to the Chief Director, Ministry of Information and thus different from the letter referred to in the Plaintiff's Statement of Claim. It stated that it was intended to reiterate a particular term of a credit facility which the Ministry was currently enjoying from the plaintiff as follows:

> "All credit customers must settle their accounts fully by the 15th of the month following that during which the service was provided."

It went on to indicate that in view of the high interest charge on bank credit, the plaintiff had decided that it would pass on the cost of credit (compound) to all customers who failed to perform in accordance with its credit terms. It then set out the interest rates the plaintiff would apply to defaulting customers as follows:

a) “Interest rate on the outstanding amount at the end of each month 3%.
b) Loss of use of the outstanding amount 4%.
c) Bank and other expenses 0.5%.”

The last paragraph of the letter was in the following terms:

> “Kindly confirm your acceptance of the above by signing, dating and stamping the copy of this letter attached hereto as your facility is being withheld till receipt of your confirmation.”

The evidence shows that the Ministry never signed, dated and stamped a copy of Exhibit A. Rather, the evidence given of its alleged acceptance of the plaintiff’s offer of credit terms was in the shape of Exhibit B. On these facts, the learned trial High Court judge held that no contract had been established on the credit terms alleged to be binding on the defendant. She said (at pp. 47-48 of the Record):

> “My understanding of the plaintiff’s witness’s evidence is that the sum presented to this court was calculated from the terms outlined in exhibit A. But a cursory look at exhibit A shows that it is a letter communicating a unilateral decision on how bills to customers would be calculated and requesting that acceptance of the terms should be indicated by signing, dating and stamping a copy of the same (this) letter attached.
>
> No such copy of the same letter signed, dated and stamped was presented showing acceptance of the terms urged on me as indicating a contract. Indeed, exhibit B is in no way a copy of exhibit A. It is a short note saying

'we confirm our acceptance of the terms of the above credit facility as outlined therein'. Is it a response to exhibit A? There is no date on exhibit B. It could easily be a response to a different document because the clearly outlined response required by exhibit A to make it a contract is a signing of the same letter that exhibit A is."

Her conclusion that no contract had been formed on the basis of Exhibit A was affirmed by the Court of Appeal. Ofoe JA said in the Court of Appeal (at pp. 193-4):

"Exhibit B is an undated letter which is purported to have been issued by the defendant. Not only is this communication not on the defendant's ministry letter head, as should normally be the case, but it is also unsigned. On Exhibit B are certain signatures which henceforth were to be the only recognized signatures by the plaintiff in any future dealings with the defendant. The letter also stated that all invoices, debit notes, statement of account were to be sent to the Ag. Chief Director. The trial judge refused to give any authenticity to this letter. I think there was sufficient evidence on record for the trial judge to have reasoned the way she did refusing authenticity and any weight to Exhibit B. These are findings of fact supportable by the evidence an appellate court like ours has no legal mandate to subvert."

Furthermore, the learned trial judge pointed out that Exhibit A was dated 1991, at which time the Ministry's indebtedness was 2,689,261.50 cedis. However, the agreement from which the indebtedness claimed under the current action was supposed to have arisen was entered into in 1997. She further drew attention to

the fact that the records of indebtedness submitted by the plaintiff to the referee appointed by the court started from 1994. She accordingly concluded perfectly logically that the debt standing at the end of 1994, amounting to 132,233.00 old cedis, had nothing to do with the letter of 1991. Her decision that the plaintiff had failed to establish any agreement that allowed it to apply the alleged interest rates set out in Exhibit A to the debts outlined in the report of the referee was thus unexceptionable.

The learned trial judge did, however, find that the defendant had used the plaintiff's services between January 1994 and November 1998 and incurred a bill of 19,406,371 cedis. Some payments had been made, leaving a balance of 15,636,482.00 cedis as at 15th April 1999. Since there was no evidence of payment of that debt, she ordered defendant to pay the outstanding debt of 1,563.64 Ghana cedis with interest on it at the prevailing commercial banking interest rate from April 1999 to date of final payment.

Dissatisfied by the judgment of the learned trial judge, the plaintiff appealed to the Court of Appeal which unanimously dismissed the appeal. It is from this decision of the Court of Appeal that the plaintiff has further appealed to this Court on the following grounds:

a) "The judgment is against the weight of evidence.
b) The Learned Justices of the Court of Appeal erred when they failed to appreciate on the evidence before them that the basis of Plaintiffs' claim was a valid and "credible Contract".
c) The Court erred in Law on the evidence before her when she failed to properly consider and construe Exhibit B as an integral part of Exhibit

A and which exhibits collectively form the Agreement or Contract between the Parties.

d) The Court of Appeal erred when she affirmed the findings of the Trial Court setting up a case for the Defendant/Respondent to the extent that Exhibit B being undated and not appearing on an official Letterhead of 1st Defendant/Respondent was invalid.

e) The Court erred in Law when she failed to consider and appreciate the import of the evidence contained in the Court Experts' Report ie Exhibit CW1 and disabled herself thereby from arriving at a proper conclusion relative to Plaintiff/Appellant/Appellant's claim.

f) The Court further erred in Law when she set up a case for the Defendant/Respondent/Respondents on interest calculation despite the existence of Exhibits 'A' and'B'.

g) The Court patently erred in affirming the decision of the Court below, in which despite clear and ambiguous *(sic)* admissions of the debt by the Defendant/Respondent/Respondents, the Court below found otherwise.

h) The Court patently erred in affirming the findings of the Court below to the effect that the Plaintiff/Appellant/Appellants' claim was unproven.

i) The Court exceeded her jurisdiction and breached the Rules of Natural Justice thereby when in the absence of any evidence on record found that there had been a collusion between the Parties in relation to Plaintiff's claim."

The appellant argued grounds (a) to (d) together. It complained that both the trial court and the Court of Appeal had set up a case for the defendant that he himself had not made, in that he had not denied that there was an agreement covering the transactions between the parties. The appellant argued that Exhibits A and B did constitute a valid enforceable contract and therefore the trial court's calculation of interest on the outstanding debt on the basis of simple interest was in error and should not have been affirmed by the Court of Appeal.

The appellant expressed dissatisfaction with the following passage from Ofoe JA's judgment (at p. 194 of the Record):

> "Having rejected the existence of any contract based on Exhibits A and B the rate of calculating the interest at compound interest, as specified in Exhibit A, was inapplicable to the debt owed the Plaintiff by the Defendant. Such conclusion necessarily flows from the rejection of the contention of the Plaintiff that it has a contract based on Exhibits A and B. I think it is necessary at this point to clarify this position of the jurisdiction of Mr. Korley in the assignment that was given him by the Court. As earlier mentioned the Court set itself issues for trial which included whether there was any credit agreement between the parties. This issue is a purely legal issue not meant and can't be for the determination of Mr. Korley, the court witness. The Court can't shirk its statutory responsibility in determining this issue to Mr. Korley. The trial judge was therefore right in ignoring the computation of Mr. Korley whose total figure was based on his believe (*sic*) that Exhibits A and B constituted a

> contract between the parties. Whether there was a concluded contract between the parties based on Exhibits A and B is for the court to determine and not Mr. Korley."

The appellant contends that, given the evidence of Mr. Korley, the referee appointed by the Court, and of the plaintiff's witness at the trial, the evidence on record did not support the finding of the courts below that the plaintiff/appellant/appellant's claim had not been established. The appellant states in its Statement of Case that:

> "It is therefore our respectful submission that the Court of Appeal rather erred in affirming the finding that the claim was not substantiated by ignoring the evidence of both PW1 and that of the referee on the debt."

This submission misses the point of Ofoe JA's analysis in the passage from his judgment quoted above. His point indeed is that the interpretation of facts to determine whether they result in the conclusion of a contract is a matter of law for a judge to undertake. Accordingly, the assumption by the referee that Exhibits A and B resulted in a contract and therefore their terms were to be applied to the calculation of interest on the indebtedness he ascertained was not binding on the trial court nor on the Court of Appeal. He was correct in this analysis. In these circumstances, the issue which calls for discussion is whether indeed Exhibits A and B do constitute a contract.

The last paragraph of Exhibit A, which was earlier quoted in this judgment, has clear words which prescribe the mode of communication of the offeree's acceptance of the plaintiff's offer. Given those clear words and the absence of

any evidence of waiver by the offeror regarding the prescribed mode of communicating acceptance, that mode of communication was binding and the learned trial judge was justified in disregarding any purported acceptance which did not conform to the prescribed mode of communication. We would thus uphold the legal conclusion of the learned trial judge that Exhibits A and B did not result in the formation of a contract. There being, accordingly, no contractually determined interest rate applicable to the indebtedness of the Ministry that had been established on the evidence, it was reasonable for the learned trial judge to order the payment of interest on it at the prevailing commercial banking interest rate from April 1999 to date of final payment, which is what the provisions of the Court (Award of Interest and Post Judgment Interest) Rules, 2005 (CI 52) authorize her to do (See rules 1 and 2 of CI 52). The Court of Appeal did not, therefore, err in affirming her decision on this issue.

The appellant's argument on grounds (e), (f), (g) and (h) is similar to that already examined. It again relies on Exhibits A and B being construed as forming a contract. It notes that under Rule 1 of the Court (Award of Interest and Post Judgment Interest) Rules, 2005 (CI 52), if the parties specify a rate of interest which is to be calculated in a particular manner, then the court shall award that rate of interest calculated in that particular manner. Of course, this argument also falls down, once this Court affirms, as it has done above, the Court of Appeal's approval of the learned trial judge's conclusion that Exhibits A and B did not constitute a contract.

The final ground argued by the appellant was ground (i). Under this ground, the appellant complained about the following passage from the judgment of Appau JA:

> "The names of the Ag. Chief Director and the Deputy (with their alleged specimen signatures) were merely inserted in the letter as persons who would sign for and on behalf of the 1st defendant/respondent without indicating who the author of the letter was. On the face, Exhibit 'B' appears fake and unauthentic. I cannot therefore fathom how the Attorney General's office could gloss over the serious defects in Exhibit B and commit the State to the payment of the whopping sum of over 14 million Ghana cedis on mere maintenance and servicing of 1st defendant/respondents vehicles when on the evidence, plaintiff was not entitled to that sum."

The appellant maintained that there was not a shred of evidence to suggest that Exhibit B was "fake and unauthentic." It also pointed out that the defendant had not raised any query about the authenticity of Exhibit B. The appellant then continued to deny that there was any collusion between the parties. It will be recalled that ground (i) was as follows: "The Court exceeded her jurisdiction and breached the Rules of Natural Justice thereby when in the absence of any evidence on record found that there had been a collusion between the Parties in relation to Plaintiff's claim."

This claim of collusion arises from the assertion in the judgment of the learned trial judge that a representative of the defendant had indicated before her a willingness to submit to judgment in the sum of 14,174,693.12 Ghana cedis. This is what she said (at p. 47 of the Record):

> "Before judgment could be given, the Attorney-General's representative reappeared, and said that the State wished to submit to judgment in the sum of 14,174,693.12 Ghana cedis being what was entered as default judgment. My understanding of my role as a judge is that I am required to give judgment on the evidence laid before me and not as directed by the parties. I have a duty to implement the ethic of competence, which requires adjudication based on evaluation of evidence. Instead of entering judgment as submitted by the State, I have chosen to examine the evidence and give my judgment based on the evidence."

Apart from this assertion in the judgment of the learned trial judge, however, we have not found any record in the Record of Appeal of this attempt by the State to submit to judgment. Either the record is incomplete or the learned trial judge neglected to make a record of that incident.

In our view, however, neither this incident nor the imputation of collusion alleged by the appellant has a determinative effect on the success of this appeal. This is because they make no difference to the central analysis of the learned trial judge, which was affirmed by the Court of Appeal, namely that Exhibits A and B did not result in a contract because there was no effective acceptance of the offer made

by the plaintiff. Accordingly, the following concluding plea of the appellant in its Statement of Case cannot succeed:

> "In reality, my Lords, we wish to submit that the finding of collusion as well as the derogatory remarks made about Exhibit 'B' to the effect that it is "fake and unauthentic" is not borne out by the evidence on record and it is respectfully submitted thus that the judgment based on these ought to be set aside and this ground of appeal allowed."

Accordingly, all the grounds argued by the appellant are dismissed. However, before concluding this judgment, we need to advert to an issue that was raised by the respondent in his Statement of Case. Although we have held above that the alleged agreement between the parties on interest calculation was not a binding contract, the respondent nevertheless claimed that the purported agreement was a loan agreement within the purview of Article 181(3) of the 1992 Constitution and without Parliamentary approval it was invalid. Having held that the purported agreement was not a binding contract, there is no need to deal with this constitutional issue fully. However, it is worth pointing out that the extension of credit facilities to a government Ministry in relation to services rendered to that Ministry is not, in our view, equivalent to a loan.

The appeal is dismissed and the judgment of the Court of Appeal affirmed.

(SGD) DR. S. K. DATE- BAH

JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

(SGD) J. V. M. DOTSE

JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE BONNIE

JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO-BAMFO (MRS)

JUSTICE OF THE SUPREME COURT

<u>COUNSEL;</u>

ADDO ATUAH FOR THE APELLANT.

PEARL AKIWUMI SIRIBOUR (PRINCIPAL STATE ATTORNEY) WITH MRS. YVONNE AWOONOR-WILLIAMS (ASSISTANT STATE ATTORNEY) FOR THE RESPONDENT.