IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD. 2025

CORAM: SACKEY TORKORNOO (MRS) CJ (PRESIDING)

AMADU JSC

ASIEDU JSC

GAEWU JSC

DARKO ASARE JSC

19TH MARCH, 2025

CIVIL APPEAL
J4/69/2023

ADRIANUS A. K. V. VEGGEL	**…**	**PLAINTIFF/RESPONDENT/ RESPONDENT**
VRS		
1. CLARA NAADU NARTEY DEFENDANT/APPELLANT/	**…**	**1ST APPELLANT**
2. TDC DEVELOPMENT COMPANY	**…**	**2ND DEFENDANT**

JUDGMENT

ASIEDU, JSC:

[1.0]. INTRODUCTION:

My Lords, this is an appeal against a judgment of the Court of Appeal dated the 17th November, 2022. The Court of Appeal, in the said judgment, dismissed an appeal by the 1st Defendant/Appellant/Appellant (herein referred to as the Appellant) and affirmed the judgment of the trial High Court which was delivered in favour of the Plaintiff / Respondent / Respondent (herein referred to as the Respondent).

[2.0]. GROUNDS OF APPEAL:

Dissatisfied with the judgment of the Court of Appeal, the Appellant has lodged the instant appeal on the grounds that:

a. The learned Justices of the Court of Appeal erred when they failed to consider that the same deed of assignment which they found as a fact to have been signed by the Plaintiff also had the 1st Defendant's name boldly written as Assignee on same signature page.

b. The learned Justices of the Court of Appeal erred when they failed to consider that the Respondent being very literate and fluent in the English language was given all the opportunity to read the content of the deed of assignment to know what he was signing and in whose favour he was signing the document.

c. The learned Justices of the Court of Appeal erred when after making a finding of fact that exhibit 2, the deed of assignment, was indeed signed by the Plaintiff and his father declared same as forged merely on suspicion that other pages of the document were manipulated in favour of the 1st Defendant.

d. The learned Justices of the Court of Appeal erred when they concluded that the mere quotation of the consideration in old Ghana Cedis in the deed of assignment (exhibit 2) necessarily inferred manipulation of the document by the 1st Defendant in whose favour the document was executed.

e. The learned Justices of the Court of Appeal erred when they failed to consider that the Plaintiff needed not [to] be in Ghana to be able to author the letter of consent (exhibit TDC1) to assign his interest in the disputed property to the 1st Defendant.

f. The judgment is against the weight of evidence.

[3.0]. FACTS:

By a writ of summons and an accompanying statement of claim, issued from the registry of the High Court, Accra, the Respondent, suing per his lawful attorney, claimed against the Appellant herein and the 2nd Defendant therein the following reliefs:

(a) "A Declaration that Plaintiff [Respondent herein] is the beneficial owner of property situate at Site 21, Community 1, Tema and numbered I/J8.

(b) An order directed to the Tema Development Company to expunge from its records any name or names however entered other than Plaintiff's, in respect of the ownership of H/No. I/J8, Site 21, Community 1, Tema.

(c) Recovery of possession of the said property from Defendant [Appellant herein].

(d) Damages for trespass.

(e) Perpetual injunction restraining Defendant by herself, agents, servants, workmen, privies or assigns or whomsoever from howsoever continuing to obstruct and interfere with Plaintiff's rights to the property."

By an order of transfer by the Honourable Chief Justice, the suit was transferred from the High Court, Accra, to the High Court, Land Division, Tema. Pursuant to leave of the trial Court, the Tema Development Corporation was joined as 2nd Defendant. The writ of summons was, therefore, amended to reflect the joinder of 2nd Defendant.

[3.1]. The Respondent pleaded that, the Respondent is a Ghanaian-Dutch national domiciled in Holland. That the property subject matter of the suit, H/No. 1/J8, Site 21, Community 1, Tema, originally owned by the Respondent's late mother, was transferred to the Respondent by the Respondent's father, acting as administrator of the estate of the Respondent's deceased mother. The said transfer was effected at the outfit of the 2nd Defendant, a statutory body vested with the mandate to oversee estate development in Tema where the disputed property is situate.

The Respondent's case has been that he is the owner of the property and has since the transfer to him, exercised ownership over the property. That in September 2006, the Respondent agreed to sell the property to one Georgina Nelson at the purchase price of £25,000.00. That the said Georgina Nelson made part payment of £10,000.00 to the Respondent. The Respondent had appointed the Appellant herein as caretaker of the

Property in Ghana and executed a power of attorney for the Appellant to act on behalf of the Respondent in the transaction with Georgina Nelson. The Respondent averred that, subsequent to the agreement with Georgina Nelson and while the Respondent was in Holland with his father, the Appellant travelled to Holland in 2006 with some documents from the 2nd Defendant for the signature of the Respondent and the Respondent's father in order to effect transfer of the Property to the said Georgina Nelson. Full payment for the property was to be made upon transfer of ownership by the Respondent to Georgina Nelson. The document(s) were signed by the Respondent and witnessed by his father. The transaction between the Respondent and Georgina Nelson, however, did not go through and Georgina Nelson demanded from the Respondent a refund of the deposit of £10,000.00 made to the Respondent. At the request of the Respondent, the Appellant paid the sum of £10,000.00 to Georgina Nelson. That, following the payment of this sum to Georgina Nelson by the Appellant, the Respondent gave Appellant, caretaker of the Property, the mandate to lease and or rent out the Property so that the Appellant would be reimbursed the sum of £10,000.00 from the rent.

[3.2]. According to the Respondent, the Respondent's father returned to Ghana from Holland in 2010 and found, to his shock, that the Appellant, with the assistance of the 2nd Defendant, has changed the ownership of the Property from the Respondent's name to the Appellant's name. At the behest of the Respondent, the Respondent's father lodged a complaint with the Tema Community 1 Police Station. That the investigations by the Police disclosed that the Appellant claims to have had the Property assigned to Appellant by the Respondent. The Appellant relied on a deed of assignment in support of her claim, but the Respondent has denied ever executing a deed to transfer the Property or an interest therein to the Appellant. That any document held by the Appellant purporting to be a deed of assignment from the Respondent, was the product of forgery and a fraudulent scheme by the Appellant to deprive the Respondent of Respondent's

Property. The Respondent, therefore, commenced the suit seeking the reliefs indorsed on the writ of summons.

[3.3]. On the other hand, the Appellant, in her pleadings, save some express admissions, denied all the allegations of the Respondent. The Appellant admitted that the Respondent is a Ghanaian-Dutch national domiciled in Holland. It is also not in dispute that the Respondent inherited the property from his deceased mother. That the Respondent entered into an agreement to sell the property to Georgina Nelson and received a deposit of £10,000.00 from Georgina Nelson, is not in contention. The Appellant has, however, strenuously averred that prior to the Respondent's father obtaining Letters of Administration to administer the estate of the Respondent's late mother, there had been litigation in court the cost of which litigation was borne by the Appellant for and on behalf of the Respondent's father. It has also been averred by the Appellant that, in the face of these expenses she made or incurred and the fact that she paid back Georgina Nelson's deposit of £10,000.00 to Georgina Nelson for and on behalf of the Respondent, the Respondent assigned the Property in dispute, H/No. 1/j8 Site 21, Community 1, Tema, to the Appellant by a deed of assignment executed by the Respondent and the Appellant, and witnessed by the Respondent's father. The Appellant has, accordingly, denied the allegation of fraud made against her by the Respondent.

[4.0]. JUDGMENT OF THE HIGH COURT:

At the end of the trial, the learned trial Judge upheld the claim of the Respondent against the Appellant and the 2nd Defendant. The trial Court reasoned that the evidence on record preponderated in favour of the Respondent's case. That the Appellant was only mandated by the power of attorney from the Respondent to find a buyer for the property,

and not to sell or transfer the property to herself. The Court found that, the Appellant had forged the Respondent's signature on the deed of assignment and that the whole transaction leading to the transfer of the disputed property from the Respondent's name to the Appellant's name, was shrouded in fraud. Consequently, the trial Court Judge concluded in favour of the Respondent (Plaintiff therein), among others, as follows:

(a) "A declaration that plaintiff [Respondent herein] is the beneficial owner of property situate at Site 21, Community 1, Tema numbered 1/J8.

(b) The 2nd defendant Company (Tema Development Company) is hereby ordered to expunge from its records any name or names however entered other than plaintiff's, in respect of the ownership of H/No. 1/J8 Site 21, Community 1, Tema.

(c) Plaintiff is to recover possession of the said property from 1st defendant one (1) month from the reading of this judgment.

(e) The 1st defendant [Appellant herein], her agents, servants, workmen, privies or assigns or whosoever, are perpetually restrained from continuing to obstruct and interfere with plaintiff's rights to the property."

[4.1]. JUDGMENT OF THE COURT OF APPEAL:

On appeal by the Appellant to the Court of Appeal from the judgment of the trial High Court, the learned Justices of the Court of Appeal affirmed the judgment of the trial Court save the finding of forgery of the deed of assignment by the trial Court which the Court

of Appeal reasoned was not supported by the evidence on record. This departure from the trial Court's finding notwithstanding, the Court of Appeal concluded that the deed of assignment and accompanying documents in their entirety raised questions which imputed fraud to the Appellant. The Court found and stated expressly that, the Respondent's signature on a letter of consent to assign the Property to the Appellant, Exhibit TDC1, purportedly written by the Respondent, was forged by the Appellant, and could not have formed the basis of a valid transfer of title to the Appellant. Therefore, the Court of Appeal dismissed the Appellant's appeal and affirmed the judgment of the trial High Court.

[5.0]. ARGUMENT OF APPELLANT BEFORE THIS COURT:

In the Appellant's statement of case filed on the 21st July, 2023, it has been argued by Counsel that the Court of Appeal erred in affirming the judgment of the trial High Court. It has been submitted by Counsel that, the Respondent has failed to discharge the burden of proof on Respondent to establish that Respondent did not sign the deed of assignment which, according to the Appellant, was signed by the Respondent to transfer the disputed property to the Appellant. Again, that the Respondent could not establish that the Respondent did not sign the letter of consent upon which the 2nd Defendant transferred the Property to the Appellant. That it was after the Respondent and his father had agreed to transfer ownership of the Property to the Appellant that the Appellant caused the necessary document, the deed of assignment, to be prepared. The Appellant then travelled with the documents to Holland, where the Respondent read through the document and appended his signature. The Respondent's father witnessed the execution of the document by appending his signature thereto. Counsel has further argued that, the learned Justices of the Court of Appeal erred when they failed to consider that the

Respondent is literate in the English Language and read the content of the deed of assignment before setting his hand thereunder. That the Respondent, as well as Respondent's father, being of full age and understanding, could not be heard to rebuff the deed of assignment and its content. It has been submitted by Counsel that, if the learned Justices of the Court of Appeal, having found that the signature on the deed of assignment was that of the Respondent's, had considered that the Appellant's name also appeared on the signature page as assignee, the learned Justices of the Court of Appeal would not have committed the error they did in affirming the judgment of the trial High Court. Again, that the Court of Appeal erred when they took into account the quotation in the deed of assignment, of the consideration in old Ghana Cedis when the deed of assignment was supposed to have been signed when the new Ghana Cedi had been in use, in reaching the conclusion that the deed of assignment was manipulated by the Appellant. Counsel for the Appellant, therefore, prays this Honourable Court to set aside the judgments of the Court of Appeal.

[6.0]. ARGUMENT OF RESPONDENT:

In the Respondent's statement of case filed on the 7th December, 2023, it has been argued by Counsel that, even though the first appellate Court made some findings contrary to those of the trial Court, the decision of the Court of Appeal affirming the judgment of the trial High Court, did not occasion a miscarriage of justice. That the Appellant herein has failed to meet the test of establishing with absolute clarity, that some blunder resulting in a miscarriage of justice has been occasioned the Appellant by the concurrent judgments of the Courts below. Counsel has argued that the circumstances of this appeal do not meet the threshold that would warrant an interference by this Honourable Court, as a second appellate Court in this case, with the concurrent findings or conclusions of the

Courts below. Counsel submits that, the mandate given the Appellant by the Respondent, evidenced by a power of attorney executed in 2006, was for the Appellant to sell the Property to Georgina Nelson and her husband (referred to as "the Normans"). But what the Appellant did was to transfer the Property to herself contrary to the Appellant's mandate. That the Appellant acted fraudulently in the whole transaction leading to the transfer of the Property to the Appellant's name. Counsel, therefore, prays this Honourable Court to affirm the judgment of the Court below.

[7.0]. PRELIMINARY OBJECTION:

Meanwhile, the Appellant, on the 25th March, 2023, filed a notice of intention to rely on a preliminary objection pursuant to Rule 17(1) of the Supreme Court Rules, 1996 (C.I. 16).

Rule 17(1) provides that:

> "17. (1) Where a respondent has not indicated in his statement that he intends to rely upon a preliminary objection at the hearing of a civil appeal he shall, before raising such objection at the hearing, give fourteen clear days' notice to the appellant in the Form 9 set out in Part I of the Schedule to these Rules, setting out in full the grounds of objection and the arguments in support of his objection."

Pursuant to leave of this Court, the Respondent, on the 29th May, 2024, filed a reply to the preliminary objection. It is noteworthy that in the instant appeal, it is the Appellant who has invoked Rule 17 (1) of C.I. 16, not the Respondent in the express terms of the provision.

The grounds of the Appellant's preliminary objection are as follows:

1. "The amended Writ of Summons and Statement of Claim that commenced the action on behalf of the Respondent is defective and same does not meet the threshold of Order 2 Rule 4 (2) of the High Court (Civil Procedure) Rules, 2004 (CI 47).

2. **The Respondent failed to prove his capacity by demonstrating to the court a valid notarized and stamped power of attorney**. There is no valid power of attorney in any of the three (3) volumes of the record of appeal from the Respondent's lawful attorney demonstrating her authority to institute the action on behalf of the Respondent.

3. The proceedings and judgments of the High Court and the Court of Appeal having been obtained on a defective writ are null and void and of no legal effect."

It has been submitted by Counsel for the Appellant that, having failed to comply with the mandatory requirements of Order 2 Rule 4 of C.I. 47, the Respondent's capacity has not been disclosed thereby rendering the writ and statement of claim which commenced the action culminating in the instant appeal, a nullity. Also, that the Respondent's attorney did not have a valid power of attorney from the Respondent to commence the action on behalf of the Respondent. Counsel argues specifically, that there is no valid power of attorney on record, duly notarised and stamped, to establish the Respondent's attorney's capacity to commence the action.

Counsel has submitted at page 2 of his argument in support of the preliminary objection as follows:

> "My Lords, the Respondent's amended writ of Summons and Statement of claim can be found at **page 103 of the volume (1) of the record of appeal**. The said writ of summons and statement of claim failed to meet the mandatory requirements in Order 2 Rule 4 of the High Court (Civil Procedure) Rules, 2004 (CI 47). This, in my respectful view, put the **capacity** of the Respondent to sue in issue and therefore all the proceedings and judgments emanated from the High Court and the Court of Appeal be rendered null and void and of no effect."

Order 2 Rule 4 of C.I. 47 provides as follows:

> "Indorsement as to capacity
>
> **4.** (1) Before a writ is filed it shall be indorsed
>
> (a) where the plaintiff sues in a representative capacity, with a statement of the capacity in which the plaintiff sues; …
>
> (2) Before a writ is filed by a plaintiff who acts by an order or on behalf of a person resident outside Ghana, the writ shall be indorsed with a statement of that fact and with the address of the person so resident."

My Lords, Order 2 Rule 4 of C.I. 47 and a similar provision under its predecessor, the High Court (Civil Procedure) Rules, 1954 (LN 140A), has received interpretation by this Honourable Court in a line of seminal cases. It has been held by this Honourable Court that, a person must have capacity to sustain an action in court, and where a person commences an action in a representative capacity, that capacity must be indorsed on the

writ of summons. Capacity must, therefore, exist at the time the writ is issued. **Akrong v Bulley [1965] GLR 469**.

In the case of an action commenced on behalf of a person resident outside Ghana, Order 2 Rule 4(2) of C.I. 47 requires that the fact of the said residence outside Ghana and the plaintiff's residential address outside Ghana, must be indorsed on the writ of summons before the writ is filed. Failure to make these indorsements has been held to go to the very existence or capacity of the plaintiff to be able to institute the action. Accordingly, the Court has not hesitated to declare as non-existent a plaintiff whose residential address outside Ghana is not disclosed on the writ of summons but on whose behalf a writ has been issued in Ghana. The implication has, therefore, been that the writ issued on behalf of such undisclosed or non-existent persons is void for want of capacity to sue.

In **NAOS HOLDINGS INC v GHANA COMMERCIAL BANK [2005-2006] SCGLR 407**, the writ issued by the plaintiff/appellant did not disclose the address of the plaintiff, either as a resident or external company in Ghana. The plaintiff, however, purported to sue per a lawful attorney resident in Ghana. The defendant entered conditional appearance to the writ and filed a motion to dismiss the suit. The basis of the application to dismiss the suit was that, having failed to disclose the plaintiff's residential address, the plaintiff did not exist as a legal entity with capacity to sue. This Court held, in holding (1) that:

> "The real effect of the defendant's motion in the High Court under Order 3, r 4 of the High Court (Civil Procedure) Rules, 1954 (LN 140A), was to challenge the very existence of the plaintiff as a corporate legal entity and place in issue its capacity to sue. Consequently, it was not enough for the plaintiff to rely on the creation of the power of attorney as evidence of its existence as a resident or external company

registered in Ghana…. There was nothing on the face of the power of attorney that served as cogent proof of the corporate personality of the plaintiff."

The Court, speaking through Sophia Akuffo, JSC (as she then was) proceeded to drum home the point, at pages 412 to 413 of the report, in the following terms:

"Once its legal status was challenged and its corporate capacity was placed in issue, it was incumbent upon the appellant to produce more cogent evidence (such as its registered office address or a copy of its certificate of incorporation) to satisfy the trial court that it has the requisite legal capacity to sue. Since it failed to do so, the trial court was justified in arriving at the conclusion that the appellant did not exist. Further, having dismally failed to satisfy the trial court in regard to such a fundamental issue as capacity to sue, it would have been pointless for the trial court to order the matter to proceed to trial. Having failed to take the opportunity to prove its capacity during the hearing of the motion, the appellant did not merit any further 'sporting chance', nor was the court obliged to act suo motu to grant the appellant leave to amend the writ to include its residential address.

In conclusion, the Court of Appeal committed no error in upholding the High Court's ruling. The writ was void for failure to state the residence of the plaintiff in the action and, in any event, there was such serious doubt as to the corporate status of the appellant that the Court was justified in its conclusion that the appellant did not exist at all." (Emphasis)

In **NATIONAL INVESTMENT BANK & Others (No.1) v STANDARD BANK OFFSHORE TRUST CO. LTD (No.1) [2017-2020] 2 SCGLR 28**, this Court held in holding (6) as follows:

> "(6) Failure to comply with the prerequisites for the issuance of a writ under Order 2, r 4 (2) of CI 47 rendered a writ void and it could neither be saved by an amendment nor waived by the Court. Therefore, where a writ of summons [was] issued by a foreign-based firm claimed to be suing on behalf of certain investors, it was not an acceptable disclosure of the identity of the 'certain investors' but it became an essential ingredient or prerequisite for a plaintiff to disclose whom the persons on whose behalf it was suing were. Additionally, where the 'certain investors' were foreigners, that fact together with their addresses must be disclosed and both must appear on the face of the writ of summons as endorsement else the writ would be voided."

In the Standard Bank Offshore Trust case (supra), the identity of the persons on whose behalf the plaintiff commenced the action, was not disclosed. The Court found that even though the indorsement on the writ suggested that the plaintiff was suing on behalf of one Sphynx Capital Markets PCC Investors, the plaintiff's pleading showed the contrary. In this regard, the Court reproduced paragraph 13 of the plaintiff's statement of claim which read that:

> "(13) On the 23 May 2007 Eland International Ghana Ltd, through Iroko Securities Ltd of London, United Kingdom, discounted the said Promissory Notes to investors of Sphynx Capital Market PCC, a Mauritian incorporated entity and others."

The Court stated that:

> "This pleading readily shows that Sphynx is not the investor per se as the title endorsed on the writ suggests. It also shows that besides the investors of Sphynx, there were other persons who also bought into the discounted promissory notes. And from the statement of claim, the only other person mentioned is Tricon, per paragraph (18) thereof…."

The Court found further that, paragraph (18) of the plaintiff's statement of claim introduced yet another dimension to who or what the plaintiff in the action represented. As a result, the Court concluded that the identity of the person(s) on whose behalf the plaintiff filed the writ, was not disclosed. Accordingly, the Court declared the plaintiff's writ void for failure to disclose the identity of the person(s) on whose behalf the action had been commenced.

My Lords, it is noteworthy that even when the Honourable Court resorted to the statement of claim in the Standard Bank Offshore Trust case (supra) to ascertain the identity of the persons on whose behalf the writ had been filed, the question of identity rather became more confounded. The Court, speaking through Benin, JSC, at page 48 to 49 of the report, emphasised the essence of the provisions in Order 2 Rule 4(2) in the following terms:

> "It is to be stressed that the provisions of Order 2, r 4 (2) of CI 47 are obligatory, and it is not one of those provisions which the court is permitted by Order 81 to waive for non-compliance. As decided in the *Naos Holdings* case, (supra), non-compliance with this provision renders the writ void. That which is void or a nullity cannot be waived by the court under Order 81 of CI 47. **That rule is there to ensure that foreigners, humans as well as corporate, are in existence in fact and have an address at which they may be reached by the defendant and by the**

court, if need be. This ensures that the identity of the real plaintiff is known by the defendant and the court lest an impostor should secure judgment only for the real claimant to surface later and saddle the defendant with another suit. It also ensures that a judgment or order obtained against a foreigner could be executed against him in his country of residence, through the address supplied on the writ, if need be. Lack of authority to sue amounts to contempt of court by virtue of Order 1, r 4 of CI 47, therefore this provision affords the only avenue whereby the defendant may cross check with the real claimant whether or not he has authorised the plaintiff to sue. These are clear legal as well as policy considerations that justify the construction placed on this rule…." (Emphasis).

It is noteworthy that in the cases cited above, the identity or legal status of the real plaintiffs was not established, more particularly by the time the writs were filed. My Lords, it is, therefore, my humble view that, to declare a writ void for non-disclosure of the real plaintiff's foreign address when the identity or existence of the plaintiff is not or could not reasonably be in doubt, either to the defendant or the court or both, would constitute a departure from the reasoning expressed in the Standard Bank Offshore Trust Co. Ltd case (supra) to underpin the provisions of Order 2 rule 4(2). It is my humble view that, to so declare would not promote the overriding objective of the High Court (Civil Procedure) Rules, 2004 (CI 47) as highlighted in Order 1 Rule 1(2) which states that:

> "(2) These Rules shall be interpreted and applied so as to achieve speedy and effective justice, avoid delays and unnecessary expense, and ensure that as far as possible, all matters in dispute between parties may be completely, effectively and finally determined and multiplicity of proceedings concerning any such matters avoided."

The indorsement of capacity on the writ culminating in the instant appeal, appears as follows:

> "ANDRIANUS ARNOLDUS KOJO VAN VEGGEL
> PER HIS LAWFUL ATTORNEY PATIENCE ASANTE
> TEMA"

Indeed, in **KIMON COMPANIA NAVIERA S.A.R.P. and Others v VOLTA LINES LTD. (CONSOLIDATED) [1973] 1 GLR 140**, the High Court stated, at page 143 of the report, that; "A person suing by a lawful attorney can only sue in the name of the principal…. If the principal has no legal personality, he cannot acquire one by using an attorney."

My Lords, paragraph (1) of the statement of claim filed by Respondent herein, a natural person, identifies the Respondent (Plaintiff therein), Andrianus Arnoldus Kojo Van Veggel, as a Ghanaian-Dutch national domiciled in Holland. In paragraph (2) of the Appellant's statement of defence, the Appellant admitted this fact. The Respondent's birth certificate, found at page 42 of volume 1 of the Record of Appeal, formed part of the documents tendered in evidence by the Respondent in the trial Court. The said birth certificate shows that the Respondent was born in Accra, Ghana, on the 22nd day of April, 1974 to a Dutch father and a Ghanaian mother. The Respondent's passport was in evidence at the trial High Court and can be found at page 49 of volume 1 of the Record of Appeal. Again, the Respondent personally filed a witness statement in the trial Court (**page 113 of volume 1 of the ROA**). These pieces of evidence show, in my humble view, that, the identity or existence of the Respondent has never been in doubt up to the point in this Honourable Court when the Appellant raised the instant objection. My Lords, considering that the Respondent's identity or existence has never been in doubt at any

stage of the proceedings leading up to this appeal, the Appellant's objection to the Respondent's capacity appears to be an attempt to escape through the back door as was observed by this Honourable Court in **BOYA v MOHAMMED (substituted by) MOHAMMED & MUJEEB [2017-2020] 1 SCGLR 997**. In that case, the Plaintiff who instituted an action against the Defendants at the High Court in respect of a disputed property, later raised an objection to the capacity of the Defendants to make a counterclaim against the Plaintiff on the basis that the Defendants, who were claiming the disputed property through their deceased father, had neither obtained letters of administration to administer the estate of their deceased father, nor had they been vested with ownership of the disputed property. The defendants, according to the plaintiff, therefore, lacked capacity to pursue a counterclaim for declaration of title to the disputed property. This Honourable Court, speaking through Gbadegbe, JSC, stated at page 1006 of the report that:

> "The plaintiff who has urged this point [want of capacity by the defendants] before us took part in the proceedings before the trial Court without raising a finger and we are firmly of the opinion that it is too late in the day for him to do that which would have the effect of escaping through the back door after much time and expense has been incurred in the action herein. The matter having been fought to this stage, the parties are entitled to have the issues determined finally between them."

My Lords, as indicated earlier, the Respondent's identity has not been in doubt from the commencement of the action leading to the instant appeal and, therefore, the writ, in my humble view, could not properly be voided for non-compliance with Order 2 Rule 4(2) of C.I. 47.

[7.1] The Power of Attorney:

It has been argued by Counsel for the Appellant that, there is no valid power of attorney, duly stamped and notarised, from the Respondent to the Respondent's attorney, Patience Asante. The implication, therefore, is that Patience Asante, through whom the Respondent commenced the action culminating in the instant appeal, was not validly appointed as an attorney. Consequently, Counsel argues that the writ issued is void for want of capacity.

Indeed, in the Standard Bank Offshore Trust Bank Co Ltd case (supra), it was held by this Court in holding (2) that:

> "A person's capacity to sue, whether under a statute or rule of practice, should be found to be present and valid before the issuance of a writ of summons, else the writ was a nullity. Thus, the capacity to sue must be present before a writ was issued and such authority should appear in the indorsement and/or statement of claim accompanying the writ."

In expounding the principle further, the Court, at page 46 of the report, expressed itself as follows:

> "Let us take another instance where on appeal it comes to light that a person who sued as an attorney for the plaintiff did not in fact hold a power of attorney as at the date he issued the writ. He secured the power of attorney in the course of the trial. The issue of the attorney's capacity to sue could be raised on appeal and the writ would be declared a nullity because it is fundamental to the authority to sue

and this clothes the plaintiff with capacity to mount the action and this must be present before the writ is issued."

To be valid, a power of attorney must be executed in conformity with section 1(2) of the Powers of Attorney Act, 1998 (Act 549). Section 1(2) of Act 549 provides that, "where the instrument is signed by the donor of the power one witness shall be present and shall attest the instrument." Where the power of attorney is signed outside Ghana, a notary public before whom it is signed qualifies as the witness envisaged by section 1(2) of Act 549, and the power of attorney shall be valid. See **Florini Luca and Another vs. Mr. Samir and 2 Others. Civil Appeal No. J4/49/2020 Delivered on 21st April, 2021**.

At **pages 34 and 35 of Volume 1** of the Record of Appeal, is a copy of the power of attorney donated by ANDRIANUS ARNOLDUS KOJO VEGGEL in favour of PATIENCE ASANTE. The face of the power of attorney shows that it has been stamped and given a number. The power of attorney is dated the 20th day of April 2011 and is signed by ANDRIANUS ARNOLDUS KOJO VEGGEL as the donor, and witnessed by JOHANNES VAN VEGGEL. The power of attorney has no indication of notarisation as argued by Counsel for the Appellant. However, the evidence on record indicates that the power of attorney was executed by the donor for use in Ghana while the donor was in Ghana. Having been locally produced, notarisation is not required. **Asante-Appiah v Amponsah alias Mansah [2009] SCGLR 90**.

The power of attorney reads in part as follows:

"…. WHEREAS

My property house no. 1/J8 situate at site 21 community 1 Tema has been wrongfully transferred to somebody through her deceitful and fraudulent act of forging my signature.
I had to come to Ghana for this reason to pursue both criminal and civil action in this respect but I am to travel back to Holland pretty soon.

It has become necessary in the circumstance to appoint an Attorney to pursue the cases, especially the civil suit on my behalf.

NOW THEREFORE, I hereby appoint and constitute into my TRUE and LAWFUL ATTORNEY Ms. Patience Asante…

AND HEREBY EMPOWER her to do everything legitimate to "reclaim" my said property for me, including…issuing a writ of summons…."

Attached to the Respondent's witness statement filed in the trial Court (**at page 117 of Volume 1 of the ROA**), is a copy of the Respondent's plane ticket showing that the Respondent came to Accra from Amsterdam on 14th April, 2011 and returned on 21st April, 2011. My Lords, these pieces of evidence preponderate in favour of a conclusion that, the power of attorney was executed by the Respondent while the Respondent was in Ghana. The writ culminating in the instant appeal, having been filed on the 16th February, 2012, about ten months after the power of attorney was executed by the Respondent for his attorney, it cannot, with respect, be argued that there was no valid power of attorney at the time the action was commenced. The Appellant's argument that the Respondent's attorney had no capacity to commence the action, for want of a valid power of attorney, therefore, fails and is hereby rejected.

For the reasons identified above, the Appellant's preliminary objection fails in toto and is hereby dismissed.

[7.2]. Propriety of the Notice of Preliminary Objection:

The language of rule 17 of the Supreme Court Rules, 1996, CI.16, when examined critically, reveals that a Preliminary Objection is not available to an Appellant. Indeed, by rule 17(1) of CI.16, it is only a Respondent to an appeal who can file a Notice of Preliminary Objection. A preliminary objection is intended to point out and argue a point of law which goes to the root of the Notice of Appeal which has been filed by the Appellant. Such point of law must be of a kind that when sustained renders the whole appeal invalid and, indeed, makes the hearing of the appeal no longer necessary. A preliminary legal objection, when properly raised, must be capable of depriving the Court of jurisdiction to hear the appeal. For instance, a preliminary objection may be taken against a Notice of Appeal which was filed in breach of a Constitutional provision, such as when an appellant fails to obtain leave before filing a Notice of Appeal where special leave is required as under article 131(2) of the Constitution or a mandatory provision of an Act of Parliament. For example, a person aggrieved by an interlocutory order of a Circuit Court requires the leave of the Circuit Court and or, upon refusal, of the Court of Appeal before filing a Notice of Appeal to the Court of Appeal. If, therefore, an appellant filed a notice of appeal against an interlocutory order of the Circuit Court without leave, a preliminary objection may be taken against the Notice of Appeal and when successful, the whole appeal crumbles. For this reason, rule 17 of CI.16 requires a Respondent to an Appeal before the Supreme Court, to include his preliminary objection

in his statement of case filed in answer to the statement of case filed by the Appellant. The Respondent is required to file a Notice of Preliminary Objection and serve same on the Appellant at least fourteen clear days before the hearing of the appeal if the Respondent fails to include the said preliminary objection in his statement of case. A respondent who fails to include his preliminary objection in his statement of case or fails to give notice of a preliminary objection at least fourteen clear days before the hearing of the appeal, shall not be heard by the Supreme Court on his preliminary objection. It follows, therefore, that the whole procedure of the raising of, or, the filing of a preliminary objection is available to only a Respondent to an Appeal and not an Appellant; unless, the Appellant is a Cross-Respondent to a Cross-Appeal filed by a Respondent to an appeal. The Appellant herein, therefore, has no right under the rules to file a Notice of Preliminary Objection. The said Notice of Preliminary Objection filed by the Appellant herein on the 25th March 2024 is, therefore, incompetent.

[7.3]. **Grounds of appeal or Preliminary Objection:**

The points of law raised in the so-called Notice of Preliminary Objection are legal arguments that should have, rather, been raised as grounds of appeal and not as preliminary objection. Issues of the defectiveness or otherwise of an originating process such as a writ of summons, issues of the capacity of a Plaintiff to sue, issues of the validity of a power of attorney are all matters that properly belong to grounds of appeal. The rules require the Appellant to raise distinct grounds of appeal for each legal point he wishes to argue on appeal. Rule 6 sub-rules 2, 4 and 6 of CI.16 provides therefore that:

> "(2) A notice of civil appeal shall set forth the grounds of appeal ….

(4) The grounds of appeal shall set out concisely and under distinct heads the grounds on which the appellant intends to rely at the hearing of the appeal, without an argument or a narrative and shall be numbered seriatim **and where a ground of appeal is one of law, the appellant shall indicate the stage of the proceedings at which it was first raised.**

(6) The appellant shall not, without the leave of the Court, argue or be heard in support of a ground of appeal that is not specified as a ground of appeal in the notice of appeal".

The Appellant herein woefully failed to raise, in his Notice of Appeal, the grounds which he indicated in his Notice of Preliminary Objection. However, the failure to state legal grounds of appeal in the Notice of Appeal shall not disable an Appellant from amending the Notice of Appeal with the leave of the Court to enable the Appellant to raise these grounds of appeal. The difficulty that the Appellant might face, in the instant matter is that the rules require the Appellant to indicate "the stage of the proceedings at which it was first raised". The record of appeal shows that the Appellant never raise any of the legal points in the Notice of Preliminary Objection at the trial. On the other hand, as shown by the pleadings, the Appellant admitted, in his statement of defence, the capacity of the Plaintiff to sue and therefore, he cannot turn around and deny, indirectly, and through an incompetent Notice of Preliminary Objection, that which he had previously admitted.

[8] CONSIDERATION OF THE APPEAL:

My Lords, grounds (a) and (c) of the grounds of appeal, would be determined together since they could conveniently be covered by ground (c), the omnibus ground of appeal that the judgment is against the weight of evidence.

It has been held in a considerable line of cases that, an appeal under the ground of appeal that the judgment is against the weight of evidence, is an invitation to the appellate court to review the entire evidence on the record to ascertain any relevant materials or evidence on record which the court below disregarded or misapplied, or irrelevant materials on the record which were relied upon by the court below in reaching its decision. Accordingly, the appellant bears the duty to clearly point out to the appellate court such erroneous considerations or exclusions but for which the decision of the court below would have been made in favour of the appellant. **Djin v Musah Baako [2007-2008] SCGLR 686**

It has been the contention of Counsel for the Appellant that, "[t]he learned Justices of the Court of Appeal erred when they failed to consider that the same deed of assignment which they found as a fact to have been signed by the Plaintiff also had the 1st Defendant's name boldly written as an Assignee on same signature page."

In dealing with the appeal, the Court of Appeal set out the main issue for determination as whether or not the transfer of the Property to the Appellant was procured by acts of forgery and fraud. The Court held that, even though the signatures in the document of transfer, exhibit 2 (D1 and D2) were those of the Respondent and the Respondent's father, the said documents in their entirety, could be a product of fraud. The learned Justices of the Court of Appeal proceeded to scrutinise the evidence. At page 60 of Volume 3 of the ROA, the Court said:

> "We recall the plaintiff saying that he and his father signed the documents in 2006 meant for the assignment of the property to Georgina Nelson and the husband. They never signed any document in 2009 to convey the property to the 1st defendant. Again, he is on record to have alleged that the front pages of Exhibit D1 which he admits they signed have been changed. If that was the case, then the document could have been manipulated to stand as an assignment for the 1st defendant [Appellant herein] instead of what was intended for Georgina Nelson and the husband. We shall come back to subject Exhibit 2 (D1 and D2) to some scrutiny."

The Court noted that although the deed of assignment was purported to have been signed in 2009, the consideration was expressed in old Ghana Cedis when Ghana had, two years earlier, changed the denomination of the Cedi. This, the Court of Appeal reasoned, raised doubts about the authenticity of the document.

The Court found, also, that, the documentary evidence on record weighed in favour of the Respondent's case that, the only legitimate transaction about the property was made in 2006. In support of this conclusion, the learned Justices of the Court of Appeal observed that it was in 2006 that the Respondent gave the Appellant a power of attorney, exhibit 1, to sell the property. That the deposit of £10,000.00 by Georgina Nelson, as by Exhibit 12, was made in 2006. That the power of attorney given by Georgina Nelson to one Edith Nelson to execute documents and generally deal with matters concerning the Property on their behalf, was also executed in 2006. Consequently, the Court reasoned that it is more probable that, the Appellant went to Holland in 2006 for execution of the documents, and not in 2009. The Court concluded, therefore, that it was more probable that the deed of assignment was executed in 2006, and not in 2009 as the Appellant wanted the Honourable Court to believe.

[8.1]. The Court observed further, that another document which was the subject of the Respondent's allegation of forgery against the Appellant, was the letter of "CONSENT TO ASSIGN", Exhibit TDC1, purportedly written and signed by the Respondent on the 11th February, 2009. Exhibit TDC1 bore a local address, yet the Respondent contended that at the time Exhibit TDC1 was purportedly signed by the Respondent, the Respondent was out of Ghana and only visited Ghana in April, 2014 for the first time since 1983 when Respondent left Ghana for Holland. Respondent tendered particulars, Exhibits F and F1, from his passport to buttress his assertion. Interestingly, the Court found that the postal address on Exhibit TDC1, belonged to the Appellant. The Court reasoned further that, the answers given by the Appellant regarding Exhibit TDC1 during cross examination, further deepened the allegation of forgery against the Appellant. This ensued during cross examination of Appellant (reproduced at page 62 of Volume 3 of the ROA):

"Q: I am putting it to you that the plaintiff left Ghana in about 1983 thereabouts.

A: I have no idea

Q: And he came back to Ghana on 14th April 2011.

A: I have no idea.

Q: And went back to Holland on 21st April 2011. I am putting that to you.

A: I have no idea.

Q: So, it is never true that on 11th February 2009 the plaintiff wrote a letter and sent it to TDC.

A: A letter was sent to TDC by his father Mr. Johannes Van Veggel.

Q: He was not in Ghana to have signed any letter and sent it through the father.

A: I have no idea about it. But the said letter was sent to TDC by his father Mr. Johannes Van Veggel in my presence."

My Lords, at this stage, the Court of Appeal found that the Appellant had shifted from the Respondent to the Respondent's father who, at the time of the testimony, had died. The Court, therefore, stated that being allegations against a dead person, the said evidence ought to be treated with caution. The Court is always enjoined to view with caution uncorroborated evidence against a dead person. In **KUSI & KUSI v BONSU [2010] SCGLR 60**, this Court stated, quoting with approval **In re Garnett; Gandy v Macauly (1885) 31 Ch D 1**, at page 82 of the report that:

> '"The law is that when an attempt is made to charge a dead person in a matter, in which if he were alive he might have answered the charge, the evidence ought to be looked at with great care; the evidence ought to be thoroughly sifted, and the mind of any judge who hears it ought to be, first of all in a state of suspicion; but if in the end the truthfulness of the witnesses is made perfectly clear and apparent, and the tribunal which has to act on their evidence believes them, the suggested doctrine [of corroboration] becomes absurd."'

The Court reaffirmed the principle in the following terms:

> "A judge in receipt of uncorroborated evidence consisting in the main of charges against a deceased person does not swallow the story lock, stock and barrel, but first views it from a suspicious standpoint."

At page 19 of the judgment (**found at page 63 of Volume 3 of the ROA**), the Court of Appeal stated that:

> "The use of her [Appellant] address for the plaintiff [Respondent] on the letter when the plaintiff knew nothing about the address smacks of dishonesty. The owner of the fraudulent address, the 1st defendant [Appellant herein] must be the architect of the letter. Assuming at all that the plaintiff's late father had a hand in the preparation of the letter, the 1st defendant [Appellant] is privy to the fraud. Her tainted hands cannot be wished away. Whichever way the point is considered, the signature on Exhibit TDC1 attributed to the plaintiff was forged. A product of forgery could not have formed the basis of any genuine transfer of title."

The Appellant's grounds (c) and (d) of the grounds of appeal, attack the Court of Appeal's findings in respect of Exhibit 2, the deed of assignment. Ground (e) attacks the Court's finding that Exhibit TDC1 was signed when the Respondent was not in Ghana. The Appellant, however, has not raised any issue with the conclusion reached by the learned Justices of the Court of Appeal, that the Respondent's signature on Exhibit TDC1 was forged by the Appellant. Whilst it is my humble view that the finding of forgery of Exhibit TDC1 is enough to rock the very foundation of the transfer of the Property to the Appellant, the deductions made by the learned Justices of the Court of Appeal in respect of the deed of assignment, are reasonable and were within their competence to make. A fortiori, it is my respectful view that the evidence on record, justify these findings.

[8.2]. Ground (b) of the appeal is to the effect that "[t]he learned Justices of the Court of Appeal erred when they failed to consider that the Respondent being very literate and fluent in the English language was given all the opportunity to read the content of the deed of assignment to know what he was signing and in whose favour he was signing the document."

My Lords, it is my humble view that, the formulation of ground (b) of the grounds of appeal, in the first place, is neither borne out of the evidence on record, nor is it backed by the conclusion reached by the Court of Appeal in the entirety of their judgment. It is not the decision of the Court of Appeal that the Respondent and the Respondent's father signed the deed of assignment purportedly executed in 2009. The decision of the Court of Appeal, however, should be understood to say that notwithstanding that the deed of assignment executed in 2009 was not or could not have been signed by the Respondent herein, the signature on the said deed of assignment is the Respondent's signature. It was in this light that the learned Justices of the Court of Appeal set out on an enquiry and concluded at page 22 of their judgment (**found at page 66 of Volume 3 of the ROA**) as follows:

> "The question then is how come the names of the plaintiff [Respondent herein] and the 1st Defendant [Appellant herein] appear on the first page of the document whereas the signatures are truly those of the plaintiff and his father? The answer we think, is found in the testimony of the plaintiff thus, though he and the father signed the document, the front pages had been changed. We are inclined to believe this case of the plaintiff [Respondent herein]. We think that, very much characteristic of the 1st defendant [Appellant herein], if the events surrounding Exhibit TDC 1 are anything to go by she manipulated Exhibit 2 (D1 and D2) to make it appear that it was a duly executed single document which in fact was not.

By her manipulation, the document told a lie of itself and was presented to deprive the plaintiff his due."

In the light of the preceding clear statement and conclusion by the Court of Appeal, the argument canvassed in ground (b) of the grounds of appeal, in my humble view, does not even arise.

[8.3]. My Lords, it is noteworthy that the instant appeal throws an invitation to this Honourable Court to interfere with concurrent findings of the two Courts below. In the circumstance, the authorities enjoin this Court to be slow in so interfering unless it is clearly demonstrated by the Appellant that the concurrent findings are perverse or have resulted in some blunder which this Honourable Court, as a second appellate Court, has been called upon to undo. In **ACHORO and Another v AKANFELA and Another [1996-97] SCGLR 209**, the Supreme Court held in holding (2) as follows:

"[I]n an appeal against findings of facts to a second appellate court like …[the Supreme Court], where the lower appellate court had concurred in the findings of the trial court, especially in a dispute, the subject-matter of which was peculiarly within the bosom of the two lower courts or tribunals, this court would not interfere with the concurrent findings of the two lower courts unless it was established with absolute clearness that some blunder or error resulting in a miscarriage of justice, was apparent in the way the lower tribunals had dealt with the facts. It must be established, for e.g., that the lower courts had clearly erred in the face of a crucial documentary, or that a principle of evidence had not been properly applied; or, that the finding was so based on erroneous proposition of the law that if that proposition be corrected, the finding would disappear…It must be demonstrated that the judgments of the courts below were clearly wrong."

See also, **Gregory v Tandoh [2010] SCGLR 971 at 975**.

It is my respectful view that, the Appellant herein has not made out a case to warrant an interference by this Court with the concurrent findings of the two courts below.

[9] CONCLUSION:

The appeal fails in its entirety and the judgment of the Court of Appeal dated the 17th November, 2022 is hereby affirmed. The appeal is hereby dismissed.
Pursuant to the powers of the Supreme Court in Article 129 (4) of the 1992 Constitution, the evidence on record and admissions of the parties, this Court orders the Respondent to refund the sum of £10,000 paid by Appellant on behalf of the Respondent in the course of the circumstances that led to this dispute.

The Respondent is to pay the cedi equivalent of £10,000 at the exchange rate of GH₵20.10 ascertained as the Bank of Ghana interbank rate amounting to the sum of GH₵ 201, 000.00.

Interest is to run on this sum from this date of judgment being 19th March, 2025 up to the date of final payment.

(SGD.) S. K. A. ASIEDU
(JUSTICE OF THE SUPREME COURT)

(SGD.) **G. SACKEY TORKORNOO (MRS.)**
(CHIEF JUSTICE)

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

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

(SGD.) **Y. DARKO ASARE**
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