

**IN THE SUPERIOR COURT OF JUDICATURE**  
**IN THE SUPREME COURT**  
**ACCRA A.D. 2016**

**CORAM: MRS.AKOTO-BAMFO (MRS) JSC. SITTING AS  
A SINGLE JUSTICE OF THE SUPREME COURT**

**CIVIL MOTION**  
**NO.J8/66/2016**

**19<sup>TH</sup> APRIL 2016**

**JOHN HOLDBROOK YANKAH - PLAINTIFF/APPELLANT/**

**RESPONDENT**

**VS.**

**1. ALHAJI MAMA**  
**2. NARTEY**  
**3. IKE ANTWI**

**- 3<sup>RD</sup> DEFENDANT/RESPONDENT/  
APPELLANT**

**CONSENT JUDGMENT**

These terms of settlement filed, are hereby adopted as a consent judgment of the suit between the parties,:

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**TERMS OF SETTLEMENT**

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**A:**

- i. The Plaintiff/Appellant/Respondent's (hereinafter called **'the Plaintiff'**) instituted an action on 4<sup>th</sup> April, 2007 in the High Court with Suit No. BL 365/2007 claiming the following reliefs:
  - a. A declaration of title to all that piece and parcel of land situate at Roman Ridge, Accra and bounded on the North East by Lessor's land measuring 85.3 feet more or less, on the South West by Lessor's land measuring 85.1 feet more or less, on the North West by Lessor's land measuring 106.4 feet more or less and on the South East by Lessor's land measuring 106.8 feet more or less and covering an approximate area of 0.21 acre and which piece of land is more particularly delineated on the plan attached to the indenture (hereinafter called **'the disputed property'**).
  - b. Recovery of possession.
  - c. Perpetual injunction to restrain Defendants, whether by themselves, assigns or agents from trespassing on the disputed property.
  - d. Damages for trespass.
  - e. Costs.
- ii. Pursuant to a Motion Ex parte for Judgment in default of Appearance, the Plaintiff obtained judgment in default of Appearance on 4<sup>th</sup> May, 2007 granted by Her Ladyship Justice Felicity Amoah. However, pursuant to an Application filed on behalf of the 3<sup>rd</sup> Defendant/Respondent/Appellant (hereinafter referred to as **'the 3<sup>rd</sup> Defendant'**) the said default judgment was set aside on 26<sup>th</sup> November, 2007 and leave to file late appearance and statement of defence was granted by Her Ladyship Justice Felicity Amoah.
- iii. That on 23<sup>rd</sup> January, 2008, the 3<sup>rd</sup> Defendant entered Appearance and filed a Statement of Defence to the Plaintiff's action disputing the Plaintiff's claims.

- iv. The Plaintiff has erected structures on the disputed property being a three-room servant's quarters, a gate house and a fence wall while the 3<sup>rd</sup> Defendant is the developer of the uncompleted storey building on the disputed property.
- v. By an order dated 11<sup>th</sup> July, 2008, made by the Chief Justice, the action was transferred to the Fast Track Division of the High with Suit No. **AL 226/2008** and after trial of the action, the Honourable Court presided over by His Lordship, Justice K. A. Ofori-Atta delivered the Judgment of the Court on 25<sup>th</sup> January, 2012 in favour of the 3<sup>rd</sup> Defendant. The 3<sup>rd</sup> Defendant was to attorn tenancy to the Lands Commission.
- vi. The Plaintiff, aggrieved by the judgment of the High Court appealed to the Court of Appeal. The Court of Appeal in a Judgment dated 19<sup>th</sup> June, 2014 reversed the judgment of the High Court, Fast Track Division, Accra and proceeded to enter judgment for the Plaintiff by among others, making orders that the Plaintiff should attorn tenancy to the Lands Commission in respect of the disputed property.
- vii. The 3<sup>rd</sup> Defendant aggrieved by the judgment of the Court of Appeal filed a Notice of Appeal in respect of the said judgment to the Supreme Court.
- viii. Pursuant to the negotiations intended to achieve an amicable, full and final settlement of all the issues joined in the Appeal and all consequential matters the parties have agreed to put litigation on hold and to work towards the filing of Terms of Settlement (this Settlement) for adoption as consent judgment of the Supreme Court binding on the parties.
- ix. The 3<sup>rd</sup> Defendant has offered to procure a new plot of land directly adjacent the disputed property in Roman Ridge, Accra (hereinafter called '**the alternative Property**') and the Plaintiff has accepted to relinquish his claims over the disputed property in exchange for the alternative property.
- x. The 3<sup>rd</sup> Defendant has executed a Special Power of Attorney in favour of George Ofosuhene, which legal instrument places the said George Ofosuhene in the stead of the 3<sup>rd</sup> Defendant with the right to sue and be sued in his personal capacity

without further recourse to the 3<sup>rd</sup> Defendant. By means of this substitution, George Ofosuhene becomes the principal, in effect, with authority to do all or any of the following:

- a. To have discussions with Plaintiff and his Counsel with the aim of settling the matter and reach an agreement on any issue during the said discussion;
- b. To execute terms of settlement and all legal documents over the alternative property emanating from the said discussions with the Plaintiff and his Counsel;
- c. To secure the preparation and delivery of a Deed of Assignment over the Alternative property in the name of the Plaintiff;
- d. To accept an assignment of the unexpired term of the Lease over the disputed property from the Plaintiff;
- e. To effect all payment(s) or perform such other functions as are necessary under or in connection with this Settlement.
- f. To defend this settlement in his own name and personally bear the consequences of the outcome of any legal action emanating from the said terms of settlement
- g. To perform the obligations hereby agreed and to enjoy the rights so conferred by this Settlement in his own name.

**B: THE PARTIES NOW THEREFORE MUTUALLY AGREE AS FOLLOWS:**

1. That 3<sup>rd</sup> Defendant by his Attorney shall immediately after the execution of this Settlement enter into a contract with the vendor selling the alternative property and thereafter ensure the preparation and delivery of a Deed of Assignment of the said vendor's interest in the alternative property to the Plaintiff free from any encumbrances or competing claims whatsoever within thirty (30) days from the date of executing this Settlement.

2. The 3<sup>rd</sup> Defendant by his Attorney shall deliver to the Plaintiff the alternative property bare and without any existing structure thereon/and or the 3<sup>rd</sup> Defendant by his Attorney shall demolish all existing structures on the alternative land at his own cost and deliver the land bare within twenty-one (21) days from the date of executing this Settlement.
3. That in consideration of the alternative property being purchased for assignment to the Plaintiff, the Plaintiff has agreed to relinquish his claims over the disputed property by executing and delivering four copies of a Deed of Assignment transferring the unexpired term of the Lease to the Attorney together with all relevant title deeds and documents thereon and signing such document(s) as are necessary to effect the assignment within thirty (30) days from the date of executing this Settlement.
4. That the Attorney of the 3<sup>rd</sup> Defendant has agreed to pay the Plaintiff an amount of Twenty-five thousand United States Dollars (US\$25,000.00) or its Ghana Cedi equivalent at the forex rate on the day and date of execution of this Settlement in lieu of the structures the Plaintiff is forfeiting on the disputed property.
5. Both parties are executing this Settlement on the condition that the disputed property and the alternative property are not affected by any adverse claims and that any third party legally challenging or disputing the titles to be exchanged will be a vitiating factor entitling the affected party to resume proceedings in the Supreme Court.
6. Both parties agree to reimburse the other party on any amount that may have been reasonably expended on either of the property before a 3<sup>rd</sup> party legally challenges or disputes the titles to be exchanged.
7. Either party will be responsible for the payment of their legal expenses and the costs and expenses relating to the registration and perfection of the title documents to be exchanged under this Settlement.

**C. PROVIDED ALWAYS THAT:**

Either party performing all of their obligations under this Settlement shall each retain possession and quite enjoyment of their respective interests in the disputed Property and the alternative property without any interference or disturbance by the other.

**D. THE PARTIES FURTHER AGREE THAT:**

**1. *No Admission***

The Plaintiff agree that these terms shall not be taken or construed as admission of complicity and or liability or potential liability on the part of the 3<sup>rd</sup> Defendant in respect of the allegations in this case or any other pending matter between the parties but rather that such allegations or potential allegations have been expressly denied.

**2. *Non Disparagement***

The parties agree and undertake that they, their associates and representatives shall not disparage the other party, their associates, representatives and respective solicitors. For the purpose of this undertaking '*disparage*' includes without limitation, any public or private statement, comment or communication in any form, whether oral, written or electronic, that may be considered to be derogatory or detrimental to the good name or business reputation of, or otherwise reflect adversely on the parties, their representatives, their associates and respective solicitors thereof. The parties further agree that they will not in any way solicit such statements, comments or communication.

**3. *Warranties and Authority***

- a. The Plaintiff warrants and represent that he has not sold, transferred, assigned, encumbered or otherwise disposed of his interests in the disputed property, the subject matter of this Settlement or any part thereof

and that he has full legal authority to compromise and resolve the matters set out in these terms.

- b. Each party further warrants and represents that they have full rights, power, capacity and authority to execute, deliver and perform the terms and obligations herein and have entered into these terms with the advice of their respective legal advisors.

#### **4. *Indemnities***

In the event of any default by any of the parties, the defaulting party hereby indemnifies, and shall keep indemnified the other party, their associates, representatives and successors in title against all costs, damages, including reasonable legal expenses, incurred in all future actions, claims and proceedings in respect of that default.

#### **5. *Entire Terms and Agreement***

- a. These terms constitute the entire undertaking and agreement between the parties in relation to the subject matter of these terms, and fully supersedes any and all prior agreements, arrangements, representations or understanding (whether orally or in writing) between the parties pertaining to the subject matter of this Settlement.
- b. No oral understandings, representations, statements or promises contrary to the terms herein expressed exist. The parties represent and agree that they have carefully read and fully understand all the provisions of these terms, having discussed same among themselves and consulted their legal advisors, and that they are each voluntarily signing up to these terms of settlement after having received legal advice and that they do not and have not relied on in any way any representation or statement of any party outside of the Terms and information expressly set forth herein. The Parties also represent that each of them is a sophisticated party and that each is seeking a full, final and amicable resolution

of the dispute among them by entering into this Settlement.

**6. *Default Clause***

Where either Party defaults in the performance of any of the terms aforementioned:

- a. In respect of any/or all sums outstanding at the time of the default, the Plaintiff shall serve one (1) month notice on the Defendant demanding payment failing which the Plaintiff shall be entitled to repudiate this Settlement and to resume proceedings.
- b. In respect of the execution of the Assignments (in respect of both the disputed property in favour of the 3<sup>rd</sup> Defendant and the alternative property in favour of the Plaintiff), each party shall be entitled to specific performance or repudiation of this Settlement and resumption of proceedings.

**7. *Dispute Resolution***

- a. Any dispute, controversy or claim arising out of or relating to this Settlement, or the interpretation, breach, termination or validity hereof, shall be resolved first by a peaceful and amicable settlement by the parties and in the event that the parties fail to reach a settlement either party may make recourse to the law courts.
- b. Prior to the commencement of any action as provided in clause 7 (a) notice of the disagreement, default or breach generating the dispute, controversy or claim must have been given and the parties must have failed to resolve the disagreement or settle the dispute within thirty (30) days from the date of the notice.

**8. *Notice***

Any notices or other communication required or permitted to be given under these terms must be in writing and will be



deemed effective on the day when it is delivered to either party at their respective addresses or on the fifth (5<sup>th</sup>) business day after the day on which it is mailed by registered post or sent by courier or email, addressed as follows:

If to the Plaintiff, to:

HOUSE NO. 5 TUDU, ACCRA  
Email:.....

OR

If to the 3<sup>rd</sup> Defendant, to

OR

Email: .....

9. That this Settlement shall be filed and entered as consent judgment in this Suit.

DATED THIS 11<sup>TH</sup> DAY OF SEPTEMBER, 2015

Signed by the Plaintiff

\_\_\_\_\_  
**John Holdbrook Yankah**

\_(SGD)\_\_\_\_\_  
In the Presence of  
**Edward Sam Crabbe Esq.**  
Solicitor for the Plaintiff

**AND**

Signed by the 3<sup>rd</sup> Defendant

\_\_\_\_\_  
**Mr. Ike Antwi** (Acting through his  
Attorney **George Ofosuhene**)

\_\_\_\_\_(SGD)\_\_\_\_\_  
In the Presence of  
**Daniyal Abdul-Karim Esq.,**  
Solicitor for the 3<sup>rd</sup> Defendant

AND FOR SERVICE ON THE:

PLAINTIFF OR THEIR SOLICITOR, EDWARD SAM CRABBE, ESQ., OF  
CRABBE ROMANLEVI & ASSOCIATES, PLOT 73 SPINTEX ROAD,  
ADJACENT FIRST CAPITAL PLUS BANK, HEAD OFFICE, SPINTEX  
ROAD, ACCRA.

3<sup>RD</sup> DEFENDANT OR HIS SOLICITOR, DANIYAL ABDUL-KARIM ESQ., OF  
LEGAL INK, F 89/7, EMMAUS ROAD, LABONE, ACCRA

**V. AKOTO BAMFO (MRS)**  
**JUSTICE OF THE SUPREME COURT**

**COUNSEL:**

KINGSFORD DEBRAH APPEAR FOR PLAINTIFF/  
APPELLANT/RESPONDENT/ RESPONDENT  
DANIYAL ABDUL KARIM FOR 3<sup>RD</sup>  
DEFENDANT/RESPONDENT/APPELLANT/ APPLICANT.