

**IN THE HIGH COURT OF JUSTICE HELD AT KOFORIDUA ON  
THURSDAY THE 21<sup>ST</sup> DAY OF FEBRUARY 2019. BEFORE HER  
LADYSHIP JUSTICE BARBARA WARD ACQUAH (MRS.) J.**

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**SUIT NO.C12/116/2015**

1. ESTHER OSEI : PLAINTIFFS  
2. COMFORT BOATENG  
3. ABENA ASEIDUA  
4. ADWOA ELLEN  
5. SISI FOKUO  
6. AKOSUA AGYEIWAA  
7. GYEATUO KYENKYENKU (HON)  
8. AFUA AMPOMAA  
ALL OF SAAMAN

**VERSUS**

**KIBI GOLDFIELDS LTD : DEFENDANT  
OF OSINO**

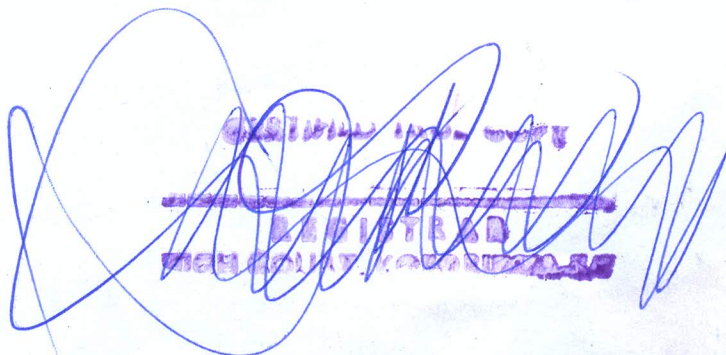
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**JUDGMENT**

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The Judgment is with respect to a suit that was instituted by the plaintiffs against the defendant on 15<sup>th</sup> July 2015 by which the plaintiffs claimed the following:

- (a) A declaration that the destruction and failure by the Defendant to pay fair and adequate compensation to the plaintiffs for the destruction of their farms and other properties is unlawful under the 1992 Constitution of Ghana and the Minerals and Mining Law, 2006 (Act 703)



A large, stylized handwritten signature in blue ink is written over a purple rectangular stamp. The stamp contains the text "REGISTERED" and "HIGH COURT, KOFORIDUA" in a bold, sans-serif font. The signature is a complex, flowing scribble that covers most of the stamp.

- (b) An order directed at the defendant to pay adequate and fair compensation to the plaintiffs for the destruction of their farms and for the use of their land as required under the Mineral and Mining Act 2006, (Act 703).
- (c) Damages
- (d) Interest at the prevailing Commercial Bank rate thereon from 2012 to date of final payment.
- (e) Costs.

The gist of plaintiffs' statement of claim is as follows:

They are farmers with various plots of farm land and also resident in Saaman in the Fantekwa District of the Eastern Region. The Defendant is a limited liability company incorporated under the laws of Ghana which deals in the business of mining and operates a mining lease at Saaman. Sometime in 2012 the defendant at the onset of their mining operation destroyed crops and other valuables on plaintiffs' land on which they had been without let or hindrance for over a decade. The crops destroyed by the defendants included cocoa, cola nuts, avocado pear, citrus fruits, nut meg, black pepper, cocoyam, plantain, yam, banana, coconuts and palm trees.

The defendant did not carry out the mandatory enumeration of the plaintiffs' crops in order to ascertain the quality of properties destroyed. In or around 2014, the plaintiffs caused their lawyers to write to the defendant to request adequate compensation for the unlawful destruction of plaintiffs' crops. Not only did defendant not respond to their counsel's letter but all attempts to get them to compensate the plaintiffs have been unsuccessful.



Plaintiffs have brought this state of affairs to the attention of the Minister of Lands and Natural Resources but again, no response has been heard.

On 28<sup>th</sup> July 2015, the defendant entered Conditional Appearance and followed this up with a Motion to set aside Plaintiffs' writ of summons on 7<sup>th</sup> October 2015. This motion was eventually heard on 17<sup>th</sup> November 2018 and dismissed by the court and the case took its normal course.

After this, Counsel for the defendant and defendant vanished. Eventually on 14<sup>th</sup> July 2017 the plaintiffs appeared before me for directions and the issues for the determination of the suit were set down. This case was then adjourned to 19<sup>th</sup> October 2017 for hearing notice to be served on defendant to appear for directions with respect to CI.87.

Incidentally, on 24<sup>th</sup> April 2017, the 1<sup>st</sup> and 7<sup>th</sup> plaintiffs had filed its witness statements for themselves and on behalf of the other plaintiffs. On 19<sup>th</sup> October 2017 the defendant's representative was absent but their counsel was present. This court then ordered that defendant files its witness statements on or before 14<sup>th</sup> November 2017. The case was adjourned to 27<sup>th</sup> November 2017 for Case Management Conference. Come 27<sup>th</sup> November 2017, neither the defendant nor its counsel was in court. Defendant's witness statement had not been filed either. Defendant was ordered to file it on or before 18<sup>th</sup> December 2017 and the case was adjourned yet again to 20<sup>th</sup> December 2017 for Case Management Conference. The plaintiff was ordered to have the defendant served with the Court's notes of that day and this was duly done on 4<sup>th</sup> December 2017. Not only was the witness statement never filed but the defendant and its Counsel disappeared altogether. Eventually, on 20<sup>th</sup> November 2018 I struck out defendant's statement of defence and proceeded to hear the

evidence of the plaintiffs. The 1<sup>st</sup> plaintiff and the 7<sup>th</sup> plaintiffs both tendered their witness statements as their evidence in chief.

Their evidence for themselves and on behalf of the other plaintiffs was that between July 2012 and 2013 the defendant company destroyed the plaintiffs' farms amidst heavy military presence to prevent the plaintiffs from resisting. The crops destroyed included cocoa, cola nut, avocado, citrus, nut meg, coconuts, palm fruits, cocoyam, black pepper and plantain. Plaintiffs' ancestors had farmed on their parcels of land for centuries and the destruction had deprived them of their livelihood and hampered the education of their children.

Plaintiffs had their cameras destroyed when they attempted to take photographs of their farms and the activities of the defendant on their farm. The defendant offered to pay each plaintiff GH¢1,000 per acre of cocoa farm destroyed irrespective of the maturity of the trees and the plaintiffs say this is unfair and a gross violation of their fundamental human rights.

The plaintiffs per 1<sup>st</sup> plaintiff exhibited some documents that they termed "General Information" which showed how to compute the compensation for the crops. By that they showed the economic life span of the various trees that were destroyed, ranging from 70 years for nut meg and coconut trees through 50 years for cocoa, cola nut, and banana, 40 years for pear, thirty years for citrus and 'Bonowa'(or voacanga Africanus).

1<sup>st</sup> plaintiff exhibited, in addition, 3 sheets of paper that stated that 1<sup>st</sup> plaintiff owned a 2 acre farm made up of Cocoa, cola, pear, bananas, Yam, coconut and plantain. 2<sup>nd</sup> plaintiff's land, also made up of the same trees was 1 acre, 3<sup>rd</sup> plaintiff had a 1.5 acre farm land, 4<sup>th</sup> plaintiff had a .25 acre, 5<sup>th</sup> plaintiff's farm land was 1.2 acres, 6<sup>th</sup> plaintiff's land size was .25 acre, 7<sup>th</sup> plaintiff's was 0.5 acres and that of 8<sup>th</sup> plaintiff was 2.5 acres. With the



exception of the 5th and 7th plaintiffs they all had cocoa trees at various levels of maturity at 10 years and under 10 years.

Plaintiff further testified that each cocoa tree yields an average of 15 kilograms a year, whilst they each earned GH¢150 per cola tree, GH¢100 per pear, GH¢150 per citrus tree and so on and so forth, per anum. Computation of compensation (cc) for the plaintiffs will be, according to their exhibits, the number of trees (Q) multiplied by the remaining economic life expectation (E) multiplied by Net Annual Income per tree (N);  $(Q \times E \times N = CC)$ .

Now on 20<sup>th</sup> November 2018 after the hearing I adjourned this case to 8<sup>th</sup> January 2019 for a date to be set for judgment. I asked plaintiff's counsel to file his written addresses to the court on or before 20<sup>th</sup> December 2018. On 8<sup>th</sup> January 2019 however, both plaintiffs' and defendant's Counsel were present in Court. I noticed that the defendant's Counsel had filed a motion to set aside the proceedings of the Court dated 20<sup>th</sup> November 2018 with a return date of 23 January 2019. I therefore adjourned to 23<sup>rd</sup> January 2019 to enable defendant's Counsel move the application. On 23<sup>rd</sup> January 2019 neither defendant nor their Counsel, Kwame Acheampong Boateng appeared in court. That motion was therefore struck out for want of prosecution.

The conclusion I draw from the altitude of the defendant and its counsel is that they have no regard for this court. They have shown utter disregard and gross disrespect for the court process altogether. They do not have and cannot prosecute a defence.

That said, this is a dispute that pertains to land. The plaintiffs must, in the circumstance, demonstrate their mode of acquisition. I have no doubt at

all that plaintiffs were being truthful when they said that their ancestors had farmed on the land for over centuries.

It is trite learning that where a party had made an averment and that averment was not denied, no issue was joined and no evidence needs to be led to that averment (See Kusi & Kusi v. Bonsu [2010] SCGLR 60 @ 78.)

On the matter of the mode of acquisition of the land therefore the plaintiffs' evidence will be believed. The same thing applies to whether crops have been destroyed or not. There is no evidence by the defendants to the contrary. I do not have any evidence to contradict plaintiffs' evidence that they have not been paid any compensation.

It is trite learning that it behoves the plaintiffs to prove their claim by producing evidence that will establish a requisite degree of belief concerning the fact sought to be proved in the mind of the Court. In civil cases, such as this, this is a burden (known as burden of persuasion) that requires proof by a preponderance of persuasion. (See Sections 10 and 12 of the Evidence Act). Section 12 (2) defines "Preponderance of Probability" as

"that degree of certainty of belief on the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence."

The plaintiffs' counsel in his written submission has referred the court to the Minerals and Mining Act of 2006, Act 703 which states, amongst others:

"S 72(5) the owner of a mining lease shall, in the presence of the owner or lawful occupier or accredited representative of the owner or occupier of land, the subject matter of the mining lease and in the presence of an officer of the Government agency responsible for land



valuation carry out survey of the crops and produce a crop identification map for the compensation in the event that running activities are extended to the areas.

“S 73(1) the owner or lawful occupier of any land subject to a mineral right is entitled to and may claim from the holder of the mineral right compensation for the disturbance of the surface rights of the owner or occupier in accordance with section 74.

“S 74 The compensation to which an owner may be entitled may include compensation for,

- (a) Deprivation of use of or a particular use of the natural surface of the land or part of the land.
- (b) Loss of or damage to immovable properties.
- (c) In the case of land under cultivation, loss of earnings or sustenance suffered by the owner or lawful occupier, having due regard to the nature of their interest in the land.
- (d) Loss of expected income, depending on the nature of the crops on the land and their life expectancy.”

Counsel also referred me to Article 20(1) and (2) of the Constitution 1992 which states:

“20(1) No property of any description, or interest in or right over any property shall be compulsorily taken possession of or acquired by the state unless the following conditions are satisfied

- (2) compulsory acquisition of property by the state shall only be made under a law which makes provision for
  - (a) the prompt payment of fair and adequate compensation.
  - (b) a right of access to the High Court by any person who has an interest in or right over the property whether direct or

on appeal from any other authority for the determination of his interest or right and the amount of compensation to which he is entitled.”

As stated earlier, the plaintiffs have proved on a balance of probabilities that they owned the parcels of land and the crops on them destroyed by the defendant company. Each plaintiff is entitled to having those crops enumerated according to their remaining life expectancy multiplied by the net income per tree/crop multiplied by the number of crops.

I am persuaded that they have not been paid a pesewa and on the authority of the Article 20 of the constitution 1992 and Act 703 it is hereby declared that plaintiffs are entitled to all their claims. Accordingly, the destruction and failure of the defendant to pay adequate compensation to plaintiffs for the destruction of their farms and other properties are unlawful. The defendant is hereby ordered, in the circumstance, to pay fair compensation for the destruction of their farms and land to the plaintiffs in accordance with law and as per the computation set down in this judgment, supra. The defendant is ordered to pay interest on the amount payable at the Commercial Bank rate from 2012 to the date of final payment. I award damages to the tune of GH¢3000 for each plaintiff against the defendant. Defendant is in addition to pay each plaintiff cost of GH¢2000.

(SGD)

**BARBARA WARD ACQUAH (MRS.)  
JUSTICE OF THE HIGH COURT**

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REGISTRAR  
HIGH COURT, KUMASI