

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON
THURSDAY THE 8TH DAY OF DECEMBER, 2022 BEFORE HER HONOUR
ENID MARFUL-SAU, CIRCUIT COURT JUDGE

SUIT NO:C2/22/2021

GODFRED MARTEY-WAYO

WEIJA

...

PLAINTIFF

VRS.

AGBESIE ANANE

AMASAMAN, ACCRA

...

DEFENDANT

PARTIES: PLAINTIFF ABSENT

DEFENDANT ABSENT

*COUNSEL: MOSES ATIGA ESQ. HOLDING BRIEF FOR YVONNE
AMEGASHIE*

ESQ. FOR PLAINTIFF ABSENT

FRANK K. NIKOI FOR DEFENDANT ABSENT

JUDGMENT

By a Writ of Summons and Statement of Claim filed on 19th January, 2021

Plaintiff claims against Defendant the following reliefs:

- a. "An order compelling Defendant to pay an amount of Seven thousand Ghana Cedis being cost of the two plots of land at the time of purchase in 2010 or in the alternative provide two plots of land at the same location with appropriate documents accompanying same.
- b. An order compelling Defendant to pay an amount of Eighteen Thousand Ghana Cedis been the cost expended on developing the land which was demolished.
- c. Interest on the above-mentioned sums in paragraphs (a) and (b) supra from the year 2010 at the prevailing bank interest rate till date of final payment.
- d. Cost.
- e. Any other order the court may deem fit."

It is the case of Plaintiff that in 2010, the Defendant sold to him two plots of land situate at Kofi-Kwie, Amasaman at a cost of Seven Thousand Ghana Cedis (GH¢7,000). Plaintiff says he paid the amount in two instalments in 2010. According to Plaintiff, since he made full payment to Defendant, all attempts to develop and take control of the land have been met with resistance by others. As a result, he says the Defendant changed location of the two plots three times however the current location has also been met with resistance from an Estate Developer. Plaintiff says that a foundation which he lay was destroyed by the estate developer who is known to the Defendant. Plaintiff says he informed the Defendant who informed him hat he was going to meet the estate developer but has since not communicated back to him on the issue. He says that an amount of GH¢18,100 was expended on the land which was destroyed by the estate developer. He says that attempts to settle the matter amicably failed hence the instant action.

Defendant filed an Appearance to the action on 9th February, 2021 and a Statement of Defence on 25th March, 2021.

Pleadings closed and the following issues were adopted and set down as the issues for trial:

- a. "Whether or not the Defendant sold two plots of land situate at Kofi-Kwie, Amasaman, Accra in the Greater Accra Region to Plaintiff in 2010 at the total cost of Seven Thousand Ghana Cedis (GH¢7,000).
- b. Whether or not Plaintiff paid the total cost of the two plots to Defendant.
- c. Whether or not Plaintiff at all times informed Defendant of the claims of ownership of the said plots by other persons in his attempts to take possession and develop same.
- d. Whether or not Defendant promised to give Plaintiff a replacement free from any claims of ownership from other persons with a built foundation as Plaintiff did on the other plots given but failed to do so."

On 1st December, 2021, this court made an order for parties to file their Witness Statements and Pre Trial-Check Lists. As of 26th September, 2022, Defendant had failed to comply with the orders of the court. His Statement of Defence was struck out in accordance with the rules of Court with the case being adjourned for hearing.

Plaintiff testified on 7th November, 2011, on this date, Defendant together with his counsel were absent. The Plaintiff was accordingly discharged with the case being adjourned for judgment which I hereby proceed to determine on its merits.

By paragraph 1 of Defendant's Statement of Defence, he admitted paragraphs 3 and 4 of Plaintiff's Statement of Claim. It is a trite principle of law that allegations of fact when admitted requires no further proof.

In the case of **WEST AFRICAN ENTERPRISES LTD v WESTERN HARDWOOD ENTERPRISE LTD [1995-96] 1 GLR 155**, it was held as follows:

“Where an averment made by one party in his pleadings was denied by the other in his defence or reply, it was necessary for the one who made that averment to produce evidence in proof of it. However, no principle of law required a party to prove an admitted fact.”

I consider that issues “1” and “2” were not in dispute and no proof was required of it and therefore no issue was even joined on it by the parties in the application for directions.

See also: **KAI V. AMARKYE [1982-83] GLR 817**

I consider that it has been established on a balance of probabilities that Plaintiff paid an amount of GH¢7,000.00 to Defendant for two plots of land. I consider issues 3 and 4 to be ancillary to issues 1 and 2 and a resolution of these issues will not aid the court to determine the reliefs sought by Plaintiff. In view of the reliefs sought by Plaintiff, I consider that an issue which arises is ‘whether or not Defendant is liable to pay Plaintiff an amount of GH¢18,100.00’. Plaintiff testified that on one occasion a foundation that was being laid by him was completely destroyed and covered up by an Estate Developer called KAST Developer. According to him, he spent an amount of GH¢18,100.00 in developing the land which was destroyed by the estate developer.

I note that Plaintiff failed to produce evidence of the expenditure of the construction on the said land. Further, Plaintiff admits that it was the Estate Developer and not the Defendant who destroyed the said foundation.

In the Supreme Court case of **AMPRATWUM MANUFACTURING CO. LTD V. D.I.C. [2009] SCGLR 692**, it was held as follows:

“It is fundamental in litigation that parties must commence action against relevant parties to the suit. To institute an action against a party, one must have a cause of action against the defendant.”

Thus, Plaintiff had no cause of action against Defendant as far as the destruction of the said foundation is concerned and has failed to show how it is that Defendant is liable to pay the said amount of GH¢18,100.00 which he in any case failed to substantiate.

I shall therefore enter Judgment in part in favour of Plaintiff against Defendant as follows:

- a. Defendant is to pay an amount of Seven Thousand Ghana Cedis (GH¢7,000.00) to Plaintiff being cost of the two plots of land purchased in 2010.
- b. Having regard to the fact that though the cause of action accrued in 2010, Plaintiff commenced this action in 2021, I consider that causing interest to run from 2010 as prayed will result in an unjust enrichment on the part of Plaintiff. Accordingly, interest is to run on the amount of GH¢7000.00 from 19th January, 2021, being the date on which the instant action was commenced.
- c. Costs of GH¢3,000.00 is awarded in favour of Plaintiff against Defendant.

(SGD.)

H/H ENID MARFUL-SAU

CIRCUIT JUDGE

AMASAMAN