

IN THE CIRCUIT COURT HELD IN KUMASI ON FRIDAY THE 14TH DAY OF JULY, 2023 BEFORE HER LADYSHIP JUSTICE PRISCILLA DAPAAH MIREKU (MRS.), SITTING AS ADDITIONAL CIRCUIT COURT JUDGE.

SUIT NO. A1/403/11

ROCKSTERS LIMITED & ANOR

VRS:

MAA CHAR LIMITED

JUDGMENT

This suit was first instituted by the plaintiff Rocksters Company Limited against the defendant for the following reliefs:

- a. A declaration that it is the rightful lessee of property numbered NR 32 Railway Plot no. 4 Lake Road-Kumasi same having been leased to it by Ghana Railway Company Limited.
- b. An order of ejectment and recovery of possession.
- c. Damages for trespass.
- d. Perpetual injunction restraining the defendant, its agents, assigns and all those acting on its authority from interfering with the property in dispute.

The plaintiff subsequently amended its writ of summons and prayed for the reliefs aforementioned.

THE PLAINTIFF'S CASE;

The case of the plaintiff is that the subject matter of this suit was originally leased to Unilever Ghana Ltd by Ghana Railway Company Limited and it was being used by them as a warehouse. That when the term of the later lease expired, it entered into a lease agreement with Ghana Railway Company Limited for a term of fifty (50) years from 1st March 2009 to 28th February, 2059. According to the plaintiff, Unilever permitted the defendant to occupy a portion of the subject matter and the defendant has refused to vacate the place interfering with its quiet enjoyment of the subject matter of this suit. That the conduct of the plaintiff is unlawful and prays per the reliefs endorsed on the writ of summons.

The Co-Plaintiff Ghana Railway Co was eventually joined as party to the suit.

THE DEFENDANT'S CASE;

Per the defendant amended statement of defence, the subject matter in dispute is State Land and the plaintiffs have no authority to evict or eject it from same. That the plaintiff fraudulently submitted and procured a lease agreement from the Lands Commission

and same was revoked by the Lands commission when it came to their attention. The defendant did not counterclaim for any relief even though the plaintiff's counsel stated that there was a counterclaim by the defendant. A perusal of all the process shows that there is no counterclaim by the defendant.

ISSUES SET DOWN FOR TRIAL;

The issues that were adopted for trial are as follows;

1. Whether Defendant merely occupied the disputed property as a licensee/tenant of Unilever Ghana Limited.
2. Whether the disputed property has been the subject matter of a lease between the government of Ghana or its predecessor in title PATERSON SIMON & CO. LTD.
3. Whether Unilever Ghana Limited ever managed the disputed property on behalf of Swanzy Real Estate Limited.
4. Whether Swanzy Real Estate Limited transferred management of the disputed property to Property Solutions Consult.
5. Whether Defendant applied to the Lands Commission for a lease.
6. Whether Defendant is a licensee tenant of the Lands Commission.
7. Whether or not the disputed property forms part of the subject matter of an action between the Lands Commission and the Railways Company Ltd & 3 Others pending at the High Court, Kumasi.

8. Whether or not the Plaintiffs have capacity to institute the instant action.

EVALUATION OF EVIDENCE AND LAW;

In civil actions, the burden of proof is by the preponderance of probabilities and 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.

The plaintiff has made averments which same has been denied by the defendant. 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.

In the case of **Aryee v. Shell Ghana Ltd & Fraga Oil Ltd [2017-2020] 1 SCGLR 721 @ 724** the Supreme Court at Holding 4 also made this statement;

In every civil trial the proof required was by preponderance of probabilities in accordance with Section 12 of NRCD 323 and the amount of evidence required to sustain that standard of proof was dependent on the nature of the issue to be resolved.

One of the issues adopted for trial was on the capacity of the plaintiff to institute this action. Thus, the first issue this court ought to consider is whether or not the plaintiff has capacity to institute this instant action.

In the case of **ASANTE-APPIAH V. AMPOSAH ALIAS MANSAH [2009] SCGLR 90**, it was held that,

“... where the capacity of a person is challenged, he has to establish it before his case can be considered on its merits”.

The plaintiff therefore has the onus to prove the capacity in which he instituted this action. Alfred Kwadwo Dankwa testified on behalf of the plaintiff and testified that the plaintiff is a limited liability company registered under the laws of Ghana.

The plaintiff's counsel in his address states that, the plaintiff's capacity was raised by the defendant in paragraph 26 of the amended statement of defence claiming that the plaintiff is not a lawful lessee of the property and hence cannot sustain any of the relief against the defendant. Thus, the plaintiff will prove its capacity if it led sufficient evidence to prove that it was a beneficial owner of the disputed property with a cause of action against the defendant.

The court is of the view that, this issue of whether the plaintiff is a lawful lessee of the property will be dealt with after the court takes into consideration of all the evidence before it.

The plaintiff has tendered exhibits as proof of it is incorporated as a company under the laws of Ghana. The plaintiff tendered Exhibit 'A' which is a certificate of incorporation and Exhibit 'B' certificate to Commence Business as prove of its assertion of being registered under the laws of Ghana. Per Exhibits 'A' and 'B', the plaintiff company was incorporated on the 9th day of June 1988 and the date for commencement was 10th June, 1988. Proving that indeed the plaintiff company is registered under the laws of Ghana.

The Company's Act, 2019 (Act 992) provides that a company is a natural person and thus has the capacity to sue and be sued. The plaintiff therefore as a legal entity has the capacity to sue the defendant to protect its interest. As to whether the plaintiff is a lessee of the subject matter in dispute, same will be determine after the conclusion of the case.

The issue to consider next is whether or not the defendant merely occupied the disputed property as a licensee/tenant of Unilever Ghana Ltd. The plaintiff has testified that,

that in 2009 it expressed interest in acquiring the disputed property and Unilever Ghana Limited assigned its unexpired interest to the plaintiff and the plaintiff concluded with the Ghana Railway Company following a referral to it by the Unilever Ghana Limited the defendant's former landlord. The plaintiff tendered exhibits 'D' and 'E' which are letters from Ghana Railway Company Ltd to the 1st Plaintiff headed; *Renewal of Lease for NR 32 Railway Petrol Plot No. 4, Lake Road – Kumasi* dated 7th March, 2009 and another

headed; *Assignment of NR 32 Railway Petrol Plot No. 4, Lake Road – Kumasi*. The plaintiff also tendered Exhibit 'H' dated 8th July, 2010 in which the lands commission wrote to the Plaintiff that Ghana Railway Company had no capacity to grant the said property to it thus, it should apply to Lands Commission for the regularization of title. That upon the receipt of that letter, they applied to Lands Commission for the grant of a lease which same was honoured by the Land commission in 2018 after it has instituted this action before this honourable court. According to the plaintiff the defendant at best can be described as being on the licence or sufferance of the Co-Plaintiff Ghana Railway Co. Ltd.

The defendant alleges that Unilever is not on record to have had any interest whatsoever in the subject property for which it could either transfer business with same nor attempt to dispose of same as contended by property solution consultants. The defendant alleges that it as an occupier for a long period to either purchase the subject matter or have same transferred to another person for sale in which case the defendant was to risk its peaceful occupation thereof over all these periods. The defendant alleging that Unilever did not have power to transfer any interest to the plaintiff in effect implied that Unilever had no capacity to have rented part of the subject matter for their occupation.

The defendant even though admits being in occupation of a structure on the subject matter denies Unilever as its landlord and avers that it is a tenant of property Solutions Consult. The defendant further challenges the fact that at the time Unilever allegedly assigned their interest to the plaintiff, they lack capacity to do same.

This denial by the defendant put the onus on the plaintiff to prove that indeed the defendant were tenants of Unilever and they put them in occupation. The plaintiff did not lead or tender any evidence to prove their assertion of the defendant being a tenant of Unilever Ghana Ltd. In the case of **The Executive Director (Economic & Organised Crime Office) Narcotic Control Board v. Nayele Ampete & Anor [2022] 176 G.M.J. 117 C.A at 121**, the Court of Appeal in a unanimous decision allowing the appeal states;

A person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment or assertion is true and he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can be properly and safely inferred; failure of which the assertion is not true. Excerpt otherwise provided by law and until it is shifted, a party has the burden of persuasion as to each fact the existence of which is essential to the claim or defence he is asserting. ... furthermore, it must be noted that a party whose pleadings raises essential to the success of the case assumes the burden of proving such an issue and it is incumbent on the party to produce admissible and credible evidence so as to avoid a ruling against him and the absence of the proof will attract or earn such a ruling.

However, under cross examination of DW1, it was admitted that it was Unilever that granted them permission to be on the land for so many years over 25 years. With this admission by DW1, the plaintiff need not lead any further proof of their claim that the defendant was put in occupation of the subject matter by Unilever and the defendant

will not be allowed to deny their landlord when it does not suit their interest. It was stated in the case of ANTIE & ADJUWUAH V. OGBO [2005-2006] SCGLR 494 and the case of GYETUA V. BOAFO [1964] GLR 443 SC that, a licensee/tenant who denies the title of his licensor/landlord forfeits his interest in the subject property. Thus this court finds that the defendant was a tenant/licensee of Unilever Ghana Limited but has however forfeit its interest through Unilever.

The third issue for consideration is whether the disputed property has been the subject matter of a lease between the government of Ghana or its predecessor in title PATERSON SIMON & CO. LTD. It was the defendant that was alleging that there was a lease agreement between the government of Ghana and Pattersoon Simon & Co. Ltd. Same was denied by the plaintiff thus the onus was on the defendant to prove this claim but the defendant failed to prove same. Mounting a witness box to reproduce what one has stated in his or her pleadings is not enough otherwise there will be no need for a party to be sworn in to give evidence.

The next issue for consideration is whether Unilever Ghana Limited ever managed the disputed property on behalf of Swanzy Real Estate Limited and whether Swanzy Real Estate Limited transferred management of the disputed property to Property Solutions Consult. Counsel for the plaintiff in his address submits that the aforementioned issues

where wrongly formulated that that the issue ought to be whether swanzy Real Estate Limited ever managed the disputed property on behalf of Unilever Ghana Ltd.

The defendant in its evidence before the court had testified that Unilever first made an offer to it for the sale of the subject matter through Property Solution Consults who were acting on behalf of Unilever but they decline same because their counsel through a search find out that the subject matter was a state land and Unilever did not have the capacity to dispose of it.

This honourable court takes judicial notice that the subject matter is indeed State land as that is not in contention that is why both parties have applied to the Lands Commission for a lease.

Both parties lead evidence that they applied to the Land commission for the grant of a lease in respect of the subject matter and the plaintiff tendered Exhibits 'L' and 'M' to show that same was granted to him. The evidence by the defendant fourth witness (DW4) shows that same was revoked after the Commission was notify about the pending action before the court.

You cannot put nothing on something and the evidence led bybefor3e this court shows that the lease of Unilever expired and even though the Ghana Railway agreed to the grant of a lease in its favour, they could not register the said lease as Lands Commission notified it that Ghana Railway had no capacity to do so. Thus, there was not a valid

transfer of title to the plaintiff from Ghana Railway. The land commission is the right organization in charge of state lands (see the case of OMABOE III V. THE AG [2005-2006] SCGLR 579 and KPOBI TETTEY TSURU III (NO. 2) V. AG (NO.2) [2011] 2 WCGLR 1042).

The evidence of DW4 who is an officer of Lands Commission is that, he was served with a subpoena to produce files in respect of Plot numbers 4P and 4 at Railways Adum. DW4 testified that after the refusal to register Exhibit '26' and '26A', it did not hear from the plaintiff until in 2018 when the plaintiff's lawyer wrote to the Commission that their application has been pending and the Commission should expedite the release of the lease. That subsequently as aforementioned, the lease was awarded to the plaintiff. That the said lease was in respect of plot 4 railway station lake road, industrial area, Kumasi. DW4 however testified that the lease was not registered as the defendant's counsel petition the lands commission and also drew the attention of the lands commission on the pending of this suit. DW4 admitted that there was an application by the defendant to the lands commission for a lease in respect of plot 4P and the said application was still pending. When asked what is the position of the commission regards the engrossment of the lease in faour of the plaintiff to cover both plot 4 and 4P, DW4 answered, *"The General lands Commission is yet to meet and decide either to vary the lease or not to vary the lease. It is only after the commission has decided that the office will execute the decision."* This clearly shows that it is the Lands commission that can lease the State land

to either the plaintiff or the defendant. DW4 after stating that Rocksters application was for only plot 4 and not 4P stated that *“Rocksters limited was to submit 6 copies of a cadastral plan consistent with the portion of land under its occupation to enable the Commission vary Rocksters lease to correct the abnormally”* but the plaintiff failed to submit same.

Counsel for the plaintiff cross examined DW4 on the issue of plot no. 4 and 4P being two different land and DW4 answered, *“the application was in respect of the 4p corners shown pick or highlighted on the site plan. Irrespective of how the name is tagged by the applicant the land commission consider only the four corners in respect of the dimensions assigned to each site.”*

Counsel for the plaintiff further went ahead to ask him, *“so you will agree with me then, the encumbrance recorded on the land Rocksters is claiming is the same encumbrance recorded on plot no. 4p which the defendant is claiming?”* and DW4 answered, *“Yes my lady. That is so because the land leased to the Gold Coast properties ltd was big and the plaintiff’s land per the search forms part or it and that of the defendant land for the search forms part of it.”* DW4 further testified under cross examination that at the time the plaintiff applied for the land apportion by the defendant’s land did not form part of it but rather it was later that they prepared a cadastral plan for the lease executed by the government in favour of the plaintiff that they incorporated a portion of the defendant’s land. DW4 however

agreed that the structure on plot no. 4P is one of the 2 structures sited on Railway station plot no. 4 at the end of the cross examination.

The issue of whether Defendant applied to the Lands Commission for a lease and the issue whether Defendant is a licensee tenant of the Lands Commission can be discussed together. Per the evidence led by DW4 who is an officer of Lands Commission, both parties have applied to the Land Commission for a lease to be executed in their favour. As the lease the lands commission executed in favour of the plaintiff has been suspended and that of the defendant is still pending, it suffice to say that both parties are not lessee of the lands commission until the Commission execute same in their favour. DW4 has made it clear on record that, it is waiting the outcome of this suit to make a decision.

It is interesting to note that even though the plaintiff is claiming plot 4p being part of plot 4 and that the subject matter is one same, same was not made an issue to be determine.

But during cross examination of DW4 the plaintiff through his lawyer sought to establish that claim.

The last issue for consideration is whether or not the disputed property forms part of the subject matter of an action between the Lands Commission and the Railways Company Ltd & 3 Others pending at the High Court, Kumasi. If indeed it forms part of

the subject matter of that suit, then ideally this court ought to stay its proceedings for the final determination of that suit. Per Exhibit '9' tendered by DW2 the registrar of the High Court, relief a states "*A declaration that by operation of law all that area in Kumasi and its environs within the Kumasi Town Land (K.T.L.) and withinwith the Part 1 area of land earmarked for the purposes of carrying out the business of Railways are State/Public lands vested in the President of the Republic of Ghana and to be managed by the Lands Commission as established by law.*"

The Co-Plaintiff in this suit who is a party in the said suit did not file anything or take part in this suit even though it had notice of same. Also there is no proof that indeed the subject matter of dispute forms part of the subject matter of the said suit. Thus this court cannot make a determination that the subject matter of this suit forms part of the aforementioned suit subject matter in dispute.

CONCLUSION;

This honourable court finds that, the subject matter is a State land as aforementioned and it being a state land, it matters not whether plot 4P forms part of plot 4 as it is the Lands Commission that will make a determination as to whether to grant a lease in favour of the plaintiff or defendant as they manage all State Lands by law. The Lands Commission being the care takers of state land per the evidence of their officer DW4 submits that the coordinates for each of the land as describe by the parties are different

that is why each land or application has its own file and have unique numbers. This court therefore give the Lands Commission the nod to consider the lease application of both defendants and make a determination as to whether to grant it a lease or not.

SGD.

H/L PRISCILLA DAPAAH MIREKU (MRS.)

HIGH COURT JUDGE SITTING

AS ADDITIONAL CIRCUIT COURT JUDGE