IN THE DISTRICT COURT 2, TAMALE HELD ON MONDAY 4TH SEPTEMBER, 2023 BEFORE HIS WORSHIP D. ANNAN ESQ.

SUIT NO. A1/16/23

BETWEEN

AFA SULEMANA MUSAH	**-**	**PLAINTIFF**
AND		
KASAPA TELECOMMUNICATIONS	**-**	**DEFENDANT**

JUDGMENT

INTRODUCTION

1. This judgment relates to land.

2. This case is a second attempt by the plaintiff in seeking a favourable judgment against the defendant. The earlier case with **Suit no. A2/62/22** intituled ***Afa Sulemana v Kasapa Telecom Ltd.*** was determined in favour on the defendant, although the defendant never attended court or filed any process.

3. In this instant suit filed on 22nd May, 2023 the plaintiff described himself as the owner and lessor of the land in question. The defendant is described as a limited liability company registered under the laws of Ghana and deals in telecommunication systems. The reliefs sought by the plaintiff are:

    "a. A declaration of title to Plot No. 146, Ward F, Old Kaladan Barracks, Tamale.

    b. An order of re-entry for portion of land occupied by the defendant and numbered as Plot No. 146, Ward F, Old Kaladan Barracks, Tamale.

c. Damages for trespass.

d. Legal costs.

e. Any other relief(s) as the justice of the case may require."

4. The defendant was duly served with the Writ of Summons via substituted service on 21st June, 2023. Despite due service on defendant, it failed to attend court or filed any response to plaintiff's claim. The court on 7th July, 2023 directed the plaintiff to file witness statement in support of his case of which same was filed and served on the defendant on 14th July, 2023. The suit was also scheduled for hearing. In all these, the defendant failed to attend court or filed any process. I shall deal with defendant's failure to attend court or file any process later in this judgment.

PLAINTIFF'S CASE

5. The summary of plaintiff's case is he owns the land described herein as Plot No. 146, Ward F, Old Kaladan Barracks, Tamale. A copy of the allocation letter was tendered and marked as Exhibit A. That on 23rd February, 2009 the plaintiff entered into a lease agreement with the defendant for a period of 10years, copy marked as Exhibit B. According to the plaintiff, per Exhibit B, the defendant is to pay monthly rent of GHS380.00. He admitted that the defendant had paid GHS13,680.00 for the initial 3years. Further, defendant issued cheques Exhibits C and C1 for subsequent rent. The amount stated thereon is GHS4,614.72 for each year.

6. Plaintiff contended that the defendant has failed to renew or paid subsequent rent, despite repeated demands. Hence, he is in court per his aforementioned claim.

BURDEN OF PROOF AND ANALYSIS OF PLAINTIFF'S CLAIM

7. As earlier pointed out, the defendant was duly served at its address via substituted service. But it failed to attend court or filed any process. The law regarding the

defendant's inaction is that where a party fails to appear in court after due service on him, he is said to have deliberately failed to take advantage of the opportunity given him to be heard. The *audi alteram partem* rule cannot be said to have been breached. The court is entitled to proceed with the trial to conclusion and make deductions, draw conclusions or make findings on the basis of the evidence adduced at the trial, see the cases of **In re West Coast Dyeing Industry Limited: Adams v Tandoh [1984-86] 2 GLR 561, CA** and **Ankumah v. City Investment Co. Ltd. [2007-2008] 1 SCGLR 1068**. See also the case of **Republic v. High Court (Fast Track Division); Ex-parte State Housing Co. Ltd. (No. 2) Koranten-Amoako Interested Party, [2009] SCGLR 185** where Wood JSC (as she then was) stated authoritatively at page 190 as follows:-

> "A party who disables himself or herself from being heard in any proceedings cannot later turn round and accuse an adjudicator of having breached the rules of natural justice."

8. The law is also that where plaintiff has endorsed on his writ a claim for declaration of title to land, the plaintiff must establish by positive evidence the identity and limits of the land which he claims. The authorities are legion on this principle: see **Asante-Appiah v Amponsah @ Mansa [2009] SCGLR 90 @ 98**, **Nii Tackie Amoah VI v Nii Amarh Okine & Ors. [2014] DLSC 2910**, **Nene Narh Matti & 2 Ors. v Osei Godwin Teye & Samuel L. Ayortey & 2 Ors. v Osei Godwin Teye (Consolidated) (2017) Suit No. J4/13/2017, Unreported dated 22/11/17, SC,** just to mention a few. The Supreme Court, in the case of **Nortey v. African Institute of Journalism and Communication [2013-2014] 1 SCGLR 703** held however that such a description of the land does not have to be mathematically certain or exact. Failing which, the claimant must lose, see the cases of **Kodilinye v Odu [1935] 2 WACA 336** and **Anane v. Donkor [1965] GLR 188.** Further, the plaintiff is to prove on the balance of probabilities that he is entitled

to that relief or his claim, see ss. 11(4) and 12(1) and (2) of Evidence Act, 1975 (NRCD 323).

6. Having heard the plaintiff under oath and without any challenge from the defendant, I shall proceed as appropriate, see **Ex-parte State Housing Co. Ltd. (No. 2) (supra).**

9. From the evidence, on 6th May, 1998 plaintiff per his Exhibit A was allocated the land in dispute by the Dakpema. Subsequently, he entered into an agreement with the defendant, Exhibit B, for the defendant to erect on the said land a telephone mast for the purpose of operating a mobile cellular telecommunication cell site. Clause 6.4 of Exhibit B permits the plaintiff to re-enter the land should the defendant fail to pay rent and of which notice of same should be served on the defendant. Clause 6.4 provides that:

"6. 4 Re-entry

6.4.1 If the said rent or any part thereof shall be unpaid for 3months after becoming due and still remains unpaid 1month after having been demanded in writing by the lessor or if any of the foregoing stipulations shall have been omitted to be materially performed or observed by lessee, after having been notified in writing by the lessor, and

6.4.2 after the failure to remedy such material omission within 3months after such notification of omission, then the lessor may, at any time thereafter, re-enter upon any part of the property in the name of the whole and thereupon the term shall absolutely determine but *without prejudice to the right of action of the lessor in respect of any breach of lessee's covenants herein contained*."

10. From the above, it is not in doubt that the said Plot No. 146, Ward F, Old Kaladan Barracks, Tamale belongs to the plaintiff, see Exhibit A. Exhibit B was executed between the parties is for a period of 10years, ending January 2019. Note, parties erroneously computed the ending date to be February 2020. Thereafter, there has not been any agreement between parties as to rent or continued use of the property. Clause 3.4 of Exhibit B entitles the defendant to exercise its option to renew, by giving the plaintiff 3months notice in writing before the expiration of the agreement and payment of rent. Clause 3.4 states:

> "If the lessee exercises its option to renew, then not less than 3months before the expiration of the term, the lessee shall notify the lessor in writing of its intention to renew the lease (renewal notice), and subject to all due rent having been paid, the lessor shall grant to the lessee a further term of five years, to commence immediately on the end of the term, at a rent to be determined by the parties and subject to the same covenants and conditions as in this present lease."

11. From the record, there is no evidence to the effect that the defendant has evinced any intention or exercised it rights to renew the agreement or paid or about to pay rent. It is the defendant who is to exercise the right to renew, prior to the expiration of the agreement. Not giving notice and failure to pay rent, it has failed to carry out its obligations under the agreement. Also, defendant had since 2014 failed to paid any rent. More importantly, Exhibit B has expired. It expired in January 2019. Based on these, I find that there is no agreement binding on the parties, as at present. Hence, there was no need for the plaintiff to serve notice for defendant to renew the agreement, as it was for the defendant to renew same if it was minded to. All that plaintiff was required to do was to exercise the right of re-entry as has been done per this present suit. Therefore, I hereby hold that the plaintiff is entitled to re-enter the

property. Thus, plaintiff to recover possession of the land. I shall deal with the issue of the accrued rent later in this judgment.

12. Trespass means, "a wrongful interference with the possession of property" or "entry to another's property without right or permission", see the *WordWeb Online Dictionary*. Hence, the continued presence of the other party without lawful right or permission amounts to trespass. Also, trespass to land, as a tort, is actionable per se. This means that once the act of trespass has been proven against a defendant, the plaintiff does not have to prove by evidence that he has suffered damages. The law presumes injury to the plaintiff to be a natural consequence of the defendant's act of trespass and therefore a claim for general damages will arise as of right by inference of the law. See the cases of **Klah v Phoenix Insurance Limited [2012] 2 SCGLR 1139** and **Esi Yeboah v Mfantseman Municipal Assembly, Suit No. A2/6/2021 dated 13th October, 2022, HC.** To assess the extent of damages, the court is required to consider the circumstances of the case and in particular the acreage of the land on which the trespass was committed, the period of wrongful occupation of the land by the defendant and the damage caused, see the cases of **Laryea v Oforiwaa [1984-1986] 2 GLR 410** and **Ayisi v Asibey III & Ors. [1964] GLR 695.** From the evidence, since the agreement between the parties has expired since 2020. The continued presence of the defendant on the plaintiff's land, therefore, constitutes trespass. Having left it properties on the said land since January 2019 and without payment of any rent, I shall award general damages assessed at GHS5,000.00.

13. Before I conclude, the Supreme Court in the case **Kofi Manu v Akosu Agyeiwaa & 3 Ors. [2013] DLSC 2572** held that, "…this court will not ordinarily grant any relief which a party has not formally asked for. The only instance when a relief has been, so to speak, granted without being specifically asked for is in an instance when that relief

emerges or *is apparent from the evidence on record*." The court does so in order to do substantial justice to the parties, see **Hanna Assi (No. 2) v GIHOC Refrigeration and Household Products Ltd. (No.2) [2007-2008] 1 SCGLR 16**. From the evidence, the plaintiff did not plead for recovery of the accrued rent. This is, however, apparent from the evidence. Hence, in order to do substantial justice, I will, therefore, grant the plaintiff the relief to recover the accrued rent. Also, this is because the defendant had not taken steps to terminate the agreement, but left its equipment on the said land for all these years. Clauses 3.1.1 and 3.1. 2 of Exhibit B state:

"3.1.1 The rent shall be reviewed at the end of the 3rd year of the term and thereafter, every 3years.

3.1.2 Any rent increase shall not exceed 10% of the existing rent immediately prior to the review."

14. From the evidence, plaintiff admitted that defendant has paid GHS13,680.00 from February 2009 to January 2012, thus the first 3years. Again, defendant paid GHS4,614.72 each in years 2012 and 2013. This means that defendant has paid up to January 2014. Hence, the outstanding rent is from February 2014 to January 2019. I will maintain the amount of GHS4,614.72 for February 2014 to January 2015, since that amount should run for 3years. Again, the increment from February 2013 to January 2015 is 1.19%. Hence, I will award 2% on the previous rent per month for the next 3years (February 2015 to January 2018). Thus GHS392.25 per month for 3years, totaling GHS14,121.24 The last year, February 2018 to January 2019, I will award 3% increment. Thus, GHS404.02 per month for a year, totaling GHS4,848.24. In sum, the outstanding rent from February 2014 to January 2019 is GHS23,583.97. This, the plaintiff shall recover.

CONCLUSION

7. In sum, I hereby enter judgment in favour of the plaintiff as follows:
    a. I declare that Plot No. 146, Ward F, Old Kaladan Barracks, Tamale belongs to the plaintiff.
    b. Plaintiff is entitled to re-enter the portion of land occupied by the defendant on the said plot. Thus, plaintiff to recover possession of the land.
    c. Plaintiff to also recover the accrued rent from February 2014 to January 2019 assessed at GHS23,583.97
    d. General damages for trespass assessed at GHS5,000.00
    e. Costs assessed at GHS5,000.00

H/W D. ANNAN ESQ.

[MAGISTRATE]

SHEIKH-ARIF ABDULLAH ESQ., WITH IAN A. ADAGWINE ESQ., FOR THE PLAINTIFF

<u>*References:*</u>

1. *ss. 11(4) and 12(1) and (2) of Evidence Act, 1975 (NRCD 323).*
2. *In re West Coast Dyeing Industry Limited: Adams v Tandoh [1984-86] 2 GLR 561, CA*
3. *Ankumah v. City Investment Co. Ltd. [2007-2008] 1 SCGLR 1068*
4. *Republic v. High Court (Fast Track Division); Ex-parte State Housing Co. Ltd. (No. 2) Koranten-Amoako Interested Party, [2009] SCGLR 185*
5. Asante-Appiah v Amponsah @ Mansa [2009] SCGLR 90 @ 98
6. *Nii Tackie Amoah VI v Nii Amarh Okine & Ors. [2014] DLSC 2910*
7. *Nene Narh Matti & 2 Ors. v Osei Godwin Teye & Samuel L. Ayortey & 2 Ors. v Osei Godwin Teye (Consolidated) (2017) Suit No. J4/13/2017, Unreported dated 22/11/17, SC*

8. *Nortey v. African Institute of Journalism and Communication [2013-2014] 1 SCGLR 703*
9. *Kodilinye v Odu [1935] 2 WACA 336*
10. *Anane v. Donkor [1965] GLR 188*
11. *Klah v Phoenix Insurance Limited [2012] 2 SCGLR 1139*
12. *Esi Yeboah v Mfantseman Municipal Assembly, Suit No. A2/6/2021 dated 13th October, 2022, HC*
13. *Laryea v Oforiwaa [1984-1986] 2 GLR 410*
14. *Ayisi v Asibey III & Ors. [1964] GLR 695*
15. *Kofi Manu v Akosu Agyeiwaa & 3 Ors. [2013] DLSC 2572*
16. *Hanna Assi (No. 2) v GIHOC Refrigeration and Household Products Ltd. (No.2) [2007-2008] 1 SCGLR 16*