**ELIZABETH NUTAKOR & DANIEL NUTAKOR**

*(PLAINTIFFS)*

**vs.**

**ABENA NUTAKOR & MOSES NUTAKOR**

*(DEFENDANTS)*

[COURT OF APPEAL, KUMASI]

CIVIL APPEAL NO: HI/33/2022 DATE: 22ND JUNE, 2023

**COUNSEL**

ENOCH KWABENA AMOAH ESQ. FOR 2ND DEFENDANT/APPELLANT.

KWAME ADOFO ESQ. FOR 2ND PLAINTIFF/RESPONDENT.

**CORAM**

SUURBAAREH, J.A (PRESIDING)

BAAH, J.A

BAIDEN, C.E.E, J.A

**JUDGMENT**

**BAAH, J.A**

## BACKGROUND

The 1st plaintiff/respondent is the mother of late Emmanuel Nutakor, the properties of who’s toils in life forms the basis of the suit resulting in this appeal. The 2nd plaintiff/respondent is a child of late Emmanuel Nutakor. The plaintiffs/respondents, hereafter respondents, sued out a writ of summons in the Circuit Court, Kumasi, against the defendants who were the administrators of the estate of Emmanuel Nutakor. Emmanuel Nutakor died intestate and was possessed of some properties. Respondents sued as beneficiaries of the intestate estate of late Emmanuel Nutakor.

## RELIEFS OF RESPONDENTS

The reliefs sought by respondents at the court below are as follows:

* 1. *An order removing the defendants as administrators of the intestate estate of Emmanuel Nutakor (deceased).*
  2. *An order of account directed at defendants to render accounts of the intestate estate of Emmanuel Nutakor of which they are administrators.*
  3. *An order restraining the 1st defendant from dissipating any property in the said intestate estate pending the determination of the suit.*
  4. *An order of recovery of amount due the estate arising out of the unlawful act of the 1st defendant.*

## CASE OF RESPONDENTS

According to respondents, letters of administration in respect of the estate of Emmanuel Nutakor were granted to the defendants and the widow, Veronica Acheampong of blessed memory. The defendants took charge of the estate and subsequently held a family meeting at which the estate was distributed to the respective beneficiaries. The defendants however allegedly failed to vest the distributed estate in the beneficiaries. The 1st defendant also charged for solely managing the estate without accounting to the other beneficiaries or the appellant, who allegedly failed to take the necessary steps to protect the estate.

Respondents considered defendants’ actions as amounting to a breach of their duties as administrators. They sought the court’s assistance in completing the administration and ensuring that 1st defendant accounted for her administration of the estate.

## CASE OF APPELLANT

Defendants at the court below filed separate entry of appearances as well as separate statements of defence. Since it is only the second defendant who decided to appeal, it is his statement of defence that is relevant at this moment.

In his four-paragraphed statement of defence, the second defendant, hereafter appellant, denied the averments of the respondents and contented that he did “*everything possible to protect the estate of the late Nutakor but it is rather the intransigent conduct of the 1st defendant which hampered the completion of the distribution of the estate.’’*

In paragraph 4 of the statement of his defence, he averred:

“*The 2nd defendant says he has no objection to the Honourable Court granting the reliefs as endorsed on the writ of summons.*’’

## JUDGMENT OF TRIAL HIGH COURT

After a plenary trial, the High Court in its judgment dated 26 June 2020, upheld part of the claims of respondents and:

1. *Ordered the removal of the then defendants as administrators of the estate of Emmanuel Nutakor. In their place, the 2nd respondent, Daniel Nutakor, and the Registrar of the trial court, George Amanfo Boateng, were appointed administrators.*
2. *Held that since Veronica Acheampong who was the surviving spouse and who had no child with the deceased was dead at the time of the judgment, and since she had already received the full uncompleted building at Kotei, which property had been further developed, that property was to vest in her estate or family as her share of the estate.*
3. *The court re-distributed the estate in a manner deemed compliant with the Intestate Succession Law.*
4. *An order for the 1st defendant to repay the loan of GHC10,000.00 for which she mortgaged plot no. 7A, Kotei, failing which her share of the estate was to be used to defray the debt in order to remove the encumbrance on the said property.*

## NOTICE AND GROUNDS OF APPEAL

Dissatisfied with the decision of the trial court, the appellant (2nd defendant) filed a notice of appeal against the entirety of the judgment, based on the following grounds*:*

1. *That the court below erred in removing the appellant as administrator of the estate of the late Emmanuel Nutakor.*
2. *That the court below erred in ordering distribution of the estate of the late Emmanuel Nutakor in a manner inconsistent with the provisions of*

*P.N.D.C.L. 111*

1. *That the court below erred in ordering that an uncompleted building which forms part of the estate of the late Emmanuel Nutakor and was given to the surviving spouse should be treated as representing her share of the entire estate.*
2. *That the court below erred in ordering that the matrimonial house be vested in the surviving children.*
3. *That the court below erred in ordering that only a portion of the estate of the late Emmanuel Nutakor should be distributed in accordance with P.N.D.CL 111.*
4. *That the court below erred in ordering that the surviving spouse’s share of the estate of the late Emmanuel Nutakor in respect of a plot at Kotei and a printing press at Asafo should be added to the share of the family and surviving parent of the late Emmanuel Nutakor.*
5. *That the court below erred in ordering the discharge of an alleged mortgage over plot 7A, Kotei by paying up only an alleged loan against which the alleged mortgage was secured without ordering accounts to be render (sic) on the loan and benefits derived from the loan by the 1st defendant.*
6. *That the judgment is against the weight of evidence on record.*

No additional grounds were filed as indicated in the notice of appeal*.*

**Reliefs sought by Appellant.**

By way of reliefs, appellant sought (a) an order reinstating him as an administrator while upholding the removal of 1st defendant as administrator, (b) an order reversing the distribution conducted by the court below, (c) an order requiring the 1st defendant to account to the remaining administrators for her stewardship as co-administrator of the estate of late Emmanuel Nutakor and (d) an order annulling a purported sale of Kia pickup with registration number AS 7557-X by the 1st defendant.

## AN APPEAL AMOUNTS TO A REHEARING

Rule 8 (1) of the **Court of Appeal Rules, 1996 (C. I. 19)** makes it clear that an appeal amounts to a rehearing. In **Tuakwa v Bosom (2001-2002) SCGLR 61,** the court per Sophia Akuffo JSC (as she then was), held (at p 61):

*“An appeal is by way of re-hearing, particularly where the appellant alleges in his notice of appeal that the decision of the trial court is against the weight of evidence. In such a case, although it is not the function of the appellate court to evaluate the veracity or otherwise of any witness, it is incumbent upon an appellate court, in a civil case, to analyse the entire record of appeal, take into account the testimonies and all documentary evidence adduced at the trial before arriving at its decision, so as to satisfy itself that, on a preponderance of probabilities, the conclusions of the trial judge are reasonably or amply supported by the evidence…’’*

In the case of **Koglex Ltd (No.2) v Field [2000] SCGLR 175, SC**, Acquah JSC (as he then was), stated the principles upon which a second appellate court may set aside concurrent findings of a first appellate court, of the findings of a trial court. These principles, which are equally applicable to a trial court’s findings by a first appellate court, as in the instant case, are:

* 1. *“Where the said findings of the trial court are clearly unsupported by evidence on record; or where the reasons in support of the findings are unsatisfactory….*
  2. *Improper application of a principle of evidence… or, where the trial court has failed to draw an irresistible conclusion from the evidence….*
  3. *Where the findings are based on a wrong proposition of law; where the finding is so based on an erroneous proposition of law, that if that proposition is corrected, the finding disappears; and*
  4. *Where the finding is inconsistent with crucial documentary evidence on record…’*

To do justice to this appeal, we shall conduct a wholistic enquiry into the crevices of the relevant evidence and the applicable law, to determine the correctness of the appealed decision. A scrutiny of the grounds of appeal however shows that most of the grounds of appeal relied on by appellant fell short of the requirements of the rules governing this court.

Rule 8 (2) of the **Court of Appeal Rules, 1996 (C.I 19)** states:

“*Where the grounds of an appeal allege misdirection or error in law, particulars of the misdirection or error shall be clearly stated*.’’

The above rule has been elucidated in several cases. In **Susan Bandoh v Dr Mrs Maxwell Apeagyei-Gyamfi & Alex Gyimah [2019] DLSC,** Marful-Sau, JSC held:

“*On examining the amended notice of appeal, I note that twelve (12) out of the fifteen grounds, namely 1,2,3,4,5,6,7,8,9,10, 12 and 13 alleged errors of law and misdirection, but the appellant failed to particularize the said errors and misdirection, to enable this court effectively to address the said grounds as required by law. The errors and misdirection cannot also be inferred sufficiently from the wording of the said grounds. Accordingly, the said twelve (12) offensive grounds of appeal will be set aside as they are non-compliant with the rules of this Court,’’*

In **Addae Aikins v Daniel Dakwa [2013] 58 GMJ 187,** it was held per Ayebi, J.A:

“*The appellant’s counsel has patently failed to comply with the rules by stating the particulars of error. Stating of the particulars of error in appropriate circumstances is not without benefit to the parties and the court. Like pleadings, it gives notice of the appellant’s ground of dissatisfaction of the trial judge’s conclusion on the particular issue; it defines the scope of that dissatisfaction and then gives direction in a logical manner, arguments proffered. That being the case in the instant appeal as regards grounds (2) to (4), I will deal with this appeal on the omnibus ground in ground one”.*

It was equally held in ***Zabrama v Segbedzi [1991] 2 GLR 221,*** per Kpegah J.A: *“(1) to state in a notice of appeal, as did the appellant's counsel, that "the trial judge misdirected himself and gave an erroneous decision" without specifying how he misdirected himself, was against the rules and rendered such a ground of [p.222] appeal inadmissible. The implications of rule 8*

*(2) and (4) of the Court of Appeal Rules, 1962 (L.I. 218) was that an appellant after specifying the part of a judgment or order complained of, must state what he alleged ought to have been found by the trial judge, or what error he had made in point of law. It did not meet the requirement of those rules to simply allege "misdirection" on the part of the trial judge. The requirement was that the ground stated in the notice of appeal must clearly and concisely indicate in what manner the trial judge misdirected himself either on the law or on the facts. The rationale was that a person who was brought to an appellate forum to maintain or defend a verdict or decision which he had got in his favour should understand on what ground it was being impugned. Therefore, as the ground of appeal alleging the misdirection failed to meet the required standard, it was clearly inadmissible.”*

See also**- Oduro v Okyere [2014] 69 GMJ 105, CA; Nasib Dahabieh v S.A. Tarqui & Brothers [2001-2002] SCGLR 498**

**Alex Onumah Coleman & Anor v Newmont Gh., Gold v Emmanuel Atsiatu v Newmont Gh., Gold v Isaac Kongetey (Consolidated), Civil Appeal No. J4/67/2019, delivered 10 March 2021 and Tamakloe & Partners v Gihoc Distilleries Co Ltd [2019] DLSC 6580.**

A careful examination of grounds (i) to (vi) show that even though the appellant allege error on the part of the trial judge, no particulars were provided of the said errors. We find the said grounds to be in violation of Rule 8 (4), C.I 19, and hereby strikes them out.

The appeal shall be determined upon ground (vii), and the omnibus ground, that is ground (viii). That was because, when an appellant properly invokes the omnibus ground, the court was obliged to review the entire record to determine as to whether the decision was in accord with the tide of the evidence.

The duty of an appellate court to review the entire record to arrive at its decision, despite imperfection of the grounds of appeal, has long been recognized as a means of ensuring substantial justice. It also ensures that the sins of counsel of a party are not visited on the party. The approach of the court in such circumstances can be discerned from the three cases cited below.

In **Tamakloe & Partners v Gihoc Distilleries Co. Ltd. [2019] DLSC 6580,** it was held per Amegatcher, JSC:

*“The authorities are legion that it is incumbent on the appellate court to analyse the entire record of appeal, taking into consideration the totality of the evidence on record, both oral and documentary, so as to satisfy itself that on the preponderance of the probabilities, the conclusions of the trial court and the 1st appellate court, were reasonably and amply supported by the evidence adduced at the trial.”*

In **Sampson Obeng & Kwame Mensah v Kwabena Mensah [2019] DLSC 6579** at pages 5 & 6, the apex court per Gbadegbe JSC held:

“*The complaint made by the defendants which finds favour with us reiterates the need for appellate judges to appreciate that their jurisdiction is one of correction, which requires them to interrogate proceedings beyond the grounds of appeal in order to uphold their onerous duty of deciding cases according to law. We observe the emergence of an unhappy trend in appeals before us of the learned justices of the Court of Appeal shying away from utilizing the extensive power conferred on them under the Rules to interrogate appeals before them beyond the grounds of appeal raised by the parties.*

**Owusu-Domena v Amoah [2015-2016] 1 SCGLR 790** at page 799:

“*The sole ground of appeal that the judgment is against the weight of evidence, throws up the case for a fresh consideration of all the facts and law by the appellate court. We are aware of this court’s decision in Tuakwa v Bosom [2001-2002] SCGLR 61, has erroneously been cited as laying down the law that, when an appeal is based on the ground that the judgment is against the weight of evidence, then, only matters of fact may be addressed upon.*

*Sometimes, a decision on facts depends on what the law is on the point or issue. An even the process of finding out whether a party has discharged the burden of persuasion or producing evidence is a matter of law. Thus, when the appeal is based on the omnibus ground that the appeal is against the weight of evidence, both factual and legal arguments could be made where the legal arguments would help advance or facilitate a determination of factual matters.*

*This court’s decision in Attorney General v Faroe Atlantic Co Ltd [2005-2006] SCGLR 271 per Georgina Wood JSC (as she then was) cited by counsel for the respondent, is apt on the point.*’’

## APPROACH

After a review of the evidence, it was decided to deal with the appeal per the relevant issues raised, in this order:

1. Capacity of Benita Yeboah, next of kin of second respondent.
2. Jurisdiction of the trial court in relation to the reliefs sought.
3. Propriety of removal of appellant as administrator of the estate of the late Emmanuel Nutakor.
4. Whether or not the estate of late Emmanuel Nutakor ought to be redistributed under PNDL 111.

Before that however, it was decided to briefly dispose of two issues counsel for the appellant raised in his submission, but which have little or no relevance to the substance of the appeal.

### Jurisdiction of the court.

Counsel for the appellant contended that since the dispute covered *inter alia,* a limited liability company, the trial circuit court, Kumasi (K.M.A) had no jurisdiction to adjudicate the case. According to him, ‘court’ as defined in section 2 and schedule 1 of the **Companies Act, 1963 (Act 179)** and currently in section 302 of the **Companies Act, 2019 (Act 992**), is the High Court. He relied on **Dolphyne (No.2) v Speedline Stevedoring Co. Ltd. [1996-97] SCGLR 514**.

It was his submission that since the case involved the ‘transfer’ of the assets of a company, it was the High Court, and not the Circuit Court, which had jurisdiction over the case. He continued that since the assets of the NUUT Company could not form part of the estate of Emmanuel Nutakor, the Circuit Court had no jurisdiction to distribute the assets of the company under the Intestate Succession Law.

The issue as to whether the assets of NUUT Company could be distributed under PNCL 111 has been dealt with below.

The issue of the jurisdiction of the Circuit Court has no merit. The dispute as to whether the court below had jurisdiction in the case had nothing to do with transferring assets of the company by any means envisaged and regulated by Act 992.

It was a simple administration case by which the estate was distributed to the beneficiaries. It was only after the administration that the beneficiaries may commence the necessary procedures to effect change of name or transfer of shares into the names of the beneficiaries who had been bestowed with rights in the company.

At the time of the suit, the only relevant jurisdictional issue was subject matter, as to the value of the assets of the estate, including the value of the shares of the deceased in NUUT Company.

When it comes to subject matter jurisdiction, a party who alleges that the value of the subject matter exceeds the jurisdiction of the Circuit Court, is required to raise objection to same under section 42 (2) of the **Courts Act, 1993 (Act 459).** Parties may by consent under section 42 (3) of Act 459, confer jurisdiction on the court despite the amount or value of the subject matter being above the jurisdiction of the court.

Where no objection is raised or no consent is given but the court proceeds with the case, the parties are deemed to have *acquiesced* to the court’s jurisdiction. They are thereafter *estopped* from complaining about the jurisdiction in terms of the amount or value of the subject matter. The accusations of appellant through his counsel, was on that score merit-less.

### Failure of court to order 1st defendant to account.

The evidence at the court below was that the 1st defendant used a property of the estate, that is plot No. 7A, Kotei, as security for a loan of GHC10,000.00. There was no doubt that the 1st defendant violated the law on administration and breached her duties as a trustee of the beneficiaries. She engaged in personal profit from the estate.

The trial court dutifully ordered her to pay up the loan for the property to be redeemed. Failing that, her share of the estate was to be reduced to facilitate redemption of the property.

The norm is for the grantor of a loan to levy interest on the loan for the grantee to pay. In this instance, the 1st defendant was to pay the interest charged on the loan of GHC10,000.00.

Appellant who sought no relief for accounts from the 1st defendant could not properly appeal the court’s decision on that issue. He could not in this appeal, act as a proxy of the respondents. Under the *jus tertii* rule, the appellant could not canvass the case of respondents who decided not to appeal the trial court’s decision.

In our view, a requirement on 1st defendant to account for profits she made on the loan is to engage in unnecessary trivialities, especially where the appellant had not sought a relief to that effect at the court below, and the respondents who sought a relief to that effect did not appeal against the decision of the court on that matter.

It was *de minimis,* and an order for accounts on the loan would have required adjournments and most probably, evidence and cross examination. It was not worth it, taking into account the fact that the distribution of the estate or its vesting had unduly delayed, resulting in distress to the beneficiaries. We reject the invitation to order accounts as being without foundation and also as being a profitless issue.

## H. CAPACITY OF BENITA YEBOAH AS NEXT OF KIN OF 2ND RESPONDENT (DANIEL NUTAKOR)

Counsel for appellant asserted that Benita Yeboah, mother of 2nd respondent who claimed to be her next of kin, only tendered a certificate of disability executed by counsel for the 2nd respondent, without any written consent to act as next of kin of 2nd respondent, as required by the rules of court.

Order 5 rule 2 of C.I. 47 deals with the appointment of next friend or guardian *ad litem*. It provides:

### “Appointment of next friend or guardian ad litem

1. *(1) No order for the appointment of a next friend or guardian ad litem shall be necessary except where any of these Rules provides.*
   1. *Except where a friend or guardian ad litem has been appointed by the Court, the name of a person shall not be used, and a person shall not be entitled to act, in any cause or matter, as next friend or guardian ad litem of a person with disability unless the lawyer of the person with disability has filed in the registry*
      1. *a written consent of the person proposing to be next friend or guardian ad item to act in that capacity; and*
      2. *a certificate made by the lawyer for the person with disability certifying that the lawyer knows or believes the person to whom the certificate relates is a person with disability, and that the person named in the certificate as next friend or guardian ad litem is a proper person to act as such and has no interest in the cause or matter adverse to that of the person with disability.*
   2. *Where there is any doubt or dispute as to whether a person is a person with disability, the Court shall determine that issue and make an appropriate order.*
   3. *Where a person has been or is next friend or guardian ad litem of a person with disability in any proceedings, no other person shall be entitled to act as next friend or guardian ad litem in those proceedings, unless the Court makes an order appointing that person as friend or guardian in substitution for the person previously acting in that capacity.*
   4. *The Court may for good cause remove a person acting as next friend or guardian ad litem and appoint another person in that person's place.*
   5. *If a person acting as next friend or guardian ad litem dies or for some good reason is unable to continue the proceedings on behalf of the person with disability, the Court shall appoint another person to act as next friend or guardian ad litem to continue the proceedings.*

The issue here is not a total failure to comply with the law. There was partial non- compliance. At page 309 of the record of appeal is a certificate of disability filed by the 2nd respondent’s counsel, in compliance with Order 5 r 2 (2) (b), C.I. 47.

What is absent is the consent of the next of kin as required under r 2 (2) (a), C.I. 47.

In the instant case, the appellant (a) never challenged the *locus standi* of the next of kin in his pleading (b) he did not raise the *locus standi* of the next of kin as a preliminary issue and (c) he took significant steps and participated in the trial to the end, despite the reservations about the *locus standi* of the next of kin.

In the case of **Quaiko v Mobil Oil (Ghana) Ltd [1977]1 GLR 461**, the High Court had to determine the effect of non-compliance with Order 16 r 19, L.N. 140A, which is *in pari materia* with Order 5 r 2 (2), C.I. 47. The High Court per Griffiths-Randolph J, held:

“(1*) Although under Order 16, r. 19 of L.N. 140A, the filing of a signed written authority by the next friend of an infant was a necessary pre- requisite to the institution of an action on behalf of an infant, the omission to file that document at the commencement of the suit was not always fatal to the case because the real concern of the defendant in such an action, was to ensure that there was a person with full legal capacity responsible for the propriety of the action who would give security for costs to the defendant. Flight v. Bolland (1828) 4 Russ. 298 and In re Brocklebank; Ex parte Brocklebank (1877) 6 Ch.D.358, C.A. cited.*

*(2) An irregularity in the issue or service of a writ of summons or an informality connected therewith, might be waived by the entry of an unconditional appearance. Consequently, having entered an unconditional appearance, followed by the statement of defence, the second defendant was deemed to have waived the irregularity arising from non-compliance with Order 16, r. 19 of L.N. 140A. In re Brocklebank; Ex parte Brocklebank (supra) cited.*’’

The insignificance of the failure to file a consent notice; besides the *acquiescence* of the appellant, is by reason of the common law and customary status of the next of kin. As mother of 2nd respondent, Benita Yeboah is his guardian by *nature* and *nurture*. According to W. C. Ekow Daniels: ***The Law on Family Relations in Ghana (2019, Black Mast, Accra, 267)***:

*“Parents are guardians by nature and nurture of all children born to them. As Lord Chancellor King explained: “the father is entitled to the custody of his children during infancy, not only as guardian by nurture, but by nature.’’*

The author continues*:*

*“Under the old common law, the right of the father over his children was absolute even against the mother except that on his death, the mother was acknowledged to be the guardian of the surviving children by nature and for nurture.’’*

Under our laws, both sexes are deemed equal. Accordingly, the position of the mother as guardian by nature and nurture is as weighty as that of the father. The right of a child to grow with the parents, and the parents’ duty and responsibility to the child has, been statutarised in sections 5 and 6 respectively, of the **Childrens’ Act, 1998 (Act 560).**

As guardian by nature and nurture, the next of kin is or was a trustee vis-à-vis property that the ward (infant) had or has a legal or beneficial interest in. In **Mathew v Brise (1851) 14 Beav. 341,345**, it was held per Lord Romilly M.R:

“*The relation of a guardian and ward is strictly that of a trustee and cestui sue trust…It is a peculiar relation of trusteeship…. A guardian is not only a trustee of the property, as in an ordinary case of a trustee, but he is also the guardian of the person of the infant, with many duties to perform, such as to see to his maintenance and education*.’’

Supplemental to the above is Order 66 rules 50 and 51, C.I 47, which empowers the court to grant of letters of administration to the guardian, on behalf of a minor.

As trustee of the property of an infant or a legally disabled person, a guardian has capacity to sue or be sued without joining the beneficiary as a party. Order 4 rule

13 of the **High Court (Civil Procedure) Rules, 2004 (C.I.47),** on “*Representation of beneficiaries by trustees*’’, accordingly provides:

“(*1) Trustees, executors or administrators may sue and be sued in their capacity as such without joining any of the persons who have beneficial interest in the trust or estate.*’’

Benita Yeboah as guardian of ward Daniel Nutakor, could have sued by herself in respect of the ward’s beneficiary interest in the father’s estate, without the need of being appointed the next of kin.

The appointment as a next of kin was a superfluous act, absent which her *locus standi* remained intact.

As gainfully expatiated in the case of **Quaiko v Mobil Oil (Ghana) Ltd** (*supra*), an omission to file a notice of consent is not fatal, so long as the next of kin by implied consent, conducted the case without any objection from the opposing side. A next of kin, who knowing his status, duties, and obligations, proceeds to the conduct of a case, is deemed to have waived his right to consent, or refusal to consent to act as next of kin.

If the next of kin who is required to file the notice of consent to act as such fails to file the consent, but proceeds to act in that capacity, he should be deemed to have consented to so act by implication or by conduct. He will thereafter be *estopped* by conduct from denying that he consented to act as next of kin. Any party who partakes in the proceedings in the face of the non-compliance would be deemed to have waived his right to object to the *locus standi* of the next of kin. He would equally be *estopped* by his *acquiescence*.

It is our decision that the non-compliance was also cured by Order 81, C.I.47. Non-compliance with the rules of C.I. 47, cannot void the proceedings thereunder, except where the non-compliance in addition amounted to breach of

(a) a provision of the constitution (b) a statute (c) the rules of natural justice, or

(d) went to jurisdiction. To that end, the apex court in **Republic v High Court, Accra, ex parte Allgate Co. Ltd., Amalgamated Bank Limited, Interested Party) [227-2008] 2 SCGLR 1041,** per Date-Bah, JSC held, (holding 3):

“*Where there has been non-compliance with any of the rules contained in the High Court (Civil Procedure) Rules,2004 (CI 47), such non- compliance is to be regarded as an irregularity that does not result in nullity, unless the non-compliance is also a breach of the Constitution or a statute other than the rules of court or the rules of natural justice or otherwise goes to jurisdiction*.’’

The same principle has been elucidated in several cases, including: **Opoku & Ors (No2) v Axes Co Ltd (No2) 2 SCGLR 1214** and **Boakye v Tutuyehene [2007-2008] 2 SCGLR 970.**

The arm of the appeal founded on the *locus standi* of 2nd respondent’s next of kin was patently merit-less.

## REMOVAL OF APPELLANT AS ADMINISTRATOR OF THE ESTATE OF EMMANUEL NUTAKOR

The key complaint of appellant is against the order of the trial court removing him as an administrator. In deciding on the relief to remove the appellant and the then 1st defendant as administrators, the trial court made the following findings of fact, based on the admissions of 1st defendant under cross examination (found at page 302 of the record of appeal):

* 1. That 1st defendant was honest enough to unambiguously admit that the administrators failed in their duties.
  2. That the administrators have benefited from the estate.
  3. That the duties of administration had not been competently performed by the administrators.
  4. That the administrators had failed to distribute the estate or vest it in the beneficiaries.
  5. That whereas appellant alleged that 1st defendant made it impossible for him to perform his duties as administrator, the 1st defendant equally accused the appellant as the one who impeded her work as an administrator.

At page 303 of the record of appeal, the trial court found as a fact that the administrators were dishonest with the court in the cause of the grant of letters of administration. That was because:

1. Whereas the inventory of the estate put its value at GHC8,000.00., the administrators used the letters of administration to withdraw from the SGSS Bank, an amount of GHC11, 230.00 belonging to the estate.
2. As of 2nd November 2007, when the letters of administration were grated, the jurisdiction of the Circuit Court which made the grant was GHC10,000.00. It was the contention of the trial judge that if the then applicants had disclosed the real value of the estate, especially the bank balance to the court, it would have declined the grant for lack of jurisdiction. The concealment of the material fact; that is the value of the estate, in particular reference to the bank balance, was in the court’s view, sufficient ground to revoke the grant of letters of administration to the then defendants.

It was on the strength of the above that the court ordered the removal of the then defendants as administrators.

In a long winding critique of the trial court’s decision *supra,* counsel for the appellant contended, *inter alia*:

* 1. That since NUUT Company Limited as a limited liability company is a separate legal entity with its own separate legal existence, the trial judge erred in considering its bank account, including the GHC11,230.00 withdrawn from SGSSB and other assets as forming part of the estate of late Emmanuel Nutakor.

That since the NUUT Company Limited is separate from the late Emmanuel Nutakor, the assets could not be lumped together.

He contended that if the late Emmanuel Nutakor had any interest in NUUT Company Limited at all, it was his shares, and not the assets of the company.

* 1. Consequently, failure to disclose the assets of NUUT Company Limited as forming part of the assets of late Emmanuel Nutakor could not have amounted to concealment of a material fact by the administrators as the trial judge held.
  2. That from the preceding, the trial judge could not have declared the assets of NUUT Company Limited as residue of the estate of late Emmanuel Nutakor, and further distribute same under the Intestate Succession Act, 1985 (PNDCL 111).

## J. DETERMINATIONS

The appeal based on the ground of alleged wrongful removal of the appellant as an administrator was full of factual twists, as well as legal and policy misconceptions and contradictions.

1. The fact that NUUT Company Limited belonged to the late Emmanuel Nutakor was common cause. It was therefore strange for counsel for appellant to waste precious time and energy in a fruitless pursuit of an issue that was never in contest.

In the evidence of appellant’s attorney, John Nutakor, appearing at page 144 of the record, he states *inter alia*:

“*The estate of my brother comprised of a house at Ayigya and another one at Kotei, a half plot at Kotei,* ***a printing press business at Asafo****, a Kia Truck, two Nissan cars, two other cars.’’*

That piece of evidence corroborated the pleadings of the plaintiffs at the court below (paragraph 16 of plaintiffs’ statement of claim) and their evidence (2nd plaintiff’s evidence at page 98 and 1st plaintiff’s evidence at page 124 of the record).

Unfortunately, the regulations or articles of NUUT Company Limited were not tendered to show the structure of the shares. However, the pleadings and evidence of both respondents and the appellant himself indicates that it was a sole proprietorship. That was because, both sides testified that the company belonged to the late Emmanuel Nutakor.

Furthermore, it was never contested that NUUT Company Limited was part of the assets inventoried for the grant of letters of administration. It was because NUUT Company Limited was inventoried as an asset of late Emmanuel Nutakor that the letters of administration were used as a basis to withdraw a sum of GHC11, 230.00 from its account with the SGSS Bank.

1. Since NUUT Company Limited is a company that was owned by late Emmanuel Nutakor, it was his asset that fell to be distributed under the power of the letters of administration. Upon his death, the shares, and assets of the company that were solely owned by Emmanuel Nutakor, devolved onto the beneficiaries of his estate. It was upon them to decide the future running of the company. They had the right and power to continue the running of the company, alienate it wholly or partly or even liquidate it and dispose of its assets. A director of the company such as the appellant, or any other officer had no right to interfere with the rights of the beneficiaries.

The principle of legal personality of a company, statutarised in various Company Acts, elucidated in the landmark case of **Salomon v Salomon (1897) A.C. 22** and domesticated prominently in **Morkor v Kuma [1998- 99] SCGLR 620, Quartson v Quartson [2012] 2 SCGLR 1077**, *etcetera*, had no relevance to this case.

Shares in a company are assets that are transferrable. Shares are the property of the shareholders which may devolve on their estates by testacy or intestacy. Since by all indications NUUT Company Limited is a sole proprietorship, the shares thereof devolved to the estate of the shareholder.

1. As the NUUT Company was solely owned by late Emmanuel Nutakor, and was inventoried to procure the letters of administration, it was part of his assets. The trial judge was right in so treating the company. The administrators in their application had the duty to state the actual or good faith values of the assets of the company.

Since the appellant was a director, it should have been easy to ascertain at least, the cash at the banks in the name of the company. Dishonesty led the applicants to understate the values of the estate as GHC8,000.00, thereby paying far less duty or fees than was required.

For years, some estate applicants have indulged in understatement of the values of their estates, with the tacit connivance of some court officials, and effectuated by dereliction of oversight duties by some judges.

Since the established facts show that the applicants withheld material facts that impacted the jurisdiction of the court, their conduct was dishonest.

The dismissive attitude of counsel of the appellant regarding the charge of dishonesty exposed his failure to uphold his duty as an officer of the court, who had to ensure that the court was not deceived. He could not trivialize what was not trivial.

The requirement to state honestly and accurately, the values of the assets of the estate is a legal duty bounden on every applicant. To that end, section 70 of the **Administration of Estates Act (Act 63**), provides:

“**Duty of Personal Representative as to Inventory**.

*The personal representative of a deceased person shall, when lawfully required so to do, exhibit an oath in the court a* ***true*** *and* ***perfect*** *inventory and account of the estate of the deceased, and the court shall have power as heretofore to require personal representatives to bring in the inventories*.’’

Order 66 rule 9 (3) of C.I 47 also provides:

“*The applicant shall make a declaration of the value of the property of the deceased and the Court shall as correctly as the circumstances allow ascertain the value*.’’

It can hardly be said in good faith that the absurd values deliberately assigned to the inventories by the appellant and the 1st defendant, were “*true and perfect’’* values.

A failure to “*truly and perfectly*’’ state the values of the assets amount to a breach of the law. The deliberate presentation of patently falsified and undervalued figures by an applicant, amounts to a contumacious illegality and an act of contempt of court. Counsel for applicants who prepare the application and or led its prosecution, would be liable for professional misconduct. The Registrar or court official who passes and endorses it, and the Judge who grants it, without calling for proper investigation or assessment and rectification, would have committed dereliction of duty.

In the recent case of **Republic v High Court, Tema, ex parte 1. Yaw Godwin Dorgbadzi 2. Monique Tetteh Dorgbadzi (Applicants) And 1. Michelle Dapaah Tetteh 2. Garfield Lee Jr. (Interested Parties) (Civil Motion No. J5/08/2023, Dated 6 June 2023**), the apex court recounted an instance of undervaluation of an estate as follows (at page 17):

“*It does appear that, the Interested Parties herein, therein Applicants for the Letters of Administration substantially undervalued the properties mentioned in the inventory for obvious reasons. For example, where in this country, can a mission Hospital in Obuasi cost GHC60,000.00?Similarly, how can going concerns in the nature of educational institutions (schools) in Obuasi and elsewhere cost GHC35,000.00 and GHC25,000.00 respectively? What about the Deceased’s place of abode at H/No. 13, Bamboo Street, Community 20, Tema valued at GHC30.000.00? Is it not also very deceptive, that the money in the account of the deceased at the banks in the United States of America have not been stated?’’*

Based on the deceptions and dishonesty on the part of the applicants and their counsel in that case, the Supreme Court in the course of referrals for investigations and disciplinary action, stated at page 30 of the judgment: “2. *We further advice and urge the Hon. Chief Justice to cause investigations into the apparent devise by the Interested Parties herein to undervalue the estate of the deceased. Learned counsel who filed the application for and on behalf of the Interested Parties should be made to give explanation as to the basis of the valuations made in respect of the properties stated therein.*

1. *It is the considered view of this panel that, such an investigation will unravel the phenomenon that parties have been adopting to undervalue estate of deceased persons in respect of whose estate’s they apply for Letters of Administration…’’*

Similar to the instant case, the applicants (appellant and 1st defendant) and their counsel valued a house at Ayigya in Kumasi, another house at Kotei in Kumasi, a half plot in Kotei, a printing press business in Asafo, which at the time had not less than GHC11,000.00 cash in one bank (SGSS Bank), a Kia truck, two Nissan cars and two other cars, at a dismal sum of GHC8,000.00, with the sole intention of evading the proper payment of fees, duties or taxies.

Since taxes are levied under law, it is by the dictates of law and public policy, incumbent on a judge who chances on such conduct to take it up, upon application by a party to the case or a third party such as whistle blower, the Registrar or a court official, or even if by the court *suo motu*, and deal with the culprits where possible, such as refusing to grant to them probate or letters of administration, and where the grant has already occurred, revoking the grant and or referring the executors or administrators and their counsel to the appropriate body for investigation and sanction.

A long list of case lays bare the legal and public policy duty of the court to uphold the law. In **Network Computer System (NCS) Ltd v Intelsat Global Sales & Marketing Ltd [2012] 1 SCGLR 218,** the apex court held per Atuguba JSC:

“*A court cannot shut its eyes to the violation of a statute as that would be very contrary to its raison detre. If a court can suo motu take up the question of illegality even on mere public policy grounds, I do not see how it can fail to take up illegality arising from statutory infraction which has duly come to its notice.’’*

Similarly, it was held in **Michael Ankomah-Nimfah v James Gyakye Quayson &Ors (No2) 176 GMJ 458, SC per….:**

*“Indeed, no court, or agency of this Republic can or should be insensitive, aloof, indifferent and or unconcerned about an allegation of a violation of this sacred and basic law, let alone a subsisting or continuing violation.*

*Otherwise, it would be condoning a subversion of the constitution and sovereign will of the Ghanaian people in an irreparable way.*’’

See the following cases for elucidation of the same principle:

* 1. **Republic v High Court (Fast Track Division), Accra, ex parte: National Lottery Authority (Ghana Lotto Operators Association)- Interested Parties [2009] SCGLR 390.**
  2. **Anyimah III v Kodia IV [1962] 2 GLR 1**
  3. **Faroe Atlantic Co. Ltd v The Attorney General [2006] 1 GMLR 1 SC.**
  4. **Seraphim v Amua Sekyi [1971] 2 GLR 132, CA.**
  5. **Republic v High Court, Kumasi, ex parte Boateng [2007-2008] SCGLR 404.**
  6. **Adjei v Foriwaah [1981] GLR 378, HC.**
  7. **Gihoc Refrigeration & Household Products Ltd. (No 1) v Hannah Assi (No 1) [2007-2008] SCGLR 1.**
  8. **Board of Directors of Orthodox Secondary School of Peki v Tawlwa-Abbels [1974] 1 GLR 419.**

Since the administrators were trustees, they were required to act in good faith, both in their dealings with the court and the beneficiaries. In the instant case, for the benefit of the estate, but in violation of the laws on administration, the administrators faked the values of the estate to mislead the court, and succeeded in undermining the fiscal regime of the nation.

Appellants’ failure of the honesty test was substantial, and was sufficient grounds to revoke their appointments. The trial judge in removing the appellant as an administrator, upheld the fidelity of the law. The appellant who was caught red- handed in cheating the law, should have shut his mouth and gone home in peace, instead of the brazen complaint resulting in this merit-less appeal.

## L. GROUNDS FOR REMOVING ADMINISTRATORS

The three broad and well-known duties of administrators (personal representatives) are the following:

1. To collect in the assets of the estate.
2. To pay funeral, testamentary, and administrative expenses, all debts of the deceased, and tax for which they are liable; and to
3. Distribute the estate.

(see **Catherine Rendell*: Wills, Probate & Administration, Guildhall- Cavendish, London, p. 253;* Derick Adu-Gyamfi*: Handbook on Probate & Administration in Ghana, 2018, p. 90-92***)

In **Republic v High Court, Sekondi, ex parte Mensah & Ors [1994-95] GBR 491, SC**, it was held (holding ):

“*The duties of administrators did not include the right to possess and run an estate, whether the estate comprised a business or not. The administrator’s duties upon receipt of the letters of administration were to gather in the estate and distribute it to persons who were beneficially entitled. Those persons might include some or all of the administrators but did not detract from the primary function of the administrators.*’’

It was further held that the court may, if good reasons warrant it, revoke a grant made and to make a fresh grant to a competent person for the administration of the estate.

The trial judge in the instant case cited a number of relevant authorities to ground the decision to remove the appellant and the 1st defendant as administrators. We found it profitable to recount them here.

In **Letterstedt v Broers (1884) 9 App Cas. 371, at 386**, it was educatively held:

“*As soon as all questions of character are as far settled as the case admits, if it appears clear that the continuance of the trustee would be detrimental to the execution of the trusts, even if for no other reason than that human infirmity would prevent those beneficially interested, or those who act for them, from working in harmony with the trustee, and if there is no reason to the contrary from the intensions of the framer of the trust to give this trustee a benefit or otherwise, the trustee is always advised by his own counsel to resign, and does so. If, without any reasonable ground, he refused to do so, it seems to their Lordships that the court might think it proper to remove him.*’’

In the case of **Re Armah-Kwantreng (Decd); Armah-Kwantreng & Ors v Armah-Kwantreng & Ors [1968] GLR 311**, it was held per Campbell J:

“*The power of removal should be exercised in this case since it was clear that the continuance in office of the trustees would be detrimental to the trust. Dicta of Lord Blackburn in Letterstedt v. Broers (1884) 9 App.Cas. 371 at p. 386, P.C. applied.*

*Per curiam. The executor-trustees have opposed the application for their removal: It is not certain whether they were advised to relinquish the trust in view of this open friction and hostility. If they were not, I am of the opinion that it is to be regretted; if they were, and refused the advice, it is more to be regretted*.’’

In **Ennin v Ampah & Ors [1982-83] GLR 952**, it was held per Osei-Hwere J:

“*It is well known that an administrator derives his authority entirely from his appointment by the court and the grant cannot be recalled or revoked*

*without showing substantial grounds. Some of the normal grounds upon which the court will revoke a grant are (a) where a defect is disclosed in the grant, such as the grant having been obtained by fraud or surprise: see Harrison v. Mitchell (1731) 94 E.R. 767; and (b) where there is a cesser of the interest of the grantee*.’’

In, **In Re Agyepong (decd); Poku Abosi & Anor [1982-83] GLR 254,** this court held (holding 6):

*“A grant of letters of administration might be revoked if the person to whom, it was made was not entitled to it. A grant obtained by fraud, mala fide or by concealing information which should have been disclosed to the court might also be revoked.’’*

A synthetization of the law and the cases reveal that, the grant of letters of administration may be revoked for the following reasons:

1. Where the grantee was not entitled to the grant.
2. Where the grantee engages in fraud, surprise, acted *mala fide*, or violated a substantive law on administration, especially one involving dishonesty.
3. Where the continuance in office of the trustee would be detrimental to the execution of the trust, such as where the beneficiaries cannot harmoniously work with the trustee.
4. Where there is disharmony between the trustees as to affect the execution of their duties.
5. Where there has been dereliction of duty, incompetence or where the continuance of the trustee(s) would be detrimental to the trust.

In the instant case, the grantees were involved in fraud and breach of the law, by way of undervaluation of the inventoried assets. That act was sufficient grounds for the removal of the appellant as an administrator.

There were however further grounds upon which appellant could be removed as administrator. Firstly, the administrators were incompetent and negligent in their duties. As the case of ex parte Mensah (supra) and the writers indicate *supra*, the administrators were required to gather in the estate, settle funeral, testamentary and administration expenses, all debts of the deceased, pay taxes, and distribute the estate. The letters of administration (exhibit B), found at page 310 of the record, was granted on the 2nd of November 2007. The writ in this case was issued on 6 February 2014. That meant the estate had not been successfully distributed or vested seven years after the grant of letters of administration.

Instead of proceeding with their duties leading to vesting of the estate in the beneficiaries, they wrangled for years and left the estate in limbo, and the

beneficiaries in want and despair, until the action was commenced in 2014. The absence of efficiency, efficacy and responsiveness on the part of the administrators was evidence of incompetence.

Secondly, there was disharmony between the administrators, and between the administrators and the beneficiaries. Whereas the appellant accused the 1st defendant as the cause of the disharmony, the 1st defendant similarly accused the appellant.

Appellant who is the head of family failed to apply requisite leadership skills because he failed to resolve the conflict. He failed to bring his brother’s daughter (1st defendant) under control. He seemed helpless when she took sole charge of the estate and ran it as she wished. His belated prayer to be granted the opportunity to mend fences as the head of family lacked conviction. The contention of the appellant that he was wrongly removed as an administrator, in the circumstances, lacked merit.

## M. RE-DISTRIBUTION OF THE ESTATE

Appellant prays us to order a redistribution of the estate. The prayer was based on his claim that the distribution by the court below did not accord with P.N.D.C.L 111.

This ground of appeal equally lacked merit.

In the first place, appellant did not seek any reliefs at the court below to enable him to make that demand at this appellate level. The court is not a Father Christmas that grants what people have not sought for by way of reliefs.

Secondly, the respondents who sought such a relief at the court below, as well as majority of the beneficiaries, seem satisfied with the distribution. The appellant cannot fight for them, a case they have no interest in fighting.

Thirdly, and most critically, the beneficiaries after the distribution of the estate in 2020, and in the absence of any injunction, have taken possession of their shares and enjoyed, or are enjoying them. The assets may have mutated in form or changed hands. It is on record that the widow, Madam Veronica Acheampong has passed away, and her share of the estate in the hands of her estate or a third person(s).

Another fact is that the trial court’s distribution was the second time the estate was distributed. An order for distribution by us would result in the third time the estate would be distributed. It is also on record that there was some difficulty in distributing the estate perfectly under PNDCL 111. The court’s distribution was a best effort to distribute the estate under PNDCL 111.

In the circumstances, we found no justification in ordering a third redistribution of the estate.

## CONCLUSION

From a review of the evidence and the submissions of counsel for the parties, we arrived at the following conclusions:

1. The appellant raised the question of the jurisdiction of the trial Circuit Court to adjudicate a case involving a company, in the face of the dictates of the Companies Act, by which the adjudicating court should be the High Court. We found no merit in that argument. The case was a simple administration case. The issue of subject matter jurisdiction which appellant could have raised, should have been raised timeously for the trial court to rule on it. The failure of appellant to raise the issue of jurisdiction at the appropriate time amounted to *acquiescence*. He was *estopped* from raising that issue on appeal.
2. The appellant did not seek any relief for accounts from the 1st defendant. The respondents who sought that relief decided not to appeal against the trial judge’s decision not to order accounts on the purported benefit on the loan of GHC10,000.00, taken by 1st defendant. We accordingly saw no merit in that ground of appeal.

The appellant could not prosecute an appeal on respondents’ reliefs by proxy. He was debarred by the rule of *jus tertii* from prosecuting a case for persons not party to this appeal.

Further, an order for accounts would have required further hearings and adjournments which would have exacerbated the distress the beneficiaries had endured over the years. It was a trivial issue the court was justified in ignoring.

1. The omission of the next of kin of 2nd respondent to file a consent notice pursuant to the certificate of disability, was not fatal, on account of appellant’s failure to raise the issue timeously. The decision in **Quaiko v Mobil Oil (Ghana) Ltd** (supra) and the position of Benita Yeboah as guardian by nature and nurture, rendered the omission insignificant.
2. The deliberate undervaluation of the assets of the estate by the applicants amounted to violation of the law and resulted in tax evasion. The trial court justifiably used it as ground to remove appellant as an administrator. Further to that, applicant was guilty of incompetence in the performance of his duties as an administrator. He could not reign in the co-administrator (1st defendant) and allowed her to take sole charge of the estate and ran it as she wished.

The disharmony between the co-administrators, and between them and the beneficiaries also contributed to a failure of the appellant to fully discharge his duties years after the grant was made. His removal as an administrator was more than justified.

1. Appellant’s prayer for a redistribution of the estate, firstly exposed his insensitivity to the plight of the beneficiaries, who had been denied their benefits due to his years of wrangling with the 1st defendant. Secondly, he sought no relief at the court below for a redistribution. There was therefore no basis for an appeal based on the trial court’s decision to redistribute the estate.

The beneficiaries who had a relief for completion of the administration of the estate, were satisfied with the redistribution done by the trial court and refused to appeal the said decision. The distribution at this stage has been done on two previous occasions and a major beneficiary, that is the widow, Veronica Acheampong, has longed passed away.

Since the assets were distributed by the court in 2020, the interests in them have been taken up by the beneficiaries which they have since been enjoying. Third party rights may have also accrued. From all the circumstances, appellant’s demand for redistribution was an utopian wish which cannot be realistically achieved.

On the score of the above, we found no merit in the appeal. Same is dismissed.

**(SGD.) ERIC BAAH**

**(JUSTICE OF APPEAL)**

**I agree (SGD.)**

**GBIEL SIMON SUURBAAREH**

**(JUSTICE OF APPEAL)**

**I also agree. (SGD.)**

**CHARLES EDWARD EKOW BAIDEN**

**(JUSTICE OF APPEAL)**

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