

24: 02: 2023

IN THE DISTRICT MAGISTRATE COURT HELD AT VAKPO ON FIRDAY THE 24TH DAY OF
FEBRUARY, 2023 BEFORE HER WORSHIP GIFTY CUDJOE, THE MAGISTRATE

SUIT NO. A11/11/2022

ADZOROR JOSUA COFFIE) PLAINTIFF

VERUSS

GEORGE KOFI TOLOKPOE) DEFENDANT

J U D G E M E N T

The Plaintiff Per the Writ of Summons seek the following relief(s)

1. An Order directed at the defendant to demolish or relocate his bath house, constructed at the back of Plaintiffs house, in the (plaintiff) absence and directed behind Plaintiffs window making it difficult for proper ventilation.
2. Cost.

The defendant when the claim was read and explained to him in the Ewe language he understood at 1st instance pleaded "Not Liable".

In Plaintiff Witness statement to the court, he states that he resides

At Botoku and the defendant herein is a neighbour whose house is adjacent to his. That (3) three months ago he noticed that the defendant has raised a bathhouse just behind his window.

That the defendant did not lay any proper drainage system to carry away the bath water leaving a stagnant water with strong stinging smell behind his window making it difficult for him to open his window for proper ventilation.

The place has become a breeding ground of mosquitoes and even pigs. The defendant he states has also constructed physical structures such as a bath house a kitchen and a pen house during the life time of plaintiff's mother and she never objected to same. The bathhouse he states, has a very good drainage system that poses no danger to the plaintiff and the neighborhood.

That the plaintiff's sister's pen which has goat and sheep and when it rains carries feces and urine of the animals to his compound leaving bad and unpleasant smell on his compound. His chicken sleep at night, cannot make uncontrollable noise. That plaintiff's sister even sheep and goats make noise to disturb her. That the plaintiff was aware of the construction of his bathhouse which lasted within eleven months and three weeks and he looked on till his final completion. The plaintiff at the close of his case tendered nothing in evidence and called no witnesses in support of his case. The defendant equally tendered nothing in evidence and called no witnesses in support.

The Issues for the court to determine are :-

1. Whether or not there is nuisance created by the erection of the defendant's bath house in the community.
2. Whether or not the said bathhouse should be re-located elsewhere.
3. Whether or not the defendant is in breach of the District Assembly Environmental and Developmental by laws.
4. Whether or not the defendant has a Permit to construct the bathhouse.

Any unreasonable interference in a person's right to enjoy his property

in a peaceful tranquility environment can be constructed as Nuisance against that person and it is a wrong. In making a determination the court will consider the general benefit to the community of the defendant's activity complained of it causing serious damages to the plaintiff's enjoyment of his property, the court will not accept the submission that plaintiff should continue to put up with the harm. It is the plaintiff's evidence that the defendant has raised a bath house just behind his window and this causes him discomfort. The defendant did not deny the construction of the bath but insisted that the construction does not cause the plaintiff herein any harm.

CROSS EXAMINATION ON THE PLAINTIFF REVEALS :-

- Q. You claim all the people including yourself have been affected by the construction of the bath house. Can that be possible?
- A. Yes it is possible. It can cause health hazard. The bath water is looking very greenish. Pigs are always there. The water stagnant and there is poor ventilation.
- Q. You claim my bath house breeds a lot of mosquitoes. Have you seen the plantain plantation close to my house and garbage which is also a nuisance? Have you observed same?
- A. I said your stagnant water breeds mosquitoes. From the above encounter between the plaintiff and defendant. Herein, it is not difficult to establish that there is nuisance in the general environment both plaintiff and defendant dwell in. The defence put with by the defendant however is simply that indeed he had constructed a bathhouse but it does not cause any discomfort to the plaintiff herein.

(In the case of)

Boaky versus Asamoah

[1974] I GLR 38 it was held that the defendant having denied the alleged nuisance the onus was on the plaintiff to provide evidence of facts and circumstances from which the court can concluded that the alleged nuisance was true.

The court finds as a fact that the defendant has indeed constructed the bath house which still stands and in his own words he used eleven months and three weeks to construct. The fact further reveal that the plaintiff cautioned defendant during the process of construction but the defendant was adamant to consider any form of abetment.

Reasonableness lies at the core of the law of nuisance and the nature and quality of the defendant's conduct is a factor in determining liability.

Reasonable has been held to be what is legally right between the parties taking account the circumstances of each case. The defendant had not denied constructing the bathhouse and it is Common knowledge that stagnant water breeds mosquitoes. It is also common knowledge what mosquitoes does to the human being therefore the effect of the nuisance is on the whole community and not the plaintiff alone. This court finds as fact that the construction of the bathhouse causes nuisance.

In the case of:-

C. F. C. Construction Company and Others versus Accra City Council.

[1964] GLR 496, it was held that interference whether temporary or not with a person's enjoyment tranquility, liberty, conveniences or comfort provided the degree of interference was sufficiently serious constitute an actionable nuisance. It is clear the defendant did not sought the necessary permit from the District Assembly before the construction.

The Plaintiff posed the following questions: -

Q. Have you obtained Permit from the District Assembly before the structure.

A. I have not received any permit from assembly.

Q. The bathhouse you placed behind my window and the hen coup is illegal. So what should be done to it.

A. We have bathed there all these years. No one has ever advised me not to . I do not see it causing any nuisance. It is within my land.

Regulation (2) of The Environmental Assessment Regulation, **1999**

[LI 1652].

Prohibits any person from commencing any undertaking which in the opinion of the Agency has or is likely to have adverse effect on the environment or Public Health unless prior to the commencement, the undertaking has been registered and an environment permit issued in respect of the undertaking.

Per the evidence, the defendant has not communicated this construction to the **District Assembly Physical Planning Officer**.

The court is therefore fortified in its conclusion that the defendant herein had breached the rules governing such construction and especially where evidence is clear that the whole environment poses a health hazard.

[In the case of:-

Aidoo versus Adjei & Ors.

[1976] GLR 431.

It was held that the operation of a chop bar in a bamboo structure on a portion of land where a Person has his residential building constituted nuisance.

The defendant is and hereby ordered to:

1. Relocate the same bathhouse with proper consultation with the planning officer together with the health directorate of the District Assembly, North -Dayi

2. Cost of GHC 1,000.00 awarded against the defendant.

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GIFTY CUDJOE

THE MAGISTRATE