

IN THE CIRCUIT COURT HELD IN KUMASI ON MONDAY THE 27<sup>TH</sup> DAY OF  
FEBRUARY, 2023 BEFORE HER LADYSHIP PRISCILLA DAPAAH MIREKU(MRS.)  
SITTING AS ADDITIONAL CIRCUIT COURT JUDGE, CIRCUIT COURT JUDGE.

SUIT NO. A2/260/2009

**MACDONALD ADOBAH AGANTABA (DECEASED) SUING PER HIS LAWFUL  
ATTORNEY AND SUBSTITUTED BY ABEDNEGO KOFI BANADAM**

**VRS:**

**DANJIMAH MOHAMMED & 2 OTHERS**

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**JUDGMENT**

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The Plaintiff instituted this action through his lawful attorney Abedenego K. Banadam against the Defendants on the 29<sup>th</sup> day of June, 2009 praying this honourable court for; the recovery of the sum of Fourteen Thousand(GHC14,000) being the cost of items destroyed or missing as a result of the unlawful conduct of the defendants, an order of perpetual injunction to restrain the defendants herein, their agents, assigns, workmen and all persons claiming through or under them from in anyway interfering with the

occupation and quiet enjoyment of the plaintiff, the present occupant of the piece of land situate adjacent to Plot No. 5 Block U Ayigya, Kumasi and damages.

The summary of the plaintiff's case is that, sometime in August 1988 he was allocated a piece of land at Ayigya for the purpose of carrying out his business by Nana Kyei-Fram the then Odikro of Ayigya and subsequently approved by the Volta River Authority (VRA) till such time they VRA will be indeed of it. According to the plaintiff he has been operating a restaurant on the said land managed by his wife Cecilia Adobea and his wife has been paying the requisite rates demanded by the Kumasi Metropolitan Authority (KMA). The Plaintiff alleges that the defendants organized some thugs to demolish his structure he used for his business and in the process destroyed his properties. Thus, he instituted this action and prays for the reliefs aforementioned endorsed on his writ of summons.

The defendants denied all the averments of the plaintiff except those they specifically admit to same. The 1<sup>st</sup> Defendant alleges he lawfully acquired Plot No. 5 Block II, Ayigya - Kumasi sometime in 1997 from the original allottee of the plot. That at the time he acquired same, the plaintiff was on a squatter on a small portion of the land. According to the 1<sup>st</sup> defendant soon after he entered the land, he detected the nuisance the plaintiff caused by his occupation and all attempt to eject him became futile. That, when KMA met with the parties and discovered that the plaintiff did not have permit

for his structure, he was given notice to vacate the place. That it is the KMA that detailed its engineering department to demolish the plaintiff's structure with the supervision of the Assembly's City Metropolitan and the Police after the plaintiff had removed all the moveable items from his structure leaving what could be described as the skeleton structure of the plot. That the plaintiff is not entitled to his reliefs.

Pursuant to the orders of this court, on the 31<sup>st</sup> day of July, 2012, the plaintiff amended their writ of summons and joined KMA to this suit as the 3<sup>rd</sup> Defendant. The plaintiff further amended his reliefs and statement of claim with leave of the court on 17<sup>th</sup> March, 2015 praying for an order for the recovery of general and special damages as a result of the unlawful conduct of the defendants; an order of perpetual injunction to restrain the defendants herein, their agents, assigns, workmen and all persons claiming through or under them from in anyway interfering with the occupation and quiet enjoyment of the plaintiff, the present occupant of the piece of land situate adjacent to Plot No. 5 Block U, Ayigya Kumasi and damages.

Before trial could commence, the plaintiff kicked the bucket and his lawful attorney was subsequently substituted as the plaintiff and the writ was also amended to reflect same.

The issues that were set down for trial were as follows;

- i. Whether or not plaintiff has the required permit for the structure demolished by the defendants.

- ii. Whether or not it was the Engineering Department of KMA that carried out the demolition of plaintiff's structure.
- iii. Whether or not it was the defendants who carried out the demolition of Plaintiff's structure.
- iv. Whether or not the demolition of plaintiff's structure was sanctioned by the Kumasi Metropolitan Assembly (KMA).
- v. Whether or not the demolition of plaintiff's structure was lawful.
- vi. Whether or not plaintiff is entitled to his claim.
- vii. Any other issues raised by the pleadings.

All the issues that were set down for trial can be discussed under two main issues;

That is, whether or not the plaintiff had permit to erect his structure allegedly demolished by the defendants and whether or not the plaintiff's structure was illegally demolished by the defendants. The plaintiff is also claiming for perpetual injunction against the defendants from interfering with his occupation of the subject matter and an issue ought to have been raised whether or not the said order can be granted by this court.

Section 12 of the Evidence Act 1975 (NRCD 323) provides that,

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

*(2) "Preponderance of the 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 its non-existence.*

In the case of **ZAMBRAMA V. SEGBEZI [1991] 2 GLR 221 @ 246** the Court of Appeal held that,

*A person who makes an averment or assertion, which is denied by his opponent, has a burden to establish that his averment or assertion is true. And he does not discharge this burden from which the fact or facts he asserted can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of the burden.*

Also, in the case of **Tetteh v. T Chandiram & Co. Gh. Ltd & Others [2017-2022] 2 SCGLR 770**, the supreme court reechoed this principle in holding 2, *"where an appellant alleged a claim but was denied, it was the duty of the appellant to adduce credible evidence to prove the claim and not to just mount the witness box and repeat her pleadings especially when the claim was capable of positive proof."*

The Plaintiff testified on his behalf and called one Nana Kyei Fram II to testify on his behalf. The said Nana Kyei Fram II alleges he allocated the site to the plaintiff to erect his temporary structure on same but during cross examination, he admitted that he did

not know whether the Kumasi Metropolitan Assembly had engaged the plaintiff before the demolition of his structure. The plaintiff tendered Exhibit "A" headed "Temporal Allocation of Plot." The plaintiff alleges that he had permit to erect his structure and operate his business, but he did not tender any evidence to support his claim that he had permit to construct the aforementioned structure. What the plaintiff tendered was a letter dated 12<sup>th</sup> June, 2003 from KMA requesting the 1<sup>st</sup> Defendant to submit his building permit and site plan and the said letter marked Exhibit 'B' indicated that the plaintiff is authorized to continue with his business until the submission of the building document has been sent by the 1<sup>st</sup> defendant. The plaintiff also tendered another letter dated 5<sup>th</sup> February, 2008 with heading, "Authority to occupy space at Ayigya Zongo – Mark Adoba" marked as Exhibit "C". This letter generates from the Metro Environmental Health Officer permitting the plaintiff to maintain his kiosk at the present location at Ayiga Zongo under certain conditions. The 2<sup>nd</sup> defendant during cross examination explained that the department that gave permits for structures to be built at KMA was different from the Environmental Department that issue permit for one to sell food and drinks. The evidence the plaintiff has led before this court shows that he was permitted to occupy a space at Ayigya to carry out his business temporary. The plaintiff repeated his assertion that the 1<sup>st</sup> and 2<sup>nd</sup> defendants organized some unidentified persons to demolish his structure but he did not lead any evidence to

prove same. In the case of In a recent case of **Equity Assurance v. Palmers Green Int'l Ltd [2019] 134 GMJ 57**, proof in civil trials were stated as follows;

*Section 11(4) and 12 of the Evidence Act, 1975 (NRCD 323) require a plaintiff in a civil matter to prove his case on a balance of probabilities.*

*Based on section 11(4) and 12 of Evidence Act (NRCD 323), the Supreme Court in the case of Awubeng v. Domfeh [1996-97] SCGLR 660 held that standard of proof in all civil action was proof by the preponderance of probabilities and there is no exception to this rule.*

Mounting the witness box to repeat ones averments in his or pleading will not suffice. There is no challenge to the fact that, the plaintiff structure was demolished. The plaintiff alleges it is the first and second defendants that hired thugs to do same. This assertion has been denied and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants claims it is the 3<sup>rd</sup> defendants which is a statutory body clothed with some powers that did same. Aside tendering pictures to show that his things were brought out and the structure demolished, there is no evidence that serve as proof that the 1<sup>st</sup> and 2<sup>nd</sup> defendant demolished same or caused it to be demolished. The 3<sup>rd</sup> defendant also does not deny demolishing the said structure as the 3<sup>rd</sup> Defendant did not file any defence.

The plaintiff during cross examination was asked, *"I'm further putting it to you that the exercise that had brought about this suit was proceeded by several notices for you to vacate the site"* and the plaintiff answered *"it is correct. I have documents to show"*.

The plaintiff is praying for special and general damages against the defendants as a result of their unlawful conduct but the plaintiff failed to prove that the defendants conducted themselves unlawfully. In fact there is not a single evidence that suggests the first and second defendants hire thugs as claimed by the plaintiff to demolish his structure.

It is interesting to note that in the whole of the plaintiff's pleadings and evidence before this honourable court, there is no description of the land on which the plaintiff alleges was allocated to him and prays this court to injunct the defendants from interfering with same. Even though the 1<sup>st</sup> defendant describes the land he allegedly acquired as Plot No. 5 Block II Ayigya, the evidence by the plaintiff suggest he is opposite the said plot but in another breath as if he is on the frontage of the said plot.

In the case of in **ARYEH & AKAKPO V. AYAA IDDRISU [2010] SCGLR 891**, the court was of the view that, *"to succeed in an action for declaration of title to land, injunction and recovery of possession the plaintiff must establish by positive evidence the identity and limits of the land claimed."* Even though the plaintiff is not praying for declaration of title to the subject matter, it became an issue for determination when the plaintiff prayed for an



injunction and the 1<sup>st</sup> defendant also alleging he was the legal owner of the said land. The first defendant however did not counterclaim for anything.

This court is of the view that, it can restrain a statutory body from performing its statutory duties. Thus the Court cannot injunct the 3<sup>rd</sup> Defendant KMA was carrying its duties as long as there is no proof of illegality.

There evidence on record as earlier discuss, does not give specific description of the land allegedly temporary allocated to the plaintiff except that it is located at Ayigya. Aside that, there is no evidence led by the plaintiff showing that, the 1<sup>st</sup> and second defendants are interfering with any land. Thus the court will not grant the injunction the plaintiff is praying for.

The case of the plaintiff is hereby dismissed and judgment is entered against the plaintiff. Cost of GH¢4000.00 is awarded against the Plaintiff. This case was started as far back in 2009, and it is unfortunate that with the simple issues in contention it had to take almost fourteen years to resolve same. Counsels owes their client due diligence in conducting their cases expeditiously and from the record of proceedings, the delayance of the case was as a result of the conduct of both parties and their counsels.

**SGD**

**H/L JUSTICE PRISCILLA DAPAAH MIREKU (MRS.)**

**CIRCUIT COURT 2, ADUM – KUMASI**

**27<sup>TH</sup> FEBRUARY, 2023s**