IN THE CIRCUIT COURT DUNKWA-ON-OFFIN; SITTING ON 05TH APRIL 2023 CORAM: HIS HONOUR YAW POKU ACHAMPONG

SUIT NO.: C11/17/2021

YAW MALICK

VS

KWAKU OPPONG

PARTIES PRESENT

HANNAH AFIA SARPONG FOR DEFENDANT, ABSENT

JUDGMENT

GENESIS

Plaintiff sued Defendant claiming the following reliefs:

A. General Damages of Thirty Thousand Ghana Cedis (GH¢30,0000) for willfully[sic] destruction to plaintiff's cocoa farm situate at Dedemedie measured about 5 acres sharing common boundaries with the respective farms of Kwaku Oppong (Defendant) and Yaw Gyan by setting the said farm ablaze.

B. Special Damages of GH¢20,000.

C. Any further order or orders as the Honourable Court deem it fit and equitable in the circumstances.

PLAINTIFF'S CASE

Plaintiff has a cocoa farm situate at a place called Dededmude[sic] which shares common boundary with Defendant's cocoa farm with its adjoining secondary forest. During the 2020 farming season, Defendant cleared the secondary portion of his land around February of that year and set fire therein; the fire spread into Plaintiff's cocoa farm and Plaintiff's farm that covered about 5 acres.

On 24th February 2020 around 07:20pm, Plaintiff had information that his said cocoa farm was on fire. Plaintiff went to the farm only to see the entire farm burnt. At that time, Plaintiff had on the farm what he said were farm inputs[and implements] such as cutlasses – seven(7) of them, knapsack spraying machines, wellington boot, insecticides and 10bags of fertilizer which had just been applied were all burnt.

Just as Plaintiff had arrived at the locus, at around 08:30pm, Defendant also came to the farm and admitted setting the fire and said that he set fire into his farm and the fire spread into Plaintiff's farm. Defendant then pleaded with Plaintiff. The parties subsequently appeared before a panel made up of Plaintiff's church minister – V. Rev. Joseph Kojo Adjei of Mfuom and some church elders namely: Patrick Adjei, Adu Francis and Mad.[sic] Theresah Gyamerah. The parties appeared with their witnesses. Before the panel, Plaintiff demanded GH¢2000.00 as full cost of the said farm inputs burnt but Defendant pleaded that he could offer GH¢1500.00 which Plaintiff accepted. Defendant further accepted and/or agreed to recultivate the burnt cocoa farm to the maturity of the cocoa plants. Plaintiff demanded that Defendant should provide him ten (10) bags of cocoa or its equivalent market price every year but Defendant asked for reduction. It was agreed that Defendant should supply five (5) bags of cocoa or pay their prevailing market price from October to December every year until the cocoa matured. Defendant had at the time this action was instituted paid GH¢1500.00 being the full cost of the farm inputs destroyed and GH¢1000.00 out of the 5bags of cocoa for the year 2020 leaving a balance of GH¢1000.00 out of the 5bags of cocoa for 2020 leaving a balance of GH¢2300.00 for 2020. Defendant had failed and or refused to pay the balance of

GH¢2300.00 for 2020 season and the subsequent year i.e. 2021 as at the time the writ was filed. Defendant has also failed and or refused to re-cultivate the cocoa farm upon persistent demands. Plaintiff tendered in evidence a copy of the terms of settlement; it was admitted and marked by the court as Exhibit A.

The contents of Exhibit A are as follows:

"ARBITRATION CASE

This note is an arbitration case between OPANIN YAW MALIK AND OPANIN KWAKU OPPONG On the subject of Burnt Cocoa Farm of OPANIN YAW MALIK BY OPANIN KWAKU OPPONG, On Monday 24th February, 2020.

NAME OF MEMBERS OF THE PANNEL[sic]

VERY REV. JOSEPH K. AGYEI ……[SIGNED]

MR. OWUSU FRANCIS ……[SIGNED]

MR. YAW MANU ……[SIGNED]

MISS THERESA GYAMERA ……[SIGNED]

MR. PATRICK ADJEI ……[SIGNED]

MR. FRANCISE ADU ……[SIGNED]

COMPLAINANT TEAM

OPANIN YAW MALIK ……..[SIGNED]

AKWASI TWARE ……..[SIGNED]

KOJO AJAPONG ……..[THUMBPRINTED]

THE ACCUSED TEAM

OPANIN KWAKU OPPONG ……..[THUMBPRINTED]

AGYA MANU ……...[THUMBPRINTED]

AGYA KOOWUO ……..[SIGNED]

ODIFO ADDE …….[SIGNED]

MEMORANDUM OF AGREEMENT

At a sitting and before the persons listed on this agreement on Monday 2nd March,2020 the Following were agreed upon:

1. That OPANIN YAW MALIK, The farm owner and OPANIN KWAKU OPPONG, The accused have agreed to the terms and conditions laid down in this agreement.
2. That OPANIN KWAKU OPPONG will give OPANIN YAW MALIK, Five bags of cocoa each year until the cocoa matures.
3. That if the cocoa price increases, the price will be adjusted accordingly to reflect the market going price[.]
4. That OPANIN KWAKU OPPONG will plant and maintain the cocoa farm until maturity where OPANIN YAW MALICK will take back his farm.
5. That OPANIN KWAKU OPPONG should pay for the cost of farm equipments[sic] burn at the cost One Thousand Ghana Cedis(GH¢1,500.00).
6. Having arrived at this conclusion, OPANIN KWAKU OPPONG and his team presented half create[sic] of fanta and GH¢50.00 as stamp fee on the case to the panel members and people who came there.

This agreement is dated on Monday 2nd March, 2020 at the Mfuom Calvary Methodist Chapel."

Plaintiff reported the failure or refusal of Defendant to honour his obligations under Exhibit A to the panel that sat on the matter and another meeting was called. There, Defendant pleaded and stood on the earlier decision that he would re-cultivate the cocoa farm but had failed. Plaintiff has re-cultivated the cocoa farm without any support whatsoever from Defendant.

Plaintiff is now old and weak and so he cultivated the cocoa by engaging labourers throughout the farming activities. Plaintiff purchased quantity of cocoa pods, weedicides, cocoa fertilizer and other farm inputs totalling about GH¢20000.00. It is the case of Plaintiff that the act of Defendant has caused substantial damage to Plaintiff as the farm is his only livelihood as a family man. All attempts to bear upon the defendant to re-cultivate the cocoa farm and also to settle the cost of 5 bags of cocoa or supply same to Plaintiff as per Exhibit A proved futile. The burnt area of the cocoa farm is measured about 4.67 acres. Plaintiff tendered in evidence a copy of the plan of the farm and it was marked Exhibit B.

DEFENDANT'S CASE

Defendant's farm shares common boundary with Plaintiff's farm at a place commonly known as Dedemude at Babianeha. Somewhere in the year 2020, Defendant cleared part of his said farmland so that he would make a new farm there. The leaves got dried and Defendant set fire into. The fire strayed into Plaintiff's adjoining cocoa farm and got Plaintiff's said cocoa farm burnt. When Defendant had information that the fire he set had strayed into Plaintiff's farm, he hurriedly went to the farm in an attempt to put out the fire but he could not bring the situation under control. Defendant pleaded with some elders to intervene in the matter on his behalf so that the problem could be peacefully resolved. The elders which included Op. Kwabena Manu, James Owusu and the Rev Minister of Mfuom Methodist Church, met the parties herein at the premises of the said Methodist Church over the issue. Eventually, the parties herein went before the said elders at the premises of the Methodist Church, Mfuom over the matter. At that meeting, Plaintiff revealed that apart from his cocoa farm getting burnt, he also lost one(1) knapsack spraying machine, two(2) bottles of insecticides and three cutlasses. Plaintiff demanded that Defendant should pay GH¢2000.00 to him for those items. Upon pleading, the gathering settled on GH¢1500.00. After lengthy deliberation on the issue about the burning of the farm, the arbiters decided that Defendant would re-cultivate the cocoa farm for a period of five(5) years, for Plaintiff. The panel further decided that

Defendant should pay five(5) bags of cocoa beans annually to to Plaintiff for a period of five(5) years. Following this arrangement, Defendant managed to pay GH¢2500.00 to Plaintiff. Defendant also started re-making Plaintiff's farm. Firstly, he cleared all the weeds in the farm and he received some cocoa pods from Plaintiff and planted them. Secondly, Plaintiff took GH¢250.00 from Defendant's mother, purchased cocoa seedlings with it, handed them over to Defendant and with the help of Defendant's family carted them to the farm and planted them as well. While Defendant was making the farm, Plaintiff once visited the farm and warned Defendant never to step foot in the farm again. According to Defendant, Plaintiff threatened defendant with harm and death if he should disobey him(Plaintiff). Defendant reported the incident to the above-mentioned arbiters and the said reverend minister convened another meeting over the issue. At that meeting, Plaintiff repeated his threats to Defendant. When the reverend minister tried to correct Plaintiff, he became offended and even ended up insulting the reverend minister, claiming that reverend minister was not the one who made the farm for him therefore he could not tell him what to do. The reverend minister who was not happy with Plaintiff's remarks, declared that he would no longer involve himself in the matter again. After the meeting, Defendant again went to the farm to continue with the recultivation but Plaintiff once again met Defendant in the farm and drove him away, amidst threats. Defendant stated that he did not flout the arrangement made for him by the arbiters. It was rather Plaintiff who made it impossible for him to go by the arrangement. Defendant further stated that he was not liable to Plaintiff's reliefs as he(Defendant) has not broken any agreement. Defendant therefore prayed the court to dismiss Plaintiff's claims.

ANALYSIS

Abban J (as he then was) stated the following in *Baah Ltd v. Saleh Brothers*[1971] 1GLR 119:

> *"It can therefore be seen that, on the whole, the plaintiffs simply put forward allegations of indebtedness in their statement of claim and repeated the same before the referee. It is well established that where a party makes an averment in his pleadings and it is denied, that*

averment cannot be sufficiently proved by just mounting the witness-box and reciting that averment on oath without adducing some sort of corroborative evidence. When delivering his judgment in the case of Majolagbe v. Larbi [1959] G.L.R. 190, Ollennu J. (as he then was) at page 192 had this to say:

> *"Here I may repeat what I stated in the case of Khoury and Anor. v. Richter on this question of proof. That judgment was delivered on the 8th December, 1958, and the passage in question is as follows: -'Proof in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way, 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 oath, or having it repeated on oath 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'."*

This opinion of the law was not only approved but also stressed by the Court of Appeal in its judgment in the case of Norgah v. Quartey, Court of Appeal, 15 May 1967, unreported; digested in (1967) C.C. 115.

In these circumstances, I am unable to say that the plaintiffs are entitled to the relief sought on the evidence before the referee. The evidence is not sufficient to satisfy the mind and the conscience of any reasonable referee and for that matter any reasonable judge so as to convince him to venture to act upon that conviction in favour of the plaintiffs. The referee was therefore justified in recommending that the plaintiffs' claim should be disallowed."

Section 10(1) of NRCD 323 defines "Burden of Persuasion" and it states:

> *For the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.*

Section 10(2) of the Evidence Act adds that:

> *The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establishes the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.*

Section 11 of NRCD 323 defines "Burden of Producing Evidence"; subsections 1 and 4 state:

> *(1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.*
> *(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.*

Sophia Adinyira JSC in *Ackah v. Pergah Transport Limited and Others* [2010] SCGLR 728; at 736 expatiated on sections 10 and 11 of the Evidence Act as follows:

> *"It is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary and things(often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as a jury. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable[sic] than its non-existence. This is a requirement of the law on evidence under sections 10 and 11 of the Evidence Decree[sic]."*

Plaintiff tendered in evidence documents that he sought to rely on. Defendant tendered none.

In the case of *Yorkwa v. Duah* (1992 – 1993) GBLR 278, it was held that wherever there was in existence a written document and oral evidence over a transaction, the practice in the court was to lean favourably towards the documentary evidence. In the same way, where a party is unable to produce documentary evidence in support of his case and his adversary does, the Court will more likely lean in favour of the party who produces documentary evidence in support of his case.

Also in *Fosua and Adu Poku v Dufie* (*deceased*) and *Adu-Poku* Mensah 2009 SCGLR 310, it was held that it is settled law that documentary evidence should prevail over oral evidence. Thus where documents supported one party's case against the other, the court should lean towards documentary evidence.

The instant case points at the Rylands v Fletcher case situation which culminated in the rule in Rylands v Fletcher as in the Law of Torts. In *Rylands v Fletcher* (1868) LR 3 HL 330, some independent contractors were employed by Defendants to construct a reservoir on their land. Though disused mines were found by the contractors when they were digging, they failed to properly seal them. They went ahead to fill the reservoir with water. Eventually, water ran through the mine shafts and flooded the plaintiff's mines on the adjoining property. When the Plaintiff sued the court held the defendant liable and the House of Lords affirmed that decision. It was held by the courts that to succeed in this tort, the claimant must show:

1. That the defendant brought something onto his land;
2. That the defendant made a "non-natural use" of his land;
3. The thing was something likely to do mischief if it escaped;
4. The thing did escape and didcause damage.

I find that all the key points as in Rylands v Fletcher prevail; Defendant, however, does not dispute any of them.

In *Barimah Gyamfi v. Ama Badu* [1963] 2GLR 596 @ 598 Ollennu JSC stated:

> "*It must be observed from the outset that there is no onus upon the defendant to disprove a claim made by a plaintiff, so that, however, conflicting or unsatisfactory his evidence may be, the same cannot avail the plaintiff; evidence given by the defence only becomes important in a case either where it can upset the balance of probabilities which the plaintiff's evidence might have created in the plaintiff's favour, or where it tends to corroborate[emphasis] evidence of the plaintiff, or tends to show that evidence led on behalf of the plaintiff is true[emphasis].*"

Defendant admits that there were terms of settlement as alluded to by Plaintiff as in Exhibit A, only that he encountered challenges fulfilling some of his obligations under the agreement. Defendant says he showed willingness to re-cultivate the farm but Plaintiff prevented him from doing so.

By the decision in the *Rylands v Fletcher* case supra, it can be said that Plaintiff deserves damages of a sort but though in his reliefs as endorsed on the writ of summons, he is praying for damages, he appears by the conduct of his case before this court in this matter to be seeking the enforcement of the terms of the agreement as in Exhibit A.

In fact, at a point during the trial when counsel came into the matter and prayed that Plaintiff be recalled to be cross-examined, Plaintiff indicated as follows:

> "I would like to discontinue the case but I pray that the Court makes Defendant pay to me what he agreed to on arbitration."

The Court then held:

> "if Plaintiff wants to discontinue the case, he may file notice of discontinuance. If he wants to withdraw any of the reliefs, he may go ahead and do so. Otherwise, the Court will have to hear the matter and decide on whatever reliefs that are pending. But if the parties have agreed on any terms of settlement, then, they may file same for the Court to enter as consent judgment."

The court then adjourned the matter.

On the next adjourned date, Counsel for Defendant stated:

> "We are minded to continue the case. It is PW1 Yaw Manu who is the witness but Plaintiff intimated to the Court on the last adjourned date that he wanted to discontinue the case but he has not filed any process."

Plaintiff then stated:

> "When I went home and reflected over the prayer I made on the last adjourned date, I realized that Defendant is not willing to have any settlement with me on the matter. So I pray that the Court continues the matter and determine it."

The court then proceeded with the hearing.

It is worth emphasizing paragraph 19 of the witness statement of Defendant, which I have paraphrased above in the presentation of the facts as regards Defendant's case as above. I hereby produce the said statement verbatim:

> "I wish to state that I did not break the agreement made for me by the arbiters. It was rather the plaintiff who it made it impossible for me to go by the arrangement."

Therefore there is no issue as to whether the parties went into any agreement as in Exhibit A. There is also no issue as to whether or not Defendant has fully complied with the terms.

One issue that arises is whether or not Plaintiff prevented Defendant from re-cultivating the farm. However, that issue is moot as Plaintiff says he has re-cultivated the farm.

Another issue is whether or not Plaintiff is entitled to damages as in reliefs a and b of his claims before the court. It must be said that the agreement before that panel supra had no teeth to bite; it was not enforceable at law. It is a court's decision on the matter that can be

enforced legally. If somebody has committed such a tort on you, the best place you run to for relief is the court. Be that as it may, if you decide to resort to alternative dispute resolution mechanism, good enough. But if the other side is not fulfilling his obligations under the agreement or is not fulfilling his obligation in such a manner as you want it to be or in such a manner as you feel it conforms to the agreement, you ran to court; that is where your remedy may be. If you decide to take up that mantle and remedy the situation yourself by doing what the other side is required to do under the agreement so be it.

It must also be said that if one is threatened with harm or death, it is criminal. It must be reported to the police for criminal action.

I therefore find no basis for the general damages Plaintiff is seeking against Defendant as Plaintiff has done the farm himself even though the agreement is to the effect that it is Defendant who should do so, and also for the fact that Plaintiff appears to be seeking the enforcement of the other terms of the agreement.

As regards the special damages of GH¢20000.00 Plaintiff is seeking, Plaintiff failed to lead evidence to establish the basis for that. In fact, he did not even particularize it. Besides, Plaintiff recultivating the farm is contrary to the agreement which he himself tendered in evidence before this court.

CONCLUSION

In the circumstances, therefore, and in accordance with relief c of the reliefs of Plaintiff, I order Defendant to fulfil all the unfulfilled obligations of his under the agreement in Exhibit A.

(SGD)

HH YAW POKU ACHAMPONG

CIRCUIT COURT JUDGE

05/04/2023