

IN THE CIRCUIT COURT '1' WESTERN REGION HELD AT TAKORADI ON THURSDAY 8TH DECEMBER, 2022 BEFORE HIS HONOUR MICHAEL K. AMPADU, CIRCUIT COURT JUDGE.

SUIT NO: C18/69/2019

THE REPUBLIC

VRS.

1. ALBERT YALLEY
 2. NANA NTI AKO
-

J U D G M E N T

Prosecution: Insp. Prince Nyarko

Counsel: Lawyer Philip f. Buckman for Accused person

The first Accused (A1) is charged with the offence of Trespass contrary to section 157 of the Criminal Offences Act, 1960, Act 29 and the Second Accused person (A2) with the offence of Abetment to Trespass Contrary to sections 20(1) and 157 of Act 29/60.

They both pleaded not Guilty to their respective charges.

The facts of the case are that the Complainant in the case is a Network Engineer residing in Accra whiles A1 is a trader and A2 is a caterpillar operator both residing in Takoradi. On 25/04/2003, Complainant bought a parcel of land from Abusuapanyin Kwesi Mrokow, now late, head of Nsona family of Sekondi at the cost of One Thousand Ghana Cedis

(GH¢1,000.00) and was issued with official receipt and other land documents in respect of the said plot of land. After the death of the said Abusuapanyin, A2 became the family head. During the month of October 2018, A2 sold the Complainant's plot numbered 81 located at Benyakrom, Takoradi to A1 at a cost of Fifteen Thousand Ghana Cedis (GH¢15,000.00). A2 assured A1 that they have done "Re-entry" covering all their family lands and for that he should start developing the land. A1 based on that assurance had started his project on the land and was later confronted by the complainant's senior brother, a witness in the case to stop work. The Complainant's brother, A1 and A2 then sent the matter to Sekondi Takoradi Metropolitan Assembly (STMA) for settlement but it yielded no positive result. Complainant's brother after being to STMA Office visited the site the second time and realized that A1 was still continuing his building up to lintel level. Complainant out of frustration reported the matter to the Police for investigation and A1 and A2 were arrested and cautioned to that effect. In their investigation cautioned statements to the police, they both admitted the offence.

A2 during investigations, pleaded with the Complainant to allow him some time to relocate him to a new plot of land or refund the money to him but the Complainant disagreed and insisted taking his land back. After investigation, they were charged with the offences and arraigned before this Court.

The prosecution called three (3) witnesses in order to establish their case. They were Charles Amoo (PW1), Mark Amoo (PW2) and No. 35911 D/Sgt. Victus Yao Ahiada.

The evidence of PW1 was that the PW2 was his senior brother and on 25/4/2003, he bought a parcel of land at One Thousand Ghana Cedis (GH¢1,000.00) from Abusuapanyin Kwesi Mrokow, head of Nsona family of Benyakrom near Sekondi for which he has documents to support. He stated that he left the land in the care of PW2 and on 1/12/2018, he was informed that someone was developing the land and since he was in Accra, he instructed his brother PW2 to formally make a case to the police. The

PW2 added that he reported the matter to the STMA and STMA sent their guards to stop the developer who had encroached on the land. That the STMA scheduled a meeting for both parties to produce their documents covering the plot but the encroacher could not produce anything including permit to build up a structure so the STMA Officials asked the accused person, Albert Yalley (A1) to stop any development on the land but from his (PW2) checks, the A1 continued the development of the land so he was instructed by PW1 to lodge a complaint at the Police Station.

The evidence of PW3, investigator Victus Yao Ahiada was that when he received the complaint, A1 and A2 were arrested on 04/01/2019 and cautioned and that in their respective cautioned statements to the police, they both admitted the offence and A2 pleaded with the Complainant to allow him some time to relocate him to a new plot of land or refund his money back to him but the Complainant disagreed and insisted taking back his plot of land and nothing else.

According to PW3, photographs were taken at the scene during investigation to show the extent of A1's building on the complainant's land. He said the complainant also produced his site plan and indenture covering the said plot of land.

PW3 tendered Exhibit 'A' series (A-A8) which were pictures of Accused's building on the land, indenture ('D'), Search Report from Lands Commission (E), caution and charge sheets of A1 and caution and charge statements of A2.

Section 13(1) of the Evidence Act, Act 323 provides that "In any 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.

Section 11(2) of the same Act provides that in a criminal action, the burden on the prosecution of facts essential to guilt requires the prosecution to produce sufficient evidence so that the Court can find the guilt of the accused beyond reasonable doubt.

Section 157 of Act 29/60 provides; a person who

- (a) Unlawfully enters in an insulting, annoying or threatening manner on land belonging to or in the possession of any other person, or
- (b) Unlawfully enters on land after having been forbidden so to do, or,
- (c) Unlawfully enter and remain on land after having been required to depart from that land, or
- (d) Having lawfully entered on a land, act in a manner that is insulting, annoying or threatening, or
- (e) Having lawfully entered on a land, remains on that land after having been lawfully required to depart from that land,

commit a criminal offence and is liable on the Complaint of the owner or occupier of the land to a fine not exceeding twenty-five (25) penalty units and the Court may order the removal from the land, by force if necessary, of a person, an animal, a structure or a thing”.

To succeed in a conviction, the prosecution has to prove that the Complainant is the owner of the land and the Accused has entered upon the land unlawfully.

The records show that the Complainant acquired the land on 24/4/2003. This is evidenced on indenture, Exhibit 'B'; A search conducted at the Lands Commission by the Complainant on 18/12/18 also showed that the said piece of land in dispute is not state land and it is registered in the name of and leased to Amoo Charles, the Complainant herein for ninety nine (99) years. The Accused person did not show any title document to this land.

Even though the A1 and A2, both in their respective witness statements, cautioned in investigative statements mentioned the plot in dispute as plot number eighty one "81", they did not say the time when A1 acquired the land from A2. The Complainant and his witness however told the Court that the Accused person (A1) got the land unlawfully on 1/12/2018 after it had been leased to him by the A2.

Lands Commission records on 18/12/18 still indicated the land was still in the name of the Complainant. This means the land was still in the name of the Complainant when the A2 allegedly leased it to the A1.

The land was leased to the Complainant for ninety nine (99) years. There is no clause in the indenture, Exhibit '3' that if the Complainant did not use the land, the stool can take it without any notice to the Complainant. The A2 alleged that when he became the family head, he put up notice to invite land owners to come and see him but the Complainant did not come. He also alleged that his predecessor family head have taken re-entry order and Re-entered the land in dispute. He was however unable to prove any of these allegation. In the case of Klutse vrs. Nelson (1965) GLR 537 it was held that when a party makes an averment that require proof, it cannot be sufficiently proved by just mounting the witness box and reciting the averment on oath without adding some corroborative evidence. The A2 alleged his predecessor had re-entered the said plot but he did not show the said re-entry order. Again he said he published notices to invite persons who have acquired lands from his predecessor to come and meet with him but he could not show one person who came to see him as a result of that publication. The Court therefore comes to the conclusion that the said plot of land numbered 81 is for the Complainant and he is the owner of same.

The A1 said he has built it to lintel level. He also alleged that the STMA put stop work on the Structure and the PW2 alleged that despite all the stop work and the attempt to

have the difference sorted out, the Accused (A1) continued with his development. His reason is that because the Complainant refused to have the matter settled even when it came to the Court and the matter was referred to ADR. Yes the Complainant has every right to refuse to have the matter settled or agree to the A2's promise to replace the land for him. This is because the land was registered in his name and he had a lease for ninety nine (99) years without any contrary condition.

That the Accused (A1) has built on the said plot without the consent of the Complainant, the real owner means that his entry to the land is unlawful. This Court believes that A1 has always thought that when he continues and built the house to completion, no Court will ask him to depart from the land. For this Court, this is a wrong notion.

The Court therefore finds the Accused person A1 guilty of trespass and A2 also guilty of abetment of trespass contrary to section 20(1) and 157 of Act 29/60.

They are both sentenced to a fine of twenty (20) penalty units, which is Two Hundred and Forty Ghana Cedis (Gh¢240.00) each; in default six (6) month I.H.L. The Accused persons are also ordered to hand over plot number 81 situate and lying at Benyakrom, Takoradi to the Complainant Charles Amoo forth with.

SGD

H/H MICHAEL K. AMPADU

CIRCUIT COURT JUDGE