

12-03-2024

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE
HELD AT NKAWKAW - EASTERN REGION ON TUESDAY THE 12TH DAY OF
MARCH 2024: BEFORE HER LADYSHIP JUSTICE CYNTHIA MARTINSON (MRS),
HIGH COURT JUDGE

SUIT NO. C1/07/2016

TRUE FAITH CHURCH : PLAINTIFF/JGT. CREDITOR

VERSUS

TRUE FAITH EVANG. CHURCH : DEFENDANT/JGT. DEBTOR

SETH OFORI : CLAIMANT

PARTIES

Plaintiff/Claimant present.

Defendant/Judgement Creditor represented by Michael K. Aning.

LEGAL REPRESENTATION:

Samuel Asiamah Snr. Esq. for the Plaintiff/Claimant holding the brief of Francis Opuni
Kesseh Esq. present.

Emmanuel Wilson Esq. holding the brief of K. Amoako Adjei for the
Defendant/Judgement Creditor present.

JUDGEMENT

This is an Interpleader action under **Order 44 R 12 of CI 47** of the High Court Civil Procedure Rules.

Background of this Interpleader Action:

On the 15th of December 2015, the plaintiff in the substantive case True Faith Church Ghana issued a Writ in this court seeking for recovery of over 75 branches therein described as branches mentioned in paragraph 10 of the plaintiff's statement of claim from the Defendant in the substantive case, known as True Faith Evangelical Church. On the 21st Day of July 2017 consent Judgement was entered in favour of the plaintiff in the substantive case by this court differently constituted, declaring title to the branches listed in paragraph 10 of the plaintiff's [judgement creditor herein] statement of claim in the substantive case. The judgment against the defendant [judgement debtor herein] in the substantive case was entered 2/10/17 and subsequently, an amended entry of judgment was also entered on the 8th of November 2017.

The plaintiff in the substantive case with the support of the police and court bailiffs went around collecting keys and properties as declared by the consent judgment from the defendant in the substantive case in the process of enforcing the consent judgment.

Subsequently, on the 31/1/2022 the Claimant filed Notice of Claim under **Order 44 Rule 12 of CI 47**, claiming title to building/structure and content situate, lying at Tatrafosso Mampong being the subject matter of the attachment and same was served on the judgement Creditor on the 31/ 1/2022. The Deputy Sheriff served a notice to Admit or Dispute the claim on the judgment creditor on the 28th of April 2022 as required by the Rules. The judgment creditor then filed a notice to dispute the claim under **Order 44 R 12 [2] of CI 47**. The interpleader summons was therefore forwarded to the court under **Order 44 Rule [12] 4** for the determination.

Following the interpleader action between the claimant and judgment creditor and considering their averments the court decided to try the action under **Order 44 Rule 13 [b]**.

In this interpleader action under **Order 44 R 13 [b] CI 47**. The court reached a consensus with the parties that based on the issues at stake the Claimant will be designated the plaintiff and the judgment/creditor will be designated as the defendant.

In this judgement, the claimant is [herein after referred to as Plaintiff] Plaintiff/claimant when the need arises. The Judgement creditor is [hereinafter referred to as the Defendant] but also as defendant/judgement creditor when the need arises. True Faith Evangelical church is [hereinafter simply referred to as judgment Debtor].

The Plaintiff/Claimant testified and called a witness.

The Evidence of Seth Ofori, plaintiff in this interpleader action through his witness statement is as follows:

He is Rev. Seth Ofori, and he lives in H/No. W1 at Woakese and of digital address number AM-0037-8869 in the Ashanti Region of Ghana.

He is the Claimant in this action, he knows the parties to this suit. It is his case that not until 27th February 2012 when he was interdicted without a prior hearing and dismissed from the Defendant's Church, he was an ardent member of the said church as evidenced by his Interdiction Letter.

After his interdiction from the defendant's church, he held a prayer session at a prayer camp at Tatafroso, Dadease near Mampong through which he got to know one sister Akua who later introduced him to Kofi Maama who at the time wanted a buyer for his piece of land.

After several interactions and negotiations with Kofi Maama, he purchased the land in dispute described as Plot No. 20A Block 'AB' Tatafroso-Extension Dadease near Mampong. After the purchase, Kofi Maama prepared a transfer document for him. The

plot originally a full plot was divided into two halves and one half was sold to him by Kofi Maama.

Having secured the land in dispute from Kofi Maama, he presented the transfer document to the Dadease Stool, the stool with jurisdiction over the land and having satisfied itself of Maama's ownership, the stool per its occupant Nana Obrako Sarpong, after paying drink money, issued an allocation note dated 29th January 2013 and site plan covering the land in dispute to him. He has copies of the allocation note and site plan issued to him by Dadease Stool.

After paying the needed consideration for the land in dispute, he expended money and resources to gradually develop the land in dispute into a church building which houses members.

He continued that the church building on the land in dispute was completed sometime in the year 2016 and he has exercised acts of ownership and control paying all outgoing, including but not limited to property rates, to the exclusion of the Defendant as they know too well that they have no interest whatsoever in the land on which the church is situated. He said he has copies of receipts issued by the Municipal Assembly as evidence of payment of property rates relating to the land in dispute.

He further testified that in addition to the land in dispute, he has in stock within the church premises tables and chairs, and musical instruments among others which aid in the smooth running of his Church.

It is his case that, on the 21st day of November 2021 while worshipping at the church in dispute with his congregants, a group of people who later introduced themselves as bailiff, police officers and some members of the defendant's church beseeched their premises and demanded to close down the church on the orders of the High Court-Nkawkaw.

The persons mentioned supra locked up his church premises on the said date and took away items against which an inventory was raised and served on him by the Bailiff. He

has the inventory of the list of items taken from his church premises and a picture of the building after the closure.

He added that, the Entry of Judgement filed by Defendant dated 2/10/17 did not mention Plot No. 20A Block AB Tatafroso, Dadease as part of the properties to be attached.

From the date of the closure of his church and seizure of items, he has been holding worship in the open space hiring canopies and other church instruments from private persons. He spends a minimum of One Thousand cedis each week to organize church service. He has evidence of receipt of expenditure after the closure of his church. The items seized in the said execution were his personal properties and not the property of the Defendant. He said he has evidence of receipt issued to him at the time the items were purchased.

He prays this Honourable Court to declare that the execution conducted on the 21st day of November 2021 attaching property described as Plot No. 20A Block 'AB' Tatafroso Dadease near Mampong was unlawful and or wrongful and the items seized therein are his personal properties.

Again, he prays this Honourable Court to award against the Defendant special damages of GH¢1,000.00 per week in his favour from 21st November 2021 till the date his church building is opened, and items seized are returned to him in good state. He also tabulated the particulars of special damages as follows:

PARTICULARS OF SPECIAL DAMAGES

- i. The cost of canopies, chairs, tables, and musical instruments for worship per day of worship is GH¢500.00
- ii. Church services are held twice a week every Friday and Saturday.

The plaintiff tendered the following documents at the trial:

- Interdiction Letter - **Exhibit 'A'**
- Statutory Declaration - **Exhibit 'B'**

- Site Plan Bearing the name Kofi Maama - **Exhibit 'C'**
- Allocation Paper from the Dabease Stool Land - **Exhibit 'D'**
- Site Plan For Seth Ofori - **Exhibit 'E'**
- Writ of Fida - **Exhibit 'F'**
- Receipt from Mampong Municipal
- Assembly dated 24/08/2020 - **Exhibit 'G'**

- Receipt from Mampong Municipal
- Assembly dated 13/10 2020 - **Exhibit 'G1'**
- Pictures of the House in Dispute
- Showing Different Views - **Exhibit 'H/H1'**

- Entry of Judgement with an Attached
- List Dated 30/08/2017 - **Exhibit 'J'**

- Receipt from Professional Musical
- Spinners Ass. of Ghana 24/12/2021 - **Exhibit 'K'**

- Stabilization price of the system
- from PROMSAG - **Exhibit 'K1'**

- 3 Receipts from Bernie's Business
- Service and Trading Centre - **Exh. 'L', 'L1' and 'L2'**

- Receipts from Cofas B. Enterprise:
 - 3/07/18 - 'M'
 - 3/09/18 - 'M1'
 - 27/06/17 - 'M2'

20/11/17 - 'M3'

28/11/17 - 'M4'

- Receipts from Big Ben General Goods:

10/06/17 - 'N'

12/05/17 - 'N1'

- Receipts from the Adom Plastics Store:

04/06/2018 - 'O'

23/05/2018 - 'O1'

- Invoices from Docbed Plastics Ent.

11/01/2021 - 'P'

16/09/2019 - 'P1'

In cross-examination, the plaintiff admitted that he was with the defendant's church from infancy until he was sacked. He however became a prophet in the Defendant's church but neither a treasurer nor a caretaker of the church. He denied coming back to the defendant's church after he was sacked. It was his case that he seized to be a member of the defendant's church on February 27th 2012. He denied being accepted back into the defendant's church. He heard about the judgement in Suit No. E2/10/2011 and the separation. He asserted that Exh. '1' is his membership card. He was not paid by the defendant's church he is also into farming. He insisted that the other half of the plot was kept by Kofi Maama. It is his case that he established a prayer camp after quitting the Defendant's church. He indicated that he put up a church building for his prayer camp and he is currently the pastor of the place now True Faith Evangelical church. He denied that the disputed property is known as a True Faith Evangelical church by all. He denied that he went with Yaw Gyamfi to purchase Plot No. 20A. He also denied that his documents were fictitious. He admitted that he once registered the land in the name of the judgment Debtor in 2019 but not the Defendant. He denied that since his interdiction he had nothing to do with the Defendant's church and so he did not change the registration in anticipation of the judgement on 21 July 2017 and that he had all the right

to do what he did. He admitted that Exh. 'E' was prepared before 2020. He denied that Exh. 'G' and 'G1' were procured to throw dust into the eyes of the court.

The plaintiff's sole witness Kofi Maama testified per his witness statement as follows:

He lives in House No. 10 Krobo near Mampong in the Ashanti Region. According to him, he knows the plaintiff but not the others. On the 29th of January 2013, he sold his land described as Plot No. 20A, Block 'AB' to Rev. Seth Ofori after he had received cash consideration of the land in dispute. It was a half plot of land carved from his full plot with the description Plot 20A Block 'AB', Tratrafosso Dedeaso near Mampong while he kept the other half of the Plot No. 20 Block AB. It is his case that, he also prepared a transfer document evidencing the said sale and purchase. He added that he knows the plaintiff has developed the land into a dwelling structure or church Premises. He said to the best of his knowledge, the church on the land he sold belongs to the Plaintiff.

In cross-examination, he said the plaintiff paid an amount of 4,500 for the land on which the church is sited. He asserted that he took the plaintiff to the Municipal Assembly to transfer the land into his name and that the documents he gave the plaintiff included Exh. 'B'. He denied that the plaintiff came to pay for the land with one Yaw Gyamfi. He admitted that the members of the plaintiff's church put on red apparel. He insisted that he did not sell the other half of the plot to anybody.

The above is the case of the claimant.

When the defendant had the opportunity to open their case, their representative testified and called a witness.

The testimony of Jonas Adu Acheampong via his witness statement is as follows:

He lives in House Number AD 92, Adweeho Mampong, in the Ashanti Region. He is currently the Prophet Secretary of Ashanti East Regional Secretariat of the True Faith Church of Ghana.

He was the Secretary of True Faith Church of Ghana, Tatafroso, Mampong between the years 2011 to 2019. He knows the Claimant herein. He was a member and a treasurer of

the True Faith Church of Ghana but after the breakaway, he joined the True Faith Evangelical Church, and he is currently a pastor in that church. He has a copy of the Membership card of the Claimant. It is his case that the True Faith Evangelical Church which the Claimant is currently a member commenced its business on the 29th day of May 2015. He added that he equally knows the land in dispute. The land and the building thereon belong to the True Faith Church of Ghana. According to him, somewhere in 2012, the church embarked on a fundraising agenda to buy land and to build a church. The church then was able to raise an amount of Forty Million, Five Hundred cedis (¢40,500.000.00) which is currently Four Thousand, Five Hundred Ghana cedis only (GH¢4,500.00). He has a copy of the Statement of Account. He further said that Out of the amount raised by the church after the fundraising, the True Faith Church of Ghana used Thirty-Six Million for deposit as part payment and later made the final payment of Four Million cedis amounting to Forty Million cedis (¢40,000,000) then, now Four Thousand Ghana cedis (GH¢4,000.00), the money was used to purchase the land namely; Plot 20A. This amount has been indicated in the financial report. It is his case that, the vendor initially sold half portion of the land for an amount of Four Thousand Ghana cedis (Gh¢4,000.00). The half portion of land that was allocated to the church was Plot 20A. He has a copy of the Allocation Form with its attached Site Plan. The vendor had used half of the plot to erect a foundation before they purchased the land named Plot 20A. It is his case that as the church developed, the vendor approached the church about his intention to sell the other portion on which he had erected the foundation as he envisaged a lot of noise coming from the church activities, hence, the need to sell the other portion of the land to the church. The church agreed to buy the other half of the land and paid an amount of Six Thousand Ghana Cedis (GH¢6000) to the vendor to acquire the other half plot of the land. He added that after the payment of the Six Thousand Ghana cedis (GH¢6000), the vendor issued another allocation paper which covers the entire plot, hence, the number was changed from plot number 20A to 20 on the allocation paper. He further testified that, after the purchase of the full plot of land, defendant obtained the services of Franktec Consult to draw a proposed church building for True Faith Church

of Ghana. A copy of the drawing of the proposed church building was exhibited. He said that after the acquisition of the proposed church building, the requisite amount of money was paid to the Mampong Municipal Assembly to obtain a building permit. It is his case that, members of the church erected the church building on the disputed plot of land before the building permit was obtained. He has a picture of the current state of the church building. He further testified that there was a problem between some members of the defendant's church about leadership in the church and some members including the Claimant took the matter to Court. At the end of the trial, the High Court gave judgment and affirmed the leader the church had chosen. A copy of the judgment is in court. He further testified that dissatisfied with the judgement, the Claimant and the other parties broke away. He said all this while the Claimant was Caretaker of the properties of the church. On 13th April 2019, the Claimant requested the documentation of the land to

enable him obtain a visa to travel outside the country. The Claimant also contacted him somewhere in 2019 to present the document to him to obtain a loan facility to help the church. It is his case that the church was built based on the contribution from the church but not built with an individual's money. He further testified that during the pendency of this instant application, a member of the board of trustees wrote to the Electricity Company of Ghana, Mampong to obtain the customer information on the electricity meter used in the church building. Copies of the Request Letter and the Electricity Bill; were exhibited It is his further case that in addition, during the pendency of this application, the defendant caused its lawyers to make an application for search to obtain the requisite information concerning the land in dispute at the Mampong Municipal Assembly. He has copies of the Search Application and Response. It is his case that every document concerning the land in dispute is in the name of True Faith Church therefore the Claimant has no interest in the land at all. He further noted that any documentation concerning the land which bears the Claimant's name is obtained purely for this case He concluded that the defendant is executing the properties attached to the Entry of Judgement dated 8th day of November 2017 which is the Amended Entry of Judgement.

He tendered the following documents at the trial

- True Faith Church of Ghana Membership card - **Exhibit '2'**
- Certificate to commerce Business of the True Faith Church Evangelical together with its Regulations - **Exhibit '3'**
- Financial report for the period; Jan. 2012 – Dec 2012 of the True Faith Church of Ghana - **Exhibit '4'**
- Allocation Paper from the Dedease Stool land together with its site plan of Plot No. 20A Block AB - **Exhibit '5'**
- Allocation Paper from the Dadeaso Stool with its attached site plan plot 20 Block AB - **Exhibit '6'**
- Proposed Building to be built on Plot No. 20 Block 'AB' for True Faith Church of Ghana - **Exhibit '7'**
- Building Permit from Mampong Municipal Assembly plot no. 20 Block AB given to True Faith Church - **Exhibit '8'**
- Photograph of the Building in dispute - **Exhibit '9'**
- Judgement of the High Court, Nkawkaw dated 4/5/15 - **Exhibit '10'**
- Request for Electricity Bill [Meter - **Exhibit '11'**
- Search by J/Creditor from Mampong Municipal Assembly dated 12/8/2022 - **Exhibit '12'**

- Response - **Exhibit '12A'**
- Amended Entry of Judgement dated
8/11/2017 with its attached documents - **Exhibit '13'**

It should be noted that **Exhibit '1'** [welfare card] was tendered by the defendant through the Claimant.

In cross-examination, he admitted that he was interdicted together with Seth Ofori but it was reversed and they continued to be members of the defendant's church. He admitted breaking away from the Plaintiff claimant in 2019 because the Plaintiff wanted to change the name of the church on documents from True Faith Church to True Faith Evangelical Church. He denied that the misunderstanding between him and the Plaintiff was because of an amorous relationship between him and a lady and that the story was framed against him. He asserted that the Plaintiff was not expelled from the church in 2012. He admitted that the church in dispute had been closed down because of the judgement from the High Court at Nkawkaw differently constituted and the amended entry of judgment. He asserted that they initially purchased plot no, 20A which was half plot and when the full plot was purchased the entire plot became plot No, 20 Block AB. He asserted that the area in dispute was included in the amended Entry of Judgement as New Road since the area used to be called New Road. He again asserted that he is the author of Exhibit 4. He also asserted that the 1st purchase of the land was done in 2013 the 2nd purchase of the other half was in 2018 and the plot was bought from one Kofi Maama. He admitted that it is not the Plaintiff who marked the entries in Exhibit 2. He denied that all his documents attached were recently prepared with the motive to assert a right that had never existed. He also denied that the musical instruments taken by Defendant were for Plaintiff. He denied that the alleged entry of judgment was not borne out by any judgment.

The Defendant also called a sole witness who is one Isaac Owusu Mensah the Municipal Director Physical Planning Unit Department of Mampong Municipal Assembly who was subpoenaed to testify.

The DW1 testified as follows: He is Isaac Owusu Mensah, a civil servant with the Local Government service, precisely Mampong Municipal Assembly as Director for Physical planning. He added that he was served with a search which he replied to and signed on the 24th of October 2022. He testified that, Exhibit '12A' is from his office.

In cross-examination, he admitted that he is currently on transfer but he is still preparing his handing over notes. He admitted that, Plot No. 20 as stated in Exhibit 12 was a mistake and should have read Plot No. 20 Block AB. He also admitted that when they see omissions in requests made to the Assembly they indicate it in their report. He admitted that Plot No. 20 Block AB is different from Plot No. 20 [A] Block AB. He said both parties came to his office to discuss Plot No. 20 Block AB and that informed his work. He admitted that, the Plaintiff is the current owner of Plot No. 20A, Block AB because of the chain of transfers.

Counsel for the claimant filed his submission on the 4/1/2024.

Counsel for Plaintiff submitted among others as follows:

- The burden of producing evidence is on the plaintiff/ Claimant. It is done on the balance of probabilities, and then the burden shifts to the judgment creditor. According to counsel, the Plaintiff discharged this burden of proof.
- Defendant was duty bound to have proven the allegation that Plaintiff continued to be in Defendant's church after the interdiction because of their assertion that they were accepted back after the intervention and plea of one Micheal Anin.
- That the membership card relied upon by Defendant constitutes a self-serving document since it is untenable for the plaintiff to pay membership dues after 2015 because they also testify that the said True Faith Evangelical church was established in 2015.
- Plaintiff was able to prove his root of title to the land in dispute and that the evidence of Kofi Maama could not be traversed by Defendant under cross-examination.
- That the defendant Exh. '5' and '6' were fraudulently procured to overreach the plaintiff by backdating it to pass off as recent Documents and the same is untenable

- That the plaintiff's evidence relating to all the musical instruments was not challenged by Defendant under cross-examination. The special damages stand admitted and therefore prays that it be granted.
- There were inconsistencies in the defendant's case making the plaintiff's claim more probable.
- The defendant could not produce any judgement of the court declaring ownership of the disputed property to them. That execution carried on 21st November 2021 resulting in the close-down of the church was without any lawful excuse.
- The defendant could not prove a valid judgement in their favour but concentrated on proof of title.

Submission by Defendant/Judgement Creditor

Defendant filed their submission on the 15th/2/2024. The summary is as follows:

- That this interpleader action emanates from the judgement in suit no.C1/07/2016 as clearly indicated on the title of the current interpleader action.
- That the plaintiff bears both the burden of producing evidence and the burden of persuasion.
- That this interpleader action cannot commence without the existence of a judgement relying on the authority of **Amidu v. Attorney General & Others [No.J7/10/2014]**
- That the fact that Jonas Acheampong was handed an interdiction letter together with the plaintiff and he still remains in the defendant church, makes it obvious that the plaintiff and the said Jonas went back to plead for a comeback and were both accepted into the defendant's church. Besides. It is flawless that exhibit 2 is the membership card of the plaintiff and not self-serving because it has details of his passport picture, recorded monthly dues and various financial contribution which shows that he was with the church after the interdiction.

- Failure of the defendant to make available reinstatement letter must not call for judgement to be entered against them since there was none. That plaintiff has failed to prove that he was not with the church after the receipt of the interdiction letter.
- The Corroboration of Kofi Maama the plaintiff grantor to the plaintiff's case is not an absolute one.
- That unlike the Defendant, the plaintiff did not disclose vividly the source of money used in the acquisition of Exhibit H and H1 and its contents alleged to have been taken away.
- That the plaintiff and his witness evidence conflicts in respect of who is in occupation of the other half of the plot, and it is not open to the trial court to gloss over such contradictions.
- Exhibit 3 shows that the True Faith Evangelical church was established the same year that judgment was given against some members and pastors of the True Faith Church Ghana. That both parties did not disclose when True Faith Evangelical Church was formed.
- The plaintiff's argument that there is no judgement is unfounded. This is because the plaintiff who initiated the interpleader action and provided suit no. C1/07/2016 as the suit number derivative from the substantive action and subsequently the interpleader action herein. The Supreme Court often waive technicalities in order to do substantial justice.
- That the Representative of the defendant gave an unblemished explanation before this court in respect of the location of the property in dispute with regards to the amended entry of judgment.
- That the Plaintiff is in collusion with the judgement debtor which is a criminal act to overreach the interest of the defendant and deny it from the fruit of its labour. The exhibits of the Plaintiff are forged copies of the defendant. Exhibits 12 and 12a being a search connotes the collusion. Exhibit 11 the electricity Bill was not controverted by the claimant throughout the trial.

- That official documents in exhibit 12 series and 11 are presumed to be regularly performed and the numerous visits of the plaintiff to the Mampong Municipal Assembly all point to one conclusion that, claimant colluded with the judgment debtor to deny the defendant from enjoying its judgment.

There is no doubt that this interpleader calls for a resolution of four major issues as depicted from the submissions of both sides, these are:

- 1] *Whether title in the attached property, a church building located on Plot No. 20A Block AB, Tratrafosso Mampong is vested in the Plaintiff/Claimant.*
- 2] *Whether or not the Musical instruments contained in the church building on Plot No. 20 A Block AB belong to the claimant.*
- 3] *Whether the Execution carried out by the Defendant is wrongful or irregular.*
- 4] *Whether the Plaintiff/Claimant is entitled to General and specific Damages*

I am fortified in this direction by the principle that a court of law is not bound to consider every conceivable issue arising from the pleadings and the evidence if, in the opinion of the court, few issues could legally settle the case by law, see **Vicentia Mensah v. Numo Adjei Kwanko II** [2018] 117 GMJ 76 SC.

ANALYSIS OF THE ISSUES, EVIDENCE ADDUCED AND APPLICATION OF THE LAW

To resolve the issues supra, I shall proceed to analyse them based on the evidence given per the parties' respective witness statements, the evidence adduced during the trial of this Inter pleader action and the position of the law on the issues raised to enable me determine the issues as set down in accordance with Law.

BURDEN OF PROOF

Now it is trite knowledge that under our jurisprudence, a party who asserts assumes the burden of proving that assertion or facts and unless admitted or supported by evidence he fails, and the court will rule against him. The Apex Court has postulated this position

of the law in a long line of cases as in; **Takoradi Flour Mills Vrs Samir Faris [2005-2006] SCGLR 882.**

In Okudzeto Ablakwa (N0.2) V. Attorney-General & Obetsebi Lamptey (No.2) [2012] 2 SCGLR 845, the Supreme Court in dealing with the burden of proof held at page 867 of the report as follows; *“...He who asserts, assumes the onus of proof, the effect of that principle is the same as what has been codified in the Evidence Act, 1975 (NRCD 323), Section 17(1). What this rule means is that, if a person goes to Court to make an allegation, the onus is on him to lead evidence to prove that allegation, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in Court if the case is based on an allegation which he fails to prove or establish”.*

On the standard of proof in civil cases, the Supreme Court again rightly observed, in the case of **Ackah v. Pergah Transport & others [2010] SCGLR 728 @736** that;

“It is a basic principle of 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 must fail. The method of producing evidence is varied, and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary evidence and things (often described as real evidence) without which the party might not succeed in establishing the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact or jury. It is trite 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 a fact is more probable than its non-existence”.

My understanding of the above position of the law is 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 probable than its non-existence. This is a requirement of the law on evidence under **Sections 10 (1) 11 (1) and (4) of the Evidence Act 1975 as Amended.**

Having stated the position of the law in civil cases, I will now resolve the issues herein.

1] Whether or not title in the attached property, a church building located on Plot No. 20A Block AB, Tratrafosso Mampong is vested in the Plaintiff/ Claimant.

Having stated the position of the law in respect of the party on whom lies the burden of proving his claim, the onus therefore lies on the Plaintiff/Claimant to prove to this Court that title in the property located on Plot No. 20A, Block AB is vested in him.

It should be noted that the parties are disputing the ownership of a church building however, it is trite that this church building is situated on a piece of land and as such title to the land on which the church is located is important. **The black law Dictionary 9th Ed.** defines land as follows:

“An immovable and indestructible three-dimensional area consisting of a portion of the earth’s surface, and everything growing or permanently affixed to it”. This definition extends the meaning of land to the space above, and below the earth and anything attached to it including **structures** and perennial and permanent crops.

It should however be noted that, the contents in the building claimed by the plaintiff is not affixed to the land.

In the case of **Yehans International Ltd. V. Martey Tsuru Family and Anor. [2018] Suit No. J4/34/2018 dated 24TH October 2018 Adinyira JSC** stated;

It is settled and trite law that, a person claiming title to land must prove:

- i] His root of title
- ii] Mode of acquisition
- iii] Various acts of possession exercised over the disputed land.

It should be noted that, the issue of title to the church building is entangled with to whom the land on which the church building is situated belongs to. This will best be resolved by the person who granted the land unless it is discredited. See the followings cases;

- **Amponsah v. Nyamaa [2009] J4/10/2008 per Baffoe-Bonnie JSC**

- **Ogbarmey -Tetteh v.Ogbarmey- Tetteh [1993-94]1GLR 353**

The Plaintiff led Evidence to prove his title to the seized property. To buttress his evidence he tendered in a Statutory Declaration and Site plan of His Grantor Kofi Maama EXH 'B' and 'C', an Allocation Note from the Dadease stool EXH. 'D', the Site Plan of the land on which the church is situated Exh. 'E' and Receipt of payments of outgoings of the land from the Mampong Municipal Assembly all bearing the claimant's name Seth Ofori. In the case of **Osei V. Korang [2013] 58 GMJ1 at 30 Ansah JSC page 30** determined as follows: *"It is settled that receipts/building permits building plans title documents etc., do not confer title on the holders per se, they nevertheless constitute strong acts of ownership. Also see Karaba v. Kwofie [1966] GLR 229"*

The plaintiff tendered documents from his grantor, in the bid to prove his root of title also invited his grantor to testify on his behalf as DW1. The law is that, *"where a grantor stands by in a case between his grantee and a third party involving the validity of a title he has conveyed and is content to see the battle fought by the grantee, he the grantor will be bound by the result of the case and will be estopped from reopening the issue determined in that case"*. See the case of **Abrahams V. Akwei [1961] GLR 679 and Amponsah V. Nyama [2009] Civil Appeal No. J4/10/2008**. The plaintiff's Grantor, Kofi Maama also concurred that he sold out that piece of Land on which the church is situated to the plaintiff and that he was the one who gave Exhibit 'B' to the plaintiff herein. Unfortunately, PW1 was not asked any questions about the grant of the land to the church by the defendant in cross examination.

The Plaintiff however did not call the Debease stool who gave him the allocation paper and the site plan Exhibit 'D' and 'E' to testify for him, although the authenticity of these documents were in issue. It should be recalled that in paragraph 6 of the plaintiff's witness statement, he indicated that he received exhibits 'D' and 'E' from the Debease stool.

It is to be noted that in a declaration of title to land, the identity of the land is crucial to the success of the Plaintiff's case, see **Anane V. Donkor [1965] GLR 188** which remains good law.

It is the Plaintiff's case that, the said property sought to be attached is located on Plot No. 20A Block AB situated at Tratrafosso Mampong, Ashanti. Evidenced by his site plan Exhibit "E" and not on any other plot like Plot No. 20 Block AB which is a full plot, part of which he purchased. It should however be recalled that, the identity of the property in dispute is known to both sides, that is the church in dispute located at Tratrafosso which they have all exhibited. In the case of Plaintiff Exhibit 'H' and 'H1' and in the case of Defendant Exhibit '9'. Therefore, the identity of the church was not in dispute in principle as the parties made it appear as if the identity of the church was in dispute. Under the circumstances, there is no burden cast on any party to prove the identity of the property in dispute. See the case of **Agbosu and Others vrs. Kotey and Others [2003-2005] 1 GLR 686 SC**.

It should be recalled that, the defendant doubted the authenticity of Exhibits 'E' and 'D' of the Plaintiff and accused him of having fraudulently acquired it through forgery. See the following questions and answers on page 18 of the record of proceedings.

Q] I suggest to you that Exhibits 'E' and 'D' do not look like old Documents?

A] It is my property and so I keep them well.

Q] I put it to you that these documents are forged documents purported to throw dust into the eyes of the court?

7] It is not correct.

Q] Have a look at Exh. 'D', I suggest to you that you deceitfully altered and inserted the dates from the original document of True Faith Church?

A] It is not true.

It should also be noted that Plaintiff also made criminal allegations of forgery against the defendant at page 38 of the record of proceedings, see the following exchanges;

Have a look at the cross-examination between the counsel for the Plaintiff and the Defendant's representative at page 38 of the Record of proceedings:

Q] The signatures as contained in paragraphs 5 and 6 are not that of the claimant and are forged?

A] The signatures on Exhibit 5 and 6 at the Alottee's Column are the signatures of the Plaintiff claimant.

Just like the defendant, it is also incumbent on the Plaintiff to justify his allegation of Forgery against the defendant as asserted.

Since one cannot prove the negative, each party is obligated to prove the allegation of fraud or forgery under sec 13 of the Evidence Act and the standard of proof is beyond reasonable doubt. Since the onus of proof is on he who asserts a fact, the court will at a later part in this Judgement consider whether the parties were able to justify the allegation of Forgery since a court confronted with fraud or forgery cannot turn a blind eye to such serious allegation coming out from the trial although the same was not specifically pleaded by the parties. See **Adwoa Boker V. Madam Agbo Addoye [Sub Phillip Odoi] SC 08-12-2021 J4/38/2021**.

The plaintiff also gave evidence that the church building was completed in 2016 and he has exercised acts of possession on same paying the outgoings including but not limited to property rates etc. The Law is that possession is nine points of the law and that a person in possession has a good title against the whole world except the rightful or true owner, see **Mamuni vrs. Nyamekye [2013] 58 GMJ 35 CA at pg. 66**. The Plaintiff tendered Exhibit 'G' and 'GI' to buttress his case. There is no doubt that, the receipt covering the Sanitation fee on the building was paid in 2020 to cover a period of 2016-2022 and property rate was also paid in 2020 to cover the period between 2021- and 2024. It is also not in dispute that the Plaintiff and some church members were in the church auditorium at the time that the property was seized in execution.

The plaintiff also tendered an interdiction letter Exhibit 'A' in support of his contention that he is currently not a Prophet of the Defendant's church. It should be noted that an interdiction letter is not a dismissal or a termination letter. **The Black law Dictionary the**

9th Edition defines '*Interdiction*' in civil law as "*a person who has been interdicted as a natural person who because of an infirmity Cannot make reasoned decisions about personal care or property or communicate those decision or a person deprived of the capacity to make juridical acts.*" The Defendant denied that, plaintiff never left the church in 2012 after the interdiction. The plaintiff could have called for further evidence to support his case, see **Majolagbe V. Larbi [1959] 1 GLR** where proof was defined. The Plaintiff however told the court upon the receipt of that letter in the year 2012, he did not go back to the Defendant's church. He instead established a prayer camp on the land he acquired, and completed a building thereon in the year 2016, which has become a church. The plaintiff tendered pictures of the building he erected which is now a church, Exh 'H' and 'H1'. Plaintiff however made the court aware through cross-examination that he is the pastor of the True Faith Evangelical church. He once registered the land in the name of True Faith Evangelical church and later had it transferred into his name see page 21 of the Record of Proceedings. He however disputed that, the property is known to all and sundry that it is True Faith Evangelical Church. From the foregoing, if the defendant is unable to Raise doubt or discredit the case of the plaintiff he is likely to win on the first issue.

In Respect of the second issue which is whether or not the Musical instruments contained in the church building on Plot No. 20A Block AB belong to the claimant. The claimant gave testimony of the ownership of the instrument in the church building and tendered a writ of FiFa, Exh. 'F' detailing the items seized under the writ of FiFa when they were worshipping in the church. The plaintiff also tendered some receipts of purchases of musical instruments in Exhibits L series and Exhibit M series. Unfortunately, the Defendant did not cross-examine the Plaintiff on these exhibits. The law is that. "*It is basic legal preposition in admissibility of evidence, though subject to some exceptions that where evidence is tendered and not objected to by the party who should have objected, would be deemed to have admitted. Again if the evidence is tendered and a party fails to cross-examine to challenge its veracity, the party, subject to some exceptions would be deemed to have admitted the contents of the evidence*". See the case of **Kwadwo Appiah v. Kwabena Anane [2020] SC J4/42/2019 Amegatcher, JSC.**

On the 3rd issue, that is whether the Execution carried out by the Defendant is wrongful or irregular. The plaintiff testified that there is no judgment warranting the seizure of the disputed properties and that the entry of judgment filed on 2-10-17 did not mention plot no.20A Block AB Tatrafosso neither is the amended entry of judgment. However, it is on the main record of the court which is attached to the interpleader action which the court cannot close its eyes to it, that there is a consent judgment between the Defendant and the True Faith Evangelical Church granted by the court on the 21st of July 2017, by this court differently constituted in the substantive suit, resulting in the filing of an amended entry of judgment as EXh. '13'. However, according to the Plaintiff, the entry of judgment Exh. 'J' and subsequent amended entry of judgment filed 10/11/17 were mute on properties seized. It should also be noted that there has been no application to set aside the entry of judgment by the Judgment/ debtor. The law is that in cases where execution is wrongful or irregular, the relief available is to have a writ of execution set aside, see the case of **Republic vs. High Court Accra ExpArte Anyan [Platinum Holdings Interested Party] [2009] SCGLR 255 at 264 Owusu JSC**. However, in the substantive case, the plaintiff herein was not a party to it and so being a non-party to the substantive suit, or a third party. The law is that an interpleader action is appropriate. See **Gyimah & Brown V. Ntiri [Williams Claimant][2005-2006] SCGLR 247 At 255-25**. It should also be noted that, it is as a result of the Consent judgement dated 21 July 2021 and its subsequent execution process which resulted in the filing of this interpleader action.

On 4th issue, which is Whether the plaintiff is entitled to special Damages, Plaintiff makes a case that because of the seizure which he termed wrongful, he has been forced to worship in an open space together with his congregants spending a minimum of GH¢1,000.00 a week to organise church services. The plaintiff tendered Exhibits 'K' and 'K1'. These exhibits were not disputed to by the Defendant neither did counsel for Defendant cross-examine on these allegations. Plaintiff therefore prays for GH¢1000 per week from the 21st of November 2021 when the church and the instruments were seized till the date of Judgement. Should the defendant fail to prove fraud, plaintiff will be entitled to general and special Damages as prayed.

Having considered the above evidence proffered by the Plaintiff, I can say for a fact that so far, the Plaintiff led some evidence backed by documentary proof in respect of the disputed properties. Unless and until the Defendant is successful in his assertion of fraud or forgery against Defendant [which said fraud can vitiate everything] plaintiff will win.

At this stage, the Dictum of Brobbey JSC in the case of **Agbosu V. Kotey In Re Ashalley Botwe Lands [2003-2004] SCGLR 420** is helpful. He said:

"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 must prove what he claims he is entitled to from the defendant. At the same time if a court has to determine a fact or 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 must help his cause or case by adducing such facts or evidence that will induce the determination to be made in his favour."

Minded of this, the defendant testified and called a witness. Regarding the ownership of the seized properties of the church supported their case with exhibits '1' to '13'.

located on Plot 20A Block AB Tatrafosso Mampong, they also Firstly, on the interdiction, the Defendant asserted that the plaintiff was received back into the church and tendered Exh '1' through the plaintiff and insisted that the plaintiff has all along been a member of the True Faith church until recently. However, the Plaintiff still denied same. The law is that he who asserts should prove, see **Section 17[1] of the Evidence Act**. Proof was defined in the case of **Majorlabi Vrs. Larbi (1959) 1 GLR 190** as follows;

"Proof in law is the establishment of facts by proper legal means where a party makes an assertion capable of proof and in some way by e.g. by producing documents, description of things reference to other facts, instances or circumstances and his averment is denied, he does not prove it by merely

going into the witness box and repeating that averment on ought or having it repeated on ought by his witness. He proves it by producing other evidence of facts and circumstances from which the court can be satisfied that what he avers is true''.

Exhibit '2' which was tendered by the Defendant has some particulars of the plaintiff on it, however, I must admit that it was not helpful to the court that much. This is because, Plaintiff did not sign anything in that Document. Hence, the Defendant could have called a witness like one Micheal Anin who intervened to get the plaintiff and another back into the church to buttress their case but that did not happen. Also, it should be noted that interdiction is not dismissal per se from the Defendant's church the content of Exh. 'A' does not show that the Plaintiff was dismissed or sacked from the church in 2012 but was interdicted and asked to hand over all properties in his possession.

It is up to the defendant who still asserts that, the properties which should have been handed over were never done to prove so since there is no Documentary proof of inventory taken from Plaintiff soon after the interdiction, nor was there a documentary proof of the withdrawal of the interdiction letter, clearing the plaintiff before 2015. However, on the ownership of the seized property, the Defendant procured evidence that the plaintiff broke away to join True Faith evangelical church and that he is currently a pastor in that church. It should be noted that from the evidence so far the Plaintiff has not denied that he is not a pastor in the said True Faith Evangelical Church.

Defendant continued his evidence that the building in dispute belongs to the True Faith Church and was built out of funds from fundraising. However, Exhibit '4' is of very little assistance to the court since it has not been categorically stated therein in words or statements accompanying the figures that the money emanating from the said fund was specifically designated for the purchase of land or to build a church house.

It is also the contention of the Defendant that, the vendor initially sold half plot which is Plot No. 20A depicted by Exh. '5', the attached document and site plan bearing Plot No. 20A Block AB. According to the defendant, the half plot was also sold to the church by the vendor to avoid noise emitting from the church. According to the defendant, all this

while plaintiff acted for the church. It is the case of the defendant that after the purchase of the other half of the plot, new plot number and allocation papers and a site plan were procured from the vendor as a composite whole which is evidenced by Exh. '6' hence, the site plan was changed to Plot No. 20 Block AB. The True Faith Church obtained the services of Frankie's consultancy evidenced by exhibit 7 to prepare a proposed church building. Then a building permit was obtained from the Mampong Municipal Assembly evidenced by Exh. '8'. It is also the case of the Defendant that, the members of the church put up the church building, and the church building is depicted by Exh.9. Besides customer information on the meter used in the church as of 2022 being meter no. 121146314 has True Faith Evangelical Church as the owner depicted by EXH '11'. The Defendant also exhibited a High court judgement as Exh. '10' to show that after the said Judgement, some of its members including the plaintiff broke away to form the True Faith Evangelical Church. The Defendant tendered a search as well as Response from the Mampong Municipal Assembly as Exh. '12' and '12A'.

Before I discuss the merit of the Defendant's case there are few undisputed facts in both cases. It is undisputed that the Plaintiff was a former prophet of the True faith church now a pastor of the True Faith Evangelical Church. It is also undisputed that the plaintiff and others broke away from the defendant's church to form the True Faith Evangelical Church. It is also undisputed that the Plaintiff and the representative of the Defendant church were once interdicted by the True Faith church. It is also undisputed that there was a judgement being suit no. E2/10/2011 in favour of some leaders of the True faith church which led to the division in the church.

Besides, even though the plaintiff disputes, it is also on record that there is a consent judgment between the defendant church and the judgement debtor [True Faith Evangelical Church] entered on the 21st of July 2017 which culminated in the filing of the entry of judgment and later amended entry of judgement Exh. '13' which led to the seizure of the properties in this case.

Interestingly in this case, whilst Plaintiff accuses Defendant that his documents on the land and the church were recently prepared, signatures forged in order to throw dust in the eyes of the court, Defendant also accuses Plaintiff of preparing fictitious or fraudulent documents on the land on which the church building is sited.

The law is that Fraud vitiates everything, see **Boi & Anor v. Adjei & Anor [2014] SC [unreported] S. O. A Adinyira JSC**. Forgery of signatures and documents are all criminal Acts which must be established by Clear evidence. See the case of **Asumadu II Vrs. Ameyaw [J4//01/2018] [2019] SC [15 May 2019] Yaw Apau JSC**.

It is also the law that, fraud is not fraud merely because it has so been stated to excite the feeling of the court. See the case of **Dzotepe v. Hahormene IIII [1987-88] 2 GLR 681**.

Now, I will consider the case of the Plaintiff to ascertain whether he was able to justify the allegation of forgery against the Defendant. The plaintiff alleges that exhibits 5 and 6 of the defendants were forged since the Plaintiff did not sign those documents as alleged and that he had long left the church at the time that the document was purportedly executed. This was denied by the Defendant. The Plaintiff's name is however found on the Defendant's document executed in 2013 and he accuses the defendant of forgery.

The compelling question is whether the plaintiff can prove forgery under the burden of persuasion in **Section 13 of the Evidence Act 1975 NLCD 323**.

It is provided by **Section 13 [1] of the Evidence Act** as follows:

"In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond reasonable doubt"

The standard of proof in a civil case when a crime is alleged changes from the civil one of the balance of probabilities to the criminal one of proof beyond a reasonable doubt.

It should also be noted that, forgery is a crime by **Section 159 of the Criminal Offences Act 1960 [Act 29]** which provides that:

"A person commits a misdemeanour who forges a document "

A] *With intent to defraud or injure another person or*

B] *With intent to evade the requirements of the law or*

C] *With intent to commit or to facilitate the commission of a criminal offence*

Have a second look at the cross-examination between the counsel for the plaintiff and the defendant on page 18;

Q] The signatures as contained in paragraphs 5 and 6 are not that of the claimant and are forged.

A] The signatures on Exhibit 5 and 6 at the Alottee's Column are the signatures of the Plaintiff claimant.

Every crime has its ingredients, **Section 159** sets out in effect the ingredients to be established in order to prove forgery i.e. *intention to defraud* , *intended to evade the requirement of the law* , *Knowingly and Deceit, etc.* None of the ingredients was proven in the instant case. The Plaintiff complained about the differences in the writings, however, the Plaintiff is not a handwriting expert so how could he determine whether the same person cannot write on two documents and change the style of writing?

One would have thought that the Plaintiff who had long seen these documents at the time of disclosures would call for other evidence in terms of forensic examination to ascertain whether the signature is his but that never happened. Besides, he failed on the face of the documents to prove the forgery or who the culprits of the alleged forgery were. Therefore, the allegation of Forgery against the Defendant was never proven.

On the part of the Defendant, they also made allegations of forgery in these terms. See the cross-examination between counsel for the defendant and the plaintiff. Pg 17 record .

Q] It is your case that exhibits D and E were the allocation plot and the site plan that was issued to you after you purchased the disputed land?

A] Yes, my Lady.

Q] These documents are fictitious and forged documents which you did in anticipation of this interpleader judgment?

Just like the plaintiff, the defendant also made an allegation of forgery against the plaintiff. The compelling question is that was the defendant successful? It is also incumbent on the defendant to prove the said allegation of Forgery beyond reasonable doubt, as stipulated in **Section 13 [1] of the Evidence Act**.

It should be noted that, it is the Defendant's case that, it was the plaintiff who led the transaction to the acquisition of the land even though the same was denied by the Plaintiff, the Defendant then produced Exhibits '5' and '6 to buttress their case, which said exhibits bear the name of the Plaintiff. Defendant then sought to justify the allegation that, Exhibit 'D' and 'E' were forged by tendering Exhibit '12' and '12A'.

Exhibit '12A', a search Report from the Mampong Municipal Assembly is an official document which in law is presumed to be regularly performed. See **Section 37 [1] of the Evidence Act 1975 NLCD 323**.

The said Exhibit '12A' goes to buttress the earlier assertion of Defendant that, Plaintiff was the person fronting the land matters of Plot No. 20A Block 'B' which later changed to Plot No. 20, Block AB as a result of the subsequent purchase.

One will also say that granted that Plot No. 20A Block AB is the plaintiff's bonafide property, from the content of Exhibit '12A', he later took another Document, being Plot No. 20 Block AB bearing the name True Faith Church to the Assembly in 2020. If he had indeed stopped dealing with True Faith Church as he made the court to believe since 2012 what was he doing with their document in the year 2020 at the Mampong Municipal Assembly? From then, he kept transferring the property that was previously in his name into the name of the true Faith Evangelical Church and then back into his name. The question is what was the plaintiff doing with the supposed Documents of the True Faith Church that he had ever associated with as a prophet in the year 2020? The plaintiff cannot say that he was unaware of the case culminating in the consent judgment on the 21

July 2017 since he is the pastor of the Judgement debtor in that case. The defendant has been able to prove the intention to defraud and deceive another person knowingly . Ingredients of the offence of forgery are prevalent in Exh. 'D' and 'E' as compared to Exh. '5' and '6' that, the plaintiff signed as a caretaker. His dealing with the land at the Assembly clearly shows that the Plaintiff was trying to conceal information in order to draw a distinction between Plot No. 20A Block AB and Plot No. 20 Block AB which he knew or ought to have known that they were merged on paper as a result of the subsequent purchase. It is therefore surprising and raises a million dollar question why the plaintiff on the 24th of August 2022 had the property transferred back into his name with the consent of the leadership of the True Faith Evangelical church. Is this not also collusion and Fraudulent (as submitted by Counsel for defendant) aided by the Judgement debtor which is criminal, to outwit the defendant church? I am of the firm opinion that, the Plaintiff transferred the document covering the land on which the plot was located into his name in order to deceive the mother church True Faith Church which Defendant has a consent judgment in their favour since 21 July 2017. This court cannot close its eyes to the various transfers made by the plaintiff in the wake of an allegation of fraud and forgery and shun the invitation to consider same as a grand scheme to shield the supposed 'assets' of the Judgement Debtor/True Faith Evangelical Church, the breakaway church. It should be noted that the defendant explained that where the church is sited is also known as New Road as stated in the face of the amended entry of judgment, this was not disputed. The allegation that the plaintiff took the True Faith Church documents from the representative of the church in 2019 to assist him secure a loan for the church was not denied in cross-examination. Another allegation that at another time the plaintiff took the document from the representative of the plaintiff to secure visa to travel abroad was not denied in cross-examination. There is also no evidence of initial payment of property rate nor sanitation fees by the claimant except the ones paid in 2020 to cover past owing.

Again, the E.C.G Customer Information Dated 15/09/2022 on the Tatrafoso property as seen in Exh. '11' has it that it is the True Faith Evangelical Church, the judgement debtor

who is the customer known to ECG and not the Plaintiff. Defendant once signed to documents of the True Faith Church as a caretaker and presently claims the property as his own. The Plaintiff did not ask a single question on Exhibit 11. This buttresses the defendant's allegation of deceit.

From the above, I am convinced that the Plaintiff intended to forge and did forge Exhibit 'D' and 'E' out of Exhibits '5' and '6'. This is also evidenced by the fact that, the Exh. '7' building plan of the True Faith Church is the same as the pictures of the church in Exh. '9', and that of Exh. 'H' and 'H1' of the plaintiff. A plaintiff who claims the church building belongs to him could not ask a single question on the said building plan (Exhibit '7') on the land on which the property is located. Plaintiff's Exhibit 'C' and defendant's Exhibit '5' depict that Plaintiff used his earlier Association with the True Faith Church to his advantage in order to get Exhibit '20A' Block AB out of the entire land, Plot No. 20 Block AB Tratrafosso.

Regarding the church building on the land, Plaintiff insisted that he put up the premises by himself however, when same was denied he did not call for further evidence. It cannot be said that the plaintiff was able to prove to the satisfaction of the court as to how the building was funded.

With the second issue on the instruments and the chairs, I am convinced that the plaintiff has been able to prove his case beyond the balance of probabilities. The defendant did not cross examine on Exhibit 'M' and 'L' series tendered by the plaintiff. I, therefore, hold that the instruments and chairs seized which are listed in the writ of Fifi dated 21/12/2021 should be returned to Plaintiff since Defendant has been unable to raise doubt in the convincing Documents of purchases tendered by the plaintiff to prove ownership.

I am however unable to award special Damages to the Plaintiff because he could not justify his title to the building in issue. It should be noted that the Plaintiff was operating a church in the open and renting properties for his church service, however, special damages will not hold under the circumstances since he was also using the church space without the consent of the defendant before it was closed up.

On the issue of whether or not the entry of judgment amended or otherwise was regular or irregular as I have already discussed elsewhere in this judgement, I will reiterate that once the same has not been set aside it is still functional and operative until the same is set aside. It can be gleaned from the Plaintiff's claim that he is alleging that the subject matter of the interpleader action was wrongfully attached thus making the execution wrongful. An execution is wrongful or irregular when it is not authorized or justified by the writ of execution or by a judgment under which it is issued, see **Exparte Ayan [supra]**. Therefore, in this case granted that execution was wrongful or irregular as the plaintiff is alleging because the said amended Entry of Judgement does not site specifically the area where the disputed property is located [as contended by the plaintiff] then, what this means is that the under that circumstances, the relief available is to have the writ of execution set aside but not to interplead. However, it is only when the property had been attached normally under a writ of FIFA that a person other than the judgment debtor like the instant plaintiff who claims an interest in it inter pleads. If the plaintiff is asserting that the execution was wrongful or irregular, then why did he file the interpleader claim in the first place? See: **Hunu Akwesi vrs. S. Sadhwani [2011] 39 GMJ 138 CA** and **Republic vs. High Court, Accra Exparte Anyan [2009] SCGLR 255 at 264**. In my respectful opinion, I doubt if the execution is irregular or wrongful.

Have a look at the following cross-examination between the counsel for the Plaintiff and the Defendant at page 33 of the record;

Q] Please have a look at your said amended entry of judgment and tell this court if plot no. 20 Block AB Tatrafroso is mentioned

A] Yes it is mentioned

Q] Kindly read the content to this court

By Court:- [witness reads the content of Exh. 13],

[A] But I have an explanation. The area where the church in dispute is situated used to be called New Road which was the first True Faith Church of Ghana that was established at Mampong.

Q] I am putting it to you that True Faith church Ghana has never obtained a judgment in respect of the property.

From the above, as I earlier discussed, Plaintiff did not dispute that the area where the property is located is also called New Road as cited in the Amended entry of Judgement.

I am therefore unable to decide that the execution was wrongful or irregular in this action.

In conclusion, plaintiff has been able to proof that, the instruments and the chairs in Exhibit 'F', belong to him and so I order that, same be released to him by the Deputy sheriff. However, the Plaintiff woefully failed to demonstrate that, the seized church building located at Tatafroso Mampong belongs to him. Plaintiff sued for special damages however, under the circumstances, I am unable to grant special damages for reasons explained earlier. Save, the musical instruments and the rest of the items listed in Exhibit 'F' which should be released to the Plaintiff, the Plaintiff's claim to the church building lying, situate and being at Tatafroso Mampong, the seized property is hereby dismissed. No order as to cost.

(SGD.)

JUSTICE CYNTHIA MARTINSON (MRS)

HIGH COURT JUDGE