

GHANA / JUDGMENT

Ntoful & Another Vrs Nyarko & Another [2023] GHACC 364 (16 January 2023)

[2023] GHACC 364

COURT

Circuit Court

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IN THE CIRCUIT COURT '1' HELD AT TAKORADI, WESTERN REGION ON MONDAY, THE 16TH JANUARY, 2023 BEFORE HIS HONOUR MICHAEL K. AMPADU CIRCUIT COURT JUDGE. SUIT NO. C1/02/23

1. NANA KWESI NTOFUL
2. GODFEARING AMEN ACQUAH PLAINTIFFS VRS.
1. EBUS. ANTHONY NYARKO
2. ZING YANG INTERNATIONAL DEFENDANTS

JUDGEMENT

Counsel: Lawyer Samuel Agbottah is present for the Plaintiff. Lawyer Kwaku Gyimah-Kye is present for the Defendant. The Plaintiffs claim against the Defendants in this suit which was filed on 8/7/22 are that; Plaintiffs claim against the Defendants jointly and severally for declaration of title to all that parcel of land situate and lying at Supom – Dunkwa whose boundaries are as follows: All that piece or parcel of land situate and lying at Supom – Dunkwa within the Shama District Assembly in the Western Region of the Republic of Ghana boundary whereof commencing from a pillar marked SGWR 25/03/66 runs on a bearing of 191° 29' for a distance of 2409.3 feet to a pillar marked SGWR B0659/20/1 on a bearing of 340° 01' for a distance of 48.7' feet to a pillar SGWR B0659/20/2 on a bearing of 029° 09' for a distance of 591 ° 9' feet to a pillar SGWR B0659/20/3 on a bearing of 114° 23' for a distance of 583. 0' to a pillar SGWR B0659/20/4 on a bearing of 178° 24' for a distance of 368.0' feet to a pillar marked SGWR B0659/20/5 on a bearing of 222° 49' for a distance of 62.1' to a pillar marked SGWR B0659/20/6 on a bearing of 276°46' for a distance of 776.2' to a pillar SGWR B0659/20/1 being the point of commencement. i. General and Specific damages for loss of business and income due the 2nd Plaintiff (P2) arising from Defendant's unjustified refusal to have 2nd Defendants' (D2) defective land title document deleted from the records of Lands Commission. ii. An order directed at the Defendants to forthwith withdraw the defective document from the records of the Lands Commission. iii. An order for perpetual injunction restraining the Defendants either by themselves, their agents, privies,

assigns, workmen, etc. from trespassing onto Plaintiff's described parcel of land. iv. Legal costs incidental to this action. In his statement of claim, the Plaintiffs stated that the P1 is the chief of Atwereboanda and has a vast tract of land attached to his stool and the D1 is the Head of the Ntwea family of Old Daboase and his family lands, at a point, shares boundary with that of the D1's stool land. That the D2 is an incorporated entity and into the business of importing clinker and a lessee of the D1 by virtue of a lease document executed between them. Plaintiffs aver that following series of negotiations between them and on the performance by the P2 of all relevant customary rites as well as the payment of the requisite consideration, the Plaintiff and elders of the stool leased and indeed executed a leasehold document in favour of the P2 in respect of eight (8) acres of P1's stool land; the land, the subject matter of the said lease is situate at Supom-Dunkwa and has its boundaries as stated on the statement of claim. The P2 contends that he has acquired the said land for his use as Fuel Filling Station and its related businesses, construction of stores and the production of ice blocks on commercial scale to meet the increasing orders from his fisher folk. Plaintiffs further averred that on the execution of the lease document, the P2 in or about January 2022, forwarded the document to Lands Commission for plotting, stamping and registration as required by Law and to their utmost dismay, the Lands Commission refused to register and when an official search was conducted by the P2 at the Lands Commission, it was disclosed that the Defendants and more specifically the D2 already had the very parcel of land plotted, stamped and registered in her name. It is the further averment of the Plaintiffs that since January 2021, the Defendants attention have been drawn to that anomaly and persistently requested of them to do the needful by withdrawing and or having it deleted from the records of Lands Commission the said defective registration made in favour of the D2 but Defendants will not budge. The P2 contends that although the Defendants are not in any physical possession of the subject land of the suit, the P2 has been deprived and continues to be deprived of putting same to the intended use within time so as to amongst other things, meet the demands of his customers. It is the further contention of the P2 that by the unexpected and an unjustifiable conduct of the defendants, he has so far lost not less than One Million Ghana Cedis (GH¢1,000,000.00) as expected revenue from the intended business as well as the inputs, plants and equipment for that business had long ago been procured. That the Defendants have not evinced any intention of doing what is expected of them unless compelled by the orders of the Court wherefore Plaintiffs claim per the endorsement on the writ of summons. The Defendants entered appearance on 20/7/22 by Counsel but failed to file any defence to the Plaintiffs claim. After a search conducted by the Plaintiffs on 01/11/22, they filed a motion on notice for interlocutory judgement in default of defence in accordance with Order 13 rule 2 of CI47 which application, the Counsel for the Defendants did not oppose so it was granted on the 28/11/22. In testifying for their claims, the P1 who testified for himself and on behalf of the P2 added to his statement of claim that the relationship between the D1 and the D2 is that it is the D1 who leased the plot to D2 to build their factory opposite the P1's land. That when the P2 went to register the land, it was seen that the Defendants have registered the land even though what they registered is not where their facility is located. That when they realized this, they went to the D1 who called a surveyor and the Chinese Interpreter and they agreed that what they did at the Lands Commission was a mistake and that the coordinates which were opposite the Plaintiffs land was what were used by them so

the P2's land could not be registered. According to the Plaintiffs, the Defendants assured them that they will correct it but till June 2022 nothing has been done. Plaintiff further stated that he had to report the matter to the Police who invited the Chinese and their translator and the surveyor called Emmanuel and at the Police Station, they agreed to correct the mistake and so the Police ordered them to go and do the needful. That the surveyor went to use the right coordinates to correct the mistake after which Town and Country Planning Department also came to confirm that the initial one was a mistake. P1 contends that due to the conduct of the Defendants, most of the items to be used for these constructions have spoilt because the P2 has not been able to register the Land and has been going up and down and incurring costs. A copy of the search conducted by the P2 was tendered as Exhibit 'A'. A Police report was also tendered as Exhibit 'B' and the Site Plan with the wrong coordinates was also tendered as Exhibit 'C'. That the Defendants' conduct cost the P2 about One Million Ghana Cedis (GH¢1,000,000.00) and so prayed the Court for this cost and also an order to cancel the defective registration as per the writ of summons. Order 13 rule 2 of the CI47 provides that "where the Plaintiff's claim against a Defendant is for an unliquidated demand only when the Defendant fails to file a defence to the claim, the Plaintiff may, after the expiration of the period fixed by these rules for filing a defence, apply for leave to enter interlocutory judgement against the Defendant for damages to be assessed and for costs and proceed with the action against other Defendants, if any". The Plaintiff filed this writ on 8/7/22 and even though the Defendants filed appearance, they failed to file a defence. Failure to file a defence means nothing than the fact that the Defendants have no defence to the Plaintiffs' claims. Both in their claim and in their witness statements to the Court, the Plaintiffs stated that the Defendants wrongly submitted their parcels or plots of land to the Lands Commission for registration and thereby preventing them (Plaintiff) from registering same to enable the P2 carry on his business on the said piece of land. The evidence of the Plaintiffs indicates that the Defendants admitted that what they submitted to the Lands Commission for registration was an error or was a mistake. Exhibit 'A', a search report from the Lands Commission, Exhibit 'B', a Police report on a case of trespass on the disputed land and Exhibit 'C', Site Plan of the Defendants' land all indicate clearly that the Defendants made a mistake per the coordinates they used in demarcating and leasing the land that was leased to the D2 by the D1. It is however surprising that even though the Defendants have recognized and agreed that they made an error in the grant to the P2, they have failed to get the said error rectified at the Lands Commission. It was held in the case of *Adormson vs. Tetteh* (2013)59 GMJ at 86, CA per Dordzie J. A that "The statutory provision on the circumstances under which a Court may order that the Land Registrar be rectified is found in Section 122 of The Land Title Registration Law, 1986 (PNDCL 152) (now repealed by Act 1036 of 2020) provides that

- (1) Subject to subsection (2) of this section, the Court may, in its discretion, order the rectification of the Land Register by directing that such registration has been obtained, made or committed by fraud or mistake.

- (2) The register shall not be rectified so as to affect the title of a proprietor who has acquired any land or interest in land for valuable consideration unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought or had himself caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default. The same proposition as stated in the above case, was also held in the case of Republic
- v. Land Title Registrar and Another; Ex Parte Boahen II (2001-2002) 1GLR at page 42 that “Although the Lands Registrar had some rectification powers under section 121 of PNDCL 152 (now repealed by Act 1036 of 2020) ... The only institution entrusted with the power to rectify the Land Registrar by amendment, cancellation or withdrawal under Act 152 were the Courts and they could only do so upon being satisfied that the registration was obtained by fraud or mistake”. The facts on record show that the registration at the Lands Commission made for the Defendants was made in error when coordinates of the Plaintiff’s land was used as coordinates for the Defendants Land. This means the Defendants Land coordinates remain unused for any purpose. It was stated in the case of Adormson v. Tetteh supra that “The register shall not be rectified ... unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought or had himself caused such omission, fraud or mistake or substantially contributed to it by his act neglect or defaults”. The Defendants have agreed that they used wrong coordinates and in fact coordinates that belong to the Plaintiffs plot of land. Defendants have by themselves, caused this mistake and the mistake should therefore be rectified by the Lands Registrar. The Court therefore orders the Lands Registrar to rectify their records and register the Plot of land which hitherto has been registered in the name of the Defendants in the name of the Plaintiffs with the appropriate coordinates. Plaintiffs also claimed for general and specific damages against the Defendants for their unjustified refusal to have the defective registration rectified which, they say has caused them about One Million Ghana Cedis (GH¢1,000,000.00). It was held in the case of Chahin & Sons v. Epope Printing Press (1962) 1GLR 163 that “where special damages are claimed, it is not enough for the Plaintiffs to write down the particulars; they have to prove them”. Plaintiffs mentioned the project they intended to use the plot in dispute for. They also mentioned that they have provided the inputs and all but in the opinion of this Court, these facts are not enough to merit the award of specific damages since there is no elaborate prove of what has been spent so far to merit the amount claimed as specific and general damages. Also, the issue between the parties is the use of wrong coordinates which do not prevent the use of the land by the Plaintiffs since the Defendants are said not to be in physical possession. Plaintiffs could have gone on to do their work while pursuing this rectification agenda more so when the Defendants have admitted their mistake. The Plaintiff again should not have waited all these while for this rectification since he is duty bound to mitigate his losses, see the case of Boham v. Evonna (1991) 1GLR 287 HC. The Court therefore awards a nominal cost of Eighty Thousand Ghana Cedis (GH¢80,000.00) as special and general damages in favour of the Plaintiff. The Defendants and all persons claiming under them are hereby injuncted perpetually from

having anything to do with the said piece of land whose title is granted in favour of the Plaintiffs. That is title to all that piece or parcel of land situate and lying at Supom – Dunkwa within the Shama District Assembly Ghana boundary whereof commencing from a pillar marked SGWR 25/03/66 runs on a bearing of 191° 29' for a distance of 2409.3 feet to a pillar marked SGWR B0659/20/1 on a bearing of 340° 01' for a distance of 48.7' feet to a pillar SGWR B0659/20/2 on a bearing of 029° 09' for a distance of 591 ° 9' feet to a pillar SGWR B0659/20/3 on a bearing of 114° 23' for a distance of 583. 0' to a pillar SGWR B0659/20/4 on a bearing of 178° 24' for a distance of 368.0' feet to a pillar marked SGWR B0659/20/5 on a bearing of 222° 49' for a distance of 62.1' to a pillar marked SGWR B0659/20/6 on a bearing of 276° 46' for a distance of 776.2' to a pillar SGWR B0659/20/1 being the point of commencement. An amount of Twenty Thousand Ghana Cedis (GH¢20,000.00) is also awarded against the Defendants as legal and incidental costs in favour of the Plaintiffs. SGD H/H MICHAEL K. AMPADU CIRCUIT COURT JUDGE 9

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