IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE HELD AT CAPE COAST IN THE CENTRAL REGION ON WEDNESDAY THE 19TH DAY OF APRIL, 2023 BEFORE HIS LORDSHIP JUSTICE BERNARD BENTIL - HIGH COURT JUDGE

SUIT NO. E2/32/2018

PACIFIC OIL GHANA LIMITED - PLAINTIFF

VRS

ABDALLA MOHAMMED - DEFENDANT

JUDGMENT

The Plaintiff, per its further amended Writ of Summons and Statement of claim filed on 23rd December, 2020, claims against the Defendant the following reliefs:

a. A declaration that the Defendant has breached the agreement between him and the Plaintiff.
b. General damages for breach of the agreement.
c. An order for the recovery of the sum of Four Hundred and Sixteen Thousand (GH₵ 416,000) being the money it paid to the Defendant for the sponsorship of the Otopi Ekumfi Abor petrol station.
d. Interest on the sum of Four Hundred and Sixteen Thousand (GH₵ 416,000) at the prevailing bank rate from the 17th day of October, 2016 to the date of last payment.
e. Special damages of GH₵ 36,000.00

f. Costs

g. Any other relief(s) which this Honourable Court deems just and equitable.

Events which culminated into this present action are that, sometime in 2016, the Plaintiff's Chief Executive Officer had a call from his late brother, Yahaya, informing him about the availability of a filling station for rent at Otopi Ekumfi Abor junction which was under the sponsorship of Cash Oil Company Limited – owned and operated by the Defendant. The Plaintiff avers that, its Chief Executive Officer and his late brother went to see the Defendant at Mankessim and he offered to put his petroleum products retail outlet situate and located at Otopi Ekumfi Abor junction in the Mfantsiman District of the Central Region of the Republic of Ghana up for rent under the sponsorship of the 1st Plaintiff by a letter dated 19th October, 2016.

The Plaintiff further avers that the report obtained on the said filling station by its Operation Team indicated that the place has a lot of potential for business development. The Plaintiff also maintains that the Defendant informed the Plaintiff's Chief Executive Officer of his reason for renting out the filling station being the fact that he is confident that the Plaintiff would ensure regular supply of petroleum products as well as in assisting the station's operations to meet the guidelines of the National Petroleum Authority (NPA) as stated in the letter dated 19th October, 2016.

The parties discussed the terms of the rent of the Otopi Ekumfi Abor junction filling station and according to the Plaintiff, the terms were satisfactory to the Plaintiff. Being so satisfied, the Plaintiff accepted the offer of renting the Otopi Ekumfi Abor junction filling station under the sponsorship of the Plaintiff. The indenture evidencing this transaction was executed on 17th October, 2016.

The Plaintiff states that the parties agreed that a letter from the Defendant's previous sponsor (Cash Oil Company Ltd) was necessary to be acquired in discharging the Defendant from any existing obligations. It is the case of the Plaintiff that it received a

letter dated 6th October, 2016 from Cash Oil Company Ltd communicating the indebtedness of the Defendant to the Plaintiff. The letter added that once the Defendant had settled his debts, the filling station would be free from any encumbrances.

The Plaintiff says that the sponsorship package was valued at Five Hundred and Twenty-four Thousand Ghana Cedis (GH₵ 524,000.00) out of which One Hundred and Eight Thousand Ghana Cedis (GH₵ 108,000.00) was to be expended on the outright purchase of the pumping machine at the Otopi Ekumfi Abor junction filling station. The Plaintiff further states that, a further One Hundred and Forty-three Thousand, Five Hundred and Ninety-eight Ghana Cedis, Fifty-five pesewas (GH₵143,598.55) was to secure the discharge of the Defendant from any existing obligation as per the product account balance in favour of Cash Oil Company Limited.

Further, the Plaintiff states that after settling the debts of the Defendant with Cash Oil Company Ltd, the Plaintiff received a letter dated 25th October, 2016 from Cash Oil Company Ltd discharging the Defendant from any obligation.

The Plaintiff avers that, further to the agreement between the parties, it made payments amounting to Five Hundred and Twenty-four Thousand Ghana Cedis (GH₵ 524,000.00) to the Defendant upon receipt of which the Defendant put the Plaintiff into possession and sponsorship of the Otopi Abor filling station on 17th November, 2016. Within twenty-four (24) hours of taking possession of the station, The Plaintiff rebranded it in the colours of Pacific Oil Company Ltd at a cost of Five Thousand Ghana Cedis (GH₵5,000) and immediately commenced business as a Pacific Oil Company retail outlet.

The Plaintiff states that on 30th November, 2016 Melbond Financial Services by a letter informed the Plaintiff that Melbond Financial Services is opposed to the sponsorship transaction between the parties as the property had been used as a collateral to guarantee an overdraft facility granted to the Defendant.

On 9th February, 2017 Melbond Financial Services, with the view of realising the collateral, sought and obtained from the Saltpond District Magistrate Court an order for police protection of the Otopi Abor petrol station. Consequent upon the order, the police moved in to protect the station and all business grounded to a halt.

The Court subsequently set aside this order on grounds of lack of jurisdiction on 21st March, 2017. However, it is the case of the Plaintiff that it was not until 15th May, 2017 that the police withdrew from the station.

The Plaintiff says that the image of the company took a nosedive as uniformed police officers paraded and guided the station day and night and curious customers of the Plaintiff Company were turned away without any explanation. The Plaintiff claims that the Defendant has been fraudulent in his dealings with the Plaintiff because of his failure to disclose his indebtedness to any financial institution at the time of the contract and fraudulently representing that the filling station at Otopi Ekumfi Abor junction was free from any encumbrances at the time of the contract.

Plaintiff further states that at the time the said order of the court was made, the Company had fuel totalling Seventy-seven Thousand, Nine Hundred and Forty-nine Ghana Cedis Seventy pesewas (GH₵77,949.70) in the underground tanks of the station. The Plaintiff again avers that it fixed a set of generator at the premises of the filling station valued at Sixteen Thousand Ghana Cedis (GH₵16,000.00).

The Plaintiff says that, premised on an average daily sale of Four Thousand Ghana Cedis (GH₵4,000.00), the Plaintiff lost a colossal amount of money for the loss of use of the facility for the Ninety-three (93) days that the business was forced into closure because of the police protection.

Additionally, the Plaintiff states that the Company incurred a debt of Fifteen Thousand Ghana Cedis (GH₵ 15,000.00) arising from the evaporation and spillage when it had to recover fuel from the underground tanks after 15th May, 2017. Moreover, the Plaintiff further claims special damages of Thirty-six Thousand Ghana

Cedis (GH₵ 36,000.00) as particularised in paragraph 28 of the Plaintiff's Further Amended Statement of Claim.

It is therefore the case of the Plaintiff that repeated demand for the refund of the Four Hundred and Sixteen Thousand Ghana Cedis (GH₵ 416,000.00) it paid to the Defendant for the sponsorship has fallen on deaf ears thus, this instant action.

The Defendant in a lengthy 36 paragraph amended Statement of Defence denied the claims of the Plaintiff. The Defendant's case is that he did not deal with any alleged Chief Executive Officer of the Plaintiff at any time prior to or during the transaction for the proposed lease. He further asserts that the alleged Chief Executive Officer of the Plaintiff has little or no idea about the actual details of the negotiations and discussions that culminated into the Plaintiff Company taking possession of the Otopi Ekumfi Abor junction filling station.

The Defendant avers that prior to the Plaintiff taking possession on 13th December, 2016 the Defendant had, during negotiation in September 2016, openly discussed and disclosed to the Plaintiff that he was indebted to Cash Oil Company Limited which sponsored the Defendant's filling station with fuel products, equipment and transport. The Defendant also informed the Plaintiff of his indebtedness to Melbond Microfinance Company Ltd as a result of a loan facility given Defendant.

The Defendant avers that he used his Renault C300 Tanker Truck valued at One Hundred and Thirty Thousand Ghana Cedis (GH₵130,000.00), Man Diesel Tanker valued at One Hundred and Eighty Thousand Ghana Cedis (GH₵180,000.00), his 0.20-acre land and building at Kpone Kokompe valued at GH₵400.00 and also the 1.24-hectare land at Otopi Ekumfi Abor (the subject of the lease between the parties herein) valued at GH₵ 1,200 as collateral for the loan.

The Defendant further states that, after duly disclosing the details of the loan from Melbond to the Plaintiff company, the Plaintiff intimated to the Defendant that the above collateral and the payments made by the Defendant were enough to pay for the

loan from Melbond Microfinance, it will go ahead with the execution of the lease in order not to lose the transaction to a competitor. The Defendant added that the Plaintiff stated it was going to pay cash to settle the indebtedness of the Defendant to Cash Oil Company Ltd while waiting for the two companies to send their documented discharge of the Defendant.

The Defendant avers that even after the Plaintiff had later received the letter from Melbond Microfinance Ltd, the Plaintiff took the firm option that it will proceed with the lease on the Otopi Ekumfi Abor junction filling station since it was satisfied that the Defendant's series of collaterals in addition to payments made by the Defendants were enough to pay for the loan.

The Defendant further avers that due to the indebtedness of the Defendants and the filling station serving as a collateral for a loan given to the Defendants, the Plaintiff suggested the option of wanting to sponsor the Defendant with regular supply of petroleum products and ensuring it will meet the guidelines of the National Petroleum Authority instead of the lease and the Defendant agreed.

Thus, the Plaintiff requested the Defendant to bring an application to this effect. According to the Defendant, he complied with the request. However, the Plaintiff changed its option again and opted to proceed with the lease. Therefore, the sponsorship arrangement did not materialise since the Plaintiff abandoned same and did not respond to the Defendant's application.

According to the Defendant, the Plaintiff wanted and also insisted that the lease be executed quickly despite the Defendant not yet discharged from his indebtedness to Cash Oil Company Ltd and Melbond Microfinance Company Ltd. Moreover, the Defendant states that he was only discharged by Cash Oil Company Ltd on 25th October 2016 whiles the Plaintiff was still awaiting Melbond Microfinance's claims against the Defendant and the filling station in question. The Defendant states that the

Plaintiff received Melbond Microfinance's claim on 30th November, 2016 before taking possession and occupation of the station from 13th December, 2016.

The Defendant admits that the Saltpond District Magistrate Court made an order in favour of Melbond Microfinance Company Ltd to realise its security in the filling station in question. However, this order was unlawfully procured and same was immediately set aside by an application by his lawyers. He states that he acted promptly and swiftly to protect the Plaintiff and its assets.

Regarding the Plaintiff's claim of the presence of the police officer at the filling station, the Defendant states that the Plaintiff knew that even before the filling station was set up till date, there have always been policemen on duty at the Otopi Ekumfi Abor junction in front of the filling station at night and that even when the Court set aside its orders and the execution was aborted by Melbond Microfinance Company Ltd, the Plaintiff was erroneously confused about the presence of the previously existing policemen.

It is the case of the Defendant that the operation of the Plaintiff continued and the Plaintiff advertised the operation of the filling station uninterrupted even after it had instituted the instant suit. Also, the police officers never interrupted the operations of the Plaintiff and no loss was occasioned the Plaintiff.

The Defendant states that the Plaintiff after operating and making monies from the Otopi Ekumfi Abor junction filling station have recently rained down the station and rushed to court to make false claims against the Defendant seeking to 'eat its cake and also have it at the same time.'

In reaction to the Defendant's case, the Plaintiff filed an amended reply on 15th February, 2021. The Plaintiff in its reply basically joined issues with the Defendants and reaffirmed its assertions in the further amended Statement of Claim.

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

1. Whether or not there was an existing agreement between the parties.
2. Whether or not the filling station was encumbered at the time that the Defendant conveyed it to the Plaintiff.
3. Whether or not the Defendant disclosed his indebtedness to Melbond Financial Services to the Plaintiff at the time of the negotiations.
4. Whether or not the Plaintiff incurred financial losses arising from the sponsorship deal with the Defendant?
5. Whether or not the Plaintiff has had possession, occupation, control and management of the filling station at Otopi Abor junction leased to it after it was handed over to it by the Defendant.

This notwithstanding, I am of the view that the crucial issues which are germane to the determination of the dispute between the parties are:

a. Whether or not the agreement between the parties is that of sponsorship and/or a lease.
b. Whether or not the Plaintiff Company is a prudent purchaser according to law.
c. Whether or not the Lease is legally effective between the parties and admissible in evidence.
d. Whether or not the Plaintiff is entitled to the reliefs sought.

It is the policy of the law that only those issues which are germane to the determination of a case must be decided by the court and not irrelevant issues although the parties might have led evidence on them. See **MICHAEL TETTEH ANGUAH V CENTRE FOR PLANT MEDICINE RESEARCH, GRAPHIC COMMUNICATIONS (SUIT NO.AC 804/2015) DATED 7TH NOVEMBER, 2016 AND DELIVERED BY THE HIGH COURT.**

Issues (1) and (2) above dealing with whether or not there was an existing agreement between the parties and whether or not the filling station was encumbered at the time that the Defendant conveyed it to the Plaintiff are not issues properly deserving

determination by this Court. These are facts which have been admitted by the Defendant. It is only unadmitted or denied facts that are in issue and need to be proved. The Court need not waste time on matters not in controversy between the parties.

Before proceeding to deal with these issues, I shall briefly deal with the law regarding the burden of proof in civil cases. It is trite that a party cannot win a case based on allegation which he fails to prove or establish. Therefore, a party who makes allegations has the burden to lead evidence to prove those allegations unless they are admitted by the other party. If he fails to do that, a ruling on those allegations will made against him. See **Okudzeto Ablakwa (No.2) v Attorney General and Another [2012] 2 SCGLR 845 at 867.**

Also, a person who makes an averment or assertion which is denied by his opponent has a burden to establish that his averment or assertion is true and he does not discharge this burden unless he leads admissible and credible evidence from which the fact(s) he asserts can properly and safely be inferred. **(See Zabrama v Segbedzi [1991] 2 GLR 221).**

Therefore, the onus, without doubt, lies on the Plaintiff to adduce sufficient evidence in support of its claims. The burden of persuasion in civil matters requires the Plaintiff herein, who has the evidential burden to discharge, to produce sufficient evidence such that a reasonable mind (such as this court) will come to a conclusion that its claims or averments have been established on the preponderance of probability or that, they are more probable than that of the Defendant's. **See sections 10 to 17 of the Evidence Act.**

The issue of whether or not the agreement between the parties is that of sponsorship and/or a lease.

As already stated supra, the question of whether or not there was an agreement between the parties is not in issue. The Defendant never denied the existence of an

agreement between the parties. However, the real dispute or issue lies with the nature of the agreement existing between the parties (that is, whether or not the agreement between the parties is that of sponsorship and/or a lease).

The Plaintiff's claim is that the agreement between the parties is that of a sponsorship and a lease. Alhaji Zakari Ahmed Ibrahim (Plaintiff's witness) stated in his witness statement that the agreement (the lease) has a component of sponsorship of the filling station. During cross-examination, the Plaintiff's witness re-affirmed this point. The following ensued during cross-examination.

Q: The lease was different from the sponsorship?

A: No. They are all one.

It is worth noting that this seriously controverts the claim of the Plaintiff in paragraph 13 of its amended reply where the Plaintiff averred that the leasehold is entirely different from the sponsorship agreement between the parties. The Plaintiff added that the sponsorship is to regularise the management of the station as a regulatory requirement by the National Petroleum Authority (NPA).

Section 29 of the National Petroleum Authority Act, 2005 (Act 691) ('the National Petroleum Authority Act') provides that *where the Board grants a licence to an applicant to procure and sell petroleum products the licence shall authorise the licensee to procure and sell petroleum products to*

(a) bulk customers, and

(b) to the public through retail stations or reseller outlets.

Sponsorships by Oil Marketing Companies (OMCs) come to play when resellers are involved in the sale of petroleum products to motorists, end users and other consumers. Section 81 of the National Petroleum Authority Act defines a reseller as *a person who is sponsored by a licensed oil marketing company to operate a reseller outlet and is*

engaged in the direct sale of petroleum products to motorists, end users and other consumers; and uses hand-operated or a mechanised pump to dispense the petroleum products.

Clearly, the interest of an OMC sponsoring a reseller is not in the land on which the reseller outlet is built. The OMC's interests lie in selling petroleum products to the public through the reseller. Therefore, the reseller and the OMC need not execute a lease in order for the latter to sponsor the former. I therefore give preference to and/or place much weight on the testimony of the Defendant to the effect that a sponsorship is used to seek and provide financial support through the supply of petroleum products or services or the transportation of products.

This notwithstanding, the terms of the lease are clear. Nowhere can it be inferred from the lease that it has a component of sponsorship of the filling station as stated in the Witness Statement of the Plaintiff's witness. The recitals of the lease reflected the discharge of the Defendant from the sponsorship of Cash Oil Company Ltd in the amount of One Hundred and Eight Thousand Ghana Cedis (GH₵ 108,000.00) and also referred to the parties as Lessor and Lessee. Moreover, the operative part of the lease is without equivocation. It provides that:

> *IN CONSIDERATION of the sum of Four Hundred and Sixteen Thousand, Six Hundred and Sixty-six Ghana Cedis (GH₵ 416,667.00) which the parties have mutually agreed to and the payment structure stated below, the Lessor as beneficial owner of the leasehold interest in the Fuel Service Station hereby* ***AGREES TO Lease ALL THAT (the) Fuel Service Station*** *for the residue of the unexpired term of the lease subject to the covenants, conditions and stipulations therein contained with effect from 17th October, 2016…*

The Agreement (which according to the Plaintiff's own witness under cross-examination was prepared by the Company's lawyer) is devoid of any sponsorship. Any ambiguity in this regard is to be construed against the Plaintiff since it authored the document. This is in line with the ***contra proferentem rule*** which dictates that an

ambiguous document or contract should be construed strictly against the maker thereof.

Following from the above, the agreement between the parties is that of lessor and lessee and devoid of any sponsorship. I give preference to the testimony of the Defendant that the Plaintiff abandoned their initial suggestion to engage the Defendant in a sponsorship deal and opted to go ahead with the lease. Thus, the sponsorship agreement did not materialise.

Having satisfied myself that the agreement between the parties is a lease and not a sponsorship deal, I proceed to determine whether or not the Plaintiff Company is a prudent purchaser. This issue is centred on whether Plaintiff Company had notice of the fact that the subject matter of the lease was encumbered prior to the execution of the lease. The parties have adduced conflicting evidence as to whether or not the Plaintiff had notice of Melbond Microfinance's security in the filling station, the subject matter of the lease.

The evidence adduced by the Alhaji Zakari Ahmed Ibrahim (Plaintiff's witness) was to the effect that the fact of the filling station being a collateral for a loan secured by the Defendant from Melbond Microfinance Company Ltd was never brought to the attention of the Plaintiff.

Alhaji Zakari Ahmed Ibrahim stated in paragraph 11 of his Witness Statement that the Defendant and the Representatives of the Plaintiff Company had several discussions on the terms of the rent arrangements and eventually he became satisfied and informed the company's Board of Directors of the venture which it agreed to sponsor the filling station of the Defendant **(EXHIBIT A).**

He added that in the course of negotiations with the Defendant, inquiries were made on the relationship of the Defendant and the sponsoring company at the time, Cash Coil Company Ltd. Alhaji Zakari Ahmed Ibrahim stated that it was brought to the attention of the Plaintiff company that the Defendant was indebted to Cash Oil

Company Ltd. Cash Oil Company Ltd then sent an invoice of the indebtedness of the Defendant to the Plaintiff to be fulfilled before the Defendant could be discharged by Cash Oil Company Ltd. **(EXHIBITS B & C)**

According to Alhaji Zakari Ahmed Ibrahim, this is the only disclosure made by the Defendant. He states in paragraph 38 of his Witness Statement that, with the understanding that there were no more financial obligations owed to any person or entity after Cash Oil Company Ltd, the Plaintiff Company was assured that the transaction on the filling station was free from any encumbrances, a term which had been incorporated in the Lease **(EXHIBIT E).**

The Defendant on the other hand insisted that the collateral was brought to the attention of the Plaintiff Company. His testimony is that the Plaintiff was in so much hurry to take the lease to prevent other competing potential lessees from taking it from it. He states in paragraph 34 of his Witness Statement that the Plaintiff insisted that a lease be executed quickly despite the fact that the Plaintiff knew the Defendant had not been discharged from indebtedness to Cash Oil and Melbond Microfinance Company Ltd.

D.W.1 also gave evidence to the fact that before the parties executed the Lease for her to sign as a witness for the Defendant, there was a discussion on the indebtedness of the Defendant to Cash Oil Company Ltd and Melbond Microfinance Company Ltd. This was corroborated by D.W.2.

D.W.2 stated in paragraph 7 of her Witness Statement that in her presence at the office of the Defendant, the Defendant informed the Plaintiff's General Manager about the status of the filling station, its valid registration, operational permits, liabilities including the sponsorship arrangement with Cash Oil Company Ltd and the fact that the filling station stands as a collateral in favour of Melbond Microfinance Company Ltd.

It worth noting that Counsel for the Plaintiff failed to dent the testimony of the Defendant under cross-examination. The following ensued during cross-examination on 17th May 2022 at page 18 to 21 of the record of proceedings:

Q: You told this Court that you informed Plaintiff-Company your relationship with Melbond Financial Services?

A: Yes.

Q: Tell the court the period you signed Exhibit 3 and the time you procured the facility from Melbond Financial Services?

A: I took the loan before I signed Exhibit 3 on 17th October, 2016.

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Q: Did you sign Exhibit 2A?

A: Yes.

Q: Did you show Exhibit 2A to Plaintiff-Company when you were negotiating with Plaintiff-Company?

A: Yes I did. I gave them copies.

Q: Do you have the documents you claim you showed Plaintiff-Company. Do you have it in evidence?

A: Yes.

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Q: I put it to you that you misrepresented the facts to Plaintiff-Company?

A: I told them all the truth. I gave them copies of theirs including agreements with Cash Oil.

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Q: Was the land in issue encumbered at the time Exhibit 3 was executed?

A: Yes. I had collaterised it for a loan from Melbourne Finance Services. I informed Plaintiff-Company accordingly. They even asked me to let my creditors write officially to inform them – Plaintiff Company.

Further, the unwavering testimony of D.W. 1 withstood cross-examination by Counsel for the Plaintiff. The following ensued during cross-examination

Q: You were part of the negotiation for the Filling Station in issue.

A: Yes.

Q: Look at Exhibit 3.

Note: Exhibit 3 is shown to witness.

Q: You would agree with me that the items listed in paragraph 11 for the collateral from Melbond included the filling station in issue?

A: Yes.

Q: At the time that Exhibit 3 was made, had the Defendant completed payment of the loan to Melbond?

A: No. he had not. He informed the General Manager of the Plaintiff Company accordingly.

Clearly, all efforts by counsel for the Plaintiff to contradict the evidence of the Defendant and his witnesses proved futile. The foregoing tilts the scale in favour of the Defendant in respect of the issue of whether or not the Plaintiff had notice or was informed of the collateral in favour of Melbond Microfinance.

I am satisfied that the negotiations held between the Defendant and the representatives of the Plaintiff prior to the execution of the Lease covered not only the Defendant's indebtedness to Cash Oil Company Ltd but also Melbond's security in the land prior to the execution of the Lease. Thus, the Plaintiff Company cannot rely

on clause 7 of the lease to the effect that the land was free from any encumbrances when in fact the Plaintiff had actual knowledge of this fact.

The Plaintiff seeks to rely on section 25(1) of the Evidence Act to establish that clause 7 of the Exhibit E, in effect proves that the Defendant did not disclose to the Plaintiff his indebtedness to Melbond Microfinance Company. The Plaintiff further contends that, the Defendant in making the representation in Clause 7 of Exhibit E to the Plaintiff intentionally and deliberately caused the Plaintiff to believe the said statement to be true and the Plaintiff acted upon such belief. Thus, by virtue of section 26 of the Evidence Act, the fact that the property is not encumbered shall be conclusively presumed against the Defendant.

This argument, in my view, is very porous and untenable. Section 25(1) of the Evidence Act provides that:

> *Except as otherwise provided by law, **including a rule of equity**, the facts recited in a written document are conclusively presumed to be true as between the parties to the instrument, or their successors in interest.*

This provision seeks to protect the intentions of the parties by providing that what they put into writing are to be taken to represent their intentions. (See Essentials of the Ghana Law of Evidence by S.A. Brobbey at page 384).

It is worth stating that section 25(1) of the Evidence Act is not a rule without exceptions; it is subject to, inter alia, the rules of equity. As already established above, the evidence adduced in this case all point to the fact that there were negotiations prior to the execution of the lease and that during these negotiations, the Defendant notified the Plaintiff of the encumbrance affecting the filling station. In the circumstances, the court of equity will not insist on form to defeat substance. Equity pays more attention to the intention of the parties. This is the meaning of the well-known maxim *"Equity looks to the intent and not to the form."*

Moreover, section 26 of the Evidence Act provides that:

*Except as otherwise provided by law, **including a rule of equity**, when a party has, by his own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon such belief, the truth of that thing shall be conclusively presumed against that party or his successors in interest in any proceedings between that party or his successors in interest and such relying person or his successors in interest.*

Likewise, section 26 is not a rule without exceptions; it is also subject to, inter alia, the rules of equity. In the case of **SOCIAL SECURITY BANK LIMITED V AGYAKWA [1991] 2 GLR 192**, the Court of Appeal held that the principle of estoppel by conduct was applicable only in those circumstances where it was just to invoke it, namely in those circumstances in which it would be unjust, inequitable or unconscionable to permit a party against whom a plea of estoppel by conduct was raised to go back on his word or conduct. Consequently, in invoking a plea of estoppel by conduct, one had to have regard to the circumstances surrounding the particular conduct which was the subject of the plea. Invariably, each case had to be decided on its own peculiar facts.

In this instant case, the Plaintiff cannot be heard to say that he relied on clause 7 of the lease to his detriment especially when there is clear and uncontroverted evidence that the encumbrance was brought to his notice during the negotiations prior to the execution of the contract. In the circumstances, invoking the equitable principle of estoppel by conduct will be unjust due to the circumstances surrounding this case.

The Plaintiff made reference to section 72(1) of the Land Act to justify its entitlement to damages against the Defendant for concealing the encumbrance. Likewise, I find no merits in this argument. Section 72(1) of the Land Act provides as follows:

*A person disposing of property or an interest in property for valuable consideration to a purchaser, or an agent of that person, who with the **intent to defraud** (a) conceals from the purchaser an instrument, or encumbrance material to the property*

or interest; or (b) falsifies a plan of the land in relation to that property or the instrument is liable to an action for damages by the purchaser or a person or a person deriving title under the purchaser for a loss sustained by reason of the concealment or falsification.

Emphasis must be placed on the phrase *intent to defraud.* This is a criminal element and therefore requires a higher standard of proof; proof beyond reasonable doubt. The Plaintiff adduced no evidence in this regard to establish fraud or that the Defendant, with the intent to defraud, concealed the encumbrance from the Plaintiff. The Plaintiff failed to discharge this burden thus, the argument fails.

The Plaintiff Company would have still been at the wrong side of the law had it been successful in proving that Melbond's security in the land was not brought to its attention prior to the execution of the Lease.

The law is that a person desirous of acquiring land must exercise all due diligence failing which he proceeds at his own peril. In the case of **OSUMANU V OSUMANU AND ANOTHER [1995-96] 1 GLR 672-689** their Lordships held that *"any intending purchaser of property is put on his inquiry to make such investigations as to title…If he failed to make such inquiries, he acted at his own peril if subsequent events disclosed that there was a valid challenge to the title he acquired."* **See also KUSI AND KUSI V BONSU (2010) SCGLR 60**

According to paragraph 48 of the Witness Statement of the Plaintiff's witness, a search conducted revealed that Melbond Financial Services has filed a Collateral Registry Form intending to realise the charge over the properties of the Defendant (including the filling station). The witness attached the Memorandum of No Objection issued by the Collateral Registry to Melbond Microfinance Company Limited for the latter's intention to realise the charge **(See EXHIBIT N).**

It beats my understanding why the Plaintiff Company did not conduct searches prior to the execution of the Lease especially when the Defendant's indebtedness to Cash

Oil Company was brought to its attention. This was enough to cause the Plaintiff Company to conduct further due diligence on the Defendant to ascertain whether there were other creditors who had interests in the land. Since the collateral had been registered with the Collateral Registry, a simple search would have revealed that the land, which is the subject matter of the Lease, is encumbered. The general principle of equity is that a purchaser is deemed to have notice of all that a reasonably prudent purchaser would have discovered **(BOATENG V DWINFUOR [1979] GLR 360)**.

In the circumstances, the Plaintiff Company is clearly not a prudent purchaser. It only dawned on the Plaintiff Company to conduct a search at the Collateral Registry after the relationship between the parties has been strained by the development on the filling station. Applying the principles of law above, the Plaintiff is deemed to have had notice of the charge over the land. The Plaintiff therefore proceeded at its own peril.

The Plaintiff's recklessness in executing the lease is further seen when the Plaintiff went ahead to execute the lease knowing very well that the Defendant was still under the sponsorship of Cash Oil Company Ltd. A reasonable prudent purchaser in the Plaintiff's shoes would not take this step or risk.

The evidence before this court reveals that the lease was executed on 17th October, 2016. During this time, Cash Oil Company Ltd had not discharged the Defendant. **Exhibit D** (discharge letter) also reveals that the Defendant was only discharged by Cash Oil Company Ltd on 25th October, 2016. **Exhibit Q series** also establish that the Plaintiff made payments to Cash Oil Company Ltd in satisfaction of conditions for the discharge of the Defendant by issuing cheques dated 18th October, 2016 (a day after execution of the Lease). There is also evidence of receipts dated 24th October, 2016 issued by Cash Oil Company Ltd to that effect.

Indubitably, this goes to collaborate and/or establish the truth of the testimony of the Defendant that the Plaintiff was in so much hurry to take the lease to prevent other

competing potential lessees from taking it from it. The Lease itself is poorly drafted; there is no site plan attached to the Lease nor a schedule describing the land. Moreover, the fact that the lease has not been registered and stamped in accordance with law could not have passed unnoticed.

The relevant law which governed the registration of instruments at the time of the execution of the lease was the Land Registry Act, 1962 (Act 122). Section 24(1) of the Land Registry Act provides that:

> *"Subject to subsection (2), an instrument, other than a will or a judge's certificate, first executed after the commencement of this Act, shall not have effect until it is registered."*

This provision has been re-enacted as section 227 of the Land Act, 2020 (Act 1036). It follows from the above that the ramification for failing to register the lease is that the lease is not valid for all purposes. In other words, no legal consequences flow from its execution unless it is registered. See **ASARE V BROBBEY & OTHERS [1971] 2 GLR 331**

Moreover, section 32(6) of the Stamp Duty Act, 2005 (Act 689) provides that except as expressly provided in this section, an instrument (a) executed in Ghana; or (b) executed outside Ghana but relating to property situate or to any matter or thing done or to be done in Ghana shall except in criminal proceedings, **not be given in evidence or be available for any purpose unless it is stamped in accordance with the law in force at the time when it was first executed.**

The Supreme Court has held in the case of **LIZORI LTD V MRS EVELYN BOYE & SCHOOL OF DOMESTIC SCIENCE & CATERING [2013 - 2014] 2 SCGLR@ 903** that:

> *"the provisions of section 32 of Stamp Duty Act is so clear and unambiguous and requires no interpretation. Either the document has been stamped and appropriate duty paid in accordance with the law in force at the time it was executed or it should*

not be admitted in evidence. There is no discretion to admit it in the first place and ask the party to pay the duty and penalty after judgment."

His Lordship Benin JSC held in the case of **MARTIN ALAMISI AMIDU V THE ATTORNEY-GENERAL, WATERVILLE HOLDINGS (BVI) LTD, ALFRED AGBESI WOYOME AND UT BANK LTD (IN RECEIVERSHIP) (CIVIL MOTION NO. J7/10/2014) DATED 27TH JUNE, 2019** that:

"The position of the law is that where legally inadmissible evidence has found its way into the record it is the duty of the Court to reject it when pronouncing judgment. It is not one of those situations which can be saved under section 6 of the Evidence Act. This is because the stamp duty is a statutory imposition and a source of revenue to the State so parties cannot be allowed to flout the law and deny the State of its revenue."

On account of the above, it is clear that the lease executed by the parties is totally ineffective and same is rendered inadmissible for failing to comply with section 24(1) of the Land Registry Act (now section 227 of the Land Act) and section 32(6) of the Stamp Duty Act respectively. The law is that, inadmissible evidence per se may be rejected by the judge or where he fails, an appellate court may expunge it from the record. On this basis, the Lease is therefore inadmissible and thus excluded and expunged on the authority of section 8 of the Evidence Act, 1975 (N.R.C.D 323). This section provides that *evidence that would be inadmissible if objected to by a party may be excluded by the court on its own motion.*

On account of the above discussed law and the objective evaluation of the evidence adduced by the parties in this suit, I find that the Plaintiff Company is not entitled to its claims. A party cannot derive any benefit from an invalid contract since no legal consequences flow from its execution.

The Plaintiff Company cannot therefore seek solace in this Court after paying no regard to the provisions of the law as to registration and stamping of instruments affecting land.

I accordingly dismiss the suit and award cost of GH¢20,000.00 against the Plaintiff in favour of the Defendant.

(SGD)

BERNARD

BENTIL J.

[HIGH COURT JUDGE]

COUNSEL

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JOHN BENSON ESQ. FOR THE DEFENDANT.