

**IN THE CIRCUIT COURT '10' OF GHANA HELD IN ACCRA ON TUESDAY  
THE 7<sup>TH</sup> DAY OF MARCH, 2023 BEFORE HER HONOUR EVELYN E.  
ASAMOAH CIRCUIT COURT JUDGE**

Time: 8.38 am

CASE NO. C2/20/19

**VINCENT HUJIONYE = PLAINTIFF**

**VRS**

**1. HENRIETTA SACKY = DEFENDANTS**

**2. NII AZUAH MARTIN**

**3. GBORBU WULOMO (BORTEY MANESON)**

*MR. BENJAMIN SEVOR FOR THE PLAINTIFF*

*MRS. DORIS BANGFU FOR 1<sup>ST</sup> & 2<sup>ND</sup> DEFENDANTS*

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**JUDGMENT**

● It is the plaintiff's case that in August 2013, he paid an amount of GH¢45,000.00 to the defendants for the sale of a piece of land located at Lashibi-Accra but the defendants reneged on their promise after receiving the money. The plaintiff sued the defendants for the following reliefs:

1. Recovery of GH¢45,000.00 from the defendants
2. Recovery of interest on the amount of GH¢45,000.0 at the commercial bank rate from 30<sup>th</sup> December, 2013 till the day of final payment and cost

● The plaintiff in his amended statement of claim stated: He came into contact with the defendants when he rented a single-bedroom building located at Nungua from the 1st defendant on 13<sup>th</sup> August, 2013. In his desire to own his property, he had discussions with the 1st defendant and 2nd defendant about his

intention to acquire three plots of land at Lashibi near Tema for a dwelling house. The 1<sup>st</sup> and 2<sup>nd</sup> defendants represented to him that they have plots of land at Lashibi in the Greater Accra region and were willing to sell same to him. He relied on the defendants' representation and paid an initial amount of GH¢30,000.00 on 30<sup>th</sup> December, 2013 for the land which was receipted by the 2<sup>nd</sup> defendant using his company's receipt. He paid the final installment of GH¢15,000.00 into a bank account provided by the 1st defendant. That he paid a total amount of GH¢45,000.00 for the three (3) plots they purported to sell to him at Lashibi.

- The plaintiff further asserted that he was taken to a bare land at Lashibi and handed over the site. The 1st defendant represented to him that the 2<sup>nd</sup> defendant could supply him bags of cement for the construction work so he paid GH¢9,500.00 to the 2<sup>nd</sup> defendant for 500 bags of Ghacem cement which were supplied by the 2<sup>nd</sup> defendant to his house. According to the plaintiff, after trenches were dug for the foundation, his workers were stopped from working on the land by the Lashibi Chief who claimed ownership of the land. The 1st defendant advised him not to go onto the land since she could not guarantee his safety on the said land. The 1st defendant later brought him an indenture in respect of 0.40 acres of land at Oyibi in Accra. That he went onto the land to start a fence wall but was stopped by some people who claimed ownership of the land and threatened to attack him. He reported the issues to the defendants but they could not do anything about it.

- The 1<sup>st</sup> and 2<sup>nd</sup> defendants, in their statement of defence, indicated that they have never represented to the plaintiff that they own any land and intended to sell same to him. According to the 2<sup>nd</sup> defendant, the plaintiff informed him of his desire to acquire land and he offered to help the plaintiff by informing him of a

parcel of land offered for sale by the Chief Fetish Priest of Nungua (Boko Wolomo) by name Botey Maneson. The 2<sup>nd</sup> defendant added that he handed over the first payment in respect of the land to the secretary of the Chief Priest in the presence of the plaintiff and the 1<sup>st</sup> defendant. He further stated that he handed over all the monies received to Botey Maneson to the knowledge of the plaintiff. The 1<sup>st</sup> defendant pointed out that she never provided the plaintiff with any account number and has never received any money from the plaintiff for the purchase of any land.

The first and second defendants added that the plaintiff at all material time knew the true vendor of the land to be Botey Maneson and was taken to the land by the said Botey Maneson, the Chief Priest, the Linguist and other subjects of the Chief Fetish Priest to show him the land. According to the 1<sup>st</sup> and 2<sup>nd</sup> defendants, they went onto the land with the plaintiff and the aforementioned persons as witnesses to the transaction between the plaintiff and the Chief Priest. The 1<sup>st</sup> and 2<sup>nd</sup> defendants denied ever handing over the site to the plaintiff. According to the 2<sup>nd</sup> defendant, she never made any representation to the plaintiff or supervised any work on any land for the plaintiff. Save that she was only sent an indenture given to her by the Chief Priest to the plaintiff. The 2<sup>nd</sup> defendant further stated that the plaintiff is fully aware that he made a complaint against the Chief Priest at the Police Headquarters in respect of the sale of the land. That Botey Maneson has made some refund at the Police station.

- The 3<sup>rd</sup> defendant explained that he has never met the plaintiff and has not transacted any business with him. According to him, the sale of the land transaction was between the 1<sup>st</sup> and 2<sup>nd</sup> plaintiff on one part and the 3<sup>rd</sup> defendant alone. That the 1<sup>st</sup> and 2<sup>nd</sup> defendants approached him to buy land and when the transaction failed, they reported him to the police and there is a criminal suit

against him. That he received money from the 1<sup>st</sup> and 2<sup>nd</sup> defendants and not the plaintiff.

- The issues as set out in the application for direction filed by the parties are as follows:

- a) Whether or not the plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> defendants entered into negotiations to sell to the plaintiff three plots of land at Lashibi?
- b) Whether or not the plaintiff was with the 1<sup>st</sup> and 2<sup>nd</sup> defendants when the land price of GH¢45,000.00 was paid to the 3<sup>rd</sup> defendant?
- c) Whether or not the 1<sup>st</sup> and 2<sup>nd</sup> defendants told the 3<sup>rd</sup> defendant about the plaintiff, as the actual purchaser of the land?
- d) Whether or not the 3<sup>rd</sup> defendant issued a receipt in the name of the 2<sup>nd</sup> defendant or the plaintiff?
- e) Whether or not the 3<sup>rd</sup> defendant handed over the land to the 1<sup>st</sup> and 2<sup>nd</sup> defendants or the plaintiff?

#### Additional Issues

- f) Whether or not the 1<sup>st</sup> and 2<sup>nd</sup> defendants represented to the plaintiff that they had plots of land at Lashibi and were willing to sell same to the plaintiff?
- g) Whether or not the 1<sup>st</sup> defendant provided the plaintiff with a bank account for the plaintiff to pay GH¢15,000.00 into same?
- h) Whether or not the 2<sup>nd</sup> defendant handed over the GH¢45,000.00 from the plaintiff to the 3<sup>rd</sup> defendant?
- i) Whether or not there was a land transaction between the plaintiff and the 3<sup>rd</sup> defendant?

- The central issue in this case is:

Whether or not the plaintiff entered into a land transaction with the 1<sup>st</sup> and 2<sup>nd</sup> Defendant or the 3<sup>rd</sup> defendant? This will be categorized into sections-- negotiation, price/ receipt, and execution- to address all the issues listed above.

- **Negotiation/transaction – Issue A, C, E, I**

The parties do not deny that monies were advanced for the purchase of plots of land at Lashibi. The central question is who negotiated/ transacted the sale of the land with the plaintiff. In the case of **Madina Shopping Mall Association vs. Rosehill Gh. Ltd. E. M. Frimpong Jimmy Nufu** Civil Appeal No. J4/3/2009 dated 28<sup>th</sup> April, 2010 - **Justice Ansah JSC** outlined the essentials of a contract/ sale in law as follows:

*“... the onus was on the plaintiffs who asserted that the shops/storerooms were sold to them to prove that assertion on the preponderance on the probabilities. They were to prove the essentials of a sale in law that was to say, by providing credible evidence on how the contract of sale was made between them and the defendants. They were to prove by credible evidence that the defendants transferred or agreed to transfer the property .... to them (plaintiffs) for a money consideration, i.e., the price, or whether or not the sale was absolute or conditional. If it was a conditional sale, they were to prove that the conditions agreed upon had been fulfilled so property ought to be transferred to the plaintiffs.”*

**Atuguba JSC** (as he then was) **stated:** Now, the authorities are quite clear, that where an essential element of a contract has not been agreed upon by the parties to a contract, there is no valid contract. In the case: **MAY AND BUTCHER vs. R, HOUSE OF LORDS [1934]2 KB 17 VISCOUNT DUNEDIN** said: “To be a good contract there must be a concluded

bargain, and a concluded contract is one which settles everything that is necessary to be settled and leaves nothing to be settled by agreement between the parties.” Again, in the case **BRITISH BANK FOR FOREIGN TRADE vs. NOVINEX LTD.** Court of Appeal [1949] 1 KB.623, 1 ALL ER. 155.

COHEN, L.J.: - had this to say:

*“A number of authorities have been cited to us, to which I do not propose to refer in detail, because in my view, the effect of the authorities is stated correctly in the learned judge’s judgment where he said: - “The principle to be deducted from the cases is that if there is an essential term which has yet to be agreed and there is no express provision for its solution, the result in point of law is that there is no binding contract.”*

- According to the 1<sup>st</sup> and 2<sup>nd</sup> defendants, they never entered into any negotiations with the plaintiff to sell any land of theirs to him. The 2<sup>nd</sup> defendant in paragraph 6 of his witness statement asserted that he only brought to the attention of the plaintiff a parcel of land at Lashibi being offered for sale by the 3<sup>rd</sup> defendant. The 3<sup>rd</sup> defendant indicated that he has never met the plaintiff in respect of this transaction, likewise the plaintiff. The 2<sup>nd</sup> defendant during cross-examination pointed out that the 3<sup>rd</sup> defendant was not even present at the bank when payment was made.

The facts establish that the 1<sup>st</sup> and 2<sup>nd</sup> defendant took the plaintiff to the land and demarcated a portion for him. The indenture in respect of the Oyibi land (Exhibit D) and the receipt of payment (Exhibit B) were handed over to the plaintiff by the 1<sup>st</sup> and 2<sup>nd</sup> defendants and not the 3<sup>rd</sup> defendant. The court finds that the plaintiff transacted business in respect of the land with the 1<sup>st</sup> and 2<sup>nd</sup> defendants who represented to him that they had plots of land at Lashibi for sale. There is no

evidence on record that the 3<sup>rd</sup> defendant knew or was informed by the 1<sup>st</sup> and 2<sup>nd</sup> defendants that the plaintiff was the actual buyer.

• **Purchase price/ receipt- Issue B, D, G, H**

The next crucial questions are: who received the purchase price of GH¢45,000.00? Who issued the receipt of payment?

The plaintiff contended, in paragraph 11, of his witness statement that he paid a total of GH¢45,000.00 to the 1<sup>st</sup> and 2<sup>nd</sup> defendants for the three plots of land they purported to sell to him at Lashibi. Thereafter the 1<sup>st</sup> and 2<sup>nd</sup> defendants took him to a bare land at Lashibi and handed over the site to him. The 1<sup>st</sup> and 2<sup>nd</sup> defendants alleged that they handed over all monies received to the 3<sup>rd</sup> defendant to the knowledge of the plaintiff. However, the facts reveal that the 2<sup>nd</sup> defendant received GH¢30,000.00 from the plaintiff and issued a receipt to the plaintiff in his business name- St Martin Professional Technology. **Exhibit 4** which is a search report indicates that the 2<sup>nd</sup> defendant is the owner of the entity. The 1<sup>st</sup> defendant during cross-examination admitted that the remaining GH¢15,000.00 was paid to the 2<sup>nd</sup> defendant via bank transfer evidenced by Exhibit 3 series.

According to the plaintiff, the 1<sup>st</sup> and 2<sup>nd</sup> defendants who were in a fiduciary relationship with him wanted to benefit from the payment made by him by overpricing the price of the three plots at Lashibi. The 2<sup>nd</sup> defendant, in his witness statement in respect of the criminal case instituted against the 3<sup>rd</sup> defendant, stated that he acquired five (5) plots of land from Nuumor Gborbu Bortey and Nuumo Tsuru at the cost of GH¢50,000.00 and that he bought the land for the plaintiff. However, the 1<sup>st</sup> and 2<sup>nd</sup> defendants stated the cost of the three (3) plots as GH¢45,000.00. The 2<sup>nd</sup> defendant in his police report- Exhibit J

stated that he was issued a receipt by the 3<sup>rd</sup> defendant in respect of the land. He failed to tender the said receipt in evidence.

Excerpt of cross-examination of the 2<sup>nd</sup> defendant by Counsel for the plaintiff:

*Q: You stated in Exhibit J – your report to the police that the 3<sup>rd</sup> defendant – Gborbu Borketey and Nuumo Tsuru issued you a receipt in respect of the GH¢45,000.00. Where is the said receipt?*

*A: It's true that he issued a receipt for the sum of GH¢45,000.00 because the initial receipt he authorized me to issue at the banking hall in respect of the GH¢30,000.00 had to be replaced by his receipt. At the time Nuumo Gborbu issued the receipt, I was about travelling and due to that I misplaced some of the receipts. I do not have them.*

*Q: You can never produce that receipt because on that receipt you were buying five plots of land and not three plots?*

*A: That is not true. The GH¢45,000.00 is for the three plots that the plaintiff chose. The GH¢5,000.00 is in respect of on the two plots at the river bank.*

It is axiomatic that the 3<sup>rd</sup> defendant did not issue any receipt to the plaintiff in respect of the land. The purchase price of GH¢45,000.00 was given to the 1<sup>st</sup> and 2<sup>nd</sup> defendants who has issued receipt of payment to the plaintiff - and not the 3<sup>rd</sup> defendant.

#### ● **Execution- Issue E**

The 1<sup>st</sup> and 2<sup>nd</sup> defendants asserted that they went to the land with the plaintiff, Bortey Maneson, the linguist and other subject of the Chief priest as witnesses of the transaction and that they never handed over the land to the plaintiff. The facts establish that the plaintiff never entered into a contract with the 3<sup>rd</sup> defendant for the sale of the land. The transaction was conducted between the plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> defendants. The 1<sup>st</sup> and 2<sup>nd</sup> defendants did represent



to the plaintiff that the land at Lashibi belonged to them and purportedly sold same to the plaintiff at the cost of GH¢45,000.00 - which representation was untrue.

The court enters judgment for the plaintiff - against the 1<sup>st</sup> and 2<sup>nd</sup> defendants as follows:

- a) Recovery of GH¢45,000.00 from the 1<sup>st</sup> and 2<sup>nd</sup> defendants.
- b) Interest on the sum of GH¢45,000.00 at the commercial bank rate from December 2013 to date of final payment.
- c) Cost of GH¢7,000.00 against the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

**(SGD)**

**H/H EVELYN. E. ASAMOAH (MRS)  
CIRCUIT COURT JUDGE**