

IN THE DISTRICT COURT 2, TAMALE HELD ON THURSDAY 7TH SEPTEMBER, 2023 BEFORE HIS WORSHIP D. ANNAN ESQ.

SUIT NO. A2/62/23

BETWEEN

SAANI ABDUL-RAUF

- PLAINTIFF

AND

CROWNVILLE ENTERPRISE LIMITED

- DEFENDANT

JUDGMENT

INTRODUCTION

1. This judgment relates to land.

2. On 28th April, 2023 the plaintiff through his counsel instituted this present action against the defendant. The plaintiff described himself as a businessman and the owner of the land in question, while the defendant is a company that deals in telecommunication systems. The reliefs sought by the plaintiff are:
 - “a. An order for recovery of rent GHS2,391.21 a year for telecommunication mast from March 2015 to present in the total sum of GHS19,129.68.
 - b. An order of directed at the defendant to remove all their equipment from plaintiff’s property situate at Plot No. Daycare Center Block K, Nyohene-Tamale and restore the said land and return to the plaintiff.
 - c. Damages for breach of contract.
 - d. Any other reliefs as the justice of the case may require.
 - e. Costs on full recovery basis.”

3. The defendant was duly served with the Writ of Summons via substituted service on 24th May, 2023. Despite due service on defendant, it failed to attend court or filed any response to plaintiff's claim. The court on 27th June, 2023 directed the plaintiff to file witness statement in support of his case of which same was filed and served on the defendant on 13th 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

4. According to the plaintiff he owns all that piece and parcel of land described as Daycare Center situate at Nyohene, Block K Residential Area, Tamale. Copy of the said land document was filed as Exhibit A. Plaintiff indicated that he entered into an agreement with the defendant company of which the defendant erected a telecommunication mast on the said land. Picture of defendant's telecommunication mast was tendered as Exhibit B. Plaintiff asserted that per the agreement, the defendant was to pay an amount of GHS20,000.00 as rent for 10years. Also the said agreement expired in February 2021. Plaintiff contended that the agreement is subject to renewal, but all attempts to get the defendant to renew or pay rent has failed. Hence, his present claim.

BURDEN OF PROOF AND ANALYSIS OF PLAINTIFF'S CLAIM

5. As earlier pointed out, the defendant was duly served 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.”

6. The law is also that where plaintiff has endorsed on his writ an injunctive relief relating 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 Amah 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).

7. 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)**.
8. From the evidence, Exhibit A is a lease dated 17th November, 2003 being an allocation of land approximately 0.83acre known as Daycare Center, Nyohene Block K, Residential Area, Tamale. From Exhibit A, there is no doubt that the said land belongs to the plaintiff.
9. However, the plaintiff failed to file the agreement he entered into with the defendant. Assuming the said agreement does not exist, the plaintiff failed to clearly demonstrate the nature of his agreement with the defendant. An extract of his evidence on oath, per his witness statement, is as follows:
 - “5. *Sometime after February 2011, I entered into an agreement with Crownville Company Limited to rent a portion of my land at Nyohene Block K, for the erection of telecommunication masts.*
 6. *Pursuant to this agreement, the defendant erected a mast on my land. (Attached hereto ...is a picture of the mast erected on my land by the defendant).*
 7. *Per the agreement, the defendant was to pay me GHS20,000.00 for 10years, before the erection of the mast. And this 10year period ended in February, 2021.*
 8. *I have since made several attempts to get the defendant to renew their rent and they failed, refused and neglected to do so.”*
10. The above is in sharp contrast with his particulars of claim. This is what was endorsed as summary of his claim:

- “1. The plaintiff was approached somewhere in 2010 in respect of installation of communication mast on his plot, Daycare Center Block K, Nyohene, Tamale.
2. *The plaintiff says further that he agreed with defendant for any annual rent of GHS2,000.00 but to be reviewed upwards 10% every five years for citing the mast on his land.*
3. *The plaintiff says that the said agreement was for a period of 15years but received a 5year advance ending in March 2015.*
4. *The plaintiff says after March 2015 the defendant was to take steps to re-new its contract with plaintiff, which it failed to do.*
5. *The plaintiff says all attempts including letters from his lawyer to get defendant to re-new rent has failed.*
6. The plaintiff says the defendant has no intention of paying outstanding rent unless compelled by this Honourable Court to do so.”

11. Let me at this point repeat the reliefs sought by the plaintiff. He claims:

- “a. An order for recovery of rent GHS2,391.21 a year for telecommunication mast from March 2015 to present in the total sum of GHS19,129.68.
- b. An order of directed at the defendant to remove all their equipment from plaintiff’s property situate at Plot No. Day Care Center Block K, Nyohene-Tamale and restore the said land and return to the plaintiff.
- c. Damages for breach of contract.
- d. Any other reliefs as the justice of the case may require.
- e. Costs on full recovery basis.”

12. The law is trite that the court is bound to consider the evidence on oath. Pleadings, however, in themselves do not constitute evidence, save that they contain the

summary of material facts to be relied upon for the claim or defence, see **Koranteng v Crocodile Matchets [2013] 58 GMJ 111 at 117-118**. In **Hammond v Odoi [1982-1983] GLR 1215**, the Supreme Court in explaining what constitutes pleadings noted that, “The pleadings are the nucleus around which the case – the whole case- revolves. Their very nature and character thus demonstrate their importance in actions, as for the benefit of the court as well as for the parties. *A trial judge can only consider the evidence of the parties in light of the pleadings. They form the basis of the respective case of each of the contestants. The pleadings bind and circumscribe the parties and place fetters on the evidence that they would lead. ...*”. [Emphasis mine]

13. From the above, I find that the evidence of the plaintiff is inconsistent with his particulars or summary of claim. Whereas he testified under oath that the agreement was for 10years ending February 2021, the particulars of his claim stated 15years: the first 5years ended in February 2016 and the entire agreement to end in February 2026. Note, the plaintiff erroneously referred to the first 5years to end on March 2015, instead of February 2016. Also, plaintiff stated in evidence that the defendant paid rent of GHS20,000.00 for the 10years, but in his particulars of claim plaintiff stated that defendant was to pay GHS2,000.00 annually for the initial 5years and to be increased by 10% every 5years. From this, there are clear doubts as to the monthly or annual rent as well as the amount paid. Per plaintiff's *relief a* he claims rent of GHS2,391.21 annually from “March 2015” to present. I wonder how the plaintiff came to this amount, if the alleged increment is 10% every 5years. Basic arithmetic tells me that 10% will not put the figure in decimals. Also, is the agreement subject to automatic renewal, per the predetermined rate of increment of the rent? The plaintiff failed to demonstrate under oath that the defendant was expected to renew the rent and for that matter this court to grant *relief a*. In fact, he indicated that he had sent letters to the defendant to renew the rent, but same fell on deaf ears. What renewal of

rent was the plaintiff asking for, if there is already a predetermined increment or formula? Plaintiff failed to tender in evidence the said letters or the agreement in support of this assertion. Alternatively, I am unable to determine whether the agreement has expired. Assuming this court is to proceed that the agreement has expired ending February 2021, what will form the basis for the new rent, since there is no binding contract? Again, if the court is to proceed with the automatic renewal of the rent, per the summary of claim, will that not be a reliance on a pleading which is not evidence per se? See **Hammond v Odoi (supra)**. Further, that pleading is in sharp contrast with the evidence under oath.

14. With regards to *relief b*, the plaintiff wants the defendant to remove its properties forthwith. It appears to this court that the plaintiff wants to re-enter the property since the defendant has failed to pay rent. If the plaintiff wants to re-enter or that demand that the defendant removes its properties on the said land, then the plaintiff is required by law to establish on the balance of probabilities that the defendant has failed to pay rent and that he is entitled to re-enter or that the defendant is to pack out. In his evidence, plaintiff averred that he has received GHS20,000.00 as rent ending February 2021. With the scenario that the agreement has expired in 2021, then there is no binding agreement. What plaintiff can claim is damages for trespass. With the scenario that the agreement is automatically renewed, then same is to expire in 2026 to which rent in arrears may be claimed. Further, if the non-payment of rent constitutes a conditional breach to entitle the plaintiff to re-enter or defendant to pack out, no evidence was adduced by the plaintiff to that effect. In fact, no indication was given as to the circumstances of re-entry. If the agreement has expired and for that matter plaintiff wants the defendants to remove its properties, then notice is to be served on the defendant or evidence led to the effect. But plaintiff failed to do so. In one breath, the plaintiff is asking for rent (at a certain rate from "March 2015" to date)

under the belief that the agreement is yet to expire. In another breath, he is asking for defendant to remove its properties because the agreement has expired in 2021. The above inconsistencies, therefore, put the case of the plaintiff in serious doubt for this court to give its blessings to his prayer. Thus, the reliefs sought are not supported by the evidence on the record.

15. Accordingly, I come to the conclusion that the plaintiff has failed to prove his case and same is dismissed as having no merit.

CONCLUSION

16. In sum, plaintiff's action fails as having no merit.

H/W D. ANNAN ESQ.

[MAGISTRATE]

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

References:

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. *Koranteng v Crocodile Matchets* [2013] 58 GMJ 111 at 117-118
12. *Hammond v Odoi* [1982-1983] GLR 1215