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

CORAM: WOOD (MRS), C.J (PRESDING)
OWUSU (MS), JSC
DOTSE, JSC
GBADEGBE, JSC
AKOTO-BAMFO (MRS), JSC

CIVIL APPEAL
NO. J4/8/10
12TH MAY, 2010

SYLVIA GREGORY	}	..	**PLAINTIFF/APPELLANT/ APPELLANT**
VRS;			
1. NANA KWESI TANDOH IV	}	..	**DEFENDANTS/RESPONDENTS/ RESPONDENTS**
2. BRIDGET HANSON	}		

J U D G M E N T

DOTSE, JSC:

INTRODUCTION

The parties in this case began their relationships on a good note as friends, presumably later as lovers and lately as bitter enemies, who are residing in the same house, albeit in different apartments.

When a similar set of facts emerged in the unreported Sekondi High Court case of suit No. TS 2/2000 intituled I.B. Clement – Plaintiff vrs Andrews Annietey – Defendant

dated 4th June, 2003 I quoted the following passage from William Shakespeare's Book, Julius Caesar Act IV, Scene 3, to depict the circumstances and this reads as follows:-

"There is a tide in the affairs of men. Which taken at the floods, leads on to fortune; omitted, all the voyage of their life, is bound in shallows, and in miseries. On such a full sea are we now afloat; we must take the current when it serves or lose our ventures."

FACTS:

Even though the facts of this case admit of no serious controversies, in view of the concurring findings of fact made by the trial High Court and the first appellate court, to wit the Court of Appeal, we will set out the facts in some detail in order to set the records straight.

The Plaintiff/Appellant/Appellant, hereafter referred to as the Plaintiff is an African American now resident in Ghana, Ankaful, near Cape Coast in H/No. AV.31/3 to be precise.

The Defendants/Respondents/Respondents hereafter referred to as Defendants, are husband and wife with the 1st Defendant being a Traditional Ruler in Elmina and both also reside in the same house as the Plaintiff.

The plaintiff visited Ghana in or about 1988, met the 1st defendant and they subsequently became friends with the latter introducing the Plaintiff to his wife the 2nd defendant. This friendship grew in leaps and bounds with the plaintiff accepting an invitation to lodge and reside with the defendants anytime she visited Ghana thereafter.

It must be noted that, the Defendants, were by then residing in rented premises and the Plaintiff had made it known to the defendants that she had planned to relocate to Ghana and make it her home.

Plaintiff thereafter resided with the Defendants anytime she visited Ghana and with the passage of time the Plaintiff and 1st defendant fell in love. According to the facts on record, the 1st defendant then proposed to marry the plaintiff at the Cape Coast Municipal Assembly.

Even though this marriage ceremony never took place, the relationship between the parties grew stronger with the 2nd defendant not showing any signs of rivalry and jealousy as women are by nature bound to show.

According to the plaintiff, she was convinced by the defendants to provide funds for the construction of a house on a vacant plot of land belonging to the defendants. The plaintiff obliged and appears to have contributed substantially to the construction of the house on this land.

When the house was barely completed, the plaintiff moved into occupation later followed by defendants with the plaintiff virtually occupying the first floor of the house and the defendants the ground floor.

Even though the defendants dispute the substantial contributions of the plaintiff towards the construction of the house, they did not take steps to prevent the plaintiff from either occupying the house altogether or the almost 50% sharing of the occupancy.

The Plaintiff later brought her daughter from the United States of America to reside with the defendant's in Ghana and provided a bus which was run commercially by the 1st defendant who was reputed to have rendered accounts to the plaintiff anytime she returned from the United States of America to Ghana.

Matters soon got out of hand and it became increasingly clear that the plaintiff's family and the defendant's family cannot cohabit together in peace in the same premises.

With series of skirmishes, quarrels and criminal acts which often time were reported to the police, the plaintiff on the 24th day of November, 1997 issued a writ at the High Court, Cape Coast against the defendants, claiming the following reliefs:-

> "The plaintiffs claims against the defendants jointly and severally is for
>
> a. An order directed at the defendants compelling them to convey the land on which H/No. AV. 31/3, Ankaful, Cape Coast is standing to the plaintiff.
>
> b. An order of perpetual injunction directed at the defendants restraining them by themselves, their dependants, agents and persons claiming title through them from interfering with plaintiffs possession of H/No AV 31/3, Ankaful, Cape Coast.
>
> c. Any order that the court may deem fit on the justice of plaintiff's case."

The Defendants entered appearance and defended the suit by putting in a counterclaim in the following terms:-

> "The defendants repeat the averments contained in paragraph 1-35 of the statement of Defence and counterclaim against the plaintiff as follows:-
>
> a. A declaration that title to H/No. AV. 31/3 Ankaful, Cape Coast is vested in the defendants.

b. An order for recovery of possession of the portion of the premises occupied by the plaintiff.

c. An order of perpetual injunction restraining the plaintiff her agents/servants/relatives assigns from in anyway interfering with the defendant's title to the said property".

The case then proceeded apace, with the issues being set down for trial, both parties testified and called witnesses.

JUDGMENT OF THE HIGH COURT

On the 23rd day of August, 2002, the High Court, Cape Coast presided over by Tweneboa-Kodua J as he then was, delivered judgment in the case, and stated in part as follows:

"The principle is well settled, he who owns the land, owns whatever is on it, for guidguid plantatur solo solo cedit (what is attached to the land is part of the land). The defendant's ownership of the house is not in doubt, notwithstanding the plaintiff's contribution, ill-defined except as acknowledged in pleadings and sworn testimony by the defendants set against the foregoing, the defendant's counterclaim must succeed and it is accordingly granted as follows:

a. A declaration that title to House No. AV. 31/3 Ankaful, Cape Coast is vested in the defendants.

b. An order of recovery of possession of a portion of the premises occupied by the plaintiff.

c. An order of perpetual injunction restraining the plaintiff, her agents, servants, relatives, assigns from in anyway interfering with the defendant's title to the said property.

The defendants are entitled to evict the plaintiff from the House No. AV 31/3, Ankaful, Cape Coast and the Plaintiff shall give vacant possession of the said house thirty (30) clear days after this day, that is to say on 23 September, 2002.

That to my mind is not the end of the matter. The court has been invited in limb (c) of the plaintiff's claim to make

"any order that the court may deem fit on the justice of the plaintiff's case". In her misguided anxiety and dream to own a house in Ghana, ***the plaintiff indeed made some contribution to the construction of the disputed house****. The defendants have admitted some contributions she made by way of assistance. As demonstrated in their Solicitor's address, the defendants do not begrudge her being adjudged to recover her contribution, they would not, it was suggested, resent paying the monetary equivalent of the assistance received".*

"It is reasonable on the justice of the plaintiff's case" to order the defendants to return the plaintiffs assistance or contribution .

The Registrar of this Court, with the assistance of the Regional Auditor of the Judicial Service, Cape Coast, shall assess the contribution in monetary terms for recovery by the plaintiff within 30 days from this day.

The parties shall bear their own costs and I therefore make no order as to costs"

As was to be expected, the plaintiff filed an appeal against this High Court judgment to the Court of Appeal on 5th September, 2002.

JUDGMENT OF COURT OF APPEAL

The Court of Appeal on the 14th day of July, 2006, by a unanimous decision dismissed the appeal filed by the plaintiff herein in the following terms:-

"In the instant case, the learned trial judge found that the plaintiff did not contribute substantially to the construction of the house in dispute and that whatever assistance she rendered in the course of the construction of the house was insignificant. He also found that no valid marriage existed between the plaintiff and the 1st defendant. ***I find nothing wrong with these findings of fact and I will not therefore disturb them.*** *It is obvious therefore that a resulting trust in any of its forms was clearly inapplicable in the circumstances of this case.*

In conclusion and for the reasons given in this judgment I find no merit in this appeal. I will therefore dismiss it and it is accordingly dismissed. The judgment of the court below is thereby affirmed."

Feeling naturally aggrieved and dissatisfied with the decision of the Court of Appeal, the plaintiff on the 21st day of February, 2007 sought leave and was granted same by the Court of Appeal to appeal to the Supreme Court.

APPEAL TO SUPREME COURT

Pursuant to leave that was granted by the Court of Appeal, the plaintiff herein through her new Solicitors, Messrs Cann, Quashie and Co. on the same 21st day of February, 2007 filed an unbelievable 18 grounds of appeal with the proviso that more grounds of appeal could be filed.

GROUNDS OF APPEAL TO THE SUPREME COURT

It is now my painful duty to set out concisely the 18 grounds of appeal.

i. The judgment is against the weight of evidence.

ii. That both the trial Court and the Court of Appeal failed to adequately or at all to consider the case of the Plaintiff.

iii. The court of Appeal misconstrued the imports of Exhibits 12, 12A & 12E with regard to the construction of the House.

iv. The Court of Appeal failed to consider the relationship (albeit erroneously) held by the Appellant that she and 1st Defendant/Respondent were "husband" and "wife" as a result of which she left the documentation of the construction of the house to him.

v. Since the relief claimed against the Defendants/Respondents was jointly and severally the statutory declaration by the 2nd Defendant which was against her interest ought to have been admitted and that it's rejection has occasioned miscarriage of justice.

vi. The holding that the Plaintiff could not take advantage of a Statutory Declaration of which she is not a party is not supported by law having regard to the fact that a Statutory Declaration is NOT an agreement between parties but a unilateral solemn declaration by whoever is the declarant.

vii. That the holding that the 1st Defendant not being a signatory to the Statutory Declaration and thus same could not be tendered through him is also erroneous in law having regard to the fact

that the 1st Defendant testified for and on behalf of the 2nd Defendant who was the Declarant of the Statutory Declaration.

viii. That the consequent conclusion by the Court of Appeal that the Statutory Declaration was rightly rejected on grounds that the Plaintiff and 1st Defendant were not signatories was therefore erroneous in law.

ix. That the rejection of the Statutory Declaration thus occasioned a miscarriage of justice as its admission would have shown the Plaintiff's contribution to the construction of the house being admitted by the Defendants.

x. Both the trial Court and Court of Appeal failed to appreciate that the Appellant's possession and occupation of the top floor with American specifications and fittings which is bigger in size than the ground floor occupied by the Defendants conclusively shows the extent and nature of the Appellant's interest in the house.

xi. The Court of Appeal failed to appreciate the reliance of the Appellant on the representation by the 1st Defendant that the Appellant and 1st Defendant were "man" and "wife".

xii. The Court of Appeal failed to appreciate that by reason of the Defendant's counterclaim, the defence of equitable estoppels raised by the Appellant was a shield in protection of her contribution towards the construction of the house.

xiii. Both the trial Court and the Court of Appeal erred in delegating the quantification of the Appellant's contribution to the

Registrar and the Regional Auditor of the Cape Coast High Court having regard to the evidence on record.

xiv. Both the trial Court and the Court of Appeal erred in not quantifying the so called "insignificant" contribution by the Appellant.

xv. The Court of Appeal failed to recognize the issue that an Appeal is by way of rehearing and failed to critically examine and evaluate the evidence on record.

xvi. The Court of Appeal seriously erred in law when it concluded that the Plaintiff failed to discharge the burden of proof on her in accordance with Sections 10 (1) and (2) and 11 (1) and (4) of the Evidence decree (1975) NRCD 323.

xvii. The both the trial Court and Appellate Court misapplied the law on the burden of proof as between the Plaintiff in relation to the relief sought by her and Defendants who had also counterclaimed for a declaration of the title to the house.

xviii. The finding that there was no evidence that Plaintiff's contribution to the construction of the house in dispute was substantial is not supported by the evidence on record.

xix. (Additional grounds of Appeal will be filed upon receipt of record of proceedings).

CONTENTS OF GROUNDS OF APPEAL

Rule 6 of the Supreme Court Rules 1996 C. I. 16 deals with Notice and grounds of appeal in the Supreme Court. Rule 6, 2 (f) of C. I. 16 provides as follows:-

" A notice of civil appeal shall set forth the grounds of appeal and shall state

(f) the particulars of a misdirection or an error in law, if that is alleged".

Rule 6 (5) provides that the grounds of appeal shall be set out concisely and under distinct heads the grounds which the appellant intends to rely upon at the hearing without any argument or narrative.

Rule 6 (4) on the other hand provides that vague or general grounds of appeal which do not disclose any reasonable ground of appeal except the general ground that the judgment is against the weight of evidence shall not be permitted.

In the instant appeal, as we have already pointed out, the plaintiff herein has filed no less than 18 grounds of appeal.

We have observed that Counsel for the plaintiffs did not comply with the requirements stated in Rule 6 of the Supreme Court Rules in the formulation of the grounds of appeal. The result has been that, there are so many grounds of appeal which could have been subsumed under one broad ground, whilst particulars of misdirection or error of law that is alleged will be stated in the Notice of Appeal, instead of setting them out as distinct heads or separate grounds of appeal.

It should therefore be noted that, Counsel who formulate grounds of appeal for their clients, should endeavour to comply with the provisions of Rule 6 of the Supreme Court Rules C. 1. 16 to prevent unnecessary and sometimes repetitive grounds of appeal being filed in clear breach of the Rules of the Supreme Court, reference grounds v, vi, vii, viii and ix of the grounds of appeal which all dealt with Statutory Declaration which could have been subsumed under one ground of appeal, touching and dealing with the issue of Statutory Declaration.

CONCURRENT FINDINGS OF FACT

We have noted that the Court of Appeal in their judgment concurred in the findings of fact made by the learned trial Judge.

There is this general principle of law which has been stated and re-stated in several decisions of this Court that where findings of fact such as in the instant case have been made by a trial court and concurred in by the first appellate court, in this case the Court of Appeal, then the second appellate Court such as this Supreme Court must be slow in coming to different conclusions unless it is satisfied that there are strong pieces of evidence on record which are manifestly clear that the findings of the trial court and the first appellate court are perverse.

This point was re-emphasised by the Supreme Court in the recent unanimous unreported judgment in Suit No. CA/J4/7/09 dated 3rd February 2010 intituled ***Assemblies of God Church, Ghana vrs Rev. Ransford Obeng & 3 others.***

The same point had been made in the following cases:

1. Achoro vrs Akanfela [1996-97] SCGLR 209 holding 2

2. Akuffo-Addo vrs Cathline [1992] 1 GLR 377 per Osei Hurere

3. Thomas vrs Thomas [1947] AER 582

4. Powell vrs Streatham Manor Home [1935] AC 243 at 250

5. Doku vrs Doku [1992-93] GBR 367

6. Koglex Ltd. (No. 2) vrs Field [2000] SCGLR 175

7. Jass Co. Ltd. vrs Appau [2009] SCGLR 26 5 which deals with circumstances justifying interference with findings of fact by Supreme Court

8. Awuku Sao vrs Ghana Supply Co. Ltd. [2009] SCGLR 710 also deals with conditions under which the Supreme Court will interfere with findings.

There are however a host of other respected authorities to support the contention that the above principle is not a cast iron situation which is incapable of being departed from.

From the reading of the cases referred to supra and others not referred to, it appears the rationale for the principle is that, an appellate court must be slow in interfering with the findings of fact, made by a trial court because it is the trial Judge alone who had the advantage of seeing, hearing and observing the demeanour of the parties and the witnesses which appeared before him. For example, if quite apart from the facts of the case as stated on record, the findings of fact were influenced or based solely on the demeanour and credibility of the witnesses, then it would be manifestly unjust to vary or depart from such findings of fact. But then, sufficient indication must be given in the judgment based on the record of proceedings to indicate the credibility and demeanour of the witnesses.

However, where the findings were based on established facts such as in the instant case, then the appellate court was in the same position as the trial court and was perfectly in a position to draw its own inferences from the established facts.

In Koglex Ltd. (No. 2) vrs Field [2000] SCGLR 175, at 176 holding 1, the Supreme Court by a majority decision on a review application held that

"A second appellate court, like the Supreme Court, must satisfy itself that the judgment of the first appellate court was justified or supported by evidence on record. ***Where there was no such evidence that finding ought to be set aside".***

It is therefore clear that, a second appellate court, like this Supreme Court can and is entitled to depart from findings of fact made by the trial court and concurred in by the first appellate court under the following circumstances:

1. Where from the record the findings of fact by the trial court are clearly not supported by evidence on record and the reasons in support of the findings are unsatisfactory.

2. Where the findings of fact by the trial court can be seen from the record to be either perverse or inconsistent with the totality of evidence led by the witnesses and the surrounding circumstances of the entire evidence on record.

3. Where the findings of fact made by the trial court are consistently inconsistent with important documentary evidence on record.

4. Where the first appellate court had wrongly applied the principle of law in *Achoro vrs Akanfela* (already referred to supra) and other cases on the principle, the second appellate court must feel free to interfere with the said findings of fact, in order to ensure that absolute justice is done in the case.

In the recent unanimous decision of the Supreme court in the case of ***Fosua and Adu-Poku vrs Dufie (deceased) & Adu Poku Mensah 2009 SCGLR 310 at 313*** the court, per Ansah JSC held as follows:-

"A second appellate court would justifiable reverse the judgment of a first appellate court where the trial court committed a fundamental error in its findings of fact but the first appellate court did not detect the error but affirmed it, and thereby perpetuated the error. In that situation, it becomes clear that a miscarriage of justice had occurred and a second appellate court will justifiable reverse the judgment of the first appellate court".

I also made the following observations in the Fosua and Adu Poku vrs Dufie case referred to as follows:

> *"An appellate court such as this court may interfere with the findings of fact of a trial court where the latter failed properly to evaluate the evidence or make the proper use of the opportunity of seeing or hearing the witnesses at the trial or where it has drawn wrong conclusions from the accepted evidence or where its findings are shown to be perverse. It is clear that there are cogent and credible pieces of evidence which this court on its own can use to differ from the findings of fact made by the trial court and the first appellate court."*

In the instant appeal, after a perusal of the entire record and the submissions of learned counsel for the parties, we are of the considered opinion that, based on the following pieces of evidence, the findings of fact made by the learned trial Judge and concurred in by the first appellate court are not supported by the evidence on record and clearly perverse having regard to the circumstances of this case.

In evaluating the evidence on record, we note that the 1st defendant testified and recounted the circumstances under which he met the plaintiff on a Tour bus which he conducted. This is what the 1st defendant said.

"In the course of operating the Tour company, I met the Plaintiff on a Tour Bus (vehicle) which has been arranged by the said Company."

Continuing the 1st defendant stated as follows:

"In the process, the plaintiff was making the loudest noise inviting me to sit by her. She was sitting alone at the rear of the bus. In the process we chatted for sometime. She in the process offered me finally $70 U.S dollars.

When I arrived back home, I informed my wife about the gift of $70 U.S dollars from the plaintiff. So my wife and I went to her in the Elmina Motel to thank her for the gift."

It was during this visit according to the 1st defendant that the plaintiff and members of her group were invited to lunch at the rented premises of the Defendants at the Ramblers Cottage, at Ankaful.

The 1st defendants stated that, whilst at the lunch, "*the plaintiff expressed an amorous interest in me and that apparently was a standing joke"* because as 1st defendant put it, he was then, and still is married to his dear wife the 2nd defendant.

It is clear therefore that, the defendants considered this gift of $70 U.S dollars so significant and important in 1988 that it demanded both man and wife going to express appreciation to the plaintiff.

Secondly, it is also clear that the 1st defendant knew or had an inkling about the amorous intentions of the plaintiff in him from that early stage. Any movement by either of them from then onwards towards each other must be deemed to be concretising the consummation of such an interest.

Thereafter, it was also very much evident that the plaintiff and the defendants were very close to the extent that in 1990, the plaintiff brought her daughter from the United States of America to reside with the defendants in Ankaful.

Based on the above background, the following pieces of evidence when properly evaluated would show that the learned trial Judge made the wrong findings of fact, which cannot be supported.

What then are these?

The evidence of the plaintiff was corroborated to a large extent by her witnesses.

1. PWI Abubakar Mustapha confirmed plaintiff's assertion that she and the 1st defendant procured building materials with which the disputed house was built. This PW1 also confirmed the destruction of some land crete blocks that the 1st defendant on his own moulded before his contact with the plaintiff. This PWI was the person who offered to keep the building materials of the 1st defendant free of charge as they were close to his house. What must be noted is that, unlike the plaintiff who is a foreigner, all the witnesses called by the plaintiff are Ghanaians and citizens of Ankaful or its environs. There is no reason for them to tell lies against the 1st defendant.

2. PW2 - John Kweku Eshun- Carpenter
   This witness together with his brother PW3 worked on the disputed house. Even though an attempt was made during cross-examination of this witness to cast doubt on his sanity and therefore credibility, his evidence remained, unshaken because of the following:

   a. His evidence was confirmed by PW3 his brother.

   b. The evidence of the witness on the material and relevant pieces of evidence was not affected by the cross-examination. He stated thus,

"*I am talking about the work upstairs: that one we did carry out*"

It was PW2 who first corroborated the evidence that when they needed to be paid for work done on the project from 1st defendant, they were informed by 1st defendant that the plaintiff had travelled and so they should wait for her. Later, when the plaintiff returned, the materials were bought jointly by the plaintiff and 1st defendant and in some instances, payments were made directly from the plaintiff through 1st defendant to them.

3. PW3 - Kwasi Obeng, also a carpenter a brother of PW2 corroborated the evidence of the Plaintiff and his brother on the record. For example, PW3 stated during evidence in chief that even though it was 1st defendant who handed over the job to him, he told him the project was for the plaintiff who had travelled outside the country and that money would be made available upon his return.

As a matter of fact, funds started to flow when the plaintiff returned and PW3 testified that he was paid by funds provided by plaintiff.

Out of abundance of caution, let us refer to some pieces of evidence led by PW3 during cross-examination:-

Q. "From whom did you receive the payments

A. The 1st defendant but it was the plaintiff who gave the money to the 1st defendant to pay me.

Q. These payments were made in the absence of the plaintiff.

A. The plaintiff was there but the 1st payment was done behind the plaintiff but later payments were made in the presence of the Plaintiff."

Continuing further, PW3 answered thus:-

Q. "Are you saying the payment was made to you in the presence of the plaintiff.

A. Yes, when the 1st defendant paid me the plaintiff was present.

Q. On all three occasions the 1st defendant paid you.

A. When we needed the money we told the first defendant and the 1st defendant went to the plaintiff to collect the money.

Q. You never saw the plaintiff gave money to the 1st defendant for payment to you.

A. I did see

Q. Where did you see this

A. The plaintiff brought the money upstairs and the 1st defendant collected the money from the plaintiff and paid me."

4. PW4 – Mrs Juliana Appiah, the wife of the landlord of the defendants when they were residing in the rented apartment at Ramblers Cottage. The evidence of PW4 is important in the sense that it gave an account of the circumstances of the defendants when they resided in the rented premises. As a matter of fact, it was not all that rosy as the 1st defendant would want this court to believe. This explains why they were so excited about the gift of the $70.00 U.S dollars to the 1st defendant by the plaintiff.

5. **EXHIBIT G**

This exhibit is a handwritten record of programme for completion of the house by the 1st defendant. In it, were estimates in U.S dollars which is the legal tender of the plaintiff.

The only conclusion to be drawn by this court is that these were items of expenditure which the 1st defendant expected the plaintiff to provide and pay for to complete the house.

It is therefore correct to infer that once the house had been completed and is now being occupied, then the said items of expenditure must have been paid for by the plaintiff. As a matter of fact, if the issue of marriage which the plaintiff and 1st defendant toyed with to the extent that marriage forms were even collected from the Cape Coast Municipal Assembly, then what began as an amorous intent had been concretised.

Considered from this background, the payments and contributions by the plaintiff towards the house must be understood with this idea of an intended marriage or subsisting amorous relationship and that explains why the plaintiff did not produce documentary proof other than the handwritten document, exhibit G.

As was stated by Atuguba JSC in the Fosua & Adu Poku vrs Adu Poku Menash case, already referred to supra on page 311, where he stated as follows:-

> *"Given the high evidential potency of documentary evidence, in the eyes of the law, the trial Judge should have given cogent reasons for doubting the veracity of exhibit 2, being the undertaking given by the late Kwaku Poku."*

In the instant case, it is our considered view that the learned trial Judge should have given some really serious examination and consideration to exhibit G. If the learned trial Judge had done that, he would have come to an irresistible conclusion that really the 1st defendant depended on the plaintiff in the construction of this house.

6. A.G.C SHARES (ASHANTI GOLD COMPANY SHARES)

The 1st defendant himself in answer to a question during cross-examination stated as follows:-

"*Before this case came to court, the Counsel for the plaintiff wrote a threatening letter to me, the effect that all legal avenues and if need be the press would be used to ensure that the plaintiff received justice. I have the letter here in my capacity then as the Acting President of the Traditional Council, I weighted the opportunity of costs or the value of these shares as opposed to publication of wild story about Nana Kwesi Tandoh VII (the 1st defendant herein) and the rationale behind reclaiming those costs was that such wild story by which I was threatened were published in the National Dailies for the gullible readers. It was the reason why I wrote the letters in question. So I wrote the letter as a result of intimidation.*"

This is exhibit E. It is also clear that but for the timely intervention of learned Counsel for the plaintiff, the 1st defendant would have unjustifiably held on to the A.G.C shares which as it turned out was paid for by the plaintiff.

7. RESPONSIBILITY OF THE PLAINTIFF IN UPKEEP OF THE HOUSE

The plaintiff testified that her intention of coming to Ghana was to settle in Ghana in addition to the United States of America. It was in pursuit of that resolve that the plaintiff brought her daughter to reside with the defendants because they had their

own children. According to the plaintiff, before her daughter came, she purchased a "Trotro" bus for their use. The plaintiff continued her evidence in chief thus:-

"So my daughter came, I took over responsibility for food, school fees, clothing, transportation, etc. So my daughter's presence here was to their advantage."

Continuing further, the plaintiff stated as follows:-

"At one point, I took the 2nd defendant to America for four months and she saw what I was doing and the source of the money I was bringing".

All the above pieces of evidence were not shaken during cross examination. For example, plaintiff reiterated her case during cross examination that the defendants could not pay their own bills, and for that reason needed assistance which she provided.

We believe the plaintiff's explanation on the record of proceedings that it was because of the marriage she thought she had contracted with the 1st defendant that she did not demand and or obtain receipts for all that she did for the defendants as she thought they were all one family.

Under the circumstances, we believe it is correct to presume that the plaintiff assumed she was married to the 1st defendant and therefore provided all that was necessary for the upkeep of the home, i.e. maintenance. If therefore assuming the 1st defendant used his own money for the construction of the house which is denied, will the plaintiff be left helpless without any remedy in the house built by the 1st defendant at a time she honestly believed she was married to the 1st defendant and took up the upkeep of the house? We think not. Under the circumstances, and in line with the decision in a number of respected Ghanaian cases like:

1. Mensah vrs Mensah [1998 – 99] SCGLR 350

2. Boafo vrs Boafo [2005-2006] SCGLR 705

The plaintiff's contribution in equity will be deemed as contributions towards the house. We shall therefore call in aid equitable principles to give meaning to the quest of this court to do justice in all cases and to all manner of persons.

8. PLAINTIFF'S OCCUPANCY OF THE 1ST FLOOR

From the evidence on record, it is clear that whilst the plaintiff alone virtually occupied the 1st floor save one bedroom which was strategically reserved for the 1st defendant, the rest of the defendant's family were confined to the ground floor. Even though the 1st defendant gave some explanation for this state of affairs, no critical mind will accept such a lame excuse. We are definitely of the view that the occupancy of the entire floor by the plaintiff is another way of stamping her authority on the building.

9. LAND TRANSACTIONS

There is also uncontroverted evidence that the plaintiff entrusted so much confidence in the defendants, especially the 1st defendant so much so that she virtually made him her trustee of her properties. For example, the plaintiff testified as to how she paid monies to the 1st defendant for the purchase of lands at Ankaful, and in Elmina. From the beginning, because the plaintiff had confidence in the 1st defendant, she entrusted everything in his name. This is the confidence that the 1st defendant and his wife abused. We take note of the fact that all these facts go to explain why the plaintiff dealt with the defendants in absolute good faith. This should have been noted by the learned trial Judge.

10. STATUTORY DECLARATION

From the record of proceedings, the learned trial Judge delivered a ruling in which she rejected the tendering of a Statutory Declaration made by the plaintiff, 1st and 2nd defendants, but executed only by the 2nd defendant. It must at this stage be noted that the defendants were sued jointly and severally and the 1st defendant also testified on behalf of the 2nd defendant his wife. The 1st defendant admitted that his wife contacted a notary public to prepare a document and explained the reasons for this document as follows:

"Q The 2nd defendant offered the plaintiff 50% share of the house in dispute. I put that to you.

A. What I know about this is that amongst several attempts made, as I have earlier on indicated. Plaintiff's Counsel had already threatened to use the media to embarrass myself and my wife, so my wife indicated to me in the interest of peace we get a notary public to come in, working out something to bring peace. This was the height we were prepared to go in order to avoid publication of lies in the papers, radio and on the internet. So after all when we realised that all that did not make any difference, the offer never took place. It was not consummated, so to speak."

Taking the above explanation into consideration and the Evidence Act 1975, NRCD 323, section 25 (1) thereof which states:

"25 (1) Except as otherwise provided by law, including a rule of equity, the facts recited in a written document are conclusively presumed to be true as between the parties to the instrument, or their successors in interest."

it is clear and apparent that the 2nd defendant, who on her own made a statement voluntarily against her own interest must be held bound by the depositions so contained in the Statutory Declaration which is on page 189 of the record as a rejected document. We must note that the rejected Statutory Declaration actually conforms to the precedent set out in the Statutory Declarations Act, 1971 Act 389, and for that matter satisfies the requirements in section 2 of Act 389 on the use of statutory declarations.

We take further note that the said declaration was duly sworn by the 2nd defendant before a Notary Public and by virtue of section 5 of the Act, a person who makes a statutory declaration knowing it to be false in a material particular, or who makes a declaration which is false in a material particular, or reckless whether it is true or not, commits a misdemeanor.

This therefore means that Statutory Declarations are to be considered as serious, solemn and sacred documents which should be treated seriously hence the creation of a criminal offence for those who willingly and knowingly make false declarations.

Besides, a walk through the rejected declaration makes it quite clear that it contains all the items of properties that the plaintiff entrusted the 1st defendant to procure or acquire for her. These include:

1. The disputed house
2. A.G.C. shares
3. Two undeveloped plots for plaintiff's daughter Tersah Bumbry at Ankaful
4. Poultry project

What must be noted is that, once the 2nd defendant has executed the document, which was admitted by the 1st defendant, the explanation that it was executed in order to put to rest their harassment by the plaintiff is an after thought and is soundly rejected by this court.

The reasons given by the learned trial Judge for rejecting the Statutory Declaration executed by only the 2nd defendant are wrong in Law and also erroneous. This is because:

i. The Statutory Declaration had been executed by the 2nd defendant and notarized.

ii. As between the 2nd defendant and the plaintiff, the declarations therein contained are deemed to be true hence the criminal sanctions provided for in Act 389.

iii. The 1st defendant must be deemed to have given evidence for and on behalf of himself and the 2nd defendant.

iv. The defendants were sued jointly and severally, that meant what can be used against one party can bind the other party. In this case, the execution of the document by 2nd defendant binds the 1st defendant.

v. It must be noted here that, the contents of a statutory declaration must be understood to mean a solemn declaration of the contents of the document as between the declarant and the plaintiff herein. Therefore as in the instant case, the 2nd defendant made declarations against her own interest, affirming in all material particulars the version of the plaintiff's case, a court of law like this Supreme Court cannot gloss over such an event.

For the above reasons, it is our considered opinion that the Statutory Declaration which was rejected by the learned trial Judge when the plaintiff sought to tender it into evidence was wrongly rejected.

We accordingly admit the said Statutory Declaration into evidence, for the purposes of confirming the contents of the document as the truth of the state of affairs between the 2nd defendant and the plaintiff.

What should be noted is that, the Statutory Declaration is not being accepted as a document conferring title on the plaintiff or 2nd defendant, but one evidencing the statement of the facts therein contained. Reasons that the document was not stamped and or registered, such as was proffered by the learned trial Judge were really not germane to the circumstances of this case.

GENERAL OVERVIEW OF THE EVIDENCE

From the above pieces of evidence which have been analyzed and referred to supra, it is our contention that if the learned trial Judge and his senior brethren in the Court of Appeal had been more circumspect and critical, they would have realised that the plaintiff was able to make a strong enough case to entitle her to be granted judgment. What must be noted is that, once the plaintiff has made a case which is reasonably probable, the learned trial Judge should have applied the same burden of proof to the defendant's case since they had also counterclaimed. An appeal is definitely by way of re-hearing, see case of ***Tuakwa vrs Bosom [2001-2002] SCGLR 61.***

Based on the totality of the evidence before this court, it is our considered view that the trial court and the court of Appeal both erred in their findings and came to the wrong conclusions.

On the evidence, it is clear that the findings of fact by the learned trial Judge and concurred in by the Court of Appeal are unsupported by the evidence on record.

Under the circumstances the judgment of the Court of Appeal dated 14th July, 2006 and by necessary implication, that of the High Court, dated 23rd August, 2002 are hereby set aside.

Instead, the appeal herein by the plaintiff succeeds in part as follows:-

1. Plaintiff's share in H/No. AV. 31/3 Ankaful Cape Coast is put at 50%. This is because this court considered her contributions as substantial coupled with the customised completion she did on the first floor where she lives.

2. The defendants are entitled to 50% share or interest in this house AV 31/3 Ankaful.

3. In order for lasting peace to prevail between the parties in the house, it is ordered that, the house, the subject matter of this appeal shall be valued by the Land Valuation Board and the parties herein shall bear the cost of the valuation equally. The defendants herein who are also entitled to 50% interest in the said property are given the first option to buy the interest of the plaintiff, within six (6) months from the date of judgment, that failing the plaintiff shall also be given the next option, failing which the offer will be made in the open market.

4. It is further ordered that until these are completed and the plaintiff paid off to enable her relocate, the defendants and their agents are restrained from interfering with the quiet, peaceful enjoyment and the occupation of the plaintiff in her portion of this H/No. AV 31/3, Ankaful.

5. On the authority of **Hanna Assi No (2) vrs GIHOC Refrigeration & Household Products Ltd. No. 2 [2007-2008] SCGLR**, this court on the basis of doing substantial justice to the parties directs as follows:-

The first defendant to take steps to convey to the plaintiff the plots of land the plaintiff paid him to purchase for her to wit land at Ankaful and Elimina, within six (6) months of the date of judgment.

6. The Court below that is the trial High Court at Cape Coast to carry out these directives.

J.V.M. DOTSE
JUSTICE OF THE SUPREME COURT

GBADEGBE, JSC:

I agree entirely with the judgment that has just been delivered by my worthy brother Dotse JSC; but as we are differing from the two lower courts on the correct inferences to be drawn by the established facts, I propose to add a few words of my own. I begin by saying that I accept Dotse JSC's statement of the facts that he carefully narrated in his judgment and the proper inferences to be deduced from them. I think that he correctly expounded the law regarding the role of this court when faced with concurrent findings of fact by the trial court and the first appellate court and desire in this delivery not to detain the precious time of the court in referring to them but to limit myself only to the determination of the nature of interest that the appellant acquired in the disputed property by virtue of her contribution. The record of appeal on which the proceedings herein turn establishes quite plainly that she provided sums of money towards the property but unfortunately she was unable to prove the extent of quantum her contribution. That aside, she hugely contributed to the upkeep of the home that she occupied with the respondents. In my view, however her failure to prove how much she actually expended on the building should not prevent us from determining the interest that she acquired by virtue of her contribution as the other contributors; the respondents herein were also unable to prove beyond the value of the plot on which the disputed property stands the exact amount that they expended on the property. I

observe that very often as happens in cases like this, it is difficult to determine the exact contribution of the parties but this should not prevent us from doing justice to the parties in the light of all the circumstances of the case.

Although the parties herein acknowledge each other as joint contributors, the appellant, not being a citizen of Ghana is precluded by Article 266 of the 1992 Constitution from acquiring a freehold interest in any land situate within Ghana. It is therefore impossible for us to confer on her a tenancy in common with the other contributors. I think that from the evidence the parties for some time now have not been living in harmony such that in the absence of the constitutional bar contained in Article 266 to make such an order would not be in accord with good reason. Although the appellant is not a spouse of the 1st respondent, I am of the opinion that it is permissible for us to grant to her a beneficial interest that is proportionate to her contribution. I think that the effect of her contribution to the acquisition of the disputed property is creating a resulting trust in her favor to the extent of her contribution. In the case of ***Cooke v Head [1972] 2 All ER 38***, the Court of Appeal applied the doctrine of resulting trust imposed by the courts on a legal owner in the case of a husband and wife who by their joint efforts acquired property to be used for their joint benefit to the case of a mistress and a man who had by their cumulative efforts acquired a property for the purpose of setting up a home together. In the course of his judgment at page 42, Lord Denning MR observed of the approach in apportioning beneficial interest to persons other than husband and wife as follows:

> ***"In the light of recent developments, I do not think it is right to approach this case by looking at the money contributions of each and dividing up the beneficial interest according to those contributions. The mater should be looked at more broadly, just as we do in husband and wife cases. We look to see what the equity is worth at the time when the parties separate. We assess the shares as at that time. If the property has been sold, we look at the amount, which it has realized, and say how it is to be divided between them."***

In my opinion having regard to the circumstances under which the appellant came to contribute to the property she must have believed that she was entitled to remain in the property with the 1st respondent and his family even though they were not married. From the evidence, I am left in no doubt that this is a reasonable inference to be deduced from the conduct of the parties. It being so, I think that the court must do that which is in accord with their reasonable expectations as at the time that the building works were being carried out. Approaching the matter this way, the court is enabled to give effect to the common intention of the parties in a manner that is fair and just. In this regard, I take into account the fact that she is a foreigner and for that matter as said earlier on in this delivery unable to acquire a freehold interest in the property against the background of exhibit G, which appears to show that the appellant must have borne a substantial part of the expenditure on the building. I then turn to consider the extent of area that she occupied in the building; and think if her contribution were insignificant the respondents and their family would not have sat by to allow her to occupy virtually the entire first floor of the building as though that part of the building was meant only for her occupation. In my opinion by allowing the appellant to occupy what appears to be half of the disputed property without any objection the respondents must be deemed to have accepted her as being entitled to one-half share of the property that was intended by them to be used as a dwelling house in common. As it is since the respondents are a husband and wife and entitled to have a freehold interest in the property, I should think that it is reasonable and just to allow in their favor fifty percent beneficial interest in the property with the remaining fifty percent going to the appellant. In my thinking this apportionment represents what is fair and just having regard to the facts, which have unfolded before us in the proceedings herein.

N. S. GBADEGBE
JUSTICE OF THE SUPREME COURT

G.T. WOOD (MRS)
CHIEF JUSTICE

R.C. OWUSU (MS)
JUSTICE OF THE SUPREME COURT

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