

GHANA / JUDGMENT

Discount Financial Services Vrs Tetteh and Nkansah Tetteh [2022] GHAHC 15 (12 December 2022)

[2022] GHAHC 15

COURT

High Court

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IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE (GENERAL JURISDICTION COURT 5) HELD IN ACCRA ON MONDAY THE 8TH DAY OF MAY, 2023 BEFORE HIS LORDSHIP JUSTICE WILLIAM BOAMPONG, HIGH COURT JUDGE SUIT NO. GJ/286/15 DISCOUNT FINANCIAL SERVICES PLAINTIFF/J/CREDITOR VS SAMUEL TETTEAH DEFENDANT/J/DEBTOR H/NO. 921W BUBUASHIE, ACCRA AND SEAN JASON NKANSAH TETTEH CLAIMANT (ACTING PER HIS NEXT FRIEND OR GUARDIAN AD LITEM, JOYCE BOATEMAA AKUAMOAH J U D G M E N T The biological mother of the Claimant who also happened to be the husband of the Defendant/J/Debtor acted as the next friend or Guardian ad litem for the Claimant who is a minor. By the affidavit evidence the guardian ad litem of the Claimant claimed that the property in question seized in execution by Bailiff of this Honourable Court pursuant to a Notice of Attachment dated 12th September 2018 is for the Claimant. She states that the property seized in execution does not belong to the Defendant/J/Debtor neither is same registered in his name. According to the next friend of the Claimant she purchased the said land for her son, the Claimant in the year 2010. She originally bought the land with an uncompleted 2-bedroom house from Doris Adzigbe per Exhibit 'GJ' series. Although it appeared on the receipt that the land is in Kasoa Iron City but it is actually situate at Iron City Ngleshie Amanfrom, Accra. After the said purchase the uncompleted structure was demolished before the land was developed into its current state. She states also that the site plan of the property is in the name of the Claimant per Exhibit "SJ1". At the time of purchase, the said Doris Adzigbe did not have proper documentations on the land, so after the purchase, she had to obtain an indenture in the name of the Claimant from the actual landowners after paying a nominal fee and she is currently in the process of registering the land in the Claimant's name. The evidence of the Plaintiff/J/Creditor is that the house subject matter of attachment in this suit belongs to the Defendant/J/Debtor eventhough he is yet to register it in his name. According to the Plaintiff/J/Creditor, the survey he had done on this house attached in execution did not reveal the name of the Claimant (Infant Sean Jason Nkansah Tetteh nor her Guadian and litem Joyce Boatemaa Akuamoah) as the owner of the property per Exhibit 'A' i.e. the Search with the search plan). The Plaintiff/J/Creditor

therefore states that the document exhibited by the Claimant do not in any way relate to the house under attachment but some other property not seized in execution. The Claimant in proof of his case tendered Exhibits 'SJ' series which are receipts proving that the property was indeed purchased from Madam Doris Azigbe in 2010. In further proof of his title to the property, the Claimant tendered also Exhibits 'SJ1' 'SJ2' and 'SJ3' which are a site plan, the indenture and some utility bills bearing the name of the Claimant. PW1 that is Madam Doris Azigbe corroborated the Claimant's evidence that indeed she sold the property to the Claimant in the year 2010. She also confirmed that Exhibit 'SJ' series were in fact the receipts she issued to the PW2, One Numo Kankam, the Wulomo Ngleshie Aman from who are the allodia title holders of the land in question also testified on behalf of the Claimant. He testified that the land on which the property is situate is the very land they sold to the Claimant. He further testified that sometime in 2010, they were approached by PW1 to prepare an indenture for the Claimant. The Claimant after paying the appropriate fee, they prepared an indenture with the site plan for the Claimant. It is also on the records that the Claimant had been in possession of the land he bought from PW1 since 2010. From the case of the plaintiff/J/Creditor the only serious issue the Plaintiff/J/Creditor had with the Claimant is the Claimant's Exhibit 'SJ1' which is the site plan the Claimant presented in his affidavit evidence. The Plaintiff/J/Creditor contention is primarily centered on the fact that from the Claimants Exhibit 'SJ1' i.e. the site plan to property the Claimant claims to have purchased from PW1 cannot be the same property. To enable the Court to have a sufficient guide to solve this crucial issue as to whether the land seized in execution is the same as the Claimants land, the Court on the 12th Day of March 2021 ordered the Regional Surveyor of the Greater Accra Region to appoint a Surveyor from the Survey and Mapping Division to prepare a composite plan to assist the Court to ascertain as to whether or not the two lands are the same, since that remained the major issue from the affidavit evidence and respective cases of the parties. The Surveyor concerned duly prepared and filed the composite plan. He was invited for Cross-Examination. The Surveyor as a Court witness was marked as 'CW1' and the Surveyor Report was as well marked as 'CW1'. On the 12th April 2022 Counsel for the Claimant put the Surveyor (CW1) under cross-examination as follows: "Q. When you take a look at the site plan (Exhibit 'A') attached to Exhibit 2, you would agree with me that, this particular site plan was prepared with the aid of a GPS machine that you Surveyors use? A. Yes. Q. When you take a look at the Claimant's Exhibit 'SJ1' you would agree with me that this particular site plan is more like a layout and was not prepared with the aid of a GPS, correct? A. Yes. Q. In fact, you agree that this particular site plan was more likely prepared with the aid of a compass, am I correct? A. Yes. Q. You will agree with me that G. P. S site plans, because they are digital, they turn out to be more accurate. A. Yes. Q. But compass site plan which is the old method are not as accurate as G. P. S site plans, am I correct? A. Yes My Lord, they have some levels of error contained in those plans prepared with the compass instruments". On the same 12th April 2022 Counsel for the Plaintiff/J/Creditor also put the Surveyor (CW1) under cross-examination as follows:- Q. Take a look at the site plan provided by the Claimant. There are longitudinal gridlines, correct? A. Yes. Q. But there are no latitudinal grid line? A. Yes, Grid values for the Eastern can be traced on the plan but that of the Northern cannot be traced. Q. Take a look at your composite plan Exhibit 'CW1' and look at the composite plan. When you compare at least the longitudinal grid lines within which the

disputed property falls, it is clear that the site plan of the Claimant at least longitudinally does fall within the two longitudinal grid lines on the composite plan? A. Yes, that of the composite plan marks from 1116500 to 1117500 at a 1000 feet interval and that of the site plan of Claimant marks 115000 to 116000 a geographical displacement of about 1000 feet intervals. Q. So put another way, the site plan of the Claimant is 1,000 feet away from the disputed property not so? A. Exactly so My Lord. Q. On the other hand, the site plan prepared by the Plaintiff/J/Creditor bearing the name Samuel Tetteh substantially falls in the property taken in execution, not so? A. Exactly so and it is marked green on the face of the Composite plan. Q. You earlier gave evidence that there was about 1000 feet displacement of the Claimant's document relative to the disputed land, and you also said compass survey is not as accurate as GPS survey. In terms of feet what is the margin of error between compass survey and GPS survey? The acceptable error for survey and mapping is plus or minus 10 feet. But in the case of this composite, it is over a 1,000 feet which is a massive geographic displacement" On the crucial issue as to whether or not the land seized in execution in this suit is the same as the land presented by the claimant per his site plan Exhibit 'SJ1', am guided by the compelling evidence of the CW1 the surveyor who prepared the composite plan as follows:-

1. That the site plan of the Claimant is 1,000 feet away from the property seized in execution in the suit.
2. The site plan presented by the Plaintiff/J/Creditor bearing the name Samuel Tetteh (the Defendant/J/Debtor in this suit) substantially falls in the property taken in execution.
3. That the 1,000 feet displacement of claimants land from the property seized in execution can never be explained by the preparation of the claimants site plan Exhibit 'SJ1' with aid of a compass since the acceptable margin of error between a site plan prepared by a compass and one prepared by GPS is only 10 feet but that in the instant case is 1,000 feet intervals from claimant's land. In the instance case the 1,000 feet displacement of Claimant's land very far exceeds the plus or minus 10 feet acceptable margin of error for same to be considered in that line. However being guided by this compelling evidence of CW1, I hold that the Claimant's land per his site plan 'SJ1' is totally different from the site plan prepared by the Plaintiff/J/Creditor bearing the name Samuel Tetteh (The Defendant/J/Debtor in this case) which exactly tarry with the composite plan drawn by the Surveyor (CW1). It is more likely that the present next friend of the Claimant being the wife of the Defendant/J/Debtor is obviously worried that her husband is going to lose the property seized in execution by the present execution process, she therefore feels compelled to enter this interpleader summons on behalf of their infant child to prevent a husband and father respectively to lose the property. I rule that the Claimant's claim is unfunded. I accordingly refuse same. The Plaintiff/J/Creditor is accordingly ordered to proceed with the execution which was halted by this Interpleader Summons. Cost of GH¢10,000.00 in favour of the Plaintiff/J/Creditor against the Claimant. (SGD) WILLIAM BOAMPONG (JUSTICE OF THE HIGH COURT) COUNSEL: JOSEPH KWODWO AMANKWAA FOR LEONARD SEDZRO FOR THE PLAINTIFF/J/CREDITOR STEPHEN SOWAH CHARWAY FOR THE CLAIMANT 9

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