

IN THE DISTRICT COURT HELD AT OSINO
ON WEDNESDAY THE 20TH DECEMBER 2023
BEFORE HIS WORSHIP AYAGIBA SALIFU BUGRI
DISTRICT MAGISTRATE

CASE NO. . A11/01/24

AGNES LYDIA POMAA PLAINTIFF
OF DWENASE

VS

1. YAA FOBEA DEFENDANTS
2. SOLOMON OBENG
OF DWENASE

JUDGEMENT

Reliefs sought:

1. An order of the court to compel the defendant to cut down her coconut tree planted behind plaintiff's house
2. Claiming damages of GHC25,000 against the defendant for the destruction caused to Plaintiff's house
3. Costs

Brief facts

Both parties are residents of Dwenase. Plaintiff is a farmer whilst Defendant is a trader. The Defendant has planted a coconut tree behind his house and has caused damage to plaintiff's house since 2016.

The Plaintiff has reported the nuisance to the elders of the community, the local chief and NADMO to compel defendant to abate the nuisance, all to no avail.

Even though defendants acknowledge that fact, they contend that plaintiff chose to build her house close to the coconut tree even though she had enough land and space to have shifted the foundation of her building at the time of its construction. They added that plaintiff has encroached a pathway/road, which separates her property from the defendant's property.

Plaintiff pleaded liable to the first relief and Not Liable to pay damages for the destruction caused to Plaintiff's roof by the coconut tree. Accordingly, the Court ordered the District Physical planning department of the Fanteakwa South District Assembly (FSDA) in Osino to ascertain the extent of the destruction of the roof by the nuisance to warrant the court to make an order for damages of GHC25,000 to be paid as plaintiff has pleaded.

Thus, the Physical Planning department of FSDA invited as Court witness to adduce evidence as expert evidence filed its report, and testified to it and cross examined in open court.

Whereas plaintiff had no cross examination, defendant cross examined the witness.

ISSUES FOR DETERMINATION

Whether or not defendant is liable to pay damages to plaintiff.

There is no doubt from the evidences adduced that the nuisance caused by Defendants coconut tree resulted in the damage to the roof of Plaintiffs house.

Per the conclusion and recommendations of the filed assessment report, immediate action should involve trimming or removing the overhanging sections of the coconut tree to prevent further damage to Mrs. Pomaa's (Plaintiff's) property. Fortunately, for the Court and Plaintiff D2 had admitted liability to that relief as pleaded by Plaintiff.

Having entered judgement in favor of plaintiff in that regard, I order that the coconut tree is removed completely by cutting its trunk and branches, and same disposed of in a safe manner to prevent injury to the unsuspecting public, the parties, their relatives and children and to property, especially the property of plaintiff from falling coconut fruits.

The cost of cutting and disposal of the coconut tree to be borne by both parties and supervised by the Physical Planning Department team that undertook and filed the assessment report as ordered by the court.

To the extent that the trunk of the coconut tree had slanted and branches over Plaintiff's house per the assessment report, and further evidence established that the falling coconut fruits have caused damage to Plaintiff's roof as a result per evidence of respective appendix of pages 5 and 6 of the report. Plaintiff is entitled to claim damages. Aside the physical damage to the building, there is no doubt from my own inference from the contents of the assessment report and evidences adduced that Plaintiff has suffered trauma and psychological fear of injury from a falling coconut fruit at any time that she is in or out of her property.

However, having stated GHC25,000 as her claim for damages, it is implied that plaintiff is seeking special damages. Plaintiff has however not lead evidence to prove same.

Accordingly, in the absence of evidence to prove special damages as pleaded, and in the absence of any recommendation of the value of any damages that plaintiff is entitled to per, the assessment report, I award general damages of GHC10,000 to the Plaintiff.

Costs of GHC 2,000 awarded to Plaintiff.

**HIS WORSHIP
AYAGIBA SALIFU BUGRI,
MAGISTRATE**