

**IN THE SUPERIOR COURT OF JUDICATURE,  
IN THE HIGH COURT OF JUSTICE, STATE DEBT RECOVERY CASES  
SITTING IN GENERAL JURISDICTION SIX HELD AT ACCRA ON MONDAY THE 7<sup>TH</sup>  
DAY OF APRIL 2025 BEFORE HIS LORDSHIP, JUSTICE GEORGE AIKINS AMPIAH-  
BONNEY (JNR.)**

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**SUIT NO. CM/IPR/0069/2022**

**REPROGRAPHIC RIGHTS ORGANIZATION OF GHANA ... PLAINTIFF  
(COPY GHANA)**

***VERSUS***

**UNIVERSITY OF PROFESSIONAL STUDIES (UPSA) ... DEFENDANT**

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**TIME: 9:50 A.M**

**PARTIES**

Plaintiff – Represented by Joseph Gyamfi

Defendant – Absent

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**COUNSEL**

Edward Yaw Udzu Esq holding John Abraham Larkai Esq brief for the Plaintiff – Present

Fortunate K.B. Fio Esq for the Defendant – Present

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**J U D G M E N T**

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The Plaintiff caused a Writ of Summons and Statement of Claim to be issued on the 2nd Day of November 2022 at the Registry of the Honourable Court against the Defendant praying for the following reliefs:

- (i) A declaration that the mass digital and photocopying of literary works by students and lecturers from photocopier machines for teaching and learning at their respective libraries and at the various faculties and by private copy shops on Defendants campuses without a license first obtained by the Defendants constitutes an infringement of the exclusive Reproduction Rights` of Authors and Publishers under the copy rights laws of Ghana
- (ii) A Declaration that the Plaintiffs are entitled to compensation as assessed by the Court from the Defendants for loss of reprographic fees due its members for each academic year from the 2004/2005 academic year until the determination of the suit..

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- (iii) Perpetual injunction restraining the Defendants from providing photocopy services their respective libraries or at the faculties or from copy shops anywhere their campuses without reprographic license first obtained from the Plaintiff.
- (iv) Costs for bringing this action including solicitor's cost on full recovery basis.

### **THE PLAINT:**

The Plaintiff avers that the Defendant has installed sophisticated photocopier machines in its library and faculties and upon the payment of fee copyright materials which belong to their members are photocopied for the Students.

Plaintiff also alleges that the Defendant has also rented out spaces within its facilities to third parties who have erected such sophisticated photocopiers and are photocopying copyright materials for students for a fee. The final allegation is that the Defendant has since 2004 refused to sign an agreement that will lead to the grant of a license.

### **THE DEFENSE:**

The Defendant says that it has not installed such giant and sophisticated photocopier machines at its library or faculties as is being alleged but admits renting its space within the library to a third party where the third party company runs secretarial services where students go and type their assignments, print their assignments, bind their thesis documents, print out their PowerPoint lecture notes etc.

Further, that it has no obligation in law to collect those fees on behalf of the Plaintiff and also submits that the requirements of the law are that those who use copyright materials are to pay for such usage.

They submits that if the Plaintiff claims that it had an agreement with the SRC in the Defendant institution and they were prepared to pay a fee annually for the use of protected works, then it was the responsibility of the Plaintiff to reach an agreement with the SRC so that it is paid annually like all other businesses who transact business with the SRC.

That, the SRC in the Defendant institution is independent of the Defendant. Thus, the Defendant cannot compel them to enter into any such agreement or impose any such levy on them when it has no such duty to do so.



The issues determination of the case were as follows:

- (i) Whether or not the Defendant has installed sophisticated photocopiers in its faculties and libraries and does photocopies of copyright materials for students and lecturers upon the payment of a fee.
- (ii) Whether or not the Defendant has rented out a space to third parties in its library and with its authorization the third party has installed sophisticated photocopiers with the purpose of photocopying copyright materials to students for a fee
- (iii) Whether or not if there is any such act, the Plaintiff is responsible for the actions of the said third party limited liability company
- (iv) Whether or not the Plaintiff has the right to collect copyright fees on behalf of its members
- (v) Whether or not the Defendant has a duty in law to collect such fees on behalf of the Plaintiff.

#### **APPLICABLE LAW:**

This Court haven given a narration briefly of the respective cases of the parties will proceed to state briefly what the law requires of them to prove their respective cases.

The position of the law in civil cases is that, the standard of proof of allegations is proof by preponderance of probabilities. It is only when crime is pleaded or raised in the evidence that the allegation sought to be proved must be proved beyond reasonable doubt.

See the case of *FENUKU vs. JOHN TEYE (2001-2002) SCGLR 985*.

The combined effect of Sections 10, 11 and 12 of the *Evidence Act 1975 (NRCD 323)* requires that, he who asserts must prove and that proof in civil cases requires proof on the balance of probabilities.

See: *ENEKWA AND OTHERS VS. KWAME NKRUMAH UNIVERSITY OF SCIENCE AND TECHNOLOGY (KNUST) (2009) SCGLR 242 AT 248 AND ABBEY AND OTHERS VS. ANTWI (2010) SCGLR Page 17 at 25-26*.

The case of *ABABIO vs. AKWASI (1994-95) part 2 GBR page 774*, aptly state the rule on the Burden of Proof in Civil cases as follows:

"It is trite learning that, the party who raises in his pleadings an issue essential to the success of his case assumes the burden of proving it. The burden only shifts to the defense to lead sufficient evidence to tilt the scales in his favour when on a particular issue Plaintiff leads some evidence to plead his claim. If the Defendant succeeds in doing this, he wins, if not, he loose on that particular issue."

The case of *ACKAH VS. PEGAH TRANSPORT LIMITED AND, OTHERS (2010) SCGLR 728*, provides guidelines as to the kind of evidence that Plaintiff is required to adduce to prove her allegation. It was held in that case that;

"It is the basic principle of law on evidence that, a party who bears the burden of proof is to produce the required evidence of facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the parties and material witnesses, admissible hearsay, and things (often described as real evidence) without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the Court or tribunal of fact such as a Jury. It is trite law that, matters that are capable of proof proved by producing sufficient evidence or that, on all the evidence a reasonable man could conclude that the existence of the fact more reasonable than its non-existence. The requirement of the law on evidence under Section 10 and 11 of the Evidence Decree"

Per Adaryim JSC (Mrs) in the case of **BISI TABIRI AKA ASARE (1987-88) 1 GLR 360**, the Supreme Court clarifies the rule as to the Standard of proof required of Plaintiff in a Civil action. This case holds that the obligation of the party who bears the burden of proof was to lead such evidence as will tilt in his favour the balance of probabilities on the particular issue.

It is salient to note that, the parameters so to speak, which trial Court adopts as guidelines in determining cases involving Declaration of title to land, recovery of possession and perpetual Injunction established by a number of decided cases by Court competent jurisdiction over time have been outlined below:

- a. The party claiming ownership to the disputed Plot or a party Counter-claiming for a declaration of title to the said disputed property as a matter of law carries that burden of identifying positively the boundaries of the land in dispute;
- b. That the party must show isolated acts of ownership;
- c. He must also discharge the burden of persuasion on him that, he is entitled to his claim without necessarily relying on the weakness in the other party's case.

It also remains to mention that, it is critical that, in an action for declaration of title to land, the party claiming same has to lead cogent evidence tracing his or her roots of title.

In the case of **MONDIAL VENEER (GH) LIMITED VS. AMUAH GYEBU XV (2010) SCGLR PAGE 466** Georgina Wood CJ (as she then was) held as follow: -

*The law requires that, the person asserting title and on whom the burden of persuasion falls, as in the instant case to prove the root of title, mode of acquisition, and various acts of possession exercised over the subject matter of litigation. It is only where the party has succeeded in establishing these facts on the balance of probabilities that the party will be entitled to the claim."*

The Supreme Court reiterated this position of the law in **YEHANS INTERNATIONAL LTD. vs. MARTEY TSURU FAMILY (2019-20) SCGLR 838** where the Court speaking through Adinyira JSC observed as follows:-

*"a person who seeks a declaration of title to land must prove*

- (i) *his root of title*
- (ii) *the mode of acquisition of the land and*
- (iii) *the various acts of possession exercised over the disputed land"*



See also the following cases:

***AWUKU vs. TETTEH (2011) 1 SCGLR 366, AKOTO vs. KAVEGE (1984-86) 2 GLR 365, ABAKAM EFFIANA FAMILY & OTHERS vs. MBIBADO EFFIANA FAMILY & 2 OTHERS (1959) GLR 362.***

Generally, Reprographic laws deals with the Legal aspect of protection and reproducing and distributing visual and graphical works such as images, books, diagrams and charts which the intellectual registered rights and heritage of people.

Under the copyright law, visual works are protected which includes photographs, illustrations and graphics further reproduction rights are copyrights owners control of reproduction distribution and display of works.

The Berne Convention established minimum copyright standards worldwide through various countries has their specific copyright laws and regulations.

The Berne Convention has a significant and major impact on Ghana copyright laws. Ghana as a member is required to provide copyright protection to works from other member countries just as it will do for domestic works. That is to say that Ghana must recognize and respect the copyright of foreign countries as well as its own nationals. That is to say that Ghana must provide same level of copyright protection to foreign works as it does to domestic works just as works originating from Ghana are automatically protected in other Berne Convention parties.

The essence of this that it encourages creativity, innovation within Ghana and cultural exchange within other countries.

Generally, the practical application of Reprographic laws are for image licensing, that is obtaining permission for commercial use, ensuring necessary permission for reproduction and the like.

The Ghana Reprographic Rights Organization (GHARRO) is a collective licensing agency responsible for managing reprographic rights in Ghana by enforcing penalties which includes fines, imprisonment or both and appealing to constant authorities to seize copies at borders. The GHARRO representing a collective of creators and publishers, authors and artists by issuing licenses to individuals and organizations who want to reproduce copyright works and collect royalties on behalf of its members for the reproduction of their work and further to prevent copyright infringements and protect the rights of its members.

The Ghana Reprographic Rights Association Act, Act 757 of 2005 establishes the Ghana Reprographic Rights Association as a collective management to manage reprographic rights in Ghana vested with the exclusive rights granted to copyright owners to reproduce their works in and material form.

The authority to collect royalties on behalf of its members for the reproduction of their works. The right to issues licenses to individuals and organization that want to reproduce copyrighted works at Royalty rates set by the GHARRO.

The Plaintiff in accordance with its mandates issued the instant writ on their three (3) Defendants, two (2) of which entered into an amicable out of Court settlement but for the Defendant herein. I commend the Defendant herein for his boldness, confidence and courageous act of innovatively to an impudent and presumptions degree. The ambition, bravery and determination to test the Law in this regards.

Also, as stated correctly and clearly by Pwamang JSC in *Ghana Independent Broadcasters Association v. Attorney-General and National Media Commission*, Writ No. J1/4/2016 (dated April 21, 2016):

"The position of the law that, where a case falls under public law, a court ought to be slow in granting interlocutory injunction was also underscored by this court in the case of *Republic v. High Court (Fast Track Division) Accra; Ex-parte Ghana Lotto Operators Association (National Lottery Authority; Interested Party)* [2009] SCGLR 372. While the authorities urge caution, the jurisdiction of the court to grant interlocutory injunction in a public law matter is beyond debate."

However recognizing that teaching and learning would be difficult without resort to the photocopying of works protected by copyright to go around that infringement *Article 9(2) of the Berne Convention* made it possible for countries of the Berne Union to remove the exclusive rights restrictions on photocopying and digital copying for educational purposes by legislation subject to the payment of equitable remuneration to authors through collective administration systems. (*Article 9(2) of the Berne Convention* reads as follows:

*"it shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author."*

For purposes of administering the photocopying and digital rights of authors by the removal of the exclusive Reprographic Rights of authors by educational institutions Section 49 of Act 690 made provision for the establishment of collective societies. Section 49 of Act 690 reads as follows:

- (1) *"Authors, producers, performers and publishers may form collective administration societies for the promotion and protection of their interest."*
- (2) *"A collective administration society may acting on the authority of the owner of a right collect and distribute royalties and other remuneration accruing to the owner."*
- (3) *"The Minister may by legislative instrument make Regulations for the formation, operation and administration of societies."*

*Section 18 of the Copyright Regulations 2010 (L.I. 1962)* grants to the Plaintiff the right to determine and collect fees in respect of works protected by copyright photocopied for educational purposes by educational institutions. (Section 18 of the Copyright Regulations reads as follows:



### ***Fees on Reprographic Reproduction:***

- (1) *"A Reprographic Right Collecting Society shall determine a fee in respect of photocopying of works protected by copyright and related rights by educational institutions and any other outlets where reprography is carried out commercially."*
- (2) *"In furtherance of sub regulation (1), the Reprographic Rights Collecting Society shall collect the fee on behalf of stakeholders and beneficiaries."*
- (3) *"Where there is a dispute over a fee imposed on photocopying of copyright works by a collecting society, the Tribunal shall levy a flat rate fee as the Tribunal considers fit."*

Before the implementation of the law on reprography or photocopying of works in copyright for educational purposes the Plaintiff held several educational and sensitization meetings with the various student union groups including in particular the National Union of Ghana Students at the end of which the student leadership fully appreciated the reprographic rights of authors and agreed to pay the appropriate fees to the authors whose works they photocopy for learning.

The Plaintiff's Exhibit 'J series' are letters from the Ministry of Education, the Attorney General and Minister for Justice and National Council for Tertiary Education entreating educational institutions to comply with the copyright laws on reprography.

The Plaintiff has produced a Reprographic Licensing Agreement for signature between the Plaintiff and tertiary institutions for the purpose of achieving the object of Section 4 of Act 690 and ***Section 18 of the Copyright Regulations 2010 (L.I. 1962)*** sadly the Defendant has since 2004 wilfully refused to sign an agreement with the Plaintiff and bill and collect from students the appropriate remuneration to authors as required under the licensing arrangement.

Although several universities have since signed the Licensing Agreement and are duly paying the appropriate reprographic fees, the Defendant has since 2004 wilfully refused to comply with the law.

In the absence of a license from the Plaintiff the use of photocopied materials or the mass photocopying of works of authors protected by copyright as takes place on the Defendant's campus and its environs constitutes a Copyright offence under ***Section 42 (1)(a) of Act 690.***

During cross examination the following transpired;

*Question: You have a huge library, not so?*

*Answer: Yes.*

*Question: And there are very sophisticated photocopier machines in the library, not so?*

*Answer: There are not. We do not have such machines in the library.*

*Question: I am putting it to you that there are very sophisticated photocopier machines installed in your library?*

*Answer: We have rented out a space within the library to a business person and I have chanced on the machine within the space provided.*

Contrary to the Defendant's flat denial at paragraph 12 of the statement of Defence that text books from libraries are not taken to points where photocopies are made the Defendant's witness Mr. Robert Gyeke-Darko put the matter to rest under cross examination on 3<sup>rd</sup> May, 2024;

*Question: I am putting it to you that under the copyright laws of Ghana what you are doing on your campus through your tenants constitutes a copyright offence under the laws of Ghana?*

*Answer: My Lord as far as I am concerned and to the best of my knowledge my tenant is doing business activities in the library.*

*Question: I am finally putting it to you that this business activity to your knowledge includes actively operating the photocopier machines which were planted in the library for the sole purpose of providing photocopier services to students?*

*Answer: Yes my Lord. Photocopier services could be part of the business activities undertaken by the tenant.*

Lastly, from the above the Defendant has knowledge of its student's engagements in photocopy of materials which are protected by copyright and is just being evasive turning a blind eye to the fact for the purpose of evading fees.

The responsibility of paying Reprographic fees should not be the preserve and responsibility of the Student's Representative Council (SRC) nor private photocopy services but should be the responsibility of the institute as a whole. I find and grant the full Reliefs prayed by the Plaintiff being;

- i. A declaration that the mass digital and photocopying of literary works by students and lecturers from photocopier machines for teaching and learning at their respective libraries and at the various faculties and by private copy shops on Defendant's campus without a license first obtained by the Defendant constitutes an infringement of the exclusive Reproduction Rights of Authors and Publishers under the Copyright laws of Ghana.
- ii. A declaration that the Plaintiffs are entitled to compensation as to be assessed by the Court from the Defendant for loss of reprographic fees due its members for each academic year from the 2004/2005 academic year until the determination of the suit.
- iii. Perpetual injunction restraining the Defendant from providing photocopy services at their respective libraries or at the faculties or from copy shops or anywhere on their campus without a reprographic license first obtained from the Plaintiff.



- iv. Costs for bringing this action including Solicitor's costs on full recovery basis. And I award GH¢20,000.00 as costs.

(SGD)  
GEORGE AIKINS AMPIAH-BONNEY (JNR.)  
(JUSTICE OF THE HIGH COURT)

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