IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA – A.D. 2026

CORAM: ASARE-BOTWE (MRS), JA (PRESIDING)
BOAFO, JA
AMEDAHE, JA

NO. H1/25/2026

12TH MARCH, 2026

1. **WINIFRED TSE**
2. **RODGER BISMARK TSE**
3. **WALTER TSE**

VRS

MARWAKO FAST FOOD LTD.

JUDGMENT

EMMANUEL SENYO AMEDAHE JA:

INTRODUCTION

This is an appeal from the Circuit Court, Adenta, following a judgment delivered on June 24, 2024. The Appellant, Marwako Fast Food Limited is a fast-food restaurant business with branches in Accra (i.e. East Legon, Abelenkpe and Labadi). It was sued for allegedly serving unwholesome food to the three Respondents who are all siblings,

which resulted in the Respondents experiencing food poisoning after consuming food purchased from the Appellant's East Legon branch.

BRIEF FACTS CASE OF THE RESPONDENTS

The suit by the Respondents was initiated on January 19, 2024. The Respondents sought the following reliefs from the Appellants:

a. General damages for physical injury suffered by the Plaintiffs.
b. General damages for psychological trauma following the injury and harm caused to the Plaintiff.
c. General damages for inconvenience and general discomfort
d. An order directed at the Defendant to refund the amount of GHC25,215.48, which constitutes special damages
e. Costs inclusive of legal fees

According to the Respondents, on May 8, 2022, the 1st Respondent, Winfred Tse, purchased food from the East Legon branch of the Appellant's Restaurant. After consuming the food, all three Respondents experienced severe abdominal pains, vomiting, and diarrhea, which required hospitalization and medical treatment. Consequently, the Respondents accused the Appellants of negligence, particulars of which included:

a. Selling food contaminated with microbial infestations to the public without due cure:
b. Failing to maintain proper sanitary conditions,
c. Failing to ensure adequate storage of food and perishable items.
d. Failing to observe and maintain hygienic food-handling practices; and
e. Failing to ensure that food sold to consumers was wholesome and free from contamination.

Medical reports tendered by the Respondents from Nyaho Clinic and the Holy Trinity Medical Centre indicated that the Respondents suffered from food poisoning, clinically referred to as gastroenteritis. The Respondents also tendered an investigation report by the Food and Drugs Authority (FDA), conducted after the incident, which identified several regulatory breaches at the Appellant's East Legon branch. The Respondents argued that these breaches demonstrated that the food sold to them was contaminated and unwholesome, resulting in harm and injury for which they sought compensation and other reliefs.

According to the Respondents, their parents are aged, and they are the primary caregivers of their parents, who also suffered shock, trauma and had to bear the brunt of their ill health and inconvenience caused by the food poisoning and their subsequent admission to the hospital. They also claimed that their condition (caused by the 1st Appellant) worsened the health of their aged parents. As a result of the rather deteriorating medical condition of the Respondents, they were compelled to hire a domestic servant for five days to assist in caring for their aged parents because they were not capable at the time of caring for their parents.

To establish their claim of harm caused by the Appellant, the Respondents presented evidence, including their health status following consumption of food bought from the 1st Appellant, medical reports from hospitals they visited, and an investigation report on the Appellant's facilities and activities. This report was prepared by the Food and Drugs Board shortly after news emerged that Marwako Fast Food Limited had served unwholesome food to the public.

According to the Respondents, because of their consumption of the food they purchased from the Appellant, they suffered injuries and traumatic experiences.
They particularized their injuries suffered as follows:

a. Excruciating abdominal and rectal pains.

b. Diarrhea.

c. Vomiting.

d. Dehydration.

The Respondents particularized their Special Damages as follows:

Hospital and other treatment expenses	7,415.48
Travel and Transport (T&T)	1,300
Payments for hiring of domestic help	1,500
Loss of earnings for 1st Plaintiff	15,000
TOTAL =	**GH¢ 25,215.48**

CASE OF THE APPELLANT

The Appellant admitted selling food to the 1st Respondent on May 8, 2022, from its East Legon branch, but denied that the food was contaminated. The Appellant also maintained that it did not breach any duty owed to the Respondents.

In response to the FDA findings, the Appellant contended that the identified breaches were regulatory in nature and did not constitute negligence or culpability as alleged by the Respondents. The Appellant denied any negligence and asserted that it bore no liability for the alleged harm. The Appellant in both their pleadings and evidence expressly denied the responsibility for the alleged food poisoning, trauma, general discomfort, or nervous shock purportedly suffered by the 2nd and 3rd Respondents, and further denied any liability for the alleged shock trauma said to have been suffered by the Respondents' aged parents, or any deterioration in their parents' health condition arising from the act.

The Appellant also denied that the 1st Respondent lost a contract as a result of her alleged hospitalization following the consumption of contaminated food purchased from the Appellant's Restaurant.

JUDGMENT OF THE CIRCUIT COURT

On June 24, 2024, the Circuit Court found merit in the Respondents' claims and determined that the Appellant had acted negligently. The Court entered judgment in favor of the Respondents and awarded a total sum of GHC1,070,215.48, broken down as follows:

a. Special Damages: GH₵25,215.48

b. General Damages for 1st Plaintiff: GH₵345,000.00

c. General Damages for 2nd Plaintiff: GH₵345,000.00

d. General Damages for 3rd Plaintiff: GH₵345,000.00

e. Costs inclusive of legal fees: GH₵10,000.00

THE APPEAL

Aggrieved by the decision of the Circuit Court, the Appellant appealed the judgment on the following grounds:

1. The Learned Trial Judge's conclusion that the food sold by the Defendant's East Legon branch to 598 customers, including the 1st Plaintiff on May 8, 2022, was contaminated with pathogens, is not supported in law or by facts.
2. The Trial Judge's findings that the food purchased by the 1st Plaintiff from the Defendant's East Legon branch on May 8, 2022, was also consumed by the 2nd and 3rd Plaintiffs is not supported by the evidence adduced at the trial.
3. The Learned Trial Judge's holding that the duty of care owed by the Defendant to the 1st Plaintiff as a customer extends to the 2nd and 3rd Plaintiffs is not supported in law or by the evidence adduced at the trial.

4. The trial judge's holding that the Defendant is in breach of its duty of care owed to the Plaintiff is not supported by the evidence adduced at the trial.
5. The general damages of GH₵345,000.00 awarded to each Plaintiff against the Defendant are arbitrary and excessive.
6. The Learned Trial Judge erred in law by granting GH₵25,215.48 to the Plaintiffs as special damages.
7. The Judgment is against the weight of evidence presented at trial.

ARGUMENTS

The Appellant challenges the Trial Judge's conclusion regarding contamination of food bought at its Restaurant, stating that it is not supported by law or facts. According to them the findings of the report was only recommendations directing them as to how to regulate the activities of their Restaurants and not that they served unwholesome food which led to the Respondents and other customers of theirs to suffer from food poisoning.

The Court of Appeal Rules 1997 (CI 16) provides that any appeal to the Court of Appeal shall be by way of re-hearing and this has been amplified in countless decisions in the Supreme Court of Ghana one being the case of **FRIMPONG V. BINEY AND ANOTHER (J4/24/2015) [2016] GHASC 88 (11 MAY 2016)** the Supreme Court through Pwamang, JSC said " *It is an established rule of law that an appeal is by way of re-hearing and especially where an appeal is mounted on the ground that a judgment is against the weight of the evidence led at the trial, the appellant court is required to peruse the whole record and satisfy itself that the findings and conclusion reached in the judgment appealed against can be supported by evidence and the law applicable. If the appellant Court finds that the findings cannot be supported by the evidence or that they are perverse as being inconsistent with the undisputed facts or documentary evidence on record, then it may set aside the findings of the lower Court."*

Similarly, in assessing the grounds of appeal, the Supreme Court again stated in the

case of **TUAKWA v BOSOM (2001 – 2002) SCGLR 61 at page 65** that: ". . . an appeal is by way of rehearing, particularly where the appellant. . . . . alledges in his notice of appeal that the decision of the trial court is against the weight of the evidence. In such a case . . . . .it is incumbent upon the appellant court, in civil cases to: a. Analyse the entire record of appeal b. Take into account the testimonies and all documentary evidence adduced at the trial before it arrives at its decision. Now to discuss the main grounds of appeal.

Before discussing the various grounds of this appeal, the Appellant states as his last ground of Appeal the omnibus ground that **the judgment is against the weight of the evidence on the record**. Per this ground of appeal, he is inviting the Court to review the entire record and determine whether the decision of the trial judge was fair, having regard to the evidence on the Record.

The Supreme Court in the case of **Djin v Musa Baako [2007-2008] SCGLR**

686 stated the position of a ground of appeal that the judgment is against the weight of evidence as follows in headnote (1):

> **Where (as in the instant case), an Appellant complains that a judgment is against the weight of evidence, he is implying that there were certain pieces of evidence on the Record which, if applied in his favour, could have changed the decision in his favour or certain pieces have been wrongly applied against him. The onus is on such an Appellant to clearly and properly demonstrate to the appellate Court the lapses in the**
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> **judgment being appealed against".**

See the cases of Owusu Domena v Amoah [2015-2016] 1GLR 790, Aryeh & Akakpo v Ayaa Iddrisu [2010] SCGLR Akufo-Addo v Catheline [1992] 1GLR 377; Tuakwa v Bosom [2001-2002] SCGLR 61, Oppon v Anarfi [2011] SCGLR 556.

GROUND A

The first ground of appeal argued by the Appellant was Ground A: **That the Learned Trial Judge's conclusion that the food sold by the Defendant's East Legon branch to 598 customers, including the 1st Plaintiff, on May 8, 2022, was contaminated with pathogens is not supported in law or fact.**

It must be noted that the Respondents relied on the FDA report, which indicated heavy microbial contamination following inspection of the East Legon facility on May 12, 2022. The FDA report noted several critical and major non-compliances that compromised food safety at that Marwako Fast Food Limited. This report was from an investigation conducted by the Food and Drugs Authority (FDA) into the activities of the Respondents on their premises.

The FDA issued a public notice, stating that heavy microbial loads were found that could be linked to the reported foodborne disease. The report stated that samples collected from the facility were heavily contaminated. It is undisputed that the 1st Respondent purchased six packs of food from the East Legon restaurant on May 8, 2022. Notably, all the Respondents did not fell sick immediately after consuming the food.

Appellants, in their evidence in chief, explained that they viewed the FDA's activity at their restaurants as an intervention following their incident, which, according to the Appellants, was widely reported by the media. From the Report tendered, the FDA paid an unannounced visit to the Appellant's East Legon Restaurant in response to reports it had received of food poisoning. This is captured in the first paragraph of the report dated 16th May 2022. Again, from the report the inspection and investigation of food poisoning took place at the premises of 12th May 2022.

The report showed that investigations observed several critical (C) and major (M) non-compliances which directly compromised the safety of food prepared at the Appellant's restaurants at East Legon (i.e. where the 1st Respondent purchased the packs of food), the Abelenkpe and Labadi all in Accra.

As per Exhibit 4, the restaurant had no temperature monitoring of its freezers and fridges. It is noted that during the time of the FDA's investigation, the freezer temperature was 5 degrees rather than the optimal range of -18 to -26 degrees. The Report described this irregularity in keeping the freezer at the right temperature as a direct critical non-compliance with the safety of the food prepared in the restaurant. It was also observed from the investigations that the restaurant had no validated means of grilling and frying of chicken. This omission was also considered a critical non-compliance to the safety of food preparation. The Authorities also observed that the containers for storing marinated chicken and fish were left uncovered in the freezer. This was classified as major critical non-compliance which directly compromises food safety.

Another major non-compliance activity which affects food safety at the East Legon branch of the Defendants' restaurants was that there were no documentation of all process activities including pest control, cleaning sanitation, raw material acquisition of and storage. There was also no designation station for staff at the food preparation area. One important observation at the Legon Branch was that the staff washroom opens directly into the area where food is prepared.

In the first place, the report was admitted in evidence by the trial Court on the grounds of relevance to the issue of unwholesome food prepared and sold by the respondent restaurant. Section 51 of the Evidence Act, 1975 (NRCD 323) which permits only evidence which makes a fact in issue more or less probable to the issue to be admitted. Section 51 of the Evidence Act states *Evidence is relevant if it tends to prove or disprove an issue.* Lord Simon in **DPP v Kilbourne [1973] AC 729** said that evidence is relevant if it is logically probative or disprobative of some matter which requires proof.

The trial judge was right to admit the FDA report into evidence. It is obvious that the purpose of the report was to determine whether the food served by the Appellant in its

restaurant, particularly on the 8th of May 2022, was unwholesome. Exhibit 4, authored by the Food and Drugs Authority, is the result of an investigation conducted. The FDA is the foremost government institution charged by Parliament to regulate all activities of the food industry as established by the Public Health Act, 2012 (Act 851). The FDA ensures that food vendors, at a minimum, prepare and serve their customers safe and wholesome food.

We can safely presume that the individuals from the FDA who conducted the investigation into the activities of the Appellant are professionals and to a large extent, experts in their field; The report was prepared by experts from the government agency that regulates the facilities for the preparation and selling of food to the public. The Judge, after reviewing the report, accepted it in evidence.

WHAT IS THE EFFECT OF THE REPORT

The report's findings confirm that food was prepared at the restaurant under unacceptable hygienic conditions. The findings, as expressed in the report, corroborate the quality of the food sold to the public before the 12th of May 2022. The refusal to comply with good and accepted sanitary and hygienic conditions could not have occurred overnight. Certainly, it was in existence before the 8th of
May 2022 when the 1st Respondent bought six packs of food from the Restaurant.

Food prepared under unhygienic conditions will certainly result in unwholesome food being consumed. I find that food prepared under such unhygienic conditions as reported by the FDA in Exhibit "4" had a direct relation in the food sold out at the East Legon Restaurant of the Appellant Company. It is therefore more probable than not that the 1st Respondent was served with unwholesome food at the Restaurant than the food being wholesome for consumption. We therefore accept the findings of the report that food was being prepared at the Restaurant under very unhygienic conditions which was dangerous to customers who consumed food prepared from that Restaurant.

The consumption of unwholesome food from the East Legon Restaurant was widely reported on social media soon after the 8th of May 2022, when the Respondents claimed they had consumed food from Marwako. The 1st Respondent tendered evidence of a transaction from her mobile App. She tendered the transaction as captured on her phone as Exhibit "A". Per their pleadings, the Appellants did not deny that the 1st Respondent bought six packs of food from their Restaurant at East Legon on the 8th of May 2022.

It is a trite and established principle that failure to deny an allegation amounts to an admission. It aligns with Order 11 rule 13 of Ghana's High Court (Civil Procedure) Rules, 2004 (CI 47), which provides that allegations of fact not denied are taken as admitted. The Appellant's non-denial constitutes an admission that the Respondent bought a six-pack of food from the Appellant's restaurant on May 8, 2022.

Since this undisputed purchase took place on May 8, 2022, the court can confidently determine that it falls within the scope of the report. This allows us to infer that the food bought by the 1st Respondent was prepared under unhygienic conditions at the Respondent's Restaurant, as documented by the FDA in their report.

Based on the foregoing, I find no reason to disturb the holding and finding of the learned trial Judge that *the food sold by the Defendant's East Legon branch to 598 customers, including the 1st Plaintiff, on May 8, 2022 was contaminated with pathogens.*

Therefore, Ground (a) of the Appeal that the Learned Trial Judge's conclusion that the food sold by the Defendant's East Legon branch to 598 customers, including the 1st Plaintiff, on May 8, 2022, was contaminated with pathogens, is not supported in law or by facts, **fails.**

GROUNDS B AND C

The second ground of the appeal by the Appellant is that "*the Trial Judge's finding that the food purchased by the 1st Plaintiff from the Respondent's East Legon branch on 8th*

May 2022, was also consumed by the 2nd and 3rd Plaintiffs is not supported by the evidence adduced at the trial".

Primarily, the Appellant disagrees with the trial judge's conclusion that the 2nd and 3rd Respondents ate part of the six packs of food purchased by the 1st Respondent.

The trial judge in her judgment stated at page 180 of the Record of proceedings that: *"Now to the extent that the food sold by the Defendant's East Legon branch on 8th May 2022 to its customers and which said food was found by the FDA to have been contaminated, was the very food that was purchased by the 1st Plaintiff herein and which said food was consumed by all 3 Plaintiffs herein as previously found by this Court, the evidence on record supports a finding that the duty of care owed the Plaintiffs by the Defendant when the Defendant sold the said contaminated food to the 1st Plaintiff, which was subsequently consumed by all three Plaintiffs. This Court accordingly finds that the Defendant breached the duty it owed the Plaintiffs when it sold contaminated food to the 1st Plaintiff on 8th May 2022 and which said contaminated food was consumed by all 3 Plaintiffs on 8th May".*

At the trial, the 2nd and 3rd Respondents gave evidence through the 1st Respondent. In her testimony on her own behalf and on behalf of the 2nd and 3rd Respondents, the 1st Respondent stated that the food purchased by her on May 8, 2022, was also consumed by the 2nd and 3rd Respondents, which caused them to fall ill.

In paragraph 6 of her evidence-in-chief, she stated that upon reaching the house on 8th May, she and her siblings, the 2nd and 3rd Respondents, consumed the food. She added that apart from the food the 1st Respondent brought to the house on 8th May 2022 from the East Legon Restaurant, they did not eat any other food.

It goes without saying that the food served that day was contaminated and unwholesome for human consumption. This court has already established that anyone who ate the food served that day will almost certainly fall ill. The issue the court is

faced with is whether the 2nd and 3rd Respondents ate food purchased by the 1st Respondent.

To prove that the 2nd and 3rd Respondents ate the food in question, the 1st Respondent exhibited medical reports on the 2nd and 3rd Respondents when they were rushed to the hospital after consuming the food. The 2nd Respondent is identified as one called *Rodger Bismark Tse* aged 35. The medical report tendered on him can be found on page 242 of the Records of Appeal. The report is dated 13th July 2023 and signed by one Dr Ruth Agyekum (MO). According to the report, Rodger Bismark Tse was admitted to Holy Trinity Medical Centre on May 14, 2022, at 11:18 pm, complaining of watery stools after eating fast food the previous day, which would have been May 13. He was discharged after four days. The 1st Respondent tendered, on his behalf, electronically generated hospital receipts labelled as Exhibit D series: D, D1 to D4.
These exhibits were to corroborate the 2nd Respondent's claims in this matter.

While the oral evidence of the 1st Respondent is that they all ate the food on the 8th of May 2022, the Medical Report says that the 2nd Respondent's complaint when he was rushed to the hospital on the 14th of May 2022, was that he was passing watery stools after eating fast food "**the previous day".** The previous day, therefore, would be the 13th of May and not the 8th of May when he is alleged to have eaten the food purchased from the East Legon Restaurant of the Appellant.

Clearly, the report does not corroborate the evidence of the Respondents in the trial Court that all the Respondents, including the 2nd Respondent, ate the food purchased from the East Legon Restaurant on the 8th of May 2022, the day it was purchased. If the 2nd Respondent ate any food which resulted in him passing watery stools, for which the hospital's conclusion after their diagnoses was that he was suffering from food poisoning, it was not proven that to be the fast food he consumed on the 8th of May 2022.

When a party's oral testimony or evidence conflicts with the documentary evidence they present, the general legal stance is that documentary evidence holds greater weight. Courts typically regard documentary evidence as more trustworthy than oral assertions because documents are presumed to have been created at the time and are less susceptible to memory lapses or fabrication. Where oral testimony contradicts a document, the court will generally rely on the document unless there is strong proof that the document was forged, altered, or otherwise unreliable. The legal position which gives precedence of documentary evidence over oral evidence is confirmed in the case of **KOGLEX LTD V. FIELD (2000) SCGLR 175** where the Supreme Court held that **documentary evidence is the best evidence of its contents, and oral testimony cannot override clear documentary proof unless fraud or illegality is shown.** Where oral evidence conflicts with documentary evidence, the latter must prevail, as documents "speak for themselves." Prior to this the Supreme in the case of Akuffo-Addo v. Catheline (1992) 1 GLR 115 (SC) had reiterated that documentary evidence carries greater probative value than.

The Medical Report concerning Rodger Bismark Tse, the 2nd Respondent, is an official document issued by the Holy Trinity Medical Centre located in North Kaneshie, Accra. This document is presumed authentic and regular, representing the highest standard of evidentiary value from the hospital. **Sections 37, 38, and 39 of the Evidence Act 1975 (NRCD 323)** address legal presumptions regarding documents.

Clearly, there is an inconsistency surrounding when the 2nd Respondent actually consumed contaminated food. It has been established from the documentary evidence that he ate fast food on 13th May 2022. Indeed, while the 2nd Respondent would have wanted the court to believe that he ate the contaminated food on May 8, 2022, his own medical report shows that whatever warranted his hospitalisation was consumed on 13th May 2022 and not on 8th May 2022. That is 5 clear days from when he alleges to have eaten the Appellant's food purchased on May 8. From the evidence on record, this court is unable to state factually that the food the 2nd Respondent told the Doctors he ate on 13th May was one and the same as the food purchased on 8th May 2022. It is trite law that where the evidence led by a party (such as exhibit D series) is in conflict

with his own testimony on a crucial issue, a trial court should not gloss over it and make a specific finding on that issue in favour of that party whose case contained the conflicting evidence on the issue. **See Atadi v Ladzekpo (1981) GLR 218.**

The first hurdle the 2nd Respondent had to clear was to prove that his symptoms were the direct result of the food he consumed. His symptoms alone are not enough to prove liability. Upon reviewing the medical report of the 2nd Respondent, we conclude that there is no evidence establishing that the 2nd Respondent consumed food purchased by the 1st Respondent on May 8. His own documentary evidence rather points to the fact that he fell ill from food that he ate on the 13th of May 2022.

That is a day before he reported his illness at the Holy Trinity Hospital, in Accra.

The 3rd respondent, ***Walter Tse,*** submitted a medical report dated 13th July 2023, prepared and signed by one Dr. Ruth Agyekum. The purpose of this report was to demonstrate to the Court that the food consumed by Mr. Walter Tse on 8th May 2022, together with the first and second respondents, was unwholesome and resulted in him experiencing loose stools. According to the report, Mr. Tse presented at the facility on 11th May 2022, complaining of having eaten fast food the previous day, which corresponds to 10th May 2022. Speaking through the 1st Respondent, he testified that the food was purchased from the appellant's restaurant on 8th May 2022, and that all parties consumed it on that same day.

The contents of the medical report contradict his account. Specifically, it does not substantiate his claim that the food consumed on 8th May led to his hospitalisation. As in previous instances, the medical report is regarded as more reliable than his oral evidence. The Supreme Court established that when oral testimony conflicts with documentary evidence, the court should generally prefer documentary evidence unless there are compelling reasons to question its authenticity. See the cases of **Yorkwa v Duah [1992-93] 1GLR 217.**

From their own documentary evidence, the illness of the 2nd and 3rd Respondent's Defendants had not shown to have had their symptoms related to the food purchased from the Appellant's Restaurant on May 8, 2022.
From the evidence discussed above therefore, Ground (b) of the Appellant that the, *the learned Trial Judge's finding that the food purchased by the 1st Plaintiff from the Defendant's East Legon branch on May 8, 2022 was also consumed by the 2nd and 3rd Plaintiffs is not supported by the evidence adduced at the trial is upheld*

GROUND D

The fourth ground of the appeal is that *the judge's holding that the Defendant is in breach of its duty of care owed to the Plaintiff, that holding is not supported by the evidence adduced at the trial.* I discuss this ground specifically relating to the 1st Plaintiff (1st Respondent). She is ***Winifred Tse***

Apart from the fact that the 1st Respondent was the one who actually bought and paid for the food from the Appellant, she is the only one who presented a more accurate version of events, supported by her documentary evidence. Her medical report, found on page 221 of the Record of Appeal, was authored by one Dr. Sylvanus Addotey on 11th September 2023. The Medical report states that she presented to the medical facility therein with a 2-day history of abdominal pain, watery, non-bloody diarrhoea, and vomiting. She reported to the hospital on May 11th and was discharged on 12 May 2022. This indicates that she experienced symptoms on 9th and 10th May. She was treated and discharged, with a follow-up on 4th June 2022, after her symptoms had resolved.

Medical Evidence Relating to the 1st Respondent

The 1st Respondent's account is clear: she consumed the food she purchased from the restaurant on May 8. There is no evidence contradicting her statement or suggesting

that the food eaten on that date did not cause the discomfort she subsequently reported. In contrast to the other Respondents, whose medical reports raised questions regarding the timing and source of their illnesses, the medical documentation for the 1st Respondent does not indicate that her condition and hospital visit were unrelated to the food she consumed on May 8.

The medical report specifically diagnosed the 1st Respondent with acute infective gastroenteritis at the hospital, supporting her claims about the symptoms she experienced following her meal.

There is clear evidence that the 1st Respondent purchased six packs of food from the Appellant's Restaurant on 8th May 2022. I refer to her mobile money transaction for the purchase marked as Exhibit 'A' on page 220. It shows she made a payment of GH¢228.00 to Marwako Fast Foods, East Legon. It has not been contested by the Appellant that the 1st Respondent made the purchase on 8th May, 2022. There is also ample evidence indicating that the restaurant sold contaminated food to its customers, including the 1st Respondent, on that day. After consuming the food she suffered some discomfort and went to the Nyaho Meical Center where she was diagnosed of food poisoning.

The evidence points to the fact that the 1st Plaintiff suffered food poisoning from eating the food she purchased from the Restaurant of the Appellant at its East Legon Restaurant.

Having established that the 1st Respondent indeed consumed contaminated food and became ill, resulting in hospitalization, what legal remedies are available to her? The Appellant's business is primarily registered to provide food to the public. In my view, the sale of food and related services creates a contractual relationship, along with a special duty to serve customers safe and wholesome food. Although it is not feasible to inspect every restaurant's kitchen, there is a legal expectation that they will serve food free of contamination. The Appellant, in this case, owed this legal duty of care to its customers, including the 1st Respondent. This legal expectation, when breached, gives rise to legal action under negligence. The basis for this legal action, seen in the Locus classicus Donoghue v Stevenson (1932) AC 562, is based upon the general public

sentiment that moral wrongdoing by the offender must pay. Lord Baron Alderson in **Blyth v Birmingham WaterWorks Co** (156) 11Exch 781at 784 *defines negligence as the omission to do something which a reasonable man, guided upon those considerations which ordinarily relate to the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. Edusei J (as he then was) drew out the elements involved in the tort in Allasan Kotokoli v Moro Hausa [1967] GLR 298-304 further explains that….. negligence means more than a heedless or carless conduct whether in omission or commission:* ***it properly connotes the complex concept of duty, breach, and damage thereby suffered by the person to whom the duty was owing.***

Based on the FDA report tendered by the Appellant, it is a proven fact that the food served to the 1st Respondent contained harmful microorganisms, which are harmful to the human body. The Appellant did not proffer any evidence, nor did they provide any justification for the presence of such a harmful microbial load, which the FDA said was linked to the reported food–borne diseases.

This court agrees with the learned trial court when she said "*In the context of the hospitality industry, it is well established that service providers bear a legal obligation to exercise care towards their customers. A legal nexus exists between food vendors and purchasers, which extends to the ultimate consumers. The recognized legal relationship holds true worldwide, both within society and under legal principles.*

This court need not belabor the point that the Appellant unquestionably owed the 1st Respondent a duty to provide her with wholesome food, nor that this duty was undeniably breached. The Appellant was negligent in its duty of care owed to the Respondent. It ought to have sold wholesome food to, but it did not.

When a customer sits down to order a meal, the most fundamental duty a restaurant owes its client is to serve food that is fit for human consumption. Food must be stored, handled, and cooked in accordance with health department standards to prevent foodborne illnesses (such as Salmonella or E. coli). This is basic. The principle of

negligence was established in the English case **Donoghue v. Stevenson [1932] AC 562,** decided by the House of Lords. The facts in that case was that Mrs. Donoghue drank ginger beer bought by a friend at a café in Paisley, Scotland. The bottle contained the decomposed remains of a snail. She became ill and sued the manufacturer, even though she had no contract with him. Lord Atkin stated that one owes a duty of care to avoid acts or omissions which are reasonably foreseen likely to injure one's "neighbour." In law, your neighbour is anyone closely and directly affected by your actions.

The Appellant, Marwako Fast Food Company Ltd could be legally held liable for its actions or omissions against its neighbours. Its neighbours were anyone who was directly or indirectly affected by its activities. The 1st Respondent bought food from them and the Appellant ought to have reasonably foreseen that their action could affect her in particular. I find no need to disturb the finding of the trial court that the Appellant owed the 1st Respondent a duty of care.

Therefore ground (d) of appeal that the trial judge's holding that the Defendant is in breach of its duty of care owed to the Plaintiff, that holding is not supported by the evidence adduced at the trial fails.

GROUND E

The general damages of GH¢345,000.00 awarded to each Plaintiff against the Defendant are arbitrary and excessive is the 5th ground of Appeal to be considered.

Lord Hoffman in the case of **Rothwell v Chemical &Insulation Co Ltd and ors [2007] 4 All ER***:…… a claim in tort based on negligence is incomplete without proof of damages. In this sense is an abstract concept of being worse off, physically, or economically, that compensation is an appropriate remedy…….How much worse off must one be? An action for compensation should not be set in motion on account of a trivial injury…..*

Damages are a monetary remedy for harm caused by a wrongful act, awarded to compensate the plaintiff. The aim is full compensation, restoring the plaintiff to the

position before the harm ('restitutio in integrum'). Damages should neither overcompensate nor undercompensate the plaintiff, as illustrated in **BORKETEY v. ACHINIVU & Others (1966) GLR 92-97.**

General damages are damages presumed to result from the defendant's tort. It can be nominal or substantial. It is trite that general damages are those that the law presumes to be the direct natural or probable consequence of the action complained of. '. BOHAM v. EVONNA [1992] 1 GLR 287 per Kpegah J. CHAHIN & SONS v. EPOPE PRINTING PRESS [1963] 1 GLR 163 – SC. General damages can be Substantial Damages, which are awarded when actual damage has been caused.
They are sometimes referred to as 'actual' or 'compensatory' damages.

According to the medical report from Nayho Medical Centre, the 1st Respondent was diagnosed with Acute Infective Gastroenteritis. Harm of this nature caused by the Appellant to the 1st Respondent can be remedied through compensation known as damages.

Having established that the Appellant was negligent and therefore liable for the harm caused to the 1st Respondent, she is entitled to be awarded damages. In light of the foregoing, **I uphold the award of the GH¢345,000 general damages awarded to the 1st Respondent by the trial High Court.**

GROUND F

This court shall deal with is that **'The Learned Trial Judge erred in law by granting GH¢25,215.48 to the Plaintiffs as special damages.'**

The trial Court awarded the Respondents all their special claims pleaded as special damages. In Ghanaian jurisprudence, special damages have been defined and clarified in several notable cases.
The Supreme Court in the case of **Delmas Agency v Food Distribution [20072008]2SCGLR 749 Holding 3** said, " *Special damages are distinct from general damages. General damages are such as the law will presume to be the natural*

or probable consequence of the Defendant's act. It arises by inference of law and therefore need not be proved by evidence. The law implies general damages in every infringement of an absolute right. The catch is that only nominal damages are awarded. Where the plaintiff suffered a properly quantifiable loss, he must plead specifically his loss and prove it strictly. If he does not, he is not entitled to anything else; general damages are also appropriate. ' see also **BOHAM v. EVONNA [1992] 1 GLR 287 per Kpegah J. CHAHIN & SONS v. EPOPE PRINTING PRESS [1963] 1 GLR 163 - SC**

It has been held that special damages must not only be pleaded but also proved with exactness. Mere averments without evidence are insufficient. The Supreme court, in the case of **Nyarko Vrs Barclays Bank Ghana Ltd. [2021] GHASC 184 (10 November 2021)** outlined *that the standard of proof in civil cases was determined to be 'preponderance of probabilities' or 'balance of probabilities,' as outlined in the Evidence Act. The court clarified that 'strict proof' of special damages does not require proof beyond a reasonable doubt but instead demands clear, cogent, and convincing evidence.* The Claimant must provide specific evidence, often documentary of actual loss rather than relying on general assertions. See also **BIG BOYS COMPANY LTD. vs. ACCESS BANK (GH) PLC (Court of Appeal) (Civil Appeal No H1/164/2020)** delivered on the 26 November 2020.

The Respondents, in their Writ of Summons pleaded special damages as follows:

Hospital and other treatment expenses,	GH₵ 7,415.48
Travel and Transport (T&T),	1,300
Payment for hiring domestic help	1,500
Loss of earnings for the 1st Plaintiff	15,000
TOTAL	**25,215.48**

Since the Courts have stated that special damages must be specifically pleaded and proved, the burden lies with the 1st Respondent to strictly prove her special damages. To establish this, she tendered receipts issued by the Nyarho Medical Centre, listing the treatment she received, the drugs supplied to her, and the total amount she paid for all of that.

On page 224 of the Records of Appeal, there is a receipt in the name of the 1st Respondent, Miss Winifred Esinam Tse, dated 12th May 2022. The amount paid by the 1st Appellant was GH¢237.00. On page 225 of the ROA, there is a Bill issued by the Medical Centre. It details each item supplied to her from the medical stores, including charges for occupying the Emergency Room, nursing care, consultation visits, and other costs such as pathology. She was billed **GH₵2,379.00.** After paying this amount, she was issued a receipt, which is found on page 224; it matches the exact bill amount, **GH₵2,379.00.** The receipt issued to the 1st Respondent is supported by her detailed bill.

On page 227 is another receipt issued to the 1st respondent, Miss Winfred Esinam Tse on 11th May 2022 by the same Medical Center. The amount stated on the receipt is GH₵323. 00 and its purpose was for the payment of OPD Consultation. I find this receipt rather strange. My reasons are that the 1st Respondent reported at the Medical Center on the 11th of May 2022 and admitted on that day and discharged the following day. The receipt found on page 227 was for payment of GH₵332 for OPD. The payment for consultation is also captured on the Bill issued to her and found on page 224 under consideration visits. The amount there is GH₵337. 00.

On page 228 of the ROA, the 1st Respondent has a receipt issued to her by the medical center on the 11th of May 2022. It was for payment for Procedure charges for Emergency Detention Care and the amount charged and said to have been paid was GH₵421. 00. On page 225 of the ROA is the Bill that was issued to her. Under heading, Nurse Care charges she was charged for being detained in the "Emergency Room". She was billed for one night and the charge was GH₵222. 00 According to the Bill she was admitted on the 11th May 2022 at 12:17 pm. She occupied room number B7 and it was

a shared room. Per her Exhibit "B" found on page 221 she was admitted on 11th May and discharged on the 12th May 2022. This means that she spent only one night on admission. From her own exhibits, she was billed for occupying Room Number B-7 for GH¢222, and she paid on the 12th of May 2022 and was issued with a receipt found on page 224 of the ROA.

On page 229 of the ROA, the 1st Respondent presented a receipt for GH¢427.00 for a Pathology Test. She was charged GH¢427 and paid on 11th May 2022. In the bill on page 226, she was billed GH¢754.00 for the same pathology tests and paid as part of the amount in the receipt issued to her on 12th May 2022.

On page 230, there is a payment of GH¢226.17 for medical store items supplied to her, made on 11th May 2022. On page 225 of the ROA, she was billed for medical supplies from the Medical Stores, and she paid on 12th May 2022, as shown on the receipt found on page 224. On page 231 is another receipt. It is also for medical store supplies, and this is GH¢60.51. This was for payment made on the 11th May 2022. It is also recorded that supplies from the Medical Stores as captured in the Bill and inclusive of the receipt issued on the 12th May 2022.

The 1st Respondent exhibited a receipt for a visit she made to the Medical Centre on 27th May 2022. On that day, she paid GH¢153.00 for a consultation. She did not state why she attended the hospital on that day and how it was connected to the activities of the Appellant on the 8th of May 2022. The Medical Report on the 1st Respondent was written on the 11th of September 2023 and was signed by Doctors
Sylvanus Addotey and Ama O. Vortia. The report covered the visit of the 1st

Respondent on 11th May 2022 and her discharge from the Medical Center on 12th

May 2022. The report said she visited again for a review on the 4th June 2022. From the report, it can be inferred that apart from the visit to the Medical Center by the 1st Respondent on 11 May her other visit was for a review on 4 June 2022. Her visit to the Medical Center on the 27th May 2022 was captured but it was not for a review of the treatment she was given at the facility on the 11th and 12th of May 2022. That visit on

the 27th May was not proven to have been related to her ailment suffered on the 11th of May 2022. *It will therefore not form part of her expenses incurred due to the negligent act of the Appellant which directly affected her.*

Regarding the medical bill, she was issued a statement in the form of a bill covering her entire treatment expenses from her arrival on 11th May until her departure on 12th May 2022. According to the bill, she was admitted to the hospital on 11Th May 2022 at 12:19 pm. The bill was paid in full on 12th May 2022 for the amount of GH¢2,379. I find that the receipt issued on 12th May is supported by the bill. The evidence of services provided and payment made for the bill, including the payment on 12th May, is so strong and convincing that it indicates one clear fact: these payments were for the services and treatment provided by Nyaho Medical Center to the 1st Respondent, as a result of the contaminated food purchased from the Appellant's Restaurant and consumed.

The other receipts, when observed closely, are payments for services already captured in the Bill and paid for in full by the 1st Respondent on 12th May 2022. It is a case of double payment for the same services and supplies. For example, she was billed GH¢220.00 for occupying room B-7 and charged GH¢327.00 for consultation. Despite paying for these services, the 1st Respondent exhibited receipts indicating that she paid for these services again and is asking for reimbursement from the Appellant in the form of Special Damages. The items she claims she paid for with receipts other than the one on page 224 of the ROA are recycled items and receipts since they are all captured in the detailed Bill issued to her as seen on page 225 and for which payment is evidenced on page 224. All other receipts cannot be honoured.

Based on the evidence adduced from the documents for the Medical Centre, only the payment of GH¢2,379 made by the 1st Respondent is supported and proven as expended by her claim under Special Damages. The others were captured in the Bill and paid for on the 12th of May 2022 when she was being discharged so could not be claimed the second time. They are recycled claims. I hold that the amount of GH¢2,379 are the only expenses incurred and strictly proved, as a result of the Appellant's

negligent act. In addition, it is also a fair calculation of expenses incurred by the Appellant.

The 1st Respondent also claimed from the Appellant an amount of GH¢1,300 as transportation costs. In their Statement of Claim attached to their Writ of Summons the Respondents stated in ¢paragraph 20 of the said statement, "Travel and Transport Expenses -GH¢1,300". In their Witness Statement too, the Respondents mentioned that they spent GH¢1,300 on Travel and Transport Expenses. She did not explain or provide any evidence of how much she spent out of the amount claimed. In the absence of any evidence to support this claim the court will not be in the position to grant her the full amount since it covers transport expenses for the three Respondents. it. The courts have emphasized that a witness cannot simply repeat what another person said to prove the truth of the matter. It is stated in the case of **Kofi Sarpong v. Jantuah [2014] 74GMJ** that, where a party makes an averment capable of proof in some positive way, he will not be discharging the burden of proof that he bears if he merely mounts the witness box and repeats on oath the averment that he has made. Such repetition amounts to hearsay and is inadmissible unless it falls within recognised exceptions.

It was therefore necessary for the 1st Respondent to demonstrate to the court how she calculated this expenditure on transport. This does not mean that the court doubts the 1st Respondent travelled from somewhere to Nyarho Medical Center. However, the amount spent on transportation must be explained to the court to verify the figure. The 1st Respondent, however, failed to prove that she spent GH₵1,300 on transportation during the period.

Mindful of the fact that the 1st Respondent travelled to the Medical Center from her place of abode and back the court shall grant her GH₵500 to cover her transport expenditure. That is fair in view of the fact that she claims all the three of them spent GH₵13, 000 on transport.

In the respect of her claim for expenditure in hiring domestic servants, beyond stating that they spent GH₵1,500 as payment for hiring domestic help to care for their aged

parents when they fell ill after eating contaminated food, she failed to provide any evidence to substantiate this. They failed to produce evidence beyond merely repeating their claim.

The 1st Respondent claimed that she lost a contract for a job she had secured days before the unfortunate incident. As a result of the incident, she was unable to meet her deadline for work or attend a few meetings. The 1st Respondent is demanding GH₵15,000 from the Appellant as compensation for her loss. The Appellant did not submit a letter of engagement from her employer, nor did she provide an appointment letter to prove her employment with the said Company.
However, the 1st Respondent presented a letter she alleges was written to her by Stanley Kwaku Kanyegui on behalf of UIC Energy Ghana. This letter informed her of the withdrawal of the environmental impact assessment letter. As a result, she lost $1,250, which the letter states was for services she was to provide.

From the letter she was scheduled to start work on 15 May 2022. She was discharged from hospital on 12th May 2022. Looking closely at the contents, it appears the withdrawal was due to her inability to ccommunicate her failure to begin work on the agreed date. After her discharge, she could have informed the company of her health if it prevented her from commencing work, because the withdrawal was based on her refusal to provide reasons for her inability to begin work, and not her absence. Evidence on record does not show she was so ill that she could not communicate with her employer.

An injured party is required to take reasonable steps to minimise damages after a tort has occurred. This acts as a crucial factor in assessing damages, as courts will not compensate for losses that could have been reasonably avoided. This is known as loss mitigation. See the cases **of R.T. Briscoe (Ghana) Ltd. v. Boateng [1968] GLR 9-20: Nartey-Tokoli v. Volta Aluminium Co. Ltd. (No. 2) [1989-90] 2 GLR 341: Delmas Agencies Gh Ltd v. Food Distributors International Ltd [2007]: Attitsogbe v. Posts and Telecommunications Corporation [1995-96]: DanielMacCarthy v. Ghana Bauxite Company Ltd. (2023):**

The Respondent could have minimized or avoided her dismissal if she had just written to explain why she could not report to work on the appointed date. She did not exhibit to this court and appointment letter or a contract of employment if she had one. Having failed to demonstrate adequately her claim for her alleged loss of employment. This claim is set aside.

CONCLUSION

We hold that the appeal from the Circuit Court is granted in part as follows:

The entire judgment and orders made in favour of the 2ND Respondent and 3rd Respondent by the trial Court fails and are set aside in its entirety. We, however, affirm the judgment as granted in favour of the 1st Respondent in part. The details are as follows:

Ground (a): The learned Trial Judge's conclusion that the food sold by the Defendant's East Legon branch to 598 customers, including the 1st Plaintiff on MAY 8, 2022, was contaminated with pathogens, is not supported by facts. This ground fails.

Ground (b) : The Trial judge's finding that the food purchased by the 1st Plaintiff from the Defendant's East Legon branch on May 8 2022 was also consumed by the 2nd and 3rd Plaintiffs is not supported by evidence adduced at the trial is upheld.

Ground (c) : That the Learned Judge's holding that the duty of care owed by the Defendant to the 1st Plaintiff as a customer extends to the 2nd and 3rd Plaintiffs is not supported in law or by the evidence adduced at the trial: This ground is upheld.

Ground (d) : The trial judge's holding that the Defendant is in breach of its duty of care owed to the 1st Plaintiff is not supported by the evidence adduced at the trial:
fails

Ground (e) : The general damages of GH₵345,000.00 awarded to each Plaintiff against the Defendant are arbitrary and excessive: it fails against the 1st Respondent. The awards made in favour of the 2nd and 3rd Respondents are set aside entirely as the ground is affirmed in respect of the 2nd and 3rd Respondents

Ground (f) : The learned judge erred in law by granting GH¢25,215.48 to the Plaintiffs as special damages: This is affirmed in respect of the 2nd and 3rd Respondents. The awards made in their favour by the trial court are hereby set aside. This ground in respect of the 1st Respondent fails. However, the award of GH¢25,215.48 made to her is now varied and an award of GH¢2,379.00 is made in her favour.

The Court allows or affirms the judgment of the trial court in favour of the 1st Respondent only but varies the award made to her as follows:

I.	Specific award for medical expenditure	GH¢2, 379.00
II.	Transport expenses to the hospital and back	500.00
Total		**2,879.00**

The Court affirms the General damages of GH₵345, 000 awarded to the 1st Respondent, and same shall not be varied.

Total awards varied to now read **GH₵ 347,979.00**

The Judgment of the Circuit Court Adenta is affirmed in part.

Cost of GH¢ 15,000 for the 1st Respondent.

EMMANUEL SENYO AMEDAHE
JUSTICE OF THE COURT OF APPEAL

DAVID KWABENA ADADE BOAFO
JUSTICE OF THE COURT OF APPEAL

CONCURRING OPINION:

AFIA SERWAH ASARE-BOTWE JA:

I have had the opportunity of reading the Judgment of my brother, Justice Emmanuel Senyo Amedahe JA. I agree entirely with his reasoning and conclusion that the Judgment of the court below is merited in part, given the facts and the evidence before it and that same must be upheld with respect to the 1st Plaintiff/Respondent and that the 2nd and 3rd Plaintiffs/Respondents' claims must fail for failing to meet the evidential standard.
I also agree with the level of damages assessed in favour of the 1st Plaintiff.

I wish, however, to set out a few observations that I made, in the course of studying the record, and make a small contribution to the legal discourse.

In this concurring opinion, the parties will maintain their respective designations, as "the Plaintiffs" and "the Defendant" as they had before the trial court.

It is not intended that I will repeat a discussion of the law and the evidence which have been ably dealt with in the lead Judgment. I would rather point out a few other matters which I think ought to be added to the reasoning.

The background and facts leading to this appeal have been well set out in the lead opinion of my learned brother. I do not intend to rehash them in this very brief concurring Judgment.

ON THE REPORT AND PUBLIC NOTICES OF THE FOOD AND DRUGS AUTHORITY (FDA)

I note with consternation that the Investigative Report/letter and Public Notices of the FDA was put in evidence, not only by the Plaintiffs/Respondents (as Exhibit G series but also by the Defendant/Appellant as their Exhibit 4.

The foundation laid by the Plaintiffs in putting the said report in evidence was found in paragraphs 27, 28, 29 and 30 of the witness statement (which became the evidence-in-chief) of the 1st Plaintiff for herself and the other Plaintiffs viz[1];

27. ***Following widespread reports of the suspected case of food poisoning, the FDA took steps to shut down all branches of the Defendant Company in Accra and subsequently conducted an investigation into the reported incident. Attached hereto and marked as WT5 is the said notice from the FDA confirming this.***

28. ***The FDA upon examination of food samples obtained from the Defendant company and its branches on the day of the reported incident concluded that there was heavy microbial load linked to the food borne disease reported and that the levels of sanitation and hygiene in the food preparation areas in the facilities of the Defendant, including the East Legon branch, were poor.***

29. ***The report of the FDA, which is public knowledge, further cited poor storage practices, poor handling practices of ingredients, used in cooking and the fact that the temperature of deep freezers and refrigerators at the***

premises of the Defendant were far above the acceptable ranges. A copy of the said report is attached hereto
and marked WT6

30. ***The FDA report also indicated that the Defendant destroyed some of the food items while the investigation was in progress obviously to hamper and derail the efforts of the FDA to establish the root cause of the contamination….***

On the other hand, the Defendant in putting the documents put out by the FDA laid this foundation: -[2]

12. ***The incident even though happened at only the East Legon branch of the Defendant led to the suspension of operations of food preparation and services at the Defendant's East Legon, as well as the Abelemkpe and Labadi branches of the Defendant, Attached and marked exhibit 4 is copy [sic] of letter from the FDA to the Defendant in verification.***

13. ***As exhibit 4 shows regulatory infractions similar to those identified at the East***

Legon which recorded the incident were identified at the Abelemkpe and the Labadi branches which recorded no incident.

In my view, the document put in evidence as Exhibit 4, if it was intended to be, was not at all exculpatory. In fact, it only went to inculpate the Defendant all the more and rather corroborated the case of the Plaintiffs. That document that contained detailed than the public notifications in the Exhibit G series, including the horrific information

that the staff toilet at the East Legon and Abelemkpe branches opened directly into the food preparation area.

I have noted the argument by the Defendant that the findings of the report were only to be considered as regulatory recommendations directing them as to how to regulate the activities of their Restaurants and not that they served unwholesome food which led to the Respondents and other customers of theirs to suffer from food poisoning. How anyone can divorce regulatory requirements from the preparation of wholesome food is difficult to understand. Regulatory requirements do not exist in a vacuum. They are intended to guarantee wholesomeness. Thus, a breach of regulatory requirements would only result in unwholesome food prepared in unsanitary conditions.

The principle of law is quite tritely known on the matter of corroboration of the case of an opposing party, that where the evidence of an opponent corroborates the evidence of the opposite party, and the even when that opponent's party remains uncorroborated, the court is bound to accept the evidence corroborated.

Please see;

- **BARCLAYS BANK GHANA LTD. v. SAKARI [2007-2008] SCGLR 639 @ 652.**
- **AGYEIWAH v. P&T CORPORTION [2007-2008] 2 SCGLR 985.**

The Judge in the Court below can hardly be faulted for her conclusions in relation to the 1st Plaintiff.

The conclusions we have come to relative to the 2nd and 3rd Plaintiffs, dismissing their claims is just attributable to the fact that being Plaintiffs with the evidential burden, they were unable to establish by their evidence the exact link between when they claimed to have eaten the food and whatever symptoms they may have suffered and the food purchased by the 1st Plaintiff on the 8th of May, 2022.

In any case, it must not be lost on the Defendant that whatever evidence is offered must be relevant to prove the case of a party as set out in the pleadings filed on its behalf.

The authorities are legion that once offered the Court is to assess the evidence put forward by the parties and see whether they are each in conformity with the law and the evidence.

Thus, in the case of **CHANTEL v. KOI [2011] 29 GMJ 20 CA,** it was held that at page 51 of the Report that one important principle that should guide the tribunal of fact in determining the credibility of witnesses is the need to test the story of the witness as to its consistency with the probabilities that surround the currently existing conditions. In short, the test is whether the story of the witness is in harmony with the preponderance of probabilities which a practical and informed person would recognise as reasonable in those conditions.

See also **NTIRI & ANOR v. ESSIEN &ANOR [2001-2002] SCGLR 451**, it was held that it is the trial court which determines the credibility of a witness. These include, the demeanour of the witness, the substance of his testimony, the existence or non-existence of any fact testified to by the witness etc.

See also:

- **TAMAKLOE & PARTNERS UNLTD. v. GIHOC DISTELLERIES CO. LTD (SC) per Amegatcher JSC (Civil Appeal No. J4/70/2018 dated 3/7/2019 (available on the online portal dennislawgh as [2019] DLSC 6580;**
- **AYEH & AKAKPO v. AYAA IDDRISU [2010] SCGLR 891 @ Holding 5;**
- **AKUFO-ADDO v. CATHELINE [1992] 1 GLR 377**
- **ASAMOAH v. SETORDZI [1987-88] 1 GLR 67;**

In other words, do the stories of the witnesses (or the parties, as the case may be) make sense in the circumstances? Would the evidence offered actually prove the case being put forward before the court as a whole?

In the **TAMAKLOE & PARTNERS UNLTD case** (cited supra), for instance, although minutes of a meeting had been offered in evidence to corroborate the fact alleged by the Plaintiff that terms of service offered had been reached, a study of the minutes revealed that no such terms had been reached.

To conclude under this head, it is my candid view that the evidence offered by the Defendant made no positive impact on its case.

ON THE DAMAGES ASSESSED AND AWARDED:

A paper presented at an induction course for newly appointed Circuit Judges at the

Judicial Training Institute entitled **ASSESSMENT OF DAMAGES** by Justice Yaw Appau, then a Justice of the Court of Appeal) (which is available at *www.jtighana.org*),may be useful. He states in the second paragraph;

"When a claim for damages is included in an action, the plaintiff or claimant is required under the law to provide evidence in support of the claim and to give facts upon which the damages could be assessed. Simply put, before assessment of damages could be made, the plaintiff or claimant must first furnish evidence to warrant the award of damages. He must also provide facts that would form the basis of assessment of the damages he would be entitled to. His failure to do so would be fatal to his claim for damages. That is why in all actions where damages is one of the reliefs claimed, the plaintiff or claimant is always called upon to give evidence in support of the claim for damages after interlocutory judgment is entered in his favour upon the failure of the defendant to either enter appearance or to defend the action."

(Emphasis added)

He states further in the article;

"Nominal Damages will be awarded where the court decides in the light of all the facts that no actual damage has been sustained. See NEVILLE v. LONDON EXPRESS NEWSPAPER LTD [1919] A.C. 368 @ p. 392, per Viscount Haldane – H.L. According to Street on Torts, the function of nominal damages is to mark the vindication, where no real damage has been suffered, of a right which is held to be so

important that infringement of it is a tort actionable per se. [Street on Torts 5th Edition London Butterworth]. This means that nominal damages are normally awarded in all torts that are actionable per se; e.g. damages for trespass to land; actions founded on defamation, i.e. damages for libel and slander; damages for assault; damages for nuisance; damages for false imprisonment; damages for seduction; etc. and again in actions for breach of contract. However, the damages that are awarded in these cases are said to be 'at large'. What this means is that although the interest protected may not have a precise cash value, the court is free on proof of the commission of the tort, or the breach of contract, to award 'substantial' damages instead of 'nominal' damages."

My brother has already discussed in detail the reason why the special damages assessed has been reduced in the manner that it has been.

We all hold the view that the losses claimed for which special damages was to be awarded could not all be proven by the 1st Plaintiff to a certain extent and in the case of the 2nd and 3rd Plaintiffs, at all.

In the case of the 1st Plaintiff, however, we hold the view that the damages awarded is fair given the circumstances. The manner in which the Defendant carried out operations at the East Legon branch of its restaurant (and from the looks of their own evidence the others) was reprehensible. It cannot be watered down by damages less than what has already been awarded.

I would also find that the appeal succeeds in part as far as it relates to the 2nd and 3rd Plaintiffs/ Respondents. The decision of the High Court in favour of the 1st Plaintiff/Respondent is affirmed.

AFIA SERWAH ASARE-BOTWE

JUSTICE OF THE COURT OF APPEAL