

GHANA / JUDGMENT

# Ocran Vrs Schmit [2023]

## GHACC 365 (7 June 2023)

[2023] GHACC 365

COURT

Circuit Court

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IN CIRCUIT COURT '1' HELD AT TAKORADI, WESTERN REGION ON WEDNESDAY 7TH JUNE, 2023 BEFORE HIS HONOUR MICHAEL K. AMPADU, CIRCUIT COURT JUDGE. SUIT NO. C1/7/2021 BETWEEN PRISCILLA OCRAN ..... PLAINTIFF AND EVELYN SCHMIT ..... DEFENDANT

### JUDGEMENT

Plaintiff: Present Defendant: Absent and not represented Counsel: Lawyer EDMUND ACQUAAH-ARHIN for Plaintiff This action was mounted by the Plaintiff on the 4th day of September, 2020 for the following reliefs;

- (a) Declaration of title to piece or a parcel of land described as all that piece or parcel of land known as Plot No. 6 situate at South Essipon Upper Inchaban Planning Scheme in the Western Region of the Republic of Ghana, bounded on the North West by a proposed road measuring 100 feet more or less, on the North West by a proposed road junction measuring 30 feet more or less, on the North East by Plot No. 7 measuring 120 feet more or less, on the South East by proposed road measuring 90 feet more or less, on the South West by Plot No. 5 measuring 120 feet more or less and thus enclosing an approximate area of 0.25 of an acre which piece or parcel of land are more particularly delineated on the plan attached hereto and thereon shown edge pink.
- (b) Perpetual injunction restraining the Defendant, her assigns, privies, agents from developing the land.
- (c) General damages for trespass.
- (d) Cost.
- (e) Any equitable relief. In her statement of claim, the Plaintiff stated that she is an Account Clerk at Gateway Logistics Limited and lives at Beahu Ridge whiles the Defendant is a Limited Liability Company in Anaji. According to her, by a Deed of Assignment dated 20/12/2013, she acquired the plot of land described above and after the execution of the document on 20/12/13, she registered same at the Lands Commission, Sekondi with Deed

Registration Number 27563 and has ever since exercised control over it. She stated that in recent weeks, the Defendant have entered into portions of her land, developing same with a clear intention of building a house thereon without her consent. It was the further statement of the Plaintiff that the Defendant is working day and night on the said plot of land as she has pitched camp on the land with masons and carpenters who have started profiling and laying blocks to construct a house. In her evidence in chief to the Court, the Plaintiff added that the land or plot of land, the subject matter of this suit is Plot No. 6 situate at South Essipon, Upper Inchaban Planning Scheme which is approximately 0.25 of an acre and she attached the Deed of Assignment which she acquired on 20/12/13 as Exhibit 'A'. She testified further that the Defendant has continued with construction on the land in dispute and has built up to window level inspite of the fact that she has her security post building built on the plot of land. Plaintiff contended that due to the conduct of the Defendant seen from her preparedness to quickly put up a house, it is only the Court that can stop or compel the Defendant to stop further development by pronouncing who the owner of Plot No. 6 situate at South Essipon, Upper Inchaban Planning Scheme is and so prayed as per her reliefs. It is hereby put on record that even though the Defendant was served with the writ and was supposed to appear in Court on 10/09/2020 which was the return date, she did not appear in Court until 24/05/21 which was the eighth hearing date and never appeared again. For the sake of fairness, the Court ordered that all proceedings in her absence be served her by substitution when personal service failed. Despite all these considerations, the Defendant did not appear and failed to file any appearance or defence. Based on the conduct of the Defendant, the Court allowed an application by the Plaintiff for judgement in default of defence and the application was ordered to be made on notice to the Defendant and when she still failed to appear, the claims of the Plaintiff were considered in accordance with Order 10 r 4(1) of CI 47 which provides that: "Where the Plaintiff's claim against the Defendant is for possession of immovable property only, and the Defendant fails to file appearance, the Plaintiff may after the time limited for appearance, apply for judgement for possession of the immovable property and costs against the Defendant, provided that the Plaintiff may proceed with the action against other Defendants, if any, who have filed appearance". In his book "Practice & Procedure in the Trial Courts and Tribunals of Ghana (2nd Edition), the Learned Author, S. A. Brobbey stated at page 380 on a Refusal by a Party to participate in proceedings and citing the case of the *In Re West Coast Dyeing Industry Ltd; Adams Vrs. Tandoh* (1984-86) 2GLR 561, CA that: "A party to a case may refuse to participate in proceedings altogether or fail to lead evidence. The rule is that when a party is given opportunity to lead evidence in support of his stand or in defence of allegations made against him but deliberately declines to avail himself of that opportunity, the Court will be entitled to proceed with the trial to conclusion and make deductions, draw conclusions or made findings on the basis of the evidence adduced at the trial". As said earlier on, the Defendant was given all the opportunity to appear to have her side of the story heard but she did not avail herself. The Court therefore gives a ruling in favour of the Plaintiff in accordance with Order 10 r 4(1) of CI 47 as follows:

- (a) The Court declares title to the piece or parcel of land known as Plot No. 6 situate at South Essipon, Upper Inchaban Planning Scheme in the Western Region of the Republic of Ghana bounded on the North West by a proposed road measuring 100 feet more or less, on the North West by a proposed road junction measuring 30 feet more or less, on the North East by Plot No. 7 measuring 120 feet more or less, on the South East by proposed road measuring 90 feet more or less, on the South West by Plot No. 5 measuring 120 feet more or less and thus enclosing an approximate area of 0.25 of an acre which piece or parcel of land are more particularly delineated on plan attached hereto and thereon shown edge pink in favour of the Plaintiff.
- (b) The Defendant, her assigns, privies, agents and persons claiming under her are hereby perpetually restrained from developing the land.
- (c) An amount of Five Thousand Ghana Cedis (GH¢5,000.00) is hereby awarded against the Defendant as general damages.
- (d) Cost of One Thousand Ghana Cedis (GH¢1,000.00) is also awarded against the Defendant.
- (SGD) H/H MICHAEL K. AMPADU CIRCUIT COURT JUDGE 5

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