IN THE DISTRICT COURT KIBI, EASTERN REGION, HELD ON FRIDAY 7TH JULY 2023 BEFORE HER WORSHIP MRS. JULIET OSEI – DUEDU SITTING AS THE MAGISTRATE

SUIT NUMBER: A11/19/22

AGNES DOKUA PLAINTIFF

VRS

KWAKU VICTOR DEFENDANT

JUDGMENT

Plaintiff in this case, Comfort Dokua on the 9th April, 2022 mounted the instant action against the defendant herein claiming as follows; "…the sum of GHC 2,011.00, being the total cost of items defendant destroyed… without any tangible reason. The items are; cocoa drying mat GHC 600.00, two trips of sand GHC 1,200.00, five (5) two by 6 boards GHC 175.00 and 12 moulded blocks GHC 36.00."

The brief facts of this case as alleged by plaintiff are that, on Sunday, 3rd of April 2022, she had dried her cocoa beans at a place closer to her house. Defendant approached her with a warning that she should remove the cocoa she was drying from that place since it was a street. And that, should plaintiff fail to comply with his warning he would return to destroy the drying mat. Defendant without any provocation returned the next day as indicated by him and destroyed the mat together with her sand and blocks, hence the present action.

Defendant denied plaintiff's claim, asserting that he only visited a plot of land he has purchased near plaintiff's residence to level same but never destroyed any item belonging to her.

The general rule in civil trials as in the instant case is that, the party who in his pleadings or his writ raises issues essential to his case assumes the onus of proof, **Faibi V State Hotels Corporation [1968] GLR 471, referred.** And the standard burden of proof in all civil matters as postulated by the Evidence Act 1975, (NRCD 323,) sections 11(4) and 12(1), is proof by the preponderance of probabilities.

Section 11(4) of the Act provides that 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 a fact is more probable than its non – existence. Thus, in the instant case, since it is the Plaintiff who has dragged the defendant to court making claims against him without any counterclaim against her, she has the burden of proof. And with defendant's denial of the said claims, she assumes the burden of establishing that her claims are true and does not discharge the onus until she leads admissible and credible evidence from which the facts she asserts can safely and properly be inferred, **Zabramah V Segbedzi [1991] 2 GLR 221, applied.**

The parties at the trial, testified personally, with plaintiff calling one witness. And at the end of the trial, it became undisputed between the parties that, the land on which plaintiff was drying her cocoa was eventually sold to the defendant by its owners. The sale was duly recognized by the Segyimase Plot Allocation Committee as valid. They therefore demarcated the land for the defendant after he has paid the purchase price and the demarcation fee. Plaintiff before the sale was farming on the land with the permission of the late Segyimase chief to ward off rodents to her house. With these facts so distilled, the first question I pose is whether or not defendant destroyed plaintiff's items to the tune of, GHC 2,011.00.

It is plaintiff's case that, on the 3rd April, 2022, at about 3:pm, she was at home when defendant came with a warning that she should remove her cocoa drying mat from where it was or he would destroy same. She woke up the next morning to realize that the mat has been destroyed together with her twelve pieces of blocks and five 2 by 6, boards of wood. Her two trips of sand had also been scattered on the land, mixed with stones and pieces of polythene. She confronted defendant on the issue but he declined responsibility for the damage. Plaintiff tendered exhibits A to E, photographs of the said damage in evidence in support of her case. She equally maintained in cross – examination that there were heaps of sand on the land before defendant took possession of same.

It is clear from plaintiff's testimony above that she did not witness the destruction of the items by defendant. She however held him accountable for same because of his earlier warning to her on the removal of the mat from his land.

PW1 who claims to have witnessed defendant threatening plaintiff's mother that he would break down the tree under which the drying of the cocoa beans was done and also destroy the mat, did not see defendant follow through with his threats. He only heard about the said destruction, subsequently.

Plaintiff's documentary evidence, specifically exhibits; A, B, and C, depict the broken blocks, the damaged wood boards and the mat. In respect of the heaps of sand, they are clearly seen to be intact in exhibits, A, D and E.

Defendant in denying responsibility for the destruction, testified in his evidence – in – chief that, he bought the land in question in 2016, from Opanin Apenteng Boadi and Opanin Nyantakyi. The site is an old refuse dump which had remained so for over many years. He planted cassava and maize on the land. Because of the heap of refuse on the land, he brought a bulldozer to level same on 4th April 2022. After the work however, plaintiff reported him to the Asiakwa Police for causing damage to her items. The police after their investigation asked him to continue with his work. He tendered exhibits 1 to 5, photographs of his land in support of his case. It is notable that there is a heap of sand seen in exhibits 1, 2 and 3, and damaged wood board and drying mat in exhibit 5. It is therefore not surprising that defendant does not dispute the damage caused to plaintiff's property but only denies responsibility for same.

Though, defendant's exhibit 5 shows the same area where plaintiff's damaged boards and drying mat are placed as shown in her exhibits B and C, defendant still maintains that, he did not destroy the items concerned. Plaintiff on the other hand asserts unflinchingly that defendant is the perpetrator. The rule in civil proceedings regarding the instant situation is that, where the evidence of the parties boils down to the oaths of one party and his witnesses against the oaths of the other party and his witnesses, the decision of the court may safely be based on the trail court's impression of the credibility of the parties and their witnesses, **Praka V Ketewa [1964] GLR 421 SC, referred.** And on the court's impression of

the credibility of the parties, I find plaintiff's story, more credible than that of the defendant and as such prefer same for the reason under stated.

Notwithstanding defendant's evidence – in – chief, what he said in cross – examination impugns his credibility.

Q. You said when you brought the bulldozer on the land, I started insulting you, what did you do before I did that?

A. I did nothing, you were just infuriated by the work and so insulted me and took me to the palace thereafter.

Q. You worked on the land with the bulldozer operator and his mate who witnessed all that you did, if you claim you did not destroy my things, why didn't you call any of them as your witness?

A. I have a witness.

Defendant however did not call any witness. The court had to adjourn the trial on three consecutive occasions for defendant to produce his alleged witness but he failed to do so. He gave one reason after another until he so was eventually deemed by the court to have closed his case. In saying this, I am no in anyway oblivious of the fact that defendant having asserted the negative, needs not prove his assertion. However, in the given circumstances, where the only two eye - witnesses plaintiff could have called to support her case are defendant's workmen, it is only fair that at least one of them should have been called to assist the court in ascertaining the truth of the matter if defendant's hands are indeed clean as he wants this court to believe. On the available evidence therefore, I find as a fact that, defendant caused damage to plaintiff's items except, the heaps of sand.

It should be noted that, it is one thing for defendant to be responsible for the damage to plaintiff's items and another thing to be liable to plaintiff's claim for the cost of the said damaged items, given the facts of this case. Per plaintiff's own testimony, the land where she placed her damaged items belongs to the defendant. Until, defendant took possession of the land, she was farming on it not with the permission of the original owners and defendant's grantor, but the parties' deceased chief. Since the land until the sale to the defendant, was not a

stool land, the said chief was not its custodian and as such could not permit plaintiff to work on same. Any such permission or licence, was null and void, as one cannot give what they don't have. Hence, plaintiff occupied the land without any permission. And without any lawful permission also, plaintiff's occupation of the land amounts to a trespass. Granted without admitting plaintiff had a lawful permission to occupy the adjoining land, defendant's purchase of the land is not affected by the said permission. This is so because, of the principle that, a purchaser of a land with subsisting licence is not bound by it as a licence is personal in nature and as such, attaches to only the

parties to the licence. Put differently, even a licence is incapable of binding persons who were not parties to the licence agreement.

In the instant case therefore, where plaintiff occupied the land unlawfully, defendant's warning prior to the destruction of plaintiff's mat was sufficient, notice for plaintiff to vacate the land. Having failed to heed the said warning, plaintiff has nobody but herself to blame for the consequences of her actions. No lawful liability can thus attach to defendant herein no matter how nonchalant his conduct may be.

For all the above reasons, and on the balance of probabilities, plaintiff herein has failed to convince the court that, she is entitled to her claim. The said claim fails accordingly. I enter judgment in defendant's favour. Costs of GHC 5,000.00, for defendant and against plaintiff.

SGD

H/W MRS JULIET OSEI – DUEDU ESQ
DISTRICT MAGISTRATE
7/07/2022