IN THE CIRCUIT COURT '10 OF GHANA, ACCRA, HELD THIS WEDNESDAY THE 25TH DAY OF OCTOBER, 2023 BEFORE HER HONOUR EVELYN E. ASAMOAH (MRS)

CASE NO. D8/22/2021

MRS SARAH MENSAH = PLAINTIFF

VRS

1. MR. ODAI WILLIAMS
2. JACOB AFOTEY ODAI = DEFENDANTS
3. SAMUEL YARLEY

MR. CHRISTOPHER LARTEY FOR THE PLAINTIFF
MR. CHARLES HABIAH FOR THE DEFENDANTS

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JUDGMENT

● The Plaintiff claims that the land in dispute is a government/ public access road and that the defendants should be restrained from putting up a building on the public road reservation.

● According to the Plaintiff, in the year 1988, she and her husband purchased a piece of land, by the access road, from Mr. Kweku Sueye known as Afotey Kwaku. Afotey Kwaku had title from the family of the 1st and 2nd Defendants. The 3rd Defendant on 20th March 2018 brought onto the land large quantity of cement blocks, sand, and stone chippings to put up a structure on the land. The attention of the Nungua District police was drawn to the intrusion and the 3rd Defendant was advised to discontinue activity until the

production of a valid building permit. The 1st and 3rd Defendants came back onto the land on 23rd August 2018 and dug trenches on the land ostensibly to put up a fence wall and in the process broke water and waste pipes buried underground to and from the plaintiff's property. The activities of the defendants have virtually blocked the entry and exit – for vehicles especially waste trucks not to talk of ambulances and fire trucks should the need arise. That the defendants will continue their act and trespass, nuisance, and waste on the land serving as a public access road to her property unless restrained by the honourable court. The Plaintiff sued the defendants for the following reliefs:

i. A declaration that the public access road lying between Parcel No. 24 and Parcel No. 18 is not for the purpose of building a dwelling structure

ii. A perpetual injunction restraining the defendants, their assignees, privies, and servants from building on or having anything to do with the public access road lying between parcel No. 24 and parcel No. 18

iii. Damages for trespass

iv. Recovery of possession

v. Cost

● The Defendants in their amended statement of defence stated: The 2nd Defendant's late father, Kwaku Sueye, granted 0.21-acre land (measuring 100 by 85 ft on one side, 100 by 100 ft on the other side) to Mr. Albert L. Mensah in 1988 on which Mr. Mensah has built a dwelling house. That the Plaintiff is unknown to them wherefore the Plaintiff lacks the capacity to take the instant action. The 2nd Defendant stated that his family lawfully granted said 0.75-acre family land to the 3rd Defendant, a family member who has started developing same for his dwelling house.

● The issues, set out in the application for direction, are as follows:

A. Whether or not the Plaintiff's right of easement is violated by the actions of the defendants.

B. Whether or not the Plaintiff had a quiet, peaceful, and unrestricted enjoyment of the disputed land as the only access road to her house for the past 30 years.
C. Whether the Plaintiff is entitled to her claim.
D. Whether the 2nd defendant's family is the bonafide owner of the 0.075 land or whether the said 0.075-acre land is a government public access road.
E. Whether aside the 0.075-acre land in issue, there is a 20-feet acre from the main road to the Plaintiff's property.
F. Whether the Plaintiff's husband had expressed interest in acquiring the subject 0.075 acre and had made definite offer for same in the past
G. Any other issues raised by the pleadings.

● **Issue D**- *Whether the 2nd defendant's family is the bonafide owner of the 0.075 land or whether the said 0.075-acre land is a government public access road.*

The central issue in this case is: ***Whether the land in dispute is a government/ public access road.***

The Plaintiff in her witness statement asserted that she and her family have enjoyed unrestricted access to their jointly acquired property by the use of the disputed land as the only access route for about 30 years. The access road is used by the members of the public. In the event of a fire outbreak or any other emergency, there would be no access to her residential property for the purpose of attending to emergencies, particularly access for fire tenders. The activities of the 3rd Defendant do not only block access to her house but also block the flow of light and air to her premises. The actions of the Defendants also expose the area to flooding due to the absence of properly laid drainage.

●The next question to ask is: Do the parties have legal permits to build on the land in dispute?

The Plaintiff in her supplementary witness statement contended that in the year 1988, the town and country planning issued a building permit to them, in the name of her husband to enable them put to put up a single-story dwelling house with a fence wall on their land – Plot No 24 block 15 section 017 Nungua. The town and planning issued a permit (***Exhibit SD6)*** to the Plaintiff to develop the land for residential purposes. The permit states 'That the building line be set back 35' from road centre and the fence line be set back 25' from road centre (along cul-de-sac).'

The 3rd Defendant in paragraph 5 of his witness statement averred that when they got their indenture, they prepared their intended building drawings, put in a permit application, and paid for it. The 3rd Defendant indicated that he started building on the land in dispute in the year 2018. In paragraph 2 of his supplementary witness statement, he indicated that "...I have applied and paid for a building permit for the property which is yet to be issued to me…"

The Survey report (***Exhibit CE1***), Paragraphs 5 and 6 states: "The Plaintiff's property is permitted with permit no x/e/sec9/nun/88/73. Defendant has tendered his application for a permit and it's in the process hence, permit has not been granted yet by the assembly"

The evidence reveals that the defendants started building on the land in dispute before they applied for a building permit, which has not been issued to date. ***Why?*** The court expert, the municipal physical planning officer of Korwor Municipal Assembly, explained during cross-examination that the structure of the Defendant is within the road reservation. She stated: "…Since the 3rd Defendant has his land document, he is the rightful owner but he entering into the road reservation is wrong but it isn't only him who has caused a reduction in the road reservation. A building permit should be renewed every 5 years…. That is why I stated that it is wrong and that is one reason his building permit has been deferred till date…"

In the case of **Henry Nimako-Brempong V. Joyce B. Akadza & Anor** CA/NO. 8/2002 dated 30th January 2003 - Justice ANSAH, J.A.: (as he then was) stated:

> *"…the National Building Regulations, (L.I 1630). Those regulations required that an applicant for a building permit has to satisfy the District Planning Authority that he has a good title to the land. The converse is that an applicant who has no such good title will not have his application granted…. At the center of the dispute that sent the parties to court was whether or not the first defendant's fence wall obstructed and impeded the access of the respondent to his house. That was the issue that the trial judge had to grapple with. To resolve that issue, it was not necessary for the applicant to produce a permit to build his house or at where he did. The onus was rather on the defendant to show that where he put up the fence wall was where she was permitted by the authorities to do so. The central issue could be disposed of by looking at the layout to see if any access road had been earmarked for the area and if so whether or not the first defendant's wall sat or straddled it. Title to the land on which the respondent's house was, was of no moment as that was neither in dispute nor was ancillary or incidental to it…."*

The evidence clearly shows that the defendant has not been granted a legal permit to put up structure on the land in dispute- which forms part of the road reservation. The land in dispute does not belong to the Defendants.

● **Access- Issues A, B, C, E &F**

The Plaintiff contended that the construction of a dwelling house by the 3rd Defendant on the disputed land would block access to her residential property and that in the event of a fire outbreak or any other emergency, there would be no access to her property. The 3rd Defendant in his testimony, paragraph 10 of his witness statement, indicated that there is a 20- 25 feet wide road from the main road leading all the way into the plaintiff,

property through her main entrance. That the biggest tipper truck can easily access the road into the plaintiff's property.

To address these issues, it is vital to establish the ***official size of the road reserve*** in that area. The actual width of the road reserve as stated by the Assembly on ***Exhibit CE2***- Survey report is ***50 ft.*** It is indicated that the 3rd defendant's property is "… into the road reservation reducing its actual width of 50ft to 20ft 3 inches on the ground which is not conforming to the scheme. However, there is an access road of 20ft 3 inches leading to both properties" The composite plan (Exhibit CE2) shows that the defendant has put up a structure on the access road- in front of the Plaintiff's property.

This is an excerpt of what transpired during the cross-examination of the Municipal Planning officer- Court expert

Q: *Do you have a copy of the system to show to this court?*

A*: Yes. Attached to Exhibit CE1.*

Q*: Prior to the revised scheme what was the size of the access road in the area?*

A*: The access road within that area is 50 ft. It's a cul de sac – It has a dead end.*

Q*: So, you are saying after the reversed scheme, the access road is 20 ft?*

A*: It's a cul de sac. On the measurement on the reserved scheme, it's 50 ft. but on the ground, it's reduced from 50 ft to 20 ft on grounds.*

Q*: Can you tell the court who reduced the 50 ft to 20 ft on ground?*

A: *When you look at the composite plan on Exhibit CE2, it shows that the road has been reduced to 20 ft on ground and this is caused by both left and right residence. This was the reason Mr. Mensah's plot was shifted up front and made Laryea (3rd Defendant) shift to the road reservation.*

Q: *Are you aware that the Plaintiff's property was constructed about 30 years ago?*

A*: No.*

Q: *You are aware that the Plaintiff obtained a building permit before building?*

A: *Yes. During the submission of the site plans requested, a permit was shown.*

Q: *You are aware that the 3rd Defendant did not obtain a building permit before commencing development of the land?*

A*: Yes. I am aware. They started a process of acquiring a building permit.*

Q: *You agree that you are in no position to tell the court that the Plaintiff's property shifted which caused the 3rd Defendant's property to shift to the road reservation?*

A: *I do not agree because a survey was done on ground and with the scheme.*

Q: *I put it to you that since the 3rd Defendant did not obtain a building permit, there is no basis for him to have his land shifted into the road reservation.*

A*: Since the 3rd Defendant has his land document, he is the rightful owner but he entering into the road reservation is wrong but it isn't only him who has caused reduction in the road reservation. A building permit should be renewed every 5 years.*

This evidence illustrates that the defendant's property is on the government access road denying the plaintiff and the general public full access to the 50 ft road reservation. It is imperative to state that the Authority demarcated that 50 ft road reservation, ostensibly for security, easement purposes, flood control among others.

In the case of **Henry Nimako-Brempong V. Joyce B. Akadza & Anor** (supra)

Justice ANSAH, J.A.: (as he then was) stated:

Everybody is entitled to have an easy and unimpeded access to his property and where the right is violated the person has a right to seek a remedy in a court of law. The plaintiffs' action is in the right direction and ought to succeed on the facts as it did in the Court below. I have an observation or two to make by way of concluding remarks. For far too long the planning schemes of and for many of our cities and towns are flouted with impunity. Many developers put up houses at places where they should not be; in the process, access roads are closed, green belts disappear, and the environment loses its greenery and beauty. Gutters are choked impeding the free flow of water, causing floods at the slightest rainfall. It was high time the

planning schemes for our towns and cities were strictly complied with in the larger interest of town and country planning. This is a call on the powers that be to strictly enforce their building regulations and to be ready to abate every nuisance in town. I believe this will not fall on deaf ears…"

It is axiomatic that the land in dispute has been demarcated by the Assembly, since 1988, as part of the 50 ft road reservation. There is no indication that the layout/scheme of the area has been revised.

In the case of **Ama Bonsu V. Yaw Boahene -**Civil Appeal Number H1/01/2015 Court of Appeal dated 10th May 2016, the court ruled**:**

And since the lane has become state land, the plaintiff does not own it and cannot claim it. The procedure for a revision of a layout especially in a built-up area is regulated by law as stipulated in sections 13 and 28 of the Town and Country Planning Act, 1945 (Cap 84) and sections 46 to 53 of the Local Government Act, 1993 (Act 462). It is clear from the evidence of DW2 and DW3 that there was no meeting at which a revision scheme was approved, ministerial consent was given, an executive instrument was passed, notices were published in the affected area and the date of the revision was stated on the revised layout.

The land in dispute is a government road reservation/ public access road and it does not belong to any of the parties. The court hereby restrains the Defendants, their assigns, privies, and servants from building on or having anything to do with the public access road lying between parcel No. 24 and parcel No. 18.- the land in dispute. Recovery of possession and other reliefs are hereby dismissed. Cost of GHC15,000.00 against the defendants.

(SGD)

H/H EVELYN E. ASAMOAH (MRS)

CIRCUIT COURT JUDGE