

IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE (LAND DIVISION) ACCRA HELD ON THE 12TH DAY OF DECEMBER, 2022 BEFORE HER LADYSHIP JUSTICE MRS.JENNIFER AHMED

Suit No. LD/1022/2020

EDWARD ADENIRAN LAMPTEY : PLAINTIFF

VRS

GEORGINA AKOSUA ACHIAA : DEFENDANT

J U D G M E N T

By his writ of summons issued out of the registry of this court on the 3rd of August 2020 the plaintiff sought the following reliefs from the defendant:

- i. An order of the court directed at the Defendant to give the mandatory easement of way on all sides to the Plaintiff's house.
- ii. An order directed at the Defendant to give space for a drive way to Plaintiff's house.
- iii. An order directed at the Defendant to remove the part of her building on plaintiff's manhole.
- iv. An order directed at the Defendant to relocate the CCTV camera that violates Plaintiff's right to privacy.

The defendant entered conditional appearance on the 10th of August 2020 and thereafter filed her statement of defence on the 9th of October 2020 denying the claims of the plaintiff. At the close of pleadings the issues that were adopted for determination were the following:

- i. Whether or not Plaintiff's mother had constructed a foundation footing on part of the land before her death.

- ii. Whether or not Defendant made provision for easement and drive way when putting up her building to make Plaintiff's property accessible.
- iii. Whether or not part of Defendant's building is built on Plaintiff's manhole making it impossible for septic tanks to dislodge the feces therein.
- iv. Whether or not Defendant CCTV is positioned at a place that violated the rights of the plaintiff to privacy as all activities on plaintiff's compound are captured by the CCTV.

The Plaintiff's Case

The case of the plaintiff as borne out by his pleadings and the evidence adduced by him and his witnesses is that his late mother one Ashiokor Lamptey as a member of the community acquired a piece of land by way of a customary grant from the Apantse We family of Shiashie . She constructed a foundation on one part of the land and left the other side bare and before her demise asked the plaintiff to continue with the building for himself and his siblings. From his own resources the plaintiff deposed that he built the house but was unable to plaster and paint it before he left the shores of this country for Nigeria.

His sister one Elizabeth Antwi rented out 2 of the bedrooms of the house to a tenant known as Thomas Fordjour and supervised him to use part of the proceeds to plaster and paint the house. He returned from Nigeria to find that the defendant had almost completed a three-storey building on the other part of the land and enquiries revealed that his sister Elizabeth Antwi had without consulting any of the beneficial owners of the land, leased the land to the defendant who had built the house which had been built without any easement or right of way or light to his building. A picture of this was tendered into evidence as exhibit A and also tendered as exhibit B was a picture of the defendant's building which he said towers precariously over his house *'such that there is no space for a compound and no air comes'* to his house.

According to the plaintiff, he is a visual artist but his clients were unable to access his showroom due to the defendant's building as there was no driveway to the house and a picture of this was tendered by him into evidence as exhibit C. The situation he stated, was so bad that when construction work is ongoing on the top floor(presumably of the defendant's building), sand and stones would fall directly

into his compound endangering the lives of the occupants of his house. The defendant had also built her house on the manhole toilet facility which cannot be accessed when full and there being no easement of way to his house and with the defendant allowing him to use the frontage, he has to receive his visitors at the other side of the main road which was an inconvenience to him. Tendered into evidence as exhibits D and E respectively were pictures of him receiving a visitor on the main road and the frontage of the property. The defendant had also intruded on his privacy by her installation of CCTV cameras which overlook his house and all efforts to get the city authorities to get the defendant to comply with the easements required by the authorities had failed as the defendant according to him, *'remained adamant'*. The various letters written by him to the authorities were tendered into evidence as exhibit F series.

The plaintiff's first witness was in the person of the aforementioned Thomas Owusu Fordjour whose evidence was that he rented three bedrooms in the plaintiff's house sometime in 2010 through the plaintiff's sister Elizabeth Antwi who said that the plaintiff was at the time in Nigeria. The building was neither plastered nor painted and the floors of the bathroom and toilet were not cemented so he agreed with the plaintiff's sister to use part of the money paid as rent advance to plaster the house, cement the floors of the bathroom and kitchen and to paint the building. He also connected electricity from a neighbouring house but the plaintiff when he returned from Nigeria had a meter fixed in the house and he paid the plaintiff a further two year rent advance.

There was a container on the space where the defendant's property is now situate where one Abraham Ashison sold electrical wares. The defendant sometime in 2011 commenced with the construction of her building and upon completion blocked the access way to the manhole. During the construction work, they had been subjected to debris falling onto their roofs and floors which they found scary. The defendant blocked the entrance to the plaintiff's house so he had to break through the fence wall at the back of the house to be able to get in and out of the house. She had also barricaded the frontage including a small space she had given to them with chains and they had to force their way in and out of the house. She had also fixed what he described as an *'electric mesh'* on the walls which sometimes sparked fire.

The second witness for the plaintiff was Grace Lamptey who described herself as the sister of the plaintiff's late mother and who testified that the plaintiff's mother sometime in 1968 informed her that she had purchased a parcel of land at Shiashie which land was for her children. The mother of the plaintiff had constructed a foundation on a portion of the land and asked the plaintiff to '*continue the building for himself and for his siblings*' which he did and then left for Nigeria. On his return, he informed her that one of his sisters had sold the rest of the land to the defendant and when she visited the land he realized that the defendant had built the house without leaving any distance between her building and that of the plaintiff with a small space serving as the entrance to the house of the plaintiff. There is also no parking space for the plaintiff as the frontage of the house is parked with vehicles belonging to the defendant.

The Defendant's Case

The case of the defendant on the other hand as gleaned from her pleadings and her witness statement is that she is a business woman who before she commenced the construction of her building which shares a boundary with the plaintiff procured the land from Faustina Dinsey, Christiana Aryeetey and Elizabeth Antwi with certification from the Apantse We family on the 28th of August 2012. Exhibit 1 tendered by her was the assignment from her grantors. The plaintiff when she sought to register her title registered an objection through his lawyers to halt the registration but was unsuccessful and she tendered into evidence as exhibit 2 the letter from the Lands Commission setting aside the plaintiff's objection. After regularizing her ownership and title the defendant stated that she proceeded to construct her building amidst interruptions by the plaintiff.

The first interruption related to issues of easement and her installation of CCTV cameras which was necessitated by thieves breaking into her some of the rooms in her building and stealing three flat screen television sets and spare parts for her vans. The thieves had managed to gain access into her building because the plaintiff's house is not walled. According to her the plaintiff in building his house did not situate it properly on his land to have access to a drive way but that notwithstanding she had provided him with a parking space anytime he had the use of a vehicle.

She also stated that prior to purchasing the land, a meeting was convened and in attendance were the plaintiff and his sisters Faustina Dinsey, Christiana Aryeetey and Elizabeth Antwi, as well as other family elders, one of whom was one Emmanuel Anum Laryea. At this meeting the plaintiff proposed buying his sisters out and indicated that he intended securing a loan to do so. However he never got this loan and as a result his sisters assigned their share to her.

Due to his opposition to her purchasing the land, the plaintiff reported her to the inspectorate division of the Accra Metropolitan Assembly during the tenure of Oko Vanderpuye as mayor and again reported her during the tenure of Adjei Sowah. Officers of the AMA were sent to in both instances to the property to examine the problem but they all came to the conclusion that there was nothing wrong with the siting of her building and that there was enough easement of way for the plaintiff.

The plaintiff had been within the jurisdiction when she commenced with the construction work and never raised any objection, but had resorted to lodging complaints against her with NADMO, CHRAJ and AMA as well as with the East Legon police station and all these entities had absolved her of any wrongdoing and concluded that she had not invaded his privacy via the installation of her CCTV camera.

The defendant stated as untrue the allegation that she had built on the plaintiff's manhole making it impossible to be emptied and stated further that the manhole had been constantly emptied via a long hose since the completion of her building. Her electric fence on the top of her wall had not been '*catching fire*' as alleged by the plaintiff as same had been fixed by an expert.

The first witness who testified on behalf of the defendant was Abraham Ashelley Ashison and his testimony was that he had rented a shop of one Aunt Lizzy in 2009 and it was he who showed the defendant the house of this Aunt Lizzy and had stayed on for a discussion that ensued. After the agreement between the defendant and the three sisters (presumably the defendant's grantors) he was asked to shift his kiosk so the defendant could construct her building. This was in the year 2010. The plaintiff was present at the time the defendant's building was started though he used to visit Nigeria '*very often*'.

On one occasion when the plaintiff returned from Nigeria the plaintiff intimated to him that the defendant had constructed a huge building to his surprise. He stated

that the plaintiff was present when the land was demarcated in late 2010 and even gave him one of his rooms so he(DW1) could pack some of his electrical items there. He had wired the defendant's building whilst he was still occupying the land but had left on the 11th of July 2011.

The second witness for the defendant was one Emmanuel Anum Laryeah, a member of the Apantse We family of La Shaishie and his evidence was that the plaintiff had been available when he went personally with the surveyor to '*pick*' the land and demarcate it in 2010. The defendant had come to the house at Shiashe together with the plaintiff and his three sisters to inform him and his brother, one Victor Adams-the older brother of the chief- about the defendant's desire to acquire the land. He and this his brother went to the chief and informed him about the defendant's acquisition of the land. The plaintiff was not with them on the visit to the chief who on that day had quoted the fees to be paid for the processing of documents by the defendant. He accompanied the defendant to pay the money to the chief and together with the surveyor went to the land where they met the plaintiff and he on that day made a suggestion to the plaintiff to sell his land to the defendant. The surveyor in '*picking the points*' demarcated 6 feet as an easement for the plaintiff and this was in the presence of the plaintiff, who was also within the jurisdiction when the defendant started the foundation of her building until the completion of same. According to DW2 it was not true that the plaintiff's mother had constructed a foundation on which he built his house and he stated that the plaintiff's building was built long before the portion of land was demarcated to the defendant.

The court shall now proceed with the issues that have been set down for determination and the first of these is whether or not Plaintiff's mother had constructed a foundation footing on part of the land before her death.

The plaintiff insisted that his late mother constructed a foundation footing on the land she acquired for the benefit of her children and had asked him to construct a house on it for the benefit of himself and his sisters. PW2 who happens to be his aunt also stated that the plaintiff's late mother had constructed a foundation footing on a portion of the land but this assertion that the plaintiff's late mother had constructed a foundation on a portion of the land was denied by DW2. It must

be stated that this issue is not relevant to the claims of the plaintiff for it does not provide us with any information such as the dimensions of this foundation and how much of the land it occupied or when exactly this foundation was allegedly built. There were also no visuals provided as evidence of any such foundation most especially when the defendant's witness denies the existence of any such foundation built by the plaintiff's late mother. What exactly will the determination of this issue have on whether or not the plaintiff is entitled to the claims he has made before this court? None whatsoever. As was held in **Domfe v Adu** [1984-86] 1 GLR 653 CA, a trial judge is not required to make findings of fact in respect of irrelevant matters on which the parties had led evidence when such findings would not assist in the determination of the issues involved in the case. I find this first issue to be an irrelevant and will make no findings on it since it has no relevance to the issues not at stake.

The crux of this case is the second issue of whether or not the defendant made provision for easement and driveway when putting up her building to make the plaintiff's property accessible.

An easement is an interest in land of limited nonpossessory legal right to use another's land for a specified purpose and may be granted or expressly conveyed in a written instrument such as a deed or a contract. It can also be implied from use of the land. An easement depending on its purpose can be affirmative or negative; affirmative which allows the privileged use of land owned by others and negative which is restrictive and limits how land is used. In his address, the plaintiff's counsel cited the case of **Re Ellenborough Park** (1955) 3 All ER 667 where Lord Evershed MR laid down the four requirements for a valid easement as follows:

1. There must be a dominant and a servient tenement.
2. An easement must accommodate the dominant tenement.
3. Dominant and servient owners must be different persons.
4. The right is capable of forming the subject of a grant.

A dominant and servient tenement is described as *'a right benefiting a piece of land (known as the dominant tenement) that is enjoyed over land owned by someone else (the servient tenement). Usually such a right allows the owner of the dominant tenement to do something on the other person's land, such as use a path, or run services over it'* - per Thomson Reuters Practical Law.

Thus a landowner who enjoys rights over property which is not his own is called the dominant owner and the land on which the liability is imposed is the servient tenement and the owner of this servient tenement is the servient owner. In the instant case, the plaintiff's counsel contended that,

'Plaintiff has adduced evidence to the effect that his property is the dominant tenement and defendant's property is the servient tenement and that defendant did not make provision for easement and driveway when putting up her building to make plaintiff's property accessible.'

Now from the pictures tendered by the plaintiff, it appears that his property is situate behind the defendant's building which is a three storey structure with a parking space in front. According to her, she gave the plaintiff access to this parking space anytime he has the use of a vehicle to park it there. The defendant does not deny running a chain link at the frontage of her building to prevent pedestrians from using the frontage of her premises as a thoroughfare, a fact which was admitted by PW1 Thomas Fordjour under cross-examination. He also admitted that the chain fixed by the defendant prevents other vehicles from parking in the parking space in front of her building.

The pictures tendered by the plaintiff also show a pedestrian walkway with a green gate affixed to the pedestrian gate which from the evidence on record, the plaintiff has access through to his house. Thomas Fordjour under cross-examination admitted that the defendant had indeed provided this walkway and gate which is locked at night and also admitted that he broke the fence wall at the back of the plaintiff's house to enable him have access to his premises. So if the plaintiff has a wall behind his house, through which his tenant has access to his premises why has he not expanded this opening to have unfettered access to his property if the easement provided him by the defendant is inadequate for him?

From the letters tendered by the plaintiff in which he complained to various organisations about the defendant's building he had a litany of complaints; from listing the defendant as being an illegal occupant of the land, not having a land title or a building permit, taking over the *'juicy part of the land'*, committing a host of infractions such as not giving him the statutory distance allowed by building regulations, not giving him an easement, blocking his water pipe for 8 years, *'colonizing her entire frontage with her commercial vehicles'* and many more, to the

Regional Lands Officer, CHRAJ and NADMO. He admitted that he received no response from these entities. His exhibit Fii, a letter he wrote to the Regional Lands Officer dated the 12th of March 2020, was titled 'APPLICATION FOR REGULARISATION OF A PARCEL OF LAND SITUATED AT SHAISHIE, EAST LEGON, ACCRA' and was a response to a letter written by the Regional Lands officer and the first paragraph is as follows;

'I would refer to your letter reference No. 72321 attached 101/2 dated 3rd March on the above subject matter. Your letter restricting me to where my building is sited is not acceptable to me. I am requesting for the whole land please. Let me state in clear terms that the content of your letter is very clear that my application was not given due consideration and my request not granted after verbal explanations on the illegal occupation of the land. Your action and inaction will defeat the functions for which Land Commission was established to administer land issues.'

The plaintiff did not tender this response from the Lands Commission via the Regional Lands Officer dated the 3rd of March. However from the contents of exhibit Fii, it appears that an inspection was conducted on the land by an official of the Lands Commission pursuant to an earlier complaint filed by him. He thus in exhibit Fii requested that another inspection be conducted by a senior officer of the Lands Commission by writing as follows;

'...I am calling for a review of your decision and conduct another inspection on the said land by a senior officer who is verse(sic) in matters relating to Lands Commission's mandate and not someone who is undergoing a (National Service Programme).'

The import of this letter is that the lands commission had conducted an earlier inspection and taken measurements of the land and concluded that there were no issues in relation to the defendant's land. The defendant has stated that the plaintiff and his sisters had brought officials from the Lands Commission to also take measurements of the land after the owners of the land the Apantse We had earlier taken measurements, a fact denied by the plaintiff. She however did not state exactly when the officials from the Lands Commission had taken the measurements of the land but exhibit Fii confirms that indeed this had been done and whatever the result had been or whatever the findings by the Lands Commission, the plaintiff had not been satisfied by it. The inference to be drawn by

exhibit Fii and his failure to have exhibited the response dated the 3rd of March from the Lands Commission is that the officials from the Lands Commission were satisfied that the defendant had not committed any infraction.

Another observation from exhibit Fii is that the plaintiff, despite the fact that his siblings had assigned their portion of the land to the defendant, was trying to lay claim to the entire portion of land.

In all the litany of complaints has no evidence been provided to this court about the size of land on which the plaintiff constructed his building, what portion of the land he demarcated to himself and what portion was left to his siblings, the dimensions of his building and what kind of space he had left around his house. He did not produce any evidence of title or identify the land he has his dwelling house on to give the court any idea about the size of his land. Whilst he has maintained that the defendant lacks a building permit, he himself has not produced what building permit he had if any.

The plaint of the plaintiff is that the defendant did not leave the required 8 feet easement for him as per building regulations but no reference has been made in this court to these building regulations. The National Building Regulations[1996] L.I 1630 provides in regulations 14(1) to (5) as follows:

'(1). No dwelling house shall be erected on a site of smaller area than 450 square meters with a frontage of less than 15 metres except where the plot is entirely surrounded by roads or lanes in which case the plot size shall be not less than 330 square metres and the frontage not less than 15 metres.

(2) No dwelling house together with its outbuildings shall cover a greater area of the plot than the following-

- Single storey detached 50%*
- Two and three storey detached 40%*
- Single storey semi-detached 60%*
- Two and three storey semi-detached 50%*
- Two and three storey terrace 50%*

provided that the total floor area of a residential building other than a block of residential flats shall not exceed 80 percent of the total area of the plot.

(3) No business premises together with its out-buildings shall cover a greater area than 75 per cent of the plot and such provision shall be made as will be required by the District Planning Authority for loading, accommodation and car parking, provided that in areas zoned for residential use, no building shall cover a greater area of the plot than that provided in sub-regulation (2) of this regulation.

(4) Where the ground floor of business premises in a commercial area is used partly or solely for human habitation the area covered by the whole building shall not exceed that laid down in sub-regulation (2) of this regulation.

(5) Where the ground floor of business premises in a commercial area is used wholly for business purposes, the area covered by the ground floor shall not exceed 75 per cent of the area of the plot.'

It is also provided under sub-regulation 12 as follows:

'Where more than one building is constructed on the same plot, or where opposite parts of more than one building are separated by a void, the distance between the nearest part of any two buildings or between opposite parts of the same building excluding the eaves, shall not be less than the height of the higher wall and in any case not less than 5 metres except for out buildings where the distance shall in no case be less than 3 metres.'

From the evidence adduced by the plaintiff and his witnesses, there has been nothing adduced to prove that the defendant has contravened these regulations. The oft repeated maxim is that he who avers must prove for the burden of persuasion lies on the party making the claim and sections 10 and 11 of the Evidence Act, 1975, NRCD 323 gives statutory recognition to this principle. In **Takoradi Flour Mills v Samir Faris** [2005-2006] SCGLR 882 at 884 it was held that;

'It is sufficient to state that this being a civil suit, the rules of evidence require that the plaintiff produces sufficient evidence to make out his claim on the preponderance of probabilities, as defined in section 12(2) of the Evidence Decree, 1975, (NRCD 323). In assessing the balance of probabilities, all the evidence, be it that of the plaintiff or the defendant, must be considered and the party in

whose favour the balance tilts is the person whose case is the most probable of the rival versions and is deserving of a favourable verdict.'

One does not mount the witness box and make assertions without providing any proof of these assertions for whilst the plaintiff insists that the defendant has not provided him with an access to his property, he has not been able to adduce evidence to suggest that the defendant did not construct her building within the confines of her land or that she perhaps encroached on the plaintiff's land. From the evidence on record, the access granted to the plaintiff is at the side of the defendant's building, she also has a parking space the use of which has not been denied to the plaintiff and the chains are at the frontage of the defendant's parking space in the frontage of her building and do not impede the access she has given the plaintiff.

The plaintiff has also asserted that the defendant constructed her building in his absence from the jurisdiction, an assertion which has been denied by the defendant. The plaintiff insists that he was not within the jurisdiction when his sister Elizabeth Antwi without recourse to the other beneficial owners leased out the portion of land to the defendant. The defendant's lease agreement however was signed by his three sisters and it has not been the plaintiff's case or alluded to that the document executed by his sisters had been forged or did not bear the signatures of his sisters as owners of the portion leased out to the defendant. His name does not appear on the document. The evidence however is that he had already built on a portion of the land at the time the lease agreement was executed between his sisters and the defendant thus he cannot claim to be entitled to the rest of the land exclusive of the portion he has constructed his building on when he has not been able to identify the size and dimensions of the land originally acquired by his mother.

As stated above, the contention of the plaintiff is that he was not within the jurisdiction when the defendant constructed her building, a contention which has been denied by the defendant and her witnesses. Going however by the contention of the plaintiff, it would mean that his showroom or art gallery was opened after he returned to the jurisdiction on a date unknown to this court, but after the defendant had already constructed her building, which implies that his decision to site a showroom in his house should not be blamed on the defendant. I must also

here make the observation that he claimed that during the course of construction of the defendant's building they were subjected to debris falling onto the ground endangering the life of occupants of his house. If he was not within the jurisdiction when the building was being constructed, how would he have known this?

The defendant in the view of this court has given him an adequate easement to his house. Her building occupies her portion of the land and to order the defendant now to provide the plaintiff with a driveway through her portion to his house would mean that she would have to demolish a part of her building in order to provide him with that kind of access. Would he be willing to bear the cost involved in that? Undoubtedly not. Since there is no impediment to his usage of the frontage of the defendant's parking space as a parking space, the court finds that to be adequate. He has chosen to site his showroom in his house which decision cannot be blamed on the defendant. Furthermore the picture he tendered did not show him meeting his clients by the side of the road but rather showed one person making a delivery of a package wrapped in brown paper to another who was receiving same and putting it into the back seat of a vehicle. And once there is no impediment to his clients or customers walking into his house, the easement provided by the defendant is sufficient.

From the forgoing the court finds that the easement provided by the defendant to the plaintiff is adequate and there is thus no need for this court to order her to give the mandatory easement of way on all sides to the Plaintiff's house or to order her to give space for a drive way to Plaintiff's house.

With regard to the issue of whether or not part of Defendant's building is built on Plaintiff's manhole making it impossible for septic tanks to dislodge the feces therein the court finds that the claims about the manhole specifically that the defendant has erected her building on the plaintiff's manhole is also not borne out by the evidence .The allegation was that the defendant had constructed her building on the plaintiff's manhole but the pictures tendered by him did not show or confirm this. The principle in **Majolagbe v Larbi** (1959) GLR 190 is applicable in this instance for it was a material piece of evidence that the defendant has built on the plaintiff's manhole or blocked the access to it but the evidence did not establish same. There was no suggestion that the plaintiff's manhole needed draining which had been made impossible by the siting of the defendant's building. According to

DW1 Abraham Ashison under cross-examination the parties each had their manholes and the plaintiff's manhole was behind the wall, which presumably is the defendant's wall. In any event, the modern way of extracting waste is done through long hoses so it would be well nigh impossible that any waste 'puller' worth his salt will not have the equipment necessary to extract the plaintiff's waste.

On the issue of whether or not Defendant CCTV is positioned at a place that violated the rights of the plaintiff to privacy as all activities on plaintiff's compound are captured by the CCTV, it must be stated that once again, the plaintiff was unable to adduce any evidence to establish in what way the defendant's CCTV cameras intruded or infringed on his privacy. According to the defendant, it became necessary to install the cameras as well as the electric fence for her own security and protection after she was burgled due to the lack of a wall around the plaintiff's house. The allegations made are that the electric fence 'sparks fire' and that the cameras intrude on the privacy of the plaintiff. It was not made known to this court whether the cameras have been installed in the plaintiff's house, or installed to monitor the inside of his house which would be breaching his privacy. The evidence is that the cameras have been installed on the defendant's building to monitor the outside of her premises and not necessarily to spy on the plaintiff. Once again no evidence was adduced to establish this claim of infringement of privacy and I find that same has not been proved.

This case is one in which if the parties could have negotiated and resolved matters amicably, the plaintiff could have reached a consensus with the defendant to have the use of one of the storerooms in her building for the operations of his art gallery/showroom. Hopefully it is not too late for that.

The court on the strength of the evidence adduced finds that the plaintiff has not been able to prove his claims before this court on the balance of the probabilities. Therefore his claim fails. The court finds the easement provided him by the defendant adequate.

Cost of Gh¢7000.00 in favour of the defendant.

LEGAL REPRESENTATION

COUNSEL FOR PLAINTIFF: MR. KOFI AHENKORAH – ABSENT

COUNSEL FOR DEFENDANT: MR. D. K. SOKPOR – PRESENT

(SGD)

**JENNIFER MYERS AHMED (MRS)
JUSTICE OF THE HIGH COURT**

