

**IN THE HIGH COURT OF JUSTICE, GHANA, AUTOMATED COURT 2, HELD  
IN ACCRA ON FRIDAY THE 2<sup>ND</sup> DAY OF MAY 2008 BEFORE HIS LORDSHIP,  
THE HONOURABLE MR. JUSTICE K.A, OFORI ATTA, J.**

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**SUIT NO. AP 36/2007**

**EMMANUEL VICTOR ASARE & 3 ORS.**

**VS.**

- 1. GA WEST DISTRICT ASSEMBLY**
  - 2. THE ATTORNEY GENERAL**
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<b>PLAINTIFFS</b>	<b>-</b>	<b>PRESENT</b>
<b>1<sup>ST</sup> DEFENDANT REPRESENTED BY FRANK NKOI</b>	<b>-</b>	<b>PRESENT</b>
<b>2<sup>ND</sup> DEFENDANT</b>	<b>-</b>	<b>ABSENT</b>
<b>POKU ADUSEI FOR PLAINTIFF/APPLICANTS</b>	<b>-</b>	<b>PRESENT</b>
<b>T.T. NARTEY FOR 1<sup>ST</sup> DEFENDANT RESPONDENT</b>	<b>-</b>	<b>ABSENT</b>
<b>AFUA ABAM FOR 2<sup>ND</sup> DEFENDANT/RESPONDENT</b>	<b>-</b>	<b>PRESENT</b>

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# J U D G M E N T

BY COURT:

The Greater Accra Region is generally low lying and some areas are flood prone during the rainy season. One of such areas is known as Mallam, towards the western side of the Accra Metropolis. It is located in the Ga West District of the Region.

In July 2007 following heavy rains, some lives and property were lost as a result of the floods in the area. The public outcry was deafening. The district Authorities maintain that the floods were the direct result of or contributed to by the houses and structures built or erected across water courses in the area by the residents including the Applicants herein. By their bye-laws, the developments were illegal.

The District Assembly was nudged into taking concrete and urgent action to prevent a recurrence. It mobilized security personnel and commenced demolishing the offending structures and forcibly evicted some of the residents from their homes.

The residents' claim that the demolition and eviction constitute violations of their fundamental human rights to life and property among others and have brought the instant action against the District Assembly and the Attorney General for:

*“Enforcement of fundamental human rights and for an order of prohibition restraining the Defendants, their workers, agents and servants from forcibly demolishing the houses of the Applicants and/or for an order for the payment of compensation to the residents whose houses have been unlawfully demolished and for such orders as this Honourable Court may deem fit”.*

The application has been brought under Article 33[1] of the 1992 Constitution. It provides:

*“Where a person alleges that a provision of this constitution on the fundamental human rights and freedoms has been or is being or, are likely to be violated or contravened in relation to him, then without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress”.*

Thus the High Court has been given power to enforce the rights of persons who allege that any of their rights as provided for in chapter five of the 1992 Constitution have been, are being or, are likely to be violated or contravened. Among them are the rights to life, liberty, human dignity, fair trial, and protection from deprivation of property. Detailed provisions have also been for property rights of spouses, economic, educational cultural rights and women and children's rights among others.

The procedure for bringing actions for the enforcement of the fundamental human rights under Article 33 of the Constitution has been provided for under Order 67 of the High Court [Civil Procedure] Rules CI 47, 2004. By rule 1 of the Order, a person who seeks in respect of the enforcement of any fundamental human right in relation to that person under Article 33[1] of the Constitution shall submit an application to the High Court. Human Rights issues are urgent and important and the rules provide for a quick and convenient disposal of same by the Courts.

The respective affidavits and statements of case filed by the parties and their Counsel disclose that the facts as stated above are not seriously in dispute.

It is the case of the Applicants that they were granted their plots by the Gbawe Kwatei Family, owners of the land between 1967 and 1991. Some of the leases were exhibited. It is also averred that Applicants have built their houses and have been living in them for several years. The Defendants counter these allegations and urge that the houses and structures are illegal in that they are within waterways and water reservations and they are not supposed to be there in the first place. It is further intended that this fact was known to the residents yet they ignored it and went ahead to erect their structures. Therefore the 1<sup>st</sup> Defendants are entitled by law to remove them to make way for the free flow of water in order to reduce if not wholly eliminate the perennial flooding of the area without its attendant loss of lives and property. From the evidence on record, the Applicants do not deny that their structures or some of them are on waterways and within water reservation and I so hold.

Another issue raised by the Applicants is that upon acquiring their leases, some of them had permission from the 1<sup>st</sup> Defendant to build their respective houses and had also been paying all necessary rates to the appropriate authorities. To the contrary the Defendants aver that the Applicants have no valid building permits. In paragraphs 12 of the affidavit in opposition by the 1<sup>st</sup> Defendant it is deposed that:

*“The building permits which are bandied about as genuine permits were paid for by cash and did not go through the proper process.”*

On the part of the 2<sup>nd</sup> Defendant, it is alleged that some of the permits are irregular and were not issued by the appropriate officers.

From the affidavit evidence, I have come to the conclusion that it is not all the houses which have building permits. It is also not in doubt that some of the building permits were not issued by the appropriate officials. On this point, I agree with learned Counsel for the Applicants that they are entitled to assume the regularity of the permits issued them. In this case, the permits were issued as part of the official duties of the officers concerned and the law is that official duty is presumed to have been regularly performed. Section 37 of the Evidence Decree 1975 [NRCD 323] provides:

*“It is presumed that official duty has been regularly performed”.*

The section falls within the rebuttable presumptions under the law.

In this instance, the permits were issued by agents of the 1<sup>st</sup> Defendants. And the objection to the permits is that they were issued by the District Works Engineer and not the Senior Architects or Building Inspectors. For my part in the absence of clear evidence that the Applicants or those who had the permits knew of the irregularity the presumption of the permits having been issued regularly by the officials concerned has not been displaced. I accordingly hold that the building permits were regularly obtained.

I also find in the evidence that some of the Applicants paid property and other rates to the 1<sup>st</sup> Defendant which payments were accepted and receipts issued for them.

It is in the light of this foregoing that the Applicants contend that the demolition of their properties and forced evictions contributed a breach of their rights to life, and livelihood, human dignity, property and a right not to be evicted without due process. They also pray for compensation for the demolished properties.

Article 13[1] of our 1992 Constitution reads:

*“No person shall be deprived of his life intentionally except in the exercise of the execution of a sentence of a Court in respect of a criminal offence under the laws of Ghana of which he has been convicted”.*

My understanding of the sub-clause is that nobody’s life can be taken intentionally without due process of law. Sub-clauses [2] of the Article provides for exception to sub-clause [1].

It provides that: “a person shall not be held to have deprived another person of his life contrary to clause 1 if that other person dies as a result of the used of reasonably justifiable force in the following circumstances”:

- [i] Self-defence or defence of .....property
- [ii] the lawful arrest of a person of the prevention of the escape of a person lawfully detained, or
- [iii] Suppression of a riot, insurrection or meeting, or
- [iv] to prevent the commission of a crime by that person.

The above exceptions show that the right to life is not absolute.

It has been urged in learned Counsel for the Applicants’ written arguments that the right to life should be given a broad meaning to cover the quantum and quality of a persons life

and refers to the case of Olga Tellis v Bombay Municipal Corporation [1985] wherein the Supreme Court of India held that the right to life includes the right of livelihood.

The Court said:

*“The sweep of the right to life conferred by Article 21[of the Constitution of India] is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as for example, by the imposition and execution of the death sentence except according to procedure established by law. An equally important facet of that right is the right to livelihood, because no person can live without the means of living; that is the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood”.*

Again, learned Counsel refers to the case of Francis Coralie Mullin vs. Administrator, Union Territory of Delhi [19981] 2 SCR 516 in which the Supreme Court of India again held that:

*“The right to life includes the right to live with human dignity and all that goes with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading writing and expressing oneself in diverse forms freely moving about and inviting and commingling with fellow human beings”.*

In the above cases, the Supreme Court of India adopted a broad interpretation of the right to life to include all conditions that make life worth living and I am indeed persuaded by the opinions, although in Ghana there are specific provision enshrined in the constitution on the right to education, movement, association etc, in addition to the right to life. Flowing from the above, it has been urged that the demolition and forced evictions during the rainy season and the failure to provide alternative accommodation and or compensation constitute a violation of the Applicants right to life nor only under our constitution but also as enshrined in international charters to which Ghana is a signatory.

One such charter is the African Charter on Human and People’s Rights, Article 4 of which states:

*“Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. Non one may be arbitrary deprived of this right”.*

The African Commission on Human and People’s Right have in rulings on the above article, made pronouncements that seem to agree with the views of the Supreme Court of India in the cases cited above.

In Kazeem Aminus vs. Nigeria cited in the “The law of the African Charter on Human and Peoples’ Rights’ 2007 by Hassan B Jallow at page 188, there was a complaint of

harassment by security officers leading to the victim going into hiding for fear of his life. The commission ruled as follows:

*”It would be a narrow interpretation to [the right to life] to think that it can only be violated when one is deprived of it. It cannot be said that the right to respect this life and the dignity of this person would be protected in a state of constant fear and or threats, as experienced by the victim. The Commission therefore finds the above acting of the security agents of the Respondent state in violation of Article 4 of the Charter”*

The learned author writes at page 189 of the book that:

*“other treatment –torture, cruel punishment etc, harassment-leading to fear for one’s life will constitute a violation of the right to life as well. The right therefore is closely related to the rights set out in Article 5 relating to respect for dignity, freedom from exploitation, degradation, slavery, torture cruel inhuman or degrading punishment and treatment denial of medical facilities and care etc”.*

From the above authorities, the right to life is not limited to deprivation of life per se. It encompasses all other rights that make the enjoyment of the right complete and meaningful. Any treatment that derogates from the living of a full life constitutes violation of it. Under our 1992 Constitution therefore, the right to life must be read in conjunction with other rights especially the right to human dignity as enshrined in Article 15.

From the facts of this case, the demolition of the buildings, and forcible eviction of the residents of some of them with the ever constant threat of further demolitions and evictions would constitute a violation of the applicants right to life unless there are circumstances that make the evictions and demolitions justifiable.

Indeed, it has been strongly urged upon me that the fundamental human rights are not absolute and are under the Constitution.

*“Subject to respect for the rights and freedoms of others and for the public interest”.*

Within the meaning of Article 12 Clause 2. And “public interest” has been defined by Article 285 of the Constitution as including:

*“any right or advantage which enures or is intended to enure to the benefit generally of the whole of the people of Ghana”*

Flowing from the above it has been submitted by learned Counsel of the 2<sup>nd</sup> Respondent that the right to life cannot be read in relation only to the applicants but to the public at large. Another point raised in respect of the above is that the presence of the structures poses a present and eminent danger to lives and property anytime it rained and the area

was flooded. Consequently it was in the public interest that the offending structures were removed.

The right to life as enshrined in our constitution is applicable to all Ghanaians. In the present case those who are not living within the water courses and reservation but who are affected by the devastating effects of the floods are also entitled to the enjoyment of the right to life and property. The eviction of the applicants according to the Respondents is to enable them construct drains to ensure that the perennial loss of lives and property as a result of the flooding of the area would be reduced if not completely eliminated. In the circumstances of this case, I am of the view that it is in the public interest that such a project be implemented. Consequently I hold that the demolitions of the houses and eviction of the applicants fall within the provisions of Article 12 clause 2 of the constitution and were justifiable.

It has been urged that the demolition of their houses infringe the Applicants' right to the protection of their privacy of home and property as enshrined in Article 18[1] of the Constitution.

The clause provides that:

*“Every person has the right to own property either alone or in association with others.”*

Learned Counsel argues in his written Submission that the failure and/or refusal by the 1<sup>st</sup> Respondent to value the respective buildings of the premises and the forced eviction is a clear interference with the rights of the applicants. Further learned Counsel states the demolitions interfere with Article 14 of the African Charter on Human and People's Rights. The article provides that:

*“The right to property shall be guaranteed. It may only be encroached upon in the interest of the public need or in the general interest of the community and in accordance with the provision of appropriate laws.”*

The African Commission on Human and Peoples' Rights has ruled in relation to the sealing of premises that the right:

*“necessarily include a right to have access to ones property and the right not to have ones' property invaded or encroached upon.”*

See Page 297 of Jallow supra at page 287

On the other hand the 2<sup>nd</sup> Respondents argue that the demolitions do not constitute a violation of the Applicants right to their property. They refer to Article 18[2] of the Constitution and Article 14 of the African Charter and submit that the houses of the Applicants are not in the general interest of the community. Neither are they in accordance with the laws of the land specially the Constitution and the Local

Government Act, 1993, Act 462, building regulations and the African Charter and should therefore be demolished.

Competing interests are at play here. The interest of the Applicants in the inviolability or alleged inviolability of their property as against the large interest of the public who stand to suffer loss of property and lives should the houses be allowed to remain as they are.

I have already in this delivery referred to the Article 12[2] of the Constitution to the effect that the enjoyment of the rights and freedoms is subject to the rights and freedoms of others and for the public interest.

In the instant case, Article 18 clause 2 of the Constitution provides that the right to privacy of home and other property could be interfered with for public safety or economic well being of the country, for the protection of health or morals, the prevention of disorder or crime or for the protection of the rights or freedoms of others.

Again Article 4 of the African Charter [Supra] makes the enjoyment of the right to property subject to the interest of the public or the general interest of the community in accordance with the provisions of the appropriate laws.

By the combined effects of Article 12[2], and 18[2] of the Constitution and Article 4 of the African Charter, I am left in no doubt that the exercise embarked upon by the Respondents is meant to protect lives and properties in the community at Mallam and its environs. I hold that the demolition and evictions do not constitute an interference with the Applicants' rights to their property.

The Applicants say that no notices were served on them before the demolition and eviction exercises. It is averred in the supporting affidavit for interim injunction that the Respondents started marking the Applicants' houses for demolition without any prior notices and about three days thereafter the demolition and evictions commenced.

The Respondents deny the above allegations and aver that as far back as 2001 notices were served in the media on all developers in all major waterways including those in Mallam of the planned removal of illegal structures to make way for a major exercise to create concrete drains across the District. It is further averred that on 10<sup>th</sup> July 2007 the 1<sup>st</sup> Respondent caused a radio announcement to be made about the impending demolition exercise. Further the Respondents allege that notices were posted on several structures in the area seriously affected by earlier floods which caused untold hardship and massive destruction to life and properties.

I have closely studied the processes on record and I am satisfied that the notices required by law that is the Local Government Act 1993, Act 462 were not strictly complied with. By the provisions of Sections 46 to 69 of the Act, the notices must be in writing. A radio announcement could only be in addition to and not in substitution for it. The notices are to be given to owners, occupiers and developers of the premises involved. This is to ensure that the affected persons have adequate notice of the intended exercise and to

enable them make alternative arrangements to relocate or mount the necessary defences to protect their interest in the property.

Having held that demolition and eviction exercises could be carried out in the public interest and also that the notices if any, did not comply with statutory requirements the following orders are hereby made:

- [i] all the affected structures and houses are to be demolished
- [ii] adequate and reasonable written notices shall be given to all owners, occupiers and or developers whose premises are to be affected by the exercise. Other forms of notices may be given in addition to the written notices.
- [iii] Since we are in the rainy season and to ensure reasonableness and proportionality the evictions shall not be carried out in bad weather or at night unless the affected persons otherwise consent.

The last issue in this suit is the claim for compensation by the Applicants. They maintain as a basis for the payment of compensation that by the ...effect of Articles 18 and 20 [1] and [2] of the 1992 Constitution they are entitled to prompt payment of fair and adequate compensation or alternative accommodation, the Respondents stress that as encroachers and trespassers they are not entitled to either. That, it is further submitted would amount to rewarding them for their wrongful acts.

There is no doubt that the Applicants acquired their plots of land for valuable consideration. They must have spent quite a lot of money in erecting their houses or structures and have been residing in them for some time now. It is also not disputed that some of them had building permits issued by the 1<sup>st</sup> Respondent and pirates and other outgoings have been paid to and accepted by the relevant authorities.

It is however my view that searches at the appropriate agencies would have disclosed that the plots they purchased were in a reservation area. Again, going into the land left them in no doubt that that holdings were across river courses. They nevertheless went ahead and develop their plots notwithstanding the likely consequences. It was a dangerous gamble! Whenever it pours, the area is flooded and poses grave danger to lives and property not only of the Applicants but innocent persons and the community in general. The parochial interest of the Applicants must give way to the public generally.

I am persuaded by the Supreme Court of India's observation in the cases of Almitra H. Patel vs. Union of India that rewarding an encroacher on Public Land with free alternative sites is like giving a reward to a pick-pocket. The Applicants were not entitled to be on the land in the first place.

Since their properties have not been compulsorily acquired by government within the meaning of Article 20 of the 1992 Constitution as contended by learned Counsel for the

Applicants, I hold that they are not entitled to compensation under the Constitution. If the Applicants are entitled to any compensation at all their claims could only be made under Section 56 of Act 462 Supra. I am however of the view that in all the circumstances of this case the Applicants are not entitled to any compensation. Encroachers cannot have any right to compensation or alternative accommodation.

I must say that I find myself not too comfortable with the orders I have had to take. This is because of the likely consequences on the affected Applicants and their families. This situation has arisen because they threw caution to the wind and felt their activities would be condoned. The law has now caught up with them and their properties must be demolished. I hope, it is a hope, that the message sent in this Judgment would make people sit up!

Neither is the conduct of the 1<sup>st</sup> Respondent commendable. As a public authority entrusted with the planning of the area within its jurisdiction this situation has arisen mainly because its officers were not diligent enough to nip the activities of the Applicants in the bud as soon as they commenced their developments. They seem to have stood by giving them a false sense of security and hope. I have noted that some building Inspectors, have been sanctioned as a result of this case. It is hoped it does not end with mere interdictions!

In conclusion I shall dismiss this suit.

There will be no order as to costs.

**[Sgd.] K.A OFORI ATTA**  
**JUSTICE OF THE HIGH COURT**

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