UPSA LAW SCHOOL

ELLEN A. AWULETEY JUSTICE ISSUES MOOT COURT COMPETITION

(SECOND EDITION-2026)

THE REPUBLIC OF GHANA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
(APPELLATE JURISDICTION)
ACCRA — A.D. 2026

CIVIL APPEAL NO. J4/439/2026
(CONSOLIDATED WITH CIVIL APPEAL NO. J4/567/2026)

BETWEEN

1. **SANKOFA AGRITECH LTD**
2. **MS. ABENA SERWAA OFORI**

(APPELLANTS)

AND

1. **NORTHERN STAR FOODS PLC**
2. **MR. SELORM AGBEKO**
3. **KETE FOODS LTD**

(RESPONDENTS)

This moot problem is a work of fiction. It does not necessarily represent or depict the usual or known court process, nor does it conform to conventional court procedures. The names, characters, places, and incidents in it are the product of the author's imagination. Any resemblance to actual persons, living or dead, or to actual events, places, or organisations, is purely coincidental.

STATEMENT OF FACTS

1. Agriculture has long been the foundation of the economy of the Republic of Ghana, engaging a substantial part of its labour force and sustaining the livelihoods of millions of its people in the rural districts. The greater part of the country's food is grown by smallholder farmers cultivating modest plots, many of them in the northern regions, where poor roads, an unreliable supply of electricity, and the absence of cold-storage have for generations caused a large proportion of perishable produce to spoil before it can reach market; it has been estimated that as much as a third of the horticultural harvest is lost each year in this way. Successive Governments have sought to reduce these post-harvest losses and to add value to the nation's produce, and have encouraged in particular the growth of "agritech" — the application of technology to agriculture — as a means of connecting rural producers to national and international markets.

2. From about 2015, a generation of Ghanaian technology enterprises emerged to address this need, combining solar-powered cold storage, digital marketplaces, and quality-certification systems. Large food processors and exporters, for their part, came increasingly to value secure and traceable sources of local produce, both to meet the exacting standards of foreign buyers and to satisfy a growing public expectation that they would support Ghanaian farmers.

3. Ms. Abena Serwaa Ofori ("Serwaa") is an agricultural engineer and the founder and inventor of the FarmLink platform. Raised in Tamale, she took a first degree in agricultural engineering at the Kwame Nkrumah University of Science and Technology and a graduate degree in systems engineering abroad, before returning to Ghana in 2014 to work on the reduction of post-harvest losses in the northern regions. Between 2015 and 2018 she designed and piloted FarmLink, for which she received national recognition as a young innovator. An earlier and smaller arrangement she had made, to supply a regional processor, had collapsed in 2017 when that processor withdrew from it without notice, leaving her with produce she could not sell; the experience had impressed upon her the importance of securing a firm commitment from a substantial buyer before committing herself to expansion.

4. FarmLink is an integrated system comprising, first, solar-powered cold-storage "hubs" sited near farming communities; secondly, a digital marketplace and logistics application that matches aggregated produce to buyers and arranges its transport; and thirdly, a quality-certification and traceability protocol conforming to international export standards — the whole underpinned by a proprietary database of registered farmers, their landholdings, and their production. By 2018, a pilot hub near Nyankpala served some 1,200 farmers across the Northern and North-East Regions, handling tomatoes, onions, peppers, and mangoes, and was independently reported to have reduced their post-harvest losses of horticultural produce by nearly forty per cent.

5. The farmer database and the pricing model at the heart of FarmLink were the product of several years of patient fieldwork and were regarded within the enterprise as its most

valuable assets. The database recorded the identity, the landholding, and the production history of each registered farmer, and the model determined the prices at which produce would be bought from farmers and sold to buyers. Both were closely guarded; they were disclosed to prospective partners, including Northern Star, only under conditions of confidentiality, and Serwaa considered them the foundation of any competitive advantage the venture might possess.

6. To take FarmLink to national scale, Serwaa required two things: a substantial "anchor" buyer whose committed purchases would justify the aggregation of large volumes of produce, and capital to construct a network of cold-storage hubs. She resolved to incorporate a company, Sankofa AgriTech Ltd ("Sankofa"), to own and operate the enlarged enterprise. She was joined by two colleagues, Mr. Kwabena Asare, an engineer, and Ms. Adjoa Mensimah, a logistics specialist, who were to become directors of the company. A development-finance investor, the Savanna Impact Fund, agreed to subscribe GH₵6 million for a minority shareholding, but upon the express condition, recorded in a subscription agreement, that Sankofa should first secure a binding anchor-offtake agreement with a major buyer; the Fund would release its money only once that condition had been satisfied.

7. Northern Star Foods PLC ("Northern Star") is one of Ghana's largest food-processing and export companies. Incorporated in 1994 and listed on the Ghana Stock Exchange since 2006, with a market capitalisation in 2019 of approximately GH₵1.2 billion and a workforce of some 2,400, it processes and exports fruits and vegetables to markets in Europe and the Gulf, and derives the greater part of its revenue from exports. Since 2018 it had pursued a policy of increasing the proportion of its produce purchased from Ghanaian smallholders, and for that reason placed value upon secure and traceable local sources of supply. Its Chief Executive Officer was Mrs. Comfort Adjei-Boateng, its Board was chaired by Mr. Nii Armah Quaye, and its Company Secretary was Mr. Kojo Danso. For Serwaa, Northern Star was the ideal anchor partner, both for the scale of its purchasing and for the credibility that association with it would bring.

8. The affairs of Northern Star were, in the ordinary course, conducted by its management, the Board meeting quarterly and delegating the negotiation of supply arrangements to the executives responsible for them. In matters of local sourcing the Board relied upon the reports and recommendations of Agbeko, and did not itself verify the terms upon which he dealt with producers; suppliers and their bankers, for their part, dealt with Agbeko as the officer who spoke for the company in such matters.

9. Mr. Selorm Agbeko ("Agbeko") was, at all material times, the Group Chief Operating Officer and Director of Business Development of Northern Star, and a member of its Board of Directors. He was publicly presented by Northern Star, in its annual reports and its press releases, as the executive responsible for its "Strategic Sourcing Partnerships," and was widely regarded in the industry as the company's principal dealmaker. In 2017 and 2018 he had negotiated and signed, on Northern Star's behalf

and without prior Board approval, two supply agreements with other producers, each for a sum exceeding the threshold above which the company's registered constitutuion required such approval; on both occasions the Board had, upon learning of the agreements, honoured them and raised no objection to the manner of their conclusion.

10. Unknown to Northern Star's Board and to Serwaa, Agbeko and his wife, Mrs. Akorfa Agbeko, were the beneficial owners of Kete Foods Ltd ("Kete Foods"), a produce-sourcing and export company, incorporated in 2018, that competed directly with Northern Star. Kete Foods maintained its own modest premises and employed a small staff, and had, before the events in question, supplied produce to two smaller processors. The Agbekos' interest was held on their behalf by a nominee shareholder, Mr. Elikem Dzokoto, a relative of Mrs. Agbeko, under a written declaration of trust; Mr. Dzokoto took no part in the management of the company, which was in truth directed by Agbeko, and Agbeko was the sole signatory upon its bank accounts. Neither Agbeko's interest in Kete Foods nor its competing business was disclosed to Northern Star, entered in any register of directors' interests, or declared at any meeting of its Board, as the company's registered constitution required.

11. In February 2019, Serwaa approached Northern Star with a proposal for a strategic partnership under which Northern Star would become the anchor buyer for FarmLink's produce. Northern Star assigned Agbeko to lead the negotiations on its behalf. Over the following months the parties held numerous meetings; Northern Star's technical staff visited the pilot hub near Nyankpala and reported favourably upon it; and Agbeko expressed strong and consistent enthusiasm for the project. At Northern Star's annual suppliers' forum in September 2019, Agbeko announced the partnership from the platform, and Northern Star's website thereafter listed Sankofa among its "strategic sourcing partners."

12. Earlier, at a meeting on 17 July 2019, and in correspondence that followed, Agbeko had given Serwaa a series of assurances intended, as he put it, to enable her "to proceed with confidence." The material part of his email to Serwaa of 2 August 2019 read as follows:

> Dear Abena, I am delighted to confirm Northern Star's strong commitment to partnering with Sankofa AgriTech. The Board has approved this partnership in principle, and I have no doubt that we shall finalise definitive terms shortly. You may proceed with confidence. Northern Star will be your anchor buyer, and we will guarantee the offtake of not less than 6,000 tonnes of certified produce every year for an initial term of five years. To help you build the cold-storage hubs on schedule, Northern Star will make available a facility advance of GH₵12 million, recoverable against future supplies. I would urge you to commence construction of the Tamale and Techiman hubs without delay, so that we do not lose the coming season. Naturally, the commercial detail will in due course be captured in a formal agreement; but you have my personal assurance, and that of the Board, that Northern Star stands firmly behind this venture.

13. In reliance upon these assurances, and before any formal agreement had been concluded, Serwaa committed substantial resources to the venture. Between August and December 2019, she applied her personal savings of some GH₵1.5 million to the project; entered into construction contracts worth some GH₵20 million with Sahel Structures Ltd for the building of cold-storage hubs at Tamale and Techiman; and, through the Northern Smallholders' Cooperative Union, signed up more than 800 smallholder farmers to binding arrangements to supply produce to the venture at guaranteed prices. By the end of 2019 she had committed, or become liable to commit, sums exceeding GH₵25 million to the project, the greater part of it borrowed or secured against her personal assets. To obtain the working capital she needed, she applied to Ashanti Trust Bank for an overdraft of GH₵8 million, secured by a mortgage of her family home, producing in support of the application a letter written on Northern Star's letterhead and signed by Agbeko, which the bank accepted and in reliance upon which it advanced the overdraft. The letter stated, in relevant part that:

> This is to confirm that Sankofa AgriTech Ltd is a strategic sourcing partner of Northern Star Foods PLC, and that Northern Star intends to purchase from it not less than 6,000 tonnes of certified produce annually for an initial period of five years.

14. Before committing these resources, Serwaa consulted a financial adviser, Mr. Yaw Boateng of Meridian Advisory, who cautioned her that no binding commitment had yet been reduced to writing and advised her to obtain documentary confirmation of Northern Star's Board approval and of the promised advance. Serwaa raised the matter with Agbeko, who assured her, orally and by a further email, that "the Board is fully behind this" and that "the paperwork will follow in the ordinary course," but who provided no board resolution or other document; and, notwithstanding the adviser's caution, she proceeded with the expenditure described above. When, in September 2019, she wrote to Northern Star's Company Secretary, Mr. Danso, to seek confirmation that the Board had approved the partnership, his reply neither confirmed nor denied that it had, stating only that "matters of commercial partnership are handled by the office of Mr. Agbeko, to whom I have referred your enquiry."

15. On 4 October 2019, and still before the incorporation of Sankofa, the parties signed a short "Term Sheet" recording the outline of their proposed partnership. Clause 9 of the Term Sheet provided that:

> This Term Sheet records the present intentions of the parties only. Save for the provisions on confidentiality and exclusivity, it is not intended to create legally binding obligations. No representation, warranty, or assurance, whether express or implied, is given by either party in connection with the proposed partnership; and neither party shall be bound unless and until a definitive written agreement has been executed by their duly authorised representatives.

16. By Clause 6 of the Term Sheet, Sankofa bound itself, during the negotiations and for the first year of any partnership, to deal exclusively with Northern Star and to offer its

produce to no other buyer. In reliance upon the arrangement, Serwaa declined, in November 2019, an overture from another processor that had offered to purchase FarmLink's produce, considering herself committed to Northern Star and unwilling in any event to imperil the larger opportunity. Clause 6 provided that:

> During the period of this Term Sheet, and for the first year of any definitive agreement, Sankofa shall deal exclusively with Northern Star, and shall not offer its produce for sale to any other buyer.

17. On 3 March 2020, and still before the incorporation of Sankofa, the parties executed a formal Strategic Supply and Offtake Agreement ("the SSOA"). Under the SSOA, Sankofa was to supply, and Northern Star to purchase, not less than 6,000 tonnes of certified produce in each year for an initial term of five years, at prices determined by a formula linked to prevailing market indices; and Northern Star was to advance to Sankofa the sum of GH₵12 million, to be applied to the construction of the hubs and recovered against future supplies. The SSOA was signed on behalf of Sankofa by Serwaa, who subscribed her signature beneath the words "for and on behalf of Sankofa AgriTech Ltd (a company under incorporation)"; and on behalf of Northern Star by Agbeko alone.

18. The SSOA had been prepared by Northern Star's external solicitors, who had settled its terms, including Clauses 2, 27, and 31. The requirement in Clause 2 that the company, once formed, re-execute the Agreement had been inserted at the instance of Northern Star, whose solicitors explained that it was intended to place beyond doubt the company's adoption of the bargain. Serwaa, who was advised only informally at this stage, raised no objection to the clause.

19. Clause 2 of the SSOA provided that:

> This Agreement is entered into on behalf of Sankofa AgriTech Ltd, a company under incorporation. It is a condition of this Agreement that the Company shall be duly incorporated within thirty (30) days of the date hereof, and shall, within sixty (60) days of its incorporation, ratify and formally re-execute this Agreement. Should the Company fail to do so, either party may treat this Agreement as being of no effect.

20. Furthermore, Clause 27 provided that "the person signing this Agreement on behalf of the Company under incorporation does so solely in a representative capacity and shall incur no personal liability whatsoever under or in connection with this Agreement." Clause 31 provided that the SSOA "constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, assurances, and understandings, whether written or oral, relating to its subject matter." Clause 33 excused either party from liability for a failure to perform occasioned by events beyond its reasonable control, including epidemics and the acts of public authorities. And Clause 22, which governed termination, provided:

> Either party may terminate this Agreement by sixty (60) days' written notice in the event of a material breach by the other party which remains uncured for thirty (30) days after written notice of the breach has been given; save that either party may terminate with immediate effect in the event of a repudiatory breach going to the root of this Agreement.

21. The registered constitution of Northern Star, which had been registered with the Office of the Registrar of Companies, required that any contract committing the company to expenditure exceeding five million Ghana cedis (GH₵5,000,000) be approved by the Board and executed on behalf of the company by two authorised signatories, and further required a director to declare the nature of any personal interest in a proposed contract at a meeting of the Board. Serwaa was neither shown, nor did she see, the registered constitution. Although the Board had, at its meeting of 14 January 2019, mandated Agbeko to pursue sourcing partnerships, it had not approved the specific terms of the SSOA or the GH₵12 million advance, and the SSOA had been executed by Agbeko alone. The Board's mandate was expressed in these terms:

> RESOLVED that Mr. Selorm Agbeko be and is hereby mandated to explore and to negotiate strategic sourcing partnerships with local producers, and to present the terms of any such partnership to the Board for its approval before the same is concluded.

22. On 24 March 2020, within the thirty-day period stipulated by Clause 2 of the SSOA, Sankofa AgriTech Ltd was duly incorporated under the Companies Act, 2019 (Act 992), the Office of the Registrar of Companies issuing to it a certificate of incorporation; the objects for which the company was formed, as stated in its constitution, included the aggregation, cold-storage, certification, and sale of agricultural produce. Serwaa held sixty per cent of the shares of the company and became its Managing Director; Mr. Asare and Ms. Mensimah held ten per cent each and were appointed directors; and the Savanna Impact Fund, its subscription condition now satisfied, held the remaining twenty per cent and nominated a director to the Board.

23. On 10 April 2020, the Board of Sankofa passed a resolution in the following terms:

> IT IS HEREBY RESOLVED that the Strategic Supply and Offtake Agreement dated 3 March 2020, made on behalf of the Company while it was under incorporation, be and is hereby adopted, ratified, and confirmed as the agreement of the Company, binding upon it and enforceable by it as though the Company had been a party thereto at the date of its execution; and that the Managing Director be and is hereby authorised to do all things necessary to give effect to the said Agreement.

24. The SSOA was not, however, formally re-executed by the parties, whether within the sixty-day period referred to in Clause 2 or at all. At the board meeting of 10 April 2020 all four directors were present; the director nominated by the Savanna Impact Fund enquired whether the SSOA required re-execution in order to bind the company, and the Board resolved to seek confirmation from Northern Star. When Serwaa's solicitors

accordingly wrote to Northern Star on 5 May 2020, enclosing an engrossment of the SSOA for re-execution, Agbeko replied by email that "there is no need to re-sign; the agreement we executed in March stands, and we should get on with delivery." No further step towards re-execution was taken by either party.

25. Sankofa proceeded to perform. It completed the Tamale hub in May 2020 and, from June 2020, began delivering consignments of produce to Northern Star. Over the following months Northern Star accepted and paid for eleven consignments, with a total value of some GH₵6.4 million. Northern Star also disbursed to Sankofa GH₵4 million of the GH₵12 million advance provided for in the SSOA.

26. For the first months the arrangement proceeded without serious complaint, and the consignments Sankofa delivered were accepted and paid for. From about October 2020, however, Northern Star began to delay its payments and to raise objections to matters it had not previously questioned; and the disbursement of the balance of the advance, which Sankofa had been promised and upon which the completion of the Techiman hub depended, was withheld, Sankofa's requests for its release going unanswered.

27. Construction of the second hub, at Techiman, fell behind schedule. Sankofa attributed the delay to Northern Star's failure to disburse the balance of the GH₵12 million advance, and to disruptions in the supply of materials and labour occasioned by the COVID-19 pandemic and the public-health measures adopted in Ghana during 2020 and 2021. Northern Star, for its part, maintained that Sankofa had planned imprudently and had over-committed itself. It is common ground that the public-health measures adopted in 2020 restricted inter-regional transport for several months, and that the cost of construction materials rose sharply during the period.

28. From about September 2020, difficulties emerged in the parties' relationship. Northern Star complained that Sankofa's deliveries fell substantially short of the annual minimum of 6,000 tonnes, and that a proportion of its consignments — about one in six — had been rejected for failing Northern Star's quality and pesticide-residue standards. In a letter dated 12 November 2020, Northern Star's operations department placed the company on notice, indicating that "deliveries this season have fallen materially short of the contracted minimum, and one consignment in six has been rejected at intake for failing our residue thresholds. Consequently, unless performance improves without delay, Northern Star reserves all of its rights under the Agreement."

29. Sankofa replied that its shortfalls were the direct consequence of Northern Star's failure to disburse the balance of the promised advance, which had deprived the venture of the working capital needed to complete the Techiman hub and to finance farmer purchases; that the pandemic had disrupted logistics beyond its control, engaging the clause of the SSOA that excused performance so prevented; and that the quality rejections concerned only a small proportion of consignments and were readily curable. By letter of 3 December 2020, Sankofa's solicitors proposed a plan of remediation and pressed for the disbursement of the outstanding advance, stating that "our client stands ready to cure

any deficiency within thirty days. It requires only that Northern Star release the balance of the facility advance, without which the Techiman hub cannot be completed, and the contracted volumes cannot be met.”

30. A meeting between the parties’ operations staff took place in December 2020. Northern Star’s Head of Operations, who had dealt with Sankofa throughout, was willing to continue the arrangement and to recommend the release of the balance of the advance, considering that the shortfalls could be made good once the Techiman hub was complete. His recommendation was not acted upon, the decision to terminate being taken at a higher level upon the recommendation of Agbeko. A file note made by the Head of Operations recorded that Sankofa’s difficulties are, in his assessment, the product of their own withholding of the advance rather than of any want of capacity on their part, and that there is no operational reason to terminate the arrangement.

31. During the same period, and without the knowledge of Northern Star’s Board, Agbeko began to steer Northern Star’s sourcing strategy away from Sankofa and towards Kete Foods. He directed an in-house team reporting to him to prepare a “supplier performance review” that portrayed Sankofa’s performance in an unfavourable light and made no mention of the undisbursed advance. He made use of Sankofa’s proprietary database of registered farmers, its pricing model, and the quality protocols he had learned through the partnership — information protected by Clause 12 of the SSOA, which provided:

> Each party shall keep confidential and shall not use otherwise than for the purposes of the partnership, the commercial information of the other, including in the case of Sankofa AgriTech Ltd its database of registered farmers and its pricing model.

Using that information, Agbeko caused Kete Foods to approach a number of the very farmers registered with Sankofa, and to submit to Northern Star, in December 2020, a competing proposal to supply produce for a term of five years. The proposal, which was more favourable to Northern Star than the SSOA, guaranteed the supply of 7,000 tonnes of certified produce annually, at a price two per cent below the formula in the Sankofa agreement, and with no requirement for any facility advance.

32. The competing proposal from Kete Foods was submitted before the termination of the SSOA. It is also the case that Northern Star’s operations department had, independently of Agbeko, documented Sankofa’s delivery shortfalls and quality rejections over the preceding months. Those records showed that, across the 2020 season, Sankofa had delivered materially less than the contracted tonnage, and that a number of its consignments had been rejected at intake; the Defendants relied upon these records as an independent and contemporaneous basis for the termination, while the Plaintiffs contended that the shortfalls were the foreseeable consequence of Northern Star’s own withholding of the advance and of the pandemic-related disruption.

33. The recommendation to terminate came before Northern Star's Board on 8 January 2021. Agbeko presented the "supplier performance review" and recommended that the Agreement be terminated and that the company source instead from an alternative supplier whom he did not name; he did not disclose to the Board that the alternative supplier was his own company. The Board resolved that the Agreement with Sankofa AgriTech Ltd be terminated, and that the Company proceed to source from an alternative supplier identified by Mr. Agbeko. On 15 January 2021, acting upon that resolution, Northern Star sent to Sankofa a notice terminating the SSOA with immediate effect. No prior notice of the alleged breaches, nor any opportunity to cure them within thirty days, had been given under Clause 22. The notice read, in relevant part that:

> Northern Star Foods PLC hereby terminates the Strategic Supply and Offtake Agreement with immediate effect. Your persistent failure to deliver the contracted tonnage, and the repeated rejection of your consignments for failing our quality and pesticide-residue standards, constitute fundamental breaches going to the very root of the Agreement. Northern Star has accordingly secured alternative sourcing arrangements in order to protect its supply chain and to honour its export commitments.

34. Within three weeks of the termination, on 8 February 2021, Northern Star entered into a five-year supply contract with Kete Foods upon terms materially similar to those of the SSOA. Sankofa, having constructed the Tamale hub and committed itself to its farmers in reliance upon the SSOA, was left with a partially built second hub, cold-storage capacity it could not fill, and obligations it could not meet. Ashanti Trust Bank called in the GH₵8 million overdraft and commenced proceedings to enforce its security over Serwaa's family home; the Northern Smallholders' Cooperative Union, whose members had not been paid for produce already supplied, organised protests at Sankofa's Tamale hub that attracted national media attention; the Savanna Impact Fund wrote down its investment to nil; and the value of Sankofa's business, independently assessed, fell by more than seventy per cent within a year.

35. On 3 June 2021, an investigative report published by The Accra Ledger, and written by the journalist Ms. Efua Nyarko, revealed that Agbeko and his wife were the true beneficial owners of Kete Foods, holding their interest through the nominee Mr. Dzokoto.

36. Upon the publication of the report, Northern Star's Board suspended Agbeko and referred the matter to its auditors; it also considered whether to rescind the contract with Kete Foods, but resolved against doing so, citing the disruption that rescission would cause to its export commitments and the fact that Kete Foods was, by then, performing the contract, and Kete Foods continued to supply Northern Star. Because Northern Star was a listed company, the disclosure drew a query from the Securities and Exchange Commission and was followed by a marked fall in its share price; and a group of minority shareholders wrote to the Board demanding that it act against Agbeko. The internal inquiry reported in September 2021 that Agbeko had concealed a disqualifying conflict

of interest and had failed to declare his interest as the registered constitution required, concluding that "Mr. Agbeko placed himself in a position in which his personal interest in Kete Foods Ltd conflicted with the duty he owed to this Company, and he preferred the former. His non-disclosure deprived the Board of the opportunity to consider the matter and to protect the interests of the Company and of those with whom it dealt."

37. Agbeko, for his part, maintained throughout the internal inquiry and in these proceedings that Sankofa had genuinely underperformed; that Kete Foods had offered Northern Star better terms upon their merits; that he had acted in what he believed to be the interests of Northern Star; and that he had not misused any confidential information, the identity of farmers in the north being, he said, a matter of common knowledge in the trade. He accepted that he had not disclosed his interest in Kete Foods, but contended that the omission had occasioned Northern Star no loss, the Kete arrangement being, on his case, more advantageous to it than the SSOA.

38. Kete Foods, for its part, contended that it was a company genuinely and independently incorporated, with its own premises, its own staff, and other customers, which had competed for and won Northern Star's business upon the merits of its proposal, and which had known nothing of any wrong. It is common ground, however, that since the award of the Northern Star contract more than eighty-five per cent of Kete Foods' revenue has been derived from that single contract, and that Agbeko is the sole signatory upon its bank accounts and its effective controller.

39. Correspondence between the parties' solicitors having failed to resolve the matter, on 4 October 2021 Sankofa AgriTech Ltd and Ms. Ofori (together, "the Plaintiffs") commenced an action in the Commercial Division of the High Court, Accra, against Northern Star, Agbeko, and Kete Foods (together, "the Defendants"). Upon issuing the writ the Plaintiffs applied for an interlocutory injunction to restrain Northern Star from performing its contract with Kete Foods; the High Court refused the application, holding that damages would, if the claim succeeded, be an adequate remedy. In the action the Plaintiffs claimed, among other reliefs: damages against Northern Star for breach of the SSOA; damages against Northern Star for misrepresentation and negligent misstatement; damages against Agbeko and Kete Foods for procuring the breach or termination of the SSOA and for the diversion of the Plaintiffs' commercial opportunity; and an order lifting the corporate veil of Kete Foods so as to fix Agbeko with personal liability and to require an account of the benefits diverted to it.

40. In their defences, the Defendants contended: that the SSOA had never become binding, no company having existed to contract at the date of its execution, and no re-execution having occurred as Clause 2 required; that any representations made were non-actionable and had in any event been negatived by the Term Sheet disclaimer, by the understanding that the parties would be bound only upon a formal contract, and by the entire-agreement clause; that Agbeko had acted without the authority of Northern Star; that Sankofa had itself repudiated the SSOA by its shortfalls and quality failures, so that no actionable

breach by Northern Star could be shown, and that its termination was in any event justified; that Agbeko's conduct, being in breach of the fiduciary duties he owed to Northern Star, was not attributable to it; and that Kete Foods, a separate legal person that had secured Northern Star's business upon its commercial merits, could neither be made liable nor have its corporate veil lifted.

41. The parties adduced conflicting evidence as to the loss the Plaintiffs had suffered. The Plaintiffs' expert assessed their loss at a substantial sum, comprising the value of the stranded cold-storage hubs, the profits Sankofa would have earned over the five-year term of the SSOA, and the liabilities it had incurred to its farmers and to its bank. The Defendants' expert contended that any recoverable loss was far smaller, since the SSOA was, on their case, terminable and Sankofa's own difficulties would in any event have limited its performance. The quantification of loss was, by agreement, reserved to a later inquiry.

42. The action was tried before Justice Ama Boafo in the Commercial Division over eleven days. The court heard evidence from Serwaa; from Agbeko; from the nominee Mr. Dzokoto, who admitted that he held his shares on trust for the Agbekos and took no part in the management of Kete Foods; from Northern Star's Company Secretary Mr. Danso; from a director of the Savanna Impact Fund; and from an independent expert on horticultural quality standards. The trial judge found as facts that Northern Star's Board had given Agbeko a general mandate to negotiate sourcing partnerships but had not approved the specific terms of the SSOA; that Serwaa had dealt with Agbeko in good faith and without knowledge of his interest in Kete Foods; that Sankofa's delivery shortfalls had been caused substantially, though not wholly, by Northern Star's failure to disburse the balance of the advance and by pandemic-related disruption, a minority of the shortfall being attributable to Sankofa's own difficulties; and that the "supplier performance review" had been prepared at Agbeko's direction and had exaggerated Sankofa's deficiencies while omitting any mention of the undisbursed advance. As to the rejected consignments, the independent expert report stated that:

> The rejected consignments exhibited residue levels marginally above the buyer's private threshold, though within the limits permitted by law; the deficiencies were of a kind ordinarily curable by improved handling and cold-chain management.

43. The trial judge made two further findings of importance. First, she found that Agbeko had used Sankofa's database of registered farmers and its pricing model in positioning Kete Foods to displace it, in breach of the confidentiality undertaking in Clause 12 of the SSOA. Secondly, she found that the effective cause of Northern Star's decision to terminate had been Agbeko's design to divert the business to Kete Foods, and not the shortfalls in Sankofa's performance, which Northern Star's own operations staff had considered curable.

44. By its judgment dated 18 July 2022, the High Court found largely in favour of the Plaintiffs. It held, in relevant part:

> We determine the issues before us as follows. First, the Strategic Supply and Offtake Agreement, though executed before the incorporation of Sankofa AgriTech Ltd, became binding upon and enforceable against Northern Star. The company ratified the Agreement, by the resolution of 10 April 2020, well within the eighteen months allowed by section 11 of the Companies Act, 2019 (Act 992); and the Agreement was in any event adopted by the conduct and part-performance of both parties, the requirement of re-execution having been waived. Upon ratification the company became bound by, and entitled to the benefit of, the Agreement as though it had been a party at the date of execution; and, but for Clause 27, the first plaintiff would herself have been personally bound and entitled under section 11(3) of that Act. Northern Star wrongfully repudiated the Agreement, terminating it without the notice and opportunity to cure that Clause 22 required. Secondly, Northern Star is liable to the plaintiffs in negligent misstatement in respect of the assurances given by Mr. Agbeko, which are attributable to Northern Star upon the footing of his ostensible authority. Thirdly, Mr. Agbeko is liable in the tort of inducing a breach of contract, and acted in breach of the fiduciary duties he owed to Northern Star. Fourthly, the corporate veil of Kete Foods Ltd is lifted so as to fix Mr. Agbeko with personal liability and to require an account of the benefits diverted to it.

45. In reaching these conclusions, the High Court held that a person dealing in good faith with a company is entitled to assume that the company's internal requirements of approval have been complied with, and is not fixed with notice of limitations contained in the company's registered constitution; and that Northern Star, having held Agbeko out as the executive responsible for such partnerships, and having in the past honoured contracts he had signed alone, was bound by his acts notwithstanding that he had exceeded his actual authority and had acted for his own concealed purposes.

46. As to the corporate veil, the High Court held that the separate personality of a company will not shield a wrongdoer where the company has been interposed as the instrument by which an existing legal obligation is evaded; and that Kete Foods had been so used by Agbeko to appropriate to himself, through a company he controlled, the very opportunity that his position obliged him to pursue for the benefit of others. As to the tort of procuring a breach of contract, the court found that Agbeko had known of the Agreement, had intended to bring about its termination, and had been without justification, having acted throughout in his own concealed interest.

47. The Defendants appealed to the Court of Appeal. By their grounds of appeal they contended that the trial judge had erred in holding the SSOA to be binding notwithstanding the failure to re-execute it; in attributing Agbeko's assurances and conduct to Northern Star; in holding Northern Star's termination to have been wrongful; and in lifting the corporate veil of Kete Foods. The appeal was heard by a panel of three

Justices: Justice Kwadwo Amankwaa, presiding, Justice Selina Lamptey, and Justice Reginald Sarpong.

48. By its judgment dated 11 March 2024, the Court of Appeal, by a majority, set aside the greater part of the judgment of the High Court. The majority (Amankwaa and Lamptey JJA) held, in relevant part:

> The Strategic Supply and Offtake Agreement never became binding. It was an express condition of that Agreement, in Clause 2, that the company, once incorporated, would within sixty days ratify and formally re-execute it. The company purported to ratify the Agreement, but it did not re-execute it, as the parties had expressly stipulated that it must. Section 11 of the Companies Act, 2019 (Act 992) enables a company to ratify a contract made before its formation, but it does not dispense with an express condition that the parties have themselves made essential to their bargain; nor was it open to one party's officer to waive that condition on behalf of both. There being no binding contract, Northern Star committed no breach of it, and neither Mr. Agbeko nor Kete Foods Ltd could be liable for inducing the breach of a contract that did not exist. The claim in negligent misstatement also fails: the assurances relied upon were negatived by the disclaimer in the Term Sheet and by the entire-agreement clause, were understood by the parties to be subject to a formal contract, and were in any event given by Mr. Agbeko without the authority of Northern Star. We uphold the finding that Mr. Agbeko acted in breach of the fiduciary duties he owed to Northern Star, for which he is liable to account to that company; but we decline to lift the corporate veil of Kete Foods Ltd. It is a separate legal person, and the principle in Salomon v Salomon & Co Ltd is to be displaced only in the most exceptional circumstances, which we do not find here.

The majority added, as to the manner of the termination:

> We would add that, even had the Agreement been binding, Northern Star would have been entitled to bring it to an end. Sankofa's failure to deliver the contracted volumes went to the root of the Agreement; and a repudiatory breach of that character entitled the innocent party to terminate at once, without resort to the notice-and-cure procedure in Clause 22.

49. The majority further explained why, in its view, Agbeko's assurances were not to be attributed to Northern Star. A person dealing with a company was put upon inquiry, it held, where the transaction plainly required the approval of the board; and Serwaa, having been told repeatedly that a formal agreement would follow, ought not to have relied upon the unconfirmed assurances of a single officer. The requirement of two signatories, and the Company Secretary's refusal to confirm that the Board had approved the partnership, were, in the majority's view, matters that should have prompted her to inquire further before committing herself.

50. Justice Sarpong dissented. He would have upheld the judgment of the High Court, holding that the Agreement had been adopted by the conduct and part-performance of

the parties, that Northern Star — having accepted deliveries, made payments, and disbursed part of the advance — could not resile from it, and that its termination without notice or opportunity to cure was wrongful; that Agbeko's assurances were attributable to Northern Star upon the footing of ostensible authority; and that the corporate veil of Kete Foods ought to be lifted. He observed thus:

> It would be a reproach to the law if a company, formed and employed by a faithless fiduciary as the very instrument of his disloyalty, could be held up to the party he wronged as a stranger to that wrong. Where the separate personality of a company is made the cloak for the evasion of an obligation, the court is not powerless to look behind it. I would lift the veil of Kete Foods Ltd.

51. Upon the questions of representation and authority, Justice Sarpong took a different view. He considered that Northern Star had held Agbeko out as the officer authorised to conclude such partnerships, and had reinforced that impression by permitting him to announce the partnership publicly at the company's own forum and to issue, upon the company's letterhead, the very letter upon which Sankofa's bank had lent; and that a company which had so held out its officer could not disavow his assurances to one who had relied upon them in good faith, and to her ruin.

52. The Defendants, for their part, cross-appealed against the Court of Appeal's judgment that Agbeko had breached his fiduciary duties, contending that any such breach sounded, if at all, only in his liability to account to Northern Star, and could not avail the Plaintiffs.

53. Dissatisfied with the judgment of the Court of Appeal, the Plaintiffs (now "the Appellants") appealed to the Supreme Court against the judgment of the Court of Appeal. By order dated 2 December 2025, the Supreme Court consolidated the appeal and the cross-appeal.

54. In consolidating the appeal, the Supreme Court held the view that the questions raised were of general public importance to commercial life in Ghana: whether an express contractual condition of re-execution could defeat the statutory ratification of a pre-incorporation contract under section 11 of the Companies Act, 2019 (Act 992); the extent to which a company is bound by the acts of a senior officer who deals beyond his authority and in his own concealed interest; and the circumstances in which the separate personality of a company may be disregarded so as to reach the individual who stands behind it.

55. By a further order dated 9 February 2026, the Supreme Court directed that it would hear the Parties' oral submissions upon the questions raised by their respective prayers for relief, and would thereafter deliver a single composite judgment determining all of those questions.

56. The Parties are agreed that the dispute is governed by the law of the Republic of Ghana, including the Companies Act, 2019 (Act 992), the Contracts Act, 1960 (Act 25), and the

common law as received and developed in Ghana; that the Court may have regard, as persuasive authority, to the decisions of other superior courts of the Commonwealth; and that Sankofa AgriTech Ltd, Northern Star Foods PLC, and Kete Foods Ltd are each companies incorporated under the laws of Ghana.

57. The Parties are further agreed that the questions now before the Court are questions of liability only; that the quantum of any damages, account of profits, or other monetary relief will, if liability be established, be assessed in separate proceedings; that the designation of the Appellants and the Respondents is without prejudice to any question as to the burden of proof; and that, in determining those questions, the Court is at large to consider the correctness of the judgments of the courts below.

58. As at the date of this Statement of Agreed Facts, Kete Foods continues to perform its supply contract with Northern Star; Agbeko remains suspended pending the conclusion of Northern Star's internal processes, and his liability to account to Northern Star, if any, has not been quantified; no criminal proceedings have been instituted arising from these events; and the operations of Sankofa remain suspended, the claims of its farmers unresolved, and the security over Serwaa's family home the subject of enforcement proceedings by Ashanti Trust Bank.

59. The Appellants respectfully request the Supreme Court to adjudge and declare:

(a) that the Strategic Supply and Offtake Agreement became binding upon and enforceable against Northern Star Foods PLC notwithstanding that it was executed before the incorporation of Sankofa AgriTech Ltd and was not thereafter formally re-executed; and therefore, Northern Star Foods PLC wrongfully repudiated it;

(b) that the first Appellant, Ms. Ofori, is entitled to enforce the Agreement, and that the Respondents may rely neither upon the non-existence of the company at the date of execution, nor upon Clause 27 or Clause 31, to defeat the Appellants' claims;

(c) that Northern Star Foods PLC is liable to the Appellants in misrepresentation and negligent misstatement in respect of the assurances given by Mr. Agbeko; and

(d) that Mr. Agbeko and Kete Foods Ltd are liable to the Appellants for procuring the breach or wrongful termination of the Agreement and for unlawfully interfering with the Appellants' economic interests.

60. The Respondents respectfully request the Supreme Court to adjudge and declare:

(a) that the Strategic Supply and Offtake Agreement never became binding, as the express condition that required a re-execution was not satisfied, and consequently, Northern Star Foods PLC committed no breach in terminating it;

(b) that the first Appellant has no enforceable claim under the Agreement, and that Clause 27 and Clause 31, together with the non-existence of the company at the date of execution, preclude the Appellants' claims;

(c) that Northern Star Foods PLC is not liable in misrepresentation or negligent misstatement; and

(d) that neither Mr. Agbeko nor Kete Foods Ltd is liable to the Appellants.