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. J4/23/2013

28TH NOVEMBER, 2014

NDK FINANCIAL SERVICES LTD.	**PLAINTIFF/ APPELLANT /RESPONDENT**
VRS.	
1. AHAMAN ENTERPRISES LTD	**1ST DEFENDANT**
2. ATTORNEY GENERAL	**2ND DEFENDANT/ RESPONDENT /APPELLANT**
3. ALEX A. ADUKO	**3RD DEFENDANT**

JUDGMENT

DOTSE,J.S.C:

This is an appeal by the Defendant, Respondent/Appellant, hereafter referred to as the Defendant, against the decision of the Court of Appeal, dated 28th March 2013 which was in favour of the Plaintiffs/Appellants/Respondents, hereafter referred to as the plaintiffs. In a nutshell, whilst, the Plaintiffs, claims against the

Defendant, (therein 2nd Defendants) was dismissed by the judgment of the High Court, dated 21st December 2011, the Court of Appeal on the 28th March 2013 reversed the judgment of the High Court, and entered judgment in favour of the plaintiffs herein.

BRIEF FACTS

The facts of this case admit of no controversy whatsoever. The Plaintiffs are a non-banking financial institution incorporated in and under the laws of Ghana. They were approached in their normal line of business by Ahaman Enterprises Limited, a haulage company for a credit facility, initially in the sum of GH¢30,000.00 to enable them execute contracts awarded them by the Ministry of Energy to haul electricity poles and other electrical materials from designated locations to various parts of the country under the National Electrification Project. In the course of time, the said Ahaman Enterprises Ltd, who were sued therein by the Plaintiffs in the High Court as 1st Defendants applied for further amounts of credit facilities from the Plaintiffs. As a condition for the approval of the credit facilities that the 1st Defendants therein requested from the Plaintiffs, the Plaintiffs required the 1st Defendants to secure a guarantee from the Ministry of Energy that payments due under the contract for the haulage of the electrical poles and other materials would be made in the **joint names of the 1st Defendant and the Plaintiffs. Relying on the Ministry of Energy's letters in support of each credit line facility applied for by the 1st Defendants, the Plaintiffs approved, advanced and disbursed various sums of money to the 1st Defendants as requested by them, pursuant to loan agreements executed between the 1st Defendants and the Plaintiffs on 26th August 2005 and thereafter in respect of all the credit advances, as per the offer letters dated 28th September 2005, 7th October 2005, 13th October 2005, 2nd February 2006 and 28th April 2006 all to the total sum of GH¢340,000.00, at an interest rate of 6.5% per month calculated at the end of each day and payable at the end of every month until the date of final payment.**

It is the plaintiffs contention that, the Defendants herein failed and or refused to honour the undertakings and guarantees contained in the Ministry of Energy letters to the plaintiffs and the 1st Defendants to the effect that all payments in respect of the contract between the 1st

Defendant and the Ministry of Energy would be paid in the joint names of the plaintiffs and the 1st defendants.

Matters came to a crisis point, when the Plaintiffs discovered that by a letter No. K838/127/01, dated 17th December 2008, the Ministry of Energy directed the Ministry of Finance to pay the sum of GH¢286,250.52 being proceeds due the 1st Defendants under the haulage contract to them without reference to the plaintiffs.

When the 1st Defendants indeed received the said sum of GH¢286,250.52 without paying same to the Plaintiffs to redeem their indebtedness and when all attempts through series of correspondence to the Defendants herein yielded no positive result, the Plaintiffs initiated action in the High Court, against several defendants, but the suit was eventually conducted against only three defendants, namely the 1st Defendants, already referred to supra, the Defendants herein, (therein as 2nd Defendants) and one Alex Aduko, a Director of 1st Defendant company.

The reliefs which the Plaintiff claimed against the Defendants in the High Court were as follows:

1. Against 1st 3rd and 4th defendants an order for recovery of the sum of GH¢1,008,833.70 being the balance due and owing as at 31st March 2009, on account of credit facilities extended to 1st defendant by plaintiff between 26th August 2005, and 28th April 2006, repayment of which was secured by 3rd and 4th defendants but payment of which they have failed to make good several demand notices notwithstanding.

2. Interest on the said sum of GH¢1,008,833.70 at the rate of 6.5% per month calculated at the close of each day and payable at the end of every month from 1st April, 2009 up to and inclusive of final payment.

3. Costs

4. Plaintiff also claims jointly and severally against defendants the sum of GH¢286,250.52 being part of the debit balance due under the facilities granted to 1st defendant by plaintiff between 26th August 2005 and 28th April 2006, which sum was secured together with other payments due 1st

defendant by 2nd defendant but paid to 1st defendant on 6th January 2009 as a result of collusion by defendants.

5. Interest on the said sum of GH¢286,250.52 at the rate of 6.5% per month calculated at the close of each day and payable at the end of every month from 7th January 2009 up to date of final payment.

6. Costs

7. An order upon 2nd defendant to render accounts of all payments made to 1st defendant under contracts awarded to 1st defendant by Ministry of Energy from 19th August 2005 to date of filing this suit.

8. A consequential order that 2nd defendant shall pay to plaintiff all sums together with interest at the rate of 6.5% per month paid to 1st defendant by Ministry of Energy in contravention of letters of undertaking dated August 19th 2005, September 28th 2005, October 13th 2005, February 2nd 2006 and April 27th 2006 up to date of filing this suit.

After trial, in which only the Plaintiffs and the 2nd Defendants testified and tendered documents, the 1st and 3rd Defendants having failed to do so after repeated opportunities to them to open their Defence, the learned trial Judge delivered judgment in favour of the Plaintiff against 1st and 3rd Defendants, but dismissed Plaintiffs claims against the Defendant herein, therein 2nd Defendants as follows:

> "*Though the haulage contract in the instant case is not before the court, from the pleadings and the evidence before the court, it is obvious that plaintiff is not a beneficiary under the contract. Indeed the contract was made before the undertaking and at a time when plaintiff could not have been within the contemplation of the parties. The undertaking being contemporaneous to the contract, I hold the plaintiff is not a third party within the meaning and intendment of section 5 (1) of Act 25.*
>
> *Where in exhibit Z the Ministry undertook to make payment in the joint names of the plaintiff and 1st defendant and not to vary or waive same without the consent of both parties in writing,* ***it is my view that the Ministry was in breach of this representation when it changed the directive and made payments under the haulage contract to***

persons other than *plaintiff without recourse to plaintiff. However as earlier discussed in the absence of consideration for the promise, representation can best be described as assurance of payment, not intended to be binding. Plaintiff has no claim against 2nd Defendant in contract.* ***I accordingly dismiss the case against 2nd defendant together with all the reliefs endorsed on the writ of summons as relief*** *2. Where as in the instant case, the Ministry has made full payment under the contract to 1st defendant and the evidence shows that the payments were made to other financial institutions on the instructions of 1st defendant, I find no justifiable reason to accede to plaintiff's prayer." Emphasis supplied*

Predictably dissatisfied and aggrieved with the decision of the High Court against the Plaintiffs in relation to their claims against the Defendants herein, the Plaintiffs successfully appealed against the said decision to the Court of Appeal.

Accordingly, the Court of Appeal in a unanimous decision rendered on the 28th of March, 2013, in favour of the Plaintiffs held as follows:

"*From the record of appeal the Ministry of Energy gave undertakings to pay all contract proceeds under the haulage contract in the joint names of the appellant and 1st defendant. Exhibits D, K and V are clear on this. Then by Exhibits DD2 payment of haulage contract proceeds in the sum of GH¢286,250.40 was made into the account of Ahaman Enterprises at Ecobank Ghana Limited on the instructions issued by the Ministry of Energy. If the Ministry of Energy had not acted in breach of the undertakings, the payment that went to Ecobank, SDC Investments and other financial institutions could have paid off the facilities granted the 1st defendant. If the trial Judge had applied these pieces of evidence in the appellant's favour it would have given judgment in the appellant's favour."*

With the above rendition, the Court of Appeal directed as follows:-

From the plaintiff's writ of summons, it is also seeking a consequential order that 2nd defendant pay to it all sums together with interest at the rate of 6.5% per month paid to 1st defendant by Minister of Energy in contravention of the letters of undertakings dated 19th/8/2005, 22/9/2005, 13/10/2005,

2/2/2006, 27/4/2006 to date of filing this appeal. We will grant the appellant's prayer except to add that all the sums due under the haulage contract together with interest at 6.5% per month that were paid to the 1st defendant in contravention of the letters of undertaking after the Accounts had been rendered by the Ministry of Energy should be paid jointly by the 1st and 2nd defendants to the appellant." Emphasis supplied

It is this judgment that the Defendants have appealed to this court with the following as the grounds of appeal:-

Grounds of Appeal

i. The learned Court of Appeal erred when it ruled that the Ministry of Energy was a guarantor to the loan taken out by the Ahaman Enterprises simply because it undertook to pay monies owed Ahaman Enterprises in the joint-name of the Respondent and Ahaman Enterprises.

ii. The learned Court of Appeal erred when it ruled that the letter of undertaking constituted the only security for the loan transaction between the Respondent and Ahaman Enterprises to the exclusion of the Mortgage over the landed property and the three guarantors to the loan.

iii. The learned Court of Appeal erred when they ruled that the Appellant and Ahaman Enterprises pay to the Respondent all sums (together with interest at the rate of 6.5% per month) paid to Ahaman Enterprises Limited by the Ministry of Energy to date of filing the appeal in the Court of Appeal.

We have considered the statements of case filed by learned counsel for the parties in this case. We will consider the issues raised therein by the learned counsel when we consider the merits of the appeal herein.

From the grounds of appeal and the submissions of learned counsel in their statements of case, the issue that stands out for determination can be formulated as follows:

Whether the letters of undertaking and guarantee written by the Ministry of Energy to the Plaintiffs and 1st Defendants constituted

sufficient basis for the Court of Appeal's decision that the Defendants and Ahaman Enterprises pay the plaintiff all sums (together with interest at the rate of 6.5% per month) paid to Ahaman Enterprises by the Ministry of Energy to date of filing the appeal in the Court of Appeal.

Findings of Undisputed Facts by the Trial Court

It is interesting to observe that, the learned trial Judge made certain findings of fact which were stated as undisputed.

These findings have been found to be crucial for the determination of the solitary issue formulated from the grounds of appeal, and we therefore deem it expedient to refer to them in extenso as follows:-

1. That prior to the grant of the facilities to 1st defendant, the Ministry wrote to 1st defendant to make payments under the haulage contract in the joint names of plaintiff and 1st defendant and also undertook not to revoke waive or alter the undertaking without the written consent of the 1st defendant.

2. That the haulage contract preceded the undertaking.

3. That the Ministry was aware that 1st defendant contracted loans from plaintiff to execute the haulage contract.

4. **That plaintiff relied on the undertaking given by the Ministry in advancing the loans to 1st defendant.**

5. That in exhibit DDI, a letter addressed by the Ministry to plaintiff, dated 27th April 2006, the Ministry confirmed that the outstanding amount owed 1st defendant in respect of the contract was 6.3 billion cedis.

6. That in the said letter which was copied to 1st defendant, 2nd defendant confirmed that they owe 1st defendant the sum of 2.5 billion cedis and undertook to continue to make all payments in the joint names of Ahaman Enterprises Ltd/NDK Financial Services Ltd until otherwise advised by both parties. Finance and Economic Planning on advice from the Ministry of Energy instructed the Controller and Accountant General to release the

sum of GH¢268,250.52 to 1st defendant's Ecobank account without recourse to plaintiff. See exhibit DD2.

7. That 1st defendant had similar arrangements with the Ministry to make payments in the joint names of 1st defendant and other finance institutions from whom they had taken loans to finance the haulage contract.

8. That the Ministry has made full payment under the haulage contract to defendant.

It is also very interesting to note and observe that the learned trial Judge, also formulated some very important issues which she considered as germane in resolving the conflict between the parties at the trial court.

These issues were formulated by the trial court as follows:-

1. "Whether or not plaintiff relied on the Ministry of Energy's letter dated 19th August 2005, and approved the sum of GH¢30,000 for a period of 3 months at the interest rate of 6.5% to the 1st defendant.

2. Whether or not prior to the grant of additional facilities to 1st defendant, Ministry of Energy by letters dated 2nd February 2005, 13th October 2005, and 27th April 2006 agreed to pay proceeds due 1st defendant under the haulage contract in the joint names of plaintiff and 1st defendant company.

3. Whether or not 2nd defendant has paid all proceeds under the haulage contract to 1st defendant contrary to the undertakings aforesaid.

4. Whether or not plaintiff is entitled to its claims

Plaintiff testified at the trial through Mr. Ebenezer Aminarh Head of Produce Division and called no further witness. He told the court that as a standard practice, on receipt of a letter of understanding involving payment by a third party, an official from plaintiff follows up to the institution to verify the contents of the letter. On this occasion the witness said he personally went to the Ministry and met one Mr. Ashie the Principal Accountant who signed the undertaking letter. He confirmed that 1st defendant had been engaged to haul electric poles under the national electrification project and also confirmed amount owed 1st defendant as at the time."

From the appeal record, the undisputed findings of fact as chronologically listed by the learned trial Judge and the issues found to be germane to the resolution of the impasse between the parties indicate that, the logical and rational decision that ought to have been arrived at, was to have found for the plaintiffs as against the Defendant's herein.

In order to fully understand this conclusion, it is necessary to quote in extenso Exhibit D, which is a letter from the Ministry of Energy to the Managing Director, Ahaman Enterprises Limited (1st Defendant's therein) and copied to the Chief Executive Officer of the Plaintiffs company. It states as follows:-

> *"**National Electrification Scheme – Payment of Haulage***
>
> *We refer to your letter dated 18th August 2005 requesting that future payments under the above project should be jointly in the names of Ahaman Enterprises Ltd/NDK Financial Services Ltd. it is our understanding that this is in connection with a facility they are offering to enable you discharge your obligations under the contract with us.*
>
> ***We hereby undertake and guarantee that payment for the above order in the amount of ¢500 million when due will be made in the joint names of Ahaman Enterprises Ltd/NDK Financial Services Ltd.***
>
> *We also confirm that the above is the only acceptable means for the payment of the haulage executed and that the obligation of payment in the above joint names remains our responsibility (the emphasis is mine).*
>
> *We note that this directive cannot be revoked, waived or altered without your written consent."*

The operating words in this letter are the following:-

> "**We hereby undertake and guarantee that payment for the above order in the amount of ¢500 million when due will be made in the joint names of Ahaman Enterprises Limited/NDK Financial Services Limited."**

Again, in exhibit K, dated 28th September 2005, a similar letter just as the one referred to supra was written by the Ministry of Energy to the Managing Director of Ahaman Enterprises Limited and copied to the Plaintiffs herein.

The operative part of this exhibit also states as follows:

> **"We hereby undertake and guarantee that payment for the above order in the amount of ¢1.8 billion when due will be made in the joint names of Ahaman Enterprises Limited/NDK Financial Services Limited."**

It is to be noted that both letters were signed by the Chief Director and the Principal Accountant, all of the said Ministry.

The Defendants at this stage purportedly kept faith with their undertakings and guarantee's and to further show their commitment to the Plaintiffs, wrote exhibit V, dated 2nd February 2006, addressed to Ahaman Enterprises and copied to the Plaintiffs.

This letter states as follows:

"National Electrification Scheme – Payment of Invoices for Haulage

Reference our letter dated 13th October 2005. After paying ¢153,781,842.42 with cheque No. 141979 dated 2nd February 2006 to Ahaman Enterprises Limited, the outstaying payment is ¢4.5 billion cedis.

We wish to confirm that until further advice by NDK Financial Services Limited we will continue to make all payments in the joint names of Ahaman Enterprises Limited/NDK Financial Services Limited". Emphasis supplied

The above constitute sufficient assurances by the Defendants to the Plaintiffs that to all intents and purposes they intend to be bound by their own undertakings and guarantee's spelt out in their previous correspondence on the matters germane to this case.

It was after the above letter was written that, the Defendants by another letter from the Ministry of Energy, dated 27th April 2006 signed this time by the Principal Accountant, and marked in the appeal record as exhibit Z was addressed to the Plaintiff's and copied to Ahaman Enterprises. This letter reads as follows:-

"National Electrification Scheme – Payment of Invoices for Haulage – Messrs Ahaman Enterprises Limited

Reference our letter dated 13th October 2005. We wish to confirm that the outstanding amount the Ministry of Energy owes Ahaman Enterprises Limited on the above contract is ¢6.3 billion as at 27th April 2006.

We further wish to confirm that we will continue making the interim payments as and when funds are available, until mid June 2006 when we expect to make a bulk payment of at least ¢2.5 billion. It is expected that this whole balance is outstanding (i.e. excluding new invoices) will be paid off by the end of the 3rd quarter of the year at the latest.

Finally, as already undertaken, we will continue to make all payments in the joint names of Ahaman Enterprises Limited/NDK Financial Services Limited until otherwise advised by both parties." Emphasis supplied

It is to be noted that, the above letter is not different from an earlier one also authored by the Ministry of Energy dated 2nd February 2006 and marked as Exhibit DD in the appeal record.

The Plaintiff's from their conduct are to be understood to have taken the said letters and their contents very serious and indeed acted upon them. As a matter of fact, in all the loan agreements executed between the Plaintiffs and Ahaman Enterprises, the said letters of undertaking and guarantee were incorporated as a critical security consideration for the grant of the loan.

For example, in exhibits, E & F, the letter of undertaking and guarantee dated 19th August 2005 was listed as one of the items of security by the Plaintiff's and Ahaman in addition to landed property of Mr and Mrs. Peter Agbezudor at North East Kwashieman.

Reference is also made to the loan agreements marked as exhibits L and P in which the letters of undertaking and guarantee from the Ministry of Energy dated 19th August and 28th September, 2005 respectively were all listed as being the security considerations of the Plaintiff's, for the payment of the debt of Ahaman which then stood at ¢1.9 billion.

We have indeed observed and noted that similar references and incorporation has been done in all the loan agreements executed between the Plaintiff's and Ahaman Enterprises and all have been captured in the appeal record and taken into consideration by the learned trial Judge.

Based on all the pieces of evidence which are all documentary, it is clear that the learned trial Judge had all the material before her to resolve the issues she formulated for the resolution of this dispute in favour of the plaintiffs.

This is because, from the evidence, the following scenario stands out clear:

1. That the Plaintiffs relied heavily on the Ministry of Energy's letters dated 19th August 2005 and 28th September 2005 and the other subsequent dates to **approve, advance** and **disburse** the various amounts to Ahaman Enterprises at the interest rates specified therein.

2. That, from the letters referred to supra by the Ministry of Energy, dated 19th August, 2005, 28th September 2005, 13th October 2005, 2nd February 2006 and 27th April 2006, the **Ministry unequivocally and unconditionally agreed to pay all the proceeds of the haulage contracts in the joint names of the plaintiffs and Ahaman Enterprises.**

3. **Finally, that the Defendant's herein have defaulted in the terms of payment they themselves proposed to the plaintiff's in the letters referred to supra.**

From the above, the plaintiffs should have been entitled to their reliefs against the Defendants herein as well. Fortunately, the Court of Appeal has reversed and set aside that erroneous position taken by the trial court.

The Court of Appeal stated in the following clear and concise language why they reversed the decision of the learned trial court:-

"With all due respect to the trial Judge we do not share her view that the undertaking contained in Exhibit D is "a letter of comfort", not intended to be legally binding on Ministry of Energy, but only give rise to moral responsibility only unless shown otherwise. I will quote the relevant portions of Exhibits C, D, DD and V to see whether the parties intended to create a legal relation. Exhibit D is a letter from Ministry of Energy to the Managing Director, Ahaman Enterprises Ltd. (1st defendant) and copied to The Chief Executive, NDK Financial Services Ltd, Accra dated 19th August 2005. "

From the narration of the facts of this case as has been captured by documentary evidence, it is clear that there is overwhelming evidence that the relationship that the Ministry of Energy's letters created between them and the Plaintiffs and Ahaman Enterprises cannot be anything but legal relationship.

We have also taken note of the use of the words undertaking and guarantee by the Ministry of Energy in the context in which they have been used and agree perfectly with the conclusion reached by the Court of Appeal as follows:-

"From the definitions quoted supra, the guarantor becomes liable for the debt or default of another. This makes business sense. Secondly, a court of equity will not permit a default party to take advantage of its own negligent act or default or a court of conscience will never allow a man to profit by his own fraud. Better still no man should be permitted to take advantage of his own wrong. See the Court of Appeal cases of Republic v Kumasi Traditional Council; Ex parte Opoku Agyeman II [1977] 1 GLR 360; Mahama v Soli [1977] 1 GLR 215, 237 and Ndoley v Iddrisu [1979] GLR 559, 565. These cases were cited with approval in the Supreme Court case of Attieh v Koglex [GH] Ltd. [2001-2002] SCGLR 936, 944."

Indeed it will be a mockery and a travesty of justice for a Ministerial Department of State, to be permitted to use such words as have been contained in the various letters under reference, upon which a non-banking financial institution, like the Plaintiffs acted, and when it matters most, be construed as a *"letter of comfort".* This is considered as erroneous.

Words used in correspondence such as those under reference, especially when construed against the background of the purposes for which they were written, and the uses to which they have been put, it is submitted should have put all key stakeholders on guard to ensure that the legal relationship that had been created between the parties cannot be wished away by the stroke of another letter without legally undoing what had been created under the previous letters. For instance, by the letter of 27th April 2006, the **Ministry had clearly stated that, its position on the payment of the proceeds of the haulage contract would continue to be in the joint names of the Plaintiffs and Ahaman Enterprises and any change can only be effected by both parties consenting to the same.**

However, as later events unfolded, i.e. the Ministry of Energy's letter of 17th December, 2008 which advised the Ministry of Finance and Economic Planning to effect payment to Ahaman Enterprises alone in the sum of GH¢268,250.52, showed clearly that, the Defendants were in breach of what has been agreed upon.

This was followed up by the Ministry of Finance and Economic Planning letter dated 6th January 2009 and marked as exhibit DD2 which clearly epitomized the breach by the Defendants of their undertaking and guarantee to the plaintiffs.

The decision by the Ministry of Energy, to bypass the laid down procedure for payment of cheques arising from and due under the haulage contracts in the joint names of the Plaintiffs and Ahaman Enterprises Limited, constituted a serious breach of the undertakings and guarantees therein contained for which legal consequences arise.

This conduct by itself is not only in breach of the said undertaking as stated supra, but smacks of conduct that is arbitrary and is frowned upon by this court.

For proof of this breach by the Defendants, see the following which is contained in a quotation from the appeal record as well as the judgment of the Court of Appeal.

"From the record of appeal, the official from Ministry of Energy, Mr. Chris Anaglo admitted that Ministry of Energy gave an undertaking to make payments due the defendant in the joint names of Ahaman/NDK Financial Services Ltd. and in fact

went ahead to make some payments in the joint names of the plaintiff and 1st defendant. See the evidence 1st defendant's witness Chris Anaglo at page 91 of the record of appeal. He said:

Q. "Now apart from the issuing of invoices concerning this contract, was there any special agreement as to the mode of payment?

A. Yes there was a special mode of payment

Q. What was it?

A. There was a Memorandum of Understanding between the Ministry of Energy and Ahaman Enterprises Limited that when payments are due, cheques will be written in the joint name of Ahaman Enterprises Limited and NDK Financial Services.

Q. So did you pay all cheque as contained in the MOU?

A. Yes my Lord, most payments were made in the joint name of Ahaman Enterprises Ltd and NDK Financial Services Ltd but some were not made in the joint name of Ahaman Enterprises Limited and NDK Financial Services because besides the Memorandum of Understanding between the Ministry of Energy and Ahaman Enterprises Ltd that payments due Ahaman should be made in the joint name of Ahaman Enterprises Ltd and NDK Financial Services and other financial institutions which also gave facilities to Ahaman under the same contract. So whenever a payment is due to Ahaman Enterprises Limited, the Ministry contacted Ahaman and Ahaman advise the Ministry how the cheques should be written. Either in the name of Ahaman Enterprises Limited and NDK or Ahaman Enterprises Limited and the other financial institution that gave facilities to Ahaman under the same contract"

From the above, there is sufficient justification for the Court of Appeal to have concluded on this matter as follows:-

> *"From the evidence of the official of Ministry of Energy, the Ministry gave an undertaking to effect payment on the haulage contract in the joint name of Ahaman and NDK Financial Services when same became due. Exhibits DD and DD1 confirmed this. Therefore when the official from the*

Ministry of Energy admitted in cross examination that they made some payments of money under the haulage contract to Ahaman Enterprise alone, the Ministry was in breach of the undertaking to make payments in the joint names of Ahaman Enterprises Ltd and NDK Financial Services Ltd. The trial judge in her judgment made a finding of a fact that the Ministry of Energy was in breach of the undertaking but held that since the plaintiff did not provide consideration for the contract it cannot claim any benefit from it. This position is not tenable. The Contracts Act, 1960 Act 25, section 10 thereof deals with the law on consideration and it provides as follows:-

"A promise is not invalid as a contract by reason only that the consideration for the promise is supplied by a person other than the promisee."

This means quite clearly that the consideration need not move from the promisee to validate the contract.

The provisions of section 10 of the Contracts Act 1960 Act 25, referred to by the Court of Appeal really puts the matter beyond peradventure.

The promise in this case has been provided by the Ministry of Energy, i.e. the Defendants. By the said provisions, the contract entered into between the Ministry and Ahaman on the one hand for the haulage contracts and between the plaintiffs and Ahaman Enterprises for the various loan agreements advanced by Plaintiffs to Ahaman Enterprises has not been invalidated by the fact that the consideration in respect of those contracts had been supplied by a person other than the promisee.

It is in circumstances like this that we observe the usefulness and progressive nature of our Contracts Act, 1960, Act 25.

With the above exposition of the facts and the law, there is no doubt, that the resolution of the solitary issue formulated by this court as arising from the grounds of appeal and the statements of case of the parties is resolved in the affirmative and in favour of the plaintiffs herein.

This is to the effect that, the letters of undertaking and guarantee written by the Ministry of Energy to the Plaintiffs and Ahaman Enterprises constituted sufficient legal basis for the Court of appeal's decision to the effect that the Defendants herein, and Ahaman Enterprises Limited, (1st Defendants therein) pay the Plaintiffs, all sums, (together with interest, at the rate of 6.5% per month) paid to Ahaman Enterprises by the Ministry of Energy to date of filing the appeal in the Court of Appeal.

The net result is that, the appeal herein fails and is accordingly dismissed.

In its place, the Court of Appeal judgment, of 28th March 2013 is hereby affirmed as follows:-

1. The appellant is asking the Ministry of Energy to render accounts of all payments made to 1st defendant under the haulage contract from 19th August 2005, up to date of filing this suit and we so order. This Account is to be rendered by the current Chief Director and The Principal Accountant of the Ministry of Energy within thirty days (30) of this order. In coming to this conclusion we have noted that the Plaintiffs admit some of the payments were made in its name jointly with that of the 1st defendant (Ahamah Enterprises).The controversy that culminated in the instant action arose because the Ministry of Energy paid some of the monies due under the haulage contract to Ahaman Enterprises Limited alone.

2. From the Plaintiff's writ of summons, it is also seeking a consequential order that defendants herein pay to it all sums together with interest at the rate of 6.5% per month paid to 1st defendant, Ahaman Enterprises Limited by the Ministry of Energy in contravention of the letters of undertakings dated 19th August 2005, 22nd September 2005, 13th October 2005, 2nd February 2006, 27th April 2006 to date of filing the appeal in the Court of Appeal. We will grant the Plaintiffs prayer except to add that all the sums due under the haulage contract together with interest at 6.5% per month that were paid to the 1st defendant in contravention of the letters of undertakings after the Accounts had been rendered by the Ministry of Energy should be paid jointly by Ahaman Enterprises and the defendants herein to the Plaintiffs.

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

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

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

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

(SGD) J. B. AKAMBA
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