

IN THE DISTRICT COURT HELD AT TESHIE - NUNGUA ON FRIDAY THE 14TH DAY OF APRIL, 2023 BEFORE HER WORSHIP PRISCILLA SOPHIA YEBOAH AS MAGISTRATE.

SUIT NO. GTNDC/A1/9/20

**JOSEPH K. SEDZRO
TESHIE, ACCRA**

PLAINTIFF

VRS:

**ANTHONY DELA SORKPOR
NEW SITE, TESHIE**

DEFENDANT

PARTIES	PRESENT
COUNSEL FOR THE PLAINTIFF - KINGSFORD DEBRAH ESQ.	PRESENT
COUNSEL FOR THE DEFENDANT- VINCENT GARR	ABSENT

JUDGEMENT

The Plaintiff caused a writ of summons to be served on the defendant claiming the following reliefs:

1. An Order directed at the Defendant to demolish the constructed wall to enable him (plaintiff) have access to his house.
2. Perpetual injunction restraining the Defendant from constructing a wall or structure to deny the Plaintiff access to his house.
3. Cost including lawyer's cost.

Defendant pleaded not liable thereby setting the issues down for trial.

PLAINTIFF'S CASE

The Plaintiff's case which has given rise to the instant judgment is that he bought a piece of land at Teshie New Site in the year 2010 and the land was carved out of the Defendant's one plot of land. After the purchase defendant subsequently built plaintiff's house on the land for him.

According to plaintiff defendant also consented that plaintiff uses defendant's land as access. Plaintiff avers that he also enjoyed access to his house through Defendant's land by driving until 2014 when the defendant decided to construct a wall blocking him to and from his house by any means.

Plaintiff contends that the defendant's action has caused him and other tenants in his house tremendous difficulty and hardship after defendant has refused all efforts by third parties including officers of the District Assembly and the Church which they both belong, to get him to remove the wall. The Plaintiff called one witness to support his case.

DEFENDANT'S CASE

On his part, the Defendant agreed with the Plaintiff that he sold part of his one plot of land to the Plaintiff but denied that there was an agreement between them for the Plaintiff to use his land to access his residence. Defendant contends that because he did not agree to the plaintiff usage of his land as access or a road, the parties both constructed their respective walls. Defendant further claims that the Plaintiff has

always used a different access road to and from his house until that road which happens to be the only access road was blocked by one Prosper whose house adjoins the parties land.

EVIDENCE IN CHIEF OF PW1

PW1 Augustina Afrifa who described herself as plaintiff's tenant, testified that when she moved into her apartment she had a passage by means of a vehicle through the defendant's house until the defendant erected a wall and later a gate to further deny the entire occupants of the plaintiff's house access. PW1 describes the current situation she and the plaintiff's household find themselves in as terrible as she wants to relocate to her husband's house but she does not know how to move her things out since there is no access.

DW1'S TESTIMONY

The Defendant called one witness by name Komada Eric Dickson who adduced evidence in support of the Defendant's case. he testified that he knows the defendant sold his portion of land to the Plaintiff. According to him the parties both built their houses with walls and that the plaintiff has been using an access road which is behind the said Prosper's building since the main access has been blocked by the said Prosper. The Defendant's witness tendered Exhibit 4 series as evidence showing a story building which he claims was built that blocked the Plaintiff's access road to his house.

ISSUES

From the facts adduced, the The issues which have been set down for determination are:

1. **whether the plaintiff is entitled to access**
2. **Whether defendants land is capable of being used as access by plaintiff.**
3. **Whether the defendant can deny the plaintiff access**

RULES/ APPLICABLE LAWS:

An easement has been defined by section 139 of the land Title Registration Act, 1986, as right capable of existing as an easement. Under rule of common law it is land attached to land and allowing the proprietor of the land or an interest in land to use another land in particular manner or to restrict its use to a particular extent but does not include a right capable of existing as a profit or restrictive agreement.

In Ghana there is no special statute dedicated specifically for easement. The common law definition of easement has been adopted in Ghana by virtue of Article 11 (2) of the Constitution of Ghana defines common law of Ghana as comprising the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the superior court of judicature. As quoted by plaintiff's counsel in his address it stands to reason that

easement created by the rules of common law are the ones recognized making the common law definition the acceptable definition in Ghana.

The common law position is that easement are incorporeal or intangible hereditaments. They are rights which a landowner may exercise. They are rights which a Landowner may exercise over an adjoining land or a land in a neighborhood owned by another landowner. **A landowner cannot exercise easement over adjoining land or land in a neighborhood which is owned by the same landowner. In all cases the land on which the landowner is exercising the right of easement should be owned by another landlord.**

Easements may be created expressly or by necessary implication, by prescription or by the rule in *Wheeldon v burrows* (1879) LR 12 Ch d 31

Whenever easement is created, the owner of the land who is enjoying the rights over the other owner's land is referred to as the dominant tenement or benefitted land'. The land of which the owner of the dominant tenement enjoys an easement loses some part or an interest in the land as it suffers incidents such as walking over it or using it to dispose drainage water from his land. The land burdened with the use of the dominant tenement is referred to as servient tenement or the burdened land. Whenever an easement is validly created or established the dominant tenement carries with it the benefits it has acquired from the servient tenement and passes them on to its transferees.

CHARACTERISTICS

1. There must be a dominant and a servient tenement.
2. The easement must accommodate the dominant tenement.
3. The dominant and servient owners must be different persons.
4. The right over land cannot amount to an easement unless it is capable of forming a subject matter of a grant.

Creation of easement

The law also spells out the essential features of an easement as follows:

1. That there must be dominant and servient tenements.

It is essential that, there must be two separate lands: one which enjoys the benefit and the other which carries the burden of the tenement. This means that an easement must be independent of the ownership of land by the person who claims the right.

2. The right must accommodate the dominant tenement.
3. It is a fundamental principle that in easement the dominant and the servient tenement must not be both owned and possessed by the same person.
4. The essence of an easement is that it is exercisable over the land of another. This is to say that a person cannot have an easement over his own land.
5. The right must "lie in grant", that is to say that the right must be capable of forming the subject matter of a grant.

ANALYSIS:

Whether the plaintiff is entitled to access.

This Court visited Locus and realized how badly the plaintiff requires access to his house. This was actually acknowledged by the defendant himself under cross-examination on the 29th August 2022 when defendant admitted that the plaintiff and his household are greatly inconvenienced. Excerpt;

Q . Mr. Sorkpor I am putting it to you that when we went to the site, it was discovered that the Plaintiff has to use a small opening to access his house?

A. It was the time we went there that I discovered how small the place he has been accessing is. (the emphasis is mine)

Citing the Plaintiff's counsel, In *Stafford v Lee* (1993) "An easement by common intention can exist if there was common intention between the seller and the purchaser as to some definite user of the land, and if easement is necessary to give effect to that intention. Where the Plaintiff (purchaser) wished to build a dwelling house on his own land, when the only practical access for construction purpose was over the defendant's land as the land has been sold to the Plaintiff by the defendant with a view to the construction and usage of a house, an easement for way for the purpose of construction was held to have been granted".

Also by the rule in **Wheldon vs burrows** where a person transfers part of his land to another, the transfer impliedly includes the grant of all rights in the nature of easement which the seller enjoyed and used prior to the transfer for the benefit of the part transferred, providing that those rights are either continues and/ or reasonably necessary for the enjoyment of the part transferred. **Under Wheeldon vs Burrows**

supra, the easement is not expressly granted, but is deemed to be implied to the sale of the land by necessity.

Applicable to this case the grantor of the land is the right person to ensure the plaintiff has access. Per the planning scheme of the area in question, the only access road to the parties' house lie in front of the defendant's house. Admitted the access was blocked before the plaintiff took possession the defendant who sold the land to plaintiff had a duty to have created access to plaintiff. On the other hand, even if the only access road was blocked after the plaintiff took possession it still stands to argue that the defendant will be the only person to ensure the plaintiff has access. This is because per the master plan of the area both the plaintiff and defendant's land are seen as one land. Even though physically there appears to be two separate land technically this currently does not reflect on the Master plan as the sub-division is not recognized in the area map. In fact, the parties were doing something on their own. It goes without saying that the plaintiff's land is technically part of the defendant's land as such any access enjoyed by the defendant must be co- shared by the parties. Further since defendant's land is the only recognized land as the land sold by the grantors of the area plaintiff has no locus to bring any action against any person in his right as a land owner.

Going by the rule in **Wheeldon vs Burrows** supra, the plaintiff acquired his land from defendant for the construction of a dwelling house. Even if the issue of access was not expressly agreed and granted, it is deemed to be implied to the sale of the land by necessity. As it stands plaintiff's need for access is non-negotiable and it must be treated with the urgency it deserves. The defendant being the vendor has a duty to ensure the plaintiff has access since the land he sold was for residential purpose.

Defendant's site plan which is in evidence, shows that apart from the road lying in front of defendants' house which has been blocked there is no other immediate road either behind or beside that leads to plaintiff's land.

Conclusion:

I hold that the plaintiff urgently requires access as the kind of access he currently enjoys is dangerous and unfit for use by humans. Further, without access to the plaintiff the land sold to him is meaningless.

1. Whether defendant's land is capable of creating easement for Plaintiffs' to access

Easements may be created expressly or by necessary implication, by prescription or by the rule in *Wheeldon v burrows* (1879) LR 12 Ch d 31

There are situations where land sold or reserved would be useless unless an easement is either created or reserved by necessary implication for the benefit of the owner. An easement may also be granted by necessity where there would be no way or light to the land unless the owner of the dominant tenement who retains part of the land shall as a matter of necessity give an easement of way to the grantee.

Easement can also be implied by common intention. In this case the parties agree by necessary implication either to grant an easement in favour of the purchaser or make a reservation in favour of the vendor and the parties give effect to it as representing their common intention. Further, the rule in **Wheldon vs burrows** supra provides that where a person transfers part of his land to another, the transfer impliedly includes the grant of all rights in the nature of easement which the seller enjoyed and used prior to the transfer for the benefit of the part transferred, providing that those rights are either continues and and/ or reasonably necessary for the enjoyment of the part transferred.

Under Wheeldon vs Burrows the easement is not expressly granted, but is deemed to be implied to the sale of the land by necessity. Reference to DIXON, M (2009) Modern Land Law 6th ed pg 340 "so for example if "A sells part of his land to B, but it is impossible for B to gain access to his new land without walking over the land retained by A, an easement of way by necessity will be impliedly granted in favor of B's land over A's retained land."

Back to the question whether defendant's land is capable of creating easement for plaintiff. The Plaintiff and his witness PW1 adduced evidence to the effect that they used to access the defendant's house to their house including plying through with plaintiff's vehicle until the defendant blocked the access by constructing a wall and a gate thereby denying the plaintiff and his household access. This evidence has been denied by defendant and his Witness who also blame the closure of the main access by on one Prosper. Defendant further claims that after his neighbor by name Prosper closed the main access Plaintiff resorted to the use of one Mr. Azuma house but he also blocked the access because he had issues with the Plaintiff.

Below are the excerpts of Cross examination (pg 47)

Q: Paragraph 6 of your witness statement, you have stated that the Plaintiff is using an access behind Prosper's building correct?

A. yes my lord.

Q. Since when did the Plaintiff stop using that access road you are talking of?

A. that was when the Defendant's wall was constructed.

Also at page 46 this was what transpired.

Q. Eric (DW1) at the time you were fetching water was there any wall between the parties?

A. No

Q. And because there was no wall the Plaintiff was using the Defendant's house's to access his own property?

A. Yes by the time the place was underdeveloped and even the community the whole community some members were visiting the access road and sometimes through the Defendant's compound before the place became developed.

The defendant's witness (DW2 at page 43 confirmed that the Plaintiff was using the Defendant compound still under cross examination.

Q. Mr. Dickson are you also aware it was the Defendant who constructed the Plaintiff's house for him?

A. yes

Q. you are aware that in the process of constructing the house he bought building materials and he the defendant used the front part of the plaintiff's house to the site of the plaintiff.

A. yes because there is access road in front of the Defendant house.

Q. The last adjourned date you indicated to this court that you built the house of Plaintiff for him is that correct?

A. That is correct

Q. And that before building the property, you moved materials through your house into that of Plaintiff when you were building for him,

A. That is not correct.

Q. Where did you pass with a load of sand and stones to the Plaintiff's house to construct the property for him?

A. during construction, building materials are off loaded by the road side where Plaintiff currently park his car and items carried with wheel barrow because the access road was under construction by the land owners.

Finally, on 26th August 2022 at page 35 of records of proceedings under cross examination this is what the defendant said.

Q, when we went to the house of the Plaintiff it was found that the so called foundation was a concrete that served as a foundation for a passage and not a foundation for wall, it was a passage for his car

A. It was a temporary passage for him when he bought a car.

The standard of proof in civil cases has been set out in NRCD 323 s. 10 as follows:

“10. (1) For the purpose of this Decree, the 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.

(2) The burden of persuasion may require a party to raise reasonable doubt concerning the existence or non-existence of a fact or that he establishes the existence or non-existence of a fact by preponderance of the probabilities or by proof beyond reasonable doubt”.

Discernable from the evidence adduced, there is incontrovertible evidence that defendant impliedly or by necessary implication created an easement over his land for the plaintiff right from the outset of the sale of the land to plaintiff. This is so because PW1's evidence that she cart her belongings through the defendant's house when she moved into her apartment was not rebutted by the defendant with any cogent better evidence to disprove the claim. Defendant is also on record to have allowed the plaintiff use his land temporary as access including driving through and this is an admission. Even though defendant argued that the time plaintiff was access his land the said prosper had closed the access. That piece of evidence contradict the evidence of DWI who testified that most people including the plaintiff were accessing the defendant land prior to the place seeing development. The implication of this piece of evidence is that the plaintiff was accessing the Defendants land. I am convinced by plaintiff's story that at the time he moved to the area there was no access road ex except the one being used

by the defendant. Going by the defendants' story that the only access road was later blocked by one Prosper, this Court believes the plaintiff's story because if the plaintiff had a different access route right from the outset, he would not have been using defendant's land even before the place developed as alluded by defendant's witness. I believe also the access was denied the plaintiff after the parties fell out. It further implied that the parties impliedly agreed for the plaintiff to access defendant's land to his house and that was how come PW1 also use same to convey her belongings to her apartment

Further admitted the defendant did not agree to his land being use as access the question is as a purported grantor which way did he create as access for the Plaintiff? Exhibit 3 was admitted in evidence as representing the Defendant's site-plan. The site plan shows an access road in front of Defendant's house part of which defendant has been blocked by one Prosper. Apart from that main access the next access lies behind the next land after defendant's and not directly behind defendant's land. That access is for the houses behind defendant's and plaintiff's and therefore defendant is being economical with the truth if claims there are other access roads but has been blocked. In any case the plaintiff's land is not recognized on the Master Plan. By the zoning of the area both parties land is seen as one land. Plaintiff is not entitled as of right to any access unless it is given to him by his grantor.

Locus Inspection:

Having visited the site myself to ascertain what is on the ground I am highly convinced as a matter of necessity for the Defendant to grant the Plaintiff easement without which it is virtually impossible for the Plaintiff to access his house as a purchaser. This is as well eminent since currently where the Plaintiff and other inmates of the house are using is dangerous and cannot even be described as access. Beside they are using another neighbors' house which place is not an access road. I agree with PWI that it has become practicably impossible for the occupants to bring in or take out any big item in or out. Aside, in case of any emergency the plaintiff would be found wanting.

From what I observed at the site I cannot watch on for this nuisance to continue. I hold that even though there is no express contract or agreement for Plaintiff to use defendant's land as access road it has become a matter of necessity for defendant to yield access to plaintiff without which plaintiff cannot have any way to his house. This is also because as a grantor he defendant owes it a duty to create access to the plaintiff whom he has partitioned portion of his land to the plaintiff. It is also to be noted that plaintiff has no capacity to sue the said Prosper whom defendant claims has blocked the access. This is because the land as it stands is seen as one land owned by defendant.

Flowing from the above analysis, I hold that it would be illegal for defendant to deny plaintiff access.

I conclude that plaintiff forthwith is entitled to access his house through defendants land subject to the following conditions.

1. Defendant is ordered to break portion of the boundary wall that can accommodate the size of a gate within 14 working days after the delivery of judgment. to enable the plaintiff and his household access in and out of the house. In the alternative after the 14 days working days if the demolishing is not done by the defendant plaintiff shall break the portion as ordered and surcharged the defendant with a receipted cost.
2. The access granted exclude the use of any form of vehicle by the plaintiff and his household on the defendant's land.
3. Regarding the outer main gate defendant has two options which are to either allow the plaintiff and his household pass through the gate between the hours from 6am -9pm or creates a bypass for plaintiff which cost shall be borne by plaintiff.
4. An order of Perpetual injunction is granted against the Defendant from putting up a wall or do any other thing to prevent the plaintiff from accessing his house.

Cost of four thousand Ghana cedis is awarded against the defendant.

SGD
H/W PRISCILLA SOPHIA YEBOAH
DISTRICT MAGISTRATE