

**IN THE HIGH COURT OF JUSTICE, WESTERN REGION, HELD AT SEKONDI
ON THE 23RD DAY OF MAY, 2023, BEFORE HER LADYSHIP AFIA N. ADU-
AMANKWA (MRS.) J.**

SUIT NO. E1/28/16

INDEPENDENCE CALVARY BAPTIST CHURCH

PLAINTIFF

VRS.

1. INDEPENDENT BIBLE BAPTIST CHURCH

1ST DEFENDANT

2. PASTOR DARE

2ND DEFENDANT

3. AYOBAMI TAYO

3RD DEFENDANT

4. ISAAC KWOFIE

4TH DEFENDANT

5. BRIGHT KWOFIE

5TH DEFENDANT

6. EMMANUEL MENYON

6TH DEFENDANT

7. EVANS VEENDIBOO

7TH DEFENDANT

8. EMMANUEL DARKWAH

8TH DEFENDANT

9. ERIC ARMOO

9TH DEFENDANT

10. SALASI EDICK

10TH DEFENDANT

JUDGMENT

By a writ of summons filed on 17th November, 2015, the plaintiff, a church and a non-governmental organisation registered under the laws of Ghana commenced the instant action against the defendants jointly and severally for:

i. General damages for trespass.

ii. General damages for destruction of Plaintiff's Church's property.

iii. Perpetual injunction restraining the Defendants, their agents, assigns and persons claiming through them from entering into or having anything to do in and with the Plaintiff's premises and acting in any manner inconsistent

with the Plaintiff's ownership, occupation, possession and quiet enjoyment of their premises.

iv. An order for recovery of GHc13,500.00 being rent arrears owed by the 1st and 2nd Defendants to Plaintiff's Church for the use of the Plaintiff's premises from March 2015 to November 2015".

It is the plaintiff's case that she is the owner of land situate at Apollo, Aprembo, measuring about 0.45 acres. Following her acquisition of the land, she completed the uncompleted building on the land and converted same into a bible school, preparatory school and worship premises for the 1st defendant, which premises was now being used as an academy. The plaintiff explained that she permitted the 1st defendant, founded in 1999 and then under her control, to hold prayer meetings and worship on the premises. The 1st defendant continued to meet at her premises without interruption until 2014, when the rest of the defendants began to disrupt her organisation and progress. At a meeting between her resident missionary in Ghana, pastor Morgan and the 1st defendant, in August 2014, she offered the 1st defendant two plots of land to construct her own premises and promised to assist her, but the 1st defendant refused the offer. Subsequently, she requested the 1st defendant through the 2nd defendant to find another place of worship, but the 1st defendant did not heed the request. In the course of usage of her premises, the 2nd and 3rd defendants engaged in acts of sabotage by destroying her property and walls. The defendants had also been threatening her resident pastor and incited her staff amidst verbal and physical attacks of her staff. As a result, she communicated to the 2nd and 3rd defendants as leaders of the 1st defendant to vacate her premises on or before 10th February 2015, failing which rent of GHc1500.00 shall be payable for further use of her premises. On 7th October, 2015, around 5:30pm, the defendants went to her premises and caused damage to the gates, doors and burglar proofs and destroyed padlocks on the premises. On 9th November, 2015, the defendants,

with a mob, attacked her and her head pastor, caused damage to the premises and defaced the walls and gates of her premises.

In their statement of defence, the defendants contended that the subject property was the bonafide property of the 1st defendant. The plaintiff had never been in existence or operational in Ghana. At all material times, the 1st defendant had been the known and established church pastored by pastor Larry Morgan and the 2nd defendant. It was their case that around 1999, they helped pastor Morgan, who professed to be a missionary from the Spring Valley Baptist Church, establish the 1st defendant church. In 2000, pastor Larry Morgan managed to raise funds for the 1st defendant, for which they acquired a plot of land at Apollo. They started to develop the land with the residue of funds left and labour provided by church members. They contended that pastor Larry Morgan fraudulently registered the property in the plaintiff's name. In 2003, the 1st defendant mandated pastor Larry Morgan to purchase additional land for the 1st defendant's use in future. Pastor Larry Morgan clandestinely registered this land in the plaintiff's name. In 2006, the 1st defendant established the Freedom Baptist Academy with a current population of about three hundred pupils. The defendants contended that pastor Larry Morgan had asserted control and ownership of the school and the 1st defendant's properties using the plaintiff as a decoy. In 2010, the 2nd defendant was appointed as the pastor of the 1st defendant, and it was at this point that they realised that the church had not been registered under the Companies Code. Pastor Larry Morgan asserted ownership of the 1st defendant and her properties, including the Academy school. The defendants contend that pastor Larry Morgan had masterminded the rampage that had occasioned the 1st defendant's premises. They counterclaimed for the following reliefs:

“(a) A declaration that the 1st defendant is the owner in equity of the subject property.

(b) Damages for trespass against the said Larry Morgan and or the Plaintiff.,

(c) An order for accounts for all moneys received from the 1st Defendant's Academy School by the (sic) Pastor Larry Morgan from 2006 and to 2015.

(d) Perpetual injunction restraining the (sic) Pastor Larry Morgan who purport (sic) to act for the fictional Plaintiff from entering upon or having anything to do with the 1st defendant's property and or acting in any manner inconsistent with the ownership, occupation, possession and quite enjoyment of the subject property by the 1st Defendant".

It would be noted from the defendants' counterclaim that with the exception of the first relief, the rest of the defendants' reliefs are against pastor Larry Morgan who is not a party to the action. It is trite that once duly incorporated, the plaintiff becomes a distinct, separate and artificial legal person distinguishable from the persons who may be behind it or control it. Thus, pastor Larry Morgan and the plaintiff are not the same person. As long as he is not a party to the action, no orders can be made against him regarding the reliefs the defendants seek.

At the close of pleadings, the defendants filed an application for directions raising nine issues, whilst the plaintiff filed twelve additional issues. These issues were adopted for resolution. They are:

- i. Whether or not the subject property was purchased from funds donated by some benevolent organisation/churches.
- ii. Whether or not those funds had been raised for and on behalf of the 1st defendant church.
- iii. Whether or not Pastor Larry Morgan was then the resident pastor in charge of the 1st defendant church.

- iv. Whether or not the said plaintiff church was established from the 1st defendant church.
- v. Whether or not the 1st defendant church has been in possession and use of the subject property since 2000 until 2015 when the present action was mounted.
- vi. Whether or not the 1st defendant is the owner in possession, use and equity of the subject property.
- vii. Whether or not the title deed of the subject property made in the name of the plaintiff was made in fraud.
- viii. Whether or not the 1st defendant is entitled to its claims.
- ix. Whether or not the plaintiff is entitled to its claim.
- x. Whether or not the plaintiff is a distinct legal entity under the name of its original sponsoring church incorporated under the laws of Ghana and different from the 1st defendant.
- xi. Whether or not the 1st defendant church was ever known or existed at the incorporation of plaintiff.
- xii. Whether or not funds for acquisition of the plaintiff's property had been lodged at Barclays Bank Ghana from its sponsoring church Independent Calvary Baptist Church in USA.
- xiii. Whether or not the plaintiff is the bonafide owner and assignee of the property situate on plot Nos. 62C, 63C and 64C Apollo, Aprembo.
- xiv. Whether or not the plaintiff only permitted the 1st defendant church to hold its prayer meetings and worship in the plaintiff's premises.
- xv. Whether or not 1st defendant was at all material times made aware that the plaintiff would need its premises at one point in time.
- xvi. Whether or not 1st defendant upon becoming autonomous was offered two plots of land to construct its own premises but same was rejected by 1st defendant.

- xvii. Whether or not the 1st defendant and its members were subsequently requested to find another place of worship from September 2014 but defendants refused.
- xviii. Whether or not the defendants engaged in acts of sabotage and destruction of plaintiff's premises.
- xix. Whether or not the said conduct of defendants caused fear to the staff and pupils of the plaintiff's Academy being operated in the plaintiff's premises.
- xx. Whether or not the plaintiff communicated to 1st defendant through 2nd defendant to pay rent for further use of plaintiff's premises after February 2015 at a monthly rent of GHc1500.00.
- xxi. Whether or not the defendant's counterclaim discloses any reasonable course of action against plaintiff and therefore maintainable against the plaintiff.

BURDEN OF PROOF

It is trite that in civil matters, the plaintiff has the burden of producing sufficient evidence in proof of his claims. The plaintiff is required to call material witnesses or lead cogent evidence to establish his case. This duty is imposed on the plaintiff by sections **10(1), 11(1) and 12 (1) of the Evidence Act, 1975 (NRCD 323)**. Section 10(1) reads:

"The burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court."

Section 11(1) of the Act states:

“For the purpose of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.”

Section 12(1) of the Act states:

“Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.

In **Takoradi Flour Mills vrs. Samir Faris [2005-2006] SCGLR 882**, the Supreme Court stated the position of the law regarding the burden of proof as follows:

To sum up this point, 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 a preponderance of probabilities, as defined in section 12(2) of the Evidence Decree, 1975 (NRCD 323). Our understanding of the rules in Evidence Decree, 1975 on the burden of proof is that 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 more probable of the rival versions and is deserving of a favourable verdict.

This burden is not discharged by merely entering the witness box and repeating the claims or averments in the pleadings. The burden is discharged by leading admissible and credible evidence from which the facts being asserted can be properly and safely inferred or concluded. Thus, in the case of **Ackah vrs. Pergah Transport Ltd. & Others [2010] SCGLR 728 at page 731**, the Supreme Court held that:

"It is the basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimony of the parties and material witness, admissible hearsay, documentary and things (often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the Court or tribunal of fact such as a jury. It is trite law that matters that are capable of proof be proved by producing sufficient evidence so that on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is a requirement of the law on evidence under Sections 10(1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD323)"

The defendant in a civil suit does not need to prove anything. The plaintiff who has instituted the action against the defendant has to prove what he claims he is entitled to from the defendant. See the case of **In Re Ashalley Botwe Lands; Adjetey Agbosu & Ors. vrs. Kotey [2003] SCGLR 420.**

The defendants have also counterclaimed for certain reliefs and bear the same burden as the plaintiff. Once made, a counterclaim proceeds as an independent action even if the original action were concluded, stayed, discontinued or dismissed. The rules provide that in proceedings arising out of a counterclaim, the counterclaim is deemed as a writ and statement of claim. The party making the counterclaim and the party against whom it is made are also deemed the plaintiff and defendant, respectively. Therefore, both parties bear the burden of proving their claims on a balance of probabilities.

SUMMARY OF EVIDENCE

The plaintiff's representative, pastor Larry Morgan testified on behalf of the plaintiff. He testified that the plaintiff was a religious body and a Non-Governmental Organization incorporated under the laws of Ghana. The 1st defendant church, which was defunct, was now called Fundamental Bible Baptist Church. According to him, the plaintiff was the assignee of a parcel of land measuring about 0.45 acres with an uncompleted house encompassing plot Nos. 62C, 63C and 64C at Apollo, Apremdo. The plaintiff's assignment was registered as Document No. WR 1238/10 with Deeds Registry No. 685. Following the acquisition of the land, the plaintiff completed the uncompleted building and converted it into a Bible School, preparatory school and worship premises originally for the 1st defendant, which premises was now being used as an Academy. He further testified that the plaintiff permitted the 1st defendant, founded in 1999 and then controlled by the plaintiff, to hold prayer meetings and worship on the premises. Through him, the plaintiff at all material times made the 1st defendant aware that she would, at a point in time, need the premises for her use. In November 2006, the 1st defendant became an autonomous local church free from any control or responsibility of the plaintiff except that they continued to meet and worship at the plaintiff's premises. All the offerings received from church members from 1999 to the date the 1st defendant became autonomous had been saved by the plaintiff in a bank account at Zenith, Takoradi, and were transferred to the 1st defendant when she became autonomous. The 1st defendant continued to meet at the plaintiff's premises without interruption until 2014 when the 2nd to 10th defendants began to disrupt the plaintiff's organisation and progress as a school and an academy. Consequently, he met the 1st defendant on the last day of August, 2014, where the 1st defendant was offered two plots of land to construct her own premises and with a promise to assist her, but the 1st defendant refused the offer. Subsequently, the plaintiff requested the 1st defendant through the 2nd defendant to find another place of worship to meet

sometime in the first week of September, 2014. The 1st defendant, through the 2nd defendant, was reminded by email and letters directed to the 1st defendant each month after September 2014 to find another place to worship as the plaintiff needed her premises, but the defendants never heeded the request. Quite apart, the 2nd and 3rd defendants, while using the plaintiff's premises, engaged in acts of sabotage by destroying the plaintiff's property and walls, among others. The defendants had also been issuing threats to him after their unsuccessful attempt to have him deported and insulted the plaintiff's staff amidst verbal and physical attacks of the plaintiff's staff and himself. As a result, the plaintiff communicated to the 2nd and 3rd defendants as leaders of the 1st defendant to vacate the plaintiff's premises on or before 10th February, 2015 failing which rent of GH¢1,500.00 shall be payable by them for further use of the plaintiff's premises. As of the date of issuing the writ, the 1st defendant had not paid any rent and was in arrears of rent from March 2015 to November 2015, amounting to GH¢13,500.00. Regarding the trespass by the defendants, the plaintiff's representative recounted that on or about the 7th day of October 2015, around 5:30 p.m., the defendants went to the plaintiff's premises and instructed the security man to open the gate to the premises at a time they were not supposed to enter the premises. Due to the threats, particularly from the 2nd defendant to the plaintiff's security man, the gate was opened for the defendants to enter the plaintiff's premises. Upon entering the premises, the defendants switched off the electricity control board and all lights and destroyed the plaintiff's lights and properties. The defendants caused damage to the gates, doors and burglar proofs and destroyed padlocks on the premises. On 9th November, 2015, the defendants, together with a mob, attacked him at the premises, caused damage to the premises and defaced the walls and gates of the plaintiff's premises. The defendants' conduct had caused much fear and anxiety to the plaintiff's staff members. The defendants continued to engage in their destructive conduct, threatening the peaceful and quiet enjoyment of the plaintiff, their members, staff and school pupils at their premises.

The plaintiff's representative stated that the defendants ceased their destructive conduct upon the court's order of interlocutory injunction against them.

PW1, Jimmy Williams testified that he was a member of the plaintiff church and the headmaster of the plaintiff's bible school and preparatory school, Freedom Baptist Academy. According to him, the 1st defendant and her members used to worship at the plaintiff's premises at Apollo with the plaintiff's permission. It came to a time the plaintiff wanted them to cease worshipping and have their own place of worship. Consequently, all offerings received from the church members which were saved were transferred to the 1st defendant and her members together with two (2) plots of land to build a place of worship of their own. However, the defendants refused to leave the plaintiff's premises. The defendants were subsequently instructed by letters from the plaintiff to make monthly payments for their usage of the plaintiff's properties and electricity and were also required to seek permission before they could carry out any work. This decision did not go down well with the 1st defendant and her members, as a result of which, they started engaging in all kinds of conduct to disrupt the plaintiff's activities. In October 2015, the 1st defendant celebrated the church's anniversary. Without any permission from the plaintiff, the 2nd defendant decided to decorate the hall they were allowed to use for their meetings. One of the plaintiff's members questioned if the defendants had sought permission from the plaintiff, but the 2nd defendant responded, "No! And we won't be seeking one". The defendants started laying a carpet in the plaintiff's auditorium, which the plaintiff's members removed because they had not sought the plaintiff's permission. The next day, which was a Monday, five of the 1st defendant's members (Isaac Kwofie, Emma Menyon, Evans Vendeboo, Felix Dadze, Derrick) showed up at the plaintiff's premises, asking to see the headmaster of the plaintiff's school during school hours. He met with them, and they threatened to damage and destroy things. The following day, he reported early to the school to find a mess in the building. Things had been destroyed. Some items were missing, while others were sealed

up. The teacher's signing-in book was torn into pieces, the office doors and padlocks to the classrooms were sealed with super glue. Desktops for teachers were smashed, wooden structures used as dividers for the classrooms had been damaged, and some other materials were missing. This went on for a couple of days. The plaintiff would replace and fix, and report to the police just to find that the locks, doors and desks had been destroyed again. The security man, Samuel Dickson, identified the boys who caused the damage as Bright Kwofie, Eric Armoo, Emma Dankwa, and Evans Vendeboo.

The plaintiff's head pastor asked the security man to take pictures. They secured a photo of one of the young guys (Eric Armoo) inside the building wearing one of the chains to the security gates on his neck and holding a sledgehammer that they used to damage the doors. He reported the matter to the police. The boys were invited, but no arrest was made, so they persisted in their acts. He explained that the very least they could do to secure the properties from theft and vandalism at the time was to secure the main gates from outside. This was done, but still to no effect, as the young men proceeded with their conduct more viciously. The following Sunday morning at around 7:00 am, he received a phone call from the security man who was hiding inside the plaintiff's school building due to the threats from the boys in their previous break-ins to harm him if they ever found him since they suspected he might have been taking pictures of their activities. He informed him that the boys were chiselling the walls and removing the gates. As previous efforts in getting the police involved were fruitless, he could only tell the watchman, "ok, and to please stay out of their way, we'll take pictures afterwards and repair". They later repaired the gates and took pictures, but that did not stop the boys and the 2nd defendant, pastor Dare, from engaging in their conduct. On Wednesday of the same week, he was in the plaintiff's premises when pastor Dare came to the gate. He requested that he let him in but also questioned him why he was not entering the premises as they had always done. After locking up, he proceeded to Pastor Morgan's house, where he and his family

had been. Upon his arrival, he received a phone call from the security man, informing him that pastor Dare had ordered some of the boys to jump over the wall, and he and the boys were inside the building switching off the meters and lights while the boys were breaking and pouring glue on the locks. A week or two later, he received another phone call from Mr. Darko, living close to the plaintiff's mission building, who informed him that somebody was painting the walls. When he showed up at the building the next day, it was the whole group of young men and a couple of the older men from the 1st defendant church, painting the plaintiff's building walls and obstructing the school children and their parents from entering the building. Bright Kwofie, Eric Armoo, Emma Darkwa and some of the men were involved in painting the walls and caused panic to the school parents. PW2 further testified that things changed when the court case started, but that did not completely deter the defendants from disrupting the plaintiff's use and control of her premises.

After these events, Bright Kwofie took pictures of his wife and kids one Sunday afternoon after church as they headed home. He questioned Bright why he was taking pictures of his family, but he denied it. He had no choice but to leave him alone. He was later presented with photos of him taking pictures by those who witnessed the incident. Again, during one Sunday morning service inside the plaintiff's building after an injunction was placed on the defendant group from entering the plaintiff's building, Bright, Eric, and Emma Darkwa entered the premises to take pictures and disrupt the service. They tried ignoring them and finally had to take pictures of their activities. But the boys came after Emmanuel Anaman, the young man who took their pictures. They smashed his phone, hit him on the chest, knocking him down to the ground, and ran away. They reported the situation to the Kwesimintsim police station, but again no arrest was effected.

Mrs. Portia Williams (PW2) testified that she fellowshiped with the plaintiff. On 16th April, 2016, while the service was ongoing and Pastor Morgan was preaching, a

young man called Bright Kwofie entered the plaintiff's premises, opened and stood by the door with a phone in his hands, and started taking pictures of the people inside. Pastor Morgan, who at the time was at the pulpit, told him to come inside. By this time, the whole congregation had turned around to look at him as he continued what he was doing. On the 8th May 2016, whilst the children and adults had Sunday school, Bright Kwofie and Eric Armoo came again to the church compound and started pointing at the children. One of the children needed water to drink, so she asked him to go and get the water outside. Bright called the child and started questioning him. A week later, during the main Sunday service, Bright Kwofie came again, took some pictures, and left. After the service that same day, whilst people were going home, she and her kids decided to wait for her husband to lock up the building before they left. Suddenly, she turned around and saw Bright Kwofie taking pictures of her four (4) children (Tracy, Tim, Tom & Tyndale Williams). As he was about to take her picture, she approached and held him, demanding why he was taking pictures of her and her kids. He responded, "you are a married woman, and you better leave me alone," warning her of his intention to get physical if she did not leave him. She further recounted another incident which occurred on 22nd May, 2016. According to her, they had finished with the children's Sunday school. She and her Sunday school kids were waiting to join the adult Church. As they stood waiting in the church auditorium, she saw Bright, Eric, Francis and Isaac standing by the gate, calling her Sunday school kids and asking them what they were doing. One of the kids answered him that they came to church, and Bright started shouting through the gate, "Is this Church, who says it's a Church"? When the main service started, and her husband, Brother Williams, started to preach, Bright and Eric opened the church auditorium door, entered and disrupted the service by taking pictures of the congregation. Brother Williams stopped while everybody also turned to look at what was happening. Brother Williams then commented from the pulpit, "I'm also taking your pictures". He sent one of their churchmen to go and lock the gate

to the church. One, Emmanuel Anaman, stood up to lock the gate. Realising their pictures were being taken, both Bright and Eric rushed out. By this time, Emmanuel Anaman was at the gate with his phone, trying to take their pictures as well, but one of the two boys who came with Eric Armoo punched Emmanuel hard on his chest, knocking him down to the ground and smashing the phone in his hands in the process. After the service, Emmanuel reported the situation at the police station and sought medical attention as he suffered serious chest pains. She estimated that Bright had been inside the plaintiff church to take pictures on about six occasions. Bright and his friend Eric had been there at least three (3) times to disrupt the church services.

Emmanuel Anaman, a member of the plaintiff church, testified that he witnessed an incident involving three (3) members of the defendant church on the plaintiff's compound. According to him, on Sunday, 22nd May, 2016, at 11:30am, three (3) people came into the plaintiff's church building with their phone cameras to take pictures and disrupt the church service. The pastor of the church, Mr. Jimmy Williams, told him to move to the gate, close it and take pictures of them. When he came out of the auditorium, one of the three (3) boys, Eric Armoo, suddenly knocked him down by hitting his chest, resulting in his mobile phone falling and breaking. He reported the case to the Kwesimintsim police.

The 4th defendant, Isaac Kwofie, testified for himself and on behalf of the rest of the defendants. It was his case that the subject property was the bonafide property of the 1st defendant. The plaintiff church had never existed or operated in Ghana when the defendants first met pastor Larry Morgan. He recounted that in 1999, pastor Larry Morgan arrived in Ghana professing to be a missionary from the Spring Valley Baptist Church of the United States of America (USA). with a mission to evangelise and establish a sister Baptist Church in Ghana for the local people. As Christians and sympathisers of the Baptist Church in Ghana, they immediately supported pastor Larry Morgan and, through evangelism, won some

other souls leading to the establishment of the 1st defendant. At its inception, the 1st defendant was run in a rented premises at Air Force Ridge, Takoradi, with very few members, including the defendants. In 2000, pastor Larry Morgan with the consent and concurrence of the members of the 1st defendant, travelled to the U.S.A to solicit funds for the running, development and organisation of the 1st defendant following a prior meeting with the members of the 1st defendant. Upon his return from the U.S.A, pastor Larry Morgan who at that material time was made the missionary pastor in charge of the 1st defendant, duly informed the defendants that he had been able to raise some funds for the 1st defendant. As the then pastor of the 1st defendant, pastor Larry Morgan was mandated, together with some of the defendants, to purchase a piece of land for the 1st defendant. They acquired a piece of land, the subject premises with an uncompleted house thereon at Apollo numbered as Plot Nos. 62C, 63C and 64C. Subsequently, they started to develop the land from the residue of funds raised for the 1st defendant and relied exclusively on the labour of the 1st defendant's members, most of whom were artisans, including the 10th defendant, a carpenter by profession. Apart from funds raised externally, tithes and other donations from members of the 1st defendant church were also applied for the construction and completion of the subject building. In 2003, the 1st defendant mandated pastor Larry Morgan to purchase additional land for the 1st defendant at Apowa to set up a radio station. Pastor Larry Morgan, who had bought the land for and on behalf of the 1st defendant, fraudulently registered it in the plaintiff's name, which was not in existence then. After the 1st defendant relocated from Air-Force Ridge to the acquired property, and even before it could be developed to its present stage, the 1st defendant in 2006 established the Freedom Baptist Academy, a private school. The school had a population of three hundred (300) pupils up to the JHS level. Having registered the subject church premises in the 1st defendant's name, pastor Larry Morgan subsequently asserted control and ownership over the school and the 1st defendant's properties using the plaintiff as a decoy and tried

every illegitimate means to suppress the defendants. Over the years, while acting as the pastor of the 1st defendant, Pastor Larry Morgan run a radio broadcast on Twin City Fm, Sekondi, every Sunday from 5:30am to 6am to propagate the gospel for and on behalf of the 1st defendant. In 2006, the 1st defendant was declared autonomous by her members in the sense that she was not under the control and direction of any third party, including pastor Larry Morgan. And it was in that same year that the Spring Valley Baptist Church of U.S.A gave recognition to the 1st defendant church and its members during which three officials from the Spring Valley Baptist Church came to Ghana to ascertain and confirm the membership of the 1st defendant. Pastor Larry Morgan clandestinely held on to the 1st defendant under the guise that there was no substantive pastor to effectively pastor the 1st defendant and frustrated her from engaging her pasture. However, by the agreement between members of the 1st defendant and pastor Larry Morgan, pastor Larry Morgan accepted to be the interim pastor pending the search for a substantive pastor to take over the duties of running the 1st defendant. In 2010, the 2nd defendant was appointed as the pastor of the 1st defendant. At that stage, it came to light that the 1st defendant had not been registered under the Company's Code of Ghana even though pastor Larry Morgan was mandated to register it. Pastor Larry Morgan, having held on to the control of the 1st defendant as well as her properties, including the Academy School, then began to organise a church in his house at Anaji. It was this church he had intended to relocate to the 1st defendant's premises and redesignate same as the plaintiff. The formation of the new church by pastor Larry Morgan was conceded when he lodged a complaint against the defendants at the Police headquarters when the defendants started to challenge his monopoly over the 1st defendant and the school. The 4th defendant attributed the rampage to pastor Larry Morgan as the mastermind behind it in his orchestration to forcefully throw out the defendants from the 1st defendant's premises. He denied that the defendants had ever attempted or tried to destroy the subject property

as same would defy any reasonableness for the defendants to destroy their own property acquired with sweat and labour.

DW1, Felix Badzi, testified that until this action, he did not know the plaintiff. According to him, in 1999, he met pastor Larry Morgan, who claimed he was in the country as a missionary from the U.S.A to propagate and disseminate the word of God. Pastor Larry Morgan told him that in pursuing his mission, he would set up a church in Ghana for the local people, and when the church was fully established, he would relocate to any country to carry out the same mission. After listening to Pastor Larry Morgan, he partnered with him together with some of the few members at the time, including most of the defendants to offer their lives for God's work. At that time, all meetings and services were held at a rented premises at the Air Force Ridge - Takoradi between them and Pastor Larry Morgan. Initially, they went from house to house teaching and preaching the word of God till they won more souls to add up to the existing number at the time, which was made up of the defendants and pastor Larry Morgan. This led to the formation of the 1st defendant church. At all material times, pastor Larry Morgan pastored the 1st defendant as a missionary pastor pending the full establishment of the 1st defendant and the eventual appointment of a substantive pastor. And in that capacity he carried on several acts for and on behalf of the 1st defendant. When the membership of the 1st defendant grew significantly, pastor Larry Morgan based on his initial promise went to the U.S.A in 2000, apparently to secure funds for the 1st defendant. When pastor Larry Morgan returned from the U.S.A, he informed the members of the 1st defendant which included all the defendants except the 2nd defendant that he had been able to raise some funds for the 1st defendant. They agreed to look for a land to enable them to construct a church on it by virtue of which the leadership of the 1st defendant, which included most of the defendants, was tasked to find a suitable land to purchase for that purpose. Eventually, they acquired two (2) plots of land at Apollo, the subject premises and purchased same with the money donated to the 1st defendant from the U.S.A.

Members of the 1st defendant started to develop the land while some provided labour and workmanship, given that some were carpenters and masons. Members of the 1st defendant constructed the building. The church also relied on proceeds from tithe, donations and offertory made to her by her members. Occasionally, the church resorted to external workmen when the need arose. Upon its completion in 2006, they established a school known as the Freedom Baptist Academy. This school was initially intended to cater for the needs of members of the 1st defendant, especially the working parents. However, it later became necessary to admit non-members' children and as such, the school was commercialised the school. Later in 2003, they decided to buy land with the intention to set up a radio station and so charged pastor Larry Morgan to undertake that task. By 2010, the 1st defendant church had grown to maturity, as a result of which the 2nd defendant was engaged as the substantive pastor for the 1st defendant church. Prior to that, some officials from the Spring Valley Baptist Church, U.S.A, had visited the 1st defendant to formally recognise the church and the membership by the Spring Valley Baptist Church of the U.S.A. From the initial representations made by pastor Larry Morgan, the Spring Valley Baptist church was the church that assigned him the mission to establish a church in Ghana for the indigenes.

The witness further testified that the fallout between the defendants and Pastor Larry Morgan ensued after the appointment of the 2nd defendant as the substantive pastor for the 1st defendant church by which appointment pastor Larry Morgan was to have relocated from Ghana as per the initial representations made by Pastor Larry Morgan to the church. Pastor Larry Morgan did not only refuse to relocate, but continued to control the affairs of both the 1st defendant and the school to the total exclusion of the defendants, who were executives and elders of the 1st defendant. The defendants' attempts to resist and restrain pastor Larry Morgan from continuous dominance of the 1st defendant resulted in bad blood between the parties as there were frequent confrontations between the

parties. What broke the camel's back was when pastor Larry Morgan at one of the meetings with the defendants, informed them that the subject premises had been registered in the name of the plaintiff, a church which was non-existent at all material times. To further dominate his control over the subject premises, pastor Larry Morgan removed the 1st defendant's posters and signpost and replaced them with the plaintiff's. He further ordered the defendants to vacate from the subject premises a move which was resisted by the 1st defendant's members led by the defendants. Pastor Larry Morgan reported the defendants to the Regional Police Headquarters in Sekondi, requesting the police to forcefully remove the defendants from the premises. However, that request was disregarded by the police, who, after interrogating the parties, directed the parties to pursue a civil suit to determine the ownership of the property.

MERITS

The plaintiff claims damages against the defendants for trespass. On the other hand, the 1st defendant claims title to the disputed property. Trespass is an interference in the proprietary rights of a person to his property such as entering the property without lawful authority, refusing to leave premises when ordered to do so by the owner or occupier or placing or projecting any object upon the land. Thus, in an action for trespass, it is sufficient for the plaintiff to establish possession. However, where there is a general denial of his title, such as in this case, the plaintiff cannot succeed without first proving his title to the land. See the case of **Nunekpeku and Others vrs. Ametepe [1966] GLR 249**.

The evidence on record shows that the plaintiff was initially incorporated as a body corporate on 7th May, 1999, as per her exhibit "A", which is the certificate of incorporation. There is also exhibit "A1", a renewed certificate of her incorporation after ten years of existence. These exhibits dispel any doubt that the plaintiff is a non-existent entity as contended by the defendants. It has been in existence since 1999. By an assignment dated 20th November, 2001, one Kwame

Godwin Fordjour assigned the residue of his unexpired lease in plots Nos 62C, 63C and 64C, situate at Apremdo near Takoradi, to the plaintiff. This is evidenced by the plaintiff's assignment, which she tendered in evidence as exhibit "B". This assignment has been registered as document No. WR 1238/10 with Deeds Registry No. 685. The defendants have not challenged exhibit "B", except to claim that, pastor Larry Morgan fraudulently registered the assignment in the plaintiff's name, who was non-existent at the time. This issue would be dealt with in due course. Upon her acquisition, the plaintiff completed the uncompleted building on the land and converted it into a Bible School, preparatory school and worship premises for the 1st defendant. In 2006, even before the 1st defendant became autonomous, the plaintiff established the Freedom Baptist Academy with a present population of about three hundred students. There is also evidence on record that the plaintiff permitted the 1st defendant to use the premises to hold prayer meetings and church services in the premises. Until September, 2014, when the plaintiff wrote to the 1st defendant to vacate the premises, the 1st defendant had used the premises since its acquisition as her place of worship.

The plaintiff has shown by her exhibit "B" that she holds title to the property. She traces her root of title to the Ebiradze family and representatives of the Apremdo stool, who on 27th August, 1976 leased the land to her assignor, Kwame G. Fordjour for 99 years. She has also shown her acts of possession by using the premises as a bible school, preparatory school and worship centre. The plaintiff has established good title in the property in terms of section 64(1) of the Lands Act, 2020, Act 1030. This raises a rebuttable presumption of ownership in the plaintiff. By **section 35 of the Evidence Act**, supra:

"The owner of the legal title to property is presumed to be the owner of the full beneficial title".

Thus, until the defendants rebut the presumption, the plaintiff remains the legal and beneficial owner of the property. Therefore, the defendants bear the burden of dislodging this presumption working in favour of the plaintiff.

The defendants do not dispute the acquisition of the property from the assignor, Kwame Fordjour. However, the 1st defendant contends that the property was acquired from funds which pastor Larry Morgan solicited from donors in the USA on the 1st defendant's behalf and, therefore, belongs to the 1st defendant, not the plaintiff. The defendants further accused pastor Larry Morgan of fraudulently registering the property in the plaintiff's name when the plaintiff was nonexistent.

In particularising their allegation of fraud against pastor Larry Morgan, the defendants alleged:

“a) That at all material time the said Pastor Larry Morgan professed as a Missionary which object was to set up 1st defendant to propagate the word of God and later leave to another Jurisdiction to continue with his missionary work which representation induced the defendants leading to the formation of 1st defendant's church.

b) That having solicited money for and on behalf of the 1st defendant and having erected the 1st defendant from the funds so raised from other benevolent organisation and members of 1st defendant the said Larry Morgan registered the property in the name of a non-existing Church the plaintiff herein.

c) That at all material time the said Larry Morgan knew that the representation that he was only a missionary designed to help the Defendants to establish the 1st Defendant Church for the Defendants was false and yet he caused the Defendants to rely on that representation to our detriment”.

An allegation of fraud if proven and sustained will wipe and sweep away everything in its trail as if the thing never existed as fraud vitiates every conduct. An allegation of fraud is a serious matter which should not be lightly made. In view of its seriousness, the law requires the defendants to establish that allegation clearly and convincingly and beyond a reasonable doubt. As stated in **section 13(1) of the Evidence Act, supra**:

"In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt".

In the case of **Sasu Bamfo vrs. Sintim [2012] 1 SCGLR 136**, it was held that:

"The law regarding proof of forgery or any allegation of a criminal act in civil trial was governed by section 13(1) of the Evidence Act, 1975 (NRCD 323); that section provided that the burden of persuasion required was proof beyond reasonable doubt".

The plaintiff's representative testified that he founded the 1st defendant originally as a mission in 1999. According to him, they assembled as a group at Anaji and chose the name Independent Bible Baptist Church. He explained that the use of the word "church" there simply denoted a group of people, given that church meant "assemble". Describing the state of the 1st defendant in its early stages, the plaintiff's representative testified that:

"In 1999, there was just a small group of people meeting together, singing hymns and I would teach them from the Bible. Sometimes, they are in groups of four and five".

The evidence shows that the 1st defendant church was formally organised into a church in 2006. This is evidenced by exhibit "6", which gives the list of the charter members of the 1st defendant and also shows the unanimous votes of the

members to become autonomous. Thus until 2006, when the 1st defendant was organised and became autonomous, it was only a mission church. The plaintiff's representative further testified under cross-examination that:

"I am baptised on the authority sponsoring church. When I baptised them, they also become members of the sponsoring church. When the church is organised, the Spring Valley Baptist Church would transfer the membership into the newly organised church. At the time the organised church would vote for a national pastor".

Until her organisation in 2006, members of the 1st defendant were members of the sponsoring church, i.e. Spring Valley Baptist Church. This explains exhibit "6", whereby the listed names who were previously members of the sponsoring church were being transferred into the membership of the 1st defendant church after becoming autonomous. According to the plaintiff's representative, the charter members agreed to be organised into an organised Baptist church by the sponsoring church.

In essence, the plaintiff is a legal personality distinct from the 1st defendant having been incorporated in 1999. Until the 1st defendant became autonomous in 2006, she was just a group whose members belonged to the Spring Valley Baptist Church.

In denial of the claim that he had solicited funds from benevolent organisations and, together with funds raised from the 1st defendant's members, used same to acquire the property, pastor Larry Morgan explained that all funds for the property were raised by the sponsoring church in USA which funded the plaintiff's operations in Ghana. He exhibited a correspondence from one Lem Yow as exhibit "G" wherein the said Lem Yow indicated that \$50,000.00 had been set aside for the plaintiff's operations. Not much weight would be attached to this document, given that it was written in the personal capacity of one who no

longer worked for the sponsoring church and therefore did not speak for it. However, pastor Larry Morgan dislodged the defendant's notion that it was the monies of the 1st defendant's members together with the solicited funds used to acquire the property. He stated that the money was available in the USA long before he came to Ghana. The sponsoring church, then Calvary Baptist Church made the monies for the property available and were lodged with Barclays bank. Regarding the members' contribution to the property, pastor Larry Morgan testified that:

"All the offerings from the time we started the mission until it was organised was kept in the Zenith Bank. When the church was organised, the monies held in the bank was given to the organised church. When I was in charge of the mission, all the monies obtained were kept in the bank and we did not touch it. The disputed building was reconstructed in 2003. When the church was organised, the funds were transferred to the organised church. Even though I happen to be an interim pastor at the time, I did not spend the money. There was always a meeting to decide on the expenditure of the church".

This evidence was corroborated by pastor Jimmy Williams when he testified that:

"1st defendant church was being funded by the mission church and therefore whatever offering that came in was being kept in the bank till the first defendant church was organised".

Pastor Jimmy Williams further explained that:

"The mission church ie, plaintiff church was seeing to the yet to be organised church ie, defendant church and so the offerings were not being given to them until they were organised. And I will not be surprised if Pastor Larry Morgan was the sole signatory to the account as he was seeing to the

organisation of the church. I was present when he handed over the church when it was organised including the funds".

The plaintiff's evidence that all the monies of the 1st defendant raised from its inception to the time it became autonomous was handed to the 1st defendant was not challenged by the defendants. By failing to cross-examine pastor Larry Morgan, the defendants are deemed to have admitted the matters testified upon by him. For when a witness testified on oath on certain vital matters and the opposing side was silent in his cross-examination on those matters, he would be taken to have admitted those matters. See the case of **Wiafe vrs Kom [1973] 1GLR 240.**

Apart from the defendants' bare assertion that funds solicited on the 1st defendant's behalf were used to acquire the property, no other evidence was given. If monies the 1st defendant had raised through her offerings and other donations from her inception in 1999 through to 2006 were handed over to her when she became autonomous, then her members could not have contributed to the acquisition of the property. Members' contribution were handed over to her. The defendants also failed to provide proof that other organisations donated money which was used to purchase the property. Thus, the defendants' allegation of their funds being used to purchase the property goes unproven. I find that the plaintiff received support from her sponsoring church to acquire the property. Funds raised by the 1st defendant could not have been used to purchase the property given that all monies she raised were returned to her when she became an autonomous church.

Regarding the issue of his representation to them that he was a missionary whose object was to set up the 1st defendant church and later leave to another jurisdiction, pastor Larry Morgan has denied this fact in part. Yes, he told them he was a missionary with the aim of setting up a church which he eventually did when the 1st defendant became autonomous. It is also not seriously in doubt that

he is a missionary. He denied representing to the defendants that he would leave after establishing the church as that decision was dependent on the directions he received from God on whether to stay or leave. In any case, there is evidence that he resigned soon after the 1st defendant became autonomous. He only had to assume the reign of leadership when the substantive pastor who was appointed was accused of immoral behaviour. In 2010, the 2nd defendant was appointed as the substantive pastor to take charge of the 1st defendant church. In effect, there was no form of misrepresentation. He set up the group, which subsequently became an autonomous church in 2006.

In sum, the defendants have failed to rebut the presumption in favour of the plaintiff that she has legal title to the disputed property.

Following the plaintiff's acquisition of the property, the plaintiff permitted the 1st defendant to hold prayer meetings and worship on the premises. As the 1st defendant was not the owner of the property, her presence there was at the plaintiff's behest. She was the plaintiff's licensee. The defendants harboured under the mistaken impression that the property belonged to the 1st defendant and occupied same as the owners of the property, but this wasn't so. Pastor Larry Morgan testified that at all material times, the plaintiff, through him made the 1st defendant aware that she would, at a point in time, need the premises for her use. Even after 2006, when the 1st defendant became autonomous, she continued to meet and worship at the plaintiff's premises. In September, 2014, the plaintiff wrote to the 1st defendant to move out of the premises. The 1st defendant was offered two plots of land to construct her premises with the assistance from the plaintiff, but she refused the offer. The 1st defendant was reminded through letters and mails to vacate the premises but she failed to. Exhibits "C", "C1"- "C6" are letters written to the 1st defendant to vacate the premises. The 1st defendant was asked to vacate the premises by 10th February, 2015 failing which she was to pay a monthly rent of GHc1500.00 for the use of the premises. To the extent that

the 1st defendant was required to pay a monthly rent of GHc1500.00 should she fail to vacate the premises, she became a tenant of the plaintiff from that time and cannot be described as a trespasser. She owes the plaintiff the rent payable from February, 2015 till the date she vacated the premises.

On 3rd March, 2016, this court (differently constituted) restrained the defendants from entering the church premises pending the final determination of the suit. According to PW2, on 16th April, 2016, during a Wednesday evening church service, whilst pastor Larry Morgan was preaching, the 5th defendant entered the church premises and started taking pictures of the people inside. During Sunday school service on 8th May, 2016, the 5th and 9th defendants came to the church compound and pointed at the children. A week later, the 5th defendant returned to the church premises, took some pictures, and left. The witness further recounted that on 22nd May, 2016, as she and the Sunday school kids were waiting to join the adult church, the 4th, 5th, 9th defendants and one Francis stood at the gate to call the kids to ask them what they were doing. When her husband started to preach, the 5th and 9th defendants entered the auditorium and disrupted the service by taking pictures of the congregation. PW1 corroborated his wife's story by stating that on one Sunday during the service 4th, 8th and 9th defendants came to the church premises, disrupted the service and took pictures. PW3 also confirmed that on 22nd May, 2016, the 4th, 8th and 9th defendants were at the church's premises to disrupt the services by taking pictures and assaulting him. Thus, there is evidence pointing to the fact that the 4th, 5th, 8th and 9th defendants went onto the church premises to disrupt church service inspite of the court's injunction restraining them from doing so. Not only were their actions contemptuous of the court, but was clearly a trespass. They had, without lawful authority entered the plaintiff's premises and should be liable in damages for trespass. The plaintiff is entitled to recover GHc15,000.00 as damages for the trespass from the 4th, 5th, 8th and 9th defendants.

There is evidence that damage was caused to the plaintiff's premises. Pastor Larry Morgan testified that in October 2015, the defendants entered the premises, switched off the electricity control board and all lights in the premises and commenced to destroy the plaintiff's lights and properties. The defendants caused damage to the gates, doors and burglar proofs and destroyed padlocks on the premises. On 9th November, 2015, the defendants, together with a mob attacked him at the premises, caused damage to the premises and defaced the walls and gates of the plaintiff's premises. Exhibits "D1", "D2", "D3", "F", "F1"- "F5" series depict the defaced walls, which pastor Morgan alluded to. The pictures i.e. exhibits "E" series also show the destroyed padlocks and locks. His evidence was corroborated by pastor Jimmy Williams who testified to the damage caused to the school and the plaintiff's premises. Indeed, DW1 in part, corroborated this damage caused to the plaintiff's property. Under cross-examination, he was asked:

"Q: When this motive did not materialise, you and defendants took to vandalise the plaintiff's property

A: Not true. When we destroyed the padlocks, we did not go on our volition. It was the police who granted us permission to break in and worship".

No such police permission was shown or tendered by the defendants. In any case, I seriously doubt that the police would have advised them to break into the premises and worship. There is sufficient evidence on record from pastor Larry Morgan, PW1, PW2 and PW3 as well as the pictures to show the damage caused to the plaintiff's property. The plaintiff is entitled to damages. Evidence was not given on the value of the destroyed property on the premises. Be that as it may, the plaintiff is entitled to damages which I assess at GHc20,000.00. It is not clear which of the defendants caused the damage. What is clear is that these persons caused damage in the name of and on behalf of the 1st defendant to register their protest that the property belonged to the 1st defendant. The 1st defendant

and her members cannot be liable for the damages considering the circumstances of the case. Either the 1st defendant, a distinct legal personality from her members, is liable for damages, or the rest of the defendants, who are members of the 1st defendant, are held personally liable for the damage. At all material times, these members acted on the 1st defendant's behalf and cannot be personally liable for the damage. They would only be personally liable if the corporate veil of the 1st defendant is lifted. Thus, the plaintiff is entitled to recover GHc20,000.00 from the 1st defendant as damages for destroying her property.

The plaintiff is also entitled to recover from the 1st defendant GHc13,500.00, as rent arrears from March 2015 to November 2015. The defendants have not denied that the 1st defendant vacated the premises in November 2015.

The defendants, their agents, assigns, and persons claiming through them are perpetually restrained from entering into or having anything to do with the plaintiff's premises or acting in any manner inconsistent with the plaintiff's ownership, occupation, possession, peaceful and quiet enjoyment of the premises.

The defendants' counterclaim is dismissed.

(SGD.)
H/L AFIA N. ADU-AMANKWA (MRS.)
JUSTICE OF THE HIGH COURT.

COUNSELS

Amy Bondzie-Hanson(holding Constantine Kudzedzi's brief) appears for the Plaintiff.
Benedicta G. Kesse (holding Stephen Kesse's brief) appears for the defendant.