IN THE SUPERIOR COURT OF JUDICATURE IN THE COMMERCIAL DIVISION (COURT 1), OF THE HIGH COURT OF JUSTICE ACCRA HELD ON WEDNESDAY THE 10TH DAY OF APRIL, 2024

BEFORE HER LADYSHIP, JUSTICE SHEILA MINTA

SUIT NO. CM/BFS/0881/2021

KAA LAW - PLAINTIFF

VRS.

BANK OF GHANA - DEFENDANT

JUDGMENT

INTRODUCTION

1. This case is a Solicitor-Client relationship contract case for recovery of fees and is essentially governed by the ***Legal Profession (Professional Conduct & Etiquette) Rules***. The Plaintiff a firm of legal Practitioners and Consultants who filed this suit against the Defendant, the Central Bank of Ghana, the Defendant herein sets out its claim for loss of fees/commission for work done. According to the Plaintiff, it was engaged by the Defendant to find for it a land for construction of a new head office. The period of the Plaintiff's alleged relationship with the Defendant spans between 2014 and 2021 when the last correspondence was sent to the Defendant. The ***Legal Profession Etiquette Rules*** that have been at play have been ***L.I. 613 of 1969*** and ***L.I. 2423 of 2020.*** It claims that it offered a number of sites to the Defendant including the SIC Ridge property which the Defendant has since acquired but

refused to pay the Plaintiff its fees and by its amended Writ of Summons claimed the following reliefs:-

a) An order for the payment of an amount of US$1,244,000 for the loss of commission.
b) Interest on the amount stated in (a) at commercial bank rate with effect from January, 2019 till date of final.
c) Cost.
d) Any other relief.

In the Alternative

a) Special Damages of US$1,244,000 for the loss of commission/fees in respect of the land purchase transaction on the disputed land at Ridge, Accra.
b) Interest on the amount determined in (a) above at commercial bank rate with effect from January, 2019 till date of final payment.
c) Cost.
d) Any other relief.

2. The Defendant in its defence denied owing the Plaintiff as by the Defendants contention it did not directly engage Plaintiff for the acquisition of the Ridge Property which is under construction for its new office. According to the Defendant the said property was acquired through compulsory acquisition by the State and per the advice of Lands Commission the purchase price was paid into an escrow account pending the resolution of other matters.

3. Before setting out the case of the respective parties, I hasten to state that the reliefs sought by the law firm for providing legal service cannot be commission but fees and the claim must be for payment of fees for work done for which a bill has been raised and unpaid but, not for loss of fees as if the Defendant had prevented the

Plaintiff from getting a business for which reason it lost fees. It is a matter so elementary in legal profession services that even where there exists a professional-client relationship, a client can terminate a lawyer's representation of the client at any time. Unfortunately, there is no indication whether the Plaintiff was engaged by the Defendant as a Finder or Conveyancer of plot for which a fee was agreed to be paid.

THE PLAINTIFF'S CASE

4. According to the Plaintiff, the Defendant made some requests through some of Defendant's officers towards the quest to help search for and secure land in a prime location in Accra for the development of its ultramodern office building. The Plaintiff averred that this engagement towards the acquisition of the land for the said purpose was initiated sometime in 2014 and continued till 2018 which period saw various engagements and activities between the parties. It is the story of the Plaintiff that during these four (4) years its staff devoted their time and resources towards the search and undertook due diligence on various lands in different locations for possible acquisition by the Defendant. That various parcels of land were identified and shown to the Defendant by the Plaintiff for inspection and analysis including some properties near Airport (37 Hospital, Total Petroleum near 37 Hospital North Legon, Kanda, Ridge and around Kempinski Hotel.

5. The Plaintiff stated that during the course of this engagement various meetings were held between staff of both parties and whenever a property was identified and shown the Defendant and same not approved by Defendant, they urged Plaintiff to continue their search for an appropriate one. The Plaintiff tendered **Exhibit "B"** (letter from the Defendant dated 29th September, 2014 to the Plaintiff).

It also tendered **Exhibit "C"** being Plaintiff's letter dated 7th October, 2014 to Managing Director of Total Petroleum Ghana in which a request was being made to them to create access to a site near the said station for use by the Defendant. And in response to this request the Plaintiff attached **Exhibit "D"** dated 12th November, 2014 which is a letter from Total Petroleum to Plaintiff declining the request made in **Exhibit "C"**. The Plaintiff further attached **Exhibit "E"** (letter dated 3rd October, 2014 from Plaintiff to the Defendant in respect of a 7 acre land at Airport (37) for the possible acquisition by the Defendant. The Defendant also responded to the said letter in **Exhibit "F"** dated 3rd October, 2014. In respect of some 10 acres of land near Kempinski Hotel, the Plaintiff tendered **Exhibit "G"** dated 1st October, 2018 which is a letter from the Defendant to the Plaintiff.

6. The Plaintiff further stated that having persistently upon the instructions of the Defendant looked for a suitable property for a continued period of four (4) good years for the Defendant, it found it strange for the bank to now purport to withdraw its interest in purchasing *"Plaintiff's client's land"* and tendered **Exhibit "H"** dated 14th December, 2018 being the Defendant's letter to Plaintiff. The Plaintiff's story is that the Defendant had subsequently passed behind the Plaintiff to acquire in 2020 the parcel of land Plaintiff had identified and introduced to the Defendant in the past which was a 6.22 acre land at Ridge, owned by the State Insurance Company (SIC). That the Defendant failed to involve the Plaintiff or give notice of acquisition of one of the properties Plaintiff had identified in the past. According to the Plaintiff this very 6.22 acre Ridge property is one of the properties it introduced to the Plaintiff for which joint meetings were held with the parties and more information furnished to Defendant by Plaintiff. The Plaintiff tendered **Exhibit "J" Series** being letters from SIC Insurance Company to Allianz Mart dated 17th May, 2016 and 15th July, 2016 with **Exhibit "J2"** which is the site plan of the said property.

7. By the Plaintiff's testimony it contacted Allianz Mart some time ago when it had information that Allianz Mart had been given the mandate to sell SIC's 6.22 acre Ridge property which said information was passed on to the Defendant. Plaintiff submitted that it received leads in the nature of **Exhibit "J" Series** from Allianz Mart for onward submission to the Defendant which said lead enabled them to subsequently acquire the said property, not from Allianz Mart nor from SIC. According to Plaintiff upon noticing that the Defendant had gone behind the Plaintiff and Allianz Mart to buy the property without their involvement, the Plaintiff wrote a letter to the Defendant demanding fees or commission from it per **Exhibit "K"** (letter dated 8th July, 2018) and the Defendant's response is contained in **Exhibit "L" Series** in which the bank denies owing the Plaintiff. These happenings led to the Plaintiff initiating this action against the Defendant for the reliefs endorsed on its Writ of Summons.

THE DEFENDANT'S CASE

8. The Defendant averred in its defence that it notified the Lands Commission and other land valuation firms that it was seeking to acquire land in a prime location in Accra for the construction of its head office and tendered **Exhibit "1"**(application letter of Defendant to Lands Commission for a parcel of land dated 3rd June 2014). Per the Defendant's **Exhibits "2A", "5", "5B", "5C"** and **"5D"** the Defendant had dealings with other institutions including Seguconsut Ltd and SIC among others towards the acquisition of a property for the construction of its Head Office. The Defendant posited also that it received various offers from Callister Ghana Limited, Good Law Ventures Limited and Dream Realty. **Exhibit "2B"** is a letter dated 26th August, 2014 by Defendant to Goodland Ventures Limited in respect of an offer for the sale of parcel of land at Afienya and Asutsuare. **Exhibit "3"** and **"4B"** are also

letters of the Defendant to SIC Insurance (dated 27th February, 2015 and 8th April, 2015) for the acquisition of the Ridge property and **Exhibits "4A"** and **"4C"** being SIC's response to Defendant's letter dated 27th February, 2015 and 20th April, 2015 respectively. None of these was done through the Plaintiff who is alleging that it had been appointed by the Defendant as its Solicitors for this purpose.

9. According to the Defendant, the Plaintiff also having come by this information wrote letters claiming to be acting on the instruction of its client(s), offered various parcels of land situate at 37 Military Hospital area, Independence Avenue, Kanda and Ridge for Defendant to acquire. That the Plaintiff kept offering land on behalf of its clients to the Defendant but none was found suitable. The Defendant also tendered **Exhibit "6A"** being the Plaintiff's letter to the Defendant with date of receipt 10th June, 2016 by the Defendant and another of Plaintiff's letter to it marked **Exhibit "6B**" dated 5th March, 2018 both in respect of the Ridge property. The Defendant's argument is that prior to the offer of the Ridge property to the Defendant by the Plaintiff on behalf of its clients, Defendant had previously identified the said parcel of land as far back as 2012 and had engaged SIC in the past towards its acquisition and at any rate, the Plaintiff was acting on behalf of its client in its dealings with the Defendant regarding the said Ridge properties.

10. The Defendant in further support of its case averred that the said Ridge property was compulsorily acquired by the State through an Executive Instrument (EI 304) and that subsequent to the compulsory acquisition of the said land by the State, the Lands Commission informed Defendant that the Receiver of Ivory Finance Company (now CDH in Receivership) had notified it of the interest of CDH in the said land. That it was brought to its attention that CDH had obtained Consent Judgment against SIC and the land had been attached in favour of CDH-(In

Receivership). Lands Commission therefore directed the Defendant to pay the approved compensation into an escrow account pending the resolution of all matters relating to the Ridge land. That per the order of the High Court dated 24th March, 2020 the said property was released from attachment and tendered **Exhibit "11"** (ruling of the High Court). The Defendant further tendered a letter from the Lands Commission to Defendant dated 27th April, 2021 on the approval of compensation which is marked in these proceedings as **Exhibit "10"**.

11. The Defendant's defence in the nutshell is that it never engaged the Plaintiff to offer the said legal services being alleged by it and there has never been a Lawyer-Client relationship between the parties in respect to the Ridge property that entitled the Plaintiff to commission, fees or compensation as is being claimed.

BURDEN OF PROOF

12. There being no counterclaim in this suit, the burden of proof is on the Plaintiff in this Solicitor-Client relationship non-payment of bill case. The Plaintiff by law has a burden to prove its case in accordance by the standard required in civil actions being the balance of probabilities. On the law of evidential burden as stated in ***Takoradi Flour Mills vrs. Samir Fans [2005-2006] SCGLR 882***, the Supreme Court held that:-

"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 NRCD 323. 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".

13. The position of the law is that the person who asserts assumes the burden of proof. See ***Faibi vrs. State Hotels Corporation (1968) GLR 471***. In the case of ***Okudzeto Ablakwa (No. 2) vrs. Attorney General & Another [2012] 2 SCLR 845*** the Supreme Court held at p. 867 that:

"If a person goes to court to make an allegation, the onus is on him to lead evidence to prove that allegation, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in court if the case is based on an allegation which he fails to prove or establish. This rule is further buttressed by section 17 (b) which, emphasizes on the party on whom lies the duty to start leading evidence…"

14. The Plaintiff as a law firm would have to establish the following:-

1. The Solicitor-Client relationship with the Engagement Letter showing the scope of work and fees charged.
2. In accordance with the rule 16 (i) of the ***Legal Profession Etiquette Rules*** whether the fee is fixed or contingent and 17(3) requiring the Contingency Fee Agreement (CFA) to be in writing, signed by the client, and 16(j) whether the fee falls within the approves Scale of Fees.
3. The Completion of work or part thereof agreed upon in the Engagement Letter and the Bill/Invoice for the UD$1,244,000 served on the Defendant prior to the commencement of this action.

ISSUES FOR TRIAL

15. At the close of pleadings, the Pre-Trial Judge and both Counsel on 6th July 2022 set down the following issues for trial.

1. Whether or not Plaintiff rendered services to Defendant in respect of the disputed land acquisition at Ridge, Accra.
2. Whether or not Plaintiff notified Defendant of fee/commission payments in respect of the services rendered by Plaintiff to Defendant in respect of the land acquisition at Ridge Accra.
3. Whether or not Defendant contracted the Plaintiff as its Lawyer for Defendant's acquisition of the land at Ridge.
4. Whether or not Plaintiff has the capacity to prosecute the instant Suit.

16. The Court notes that the Plaintiff discussed some 8 issues some of which included those specifically set down for trial by the Pre-Trial judge. It is my considered opinion that the discussions of the four (4) issues set up are important and if there are any others I find germane that will help effectively determine this suit I will do so. See ***Fidelity Investment Advisors vrs. Aboagye Atta [2003-2004] 2 GLR 188***, where the Court held that what issues are relevant and essential was a matter of law entirely for the judge to determine the case. I will begin my discussions with issue 4, which is on capacity. In the case of ***Ama Serwaa vrs. Adu Gyamfi & Anor. [2018] 124 G.M.J. 36 @ 54*** cited by Counsel for the Plaintiff, the Court of Appeal stated:-

"Where there has been a full trial, capacity will still have to be determined before the Plaintiff is heard on the merits. The practice in such a situation is to evaluate the evidence. If the determination is that there is want of capacity, the Court proceeds no further, and the Plaintiff's action is dismissed. If on the other hand, the decision is that the Plaintiff has capacity, the Court proceeds to review the entire evidence to determine the Plaintiff's case on the merits."

Discussions of other issues will therefore become necessary after resolving this issue.

ISSUE 4

WHETHER OR NOT PLAINTIFF HAS THE CAPACITY TO PROSECUTE THE INSTANT SUIT

17. The Plaintiff's capacity to institute the present action against the Defendant has been challenged by the Defendant on the grounds that at all material times the Plaintiff had indicated to Defendant that it was acting on behalf of its client and therefore there was no Lawyer-Client relationship between the parties and that the Defendant never engaged Plaintiff in respect of the Ridge property. Capacity is fundamental to the success or otherwise of a case as same goes to the root of the matter hence its discussion first. Both parties took pains to discuss the issue of capacity by referring the court to decisions of our courts on same.

18. It is the Defendant's submission that this is a personal action by the Plaintiff and it has no such capacity since by the Defendant's understanding as per Plaintiff's own correspondence, Defendant cannot be construed to be **its client** in respect of the property in issue. And since it is not its client the said action against the Defendant is unwarranted as same ought to be targeted at the Plaintiff's client for which this offer was made to the Defendant. At all material times and in the correspondence between the parties, the Plaintiff for instance was acting for another entity as its clients, relying on **Exhibits "6A"** and **"6B"** excerpts of which stated thus;

"We wish to inform you that our client has a parcel of land at Ridge, Accra next to Ridge Towers Building suitable for office development on offer to anyone interested.

6.12 acres at Ridge, @ US$4 Million/acre.

We wish to respectively inquire if the Bank will be interested in any of them…"

19. The Defendant also posited that by the ***Legal Profession Act*** the Plaintiff was required to serve a bill of its fees on the Defendant before proceeding to institute this action and this it failed to do. What the Plaintiff rather did was to write **Exhibit "K"** dated 8th July, 2021 to Plaintiff for the payment of fees for services rendered to the Defendant on the acquisition of land at Ridge Accra. In the said letter the Plaintiff stated among others thus:-

"Based on the value of the land at US$4 million per acre at the time same was offered to the Bank in October, 2016, our fees/commission on pro rata basis would be equivalent of US$746,400.

We therefore request the Bank to pay to our firm an amount of US$746,400 or its Ghana cedi equivalent as our fees/compensation for work done for the Bank in the acquisition of the said land."

20. The Defendant is further inviting to Court to hold that no proper bill in accordance with the **Section 30 of the Legal Profession Act, 1960 (Act 32)** has been submitted to it and no wonder in the course of proceedings before the Court the Plaintiff changed its so-called bill from US$746,400 to US$1,244,000. The Defendant cited the Supreme Court decision per Dotse JSC (as he then was) in the case of ***T. T. Nartey vrs. Godwin Gati [2010] DLSC 4143*** stated:-

"In my opinion, the request for lawyers (under Act 32) to give a written demand for their fees one month before commencement of a suit is mounted in the law courts to demand their legal fees pursuant to Section 30 or Act 32, is only regulatory of the affairs of Lawyers and not discriminatory. The rationale for this to me is not only sound but in line with the ethics of the legal profession. This is further to ensure that the client of a lawyer is notified before the commencement of the suit at the instance of the lawyer that so much is either in arrears or due in the nature of legal fees. Apart from being regulatory of the Legal Profession,

Section 30 of Act 32 must be seen also as preventing situations where the client is taken by surprise. In any case the right of the Lawyer to go to court has never been taken away."

21. It appears that the Defendant's contention on capacity lacks clarity. So much ink had been spilled on conflict of interest and accrual of cause of action, but not on capacity. In one breath it seems the Defendant raises capacity to mean that the Plaintiff lacks locus standi and in other instances, the contention is raised to mean the Plaintiff lacks the legal personality to maintain a suit. In my respective view, the Defendant's contention on capacity in either sense is misconceived. A law firm has the capacity to prosecute or defend actions in respect of any transaction it entered into or sue to recover its fees for services rendered. See ***Cipion Capital (UK) vrs. Atuguba & Associates Civil Appeal No. H1/178/2021 dated 11th December, 2021 C.A*** and ***Tamakloe vrs Gihoc Distilleries [2018-19] 11 GLR 889***.

22. This Court is of the view also that per **Exhibit "A"** the Plaintiff as an incorporated law firm has the capacity to sue and would have locus standi for its fees arising out of Engagement Letter between the law firm and its client. The Defendant's contention of Plaintiff's lack of capacity fails and this issue is resolved in the Plaintiff's favour. Having dismissed the contention of lack of capacity, I now proceed to review the entire evidence to determine the Plaintiff's case on the merits.

ISSUE 3

WHETHER OR NOT DEFENDANT CONTRACTED THE PLAINTIFF AS ITS LAWYER FOR DEFENDANT'S ACQUISITION OF THE LAND AT RIDGE.

23. Lawyer-Client relationship between a law firm and the Central Bank of Ghana by all ethical standards ought to be clearly stated in an Engagement Letter. An Engagement Letter is a contract between the parties which sets out details of scope of work and consideration to be paid. This is in line with Regulation 16(3) of the ***Legal Profession (Professional Conduct and Etiquette) Rules, 2020 L.I. 2423*** which state thus:-

"A lawyer shall communicate in writing, the scope of the representation and the basis or rate of the fees and expenses for which the client is responsible to the client, before or within a reasonable time after commencing the representation."

24. This position has been affirmed by the Supreme Court in ***Tamakloe & Partners Unlimited vrs Ghihoc Distilleries Co. Limited [2019] JELR 67475*** cited by the Counsel for the Defendant as follows:-

"A law firm or lawyer who fails to negotiate and agree on the legal fees with the client before commencement of the service or within a reasonable time after the commencement (if the instruction is an emergency one in which legal fees could not have been agreed before the commencement) of the service is not entitled to recover any fees if the client disputes the fees invoiced it subsequently. … When instructed by the client, a lawyer or law firm is required to discuss, negotiate and agree with the client the fees payable within the range provided in the Scale of Fees and then execute a written retainer agreement, engagement letter or fee-paying agreement detailing the scope of legal services to be performed, the fees and expenses to be charged and the possibility of a refresher fees if the assignment goes beyond the anticipated time frame for such cases."

25. From the evidence before the Court the Defendant and Plaintiff have had some correspondence between them in respect of various pieces of land but not in the capacity of Defendant's lawyer as asserted by the Plaintiff. Some of the

correspondence had shown the Plaintiff acting for some of its clients and others being communication on what may pique the Defendant's interest. Indeed, Plaintiff's Exhibits tendered are all correspondence that suggest that the Plaintiff offered properties on behalf of its client to Defendant to accept and which were not suitable at one time or the other. The Ridge property was one of such lands the Plaintiff offered on behalf of its client to the Defendant. Per rule 22 of the ***Legal Professions (Professional Conduct and Etiquette) Rules,*** a lawyer or a firm of a lawyer shall not act as lawyer for two parties in the same transaction and shall not act for both vendor and purchaser. The Plaintiff's case is that even though the Ridge property was suitable for the Defendant, it feigned lack of interest in the said land and went behind the Plaintiff to acquire same. Was there an agreement between the parties showing the scope of work and fees signed by both parties for the Plaintiff to find the Defendant a suitable property and what were the arrangements between them? There is no indication whether the law firm was engaged to be a mere finder of sites or a conveyancer for the Defendant, whether the Plaintiff was being appointed on Contingent Fee Arrangement or Fixed Fee Arrangement. Per rule 17(3) of the Legal Profession (Professional Conduct and Etiquette) Rules, Contingent Fee Arrangement ought to be in writing and signed by the Client. The Plaintiff has not been able to prove this was met.

26. The Plaintiff says the Court should construe the conduct of the parties and the correspondence between them to mean a contract to find a suitable land to purchase. The Plaintiff per its **Exhibit "B"** which is a letter from the Bank requesting Plaintiff to explore the possibility of acquiring some other land at 37 Airport is inviting to Court to interpret same as a contract to find land for the Defendant. This letter was for a specific property and dated 29th September, 2014. Meanwhile even in that letter the Defendant requested the Plaintiff to provide it with cost and legal details for consideration and in **Exhibit "E**" (dated 3rd October, 2014) the Plaintiff

wrote to Defendant that "*the cost and legal charges shall be 15% of the price*" for the 7 acre land at Airport. Apart from the Bank acknowledging receipt of **Exhibit "E,"** no acceptance was communicated by the Defendant to the Plaintiff even on the 7 acre land at 37 offered it per the evidence before this Court. Defendant's witness under cross-examination stated as follows on 11th December, 2023;

> *"Q: I am suggesting to you that the Plaintiff got to know that the property was available for sale through strenuous efforts and searches made in response to the request from the Defendant to look for land for the Defendant to buy.*
>
> *A: The bank never made any request to the Plaintiff to acquire any land at Ridge. The Bank's only request to the Plaintiff was to explore the possibility of land acquisition is related to the Filing Station at 37.*
>
> *Q: In fact, the Defendant requested for copies of Exhibit "J" series which was given to the officers of Defendant who were dealing with the Plaintiff on behalf of the Defendant.*
>
> *A: The Bank as a corporate institution will deal with third parties through appropriate written correspondences. We refer to Exhibit "2B" where a company offered land to the Bank and the Bank wrote formally to the company. I am also referring to Exhibit "F" of the Plaintiff's Witness Statement, the Bank wrote formally to the Plaintiff. If the Bank required any document from the Plaintiff, the Bank would have written to the Plaintiff for such an important information that the Plaintiff is referring to."*

27. The Ridge property did not have any such arrangement with the parties. The following were recorded by the Court on 11th December, 2023 when Counsel for the Plaintiff during the cross-examination of the Defendant's witness on the interrogation on the contract for the Ridge property.

Q: I am referring to you that this contract I am referring to would be a contract of service and would be formed once a suitable property was presented to and accepted by the Bank.

A: It is exactly so, he is taking about offer and acceptance. So, once it is offered and accepted by the Bank, then a contract of service can be signed.

Q: I am suggesting to you that in the particular case of this transaction, the contract was not signed because Defendant never communicated back to Plaintiff that it has accepted the property.

A: Plaintiff offered a property from its clients and Defendant never accepted it.

Q: The property as has been shown in this Court was offered to the Defendant by Exhibits "6A" (dated 10th June, 2016) and "6B" (dated 5th March, 2018 and received by the Defendant on 7th March, 2018).

A: Yes, the Plaintiff made those offers to the Bank, but one wonders if it is the same land the Plaintiff is talking about. One is talking about a 6 acre leasehold land and the other is talking about 6.12 acres. Such discrepancies made it very difficult for one to take firm decisions. And before these letters, as we have referred in the earlier Exhibits (Exhibits 3, 4A, 4B and 4C) the Bank was already in discussion to acquire same property from SIC.

28. Was the Plaintiff engaged by the Defendant as an Agent to find the Ridge property? There is evidence on record that the Defendant had engaged SIC in respect of the same Ridge property way back from 2012 even before Plaintiff's letters to the Bank on same. And in response to this assertion the Plaintiff's claim that, that engagement was only in respect of an attempt at swapping properties which said

arrangement made between SIC and Defendant sometime in 2014 failed and the property put back on the market.

29. In most of Plaintiff's correspondence it wrote that it was offering same on behalf of its client. Can the Plaintiff have a client for whom it acts and also seek to represent Defendant for the identified properties and collect fees from both sides? This would be conflicting, a conduct prohibited by the ***Legal Profession (Professional Conduct and Etiquette) Rules, 2020 L.I. 2423.*** Rule 20 (2) stated that a lawyer shall not act in a matter when there is likely to be a conflicting interest unless after disclosure adequate to make an informed decision, the client or prospective client CONSENTS. There is no indication that duty of disclosure was discharged and the Defendant's consent obtained therefrom. The breach of this ethical standard will not be endorsed by the Court more especially when there is lack of evidence of Letters of Engagement between the law firm and the Defendant. The Plaintiff submitted that Allianz Mart (PW1's company) was acting for SIC whiles Plaintiff acted for Defendant which obligated Defendant to pay fees to the Plaintiff. Why the Plaintiff wrote to Defendant that it was acting on behalf of its client in respect of the Ridge property is still yet to be answered.

30. The burden of proof of contractual arrangement for legal services between the parties in respect of the Ridge property lies on the Plaintiff and to discharge this burden these questions ought to be answered with documentary evidence lack of which would make it difficult for the Court to resolve this issue in its favour. Not only is the Defendant contending that there was no Solicitor-Client relationship between the Plaintiff and the Defendant but that had there even been one, the Solicitor's services could be terminated by the client. There is no exclusivity agreement between a Client and Solicitor. When such event of termination of legal services occurs, the Solicitor's task is to look at the scope of work in the Engagement

Letter and determine how much work has been done to raise a bill therefrom. In the absence of an Engagement Letter and a bill raised out of it, a cause of action would not have accrued. The provisions of the ***Legal Profession Act, 1960 (Act 32)*** provides as follows:-

"*A lawyer shall not be entitled to commence any suit for the recovery of any fees for any business done by him as a barrister or solicitor until the expiration of one month after he has served on the party to be charged a bill of those fees, the bill either being signed by the lawyer (or in the case of a partnership by any of the partners, either in his own name or in the name of the partnership) or being enclosed in or accompanied by a letter signed referring to the bill."*

31. A bill for legal fees does not get changed and notice of the change given the client in Court during proceedings. Even the language contained in **Exhibit "K"** cannot be said to be in consonance with Section 30 of Act 32. The Defendant's case is that it couldn't have been the Plaintiff's client no wonder no proper bill was served it. And that having failed to comply with what the Act 32 mandated Lawyers to do, the suit against the Defendant is incompetent and same ought to be dismissed for failure to comply with Act 32. May I refer once more to the quote from ***Tamakloe & Partners Unlimited vrs Gihoc Distilleries Co. Ltd [supra]:-***

"A law firm or lawyer who fails to negotiate and agree on the legal fees with the client before commencement of the service or within a reasonable time after the commencement of the service or within a reasonable time after the commencement (if the instruction is emergency one in which legal fees could not have been agreed before the commencement) of the service ***is not entitled to recover any fees if the client disputes the fees invoiced it subsequently.****"*

32. If Plaintiff is selling land for his client why fees should be taken from the Defendant. The Plaintiff has failed to discharge its burden of proof regarding the existence of a Solicitor-Client relationship, an Engagement Letter, the generation of a bill borne out of the Engagement Letter, work done regarding the SIC land at Ridge (**Exhibits "6A"** and **"6B"**) for same to lead to the accrual of cause of action for a fee of US$1,244,000. This issue is resolved in favour of the Defendant.

ISSUE 1

WHETHER OR NOT PLAINTIFF RENDERED SERVICES TO DEFENDANT IN RESPECT OF THE DISPUTED LAND ACQUISITION AT RIDGE, ACCRA

33. Per the Plaintiff's own **Exhibit "6B"** it was rendering services to its client who was the owner of the said parcel of land and not the Defendant. Indeed, in the said letter it was enquiring from the Defendant whether it was interested in the property. From the analysis above this issue cannot also be resolved in favour of the Plaintiff.

ISSUE 2

WHETHER OR NOT PLAINTIFF NOTIFIED DEFENDANT OF FEE/COMMISSION PAYMENTS IN RESPECT OF THE SERVICES RENDERED BY PLAINTIFF TO DEFENDANT IN RESPECT OF THE LAND ACQUISITION AT RIDGE ACCRA.

From the above analysis the Plaintiff cannot be entitled to any commission or fee payment from the Defendant who was not its client.

PLAINTIFF'S ISSUE 8

WHETHER OF NOT PLAINTIFF IS ENTITLED TO BE PAID FEES ON QUANTUM MERUIT

34. Quantum meruit payments is for parties who have a contract that is partly performed, who equity may want to compensate the person who had partly performed the contract. It is not a principle for a stranger to pay another person who is providing services for his client. I find it very strange for the Plaintiff to be asking the Court to consider that relief.

CONCLULSION

35. The Plaintiff does not lack capacity as a legal person to sue. However, this claim for fees by the Plaintiff borne out of Solicitor-Client relationship imposes the burden of proof on the Plaintiff. As a Solicitor-Client claim, same is governed by the Legal Profession Act (Act 32). This Act imposes on the Plaintiff the need to show an Engagement Letter containing the Scope of Work and Fees; proof of work actually performed and a bill raised for it for the payment of a specific sum in accordance with the terms of engagement. The Plaintiff was unable to discharge this burden as regards the nature of the relationship it had with the Defendant, the sum owed by the Defendant as per Invoice for Service (i.e. Bill) and who it was working for regarding the SIC plot measuring 6.22 acre when he wrote to the Defendant regarding its claims against the Defendant to warrant judgment regarding that land.

36. Plaintiff's claim is dismissed with cost of Fifty Thousand Ghana Cedis (GHS50,000.00) in favour of the Defendant against the Plaintiff.

(SGD.)

SHEILA MINTA, J.

JUSTICE OF THE HIGH COURT

REPRESENTATIONS:

PARTIES:

PLAINTIFF REPRESENTED BY DR. SHADRACK ASARE

DEFENDANT REPRESENTED BY SETH ELTON AWUKU

***COUNSEL*:**

K. AMOFA AGYEMANG, ESQ., WITH ERNEST OBENG AMOAKO, ESQ., AND KINGSLEY YAW ANSAH, ESQ., FOR PLAINTIFF - PRESENT

FRANCIS KWAME OFFIN, ESQ., WITH FAISAL ZIBLIM, ESQ., AND NANA PRAH OWUSU-SEKYERE, ESQ., HOLDING BRIEF FOR MAAME SARPONG, ESQ., FOR DEFENDANT – PRESENT

AUTHORITIES:

1. *TAKORADI FLOUR MILLS VRS. SAMIR FANS [2005-2006] SCGLR 882,*
2. *FAIBI VRS. STATE HOTELS CORPORATION (1968) GLR 471*
3. *OKUDZETO ABLAKWA (NO. 2) VRS. ATTORNEY GENERAL & ANOTHER [2012] 2 SCLR 845*
4. *FIDELITY INVESTMENT ADVISORS VRS. ABOAGYE ATTA [2003-2004] 2 GLR 188,*
5. *AMA SERWAA VRS. ADU GYAMFI & ANOR. [2018] 124 G.M.J. 36 @ 54*
6. *TAMAKLOE & PARTNERS UNLIMITED VRS GHIHOC DISTILLERIES CO. LIMITED [2019] JELR 67475*
7. *T. T. NARTEY VRS. GODWIN GATI [2010] DLSC 4143*
8. *CIPION CAPITAL (UK) VRS. ATUGUBA & ASSOCIATES CIVIL APPEAL NO. H1/178/2021 DATED 11TH DECEMBER, 2021 C.A*
9. *TAMAKLOE VRS GIHOC DISTILLERIES [2018-19] 11 GLR 889*
10. *LEGAL PROFESSION (PROFESSIONAL CONDUCT AND ETIQUETTE) RULES, 2020 L.I. 2423*
11. *LEGAL PROFESSION ACT, 1960 (ACT 32)*