IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON MONDAY THE 24TH DAY OF OCTOBER, 2022 BEFORE HER HONOUR ENID MARFUL-SAU, CIRCUIT COURT JUDGE

SUIT NO:C2/01/2019

SEDRICK AHIAMADIA
HNO 9 FISE RAILWAY JUNCTION
AMASAMAN ... PLAINTIFF

VRS.

MOHAMMED KAMAL
HERITAGE SCHOOL
AMASAMAN

NKANSAH
UNNUMBERED HOUSE
SARPEIMAN ...
DEFENDANTS

PARTIES: PLAINTIFF PRESENT
DEFENDANTS ABSENT

COUNSEL: CHARLES OFORI ESQ. FOR PLAINTIFF ABSENT
FRANK K. NIKOI ESQ. FOR DEFENDANTS ABSENT

JUDGMENT

By a Writ of Summons and Statement of Claim filed on 10th September, 2018 Plaintiff claims against Defendants the following reliefs:

a. "An order of court directed against defendants for recovery of GH¢45,000.00 with interest from 9th September, 2017 to the final date of payment.
b. Costs"

Plaintiff says that the Defendants made a representation to him that they own a parcel of land and he showed interest. According to him, after inspecting the land and its documents and being satisfied that it was genuine, he parted with an amount of GH¢45,000.00 to the Defendants after they demarcated the land for him. Plaintiff says that he went into possession and deposited cement blocks, sand and gravels on the land and started building. He says that while his workers were on the land, a man named Asafoatse lay claim to the land and destroyed his building. Plaintiff says that he reported this to the Defendants, and they suggested that they will change the land for him. Plaintiff however did not want the land changed as he had spent money on same therefore, he says that he will prefer a refund of the purchase price with interest hence the instant action.

Defendants entered appearance through counsel on 17th September 2018 and filed a Statement of Defence on 4th October, 2018. They contend that the land in question belongs to the 1st Defendant, and he sold same to the Plaintiff with an Agreement being signed. According to them, after selling the land, another family took Defendant's grantor to court and obtained judgment against his grantors. According to Defendants, it was that family which prevented Plaintiff from developing the land. They say that when the Plaintiff was prevented from working on the land, they went to see the family that had

judgment and the family told them to pay again for the land. Defendants say that they explained this to Plaintiff and asked him to be patient while they reacquired the land. According to them, they were in the process of reporting with the family when they were served with the instant writ. Defendants say that they have an alternative land with an uncompleted building which they were willing to negotiate with Plaintiff so he could have that.

On 19th November, 2018, the following issues were set down for trial by this court differently constituted:

a. "Whether or not there is litigation on the land in issue
b. Whether or not the Plaintiff is entitled to the refund of his money with interest
c. Any other relevant matter raised in the pleading"

Trial in this matter commenced on 1st August, 2022. On 3rd August, 2022, Counsel for Defendants indicated that he has been unable to contact the Defendants, accordingly, the case of Defendants was closed, and the case accordingly adjourned for Judgment which I hereby proceed the consider on the merits.

The Standard of proof required in a Civil action was set out in the case of **BISI AND OTHERS v. TABIRI ALIAS ASARE [1987-88] 1 GLR 360; SC**

> *"The standard of proof required of a plaintiff in a civil action was to lead such evidence as would tilt in his favour the balance of probabilities on the particular issue. The demand for strict proof of pleadings had however never been taken to call for an inflexible proof either beyond reasonable doubt or with mathematical exactitude or with such precision as would fit a jig-saw puzzle. Preponderance of evidence became the trier's belief in the preponderance of probability. But "probability" denoted an element of doubt or uncertainty and*

recognised that where there were two choices it was sufficient if the choice selected was more probable than the choice rejected. ...”

The first issue is ‘whether or not there is litigation on the land in issue’. By paragraph 6 of the Statement of Claim, Plaintiff indicated that his workers were on the land when a man by name Asafoatse came to lay claim to same and destroyed his building. Though by paragraph 10 of the Statement of Defence Defendants deny this assertion of Plaintiff, they admit at paragraphs 4, 5 and 6 of their Statement of Defence as follows:

> “4. Further to (3) above defendants say after placing plaintiff in possession of the land another family took his grantors to Court and had judgment against his grantors.
>
> 5. Defendants say it was the family who had the judgment that prevented plaintiff from working on the land.
>
> 6. Defendants say when plaintiff was prevented from working they went to see the Family that had the judgment who told them to pay again for the same land.”

From the above, it is quite apparent that Defendants do in fact admit that the land they granted to Plaintiff was the subject of another action in which their grantors were held not to be owners of the land. 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."

In the instant case, the fact that the land sold to Plaintiff formed the subject matter of another litigation where the grantors of Defendants lost the said case was admitted by the Defendants, that fact was 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**

Issue 2 is 'whether or not the Plaintiff is entitled to the refund of his money with interest'. Plaintiff testified that he was in search of land to build a dwelling house when he met the Defendants. He stated that they entered into an Agreement and he leased a 70ft by 100ft land in exchange for his Toyota Corolla vehicle which cost GH¢45,000.00. He tendered the Agreement as *Exhibit A*. *Exhibit A* is an Agreement between the Plaintiff and 1st Defendant for a plot of land in exchange for a vehicle and a remainder of GH¢5,000.00 to be paid as final balance. Plaintiff tendered *Exhibit B*, which is an indenture as proof of documentation given to him by Defendants. I note however that *Exhibit B* is not stamped.

Section 32(6) of the **STAMP DUTY ACT, 2005 (ACT 689)** requires that an instrument executed in Ghana or outside Ghana relating to property in Ghana shall not be given in evidence or be available for any purpose unless it is stamped in accordance with the law in force at the time when it is first executed. The law, therefore, places an obligation on a party who seeks to rely on an instrument intended to be produced in Court as evidence to ensure that same is duly stamped and the appropriate duty paid. This is a mandatory requirement which cannot be derogated from.

It was held in the case of **THOMPSON V. TOTAL GHANA [2011] 34 GMJ 16 SC** thus:

> *'If inadmissible evidence has been received (whether with or without objection), it is the duty of the judge to reject it when giving judgment, and if he has not done so, it will be rejected on appeal, as it is the duty of courts to arrive at their decision upon legal evidence only.'*
>
> (*See also* ***NARTEY v. MECHANICAL LLOYD ASSEMBLY PLANT LIMITED [1987-88] 2 GLR 314***)

On the strength of Act 689 and the judicial decisions cited above, I find that the said *Exhibit B* is inadmissible in evidence to prove the averments of the Plaintiff; same shall thus be disregarded.

I note from the Statement of Defence that 1st Defendant admits owning the land in question before he sold same to the Plaintiff and an Agreement was signed between them. During cross examination of Plaintiff by counsel for Defendants the following ensued:

> "**Q:** The 1st Defendant paid you GH¢25,000 is that not the case
> **A:** No. It is GH¢20,000"

Here, Plaintiff admits that he has received an amount of GH¢20,000.00 from the 1st Defendant.

The Supreme Court stated in the case of **DON ACKAH VRS PERGAH TRANSPORT [2011] 31 GMJ 174** as follows:

> *'It is a basic principle of the law of 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. 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 probable than its non-existence'.

I find that from the evidence, Plaintiff has established that though his claim is for an amount of GH¢45,000.00, he has indeed received a refund of GH¢20,000.00 from the 1st Defendant. In view of this evidence, it would therefore be most unjust to hold that Plaintiff is entitled to a refund of an amount of GH¢45,000.00. On the issue of interest, I am unable to find from the pleadings and evidence exactly when the Agreement was entered into between the Parties and exactly when the contract sum fell due. Therefore, I find that Plaintiff has failed to produce evidence before this court as to why interest should run on the amount claimed from 9th September, 2017 till date of final payment. This notwithstanding, it has been held in **UNILIVER GHANA LTD VRS KAMA HEALTH SERVICES LTD [2013-2014] 2 SCGLR 861** that 'interest payment follows failure of a contract under which payment has been made, as a form of damages for breach of contract.' Having found that Plaintiff parted with money under a contract with the Defendants, I find that he is entitled to interest. However, in the absence of evidence of a justification as to why interest should run from 9th September, 2017, I shall deem the date the action was instituted as the date on which interest began to run. Plaintiff's claim therefore succeeds in part. Judgment is entered in favour of Plaintiff against the Defendants as follows:

1. Plaintiff is to recover an amount of GH¢25,000.00 from Defendants.
2. Plaintiff is to recover interest on the amount of GH¢25,000.00 at the prevailing interest rate from 10th September, 2018 till date of final payment.

3. Costs of GH¢3,000.00 is awarded in favour of Plaintiff against Defendants.

H/H ENID MARFUL-SAU

CIRCUIT JUDGE

AMASAMAN