

IN THE CIRCUIT COURT HELD IN KUMASI ON FRIDAY THE 3RD DAY OF MARCH,
2023 BEFORE HER LADYSHIP JUSTICE PRISCILLA DAPAAH MIREKU (MRS.),
SITTING AS ADDITIONAL CIRCUIT COURT JUDGE.

SUIT NO. A2/60/2020

EDMUND OSEI AGYEMAN

VRS:

JOHN KWADWO MFUM

JUDGMENT

The Plaintiff and the defendants once as close as a father and son but unfortunately their relationship deteriorated and they are before this Court with a suit instituted by the plaintiff against the defendant. The Plaintiff claims that the defendant was once his landlord and around February, 2017 he told him his desire to acquire a plot of land. According to the plaintiff, the defendant showed him a piece of land at Sepaase number plot 1 Ntiwaa Street and they agreed on consideration of Twelve Thousand Ghana Cedis (GH¢12,000.00) which he took a loan to pay same to the defendant. That two years after payment, he still did not receive documentation to the said land so he

decided to ask the defendant about it which the defendant allegedly responded that he was no more going to sell the land to the plaintiff as he does not respect so he is ready to pay his money to him. The defendant allegedly caused his lawyers to write to the Plaintiff to come to their office and take his money. The plaintiff claims he finds the behavior of the defendant unlawful and therefore prays for the following reliefs;

1. An order of the court for specific performance against the Defendant or in the alternative, recovery of an amount of Twelve Thousand (GH¢12,000.00) from the Defendant.
2. Interest on the said amount at the previously bank rate from February 2017 to the date of final payment.
3. Damages for the breach of contract.

The defendant in his defence avers that he never offer a land to the defendant to buy but rather he told the plaintiff that he will assist him to acquire a piece of land by introducing him to his brother who had land to sell. That the agreed price for the land was Fifteen Thousand Cedis (GH¢15,000.) but the Plaintiff made payment of Eleven Thousand Five Hundred Cedis (GH¢11,500.00) and not Twelve Thousand Cedis (GH¢12,0000.00) which he convinced his brother to allow the ptf to pay by installment. According to the defendant, the plaintiff showed him gross disrespect thus he withdrew his services and informed his brother. That sometime March 2019, he asked the plaintiff

to come for his money which he refused. The defendant further avers that it is rather the plaintiff who owes him rent for his shop he occupied for 63 months and counterclaim for the following;

- a. An order for the recovery of an amount of GH¢4,410.00 being unpaid rent in respect of store room located on digital address AK 741 – 0572 by the plaintiff from June 2013 to August 2018.
- b. Interest on the said amount at the prevailing commercial bank rate from August 2018 to date of final payment.
- c. Cost of litigation including legal fees; and
- d. Any other relief that the Honourable Court may grant in order to attain substantial justice in this suit.

The reply and defence to the defendant's defence and counterclaim is that, the lawyers of the plaintiff wrote to him to come for the money three years after the defendant had kept the money so he felt wronged. The plaintiff further states that, the defendant demanded rent of Eight Ghana Cedis (GH¢80.00) per month which he paid same for the three years he was in occupation.

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

- i. Whether or not the defendant personally took GH¢12,000.00 from the Plaintiff as price of the land in dispute.

- ii. Whether or not defendant only acted as a facilitator in the said contract.
- iii. Whether or not defendant received consideration from the plaintiff.
- iv. Whether or not plaintiff is indebted to the defendant.
- v. Whether or not plaintiff is entitled to his claim.
- vi. Whether or not the defendant is entitled to his counterclaim.

Even though issues were set down for trial counsel for the defendant in his address set out his own issues and addressed same. The court will however deal with the issues as set down for trial.

In the case of **Zambrama vs Segbezi [1991] 2 GLR 221 @ 246** it was 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.

Section 11 (1) of the Evidence Act 1975(NRCD 323) provides that,

“For the purposes 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 12(1) also provides that,

“except as otherwise provided by law, the burden of persuasion requires proof by preponderance of probabilities.”

The onus is on the plaintiff to prove his case by the preponderance of probability and the onus likewise is on the defendant to prove his counterclaim by the preponderance of probabilities. Both cannot rely on the weakness of the other case.

The first issue for consideration is whether or not the defendant personally took GH¢12,000.00 from the Plaintiff as price of the land in dispute. The plaintiff alleges that he paid GH¢12,000.00 to the defendant for the purchase of the plot of land while the defendant claims that the plaintiff paid GH¢11,500.00 for the land and GH¢200.00 for the site plan. The plaintiff claims he took a loan to make the said payment in two installments that is first payment of GH¢7,000.00 and second payment of GH¢5000.00. Aside the wife of the plaintiff coming to corroborate his evidence of payment of GH¢12,000.00, the plaintiff did not tender anything to prove same. The defendant accepts having received GH¢11,500.00 from the defendant and denies that the purchase price for the land was GH¢12,000.00. The defendant accepting that he received the aforementioned amount from the plaintiff is proof that the defendant personally took money from the plaintiff. The plaintiff failed to prove that the amount was GH¢12,000 as claimed by him, thus this court finds that the total amount the plaintiff paid to the defendant was GH¢11,500.00 as the purchase price of the land and GH¢200.00 for the

site plan making a total of GHC11,700.00 and the defendant personally took the said sum from the plaintiff.

The second issue for consideration is whether or not defendant only acted as a facilitator in the said contract. The plaintiff alleges that the plaintiff was the one who was selling him the land and showed him the land. The defendant alleges that he was only a facilitator and that it was his brother rather who was selling the land. However the evidence on record shows that the money was paid to the defendant. That it was the defendant who showed the plaintiff the land. Also when the defendant claimed, the plaintiff had grossly disrespected him and was allegedly not going to assist him again, it was the defendant who asked the plaintiff to come back for his money and not the alleged brother. The evidence before the court clearly shows that the whole transaction was between the plaintiff and the defendant. Thus the defendant did not act as a facilitator only.

The third issue is whether or not the defendant received consideration from the plaintiff. The defendant alleges that the plaintiff took two years to pay the GHC11,500 and that the consideration for the land was GHC15,000.00. The Plaintiff however alleges that the consideration was GHC12,000.00 and he paid full consideration. Exhibit '1' which the defendant tendered in evidence mentioned the consideration for the full plot as GHC11,500.00. I find it more probable that full consideration was paid to the defendant

that is why the plaintiff paid for the site plan. If the plaintiff had not paid full consideration, it does not make sense that the plaintiff will go ahead and pay for the site plan.

The fourth issue for consideration is whether or not plaintiff is indebted to the defendant. The defendant is alleging that the plaintiff is indebted to him for rent arrears for 63 months which amounts to GHC4,410.00. The plaintiff denies same and avers that he only occupy the shop for 3 years and while in occupation paid rent of GHC80.00 as demanded by the defendant. The defendant called his wife Mercy Mfum (DW1) to testify on his behalf. DW1 corroborated her husband claim that the plaintiff was in occupation of the shop for 63 months and never paid any rent. Aside the corroboration from the DW1, the defendant did not tender any evidence as proof of same. During cross examination of the plaintiff by the defendant counsel, it came to light that the defendant sued the Plaintiff at a court at Akropong to eject the plaintiff. If indeed the plaintiff owed him rent arrears as claimed, I am of the view that he would have raised same. I therefore find that the plaintiff is not indebted to the defendant.

The fifth and sixth issues will be discussed together. They are whether or not the parties are entitled to their respective claims. The defendant accepts that the plaintiff's money is with him but the evidence shows that the defendant has been asking the plaintiff to come for his money since 2019 but the plaintiff testified that, he failed to go for it

because the defendant was making refund after two years without any interest and he felt cheated. The defendant also tendered a letter dated 5th September, 2019 marked as Exhibit '1' from his lawyers inviting the defendant to come for his money. The lawyers requested the plaintiff to come for his GHC11,500.00 but made no mention of the GHC200.00 the defendant in his statement of defence at paragraph 11 stated that some extra GHC200 Cedis was paid to be used to prepare the site plan of the land.

This court also finds the plaintiff to be more credible than the defendant and find the case of the plaintiff to be more probable on the preponderance of probabilities. The defendant therefore failed to prove his counterclaim.

Judgment is therefore enter for the plaintiff for the defendant to refund the sum of GH11,700.00 to the plaintiff. interest on the sum of GHC11,500 will run from February 2017 when the said amount was paid at the then prevailing bank rate till June 2019 when the Plaintiff was upon to come for his money and failed to do so. The plaintiff should have gone for his money and sue the defendant for the interest rather than reject same and come to court later for its refund.

The plaintiff is also praying for breach of contract. As discussed above, the court find that there was an oral agreement for the defendant to sell a piece of land at Sepaase at a consideration of GHC11,500.00 which the plaintiff paid same. But the defendant refused to honour the said agreement because he felt the plaintiff has grossly disrespected him.

Thus, this court award GHC4000 as damages for the breach of contract and cost of
GHC3000.00 against the defendant.

SGD.

H/L PRISCILLA DAPAAH MIREKU (MRS.) J.

CIRCUIT COURT 2, ADUM – KUMASI

3RD MARCH, 2023