IN THE HIGH COURT, SEKONDI HELD ON TUESDAY, THE 15TH DAY OF JUNE 2023 BEFORE HER LADYSHIP JUSTICE DR. BRIDGET KAFUI ANTHONIO-APEDZI (MRS) J.

SUIT NO: E1/49/18

NICHOLAS KARYAVOULAS
HOUSE NO. EA.13
ESSIPON - PLAINTIFF

VRS

DANIEL BENTIL
H/NO. UNKNOWN
SEKONDI - DEFENDANT

J U D G M E N T

Plaintiff on the 6th of February 2018 instituted this present action against the Defendant for the following reliefs:

1. *Damages for trespassing onto Plot No. 270 Essipon which is owned by the Plaintiff;*

2. *Recovery of possession thereof;*

3. ***Perpetual injunction restraining the Defendant, his agent assigns and workmen from having anything to do with the disputed land.***

The writ was amended on 6th of January 2020, to include an additional relief:

4. ***An order directing the Lands Commission to expunge from its records the name of the Defendant as the Lessee of the said Plot of Land.***

Preliminary Points

The procedural history of the case attracts relevant treatment by this court because the Defendant chose not to participate in the court proceedings. The Court granted two renewal of the writ all of which could not be served on the Defendant personally.

In such a situation, the *Rules* provide that the procedure for obtaining a default judgment is used to dispose of the case. Yet, there are situations where proceedings through the use of Affidavit evidence, alone, may be inadequate and that testimony is also required. For instance, under civil procedure, where pleadings contend title to land, the matter is not merely disposed of through a default judgment but that a one-sided trial is held, to prove the relevant facts in the pleadings, to the court. In such cases, the party who alleges must prove per the rules of evidence and satisfy both the legal and evidentiary burden. This constitutes an uncontested trial. One of the effects of this is that, unlike a default judgment, a decision from such a process is based on the merits. It creates a hurdle in setting it aside and blunts one of the grounds used to impugn a default judgment, properly so-called.

Further, there are situations where the other party participates partially, such as providing some type of responding material and thereafter. There are situations where the said party's involvement is totally silent.

Where there is total silence from a Defendant, such as in the case herein, a court must ascertain the procedural history of the case and verify key elements such as those of service (notice), etc. The rules of natural justice demand this - it is also a constitutional requirement under Article 23. The court therefore made an order to serve the Writ and the Statement of Claim on the Defendant through substituted Service on the 22nd of October 2022 pursuant to an application to that effect filed by the Plaintiff. The substituted service was effected, but the defendant failed or refused to enter an appearance.

Upon an application by the Plaintiff for judgment in default of appearance, the plaintiff was directed to testify to proof his title in accordance to Order 10 Rule 6 (1) of CI 47, so the matter was set down for trial.

In RE NUNGUA CHIEFTAINCY AFFAIRS; ODAI AYIKU IV V ATTORNEY-GENERAL [2010] SCGLR 413 holding 3 as follows:

> "*all that the phrase 'proceed as if such a party had appeared meant was that the case has been set down for hearing. The Plaintiff must lead evidence in proof of his claim*."

Plaintiff's Testimony

On 8th November, 2022 plaintiff's mounted the witness box and relied on his witness statement as his evidence in chief. In his witness statement Plaintiff stated that the land dispute was obtained by his father Andrew Karyavoulas from the Stool of Essipon after payment of valuable consideration on the 12th of January, 1952. The land in question measured about 11.2 acres more or less. According to the Plaintiff, in order to acquire the adjoining land measuring about 4.2 acres more or less in addition to the

land measuring 11.2 acres, the Plaintiff says his father surrendered the earlier lease measuring 11.2 acres to the stool land of Essipon and acquired the 11.2 acre land together with the 4.2 acre land by way of a conveyance in his name as well as that of the Plaintiff, bringing the entire area of land that was acquired to a total of 15.4 acres more or less. On the face of the conveyance, the lease commenced on the 14th of May 1957.

The Plaintiff tendered **Exhibit A**, a Deed of Conveyance dated 12th January, 1952 which was surrendered to the Stool of Essipon and **Exhibit B** which is a Deed of Conveyance prepared in the name of the Plaintiff and his father and registered at the Deeds Registry.

The Plaintiff says that the 15.4-acre land was divided into building plots by the Department of Town and Country Planning. The disputed land Plot No. 270 forms part of the said 15.4 acres. Plaintiff says his father died intestate and Letters of Administration was granted to himself and his sister to administer his Estate. That his sister has since died leaving him as the sole administrator of his father's estate.

Plaintiff states that he was in Greece until recently when he returned to Ghana to find the Defendant developing the disputed land, without his authority. Further that the Defendant had dug the foundation trenches and had also started block work. Plaintiff tendered in **Exhibit C**, a picture depicting the developing the Defendant is undertaking on the disputed land.

The Plaintiff claims he issued several warnings to the Defendant to halt the development on the land, but the Defendant refused to heed to the warnings.

The, the Plaintiff claims, and the money he would have derived from it if he had put the disputed land to economic use. The Plaintiff gave approximate value a plot of the land at Essipon between GHC 15,000 to GHC 20,000 and a minimum annual rent of about GHC 5,000 and assert that the actions of the Defendant has deprived him

putting the disputed land to economic use. Based on that the Plaintiff prays the court to him all his reliefs.

In the absence of the Defendant to cross-examine the Plaintiff after his examination-in-chief, the Plaintiff was discharged. The plaintiff closed his case and the matter was adjourned for judgment. The Court was justified in law and practice, to take this step since the Defendant had notice of the cause of matter against him through substituted service but failed to avail himself. In the case of Doris Naadu Nartey v Christian Kumi, Civil Appeal No. J4/20/2006 dated 13th March, 2007, the Supreme Court held per Sophia Adinyira (Mrs) JSC as follows:

> "*As I see it the main point raised in this appeal by the appellant is that he was not given a hearing and this was a breach of natural justice i.e. a breach of the maxim audi alterem partem rule. However, this maxim cannot avail a party who has notice of a trial but fails or refuses to appear*."

Admission is implied in a civil trial if a Defendant fails to file a Notice of appearance and a Statement of Defence. The Defendant may also expressly admit a fact pleaded in a statement of claim or admission is inferred by failure to traverse facts pleaded. Whereas judgment may be entered against the defendant in these instances, judgment cannot be entered against the defendant without hearing the evidence, where the matter is set down for trial. The legal burden of proof is thus required at trial regardless of the implied admission occasioned by the Defendant's failure to contest the matter.

Flowing therefrom, the plaintiff bears the burden of proof to prove his title to the land. The plaintiff has led cogent evidence to establish his interest in the land, the subject of the suit.

All in all, the plaintiff has discharged the burden of proof imposed on her by law as expounded in Ackah v. Pergah Transport Limited and Others [2010] SCGLR 728 at page 736 by Adinyira, JSC 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)."

Insofar as the plaintiff's evidence in respect of the purported leasehold agreement has been processed and plotted in the records of the Lands Commission and also registered at the deeds registry stands unchallenged, the plaintiff's action succeeds as he has discharged the burden of proof imposed on him by law that is by the preponderance of probabilities as required by sections 11(4) and 12 of the Evidence Act, 1975 (NRCD 323).

For the reasons above, final judgment is entered against the defendant for the reliefs endorsed on the writ of summons as follows:

1. That the Plaintiff recover possession of Plot No. 270 Essipon
2. Perpetual injunction restraining the Defendant, his agent assigns and workmen from having anything to do with the disputed land.
3. It is further ordered that the Defendant's name be expunged from the records of the Lands Commission as the lessee of Plot No. 270 Essipon
4. General damages of GHS 10,000.00 for trespassing onto Plot No. 270 Essipon and Costs of GHS 10,000.00 are awarded against the defendant.

DR BRIDGET KAFUI ANTHONIO-APEDZI

JUSTICE OF THE HIGH COURT

COUNSEL

BAFFOUR DWUMAH FOR THE PLAINTIFF