

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT
OF JUSTICE (GENERAL JURISDICTION COURT 5) HELD IN ACCRA
ON FRIDAY THE 12TH DAY OF MAY, 2023 BEFORE HIS LORDSHIP
JUSTICE WILLIAM BOAMPONG, HIGH COURT JUDGE

SUIT NO: AL/76/2005

KRISPOL ESTATES LIMITED

PLAINTIFF/APPLICANT

HOUSE NO. BLOCK 38

SOUTH ODORKOR, ACCRA

C/o NAOFERG CHAMBERS

11 NGOI FAAM BLK, S.2, KORLE WORKON

DERBY LINK, ACCRA

VS

CHRISTOPHER

KOBINA

SAMPSON

DEFENDANT/RESPONDENT

HOUSE NO. BLOCK 38

SOUTH ODORKOR, ACCRA

J U D G M E N T

The Plaintiff issued its Writ of Summons per its Amended Statement of Claim claiming against the Defendant as follows:-

- a) The Defendant be ordered to assign his title to the lands at Kasoa Odupongkpehe on which the houses have been constructed to the

1st Plaintiff as per his Statutory Declaration made the 19th of November 2001.

- b) Specific performance of the said contract.
- c) Further in the alternative, the Defendant should forfeit his 30% equity stake in the 1st Plaintiff in favour of the 2nd Plaintiff on a finding that he not own the land aforesaid which was the material inducement for the share allotment.
- d) An order directed at the Defendant to account for all monies he has received from Stefano Pol, the 2nd Plaintiff, and any other sources for the estate development project and their application in the name of the 1st Plaintiff.
- e) General Damages or such other reliefs as the Court may deem fit.
- f) Cost, including Solicitors fees.

The Defendant also filed a Statement of Defence to the Plaintiff's claim in which the Defendant incorporated a counterclaim against the Plaintiff as follows:-

1. A declaration that the agreement for the assignment of the Defendant's title deeds and/or interest in the lands at Odupongkpehe to the Plaintiff's Company for the housing project is unenforceable for failure of consideration.
2. An order by the Court to probe into the accounts of the Plaintiff's Company with respect to its financial position and changes therein, and with respect to the control and accounting for all property acquired whether for resale or use in the Company's business and in particular with respect to

- a) all sums of money received and expended by, or on behalf of the Company and the matters in respect of which the receipt and the expenditure took place.
 - b) all sales and purchases by the Company of any property, goods and services.
 - c) the assets and liabilities of the company
3. An Order of the Court for the winding up of the Company.
4. Further or other reliefs as in the circumstances may be just fit or proper. I do not doubt chequered history the case has gone through. The original Writ of Summons itself was filed on the 11th August 2005. The case had passed through the hands of one judge to the other.

On the 30th day of May 2017, the Court differently constituted recorded in the Court's Record Book as follows:-

"By Court: The suit is adjourned to 27/06/17 @ 10:00 am. The Court will make efforts to retrieve the records of proceedings prior to the return date.

On the 27th June 2017 the Court recorded as follows:-

"By Court: The Suit is adjourned to 17/10/17 @ 10:00 am. The Court was unable to retrieve the record of proceedings from the previous Court. The Parties will therefore file witness statement so that the hearing can continue".

On the 23rd October 2018, the Court again differently constituted, but not constituted with the judge who made the earlier order referred to also ordered as follows.

"By Court

In view of the circumstances of this case I order that the matter be started denovo. This Court therefore orders the Parties to file their respective pre-trial check list, witness statements and the exhibits they intend to rely on within 30 days. The Court notes for today together with a Hearing Notice be served on the Defendant or his Counsel.

Suit adjourned to 29th November 2018 for Case Management Conference.

It was until the 7th July, 2021 that the Court presently constituted took the Case Management Conference.

The recordings of the Court on the 7th July 2021 are as follows:

“By Court: I adopt the witness statements filed by the Plaintiff for the trial. Plaintiff to serve a Hearing Notice on the Defendant for the trial to commence at the next adjourned date. Cost of GH¢1,000.00 against the Defendant. Suit adjourned to 25th October, 2021 for Hearing”.

It was when the said Hearing Notice was served on the Defendant but the Defendant refused to attend the trial that the Court proceeded with the trial.

On the case docket, the following issues were set down for trial after the pleadings.

ISSUES FOR TRIAL:

- a) *Whether or not the Defendant, by the Deed of Agreement between the Company and the Defendant was to provide land for the use of the Company?*
- b) *Whether the Defendant indeed provided the land in a Statutory Declaration?*
- c) *Whether the Defendant has fulfilled his obligation under the Agreement by assigning the land to the Company?*

- d) *Whether the Plaintiff's Company is entitled to specific performance?*
- e) *Whether or not the Defendant's Counter-claim is maintainable?*

Additional Issued:

1. *Whether or not the agreement and/or contract to assign title in the lands to Plaintiff as disclosed in the Statutory Declaration was contingents on the assurances of the provision of substantial funds and monies by the Executive chairman, Stefano Pol.*
2. *Whether or not the agreement for the assignment of the Defendant's title deeds and/or interest in the lands at Odupongkpehe to the Plaintiff's Company remained unenforceable for failure of consideration.*
3. *Whether or not the Defendant has spent a total amount of One billion, nine hundred and ninety five million, five hundred and eighty-eight thousand cedis (¢1,995,588,000.00) for and on behalf of the Plaintiff's Company.*
4. *Whether or not the Plaintiff is clothed with the capacity to institute this action.*

I should not however hide the fact that the very date these issues were set down for the trial is not captured on the records before me. I have earlier stated that the earlier judges who sat on the matter had indicated as captured on the back of this docket that they could not retrieve the record of proceedings prior to their sitting on the case.

What is very clear on the records is that on the 23rd day of October 2018, this Court differently constituted ordered the Parties to file their witness statements within 30 days from that date for the Case Management Conference to be taken.

The Court presently constituted took the Case Management Conference. At that time the time for filing the witness statement had elapsed but the

Defendant had filed no witness statement. No witness statement of the Defendant stands on the records for the Court's consideration.

I therefore strike out the Defendant's Defence and the Defendant's Counter-claim as well.

Plaintiff's Case:

The Plaintiff's case per its witness statement was given by me Stefano Pol the Executive Chairman of the Plaintiff's Company who hold 70% of the share of the Plaintiff's Company.

The Plaintiff's case is that it is a Company registered under the provisions of the Companies code 1963 Act 179, to carry on business as an Estate Development Company.

The Defendant is a Ghanaian citizen with 30% interest in Krispol Estate Limited and also its Managing Director.

The Plaintiff and Defendant agreed to promote a Company for the development of Housing Estates. It was agreed that the Defendant would provide the land and he Stefano Pol would finance the construction of the houses and service facilities of the estates. It was further agreed that the shareholding in the Company was to be as follows:-

70% for (he) Stefano Pol and

30% for the Defendant.

The Defendant's share to be paid for with the land to be provided by him. Exhibit 'A' is a copy of the Board meeting.

On the establishment of the Company, the Defendant duly provided certain lands to which he held title at Kasoa Odupongkpehe in the Central

Region of Ghana and placed them at the disposal of the Plaintiff's Company in satisfaction of his 30% shares.

The title deeds to these lands as disclosed in a Statutory Declaration made by the Defendant on the 19th November, 2021 bears the following numbers:-

LR.2843/2001

LUB/CR 658/2001

LR 2842/2001

LUB/CR661/2001

LR 2844/2001LUB

LUB/CR 659/2001

LR/2845/2001

LUB/CR 657/2001

LR 2846/2001

LUB/CR/660/2001

See Exhibit 'B' a copy of the said Statutory Declaration.

The Plaintiff contends that in the said Statutory Declaration the Defendant declared that he had engaged a firm of solicitors, Lexocom Associates to assign his interests in the lands to Krispol Estate Limited and that the said assignment of its title deeds in the said lands to the Plaintiff would be completed by 23rd November 2001. The Plaintiff's Company on the faith of such promise and declaration on the part of the Defendant went ahead with the help of Stefano Pol funds and also with the equity contribution made by him proceeded to construct houses and Estate facilities based on

a technology developed by Stefano Pol Company in Italy, Belwood Construction Company, as indeed was the main objective of that whole business venture.

According to the Plaintiff it has in the process made an investment (including the cost of Belwood Technology used) were in excess of two million U.S Dollars. (USD2,000,000.00) in the construction of these estates. However the Defendant has up to now, failed or refused to execute the Deed of Assignment to the Plaintiff, thus making it impossible for the Plaintiff's Company to dispose of the houses constructed as beneficial owner in accordance with and in fulfilment of its business purpose.

The Defendant actually did not contest this case. The pieces of evidence adduce on the records led by the Plaintiff therefore stands unchallenged.

It is unchallenged that by virtue of the agreement between the Parties, the Plaintiff was to provide funds for the construction of estate or homes with 70% stake while the Defendant gave a promise to provide and transfer his interest in some parcel of land for the purpose of same constituting a 30% equity stake on the project.

Also per the statutory declaration executed by the Defendant for the benefit of the Plaintiff, there is no doubt about the identity of land and the clear intention of the Defendant to make such transfer of the land to the Plaintiff.

It is not also disputed that Plaintiff made payment of at least US\$683,681.00 towards the construction of the estates and in pursuance of the agreement between the Parties. The Defendant cannot repudiate the contract because to the Defendant the consideration of US\$683,681.00 is not sufficient enough.

The fact remains that something of value had been offered by the Plaintiff to the Defendant and that satisfies the requirement in law.

See the case of:

Thomas vrs Thomas [1842] 2 QB 851

In law legal value of consideration has nothing to do with adequacy or even the real market value of the consideration offered or even what is adequate and satisfactory in subjective estimation of the other.

See the case of:-

NTAC Ltd. vrs Yaa Antwi [2009] SCBLR

I hold therefore that there was a valid concluded contract between the Parties herein for the Defendant to vest and transfer his interest on the disputed plots of land to the Plaintiff for the construction of the estates or houses.

I hold also that the total-payment and investment and advancement made by the Plaintiff towards the construction project and in pursuance to the agreement between the Parties which is acknowledge and unchallenged by the Defendant constitute sufficient consideration.

The Defendant therefore is ordered to assign his interest in the disputed lands to the Plaintiff based on the terms of the contract or alternatively the Defendant is ordered to execute the appropriate deed of assignment to assign or transfer his interest in the subject matter land.

It is also trite learning that General Damages flow from the breach of contract or tort. The Plaintiff is therefore entitled to General Damages against the Defendant.

As said earlier before the commencement of this suit an invitation in the form of a Hearing Notice was extended to the Defendant to appear for the trial but the Defendant refused to appear.

When the trial ended and the Court fixed a date for judgment another Hearing Notice was served on the Defendant but the Defendant still refused to appear in Court.

The legal effect of the Defendant's conduct is that he does not wish to contest the suit. It was decided in the Supreme Court case of:-

Ankumah v City Investment Co. Ltd. [2007/08] 2 SCGLR page 1064 at page 1067

Holding 4 as follows:-

"A Court is entitled to give... judgment, as in the instant case, if a Party fails to appear after notice of the proceedings has been given to him. For then, it would be justifiable to assume that he does not wish to be heard".

In the Supreme Court case of:-

Alabi vrs B5 Plus Company Ltd. [2018/19] 1GLR 197

The Supreme Court held as follows:-

"Where a Party voluntarily and deliberately failed and or refused to attend upon a Court of competent jurisdiction to prosecute a claim against him, he could not complain that he was not given a fair hearing or that there was a breach of natural justice. The Defendant must be respected for making such a choice, but they must not be allowed to get away with it..."

With the facts of the Plaintiff's case and the analysis made thereafter coupled with the Supreme Court authorities cited, I enter judgment in

favour of Plaintiff against Defendant on all the reliefs as endorsed on the Plaintiff's Writ of Summons.

Reliefs (a & b) and (c & d) are alternative reliefs. Plaintiff cannot at the same go into execution on both reliefs. The Plaintiff should therefore opt to go into execution in respect of one of the two reliefs in respect of relief (a & b) and (c & d).

I award GH¢20,000.00 General Damages against Defendant in favour of the Plaintiff.

Cost in this suit is assessed at GH¢50,000.00 in favour of Plaintiff against the Defendant.

(SGD)

WILLIAM BOAMPONG

(JUSTICE OF THE HIGH COURT)

COUNSEL:

ABDAL-SULLEYMAN HAFIZ FOR KWAKU OWUSU-ASARE FOR THE
PLAINTIFF