

IN THE DISTRICT COURT HELD AT OSINO
ON THURSDAY THE 13TH DAY OF JULY, 2023
BEFORE HIS WORSHIP AYAGIBA SALIFU BUGRI
DISTRICT MAGISTRATE

CASE NO . A2/02/23

1. ISAAC LOMOH PLAINTIFF
2. MR. YAKAH

VS

INUSAH KASSIM DEFENDANT

JUDGEMENT

Reliefs Sought

1. Recovery of cash sum of GH5,000.00 being damages of plaintiffs food crops
2. Order for defendant to prevent animals from entering plaintiffs farm
3. Any other orders the court may deem fit
4. Costs

Brief facts

Plaintiffs are farmers, whilst defendant is self-employed. Both parties are residents of Osino. Plaintiffs case are that, they are owners of over five (5) acres of farmland at Osino and have cultivated cocoa, cassava, maize, yam, cocoyam, plantain and pear on it. Defendant owns sheep, that have entered into plaintiffs' farms and destroyed all the food crops on it.

According to P1 who gave evidence on behalf of P2, about 2years ago, he observed that some sheep had destroyed food crops on his farm and other adjoining ones including P2's farm. Through his own investigation, it revealed that defendant's sheep were responsible for the destruction. Having visited the farm and witnessed the destruction caused by his sheep, the two negotiated on how much plaintiff be compensated. According to plaintiff an amount of GHC1500 was agreed whereas defendant says it was GHC500 that was agreed, which he has paid to plaintiff. That settlement notwithstanding, defendant's sheep continued to destroy crops on farmlands until P1 confronted him again and defendant said he had relocated the sheep. However, adjoining farmers including P2 complained about continued destruction of food crops

by defendant's sheep. Plaintiff says he took photographs of defendant's sheep grazing on his and P2's farm and destroying their food crops as well.

According to P1, together with P2, they lodged a complaint at the Sanitation and environmental department who paid a visit to their respective farms and witnessed the sheep on their farms. Defendant was furious when confronted by the officers, and taken around the farm to witness the destruction caused by his sheep. Defendant later apologized through his brothers, but the nuisance never abated.

On 13th/05/23, plaintiff says he visited his farm and saw defendant's sheep destroying his food crops. Plaintiff said he took video and photograph evidence of the presence of, and destruction caused by defendant's sheep on that date.

Issues For Determination

Whether or not enough evidence has been adduced to prove that defendant's sheep are responsible for the continued destruction of food crops on P1 and P2's farmland.

It is clear from the evidences adduced by both P1 and P2 that there had been an initial destruction of plaintiffs farm by defendant's sheep. This culminated in a settlement between the two parties eventually and an amount of GHC500 paid to P1 by defendant. Even though there is a contention of exactly how much compensation was agreed by the two, the fact that a settlement was reached in that instance has been established. None of the parties called witnesses to adduce evidence to corroborate their respective testimonies on the amount of compensation that was agreed. Moreover, that contention is not in issue per the reliefs sought by the plaintiff. Having received compensation for that, plaintiff is not liable to receive additional compensation in that regard. Plaintiff could have only sought to recover the outstanding amount per the agreement on compensation, by adducing evidence to substantiate and prove his claim.

According to plaintiff, in the second instance that defendant's sheep went unto his farm to destroy food crops, he confronted defendant and also invited the environmental and sanitation unit of the district assembly that has jurisdiction over the area to ascertain the extent of the destruction, and defendant was ordered to relocate his sheep within a month. This evidence is corroborated by PW1 and PW2 who were engaged by plaintiff as farm hands on his farm. According to PW1 and PW2, they have encountered defendant's sheep several times on the farmland, and in one instance, for the whole week that they were on plaintiffs farm the sheep had come to graze on the food crops.

The two have testified that, they were present when plaintiff invited defendant and some officials to the farm to witness the destruction caused by his sheep. They were also present and witnessed when plaintiff took photographs of food crops destroyed by defendant's sheep. According to the two witnesses the sheep have continued to destroy food crops on the farm following that visit to the farm.

Even though defendant indicated that he does not know PW1, the only response or cross examination he had for PW2 was an insistence that he has confined his animals. I infer from that response that, it is admittance by defendant that indeed such incident took place, hence confirming the second instance that plaintiff's food crops were destroyed. My inference is further entrenched by defendant's admittance during cross examination of P1 that he was granted one month to confine his sheep. At this second instance, there's no evidence that any compensation was awarded. Since the sanitation and environmental management officers were invited to mediate that second instance, and they made specific orders that defendant confines his sheep, this court shall not undo that. If the officers thought it was meritorious to order for compensation, I believe they would have done so. PW3's testimony was largely hearsay even though she claimed to be part of those whose farms were affected by defendant's sheep constant destruction. There is no evidence that she ever confronted defendant when she was told by P1 that defendant's sheep were responsible for the destruction, except to rely on P1 to conclude that her food crops were destroyed by defendant's sheep. PW3 did not make an effort to know or acquaint himself with defendant, considering the resources expended in clearing and cultivating the land as she alluded to. Even though I have no cause to doubt PW3's testimony, it is not admissible in law.

Defendant's denial that his animals or sheep have destroyed P1's farm is only in one instance. He admits that there was an initial destruction and through his wife payment of GHC500 compensation was paid to P1. Even though defendant says he relocated his sheep since 4th April 2023, he has not presented any evidence of the process of relocating them or their current location.

However, a witness (environmental officer- DW2) who testified on behalf of defendant averred that he was the one who mediated the initial settlement between P1 and defendant, upon an invitation by P1 to visit his farm to ascertain the destruction caused by defendant's sheep and for action taken on his behalf.

The witness corroborated defendant's testimony of the relocation of the sheep. Whereas DW2 indicates in his witness statement that "right in front of me defendant started catching his animals", defendant said in his witness statement, at paragraph 6 that, after settling with P1 he informed his friend called Abdulai Abubarkar Sadik (DW1) to assist him relocate the sheep. The said witness (DW1) has corroborated defendant's testimony that on 4th April, per defendants request he assisted him to relocate his sheep.

The missing link in the defendant's witnesses testimonies are in the dates. Whereas DW2 is not specific about the date, defendant and DW1 are insistent on 4th April 2023 as the date the sheep were relocated and have not been at P1's farm ever after. It is apparent on the face of DW1's testimony that he was coached on what to say to the court. During cross examination, DW1 admitted that he was not present when the environmental officers visited the farm. According to DW1 he was seated in defendant's car and saw P1 and defendant engaged in an altercation, and that is how he knows P1 in the instant case. It bothers the mind of this court how DW1 became aware of GHC500 that was paid to P1 if not told by defendant. After all, the two are friends per their respective testimonies and this court is not aware that they reside at the same place since it is not in evidence. Moreover, defendant said GHC500 paid to P1 was through his wife, which DW1 failed to include in his testimony if it is a fact that he witnessed what transpired. By extension DW1's testimony that since 4th April 2023, defendants animals have never returned to P1's farm is not known to him as a matter of fact, but coached to say so. Be that as it may, that DW1 assisted defendant to relocate his sheep, he failed to mention where they were relocated. These are matters of fact that are essential in the determination of a matter such as the instant one which is laden with possibilities considering varied circumstances as a result of evidences adduced.

Per Evidence Act; Act 323:

Section 11 – Burden of Producing Evidence Defined.

(1) 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.

4. 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.

Section 12—Proof by a Preponderance of the Probabilities.

(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.

After evaluating and analyzing the evidences adduced before me, I have no doubt to believe that, P1's crops were destroyed by defendant's sheep in one instance. For that reason P1 made a report to environmental officers and an inspection of the farm conducted by the officers in the presence of, or participation of the parties, to wit P1 and defendant. There was an amicable settlement mediated by the officers and defendant paid GHC500 to P1.

Even though defendant's denial is fraught with inconsistencies, the plaintiffs and more especially P1 has the burden to prove that, the sheep that have continued to graze on his food crops on his farm are the property of defendant. In the first instance defendant admitted that the sheep were his, which made matters easier and simple. Otherwise, one cannot simply conclude that because a person owns sheep and resident around farmlands, his sheep are responsible for whatever destruction caused. In this case, it would have been prudent to catch one of the animals and await a claimant. That way a denial will not avail such a claimant since the evidence is substantial.

Even though DW2 averred that P1's videos were obtained in April, which is when P1 reported the destruction and an inspection subsequently conducted on his farm, the video evidence tended to this court indicate that the videos were obtained on 18/05/2023. That is three clear days after the instant suit was filed.

In the opinion of this court, the video evidence is not conclusive, though there is evidence on the face of it that crops have been grazed upon by animals. Even if sheep were captured in the video evidence, it is not enough to conclude that they are the property of defendant without any mark or identification on them to prove so.

Under the circumstances, the plaintiffs allegation against defendant is highly circumstantial, even though very probable. Circumstantial evidence is evidence of other facts which point to only one direction that the accused or defendant committed the

offence. In the instant case, there is no evidence adduced before this court that suggest other people, persons or group residing within the catchment area of the farms whose crops defendant's sheep destroyed rare sheep or other livestock. In the absence of such evidence, and to the extent that defendant's sheep have ever been on P1's farm, there is only one probable conclusion on the balance of probabilities of the evidences adduced, that defendant's sheep are responsible for the destruction on P1's farm.

Per the evidences adduced, P2's farm and whatever destruction was caused thereupon was not documented as P1. In all the evidences adduced, P2 was only a witness to P1's issues. It is not said anywhere in the evidence that P2 lodged a complaint with any person or office regarding his loss. The closest was to say that together with P1 they visited DW2 at his home to lodge a complaint. However, DW2 has denied that. In the opinion of this court, this puts P2 in a similar position as PW3 and at best should have been called as a witness in this case rather than a co-plaintiff.

Since P1 has not adduced evidence to prove damages of GHC5000 that he suffered as a result of the destruction, I award general damages of GHC2000

I further order defendant to confine his animals or take measures to prevent them from destroying other farms and crops as soon as practicable.

Costs of GHC500 awarded to P1.

**HIS WORSHIP AYAGIBA SALIFU BUGRI,
MAGISTRATE**