IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA- GHANA, A.D.2014

CORAM: WOOD, C. J. (PRESIDING)
ANSAH, J.S.C.
DOTSE, J.S.C.
BONNIE, J.S.C.
AKAMBA, J.S.C.

CIVIL APPEAL
NO. J4/63/2013

28TH NOVEMBER, 2014

CHARLES LAWRENCE QUIST - - - PLAINTIFF/ RESPONDENT
(SUBSTITUTED BY DIANA QUIST) /APPELLANT
F727/2 15TH LANE, OSU RE ESTATE

VRS.

AHMED DANAWI - - - DEFENDANT/APPELLANT
AFRIDOM SUPERMARKET **/RESPONDENT**
OSU R. E. OSU, ACCRA.

JUDGMENT

BAFFOE-BONNIE JSC:-

The events culminating in this instant appeal have been faithfully recounted in material detail in the judgment of the Court of Appeal and also the statements of case of the parties. We do not therefore intend to set them out in extensor.

Suffice to say that for a fuller and better appreciation of our judgment we will summarize the material facts and events that have led to this appeal before us.

Mr. Charles Lawrence Quist, now deceased, instituted action at the High Court, Accra, against Ahmed Danawi, for ejectment from a plot of land that was leased to him and his brother, Abdulatif Danawi, because according to him, the two of them had denied his title to the land and therefore forfeited the lease. Ahmed contested the action upon the basis that they had not denied Mr. Quist's title, so the main issue that called for determination at the trial court was whether the two brothers had denied their landlord's title and forfeited the lease.

The plaintiff gave evidence was cross-examined and he closed his case. When it was time for the defendant to open his defence, he was absent and his counsel informed the court that since his defence was purely documentary, he sought permission and same was granted for the documents to be tendered. The documents were allowed in and the defendant closed his case. Counsel for the plaintiff was Mr. Ahenkorah while counsel for the defendant was Mr. Norvor. The trial judge who presided over the proceedings up to this stage was the late GyamerahTawiah J. At the close of day both counsel were informed to file their respective addresses by 8/11/2002 whereupon the parties would be notified of the date for judgment. In pursuance of that, defendant's counsel, Mr. Norvor, filed the relevant documents on 24th September 2002 after which an address was filed on behalf of the plaintiff.

This was the state of things when the suit was finally transferred by the CJ to Justice Bright Mensah following the demise of Gyamerah-Tawiah J.Bright Mensah

J. ordered that the record of proceedings taken before GyamerahTawiah J, should be typed so that the parties may adopt the proceedings for the case to proceed.

When both counsel appeared before justice Mensah, there was an initial discussion on the exact status of the case. WhilstAhenkorah, who had all along represented the plaintiff, informed the court that thecase had gone through trial and was left with judgment to be delivered, Mr. Yoni Kulendi, who had recently been appointed defence counsel, was oblivious of the real situation. Apparently not having been handed the original case docket he could not even understand how and why closing addresses had been ordered and filed when his client, the defendant, had not given evidence. It was left to Mr. Ahenkorah to explain the situation. While Ahenkorah insisted on the new judge continuing from where the late judge left off and give judgment, Mr. Kulendi expressed no opinion on this except to say that there was a possibility that the matter could be settled. After some discourse the trial judge decided to refer the matter to the CJ for directions. Judgment was actually delivered on 3rd June 2010 in favour of plaintiff. Both counsel were present. Thus ended the trial at the High Court.

The defendant filed an appeal to the Court of Appeal on two main grounds that:
1)the judgment was wrong in law because it was given when the parties did not agree to the adoption of proceedings after the death of the trial judge and there was no order for the adoption of proceedings.

2)the judge failed to consider the fact that at the time of the institution of the action, the plaintiff did not have any cause of action.

Relying mainly on the case of **Awudome(Tsito)Stool V Peki Stool [2009] SCGLR 681,** the Court of Appeal heard and sustained the first ground of appeal by holding that the new judge to whom the case was transferred had no jurisdiction to use the proceedings prior to the transfer to him without the parties agreeing that those proceedings be adopted. It therefore set aside the judgment of Bright Mensah J. and remitted the case to be dealt with by a High Court differently constituted; A decision on the second ground of appeal was deferred. It is against the judgment with respect to the first ground of appeal therefore that this appeal was filed.

The appellant has argued extensively, as he did before the Court of Appeal, that the decision in theAwudomePeki/Tsitocase(supra) to the effect that the court need the consent of parties to adopt proceedings taken earlier in a case, was wrongly given and given per incuriam and that the reliance on same by the Court of Appeal was wrong. On his part the respondent fully supported the Court of Appeal decision to remit the case back to the High Court for it to be tried de novo because the proceedings were not formally adopted before the High Court continued to deliver the judgment based on the proceedings.

The issue as to whether proceedings already taken before an earlier judge has to be formally adopted before a new judge, and the role the parties, or their counsel and the presiding judge, have to play in the adoption, has been finally settled per the decision of this court in the case of **AdomakoAnanevrs. Nana OwusuAgyemang (subst. by Nana Banahene) and 7ors.(unreported) dated 26th Feb 2014, Civil Appeal No. J4/42/2013**.**Coram: Wood CJ, Ansah, Anin-Yeboah,**

Baffoe-Bonnie and Akamba JJSC..In that case this court used the opportunity to review various decided cases on this subject of adoption of evidence like**,Boama v Okyere [1967] GLR 548,Coleshill v Manchester Corporation [1928] 1 K B 776**and the**Awudome (Tsito) Stool v Peki Stool** (supra) and pursuant to Article 123(9) of the 1992 Constitution, departed from its earlier held position on this subject.

The Court, per Wood CJ., in a very illuminating ruling, gave reasons for the departure. Because of its importance we will like to quote it in extenso;

"The pronouncement on this crucial issue will alter the course of our jurisprudence, in that it would provide a more just and far lasting legal solution to the challenge which has faced our courts in the past and created enormous difficulties for the smooth and speedy administration of justice in our jurisdiction. We concede that the time is long overdue for a volte-face from the age–old legal position of "no agreement by all the parties no adoption of evidence" that the courts have unremittingly followed for decades. At this re-hearing, we will not tie ourselves to the existing legal principle, but liberate ourselves from its shackles.

".....In the administration of justice, transfers, ill health, death, resignations, retirements, and other vicissitudes of life from which the judiciary is not spared have, unavoidably necessitated the transfer of part heard cases from one court to another differently constituted; that is from one judge to another. The first question which arises in such cases is whether the new judge must adopt the evidence taken by the previous judge and continue from where he or she left off or the case be retried or heard de novo, namely that fresh evidence be received. Hitherto this ground breaking decision; our courts have adopted proceedings, namely the evidence, only where all the parties have given their unequivocal

consent. But more often than not, this consent has, without valid reasons, unreasonably been withheld. Under such circumstances, judges have, in desperation thrown their hands in the air and yielded to a de novo hearing, leading to needless delays.

The main policy reasoning behind this approach is the thinking that the new judge can only serve justice if he or she saw and heard the witnesses to enable a close monitoring or observation of their demean our. And yet, speaking for this bench as presently constituted, our judicial experience, cumulatively spanning a period of over a century has taught us that hardly does the demeanour qua demeanour of witnesses play a significant role when evaluating the credibility of witnesses. Courts tend to rely on some more reliable criteria such as documentary evidence, the testimony of disinterested witnesses, the implausibility or otherwise of narrations given in court, to arrive at their findings and conclusions. As noted by the learned author(of the SCGLR Dr. Bimpong-Buta) inter alia, (see the editorial comments in Awudome (Tsito) Stool v Peki Stool (supra)) :

"*The argument based on observation of the demean our of parties and witnesses is not always tenable, especially where that trial lasts for many weeks; months or years as is common in the courts. The effluxion of time may cause memories to fade, wane or totally forgotten and, in that event, there can be no legitimate reliance on demeanour which cannot be recollected.*

…If the specific observation is not apparent on the face of the record, it may be attacked as being speculative. If the observation is properly recorded and is apparent in the proceedings, the second trial judge can make use of them as the

basis for commenting on or evaluating the credibility of parties and witnesses. In that event, the reason for insisting on trial de novo will not be applicable."

And as he further urged:

"On the other hand, arguments for trial de novo may be countered on the following grounds: (i) the protracted trials and delay in the delivery of judgments; (ii) they afford parties undue advantage to reconstruct their case and thus waste more time; (iii) they encourage parties to seek to embellish or improve their case if they believe that their performance or the performance of their witnesses did not go the way they wanted; (iv) they can sometimes lead to denial of justice where the witness or party is dead or otherwise unavailable and there is no other means of hearing the truth except to rely on what has already been reproduced by the court under cross-examination in the previous proceedings; (v) there will be denial of justice where vital exhibit is lost or otherwise unavailable but details of it are on the record and could have been used to write the judgment if the previous proceedings had been adopted; and (vi) in fact in the event of the last two reasons, trials may have to be discontinued or cases abandoned or justice denied when, indeed, adoption of the record would have saved the continuation of the trial and the entire case."

Wood CJ concluded;

"…..The argument against de novo hearing is so cogent and compelling that sound case management policy reasoning alone constitutes a sufficient basis for charting a new legal path in our jurisprudence. We would, therefore state the law as follows. In civil proceedings, the ultimate question of whether or not evidence already adduced before a previous judge be adopted should not rest on the

parties' consent. It should exclusively be at the discretion of the new judge who takes over the partly heard case. Since this involves the exercise of a discretionary jurisdiction, we will identify some of the factors that must be taken into account to arrive at this decision. The judge's broad and primary concern must be to ensure that the adoption of the proceedings would not result in any miscarriage of justice. Specific factors that would influence the decision would include the length of time that the case has been on the court's calendar, the stage at which a trial has reached, the number of witnesses already called, the disputed issues, the nature of the evidence- mostly narrative or documentary, weighty objections by either party, if any, to its reliability, the availability of the witnesses who have already testified, the quality and reliability of the record or transcript.

"In this appeal, we have before us a reliable transcript of the proceedings, signed by the judge who received the evidence. We have not the least evidence of the slightest objection from any of the parties' relative to its reliability. To the contrary, the Respondent's lament at one time had been that the evidence was not adopted in accordance with the law. Again, the availability and or memory of the only parties and witnesses who may happen to be alive and who had earlier testified has not been guaranteed, in respect of this forty year old case. On these bases, we will adopt the proceedings and, at this re-hearing, use the evidence to resolve the disputed facts which are central to this case."

In this appeal, like the one cited above, we have before us a reliable transcript of the proceedings signed by the judge who received the evidence. We have not the least evidence of the slightest objection from any of the parties' relative to its

reliability. The proceedings of the final day clearly indicate that the problem of the defendant counsel who was fresh in the matter related only to the state the case had got to and not the contents of the proceedings. When the plaintiff counsel explained things to him he understood and raised no further objection.

We believe that the trial judge was right in proceeding to deliver the judgment based on the proceedings on record and the Court of Appeal was wrong in ordering a fresh trial.

We notice that before the court of Appeal there was a second ground of Appeal which was not dealt with but was not raised before us. However because all the record of appeal is before the court, and also to ensure the speedy resolution of the main issue in controversy, we refuse to accede to the appellants request that the matter be remitted to the Court of Appeal for the appeal to be decided on its merits. Pursuant to rule 6(8) of the Supreme Court Rules, CI 16, we will invite parties to address us on the second ground of appeal filed before the Court of Appeal, which was not decided upon for us to bring finality to this case in this Court.

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

(SGD) G. T. WOOD (MRS)
CHIEF JUSTICE

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

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

(SGD) J. B. AKAMBA
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