

**IN THE DISTRICT COURT HELD IN THE WESTERN REGION ON FRIDAY AT
AGONA NKWANTA ON THE 21ST OF OCTOBER 2022 BEFORE HIS WORSHIP
SIDNEY BRAIMAH DISTRICT MAGISTRATE**

WR/AA/DC/A2/45/2021

AZULO PRAH

VRS

1. NANA AKOTSIA (CHIEF FISHERMAN)

2. EGYA AWORTWE

JUDGMENT

The indorsement on the writ of summons filed on 19th March 2021 claims against the defendants for the following reliefs.

1. Cash the sum of Ghc100,000.00 from defendants being cost of destruction of plaintiff's sea defence.
2. Perpetual injunction restraining defendants, workmen, assigns privies and those who claim through the defendants from docking their canoes at plaintiff's bay.
3. Cost.

The evidence adduced by plaintiff in support of his case is that he acquired a parcel of land from his family through PW1, his head of family to build a house and operate a hotel in 2009 and that he had been in unfettered possession and occupation of the land granted to him. According to plaintiff, the land granted to him is close by the sea and that over a period of time the ravages of the sea caused degradation of his land and was therefore compelled to plant trees and construct sea defence along his boundary with the sea without any assistance from the Municipal Assembly or the government. Upon completion of the sea defence, plaintiff noticed that the defendants began to tie ropes

from their canoes to the trees he planted as part of his sea defence and in the process causing damage to the structure. Plaintiff further contended that the defendants appropriated stones he used to construct the sea defence wall to use as anchor to their canoes and to construct a drinking bar. The plaintiff also submitted that he confronted the defendants on the appropriation and usage of his sea defence wall and urged them to desist from their acts but he was rebuffed and ignored. The plaintiff asserted that the unsanctioned acts by the defendants have caused damage to his trees and sea defence wall. Plaintiff further submitted that the conducts of the defendants have denied him the usage of the frontage of his business and denied his patrons unfettered access to the sea. Plaintiff prayed to the court to grants his reliefs.

In their defence, the defendants testified that the coast along Busia, Dixcove, Akwidaa and other towns are characterized by stones imbedded in their beaches and that fishermen along that coast have developed the custom of tying their canoes with ropes to the stones to keep them afloat in the sea. The defendants denied the assertions by plaintiff that they tied their canoes to the trees or his sea defence structure and referred to the agreements between plaintiff and some fishermen to anchor their canoes to his seas defence wall and trees in exchange for fresh fish. The defendants further submitted that about fifteen years ago, a whiteman was engaged to build a bridge between Dixcove and Busia and in the course of constructing the bridge; caused stones along the shore to tip into the lagoon thereby restricting the passage and landing of the canoes. According to the defendants, the restriction of movements of the canoes in the lagoon moved the community with the consent of Otumfuo Baddoe Bonsoe, Ahantahene and the then Assemblyman to organize communal labour to dredge the lagoon of stones to facilitate the easy passage and landing of canoes in the lagoon. The defendants contended that 2nd defendant used the stones removed from the lagoon through the

communal labour and deposited along the shore to construct his drinking bar. The defendants denied the claims against them.

On the record, the evidence is conclusive that the plaintiff has constructed sea defence to protect his land from the ravages of the sea. It was also not in dispute that 2nd defendant is a Chief fisherman in Busia. The evidence is again incontrovertible that some fishermen tie their canoes to trees on the beach close to the plaintiff's premises. The evidence is also uncontested that 1st defendant and other fishermen anchor their canoes on a pile of stones gathered along the beach at the frontage of the plaintiff's structure. Accordingly, the issues raised for determination are the following:

1. Whether or not defendants tie their canoes to the trees and sea defence wall at the beach at the frontage of plaintiff's premises?
2. Whether or not defendants have caused damage to the plaintiff's sea defence wall or trees therein?
3. Whether or not the damage caused is valued at Ghc100, 000.00?
4. Whether or not the plaintiff is entitled to his reliefs

In civil cases, the plaintiff bears the burden to adduce sufficient evidence to prove his case on the preponderance of probabilities as stated at sections 11(4) and 12(2) of Evidence Act, 1975, NRCD 323. With regard to the burden of proof on the parties to the suit, it is stated in the case of *In Re Ashalley Botwe Lands; Adjetey Agbosu & Ors v Kotey & Ors* [2003-2004] SCGLR 420 and *Sumaila Bielbiel (No.3) v Adamu Dramani & Attorney-General* [2012] SCGLR 371 by the Supreme Court that in general, the defendant needs not prove anything in a civil case, given that it is the plaintiff who instituted the action against him. In respect of the burden of producing evidence on the issues admitted or denied, the apex court held in the above cases that burden is not fixed but shifts from one party to the other at various stages of the trial, although the

legal burden or burden of persuasion remains with the plaintiff. Brobbey JSC puts it succinctly in the case of *In Re Ashalley Botwe Lands; Adjetey Agbosu & Ors v Kotey & Ors* [supra] at page 425. I reproduce:

“...If the court has to make a determination of a fact or of an issue and that determination depends on evaluation of facts and evidence, the defendant must realise that the determination cannot be made on nothing...The logical sequel to this is that if he leads no such facts or evidence, the court will be left with no choice but to evaluate the entire case on the basis of the evidence before the court.”

Before the court proceeds to evaluate the evidence; the court finds it important to declare that the plaintiff vacated a fundamental role under the law in respect of claim for damages; that is; a legal requirement to provide evidence in support of the claim and to give facts upon which the damages could be assessed. Accordingly, to enable the court to assess damages if any; to be awarded, the plaintiff must first adduce evidence to enable the court to award damages. Failing that, would be fatal to his claim for damages. In the present action; apart from the indorsement for a claim of Ghc100,000.00 damages claimed, and yet the plaintiff woefully failed to adduce an iota of evidence in support of the claim for damages.

It can be ascertained from the record that the core of the case against the defendants rest on two head of causation of damage. The first head is the purported damage to plaintiff's trees forming part of his sea defence at the frontage of his property. The second head is the damage caused by the removal of stone complied to form sea defence wall.

On the first head of damage, the plaintiff contended until he planted the trees along the beach on his land and constructed his sea defence wall, the defendants and the fishermen were not using the place to tie their canoes to anchor them. Plaintiff

submitted that the place was formerly used to dry fish and defecation until he caused a gong gong to announce prohibition of such activities in the area and to enable him to fence his land. Plaintiff tendered in evidence exhibits A3 and A5 which are photographs of the frontage of his premises that show compilation of stones by the sea beyond his fenced wall as his sea defence. The afore-stated exhibits also show that there are trees within the bamboo fence wall and along the beach next to the bamboo fence and between the bamboo structures raised along the beach. Exhibits A3, A5, and 1A again show that ropes have been tied to the trees and stones along the frontage of the plaintiff's premises. The plaintiff further submitted that one of his trees fell down and damaged his sea defence resultant of defendants tying their canoes to it.

Although plaintiff submitted that he did not personally see the defendants tying their canoes to the said trees his investigation disclosed that they were the principal culprits to the act. PW1, on the other hand asserted under cross-examination that he saw defendants tying their canoes to plaintiff's trees. Plaintiff and PW1 intimated to the court that the defendants are the owners of most if not all of the canoes in Busia and therefore by necessary implication; the only people who tie their canoes to his trees.

The defendant vehemently denied the allegations and challenged the plaintiff to show by the myriads of photographs tendered in evidence that one of the canoes captured belong to them and that they are also tied to the trees in issue. The defendant submitted that contrary to the assertions by plaintiff and PW1, the trees along the beach were not cultivated by plaintiff and that they grew naturally along the beach. The 1st defendant contented that although he owns canoes in Busia; he had not personally tied any of his canoes to any tree at the frontage of plaintiff's premises. The 1st defendant denied that allegation that he owns most of the canoes and tendered in evidence, exhibit 2 series which comprises of registration of six canoes with Fisheries Commission all named :Man Proposes" as the canoes owned by him and that 2nd defendant does not own a

canoe. The 1st defendant however conceded that some fishermen tie their canoes to plaintiff's trees with his consent for the consideration of fresh fish. On his part, 2nd defendant denied that he owns a canoe but operates a drinking bar at the beach, but contradicted 1st defendant by admitting that the defendants own about ten (10) canoes together.

The evaluation of the evidence on record and the contents of the afore-mentioned exhibits support the evidence adduced by defendants that some fishermen tie their canoes to the trees and sea defence in issue. The record also reveals per exhibit A7 that a canoe by name "Man proposes" is anchored near the frontage of the plaintiff's premises. Indeed, 2nd defendant admitted under cross-examination that plaintiff summoned him and other fishermen and asked them not to tie their canoes to his trees and they complied. I reproduce the relevant portion:

Q. You and your fishermen tie your canoe to my trees.

A. I have not personally tied any canoes to your tree. Neither has 2nd defendant. You rather concluded agreement with some fishermen including my watchman to tie their canoes to the trees and compensate you with fresh fish.

Q. As a result of your nuisance, I called you and other fishermen to tie your canoes to the stones created at the back of my house,

A. It is correct. You subsequently entered into agreement with some fishermen to tie their canoes to your trees for fresh fish.

It is logical to conclusively infer from the conduct of 1st defendant in heeding to the call from plaintiff not to tie his canoes to his trees and his subsequent compliance with his directive to tie his canoes at the back of his house evidence that they believed that plaintiff has proprietary interest in the trees situate at the frontage of his house. Again,

if 1st defendant was not party to the fishermen who tie their canoes to the trees, would he be summoned by plaintiff? The purported agreement between the plaintiff and other fishermen not to tie their canoes to the said trees as submitted by 1st defendant strongly established their belief that plaintiff is the owner or has proprietary interest in the trees in issue. The court finds that the evidence adduced by 1st defendants corroborated the evidence adduced by plaintiff that 1st defendant personally tied ropes to the trees at the frontage of plaintiff's house and that he believed that plaintiff has interest in those trees. The court however finds no cogent evidence on record to establish that 2nd defendant was party to the agreement between plaintiff, 1st defendant and the other fishermen. The court accordingly finds it so.

It is the custom that canoes are normally given specific names to identify them and their owners. On the evidence, the plaintiff did not identify any canoe by name or through the photographs tendered in evidence or any cogent evidence to identify 2nd defendant as the owner of a canoe identified to have been tied to the trees in issue. The court therefore finds as fact that plaintiff failed to establish that 2nd defendant tied canoes to the trees in issue.

The legal effect of admitted agreement between plaintiff and the fishermen including 1st defendant to tie their canoes at the back of his house is in the nature of injunction as a remedy to the purported nuisance created by the fishermen. Accordingly, by the agreement, no cause of action accrues to the plaintiff for past infractions by the fishermen including the 1st defendant. The plaintiff however adduced multiple instance of breach of his previous agreement to establish that 1st defendant disregarded restraint on him from tying his canoes to his trees and persisted in doing so.

On the record, the plaintiff was not able to substantiate his allegation that the defendants caused one of his trees to break as a result of using the same to anchor their

canoes. That allegation could not be supported by positive proof. The defendants challenged the plaintiff to produce a photograph of the felled tree and the resulting damage to his sea defence and he could not do so. The court is of the humble view that the request by defendants to plaintiff to produce photographs of the fallen tree and the damage thereof to be reasonable given the peculiar circumstances of this case. It can be inferred from the fact on record that the plaintiff took the photographs tendered in evidence for the purpose of litigation. The conclusion of the court can be discerned from the title given to the photographs for emphasis and effect. Particularly the exhibit A series. The plaintiff tendered in evidence fifteen photographs including multiple shots in one frame from every direction of his premises to support his case but failed to take a single shot of the damage caused to the sea defence by the tree or a canoe alleged to be owned by the defendant. If indeed such damage or a fallen tree existed, it would have been highly probable that plaintiff would have taken photographs of it and tendered it in evidence.

In respect of the claim to the damage to sea defence, the plaintiff persistently asserted that 1st defendant ties his canoes to his sea defence wall and also collected stones from his sea defence wall to form a bundle of stones in nets at the frontage of his premises to anchor his canoes. In respect of 2nd defendant; the plaintiff alleged that he collected the stones from his sea defence wall to construct his drinking bar.

In his defence, 1st defendant admitted that he ties his canoe at the bundle of stones contained in a net used as an anchor at the end of the plaintiff's sea defence wall except that bundle of stones were constructed by the community. The 1st defendant further contended under cross-examination that the bundled stones are not situate on plaintiff's land but in the sea. I refer to the relevant portion of the cross-examination of 1st defendant.

Q. When I completed the sea defence. It is as it is shown in exhibit A3. Is it not so?

A. Yes. It is the same as today except for the rotting bamboo.

Q. When I completed my sea defence wall, there were no stone placed there to anchor the canoes.

A. Yes

Q. It is because you placed stones to anchor the canoes; my sea defence is destroyed, if you compare exhibit A3 to exhibit A5.

A. No. We constructed a strong net in which we placed boulders to anchor the canoes. It was constructed by the Oman and not 2nd defendant and I

Q. You collected the stones in my sea defence and place them in the net.

A. It is not correct.

Q. In exhibit A1, you collected my stones from my seas defence to use it to anchor your canoes shown in the photos.

A. It is not correct. We collected them from the beach at low tide and not from the sea defence.

It would be recalled that plaintiff under cross-examination conceded that the embedded stones shown in exhibit A1 were naturally deposited there and not manually collected by the industry of any person. I reproduce the responses of plaintiff when cross-examined by 2nd defendant on the issue.

Q. Who is the owner of the stones in exhibit A1?

A. It is a natural deposit. It does not belong to you.

Q. If it is a natural deposit, why do you say that I collected them from you?

A. You collected my stones.

It is clear from the record that the plaintiff is approbating and reprobating on the issue. It is either the stones depicted in exhibit A1 were manually placed there by plaintiff as part of his sea defence or they are naturally formed. Indeed, a cursory examination of photographs marked exhibits A3, A5 and A6 show that the stones used as sea defence wall are raised or packed much higher than the deep embedded stones shown in exhibit A1.

It would also be recalled that PW1 and plaintiff resiled from their early evidence in their witness statements to assert that they saw the defendants collecting stones from the sea defence wall and reported the matter to the police at Dixcove. The plaintiff did not call on any positive evidence to establish his allegations apart from mere accusations on record. The plaintiff could have positively established his evidence on the issue by tendering documentary evidence of the alleged complaint filed or call any Police Officer connected with the case as a witness to support his case. Again; the evidence is bereft of any fact to indicate whether the defendant was prosecuted for purported stealing or causing damage to his sea defence wall or that a complaint was made to the police.

On the evidence, the plaintiff failed to dispel the evidence adduced by defendants that the bundled stones were constructed by the community. More importantly, the plaintiff failed to establish how the bundled stone anchor caused damage to his sea defence wall. Exhibit A9 merely shows pieces of torn ropes at the beach.

In respect of 2nd defendant, the evidence adduced by plaintiff that he used the stones in his sea defence to build his drinking bar is not supported by the record. Contrary to the evidence adduced by plaintiff; PW1 corroborated the evidence by the defendants and

DW1 that a contractor engaged to construct the bridge in Busia excavated the area and that caused stones in the soil to dump into the lagoon. PW1 and plaintiff however vehemently denied that the community engaged in communal labour organized by DW1's predecessor to dredge the lagoon and that the stones removed therefrom were deposited at the beach. The court finds that DW1, as an Assembly man for the area to be well versed in matters relating to the history of communal labour organised in the community in the recent past and consistent with the testimonies of the defendants relating to the communal labour. The court also finds DW1 to be an independent witness with no stated interest; prejudice or bias against either party. The court accordingly relies on the holdings in **Aikins v Dakwa [2015] 82 GMJ 23 S.C**, **Akoto II v Kavage [1984-86] 2 GLR 365** and **Hijazi v Oppong [1965] GLR 558** which establish the legal principle that when an independent witness supports a party's case against the other party, the matter is deemed settled in the absence of any strong reasons to the contrary. The court did not find any contrary evidence to counter the singular purpose of the calling DW1 as a witness with the sole purpose of corroborating the evidence adduced by defendants that lagoon was dredged by communal labour. In addition to impeach the credibility of plaintiff and PW1, the defendant were successful in establishing the reasonable probabilities that the source of stone use to construct the drinking bar were obtain from the stone dredged from the lagoon.

The court reverts to the evidence adduced by plaintiff and PW1 in their respective witness statements that the plaintiff constructed the sea defence wall on plaintiff's own volition without any assistance from the Municipal Assembly or the government. The plaintiff also testified that he built a fence wall around the land granted to him which suggested that the land lying outside his bamboo fence does not form part of the granted to him. The evidence on record is also conclusive that the sea defence and the trees in issue are located outside the bamboo fence wall. It can therefore be deduced

from the record that the sea defence wall lays within the beaches and along the rocky coast in Busia (See exhibits A3, A5 and A6).

On the facts, the court finds no credible evidence that the land leased to plaintiff as contained in exhibit 2 extends to where the sea defence wall and trees are located which is a coastland. Granted without admitting that the land leased to plaintiff extents to the where the sea defence is located; the grant of coastland is subject to law. Regulation 4 of Ahanta West Assembly [Protection and Conservation of Coastal Environment) Bye Law, 2013 (hereinafter known as bye laws) vest the management of the coastal environment including the rocky beaches in the Municipal Assembly in trust for the present and future generation. Coastal environment has been defined at Regulation 23 to include coastal lagoon, rocky shores and mangrove swamp.

Regulation 4(2) states that no individual or corporate body other than the Assembly shall have property interest in the coastal fauna, flora and rocks. Despite the above provision of the bye laws, where an individual or corporate body other than the Assembly has possession of part of the coastal environment; that individual or corporate entity shall not have absolute title and shall exercise the rights accrued to him in trust for the benefit of the community. Where the coastal environment forms part or is the subject matter of a lease as the plaintiff purports to assert; it shall be a breach of public trust and prima facie voidable unless the lease is aimed at environmental protection or management of the coastal environment(**See Regulation 4(3) and (4)**)

The bye laws also vest in the Assembly as a trustee, the responsibility to take measure to protect the coastal environment and further makes it an offence to alter the configuration of the coastal environment without permit, licence or lawful authority **[Regulations 8 and 9 (5)]**

The record does not disclose that the plaintiff complied with the above regulations or acquired the necessary permit, licence or lawful authority from the Assembly to alter the configuration of the rocky beaches the frontage of his building or to harvest the rocks or stone to construct his sea defence wall. Accordingly, the court, on the balance finds that the plaintiff flouted the law when he harvested the stones from the beach and proceeded to construct a sea defence on the beach without lawful authority, licence or permit contrary to the afore-stated Regulations. In the case of **Nortey (No.2) v African Institute of Journalism & Communication (No.2)** [2013-2014] 1 SCGLR 700 at 707 states that the courts have a duty to ensure compliance with statutes including subsidiary legislations. Accordingly, having built a sea wall in contravention of the law, it is disingenuous for the plaintiff to run to the law for relief. A grant of the plaintiff's relief will mean that the court is aiding her to benefit from her failure to comply with the relevant provisions in bye-laws.

In conclusion, the court is of view that, the above analysis fortifies me to dismiss the plaintiff action in its entirety against the defendants. The defendants would be entitled to cost against the plaintiff in the sum of GH¢3,000. Interest thereof shall be at the prevailing bank rate until the entire amount is fully paid.

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HW Sidney Braimah

Magistrate