

**IN THE HIGH COURT OF JUSTICE, ADENTAN, CORAM ENYONAM ADINYIRA,  
J ON WEDNESDAY THE 3<sup>RD</sup> DAY OF NOVEMBER 2023.**

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**SUIT NO. C12/09/2020**

**TIME: 10:10 a.m.**

**KAKRA SERSAH  
HOUSE No.9  
HILL VIEW CRESCENT  
McCARTHY HILL**

**PLAINTIFF**

**VS**

**1. NANA DWOMOH AGYEMAN- BADU  
LAKESIDE- ACCRA  
2. BAND PLATINUM PROPERTIES  
ACCRA**

**DEFENDANTS**

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**JUDGMENT**

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**A. INTRODUCTION**

The Plaintiff instituted this suit against the Defendants by an Amended Writ of Summons dated 24<sup>th</sup> March 2021 together with an accompanying statement of claim and claimed against the Defendants the following reliefs:

- i. General damages for breach of contract;
- ii. An order to set aside the sale of the property by the Defendants for want of capacity;
- iii. An order for specific performance compelling the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to perform their obligations under the Sale and Purchase Agreement (SPA) and the Deed of Assignment respectively;
- iv. An order directing the Defendants to pay damages to the Plaintiff for all the costs he has incurred in seeking to enforce the Deed of assignment and the Sale and Purchase Agreement including cost of the Counsel's fees; and

v. Any other reliefs that this court may deem fit.

## **B. PLAINTIFF'S CASE**

- 1 The Plaintiff's case is that he is the beneficial owner of a property situated, lying and being at Abladjei in the Ga East District of the Greater Accra Region of the Republic of Ghana (the "Property").
2. The 1<sup>st</sup> Defendant is the Chief Executive Officer of the 2<sup>nd</sup> Defendant and a developer of a two- bedroom house situated at Agbogba Suncity and sitting on the Plaintiff's property. The 2<sup>nd</sup> Defendant is the current registered owner of the property with land certificate No. GA.61466.
3. The 1<sup>st</sup> Defendant was desirous of selling the property in dispute after developing the same and the Plaintiff expressed interest in buying the said Property.
4. The Plaintiff says that the parties accordingly entered into and executed a Sale and Purchase Agreement dated 14<sup>th</sup> November 2019 and subsequently on 12<sup>th</sup> March 2020, the 1<sup>st</sup> Defendant acting on behalf of and for the 2<sup>nd</sup> Defendant, entered into an agreement with the Plaintiff per a deed of assignment to transfer the land upon which the property was developed to the Plaintiff for a term of ninety-nine (99) years.
5. The Plaintiff says that in the said Sale and Purchase Agreement, the Parties agreed that the Plaintiff shall purchase the property for the sum of Four Hundred and Twenty thousand Ghana Cedis only (GHS 420,000.00) in the following manner:
  - a) An initial deposit of one hundred and fifty thousand cedis only (GHS 150,000.00) of the purchase price, was to be paid upon execution of the Sale and Purchase Agreement;
  - b) A second payment of one hundred and fifty thousand cedis only (GHS 150,000.00) was payable upon the development of the property to lentil level;
  - c) The final payment of one hundred and twenty thousand cedis only (GHS 120,000.00) of the purchase price, shall be paid prior to the purchaser moving into the property after the vendor has completed the development of the property.
- 6 The Plaintiff says that the 1<sup>st</sup> Defendant agreed that upon the execution of the sale and purchase agreement, she shall reserve exclusively for the Plaintiff, the

property upon receipt of the first installment. The 1<sup>st</sup> Defendant further agreed to undertake the preparation of all transfer documents and indeed did prepare and execute a deed of assignment in favour of the Plaintiff effectively transferring the 2<sup>nd</sup> Defendant's interest to the Plaintiff after Plaintiff had paid the second installment.

7. Plaintiff says that he even informed the 1<sup>st</sup> Defendant of his specifications for the property to be developed and employed the services of his own architect.
8. The Plaintiff made the initial payment in accordance with the Sale and Purchase Agreement. The initial payment was used by the 1<sup>st</sup> Defendant to start the project and was sufficient to get the project to the lentil level.
9. The Plaintiff says that the 1<sup>st</sup> defendant delayed inordinately in completing the project by several months and for that reason, the Plaintiff paid the full purchase price less Ninety Thousand Ghana Cedis (GHC 90,000) until the 1<sup>st</sup> Defendant was able to complete the project which Plaintiff anticipated would be on or after the month of August 2020.
10. The Plaintiff says that the 1<sup>st</sup> Defendant after Plaintiff made the proposal to pay the remaining 90,000 Ghana Cedis upon completion of the project, immediately put the property up for sale by an advertisement claiming the property is hers and she can do whatever she intends to do with it, though the Plaintiff had already paid about 80% of the purchase price.
11. The Plaintiff says that the 1<sup>st</sup> Defendant engaged a broker to sell the Property.
12. The Plaintiff says that the 1<sup>st</sup> Defendant's act of putting up the Property for sale is fraudulent. The particulars of fraud are as follows:
  - a) The 1<sup>st</sup> Defendant does not have capacity to sell the property because she has already conveyed the property to the Plaintiff by a deed of assignment dated 12<sup>th</sup> March 2020.
  - b) The 1<sup>st</sup> Defendant is knowingly purporting to make conflicting grants in respect of the same piece of land to more than one person contrary to law.
13. Wherefore the Plaintiff claimed against the Defendant the following reliefs:
  - i. General damages for breach of contract;
  - ii. An order by this Honourable Court to set aside the sale of the property by Defendants for want of capacity;

- iii An order for specific performance compelling the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to perform their obligations under the Sale and Purchase Agreement and the deed of Assignment respectively;
- iv. An order directing the Defendants to pay damages to the Plaintiff for all the costs he has incurred in seeking to enforce the Deed of assignment and the Sale and Purchase Agreement including cost of the Counsel's fees; and
- v. Any other reliefs that this court may deem fit

### **C. DEFENDANTS' CASE**

1. The Defendants denied all the allegations in the Plaintiff's Statement of Claim and went ahead to make their case in their statement of Defence and Counterclaim. In their Defence, the Defendants say that an offer was made to Plaintiff herein to purchase the said property and make full payment within a specific time but Plaintiff refused to make full payment of the purchase price at the specific time and therefore he cannot be the beneficial owner of the said property.
2. The Defendants further say that the Plaintiff failed to abide by the terms of the said Sale and Purchase agreement.
3. The Defendants say that any transfer of interest in the Property was on condition that the Plaintiff would fulfil his part of the transaction but failed or refused to do same.
4. The Defendants say that the modifications extended the time of completion, but they still managed to complete the project.
5. The Defendants say that the Plaintiff breached the terms of the agreement as he failed to make final payment by the due date.
6. The Defendants added that the project was further delayed by the COVID-19 pandemic but by 4<sup>th</sup> June 2020 the building had been completed.
7. The Defendants alleged that the Plaintiff fraudulently told them that the rest of the money was ready and hence the 1<sup>st</sup> Defendant completed the project but after completion the Plaintiff failed to turn up for final inspection and handing over of the project to him and further refused to answer the calls from the Defendants and eventually the Plaintiff told the Defendants he was broke.
8. The Defendants say that the property is in the name of the Plaintiff and interest in the property would only pass to the Plaintiff on condition that within the stipulated time, the Plaintiff would fulfil his part of the agreement but the Plaintiff failed or refused to do the same and is therefore entitled to a refund of his money

paid but cannot claim the property as he has breached his part of the sale and purchase agreement.

9. The Defendants counterclaimed for the following reliefs:
  - (i) Damages for breach of Contract
  - (ii) Any other cost including Counsel's fees as the Court may deem fit.

#### **D. ISSUES FOR TRIAL**

1. Whether or not the Plaintiff is the beneficial owner of the property?
2. Whether or not the 1<sup>st</sup> Defendant breached the Sale and Purchase agreement?
3. Whether or not the 2<sup>nd</sup> Defendant conveyed its interest in the property to the Plaintiff?
4. Whether or not the 1<sup>st</sup> Defendant failed to complete the Project in accordance with the timelines set out in the Sale and Purchase Agreement?
5. Whether or not the 2<sup>nd</sup> Defendant had capacity to sell the property after 2<sup>nd</sup> Defendant had conveyed the property to the Plaintiff?
6. Whether or not the purported conveyance to a third party after the issuance of the writ constitutes fraud and should be set aside?

#### **E. STANDARD OF PROOF AND THE BURDEN THEREOF**

This suit, being civil litigation, the standard of proof is on the balance of probabilities or preponderance of probabilities and the Plaintiff bears the legal burden of proof on the issues critical to substantiate its case. Thus, the Plaintiff bears the burden of persuasion which per section 10(1) of Evidence Act, 1975 (Act 323) is

*"the obligation of a party to establish the requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court"*

The Plaintiff also has the burden of producing evidence which per Section 11(1) of Act 323 is:

*"the obligation of a party to introduce sufficient evidence to avoid ruling against him in this issue. The burden of persuasion in all civil cases is proof by preponderances of probabilities."*

**Section 12(2) of Act 323** also states as follows:

*Proof by a preponderance of probabilities is the 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<sup>1</sup>.*

**Section 14 of Act 323** is also as follows:

*“Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence”.*

The succinct dictum on the burden of proof by the Supreme Court in **ACKAH VRS. PERGAH TRANSPORT LTD [2010] SCGLR 736 per Adinyira JSC** bears reiteration as follows:

*“It is a basic principle of the law on 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.*

*The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary and things (often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the Court or tribunal of fact such as a jury.*

*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 reasonable than its non-existence. This is a requirement of the law on evidence under sections 10 and 11 of the Evidence Decree.”*

His Lordship Anin-Yeboah, JSC in **ACQUIE V TIJANI (2012) 2 SCGLR 1252 at 1258** also stated as follows:

*“In any case, the law does not require a party to prove his case with absolute certainty in civil proceedings. A court must, however, satisfy itself that the evidence led on a particular issue is proved in accordance with the requisite standard required by law. In **Hawkins v Powells Tillery Steam Coal Co Ltd (1911) KB 988 at 996**, Buckley, L.J said: ‘When it is said that a person who comes to the Court for relief must prove his case, it is never meant that he must prove it with absolute certainty. No fact can be proved in this world with absolute certainty. All that can be done is to adduce such evidence as that the mind of the tribunal is satisfied that the fact is so. That may be done either by direct evidence or by inference from facts. But the matter must not be left to rest in surmise, conjecture or guess.’”*

**In re PRESIDENTIAL ELECTION PETITION (NO. 4) AKUFO-ADDO & ORS. V. MAHAMA & ORS. [2013] SCGLR (SPECIAL EDITION) 73**, the Supreme Court held at page 322 of the report as follows:

*“Our understanding of the rules in the Evidence Decree, 1975 on the burden of proof is that in assessing the balance of probabilities, all the evidence, be it that of the plaintiff, or the defendant, must be considered and the party in whose favour the balance tilts is the person whose case is the more probable of the rival versions and is deserving of a favorable verdict.”*

## **F. ANALYSIS OF THE ISSUES**

### **Issue 1 Whether or not the Plaintiff is the beneficial owner of the property?**

The law is settled that the moment parties enter into a valid Sale and Purchase agreement, the vendor becomes in equity a trustee for the purchaser of the estate sold and the beneficial ownership passes to the purchaser. This principle was aptly captured by Ampiah JSC as he then was in the case of **AMUZU V. OKLIKAH [1997-98] 1 GLR 89 - 143**.

In the instant case, the Plaintiff entered into a valid Sale and Purchase agreement dated 14<sup>th</sup> November 2019 marked as **Exhibit D**. As part of the agreement in paragraph 3(i) of the Sale and Purchase Agreement, the Defendants agreed to reserve exclusively for the Plaintiff the property upon the receipt of the first installment payment. The Plaintiff proceeded to pay over 80% of the purchase price of Four Hundred and Twenty Thousand Ghana Cedis (GHS 420,000) despite delays in the completion of the property.

The Defendant went further to execute a Deed of Assignment dated 12<sup>th</sup> March, 2020 which was duly stamped. The stamped deed of Assignment is marked and exhibited as **Exhibit A**.

Based on the executed Sale and Purchase Agreement, the Deed of Assignment, and the substantial payment made by the Plaintiff, the court holds that the Plaintiff is the beneficial owner of the disputed property.

**Issue 2: Whether or not the 1<sup>st</sup> Defendant breached the Sale and Purchase agreement?**

In the case of **EVELYN NYARKOA OBENG AND VICTORIA SOLOMON vs. DAOUD ANUM YEMOH [HIGH COURT (GENERAL JURISDICTION DIVISION), ACCRA] SUIT NO: GJ/1012/2018** which also referred to **G.H. Treitel, The Law of Contract 11 Edition** it is stated that *'a breach of contract is committed when a party without lawful excuse fails to perform what is due from him under the contract, or perform defectively or incapacitates himself from performing'*.

The Defendant during cross-examination admitted to selling the property. On page 50 to 51 of the Record of Proceedings this is what transpired:

**“Q:**     *Are you aware that the Plaintiff acquired an interest in the property upon payment of GHC330,000 to you.*

**A:**     *Yes, please I am aware and I have always been ready to hand over till he defaulted on the payment of the balance.*

**Q:**     *I put it to you that upon acquiring that interest, you had no right to advertise or sell the property to a third party without his consent.*

**A:**     *I did not advertise the property personally. I only resorted to sell when I needed the balance to solve a family problem.*

**Q:**     *Are you aware that you cannot sell someone's property?*

**A:**     *By the Sale and Purchase Agreement (SPA), I am the owner of the property till all payments are made. I, on several occasions, pleaded with the plaintiff to make payments so I could do the full handover to him, which he refused.*



**Q:** *I put it to you that your answer shows that you deliberately breached clause 3(i) of the Sale and Purchase Agreement (SPA) which provided 'that the vendor shall upon execution of this agreement reserve exclusively for the purchaser, the property upon receipt of the first installment.*

**A:** *That has been the case even till date. Since the completion of the project, I pleaded to the Plaintiff to make payment which he has not done till date relinquishing his right to the property.*

**Q:** *I put it to you that per your own Exhibit NDA 1 series at page 8 being the WhatsApp conversations, you on 26/08/2020 messaged the Plaintiff and the message was as follows:*

*'Kakra I advise you make payment as you have already indicated. If you insist on going to Court know that it will be your loss not mine. I will make sure of that'. This was threat; Not so?*

**A:** *It was not a threat. I had exhausted every angle of persuasion for him to make final payment. This was just for him to make the payment and not a threat. I was after the money.*

**Q:** *I put it to you that you had no right to advertise or sell the property.*

**A:** *Your Ladyship, I did not advertise the property for sale and I resorted to sell to retrieve my balance. (So I have sold the property)."*

Based on the 1st Defendant's admission in the Record of Proceedings quoted above, it is evident that the 1st Defendant has breached clause 3(i) of the Sale and Purchase Agreement. Consequently, the Plaintiff is entitled to damages.

**Issue 3 and Issue 5: Whether or not the 2nd Defendant had conveyed the property to the Plaintiff and Whether or not the 2nd Defendant had capacity to sell the property after 2nd Defendant had conveyed the property to the Plaintiff?**

Section 35 of the Land Act, 2020 (Act 1036), stipulates as follows:

*"Section 35—Mode of transfer*

*(1) A transfer of an interest in land other than a transfer specified in section 36, shall be in writing and signed by*

- (a) the person making the transfer or by the agent of that person duly authorised in writing; and*
- (b) the person to whom the transfer is made or the agent of that person duly authorised in writing.*
- (2) A transfer of an interest in land made in a manner other than that provided in this section does not confer an interest on the person to whom the transfer is made."*

The court finds that the Deed of Assignment dated 12th March 2020 (Exhibit A) duly satisfies these legal requirements. This fact is corroborated by the 1st Defendant's admission during cross-examination, as reflected on **page 48** of the Record of Proceedings detailed below.

*"Q: Are you aware that the Plaintiff is the owner of the property?*

*A: No, please.*

*Q: Did you execute a Deed of Assignment dated 12/03/2020 with the Plaintiff being Exhibit A attached to the Supplementary Affidavit dated 31/07/2022 at the last page?*

*A: Yes, please. But the Plaintiff asked me to do so in order for him to make payment for the house. He had to convince his investors. So I gave him a copy of the signed Deed of Assignment to use.*

*Q: I put it to you that your explanation as to why the Deed of Assignment was executed is untrue and an afterthought as same has not been pleaded.*

*A: That is the truth*

*Q: I put it to you that by executing that stamped Deed of Assignment, you transferred ownership to the Plaintiff."*

From the dialogue above, the 2<sup>nd</sup> Defendant's execution of the Deed of Assignment unequivocally conveyed its interests in the disputed property to the Plaintiff. Thus the 2nd Defendant lacked the capacity to transfer the property to a third Party, based on the principle of *nemo dat quo non habet*

In addition, whatever the reason, and without evidence of this discussion between the Parties, the court finds that a legal document was duly executed between the parties wherein the 2<sup>nd</sup> Defendant transferred its interest in the Property to the Plaintiff.

**Issue 4: Whether or not the 1<sup>st</sup> Defendant failed to complete the Project in accordance with the timelines set out in the Sale and Purchase Agreement?**

The timelines in the SPA are based on milestones which are stated in section 4 of the Agreement as follows:

- i. An initial deposit of one hundred and fifty thousand Ghana Cedis only (GHC150,000) of the purchase price, will paid upon the execution of this contract.**
- ii. A second payment of one hundred and fifty thousand Ghana Cedis (GHC150,000) of the balance shall be made upon the development reaching the lintel level.**
- iii. The final payment of one hundred and twenty thousand Ghana Cedis only (GHC120,000) of the purchase price, shall be paid prior to the purchaser moving into the house after the vendor has completed the development.**

From the evidence before the court, the 1<sup>st</sup> defendant failed to complete the Project in accordance with the timelines set out in the Sale and Purchase Agreement. This fact is substantiated by the testimony of the 1st Defendant, as stated on pages 51 and 52 of the Record of Proceedings, which reads as follows:

***“Q: Would you agree with me that the building project was not completed on time?***

***A: No, please. It was completed on time.***

***Q: Madam, your earlier answer suggests that you were working according to a certain schedule; is that correct?***

***A: Yes, please.***

***Q: Did you meet that schedule?***

***A: Per our agreement the Plaintiff delayed in making the second payment which affected our work. In 2020, we had a COVID restriction around that time the project was meant to be handed over.***

- Q: Did you finish the project on time per that schedule?*
- A: Per the said schedule in our agreement, yes. But per our communication, the project was delayed because of his delay in payment and COVID lockdown.*
- Q: I put it to you that the evidence about his delay in payment is not pleaded. What is pleaded is that the Plaintiff requested for modifications, and this caused the delay in the schedule; Not so?*
- A: I did indicate in my Witness Statement that the delay was caused by COVID, and the modifications requested by the Plaintiff.*
- Q: So you would agree with me that there was a delay in completing the building.*
- A: Your Ladyship, I will answer this in two parts; Yes according to our communication but by our Sale and Purchase Agreement there was no delay.*
- Q: When was the final instalment to be paid?*
- A: Right after we finished the project.*
- Q: I put it to you that the final instalment was to be paid prior to the purchaser moving into the house after the vendor had completed the developments*
- A: Your Ladyship, No. They had constantly pushed me to finish the project which I did. They did not make any indication of not having the balance and that they did not have the money to pay the balance. They did promise to pay as soon as I was done and that pushed me further to complete the project."*

From the foregoing the court finds that 1<sup>st</sup> Defendant did not fulfill her obligation to complete the house within the Agreed timelines. If the COVID-19 was the reason for the delay the Defendants should have formally communicated this delay to the Plaintiff and equally given the Plaintiff a timeline to also make payment and not demand that payment be made within seven (7) days as evident in Exhibit F being the email dated the 12<sup>th</sup> August 2020.

**Issue 6 : Whether or not the purported conveyance to a third party after the issuance of the Writ constitutes fraud and should be set aside?**

Per Acquah JSC (as he then was in **KOGLEX LTD V FIELD [2000] DLSC 331**, "the relief of specific performance lies whenever agreement between parties have got to such a stage that it would amount to fraud on the part of the other party to refuse to perform his side of the bargain."

Wood JA (as she then was) in **GOOD SHEPHERD MISSION V. SYKES AND ORS [1997-88] 1 GLR 978-99 CA** defined fraud as encompassing acts, omissions, and concealment that breach legal or equitable duties, trust, or confidence, causing harm to another and resulting in the undue or unconscientious taking of advantage. Fraud includes any form of surprise, trickery, cunning, dissembling, or unfair means used to deceive and cheat others. It implies a willful act with the intention to unlawfully or inequitably deprive someone of what they are entitled to.

In **MORKOR V KUMA (NO.1) [1999-2000] 1 GLR 721**, the position of the law as stated by Sophia Akuffo, JSC is "*The corporate barrier between a company and the persons who constitute or run it may be breached only under certain circumstances.*" These circumstances include fraud. Where it is shown that the company was established to further fraudulent activities or to avoid contractual liability, the corporate veil will be lifted.

It is evident that the Defendants purported to convey the property to a third Party after the issuance of the Writ. Their actions involve a clear breach of legal and equitable duties, a violation of the trust reposed by the Plaintiff amounting to fraud.

Additionally, the Defendants should have communicated to the Plaintiff that the Property was completed, allow the Plaintiff to least sight the completed project, then make arrangements for the payment of the balance at the time the Plaintiff was being put into possession particularly as the **Plaintiff had even paid in advance GHC 30,000 of the last instalment of GHC 120,000**. From the evidence before the court, the Defendant merely communicated via email being Exhibit F that the property was completed and gave the Plaintiff seven days to complete the payment. In this email dated August 23, 2020 the 1st Defendant stated as follows;

*"I will actively market the house and refund your GHC 330,000 if I don't receive the balance as you requested."*

This singular act was in clear violation of the SPA particularly clause 3 (i) which states as follows:

*The vendor shall upon execution of this Agreement*

*(i) Reserve exclusively for the Purchaser the Property upon receipt of the first instalment.*

Furthermore, if in the opinion of the Defendant, the Plaintiff delayed in making the final payment and that was a basis to sell the property to a third Party, the SPA had an express provision to deal with subsequent encumbrances, which provision the Defendants again flouted.

**Clause 6 of the SPA states as follows:**

*The vendor warrants and irrevocably undertakes to refund in **one bullet payment** all monies paid to them on the purchase price and expenses incurred relating to this transaction commencing from the date of execution of this Agreement should the ownership of the property be **deemed encumbered by a third party** or deemed to be imperfect or nonexistent or cancelled by the Lands Commission. (Emphasis mine)*

For this reason, and on the authority of **MORKOR V KUMA (NO.1) [1999-2000] 1 GLR 721**, the purported sale was fraudulent and contrary to SPA executed between the Parties on 14<sup>th</sup> November 2019. Based on the foregoing the Court lifts the corporate veil and sets aside the purported conveyance.

The Defendant counterclaimed for general damages for breach of contract and cost including counsel's fees as the court may deem fit.

A counterclaim is a separate action from the claim in which case the Defendant also bears the burden of proving his counterclaim on the preponderance of probabilities.

In the case of **SASU BAMFO VRS. SIMTIM [2012] 1 SCGLR 136 at 155 Rose Owusu JSC** held as follows:

*"A counterclaim is a different action in which the Defendant, as a counter claimant is the Plaintiff and the Plaintiff in the action becomes a Defendant.*

From the facts and evidence discussed supra the Defendant failed to discharge its burden of proof with respect to specific averments made in its Statement of Defence to be entitled to damages for breach of contract and cost. The counterclaim therefore fails and is accordingly dismissed.

The court notes that following the admission of the 1<sup>st</sup> Defendant during cross examination that the Property was available to be given to the Plaintiff, the court granted the Parties leave to have discussions and reach an amicable arrangement for honoring the Sale and Purchase Agreement for inclusion in the final judgment. Plaintiff counsel furnished the court with Minutes of Meeting dated 30<sup>th</sup> March 2023 which in summary confirmed the Parties had met and it was agreed the Defendant will grant access to the grant the Plaintiff access to the Property to ascertain what restorative works were required. 1<sup>st</sup> Defendant agreed to confirm within a week when the inspection could be done. In this meeting the Counsel for the Plaintiff also assured the Defendant that the balance of Ninety Thousand Cedis (GHC 90,000.00) was available to be paid. As at 17<sup>th</sup> May 2023 when Counsel for the Plaintiff filed the Minutes of Meeting, it was indicated in the report that the Defendant has still not given the Plaintiff access to the Property to inspect and identify the restorative required.

## **CONCLUSION**

**Based on all of the foregoing the court declares in favour of the Plaintiff as follows:**

- a. The executed Sale and Purchase Agreement dated 14<sup>th</sup> November 2019, the Deed of Assignment dated 12<sup>th</sup> March 2020, and the substantial payment made by the Plaintiff towards the purchase price substantiate the ownership rights of the Plaintiff and therefore the court declares him as the beneficial owner of the 2 bedroom property situated on land at Abladjei in the Ga East District of the Greater Accra Region comprising an area of 0.086 acres as described in the Schedule to the Deed of Assignment.
- b. The 1<sup>st</sup> Defendant breached the Sale and Purchase Agreement by her failure to complete the project within the agreed timelines and failing to reserve the property exclusively for the Plaintiff as stated in the Sale and Purchase Agreement.
- c. Thirdly, the 2<sup>nd</sup> Defendant conveyed its interest in the Property to the Plaintiff by preparing and executing the Deed of Assignment dated 12<sup>th</sup> March 2020 in accordance with law and therefore the 2<sup>nd</sup> Defendant did not have capacity to convey the Property to a third Party when she had already conveyed it to the Plaintiff.
- d. Therefore, the purported conveyance to a third party after the issuance of the Writ constitutes fraud and is therefore set aside.

**The Plaintiff is therefore entitled to its reliefs and the court hereby makes the following additional orders:**

- i. The Defendants are directed to put the Property into a tenantable state within 21 days after this judgment.
- ii. The Defendants shall before the expiration of the 21 days notify the Plaintiff in writing that the Property is ready for inspection and handing over and specify a date for the inspection to be done.
- iii. After the Plaintiff conducts inspection of the Property, the Plaintiff shall within a week remit the outstanding balance of the purchase price into the bank account of the Defendants and furnish the Defendants with evidence of the bank transfer within the same week.
- iv. Upon receipt of the evidence of bank transfer the Defendants shall hand over the keys of Property to the Plaintiff within a week.
- v. Where the Plaintiff fails to make payment to the Defendants within a week as aforementioned, the outstanding balance shall attract interest from the date of default at the Ghana Commercial Bank rate until date of final payment.
- vi. Where the Defendants fail to notify the Plaintiff the Property is ready for inspection within 21 days after this judgment, all amounts owed the Plaintiff shall become due for refund with interest calculated at the Ghana Commercial Bank rate from August 2020 until date of final payment.
- vii. Where the Defendant communicates in writing to the Plaintiff the Property is ready for inspection and the Plaintiff fails to make the required payments within a week, the Defendant shall be entitled to terminate these terms and refund all payments made by the Plaintiff with interest at the Ghana Commercial Bank rate calculated from January 2023 until date of full refund to the Plaintiff.
- iv. Cost of Fifteen thousand Cedis (GHC 15,000.00) is awarded against the Defendants as general damages for breach of contract.
- v. An additional Fifteen thousand Cedis (GHC 15,000.00) is awarded against the Defendants as cost for legal fees.

**ENYONAM ADINYIRA, J**  
**HIGH COURT JUDGE**