

IN THE DISTRICT COURT HELD AT WASSA AKROPONG ON THURSDAY THE
9TH DAY OF MAY, 2023 BEFORE HIS WORSHIP MR. AKOANDE .A. BRIGHT, ESQ
DISTRICT MAGISTRATE

SUIT NO: A2/22/23

JUSTICE OPARE DANQUAH

VRS.

EDWARD WIREKU

JUDGMENT

No Legal Representation for the parties.

Judgment

The plaintiff's claim is as follows:

- "a. Recovery of GHC 120,850.00
- b. An order for interest."

Though the plaintiff has described himself per paragraph 2 of his witness statement as a small scale miner, he admitted in the witness box that he did not have the requisite licence to qualify as a small scale miner. He could not produce a valid license from the Minerals Commission or the sector minister to prove his averment that he is licensed small scale gold miner. The case of the plaintiff is that in September, 2020, he hired an excavator from the defendant to use it for gold mining at Sefwi Asawinso. Under the agreement, the plaintiff was required to pay a hiring fee of GHC 5,600 to the defendant daily. According to the plaintiff, he paid the defendant GHC 47,000.00 instantly. The plaintiff then moved

the excavator to his mining site. He then detected that the excavator was mechanically defective. He quickly informed the defendant of the development. The defendant then asked the plaintiff to use his own money and engage mechanics to repair the excavator. The plaintiff engaged several mechanics to repair the excavator. After he had managed to repair the excavator, the plaintiff could only use it to carry out the mining activities for only a week. The plaintiff alleges that he has spent a total of GHC120, 850.00 on repairing the excavator. He also alleges he informed the defendant of the said expenditure and that the defendant agreed to refund the said amount to him but to no avail and hence this instant action.

The defendant was duly served with the writ and hearing notices but he declined the invitation to come to court and defend himself. A principle of law is that when a defendant or a party has been given opportunity to defend himself of allegations made against him but he deliberately declines the invitation, the court is clothed with jurisdiction to proceed with the case, see Republic v High Court, Accra, Ex parte Akita, civil motion JS/7/2010 dated 17/02/2010.

After examining the facts and evidence of the case, I am of the considered opinion that the issues for determination are

1. Whether or not the agreement between the parties is an illegal one and therefore unenforceable and
2. Whether or not the plaintiff is entitled to recover GHC 120,850.00 from the defendant.

Before determining the issues, I will briefly analyse the burden of proof. The law is firmly settled that it is the duty of the plaintiff to prove his case for he who alleges must prove. In other words, it is the party who raises an issue essential to the success of his case who assumes the burden of proving such issue; see Faibi v State Hotels Corporation (1968)

GLR 471. The burden of proof is statutorily defined in sections 10(1) and (2), 11(1) and (4) and 12(1) and (2) of the Evidence Act, 1975 (Act 323). The burden of proof has been further explained in *Adwubeng Vrs. Domfeh* (1996-97) ISC GLR 660. In the instant case, the plaintiff must lead sufficient evidence to prove his claim if he is to succeed.

I now proceed to determine the issues. The first issue is whether or not the agreement between the parties is an illegal one and therefore unenforceable. Though a contract may be complete in all aspects, it may be held to be unenforceable if its purpose or object is illegal or contrary to the policy of the law. A contract may be illegal if it involves the doing of an act that is unlawful because the act is prohibited by a statute. A contract may also be unenforceable not because it is prohibited by a statute but because it involves the doing of an act which is against the public good or public interest. In *Olatiboya V Captan* (1968) GLR 146, a statute provided that nobody should sell diamonds unless he had a license. The plaintiff in that case did not have the requisite license yet sued to recover from the defendant the price of certain diamonds he sold to him. It was held that the contract was illegal and unenforceable. In the instant case, the plaintiff admitted in the witness box (under oath) that he did not have a license to undertake gold mining yet he entered into an agreement with the defendant to use the defendant's excavator to carry out mining activities at Sefwi Asawinso. The contract or agreement between the parties was entered in to at Wasa Epon which is within the jurisdiction of this court. Wasa Epon is also where the defendant lives. Section 82(1) of the Minerals and Mining Act, 2006 (Act 703) as amended, provides that despite a law to the contrary, a person shall not engage in or undertake a small scale mining operation for a mineral unless there is in existence in respect of the mining operation a license granted by the minister of mines or by an officer authorized by the minister. In the instant case, the plaintiff does not have a license or a valid authority within the meaning of section 82 (1) of Act 703 as amended to undertake or engage in a small scale mining. The agreement between the parties which agreement

provides that the plaintiff should hire excavator from the defendant and use it to engage or undertake small scale mining contravenes or breaches section 82 (1) of Act 703 as amended and is therefore illegal and unenforceable. In *Mahmoud Vrs. Ispahani (1921) 2 KB 716*, a statute provided that a contract for the sale of linseed oil would be void unless both parties to the contract of sale had a license. The plaintiff seller entered into a contract to sell linseed oil to the defendant. The plaintiff had a license but the defendant did not have a license. The defendant committed a breach of contract by refusing to take delivery of the goods. The plaintiff sued the defendant for damages for breach of contract. The court held that the plaintiff could not maintain an action for damages because the contract in question was illegal as having been made in violation of the statute. In the instant case, the plaintiff cannot maintain an action to recover GHC 120,850 from the defendant since the agreement between the parties was tainted with illegality right from its inception. On the evidence, I find and hold that the agreement between the parties is an illegal one and therefore unenforceable.

With respect to the second issue for determination, since I have already held that the agreement between the parties is illegal and unenforceable, the second issue has been rendered otiose and redundant. It goes without saying that the plaintiff is not entitled to recover GHC120,850 from the defendant. There is no need to further multiply the reasons for this decision. From all the foregoing, the claim fails and it is hereby dismissed. There will be no order as to costs.

Before I sign off, I will make some remarks about illegal mining in Ghana. The Wasa Amenfi East Municipality where this court is situate, is one of the areas that have been devastated by illegal gold mining popularly known as galamsey in Ghana. The Municipal capital of Wasa Amenfi East is Wasa Akropong. This court is situate at the municipal capital. To the south of Wasa Akropong is the sprawling town of Bogoso which town is well known in Ghana. Bogoso is about 30 minutes drive from Wasa Akropong. Ayanfuri

which is a small town in the Central Region and which serves as an intersection of three regions, namely, Western Region, Central Region and Western North Region is also about 30 minutes' drive north of Wasa Akropong. On both sides of the Wasa Akropong Ayanfuri high way (a first class road constructed during the government of Prof. J.E.A Mills), the land and forestry have been destroyed by illegal gold miners or galamsayers. Farms cannot be established because the land and forest have been reduced to desolate land. When you drive on the said road, you are greeted on both sides of the road by the ubiquitous illegal mining or galamsay pits. Every week, people, including children, fall into the dangerous ubiquitous galamsay pits and die. By virtue of section 1 (1) of the Coroner Act, 1960, (Act 18), I am also a Coroner. Every week, I sign coroner forms in respect of people who fall into the illegal mining pits and die. As I write this judgment, illegal miners or is it community miners, (there is no difference between the two in so far as the destruction of the environment is concerned) are mining gold about 150 metres behind my official residence (the official residence of the magistrate). It will shock you to know that the residence of the magistrate for Wasa Amenfi East is adjacent the official residence of the Municipal Chief Executive (M.C.E). The M.C.E is the political head of the Municipality. The Municipal Education office is only 20 metres in front of the official residence of the Magistrate. The Municipal Assembly building is a few metres in front of the official residence of the M.C.E. The noise from the chang-fang machines that are used by the miners behind my residence is very irritating, to say the least. The illegal miners carry out their mining activities everyday, including Sundays. The noise from their chang-fang machines and other machine equipment has reached intolerable levels. The noise also incessantly hits the Municipal Assembly and the Municipal Education office but the authorities do not care one bit. It is unbearable. There is a tributary running through where the illegal miners are. The said tributary has been completely destroyed by the activities of the illegal miners. The Municipal Police Command cannot claim ignorance of the illegal mining activity that is going on behind my residence. The

activities of the said illegal miners are too overt for the police to claim that they are unaware. Are we living in a shithole country? The Ankobrah River which passes through the jurisdiction of this court is also heavily polluted as its water has turned into “milo” as a result of the activities of the illegal miners. It is now common knowledge in Ghana that illegal miners use dangerous chemicals like lead, cyanide and mercury to extract gold at mining sites. Professor Paul Poku Sampene Osei, an associate Professor at the Department of Pathology, KNUST and consultant pathologist at the Komfo-Anokye Teaching Hospital, Kumasi, has observed that children born in illegal mining areas suffer cognitive impairment and other deformities due to the use of heavy metals in gold extraction by galamseyers.

I had the privilege to listen to the Professor on Luv FM, a radio station based in Kumasi, in May, 2023. The Professor said the following “The first thing that affects these babies (born in galamsey areas) when they are infected by these toxins is cognitive impairment, their brains do not respond to these normal things that we see”. The Professor continued. “In Ghana (in illegal mining areas) we have babies being born with one eye without genitalia. The placenta of a pregnant woman has a high affinity for lead. So if such a woman lives in a galamsey area, her baby will certainly have deformities when born”. The words of the professor are scary but this is the reality in galamsey areas in Ghana.

The plaintiff has stated in his witness statement that he lives at Dunkwa-On-Offin. Whenever I am going to Kumasi I use the Wasa Akropong-Ayanfuri- Dunkwa road. On one of my journeys in 2021, I saw illegal miners on the Offin River in Dunkwa-On-Offin. I was shocked to the bone marrow. They actually diverted the course of the Offin River for the illegal mining purpose. The M.C.E and the police Commander of Dunkwa-On-Offin could not have looked in the face of anybody and denied that illegal mining was taking place on the Offin river right in Dunkwa town. As I write this judgment, it is a notorious fact that the Offin River is one of the heavily polluted rivers in Ghana as a result

of the activities of illegal miners. The Offin River is now a pale shadow of itself. We have allowed God's wonderful creation to be destroyed by galamseyers. The fight against galamsey can be described as tragic failure of leadership. It is a tragic failure because many lives end in tragedy as a result of the evil activities of the galamseyers. If the government continues to pay lip service to the fight against the galamsey canker, I doubt whether Ghana will exist after a decade. Given the existential threat that face

Ghana as a result of the devastating consequences of illegal mining, I will never enforce an illegal contract deliberately designed to cause irreversible damage to flora and fauna.

(SGD)

MR. A. A. BRIGHT

DISTRICT MAGISTRATE