

IN THE TDC DISTRICT COURT HELD AT TEMA ON THURSDAY, THE  
15<sup>TH</sup> DAY OF DECEMBER 2022 BEFORE HER HONOUR AKOSUA  
ANOKYEWAA ADJEPONG (MRS.), CIRCUIT COURT JUDGE, SITTING AS  
AN ADDITIONAL MAGISTRATE

SUIT NO. A11/63/17

EBENEZER OSEI ----- PLAINTIFF  
HS. NO. CES 15  
SEBREPOR, NEAR MICHEL CAMP  
TEMA

VRS

PARADISE PRAISE OUTREACH MINISTRIES -----  
DEFENDANT  
SEBREPOR, NEAR MICHEL CAMP  
TEMA

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PARTIES: PLAINTIFF ABSENT  
DEFENDANT REPRESENTED BY PATRICK ADDO  
GYAMFI

COUNSEL: GODFRED KWAME ROGER AYEH, ESQ. FOR PLAINTIFF  
ABSENT  
EMMANUEL KYEI YANKSON, ESQ. HOLDING THE  
BRIEF OF ERIC  
ASUMAN-ADU, ESQ. FOR DEFENDANT PRESENT

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JUDGMENT

The Plaintiff herein claims against the Defendant herein the following reliefs:

- a. A declaration that the Defendant lacks the required permit from the appropriate authorities to operate in the purely residential area.
- b. A declaration that the noisy manner in which the Defendant operates amounts to nuisance.
- c. An order by Court directed at the Defendant to relocate its operations from the purely residential area which is causing nuisance to the detriment of Plaintiff with immediate effect.
- d. General damages for the inconvenience caused to Plaintiff.
- e. Cost, including legal fees.

#### THE CASE OF THE PLAINTIFF

According to the Amended Statement of Claim, the Plaintiff is a businessman who resides in house no. CES 15, Sebrepur, near Michel Camp, Tema and also the owner of the said property. That the Defendant operates within its premises which is just about 30 metres away from the Plaintiff's property. The Plaintiff further averred that his property has seven different flats each comprising of a two bedroom self-contained apartment all within the same yard. That he has rented out 6 of his apartments and occupies one himself with his family. That the operation of the Defendant generates unbearable noise which consistently causes inconvenience to his family and tenants. According to the Plaintiff, the area has been zoned as a purely residential one and the Defendant ought not operate in the area. That due to the unbearable noise generated by the operation of the Defendant, his tenants have all threatened to vacate their respective apartments

and demand refund of the rent paid by them. That he lodged a complaint with the Environmental Protection Agency (EPA) of the Kpone Katamanso District Assembly (KKDA) and they instituted criminal proceedings against the Pastor of the Defendant at the Community Centre District Court, Tema and obtained judgment against the pastor of the Defendant on 26<sup>th</sup> January 2016. That apart from the sentence and order for compensation, the pastor was also ordered by the Court to install sound proof equipment in his church premises not later than 26<sup>th</sup> February 2017. That the Defendant till date has refused to comply with the Court's order directed at its pastor with respect to the operations of the church. The Plaintiff further stated that the Defendant has no permit from the appropriate authorities like the EPA to run a church in a purely residential area. That the Defendant will not stop with the unbearable noise or install sound proof to minimize the noise unless the orders of this Court. That the operations of Defendant in an excessively noisy manner affects his health and that of his family and tenants; and that he stands a greater risk of suffering due to the negative effects the operations of Defendant has on him, his family and tenants.

In his evidence to the Court, the Plaintiff tendered the land title certificate covering his property being the said property close to the Defendant church, as exhibit A'. He also tendered the judgment of the Tema Motor and Sanitation Court as exhibit 'B'. The Plaintiff repeated his assertions in the Amended Statement of Claim as to the orders of the Motor and Sanitation Court, Tema and testified that he realized the loud noise and sound were still continuing after the period the Court gave for the Defendant to install sound proof equipment in his church so he decided to take a legal action against the church. He denied the Defendant's defence and testified that the church operates every other day and the noise from the church is so loud that it causes nuisance to his family and

tenants. That the Defendant's pastor did not comply with the Court's order to install sound proof instrument. The Plaintiff further testified that he acquired the land before the Defendant started the service. That the Coastal Industries Limited zoned where the church and his property are as residential area; and where the filling station and other shops are situated is purely commercial area which was also zoned by Coastal Industries Limited.

The Plaintiff called two witnesses as PW1 and PW2.

PW1 gave his name as Abdallah Abubakari. He testified to the effect that he lives at Michel Camp, and was in Court to represent the EPA. That he is a Senior Programme Officer at the EPA. He tendered exhibit 'C' being report on noise levels measurement at Defendant church. He continued that per the EPA standard, any activity or anyone living in areas zoned as residential areas should not generate noise levels above 48 decibels for the night time which is 10pm to 6am; and one cannot generate noise levels above 55 decibels for day time, which is 6am to 10pm. According to PW1 per the measurement they carried out when the church service was in progress, they recorded 67.2 decibel which was above the Ghana standards for health protection requirement for ambient noise level. That they recorded 53.5 decibels without church activity. He concluded that EPA has an LI 1652 which requires that any undertaking be it a church, school, industrial facilities, etc needs an environmental permit before they can locate in any place.

PW2 gave his name as Michael Ewurah. He also testified that he lives in Ashaiman; and is an environmental health officer. He told the Court that there was a complaint from the Plaintiff herein to their office. That he reported that a church adjacent to his house was producing noise. That based on that they, the

Assembly wrote to the EPA to request for them to take the measuring noise level which they did and produced a report, being exhibit 'C'. That they later prosecuted the Defendant church and its pastor represented the church. PW2 also spoke about exhibit 'B' and the orders of the said Court therein. According to PW2, he visited the premises where the church is located with the head of Environmental Zonal Council, Henry Akakuli when he was asked to come to Court to represent the Assembly. That when they visited there they realized that the activity was not conducted as directed by the Court so he was to come to this Court to serve as a witness.

The Plaintiff thereafter closed his case.

#### THE CASE OF THE DEFENDANT

In the Statement of Defence pursuant to Amended Statement of Claim filed by counsel for Defendant on behalf of the Defendant, the Defendant denied the claim of nuisance by the Plaintiff and stated that it organizes church services on Wednesdays and Sundays in the forenoon and ensures it operates within the allowable noise of the EPA. The Defendant further denied the claim that it has not complied with the orders of the said Court. That the Defendant church was there long before the Plaintiff went to the site and it has been the style of the Plaintiff to harass people who are doing business there even though no one has zoned the place as purely residential area. That there are a lot of commercial activities in the area including filling stations, shops, etc. The Defendant continued that one does not need any license from EPA before running a church. That there is no iota of truth in the claims of the Plaintiff. The Defendant prayed

this Court to disallow the Plaintiffs reliefs as same have no basis and not worthy of belief.

In his evidence in chief, the representative of the Defendant church who gave his name as Patrick Addo Gyamfi testified that he lives at Bediako, Saki 2 and is a reverend minister in the Defendant church. That the church has been duly registered. He tendered the certificate of incorporation and certificate to commence business as exhibit '1 series'. He further testified that it is not true that the church makes noise to disturb the Plaintiff and people living in his house and his tenants. That the church has been in operation within that area for about 10 years; and it is situated at a business center, with about three filling stations in the area where the church is. That there are two tanker yards in the area and a hardware shop also in the vicinity. He repeated the averments in the Statement of Defence and further tendered exhibit '2 series' being photographs of a room with chairs and speaker attached to the wall of the building to support his defence that he has complied with the orders of the Sanitation Court. He also tendered exhibit '3' which is a photograph of the inside of a building with people and balloons on the ceiling to show how the auditorium was before he complied with the orders of the Sanitation Court. He concluded that they have done nothing to warrant the church to relocate from that premises.

Thereafter, the Defendant's case was closed.

At the end of the hearing, the legal issues to be determined by this Court are:

1. *Whether or not the area where the Plaintiff's property and the Defendant church are located is a purely residential area.*

2. *Whether or not the Plaintiff has capacity to seek a declaratory relief in relation to Defendant's required permit or otherwise from the appropriate authorities to operate in a purely residential area.*
3. *Whether or not the operations of the Defendant causes nuisance to the Plaintiff, his family and tenants.*
4. *Whether or not the Plaintiff is entitled to the reliefs endorsed his Amended Statement of claim.*

In civil cases, the general rule is that the party who in his pleadings raises an issue essential to the success of his case assumes the onus of proof.

***Section 12(1) of the Evidence Act, 1975 (NRCD 323)***, provides that:

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

In the case of *Adwubeng v. Domfe [1996-97] SCGLR 660*, the Supreme Court held thus:

*“Sections 11(4) and 12 of the Evidence Decree, 1975 (NRCD 323)... have clearly provided that the standard of proof in all civil actions was proof by preponderance of probabilities – no exceptions were made.*

It is trite learning that in civil cases, the standard of proof is on the preponderance of probabilities. Thus, the Court determines whose case is more probable than not.

***Section 12(2) of the Evidence Act, N.R.C.D 323*** states:

*“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 civil cases, the law imposes the legal burden on the Plaintiff in a case like the instant one. The Plaintiff in this case thus bore the legal burden of adducing evidence from which it could be concluded that the Defendant church is located at a purely residential area which was zoned by the Coastal Industries Limited and also its operation causes nuisance to the Plaintiff, his family and tenants.

**Section 10(1) of the Evidence Act N.R.C.D 323** states:

*“...burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court.”*

**Section 11(4) of the Evidence Act** explains the burden of proof in civil cases as follows:

*“In other circumstances, the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence, a reasonable mind could conclude that the existence of the fact was more probable than its non-existence”.*

In the case of **Memuna Amoudi v. Kofi Antwi, Part 3, [2006] MLRG, 183 at 195,** the Supreme Court per Wood, JSC (as she then was) stated:

*“A cardinal principle of law on proof ... is that a person who makes an averment or assertion ... has the burden to establish that his averment or assertion is true. He does not discharge his burden unless he leads admissible and credible evidence from which the fact or facts he asserts can be properly and safely inferred.”*



I shall now analyse and evaluate the evidence adduced by the Plaintiff and his witnesses in support of the Plaintiff's case and the Defendant's evidence in support of its defence within the context of proof by preponderance of probabilities to resolve the above issues.

From the evidence before this Court, it is not in dispute that the Defendant church is located close to the Plaintiff's property, as the Defendant's representative admitted under cross examination that where the Plaintiff's house is situated is closer to his church auditorium. The following extract from the cross examination of the Defendant's representative by Counsel for the Plaintiff is relevant:

*"Q: So can you tell this Court the distance between your church and the Plaintiff's house, and the distance between the church and the 1<sup>st</sup> filling station which one is nearer.*

*A: Where the Plaintiff's house is situated is closer to my church auditorium."*

In his evidence before this Court, the Defendant's representative admitted under cross examination that Defendant's church auditorium is relatively closer to the Plaintiff's property than the other structures in the area. The main issues between the parties are whether the said area has been zoned as purely residential area; and the operation of Defendant's church causes nuisance to the Plaintiff and others resident in his said property. If the Plaintiff is able to establish his claims from the evidence before this Court he will be entitled to the reliefs he is praying for, against the Defendant.

- 1. Whether or not the area where the Plaintiff's property and the Defendant church are located is a purely residential area.*

The Plaintiff stated in the Amended Statement of Claim and in his evidence before this Court that the area has been zoned as a purely residential one and the Defendant ought not operate in the area. That where his property is situated and where the Defendant operates is purely residential area zoned by Coastal Industries Limited; and where the filling station and other shops are situated is purely commercial area which was also zoned by Coastal Industries Limited. However the Defendant in its Statement of Defence disputed the Plaintiff's claim that the said area where both parties are located is purely residential area and that no one has zoned the place as purely residential area. That there are a lot of commercial activities in the area including filling stations, shops, etc. The Defendant's representative testified that the church is situated at a business center and they are also in between. That there is a tanker yard in front of them, a warehouse and another tanker yard and a hardware shop in the vicinity.

The Defendant having denied the Plaintiff's claim that the said area where both Plaintiff's property and Defendant church is located is purely residential area, there was a legal burden on the Plaintiff to prove that the said area is purely residential area. The Plaintiff mentioned that the said area has been zoned by Coastal Industries Limited as purely residential area but when his assertion was denied, he did not lead sufficient evidence to establish same when he was given the opportunity to adduce evidence in support of his claims.

Gbadegbe JSC in the case of Sagoe v. SSNIT (2011) 30 GMJ 133; (2012) 52 GMJ 47 held that:

*"The party who asserts the affirmative of an issue has the incidence of the legal burden ..."*

From the authority above, the Plaintiff had the legal burden to establish his assertion after same had been rebutted by the Defendant.

The Plaintiff only tendered his land title certificate to prove that he is the owner of the property from which continuous nuisance is being alleged as a result of Defendant's operation as a church. The Plaintiff ought to have tendered the document from Coastal Industries Limited that zoned the said area as purely residential or he could have called an appropriate officer from the authorized institution that zoned the said place as purely residential to adduce the necessary evidence in support of the assertion that the said area is zoned as purely residential. PW1 and PW2 did not give satisfactory evidence as to whether or not the said area both parties are situated is zoned as purely residential. No such evidence is before this Court to establish that Coastal Industries Limited zoned the said area as purely residential as asserted by the Plaintiff. The evidence before this Court does not also indicate the relevant Assembly has zoned the said area as purely residential since neither PW1 nor PW2 tendered any document to that effect.

In **Klah v. Phoenix Insurance Company Ltd [2012] 2 SCGLR 1139**, it was held thus:

*“where a party makes an averment capable of proof in some positive way e.g. by producing documents, description of things, reference to other facts, instances, and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances from which the Court can be satisfied that what he avers is true”*

In the absence of cogent evidence before this Court that the area where Plaintiff's property and Defendant church are located is purely residential, I hereby dismiss the said assertion as unsubstantiated.

2. *Whether or not the Plaintiff has capacity to seek a declaratory relief in relation to Defendant's required permit or otherwise from the appropriate authorities to operate in a purely residential area.*

The Plaintiff has claimed against the Defendant a declaration that the Defendant lacks the required permit from the appropriate authorities to operate in the purely residential area. However the Plaintiff did not lead satisfactory evidence in support of this relief as his claim is that the Defendant has no permit from the appropriate authorities like the EPA to run a church in a purely residential area.

From the evidence before this Court, the Plaintiff could not establish that the said area is purely residential as that claim has been dismissed as unsubstantiated. Moreover, the evidence on record suggests that both the EPA and the then KKDA (now KKMA) are aware that the Defendant is occupying the land in dispute and operating as a church. The evidence before this Court indicates that the State authorities in charge of permit or otherwise in relation to the Defendant's operations are very much aware of the Defendant's occupation of the land in the area and its operations thereon but have not taken any steps to enforce the relevant regulations with regards to the required permit or otherwise as PW1 stated in his evidence before this Court. The Defendant stated in its Statement of Defence that it does not need any license from EPA before running a church. Notwithstanding, there is no evidence before this Court that the relevant institution has authorized the Plaintiff to seek declaratory relief as to

whether or not the Defendant has the required permit especially when L.I. 1652 has made clear provisions on the issue of permit before certain activities can be carried out. From the evidence before this Court, the Plaintiff does not have any capacity or mandate to seek the said declaration as the appropriate institutions appear to have no problem with the Defendant's operations with respect to the regulations under L.I. 1652 otherwise they would have taken the necessary action under the said Regulations. In the absence of any authority from the appropriate institution to the Plaintiff to seek the present relief against the Defendant, same hereby fails and is accordingly dismissed.

*3. Whether or not the operations of the Defendant causes nuisance to the Plaintiff, his family and tenants.*

The Plaintiff claimed that the Defendant operates within its premises which is just about 30 metres away from his property, that his property has seven different flats each comprising of a two bedroom self-contained apartment all within the same yard and he has rented out 6 of his apartments and occupies one himself with his family. That the operation of the Defendant generates unbearable noise which consistently causes inconvenience to his family and tenants. That due to the unbearable noise generated by the operation of the Defendant, his tenants have all threatened to vacate their respective apartments and demand refund of the rent paid by them. That the operations of Defendant in an excessively noisy manner affects his health and that of his family and tenants. In his evidence he testified that he realized the loud noise and sound were still continuing after the period the Court gave for him to install sound proof equipment in his church so he decided to take a legal action against the

church. That the Defendant's pastor did not comply with the Court's order to install sound proof instrument.

The Defendant vehemently denied the Plaintiff's claim that the operation of the church is causing nuisance to the Plaintiff and the others mentioned; and also denied that it has not complied with the orders of the Sanitation Court. In his evidence, the representative of the Defendant tendered exhibit '2 series' and '3' to support his defence that he has complied with the orders of the Sanitation Court.

The Plaintiff therefore had the incidence of a legal burden to establish the claim of nuisance. To support the claim of nuisance, exhibits 'B' and 'C' were tendered in evidence. Exhibits 'B' was obtained based on exhibit 'C' which was conducted in August 2016.

Under cross examination PW1 told the Court that the exercise was carried out on 27<sup>th</sup> and 28<sup>th</sup> August 2016. That since then they have not conducted any subsequent exercise with regards to the Defendant church. He further answered in the negative when he was asked if he could tell whether at the time of giving evidence the Defendant church was operating within the appropriate sound level. He further told the Court that at the time of giving evidence he may not be able to respond to whether or not the operations of the Defendant church amount to a nuisance.

PW2 did not tender any subsequent report to indicate that the noise levels as at the time the report in exhibit 'C' was conducted still remained the same. The evidence of PW2 is not sufficient enough to establish the noise levels as at the time he testified before the Court. The Plaintiff had a duty to produce a subsequent report after the judgment of the Motor and Sanitation Court had been given. This is because exhibit 'C' is the same report the Sanitation Court

relied on to convict the Defendant's pastor, as an accused and also gave further orders as to compensation to the Plaintiff and orders to curtail the noise level during operation of Defendant church which the Defendant in its Statement of Defence and evidence, stated that it had complied and tendered exhibits to that effect. Therefore to satisfy this Court that the said nuisance based on which exhibit 'B' was obtained continues unabated, there ought to have been a subsequent report on the operation of Defendant church and its effect on the Plaintiff as to the permitted noise level or otherwise. Unfortunately, there is no such evidence before this Court in the face of vehement denial by the Defendant that its operation still creates excessive noise which affects the Plaintiff and those resident in his said property.

The evidence adduced by the Plaintiff's attorney could not sufficiently establish the claim of nuisance caused by the operation of the Defendant church since there is no subsequent report by the EPA on the noise levels after exhibit 'C' was conducted and exhibit 'B' was obtained. The Plaintiff did not also adduce any evidence as to the alleged threat by his tenants to vacate their respective apartments and demand refund of the rent paid by them except to repeat his assertions when he was given the opportunity to lead sufficient evidence to establish his claims. No evidence at all was led to establish the said claim. The Plaintiff could have called some of the tenants to corroborate his claims or any document in relation to the demand of their paid rent. There is also no evidence before this Court to suggest that after the sanitation Court gave its orders, there is another report by EPA that confirms that the noise that emanates from the activities of Defendant is still above the allowed EPA standard and has affected the health of the Plaintiff as well as that of his family and tenants. There is no medical report before this Court to indicate that the Plaintiff, his family or

tenants have been diagnosed of a health condition that is caused by noise for the Court to link same to the operation of the Defendant church.

Counsel for the Plaintiff referred the Court to the case of In the case of *Aidoo v. Adjei & Others [1976] 1 GLR 431*, where the Court held that the operation of a chop bar in a bamboo structure on a portion of land where a person had his residential building constituted nuisance.

Distinguishing the above case from the instant case, the Defendant tendered exhibits that he complied with the orders of the Sanitation Court and installed sound proof devices. Therefore the Plaintiff had a burden to satisfy this Court with cogent evidence that the nuisance still continued after the orders given by the Sanitation Court by causing EPA to conduct a subsequent report on the noise levels measurement emanating from the Defendant church but he failed to do so and decided to rely on the same report upon which he got compensation from the Defendant per the orders of the Sanitation Court.

From the entire evidence before this Court and in the absence of persuasive evidence to support the claim of nuisance as alleged by the Plaintiff, the said claim hereby fails.

4. *Whether or not the Plaintiff is entitled to the reliefs endorsed his Amended Statement of claim.*

The Court of Appeal applying the principle held in the case of *Fordjour v. Kaakyire [2015] 85 GMJ 61* when His Lordship Ayebi J.A. espoused:

*“It has to be noted that the Court determines the merits of every case based on legally proven evidence a*



The Plaintiff could not lead satisfactory evidence that his property and the Defendant church are situated in a purely residential area. He could not also establish his claim that the Defendant failed to comply with the orders of the Sanitation Court and therefore continued to cause nuisance to him, his family and tenants as there was no subsequent report on noise levels measurement at the Defendant church to prove the Plaintiff's claim. There was no sufficient evidence before this Court by the Plaintiff to establish his claim of nuisance caused by the operation of the Defendant church.

Moreover, from the conduct of the relevant authorities, they appear to have no issue with the operation of the Defendant church with regards to the required permit under L.I. 1652 as the Defendant has been in operation for some time now.

In relation to the claim of general damages, given that the Plaintiff could not establish his claim of nuisance by adducing cogent evidence in support of the said claim, same is dismissed for lack of satisfactory evidence.

I rely on the statement of Adede JSC in the case of *Nartey v. Mechanical Lloyd Assembly Press Ltd [1987-1988] 2 GLR 314* when he stated that:

*"A person who comes to Court, no matter what the claim is, must be able to make a good case for the Court to consider, otherwise he must fail".*

On the basis of the entire evidence before this Court and from the findings above, I conclude that the Plaintiff has failed in his duty of providing and adducing sufficient evidence to establish his claims on the balance of probabilities.

Appau JSC held in the case of Emmanuel Osei Amoako v. Stanford Edward Osei (substituted by Bridget Osei Larley); Civil App. No. J4/3/2016 dated 1<sup>st</sup> June 2016, S.C. (Unreported) as follows:

*“Respondent, did not go beyond his rhetorical statements ... Judgments must be based on established facts not mere rhetoric or narrations without any supporting evidence that can sustain the claim”.*

Flowing from the above analysis of the evidence before this Court and the authorities cited, I find that the Plaintiff did not adduce the required evidence in support of his claims and therefore could not discharge the burden and the standard of proof as provided in the Evidence Act.

Having failed to adequately establish the claim of nuisance caused by the operation of the Defendant after the Sanitation Court delivered its judgment; and without the necessary evidence and authority from the appropriate institutions, the Plaintiff is not entitled to the reliefs he seeks against the Defendant in this action. Consequently, I hereby dismiss the claims of the Plaintiff as not substantiated; and the reliefs endorsed on his Amended Statement of Claim are dismissed.

A cost of GH¢2,000.00 is awarded against the Plaintiff in favour of the Defendant.

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H/H AKOSUA A. ADJEPONG (MRS)  
CIRCUIT COURT JUDGE  
15<sup>TH</sup> DECEMBER 2022