

CORAM: HER HONOUR SEDINAM AWO BALOKAH (MS.), JUDGE,
SITTING AT THE CIRCUIT COURT 2, ADENTAN, ACCRA ON THE 8TH
DAY OF JUNE, 2023

SUIT NO: C2/05/2020

JOSHUA PEREIRA TSEDY

V.

MENSAH DELALI

PARTIES.....PRESENT

RAYMOND P. AKPATSA FOR DEFENDANTABSENT

PRO SE REP FOR PLAINTIFF

JUDGMENT

Permit me to give a brief background of this case to put this Judgment in its appropriate perspective.

The Writ of Summons issued by the Plaintiff herein was indorsed with the following reliefs;

- a) An Order for the Recovery of GHC27,000,**
- b) Cost of Building GHC23,000,**
- c) Interest at the current Bank Rates from June 2018 till final date of payment and,**
- d) Cost of Application.**

The matter having come before the Court for Direction, the Court deemed it fit to refer the parties to undertake a Court Connected Alternative Dispute Resolution mediation process. An Order was made to that effect on the 29th day of July, 2020. On the 24th day of August 2020, the parties' Mediation Agreement was adopted as a Consent Judgment of this Court with respect to reliefs **a)** and **c)** indorsed on the Writ of Summons. The parties were unable to reach a Settlement on relief **b)** as indorsed on the Writ of Summons. Therefore, the Court in determining the issue of whether or not the Plaintiff was entitled to the said relief **b)** was set down as the only issue for trial. An Order was made accordingly for the parties to file their Proposed Evidence for a Case Management Conference to be conducted.

Further, an Order was made for a Composite Plan to be made by the Survey and Mapping Department of the Lands Commission, Accra.

The Law

Sections 11(4), 12(1) & (2), and 14 of the Evidence Act, 1975 (NRCD 323) are the evidentiary compass in the determination of the issue.

The Plaintiff claims that he put up the uncompleted structure within the boundaries of the Land the Defendant had purportedly sold to him. The evidentiary burden for the Plaintiff to discharge was to lead sufficient evidence to establish facts to the effect that his claim is more probable than not.

The Plaintiff testified relying on his Witness Statement, **Exhibits A Series (receipts and invoices), B Series (photographs of building materials and building) and C (Indenture)**. The Plaintiff's evidence in support of his claim for

refund of some GHC23, 000.00 being the cost of his putting up of a structure on or developing the land purportedly sold to him by the Defendants were relevant to the extent of showing the veracity of his claim of developing the land in issue.

There was a more pertinent fact to establish that was beyond the capacity of the Plaintiff. This is whether or not whatever development the Plaintiff claims he had undertaken, same was done within the boundaries of the Land sold to him by the Defendants as per the Site Plan given to the Plaintiff and Defendant.

Looking at **Exhibits A series and B series**, it was sufficiently proven by the Plaintiff that he had undertaken development on the land (**See Exhibits A series and B series**).

The Court therefore finds that Plaintiff has developed a structure on the land to the tune of the GHC23,000 as he claims.

Now, in order to ascertain the veracity of the Plaintiff's claim that he had made the development on the land purportedly sold to him by the Defendant, the Court must necessarily look at **Exhibit C and 1** in light of **Exhibits CE and CE1** (the Report and Composite Plan prepared by the Survey and Mapping Department of the Lands Commission, Accra). A careful and critical analysis of **Exhibit CE and CE1** as well as the evidence of CW1, the Surveyor who undertook the exercise of preparing **Exhibits CE and CE1**, shows that the Site Plan contained in the land documents given to the Plaintiff by the Defendant clearly encompasses the physical land within which the Plaintiff has constructed the building and placed the building materials as shown in **Exhibit B series (see Exhibit B series, Exhibits CE and CE1)**.

Although the Defendant in his testimony denied that the Plaintiff has stayed within the confines of the Land which he (Defendant) sold to Plaintiff, the evidence obtained through the **CW1 and Exhibits CE and CE1** tell otherwise. From the expert's evidence on record, this Court can safely and logically conclude that the fact is established from all the evidence on record that the Plaintiff constructed his building and placed his building materials within the boundaries of the land per the land documents (Site Plan) given to him by the Defendant when the Defendant purported to sell same to the Plaintiff. This fact is accordingly found.

The Court has already found that the Plaintiff did use some GHC23,000 in developing the land sold to him by the Defendant. Therefore, in light of the finding by this Court of the fact that the said development was undertaken by the Plaintiff within the boundaries of the land sold to him as per the Site Plan given to him by Defendant, on the preponderance of the probabilities, the Court finds that the Plaintiff has led sufficient evidence, and on the strength of his own case, to prove that he is entitled to his claim for reimbursement of the GHC23, 000 he spent in developing the land Defendant purportedly sold to him erroneously when he, Defendant did not have rights to the said land as this fact is undisputed by the Defendant.

The Court therefore finds that the loss that Plaintiff suffered owing to his development of the said structures on the land which eventually turned out as not owned by the Defendant, should be compensated adequately. The sum of GHC23, 000 claimed by the Plaintiff as the cost of the structure he put upon the land is found to be proved by the evidence adduced by the Plaintiff at the trial.

In the circumstances, Judgment is entered in favour of the Plaintiff for relief **b)** as indorsed on the Writ of Summons.

The Defendant is ordered to pay to the Plaintiff GHC23, 000.

The Defendant is further ordered to pay interest on the GHC23, 000 from January 2019 until this day 8th June 2023 at the prevailing Bank of Ghana rates.

Cost of **GHC 3, 000** is awarded in favour of Plaintiff.

SGD

**H/H SEDINAM AWO BALOKAH
JUDGE
CIRCUIT COURT 2
ADENTAN**