

IN THE DISTRICT COURT, KWASO-ASHANTI HELD ON THURSDAY

**2ND DAY OF NOVEMBER 2023 BEFORE HIS WORSHIP SOLOMON KWASI
ALOMATU, DISTRICT MAGISTRATE**

SUIT NO: A2/20/2023

CHARLES BANGURA PLAINTIFF

V

ISAAC KARIKARI DEFENDANT

PARTIES PRESENT

JUDGEMENT

The Plaintiff issued a writ of summons and accompanying affidavit in support of claim against the Defendant seeking the following reliefs:

1. Recovery of the sum of Gh¢7,500.00 being an agent fee the plaintiff paid to Defendant in order to secure a four-bed room apartment on plot No. 80 BK which transaction turned out to be fraudulent
2. Costs incidental to the institution of this action

A summary of affidavit in support of his claim is that:

He is seeking against defendant a recovery of Gh¢7,500.00 being an Agent fee the Defendant collected during the sale of four Bedroom House No. Plot 80 BIK D situate at Onwe which turned out that the seller has no capacity. That the sale of the house was fraudulently done. That all attempts to get Defendant/Agent to refund the said amount

has proven futile and until Defendant is compelled by this Hon. Court, he will not pay/refund the Gh¢7,500.00. Finally, defendant has no defence to the claim therefore same be entered on the Undefended List.

The Defendant having been served, filed affidavit in opposition in which he vehemently resisted plaintiff's claim. He continued that, in March 2023, he led Plaintiff to purchase the House in reference from one Priscila Abakah, who had earlier on informed him to get a buyer for the sale of her house. That upon showing plaintiff the house, he expressed interest, negotiated with the owner and paid for same. That all documents covering the house were handed over to the plaintiff. Further, plaintiff in the form of appreciation, invited him to his shop and gave him Gh¢15,000.00.

He shared equally the money with the nephew of plaintiff Yaw Darko for helping to facilitate the purchase of the house. Finally he never used any fraudulent means to defraud the Plaintiff, therefore the action be dismissed.

It is the above denial by the Defendant that occasioned the trial/hearing.

From the above position by the two parties, it is not in doubt that, Defendant played a role in the purchase of the House by the Plaintiff from one Priscila Abakah. Again the defendant received the amount in question.

The issues in controversy are:

1. Whether or not the Defendant is an Agent for the Plaintiff
2. Whether or not Defendant defrauded plaintiff.

It is based on the above issues that both parties gave evidence to support their respective positions.

The case of the plaintiff is that, he lives at Onwe in the Ashanti Region. He returned from Abroad in the month of February 2023. He discussed the intention of buying a house with

his nephew, Yaw Darko. Mr. Darko told him that there is an Agent who could assist him. Mr. Darko later invited the Defendant to his house. Defendant who is an agent confirmed that he knows a lady was offering her house for sale. Defendant then called the said lady and together they went to see if indeed it is true. The lady confirmed to him about the intended sale. He expressed interest in it. They agreed on the purchase price of Gh¢170,000.00. About a week later he transferred the said amount to the ADB account of the seller. Ten days later the seller gave him all the necessary documents. After the successful transaction defendant demanded his agent fee of Gh¢15,000.00, which he paid.

A month later, the husband of the seller came to inform him that, he built the house for his children therefore not for sale. With this, he demanded a refund of the Agent fee from the Defendant and he refused.

Later on Yaw Darko informed him the defendant shared the money with him equally and did refund his share. He therefore took this action to recover the remaining of Gh¢7,500.00. During cross examination, Defendant denied being agent. When he challenged the plaintiff as to whether or not he is agent, Plaintiff responded that his nephew told him that defendant is an agent. He suggested to the Plaintiff that he is not an Agent and if he were, he would have taken 10% of the Gh¢170,000.00 he paid to the seller, instead of Gh¢15,000.00. Furthermore, he would have taken 10% from the seller too. On all these, the plaintiff insisted that Defendant is an Agent. Plaintiff admitted the following under cross examination: he bargained the sale with the seller, paid for the house, and all documents transferred into his name.

The Defendant having served with writ of summons, file affidavit in opposition in which he denied the material claims of the Plaintiff. It is this denial that warranted the trial of this suit as same moved to the general cause list.

On the whole, it is the case for the Defendant that, sometimes ago, one Priscilla Abakah (seller), informed him that she was selling the house, therefore if he got a prospective

buyer, he should lead same to her. Defendant thereafter informed his friends, including one Yaw Darko about it. In March 2023, the said Darko approached to find out if the house meant for sale was still available. Defendant then told Darko to go the landlady to inquire from her directly. Darko responded he is not in talking terms with the landlady and pleaded with him to assist his uncle (Plaintiff) buy the house. Defendant averred further that, plaintiff invited him and impressed upon him to front for the purchase of the house since Darko in not in good terms with the seller. Defendant thereafter called the landlady and informed her about the prospective buyer. The Seller asked the plaintiff should come over to her. Some days later, Defendant led plaintiff to the seller, where the plaintiff was shown the house and he expressed his interest. Both plaintiff and the seller bargained and agreed on Gh¢170,000.00. Three days later defendant, plaintiff and his nephew, Darko, went to the bank withdrew money for the purchase of the house. The plaintiff promised to reward him. Defendant contests later on plaintiff went and paid the seller. In all the deed of transfer was done for the plaintiff to bring the transaction to a conclusion.

Plaintiff having satisfied himself that, it was successful, invited him to his shop and handed Gh¢15,00.00 to him as form of appreciation. Later that evening Darko came to demand a share of the money and he gave him Gh¢7,500.00 without the knowledge of the plaintiff. In the month of April, Darko came to him, with the message that plaintiff said he should return the Gh¢15,000.00 and that it was too much. Defendant the replied that if that is the case then, he should refund the Gh¢7,500.00 he got, so that defendant could realize the full amount. Darko was hesitant in returning the money. Defendant argues that, plaintiff reported the matter to the police at Ejisu, who invited them, but he failed to show up. Later on plaintiff took the instant action against him.

In conclusion, plaintiff gave him Gh¢15,000.00 for appreciation and on his own shares same with Mr. Darko. He is not an agent and never took agent fee from the plaintiff. The claims of the plaintiff is frivolous and same be dismissed with punitive costs so as to serve as deterrent to others.

Under cross examination, defendant-maintained plaintiff gave him the money as an appreciation for successful Deal. He denied any fraudulent act on his part, being an agent and being a party to the contract of sale of the said house.

Having considered the case for both sides, the following emerged as facts:

- Plaintiff approached the Defendant to lead him to buy a house
- Defendant led the plaintiff to the landlady
- Plaintiff agreed with the house seller and bought same.
- Deed of Transfer of title was done in favour of the plaintiff
- Plaintiff was satisfied with the transaction
- Plaintiff later on rewarded the Defendant.

At the close of the case for both the plaintiff and the Defendant, and

Having arrived at the above as facts not in dispute, the issues dispute that Court is called upon to resolve are essentially the same as those stated above:

- 1. Whether or not Defendant is an agent of the plaintiff**
- 2. Whether or not the Defendant either acting alone or in alliance with the landlady defrauded the plaintiff**

I now proceed to examine the issues as they appeared above.

On the very first issue above, it is the case of the plaintiff that, Defendant acted his agent in a purchase of a building. In that capacity he paid him. The Defendant denied he never acted as agent of the plaintiff in the said Transaction. This placed the legal burden on the Plaintiff to proof his case.

This leads to the question who is an Agent? An Agent is a person who is recognized by law as having the authority to enter into transactions on behalf of his principal with third party which creates legally binding rights and obligations between the principal and third party.

They are types of Agents, for this case, my focus is on Estate Agent. An estate agent has the authority to find a buyer and to negotiate contracts. He is a merely an intermediary to facilitates contracts between principal and third party and does not have normal authority to make a binding contract unless specially authorized. It is important to note that an estate agent is merely a canvassing or introducing intermediary whose main function is to facilitate contract between the principal and third party. He is not to affect the legal relations on the principal. It means that an estate agent is not an agent at law.

From the above exposition, can defendant in the present case be described as an agent of the Plaintiff? It is interesting to note that, per his particulars of claim, plaintiff described the Defendant as his agent and in that respect paid him the amount in question. However during cross examination, he put to the defendant being an agent for the seller. The defendant denied being an agent for either the plaintiff himself or the seller. In one breath plaintiff claimed Defendant is his agent and in another breath he wanted the court to belief the Defendant is agent or acted as agent of the seller. In fact plaintiff never led cogent evidence to proof that the Defendant is his agent or that of the seller. This is a civil matter and there is no counterclaim. Therefore the burden of proof lies with the plaintiff. He assumes the legal burden of proof by adducing cogent and convincing evidence to support his assertion. The degree of proof is on the balance of probabilities. He must succeed on the strength of his own case to tilt the scale of justice in his favor. **Adwebeng v Domfeh(199697) SCGLR 66.**

Again from the evidence on record, nothing show that, plaintiff and Defendant prior to the purchase of the house had agreed that if the Defendant was able to lead him carryout a successful purchase of a house the plaintiff will reward him either Gh¢15,000.00 or

Gh¢7,500.00. It is the plaintiff who after the purchase and having satisfied himself gave the money to the Defendant voluntarily. I regard this as a gift, and a gift validly so made is irrecoverable at law. I must point out that Defendant sought to make the point that he is not agent because an agent because one he did not take 10% of the total purchase price of Gh¢170,000.00 and secondly, he did not take money from the vendor. No law supports this position.

On the second issue above, plaintiff alleged fraud on the part of the Defendant. This the Defendant vehemently denied. He a denied ever engaging in the negotiations leading to the purchase. He maintained that his role was that, he led the plaintiff to the seller therefore not responsible to investigate the title of the seller.

The defendant through his defence and evidence though admitted the receipt of the of the money from the plaintiff, denied any liability. He contended that Plaintiff's nephew, Darko had informed him that plaintiff was searching for a building to buy. He directed the said nephew to the woman was selling the house. PW1 responded that he is not in good terms with the seller, and requested he leads his uncle to the seller. He therefore led the plaintiff to the seller, where plaintiff negotiated with her and bought the house successfully. Defendant averred that after everything the plaintiff voluntarily gave him Gh¢15,000.00 to thank him. He thereafter shared the money with the nephew of the Plaintiff.

Under cross-examination, plaintiff said it was Defendant's duty to have investigated the title of the seller and he teamed up with the seller to defraud him. According to **section 13(1) of the Evidence Act, 1975, where in Civil or Criminal action a party alleges crime on the part of his/her opponent, the standard of proof is beyond reasonable doubt. Fraud is proved by showing that, the person made false representation; knowingly or without belief in it truth or recklessly, whether it be truth or false. A legal burden is**

therefore placed on the plaintiff to proof his alleged fraud. He never led any evidence in-chief to proof same.

Just take a glance at an extract of what transpired when the Defendant cross examined the Plaintiff:

Q. On the whole you have showed to the Court that everything about the purchase of the house you did it yourself because it is your money. How then did you not make the search about the house yourself?

A. it was a mistake that I did not do the search but the next day the husband claimed ownership of the house I informed the woman so that she could refund the money.

Q. If you admit in Court, you made mistake for not doing the search why then blame me?

A. As an Agent you must first do a good search before you inform your principal.

It is my respectful view that, from above exchanges between the two parties, one can concludes safely that Defendant never acted fraudulently.

I therefore dismissed all the claims of the plaintiff as he woefully failed to establish them on the balance of probabilities.

I award costs of Gh¢1,500.00 against the plaintiff for the Defendant. It should be paid into Court within 7 working days.

Plaintiff is reminded of his right to appeal.

SGD

H/W SOLOMON. K. ALOMATU

DISTRICT MAGISTRATE

02-11-23