

**IN THE DISTRICT MAGISTRATE COURT HELD AT NEW TAFO-AKIM  
ON WEDNESDAY 21-06-2023 BEFORE HER WORSHIP JOSEPHINE  
SARFO (MRS.)**

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**SUIT NO: A11/06/2022**

**FUSENI MOHAMMED  
AKYEM-MAASE**

**PLAINTIFF**

**VRS**

**1.ABDULAI YAYA  
2. T.T.YAYA  
AKYEM-MAASE**

**DEFENDANTS**

**PARTIES - PRESENT**

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**JUDGMENT**

The Plaintiff in a writ issued on 10/11/2021 sought the following reliefs:

- a. An amount of GHC 450.00 being the cost of 150 cement blocks Defendants destroyed on his site.
- b. Any order (s) the Court may deem fit.

Plaintiff in the statement of claimed averred that on 9<sup>th</sup> November, 2021, he purchased 150 pieces of cement blocks from Mahazu Amidu Enterprise, New Tafo-Akim for use on his site at Akyem Maase. That as part of the purchasing policy of the Enterprise, the cement blocks were conveyed to his site; upon arrival when the cement blocks were being offloaded unto the site from the vehicle, the Defendants out of nowhere, appeared and begun destroying the blocks. When he inquired from the Defendants the reason for their act, the Defendants told him that they were destroying the blocks to prevent him from continuing with the construction of his

building. According to the Plaintiff, all the 150 blocks of cement were destroyed by the Defendants without any show of remorse on their part.

The Defendants have resisted the claim of the Plaintiff and instead set out a cross action in the nature of a counterclaim for the following reliefs:

- a. Declaration of title and recovery of possession of all that piece or parcel of land situate, lying and being at Akyem – Maase and bounded as follows: On one side lies the Akyem Maase and Anyinasin Motor Road, on one side lies the property of Seibu Ismaila, on one side lies the property of Kwaku Biribi and on the other side lies the big gutter.
- b. Perpetual injunction restraining Plaintiff, his agents, assigns, privies, etc, from interfering with the land.
- c. Punitive cost.

The Defendants in their statement of defence averred that the Plaintiff was offloading the cement blocks unto their land; beside a store building of their Senior brother by name Inusah Ismaila. According to them, the land has been their family land for years now; it belonged to their father by name Yahaya Bassari and thus the Plaintiff had no right to offload the cement blocks on it. The Defendants averred that the action of the Plaintiff in offloading the cement blocks on their land was an act on his part to test the waters as to how they were going to react in the event that he went on with the development of the land. The Defendants averred that the action of the Plaintiff amounts to trespass and nuisance thus they asked the driver of the truck and Plaintiff to desist from offloading the blocks on the land however the Plaintiff instructed the loading boys to continue with the offloading which caused a struggle between the parties leading to some of the blocks breaking in the process.

At the close of the pleadings, the issues which came up for determination by the Court were:

1. Whether or not the Defendants destroyed the cement blocks of the Plaintiff while they were being offloaded?
2. Whether or not the land or site on which the Plaintiff's cement blocks were being offloaded is a footpath accessible by all or land belonging to the Defendants?

### **ANALYSIS OF THE EVIDENCE AND EVALUATION OF THE LAW**

As there is a claim and a counter claim both parties have obligations to prove their claims and counter claims on the balance of probabilities. The dictum of Brobbey JSC in the case of **IN RE ASHALLEY BOTWE LANDS [2003 – 2004] SCGLR 420** is instructive in this regard that:

*“The effect of sections 11(1) and 14 and similar sections in the Evidence Decree 1975 may be described as follows: A litigant who is a defendant in a civil case does not need to prove anything. The plaintiff who took the defendant to court has to prove what he claims he is entitled to from the defendant. At the same time if the court has to make a determination of a fact or of an issue, and that determination depends on the evaluation of facts and evidence the defendant must realize that the determination cannot be made on nothing. If the defendant desires a determination to be made in his favour, then he has a duty to help his own cause or case by adducing before the court such facts or evidence that will induce the determination to be made in his favour...”*

In respect of the defendants' counter claim it is to be viewed with the same scale of measurement as if they were the plaintiff. As far back as the case of **AMON v BOBBETT (1889) 22 QBD 543** where Browne LJ noted that:

*“a counter claim is to be viewed and to be treated for all purposes for which justice requires it to be so treated as an independent action”.*

Dotse JSC came to the same conclusion on counter claim actions in the case of **JASS CO. LTD v APPAU [2009] SCGLR 269 at 271** that:

*‘whenever, a defendant also files a counterclaim, then the same standard or burden of proof would be used in evaluating and assessing the case of the defendant just as it was used to evaluate and assess the case of the plaintiff against the defendant’*

Plaintiff testified and tendered into evidence a receipt issued to him by Mahazu Amidu Enterprised dated 09/11/21 in respect of the 150 cement blocks he purchased as exhibit Exhibit A. The Defendants did not dispute that they destroyed the cement blocks of the Plaintiff, however, they denied destroying all 150 blocks as alleged by the Plaintiff. The Plaintiff during cross-examination admitted that not all 150 blocks were destroyed by the Defendants. During cross-examination of Plaintiff this is what transpired:

*Q: In paragraph 7 of your witness statement you stated that Defendants destroyed all the 150 blocks without showing any remorse or whatsoever for their action, you have however admitted ownership of the blocks packed beside my brother Inusah Ismaila’s store, the broken blocks closer to the packed blocks and some other blocks closer to Degod’s cornmill, do you still stand by your allegation in paragraph 7 of your witness statement?*

*A: You destroyed some of the blocks so I indicated to you that I am only going to take full compensation of all 150 blocks and not just the ones you destroyed.*

It is therefore patent from the pleadings and evidence of the parties that the Defendant destroyed the cement blocks of the Plaintiff if not all the cement blocks.

The question posed per the facts of this case is whether the Defendants had the right or authority to destroy the cement blocks purchased by the Plaintiff for purposes of putting up a building on his land? The Defendants in their defence averred that they destroyed the cement blocks of Plaintiffs because the cement blocks were being offloaded onto their father, Baba Yahaya's land and upon cautioning the Plaintiff and the offloading boys to stop their act of trespass, the boys continued to offload the cement blocks due to the Plaintiff's encouragement for them to continue. They tendered into evidence receipts of property rates paid by their father over the years as Exhibit 1 series. That the Plaintiff's act amounted to trespass and was done in a bid to test the waters on how the Defendants would react should the Plaintiff commence work on the land. DW1, Salifu Abubakar corroborated the evidence of the Defendants to the effect that the site on which the cement blocks were being offloaded belonged to the father of the Defendants; the said land was given to the father of the Defendants by the grandfather of the Defendants by name Baba Ismaila.

The Plaintiff denied that the site on which the cement blocks were being offloaded was the Defendants' father's land but a footpath which leads to the location of his land. PW1, Munkaila Fuseni, also stated that on the day of the incident he came out of his room to meet the Defendants destroying the cement blocks. He corroborated the Plaintiff's evidence that the cement blocks were being offloaded on a pathway leading to the location of Plaintiff's land. That the Plaintiff was only exercising his right of easement as his land was not accessible by vehicle.

In a bid to determine whether or not the site on which the cement blocks were being offloaded was a pathway(footpath) or land belonging to the father of the Defendants, in the absence of a properly drawn to scale plan of the area in dispute, the Court

moved to locus to inspect the site. During the locus visit, three persons, were interviewed by the Court in respect of the subject matter in dispute. Issaka Fuseni CW1, stated that the land on which was situated a house was put up by the grandfather of the parties by name Baba Ismaila. Fatima Yahaya, CW2, who is the mother of the Defendants also stated that the site on which the cement blocks were being offloaded was a footpath which was accessible by all. It did not belong to anyone as it was used as a road by all and sundry. CW3, Iddrisu Yahaya, also stated that the site was formerly a riverbed called River Ashriensu but dried up and now used as a footpath by all inhabitants of Maase. According to CW3, the pathway is used by everyone; some access it using a motorcycle whilst others use a motor.

It is instructive to note that the parties opted not to cross examine any of the court witnesses when they were called upon to do so.

**In Quagrain V. Adam [1981] GLR 599, CA**, it was held that where a party makes an averment and his opponent fails to cross-examine on it, the opponent will be deemed to have acknowledged sub silentio, that averment by the failure to cross-examine. The failure of the parties in not cross-examining any of the court witnesses suggests that they affirmed the testimony of the court witnesses. In view of the foregoing, I find from the facts and evidence of this case that the cement blocks were being offloaded on the pathway leading to the land of the Plaintiff. The said pathway/footpath is not the property of the Defendants' father nor the Defendant but a public access place.

Were the Defendants justified in destroying the cement blocks of the Plaintiff in the purported belief that the footpath was their father's land? it is the opinion of the Court that the Defendants had no right to take the law into their own hands even if the land on which the Plaintiff's cement blocks were being offloaded belonged to them. At best the Defendants could have instituted an action against the Plaintiff to

assert their rights or lodged a complaint with the law enforcement agencies if they believed that the Plaintiff was trespassing unto their land. I find the Defendants' actions unjustifiable which will not be countenanced by this honorable court. Their defence of having title to the site was only a ruse sought to deceive the Court and to justify their unlawful acts of destroying the cement blocks. To the extent that the Defendants sought to destroy the cement blocks of the Plaintiff unjustifiably, I hold them liable to refund the amount of GHC 450.00 the Plaintiff paid in purchasing the 150 blocks.

### **CONCLUSION**

In conclusion, I dismiss the counter claim of the defendants and grant the reliefs endorsed on the writ of the plaintiff.

I further award cost of GHC 700.00 in favour of the Plaintiff against the Defendants taking into account the period of time this case has been pending in this Court.

**SGD**

**H/W JOSEPHINE SARFO (MRS)**