

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON THURSDAY THE 23RD DAY OF FEBRUARY, 2023 BEFORE HER HONOUR MAWUSI BEDJRAH SITTING AS A RELIEVING JUDGE DELIVERING ON BEHALF OF HER HONOUR ENID MARFUL-SAU, CIRCUIT COURT JUDGES

SUIT NO:C2/06/2022

NANA KWABENA OWUSU
HSE NO. 69B, DAMAS ESTATE
KUNTUNSE-SATELITE ...
PLAINTIFF

VRS.

1.EQUITABLE-MA VENTURES LTD
2.MIKAIL ABUBAKARI
3.ABDUL QUABIR
4.HUSSEIN GIBRIL-BAKARI ...
DEFENDANT

JUDGMENT

By a Writ of Summons and Statement of Claim filed on 25th November, 2021

Plaintiff claims against Defendants the following reliefs:

- a) “Declaration that the Defendant fraudulently misrepresented to Plaintiff that it would sell unencumbered land to the Plaintiff;
- b) An Order of this Court piercing the veil of incorporation to hold the 2nd, 3rd and 4th Defendants personally liable to the Plaintiff;
- c) Recovery of the sum of Forty-Two Thousand Ghana Cedis from Defendants;
- d) Interest on the said amount of Forty-Two Thousand Ghana Cedis from November, 2020 until time of final payment;
- e) Damages for breach of agreement;
- f) Cost including legal fees.”

It is the case of Plaintiff that 1st Defendant fraudulently misrepresented to him that he would sell to him land that is not encumbered when he knew he had no such land and he relied on the said misrepresentation to his detriment. He says that sometime in the year 2018, he was introduced to the 1st Defendant which was at the time offering land for sale in a promotion. According to him, he purchased a plot of land for GH¢10,000.00 and the Defendant initially gave him land at Papase near Kotoku but when he took his Surveyor to the land, he was informed that the land belonged to someone. He says that when he informed Defendant, he conceded and offered to change the land for him which he obliged. The Defendant then sent him to a land at Kuntunse but indicated that the price of the new land was GH¢35,000.00 so Plaintiff had to pay a top up of GH¢25,000.00. Plaintiff however says that one Michael Boakye who had paid an amount of GH¢5,000.00 to the Defendant lost interest in transacting with Defendant so he decided to transfer the money he paid to the Plaintiff's account with the Defendant which meant that Plaintiff had to top up with an amount of GH¢20,000.00 instead of the GH¢25,000.00.

Plaintiff says that he paid the top up and an amount of GH¢2,000.00 for a Site Plan to be prepared for him which was prepared and handed to him. According to Plaintiff, he bought a trip of sand and deposited at the site and not long after someone came to lay adverse claim to the land which he reported to the Defendant. He says that again Defendant conceded and offered to replace the land, so Defendant took him to a land Pobikofe where he paid another GH¢1,500.00 for preparation of site plan which was done. He says that upon investigations, he found that the land at Pobikofe was also encumbered therefore he indicated to Defendant that he was no longer interested in purchasing land from them so all monies paid should be refunded. He says that Defendant agreed to refund the money but failed to do so since November, 2020. He says that as a result of the fraudulent

misrepresentation by 1st Defendant, the veil of incorporation must be pierced to hold the 2nd Defendant, a sole shareholder of 1st Defendant and the 3rd and 4th Defendants, Directors of 1st Defendant personally liable to Plaintiff.

Defendants were served with the Writ of Summons and Statement of Claim by means of substituted service on 21st February, 2022. On 6th April, 2022, Counsel for Plaintiff moved an application for Judgment in default of appearance which was granted on reliefs 'c' and 'd'. As relief 'a' is for a declaration, the case was adjourned for Plaintiff to prove his case. The issues which will be considered in this decision will thus be in a bid to determine reliefs 'a', 'b' and 'e'.

I note from the record that Defendants were served with all subsequent processes as well as hearing notices through substituted service; they however never appeared before the court. Plaintiff testified on 5th October, 2022.

I shall first consider the issue of fraudulent misrepresentation raised by relief 'a'. Plaintiff testified that 1st Defendant fraudulently misrepresented to him that it will sell land to him which was not encumbered when Defendant knew it had no such land and he believed and relied on the fraudulent misrepresentation to his detriment.

Fraudulent misrepresentation was defined by Lord Herschell in the case of **DERRY v. PEEK (1889)14 APP CAS 337** as follows:

"First, in order to sustain an action of deceit, there must be proof of fraud and nothing more short of that will suffice. Secondly, fraud is proved when it is shewn that a false representation has been made (1) knowingly; or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false"

Also, in the case of **S. A. TURQUI & BROS v. DAHABIEH [1987-88] 2 GLR 486** it was held as follows:

“A charge of fraud in law could be taken to be properly made against a party who knowingly or recklessly whether by conduct or words used unfair, wrongful or unlawful means to obtain a material advantage to the detriment of another party...”

The undisputed evidence before this court is that Plaintiff entered into an agreement with the 1st Defendant to purchase land which turned out to be encumbered and was therefore changed twice but to no avail. Plaintiff tendered *Exhibits B and C series* which are receipts issued to him by 1st Defendant for the payment of land which it turned out that 1st Defendant did not own. When Plaintiff realized 1st Defendant owned none of the lands sold to him, he rescinded the contract and sought a refund of the purchase price which was never repaid to him.

I therefore find from the evidence before me that Plaintiff was induced to purchase land from 1st Defendant at 1st Defendant’s fraudulent misrepresentation.

I shall now turn to relief ‘b’ which borders on piercing the veil of incorporation. It is a trite principle of law that the corporate barrier between the company and the persons who constitute or run it may be lifted under certain circumstances. These situations may be in the light of the dictates of justice, public policy or where the Companies Act so requires.

***See. MORKOR v. KUMA [1998-1999] SCGLR 620 at 632,
SALOMON v. SALOMON [1895-9] ALL ER 33.***

Now, the law which governs companies formed within Ghana is the Companies Act, 2019 (Act 992). By Section 302 of Act 992, every reference to “Court” means the High Court. Therefore, the Act clearly ousts the jurisdiction of the Circuit Court in matters affecting companies formed within

Ghana. On this basis, I find that this court is not clothed with the requisite jurisdiction to determine the issue raised by relief 'b' and I so hold.

Having made a fraudulent misrepresentation to Plaintiff, 1st Defendant is bound to make reparation for damages flowing from the inducement which caused Plaintiff to purchase the land. I shall therefore award Five Thousand Ghana Cedis (GH¢5,000.00) as general damages in favour of Plaintiff against 1st Defendant.

As already indicated, this court on 6th April, 2022 granted final Judgment pursuant to an application under order 10 of the rules of court on the liquidated reliefs. Order 10 rule 8 provides as follows:

“Rule 8—Setting Aside Judgment

The Court may, on such terms as it thinks fit, set aside or vary any judgment entered in pursuance of this Order.”

Having found by this decision that Plaintiff contracted with the 1st Defendant and having further held that this court does not have jurisdiction to determine issues bordering on the Companies Act, I shall proceed to vary the judgment entered on 6th April, 2022 as regards reliefs 'c' and 'd' as follows:

1. Plaintiff is to recover the sum of Forty-Two Thousand Ghana Cedis (GH¢42,000.00) from the 1st Defendant.
2. Plaintiff is to recover interest on the sum of Forty-Two Thousand Ghana Cedis (GH¢42,000.00) from 1st Defendant beginning November, 2020 till date of final payment.

Costs of Three Thousand Ghana Cedis (GH¢3,000.00) is awarded in favour of Plaintiff against 1st Defendant.

SGD

H/H ENID MARFUL-SAU

CIRCUIT JUDGE

AMASAMAN