

**IN THE CIRCUIT COURT WEIJA-ACCRA BEFORE HIS HONOUR JAMES KOJOH BOTAH SITTING ON MONDAY THE 18<sup>TH</sup> DAY OF SEPTEMBER, 2023.**

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**SUIT NO. C1/22/2022**

**RASFORD NANA ADDO JNR ----- PLAINTIFF**

**VRS:**

**21<sup>ST</sup> CENTURY CONSTRUCTION LIMITED ----- DEFENDANT**

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**PARTIES – ABSENT**

**FELIX NANA OSEI FOR PLAINTIFF – PRESENT**

**GEOFFREY KOFI DOAGBOZIE FOR DEFENDANT – ABSENT**

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**JUDGMENT**

Per his Writ of Summons and Statement of Claim filed on 24-1-2022, the Plaintiff is claiming the following reliefs against the defendant:

- (1) A recovery of the amount of GH¢7,000.00 which is the purchase price for the plots of land;
- (2) Interest on the said sum from the 6<sup>th</sup> of September, 2010 to date of final payment;
- (3) Damages for breach of contract;
- (4) Special damages of GH¢48,723.40; and
- (5) Costs.

The defendant's company entered appearance through her lawyer Geoffrey Kofi Doagbodzie Esq., on 10<sup>th</sup> March 2022. Counsel for defendant filed a statement of defence for the defendant on 21<sup>st</sup> March, 2022.

## **THE ISSUES FOR TRIAL**

The following issues were set down for trial at the application for directions:

- (1) Whether or not the land sold to the Plaintiff by the defendant is encumbered;
- (2) Whether or not the Plaintiff has expended monies for the development of the land sold to him by the defendant; and
- (3) Whether or not the Plaintiff has had quiet enjoyment of the land sold to him by the defendant.

## **THE PLAINTIFF'S CASE**

The Plaintiff stated in his witness statement that in 2010 he purchased two (2) plots of land from the defendant's company at the price of GH¢7,000.00. The parties entered into a purchase agreement to that effect. The Plaintiff annexed the purchase agreement to his witness statement as Exhibit "C". Exhibit "A" and "B" also attached to the Plaintiff's Witness Statement are receipts issued to Plaintiff by defendant in respect of the land purchased by the Plaintiff. On 8<sup>th</sup> October 2010 the parties entered into a Deed of Assignment in respect of the land purchased by the Plaintiff from the defendant. This document is attached to the Plaintiff's Witness Statement as Exhibit "D."

The Plaintiff testified that he erected a fence wall on the land so as to secure it. Plaintiff said he also took steps to apply for a Land Title Certificate on 11<sup>th</sup> February, 2016. However, the Lands Commission rejected his application for registration of his document because of competing interests on the land. Exhibit "E" attached to Plaintiff's witness statement speaks to this fact. Plaintiff informed the Court that he notified the defendant about the developments and the defendant assured him that they will reallocate the plots of land to him. Exhibit "G" attached to Plaintiff's witness statement is the defendant's letter on the reallocation. The Plaintiff further informed the Court that the defendant has up to date failed to reallocate the plots to him. Furthermore, the development he made

on the land with his money were raised down by persons claiming ownership of the land. According to Plaintiff, he reported the matter to the Police. A search conducted by the Police on the land revealed that the defendant has mortgaged the land to NDK Financial services. The search results is attached to Plaintiff's Witness Statement as Exhibit "J." Plaintiff told the Court that he paid for the land and erected the fence wall before the defendant registered the mortgage on the land on 25<sup>th</sup> July 2013.

Plaintiff intimated to the Court that he has incurred expenditure on the land and that he has suffered damage as a result of the demolition on the land. Plaintiff listed at paragraph 16 of his witness statement the cost he has incurred on the land as proof of his claim for special damages. The total amount incurred by Plaintiff as expenditure on the land as per his paragraph 16 is GH¢48,723.40. Exhibit "K" is the Bill of Quantities annexed to Plaintiff's witness statement in further proof of his claim for special damages.

### **THE CASE OF THE DEFENDANT**

The defendant's company filed a witness statement through Baba Alhaji Ibrahim. The hearing of the case was to commence properly on 25<sup>th</sup> November, 2022. All the parties were aware of this date. However, the defendant's representative Osei Frimpong and Counsel for defendant were absent. The Court permitted Counsel for Plaintiff to lead the Plaintiff in evidence resulting in the Plaintiff's witness statement filed on 22/6/2022 being admitted into evidence as his Evidence-In-Chief. The Court subsequently adjourned the case to 13/1/23 with an Order that the Plaintiff should serve hearing notice on the defendant or her Counsel to appear in Court to cross examine the Plaintiff on his evidence. The Court's records shows that two (2) hearing notices so far have been served on the defendant or her Counsel, yet, they have ignored the processes.

Consequently, upon application by Counsel for Plaintiff on 8/8/2023, the Court closed the case of the defendant and adjourned the case to today 18/9/23 for judgment. As it stands

now the defendant has failed to adduce evidence before the Court in support of their defence filed on 16/6/2022. However, as and when it is necessary the Court will make a recourse to the defendants defence in its judgment.

### **THE BURDEN OF PROOF**

In the case of **Ababio v. Akwasi** [1994-95] 2 GBR 774 the Court stated that a party whose pleadings raised an issue essential to the success of its. case assumes the burden of proving such issue. Per **In re Ashalley Botwe Lands; Adjete Agbosa and Others v. Kotey & Others** [2003-2004] SCGLR 420, the burden of producing evidence in any given case was not fixed, but shifted from party to party at various stages of the trial depending on the issue or issues asserted or denied. Also in **Ackah v. Pergah Transport Limited & Others** [2010] SCGLR 728 the supreme Court per Wood CJ stated 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 which his claim may fail.”

### **EVALUATION OF THE EVIDENCE**

The first issue for the determination of the Court is whether or not the land sold to the Plaintiff by the defendant is encumbered. Per the evidence on record, I find that on 6/9/2010 the parties entered into a purchase agreement in the sum of GH¢7,000.00 in respect of the land in issue. This is evidenced by Exhibit “C” which is the said purchase agreement. The defendant’s company on 8/10/2010 executed a Deed of Assignment in favour of the Plaintiff in respect of the land situate at Gomoa Fetei i.e. plot 368, 370 Sector 6 Block “A” in the Central Region of the Republic of Ghana. See Exhibit “D”, the Deed of Assignment. I have also seen Exhibit, “A” and “B” which are receipts totaling an amount of GH¢6,000.00 paid to the defendant’s company by the Plaintiff in respect of the land. I presume the balance of GH¢1,000.00 was also paid to the defendant by the Plaintiff even though there is no receipt to evidence that. In paragraph 2 of her statement of

defence, the defendant admits having received GH¢7,000.00 from the plaintiff in respect of the land and having also executed a Deed of Assignment in favour of the Plaintiff in respect of the same land. Flowing from the evidence on record and the defendant's pleadings, there is no doubt that the Plaintiff purchased land from the defendant's company as claimed.

The Plaintiff adduced further evidence before the Court to demonstrate his inability to retain the land he has purchased from the defendant even after exercising acts of possession over the land by constructing a fence wall on the land. An attempt by the Plaintiff to register the land document at the Lands Commission with a view of securing a Land Title Certificate was met with frustration and failure since the Lands Commission rejected his document on the grounds that the site allocated to the Plaintiff by the defendant fall within a Judgment dated 11/6/2014 in favour of Nana Essel Amoquandoh and Ebusuapanyin Kobina Okokye. The land was also encumbered by a Deed of Mortgage dated 25/7/2013 between the defendant's company on one part and NDK Financial Services Limited on the other part. See Exhibit "E", "K" and "J" annexed to the Plaintiff's witness statement. Per the evidence, the Plaintiff complained to the defendant about the difficulties he was having in registering and possessing the land allocated to him.

The defendant appreciated the Plaintiff's complaint and assured him that they will give him a reallocation of land. The defendant has however failed to make good her promise to the Plaintiff up to date. To make matters worse for the Plaintiff, his investment in a fence wall so as to secure the land was lost as the fence wall was demolished by persons laying adverse claim to the land.

Per the evidence on record the land the defendant sold to the Plaintiff was encumbered by the Judgment of 11/6/2014 in favour of Nana Essel Amoquandoh and Ebusuapayin Kobina Okokye and further by the Deed of Mortgage entered into between the Defendant

and NDK Financial Services on 25/7/2017, even though per his Evidence-In-Chief, the Plaintiff purchased the land from the defendant and subsequently erected his fence wall in 2010, long before the defendant registered the Deed of Mortgage. The two subsequent encumbrances on the land purchased by the Plaintiff hindered his possession of the property or registering same at the Lands Commission.

The second issue for determination is whether or not the Plaintiff has expended monies for the development of the land sold to him by the defendant. This issue ties in with the Plaintiff's relief 4 i.e. special damages of GH¢48,723.40. The full description and details of the expenses incurred by the Plaintiff on the land is stated at paragraph 16 of his witness statement and also at paragraph 20 of the statement of claim. I am unable to reproduce the list in this judgment due to the lengthy nature of the list. At paragraph 9 of his statement of defence, the defendant averred that she is not aware if there are any expenses incurred by the Plaintiff and that neither the defendant nor her agents, assigns and privies have destroyed any structure erected by the Plaintiff and therefore the Plaintiff is not entitled to his Claim for special damages. In the case of **Eastern Alloys Company Ltd v. Chirano Gold Mines** Suit No. J4/48/2016 [2017] GHASC 5 delivered 26/1/2017 the Supreme Court held that special damages refer to the particular damage suffered by a party beyond that presumed by law from the mere fact of an invasion of a right and must be proved strictly by evidence. If a Plaintiff does not specifically plead his loss and prove it, he cannot succeed in a claim for special damages.

Adwiiyira JSC in the case of **Delmas Agency Ghana Ltd v. Food Distribution International Ltd** [2007-2008] 2 SCGLR 748 at 759 *also held that, "where the Plaintiff has suffered a property quantifiable loss he must plead specifically his loss and prove its strictly. If he does not, he is not entitled to anything unless general damages are also appropriate."*

As earlier on mentioned, the Plaintiff has pleaded special damages at paragraph 20 of his statement of claim. The burden is on him to prove his claim by evidence. Normally

receipts, invoices or the fair market value of damaged property can be used to prove special damages. In proof of his claim for special damages, the Plaintiff did not exhibit receipts or invoices to his witness statement. However, he exhibited Exhibit "K" the Bill of Quantities on the fence wall he constructed on the land prepared by Macdonald K.K. Dontoh of the Kwame Nkrumah University of Science and Technology Kumasi. Exhibit "K" describes the items that went into the construction of the fence wall and the various expenditures incurred by the Plaintiff. The total expenditure incurred by the Plaintiff as stated on Exhibit "K" is GH¢46,223.40. In my opinion, Exhibit "K" prepared by an expert quantity surveyor gives a fair market value of the costs incurred by the Plaintiff on the demolished fence wall. The defendant failed to appear at the trial to cross-examine the Plaintiff on his Exhibit "K". In **Fori v. Ayirebi** [1966] GLR 627 the Supreme Court held that where the evidence of a witness is unchallenged in cross-examination, it is deemed to have been admitted by the other side. See also **Ashanti Goldfields v. Westchester Resources Ltd** [2013] 60 GMJ 128 per Korbieh J.A.

By electing not to appear at the trial to cross-examine the Plaintiff in his evidence, in spite of hearing notices served on defendant and her lawyer, the defendant has admitted the Plaintiff's claim to special damages incurred by him. Accordingly, the Court hereby adopts Exhibit "K" as proof of the Plaintiff's claim of his relief 4.

The Last issue for determination is whether or not the Plaintiff has had quiet enjoyment of the land sold to him by the defendant. The evidence on record point to the contrary. In fact, the defendant, a Real Estate Development and Building Construction Company failed to protect the Plaintiff's interest on the land sold to him. The Defendant also did the unthinkable by mortgaging the same land he earlier on sold to the Plaintiff to a financial institution thus disturbing the Plaintiff's quiet enjoyment and use of his land. By so doing, the defendant breached the Deed of Assignment entered into between her and the Plaintiff. A promise made by the defendant to the Plaintiff to reallocate a different

parcel of land to him appears to be a hollow promise, as to date the defendant is yet to deliver on her promise to the Plaintiff.

### **CONCLUSION AND FINAL DECISION**

I have evaluated the available evidence before me and the pleadings filed by the parties in its totality and I find favour with the Plaintiff's case. Accordingly, I hereby enter Judgment in favour of the Plaintiff against the defendant in respect of all the reliefs of the Plaintiff endorsed on the Writ and Statement of Claim. To this effect, an order is hereby made for the Plaintiff to recover an amount of GH¢7,000.00 from the defendant's company being the price the Plaintiff paid to the defendant for the two (2) plots of land. Plaintiff is entitled to interest payment on the GH¢7,000.00 from 6/9/2010 at the prevailing commercial bank rate to the date of final payment. I award an amount of GH¢5,000.00 in favour of the Plaintiff against the defendant as general damages for the defendant's breach of the contract between the parties. I further award GH¢46,223.40 as stated on Exhibit "K" as special damages in favour of the Plaintiff against the defendant.

Finally, I award GH¢5,000.00 as costs in favour of the Plaintiff against the defendant's company.

**H/H JAMES KOJOH BOTAH**  
**CIRCUIT COURT JUDGE**