

**IN THE SUPERIOR COURT OF JUDICATURE,
IN THE HIGH COURT OF JUSTICE,
HO – VOLTA REGION,
A.D. 2022.**

CORAM: CHARITY A. ASEM (MRS), J.

SUIT NO. E1/17/2020

DATE: 28TH OCTOBER, 2022

**ANTHONY DZIGBOR
SUING AS THE HEAD OF THE
DZIGBOR FAMILY, HO**

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PLAINTIFF

VRS.

- 1. THE ATTORNEY GENERAL, HO**
 - 2. THE SOCIAL WELFARE DEPT., HO**
 - 3. E.P. CHURCH OF GHANA, FIAVE, HO**
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DEFENDANTS

JUDGEMENT

The plaintiff in the instant case claim that he is the Head of the Dzigbor family of Ho Volta Region. According to him this family are the owners of a large parcel of land known as the Kpleve Lands which includes the land in dispute. He said the land covers an area of approximants 6.3 acres in measurement.

Plaintiff stated that his family become aware for several years the unlawful occupation of the disputed site by the 2nd defendant and will aver that even though the 2nd defendant is

a governmental agency, it cannot unlawfully occupy someone's land and commence construction of permanent structures without evidence of acquisition.

Plaintiff equally accused the 3rd defendant herein of trespass; and therefore claimed per the endorsement on the writ of summons as follows;

- a. An order for declaration of title to all that parcel of land covering an area of 6.3 acres occupied by the Defendants and situate directly behind the Rural Training Centre (Yard) at Ho Bankoe.
- b. An order directing the 2nd Defendant to pay adequate compensation to be assessed by the court appointed valuer for the period the 2nd Defendant had occupied the land unlawfully.
- c. An order that the 2nd Defendant gives up vacant possession of the parcel of land they occupied to the Plaintiffs forthwith.
- d. An order directing the 3rd Defendant to pay adequate compensation for trespassing on to the Plaintiffs land without authority.
- e. An order for recovery of possession of all the parcel of land being developed by the 3rd Defendant.
- f. Cost including solicitor's fees against all the Defendants jointly and severally.

1st and 2nd Defendants per their initial defence filed on the 9/12/2019 at paragraph 3 and thereof stated that the disputed site occupied by the 2nd defendant was legally acquired by the state and paid for. That the 2nd defendant has a site plan covering the land. They thus put the plaintiffs to strict proof. In robing 3rd defendant into the dispute, at paragraph 10 of the statement of defence counsel alleged that, the portion granted to the 3rd defendant was by the Ho Municipal Assembly against all resistance from the 2nd defendant. And finally that the plaintiffs are not the owners of the land and could not have leased same to the 3rd defendant. So they are not entitled to their claims.

Even though 3rd defendant cause an appearance to be filed on its behalf, the court received no defence from the church.

Determined to proof its ownership to the land plaintiff filed directions and several issues were raised, amongst the issues that is of interest to the court; is whether or not apart from the RTC Land, the government has paid to the plaintiff's family any money or compensation for the land being occupied by the 2nd defendant. The issues were set down for trial. An order was directed at the parties to file Witness Statement together with relevant documents in support of their claims.

Sometime later both learned lawyers for the parties informed the court of a possible settlement. It is imperative to state that the parties were on and off as regard the settlement; which caused the plaintiff to file a Witness Statement in readiness to proof his case, as settlement broke down.

However, on the 28/10/2022 counsel for the 1st and 2nd defendants submitted to judgment and stated as follows;

I wish to state that we have advised and sent a copy of terms of settlement to the head office of the Social Welfare Directorate. It is difficult to get the powers that be execute the terms. We were served on the 5/9/2019. On 2nd October 2019 we filed our Notice of Appearance to defend this action.

My Lord, we quickly wrote to the 2nd defendant for comments to the issues raised by the plaintiff to respond to the issues. We received a write up from them on the issue even though without cogent issues of defence we filed some defence on 9/11/2019. We invited the Director of Social Welfare to furnish us with further and better particulars which will enable us to appropriately respond to the suit.

The Director could not provide any Executive Instrument supporting acquisition neither any evidence of payment for the land. We wrote to Lands Commission to search for evidence of acquisition but we did not receive any response from them. The Director subsequently informed me that we should check at Bank of Ghana, Hohoe for a search on the records as those days Bank of Ghana used to keep those records. We did and personally gave the search to an officer of the Social Welfare Department to submit to Bank of Ghana, Hohoe. We receive no response in respect of that search. We have no option but to enter into settlement with the plaintiff and their lawyer.

The Regional Director Volta Region was involved in the settlement and we submitted a copy to the Regional Director to sign, but she said she has no capacity to commit the Directorate in that manner. I then wrote a letter giving reasons why it was prudent to settle the matter and forward same to the National Director for her signature.

Since that letter and copy of the terms of settlement was sent in June 2020 we have not received the settlement signed by the National Director.

So in the circumstances, we cannot continue to stand in the way of the plaintiff. We therefore concede that judgment can be given in favour of the plaintiff's family except some of the reliefs we wish to raise some concerns.

- (1) We are pleading with the court and plaintiffs not to ask for compensation as captured in relief (2).*

COUNSEL FOR PLAINTIFF – *As part of the negotiation we were comfortable with the land being valued and the current value paid to us. We have subsequently did so appointed a surveyor and same was done in 2021, we are in 2022. We will pray the court to look at the value and enhance it. We pray for the current value of the land.*

Based on the above admission counsel for the plaintiff then prayed the court not to waste any further time but grant the reliefs of the plaintiff. The court considered the issues and thus entered judgment in favour of the plaintiff on admission.

Order 23 of the High Court Civil Procedure Rules (2004) CI 47 provides the window to the court for addressing issues of this nature.

Order 23 rule 6 (1 a-c) provides as follows;

Order based on admission of fact or document.

6 (1) Where an admission of the truth of a fact or the authenticity of a document is made;

- a. In an affidavit filed by a party
 - b. In the examination for discovering of a party or a person examined for discovery and on behalf of a party or,
 - c. By a party or any other examination under oath or affirmation in or out of court;
- any party may apply to the court or judge in the same or another cause or matter for such order as the party may be entitled to on the admission without waiting for the determination of any other question between the parties, and the court or judge may make such order as is just.

Armed with the above provisions of the law, it is just and considered that plaintiff is entitled to judgment on the reliefs sought before this court. I however take into consideration the prayer of Learned Senior State Attorney on behalf of the state that the plaintiff should forgive the state payment of compensation as captured in reliefs (b) thereof.

It is to be stated the counsel for the plaintiff was magnanimous and indicated that at the settlement table it was agreed that their relief (b) be forgiven so as the current market value of the land be paid to the plaintiff's family.

Without much I do, this court hereby enter judgment in favour of this plaintiff on his reliefs with variation and order as following;

- a. Plaintiff is to recover the sum of GH¢ 1,209,000.00 being the current value of the disputed land as appears in the valuation report before the court dated the 25/3/2021.
- b. The court awards to the plaintiff cost of 20% of the judgement sum in view of plaintiff's abandoning payment of compensation etc.
- c. The defendant is directed to pay the above sum forthwith.
- d. The above decree encompasses all of plaintiff's reliefs sought.

(SGD)

CHARITY A. ASEM (MRS)

(JUSTICE OF THE HIGH COURT)

PARTIES

Plaintiff – Present.

1st Defendant – Present.

Others – Absent.

LEGAL REPRESENTATION

ROBERTSON KPATSA FOR THE PLAINTIFFS – PRESENT.

MOSES AYENE ASAMPOA – PRESENT FOR 1ST & 2ND DEFENDANTS.

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