IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA
AD 2015

CORAM: ADINYIRA (MRS.), JSC (PRESIDING)
DOTSE, JSC
BAFFOE-BONNIE, JSC
GBADEGBE, JSC
AKAMBA, JSC

CIVIL APPEAL
NO. J4/5/2015

22ND JULY 2015

NANA KOW MENSAH KING ... PLAINTIFFS/APPELLANTS
HEAD OF TUMPA ANONA FAMILY APPELLANTS
OF WINNEBA
H/NO: 178/15, EAST ANSAFUL
WINNEBA

VRS

OPANIN KWEKU KYIKYIBI GYAN ... DEFENDANT/
HEAD OF OTUANO ROYAL STOOL RESPONDENT/
FAMILY, WINNEBA RESPONDENT

JUDGMENT

ADINYIRA JSC:

The Plaintiff/Appellant/Appellant (Appellant) on 18th of October, 2012 issued a writ of Summons with statement of claim at the High Court against defendant/Respondent/Respondent (Respondent") for the following reliefs:

(a) A declaration that the judgment of the Judicial Committee of the Central Regional House of Chiefs in so far as it purportedly made a finding of fact that the High Court and the Court of Appeal upheld as raising issues estoppels against the party the issue was determined against and privies without giving the Ayirebi Acquahs and for that matter the Tumpa Anona Family members the right of hearing breached the principles of natural justice.
(b) An order to set aside the judgment of the Judicial Committee of the Central Regional House of Chiefs that purported to determine issues that directly affect the interest of the Ayirebi Acquahs and the Tumpa Anona Royal Family of Winneba without giving the family a hearing.
(c) Cost.

On 9 November, 2012, Respondent filed application before the trial court to dismiss the suit on the ground that it was a matter affecting chieftaincy.

The Appellant resisted the application by filling affidavit in opposition. Counsel for the parties filed written addresses for hearing of the application.

On the 17 June, 2013, the learned judge dismissed the suit on the grounds that it was an abuse of process but not that it was a matter affecting chieftaincy as raised by the Defendant. Being aggrieved of the ruling, Appellant filed appeal before the Court of Appeal on the 18th day of July, 2013 against the ruling.

On the 12 June, 2014, the Court of Appeal dismissed the appeal and affirmed the ruling of the High Court dismissing the suit but on grounds of jurisdiction that the suit was a matter affecting chieftaincy. The Court held:

> "All the other grounds of appeal raised by the plaintiff are without merits and they should fail. Jurisdiction goes to the root of the suit and once there is no jurisdiction we shall affirm the conclusion by the trial judge dismissing the suit but with different reasons stated in the judgment."

On the 13th day of August, 2014, Appellant filed the instant appeal against the judgment of the Court of Appeal on 3 grounds. However in his statement of case filed on 20 October, 2014, Counsel for the Appellant argued only the first ground of the appeal stating he abandoned the two grounds because the one ground is sufficient to dispose of the appeal.

That ground argued by Counsel for Appellant was couched thus:

> "The Court of Appeal misdirected itself when it invoked the principle that an appeal is by way of rehearing to raise a point by itself and dismiss the appeal without giving the parties opportunity to be heard on that ground."

The Appellant submits in dismissing the appeal for the reason that the suit was a matter affecting chieftaincy, the Court of Appeal failed to hear the parties or their counsel on that issue. He contends that the Court of Appeal wrongly invoked and misapplied the principle that appeal is by way of rehearing in dismissing the appeal.

His Counsel referred to the Court of Appeal Rules, 1977, C.I. 19, rule 8. sub-rules 1, 2, 5, 7 and 8 that states:

> (1) Any appeal to the Court shall be by way of rehearing and shall be brought by a notice referred to these Rules as 'the notice of appeal',
> (2) The notice of appeal shall be filed at the Registry of the Court below and shall
> (a) set out the grounds of appeal;
>
> (5) The grounds of appeal shall set out concisely and under distinct heads the ground upon which the appellant intends to rely at the hearing of the appeal.

(7) The appellant shall not, without leave of the Court, urge or be heard in support of any ground of objection not mentioned in the notice of appeal, but the Court may allow the appellant to amend the grounds of appeal upon such terms as the Court may think just.

(8) Notwithstanding sub-rules (4) to (7) of this rule, the Court in deciding the appeal shall not be confined to the grounds set out by the appellant but the Court shall not rest its decision on any ground not set out by the appellant unless the respondent has had sufficient opportunity of contesting the case on that ground.

Counsel in addressing the above rule submitted that:

> "The rehearing occurs when the appeal court is listening to arguments by counsel for the parties. That is supposed to be the rehearing because the parties are expected to argue appeal points of fact or law which arise on the face of the record and leave them for the court's determination, whether or not that point was argued at the court below. Besides that, the appellate court itself may raise any point of law or fact arising on the record for the parties to argue though not raised by the parties. Having heard the parties on the points so raised by the parties and the appellate court itself, the court will then proceed to consider the points argued and give judgment. In this way, in the days when appeals were heard by oral argument, the bench would intercede to draw attention to relevant points of fact or law appealing on the record and necessary for determination of the appeal not raised by the parties and invited the parties to address it. That is the process of rehearing."

Counsel complained that: The Court of Appeal did not follow the above rules and that:

> "[I]n its judgment the Court of Appeal based itself on some other points to dismiss the appeal without giving the parties any

> opportunity to be heard. It did that under the pretext that the appeal was by way of rehearing. It is this that provoked the plaintiff to appeal to the Supreme Court"

With due respect to learned Counsel for the Appellant, we think Counsel's understanding of the principle that an 'appeal is by way of rehearing' is completely misconceived.

Counsel for the Respondent rather correctly explained what it means by 'an appeal is by way of rehearing'. He said:

> "[I]t is clear that Counsel for Appellant misapplied the principle. He failed to draw a distinction between the process of hearing the appeal itself where the bench may invite parties or their counsel to address the court on points raised by the parties, by counsel, or by the court, on one hand, and the principle that appeal is by way of rehearing. The principle simply means that the appellate court in coming to its judgment examines relevant piece of evidence on the record including the exhibits, oral or written submissions of counsel, to ascertain whether the trial court below or the first appellate court below was justified in arriving at a finding of fact or law in the judgment."

There is a host of jurisprudence on point that an appeal at whatever stage is by way of rehearing as every appellate court has a duty to examine the record of proceeding by scrutinizing pieces of evidence on record and ascertain whether the decision is supported by the evidence. In that respect the appellate court can draw its own inferences from the established facts and in arriving at its judgment, the appellate court can affirm the judgment for different reasons or vary it.

In the case of *Koglex Ltd (No. 2) V Field* [2000] SCGLR 175, at 185 of the Supreme Court held that:

> "The very fact that the first appellate court had confirmed the judgment of the trial court does not relieve the second appellate court of its duty to satisfy itself that the first appellate court's judgment is, like the trial court's, also justified by the evidence on record. For, an appeal, at whatever stage, is by way of rehearing; and every appellate

court has a duty to make its own independent examination of the record of proceedings"

In the case of *Tuakwa v Bosom* [2001-2002] SCGLR 61, this court held that appeal is by way of re-hearing and the appellate court has power to review the evidence and ascertain whether the decision of the trial court is supported by the evidence on record.

It is also the law that after scrutinizing pieces of evidence on record and in arriving at its judgment, appellate court can affirm the judgment for different reasons. In *Oblie & 2 Others v Lancaster* [2014] 73 G.M.J. 140, it was held that where a trial judge arrived at the right decision but gave wrong reasons, an appellate court can substitute its own right reasons to support the decision reached by the trial judge. The reason is that appeal is by way of rehearing.

In the *Koglex (No. 2)* Case (supra), the Supreme Court held at page 184 of the report as follows:

> "On the other hand, where the findings are based on established facts, then the appellate court is in the same position as the trial court and can draw its inferences from the established facts."

In the instant appeal the Court of Appeal examined the record and came to the conclusion that the suit was a matter affecting chieftaincy. We hold that the Court of Appeal correctly applied the principle that appeal is by way of rehearing in arriving at its judgment.

On the complaint that the Court of Appeal failed to hear the parties on the issue of whether the suit was a matter affecting chieftaincy, we can see from the record that the jurisdictional point was first raised in the High Court by the Respondent, then defendant by way of a motion and supporting affidavit and some exhibits. Counsel for the Appellant also filed an affidavit in opposition with relevant documents. At the instance of the Court, Counsel for the parties then filed written submissions in support of their respective positions on the Respondent's contention that the High Court had no jurisdiction to entertain the appellant's action because it was a cause or matter affecting chieftaincy. All these documents formed part of the

record that was scrutinized by the Court of Appeal in arriving at the judgment.

Counsel for the appellant further submitted, thus:

> "If the Court of Appeal was of the view that what the High Court decided was wrong, it had every opportunity, since the appeal was by way of rehearing, to raise the point *suo motu* at the hearing stage and invite the parties to re-argue the point so that the point could be reconsidered in its judgment to decide that in law the action is a cause or matter affecting chieftaincy"

By these submissions it is apparent Counsel merely wants a chance to reargue this same point that had been thoroughly argued before the High Court. We do not think the trial at the High Court is a dress rehearsal to be repeated at the Court of Appeal. We are of the view that the Appellant is merely showing his dissatisfaction with the judgment without raising anything germane.

In any event, in the case of *Tindana (No. 2) v Chief of Defence Staff & Attorney-General (No. 2)* [2011]2 SCGLR 732, which was cited by both the Court of Appeal and Counsel for Respondent in his statement of case, this Court held at page 743 of the report as follows:

> "It is trite learning that a court adjudicating any matter might raise a point of law on its own motion. In these proceedings, the point of law raised was jurisdictional. In as much as we agree with learned counsel that the court ought to have offered the parties the opportunity to address it on the point raised… the point raised was clearly unanswerable to admit of any legal argument. Under the circumstances, it would therefore have been an exercise in futility for counsel on both sides to address the court on the point raised."

Also, in *Akufo-Addo v Catheline* (1992)1 GLR 377, this court held at page 392 of the report as follows:

> "Therefore in applying the proviso to rule 8(6) of L.I 218 care must be taken that we do not in the process give an interpretation which will

inhibit or stultify the rule that an appeal before the Court of Appeal "shall be by way of rehearing." The proviso cannot, in my view, be said to imply an absolute prohibition. In certain special or exceptional circumstances, the proviso will not apply. So it can be said that the Court of Appeal should not decide in favour of an appellant on a ground not put forward by him unless the court is satisfied beyond doubt, first, that it has before it all the facts or materials bearing upon the contention being taken by it ***suo motu***; and secondly, that the point is such that no satisfactory or meaningful explanation or legal contention can be advanced by the party against whom the point is being taken even if an opportunity is given him to present an explanation or legal argument; for example, void matters as in this case."

Having examined the record of proceedings we find that the issue that the suit was a matter affecting chieftaincy was an unanswerable jurisdictional point. The judgment is supported by the record and we find no reason to disturb it.

The appeal is without merit and it is therefore dismissed.

The judgment of the Court of Appeal is affirmed.

(SGD) S. O. A. ADINYIRA (MRS)

JUSTICE OF THE SUPREME COURT

(SGD) V. J. M. DOTSE

JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE BONNIE

JUSTICE OF THE SUPREME COURT

(SGD) N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT

(SGD) J. B. AKAMBA

JUSTICE OF THE SUPREME COURT

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