

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, INDUSTRIAL AND LABOUR DIVISION 2 HELD IN ACCRA, ON THURSDAY THE 9TH OF FEBRUARY 2023, BEFORE HER LADYSHIP JUSTICE ANANDA J. AIKINS (MRS) JUSTICE OF THE HIGH COURT.

SUIT NO. GJ/1750/2017

CHRIS OKYERE

VRS

TANG WEI

COUNSEL FOR THE PLAINTIFF: DR. KWEIKU AINUSON, ESQ.

COUNSEL FOR THE DEFENDANT: NATASHA ODARKAI LAMPTEY, ESQ.

JUDGMENT

(1) INTRODUCTION

The plaintiff in his writ and statement of claim filed on the 28th of November 2017, sought the following reliefs against the defendant:-

- (a) An order for the recovery of the sum of GH¢145,000.00 from the defendant, being the amount plaintiff paid to defendant as cost of the said land.

- (b) Interest on the said GH¢145,000.00 at the prevailing commercial rate from December 2013 till date of final payment.

- (c) Damages for breach of contract.

- (d) Cost including legal fees

The defendant denied liability for the claims of the plaintiff and after the close of pleadings the following issues were set down by the court for determination:-

- (1) Whether or not plaintiff purchased a piece of land situate at Gbawe from the defendant?

- (2) Whether or not defendant gave vacate possession of the land to plaintiff after plaintiff made payment for the land?

- (3) Whether or not the plaintiff is entitled to rescind the contract?

- (4) Whether or not plaintiff is entitled to the reliefs indorsed on the plaintiff's writ of summons?

(2) BRIEF FACTS

The plaintiff bought land situate along the Accra Cape Coast road from the defendant in the year 2013 precisely in the month of December. Thereafter the plaintiff tried to take possession of the land to begin construction on same. The plaintiff was unsuccessful in his bid to develop the land because he was prevented from doing so by persons who claimed the land in question did not belong to the defendant. The plaintiff, after several unsuccessful attempts at taking control and developing the land, then made a demand on the defendant to refund the amount he (plaintiff) had paid to the defendant for the land. The defendant refused to refund plaintiff's money, claiming that he had given vacant possession of the land to the plaintiff and was therefore not responsible for any encroachment that had occurred on the land after the purchase transaction.

(3) ANALYSIS OF ISSUES

ISSUE 1 – Whether or not the plaintiff purchased land from the defendant?

According to the plaintiff, he and his business associates were desirous of establishing a large scale laundry processing plant along the Accra – Cape Coast Highway at a place called Gbawe and that he got information about the fact that the defendant had four (4) plots of land which he was offering for sale. He said he approached the defendant and expressed interest in the said four (4) plots of land which is along the Accra–Cape Coast High way.

After discussions with the defendant, the purchase price for the land which was four (4) plots in all was agreed at GH¢145,000.00 and the plaintiff paid the said amount through his father to the defendant in two tranches. The plaintiff also stated that right after the payment of the purchase price, he caused to be deposited on the land stones, cement blocks, sand and gravel in readiness to commence development on the land.

The plaintiff said he finished paying for the land in December 2013 and was about to start developing the land in January 2014 when his workers were stopped by thugs who claimed to be acting on behalf of another person whom they (the thugs) claimed to be the owner of the four (4) plots of land sold to the plaintiff by the defendant.

The defendant on the other land did not deny receiving the amount of one hundred and four five thousand cedis (GH¢145,000.00) from the plaintiff for the said four (4) plots of land situate at Gbawe along the Accra-Cape Coast Highway. He however said that the plaintiff approached him through his original grantors, the Gbawe Kwatei Family to purchase the four (4) plots of land. The defendant also acknowledged giving exhibit 'D' to the plaintiff after the latter had paid for the land. A careful read of exhibit 'D' which was attached to the plaintiff's witness statement shows that it is a deed of assignment executed between the defendant (the assignor) and the plaintiff and three other persons by name J.K. Van Der Wouden, Jeffery Okyere and Sjoerd Vander Wouden (the assignees). The plaintiff claimed that these three other persons were his business associates. My finding of fact, based on

exhibit 'D' is that the plaintiff did purchase four (4) plots of land situate at Gbawe South along the Accra – Cape Coast Highway from the defendant.

ISSUE 2 – Whether or not the defendant gave vacant possession of the land to the plaintiff?

This issue is germane to this case and it is trite law that he who asserts must prove what he asserts. In the case of *Adwubeng vs Domfeh [1996-97] SCGLR 660* the Supreme Court stated that the burden of persuasion and the burden of producing evidence in all civil cases is proof by a preponderance or balance of probabilities. And also in the case of *Zabrama v. Segbedzi [1991] 2GLR 221 at 224* the Court of Appeal speaking through Kpegah JA (as he then was) stated as follows:

“...a person who makes an averment or assertion, which is denied by the opponent, has a burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred. The nature of the each averment or assertion determines the degree and nature of the burden...”

While it is the plaintiff's contention that he was not given control and possession by the defendant of the four (4) plots that he purchased from the defendant, the latter insists that he divested himself of his interest in the land when he executed the deed of assignment in favour of the plaintiff and

that any subsequent trespass by any other person was not his making because there were no encroachers on the land at the time he gave the same to the plaintiff. The defendant also claimed that he was unaware of any challenges that the plaintiff had with the land until the year 2016.

As already noted above, the plaintiff's evidence is that after he had finished paying for the land, he caused to be deposited on it stones, sand, blocks and gravels all in a bid to develop the land by constructing a fence wall but the workers he sent unto the land to work on same were prevented from doing so by some thugs who claimed the land in question belonged to another person. According to the plaintiff, this incident happened in January, 2014, a few weeks after he had finished paying for the land.

The plaintiff's evidence was corroborated by the evidence of his father (PW2) and two other witnesses by name Daniel Afful (PW3) and David Hediron whose witness statement was put in as hearsay evidence. Both PW2 and PW3 testified that when the plaintiff deposited his materials on the land and attempted to construct a fence wall on the land, the plaintiff's workers were prevented from doing so. The second plaintiff witness (PW2) said that when they encountered resistance on the land, they reported the issue to the defendant who promised to sought things out. He said the defendant arranged meetings with Gbawe Kwatei family in a bid to resolve the issue with the other person who was laying claim to the land which had been sold to the plaintiff but all these meetings yielded no fruitful results.

PW2 who is the father of the plaintiff further testified that the defendant promised that he was in the process of getting a land title certificate in

respect of the four plots of land but that too never materialised and that after about three (3) years or more after the plaintiff had purchased the land and had not been able to develop same, they (i.e. he and his son the plaintiff) made a demand for their money from the defendant but the latter refused to pay.

The 3rd witness for the plaintiff (PW3) also testified that he was instructed in December 2013 by the plaintiff to work on the land that had been bought by the plaintiff from the defendant. He said he went unto the land to commence work with his construction team but they were stopped by an unknown person from working on the land and that he reported the issue to the plaintiff. He also said that several attempts made by the plaintiff to develop the land had been unsuccessful because the plaintiff had not been able to have possession and control over the land.

The defendant on the other hand stated that he gave vacant possession of the land to the plaintiff when he sold same to him and that he was not aware that the plaintiff had issues with the land. He said the sale and assignment of the land to the plaintiff took place in the year 2013 and that the plaintiff went to slept after that time and left the land at the mercy of encroachers. According to the defendant it was fraudulent on the part of the plaintiff to claim that he had not been given vacant possession of the land.

The witness for the defendant also claimed that the plaintiff conducted searches at the Lands Commission to ascertain the true ownership of the land in dispute before he bought same from the defendant. He further claimed that at the time the defendant sold the land to the plaintiff, there

were no encroachers on the land and that the plaintiff travelled after purchasing the land and that it was in the absence of the plaintiff that someone encroached on the land. DW1 further testified that the elders of the Gbawe Kwatei family met to discuss the issue of the encroachment and the said elders reached a decision to share the four plots of land between the plaintiff and the encroacher but the encroacher did not agree to this decision.

As already noted above, it is trite law that in civil cases proof is on the balance or preponderance of probabilities. Section 12(2) of the Evidence Act of 1975(NRCD323) defines

“Preponderance of probability as 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 nonexistence”.

The evidence of the defendant was riddled with untruths. While the defendant contended that his grantors, the Gbawe Chiefs, were involved in the transactions with the plaintiff and that it was the chiefs who pressed him to sell the land to the plaintiff, the deed of assignment (exhibit 'D') rather shows that the transaction was between the plaintiff and his business partners on one hand and the defendant on the other hand. The defendant's witness confirmed in paragraphs 10 & 11 of his witness statement and even in cross examination that the transaction was between the defendant and the plaintiff.

The defendant claimed in cross examination that it was in the year 2016 that the plaintiff brought the challenges he was facing in respect of the land to his attention. This assertion however cannot be true because the evidence of King David Hediron Kojo which was put in evidence as a hearsay statement without any objection from the defendant's counsel shows that several meetings were held in the year 2014 between PW2 and the defendant concerning the plaintiff's inability to get control of the four plots of land. These meetings were in the office of the defendant and also at the Gbawe chief's place.

The defendant claimed he gave vacant possession of the land to the plaintiff in 2013 after he had assigned the land to the plaintiff and that the plaintiff went to sleep afterwards and left the land at the mercy of encroachers. The defendant however did not lead any evidence to establish this assertion that the plaintiff went to sleep right after purchasing the land.

The plaintiff's evidence is that he, through his father (PW2), caused sand, stones, blocks etc. to be put on the land in early January 2014 for construction work to begin and that he caused exhibit 'D' which is the deed of assignment executed by defendant and the plaintiff to be duly stamped at the offices of the Lands Commission on 24th of December 2013 a few days after the plaintiff had paid for the land. The plaintiff also sent workers to the land to work but they were driven away by persons who claimed the land belongs to another person.

Also the plaintiff's exhibit 'E' is an estimate which was made in December 2013 for the construction of a fence wall around the land. These steps taken by the plaintiff show that the plaintiff was really interested in developing

the land and would have done so had it not been for the fact that his workers were stopped by other persons who laid claim to the land.

Furthermore the evidence of the defendant that he was approached by the plaintiff and the Gbawe Kwatei family to sell the four (4) plots of land to the plaintiff cannot be true because there is nothing in exhibit 'D' that show that the assignment of the defendant's interest in the four (4) plots of land to the plaintiff was at the behest of the Gbawe Kwatei family. As already noted above the said exhibit shows that the transaction was solely between the defendant and the plaintiff and his other business partners.

Moreover the defendant further stated under cross examination (pages 3 and 4 of the record of proceedings for 21st February 2022) that he went for a meeting with the plaintiff at the Gbawe stool palace and that the Gbawe Kwatei family agreed to help the plaintiff resolve the issues concerning the land. The court finds the evidence of the defendant that the Gbawe Kwatei family agreed to help the plaintiff resolve the issues surrounding the four (4) plots land hard to believe. This is because as rightly submitted by plaintiff's counsel, there is no evidence that the Gbawe Kwatei family had sold the land to the plaintiff so the said family was under no obligation to offer help in respect of the four plots of land.

The court rather believes that the said meetings at the Gbawe chief's palace was convened at the behest of the defendant because the defendant was the one who sold the land to the plaintiff and since there had come up another claimant by name '*German Borger*' to the same land and because the defendant knew he was under an obligation to deliver vacant possession to

the plaintiff, hence the defendant's recourse to his original grantor, the Gbawe Kwatei Family to solicit their help in getting the other claimant out of the way of the plaintiff to enable the plaintiff have peaceful possession of the land because the plaintiff had paid the defendant for the land.

Once again the evidence of King David Hediron Kojo corroborates the evidence of the plaintiff and his two other witnesses (PW2 and PW3) that the plaintiff had challenges in respect of the four (4) plots of land that plaintiff bought from the defendant. The said hearsay evidence shows that the meetings that were held at the Gbawe Palace were called at the behest of the defendant. It therefore cannot be true that the defendant attended the meetings as a mere witness.

As regard the time frame of when the meetings were held at the palace the defendant insisted it was in the year 2016 but this was not even corroborated by his own witness (DW1) who claimed he was at the meeting but could not remember exactly when it was held. The court is more inclined to believe the testimony of the plaintiff that the meetings at the Gbawe Palace took place in the year 2014 because their testimonies were not seriously challenged by the defendant.

Lastly when the defendant was cross examined on his claim that he had given vacation possession to the plaintiff in respect of the four (4) plots of land which he sold to the plaintiff, the defendant insisted that the signing of exhibit 'D' by himself and the plaintiff constituted evidence that he had given vacant possession to the plaintiff. This certainly cannot be the truth

because the mere signing of a deed of assignment cannot constitute the grant of vacant possession.

As rightly submitted by the plaintiff's counsel the Conveyancing Act, 1973 (NRCD 175) which was the enabling law at the time of the transaction between the parties herein provided per its section 22 that in a conveyance for valuable consideration there is implied the covenants of the right to convey, quiet enjoyment, freedom from encumbrances and also further assurance in the terms as set out in part one of the second schedule of the Act.

The new Land Act of 2020, Act 1036 which has repealed the Conveyancing Act also provides per its section 50(1) that there are implied in a conveyance for valuable consideration the covenants of right to convey, quiet enjoyment, freedom from encumbrances and further assurances. The evidence before this court is clear that the defendant was unable to grant the plaintiff possession and quiet enjoyment of the land he sold to the plaintiff. This is because no sooner had the plaintiff attempted to reconstruct the fence wall that was already on the land at the time of purchase than another claimant came unto the land claiming it as his. All meetings held at the palace of the Gbawe Kwatei family to resolve the issue failed with the result that the plaintiff and his workers were unable to work on the land. My findings of fact on this issue is that the defendant did not give vacant possession of the four (4) plots of land to the plaintiff.

Issue 3 - Whether or not the plaintiff is entitled to rescind the contract?

The court believes that the evidence before it clearly shows that the defendant was unable to grant or give quiet enjoyment of, possession and control over the 4 plots of land sold to the plaintiff. Soon after the plaintiff paid for the said land another claimant, who the first defendant witness (DW1) referred to as German Borgar, came up to also lay claim to the land and land guards or thugs allegedly placed on the land by the said claimant prevented the plaintiff and his workers from having access to the land notwithstanding the fact that the plaintiff had deposited some stones, blocks and sand on the land in anticipation of developing same.

The plaintiff paid a valuable consideration of GH¢145,000.00 to the defendant for the land and yet he could not get possession and control of same despite his best efforts. All the promises given by the defendant to resolve all challenges on the land and to give plaintiff control of the land proved futile as the defendant could not fulfil his side of the bargain. It therefore stands to reason to say that the plaintiff is entitled to have his money back because the defendant could not deliver vacant possession of the four (4) plots of land to the plaintiff. The defendant had by his own conduct of non-performance repudiated the contract and therefore he cannot be expected to hold onto the plaintiff's money.

CONCLUSION

In the light of the foregoing analysis the court is of the opinion that the plaintiff has established his case on the balance of probabilities and he is

therefore entitled to the award of judgment in his favour as against the defendant. The court enters judgment in favour of the plaintiff as follows:

- (1) The plaintiff is to recover the sum of GH¢145,000.00 from the defendant being the sum the plaintiff paid to the defendant for the four (4) plots of land.
- (2) Interest is awarded on the sum above at the current bank rate from 9th December 2013 till date of final payment.
- (3) The court awards the plaintiff the sum of GH¢10,000.00 Ghana Cedis as damages for breach of contract.
- (4) The court also awards the plaintiff GH¢10,000.00 as cost in cause.

(SGD.)

JUSTICE ANANDA J. AIKINS (MRS)

JUSTICE OF THE HIGH COURT

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