

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON WEDNESDAY, 5<sup>TH</sup> JULY, 2023

**SUIT NO. C1/07/22**

**KWAME BOAKYE - PLAINTIFF**

**SUING PER HIS LAWFUL ATTORNEY**

**PATRICK DUGBARTEY DORNOR**

**VRS**

**VICTORIA AMMAH - 1<sup>ST</sup> DEFENDANT**

**TEMA DEVELOPMENT COMPANY - 2<sup>ND</sup> DEFENDANT**

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**JUDGMENT**  
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On the 19<sup>th</sup> day of November, 2021, the plaintiff issued a writ of summons with an attached statement of claim seeking the reliefs of;

- a) A declaration of title to all that piece or parcel of land described in the schedule herein
- b) An order of the court directing the 1<sup>st</sup> defendant to transfer the indenture and conveyance for all that piece or parcel of land described herein to the Plaintiff; or in the alternative,
- c) An order of the court directing the 2<sup>nd</sup> defendant to register the interest of the plaintiff in the said land and cause title to be issued to the plaintiff

- d) Perpetual injunction restraining the 1<sup>st</sup> defendant, her agents, privies, assigns and all persons deriving their title from them from entering, developing, constructing or meddling with the land.

The plaintiff in his statement of claim describes himself as the purchaser of a TDC plot No. C/5 situated at Comm. 18 Tema. He described the 1<sup>st</sup> defendant as the vendor of the subject matter who sold the said land to him and 2<sup>nd</sup> defendant as a corporation responsible for the planning, development and management of the Tema Acquisition Area of which the subject matter of the suit falls. That 2<sup>nd</sup> defendant is also the corporation responsible for transfer of title of lands acquired by the parties in the Tema area.

The schedule of the land to which the plaintiff seeks a declaration of title is contained in his statement of claim and reads “all that piece or parcel of land situate, lying and being at Comm.18, Tema in the Greater Accra Region of the Republic of Ghana, containing an approximate area of 0.11 ac. More or less and known as Plot No. C/5 Comm. 18 Tema bounded on the North measuring 60 feet more or less; on the West by 80 feet more or less; on the East by 60 feet more or less; on the South by measuring 80 more or less which said piece or parcel of land is more particularly described and delineated on the site plan.”

Although both defendants were served with the writ of summons and statement of claim; 1<sup>st</sup> defendant by substituted service and personally on the 2<sup>nd</sup> defendant, it is only the 2<sup>nd</sup> defendant who entered appearance to this action on the 8<sup>th</sup> of December, 2021. The 1<sup>st</sup> defendant did not enter appearance or file any process throughout the pendency of this case despite being served with all processes including the witness statement of the plaintiff.

2<sup>nd</sup> defendant filed its statement of defence on the 8<sup>th</sup> of December, 2021 and admitted that the subject matter is located at community 18 and measures 0.11 acres. That on 14<sup>th</sup> October, 2009, it received a letter from the solicitor of the plaintiff on the progress of their report for transfer of the property to the plaintiff and in response, it requested the plaintiff to submit original copies of his documents as there was no trace of same being submitted.

2<sup>nd</sup> defendant also admitted the payment of ground rent on the property and contended that it has no objection if this court is minded to grant the reliefs as prayed for by the plaintiff.

Manifestly evidence is the fact that the 1<sup>st</sup> defendant by her actions did not wish for the court to hear her side of the story or to confront the plaintiff as mandated by the rules of natural justice; specifically, *audi alteram partem*.

Dotse JSC speaking for the Supreme Court in the case of ***Julius Sylvester Bortey Alabi v. Paresh & 2 Others*** [2018] 120 GMJ 1 at p. 11 held: “We are therefore of the view that, if a party voluntarily and deliberately fails and or refuses to attend a court of competent jurisdiction,) to prosecute a claim against him, he cannot complain that he was not given a fair hearing or that there was a breach of natural justice. The Defendants must be respected for making such a choice, but they must not be allowed to get away with it”.

The Court of Appeal also in the case of ***Ghana Consolidated Diamonds Ltd. v. Tantuo*** [2001-2002] 2 GLR 150 held at holding 4: “A party who was aware of the hearing of a case but chose to stay away out of his own decision could not, if the judgment went against him complain

*that he was not given a hearing". See also the case of Accra Hearts of Oak Sporting Club v. Ghana Football Association [1982-83] GLR 111 at page 117.*

*Order 13 rule 6 (1) and (2) of the High Court (Civil Procedure) Rules, 2004 (C.I.47) provide that;*

(1) "where the plaintiff makes against the defendant a claim of a description not mentioned in rules 1 to 4 and the defendant fails to file a defence to the claim, the plaintiff may after the expiration of the period fixed by these Rules for filing the defence, apply to the Court for judgment.

(2) On the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to by the statement of claim of the plaintiff. See also the decision of the Supreme Court speaking through Gbadge JSC in the case of the **Republic v. High Court, Accra; Ex parte Osafo [2011] 2 SCGLR 966 at 972.**

In reliance on the rules, the plaintiff filed an application for interlocutory judgment in default of appearance against the 1<sup>st</sup> defendant. On the 19<sup>th</sup> day of October, 2022, I granted the application for interlocutory judgment in default of appearance in favour of the plaintiff against the 1<sup>st</sup> defendant on the reliefs endorsed on his writ of summons and statement of claim.

The matter was adjourned for him to lead evidence in proof of his claim. Counsel for 2<sup>nd</sup> defendants indicated to the court that they were not privy to the agreement between the parties and so they would all but observe the proceedings and would not cross examine the plaintiff attorney.

## **THE CASE OF THE PLAINTIFF**

The evidence of the plaintiff is that sometime in the year 1994, whilst he was outside the jurisdiction, he entered into negotiations with the 1<sup>st</sup> defendant through his sister and her husband for the purchase of 1<sup>st</sup> defendant's serviced plot of land located at Community, 18, Lashibi. The said land had its grantors being the 2<sup>nd</sup> defendant.

After due diligence confirmed the plot of land to belong to the 1<sup>st</sup> defendant, he commenced payment of the purchase price. That after part payment, 1<sup>st</sup> defendant prepared a site plan in his name. He tendered in evidence the receipts of payments as EXHIBIT A series and the said site plan as EXHIBIT B.

That he returned to Ghana in 1995 for the 1<sup>st</sup> defendant to transfer her title in the property to him. They could not go to the offices of the 2<sup>nd</sup> defendant to effect the transfer. A year later, he paid the sum of Ghs 800 to the 1<sup>st</sup> defendant upon her request as costs which she would incur in the transfer of ownership. Notwithstanding this, the 1<sup>st</sup> defendant never did the said transfer.

That upon his persistent demands for a transfer, 1<sup>st</sup> defendant prepared a handwritten letter of her intention to transfer the property to him dated the 28<sup>th</sup> day of December, 2000. He tendered same in evidence as EXHIBIT C.

That he has since developed the land and connected electricity and water to same in his name. He tendered in evidence pictures of the said development as well as copies of water and electricity payments as EXHIBIT D and E series. That he has been paying ground rent to TDC albeit in the name of the 1<sup>st</sup> defendant and has continued to enjoy peaceful possession of the property. He tendered in evidence EXHIBIT F series as copies of the receipt of payment and EXHIBIT G as the current state of the property.

That a search at TDC indicated that the property is still registered in the name of the 1<sup>st</sup> defendant and his belief is that this limits his rights to the property hence this action.

## CONSIDERATION BY COURT

The non appearance of 1<sup>st</sup> defendant in court and the decision of the 2<sup>nd</sup> defendant to only observe proceedings does not mean “nirvana” for the plaintiff. The inaction of the defendants in court does not automatically guarantee that judgment would be entered for the plaintiff. In civil cases, the burden of proof required for a party to succeed in a claim is that of a balance of probabilities. *Section 12 (1) and (2) of the Evidence Act, 1975 (Act 323)* provides that except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities. See the case of *Bakers Wood v. Nana Fitz [2007-2008] SCGLR*

Preponderance of probabilities means that 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 it's non-existence. The burden of persuasion remains on the petitioner and it is only after he has established the existence of his case that same would shift unto the respondent to lead sufficient evidence to avoid a ruling against her.

Plaintiff still very much bears the onus of producing evidence that would convince the court on a balance of probabilities that he is entitled to the reliefs which he seeks. In the case of *Gifty Avadzinu v. Theresa Nioone [2010] 26 MLRG 105 @ 108*, their lordships held “It is trite that the standard of proof in all civil actions without exception is proof by preponderance of probabilities, having regard to section 11 (4) and 12 of the Evidence Act. This means that a successful party must show that his claim is more probable than the other.”

In discharging this burden, the plaintiff must not merely assert and repeat his assertions on oath, he must lead cogent or relevant evidence of facts and circumstances in proof of his claim. Such cogent or relevant evidence was explained in the case of *Ackah v. Pergah Transport Ltd (2010) SCGLR 728*, as *'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 facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary evidence and things (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'' See also the decision of the Supreme Court in the case of *Sarkodie v. F.K.A CO. LTD [2009] SCGLR 65*

Plaintiff attorney testified and tendered in evidence various documentary evidence as proof. In the case of *Adei and Anor vs. Robertson and Anor [ 2016] 101 GMJ 160 Pwamang JSC* stated that '' the law is settled that unless a document in evidence is invalid on the grounds of breach of a statute or has been shown not to be authentic, a court of law would consider it favourably in preference to inconsistent oral testimony''. See also the case *of YORKWA v DUA [1992-93] GBR 278 CA*, in which the Court of Appeal made it clear that where there exists (a) documentary evidence preference must be given to it than oral evidence provided the documentary evidence is found to be authentic. The court at page 293 said:

*"Whenever there is in existence a written document and oral evidence over a transaction, the practice in this court is to consider both the oral and the documentary evidence, especially where the documentary evidence is found to be authentic and the oral evidence conflicting"*

EXHIBIT A series are handwritten receipts dated the 9<sup>th</sup> day of September, 1994, 24<sup>th</sup> day of October, 1994 and 10<sup>th</sup> May, 1994. In same, one Victoria Ammah acknowledges the collection of various sums ranging from one million, five hundred and fifty cedis, seven hundred thousand cedis and one million cedis from Comfort Abrokwah and Mr. Botse Baidoo as payment for a serviced plot at community 18, Lashibi.

The plaintiff in his evidence in chief mentions the said Comfort Abrokwah and Andrew Baidoo as being his sister and brother in law who acted on his behalf in his transaction with the 1<sup>st</sup> defendant in paragraph 2 and 5 of his evidence in chief.

EXHIBIT B is a site plan in the name of the plaintiff whilst EXHIBIT C is a letter of transfer signed by Victoria Ammah. In same, she indicates that she wishes to transfer her serviced plot at Community 18, Lashibi to Mr. Amos Kwame Boakye.

EXHIBIT D series are pictures and E are photographs of the building and Ghana Water company receipts as well as Ghana electricity company Ltd receipts. EXHIBIT E series are in the name of the plaintiff herein.

EXHIBIT F series are ground rent payments to the 2<sup>nd</sup> defendant for the year ending 6<sup>th</sup> January, 2016, 31<sup>st</sup> January, 2019, 9<sup>th</sup> May, 2019, the year ending 6<sup>th</sup> January, 2020 and the year ending 31<sup>st</sup> December, 2018. For EXHIBIT G, it depicts a bright green painted house which according to the plaintiff is the current state of the house.

I find the documentary evidence worthy of belief and without any contrary evidence, it is res ipsa as to the transaction between the parties. It shows that as at October, 1994, the plaintiff had paid the 1<sup>st</sup> defendant for the said parcel of land and the 1<sup>st</sup> defendant by EXHIBIT C which is dated the 28<sup>th</sup> day of December, 2001, although not addressed to anyone in particular, the 1<sup>st</sup> defendant indicated by name wished to transfer ownership



of the serviced plot at community 18, Lashibi to the plaintiff. A cursory look at the signatures of the 1<sup>st</sup> defendant on EXHIBIT A series and EXHIBIT C appear to be the same. The payment of ground rent to the 2<sup>nd</sup> defendant in respect of the property have continued and the plaintiff's EXHIBIT F series are as recent as the year 2020.

That the plaintiff has since developed the property and been in peaceful enjoyment of same from 1995 till now is also evidenced by the D and G. In all, from the date of payment by the plaintiff in 1994 till the institution of this action in 2021, the plaintiff has had peaceful occupation and possession of the land for more than 17 years. The period of peaceful possession and occupation of the land by the building of a house which is a clear and manifest act of ownership and possession without any challenge, is sufficient for the plaintiff to be declared as the owner of the said property.

Accordingly, after a consideration of the entire evidence on record and relying particularly on the documentary evidence, I find on a balance of probabilities that the plaintiff has established the existence of his claim in my mind on a balance of probabilities.

Consequently, final judgment is hereby entered for him and he is hereby declared as having legally acquired the interest of the 1<sup>st</sup> defendant in 'all that piece or parcel of land situate, lying and being at Comm.18, Tema in the Greater Accra Region of the Republic of Ghana, containing an approximate area of 0.11 ac. More or less and known as Plot No. C/5 Comm. 18 Tema bounded on the North measuring 60 feet more or less; on the West by 80 feet more or less; on the East by 60 feet more or less; on the South by measuring 80 more or less which said piece or parcel of land is more particularly described and delineated on the site plan''.

The 1<sup>st</sup> defendant is hereby ordered to transfer the indenture and conveyance for all that piece or parcel of land described herein to the Plaintiff within thirty days from the date of judgment. In the alternative, it is hereby ordered that the 2<sup>nd</sup> defendant; TDC Development Company Limited transfer the said parcel of land with building thereon, into the name of the plaintiff within sixty days from the date of judgment. The 1<sup>st</sup> defendant, her agents, privies, assigns and all persons deriving their title from them are perpetually restrained from entering, developing, constructing or meddling with the land.

Costs of Ghs 5,000 is hereby awarded to the plaintiff against the 1<sup>st</sup> defendant.

(SGD)

**H/H BERTHA ANIAGYEI (MS)**

**(CIRCUIT COURT JUDGE)**

YAA BOATEMAA AMARH-KPENTY FOR JOHN DARKO FOR THE PLAINTIFF

NANA AKUA ASUBONTENG FOR FRANCES ACQUAYE FOR THE 2<sup>ND</sup>  
DEFENDANT