

**IN THE CIRCUIT COURT HELD IN ACCRA ON 18<sup>TH</sup> DAY OF MAY, 2023 BEFORE  
HIS HONOUR SAMUEL BRIGHT ACQUAH, CIRCUIT COURT JUDGE**

**SUIT NO. C11/81/2020**

**PASTOR JOE DARKO FRIMPONG  
H/NO. A 155/5, AKWEIBI  
ACCRA**

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**PLAINTIFF**

**VRS**

**ALHAJI SITA MUNKAILA  
DANSOMAN, ACCRA**

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**DEFENDANT**

**COUNSEL FOR PLAINTIFF – DORA OCQUAYE NORTEY ESQ.  
COUNSEL FOR DEFENDANT – CHRISTIAN LEBRECHT MALM-HESSE**

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**FINAL JUDGMENT**

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**PLAINTIFF'S WRIT OF SUMMONS**

- i. An order for specific performance directed at defendant to release the land with the structure thereon, the subject matter of this suit to the plaintiff.
- ii. An order compelling the defendant to assign the land in dispute to the plaintiff.
- iii. An order of perpetual injunction restraining the defendant, his agents, assigns and licensees from going into the land the subject matter of the dispute.
- iv. Damages for breach of contract
- v. Cost including legal fees.

**DEFENDANT'S COUNTERCLAIM**

- a) A declaration that plaintiff breached the contract between himself and the defendant.
- b) A declaration that the contract between the parties is discharged.
- c) An order to the defendant to refund Gh¢20,000 to the plaintiff at the prevailing commercial rate.
- d) An order for general damages for the breach of contract against the plaintiff.
- e) Cost.

f) Any other reliefs that this court deem fit.

### PLAINTIFF'S CASE

Plaintiff is claiming he bought a vacant parcel of land from one Patricia Dwomo in which plaintiff made full payment to his grantor, but was not allowed possession by his grantor with simple reason that her husband is not in favour of the sale of the land. Plaintiff then caused the arrest of his grantor and defendant came in to bail her, and the defendant promised the plaintiff that he was going to use his own land to replace the disputed land sold to the plaintiff.

It is also the case of the plaintiff that on visiting the land to be used for the replacement with the defendant, he saw a two bed-room uncompleted structure thereon, and when he enquired from the defendant, he said he owned the structure. Two months later when defendant returned to the land he saw the structure being roofed, which upon enquiry, defendant told me he roofed same. The parties (plaintiff and defendant) then agreed that all developments on the land should be seized where plaintiff made a payment of Gh¢4,300 as a refund to the defendant for the cost incurred on the structure. Defendant continued to develop the structure till plaintiff agreed to pay Gh¢15,000 for all the cost incurred on the land.

Plaintiff then made another attempt to process the land and this time round defendant for him he has been served and the matter was in court. Plaintiff later paid another Gh¢1000 to the defendant to defray the cost incurred in court trial which he won. It is also the case of the plaintiff that, after all these payments he was not allowed possession, and the story this time is that defendant says he was going to sell the land at Gh¢40,000.

As a result of this misunderstanding, the parties (Plaintiff and defendant) went to one Mr. Sowah to assist them to settle the matter. At the said meeting according to the plaintiff, defendant proposed Gh¢40,000 whilst the plaintiff also proposed Gh¢10,000 and went ahead to pay Gh¢4,000 which he was issued with a receipt. Defendant insisted he was not going to take anything below Gh¢30,000 before releasing the land to the plaintiff, hence the suit.

### **DEFENDANT'S CASE**

Defendant avers he is not a party to the transaction between plaintiff and that of Patricia Dwomo and that he was only called by the Husband of Patricia Dwomo to bail her when she was arrested by the police. So when defendant became aware of the dispute, he proposed to the plaintiff that he had a plot of land with a house thereon at Ablekuma, the land also walled with toilet, electricity, borehole and will sell it to plaintiff at Gh¢60,000. The defendant says at no particular time did he show the documents in the land to plaintiff with the intention for replacement, but rather to sell the house and the land to the plaintiff.

It is also the case of the defendant that the Gh¢15,000 paid by the plaintiff to the defendant is in relation to part payment of the Gh¢60,000 to sell the house to the plaintiff. But shortly after that plaintiff began to re-negotiate for the price by making counter offer which defendant opposed or refused.

As a result of the disagreement over the purchase price, the plaintiff wooed the defendant to have a meeting with one Francis Adjetey Sowah who will serve as a mediator and help to resolve the empress between them. At the said meeting plaintiff made further payment of Gh¢4000 through Mr. Sowah, making sum total of Gh¢20,000 being money paid by the plaintiff for the purchase of the land.

### **ISSUE**

The only issue left for the court for determination is; what offer did the defendant make to the plaintiff, an offer for replacement or an offer for outright sale.

**EVIDENCE ADDUCED BY THE PLAINTIFF TO PROVE HIS CASE**

- (a) Plaintiff exhibited an indenture and a yellow card on the land in dispute given to him by the defendant to show ownership of the land which defendant intended for replacement of the one plaintiff bought from one Patricia Dwomo.
- (b) Defendant also took plaintiff and two others to the disputed land where plaintiff saw a two bedroom structure on it which defendant claims ownership when asked by the plaintiff. That defendant continued with development of the structure where the plaintiff stopped him and paid all the expenses incurred on the structure – Gh¢4,300. That defendant later claimed he had in total spent Gh¢5,000 on the structure which the plaintiff also paid.
- (c) As the misunderstanding still ensued, defendant took plaintiff to one Mr. Francis Adjetei Sowah for amicable resolution of the impasse. At the meeting defendant proposed of selling the disputed land to defendant at Gh¢40,000 which plaintiff paid GH¢40,000. Another Gh¢4000 was paid by the plaintiff to that Sowah which a receipt was prepared for him
- (d) Exhibit B was also tendered by the plaintiff which was captioned Outright Disposal which in part stated:  
**“IN REPLACEMENT OF A PORTION OF LAND HE (MR JOE DARKO FRIMPONG) BOUGHT FROM MADAM PATRICIA DWOMO ---** This documents signed by both plaintiff and defendant only – 14<sup>th</sup> August, 2015.

**EVIDENCE BY THE DEFENDANT**

He insisted the land was for sale but not for replacement. Mr. Sowah the mediator also confirmed before the court that the matter that came before him was for a sale but no definite price was arrived at, between Gh¢60,000 and Gh¢40,000.

## LEGAL ANALYSIS

### **EVIDENCE DECREE 1975 NRCD 323**

Section 10 (1) – 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.

10(2) – A burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact by a preponderance of probabilities or ----

Section 11(1) – For the purpose 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.

Section 11(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.

Section 12(1) – Except as otherwise provided by law, the burden of persuasion requires a proof by a preponderance of probabilities.

Section 12(2) Preponderance of probabilities means that the degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence.

Section 14 – Except as otherwise provided by law; unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.

**IN RE ELECTION PETITION, AKUFO ADDO, BAWUMIA & OBETSEBI LAMPTEY  
(THE AKUFO ADDO'S CASE) (NO. 4) (2013) SCGLR (SPECIAL EDITION) 73 – PER  
GBADEGBE JSC**

“As the case herein sought evidence placed before us, our task in keeping with a long and settled line of authorities is to reach our decision on all the evidence on a balance of probabilities – see sections 10, 11, 12, 13, and 14 of Evidence Act, NRCD 323 of 1975. This being a civil case the petitioners bear the burden leading evidence on a balance of probabilities.

At this juncture, I venture to say that the effect of the Acts in which the petitioners rely to sustain their action is the one that turns on a central consideration of applicable statutory provisions and so stated it would appear that our decision turn not solely on facts but a mixed questions of facts and law. Our courts have over the years determined several cases in which decisions are based on a consideration of mixed questions of facts and law and as such this case does not present to us a challenge of that is historical in terms of the evolution of evidence ---

**ACKAH V PEGAH TRANSPORT LTD & OTHERS (2010) SCGLR 728 @ 736 –  
SOPHIA ADINYIRA JSC** – 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 facts in issue that has the quality of credibility, short of which his claim will fail. The method of producing evidence as raised and it includes, testimonies of the parties and material witnesses, admissible hearsay, documentary and they (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 of tribunal of fact such as jury. It is a trite law that matters that a 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 than its non-existence. This is the requirement of the law on evidence under section 10 and 11 of the Evidence Decree.

**NATIONAL DEMOCRATIC CONGRESS V ELECTORAL COMMISSION (2001-2002) 2 GLR @ 340 – AMPIAH JSC.**

---of course, generally the plaintiff who seeks the declaration or claim and who must succeed on the strength of his own case and not on the weakness of the defendant, must fail in such a situation.

**SARFO – DOMFEH (1977) I GLR 282 @ 295**

- The burden of proof in a civil trial is by preponderance of probabilities.

Zabrama v Segbefia (1991) 2GLR 221

A person who makes an averment or assertion which is denied by his opponent was under the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which the facts he asserts can properly and safely be inferred.

**DUAH V YORKWAA (1993-94) GLR 2 17**

It is a settled principle of law of evidence that if an oral evidence conflicts with documentary evidence which is authentic, then the documentary evidence ought to be preferred over and above the oral evidence.

**HAPPEE V HAPPEE (1971) I GLR 104**

A cross petition like a Counterclaim is, in my view, to all intends and purposes an action by the respondent against the petitioner. It is an independent and separate action ---the true mode of considering the claim and counterclaim is that they are

wholly independent suits which for convenience of procedure, are combined in one action.

**MADINA SHOPPING MALL ASSOCIATION V ROSE HILL GH LTD (2012) 39 MLRG 81 (SC)** – To be of good contract there must be a concluded bargain, and a concluded contract is the one which settles everything that is necessary to be settled and leaves nothing to be settled by agreement between the parties ---if there is an essential term which has yet to be agreed and there is no express provision for, its solution, the result in point is that there is no binding contract.

Acceptance of an offer must be absolute and unqualified – **DEGBE V NSIAH AND ANOR (1984-86) 1 GLR 545 –CA**

The court will first of all consider the main writ filed by the plaintiff in this case, in this the burden is on the plaintiff to prove his case that the offer he accepted from the defendant is exchange of the disputed land but not for sale at a cost of GH¢60,000. However, when it comes to the counterclaim, then the burden goes to the defendant to also prove his case that the promise made by him to the plaintiff was for sale and the payment (GH¢20,000) made to him by the plaintiff was part payment of the sale of GH¢60,000 as claimed by the defendant in this case.

There are two documents which come into focus and these are (i) the indenture on the land and a yellow card that plaintiff is claiming was given to him by the defendant to show ownership. This documents, during the cross examination, the defendant said that he never gave those documents to the plaintiff but he only gave them to the police when he was called upon to bail Patricia Dwomo.

On critical analysis, it is very unlikely for the police to give the original document (Exhibit A) to the plaintiff, if anything they will only give the photocopy of it but not the



original. These documents (Exhibit A) also appeared in Exhibit B, the supposed agreement between the parties which partly states;

### EXHIBIT B

I, Alhaji Sittah Mukaila of House No. (H/No. B916/32, Kwashiebu) in Hong Kong Area of Accra on this day, 14<sup>th</sup> August, 2015 has given my land at Ablekuma, with a true two (2) original copies of the indenture duly signed and registered at the Lands Commission with receipts and the Yellow Cards registered and issued on 7<sup>th</sup> day of April, 2008 to Mr. Joe Darko Frimpong of Dansoman ----

This Exhibit B even though contested by the counsel for defendant (the court will deal with Exhibit B in details later), tried to corroborated the plaintiff's assertion that it was the defendant who wholeheartedly and without any duress or fraud gave the Exhibit A, the indenture to the plaintiff.

At least for now, plaintiff tried to corroborate his claim but defendant could not call witness to testify that, the indenture and the Yellow Card were given to the plaintiff by the police, when the burden of proof shifted to the defendant to do so – A corroborated evidence is preferable non- corroborated evidence.

### EXHIBIT 'B'

This document is titled **OUTRIGHT DISPOSAL** and was exhibited by the plaintiff to prove his case that the house was for replacement but not for sale as defendant is trying to tell the court.

Here, the evidence of the Investigator Detective Inspector Godwin Kasu became very material just to know what really transpired at the police station for which the banter between the plaintiff and Patricia Dwomo ended. The defendant then prayed to the

court to subpoena Detective Inspector Godwin Kasu and was granted. When Kasu was under cross examination the following ensued.

Q. You have stated before this court that in your presence the defendant has stated that he will give the plaintiff a land to replace the land he had bought from him

A. Yes

Q. What was the terms of bail when defendant came in

A. To give an alternative land to the plaintiff so that the case will not go to court.

Q. Look at Exhibit 'B', the contents of Exhibit 'B' does it correspond with the promise made by defendant for which reason you did not take it to court.

A. Yes

However Investigator Kasu denied being a witness to Exhibit 'B' for which his name appeared. Counsel for defendant, based on this denial, prayed to the court not to admit Exhibit 'B' Kasu's name was just mentioned as being present when the document was signed, but Kasu has no column for his signature for which he contested that he did not sign the document, the only denial is to the effect that he was not present, but the contends he was aware of and that abated the proceedings at the police station.

However, the most significant thing was for the defendant to deny it, meaning he signed the Exhibit 'B', and the prayer to reject Exhibit 'B' in evidence by counsel for defendant is thereby refused by the court. Exhibit 'B' tells it all, defendant handed over two original copies of indenture and the yellow card to the plaintiff for replacement to the plaintiff not to send Patricia Dwomo to court - This is enough consideration to the plaintiff.

The defendant also dragged plaintiff to one Mr. Francis Adjetej to mediate. At the meeting, the defendant made it clear to the mediator that the land was for sale and that

the only difference between them was the price, as the defendant is claiming Gh¢60,000, the plaintiff is also talking of Gh¢40,000, hence could not conclude.

Before the plaintiff appointed Sowah as a mediator, Exhibit 'B' was already in existence, so the court thinks it is rather the defendant who was trying to make a fresh offer, from replacement to sale for which plaintiff refused, but not the vice versa as the defendant wanted this court to believe.

The Gh¢20,000 paid by plaintiff to defendant was not denied, but the part of departure on the part of defendant was that, it was a part payment of the sale price of Gh¢60,000 as the plaintiff was also claiming it was the cost incurred on the work done on the structure on the land.

It was too late to appear before Sowah since Exhibit 'B' was in existence before going to Sowah. Exhibit B could only be mutual agreement between the parties but not unilaterally by any of the parties.

### CONCLUSIONS

Considering the evidence adduced by the parties, the evidence by the plaintiff is more reasonably probable than that of the defendant, and its existence is more reasonable than its non-existence. Also documentary evidence by the plaintiff is more preferable to the oral evidence led by the defendant.

Exhibit A, the Indenture was given to the plaintiff by the defendant to effect the promise to replace the land with the earlier one plaintiff contracted with Patricia Dwomo.

The Exhibit 'B' is also a good document admitted in evidence by the court and therefore the contents must be fully respected by both parties. It also concluded that, the initial intention of the defendant was to replace the land but later changed his mind to sell

same to the plaintiff, hence defendant clearly sent plaintiff to Sowah with the intention to change the face of the offer earlier made so that he Sowah can witness for him in case of any legal tussle.

All the monies paid by plaintiff (Gh¢20,000) was intended to be the cost of the expenditure on the structure thereon but not to advance payment with the intention to buy the disputed land. There is a valid contract between the two parties for a replacement but not to sell the land to the plaintiff. Plaintiff abated the court process for only one reason, he is gotten a new land to replace the one he bought from Patricia Dwomo.

Plaintiff reliefs granted, defendant's counterclaim dismissed.

- (1) Specific performance directed at the defendant to release the disputed land at Ablekuma to the plaintiff, the subject matter of the dispute.
- (2) Defendant is therefore ordered by the court to transfer the disputed land situate at Ablekuma to the plaintiff.
- (3) The Defendant, his agents, assigns, laboureres, licensees are perpetually injuncted and restrained from dealing with the land the subject matter of the dispute in any manner.
- (4) The court refused to award damages because it was not particularized
- (5) Gh¢10,000 cost awarded in favour of the plaintiff.
- (6) Plaintiff should pay any balance left to the Defendant for the cost of the structure found on the disputed land for which he has already paid GH¢20,000.00.

**DECISION:**

**JUDGMENT IN FAVOUR OF THE PLAINTIFF.**

**(SGD)**

**H/H. SAMUEL BRIGHT ACQUAH  
CIRCUIT COURT JUDGE**