IN THE SUPERIOR COURT OF JUDICATURE

IN THE HIGH COURT OF JUSTICE LAND DIVISION

HELD IN ACCRA ON FRIDAY, THE 26TH DAY OF JULY, 2024

BEFORE HIS LORDSHIP WILLIAM APPIAH TWUMASI (J)

SUIT NO.: LD/0705/2021

COMFORT AMOA BOADU **PLAINTIFF**

VRS

LA-NKWANTANANG & ANOR. **DEFENDANTS**

PARTIES: PLAINTIFF ABSENT

DEFENDANTS ABSENT

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JUDGMENT

The Plaintiff caused to be issued from the registry of this court a writ of summons and statement of claim on the 29 July, 2021 against the Defendants claiming the following reliefs:

i) Declaration that the Plaintiff is entitled to access to her house in conformity with the North Oyarifa Residential Planning Scheme of the 1st Defendant.

ii) Declaration that the 2nd Defendant's property situate at Oyarifa (Ghana Flag) is being developed without the requisite building permit from the 1st Defendant and in breach of its North Oyarifa Residential Planning Scheme.

iii) An order for the 1st Defendant to create an access to the Plaintiff's property in conformity with the 1st Defendant's North Oyarifa Residential Planning Scheme.

iv) An order of perpetual injunction against the 2nd Defendant restraining her, either by herself, her agents, privies, assigns, workmen, from obstructing the 1st Defendant in its legal duty to create an access road to the Plaintiff's property.

v) General damages.

vi) Payment of Plaintiff's legal fees.

vii)Costs.

THE CASE OF THE PLAINTIFF

It is the case of the Plaintiff that she is the owner of uncompleted property (at roofing stage) situate at Oyarifa (Ghana Flag), Accra and the 2nd Defendant is her neighbor who is developing her property, whilst the 1st Defendant is the local government structure for the area with the mandate to draw up and enforce planning schemes and layout within its jurisdiction.

It is the case of the Plaintiff that all the developers around her property had built around it completely blocking access to her property. Plaintiff says she reported the matter to the Physical Planning Department of the 1st Defendant, and upon inspection by an officer of the 1st Defendant, the 1st Defendant decided to create an access road to the Plaintiff's property in conformity with the 1st Defendant's layout for the area.

It is the case of the Plaintiff that when the 1st Defendant created the access road, the 2nd Defendant blocked it claiming the access road went through her land. Plaintiff says she subsequently asked her lawyers to write formally to the 1st Defendant in a letter dated 25 November, 2020 requesting for clarification as to whether the 2nd Defendant had obtained a building permit from the 1st Defendant, and also whether 2nd Defendant's development conformed with the 1st Defendant's layout plan for the area.

The Plaintiff says in a reply dated 21 May, 2021, the 1st Defendant attached the planning scheme or layout plan for the area, indicating the exact zoning and access roads. Plaintiff says it was evident from the 1st Defendant's planning scheme that the access road to the Plaintiff's property had been appropriated by the 2nd Defendant as part of her land.

The Plaintiff avers that as things stand now, she will incur cost as a result of the delay in construction, saying she has been deprived of the use and enjoyment of her property and have therefore suffered loss and damage.

THE CASE OF THE DEFENDANTS

The 1st Defendant did not enter appearance nor filed a defence to the Plaintiff's writ of summons even though there is evidence on record that 1st Defendant was served through the Secretary.

The 2nd Defendant entered a conditional appearance on the 13 October, 2021 and followed it up with a statement of defence filed at the registry of this court on the 27 October, 2021, and counterclaimed against the 1st Defendant.

Case of the 2nd Defendant

The 2nd Defendant denies the averments in the Plaintiff's statement of claim. It is the case of the 2nd Defendant that she is the owner of a property situate at Oyarifa, Ghana Flag Area, near Rehoboth Estates.

It is the case of the 2nd Defendant that on 8 November, 2018, she, together with a neighbour, by name, Daniel Tawiah Akuetteh discovered that the fence walls that they shared had been completely demolished as well as the frontage of the plots. 2nd Defendant says the said Daniel Tawiah Akuetteh's frontage wall and back wall had been demolished to create access to a parcel of land behind his plot.

2nd Defendant avers that she was informed that the said parcel of land belonged to or was managed by one Yaw Festus Ofosu, but it has now emerged that the Plaintiff is the real owner.

2nd Defendant says she and Daniel Tawiah Akuetteh lodged a formal complaint with the Regional Criminal Investigations Department of the Ghana Police Service at the Regional Headquarters on 8 November, 2018 and made copies of their land documents and building permits to the police.

2nd Defendant says she and Daniel Tawiah Akuetteh had a meeting with the Director of Physical Planning Department of the Assembly, Emmanuel Kumi and his deputy, Robert Okoe and the foreman and these officials confirmed to 2nd Defendant and Daniel Tawiah Akuetteh that the demolition exercise was carried out by the 1st Defendant specifically upon the instructions of Department after conducting inspection at the site.

2nd Defendant denies paragraphs 8 and 9 of the Plaintiff's statement of claim and avers further that she and Akuetteh presented their land documents, including building permit. The Director of Physical Planning Department of the Assembly, Emmanuel Kumi confirmed that the documents were genuine, but the 1st Defendant could not offer any reasonable explanation for its actions as it was the same 1st Defendant which issued the building permits to 2nd Defendant and Daniel Tawiah Akuetteh in 2004 for, among others, the building of the demolished wall.

It is the case of the 2nd Defendant that no legal notice was issued to them concerning the demolition exercise, resulting in she and Daniel Tawiah Akuetteh suing the 1st Defendant and Yaw Festus Ofosu per a writ issued on 23 November, 2018 (Suit No. LD/0182/2019). 2nd Defendant says the court subsequently granted them interlocutory judgment in default of appearance and defence against the 1st Defendant on 22 February, 2019.

The 2nd Defendant says that she was put to great expense in reconstructing the demolished wall and puts the cost at GHC16,510.00. It is the further case of the 2nd

Defendant that on 21 October, 2021, the 1st Defendant again demolished her newly constructed wall to create access for the Plaintiff, contending that she has been deprived of the enjoyment of her property as her wall has been demolished twice by the 1st Defendant.

The 2nd Defendant says Plaintiff is not entitled to any or all of her reliefs.

The 2nd Defendant also counterclaims against the 1st Defendant as follows:

a) A declaration that the demolition of the 2nd Defendant's wall by the 1st Defendant during the pendency of the instant suit is wrongful, illegal and contrary to law and is an unlawful usurpation of the authority of this court.

b) Interlocutory injunction restraining the Plaintiff and 1st Defendant, their workmen, servants, assigns, representatives from creating access route to the Plaintiff's property and from interfering with 2nd Defendant's property in any shape or form pending the final determination of this suit.

c) General and special damages for contemptuously demolishing the wall of the 2nd Defendant.

d) Costs including legal fees and such further orders as this Court will deem fit.

At the close of pleadings, the following issues were set down for trial:

a) Whether or not the Plaintiff is allowed to create an illegal access road through the land of the 2nd Defendant.

b) Whether or not the 2nd Defendant has the requisite building permit issued to her by the 1st Defendant.

c) Whether or not the demolition of the 2nd Defendant's wall by the 1st Defendant during the pendency of the instant suit was wrongful, illegal and contrary to law and is an unlawful usurpation of the authority of this court.4

d) Whether or not the 2nd Defendant is entitled to general and special damages from the 1st Defendant for contemptuously demolishing the 2nd Defendant's wall.

e) Whether or not the 1st Defendant is the statutory body with the power to make a lay-out for landowners to ensure access by all.

f) Whether or not the 1st Defendant, in the exercise of its statutory function created an access road for the Plaintiff.

g) Whether or not the Plaintiff as a landowner is entitled to an access road to her property.

Before proceeding to deal with these issues, it will be appropriate at this point to chronicle the pieces of evidence offered by both parties at the trial.

EVIDENCE OF THE PLAINTIFF

The Plaintiff testified that she is the owner of a completed property located at Oyarifa, Ghana Flag, Accra. She told the court that in the course of developing her property, she realized that all the developers around her property had built around her property thus completely blocking access to her property.

Plaintiff said she complained to the 1st Defendant and 1st Defendant sent an officer for inspection and the said officer recommended and access was created by the 1st Defendant for the Plaintiff but this was immediately blocked by the 2nd Defendant with a wall. Plaintiff said she again reported the matter to the 1st Defendant through her lawyers in a letter dated 25 November, 2020 enquiring whether 1st Defendant had issued a building permit to the 2nd Defendant and also whether the 2nd Defendant's development conformed to the layout plan for the area (**Exhibit "A"**).

Plaintiff said in a reply to her letter, the 1st Defendant in a letter dated 21 May, 2021 attached its zoning and layout plan showing the Plaintiff's access road which apparently affected about ten (10) feet of the 2nd Defendant's land (**Exhibit "B"**).

The Plaintiff further testified that the 1st Defendant obviously made a mistake in granting a building permit to the 2nd Defendant when 2nd Defendant's development did not conform to 1st Defendant's zoning and layout plan. It was the case of the Plaintiff that she and the 2nd Defendant are not disputing over ownership of their respective lands and therefore no issue of trespass arises.

It was the contention of the Plaintiff that the 1st Defendant is the statutory body seized with the legal authority to create a layout and zoning which guarantees access roads and also provide building permits to land owners within its jurisdiction.

The Plaintiff testified that the 2nd Defendant has since rebuilt her wall in conformity with the 1st Defendant's zoning and layout and in the circumstances acquiesced to the new situation, and consequently any issue between the plaintiff and the 2nd Defendant in this suit has become moot.

It was the evidence of the Plaintiff that the 2nd Defendant is entitled to compensation or damages from the 1st Defendant but has no cause of action against the Plaintiff and that was the reason why the 2nd Defendant counterclaimed against the 1st Defendant only.

The Plaintiff contended that when a public body creates a right of way involving road, electricity or water through private land, the remedy lies in adequate compensation from the public body concerned.

Plaintiff said she is blameless in this as her property required an access and same has been provided by the Assembly. It was therefore the evidence of the Plaintiff that she is entitled to her reliefs. The 2nd Defendant did not cross examine the Plaintiff on her evidence in chief.

CASE OF THE DEFENDANT

The 2nd Defendant testified that she is the owner of a property situate at Oyarifa, Ghana Flag area near Rehoboth Estates. 2nd Defendant's evidence was that on the 8th November, 2018 she discovered that the common wall she shares with a neighbour,

as well as the frontage of the fence wall had been demolished to create access to a parcel of land behind her plot.

The 2nd Defendant told the court that she was informed the said parcel of land belonged to one Yaw Festus Ofosu but it turned out that the real owner of the parcel of land is the Plaintiff herein.

The 2nd Defendant informed the court that upon this discovery, she lodged a formal complaint with the Regional CID, Accra Regional Headquarters on the 8th November, 2018 where she and her neighbour presented their land documents, including building permit (**Exhibits "1" and "2"**).

The 2nd Defendant further stated that she met with the Director of Physical Planning Department of the Assembly who confirmed that it was the Assembly (1st Defendant) which demolished the wall following an inspection conducted by the Assembly.

It was the evidence of the 2nd Defendant the Director of the Physical Planning Department confirmed that her approved Permit was genuine but the 1st Defendant could not offer any reasonable explanation for its actions as it was the same 1st Defendant that issued the building permit for the building of the demolished wall in 2014.

The 2nd Defendant testified that she was not issued with any legal notice of the said demolition, and thus she and her neighbour issued a writ of summons against the 1st Defendant and one Yaw Festus Ofosu and subsequently obtained an interlocutory judgment against the 1st Defendant in default of appearance and defence.

It was the further testimony of the 2nd Defendant that she incurred a total cost of GHC16,510.00 in rebuilding the demolished walls and attached the receipt as **Exhibit "3"**.

The 2nd Defendant said the 1st Defendant again demolished the walls she rebuilt on the 21st October, 2021 to create an access route for the Plaintiff, and indicated that this has deprived her of the enjoyment of her property.

The 2nd Defendant therefore prayed this court that the Plaintiff is not entitled to her reliefs. 2nd Defendant prayed that her counterclaim against the 1st Defendant be granted.

THE LAW AND THIS CASE

BURDEN OF PROOF / PERSUASION:

It is important at this stage to deal with the requisite preliminary remarks about the proof in matters and where the burden of proof or persuasion lies before I proceed to deal with the evaluation of the law and the evidence in this case viz-a viz the issues set down for the determination of this case.

It is trite law that the Plaintiff had a burden to prove her case to the standard required in civil actions, that is, on a balance of probabilities. This provision has been codified per **Section 11 of the Evidence Act, 1975 (NRCD 323)** which states in part as follows:

> *"**Section 11—Burden of Producing Evidence Defined**.*
>
> *(1) For the purposes 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.*
>
> *(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence."*

Section 12(1) of NRCD 323 also provides as follows:

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

In the Supreme Court case of **Adwubeng v Domfeh [1996-97] SCGLR 660** at **670**, the apex court held that:

> *"But section 11(2) of NRCD 323 imposed proof beyond reasonable doubt only on prosecutions in criminal actions, and in proof of a commission of a crime in any civil or criminal action. While sections 11(4) and 12 of NRCD 323 clearly provide that the standard of proof in all civil actions is proof by a preponderance of probabilities – no exceptions are made. In the light of NRCD 323 therefore the cases which hold that proof of title to land required proof beyond reasonable doubt no longer represent the present state of the law."*

Regarding the burden of proof, the dictum of the Supreme Court in the case of **Klah v. Phoenix Insurance Co. Ltd. [2012] SCGLR 1139**, is relevant. In that case, it was held that:

> *"Where a party makes an averment capable of proof in some positive way e.g. by producing documents, description of things, reference to other facts, instances and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances from which the court can satisfy itself that what he avers is true."*

(One can also see the cases of **Okudzeto Ablakwa (No.2) v. Attorney-General & Anor [2012] 2 SCGLR 845 at 847** and **Ackah v. Pergah Transport Limited & Ors. [2010] SCGLR 736**).

The burden of proof has been described by His Lordship Justice S.A. Brobbey in his book **Essentials of the Ghana Law of Evidence** at page 31 as follows:

"This literally means "The proof lies upon him who affirms, not on him who denies, since by the nature of things, he who denies a fact cannot produce proof."

Where the Plaintiff makes a positive assertion at the start of the trial, he bears the legal burden. At the same time, he bears the evidential burden to adduce evidence at the start of the trial."

In this case therefore, it is important to note that the Plaintiff is required, by law, to prove her claims against the Defendants on a balance of probabilities. It is noted that the 2nd Defendant, who filed a defence in this suit, also counterclaimed against the 1st Defendant for the reliefs noted supra, and by law, the 2nd Defendant bears the same burden of proof for her counterclaim just like the Plaintiff. The case of **Malm v. Lutterodt [1963] 1 GLR 1 SC** held that a defendant in an action for declaration of title assumes legal burden of proof when he counterclaims for a declaration of title in his favour.

The position of the law was clearly stated by the Supreme Court in the case of **Osei v. Korang [2013] 58 GMJ 1** at **22-23, 32** per His Lordship Ansah, JSC (as he then was) as follows:

"Where in an action, the parties claim and counterclaim for declaration of title to the same piece of land, each party bears the onus of proof as to which has a better claim of title against his/her adversary, for a counterclaim is as good as a plaintiff in respect of a property which he/she assays to make his/her own. In this wise, it might be useful to state that the approach adopted and approved for resolving disputes of title to land has been stated repeatedly in several judicial dicta in our reports and I wish to cite only one for example namely Yokwa v. Duah [1982-83] GBR 278, CA at p.281 where the learned Brobbey, JA (as he then was), stated "Firstly, this is a land case and therefore the plaintiff/respondent must succeed on the strength of her own case…then there was the case of Nartey v. Mechanical Llyod Assembly Plant Ltd. [1987-88] 2

GLR 314 in which Adade JSC stated that a person who comes to court, no matter what the claim is, must be able to make a good case for the court to consider, otherwise he must fail…"

In the instant case, in view of the counterclaim by the 2nd Defendant, the same burden, as placed on the Plaintiff, is placed on the 2nd Defendant to make a case for her claims against the 1st Defendant, otherwise the 2nd Defendant will fail in her counterclaim.

EVALUATION OF EVIDENCE AND DETERMINATION OF ISSUES

It is noted that at the close of pleadings, the following issues were set down for determination by this court:

(a) Whether or not the Plaintiff is allowed to create an illegal access road through the land of the 2nd Defendant.

(b) Whether or not the 2nd Defendant has the requisite building permit issued to her by the 1st Defendant.

(c) Whether or not the demolition of the 2nd Defendant's wall by the 1st Defendant during the pendency of the instant suit was wrongful, illegal and contrary to law and is an unlawful usurpation of the authority of this court.

(d) Whether or not the 2nd Defendant is entitled to general and special damages from the 1st Defendant for contemptuously demolishing the 2nd Defendant's wall.

Additional issues were filed for and on behalf of the Plaintiff as follows:

(e) Whether or not the 1st Defendant is the statutory body with the power to make a lay-out for landowners to ensure access by all.

(f) Whether or not the 1st Defendant, in the exercise of its statutory function created an access road for the Plaintiff.

(g) Whether or not the Plaintiff as a landowner is entitled to an access road to her property.

A closer look at the pleadings and the evidence of the parties vis-à-vis the issues set down for the determination of this case makes it imperative that to resolve the real issues in controversy between the parties, some of the issues will have to be merged, modified or completely struck out as irrelevant. To do that, it is important for this court to emphasise that the real issue in contention is whether or not the Plaintiff is entitled to have access to her property which Plaintiff says other developers around her property have built all around her land thus depriving her access to her property.

In the circumstances, I propose to raise issues that would settle the matter one way or the other. I will also deal with some of the issues together as they overlap. This approach is supported by decided cases. For example, in **Fidelity Investment Advisors v. Aboagye Attah [2003-2005] 2 GLR 188, CA**, it was held that which issues were relevant and essential was a matter of law entirely for the judge to determine. One can also look at the case of **Domfe v. Adu [1986] 1 GLR 653,** CA per Abban JA (as he then was) in which he stated that although several issues were set down in the Summons for Directions for trial, most of them could hardly be described as relevant. To His Lordship's mind, which issues were relevant were those that could dispose of the case one way or the other.

Similarly, in the case of **Fatal v. Wolley [2013-2014] 2 SCGLR 1070 at 1076, Her Ladyship Georgina Wood CJ** (as she then was) stated as follows:

> *"…Admittedly, it is indeed sound basic learning that courts are not tied down to only the issues agreed upon by the parties at pre-trial. Thus, if in the course of the hearing, an issue is found to be irrelevant, moot or even not germane to the action under trial, there is no duty cast on the court to receive evidence and adjudicate on it. The converse is equally true. If a crucial issue is left out, but emanates at trial from either the pleadings or the evidence, the court*

cannot refuse to address it on the grounds that it is not included in the agreed issues."

In the circumstances of this case, I propose to deal with the issues in the following manner: It is trite law that the issues which are essential and relevant for the determination of the matter at hand are matter of law entirely for the judge to determine. Therefore, in this case, as noted earlier, where the issues set down for determination overlaps or are not relevant, or if a particular issue is worth considering which will help resolve this matter, this court will make a determination of that and make the necessary amendments.

From the issues set down for the determination of this matter supra, this court makes a determination that issues **(a)** and **(c)** are completely irrelevant to the resolution of this matter and same are hereby struck out by this court. Issue **(c)** in particular is very interesting and will be addressed in the course of this judgment. Issues **(e)** and **(f)** appear to overlap and will therefore be merged. From these proposed amendments, the issues for determination by this court will appear as follows:

i) Whether or not the 1st Defendant is the statutory body with the power and mandate to make a lay-out for landowners within its jurisdiction to ensure access by all and whether or not in the exercise of its statutory function, it created an access road for the Plaintiff.

ii) Whether or not the Plaintiff as a landowner is entitled to an access road to her property.

iii) Whether or not the 2nd Defendant has the requisite building permit issued to her by the 1st Defendant.

iv) Whether or not the 2nd Defendant is entitled to general and special damages from the 1st Defendant for contemptuously demolishing the 2nd Defendant's wall.

The issues will be dealt with in the manner in which they appear.

Before proceeding to deal with the issues herein, it is important at this stage for this court to deal with the legal principle of easements, i.e. a right attached to land which allows the proprietor of land to use another person's land, for example, for access or for the provision of utility services. Without this legal principle, it will be virtually impossible for any person to have access to his or her land without necessarily trespassing on another person's land. By public policy therefore, no one should be deprived of having access to his or her property provided such property complied with the building regulations of that particular locality.

It is provided under **Section 281 of the Land Act, 2020 (Act 1036)** as follows:

> ""***easement***" *means a right under the rules of common law attached to land and which allows the proprietor of the land to which the right is attached to use another land in the particular manner or to restrict the use of the land to a particular extent but does not include any right capable of existing as a profit or a restrictive covenant."*

From the above, people who conform to the layout planning of a particular locality in the construction of their landed properties should, by law or in equity, have access to their property without any hindrance being put in their way, or without being considered as trespassers.

This legal principle (easements) is always taken into consideration by the legislature anytime legislations in respect of physical developments are being promulgated.

<u>Issue (i)</u>:

Whether or not the 1st Defendant is the statutory body with the power and mandate to make a lay-out for landowners within its jurisdiction to ensure access by all and whether or not in the exercise of its statutory function, it created an access road for the Plaintiff.

It is the evidence of the Plaintiff that developers with properties around her property had built around it thus depriving her access to her property thus compelling her to write to the La-Nkwantanang-Madina Municipal Assembly (1st Defendant) who subsequently demolished the walls of the 2nd Defendant to create access for the Plaintiff to enable her access her property. The 2nd Defendant, on her part, claimed that she obtained a building permit from the 1st Defendant before constructing her building and therefore the demolition of her walls by the officers of the 1st Defendant constituted an unlawful act which the 1st Defendant must compensate her for. She is also praying for injunction to restrain the Plaintiff and the 1st Defendant from interfering with her right to enjoy her property.

It is provided under **Section 62** of the **Local Government Act, 1993 (Act 462)** as follows:

> *"**Section 62- Building Bye-Laws.***
>
> *(1) Subject to section 63 of this Act, a District Planning Authority may make building bye-laws within the scope of national building practices prescribed by law and shall in particular make provisions for—*
>
> *(a) the control of the construction of buildings, streets, boardings, fences and signboards;*
>
> *(b) the execution of work on and in relation to existing buildings, structures and streets;*
>
> *(c) drainage and sanitation;*
>
> *(d) the removal or abatement of obstructions and nuisance; and*
>
> *(e) matters referred for the guidance of District Planning Authorities in the Second Schedule to this Act.*
>
> *(2) The bye-laws may be made with respect to the district generally or with respect to particular areas, buildings or works in the district.*

It is further provided under **Section 10(3)(e) of the Local Government Act, 1993 (Act 462)** provides as follows:

> "*(3) Without prejudice to subsections (1) and (2) of this section, a District Assembly shall (e) be responsible for the development, improvement and management of human settlements and the environment in the district*."

It is abundantly clear from the provisions of **Act 462** quoted supra, and this court makes a determination, that the 1st Defendant, by-law, is mandated or has the necessary power and authority to make building bye-laws to regulate the construction of buildings and other structures within its jurisdiction and to enforce same. In this case, it is the claim of the 2nd Defendant that she obtained a Building Permit from the 1st Defendant. Even though the 1st Defendant failed to make any appearance at this trial which would have afforded them the opportunity to corroborate or deny whether indeed it issued a Building Permit to the 2nd Defendant. But from the 2nd Defendant's own evidence, her walls were demolished by the Officers of the 1st Defendant when the Plaintiff complained to them that access to her property had been blocked by the 2nd Defendant and after an inspection had been conducted by the Officers of the 1st Defendant.

Even admitting that the 2nd Defendant obtained a valid Building Permit from the 1st Defendant, why will the Officers of the 1st Defendant demolish her walls if indeed she complied with the conditions of her Building Permit in constructing her property? The fact that the Officers of the 1st Defendant demolished her walls and that of her neighbour after an inspection by Officers of the 1st Defendant is an indication that the 2nd Defendant did not comply with the conditions of the Building Permit granted to her. This court doubts it very much if the 1st Defendant will issue a Building Permit, based on their layout for the area, which will have the effect of blocking access to other land owners.

It is provided under **Section 64 of Act 462** that

> *"Every person shall, before constructing a building or other structure or undertaking any work, obtain a permit from the District Planning Authority which shall contain such conditions as the District Planning Authority may consider necessary."*

The framers of this legislation envisaged that without empowering the Assemblies to regulate orderly development of structures, there will be chaos and inconveniences in our various communities. **Act 462** thus empowers the Assemblies, including the 1st Defendant, to ensure that developers within their jurisdiction obtain building permits first before undertaking any construction, and this court cannot imagine the 1st Defendant approving a building permit to the 2nd Defendant to construct a structure which will block access to other persons' properties. Such an enterprise will defeat the purpose envisaged by the legislature, and it is for this reason that this court holds that the 2nd Defendant did not comply with the terms and conditions of the Building Permit issued to her by 1st Defendant and that ultimately led to the demolition of her walls to pave way for the creation of access for the Plaintiff to her property.

From the foregoing, this court holds that the demolition exercise was carried out by the 1st Defendant to enable the Plaintiff have access to her property. In any case, the Plaintiff conceded in her evidence (paragraphs 13 and 14 of her witness statement) that the 2nd Defendant has complied with the 1st Defendant's zoning and layout and in the circumstances the 2nd Defendant has acquiesced to the new situation and therefore there is no issue in controversy between her and the 2nd Defendant, or if there was any such controversy, same has become moot, and this court agrees with the Plaintiff on this.

The resolution of **issue (i)** in the affirmative will also resolve **issue (ii)** i.e. ***whether or not the Plaintiff as a landowner is entitled to an access road to her property***. It was noted in this judgment that the Plaintiff complained to the 1st Defendant that developers have built around her property thus denying her access to her own property. Based on this information, Officers of the 1st Defendant inspected the site

and subsequently demolished the walls of the 2nd Defendant and another person to create access for the Plaintiff in line with the development layout scheme for the area. This court therefore holds that the Plaintiff as a landowner within the community is entitled to an access road to her property.

It is noteworthy at this point to address the issue of the demolition of the 2nd Defendant's wall and the reasons why this court is of the view that **issue (c)** in the 2nd Defendant's **Application for Directions** is not relevant to the resolution of this matter. From the 2nd Defendant's own evidence (paragraph 3 of her witness statement), the 1st Defendant demolished her wall on the 8 November, 2018 at a time this suit was not instituted. One would have expected that the 2nd Defendant would have taken the necessary steps to address whatever challenges or concerns the 1st Defendant had with her walls and why it was pulled down but she did not do that. Instead, she took the law into her own hands and reconstructed the wall, damning any consequences that may arise therefrom. Equity and fairness will not allow her now to make a case out of her own recalcitrance and wanton disregard of the laid down by-laws of the 1st Defendant, and expect this court to come to her aid. If the 2nd Defendant had been a law-abiding citizen and complied with the by-laws of the 1st Defendant, **issue (c)** would not have arisen in the first place. In any case, how useful is **issue (c)** in resolving the issues in controversy between the parties? This court determined that **issue (c)** cannot in any way assist this court in resolving the issues in controversy in this matter, and rightly struck same out.

Issue iii:

Whether or not the 2nd Defendant has the requisite building permit issued to her by the 1st Defendant.

It was the evidence of the 2nd Defendant that she obtained a Building Permit from the 1st Defendant (**Exhibit "2"**). It is important to note however that granting a building permit to a developer is one thing and the developer complying with the said building permit is another thing. **Exhibit "2"** was not challenged by the Plaintiff

when it was tendered. The 1st Defendant also failed to participate in this trial to confirm the authenticity or otherwise of **Exhibit "2"**. However, this court has no basis to doubt the authenticity of **Exhibit "2"** and rightly admitted it in evidence. This court however doubts it very much if 1st Defendant will condone or allow in the said building permit a development that will block access to another person's property. It is the considered view of this court that the demolition of the 2nd Defendant's walls to pave way for the creation of access for the Plaintiff is an indication that even though the 1st Defendant issued a Building Permit to the 2nd Defendant, the 2nd Defendant did not comply with the conditions therein when constructing her property, which compelled the 1st Defendant to demolish the offending walls.

Issue (iv)

Whether or not the 2nd Defendant is entitled to general and special damages from the 1st Defendant for contemptuously demolishing the 2nd Defendant's wall.

It was the evidence of the 2nd Defendant that she was put at great expense in reconstructing the walls that were demolished by the 1st Defendant, putting the total expenses incurred at **GHC16,510.00** as special damages (**Exhibit "3 series"**), and claimed this amount in her counterclaim against the 1st Defendant. Even though the 1st Defendant did not participate in this trial to contest this figure.

It is trite law that where special damages are claimed, it is not enough for the plaintiff to write down the particulars or plead to them merely but more importantly, the plaintiff must lead evidence to prove them.

In the case of **Peter Ankomah v. City Investment Co. Ltd.** (Civil Appeal No. J4/13/2011 dated 30th May 2012), the wife of the plaintiff/appellant/appellant, therein referred to as the plaintiff, defaulted in the repayment of loans he took from the defendants/respondents/respondent therein referred to as the defendants. As a result of this default, the defendants instituted action against the wife of the plaintiff and obtained judgment against her.

It was in the course of the execution of the judgment that the defendants caused the Deputy Sheriff to attach items which belonged to the plaintiff from their matrimonial home. The items of property seized from the plaintiff were a Mitsubishi car and a deep freezer. Following the failure of the defendants to return the said items to the plaintiff upon repeated demands, the plaintiff instituted an action in the High Court against the defendants for the delivery up of the Mitsubishi car unlawfully caused by the defendants to be seized by the Sheriff or the value of the said car and damages for its detention and the delivery up of the refrigerator unlawfully caused by the defendants to be seized by the Sheriff on execution or the value thereof and damages for its detention.

In a supporting statement of claim, the plaintiff provided the particulars of damages in paragraph 4 of the statement of claim as follows:

> *"The plaintiff has since the seizure of the car and the refrigerator demanded their return but the defendants have refused to cause their return or delivery up with the consequence that the plaintiff has suffered loss and damage.*
>
> *Particulars of Damage:*
>
> *(i) Loss of use of the said car at ¢250.00 per day from 8th September 1997 and continuing.*
>
> *(ii) Cost of putting the vehicle in a good and road worthy condition.*
>
> *(iii) Loss of use of the said refrigerator at ¢50,000.00 per day from 8th September 1997 and continuing.*
>
> *(iv) Cost of repair.*

And the plaintiff claims:

> *An order for the delivery up of the said Mitsubishi Car No. GR 9185 G and the refrigerator, or payment of their respective values".*

The High Court gave judgment in favour of the plaintiff but varied the quantum of damages claimed by the plaintiff in the absence of any evidence by the plaintiff to prove such claims. Being aggrieved and dissatisfied with the level of damages awarded for the loss of use, the plaintiff appealed to the Court of Appeal, which held that the Plaintiff had failed to strictly prove his special damages and as such, he was not entitled to same. However, the Court of Appeal, applied equitable principles and held that the plaintiff was therefore only entitled to nominal damages which were entirely within the trial judge's discretion. The Court of Appeal found that the said discretion had been appropriately exercised and as such, the Honourable Court declined to overturn the judgment of the trial court. Still dissatisfied, the plaintiff appealed to the Supreme Court.

Reading the judgment of the Apex Court, His Lordship Dotse, JSC (as he then was) stated as follows:

> *"In our opinion, it was certainly not enough for the plaintiff to have recited some figures as the replacement values for the chattels unlawfully detained. Proof in law means that sufficient evidence must have been led before the court i.e. by the production of Proforma Invoices from regular and accredited distributors of the chattels concerned as the current sale price of the chattels. That way, there would have been satisfactory evidence led by the plaintiff to support the replacement value and cost of the chattels."*

Continuing, His Lordship stated thus:

> *"We are certain that the assessment of the damages for loss of use of the chattels by the trial court followed established practice. This is because, from the nature of the pleadings as already referred to supra in the statement of claim, the particulars of damages given indicate a clear intention that the items of damage are special in nature. This is so because the plaintiff specifically mentioned the amounts of loss per day. One would therefore expect that those claims would be strictly proved by not only mounting the witness box to repeat the figures but by the production of*

documentary evidence as proof of payment of those amounts. Alternatively, evidence could have been led to establish that the vehicle hired in the absence of the plaintiff's vehicle which was unlawfully detained cost so much and that the period of hire was for this or that period. The same could have been done for the refrigerator."

Acquah, J (as he then was) succinctly elucidated the same legal principle in the case of **Norgbey & Anor v. Asante & Anor [1992] 1 GLR 506 at pages 516-517** as follows:

"The plaintiff claims special and general damages against the defendant. And it is trite learning that special damages must be proved and proved strictly. But let me digress a little to explain what is required in a proof of special damages and the consequences following from the failure by a claimant to satisfy the said requirements. A successful proof of a special damage involves basically proof of the subject matter of the special damage, and then proof of the value claimed for that subject matter. Now these two-fold requirements may boil down to two, three or four steps depending on the nature of the claim. For example, where someone claims as special damage the sum of ¢10,000 as being the value of his damaged watch, this will involve the claimant in proving first, that the defendant did indeed destroy his watch; and secondly, that the value of the damage watch is ¢10,000. Again where the claim for special damage is ¢10,000 being cost of repairs for a damaged watch, the claimant has to prove first that the defendant did damage his watch; secondly, that the claimant did repair the said damaged watch; and thirdly, that the repairs cost him ¢10,000. Thus in my recent judgment in ***Fuseini v Ayivor, High Court, Ho, 12 April 1991****, unreported, I explained what is required of a plaintiff who claims as special damages the cost of repairs on his damaged vehicle as follows:*

"I am of the view that a desirable way of establishing cost of repairs on a vehicle is first to establish the actual damage to the vehicle. And this may be achieved by the evidence and report of the vehicle examiner who examined the vehicle at the request of the police. In the absence of a vehicle examiner, or in addition to him, any competent engineer who examined the vehicle after the accident can equally testify on the extent of damage the vehicle sustained. Having established the extent of damage, the second

step is to call evidence of the mechanics who actually worked on the vehicle to testify on the work done and how long it took them to complete the work. And the final step is the tendering of the receipts for the items bought and the amount paid as workmanship. Where there are no receipts, satisfactory evidence can be led to establish that the parts and workmanship testified to by the mechanics were in fact paid for. In my view these are the three steps a plaintiff has to go through in establishing his claim for cost of repairs."

His Lordship continued his judgment thus:

"The legal position therefore is that in a claim for special damages where the claimant succeeds in proving both the subject matter and the value, he is entitled to be awarded the value he claims. But where he succeeds in proving only the subject matter but fails to prove the value of the subject matter, the claimant is not to be denied any compensation. In such a situation the claimant is entitled to be awarded some value for the damaged subject matter."

Applying the legal principles elucidated in the above-quoted authorities to the instant case, is the 2nd Defendant entitled to the relief of special damages?

It is provided under **Section 55 of Act 462** as follows:

A District Planning Authority may without prior notice, effect or carry out instant prohibition, abatement, alteration, ***removal or demolition of any unauthorised development carried out or being carried out that encroaches or will encroach upon a community right of space, or interferes or will interfere with the use of such space****." (Emphasis mine.)*

Act 462 mandates the 1st Defendant to, without any prior notice, remove or demolish any unauthorized structure or development that encroaches or will encroach the community's right of space or that will interfere with the use of such space, and this is the reason why developers, by law, are required to obtain building permits from their respective assemblies before undertaking any constructional work to forestall

the chaos and inconvenience that haphazard developments will visit upon our communities.

In undertaking the demolition exercise to remove walls which have obstructed access to the property of the Plaintiff, the 1st Defendant was only performing its statutory functions as mandated by **Act 462**, and to accede to the prayers of the 2nd Defendant to award special damages or any damages at all against the 1st Defendant will go against public policy as it has the potential to open the flood gates to all manner of demands being made on our various Assemblies by people who will flout the Assemblies' building regulations and turn around to make demands on the Assemblies for refunds or reimbursements if their unauthorized structures are pulled down.

This court finds the attitude of the 2nd Defendant in this whole enterprise very worrying. He who seeks equity must do equity, and he who comes to equity must come with clean hands. This court finds that it is the failure of the 2nd Defendant to comply with the terms and conditions of the Building Permit (**Exhibit "2"**) granted to her which has necessitated this suit in the first place. What is more worrisome is that after the 1st Defendant had demolished the offending walls, the 2nd Defendant, in total disregard to the authority of the 1st Defendant to ensure orderly development within its jurisdiction, reconstructed the same offending walls, which was eventually demolished by the 1st Defendant. 2nd Defendant now turns round to demand that the 1st Defendant reimburse her for the expenses she incurred by disrespecting the 1st Defendant's authority to ensure orderly development. This court cannot, by any stretch of imagination, condone such blatant and mischievous attitude as exhibited by the 2nd Defendant towards the 1st Defendant.

In the circumstances, all the reliefs in the counterclaim of the 2nd Defendant will fail as this court makes a determination that if the 2nd Defendant incurred any losses or suffered any damage, it could best be described as self-inflicted, without any role being played in it by the 1st Defendant. The 2nd Defendant is also not entitled to any injunction as the 1st Defendant, being a statutory body, cannot be injuncted in the

discharge of its official duties. For it is trite law that the grant of an injunction resulting in an illegality cannot stand. See the case of The Republic v. High Court (Fast Track), Accra; ex parte National Lottery Authority (Ghana Lottery Operators Association and Ors. – Interested Parties) [2009] SCGLR 390 at 402 where the court stated as follows:

> *"Furthermore, an interlocutory injunction is an equitable remedy and it is unimaginable that a court of equity would allow its effect to permit a party to perform an illegal act and to shield the party from the consequences of the breach of statute. Even a contract to perform an illegal act will be declared void by the courts. We do not see how the same courts can find their way clear to permit, by injunction, the performance of acts prohibited by an Act of Parliament which has been declared by this court to be constitutional."*

In effect, granting an injunction against the 1st Defendant from taking any action against the 2nd Defendant penchant for flouting the building regulations of the 1st Defendant will be tantamount to this court acquiescing illegality. In the circumstances, the counterclaim of the 2nd Defendant is refused in its entirety.

CONCLUSION:

Having assessed the totality of the evidence adduced before me at this trial, it is evidently clear that the Plaintiff's action must succeed. Even though it was the evidence of the Plaintiff that that the 2nd Defendant has since rebuilt her wall in conformity with the 1st Defendant's zoning and layout and in the circumstances acquiesced to the new situation, and consequently any issue between the plaintiff and the 2nd Defendant in this suit has become moot, this court is of the opinion that leaving the grant of the reliefs of the Plaintiff hanging on the assumption that the 2nd Defendant will comply with the zoning scheme of the 1st Defendant will not serve any useful purpose considering the past activities of the 2nd Defendant regarding access to the Plaintiff's property. In the circumstances, the reliefs of the Plaintiff are granted as follows:

i) It is hereby declared that the Plaintiff is entitled to access to her house in conformity with the North Oyarifa Residential Planning Scheme of the 1st Defendant.

ii) The 1st Defendant is hereby ordered to create an access to the Plaintiff's property in conformity with the 1st Defendant's North Oyarifa Residential Planning Scheme.

iii) An order of perpetual injunction is hereby granted against the 2nd Defendant restraining her, either by herself, her agents, privies, assigns, workmen, from obstructing the 1st Defendant in its legal duty to create an access road to the Plaintiff's property.

In the peculiar circumstances of this case, there will be no order as to cost.

(SGD)

WILLIAM APPIAH TWUMASI (J)

COUNSEL:

EDWARD ANOKYE FOR THE PLAINTIFF

MIRANDA BANNERMAN-QUARTEY HOLDING BRIEF FOR ANDREW DANIELS FOR THE 2ND DEFENDANT

NO LEGAL REPRESENTATION FOR THE 1ST DEFENDANT