IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE (LAND DIVISION) ACCRA HELD ON THURSDAY THE 27TH OF APRIL, 2023 BEFORE HER LADYSHIP JUSTICE JENNIFER ANNE MYERS AHMED (MRS)

LDT/0010/2019

SAMUEL AYIM : PLAINTIFF

VRS

THE LANDS COMMISSION : DEFENDANT

PLAINTIFF: PRESENT

DEFENDANT: ABSENT

COUNSEL FOR PLAINTIFF: ABSENT

COUNSEL FOR DEFENDANT: ABSENT

J U D G M E N T

The Plaintiff by a Writ of Summons and Statement of Claim filed on 7th November, 2013 instituted this instant action initially against the Defendant herein and the Attorney-General as the 2nd Defendant. However, pursuant to an motion filed on the 2nd day of June 2016 the suit was discontinued against the Attorney-General on the 8th of June, 2016.

The Plaintiff by his writ of summons and statement of claim prayed for the following reliefs from the defendant:

a. Declaration that the valuation report prepared by the independent valuer represents the true and the proper values of the Plaintiff's properties Nos. L77 and L78;
b. An order that the Plaintiff recovers the amount of GH₵ 91,510.00 being the difference of the actual amount paid to the Plaintiff by the Defendant in the sum of GH₵ 53,890.00 and the proper valuation amount of GH₵ 145,400.00.
c. An order that the Plaintiff recovers from the Defendant the outstanding cost of the land in the sum of GH₵27,500.00
d. An order that all payment be made with interest at prevailing commercial bank rate from 29th June, 2011 to date of final payment.
e. Cost of the proceedings.

The facts of this case are bereft of any complexity. The Plaintiff's case is that, on or about 30th November, 2009 the Defendant by a letter entitled *"Awoshie-Pokuase Road and Urban Development Project"* informed him that his properties situate at Awoshie have been affected by the said project and would have to be demolished. Additionally, the said letter communicated the Plaintiff's entitlement to compensation and the modalities for computing and accessing the compensation.

The Plaintiff averred that his affected property was in two lots made up of seven stores and two (2) bedroom accommodation and identified by the Defendants as DUR/AC/APR/09/77 and DUR/AC/APR/09/78 respectively. Property L78 is made up of three (3) commercial shops, two (2) bedrooms, a hall, kitchen, sanitary area and a porch whereas property L77 is comprised of 4 commercial shops.

The Plaintiff further avers that he was subsequently informed by two letters dated 17th March, 2011 and captioned *"RE: State Lands (Statutory Wayleaves – Awoshie-Pokuase Road) Instrument, 2006. E.I. 19 Phase II. Compensation Valuation Properties Nos. DUR/AC/APR/09/77 and DUR/AC/APR/09/78"* that compensation being recommended

for the Plaintiff's properties aforementioned are Eighteen Thousand, One Hundred and Ten Ghana Cedis (GH₵18,110.00) and Thirty-five Thousand, Seven Hundred and Eighty Ghana Cedis (GH₵35,780.00).

According to the Plaintiff, prior to the computation above, he had, on 31st January, 2011, written to the Defendant an SOS message seeking to be paid some money in advance of his anticipated compensation to enable him undergo an emergency surgical treatment at the Medical/Surgical Department of the Korle-Bu Teaching Hospital where he was seeking treatment for a serious urine retention problem. The Plaintiff says that, instead of the accepting his request, the Defendant hurriedly computed and assessed the value of the property as earlier indicated and brought the cheque to him and he was compelled to acknowledge receipt of same. Due to the severity of his ill health at the time, he was not in a position to seek a secondary opinion on the value put on his said properties. Upon his recovery, he interrogated the valuation rendered by the Defendant and complained to the Chief valuer who in turn advised the Plaintiff to look for an independent valuer to revalue the property for comparative purpose which the Plaintiff did. The revaluation of his properties revealed that properties L77 and L78 had a value of Fifty-five Thousand Ghana Cedis (GH₵55,000.00) and Ninety Thousand, Four Hundred Ghana Cedis (GH90,400.00) respectively amounting to a total sum of One Hundred and Forty-five Thousand, Four Hundred Ghana Cedis (GH₵145,400.00). The Plaintiff's claim is that all efforts to get the Defendant to pay the outstanding compensation and the value of the land due to him in the cumulative sum of One Hundred and Nineteen Thousand Ghana Cedis (GH₵119,000.00) have proven futile especially so when the valuation report excluded the value of the land which by the independent valuer's report stood at Twenty-seven Thousand, Five Hundred Ghana Cedis (GH27,500.00).

The Defendant in its defence filed a sixteen (16) paragraph Statement of Defence on 11th February, 2014 denying the claims of the Plaintiff and averring that although it was aware of the said letter dated 30th November, 2009, it was not the author of same. The Defendant admitted paragraph 7 of the Plaintiff's Statement of Claim which is in respect of the recommended compensation for the Plaintiff's properties identified as DUR/AC/APR/09/77 and DUR/AC/APR/09/78.

The Defendant's case is that it has no authority to sanction advance payments against compensation claims. However, on humanitarian grounds and out of sympathy for the Plaintiff, the Defendant decided to prioritise the Plaintiff's claim processing under Phasi II Batch I Lot covering 466 properties and this was done in spite of the fact that the planned work had not reached the Plaintiff's properties location. According to the Defendant, due process was applied in the assessment of the compensation claim by the Plaintiff who willingly and without any compulsion from the Defendant accepted the compensation offers in respect of the two properties. The Defendant's case is that even though the Plaintiff had the opportunity to engage an independent valuer to revalue his properties for comparative purpose before payment, he refused or neglected to do so and cannot at this stage interrogate the valuation when compensation payments of the two properties have been made in full.

The Defendant denied owning the Plaintiff any outstanding compensation in respect of the two properties (Nos. L77 and L78) since the Plaintiff has been paid full compensation but admitted that compensation on the land itself is still outstanding. It is worth mentioning that Judgment on Admission was entered for the Plaintiff for the recovery of relief (c) endorsed on the Writ of Summons as reproduced above together with interest at the prevailing bank rate.

The Plaintiff in his reply filed on 20th March 2014 reiterated that he was seriously indisposed at the time the Defendant made payment to him on the basis of the valuation the Defendant had conducted. He averred that he was not in the position to

authorise another valuation for comparative purposes as he was battling for his life and had to accept what was offered to him at the time.

From the record of proceedings, it is clear that the Defendant ignored the numerous hearing notices served on them. Several opportunities were afforded Counsel for the Defendant to appear before this Court to continue cross-examination of the Plaintiff on his evidence and subsequently for the Defendant to open its case but the Defendant failed to take advantage of these opportunities for reasons best known to them.

In the considered view of this Court, the Defendant simply disabled itself from being heard. It is trite that a party's right to be given a hearing before he is condemned is paramount and a judgment or decision of a court or any administrative tribunal in breach of this right is a nullity. This is in accordance with the maxim *audi alteram partem.* However, this maxim cannot avail a party who has notice of a trial but fails or refuses to appear, for where a man is afforded the opportunity to advance his case in answer to charges against him and he disables himself or does not avail himself of such opportunity, he cannot be heard to say that the audi alteram partem has been breached. The court is also justified to proceed without him. In **THE REPUBLIC V HIGH COURT(FAST TRACK DIV) ACCRA; EX PARTE STATE HOUSING CO. LTD(NO.2)(KORANTEN-AMOAKO INTERESTED PARTY)**[2009] SCGLR 185, the apex court stated as follows;

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

Similarly in **GHANA CONSOLIDATED DIAMONDS LTD.V TANTUO & OTHERS** [2001-2002] 2 GLR 150, it was held that a party who was aware of the hearing of a case but chose to stay away out of his own decision could not, if the judgment went against him, complain that he was not given a hearing. It is on the basis of the above that this Court deemed the Defendant to have closed its case. The above notwithstanding, the Plaintiff is still required to prove his case on the preponderance

of probabilities as per section 12(1) of the Evidence Act, 1975 (N.R.C.D. 323). The conduct of the Defendant did not, in any way, reduce or take away the onus on the Plaintiff to establish his case on the balance of the probabilities and this is because of the principle of law that a Plaintiff must succeed on the strength of his case and not on the weakness of the Defendant's case.

The standard of proof required of a Plaintiff in a civil suit is to lead such evidence, on the totality of which a reasonable mind, such as this Court, would be satisfied that the claim of the Plaintiff is more probable than that of the Defendant. The burden only shifts to the Defendant to adduce evidence to tip the scale in their favour when the Plaintiff has established a prima facie case or when a rebuttable presumption of law arises. See **ASHALLEY BOTWE LANDS, ADJETEY AGBOSU & OTHERS V KOTEY AND OTHERS [2003-2004] SCGLR 420; and ABABIO V AKWASI III (1994-1995) 2 GLR 774**. This is also in accordance with the tenets of section 14 of the Evidence Act.

The Plaintiff's Witness Statement is not so different from his Statement of Claim. He tendered several documents in proof of his claims, commencing with his **EXHIBIT A** which is the letter dated 30th November, 2009 from the Department of Urban Roads (Head Office) informing the Plaintiff that his property has been affected by the construction project and would have to be demolished. Also tendered as **EXHIBITS B & C** were two letters dated 17TH March 2011 informing him that compensation recommended for his properties Nos. L77 and L78 were Eighteen Thousand, One Hundred and Ten Ghana Cedis (GH₵18,110.00) and Thirty-five Thousand, Seven Hundred and Eighty Ghana Cedis (GH₵35,780.00) respectively.

According to the Plaintiff, after recovering from his surgery he petitioned against the compensation paid to him and was advised to engage an independent valuer to revalue the property. The consequent Revaluation report was tendered as **EXHIBIT E.** On the face of Exhibit E, it is clear that upon a careful examination of the available

data, compensation due the Plaintiff in respect of property L77 and L78 are Fifty-five Thousand Ghana Cedis (GH₵55,000.00) and Ninety Thousand, Four Hundred Ghana Cedis (GH₵90,400.00) respectively making a total of One Hundred and Forty-five thousand, Four Hundred Ghana Cedis (GH₵145,400.00).

As already indicated above, the Plaintiff was not cross-examined on the above evidence. The law is that, where a party gives evidence of a material fact and is not cross-examined on same, he needs not call further evidence to corroborate that fact. This is because such failure is deemed to be an admission of those matters. See **KUSI AND KUSI V BONSU 2010 SCGLR at 60; FOLI V AYIREBI [1966] GLR 627.**

In this wise, the Plaintiff has established a prima facie case against the Defendant thus shifting the onus onto the Defendant to adduce evidence in order to avoid judgment against them. In the case of **FAIBI V STATE HOTELS CORPORATION [1968] GLR 471**, the court held that:

> *Onus in law always lies upon the party who would lose if no evidence is led in the case* ***and where some evidence has been led, it lies upon the party who would lose if no further evidence was led****.*

The Defendant adduced no evidence in this case due to the fact that it disabled itself from being heard by absenting itself from Court notwithstanding the service of numerous hearing notices on it.

Therefore, on the totality of the evidence adduced in this case, I find that the Plaintiff has proven his case on the preponderance of probabilities. Judgment is therefore entered in favour of the Plaintiff in respect of all his reliefs save for relief (iii) (which the Plaintiff had previously obtained judgment based on the admission of the Defendant).

Cost of Gh₵5000.00 awarded in favour of the Plaintiff.

SGD

H/L JENNIFER ANNE MYERS AHMED (MRS.)
(JUSTICE OF THE HIGH COURT)