

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON THURSDAY
THE 28TH DAY OF DECEMBER, 2023 BEFORE HER HONOUR ENID
MARFUL-SAU, CIRCUIT COURT JUDGE**

SUIT NO:C2/41/18

1.VINCENT KPORNYO
2.KOJO LOWONU
ALL OF HEBRON, NEAR AMASAMAN ... PLAINTIFFS

VRS.

1.ZONDA TECH GHANA LIMITED
TEMAMOTORWAY ROUNDABOUT
ACCRA
2.YAN TENG
DOBORO NEAR AMASAMAN, ACCRA ... DEFENDANTS

*PARTIES: PLAINTIFFS PRESENT
1ST DEFENDANT ABSENT
2ND DEFENDANT PRESENT*

*COUNSEL: ANTHONY COBBINAH ESQ. FOR PLAINTIFFS PRESENT
GEORGE A. ASAMANEY ESQ. FOR DEFENDANTS ABSENT*

JUDGMENT

By a Writ of Summons and Statement of Claim filed on 23rd April, 2018, Plaintiffs claim against Defendants the following reliefs:

- a. “Recovery of an amount of GH₵50,000.00.
- b. Interest on the same amount from April, 2017
- c. Cost”

Plaintiffs say that they are land agents as well as barber and mason respectively. They say that in the month of April, 2017, the 2nd Defendant, who claims to be a lawful representative of the 1st Defendant visited the barbering shop of 1st Plaintiff to as usual barber his hair and expressed interest in acquiring ten (10) plots of land on the Amasaman-Nsawam Highway to establish a showroom and service centre for 1st Defendant. The

Plaintiffs therefore promised to assist the 2nd Defendant in acquiring a litigation free land and orally agreed in the presence of witnesses that in the event of assisting Defendants to acquire a dispute free land, Defendants would pay five percent of the cost of the land as commission to Plaintiffs. Plaintiffs say that they introduced 2nd Defendant to a piece of land at Doboro near Nsawam on the Amasaman-Nsawam Highway and 2nd Defendant expressed interest in acquiring the land. According to Plaintiffs, the Defendant, the landowner and his caretaker met on the land and negotiated for ten plots of land at a cost of GH¢10,000.00 being GH¢1,000,000.00 per plot. Plaintiffs say that the Defendants have since commenced development on the land and have displayed heavy duty trucks for sale and have since refused to pay them their agreed commission which amounts to GH¢50,000.00 despite several demands hence this action.

Defendants entered appearance through counsel on 3rd May, 2018 and filed a Statement of Defence on 11th May, 2018. They contend that the 1st Defendant is only an employee of 1st Defendant and does not have the authority to act for and on behalf of 1st Defendant. Defendants contend that the Plaintiffs are well known land guards at Nsawam and its environs. They say that Plaintiffs have been trespassing on their property and harassing them since they purchased their land about a year prior to the Statement of Defence. According to Defendants, in June 2017 the 2nd Defendant and her husband saw a fence wall with the inscription "THIS LAND IS NOT FOR SALE" with a telephone number so they called the number as the location of the land in their estimation was a good place to build a showroom to display their trucks. Defendants says that they were able to establish contact with one of the owners of the land called Mr. Arnold Kwasi Nyonator.

According to them the owner initially stated that the land was not for sale however his adjoining neighbour was looking for buyers to purchase his land so he was willing to take them to see the neighbour if he is paid an agent fee. Defendants say that they agreed to the terms proposed by Mr. Nyonator but he later changed his mind and agreed to lease his land to 1st Defendant. Defendants contend that on 28th June, 2017 2nd Defendant and her husband entered into two separate Agreements with the respective owners of the land being Mr. Arnold Kwasi Nyonator and his neighbour, Gladstone Consultant Limited. According to Defendants per the Agreement, King Kash Royal Co. Ltd. acting per its Managing Directors Mr Arnold Kwasi

Nyanotor and Michael Ahwireng agreed to lease their land to the 1st Defendant for a period of 50 years. In the second Agreement, Goldstone Consultant Ltd acting per its Managing Director Charlotte Asamoah agreed to lease its land to 1st Defendant for a period of 50 years. Defendants contend that the 2nd Defendant was in China during the whole transaction and thus could not have been involved in any aspect of the transaction. They say that since they purchased the land, Plaintiffs have caused harm to the Defendants, their property and at a point in time threatened the lives of Defendants and their Lessors. Defendants say that they lodged several complaints against the Defendants at the Nsawam Police Station. They say that Plaintiffs and their lawyer has no capacity to institute this action since they are not registered taxpayers, hence they are not entitled to the reliefs sought. They counterclaim as follows:

- a) “An order for perpetual injunction restraining the Plaintiffs, their agents or assigns from trespassing against the Defendants Property situate at Nsawam.
- b) Damages
- c) Cost including legal fees
- d) Any other reliefs as this Honourable Court may deem fit”

Plaintiffs filed a Reply on 30th May, 2018. They contend that 2nd Defendant was authorized to look for and negotiate the purchase of the land on behalf of 1st Defendant. They say that 2nd Defendant wrote ‘Yan Teng’ on a brochure as his name. They say that Defendants only went to the Police when Plaintiffs went to demand their commission. At the close of pleadings, the following issues were adopted and set down for trial on 23rd July, 2018 by this court differently constituted:

1. “Whether or not Plaintiffs as land agents assisted defendants to acquire the land.
2. Whether or not plaintiffs are entitled to their claim.
3. Whether or not defendants are entitled to their counterclaim.
4. Whether or not the Defendants agreed to pay the Plaintiffs five percent of the purchase price of the said land as commission.
5. Whether or not the Plaintiffs have trespassed on Defendants said land”

1st Plaintiff testified by means of a Witness Statement filed on 24th August, 2018. He testified that he is a barber and a land agent and the 2nd Defendant patronizes his shop to barber his hair. He testified that in April, 2017, 2nd

Defendant told him he is the lawful representative of 1st Defendant and expressed interest in acquiring ten plots of land on the Amasaman-Nsawam Highway to establish a showroom and service centre for 1st Defendant. He testified that he invited the 2nd Plaintiff who is his partner to assist in acquiring the land for Defendants. He testified that they agreed in the presence of witnesses that in the event of assisting Defendants to acquire a dispute free land, they would pay five percent of the cost of the land as commission to Plaintiffs. He stated that on the same day they introduced 2nd Defendant to a land at Doboro and the 2nd Defendant expressed interest in acquiring same and they met a caretaker named De Graft Forson. He stated that 2nd Defendant was taken to meet the landowner and caretaker on the land and they negotiated and acquired ten plots at a price of Hundred Thousand Ghana Cedis (GH¢100,000.00) from Arnold Kwasi Nyanotor @ Mascimo. He testified that Defendant has since commenced development on the land and had displayed heavy trucks and equipment for sale. He stated that since then Defendants have refused to pay them the agreed commission amounting to Fifty Thousand Ghana Cedis (GH¢50,000.00).

2nd Plaintiff testified by means of Witness Statement filed on 24th August, 2018. He testified that in April, 2017, 1st Plaintiff who was his partner called him on phone and told him that 2nd Defendant had expressed interest in acquiring ten plots of land on the Amasaman Nsawam Highway to establish a show room and service centre for 1st Defendant. He testified that he went to the barbering shop to assist the 2nd Defendant acquire the litigation free land. According to him, they orally agreed that in the event of assisting Defendants to acquire a dispute free land, they would pay five percent of the cost of the land as commission and this Agreement took place in the presence of witnesses. He testified they introduced 2nd Defendant to a land at Doboro and met the caretaker and landowner and 2nd Defendant negotiated and paid for ten plots of land amounting to GH¢100,000.00. He testified that Defendants have since commenced development on the land and displayed heavy duty trucks and equipment for sale on the land but have refused to pay Plaintiffs their agreed commission of GH¢50,000.00 despite repeated demands.

PW1 was De Graft Forson. He testified by means of a witness statement filed on 24th August, 2018. According to him, he is a mechanic and owns a shop on the land in question and has lived on the land for about ten years. According to him he knows the land owner Arnold Kwesi Nyanotor by his

alias Mascino. He testified that the land owner came to inform him that he acquired the land from the Chief of Doboro and it was confirmed by one Nana Akua Oye. He stated that Plaintiffs brought someone to inquire about acquiring the land so he took them to Mr. Nyanotor but nothing came out of the transaction. He stated that Plaintiffs again brought 2nd Defendant who they said was interested in the land. According to him, the landowner earlier informed him to introduce anyone who expressed interest in buying the land and promised to compensate him with GH¢5,000.00 since whoever buys the land would eject him. He testified that when the 2nd Defendant came unto the land, he called Mr. Nyanotor and they met on the land and while they discussed he went back to his work. He testified that one Sunday Plaintiffs came to him at home and said they had seen construction activities on the land and so were wondering if he had taken his commission and had not informed them about ongoing activities on the land. He stated that he went to see Mr. Nyanotor at his house and he told the Plaintiffs and himself that he had received a cheque from Defendants which he showed to them. He testified that some five minutes after they left, he was at his workshop when Mr. Nyanotor came to blame him for bringing Plaintiffs to his house and threatened to reduce his compensation to GH¢4,000.00 because of what he had done. He testified that he told a container owner who was also on the land that Mr. Nyanotor had sold the land and would compensate them and upon hearing this, he threatened to further reduce his compensation to GH¢3,000.00. He stated that the defendants went unto the land and he had to relocate and he never got his compensation from Mr. Nyanotor. He stated that it was not true that Defendants went to the land at their own will.

The Defendants failed to appear when the case was called 13th November, 2023 accordingly this court proceeded to close their case and adjourned the matter for Judgment. It is a trite principle of law that for a writ of summons to be competent, it must be endorsed with a substantive claim hence one cannot bring an action claiming only an ancillary relief.

See.

- **REPUBLIC VRS HIGH COURT, TEMA EX PARTE OWNERS OF MV ESSCO SPIRIT (DRAYA SHIPPING CO- INTERESTED PARTY) [2003-2004]1 SCGLR 689**
- **ROCKSON VRS. ILLIOS SHIPPING CO. SA & ANOTHER [2010-2012] 1 GLR 144**

Defendants have a counterclaim, in its nature as a cross action, Plaintiffs become Defendants to the Counterclaim. Even where the claim of a Plaintiff is struck out, the counterclaim could be pursued, hence it is independent of the claim of Plaintiff. Thus, the counterclaim, must meet the requirement of having a substantive claim endorsed in order to make it competent. In the instant case, Defendants by their counterclaim claim an order for perpetual injunction, damages and costs. Clearly there is no substantive action endorsed on the counterclaim. I therefore find that the counterclaim is incompetent and same is hereby struck out.

In view of the reliefs sought by Plaintiffs, I consider that the basic issue which needs to be resolved is whether or not there was an Agreement between Plaintiffs and 2nd Defendant for the payment of five percent commission after finding him litigation free land for the use of 1st Defendant. All the other issues I consider, are ancillary. I shall thus address this basic issue arising from the pleadings and evidence.

Section 11(1) of the **EVIDENCE ACT, 1975 (NRCD 323)** provides as follows:

“For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.”

Section 12 also provides as follows:

“(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.

(2) “Preponderance of the probabilities” means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence.”

The Standard of proof required in a Civil action was set out in the case of **BISI AND OTHERS v. TABIRI ALIAS ASARE [1987-88] 1 GLR 360; SC**

“The standard of proof required of a plaintiff in a civil action was to lead such evidence as would tilt in his favour the balance of probabilities on the [p.362] particular issue. The demand for strict proof of pleadings had however never been taken to call for an inflexible proof either beyond reasonable doubt or with mathematical exactitude or with such precision as would fit a jig-saw puzzle.

Preponderance of evidence became the trier's belief in the preponderance of probability. But "probability" denoted an element of doubt or uncertainty and recognised that where there were two choices it was sufficient if the choice selected was more probable than the choice rejected. Consequently the trial judge was justified in accepting the case of the plaintiff on the materials and money he had contributed towards the construction of the house, in spite of the discrepancies in the evidence of the first and fourth plaintiff witnesses on the quantities."

As the claim of Plaintiffs arises from a contractual relationship they claim they had with Defendants, the onus is on them to prove a valid contract for their claim to succeed. Plaintiffs stated that the Agreement between them and Defendants was oral, accordingly no documentary evidence has been produced in support of their case. It is not in dispute that both Plaintiffs stated that they are not proficient in English and indeed 2nd Plaintiff stated that they communicated in pidgin English. Again, it is not in dispute that 2nd Defendant is a Chinese National. While 1st Defendant stated that the parties communicated in English and understood each other, 2nd Defendant stated that they communicated in pidgin English. Both Plaintiffs also claim that there were witnesses to the oral contract, however none of such witnesses appeared to testify before the court.

2nd Plaintiff during cross examination set up new claim that Plaintiffs acted as agents for both Mr. Nyanotor and 2nd Defendant and both of them agreed to give them a percentage. The following ensued during cross examination of the 2nd Plaintiff:

Q: Did Mr. Nyanotor ask you to act as his agent

A: Yes

Q: Did the 2nd Defendant also ask you to act as Agent

A: Yes

Q: Did you tell Mr. Nyanotor or the 2nd Defendant that you were acting as an Agent for both of them

A: Yes

Q: And what did either of them say

A: They both agreed to give us percentage."

Though Defendants did not appear to testify, their counsel had the opportunity to cross examine Plaintiffs and their witnesses. Again, from the pleadings of Defendants, they have denied having any contract with

Plaintiffs. There was thus a burden cast on Plaintiffs to prove their case on a preponderance of probabilities to tilt the scale in their favour. It is trite that proof of an act of part performance is a sine qua non for specific performance where an alleged contract is said to be oral. See **KOGLEX LTD (NO 2) V FIELD[2000] SCGLR 175**. In this case the claim of Plaintiffs is that they provided the Defendants with litigation free land hence they were entitled to GH₵50,000.00 which is 5% of the cost of the land purchased by Defendants. Yet from the evidence, 1st Plaintiff admitted during cross examination that he was not aware what the cost of 8 plots of the land belonging to another owner cost Defendant. He also indicated that he had no knowledge that part of the land sold by Mr. Nyanotor had litigation over it which was pending before the High Court. Thus, assuming even that the evidence establishes an oral contract between the parties, I am unable to find evidence of part performance as per the terms indicated by Plaintiffs themselves.

The Supreme Court stated in the case of **DON ACKAH VRS PERGAH TRANSPORT [2011] 31 GMJ 174** as follows:

'It is a basic principle of the law of evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more probable than its non-existence.'

I find that Plaintiffs have failed to discharge the burden of proving the alleged oral contract between themselves and Defendants on a balance of probabilities and I so hold. Having so found, I consider that no useful purpose would be served in addressing the issues set down. On the entirety of evidence before me, I fail to find that Plaintiffs have adduced sufficient credible evidence of the facts in issue which should render them victorious in this action their claim accordingly fails in its entirety and same is hereby dismissed.

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

