

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON TUESDAY
THE 22ND DAY OF AUGUST, 2023 BEFORE HER HONOUR ENID MARFUL-
SAU, CIRCUIT COURT JUDGE**

CASE NO. D1/28/2018

THE REPUBLIC

VRS.

1.NII ADOTEY ONORDJIONOR @ ELISHA ADOTEY BROWN

2.MICHAEL OBODAI @ ASA AKWEI

ACCUSED: A1 & A2 PRESENT

PROSECUTION: C/INSP AWUAH ANSAH PRESENT

COUNSEL: RAPHAEL ALIJINA FOR ACCUSED PERSONS ABSENT

JUDGMENT

The Accused Persons are charged with one count of Conspiracy to wit Trespass contrary to sections 23(1) and 157 and one count of Trespass contrary to section 157 of the Criminal Offences Act, 1960 (Act 29).

The facts as presented by Prosecution are that in the year 2000, complainant Sandra Apegyei purchased two plots of land from the father of A1. Prosecution says that the construction of high-tension electrical pylons along the Medie-Nsawam Highway covered part of complainant's land therefore she complained to her grantor who added a plot of land nearby to her land. According to prosecution, complainant registered her land and constructed a fruit processing factory on part of the land. Prosecution says that upon the death of her grantor, A1 asked her to produce her indenture for regularization which she refused. Prosecution states that in 2015, the Accused persons forcibly entered the land and started constructing a single room on part of the land ignoring all warnings by complainant. A2 occupies the building and both Accused persons have driven away any worker complainant sends to the land. A report was made to the Police and based upon these facts the Accused persons were arrested and charged with the offences.

Prosecution called three witnesses in support of its case. PW1 was the complainant, Sandra Apegyei, PW2 was Samuel Bortey and PW3 was the Investigator, C/Inspr. Gideon S. Zowonu. By a Ruling dated 23rd February,

2023, the Accused persons were called upon to open their defence to the charges.

A1 testified on 18th July, 2023. His defence was that he did not trespass on the land, the subject matter of this case. A2 testified on the same date. He also stated that he did not trespass on the land. According to him, in 2008 he and A1 lost their father and he needed a place to stay so he went to A1 who informed him that he had sold all his father's lands but there is a portion left where he has an unfinished structure. He stated that A1 informed him that if he had money, he could finish up the structure so he did. According to him while doing that PW1 came unto the land and asked who the owner of the building was and A1 informed her that it was a structure he started which was finished by A2. He testified that PW1 informed them that she abandoned the land for a long time, so she wants it remeasured for her to know the size of the plot. He stated that they went unto the land and remeasured it but PW1 stated that she wanted a bigger plot because she wants to construct a factory. According to him, A1 informed her that he will leave the frontage of the land his father gave and where his (A2's) building is for compensation of a certain amount of money. He testified that they concluded and agreed so PW1 gave them GH¢300.00 but they did not hear from her for a long time. He stated that in January, 2016 while sleeping he heard PW1's voice and when he went out, she was there with a Surveyor measuring the land so he called A1 to come.

According to him, when A1 questioned her why she was picking the coordinates, she stated that she was going and that they will hear from her. He stated that there was a confrontation between them and she left. During the year, PW1 brought building materials and started to construct a fence wall but he noticed that the wall was going through the middle of his building so he called A1 who advised that they should go to the Police Station. According to him, at the Police Station they were asked to sign an undertaking so PW1 prepared it and they signed. He stated that they went to PW1's house and she asked the cost of the land and he told her it was GH¢25,000.00 so she was asked to produce the land documents but she said she could not locate it. He subsequently found out that this case had been initiated.

PW1 testified that she bought two plots of land in the year 2000 from one Nii Moi Brown. According to her, her architect detected that the plot was along the Nsawam Road and had high tension cables running right across it so she informed Nii Moi Brown who suggested that she buys the land

immediately next to hers. According to her, her grantor informed her that his son Elisha Brown has an interest in the land and this was smaller in size as it measured 80x100ft and she agreed to buy the land. According to her, to ensure that Elisha had given his consent to the sale of the land, she insisted that that he signs the sale document making her owner of three plots in all. She testified that she constructed a facility on the land. She testified that upon the death of her grantor, Elisha indicated that he will give her fresh documentation but she stated that there was no need for that but Elisha tried several means to collect money from her. She stated that A1 sent potential buyers to the land so they put up “This land is not for Sale” notices on the land after which she made a complaint at the Local Metropolitan Authority, Amasaman. According to her, the Authority put a notice of ‘stop construction work’ on the structure of the Accused persons and this triggered threats. She testified that she sent workers on the land and A1 had them arrested and when she arrived at the Police Station to bail her workers, A1 asked that she is also arrested. She stated that on examination by the Amasaman Police, A1 withdrew his complaint and said it was a plot to renegotiate the sale of the land with her however she refused. She stated that A1 and his land guard have taken possession of the land and threaten anyone she sends to work there.

PW3 tendered the following Exhibits:

- Exhibit A&A1: Charge Sheet and Brief facts
- Exhibit B: Statement of PW1
- Exhibit C: Statement of PW2
- Exhibit D: Statement of Samuel Bortey
- Exhibit E: Statement of A1
- Exhibit F&F1: Investigative & Charge Cautioned Statement of A1
- Exhibit G&G1: Investigative & Charge Cautioned Statement of A2
- Exhibit H: Investigative Cautioned Statement of PW1
- Exhibit J: Investigative Cautioned Statement of PW2
- Exhibit K: Indenture and Site Plan of PW1
- Exhibit L: Search Report
- Exhibit M Series: Photographs

The case of prosecution is that the Accused persons have trespassed unto land owned by PW1. In support of its case, Prosecution tendered Exhibit L which is a Search Report from the Lands Commission. The Search Report is dated 30th June, 2017. The Report indicates that the site for the Search is affected by a Deed of Conveyance dated 1st January, 2003 between

Ebenezer Nii Nai Brown and Sandra Apeagyei. I note that the Site Plan used for the Search is that which is attached to Exhibit K which is the indenture given to PW1. I note from the evidence before me that no issue was raised by Accused Persons or their counsel as to the authenticity of the Search Report. I am thus satisfied that Exhibit L is genuine. The law is that a Search Report is presumed to be conclusive of matters stated therein. (See Section 130(2) of the **LANDS ACT, 2020, ACT 1036**). The Search therefore supports the testimony of PW1 that she has the land registered in her name thereby making her owner of same. From the evidence, PW1 was in possession of the land when Accused persons entered unto same and took possession of part of the land by erecting the building and wooden structure housing the pit latrine. Indeed, Exhibit M Series shows photographs of these structures and there is direct evidence from PW3 indicating that upon his visit to the site A1 pointed the single room as his while A2 claimed the wooden structure on the land. The evidence is also indicative of the fact that with the presence of the Accused persons on the land, PW1's workers have been unable to go unto the land to work as they are threatened by Accused Persons.

Though the Accused persons deny trespassing on PW1's land, the following ensued during cross examination of A2:

Q: Look at Exhibit K, the indenture, I put it to you that this document has been registered at Lands Commission

A: I am aware

Q: I put it to you that A1 signed the document, that is the indenture of the three plots

A: I know he signed

Q: I put it to you that the 3 plots doesn't belong to A1

A: A1 has one plot among the three plots, his father changed it for him."

A1 insisted that the land given to PW1 is not that which is contained in Exhibit K, yet he admits that his signature is found on the said document. Indeed, when Exhibit K was shown to A2 to show where his building was, where he indicated falls within the site plan of PW1. Though the Accused persons claim that A1 owns the land where their structure is located, they have failed to produce any evidence of ownership. It is apparent that A1 owned the land in the past, but the said land was sold to PW1 by his father with his consent hence his signature appearing on the indenture as a

witness as stated by PW1. He thus ceased to have any rights over the said land which has since been registered by PW1 in her name.

As already stated in the Ruling of this court dated 23rd February, 2023, Prosecution's witnesses were found to be credible and were not discredited during cross-examination. I find on the evidence that Prosecution has succeeded in proving the ingredients of the offences levelled. I find from the evidence before me that there was a conspiracy between A1 and A2 to enter unto the land belonging to PW1 and went ahead to put up a structure and take possession of same amidst threats and preventing her use of the land for all these years. I find that the Accused persons worked together with the common object of dispossessing PW1 of a portion of her land and succeeded in doing so. This common purpose is glaring from the direct evidence before this court.

In the case of **LUTTERODT v. COMMISSIONER OF POLICE [1963] 2 GLR 429; SC** it was held as follows:

"In all criminal cases where the determination of a case depends upon facts and the court forms the opinion that a prima facie case has been made, the court should proceed to examine the case for the defence in three stages:

(a) if the explanation of the defence is acceptable, then the accused should be acquitted;

(b) if the explanation is not acceptable, but is reasonably probable, the accused should be acquitted;

(c) if quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict."

I find that the explanation given by the Accused persons in respect of the Charges are unacceptable. It is also reasonably improbable the evidence of Accused persons that they have not trespassed on PW1's land yet their own evidence points to the fact that the structure they put up falls within the site plan of PW1. I find no other evidence on record to exonerate Accused persons from the Offences as Charged. I therefore find the Accused Persons guilty on Counts 1 and 2 and they are hereby convicted.

**H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN**