IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE COMMERCIAL DIVISION
HELD IN ACCRA ON THURSDAY THE 12TH DAY OF JUNE, 2015
BEFORE HER LADYSHIP MRS. GERTRUDE TORKORNOO J.
SITTING AS ADDITIONAL HIGH COURT JUDGE

SUIT NO. AP/134/12

(1) NETWORK OF INT. CHRISTIAN SCHOOL INC. === 1ST PLAINTIFF

(2) AMERICAN INTERNATIONAL SCHOOL === 2ND PLAINTIFF

VERSUS

(1) LAURIE KORUM === 1ST DEFENDANT

(2) MARSDEN TIM CROSBY === 2ND DEFENDANT

(3) DR. JOHN LABA === 3RD DEFENDANT

(4) AKOSUA BUSIA === 4TH DEFENDANT

AND

SUIT NO. OCC/56/12

(1) AMERICAN INTERNATIONAL SCHOOL === 1ST PLAINTIFF

(2) MRS. LAURIE KORUM === 2ND PLAINTIFF

(3) DR. JOHN BALEMA LABA === 3RD PLAINTIFF

(4) MS. AKOSUA BUSIA === 4TH PLAINTIFF

(5) MRS. CYNTHIA AGYAPONG === 5TH PLAINTIFF

VERSUS

CERTIFIED TRUE COPY
REGISTRAR
COMMERCIAL DIVISION OF THE
HIGH COURT, ACCRA

(1)NETWORK OF INT. CHRISTIAN SCHOOL	**===**	**1ST DEFENDANT**
(2) DR. HARRY VESTER PHILIPS III	**===**	**2ND DEFENDANT**
(3) MR. MICHAEL WITTS	**===**	**3RD DEFENDANT**
(4) MR. JAMES PATRICK SULLINS	**===**	**4TH DEFENDANT**

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JUDGMENT

'*Beware the ides of March*!' Julius Caesar was told on the night of his assassination. Such could easily have been some unheard direction regarding August 2012 for those involved with the American International School. The immediate background to this hotly fought dispute was a tussle for control of the School described by the parties as '*the events of August 2012'*. Each set of parties have their version of the basis of the dispute which I will set out anon.

The plaintiffs in suit number AP 134/12 – Network of International Christian Schools, and American International Schools (NICS and AIS) filed the first action on 22nd August 2012 in the Fast Track Division of the High Court against Laurie Korum, Marsden Tim Crosby, Dr. Laba, and Akosua Busia. NICS is a non-profit organization registered under the laws of Tennessee in the United States, and American International School is a guarantee company registered in Ghana.

Three of the defendants in that suit – Laurie Korum, Dr. Laba, Akosua Busia, together with American International School and one Cynthia Agyepong commenced the second action OCC 56/2012 in the Commercial division on 23rd August 2012. The defendants were NICS, Michael Witt, James Patrick Sullins, Charles Hunsucker, Samuel James Davies, Dr. Harry Vester Phillips 111, Seth Kwasi Asante. And Trustee Services, who are the first registered members of AIS's Executive Council and its company secretary. On 14th January, 2013, the action

against the 2nd to 6th defendants was discontinued, and Mr. Asante and Trustee Services became 2nd and 3rd defendants in this action

Mrs. Korum and Mr. Crosby are American citizens who worked with AIS at the time of the dispute and Ms Busia, Dr. Laba and Ms Agyepong are parents of children in the school. Ms Agyepong discontinued her participation in the suit on 11th September 2012. The two suits were consolidated and heard together in the Commercial division. This judgment covers the two suits.

The version of the triggering events of that August by the plaintiffs in AP 134/12 is that NICS is the sole member and subscriber of AIS and had the power to appoint members of the School's Executive Council, which is responsible for managing and directing the administration of AIS. On 10th August 2012, an email (exhibit Y) was issued by one Steve Stark, a Vice President of NICS, to Mr. Tim Marsden Crosby, then School Director of AIS, directing him to go on indefinite administrative leave and to stay off the school campus during that time. On August 22nd and in exhibit Z, this leave was extended to termination of his appointment and announced to him by Dr. Joe Hale, President of NICS.

Mrs Korum, then in charge of projects in the school, reacted to this action by appointing Dr. Laba, Mrs. Cynthia Agyepong and Ms Busia as AIS' Executive Council and filing a Form 17 indicating a change in the school's directors with the Registrar of Companies in exhibit AAAA. This new Executive Council wrote to revoke Mr. Crosby's indefinite leave. They went on to terminate the appointment of Sheree Haley, the school's principal, and Minta Berry, the business manager and forbade them from entering the school's premises. The defendants in AP 134/12 took control of the AIS premises, and stationed police there to deny any agent or representative of NICS from entering the school. Eventually a report to the police brought an end to this control.

During this time, the plaintiffs in AP 134/12 alleged that the defendants withdrew various sums of money from the school's accounts and the 2nd defendant also took $58,500 and GHC 18,714 from the custody of the school cashier which sums remain with him. They alleged further that many students were withdrawn from the school as a result of this situation and altogether the school lost $395,32.78 and GHC 2,050 as a result of the events of that August.

The version of the plaintiffs in OCC 56/2012 (OCC plaintiffs) is that Laurie Korum is the originator, promoter, founder and director of AIS and save for Seth Asante, all the Executive Council members of AIS registered with the Registrar of Companies were never properly appointed. They assert that these gentlemen had never been to Ghana, and the executive council had never had a meeting since the school was incorporated. It is their case that as legal adviser and Executive Council member, Seth Asante admitted to the failings of this Executive Council in an email dated 10th August 2012.

Apart from that, NICS had interfered with the day to day administration of the school by purporting to dismiss the Registrar of the school – Mrs. Joyce Crosby, and remove the director of the school Mr. Crosby – acts which the OCC plaintiffs alleged they had no power to do. They alleged that NICS had appointed one Jim Korver as a new interim director without any consultation with Mrs. Korum contrary to an agreement she had with NICS. The plaintiffs described the actions of NICS as undermining discipline and order in the administration of the school. With these circumstances, and because the plaintiffs in OCC 56/12 already constituted the Director's Advisory Council of the school, they re-constituted themselves into the Executive Council of the school when they realized that the school had no functioning Executive Council, a situation they described as contrary to law and the company's

regulations. They went on to allege that in violation of the laws of Ghana and the regulations of AIS, NICS had levied, collected and spirited away various percentages on all the income received by the School amounting to $798,090 since the incorporation of the school, which acts are illegal. They further alleged that the originally registered and now '*defunct executive council'* had purported to pass a resolution to change the mandates of the company's bank accounts at the Action Chapel Branch of Fidelity Bank and seized control of the school's finances and this was unlawful. They had also brutalized Mr. Crosby through policemen from Legon Police Station and unless restrained, would create panic and disorder in the school.

The issues that arise for resolution in the reliefs sought in the two suits can be formulated under four headings: - the membership and corporate governance of American International School (AIS) as a corporate body; the internal administration of AIS, dealings of the parties with the finances and funds of AIS; the lawfulness of the termination of Mr. Crosby's employment with AIS and consequences thereof. I will determine entitlement to these reliefs under these headings and they will therefore not follow strictly the manner in which they are arranged in the indorsements.

Membership of AIS

The AP134/2012 plaintiffs claimed against the defendants –**jointly and severally as their claim (i):**

i. A declaration that the 1st Plaintiff (NICS) is the sole member of the 2nd Plaintiff (AIS).

The plaintiffs in OCC 56/12 also claimed jointly and severally against the defendants as their claim c) for

c) A declaration that the 2nd Plaintiff is the originator, founder, promoter, director and subscriber to the objects of the 1st Plaintiff school.

This controversy has arisen because although it is the case of NICS and AIS in suit number AP134/12, that NICS is the sole subscriber to the Regulations of AIS, it is Mrs. Korum who signed the subscriber's page of the Regulations of AIS and the Form 3 which required the signature of the directors. She did not hold the power of attorney of NICS. NICS claims that without issuing a power of attorney to Mrs. Korum, she was asked to sign the Regulations of AIS on NICs behalf, while she asserts that she did it in her own name as the founder, promoter and a subscriber to the regulations of AIS.

When a court is called upon to resolve conflicting versions of facts, the duty of the court is distilled in a crucial question articulated by her Ladyship Georgina Wood CJ on **page 69 of Sarkodie v. FKA Co Ltd 2009 SCGLR 65** in these words - '*the main issue for the court to determine is simply that, on a preponderance of the probabilities, whose story is more probable than not*?' That question put differently is – whose evidence had more weight and credibility?

In the current case, the resolution of the conundrum is assisted by several rules of law.

In the law of interpretation, words, expressions and documents with special or technical meanings must be construed within the context of their special meanings. See **Biney v Biney 1974 1 GLR 318**. The critical exhibit for the determination of this issue is a special type of document – the Regulations of a company.

I have studied exhibit B2, the Regulations of American International School and find that on the proper evaluation and interpretation of the document, Mrs. Korum cannot be held to be a subscriber to the Regulations of NICS.

Exhibit BBB is the Form 3. This form is filed pursuant to Section 27 (1) of Act 179 which requires that at incorporation, a company shall deliver to the registrar particulars of its name, authorized objects, names, addresses and occupations of its directors and secretary inter alia.

No matter one's involvement in the incorporation of a company, the membership of a corporate body in Ghana is determined only from actual subscription to the regulations of the company. The relevant provision is found in **Section 30 of the Companies Code Act 179 1961** with foundation in **Sections 8 and 18**

Section 8 – Right to form a company

Anyone or more persons may form an incorporated company by complying with the provisions of this code in respect of registration

Section 18—Subscribing to Regulations

(1) The Regulations of any company registered after the commencement of this Code shall be signed by one, or more subscribers in the presence of, and shall be attested by, one witness at the least

Section 30 – Constitution of Membership

The subscribers to the Regulations shall be deemed to be members of the company and on its registration shall be entered as members in the of this Code

As stated in **Words and Phrases Legally Defined, Fourth Edition, LexisNexis Butterworth 2007 Volume 2** page *...'a member is not*

necessarily a shareholder, because an unlimited company or a company limited by guarantee may exist without a share capital'..... The subscribers of a company's memorandum are deemed to have agreed o become members of the company, and on its registration shall be entered as such in its registers of members.

And in a charity and company limited by guarantee such as AIS, the subscribers are those who guarantee to pay the debts of the company in the event of winding up, as provided for under **Section 16 (5) of Act 179**.

Thus Membership is derived from subscribing to the Regulations of the company and nothing more. It does not require the making of any investment in the company beyond the commitments made with subscription. These commitments are found in the Regulations to which the subscriber sets out their details such as name, address, designation and then appends their name and signature. The completion of the Regulations with these details create a contract between the subscriber and the company under **Section 21 of Act 179** from which the law confers membership and the member undertakes obligations and obtains rights.

A study of exhibits B2 and BBB, the parts of the Incorporation document of AIS which were tendered, creates a very disturbing picture of incoherence. But that incoherence, when properly construed, also compels the interpretation that Mrs. Korum cannot be held out as a first director of AIS simply because she signed that form.

What do these two documents look like?

On exhibit B, the name of NICs, its address and description are provided as a subscriber as required by that page of the document. Its stamp is placed on the regulations where it is required to sign as a subscriber.

After its name and designation in the first part of the page, the words '*represented by*' immediately follow, clarifying that the signature that will be seen is the signature of NICS' representative. Thereafter, there is a dotted line, indicating a deliberate place created for the signatory representing NICS. Underneath the dotted line the name Laurie Korum is printed, along with her designation as an American missionary and her age; indicating that by prearrangement of the person who prepared the regulations, she was designated as the representative of NICS. It is on top of this dotted line that Laurie Korum has signed.

That page shows that whoever prepared the regulations, if they had instructions to record Laurie Korum as a subscriber, knew enough to have put her address in the address column, since the address of NICS was written against their name, and in the right column. In the same vein, if it was intended that Laurie Korum should be a subscriber, the person who prepared the regulations knew that the proper place to put a description of her would be in the third and final column of that last page, instead of under her name, because they had done so for NICS.

However, her details are not found in these proper columns. By reason of this, she could not have stood in her own stead to enter into the commitments that lead to membership through the Regulations of a company. Since the Regulations constitute a written agreement between the members and the company, Mrs. Korum cannot be declared a member of AIS by reason of the absence of her details within the address and description of subscribers. This is the necessary technical construction of exhibit B.

Regarding exhibit BBB on directorship, Although Section 27 (3) requires that the return shall be signed by two directors and the secretary of the company, the front part of Form 3 requires certain details of all directors and secretary of the company.

Within the main regulations, as many as six gentlemen are listed as the Executive Council, which is the board of directors for guarantee companies. And yet only two names are listed as directors of the company on the front part of Form 3 – Dr. Harry Vester Phillips 111 and Seth Kwasi Asante. Clearly, whoever prepared the Form 3 failed to fill in all the particulars of directors and chose to place on record the particulars of only two directors though the law requires the particulars of all directors and the signatures of two.

On the flip side of the Form 3, one finds that the required signatures of the two directors who must sign these particulars are the signatures of Mr. Seth Asante and Laurie Korum. Dr. Phillips did not sign the Form 3 even though his details as a director were provided on Form 3. Mrs. Korum was not named as a director at all within main regulations where the full list of the executive council members is provided and she is not named as a director on the front part of Form 3 where the details of two of the directors is provided. And yet she signed with Mr. Asante where the two directors were supposed to sign.

My construction of this Form 3 is that the absence of the minimum of her details as a director ensured that Mrs. Korum was not held out to be and cannot be found to be a director of AIS. Again, the failure to write the name of Mrs. Korum on any part of Form 3 can only mean that she was never intended to be a director of AIS, otherwise her name would have been with the pool of directors in the main regulations

The first rule of interpretation is that a court must discover the true intention of the author of the document and arrive at an interpretation that gives the document its real meaning. See **The Law of Interpretation in Ghana (Exposition & Critique) S. Y. Bimpong Buta Advanced Legal Publications, 1995**, pages 26 to 27

From the layout of exhibit B, and especially the presence of the dotted line after the words 'Represented by' and on top of her name, it is clear that from the time of preparations of the regulations and particulars of the company, it was understood that Laurie Korum would represent NICS in signing as a subscriber to the regulations of AIS. Her name is only tacked beneath the name and address of NICS after the words 'represented by' and the clear and unambigous interpretation of that act is that she represented NICS in signing the Regulations. The absence of further provision for her own details can only mean that beyond representation, Mrs. Korum was not intended to become a member and director of AIS

I will now utilize the law of evidence.

Section 10 of the Evidence Act 1975 NRCD 323 on burden of proof defines a burden of persuasion as '*the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.*' It goes on in subsection 2 to provide:

(2) *The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.*

As stated in **Duah v Yorkwa 1993-94 1 GLR 225,** it is the party against whom a matter will be settled against if he fails to discharge the burden of proof who carries the burden to adduce evidence regarding that issue. Again, the burden of persuasion speaks to the quality and quantum of evidence that is sufficient to persuade the court that what is being asserted is more probable than what the other party claims.

None of the copious documents tendered in evidence showed a reference to Mrs. Korum as a subscriber to the regulations of the company through

the years of the school and before the events of August 2012. The audited accounts over the years never included her name as a director. Interestingly even in the heat of the August 2012 events, an email written by Dr. Laba stated explicitly what the AP plaintiffs have said and this court has found. He wrote on page 2 of exhibit FFFF '*Mrs. Korum also signed for NICS as subscribers to the objects of the company*'.

This can only mean that on the preponderance of probabilities, notwithstanding her execution of the incorporation documents, Mrs. Korum was never intended to be, never agreed to be, and never held out to be either a member or subscriber of AIS.

Other rules of evidence apply. The rule on conclusive presumption regarding agreements in **Section 25** of the Evidence Act 1975 NRCD and the rule on parole evidence in **Section 177** of the Evidence Act must apply to the evaluation of the matter on hand because of the fact that the regulations are a written agreement between the company and its subscribers.

Section 25—Facts Recited in Written Instrument.

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

Section 177—Extrinsic Evidence Affecting the Contents of a Writing

(1) *Except as otherwise provided by the rules of equity, terms set forth in a writing intended by the party or parties to the writing as a final expression of intention or agreement with respect to such terms as are included in the writing may not be contradicted by evidence of any prior declaration of intention, of any prior agreement or of a*

contemporaneous oral agreement or declaration of intention, but may be explained or supplemented-

(a) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the intention or agreement, provided .....

(b) by a course of dealing or usage of trade or by course of performance.

(2) Nothing in this section precludes the admission of evidence relevant to the interpretation of terms in a writing

(3) For the purpose of this section

(a) "a course of dealing" means a sequence of previous conduct between parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct;

(b) "a usage of trade" means any practice or method of dealing in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question;

(c) "course of performance" means, in respect only of a contract which involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any manner of performance accepted or acquiesced in without objection.

The directions of Section 25 of NRCD 25 means that the absence of Laurie Korum's name as a director and her details as a member of AIS as well as her signature over the words 'represented by' must be conclusively presumed against her. Further, and by reason of Section

177 the presence of her signature within the director column where Dr. Phillips, a NICS executive council member should have signed, and the absence of her name and details as a subscriber, although room is made for her signature as 'representative of' NICS definitely shows a course of dealing and course of performance between her and NICS when it comes to who signed those incorporation documents for NICS. This course of dealing and performance is emphasized when one examines the manner in which the details of the subscriber to the regulations are recorded on the last page of exhibit B2.

I find and hold that Laurie Korum is not a subscriber to the regulations of AIS at the time of incorporation, but signed as a representative of the subscriber. I also find that Mrs. Korum was not appointed a director or executive council member by the sole subscriber of AIS, but she signed on behalf of the NICS director.

Section 18 of Act 179 directs in **subsection (1)** that

The regulations of any company registered after the commencement of this Code shall be signed by one, or more subscribers in the presence of, and shall be attested by, one witness at the least.

With the above finding and holding, the issue that arises is the import of the absence of a power of attorney from NICS to Laurie Korum. Would the absence of that power of attorney invalidate the validity of her signature as a representative of NICS? The answer is a firm no.

Section 137 of Act 179 lists people who may act for a company as including '*members in general meeting, board of directors, officers or agents, appointed by or under authority derived from the members in general meeting or the board of directors.*'

Section 140 goes on to expand on acts of officers or agents. Subsection 2 directs that the '*authority of an officer or agent of the company may be conferred prior to action by him or by subsequent ratification; and knowledge of action by such officer or agent and acquiescence therein by all the members for the time being entitled to attend general meetings of the company or by the directors for the time being or by the managing director for the time being, shall be equivalent to ratification by the members in general meeting, board of directors, or managing director, as the case may be.*'

The testimony of Dr. Joe Hale was that all the members of the board of NICS, were those who were whole sale listed in the regulations of AIS as executive council members of AIS. This testimony was not challenged and discredited. Thus, this court can rightly impute as a matter of law, that the board of NICS had knowledge of Laurie Korum signing the regulations of AIS as a representative of NICS and signing as a director where Dr. Phillips was expected to sign as a second director of AIS. **Under Section 140 of Act 179**, this knowledge would amount to ratification of her authority as an agent of NICS.

Again, under Section 142, dealing with Presumption of Regularity by '*any person having dealings with a company or with someone deriving title under the company*' to make certain assumptions, I am satisfied that the Registrar of Companies was entitled to presume the regularity of the representation of NICS by Laurie Korum in her signing of the regulations of AIS. It is within this context of law that I hold that the lack of a written appointment for Laurie Korum from NICS at the time she signed the regulations of AIS as a representative of its subscriber would not invalidate the legality of that act.

I am further convinced into the above finding from the tenor of the emails tendered as exhibits A to A5. They show Mrs. Korum as a person

who was enthusiastically seeking the creation of a Christian school within certain specifications which NICS schools met, and she led a group of like-minded people to invite NICS into the venture eventually called American International School for the purpose. None of her emails or NICS' communication indicated any discussion of her involvement as a subscriber or director in the venture. It is not clear why she did not insist on her inclusion as a subscriber and director at that inception stage, since she was clearly in charge of many things at that time, and she ended up signing for NICS, or why she has turned out at this time to lay claim to the subscription of AIS, but I find that that claim is not supported by the Regulations on their face.

Judgment is entered for NICS first claim in AP/134/12 to wit '**A declaration that the (NICS) is the sole member of the (AIS).**

A study of Exhibits 1, 2 and 3 tendered by Mrs. Korum as her earliest emails sent in 2005 and on behalf of the group of people she seemed to be leading in seeking the creation of a Christian school of the ilk of 'NICS schools' in Ghana shows that the group could not find their way around setting up such a school because it was a daunting task. The emails showed a keen appreciation that the school they wanted would actually be shaped by NICS, and not that of the seekers.

In her first email, after describing their frustration with the lack of Christian, affordable, good academic educational options in Ghana , she asked '*does NICS actually start schools like what we are talking about? I understand that NICS was involved with a Ghanaian school in Kumasi and things did not work out so well. We are very specifically looking to start an international Christian school primarily to meet the needs of the missionaries as well as the Christian expatriates*'. In her second email, she says *'..there is really a growing fervor hoping that NICS can work with the families here to start something....that a Romanian lady has*

started rallying folks to get the money together to rent a facility....I just wanted to let you know that there is so much support for this kind of relationship.....'

By February 2006, her email to the group in exhibit A indicated that '*you might be interested to hear how things went this week with Joe Hale, President of NICS and his efforts towards starting a NICS school in Accra.*' She ended that email with '*NICS will need to name the school to start the registration process. Of course the final decision will be left up to the NICS folks but go ahead and make your suggestions...*'

AIS was eventually incorporated in August 2006. Clearly, by her own assertions, Mrs. Korum was one of several missionaries who mooted the idea of the Christian school in 2005 and she could hardly be described as the '*originator*' of the idea of AIS. Further, even if she led the invitation to NICS into Ghana for the founding of AIS, by the time the school was founded, she could hardly be described as the founder and promoter because she conceded leadership in creating the school as residing in NICS and her own efforts as that of a convener for the group of missionaries who wanted a '*NICS school*' in Ghana.

I dismiss claim (c) in OCC 56/2012 that Mrs. Korum is the originator, promoter, founder, subscriber and director of AIS.

DIRECTORSHIP OF AIS

It is important not to mix up the two types of directors that are referred to in this case. The first is the directorship under Act 179 which is described as Executive Council for guarantee companies. The second is the office of School Director – an office that Mr. Crosby filled at the time of the events of August 2012 which led to this suit. I will first deal with the claims around directorship such as provided for under Act 179.

The plaintiffs in AP 134/12 claimed as their claim (ii) and (iii)

ii) *A declaration that the 3rd and 4th Defendants (Dr. Laba and Ms. Busia) are not directors of the 2nd Plaintiff, not being members of the 2nd Plaintiff's Executive Council.*

iii) *A declaration that all actions taken by the 3rd and 4th Defendants (Mrs. Korum, Dr. Laba and Ms. Busia) in their* capacity as members of an illegally constituted Executive Council are null and void.

The plaintiffs in OCC 56/12 also sought as claims (a), (b) and (i)

(a) 'A declaration that the 2nd to 6th defendants are not and have never been properly appointed directors of the 1st plaintiff company and/or a further declaration that the first Executive Council of the 1st plaintiff council was never constituted.

b) A declaration that the mandate of the first Executive Council of the 1st Plaintiff company lapsed on the 20th October 2008 when the company should have had its first AGM of the company

i) a declaration that the Current Executive council of the school is constituted by the 3rd, 4th and 5th Defendants.'

A court is required to look at the legalities of the issues in a suit even if the parties fail to do so. As the Supreme Court held in **GIHOC REFRIGERATION (NO. 1) HANNA ASSI (NO. 1) 2007/2008 SCGLR 1** '*A court was entitled to apply the law to the facts of the case even if the parties were unaware of it. Therefore, while a court was bound by the parties' evidence, it was not bound by the parties' legal misconceptions arising there-from.* '

The first point to make is that though suit number OCC 56 was commenced against all the Executive Council members named in the

incorporation documents the action against **2nd to 6th defendants**, was discontinued very early. These gentlemen never filed a defence and were not heard on this claim which was made against them at the commencement of the action. Thus any declaration concerning these gentlemen would be in violation of a fundamental principle of natural justice. In **Awuni v WAEC 2003 -2004 471,** the Supreme Court was very firm about setting aside an administrative decision which penalized students on the ground that the Council failed to give the students an opportunity to respond to the charges before they took the decision against them. This court ought to therefore dismiss the first part of claim (a) which reads '*A declaration that the 2nd to 6th defendants are not and have never been properly appointed directors of the 1st plaintiff company*' and I so dismiss.

The second part of that claim seeks '*...a further declaration that the first Executive Council of the 1st plaintiff council was never constituted*'. Seth Asante, the only member of that first Executive council who signed the regulations is a party to this suit. Although the claim does not specifically attack his membership of the Executive Council, by reason of his presence in that Council, this court can consider the claim.

Section 181 (1) of Act 179 requires each director to first consent in writing before their appointment. **Section 181 (2)** goes on to provide that the first directors are to be named in the Regulations In the case of AIS, only Seth Asante out of the named Executive Council members signed the Regulations. But as already found, Laurie Korum signed as an agent of NICS. Since agency of a corporate body does not constitute a power of attorney of individuals who work with that corporate body, her signature cannot as a matter of law cover the remaining directors. Thus in essence, these named directors did not sign the Form 3 and I so find. Although Trustee Services which incorporated AIS was part of this suit,

it chose not to appear in court and assist this court with the resolution of this claim. I find from the records that there is no evidence that apart from Seth Asante, any one among the first Executive Council passed the test of the legal requirements to be part of the Executive Council.

However, the law is not stiff when it comes to recognizing the role of directors and does not rely only on the proper filing of a director's records to identify directors. It makes room for a person to be saddled with the duties and liabilities of director under Section 179 (2) of Act 179 if they represent themselves as directors, or knowingly allow themselves to be held out as directors. This statutory provision was given flesh in **Commodore v Fruit Supply (Ghana) Ltd 1977 1 GLR 241 CA**. It must be noted that this provision is a shield against the abuse of the effect of being improperly held out as a director, and not a sword to arrogate the position of directorship to oneself where the company has not overtly recognized you as such or held you out to be such. It is a shield for the protection of third parties who deal with persons as directors without the knowledge of irregularities.

Thus in **Quarcoopome v. Sanyo Electric Trading Co Ltd & Another, 2009 SCGLR 213**, although the Supreme Court agreed that the plaintiff had morphed into a de facto director by reason of being held out as such, he was not a duly appointed director because there was non-compliance with Sections 181 and 272 (1) of Act 179 which regulated he appointment of directors. The greater concern of the Supreme Court was also to set aside payments for the plaintiff for the performance of duties as a director of Sanyo, not because he was not properly found to have been held out as a director of the company, but because the payments were awarded outside of the provisions of Act 179 on how director's fees were to be set.

Thus to the extent these persons were held out to the world as directors through the regulations and subsequent documentations issued, I find them as being caught under **Section 179 (2)** and recognize them as part of the Executive Council of AIS. Claim (a) in Suit number OCC 56/2012 is dismissed in its entirety.

I find the consideration of Claim (b) in Suit number OCC 56/2012 to be a mere academic exercise. Whether or not the mandate of the first Executive Council lapsed, the evidence from Exhibit E is that NICS, as the sole member of the company, resolved to keep these persons in office. The appointment and removal of the Executive Council is a matter reserved to the members of a company. I hold that the remedy sought is without merit and is dismissed.

Claim (i) in Suit Number OCC 56/2012 arises from exhibit AAAA which was filed with the Registrar of Companies on 10th August 2012 recording that Dr. Laba, Cynthia Agyepong and Akosua Busia had been appointed as directors and Secretary of AIS. Regulation 29 of AIS found in exhibits B2 provides that Executive Council would be appointed from among the members of the company. This gives NICS the sole prerogative to appoint directors. The evidence before this court is that members of this Executive Council were appointed by Laurie Korum in her understanding that she is a member and subscriber to the regulations of AIS. Having held that she is not, I hold that she did not have the legal capacity to appoint directors for AIS. I dismiss claim (i) of the plaintiffs in OCC 56/2012 and grant claims (ii) and (iii) of the plaintiffs in AP 134/2012

INTERNAL ADMINISTRATION OF AIS

The claims under this heading presented by the plaintiff in OCC 56/2012 were in their claims b), c) and d). For the plaintiffs in AP 134/12, it is in their claim vi)

b. A declaration that by agreement and custom of the school, the 1st Defendant cannot appoint a director of the school without 2nd Plaintiff's consent.

c. A declaration that by law, agreement and custom of the school, the 1st Defendant has no power to authority over the day to day administration of the school.

d. A declaration that the purported dismissal of Mrs. Joyce Crosby by the 1st Defendant was wrongful, without authority, null and void and of no effect.

e. An order of perpetual injunction restraining the defendants, by themselves, agents, representative and/or appointees from interfering with the management of the school.

From AP 134/12

vi) An order of perpetual injunction restraining the defendants, their agents, assigns and privies from interfering in the management and administration of the 2nd Plaintiff and

Since the 2nd defendant denied the allegation that the school director could not be appointed without the consent of Mrs. Korum, the plaintiffs carried a burden of persuasion regarding these assertions.

In their pleadings, the plaintiffs averred in OCC/56/2012 that prior to incorporation, she entered into certain agreements with NICS. One of such agreements was that the management of the school would be in the hands of a director head hunted by NICS and approved by Mrs. Korum.

It is trite learning that the terms of an agreement have to be specific, identifiable and clearly agreed, that there has to be an exchange of consideration between the parties to an agreement, and the parties have to have the intention to create legal relations for any alleged agreement to be enforceable. These are the fundamental elements of any contract.

In **Fofie v Zanyo 1992 2 GLR 475**, the inability to establish the acceptance of clear terms of the alleged contract of sale led to the Supreme Court affirming the decision of the High Court to dismiss an action for specific performance. On the flip side, in **Koglex Ltd (No.2) v Field, 2000 SCGLR 175**, the Supreme Court upheld the finding of a contract when it was satisfied that clear and firm terms had been concluded by the parties. A lack of positive evidence of the fundamentals of contract should lead to the dismissal of a claim of contract

I have scratched my head no end to appreciate the applicability of the principles of contract and agreement to the assertions of Mrs. Korum on this issue of appointing the school director. Her averments and testimony did not point to any intention to create legal relations, any consideration nor the full parameters of this alleged agreement - to wit, what was offered, what was agreed, and the terms of performance. It would seem that this is the reason for the allusions to custom in the same claim.

However, this is a court of law and the orders made by this court have to be firmly situated in law and not custom, unless the custom is considered for the purpose of determining the various elements of the applicable

law. I have not been given any factual circumstances for finding a binding agreement that compels anyone who appoints the School Director of AIS to obtain the consent of Mrs. Korum. Mrs. Korum stated in the pleadings that when Charlene Berry was appointed school director, she found her unsuitable and so she was removed. Again, when Barry Bennet was appointed, she accepted him only in an interim capacity. And Mr. Crosby stayed on as director because she approved him as qualified and suited to run the school in accordance with her vision. However, no evidence was given to this court to show the nexus of elements that created a binding agreement around what seems to have been a mere collaborative effort, at the most. This court received no evidence to show the consideration for this arrangement and intention to create legal relations regarding this consenting of appointment which would elevate those situations into an agreement. I must dismiss claim b and I so do.

I will next deal with claim (d). Mrs. Joyce Crosby was not a party to this suit, she did not testify to support this claim concerning her, and not even her husband, who was a party to the suit attempted to dive into the hows and whys she was dismissed. As I stated when I considered the claims involving the 5 defendants against whom this action had been discontinued, this court cannot consider a claim concerning a party who is not part of the suit and from whom no evidence has been taken to corroborate the claims made. I must therefore dismiss this claim (d) in OCC 56/12 as well and I so do.

Did NICS have power to authority over the day to day administration of the school? It would seem that the basis of this claim is the claimant's position that exhibit J, the Memorandum Of Understanding (MOU) alleged to have been made between NICS and AIS for the management of the school, is a bogus document. My evaluation is that even if the

MOU is a bogus document and cannot undergird NIC's dealings with AIS, a matter I do not deal with at this point, the instruments for resolving this claim lies with the law and not this MOU.

Section 179 of Act 179 gives the mandate for the administration of the business of a corporate body to the directors of the company. The abundant evidence before this court is that apart from being a member, NICS is the controlling and directing mind of this school. It is the directors of NICS who are directors of AIS. With this overflowing evidence, and without the preclusion of law that a member of a company cannot be involved in the internal administration of the company, I cannot grant the declaration that NICS did not have power and authority over the day to day administration of the school. Claim (c) of OCC 56/2012 is dismissed.

I will deal with the claims for injunction later. I will now consider the dispute regarding the funds and finances of the school.

The plaintiffs in AP 134/2012 have prayed for in their claims v) vii), i) and ii) the following reliefs:

iv) An order of accounts directed at the Defendants with respect to all sums withdrawn by them from the 2nd Plaintiff's bank accounts, and a further order directed at the Defendants to refund all sums determined to have been wrongfully withdrawn from the 2nd Plaintiff's bank accounts.

vii) Payment of a total sum of $395,321.78 and GH¢2,050 representing the total losses suffered by the 2nd Plaintiff as a result of the Defendants' illegal and hostile attempts to takeover the 2nd Plaintiff.

Against Mr. Crosby:

i. An order of accounts directed at the 2nd Defendant with respect to the sum of $58,500 and GH¢18,714 belonging to the 2nd

Plaintiff which were in the 2nd Defendant's custody and/or under his control on 16th August, 2013 and

ii. A further order directed at the 2nd Defendant to refund the sum of $58,500 and GH¢18,714, as well as any other cash belonging to the 2nd Plaintiff determined to have been wrongfully kept or expended by the 2nd Defendant.

On the other hand, the plaintiffs in OCC 56/12 have also prayed for

k. A declaration that the levy and collection of a fixed percentage of all incomes of the school by 1st Defendant is unlawful and in breach of the regulations of the company and the laws of Ghana.

l. An order directed at the 1st Defendant to refund the sum of $798,090.00 unlawfully levied and collected by 1st Defendant in violations of the regulations of the school and the laws of Ghana.

n. A declaration that the resolution changing the mandates to the 1st Plaintiff's bank account at the Action Chapel branch of the Fidelity Bank is illegal, without mandate, null and void ineffectual to constitute a change in the mandate to the bank accounts.

o. An order for all true, necessary and proper account to be rendered by the 1st Defendant of all monies taken from and/or received on behalf of the 1st Plaintiff and a further order that the 1st Defendant pay back all such monies to 1st Plaintiff.

The evidence before this court is that during the events of August 2012, Mrs. Korum and Mr. Crosby took the liberty of moving money from the

accounts of the school into the accounts of Compassion International, a body which is a total stranger to the school. Clearly, no one including a project director or a school director should be allowed to deal with the money of an institution without being held accountable, even if their intention was to utilize the money to save the school from bad governance.

It is on this premise that I grant the claim for an order of accounts directed at the Defendants in AP 134/2012 with respect to all sums withdrawn by them from AIS' bank accounts, and a further order directed at the Defendants to refund all sums withdrawn from the school's bank accounts and which they cannot show were utilized for the running of the school as a school, or for their functions as project officer, school director and members of the directors advisory council at the time when they held those offices.

Before dealing with the claims for damages by the plaintiffs in AP 134/2012, I need to present my evaluation of the 'hostility' and illegality' that they are alleging regarding the events of August 2012 in their claim (vii). The evidence before me shows otherwise. Clearly, the school was very close to Mrs. Korum's heart. She had led a group of people to convince NICS to come and start the school in Ghana. She had opened her home without cost to all manner of persons who came to Ghana to work for the school after its incorporation. She had used her cards to make payments for the school in certain cases, even if those moneys were later refunded. The records do not even show that she was near compensated for the manner in which she put herself out for this school.

And all the while, she had believed NICS to be a missionary charity committed to Christian charity. When the auditors of the school and the legal adviser of the school indicated that monies being taken out of the

school were irregular and unlawful through exhibit GG, it is not surprising that she decided that something had to be done to stop NICS from tampering with the school's finances and administration.

Further, with her signatures on the regulations and no record of a power of attorney from NICS, I do not find it surprising that Mrs. Korum imagined herself to be a member and director of AIS, however misconceived those ideas were. Especially since it is supposed to be a charity and not a company limited by shares for which she had to pay money for her shares. Within this context, and with the leverage she obviously had in the school's administration, I do not find her actions in '*reconstituting the executive council'* with the Director's Advisory Council' as hostile. I find it as done with altruistic intensions but misguided to the extent that it was not backed by law.

Causation is an essential element required for a finding in tort. Two reasons have been given by the different sides in this suit for why students left the school in droves after August 2012. The plaintiffs in OCC 56/2012 posit that it was because NICS shut the school down for three days and brought police on to campus to remove Mr. Crosby. The plaintiffs in AP 134/12 assert that it was because the defendants in that suit embarked on what they call a hostile take over – a description I have disagreed with – and brought police onto campus to disturb a staff meeting and prevent certain teachers and administrators from coming to the school for a period of time in august 2012. Then there were injunctions obtained by both sides of the conflict from two different divisions of the high court after the commenced their actions a day after the other.

I have evaluated all these pieces of evidence and find that the exodus of students from the school could have occurred for any number of reasons including all or none of the reasons given by both sides of the conflict.

No clear evidence of the causation of the exodus by each of the students that left the school was brought to this court. To that extent, I do not at all find that the defendants in AP 134/2012 caused the losses alleged in claim (vii) of that action and I dismiss that claim.

Now to the claim against Mr. Crosby for the return of $58,500 and GH¢18,714 belonging to the school. Mr. Crosby denied that he had taken this money which means that if he indeed took it, then it was with a dishonest intention to appropriate money that was not his. Under **Section 125 of the Criminal and Other Offences Act 1960, Act** 29 this is plain stealing. Stealing is defined in **Section 125 of Act 29** as '*a person steals who dishonestly appropriates a thing of which that person is not the owner*

The Supreme Court made it very clear in **Feneku v. John Teye 2001-2002 SCGLR 985** that in any allegation of a criminal act, even in a civil trial, the standard of proof is governed by section 13 (1) of Evidence Decree which requires proof '*beyond reasonable doubt*'. See also **Donkor v The State** 1964 GLR 598

Generally, in a civil trial, the burden of persuasion is on the preponderance of probabilities. Where, however a criminal act is the issue in a civil trial, the burden of persuasion requires proof beyond reasonable doubt.

Although Mr. Crosby denied having received this money into his safe, I must make clear in this judgment that I do not believe him. I believe Ms Abbew-Mensah that indeed he asked for these sums of money and put them in his safe. However as stated in **Darko v. Republic 1968 GLR 203**, if a court '*...convicted in a criminal trial only because it took the view that the accused person's defence was not to be believed, this would be equivalent to shifting the burden of proof on to the defence. A*

court could not convict an accused because it did not believe his story. It must go further and show whether his story did not create a reasonable doubt either'.

Like an Agatha Christie story, the problem arises regarding how those moneys left the safe. Nobody saw Mr. Crosby take them out of the safe and leave campus with them. Apart from him, Ms Minta Berry had a key and the combination to that safe. Ms Cabrera shared a door to his office, and Ms Berry and Ms Cabrera entered his office and found the safe empty. It is clear to me that between the time he received the money into his safe and the time the money was found to have been removed from it, any number of people, including and excluding these two ladies, could have had access to the money.

I must hastily add that Ms Berry, Ms Cabrera and Mrs. Abbew Mensah all testified in this case and none gave me the slightest reason to doubt their credibility. On the contrary, I found Mr. Crosby extremely cagey about the circumstances under which the money came into his custody. I did not find him to have acted as a witness of truth. As a court of law however, I am bound by law. I cannot decide this issue on a preponderance of probabilities as in a civil case, but must decide it on the basis of evidence which proves beyond reasonable doubt that it is Mr. Crosby and only Mr. Crosby who took that money. I do not find that the plaintiffs in AP 134/2012 brought that quality of evidence to this court and I dismiss their claim (i) and (ii) against Mr. Crosby.

The plaintiffs in OCC 56/2012 are seeking a declaration that the levy and collection of a fixed percentage of all incomes of the school by 1st Defendant is unlawful and in breach of the regulations of the company and the laws of Ghana.

Section 10 of Act 179 pointedly provides that

(1)*A company limited by guarantee may not lawfully be incorporated with the object of carrying on business for the purpose of making profits.'*

(2) If any company limited by guarantee shall carry on business for the purpose of making profits, all officers and members thereof who shall be cognisant of the fact that it is so carrying on business shall be jointly and severally liable for the payment and discharge of all the debts and liabilities of the company incurred in carrying on such business, and the company and every such officer and member shall be liable to a fine.....'

Again, any income earned in Ghana is subject to tax. What was the evidence before the court? NICS did not deny receiving flat rates of 6% from AIS every month to cover services it was allegedly performing for the school. This was confirmed by Ms. Minta Berry, the business manager of the school and Mr. Nipah, the auditor of the school, the two of them testifying on opposite sides of the case. These monies had reached $798,000 by the time the auditor of the school raised alarm bells in exhibit 29. And yet exhibits 8 series were copious documentation covering specific expenses that NICS invoiced and sought reimbursement for from AIS.

As much members of guarantee companies may provide services to the company and earn fees, such fees ought to be subject to the payment of tax. What is clear from this evidence is that under the cloak of being non-profit organizations, NICS was being given money from the income of AIS for whatever activities on top of the reimbursements that NICS had bothered to present records to Ghana in the form of vouchers or receipts to prove their expenses. They were not paying taxes for this fee they were earning for whatever services the flat fee covered.

I was not at all impressed by the glib 'Christian' posturing of Dr. Hale regarding the work NICS was doing at AIS when it came to the records placed before him on the mechanism NICS had designed to move the school's money out of Ghana and I must say so in this judgment. I was also not impressed with exhibit J, which was obviously created to justify the movements of this money and I find it a sham. All its signatories were supposed to have signed it in January 2006, including Mr. Seth Asante, who ostensibly was not known to Dr. Hale by then. And counsel for NICS in their addresses has sought to create the impression that exhibit J was a pre-incorporation contract. However by January 2006, the name American International School had not been settled on. It was in exhibit 25 dated 24th April 2006 that Mrs. Korum asked Mr. Asante to reserve the name American International School for the company. The school itself was incorporated on 2nd August 2006.

Exhibit J is an obvious sham, bogus and has no Christian integrity and I think it is a real shame that Dr. Hale swore on a bible, talked extensively about prayer and scripture, and sought to hoodwink this court with it to justify the monies being lugged out of Ghana for alleged services.

Indeed, the situation is even more horrifying when one examines his evidence that all the NICS affiliated schools in developing countries were sending these monies to NICS in the United States for these services, and yet he could not attest that due taxes were being paid on them. See exhibit 7.

In response to the claims (k), (l) and (o) of OCC 56/2012, it is my considered order that NICS is ordered to immediately return the sum of $798,000 transferred from Ghana since the opening of AIS to the accounts of AIS in Ghana. Secondly, this court orders the head of Ghana Revenue Authority to audit AIS' books to determine what taxes are payable for any sums retained by NICS as fees for services it

purportedly performed for AIS. This audit should cover all the different types of levies NICS has placed on AIS in different names such as CRISIS fund, CARE fund. It is my considered view that if AIS decides to retain money out of Ghana for any purposes such as paying for the care and crisis of some of its teachers, these sums should go under he lens of Ghana Revenue Service. Such audit should include all payments made directly to NICS in the United States from students at AIS which are retained for unaccounted purposes by NICS. The head of Ghana Revenue Authority responsible for taxes is ordered to complete this exercise within six months of this judgment and file a report with the Registrar of Companies in its oversight responsibility for guarantee companies, as well as the Registrar of this court for retention as part of the records of this suit.

It is my sincere hope that the appropriate office within the American Embassy will assist the Ghana Revenue Authority with gaining access to information for this exercise.

Again, I must express my profound dismay with the Registrar of Companies for the unbelievably reckless and feckless manner in which so many ventures are set up as non-profit organizations with no mechanism for monitoring that their income is used for charity instead of as a scheme for persons to earn money without paying tax to a country brought to its knees by poverty. I believe it is high time Parliament took up its responsibility of setting up a Charities Authority to ensure that income obtained through the activities of alleged non-profit organizations such as churches and other institutions are actually used to partner social development instead of being taken by organizations that effectively dodge the tax net. .

I must dismiss claim (n) in OCC 56/2012 because I have already held that to the extent that AIS held out the gentlemen on the board of NICS

as its Executive Council on its official records, they should be recognized as the Executive Council of the school. Act 179 gives the Executive Council authority to manage the school and any resolution passed by the Executive Council in relation to the affairs of the school cannot be held to be illegal or unlawful.

The claim vi) in AP 134/12 and p) in OCC 56/2012 are mirror images of each other. Both parties claim perpetual injunctions restraining the defendants in the various suits, their agents, assigns and privies from interfering in the management and administration of the 2nd Plaintiff.

A final or perpetual injunction is an equitable relief the grant of which is dependent on the existence of a right coupled with circumstances which make it equitable to make the order. **See Snell's Equity, 31st Edition (John McGhee QC ed) Thomson Sweet & Maxwell 2005, page 382.**

Before dealing with these claims, I deem it fit to stop and consider a matter counsel for the plaintiffs in AP 134/2012 brought up in his addresses which is the locus standi of the plaintiffs in OCC 56/12 to seek and obtain the orders they are praying for in this court. After determining that Mrs. Korum is not a member or executive council member of AIS and the remaining plaintiffs are also not executive council members, this court cannot consider the question of whether they have a right at law for the perpetual injunction sought without first determining whether they have locus to sustain the reliefs sought.

AIS purports to be a Christian charity, a non-profit institution that is by law compelled to provide the services it registered to the country. As Christians, citizens and parents of children in the school at the time the dispute commenced, I have no hesitation in finding that these persons have an interest in the proper running of the school and a cause of action regarding the reliefs under consideration.

Regarding the claim for injunction by the plaintiffs in OCC 56/12, I have dismissed the claim for declaration that the defendants did not have power and authority to interfere with the day to day administration of AIS. In such a situation, should the court grant the injunction to restrain the 1st defendants from '*interfering with the management of the school*?' Such an order would be untenable because NICS is not just the sole member of AIS, NICS also holds the blue print for managing the school. I dismiss the claim for injunction by the plaintiffs in OCC 56/12.

As stated earlier, the defendants in AP134/2012 are also parents of children in the school and Christians with an interest in the charity that AIS purports to be. In that wise, I will also decline the order for injunction sought by the plaintiffs in AP 134/2012 to restrain the defendants from meddling in the internal affairs and administration of the school, since such an order may be misconstrued to mean that they are forever precluded from raising any complaints they may have regarding any matter to do with the school. If AIS wants to conduct business in Ghana and enjoy the freedoms of a corporate body paying taxes, free of interference by persons without shares in it and who do not transact business with it, it is my humble suggestion that they convert from 'non profit charity' to a company limited by shares.

Now was the termination of Mr. Crosby's employment wrongful? It is trite learning that either party to an employment contract may choose to terminate the contract. **See *Hemans v. Ghana National Trading Corporation 1978 GLR 4, Nartey Tokoli v. Volta Aluminium Co Ltd 1987-88 2 GLR 532, Ghana Cocoa Marketing Board v. Agbettor 1984-86 1 GLR 122.***The problem arises with termination that is contrary to the agreed terms of the employment contract. The evidence shows that for months prior to being relieved of his duty, NICS, as the organization permitted by the Executive Council of AIS to manage the school,

nagged Mr. Crosby about his alleged 'leadership style'. He was then placed on 'indefinite administrative leave'. It was after this that Mr. Crosby's employment was terminated for the part he played with those who revoked his administrative leave, purported to reinstate him, and took over the running of the school.

The law has always made room for implied terms in any form of contract. Mr. Crosby's contract is with AIS and was tendered as exhibit L. It definitely must be an implied term of any contract of employment that when an employee joins forces with others who claim control over the organization he works for, against those who recruited him, any termination of his contract of employment is entirely justified. I find the termination of Mr. Crosby's employment as per exhibit Z lawful, and dismiss his counter claims.

Mr. Crosby has also claimed for damages on the grounds that he did not have access to his certificates etc. I note that on exhibit Y, as far back as August 10 2012, Mr. Steve Stark informed him that 'if you wish to pick up some personal items please do so if you wish, otherwise please refrain from coming on campus except at Mr. Korver's request..' Clearly if Mr. Crosby had wanted his certificates, he could have picked them up and there is no evidence that he was restrained from doing so. Indeed, I appointed him part of an interim management committee pending this judgment but he chose to leave the jurisdiction. His other claims are dismissed.

In summary, regarding suit number AP 134/2012, I grant claims i, ii, iii, v, and dismiss claims iv, vi, vii. Also against Mr. Crosby, I dismiss claims i, ii,. I dismiss all of Mr. Crosby's counter claims. Regarding the counterclaims of the other defendants, I dismiss all the counterclaims except counterclaims l, m, and p

Regarding suit number, OCC 56/2012, I grant claims k, l, o, and dismiss claims a, b, c, d, e, f, g, h, I, j, m, n, p. Each party is to bear their own costs.

(SGD)

GETRUDE TORKORNOO (JA)

JUSTICE OF THE COURT OF APPEAL

(SITTING AS ADDITIONAL HIGH COURT JUDGE)

COUNSEL

ACE ANAN ANKOMAH FOR PLAINTIFFS IN AP/134/12 AND 1ST, 2ND AND 3RD DEFEDDANTS IN OCC/56/12 AND WITH HIM IS NANIA OWUSU-ANKOMAH.

KWAME BOAFO AKUFFO LED BY PHILIP ADDISON FOR PLAINTIFFS IN OCC/56/12 AND 3RD AND 4TH DEFEDANTS IN AP/134/12.

YONNY KULENDI WITH JOYCE AGYEMANG ATTAFOAH AND DENNIS ADJEI DWOMOH FOR 2ND DEFENDANT IN AP/134/12

CASES REFERRED TO:

Sarkodie v. FKA Co Ltd 2009 SCGLR 65

Biney v Biney 1974 1 GLR 318.

Duah v Yorkwa 1993-94 1 GLR 225

GIHOC REFRIGERATION (NO. 1) HANNA ASSI (NO. 1) 2007/2008 SCGLR 1

Awuni v WAEC 2003 -2004 471

Commodore v Fruit Supply (Ghana) Ltd 1977 1 GLR 241 CA.
Quarcoopome v. Sanyo Electric Trading Co Ltd & Another, 2009 SCGLR 213

Fofie v Zanyo 1992 2 GLR 475,

Koglex Ltd (No.2) v Field, 2000 SCGLR 175,

Feneku v. John Teye 2001-2002 SCGLR 985

Donkor v The State 1964 GLR 598

Darko v. Republic 1968 GLR 203,

Hemans v. Ghana National Trading Corporation 1978 GLR 4,

Nartey Tokoli v. Volta Aluminium Co Ltd 1987-88 2 GLR 532,

Ghana Cocoa Marketing Board v. Agbettor 1984-86 1 GLR 122.

STATUTES REFERRED TO:

Section 30 of the Companies Code Act 179 1961

Section 8 of Act 179

Section 18 of Act 179

Section 30 of Act 179

Words and Phrases Legally Defined, Fourth Edition, LexisNexis Butterworth 2007 Volume 2

Section 16 (5) of Act 179.

Section 21 of Act 179

The Law of Interpretation in Ghana (Exposition & Critique) S. Y. Bimpong Buta Advanced Legal Publications, 1995, pages 26 to 27

Section 10 of the Evidence Act 1975 NRCD 323

Section 25 of the Evidence Act 1975 NRCD 323

Section 25 of NRCD 323

Section 177 of NRCD 323

Section 18 (1) of Act 179

Section 137 of Act 179

Section 140 of Act 179

Section 181 (1) of Act 179

Section 181 (2) of Act 179

Section 179 (2) of Act 179

Section 10 of Act 179

Snell's Equity 31st Edition (John McGhee QC ed) Thomson Sweet & Maxwell 2005, page 382.