

Prove judgment incorrect | Grounds to set aside | Balance of probabilities standard | Burden unchanged by presumption | Presumption rebuttable by evidence | Title certificate not conclusive | Signature doesn't prove ownership | Marital claims require contribution | Equal access joint property | Spouse may solely acquire | No automatic equitable share | Error ratio upheld

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2024

**CORAM: OWUSU (MS), JSC (PRESIDING)
 LOVELACE-JOHNSON (MS), JSC
 PROF. MENSA-BONSU (MRS), JSC
 ASIEDU, JSC
 KOOMSON, JSC**

**CONSOLIDATED CIVIL APPEAL
 NO. J4/89/2022**

28TH FEBRUARY, 2024

**EMMANUEL YAW KUMI PLAINTIFF/RESPONDENT/APPELLANT
 (CUSTOMARY SUCESSOR OF THE LATE
 OP. KWASI ASANTE (DECEASED) OF AKONTANIM
 FOR HIMSELF AND ON BEHALF OF HIS MATERNAL FAMILY)**

VS.

**1. KOFI ANSU
 2. REV. FATHER ROBERT KWARTENG OF WAMFIE
 3. STEPHEN ASANTE**



**DEFENDANTS/
 APPELLANTS/
 RESPONDENTS**

AND

EMMANUEL YAW KUMI PLAINTIFF/RESPONDENT/APPELLANT

VS.

**1. YAW PETER
 2. KWASI PAUL
 3. YAA DONKOR
 4. ANTHONY KWABENA ASANTE**



**DEFENDANTS/
 APPELLANTS/
 RESPONDENTS**

JUDGMENT

ASIEDU JSC:

[1]. This appeal is against the judgment of the Court of Appeal, Kumasi delivered on the 18th day of December 2018. On 19th December 2006, Emmanuel Yaw Kumi, who claims to be a lawyer and a customary successor of the late Opanin Kwasi Asante, for himself and on behalf of his maternal family, sued Akosua Donkor alias Maame Donkor in Suit No. C1/59/07 at the High Court Sunyani for a declaration, among others, that House No. SE.78 Sunyani, AB 27 Dormaa Ahenkro, Estate House No. 14, Sunyani and other properties are all plaintiff's maternal family properties and that the deceased, the late Opanin Kwasi Asante had no power or right in law to dispose of, devise or give same or portions of the said properties to any person in his alleged will. The Defendant caused a conditional appearance to be entered on her behalf and subsequently filed an application for the action to be dismissed. On the 9th May 2007, the High Court, Sunyani, holding that the Plaintiff's claim was essentially one relating to the validity of a Will, dismissed the action for the reason that the right person had not been sued.

Unperturbed, Emmanuel Yaw Kumi, suing as customary successor of the late Kwasi Asante, for himself and his maternal family, filed another action in Suit No. C7/23/07 against Kofi Ansa, Rev. Father Robert Kwarteng and Stephen Asante as executors, claiming against them, jointly and severally, an order revoking the probate of the will of the late Kwasi Asante granted on the 21st May 2007, on the grounds that the said will was a forgery and invalid in law. The writ which was filed in the High Court, Sunyani on the 1st June 2007, was accompanied by a statement of claim. The defendants also filed their statement of defence. Almost a year after the institution of this action, the Plaintiff filed, yet, another suit No. C7/13/08 against Yaw Peter, Kwasi Paul, Yaa Donkor and Anthony Kwabena Asante. This action sought a declaration that certain houses and cocoa farms, farm lands, furniture, cloths, kente and other properties left behind by Kwasi Asante (deceased) and bank accounts in the name of Kwasi Asante (deceased) are the family properties of the Plaintiff's maternal family. The defendants filed their

statement of defence. The two suits were later consolidated upon an application by the Plaintiff.

[2]. On the 11th November 2011, the Plaintiff in the two consolidated suits filed a motion on notice for judgment on admission. The motion was supported by an affidavit as well as a supplementary affidavit and was equally opposed by an affidavit in opposition by the defendants. After hearing the motion, the trial Judge, on the 16th of July 2012, “entered judgment on admission in favour of the Plaintiffs against the defendants jointly and severally for all the reliefs claimed”. The aggrieved defendants appealed against the judgment of the High Court, Sunyani to the Court of Appeal Kumasi which, on the 18th December 2018, set aside the judgment on admission. It is against the judgment of the Court of Appeal that the Plaintiff has filed the instant appeal seeking an order to set aside the said judgment and also to re-instate the judgment of the High Court, Sunyani.

All the defendants in the two consolidated cases have been listed in the Notice of Appeal, as persons directly affected by this appeal. See page 377 of the record. This position adopted by the Plaintiff/Appellant is difficult to appreciate and we find it to be irregular in the opinion of this court. This is so because the application [see page 191 of ROA] which triggered the judgment in question was against the defendants in suit No. C7/13/2008. The defendants in Suit No. C7/23/07 were not cited as respondents to the said application. It is therefore irregular in our view for the defendants in Suit No. C7/23/07 to be made parties to this appeal on the Notice of Appeal filed in this matter.

[3]. The Notice of Appeal was filed on the 8th day of March 2019 by the Plaintiff/Respondent/Appellant herein who shall, henceforth, be referred to as the Plaintiff. Paragraph 3 thereof contains the grounds of appeal which are so argumentative and narrative to an extent that when his present counsel took over the conduct of the appeal, he submitted that “the original grounds of appeal filed by the Appellant himself appears at the page 374n-377 of the record of proceedings which grounds fly in the face of the rules of procedure ... the original grounds of appeal are just too argumentative and prolix for comfort hence they stand abandoned before this august court. My lords, rule 6(4) of the Supreme Court Rules (CI.16) has stated that the grounds of appeal must be clearly and concisely stated. It must not be narrative and it

must not be argumentative. To the extent that grounds (a), (b), (c), (d), (e), (f), (g) and (h) are argumentative and/or narrative, same does not comply with rule 6(4) of CI. 16, which provides the mode by which appellate jurisdiction can be invoked. In the circumstance we pray that these grounds of appeal be struck out for non-compliance”.

We consequently proceed to strike out the grounds of appeal contained in the notice of appeal filed by the Plaintiff herein for being narrative and argumentative and offensive to rules 6(4) and (5) of the Rules of the Supreme Court. Counsel filed additional grounds of appeal, though without the leave of the court. We have decided to adopt these additional grounds of appeal to enable us deal with the appeal on its merit. The first additional ground filed is that; “The judgment of the Court of Appeal, Kumasi, is against the weight of evidence” and the second is that; “the reversal of the High Court, Sunyani’s cogent and sound judgment has occasioned substantial miscarriage of justice.”

[4]. In arguing his grounds of appeal, it was submitted on behalf of the Plaintiff at page 7 of the statement of case that “the Respondents’ exhibit entitled: Emmanuel Yaw Kumi etc. vs Akosua Donkor, alias Maame Donkor filed in the High Court in 2008 and found on page 64 to 69 clearly admitted that:

- a. The disputed properties were acquired by the appellant’s maternal family
- b. In 1985, a dispute as to the ownership of the said properties was resolved in favour of the appellant’s maternal family.
- c. Members of the appellant’s maternal family exercised control over the said properties.”

Counsel then submitted that once the respondents have made the alleged admissions as stated above, they are precluded from denying them.

A critical look at the alleged exhibit at page 64 to 69 of the record of appeal shows that the alleged exhibit was the writ of summons and statement of claim filed by the Plaintiff in suit No. C1/59/07 which the Plaintiff filed against Akosua Donkor alias Maame Donkor at the High Court Sunyani for a declaration that the deceased Opanin Kwasi Asante had no power or right to devise certain properties in his Will because those properties were family properties. Indeed, the High Court, Sunyani did not hesitate to set aside this very

suit, No. C1/59/07 for the reason that the defendant therein was not the right person to be sued since the Plaintiff's action was about the validity of the Will of Kwasi Asante (deceased). The Defendant in that matter did not even file a statement of defence. The defendant in Suit No. C1/59/07, that is, Akosua Donkor was not made a party in any of the subsequent suits filed by the Plaintiff herein including the suit whose judgment is on appeal before this court. It is therefore strange for counsel for the Plaintiff/Appellant to make the submission which is the focus of the present discussion to the effect that the respondents herein made admissions in a statement of claim filed by the plaintiff in a suit to which they were not parties. We find no merit in the submission made by counsel for the appellant referred to above.

[5]. In his judgment, the trial Judge stated, at page 217 of the ROA that:

“The Plaintiff filed as many as 49 paragraphs in support of his claim. For the purpose of this judgment I shall confine myself to material averments as contained in paragraphs 28, 29, 30, 31, 32, 33, 34 and 35. Put differently, the material averments of the Plaintiff are contained in the above paragraphs of the claim”

The judge then went ahead to re-state the content of these paragraphs as captured in the statement of claim filed by the Plaintiff in Suit No. C7/13/08.

In these paragraphs of the Plaintiff's statement of claim in Suit No. C7/13/08, the Plaintiff pleaded that a dispute arose between Kwasi Asante (deceased) and his three wives and children on one part and the Plaintiff's mother and her children excluding the Plaintiff on one part. The genesis of the dispute was an attempt made by Kwasi Asante (deceased) to gift to his wives and children, some of the properties endorsed on the Plaintiff's writ of summons herein; which the Plaintiff claims are family properties. When the disputants could not resolve the dispute, the Plaintiff alleges, that he was invited to Akontanmu, the place where the disputants were living at the time and he, the Plaintiff, managed to resolve the dispute. According to the Plaintiff, the disputants agreed that all the properties endorsed on the writ were family properties but that notwithstanding portions of the said family properties were given to the wives and children of Kwasi Asante (deceased) on condition that they will never lay claim to any of the remaining properties and that if they did so, they stand to forfeit the properties gifted to them by

the family. The Plaintiff asserted that all the parties to the dispute agreed to the settlement and the gift as a result of which aseda was offered by the wives and children on one side and accepted by the family. The Plaintiff pleaded at paragraph 35 that:

“because the 1st, 2nd, 3rd and 4th defendants have no share in the said properties, they never claimed any property from the family even though they sided with the deceased in the said dispute”

[6]. In answer to the Plaintiff’s averments summarized above, the defendants pleaded as follows at paragraphs 33 to 37 of their statement of defence which can be found on page 159 of the record of appeal:

“33. The defendants deny paragraphs 28, 29 30, 31, 32, 33 and 35 of the statement of claim save that certain properties of Opanin Kwasi Asante (deceased) were gifted by him to his wives and children in or around 1985 for which they offered aseda to him (and not the family) in 1986 in the presence of members of his family.

34. The defendants say that the said wives and children of Kwasi Asante (deceased) offered their aseda on the day that his family met over accounts on the funeral of the mother of the 4th Defendant at Akontanim in or around 1986.

35. The defendants say that no dispute arose over the gifts of Opanin Kwasi Asante’s own property so made by him and that the only dispute that the defendants know to the best of their knowledge was over the obtaining of a loan for the organisation and celebration of the funeral of the mother of the 4th defendant Mad. Amma Adufa.

36. The defendants say that the dispute arose when the family rebuked Opanin Kwasi Asante (as an uncle) for failing as a man known to be of substance to look for a loan for the funeral and rather allowing his nephew, the 4th defendant whose mother had then died and needed to be sympathized with to look for the loan.

37. The defendants in defence to paragraph 35 of the claim say that the dispute had nothing to do with family properties and gifts by the deceased to his wives

and children and that the properties in dispute belong to the deceased Opanin Kwasi Asante.”

[7]. In the face of these averments by the defendants in their statement of defence, the trial Judge held in his judgment, specifically at page 222 of the record of appeal, that:

“At the risk of being repetitive the denial by the defendants regarding the negotiated settlement within the meaning of Order 11 rule 13(3) amounted to only a general denial and is not denial of the specific averments as required by the rule stipulated above, that is Order 11 rule 13(3) of CI.47, 2004.

Definitely the specific averments by the Plaintiff that there was settlement and that they provided aseda after acceptance by all the sides was not denied specifically or by necessary implication, and not stated to be not admitted. Therefore, by virtue of rule 13(3) of Order 11 referred to above, the defendants must be deemed to have admitted that there was a final and conclusive settlement”

At page 223 of the record, the trial Judge stated among others that:

“To answer the question posed by me, I find on the face of the pleadings that there was a valid settlement negotiated by the plaintiff and is binding on the parties and by extension or operation of law on the present defendants. The present defendants on that occasion supported and backed the deceased Opanin Kwasi Asante to falsely claim the properties as his personal properties ... They cannot now be heard to say otherwise

I wholeheartedly agree with the Plaintiff’s argument that the defendants are therefore stopped (sic) by the terms of the said settlement from challenging the Plaintiff’s title/ownership of the listed properties. Having found as above, the deceased (Opanin Kwasi Asante) could not have validly devised the family properties to the beneficiaries in his last will.

In conclusion I enter judgment on admission in favour of the Plaintiffs against the defendants jointly and severally for all the reliefs claimed”

[8]. The question before the trial judge was whether in the light of the claim and pleadings of the Plaintiff herein as contained in the statement of claim vis-a vis the averments by the defendants in their statement of defence, the defendants could be said to have admitted the Plaintiff's claim to warrant the judgment on admission which was entered by the trial Judge against the defendants? The real question before the trial Judge was not whether or not there was a dispute over family properties and whether the defendants sided with the deceased Kwasi Asante during the settlement.

In paragraphs 28 to 35 of his statement of claim, the Plaintiff averred that the dispute between his mother and siblings on one part and Opanin Kwasi Asante and his wives and children was about the making of a gift of the properties claimed by the Plaintiff on the writ and statement of claim by Opanin Asante to his wives and children which the Plaintiff's mother and siblings opposed. The defendants say that that is not so and that the properties at the centre of the gifts were self-acquired properties of Opanin Kwasi Asante. The defendants say that Opanin Kwasi Asante in fact gifted the said properties to his wives and children without any challenge from anybody and that they subsequently offered aseda to Opanin Kwasi Asante during the funeral rites of the mother of the 4th Defendant. The dispute, according to the defendants, revolved around the failure of Opanin Kwasi Asante to raise a loan for the performance of the funeral of the deceased mother of the 4th defendant and not about the making of a gift by Opanin Kwasi Asante of his own properties to his wives and children.

It seems to us clear therefore that it cannot be said by the stretch of the imagination that the defendants have failed to deny any substantive or material allegation made by the Plaintiff in his statement of claim. And, neither can it be said that the defendants have impliedly admitted any material allegation contained in the statement of claim as to the family ownership of the properties being claimed by the Plaintiff for his family. In our opinion the defendants' denial are more categorical and specific that the properties gifted by Opanin Kwasi Asante are his self-acquired properties. It is therefore incorrect for the trial Judge to say that by Order 11 rule 13(3) of CI. 47, the defendants have failed to deny the Plaintiff's allegation and therefore they are deemed to admit them.

[9]. Order 11 rule 13(1), (2) and (3) of the High Court (Civil Procedure) Rules, 2004, CI. 47 states that:

“13. Admissions and denials

(1) Subject to subrule (4) of this rule, any allegation of fact made by a party in the party’s pleading shall be deemed to be admitted by the opposite party unless it is traversed by that party in pleading or a joinder of issue under rule 14 operates as a denial of it.

(2) A traverse may be made either by a denial or by a statement of non-admission and either expressly or by necessary implication.

(3) Subject to subrule (4), every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit shall be specifically traversed by the party in the party’s defence or defence to counterclaim and a general statement of non-admission shall not be a sufficient traverse of them.

(4) Any allegation that a party has suffered damage and any allegation as to the extent of damage or the amount of damages shall be deemed to be traversed unless specifically admitted.

Rule 13 of Order 11 of CI.47 serves as a guide to parties and legal practitioners in their preparation of pleadings. It demands that allegations made in the pleadings of the opposite party which are not admitted must be specifically traversed or denied in the pleadings of the party who does not admit the averments contained in the opponent’s pleading. Where a party is served with the pleadings of his opponent and he fails to deny material allegations contained in the opponent’s pleadings, he will be presumed to have admitted those material allegations which he had failed to deny. The denial or the traverse shall be specific. It must be made by a statement of denial or by a statement of non-admission.

The denial must be expressly stated or the denial should be obvious, that is, by necessary implication, from a reading or consideration of the whole of the pleading. No room is left for towing a middle way. Hence, a general statement of non-admission shall not be sufficient to traverse a material averment contained in an opponent’s pleading. For that reason, a defendant shall deny material allegations contained in the Plaintiff’s statement of claim if he does not admit those averments. Thus, a defendant cannot rely

on the general statement of denial normally found in a lawyer's pleading either at the beginning or the end of the statement of defence and hope to successfully deny material allegations contained in a statement of claim.

Equally, a Plaintiff who is served with a counterclaim is required to specifically and expressly deny any material allegation contained in the counterclaim if he does not admit them. This denial by the Plaintiff shall be made in his Defence to Counterclaim. If a plaintiff fails to make such denials, he will be presumed to have admitted those material allegations contained in the counterclaim, unless the whole tenor of the pleadings suggests otherwise. If material allegations are contained in a statement of defence, then a Plaintiff who is served with the statement of defence and who does not admit those material allegations shall deny them in his Reply. See **Offei vs. Asamoah & Another [2017-2018] 1 SCLR 417**.

However, the rules in Order 11 rule 13(4) presume a denial of allegations of damage or damages suffered unless these are admitted by a party in his pleading.

[10]. Under Order 11 rule 13(1), a joinder of issue may also operate as a traverse by virtue of the provisions in Order 11 rule 14 to serve as a denial of allegations contained in the statement of defence if no Reply is filed. However, a defendant is required to answer allegations contained in a statement of claim just as a Plaintiff is also required to answer allegations contained in a counterclaim and for that reason the rules forbid issues to be joined in respect of a statement of claim and a counterclaim. By Order 11 rule 14(4) "A joinder of issue shall operate as a denial of every material allegation of fact made in the pleading unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the express joinder of issue operates as a denial of every other such allegation".

In the instant matter, the defendants in clear language stated at paragraph 33 of their statement of defence that they deny the allegations contained in paragraphs 28, 29 30, 31, 32, 33 and 35 of the statement of claim. The defendants went ahead to explain or aver that "certain properties of Opanin Kwasi Asante (deceased) were gifted by him to his wives and children in or around 1985 for which they offered aseda to him (and not the family) in 1986 in the presence of members of his family." There is therefore no legal basis for the trial Judge's finding that "the specific averments by the Plaintiff that

there was settlement and that they provided aseda after acceptance by all the sides was not denied specifically or by necessary implication, and not stated to be not admitted.”

Throughout their statement of defence, there is not a single paragraph in which the defendants averred that the properties claimed by the Plaintiff as being the family properties of his maternal family really belong to the Plaintiff’s maternal family. The defendants have maintained along the length and breadth of their statement of defence that the properties gifted by the late Opanin Kwasi Asante were the self-acquired properties of Opanin Kwasi Asante and that he gifted those properties to his wives and children as a matter of right. The defendants finally pleaded at paragraph 57 of their statement of defence that: “the defendants deny paragraph 49 of the statement of claim and say that the Plaintiff is not entitled to the reliefs that he seeks or any at all”.

Combing through the statement of defence reveals that the defendants never conceded to the Plaintiff’s claim as to the ownership of the properties in his maternal family.

[11]. Indeed, Order 23 rule 6(2) of the High Court Rules permits a party to file for judgment on admission. It states that:

“Where an admission of the truth of a fact or the authenticity of a document is made by a party in a pleading or is made or deemed to be made by a party in response to a request to admit, any party may apply by motion to the Court or to the Judge for such order as the party may be entitled to on the admission without waiting for the determination of any question between the parties, and the Court or the Judge may make such order as is just”.

In **POMAA AND OTHERS v. FOSUHENE [1987-88] 1 GLR 244**, this court gave meaning to Order 32 rule 6 of the High Court (Civil Procedure) Rules, 1954 (L.N. 140A) which is in pari materia with the current Order 23 rule 6(2) of CI.47. The court held that:

“A judgment would not be given under Order 32, r. 6 of the High Court (Civil Procedure) Rules, 1954 (L.N. 140A) unless the admission was clear and unequivocal. In the instant case although the appellants admitted paragraph 6 (1) of the respondent’s petition, they went on to challenge the nomination and

the very foundation of the alleged election and clearly indicated that they did not agree that the respondent was the Adansihene-elect. The statement of defence read as a whole showed that the admission that the plaintiff was the Adansihene-elect was equivocal. A number of paragraphs subsequent to it watered down the admission and made it at best ambiguous. They negated an intention to admit and could not be a ground for a snap judgment under Order 32, r. 6 of L.N. 140A. Even if an admission was clear and unequivocal a judgment under Order 32, r. 6 was not automatic. It might be given only if the court thought it just. And it might not be just if there were other issues to be tried on the pleading, as in the instant case and a judgment on an admission was likely to prejudice the fate of the other issues”.

As already pointed out herein, the defendants in their statement of defence had been categorical in their denial of the averments contained in the Plaintiff’s statement of claim which is the basis for the Plaintiff’s assertion that the properties endorsed on the writ and pleaded in the statement of claim are the properties of the Plaintiff’s maternal family.

The learned editors of Atkin’s Court Forms (2nd) Volume 19(2), 2007 Issue, have explained at page 15 paragraph [9] that:

“A defendant who fails to deal with an allegation in his defence is taken to admit that allegation. However, if a defendant fails to deal specifically with an allegation but has nevertheless set out in his defence the nature of his case on that issue, he will be taken to require that issue to be proved.”

In the instant matter not only have the defendants denied the Plaintiff’s allegation of his family ownership of the properties which are the subject matter of the present action, but the defendants have gone ahead to plead that the said properties belong to the Kwasi Asante (deceased). In our opinion, the least that the trial Judge could have done was to indulge the defendants with a hearing of the case especially when the trial Judge noted in his judgment that issues have been joined between the parties. The Court of Appeal was therefore right in holding, among others, at page 369 of the record of appeal that:

“Considering the claims made in the present case and the general tenor of the pleadings, the trial Judge did not exercise its discretion judicially when, in determining this matter, it took a position in favour of judgment on admissions. The trial court denied the defendants their right to contest the claims made against them in the circumstances that did not warrant such denial”.

[12]. It is also worthy of note that the main claim indorsed on the Plaintiff’s writ of summons was a declaratory relief. Indeed, the Plaintiff, in his writ of summons prayed the High Court for a declaration that certain properties listed on the writ of summons were the properties of his maternal family. The Plaintiff, in addition, prayed for recovery of rent/money unlawfully collected from tenants, recovery of monies or proceeds accruing from cocoa farms, general damages for trespass, perpetual injunction among others. Declaratory relief is a discretionary remedy and the philosophy has been an advocacy of the exercise of caution and circumspection in the grant of that relief. The courts have always stated that it must be granted only in a situation where the claimant has proved his claim for the relief. In their book *Zamir & Woolf, The Declaratory Judgment* (3rd ed.), authored by Lord Woolf & Jeremy Woolf, Sweet & Maxwell, (UK), the learned authors have this to say at page 128 to 129, paragraphs 4.015 and 4.016:

“Attitudes towards the declaratory judgment reflect its particular history: it is comparatively new remedy, not developed by the process of case law but imposed by the Legislature. It is both a wide and imprecisely defined remedy. However, caution is not entirely unjustified. The declaratory power conferred on the courts is indeed so wide as to be easily capable of abuse. If employed incautiously it might encourage people unnecessarily to claim declaration of their rights, involving unjustifiable, costly litigation and causing excessive embarrassment to defendants. As Lord Sterndale M.R., admitted (*Gray vs. Spyer* [1922] 2 Ch.22 at 27) ‘I agree that claims for declaration should be carefully watched. Properly used, they are very useful; improperly used, they almost amount to a nuisance’.

The declaration, like any other discretionary remedy, has therefore to be employed with care. ‘The discretion’, Viscount Kilmur L.C. said (*Vine vs National Dock Labour* [1957] AC. 488 at 500) ‘should not be exercised save for good

reasons'. But the same can be said of other remedies and there is nothing particular about the nature or consequence of declaratory relief which calls for extraordinary caution. On the contrary, not being coercive relief, it is less harmful, potentially, than other remedies, notably injunctions and specific performance. Extreme caution is both unnecessary and undesirable. On the other hand, care is needed, not only to avoid indiscriminate and unjustified use of the declaratory power, but also to prevent declaratory actions from being dismissed and the scope of the remedy being unduly restricted out of extreme caution.

In practice, the courts seem to have struck a proper balance by usually making declarations in cases where the claimant has proved his right and his interest in having that right declared and there are no special considerations to the contrary..."

In **BOATENG v. DWINFUOR [1979] GLR 360**, the court pointed out that:

"The general rule was that the grant of a declaratory relief was discretionary and should be exercised with care and caution and judicially with regard to all the circumstances of the case and except in special circumstances it should not be exercised unless all the parties were present. But there had never been an unqualified rule of practice that forbade the making of a declaration when some of the persons interested in the subject of the declaration were not before the court. ***The test was whether it was just and appropriate in all the circumstances of the case to grant it.***"

In the instant matter, the trial court was confronted with a situation where the Plaintiff was laying claims to properties which he says belong to his maternal family. The defendants on the other hand claim that these same properties were the self-acquired properties of Kwasi Asante (deceased); some of which he gifted to his wives and children inter vivos. In the opinion of this court, it should have occurred to the trial Judge that given the nature of the competing claims by the parties, it would have been more prudent for the Judge to submit the issues to a full-scale trial to enable the parties give viva voce evidence to establish the veracity of the claims put forth by them instead of granting judgment to the Plaintiff on an equivocal admission which the court found to have been made by the defendants. It is the settled practice of our courts that

“a declaratory relief cannot be obtained by a motion in the cause but after hearing the parties either by way of legal argument or a full-scale trial.” See Bank of Ghana (No.3) vs Sefa (No.3) & Others [2015-2016] 1 SCGLR 741; Republic vs High Court Accra; Ex parte Osafo [2011] 2 SCGLR 966.

We wish to add that where the claim has been strenuously denied by the defendants, as is the case in the instant matter, then in order for the Judge to be properly equipped to evaluate the different allegations of the parties as contained in their respective pleadings and make legitimate findings of fact, a full-scale trial is preferable than a resolution based on a motion. The averments in the defendants’ statement of defence in the instant matter, are in our opinion, such as should have prompted the trial Judge to realise that the grant of judgment on admission constituted an improper exercise of discretion since it completely took away the right of the defendants to challenge the factual assertions of the Plaintiff which they have denied.

[13]. There is yet the question of consolidation of Suit No. C7/23/07 and Suit No C7/13/08 by the trial Judge as stated at page 174 of the record. It is to be observed that whereas in Suit No. C7/23/07, the Plaintiff, as customary successor of the late Opanin Kwasi Asante (deceased), claims against the defendants, jointly and severally, an order revoking the probate of the alleged Will of the deceased granted to 1st and 2nd Defendants as executors of the said Will on 21st May 2007, upon grounds that the said Will is a forgery and is invalid in law; in Suit No C7/13/08, the Plaintiff, as customary successor of Kwasi Asante (deceased), for himself and on behalf of his maternal family, claims against the defendants, among others, a declaration that certain properties listed on the writ of summons are the properties of his maternal family.

Order 31 of the High Court Rules of Procedure permits two cases pending before the same court to be consolidated and heard together. Surprisingly, the Judge entertained an application for judgment on admission in Suit No. C7/13/08 and entered judgment for the Plaintiff therein without dealing with Suit No. C7/23/07. It has been the settled position of the law that where suits are consolidated, judgment shall be given in respect of each suit at the end of the proceedings with the result that, the court cannot determine one suit and ignore the other.

In the Nigerian case of **Diab Nasr vs. House Enterprises (Nigeria) Ltd. (1977) 5 SC 1**, two suits were consolidated. In one of the suits, the relief sought was a petition for the winding up of the company and the other was an originating summons proceeding relating to the company. During the pendency of the consolidated suits, a motion was filed in the petition for the winding-up with the result that the trial Judge struck out the petition for the winding up of the company leaving the originating summons undetermined. On appeal, the Supreme Court held that the order striking out the petition was wrong and premature and that the two consolidated suits should have been determined on the merits after issues have been set down. Once two cases are consolidated, they must be heard and determined as a single matter at one hearing.

We find the scenario in the instant matter to be on all fours with the scenario in the Diab Nasr case. In the present action, two cases have been consolidated and whiles they were pending the trial Judge entertained an application for judgment on admission in Suit No. C7/13/08 and gave judgment therein leaving the other suit, No C7/23/07, challenging the validity of the Will of Kwasi Asante (deceased) largely undetermined. We hold therefore that, the procedure adopted by the trial Judge in determining Suit No. C7/13/08 during the pendency of the order for consolidation was highly improper and that where suits are consolidated, it is incumbent upon the trial court to hear the consolidated cases together and give judgment on each of them independently at one hearing.

[14]. For all the reasons articulated in this judgment, we hold that the Court of Appeal was right in setting aside the judgment of the trial High Court. We therefore proceed to affirm the judgment delivered by the Court of Appeal Kumasi, on the 18th day of December 2018. The appeal is therefore dismissed. Let the consolidated case be placed before the High Court, Sunyani differently constituted for it to be heard on the merit.

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

M. OWUSU (MS)
(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS)
(JUSTICE OF THE SUPREME COURT)

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**CHARLES AGBANU ESQ. FOR THE PLAINTIFF/RESPONDENT/APPELLANT
WITH HIM, DANIEL ADJEI.**

**KWAME GYAN-KONTOH ESQ. FOR THE DEFENDANTS/APPELLANTS/
RESPONDENTS WITH HIM, ROBERT TWENE.**