

**IN THE HIGH COURT OF JUSTICE, WESTERN REGION HELD AT SEKONDI**  
**ON THE 31<sup>ST</sup> DAY OF JULY, 2023, BEFORE HER LADYSHIP DR. BRIDGET**  
**KAFUI ANTHONIO – APEDZI (MRS.) J.**

**SUIT NO. E12/49/21**

**LYDIA BANNERMAN-HULL**

**H/NO. 13 LIBERATION ROAD**

**TAKORADI : PLAINTIFF**

**VRS:**

**SEKONDI TAKORADI METROPOLITAN ASSEMBLY**

**SEKONDI : DEFENDANTS**

**JUDGMENT**

**A. INTRODUCTION**

The Plaintiff commenced the present action on 25<sup>th</sup> May 2021 against the Defendant for the following reliefs:

- a. *A declaration that the prevention of the plaintiff who is a tenant of H/No.13 Liberation Road, Takoradi by the defendant from continuing to sell on the pavement in front of H/No. 13 Liberation Road, Takoradi where the plaintiff has been operating for over 15 years and rather allowing a co-tenant who has become*

*a tenant in November 2022 in H/No. 13 Liberation Road, Takoradi and who operates a drug store to put up tents in front of the pavement is discriminating and contrary to Article 17(2) of the 1992 Constitution.*

- b. An order directing the defendant to allow the plaintiff to operate her business on a portion of the space in front of H/No. 13 Liberation Road, Takoradi.*
- c. An order for compensation to be paid to the plaintiff for the financial loss occasioned to plaintiff by the defendant's prevention to the plaintiff to operate on the space in front of H/No. 13 Liberation Road, Takoradi".*

On 25<sup>th</sup> May 2021, the Plaintiff applied for an interlocutory Injunction, praying the Honourable court to restrain the Defendant from preventing her from carrying on her trading business on the pavement in front to House No. 13 Liberation Road, Takoradi. The Plaintiff argued in support of her prayer that, that time of the year was the peak period for selling. She further argued that the said prevention was creating chaos in her business. The application for injunction was declined /dismissed.

## **B. PLAINTIFF'S CASE**

The plaintiff's case is that she is a tenant on the 1st floor of H/No. 13, Liberation Road, Takoradi and a trader. In order to attract buyers, she had been selling on the pavement of the building for over 15 years and paying taxes to the Defendant, daily, for all those years. She claimed not to be the only person who sells on the pavement in front of the building. The Plaintiff said that, sometime in 2020, a pharmacy, Medrugs started operation in the same building. The Plaintiff says that the pharmacy shop operator, in connivance with the Defendant, in early 2021, prevented her from selling on a

portion of the frontage pavement. That, the Defendant allowed the pharmacy shop to put up a tent in front of the said property. Further, that the pharmacy operator tried several times to prevent the Plaintiff from selling on the pavement. It was stated that when those effort failed, the pharmacy operator beat up the Plaintiff. It was after the said beating that the Defendant came to stop the Plaintiff from selling on the pavement. The Plaintiff's other complaint was that, even though she was stopped from selling on the pavement, other traders were still selling on the frontage pavement. The Plaintiff contends that the conduct of the Defendant is discriminatory and contrary to Article 17 (2) of the Constitution, hence the instant suit. She asserts that, since they are all tenants of the same property, they all have the right to make use of the space in front of the building.

### **C. DEFENDANT'S CASE**

The Defendant states that the Plaintiff has a shop on the 1<sup>st</sup> floor of H/No. 13 Liberation Road, Takoradi. The Defendant admits collecting money from the Plaintiff but that this was for the required levy towards her trading activities in her 1st floor shop but not for trading on the frontage pavement of the building. Further, the Defendant says that, that type of trading desired by the Plaintiff is prohibited by Act 936 and its byelaws of 2017. Also, the Defendant states that Medrugs Pharmacy started operating early 2020, as a tenant within the same building but rather on the ground floor.

The Defendant specifically denied any act of discrimination against the Plaintiff and averred that they were only enforcing the law. They explained that the pharmacy applied to the Defendant for a permit, which was approved. This was to mount a canopy at the frontal/frontage of its shop, during the height of the Covid-19 pandemic, in order to comply with the Government's directives of social distancing and other related protocols. The Defendant prayed the Court to dismiss the Plaintiff's case.

## **D. ISSUES**

At the close of pleadings, the following were the issues adopted for the trial:

- a. *Whether or not the plaintiff had been selling on the pavement for over 15 years.*
- b. *Whether or not the defendant before preventing the plaintiff from selling on the pavement served the plaintiff with any notification of the breach of the defendant's bye-laws.*
- c. *Whether or not other people are selling on the pavement in front of the H/No. 13 Liberation Road, Takoradi.*
- d. *Whether or not the prevention of the plaintiff from selling on the pavement was discriminatory contrary to article 17 (2) of the 1992 constitution".*

The Defendant did not file additional issues.

## **E. THE LAW**

### **1. Discrimination**

Article 17 (2) of the 1992 Constitution provides, fundamentally, that no person shall be discriminated against on grounds of gender etc, creed or social or economic status. However, there are also provisions in the same Constitution that such a right is in no way absolute. Its enjoyment is subject to the right and freedom of others and for public interest. – see Article 12 (2) of the Constitution.

Similarly, the Parliamentary mandate to enact towards the implementation of policies and programs for maintaining social order and economic stability rest in the Constitution (See Article 17 (4) of the Constitution)

Further, though the enjoyment of economic rights as catered for everyone by the Constitution, it is not one of the fundamental provisions. It is a second generation right. Besides, Article 24 (4) has provided for restrictions where it is reasonably necessary, in the interest of public order or for the protection of the rights and freedoms of others.

Article 17 (1) provides that all persons shall be equal before the law in other words no one is above the law. and 17 (2) states that a *“person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status”*.

*17 (3) For the purposes of this article, “discriminate” means to give different*

*treatment to different persons attributable only or mainly to their respective descriptions by race, place of origin, political opinions, colour, gender, occupation, religion or creed, whereby persons of one description are subjected to disabilities or restrictions to which persons of another description which are not granted of persons of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description.*

*12 (2) Every person in Ghana, whatever his race, place of origin, political opinion,*

*colour, religion, creed or gender shall be entitled to the fundamental human rights and freedoms of the individual contained in this Chapter but subject to respect for the rights and freedoms of others and for the public interest.*

The Cambridge dictionary generally defines discrimination semantically, as *“treating a person or particular group of people differently, especially in a worse way from the way in which you treat other people, because of their race, gender, sexuality, etc”*.

## ***2. Parliament’s Legislative Power under Constitution***

Article 93 (2) of the 1992 Constitution grants Parliament the power to enact laws, generally, subject only to the relevant provisions of the Constitution. This includes enactments for local government and related matters.

The Local Government, its institutions and the system of decentralisation is enshrined in the Constitution (See Articles 35 & 240).

## ***3. Local Government Act and Byelaws***

The ***Local Governance Act 2016 (Act 936)*** is enacted pursuant to Parliament’s constitutional power, to regulate the functions of the District Assemblies, including the Defendant. **Section 81, the Act** gives powers to the District Assemblies to make their own by-laws, for the purposes of regulating activities within their political/administrative areas. The Defendant herein, by their **STMA BY-LAWS, 2017**, have provided for the prohibition of trading of any kind on any pavements, except by a Permit of the Defendant/Assembly.

The **STMA (Control of Markets) By-Laws, 2017**, paragraph 16 states as follows:

***“No person shall sell at any place other than a market without first obtaining approval from the Assembly.”***

Any trader who contravenes any provision of the said By-Law commits an offence. Also, the **STMA (Cleansing) By-Law, 2017** has criminalized any obstruction of any public pathway or pavement in the metropolis, by providing as follows:

*“A person commits an offence who parks a vehicle, or parks goods or other things, in a public pathway or pavement”.*

Further, the **STMA (Control of Hawkers) By-Law 2017** makes it an offence, if a person is found doing what is prohibited, *inter alia* that:

*“No person shall sell, offer for sale or exhibit for sale any article of merchandise, except in a public market or shop, save under, or by virtue of or in accordance with the conditions and limitations contained in a licence granted for that purpose by the Assembly”.*

Additionally, the **STMA (Use of Public Roads) By-Laws 2017** also prohibits and criminalizes selling on any walkway or road shoulder when it provides as below:

*“A person commits an offence, when he/she sells or obstructs a walkway or road shoulder.”*

#### **4. Laws of Civil Procedure: The Burden of Proof in Civil Suits Generally**

Per the general rule in civil suits, the burden of proof is on the party who asserts the existence of facts in issue. Depending on the admissions made, the party on whom the burden of proof lies is enjoined by the provisions of sections 10, 11(4), 12 and 14 of the *Evidence Act, 1975* (NRCD 323), to lead cogent evidence. This must be such that, on

the totality of the evidence on record, the trier of facts will find that party's version to be more probable than its non-existence, in relation to the rival accounts.

This basic principle of proof in civil suits, is expounded in **ZAMBRAMA V SEGBEDZIE (1991) 2 GLR 221**. The same has been applied in numerous cases, including **TAKORADI FLOOR MILLS V SAMIR FARIS (2005/06) SCGLR 882**; **CONTINENTAL PLASTICS LTD V IMC INDUSTRIES (2009) SCGLR 298** at pages 306 to 307; **ABBEY V ANTWI (2010) SCGLR 17** at 19 (holding 2); and **ACKAH V. PERGAH TRANSPORT LIMITED AND OTHERS [2010] SCGLR 728**.

In **ACKAH V. PERGAH TRANSPORT LIMITED AND OTHERS [2010] SCGLR 728** at page 736, ~~by~~ Adinyira, JSC stated as follows:

*“It is a basic principle of law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail...It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that, on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is the requirement of the law on evidence under section 10 (1) and (2) and 11 (1) and (4) of the Evidence Act, 1975 (NRCD 323).”*

Also, in the Supreme Court case of **BISI AND OTHERS V. TABIRI ALIAS ASARE [1987-88] 1 GLR 372**, Osei-Hwere JA (as he then was) held that:

*“The standard of proof required of a plaintiff in a civil action is to lead such evidence as will tilt in his favour the balance of probabilities on the particular issue. The rampant encounter with the pleader’s demand for strict proof has never been taken to call for an inflexible proof either beyond reasonable doubt or with mathematical exactitude or with such precision as would fit a jig-saw puzzle. With the definition supplied, preponderance of evidence, in short, becomes the trier’s belief in the preponderance of*



*probability. An American decision Norton v. Futrell, 149 Cal App. 2d 586 (1957) has explained that: 'The term 'probability' denotes an element of doubt or uncertainty and recognizes that where there are two choices, it is not necessary that the jury be absolutely certain or doubtless, but that it is sufficient if the choice selected is more probable than the choice rejected'."*

Further, of note is the distinction between the legal burden of proof and evidential burden. Whereas the said legal burden is mostly borne by a plaintiff or whoever makes an assertion, the evidential burden requires the production of evidence in support of either an assertion or a tactic, an onus deployed to contradict/weaken an adversary's evidence. Thus, at the trial, the Plaintiff bore the burden of producing evidence and the burden of persuasion on the issues set down for trial. The Defendant is also at liberty to introduce evidence to contradict the Plaintiff's case.

This principle is also stated in Section 14 and 17 of NRCD 323. Commenting on the said principle, Pwamang JSC, in delivering the majority decision in **AMIDU AND ANOTHER V ALAWIYE AND OTHERS (J4/54/2018) [2019] Unreported SC, (24 July 2019)**, had this to say: *"It is the party who stands to lose on an issue, if no evidence is led on it, that bears the burden of proof as far as that issue is concerned.*

## **F. TESTIMONY/EVIDENCE**

### **1. Plaintiff's Testimony**

On 20<sup>th</sup> February 2023, the Plaintiff opened her case and testified that she is not the only trader who sells on the pavement of the Central Business District (CBD). To substantiate this, she tendered in evidence Exhibit A series - five photographs taken at various locations of people selling at the pavement of CBD.

The Plaintiff also alleged that the operator of the pharmacy shop organised some thugs to beat her up after he tried several times to stop her from selling on the pavement. She tendered Exhibit B series - three photographs, showing portrait of herself with minimal mark under her right eye. Plaintiff also tendered Exhibit C - a picture of the frontage of Medrugs Pharmacy showing an erected tent.

The Plaintiff further testified that she only occupied one-fourth of the space in front of the Pharmacy shop and that even though the Defendant stopped her from selling, no notification was served on her to stop the said selling. She stated that this is in breach of the Byelaws of STMA. She also pointed out that the said stoppage by the STMA, at the peak of season, occasioned a substantial financial loss to her since her business has since gone down by 90%.

The Plaintiff additionally tendered exhibit D - a letter written by her counsel, on her instruction, to the Defendant seeking damages from wrongful stoppage of her trading business and recovery of financial loss, occasioned by the action of the STMA. Finally, Plaintiff tendered Exhibit E, to corroborate her discriminatory treatment by the Defendant and that Medrugs had allowed some other traders to sell even under the canopy mounted by Medrugs. Exhibit E simply depicts a cordoned space with four plastic chairs, three empty and a receptacle, in which some umbrellas are displayed.

## **2. Defendant's Testimony**

The testimony of the Defendant was on 15th May, 2023. IT was through Frank Kwesi Yeboah, the administrator of the Defendant's Takoradi Sub-Metro Office. He stated that the Plaintiff was asked to stop trading on the pavement since it is prohibited. However, she became recalcitrant and was joined by other hawkers. Frank Kwesi

Yeboah asserted that the Defendant's actions were not discriminatory and that they were only enforcing the laws since Plaintiff was made aware of the prohibition.

### **3. The Court's visit to the locus in quo**

At the close of the parties' case, the Court was invited by the parties to visit the *locus in quo*. This was done on the 23<sup>rd</sup> of May 2023, at about 1:45 pm, together with both parties and their Counsel. The court was later joined by Mr Gyimah, the caretaker of H/No. 13 and Mr Sekum, the Operation Manager of Medrugs Pharmacy.

The following were the observations/notes of the Court:

- a. The disputed area is a space on the pavement right in front of Medrugs Pharmacy, which is housed within a two-storey building.
- b. Right above the Pharmacy is the Plaintiff's shop, which goes by the name "Adepa Shoes".
- c. There was a white line (faded in part) approximately 3 metres away from the Pharmacy.
- d. The Defendant's Representative claims the said white line stretched across length of the block. He also pointed out that the white line divides the pavement into two clear parts - the first part which is a space in front of the block within which traders/vendors were allowed to display their goods/wares; the second part which is the space extending from the white line, tapering towards the street, within and beyond which the vendors were prohibited to operate.

- e. There is a 'one-room' canopy installed on the pavement in front of the Medrugs Pharmacy and about 0.5 metres beyond the white line.
- f. The Plaintiff pointed to an area approximately beyond the white line where her table was positioned before she was ejected by the Defendant.
- g. There was a shoe stall positioned right in front left of the Pharmacy to the left, within the white line.
- h. The positioning of the shop neither obstructed the pedestrian walkway nor restricted access to the pharmacy.
- i. Madam Catherine Mensah, alias Ewurama, the shoe stall owner informed the Court that she was permitted to operate in that shop by Mr. Gyimah. Mr Gyimah confirmed same.
- j. The Plaintiff's Counsel invited the Court to take judicial notice of trading activities on the pavement and the Court took a brief tour along the pavement.
- k. It was observed that the white line run along most shops, albeit faded and that some of the traders took advantage of this and displayed their goods slightly beyond the white line.
- i. Locus in quo evidence

There were differing testimonies by both the Plaintiff and the Defendant, at the trial, regarding the joined issues. These related to the positioning of the Plaintiff's store at *H/No. 13 Liberation Road* compared to the drug store; the attributes of the Plaintiff's tenancy and that of the drug store, in relation to the pavement/frontage of the rented building, the use by the public of the relevant areas of the building that fell under the municipal functions of the Defendant, and related matters, etc.

In this instance case the doubt which arise was whether or not there are people selling on the pavement and whether at the permit of the Defendant. This is to establish the issue of discrimination.

ii. Law on *Locus in quo*

Generally, evidence at trials on the existence, non-existence or the conditions of facts, are brought to court and dealt with, pursuant to the rules of court/procedure. Yet, there are instances where the said evidence is incapable of being brought to court and to be subjected to the routine, in-court judicial procedure. This may occur where the evidence relates to an immovable property or a state of condition that requires the observation of dynamics. In such situations and to meet the ends of justice and fairness, a court must, necessarily, visit a location and conduct an out-of-court inquiry. There is a common law term for it - "*locus in quo*".

I have looked for a clear statute, either under *NRCD 323* or *CI 47*, which deals with *locus in quo* phenomenon and to verify if there is a legislated procedure for conducting such an inquiry as provided for the Evidence Act (2011) Federal Republic of Nigeria. I have found none. Section 127, under Part VII of the Evidence Act (2011) Federal Republic of Nigeria makes provision for out-of-court visits and sets out a procedure for doing so. However, there is some case

law and a Directive dated 4<sup>th</sup> October, 2007 (ref No.J/4/V6) referred in Trial Courts & Tribunals of Ghana, by Justice (rtd.) S. A. Brobbey.

A court does not cease to be a court, properly so-called, merely by stepping out of the courtroom and entering into a location, elsewhere. When the court adjourns to the location, the Judge is normally accompanied by the traditional courtroom staff. But there is a difference. the facts obtained and/or statements made at the *locus in quo* are not sworn to. Also, to prevent the court from unconsciously assuming the role of a witness rather than an adjudicator, a record is made of the ocular observations. Further, the purpose of the visit is not to fill in gaps in the evidence - it is rather to have an ocular ascertainment of the evidence already adduce, and to freely clarify it one way or the other. (See Kofi v Kumasah [1984-86] 116 CA The visit must be in the presence of the parties and their counsel, if any. See the Court of Appeal of Tanzania case of *Kimondimitri Mantheakis v. Ally Azim Dewji & 7 Ors*, 2021 TZCA 663.

I hold the view that the Judge's relevant observations are akin to "taking judicial notice" of an existing state of facts, subject to the determination of relevance, weight, etc. The use of the said observations must accord with the relevant rules. For instance, those out of court observations, upon a return from the location, may be subjected to an in-court testimony and tested by cross-examination, etc. The parties are at liberty to adduce evidence, based on the factual occurrences at the *locus in quo*. This must accord with on matters of relevance, admissibility, etc. per the trial process. This is where a Judge's prior observation may become relevant and be factored in, as a trier-of-fact and where judicial notice can be subsumed thereunder. But, generally, a trial judge may factor in observations at the *locus in quo*, in the onus of proof and the

legal/evidentiary burden analysis, should the parties choose to rely on what transpired at the locus, *simpliciter*.

## G. EVALUATION OF EVIDENCE

### 1. Issue 1

~ *Whether or not the plaintiff had been selling on the pavement for over 15 years.*

The Plaintiff says she has been a tenant of the said building for over 15 years. She displayed her ware on the pavement in front of the house before she secured the shop on the first floor of said building/house. That, even after securing the shop, she still exhibited my wares on the frontage pavement until the pharmacy started operating in 2020. The Plaintiff's answer asserted her claim of right through long occupation of the frontage pavement of the building.

She stated under cross examination as follow:

Q: *Aunty Lydia, you will also agree with me that the particular pavement which is the subject of this case is right in front a company called Medrugs pharmacy limited?*

A: *My lady the pavement, the subject matter, is not in front of the pharmacy shop. The pavement is between the gutter and the road, and whoever settles on the portion of the pavement owns the space. That is how the practice has been.*

Q: *Your answer that it is the practice that whoever settles on the pavement becomes the right person to use it, there is no practice like that?*

A: *That has been the practice; that whoever settles on the portion of the pavement owns the space and the S.T.M.A does not give out space on pavement especially for us who had been there for long.*

Q: *You see sister Lydia, you will agree with me that unlike you, whose store is on the first floor, Medrugs has the stores on the ground floor of the same building?*

A: *The Medrug pharmacy shop came to meet me selling on the pavement and my shop is located right on top of theirs. The pharmacy shop came there only recently.*

On the other hand, the Defendant, under cross-examination explained that, in instances where people are allowed to display wares on the pavement in the CBD, they had to apply to do so from the Assembly. This is what ensued during cross-examination:

Q: *I am putting it to you that the plaintiff has been selling on this pavement for over 15 years before you were appointed as an administrator?*

A: *My lord, that is not correct. I have admitted before the court that the plaintiff has a shop in the house under reference. My lord, as to she trading on the pavement for the last 15 years cannot vouch. My lord, I am saying this because before anyone could be allowed to trade at location or sell on pavement, the individual must officially apply to the Assembly and my lord there is no evidence at the office that the plaintiff officially acquired (sic) to trade on the pavement.*

Q: *I am putting it to you that what you have just said, that you have to apply for permit before you sell on a pavement of a house you live in is not true. People have been selling on pavements all over the country, in front of their building.*

A: *My lord, respectfully, I beg to differ or (sic) the assertion by counsel in the sense that the matter in issue is about the Central Business District of Takoradi and I am saying that for any individual to trade on pavement, which is made for the public, as an access, that person must officially seek permission from the Assembly.*



The witness went on to explain that Medrug Pharmacy applied for permit to use the frontage of their shop.

A: *My lord, pavements within the metropolis are public places owned by the government.*

Q: *You see, the landlord or the tenant also have an access to a percentage to that pavement so that they can sell anything there*

A: *My lord it is not true. It is the Assembly that determines that.*

Q: *Now, from your own paragraph 6 of the witness statement, you stopped the plaintiff from selling on the pavement because of an alleged complaint by a pharmacy shop that she has been selling in front of their shop?*

A: *Yes, my lord. A pharmacy shop lodged a complaint. This pharmacy shop which is on the ground floor had also applied officially for the space or pavement right in front of the facility to be used for social distancing at the peak of Covid 19.*

Q: *You see nowhere in your witness statement did you say that the pharmacy shop had applied for the pavement?*

A: *My lord, there is evidence to that effect that there is official application which the pharmacy shop submitted to us.*

Q: *What you have just said is never true. You did not even attach a copy of such application?*

A: *My lord, there is evidence that the pharmacy shop applied.*

Q: *Who is the owner of this pharmacy shop?*

A: *My lord, I do not personally know the owner.*

Q: *I am putting it to you, you know the owner and the owner is a relative of yours - that is why you are concealing the name?*

A: *My lord, that is not true.*

It is obvious from the testimony that, with the opening of the Pharmacy shop, the frontage which the Plaintiff hitherto displayed her wares was no longer available for her use. Thereafter, the Plaintiff therefore resorted to selling outside the designated area. The Plaintiff's activities then resulted in two nuisances: that is - i. blocking access to the pharmacy shop and ii. Blocking the pedestrian way.

Generally, everyone has a right over the uninterrupted, quiet enjoyment of the frontage of his/her property. But this is subject to municipal restrictions, such as when that property is located in, say, a Central Business District (CBD). Whether or not the Plaintiff has been selling on the pavement for over 15 years does not ripen into a prescriptive right of a case of adverse possession against the municipal function. The issue is about whether the Plaintiff's activity is permissible by statute/contract.

**Holding 1:** The Court holds that issue (i) against the Defendant is mis-placed or misconstrued. The Plaintiff does not have a right over the frontage pavement, on the ground floor. Plaintiff may have been selling on the pavement long before the Medrugs Pharmacy started operation, nonetheless, the long duration of the Plaintiff's trading activity on the pavement does not translate into a right.

## **2. Issue 2**

~ *Whether or not the defendant, before preventing the plaintiff from selling on the pavement, served the plaintiff with any notification of the breach of the defendant's bye-laws.*

The Plaintiff, under cross-examination, did admit trading on the pavement within the CBD. However, she said she has no knowledge of any law that precludes her from

selling on the pavement or that she needed a permit before she sells on the pavement of the house she occupies. She stated under cross-examination thus:

Q: *Are you also aware that the defendant has the authority under law to prevent the obstruction to any pathway or pavement within the jurisdiction of the defendant's authority?*

A: *My lord, I do not know of any such law but if that is the case, they should move all of us from the pavement.*

**Holding 2:** Ignorance of the law is not an excuse. (*Ignorantia juris non excusat*) Lack of knowledge of the law cannot be used to escape liability. This is especially so where the offending party is in breach of a statutory function and a public one, such as a municipal obligation, meant for general good order. Further, there is no law mandating the Defendant to serve notice of the breach of the statutory infraction before exercising its obligation towards enforcement. The Plaintiff is held liable and to hold otherwise will spell anarchy and disorder.

### **3. Issues 3 and 4**

~ *Whether or not other people are selling on the pavement in front of the H/No. 13 Liberation Road, Takoradi.*

~ *Whether or not the prevention of the plaintiff from selling on the pavement was discriminatory contrary to article 17 (2) of the 1992 constitution".*

The Plaintiff admitted that all roads and pavement within the administrative jurisdiction of Defendant are controlled and or regulated by the Defendant. However, she insisted that she suffered differential treatment from the Defendant.

She stated under cross-examination, as follows:

Q: *Sister Lydia, is it your case that you want the honourable court to allow you carry on your trade on the pavement of the metropolis?*

A: *Yes my lord, because there are people still selling on the pavement.*

Q: *Aunty Lydia, are you aware that all road and pavements within the catchment area of S.T.M.A. are controlled and regulated by S.T.M.A by virtue of law?*

A: *Whenever the S.T.M.A is carrying out eviction exercises, they evict everyone selling on the pavement but for this one, I was the only one evicted and beaten.*

Q: *Are you also aware that the defendant has the authority under law to prevent the obstruction to any pathway or pavement within the jurisdiction of the defendant's authority?*

A: *My lord, I do not know of any such law but if that is the case, they should move all of us from the pavement.*

Q: *I am respectfully suggesting to you that all the acts of the assembly that you are complaining of is meant for the enforcement of the regulation and laws of S.T.M.A?*

A: *My lady that is not true, because if the assembly is evicting people from a place everyone over there is affected. The assembly does not remove only one person from the rest.*

Q: *I am again suggesting to you that there is nothing discriminatory against you?*

A: *The assembly has done several things against me including organizing people to beat me and removing me from the space to enable a tent to be erected. And my wares that they collected were in their custody and it is over one year now.*

The Court, during the visit to the *locus in quo*, noted that there were people selling on the pavement albeit within the demarcated portion.

The Defendant's representation explained that these people are the shop owners of the ground floor who had obtained the required permit/approval from the Defendant. He added that, some other sellers had obtained permission from the permitted shop owners, such as Catherine Mensah. In effect, that type of hawking was a mutual arrangement with the shop owners. In any case, there were those who slightly extended their activities into the prohibited portion. The Defendant's Representation explained that, the Assembly had to engage in a balancing act between the usage of pedestrians and the demand of traders to display their wares in front of their shops. They ensured order through regular checks. This was the activity purportedly depicted by Exhibit B as discriminatory.

I find that Exhibit B has little evidential value, with regards to the facts in issue.

**Holding 3:** The Court finds no incident of discrimination against the Plaintiff. Although the Plaintiff has a right, as espoused by the constitution, the right must be exercised within the purview of the law. The STMA is a statutory body, mandated to maintain order in the CBD. The Covid -19 protocols were in force in 2020 and for a greater part 2021. Therefore, the Defendant's decision to approve the erection of a canopy by Medrugs, for implementing covid-19 protocols, accorded with the exigencies of the times. I find this more probable than not, on preponderance. The Court does not find any incident of thuggery against the Medrugs Pharmacy. The pictures tendered in evidence cannot be substantiated. These pictures bear no date, for the necessary inference to be made, if at all. In any case, the pharmacy was not made a party to the suit.

## **F. CONCLUSION**

The Court cannot condone wrongdoing or the breaking of the law. The Plaintiff's stance and her claim of right, to sell on the pavement, uncontrolled and defiantly, is inconsistent with civility and good order.

The court takes judicial notice of the flagrant disregard of the byelaws in the CBD of the country, where traders display their wares, with impunity on the pedestrian walkways of the major cities. The Local government, with its municipal assemblies, seems to be losing the battle. To permit the Plaintiff's request and its effrontery, under the circumstances, is not the remit of a court of justice. This will set a bad example, create an erroneous impression and turn the law "on its head". I do not accept that. – I take inspiration from the reasoning of Dotse JSC (as he then was) in *KORBOE V AMOSA* (J4/56/2014) [2016] that the Courts of law must lend support to statutory institutions in their bid to enforce laws on maintenance of '*professional rules on ethics and integrity*' and in this instance, by implication, to law and order [emphasis mine].

*AMISSAH JA QUARSHIE IDUN V AKUFFO-ADDO* [1968] GLR 667- 688 had this to say:

*"And where the balance is between inconvenience or even pecuniary harm to a party on one hand as opposed to the condonation of law breaking on the other, as appears to be the case here, the courts should not lend their assistance to the breaking of the law."*

A court cannot shut its eyes to the violation of a statute - see *Network Computer System Ltd v Intelsat Global Sales & Marketing Ltd Atuguba JSC*.

Judgement is entered for the Defendant. The Plaintiff is not entitled to the reliefs sought. The Plaintiff is restrained from operating her business on a portion of the space in front of H/No. 13 Liberation Road, Takoradi. Cost of GHS 5,000.00 awarded against the Plaintiff.

**DR. BRIDGET KAFUI  
ANTHONIO-APEDZI (MRS)**

**JUSTICE OF THE HIGH COURT**

**COUNSEL:**

- 1. NANA KONDUAH FOR PLAINTIFF**
- 2. SAMUEL AGBOTTAH FOR THE DEFENDANT**