

**IN THE DISTRICT COURT HELD AT SEFWI JUABOSO ON
TUESDAY, THE 31ST DAY OF JANUARY, 2023 BEFORE HIS
WORSHIP SAMUEL ENTEE JNR ESQ. THE MAGISTRATE**

SUIT NO.: A2/58/23

ISAAC ASSAW GYABENG

VS

LIMERICA GHANA LTD

Plaintiff Present

Defendant Company represented by Richmond Yeboah Absent

JUDGEMENT

The Plaintiff claims against the Defendant Company for GH¢ 20,000 being Cost of 4 rooms the defendant destroyed, and general damages of GH¢ 20,000 for use of Plaintiff's lands for their business.

It is the case of the plaintiff that he used to live at Sefwi Proso and established a private school at Kofikrom. That when his school reached Junior High School (JHS), He built 3 rooms and an office to accommodate the students but he could not complete the JHS building. That sometime later the defendant company which was constructing a road from Kofikrom to kwasikrom pulled down the uncompleted JHS building without his knowledge and concern and deposited chippings there.

That he took various steps including taking the defendant Company to CHRAJ to seek compensation from them, and eventually there was agreement between them that the defendant Company would leave a double Axle truck load of chippings on the land for him, supplied him with 10 trips of sand with the double Axle truck, supplied him with 50 bags of cement, and paid him GH¢ 3000.00 in respect of the expenses he made when he took them to CHRAJ. The Plaintiff said the defendant Company later paid

the GH¢ 3000 but failed to abide by the rest of the terms of agreement. So he was claiming GH¢ 20,000 for pulling down his uncompleted building and 20,000 Ghana Cedis for general damages for using his land to do their work.

Although the defendant Company failed to appear in court to put up a defence the Onus is on the Plaintiff who is making claim to prove his case.

The issues for determination therefore are;

1. Whether or not the Defendant Company is liable to pay 20,000 Ghana Cedis for pulling down Plaintiff uncompleted building.
2. Whether or not the Defendant Company is liable to pay general damages of 20,000 Ghana Cedis for using Plaintiff's land for their work.
3. Whether or not the Plaintiff is entitled to obtain equitable relief.

ISSUE 1: Whether or not the Defendant Company is liable to pay 20, 000.00 Ghana Cedis for pulling down Plaintiff uncompleted building.

On this issue, the Plaintiff did not lead evidence to establish that his uncompleted building cost 20,000 Ghana Cedis. Again, the Plaintiff said at a meeting with the Defendant Company representatives together with the elders of Kofikrom he mentioned 25,000 Ghana Cedis as the amount of money he would take for the destruction of his building. That the Company representatives told him that he had to inform the Company management about it and give him the feedback. However, he never heard from the company. So it is clear to the court that the parties did not agree on any amount of money for the destruction of the uncompleted building. He also said he took the company to CHRAJ and officials from CHRAJ went to assess the damage to see how much the Company should pay but did not meet the Company officials for that purpose.

In the case of *Faibi Vrs State Hotel* [1968] GLR 471, the court held that “Onus in law lay upon the party who would lose if no evidence was led in the case, and where some evidence had been led it lay on the party who would lose if no further evidence was led”

In the instant case it is the view of the court that the Plaintiff failed to led sufficient evidence to prove that the uncompleted building demolished by the Defendant Company cost 20,000 Ghana Cedis. So the Plaintiff failed to displace the burden or Onus on him.

Accordingly, I find that the Defendant Company is not liable to pay GH¢20,000 for pulling down Plaintiff uncompleted building.

ISSUE 2: Whether or not the Defendant Company is liable to pay general damages of 20,000 Ghana Cedis for using Plaintiff’s land for their work.

On this issue, the Plaintiff again did not lead evidence to show that by depositing their Chippings and other materials on the land the company was supposed to pay for instance GH¢1000.00 per month, per 6 months or per year and based on that he was asking for GH¢20,000.00 due to the period the materials were deposited on the land.

Additionally, the Plaintiff did not give evidence of trespass by the Defendant Company. All evidence of Plaintiff were based on the fact that the Company had demolished his uncompleted building.

In the view of the court, the plaintiff failed to lead sufficient evidence to establish his claim for the GH¢20,000 general damages.

Accordingly, I find that the Defendant’s Company is not liable to pay general damages of GH¢20,000 for using Plaintiff land for their work.

ISSUE 3: Whether or not the Plaintiff is entitled to obtain equitable relief.

Order 15 rule 1 of the district court rules, 2009 (LI 59) provides, “A Plaintiff may obtain any equitable relief which the facts stated and proved in the suit entitles that Plaintiff even if that relief has not been specifically asked for”.

The Plaintiff told the court that he and the Company made an agreement that the Company would supply him with some quantities of sand, stones and cement in addition to paying him GHC3,000 in respect of the expenses he incurred in taking them to CHRAJ. The evidence indicated that the company has partially fulfilled the terms of agreement by paying the 3,000 Ghana Cedis to the Plaintiff. What are left according to the Plaintiff evidence are the sand, stones and cement. In the view of the court therefore the Plaintiff should have sued for the remaining items and also for damages for breach of contract.

At any rate the court is of the view that the facts stated and proved by the Plaintiff entitles him to the supply of the sand, stone and cement by the Defendant Company.

I therefore find that the Plaintiff is entitled to obtain equitable relief of supply of sand, stone and cement by the Defendant Company.

Accordingly, judgment is hereby entered for the Plaintiff against the Defendant Company for the supply of sand, stone and cement to the Plaintiff as agreed.

Consequently, the Defendant Company is ordered to supply the Plaintiff with, one double axel truck load of chippings, 10 double axel truck load of sand, and 50 bags of cement.

Costs of GHC 5,000.00 is hereby awarded against the Defendant Company in favour of the Plaintiff.

The Plaintiff's relief for 20,000 Ghana Cedis being cost of 4rooms the Defendant Company destroyed is however, dismissed.

Again, the Plaintiff relief for another 20,000 Ghana Cedis being general damages for use of Plaintiffs land by the Defendant Company for their business is dismissed.

SGD::: SAMUEL ENTEE JNR ESQ
THE MAGISTRATE