CORAM: HER WORSHIP AMA ADOMAKO-KWAKYE (MS.), MAGISTRATE, DISTRICT COURT '2', KANESHIE, SITTING AT THE FORMER STOOL LANDS BOUNDARIES SETTLEMENT COMMISSION OFFICES NEAR WORKERS' COLLEGE, ACCRA ON 11TH JANUARY, 2024.

SUIT NO. A11/41/21

NII AYAA KLEMEKUKU
H/NO. A89/14 :: **PLAINTIFF**
MPOASE, ACCRA

VRS.

1. **VICTORIA ARHIN**
2. **CATHERINE ARHIN** :: **DEFENDANTS**

EBENEZER DOWN, MPOASE

JUDGMENT

INTRODUCTION

The Plaintiff caused the issuance of a Writ of Summons on 10th December, 2020 against the Defendants praying this Court for the following reliefs:

a. Declaration that the land located at Opetekwei in Mpoase is an access route to the Plaintiff's land.

b. An order for the demolition of fence wall built by the Defendants on the access road impeding the Plaintiff access to his land.

c. Perpetual injunction restraining the Defendants, their agents and assigns or any other person claiming through them from putting up a fence wall on the said piece of land.

In their Amended Statement of Defence filed on 5th November, 2021, the Defendants also put in a counterclaim for the following reliefs:

i. An order of perpetual injunction against the Plaintiff from trespassing on their land.

ii. Damages for trespass on their land.

In the course of the suit, there was a locus in quo where the Court, parties and Counsel for the Defendants visited the locus. A report was consequently filed in respect of the locus visit on 27th March 2023, which Report was duly tendered by the Court clerk who was subjected to cross examination. After the close of trial, Lawyers for both parties filed their respective Addresses on 5th October 2023 and 4th October 2023 respectively.

PLAINTIFF'S CASE

According to Plaintiff, he is the head of family of chiefs at James town, Accra and lives at Mpoase in Ablekuma West Municipal Assembly whereas the Defendants are siblings residing at Ebenezer down in Mpoase. Plaintiff asserted that about twelve years ago, he built his house at Mpoase in accordance with the planning scheme of the Ablekuma West Municipal Assembly. He stated further that sometime in 2007, in a meeting presided over by the Mpoase Mankralo, Nii Adotei Obedeka II with the father of the Defendants being in attendance, it was agreed that due to the landscaping of the area, a right of way would be allowed on a section of his land to allow access to the Plaintiff's land as well as other adjoining houses.

Plaintiff averred that since 2007, the said piece of land has been used as easement to the Plaintiff's land and other neighbouring houses in the area. According to Plaintiff, the Defendant's father is now deceased and the Defendants have erected a fence wall on the said land preventing Plaintiff and others from accessing their properties. Plaintiff asserted that he reported the matter to Nii Adotse Din Barima I, the Mpoase Mantse. Subsequently, the Mpoase Mantse caused a letter to be written to the Municipal Chief Executive Officer of the Ablekuma West Municipal Assembly to caution the Defendants.

It is the case of the Plaintiff that he has made several efforts to bring to the attention of the Defendants that that piece of land has been marked as an access route to neighbouring houses but his efforts proved futile. Plaintiff stated that the Defendants have indicated by their conduct not to cease the construction of the wall on the access road unless ordered by this Honourable Court.

DEFENDANTS' CASE

The Defendants defended the action by initially filing a statement of defence on the 8th of January, 2021. However, on 5th November, 2021, the Defendants filed an Amended Statement of Defence. According to the Defendants, they are siblings and joint owners of the said house and its wall, which wall is the subject matter of this suit. They added that the said house is the estate of their father which they inherited. It was their case that their deceased father built the said house in or around 1991 long before the Plaintiff built his house.

According to them, their deceased father built the house in accordance with the planning and layout of the appropriate authorities and that the said house was not built in a road or a land, marked for the construction of road and same does not extend into the land of the Plaintiff or any other person. The Defendants denied the alleged meeting held between their late father and Mpoase Mankralo. They further denied that their house has been used as

easement or road by the Plaintiff or any other person. It was their case that if any person derived such benefits from their land, such a person was a trespasser who was unauthorized since all landlords in the area have roads to their houses.

Defendant further denied the fact that the fence wall being built in front of their house, the subject matter of this suit prevents the Plaintiff from accessing his house. According to them, the Plaintiff's house is nowhere close to their house so as to block the route to Plaintiff's house. They further denied the alleged intervention of the Mpoase Mantse in any matter between them and the Plaintiff or receiving any letter from the Assembly. It is the case of the Defendants that all the houses in the area have their access routes. They averred that the Plaintiff uses their house as a road to his house for his convenience instead of using the usual road to his house. According to them, Plaintiff's action constitutes trespass on their land.

REPLY

Plaintiff subsequently filed a Reply and Defence to Counterclaim on 2nd June, 2022 wherein he stated that Defendants' fence wall which is blocking the access route to his house is a very recent construction and that per the layout of the area, the said fence wall blocks the road earmarked to Plaintiff's house. According to Plaintiff, Defendants' fence has blocked the access route to the various houses in the area and that an easement cannot constitute a trespass, as such, the Defendants are not entitled to their claims.

ISSUE

The suit before the Court is within a limited and defined scope, being easement. The main issue for determination is whether or not the alleged access route through Defendants' land qualifies as easement for the benefit of the Plaintiff such that the construction of the fence wall by Defendants interferes with same.

RESOLUTION OF ISSUE

It is trite that in civil cases, the general rule is that the party who in his/her pleadings or writ raises issues essential to the success of his/her case assumes the onus of proof. The one who alleges, be (s)he a plaintiff or a defendant, assumes the initial burden of producing evidence. It is only when (s)he has succeeded in producing evidence that the other party will be required to lead rebuttal evidence, if need be. Proof lies upon him who affirms or alleges, not upon him who denies since, by the nature of things, he who denies a fact cannot produce any proof. See the following:

Sections 11(1) & (2), 12(2) and 14 of the Evidence Act, 1975 (NRCD 323)

Takoradi Flour Mills vs. Samir Faris [2005-2006] SCGLR 882 @ 900

GIHOC Refrigeration & Household vs. Jean Hanna Assi (2005-2006) SCGLR 458

Tagoe v. Accra Brewery [2016] 93 GMJ 103 S.C

Deliman Oil v. HFC Bank [2016] 92 GMJ 1 C.A.

In the case of **Agbosu v Kotey; In Re Ashalley Botwe Lands [2003 – 2004] SCGLR 420** His Lordship Brobbey JSC on the burden of proof held as follows:

"The effect of sections 11(1) and 14 and similar sections in the Evidence Decree 1975 may be described as follows: A litigant who is a Defendant in a civil case does not need to prove anything. The Plaintiff who took the Defendant to court has to prove what he claims he is entitled to from the defendant... At the same time if the court has to make a determination of a fact or of an issue, and that determination depends on the evaluation of facts and evidence the defendant must realize that the determination cannot be made on nothing. If the defendant desires a determination to be made in his favour, then he has a duty to help his own cause or case by adducing before the court such facts or evidence that will induce the determination to be made in his favour…" See also **Tagoe v. Accra Brewery [2016] 93 GMJ 103 @ 123 S.C** per Benin, JSC.

In a case where a Counterclaim is filed by a Defendant, the Defendant assumes the position of a Plaintiff as regards his or her Counterclaim and would therefore have to prove the counterclaim. The Supreme Court speaking on the burden of proof on a Defendant who has a Counterclaim held in the case of **Nortey (No. 2) v African Institute of Journalism and Communication & Others (No. 2) [2013-2014] 1 SCGLR 703** as follows:

> *"Without any doubt, a defendant who files a counterclaim assumes the same burden as a plaintiff in the substantive action if he/she is to succeed. This is because a counterclaim is a distinct and separate action on its own which must also be proved according to the same standard of proof prescribed by sections 11 and 14 of NRCD 323 the Evidence Act (1975)."*

The Court of Appeal also noted as follows on the same topic in the case **Alex Etoh Kwaku v Bridgette Ofosu Asabea [2014] 72 GMJ 68**:

> "*It is trite learning that in civil suits when the defendant counterclaims, for the purposes of the relief, that party becomes the plaintiff and bears the same burden of establishing that relief. The yardstick being the same as the plaintiff, on the preponderance of probabilities."*

Both the Plaintiff and the Defendants herein therefore had the duty in the course of the suit to produce sufficient evidence in respect of their respective claims on a balance of probabilities for a determination to be made in their favour. See also the case of **In Re Krah (Decd.); Yankyeraah v Osei-Tutu & Another [1989] DLSC 601**.

In his witness statement filed on 12th July, 2022 which same was adopted by the Court as his evidence in chief, the Plaintiff testified that sometime in the year 2007, the Mankralo of Mpoase, Nii Adotei Obedeka together with the stool secretary held a meeting with the Defendants' father at which meeting Defendants' father agreed to give way behind his building to allow the Plaintiff and others around to have a passageway to their properties. Plaintiff testified that due to the said agreement, the area behind Defendants' house was used

by himself and others until the Defendants took possession of the house and decided to erect a fence wall to block the way. According to the Plaintiff, he lodged a complaint with the Mpoase Mantse, Nii Adotse Din Barima I who caused letters to be sent to the Security Coordinator as well as the Municipal Chief Executive of the Ablekuma West Municipal Assembly to caution the Defendants. He tendered in evidence copies of the said letters marked as Exhibit 'A' and 'B' respectively.

According to the Plaintiff, he has made several demands on the Defendants to stop the construction of the fence wall but all his efforts have been unsuccessful. He testified further that the fence wall was not built by Defendant's father during his lifetime but by the Defendants themselves and same has blocked him from using the access route to his house. He added that per the layout of the area, the said fence wall blocks the road earmarked to Plaintiff's house. He tendered in evidence Exhibit 'C' which he referred to as the layout. It was the testimony of the Plaintiff that the Defendants have intentionally left obstacles on the access road and have intentionally constructed the fence wall which hinders movement to the various houses in the area. To establish his assertions, Plaintiff tendered in evidence copies of photographs showing the said obstacles including the fence wall as Exhibit 'D' series.

The 2nd Defendant filed her Witness Statement on the 1st of June, 2022 and same was adopted by the Court as her evidence-in-chief. She testified that she and her sister, the 1st Defendant, are joint legal and beneficial owners of the house at Ebenezer Down, Mpoase, Accra which was part of the estate of their deceased father. According to her, their deceased father built the said house in or around 1991 long before the Plaintiff built his house away from theirs and that there are about five houses between their house and that of the Plaintiff's. She further testified that their deceased father built the house in accordance with the planning and layout of the appropriate authorities. As such, the Assembly which is responsible for

housing planning has never questioned the siting of their house. This is because their house was not built in a road or on a land marked for the construction of a road nor does it extend into the land of the Plaintiff. She added that there is a road leading to Plaintiff's house and that has been the road Plaintiff has been using until he started passing through the middle of their house even though they cautioned him to stop.

According to the 2nd Defendant, there is a pavement between the fence wall they are building in front of their house and the main road. As such, the fence wall does not block the road as Plaintiff wants this Court to believe. To prove their case, they tendered in evidence a photograph evidencing the wall they are building in front of their house as Exhibit '1'. It is the case of the 2nd Defendant that the Plaintiff started passing through their house because they had not fenced the back of their house and Plaintiff therefore found it more convenient to pass there instead of the actual road to his house and not because there is a road behind their house and that they have not agreed for him to pass there.

It was the testimony of the 2nd Defendant that there has not been any meeting between their late father and the Plaintiff regarding Plaintiff's unlawful conduct of passing through their house. They added that all those whose houses are adjacent to Plaintiff's house use the main road to their various houses. The fence wall therefore does not hinder the Plaintiff from getting access to his house as there is an actual road leading to Plaintiff's house. It was their case that neither the Mpoase Mantse nor the Assembly has intervened in any matter between the parties nor have they received letters from the Assembly regarding the construction of the wall.

According to 2nd Defendant, Plaintiff's conduct of passing through their house poses a threat to their lives as Plaintiff's vehicle can knock any one in their house down and it also produces a lot of dust and vehicle fumes which are hazardous to their health as well as other occupants of their house. She further stated that all the houses adjacent to theirs have built fence walls

but neither of them blocks any road or access to Plaintiff's house. She therefore prayed for the Plaintiff to be ordered to stop passing through their house.

From the evidence adduced before the Court, it is evident that the matter is one which arises out of easement, particularly an alleged right of way Plaintiff claims he has in Defendant's land. It is therefore important to consider the position of the law concerning easement if a determination of the issue is to be made. At the time Plaintiff instituted the action on 10th December, 2020, the Land Act, 2020 (Act 1036) had not yet come into force and for that matter, it had not yet repealed the Land Title Registration Act, 1986. An easement according to **Section 139 of the Land Title Registration Act, 1986 (PNDCL 152)** is a right capable of existing as an easement under the rules of common law attached to land and allowing the proprietor of the land or of an interest therein either to use another land in a particular manner or to restrict its use to a particular extent, but does not include a right capable of existing as profit or restrictive agreement. See also **Section 281 of Act 1036**.

Thus, the Court speaking through Anthony Oppong J. (as he then was) in the case of **Elizabeth Frimpong v Atta Dwamena (2017) JELR 108264 (HC)** held that: *"A right to access one's property is recognized by the common law. That right is capable of being a right which one landowner enjoys over the land of another. At page 1246 of Megarry & Wade, Eight Edition, it is stated that an easement is "either a right to do something or a right to prevent something". I must say that the common law definition of easement has virtually been adopted in Ghana, which is evident in section 139 of the Land Title Registration Act, 1986 (PNDCL 152): "'easement' means a right capable of existing as an easement under the rules of common law attached to land and allowing the proprietor of the land or of an interest in land to use another land in a particular manner or to restrict its use to a particular extent, but does not include a right capable of existing as a profit or a restrictive agreement." It may be observed that where an easement exists, the owner of the land who is enjoying the rights over the other owner's land takes some benefit from the said land. There is*

always the benefiting land called the dominant tenement and there is the burdened land called the servient tenement."

The Court of Appeal in the case of **Danso and Alayea v. Kwaku Sarpong (2010) JELR 69960** after reproducing the definition of easement as provided above added as follows:

> **"***Simply put, an easement is the right to use the real property of another without possessing it. At common law an easement is considered as a property right in itself."*

Furthermore, Her Ladyship Rebecca Sittie J. in the case of **Edward Ayiku Kanor v. Stephen Stanley (2016) JELR 108258** noted in making reference to His Lordship Sir Dennis Dominic Adjei, JA's book as follows:

> *"Justice Dennis Dominic Adjei (Justice of Appeal), on page 259 of his book on* ***Land Law, Practice and Conveyancing in Ghana****, in reference to easements, stated as follows: 'The commonl aw position is that easements are incorporeal or intangible hereditaments. These are rights which a land owner may exercise over an adjoining land or land in the neighbourhood owned by another land owner.'"*

For a right over land to amount to an easement it must have satisfied some conditions. These conditions were set out in **Re Ellenborough Park [1955] EWCA Civ 4.** The Court in this case outlined four conditions for granting of an easement. These conditions have been further discussed below.

1. There must be a dominant and servient tenement. In all easements, there must be two separate lands; one, which enjoys the benefit and the other, which carries the burden of the easement. The dominant tenement is the land belonging to the owner of the easement and the servient tenement is the land over which the easement is exercised. In **Leech v Schweder (1874) L.R. 9 Ch. App. 463** it was agreed that a person not owing any land in an area may be given permission to pass over the land but this does not amount to an easement. To amount to an easement the person must have owned the

land. An easement must be connected with the enjoyment of the dominant tenement and must be for its benefit as held in **Clapman v Edwards [1938] 2 All ER 507**. An easement in the form of a right of way must be contiguous to the dominant land in that it gives direct access to that land as established in **Todrick v Western National Omnibus Co. Ltd. [1934] Ch 190.**

2. The easement must accommodate the dominant land. It must be established that the easement operates to provide a benefit to the dominant tenement. It must be connected with the normal enjoyment of the land and not just the dominant land. The grantee cannot create an easement conferring rights which are not in relation to the land. In **Ackroyd v Smith (150) 10 CB 154**, it was held that conferring rights on a party over a piece of land which is not connected with the use and enjoyment of the land will not amount to an easement, rather, it will operate as a license and will not create any property rights.
3. The dominant and servient tenements must not be both owned and occupied by the same person. Where one person owns and possesses both dominant and servient tenements then there can be no easement. A person cannot have an easement over his own land as noted by **Lord Esher MR in Metropolitan Railway Co. v. Fowler [1892] 1 QB 165**. A landlord may grant an easement to a tenant over land retained by the landlord and a tenant may by express or implied grant make an easement to his landlord over the land leased to him.
4. Lastly, the easement must be capable of forming the subject matter of a grant. Every easement must originate from a grant. The right claimed must be capable of exact description, there must be a capable grantee and a capable grantor. In **Evanel Pty Ltd v Nelson (1995) 39 NSWLR 209** it was held that a right of foot way over the garden was capable of forming the subject matter of an easement.

How then can a party acquire this interest in land? An easement may be acquired or created by statute and by grant, which may be express, implied or presumed (prescription). Express grant of an easement can either be made by writing or word of mouth. Under the implied easement, there are three ways, namely; easement by necessity; easement of common intention; and easement under the rule in Wheeldon v Burrow [1879].

From the facts of the case, the Plaintiff's claim is basically premised on an alleged agreement between the Defendants' deceased father and the Mpoase Mankralo. Plaintiff's grant therefore falls under express grant having stated that there was an agreement with the Defendant's late father. Plaintiff testified that in 2007, the Mankralo of Mpoase, Nii Adotei Obedeka together with the stool secretary held a meeting with the father of the Defendants where the father of the Defendant, now deceased, agreed to give way behind his building to allow the Plaintiff and others around to have a passageway to their properties. Defendants however denied this. According to the Defendants, there had not been any such agreement between their deceased father and the Plaintiff. The onus was therefore on Plaintiff to prove that such an agreement was held.

Surprisingly, under cross examination of Plaintiff by Counsel for the Defendants, it came to the knowledge of the Court that Plaintiff himself was not even a party to this alleged agreement. Plaintiff was not present when the supposed agreement from which he draws his right was made. This is what happened under cross examination:

> *Q. In paragraph 4 of your Witness Statement you state that Nii Adotei Obedeka together with the stool secretary held a meeting with the father of the defendant, not so?*
>
> *A. That is true.*

Q. And at the said meeting the deceased father of Defendants agreed with those he had the meeting with that he would allow you and others around to have passage to their properties, not so?

A. That is true.

Q. You did not attend the said meeting, not so?

A. I did not attend that meeting because when the Defendants' father's neighbour was constructing his wall, the leaders told him to hold on and make way for us to access our property through it.

It is evident from this piece of evidence that Plaintiff was absent at the supposed meeting. Whatever decision that was taken if indeed such a meeting was held leads to only one conclusion, that the Plaintiff was not a party to whatever agreement that was entered into if there was any. Plaintiff himself says he was not at the meeting where it was allegedly agreed that he could make use of the Defendants' father's land as an access route and it was the Defendants' father who told him. This evidence provided by him is nothing but hearsay and cannot be considered by the court.

Quite apart, from Exhibits 'A' and 'B' which Plaintiff tendered, the said letters said to have emanated from Nii Adote Din Barima I, who was not the one who tendered those exhibits, shows that he (Nii Adote Din Barima I) was also not even present in that alleged meeting. Neither the Mpoase Mankralo nor any of those who were allegedly present at the said meeting with Defendants' father was called to testify. I would attach no weight to Exhibits 'A' and 'B' whose contents are also hearsay. Exhibits 'C' and 'C1' do not also support Plaintiff's case that the fence wall of Defendants blocks an area earmarked as a road. Indeed, those exhibits are not the approved layout of the area as alleged but are only self-serving documents.

Since the Defendants denied the existence of any such agreement, Plaintiff had to do more than merely repeating his pleadings on oath. Plaintiff did not call as a witness any of the persons who attended the alleged meeting at which the supposed agreement was made to testify for him. None of the neighbours was also even called to give evidence that indeed they used portion of Defendants' land as an access route. I agree with Counsel for the Defendants when he submitted in his Written Address that the Plaintiff had obviously failed to prove that the Defendants' deceased father reached any agreement with anybody that his house should be used to access their land and thus Plaintiff cannot rely on this alleged agreement to claim easement over the Defendants' land.

Again, it is trite that to amount to an easement the person must have owned the land. It is important to note that even though the Plaintiff testified that an agreement was reached between the Defendants' father and the Mankralo of Mpoase for a right of way to be created from Defendant's father's land, under cross examination of Plaintiff, it became known that when the supposed meeting was even held, Plaintiff had not yet built his house. Plaintiff was not living in the area and did not own any house there at the time the alleged meeting was held. The following as happened under cross examination of Plaintiff by counsel for the Defendants is worth reproducing:

> *Q: You did not attend the alleged meeting because you did not have a house in that neighborhood at that time?*
>
> *A: That is true. The chiefs know that the Ebenezer School's wall from Opetekwei station all through to Alhaji was meant to be a road but Defendant's father has constructed a building on it.*

Assuming without admitting that such an agreement was made, to the extent that Plaintiff did not own a house in the area, the supposed agreement was not made for his benefit. He

cannot therefore purport to derive a benefit from it and enforce same. That is even in the event that such an agreement exists which in the opinion of the Court, does not since Plaintiff has failed to prove same to the satisfaction of the Court. Indeed, Plaintiff tendered in evidence Exhibits 'A' and 'B' being letters the chief allegedly sent to the Assembly to resolve the matter between the parties. Defendants however denied ever receiving any such letter nor were they sanctioned by the Assembly and asked to cease the construction of the fence wall. This can only mean that the Defendants in constructing the fence wall did not exceed their boundaries nor build same in an access road.

From the Written Address of Counsel for the Plaintiff filed on 5th October, 2023, Counsel for Plaintiff wants this Court to believe that apart from the route through Defendants' land, the Plaintiff has nowhere to pass to his house using his vehicle. This is not borne out of the evidence adduced before this Court and the visit to the locus, the report of which was tendered. From the evidence adduced, it is evident that there is an access road which is the main road leading to Plaintiff's house. This is what transpired during cross examination of 2nd Defendant by Counsel for the Plaintiff:

> *Q. You stated in paragraph 13 of your Witness Statement that there is a road to his house. Where is that road or which road are you referring to?*
>
> *A. It is from the station to Plaintiff's house.*
>
> *Q. Which station are you referring to?*
>
> *A. The lorry station in the area.*
>
> *Q. Is it a road that you can use a vehicle to access to Plaintiff's house?*
>
> *A. Yes my lady but the Plaintiff's cousin has blocked part of the road by constructing a building.*

It seems to me that Plaintiff is unable to access the main road leading to his house because he looked on for another person to build his house blocking the only way from Plaintiff's house which leads to the main road. Plaintiff allowed his relative to build a house blocking an access route to his own house. It is therefore not surprising that he insists on using Defendants' land for his convenience. The law of Equity dictates that he who comes to equity must come with clean hands. In the opinion of the Court, it will be unfair and unjust to allow the Defendants bear the brunt of the Plaintiff's carelessness and unconscionable conduct for not considering the fact that the house built by his cousin was going to cause him an inconvenience.

The wrongful conduct of the Plaintiff has disabled him from enjoying a right of way on the property of the Defendants. In the case of **Benonia Okang v Benjamin T. Saban & Other [2015] DLCA 4498**, the Court noted: "The plaintiff invited this court to make an order demolishing 1st defendant's property because he did not obtain a building permit but plaintiff herself does not have permit to develop her property. As the equitable maxim goes, he who comes to equity must come with clean hands. Ground (a) of the appeal fails and it is hereby dismissed". It will be repugnant to equity, justice and good conscience for the Plaintiff to benefit from his conduct by omission by not preventing his cousin from blocking his access route. This Court therefore holds that no easement exists for the Plaintiff in resect of Defendants' land. There is another means of getting to the Plaintiff's land even if this other means is not convenient.

I must state that the main factual matters as observed at the locus visit as presented in the locus report under 'Observations' were not in controversy (save the portion which stated that there was litigation in respect of another land, which in any event, has no bearing on this present case and the issue before the Court). Exhibits 'CE 1A', 'CE 1B' and 'CE 1C' aptly portrayed what was seen at the locus.

The Defendants have a counterclaim before the Court for an order of perpetual injunction against the Plaintiff from trespassing on their land and damages for trespass. It is trite that general damages are such as the law will presume to be the natural or probable consequence of the defendant's act. In the case of **Afare Apeadu Donkor v EDC Stock Brokerage Ltd & Another [2015] 91 G.M.J. 106**, Her Ladyship Sowah J.A. stated at page 147 as follows:

> *It is trite that general damages are such as the law will presume to be the natural or probable consequence of the defendant's act. It arises by inference of the law and therefore unlike a claim for special damages need not be proved by evidence. The law implies general damages in every infringement of an absolute right.*

Again, in the case of **Bogoso Gold Limited v Kojo Ntrakwa & Another [2011] 1 SCGLR 415**, it was held thus:

> *"The correct position that runs through a collection of cases on the point is that where an act of a defendant ordinarily entitles a plaintiff to an award of damages without proof of actual damage such as an act of unlawfully entering upon the close of another, the award under this head is general damages, which in its nature is nominal and only intended to vindicate the right of the occupier to have undisturbed possession of his property. Writing on the subject 'Nominal damages', the learned authors in Halsbury's Laws of England, Volume 12 (Fourth Edition), paragraph 1114 at page 417 state as follows:*
>
> > *"A plaintiff is entitled to 'nominal damages" where (1) his rights have been infringed, but he has not in fact sustained any actual damage from the infringement, or fails to prove that he has; or (2) although he has sustained actual damage, the damage arises not from defendant's wrongful act but from the conduct of the plaintiff himself; or (3) the plaintiff is not concerned to raise the question of actual loss, but brings his action simply with the view of establishing his right."*

See also the case of **Delmas Agency Ghana Ltd. v. Food Distributors International Ltd. [2007-2008] 2 SCGLR 748 at 760** where it was held by the Court that only nominal damages are awarded in the case of general damages.

In the case of **Mr. & Mrs. Ben Anim Ansah v Prof. S.K.A. Danso (2012) JELR 64616 (CA)**, the Court held that the law was settled that there must be basis for the award of general damages and that although trespass is actionable per se, the Court cannot make an arbitrary award without reference to the damage or the injury being complained of by the Plaintiff. Furthermore, in the case of **Charles Kwesi Gambrah & Another v Michael Kwame Nyarko (2022) JELR 109785** the Court held as follows:

"In respect of general damages, I wish to state that it is the law that in a claim for general damages unlike specific damages, same is not available just for asking but that a party desirous of getting something by way of general damages must prove why he is entitled and thereafter the court will use its discretion to make the assessment basing itself on all the particular circumstances of each case."

According to the Defendants, Plaintiff's conduct of driving through their house poses a threat to their lives because Plaintiff's vehicle can knock any one in their house down. They added further that the dusts and vehicle fumes produced by Plaintiff's car whenever he drives through their house are hazardous to their health. Plaintiff did not deny driving through Defendants' house with his car. In fact, when he was questioned under cross examination concerning same, this is what he had to say:

> *Q. You agree with me that driving through Defendants' house as a passage is dangerous to their lives. Don't you?*
>
> *A. That is true but defendants know that where a car will pass is where they have built a self-contained.*

It is clear from this piece of evidence that Plaintiff is only concerned about gaining access to his house and has no regard for the dangers his conduct poses to other members of the community he resides in. Since Defendants' claims were admitted by him, it was not necessary for Defendants to adduce any further evidence to prove same. The usage of the Defendants' land by Plaintiff as his passageway without their consent amounts trespass and it is a disturbance to the peaceful possession of the Defendants of their land. It is therefore appropriate that general damages are awarded for them. I would award nominal damages of GH¢ 2,000.00 for the inconvenience caused to Defendants by Plaintiff from his trespass and the Plaintiff is also perpetually injuncted from using the Defendants' land as an access route.

CONCLUSION

Having considered the entirety of the evidence adduced at trial, I find that the Plaintiff has not been able to discharge the burden of proof on him in respect of the claims levelled against the Defendants. Plaintiff's action therefore fails and same is accordingly dismissed. The Defendants succeed on their counterclaim and the following orders are therefore made by the Court:

a. General damages of GH¢ 2,000.00 is awarded for the Defendants against the Plaintiff.

b. The Plaintiff is perpetually restrained from entering onto Defendants' land and using same as a passageway.

c. Cost of GH¢ 6,000.00 is awarded to the Defendants against the Plaintiff.

AMA ADOMAKO-KWAKYE (MS.)

MAGISTRATE

Counsel

Ben Sevor, Esq. for the Plaintiff.

Kwame Gyamfi, Esq. for the Defendants.