IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD. 2025

CORAM: PWAMANG JSC (PRESIDING)

AMADU JSC

PROF. MENSA – BONSU (MRS.) JSC

GAEWU JSC

DARKO ASARE JSC

2ND APRIL, 2025

CIVIL APPEAL
J4/62/2024

1.	**CHEMITECH LIMITED**	**…**	**1ST PLAINTIFF/APPELLANT/ APPELLANT**
2.	**MR. MINTAH GYAMPOH**		
	VRS		
STANBIC BANK GHANA LIMITED		**…**	**DEFENDANT/RESPONDENT/ RESPONDENT**

JUDGMENT

DARKO ASARE JSC:

1. This is an appeal filed against the judgment of the Court of Appeal, Accra dated the 17th of March 2022 which had affirmed an earlier judgment of the High Court Accra.

2. For purposes of convenience, the Parties in these proceedings, shall bear the same designation that they bore in the trial court and accordingly the Plaintiff/Appellant herein shall be described as the Plaintiff, whilst the Defendant/Respondent herein as the Defendant.

FACTS

3. The facts giving rise to the instant appeal have been well set out in the judgment of the Court of Appeal, Accra and it will be necessary only to refer to the salient points necessary for the determination of this appeal, as set out in the said judgment.

4. The 1st Plaintiff is a limited liability company incorporated under the laws of Ghana whilst the 2nd is its Executive Director. The Defendant is a well-known banking institution in Ghana and the 1st Plaintiff's bank. The Plaintiff has been trading with Comma Oil and Chemicals Limited, a UK-based company, since 1994. Due to their long-standing relationship, Comma Oil extended an interest-free, collateral-free 60-day credit facility to the Plaintiff. This arrangement allowed the Plaintiff to purchase products on credit and repay within 60 days. In October 2014, the Plaintiff ordered £48,818.86 worth of products from Comma Oil on credit, which the latter agreed to supply subject to the Plaintiff settling an outstanding balance of £5,017 due on a previous consignment. To

settle the said outstanding amount, the Plaintiff instructed the Defendant to issue a £5,017 banker's draft to Comma Oil on November 18, 2014. However, the Defendant failed to provide the required authorization, causing the draft to be returned unpaid when Comma Oil presented it to HSBC on November 25, 2014. Despite assurances from the Defendant, the draft was returned unpaid twice more. It was finally paid on January 5, 2015. The Plaintiff alleged that the Defendant later admitted to paying the amount into the wrong account and failing to identify the correct account. Due to the delay, the Plaintiff requested the Defendant to prepare a SWIFT transfer for Comma Oil's benefit. However, the Defendant unilaterally cancelled the SWIFT transfer after locating the correct account. Plaintiff also took with the Defendant's unauthorized contact with Comma Oil during the delay, describing it as unethical. It was Plaintiff's contention that the Defendant's negligence which was admitted in a letter dated the 19th of December 2014 from the Defendant's CEO to the 1st Plaintiff, led to the cancellation of the 60-day credit arrangement, resulting in lost business, income, profits, and reputation. The Plaintiff also alleged that the Defendant's conduct caused anxiety, anguish, and embarrassment. Furthermore, the Plaintiff discovered that the Defendant had fraudulently deducted £12.00 from the £5,017 intended for Comma Oil. The prayer for relief follows on from the particulars of the claim, and it stated as follows: -

i) *"Declaration that the defendant was consistently and repeatedly negligent for failing to send the authorization for payment of the bank draft within the stipulated time and in the general handling of 1st plaintiff's banker's draft to Comma Oil.*

ii) An order for the payment of general damages for negligence and general inconvenience caused to the plaintiffs.

iii) An order for the payment of compensatory damages for loss of business; loss of anticipated income and profits; loss of customers; loss of corporate reputation.

iv) An order for payment of compensatory damages for causing the plaintiffs, embarrassment, anxiety and anguish to particularly, 2nd plaintiff.

v) An order for the payment of special damages in the sum of GBP 12.00 only or its Ghana Cedi equivalent being the sum short- changed by the defendant or its agents to Comma Oil, plaintiff's principal and interest accrued thereon at the commercial bank's lending rate from January 6, 2015 to date of final payment.

vi) An order for the payment of damages for fraudulent concealment.

vii) An order for the payment of exemplary damages in the sum of 30 million GBP or its Cedi equivalent, for the loss of the 60-day credit arrangement built with Comma Oil over twenty years of doing business as well as the loss of reputation of plaintiffs before Comma Oil."

5. The Defendant vigorously denied the Plaintiff's claims, asserting that it issued a bank draft in favor of Comma Oil at the Plaintiff's instruction. While acknowledging a delay in sending the authorization to HSBC, the Defendant claimed it sent the authorization on November 26, 2014, upon being notified of

the omission. The Defendant explained that Comma Oil re-presented the bank draft on December 8, 2014, through Bank of America, UK, which submitted it for clearing through NatWest Bank, UK. HSBC released the funds to NatWest Bank on December 10, 2014. However, due to an issue between Bank of America and NatWest, the account into which the cleared funds were to be lodged could not be traced, leading NatWest to return the funds to HSBC on December 15, 2014. Once NatWest provided the correct account details, the payment was made on January 5, 2015. The Defendant denied any negligence, arguing that events after November 26, 2014, were beyond its control. The Defendant also disputed the claim that the bank draft was dishonored three times. Furthermore, the Defendant asserted that it canceled the SWIFT transfer upon Comma Oil's confirmation of receipt and informed the Plaintiff accordingly. The Defendant claimed it took all necessary steps to trace the funds and even offered to execute a SWIFT transfer to ensure timely payment. The Defendant denied any unethical conduct, stating that its contact with Comma Oil was aimed at tracing the funds. The Defendant also claimed that the Plaintiff was involved in all exchanges between the Defendant and Comma Oil. Regarding the apology letter from its Managing Director, the Defendant clarified that it was solely for the initial failure to provide authorization, not for the subsequent events. The Defendant also denied any fraudulent concealment, stating that the bank draft was issued for the full amount of £5,017 and personally delivered to the Plaintiff's Managing Director. Finally, the Defendant averred that the Plaintiff's relationship with Comma Oil was already compromised due to outstanding payment obligations, and that the £5,017 payment was six months overdue. The Defendant contended that the Plaintiff's principal terminated their relationship due to the Plaintiff's failure to settle invoices on time, and prayed that the Plaintiff’s action be dismissed.

JUDGMENT OF THE HIGH COURT

6. Upon conclusion of the trial, the High Court non-suited the 2nd Plaintiff holding that it was not a necessary party to the suit. the trial court then proceeded to find the Defendant liable for negligence on account of its acts and omissions in the events leading up to the institution of the Plaintiff's action. The High Court proceeded to dismiss the Plaintiff's claims for reliefs (v) and (vi), and awarded compensatory damages in the amount of £48,818.89 in favor of the Plaintiff. The court reasoned that this sum, or its cedi equivalent, was sufficient to cover reliefs (iii), (iv), and (vi). Notably, the court considered reliefs (iii) (compensatory damages) and (vii) (exemplary damages) to be substantially identical. Finally, the trial judge awarded general damages in the amount of GHC 10,000.00 in favor of the Plaintiff.

7. Significantly, the Plaintiff did not appeal the trial court's judgment, but the Defendant, expressing dissatisfaction with the outcome, filed an appeal.

8. The Defendant's appeal, as amended, primarily contested the adequacy of the damages awarded, arguing that they were grossly insufficient. In the main the Defendant complained that erred in several respects including failing to uphold its claim for special damages in the amount of £12.00, failing to award general damages for fraudulent concealment, failing to grant various heads of damages sought by the Defendant, and neglecting to assess the adverse impact of the Defendant's actions on its corporate reputation and image. The Plaintiff sought relief from these perceived errors in the trial court's judgment.

JUDGMENT OF THE COURT OF APPEAL

9. The Court of Appeal found no merit in the appeal and by a unanimous decision, affirmed the judgment of the trial court, reasoning that the award of compensatory damages in the amount of £48,818.89 was adequate and was close to conferring a windfall on the Plaintiff. The Court of Appeal however set aside the GHC10,000.00 general damages awarded in favour of the Plaintiff deeming same to be superfluous.

10. Dissatisfied by the judgment of the Court of Appeal the Plaintiff has lodged this appeal to this apex Court and has formulated the following grounds of appeal:-

a) *The Learned Court of Appeal Judges erred in their lead judgment when they considered the grounds of appeal as contained in the Notice of Appeal filed on the 26th of May 2017, which grounds of appeal had been amended by the filing of an Amended Notice of Appeal filed on the 11th May 2021.*

b) *The Learned Court of Appeal Judges erred in their lead judgment when they failed to consider and resolve the appeal before them based on grounds of appeal set out in the Amended Notice of Appeal filed on the 11th of May 2021.*

c) *The Learned Justices of the Court of Appeal erred when they held that the amount of GBP 48, 818. 86 awarded to the Plaintiff / Appellant / Appellant by the trial High Court as compensatory damages was adequate.*

d) *The Learned Justices of the Court of Appeal erred when they held that the amount of GBP 48, 818.86 awarded to the Plaintiff / Appellant / Appellant by the trial High Court as compensatory damages is close to conferring a windfall on the Plaintiff / Appellant / Appellant.*

e) *The Learned Justices of the Court of Appeal erred when they held that the Plaintiff / Appellant / Appellant damages for were not entitled to punitive or exemplary its injury suffered as a result of Defendant / Respondent / Respondent's proven negligence.*

f) *The Learned Justices of the Court of Appeal erred when they held that the claim for special damages of GBP 12.00 is a complaint about trivialities which did not occasion any injury to the Plaintiff / Appellant / Appellant.*

g) *The Learned Justices of the Court of Appeal erred when they set aside the award of general damages of GHC 10,000.00 to the Plaintiff/Appellant/Appellant by the trial High Court on grounds that same was superfluous when in fact, the trial High Court held that the Defendant/Respondent/Respondent breached its obligations owed the Plaintiff/Appellant/Appellant.*

h) *The judgment of the Court of Appeal is against the weight of the evidence before the Court*

i) *Additional grounds of appeal may be filed with leave of the Court upon receipt of the record of appeal.*

ANALYSIS

GROUNDS A & B

11. Learned Counsel for the Plaintiff argued grounds (a) and (b) together and contended that the Court of Appeal fell into error by failing to consider and resolve the appeal based on grounds of appeal set out in the Amended Notice of Appeal filed on the 11th of May 2021. According to learned Counsel, this failure to dispose of the appeal in exact conformity with the grounds set out in the amended Notice of Appeal occasioned a miscarriage of justice against the Plaintiff *"…since the case as put forth by the Appellant before the Court of Appeal was not what was considered by the Court of Appeal"*

12. In spite of his otherwise vehement submissions urged in support of the grounds (a) and (b) in the Statement of Case, learned Counsel's concluding remarks were tinged with a palpable air of resignation, betraying a notable absence of conviction. This is what he said: -

> *"My Lords, we are in no way suggesting that had the Court of Appeal through the Learned Presiding Judge considered the amended grounds of appeal and the submissions in support of them, the Court of Appeal would have found in favour of the Appellant. But as it is oft said, justice must not only be done but must also be seen to be done"*

13. We have carefully evaluated learned Counsel's submissions in the context of the judgment of the Court of Appeal and against the backdrop of the record of appeal in its entirety. Much as we agree that disregarding amended grounds of appeal in favor of original grounds, may be subversive of the integrity of the

appeal process, we are unable to endorse the proposition that the Court of Appeal's determination in this matter led to a miscarriage of justice, merely by failing to dispose of the appeal in strict alignment with the amended grounds dated the 11th of May 2021.

14. Our analysis of the record reveals that the original and amended grounds of appeal converge on a single issue, namely, the propriety of the trial court's damages award against the Defendant. Therefore, we reject the notion that the Court of Appeal's lead judgment failed to address the core issues in dispute, as it comprehensively examined and substantially resolved all pertinent issues raised in contention, notwithstanding the omission to specifically address the appeal in accordance with the amended Notice of Appeal.

15. Consequently, and upon careful consideration, we find that the Plaintiff's assertion of a miscarriage of justice, predicated solely on the Court of Appeal's alleged failure to dispose of the appeal in exact conformity with the amended grounds set out in the amended Notice of Appeal dated May 11, 2021 lacks merit and is therefore rejected

16. In the circumstances, grounds (a) and (b) of the appeal fail, and are hereby dismissed.

GROUNDS (C), (D), & (E)

17. In order to properly orient our analysis of grounds (c), (d) and (e) of this appeal, it is important to recognize that the Defendant did not appeal the trial court's

determination of liability, which thus remains unchallenged; as a result, the sole focus of this appeal, is the assessment of damages and their corresponding quantum.

18. Following a careful analysis of Counsel's written briefs and the appeal record in its entirety, we have identified two primary grievances underlying grounds (c), (d), and (e), which challenge the sufficiency of damages awarded to the Plaintiff. These concerns relate to the alleged inadequacy of punitive and exemplary damages for reputational harm, as well as the insufficiency of compensatory damages for economic losses purportedly stemming from the Defendant's negligence. We shall address these contentions sequentially.

EXEMPLARY AND PUNITIVE DAMAGES

19. In order to properly contextualize the Plaintiff's claim for exemplary damages in this case, a brief excursion into its applicability in various actions in tort, may provide valuable insight.

20. The commonest torts in respect of which exemplary damages have been awarded in tort, are trespass to the person or property. According to Halsbury's Laws of England (3rd Ed) vol. 11 pages 224-225, exemplary damages may be awarded in various tort actions, including assault, conversion, trespass, negligence, nuisance, libel, slander, seduction, malicious prosecution, and false imprisonment.

21. However, to warrant an award for exemplary damages, the Defendant's conduct must exceed mere wrongdoing and demonstrate a high degree of culpability, characterized by actions that are oppressive, arrogant, vindictive, or malicious, exhibiting a blatant disregard for the Plaintiff's rights and a flagrant breach of decent behavior.

22. At the outset, it is noteworthy that exemplary damages, have long been a subject of considerable judicial disquiet. Critics argue that exemplary damages blur the lines between civil and criminal law, as Defendants are "punished" without the safeguards afforded to accused persons in criminal proceedings, while claimants receive an unwarranted windfall.

In the House of Lords decision of ***Cassell & Co. Ltd v roome [1972] 1 All ER 801***, Lord Reid, conceded that the basis for the award of exemplary damages in the decided cases have sometimes been ***"…highly anomalous…confusing the function of the civil law which is to compensate with the function of the criminal law which is to inflict deterrent and punitive penalties"***

23. The judicial unease surrounding the application of exemplary damages in tortious actions, is evident in the restrictive approach adopted by Lord Devlin in ***Rookes v Barnard [1964] AC 1129*** HL, where he confined such awards to three distinct categories

> *"1. Cases involving oppressive, arbitrary, or unconstitutional actions by government servants.*
> *2. Situations where the Defendant's conduct is calculated to yield a profit exceeding the Claimant's compensation.*

3. Instances authorized by statute."

24. The Privy Council's decision in ***A v Bottrill [2002] 3 WLR 1406*** further refined this principle, emphasizing that the fundamental question in awarding exemplary damages is whether the Defendant's conduct constitutes outrageous behavior unacceptable to society. The Council stressed that such awards should remain exceptional, and in cases involving negligence, justification for exemplary damages would be rare in the absence of intentional wrongdoing or conscious recklessness.

See also the case of ***Messrs Askus Company v Boakye & Ors J4/14/2015 (2016)*** referred to by the Court of Appeal in its concurring judgment.

25. We have tested the principles examined in the authorities cited above against the established facts on record in this appeal, and we are persuaded that this case does not meet the threshold for an award of exemplary damages, as there is no evidence to establish that the Defendant's conduct was egregious, driven by a desire for profit, or characterized by intentional wrongdoing or conscious recklessness.

26. Nowhere in its pleadings nor in the evidence it adduced at the trial was it suggested even obliquely that the Defendant had acted out of motives that were consciously egregious, profit-motivated, or demonstrated reckless wrongdoing. We therefore struggle to find any justification for the claim that this was a deserving case for the grant of exemplary damages

27. Given that both the trial court and the Court of Appeal have unequivocally held, grounded in solid authority, that the facts of this case fall short of warranting exemplary damages in the amount of GHC30m, it is remarkable that learned Counsel for Plaintiff persisted in a demonstrably flawed proposition, urging that we reverse the conclusions of the two lower courts.

28. In our judgment the only plausible conclusion which the proven facts on the record warrant is that drawn by the learned Justices of Appeal above, and we see no justification for departing from their decision. Consequently, we find no merit in the Plaintiff's challenge to the Court of Appeal's rejection of the claim for GHC30million as exemplary damages.

LOSS OF FUTURE PROFITS

29. In making the award for the sum of £48,818.86, the Court of Appeal in its lead judgment came to the conclusion that the damages awarded by the trial court adequately compensated the Plaintiff to make it credit worthy and was close to conferring a windfall. It reasoned as follows: -

> *"The Plaintiff who was buying on credit, sell and pay within sixty days has been awarded adequate compensation by the High Court to enable it to buy oil from its creditors to the tune of £48,818.86 which represented the total worth of oil that it was to buy on credit and sell"*

30. Learned Counsel for the Plaintiff however assails the decision by the Court of Appeal describing it as erroneous. This is what he submitted in his Statement of Case: -

> *"It is the Appellant's case that having found the Respondent liable for negligence, the learned trial Judge did not properly advert his mind to the gravity of the Respondent's negligence and the severity of damage caused the Appellant. Unfortunately, My Lords, the Court of Appeal fell into the same error when it held among others that the sum of GBP48,818.86 awarded the Appellant as compensatory damages was adequate"*

31. Plaintiff's Counsel identifies a number of factors which he alleges the Court of Appeal failed to take into account before awarding the *"…. meagre sum of £48,818.86 as compensatory damages…"* to the Plaintiff. These factors include the change in market price of the goods from the time of the Defendant's negligence to the date of judgment, the consequential economic losses resulting from the termination of the Plaintiff's privilege to discounted prices and credit facility it previously enjoyed from Comma Oil as well as the disruption of its business relationship with Comma Oil, and the consequential reputational damage it had suffered as a direct result of the Defendant's negligence.

32. Is the Plaintiff justified in the attacks it raises against the judgment of the Court of Appeal?

33. The fundamental principle by which the courts are guided in awarding damages is *restitutio in integrum*, by which is meant that the law will endeavour so far as money can do it, place the injured person in the same situation he

occupied before the occurrence of the tortious act complained of. This principle is however subject to the qualification that the damage must not be remote. See for instance ***The Wagon Mound) (No 1) [1961] AC 388.***

34. When it comes to a consideration of claims for economic losses, it is instructive to establish from the very onset that the attitude of the courts demonstrate a cautious approach, emphasizing the need to eschew uncertainty and speculation, and requiring claimants to provide robust evidence based on reasonable and realistic expectations to support their claims. See the decision of this Court in the case of ***Ecobank Ghana Limited v Aluminium Enterprise Limited Civil Appeal No. J4/18/2020; dated 13th May 2020***

35. At common law, the courts have traditionally denied liability for economic loss resulting from another's negligent act where that loss is not consequent upon some physical injury to the plaintiff's person or to property in which he has a possessory or proprietary interest See for instance the case of ***Spartan Steel and Alloys Ltd v Martin & Co (Contractors) Ltd [1972] 3 All ER 557***. However, if pure economic loss is caused by negligent words, then in certain cases, since 1963 the courts have imposed liability. See the case of ***Hedley Byrne & Co Ltd v Heller & Partners Ltd [1964] AC 465***

36. In the case of ***Spartan Steel and Alloys Ltd v Martin & Co (Contractors) Ltd*** (supra) Lawton LJ after posing the question whether a Plaintiff can recover from a Defendant, proved or admitted to have been negligent, foreseeable financial damage which is not consequential on foreseeable physical injury or damage to property, then proceeded to answer himself as follows: -

"Any doubts there may have been about the recovery of such consequential financial damage were settled by this court in SCM (United Kingdom) Ltd v W. J. Whittall & Son Ltd [1970] 3 All ER 245. In my judgment the answer to this question is that such financial damage cannot be recovered save when it is the immediate consequence of a breach of duty to safeguard the plaintiff from that kind of loss".

37. In his Statement of Case, Learned Counsel expresses dismay that in making the award for the sum of £48,818.86, both the trial court and the intermediate appellate court overlooked the Plaintiff's potential earnings and price hikes between the date of the Defendant's negligent conduct and the judgment date, and that this constituted a significant omission.

38. But did the Plaintiff produce any credible evidence at trial to substantiate its assertions regarding the alleged price increases and profit margins it would have realized during the relevant period, but for the termination of its credit-based arrangement with Comma Oil resulting from the Defendant's negligence?

39. At paragraph 5 of its amended Statement of Claim the Plaintiff pleaded that: -

"Plaintiffs aver that this 60-day credit arrangement enables them to buy an average of four (4) consignments of lubricants in 20/40-footer containers from Comma a year. Plaintiffs say when business is very good, they are able to buy an average of five (5) different consignments of 20/40 footer containers. For instance, in 2010, Plaintiffs purchased about seven (7) containers of lubricants from Comma with the average value of £35,000.00 each".

40. At the trial, the Plaintiff's witness, Mercy Mintah Gyamph, reiterated the allegations made in paragraph 5 of the amended Statement of Claim, without providing any supplementary evidence to substantiate the alleged profit margins and price hikes, leaving the trial court with only the Plaintiff's uncorroborated pleadings to consider. That we find to be rather striking

41. As the Plaintiff's claims regarding profit margins and price hikes are amenable to concrete proof, we find the absence of credible documentary evidence quite remarkable, particularly in view of the well-established legal principles articulated in cases such as ***Majolagbe v Larbi [1959] GLR 190*** and ***Zambrama v Segbedzi [1991] 2 GLR 231***.

42. In the absence of concrete evidence, it is plain that the Plaintiff's claims in this case can only be relegated to the realms of mere conjecture, lacking in probative value.

43. Given the circumstances, we align ourselves with the trial court and the Court of Appeal in holding that the Plaintiff's inability to provide financially-documented proof of its typical profit margins, subsequent to purchasing oil on credit from Comma Oil, selling it, and repaying the debt, constituted a fatal flaw that undermines the validity of its claim, particularly in inviting this court to declare the compensatory award deficient.

44. In a matter of such gravity, it is difficult to comprehend how the Plaintiff reasonably anticipated success in its claims for such fantastic compensatory

awards, based on evidence that was, in essence, remarkably tenuous and ephemeral.

45. In rejecting the Plaintiff's claims for economic losses beyond the sum awarded by the trial court, the Court of Appeal had reasoned that the award of £48,818.86 adequately compensated the Plaintiff who did not previously have the means of purchasing products cash-upfront, to now have the resources of transitioning from a credit-based arrangement with its Principal, to a cash-upfront basis, thereby restoring its purchasing power with Comma Oil for the first time since 1994. This outcome does not perpetuate any injustice, as any additional award would unjustly enrich the Plaintiff.

46. We are convinced by the logic of the above deductions and consequently hold that, on the facts of this case, the award of £48,818.86 was not deficient or unreasonable in any way, and that the Plaintiff was only entitled to compensation for the direct consequences of the Defendant's negligent acts, excluding any unproven or speculative elements.

47. The Plaintiff's contention that the trial court should have considered all losses incurred during the relevant period further ignores the fundamental principle of mitigation, which imposes a duty on the injured party to minimize their losses, and to take all reasonable steps to reduce the extent of their damages.

48. It has long ago been settled that in assessing damage for such losses the law requires the Plaintiff to minimize its loss, and if it might reasonably have averted any part of the damage it has suffered, to have done so. See ***R. T. Briscoe***

(Ghana) Ltd. v. Boateng [1968] GLR 9. It is upon the same principle that a Plaintiff cannot obtain damages for loss caused wholly or mainly by his own voluntary act or for any increase in his loss which is attributable to his own conduct.

49. In this regard, it is worth emphasizing that, any claims of financial constraints which could possibly have rendered it impossible to comply with Comma Oil's revised terms of cash upfront payments for fresh orders, does not relieve Plaintiff of its responsibility to take all reasonable steps to mitigate its losses.

50. In this connection, the old case of ***The Edison [1933] All ER 144*** HL, which established long ago the principle that impecuniosity is no excuse for not mitigating damage would appear to furnish a complete answer. The sound logic of Lord Wright's explanation of the rationale underpinning the principle cannot be lost on us. This is what he said: -

> ***"But the appellants' actual loss in so far as it was due to their impecuniosity arose from that impecuniosity as a separate and concurrent cause, extraneous to and distinct in character from the tort; the impecuniosity was not traceable to the respondents' acts, and, in my opinion, was outside the legal purview of the consequences of these acts."***

51. Applying the principle of the law discernible from the above authority to the facts on record, it becomes too clear for argument or dispute that the measure of damages Plaintiff was entitled to recover, under the circumstances of this

case, must be the actual loss thereby suffered, subject to the duty of the Plaintiff to mitigate its loss.

52. These legal considerations when properly applied to the facts on record, render completely tenuous, the complaints about the inadequacy of the damages in the sum of £48,818.86 awarded by the trial court in favour of the Plaintiff.

53. Damages, it is often said, must be awarded for compensation and not for gain.

54. The principles on which an appellate court should act in reviewing an award of damages have been well settled in a plethora of cases and we need not burden this delivery with any detailed re-statement thereof.

55. Hayfron-Benjamin JSC in the oft-cited case of ***Standard Chartered Bank (Ghana) Ltd v Nelson [1998-99] SCGLR 810*** at 824 lucidly restated the circumstances under which an appellate court will interfere with an award of damages by lower courts as follows:

> ***"In reference to the authority immediately cited above, it is clear that an appellate court may reverse or vary the award of damages on the grounds (a) "that the Judge acted on some wrong principles of law" or, (b) "that the amount awarded was so extremely high or so very small as to make it, in the judgment of this court an entirely erroneous estimate of the damage to which the plaintiff is entitled." See also Zik's Press Ltd v Ikoku (1951) 13 WACA 188 at 189 and Frabina Ltd v Shell Ghana Ltd, [2011] SCGLR 429.***

56. See similar views expressed by Amegatcher JSC in **Kwadwo *Appiah v. Kwabena Anane [2020) DLSC 8597***

57. We have also reminded ourselves that in our review of the awards of damages by the trial court, it is not enough that there is a mere balance of opinion or preference. This point was drummed home by Lord Wright in the famous English case of ***Davies v Powell Duffryn Associated Collieries Ltd ([1942] 1 All ER 657*** at pp 664, 665: -

> ***"In effect, the court, before it interferes with an award of damages, should be satisfied that the judge has acted on a wrong principle of law, or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attacked if the appellate court is to interfere, whether on the ground of excess or insufficiency."*** (emphasis)

58. Having therefore carefully analysed the record of appeal and tested it against the principles above mentioned, we are unable to agree with learned Counsel for the Plaintiff that the two lower courts wrongly exercised their discretion in the compensatory awards made in favour of the Plaintiff in this case. Neither has it been demonstrated that the findings of the lower courts were in any way perverse. That being the case, grounds (c) (d) and (e) of the appeal have not been successfully made out and are hereby dismissed.

GROUND (F)

59. Under this ground of appeal an invitation is extended to this Court to reverse the rejection of the claim for special damages in the sum of GBP£12.00, which according to the Plaintiff represented the shortfall in the bankers draft with a face value of £5,017 transferred to Comma Oil. The Court of Appeal, had reasoned that that claim was nothing more than a complaint about trivialities which did not occasion any injury to the Plaintiff. Learned Counsel for the Plaintiff argued in his Statement of Case that the Court of Appeal's decision was neither supported by the evidence on the record nor justified in law.

60. It is not in dispute that the bank draft with a face value of £5,017 was received by Plaintiff's Managing Director and forwarded to Comma Oil. It is also not in dispute that HSBC paid the sum of £5,005 to Comma Oil through NatWest.

61. It is intriguing to observe that although the exact amount due Comma Oil, was £5,017 GBP, there is no evidence in the record of appeal to suggest that Comma Oil ever complained about being short paid, contrary to Plaintiff's assertions.

62. This led the Court of Appeal, rightly in our view, to properly infer that Comma Oil accepted the sum of £5,005 GBP in full payment, who by all accounts must have acknowledged that any shortfall in the face value of the amount received was due to ordinary bank charges.

63. Following a meticulous examination of the record of appeal, we find the argument presented by learned Counsel under this ground of appeal to be entirely without merit, lacking any semblance of substance. Even if the point were to have some modicum of merit, it is utterly eclipsed by the overwhelming

evidence on record, accepted by the trial court and affirmed by the Court of Appeal, which unequivocally establishes that Comma Oil, as the ultimate beneficiary, accepted the amount of £5,005 as the face value of the funds transferred, minus legitimate bank charges, without any objection.

64. The above conclusion by the Court of Appeal, being the subject of concurrent findings of fact, we find ourselves bound by the now almost hallowed principle which require that where a finding of fact has been made by a trial court and concurred in by the first appellate court as in the present case, this Court should be slow in interfering with such findings unless it is satisfied that there are strong pieces of evidence in the record of appeal which make it manifestly clear that the findings of the trial and first appellate tribunals are perverse. See cases like ***Gregory v Tandoh (IV) and Hanson (2010) SCGLR 971,*** and ***Obeng v Assemblies of God Church, Ghana 2010 SCGLR 300***;

65. The result is that ground (f) fails and is hereby dismissed.

GROUND (G)

66. The omnibus ground of appeal which alleges that the judgment is against the weight of the evidence on record invites this Court by way of rehearing to engage in a meticulous re-evaluation of the evidence, both oral and documentary, to ascertain whether the judgment under appeal accurately reflects the weight of evidence and is informed by a correct application of the governing legal principles.

67. The above statutory regime has been endorsed by a litany of respected judicial authorities including such cases as ***Akufo Addo v Catheline [1992] 1 GLR 377***; ***Tuakwa v Bosom [2001-2002] SCGLR 61***; ***Brown v Quashigah [2003-2004] SCGLR 930*** and ***Djin v Musah Baako [2007-2008] SCGLR 686***, to mention just a few.

68. But before this Court embarks on the above judicial exercise, the duty is imposed on an Appellant, to first and foremost demonstrate to the appellate court the lapses in the judgment complained of, which, when corrected, would result in a judgment in his favour, as was well stated in the ***Djin v Musah Baako*** case (supra).

69. At this re-hearing, we have thoughtfully examined the record of appeal in its entirety and further given careful consideration to the erudite submissions urged on us by learned Counsel for the respective Parties. We must commend the industry they put into the preparation of their respective Written Submissions. We are however unable to take any benevolent view of the criticisms levelled against the judgment of the trial court and the Court of Appeal by the Plaintiff.

70. We have already demonstrated above the pertinent pieces of evidence which substantially weighed on the mind of the trial Judge and led him to reach the conclusions he arrived at, which conclusions were correctly affirmed by the Court of Appeal.

71. These being concurrent findings reached by the trial court and the intermediate appellate court, the authorities require the Plaintiff, if he seeks to have same

overturned, to demonstrate that they were perverse. This formidable hurdle, the Plaintiff has obviously failed to surmount.

72. Our own view of the matter is that the learned trial Judge diligently sifted through the mass of evidence, both oral and documentary, and proceeded to apply due and appropriate weight to critical and pertinent pieces of established evidence on the record. He also drew key inferences that were required to be drawn from the said evidence on record. In sum effect, not only did the learned trial Judge correctly identify the nature of the dispute before him, the nature of the evidence led, the primary issues involved, but more importantly he adopted the correct approach in resolving those issues. No wonder, save for the award of GHc10,000.00, the trial Judge's conclusions were correctly affirmed by the Court of Appeal.

73. In the end, we are not satisfied that learned Counsel for the Plaintiff has pointed us to any relevant piece of evidence or principle of law, which was ignored or mis-applied by the learned Justices of Appeal, and which, if properly applied will return a verdict in Plaintiff's favour. The complaint that the judgment was against the weight of evidence on record simply lacks merit. This ground of the appeal fails and is hereby dismissed.

GROUND (G)

74. This ground contests the Court of Appeal's overturning of the award of GHC10,000.00 made in favour of the Plaintiff by the trial Judge, with the learned Justices of Appeal describing the ward as superfluous and unjustified.

75. We have reviewed the said decision and we do concur that having already determined that the award of compensatory damages in the sum of £48,818.86 adequately compensated the Plaintiff for its injuries suffered as a result of the Defendant's negligence, there existed no further basis for the additional award of GHC10,000 general damages.

76. At the pain of repetition, we must reiterate that damages, must be awarded for compensation and not for gain. Applying this principle to the facts on record, we are bound to endorse the decision to set aside the trial court's award of GHC10,000.00, as we think the learned Justices of Appeal properly applied the correct principles of the law to the established facts on record.

77. This ground (g) of the appeal has not been made out and is hereby dismissed.

CONCLUSION

78. In conclusion, we think the reasons we have assigned supra are sufficient to dispose of this appeal in favour of the Defendant, the result of which is that the appeal herein fails in its entirety and is hereby dismissed. The judgment of the Court of Appeal, Accra dated 17th of March 2022 is hereby affirmed.

(SGD.) Y. DARKO ASARE
(JUSTICE OF THE SUPREME COURT)

(SGD.) **G. PWAMANG**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **I. O. TANKO AMADU**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **PROF. H. J. A. N. MENSA – BONSU (MRS.)**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **E. Y. GAEWU**
(JUSTICE OF THE SUPREME COURT)

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