

IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE, LAW COURT COMPLEX, (LAND DIVISION ONE) HELD IN ACCRA ON WEDNESDAY THE 20TH DAY OF DECEMBER 2023 BEFORE JUSTICE ABENA A. OPPONG

SUIT NO. LD/0160/2022

ELIZABETH BRAYIE DARKWA

ALFRED DANSO DARKWA

V.

NANA OFORI BOAKYE

INCANT 2 SOLUTIONS

1ST PLAINTIFF PRESENT, 2ND PLAINTIFF ABSENT

DEFENDANTS ARE REPRESENTED BY RAYMOND QUARCOOPOME

FRANK MANTE HOLDING THE BRIEF OF JOHN DARKO FOR THE PLAINTIFFS PRESENT

MAXWELL TORGBUI HOLDING THE BRIEF OF JERRY AVENORGBOR FOR THE DEFENDANTS PRESENT

J U D G M E N T

1. The Plaintiffs are mother and son who claim to have agreed on a purchase price of two hundred thousand United States dollars with the 1st Defendant for a piece of land situate at Adjiringano. After full payment of the agreed amount was made, the 1st Defendant refused to hand over to the 1st Plaintiff the piece of land for which the payment was made. On an attempt to take possession of the land, the 1st Plaintiff discovered another person who the 1st Defendant admitted selling the land to, developing the land. The 1st Defendant told the 1st

Plaintiff that he had given the land to the Municipal Assembly to build on and offered another parcel of land. The Plaintiffs again discovered that the second parcel of land offered to them was also encumbered. The 1st Defendant offered a third parcel of land which was bigger in size than the one paid for and therefore requested a top up amount of three hundred and thirteen thousand cedis which the Plaintiffs agreed and paid but the 1st Defendant has reneged on his agreement to transfer the land to the 1st Plaintiff. The Plaintiffs therefore seek the following reliefs:

- a. An Order directed at the 1st Defendant to yield vacant possession and hand over the parcel of Land, registered as Block 9 Section 115 Parcel 7435, Adiringano, Greater Accra Region particularly described in the Schedule herein, to the 1st Plaintiff.
 - b. An order directed at the 1st Defendant for the repayment of Three Hundred and Thirteen Thousand Ghana cedis (GH¢ 313,000.00) to the 2nd Plaintiff, as an additional payment to the 1st Defendant for the said new land, with interest calculated at the prevailing Bank rate from the date of payment until the day of judgment.
 - c. An order of perpetual injunction to restrain the Defendants and agents, assigns, privies, workmen or servants from selling the land or transferring the ownership of the land to any person or company or deal with the land in any way contrary to the interest of the 1st Plaintiff.
 - d. Damages for breach of contract on the part of the 1st Defendant.
 - e. Cost including legal fees or Solicitor's fees.
 - f. Any further order(s) that this Honourable Court may deem fit to make.
2. The Defendants admit that there was an agreement between them and the Plaintiffs for the purchase of a parcel of land but deny that the land described by the Plaintiffs was the land agreed upon and also state that the agreed purchase price was two hundred and fifty thousand United States dollars and

not two hundred thousand United States dollars. It is the case of the Defendants that the land agreed on was two plots of land situate on the boundary road, East Legon. The land described by the Plaintiffs form part of an old transaction which was not finalised and no consideration paid. They state that they acquired the land situate at the boundary road from the Nikoitse We Family in the year 2013. Due to conflict between the Defendants and their grantor, when the Plaintiffs expressed interest in the said land, an agreement was reached and the family executed an indenture dated 20th February, 2015 in favour of the Plaintiffs company Earbeam Company. The said land was subsequently affected by an injunction and all parties were restrained. The Defendants admit the payment of thirty thousand cedis, thirty thousand dollars and two hundred and seventy-eight thousand cedis but denied receiving another four hundred and seventy thousand cedis which they state was paid by the Plaintiffs directly to the Nikoitse We family. The Defendants deny offering another piece of land to the Plaintiffs necessitating a top up of the previous amount paid and also deny telling the Plaintiffs that the land they paid for had been given to the Municipal Assembly.

3. At the close of pleadings, the following issues were set down for trial:
 - i. Whether or not the Defendants sold all that parcel of land registered as Block 9 Section 115 Parcel 7435, Adjiringanor, Greater Accra Region to the 1st Plaintiff.
 - ii. Whether or not the Defendants collected an amount of USD 200,000 or its equivalent in Ghana Cedis from the 1st Plaintiff as payment for the said parcel of land.
 - iii. Whether or not the Defendants collected a sum of Three Hundred and Thirteen Thousand Ghana cedis (GH¢ 313,000.00) from the 2nd Plaintiff as additional payment to the amount collected from the 1st Plaintiff for another parcel of land.

- iv. Whether or not Plaintiffs acquired all that piece and parcel of 2 plots of land at East Legon on the boundary road in the Greater Accra Region of Ghana from the NIKOITSE WE FAMILY through its Lawful Head of Family, NII KOTEY AMLI III, with Defendants involved in the said agreement.
 - v. Whether or not payments made to Defendants by Plaintiffs were with respect to the said piece of land.
 - vi. Whether or not payments were also made to the NIKOITSE WE FAMILY by the Plaintiffs with respect to the said piece of land.
4. Per the Plaintiffs exhibits "D" series and "E" series and which amounts the 1st Defendant admits receiving, the Plaintiffs have paid about one million, one hundred and twenty-three thousand, five hundred Ghana cedis (GH¢1,123,500.00) and an additional thirty thousand dollars (\$30,000).
 5. The Plaintiffs claim the payments they made to the Defendants was based on a contract for the sale of land. Per the applicable law at the time of the transaction, any agreement for the transfer of an interest in land ought to be in writing. **Section 1 of the Conveyancing Act, NRCD 175** which was the applicable law at the time the transaction in issue took place and which has the same provision as **section 35 of the Land Act, 2020, Act 1036** states:

Mode of Transfer

- (1) A transfer of an interest in land shall be by a writing signed by the person making the transfer or by the agent of that person duly authorised in writing, unless relieved against the need for a writing by section 3.

- (2) A transfer of an interest in land made in a manner other than as provided in sections 1 to 10 shall not confer an interest on the transferee.

6. **Section 2 of NRCD 175**, which provision is the same as section **34 of Act 1036** states:

Contracts for Transfer

A contract for the transfer of an interest in land is not enforceable unless

- (a) it is evidenced by a writing signed by the person against whom the contract is to be proved or by a person who was authorised to sign on behalf of that person; or
- (b) it is relieved against the need for a writing by section 3.

7. **Section 3 of NRCD 175** which also has the same provision as section **36 of the Land Act, Act 1036** states:

Transactions Permitted Without Writing

- (1) Sections 1 and 2 do not apply to a transfer or contract for the transfer of an interest in land which takes effect:
 - (a) by operation of law;
 - (b) by operation of the rules of equity relating to the creation or operation of resulting, implied or constructive trusts;
 - (c) by order of the court;
 - (d) by will or on intestacy;

- (e) by prescription;
- (f) by a lease taking effect in possession for a term not exceeding three years, whether or not the lessee is given power to extend the term;
- (g) by a licence or profit other than a concession required to be in writing by section 3 of the Concessions Act, 1936;
- (h) by oral grant under customary law.

- (2) Sections 1 and 2 are subject to the rules of equity including the rules relating to unconscionability, fraud, duress and **part-performance**.

8. Having entered into an oral agreement for the sale of land, such a contract would have been unenforceable but for the fact that the Plaintiffs have paid monies based on the oral agreement. The payment is an act of part performance and therefore makes the contract enforceable (see **KOGLEX LTD (NO 2) V. FIELD¹**).

9. Whiles the Plaintiffs indicate that the land agreed on for transfer is the land indicated in exhibit "B", the Defendants disagree and state that the land agreed upon is the land contained in exhibit "3". I am unable to accept the Defendants version of the story because I ask the question; why is there the need for this litigation when the land the Plaintiffs paid for has been transferred to them by the family from whom the Defendants purchased the land? Secondly, all the payments in exhibit "D" series were made to the Defendants in the year 2017 whiles the payments in exhibit "E" series were made between 2019 and 2020.

¹ [2000] SCGLR 175

Exhibit "3" is however dated 2015 which means that exhibit "3" was already in existence before the payments in exhibits "D" series and "E" series were made. Although the 1st Defendant disputes this and says exhibit "3" was backdated to take effect from the date of his original agreement with the Nikoitse We family, he did not produce any document to show the date he first acquired the said land from the Nikoitse We family. By their own averments in their statement of defence, the Defendants acquired the land from the Nikoitse We family in the year 2013 so if the family agreed to prepare documents for the Plaintiffs to correspond with the date of the Defendants acquisition, then the date on the document ought to have been 2013 and not 2015 as the 1st Defendant wanted the court to believe. Assuming without admitting that the Nikoitse We family even agreed to backdate exhibit "3", without evidence to the contrary, I cannot be convinced that the licensed surveyor who prepared the site plan contained in exhibit "3" also backdated the date of preparation of the site plan to 2015 when it was actually made in or about the year 2017. The Registrar of the High Court (Registrar of Lands) before whom the document was proved could not also have been coerced to put a 2015 date on the document instead of the actual date the certificate of proof was signed.

10. Based on the totality of the evidence and on the preponderance of probabilities, I accept the Plaintiffs side of the story that the land they negotiated for and based on which the Defendants received payments was the land in exhibit "B".

11. The Plaintiffs averred in paragraphs 26 to 29 of their statement of claim that when the 1st Defendant could not give the 1st Plaintiff the land she had paid for, the 1st and 2nd Plaintiffs and the 1st Defendant agreed for the Plaintiffs to make additional payments of ₵313,000.00 for another parcel of land. They paid the additional money but the 1st Defendant failed to give them the land they

renegotiated for. By agreeing to make further payments for another parcel of land instead of the one originally agreed on, the parties had changed their agreement and renegotiated. Parties to a contract are free to renegotiate and change their positions until the agreement is executed.

12. The Plaintiffs pray for an Order for the 1st Defendant to yield vacant possession and hand over the parcel of Land, registered as Block 9 Section 115 Parcel 7435, Adiringano, to the 1st Plaintiff. The evidence however proves that after the initial agreement for the lease of that portion of land, the parties changed their position. The 1st Plaintiff told the court that when it became obvious that the 1st Defendant could not deliver on his promise, they agreed to pay an additional amount for a different parcel of land and the Plaintiffs indeed paid the additional amount. That means that the initial agreement had terminated and a new one kicked in. The Plaintiffs cannot therefore go back to claim that piece of land based on a contract they had moved on from.

13. The relief the Plaintiffs seek is specific performance which is an equitable remedy. Equitable remedies are granted at the discretion of the court. In equity, the Plaintiffs cannot have the remedy sought but the Defendants should not be allowed to benefit from their own breach. Equity would not suffer a wrong to be without a remedy and equity will not allow a wrongdoer to profit from the wrong. Since the Defendants could not deliver on their part of the contract, equity demands that they make a refund of the monies received pursuant to the agreement for the lease.

14. In **MULLER V. HOME FINANCE CO LTD**² it was held that:

² [2012] 2 SCGLR 1234

“The Supreme Court would, to a large extent, agree with the Court of Appeal observation that it was not the duty of the trial court in civil cases to make the case for the parties; and that the duty of the trial court was to enter judgment for the party what it had asked for and not to give him what the court thought he needed. However, it was fairly now established that on the principle of doing substantial justice, the court might, in some circumstances, grant a party reliefs not asked for, provided the grant of that or those reliefs would help achieve substantial justice to the case and bring litigation to an end between the parties. Hanna Assi (No 2) v Gihoc Refrigeration & Household Products Ltd (No 2) [2007-2008] 1 SCGLR 16 cited”.

15. The court went on further to hold that once the transaction between the parties had failed, the defendant could not rely on its carelessness to avoid the legal ramification of breaching its contractual obligations. Accordingly, the plaintiff ought to be put in the position he would have been but for the inability of the defendant to deliver on their agreement.
16. Based on the analysis above, even though I am unable to grant the Plaintiffs relief for the Defendants to yield vacant possession and hand over the parcel of Land, registered as Block 9 Section 115 Parcel 7435, Adiringano, Greater Accra Region, I make an order for the Defendants to refund to the Plaintiffs the amount of one million, one hundred and twenty-three thousand, five hundred Ghana cedis (GH¢1,123,500.00) and (\$30,000) which the Plaintiffs paid to the Defendants.
17. Interest is to be calculated on the said amount from the date of judgment to the date of final payment.

18. The claim for injunction is thus dismissed.

19. Damages are assessed at fifty thousand Ghana cedis (GH¢50,000.00) cedis to the Plaintiffs against the Defendants

20. Cost is also assessed at twenty thousand Ghana cedis (GH¢20,000) to the Plaintiffs against the Defendants.

(SGD) ABENA A. OPPONG

(JUSTICE OF THE HIGH COURT)