IN THE SUPRERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA – AD 2021

CORAM: KWOFIE, JA (PRESIDING)

OBENG-MANU JNR, JA

KOOMSON, JA

SUIT NO: H1/108/2020

DATE: 15TH APRIL, 2021

GLADYS OBENEWA AFARI … PLAINTIFF/APPELLANT

VRS

1. NANA DONKOR MANIANOR II

2. DANIEL K. OHENE … DEFENDANTS/RESPONDENTS

3. KWEKU NYAMEKYE

4. GREATER ACCRA LANDS COMMISSION

J U D G M E N T

KOOMSON, JA

The facts that occasioned this appeal are that, the Plaintiff/Appellant (hereafter called ''the Appellant''), claims to be the lawful owner of a piece of land situate at Obosomase

in the Akwapim South District of the Eastern Region. That she became the owner of the land after her father, James Winfred Afari, a native of Obosomase, gifted the land to her because she was the only daughter to have married from his hometown of Obosomase. According to the Appellant, her father purchased the land in dispute for eighty pounds (£80) from Kwasi Danso (the then Mankrado of Obosomase). It was contended further by the Appellant that after her father purchased the land, its boundaries were physically marked with ntome trees. In exercising acts of possession over the land, James Winfred Afari gave out portions of the land to his brother Opanyin Kwame Armah, Opanyin Kofi Amoah, one Mr. Mensah and family, Mr. Ametepe and his family and a native of Nungua called Aprodoku, for purposes of farming.

The Appellant claims that when she became the owner of the land, she also permitted certain persons to cultivate on the land and these tenant farmers paid a token to her as appreciation and acknowledgement that she was the owner of the lands. Subsequently, she discovered that the 1st to 3rd Defendants (herein after called the Respondents) were selling portions of her land to third parties without her consent. The Appellant claimed that in one such unlawful sale, the Respondents attempted to alienate portions of her land to Comet properties but her timely intervention prevented the sale from materializing. The Appellant caused to be registered at the Lands Commission, Koforidua, a statutory declaration confirming her ownership of the land on the basis of the transaction between her father, James Winfred Afari and Kwasi Danso. The Respondents objected to the said registration of the land being claimed by the Appellant on grounds that, the Appellant is attempting to register a larger portion of land than was granted to her father. As far as the Respondents are concerned, the father of the Appellant purchased about 17 acres of land and not 441.98 acres as it was being claimed by the Appellant. The Appellant resorted to the law courts in an attempt to vindicate

her ownership of the 441.98 acres. By a writ of summons and statement of claim issued against the Respondents and the Lands Commission, the Appellant claimed the following reliefs;

1. *Declaration of title to a parcel of land measuring 441.98 acres;*
2. *Perpetual injunction to restrain 1st, 2nd and 3rd Defendants, their agents assigns and representatives from trespassing on Plaintiff's land or alienating same to third parties;*
3. *An order to eject all trespassers on Plaintiff's land subject matter of this case; and*
4. *An order directed at 4th Defendant to expunge all unauthorized transactions plotted in plaintiff's land, the subject matter of this case.*

The Respondents filed a statement of defence and claimed essentially that their Family through, Kwesi Danso granted only 17 acres but not 441.98 of land to the Appellant's father. That portions of the land in excess of the 17 acres being claimed by the Appellant cannot be alienated by their Family for the reason that, those portions had community protected shrines on it. The Respondents also contend that the tenant farmers cultivating the land are rather there because of the Respondents but not the Appellant. Furthermore, the Respondent claim that they have sold lands to third parties but deny selling land belonging to the Appellant. The Respondents counterclaimed for the following reliefs:

1. *A declaration that the Aduana-Abrade Family of the Mankrado Stool of Obosomase of which the 1st Defendant is the head of family are the beneficial owners of all that large parcel or tract of land situate, lying and being at Obosomase partly in the Akwapim North District in the Eastern Region and Dangbe West in the Greater Accra Region of Ghana containing an approximate area of 20,321.12 acres or 8,230.05 hectares.*
2. *An order for recovery of possession*
3. *An order of perpetual injunction restraining the Plaintiff whether by herself her agents, workmen, privies and successors in the title from dealing with the land belonging to*

Aduana-Abrade Family of Mankrado stool of Obosomase of which the 1st Defendant is the Head of Family apart from being the Mankrado of Obosomase.

Several issues were set down for trial. We however agree with the trial judge that the primary issue for determination was whether the Appellant's father owned land measuring 441.98acres or 17 acres as claimed by the Appellant and Respondents respectively?

At the end of the trial, the trial judge found that none of the parties were able to prove the exact identities of lands as claimed yet entered judgment for the Appellant for 30 acres of land. The Appellant, being dissatisfied with the decision of the trial judge filed a Notice of Appeal on the following grounds:

1. *The judgment was against the weight of the evidence*
2. *That the trial court erred in granting Plaintiff 30 acres of land*
3. *That the trial court erred when it held that Plaintiff failed to prove her case*
4. *That the trial court erred when it held that Plaintiff failed to prove her boundaries.*

The core issue to be resolved is whether or not the Appellant is the owner of 441.98 acres of land as described above?

An appeal is by way of rehearing and rehearing means having a look at and taking into consideration all the relevant evidence on record. The appellate court, so far as appeals are concerned, is virtually in the same position as if the rehearing were the original hearing and may review the whole case and not merely the points as to which the appeal was brought. See the cases of **MAMUDU WANGARA v. GYATO WANGARA [1982-83] GLR 639, ACHORO AND ANOR v. AKANFELA [1996-97] SCGLR 209 AND KOGLEX LTD (NO.2) v. FIELD [2000] SCGLR 175**.

This court will consider all the grounds of appeal together, in accordance with the law and the evidence adduced, as they all have a single strand, namely, the identity of the

Appellant's land, running through them. In the case of **TUAKWA v BOSOM [2001-2002] SCGLR 61,** the Supreme Court explicated the duty of an appellate Court when resolving the omnibus ground of appeal when it held that:

> ***"It is true that an appeal is by way of rehearing, and therefore the appellate court is entitled to make up its own mind on the facts and to draw inferences from them to the same extent as the trial court could; but where the decision on the facts depends upon credibility of witnesses, the appeal court ought not to interfere with findings of fact except where they are clearly shown to be wrong, or where those facts are wrong inferences drawn from admitted facts or from the facts found by the trial court. Therefore, if in the exercise of its powers, an appeal court feels itself obliged to reverse findings of fact made by the trial court, it is incumbent upon it to show clearly in its judgment where it thinks the trial court went wrong. It goes without saying that if an appeal court sets aside the findings of a trial court without good ground, or upon grounds which do not warrant such interference with the findings made by the trial court, a higher court will set that judgment aside."***

One of the major reliefs being claimed by the parties in this appeal is for declaration of title. This action being an action in which the disputing parties are asserting title to land, the law requires that both parties produce persuasive evidence to establish their root of title, mode of acquisition and overt acts of possession. See the case of **MONDIAL VENEER (GH) LTD. V AMUAH GYEBU XV [2011]1SCGLR 466**.

The matters that are not in contention in this appeal are that, the Appellant's father acquired land from Kwasi Danso who belonged to the Respondent's family. The Appellant's father paid £80 for the acquisition of the land. The acquisition was evidenced by a document (Exhibit 1) titled as Conveyance and made between the

Appellant's father and Kwasi Danso. It is worthy to note that Exhibit 1 did not provide the actual size of the land conveyed but the vendor described the boundaries as:

> '*The said land as above mentioned is bounded on all sided by my own property except western side bounded by property belonging to elders of Ahwerease or general boundary between Obosomase and Ahwerease'*

The main dispute between the parties is the identity of the land as conveyed to the Appellant's father. Did the Appellant establish the identity of her land on the balance of probabilities?

In land dispute, the description of land is a *sine qua non* where the relief sought is for declaration of title and/or recovery of possession. In the case of **ANANE AND OTHERS v. DONKOR AND ANOTHER (CONSOLIDATED)** [1965] GLR 188, the Supreme Court delivered itself as follows:

> **''Where a court grants declaration of title to land or makes an order for injunction in respect of land, the land the subject of that declaration should be clearly identified so that an order for possession can be executed without difficulty, and also if the order for injunction is violated the person in contempt can be punished. If the boundaries of such land are not clearly established, a judgment or order of the court will be in vain. Again, a judgment for declaration of title to land should operate as res judicata to prevent the parties relitigating the same issues in respect of the identical subject-matter, but it cannot so operate unless the subject-matter thereof is clearly identified. For these reasons a claim for declaration of title or an order for injunction must always fail if the plaintiff fails to establish positively the identity of the land to which he claims title with the land the subject-matter of the suit**.''

In the case of **NORTEY (2) v AFRICAN INSTITUTE OF JOURNALISM & COMMUNICATION & ORS (NO 2) [2013 – 2014] SCGLR 703 @ 714** the Supreme Court explained that the onus of proof required by law as regards the identity of land would be discharged by meeting the following conditions;

1. **The Plaintiff has to establish positively the identity of the land to which he claimed title in the subject matter of the suit;**
2. **Plaintiff also has to establish all his boundaries; and**
3. **Where there is no properly oriented plan drawn to scale, which made compass bearings vague and uncertain, the Court would hold that the Plaintiff had not discharged the onus of proof of his title.**

The Supreme Court further explained that even though the Courts require that the identity of a disputed land be clearly established or established with certainty as a pre-condition for the grant of title, this did not mean *mathematical certainty or exactness.* According to the apex court, the stipulation called for a *common sense approach* to providing proof which demanded that material witnesses would not be left out.

In the case of **ACKAH v PERGAH TRANSPORT LTD & OTHERS (2010) SCGLR 728 at 736,** the Apex Court, speaking through Adinyira JSC, summed up the duty imposed on a party who bore the burden of proof and persuasion on an issue in the following manner;

> **"It is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the 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 party, material witnesses, admissible hearsay, documentary and things (often**

described as real evidence) without which a 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 therefore clear from the authorities cited above, that the Plaintiff had a duty to adduce sufficient and credible evidence to prove the identity of the land claimed the subject matter of this suit in order to succeed on the claim for declaration of title. The Respondents also filed a counterclaim and therefore had the equivalent burden.

The Appellant described her land as per the schedule in the statement of claim as follows:

> *All that piece or parcel of land containing an approximate area of 441.98 acres or (178.87 Hectares) and situate at Obosomase in the Akwapim South District in the Eastern Region of the Republic of Ghana and bounded on the North-West by Samuel Obiri Korang Danquah's property and measuring on that side a distance of 1959.5 feet more or less on the North-East by Obosomase Stool land and measuring on that side a distance of 7633.7 feet more or less on the South-East by Obosomase Stool land and measuring on that side a distance of 1980.5 feet more or less and on the South-West by Ahwerease/Adamorobe land measuring on that side a total distance of 8749.0 feet more or less which piece or parcel of land is more particularly delineated on the site plan attached hereto and thereon shewn edged Pink.*

According to the Appellant, in 2011 she caused a site plan to be drawn on the land conveyed to her by her father in an attempt to register her interest. This was tendered in evidence as Exhibit D through PW1, Samuel Boateng Asare (the son of the Appellant) without any objection from the Respondents. The provision of this schedule and the site plan raises a prima facie proof of the identity of the land. This satisfies the first ambit of proof of identity of land in a land dispute as set out by the Supreme Court in **NORTEY**

(2) V AFRICAN INSTITUTE OF JOURNALISM & COMMUNICATION & ORS (NO 2) (supra). In addition, the testimony of PW1 was that although the size of the land was not provided in Exhibit 1, her father's land was clearly demarcated by ntome trees, three big trees in the shape of a triangle and the Accra Dodowa road.

Counsel for the Respondents sought to impeach the size of the land under cross examination of PW1 and this is what transpired:

Q: I am putting it to you that the land given to your grandfather

for the £80.11 he paid was for 17 acres not 441 acres

A: That is not true

Q: I put it to you that by going with the Surveyor alone, you took

far more than what was originally due to your grandfather

A: No. I have known the land since 1983.

The Respondents' case put to PW1 was that because the Appellants caused the site plan to be drawn without consulting the elders of the Respondents' family, they concocted a size larger than was originally given to the Appellant's father. Although this is a valid reason to doubt the size of the land as claimed by the Appellant, it does not necessarily mean that the Appellant did not know the size of her land. A person who knows his land and the boundaries very well after being in long possession of same is not bound to consult his grantor when obtaining a new site plan. Such a practice is desirable but not necessary. The Appellant can positively identify her land by leading unchallenged testimony regarding the boundaries of her land as claimed.

The next burden is for the Appellant to establish all her boundaries. This will require calling on boundary neighbors to testify or leading credible evidence of some landmarks, if any, on the boundaries of the land in dispute.

In proof of the boundaries of the land being claimed by the Appellant, 4 witnesses testified for the Appellant. PW2, by name Ametepe Daplelesah, a farmer on the land in dispute since 1975 gave testimony that he had farmed on about 8 acres of the land. That he originally thought the land was for one Kojo Mantey but discovered later that it was for the Appellant after Kojo Mantey told him so. Under cross examination by Respondents' Counsel, PW2 also corroborated PW1's testimony that the land was demarcated by ntome trees and that there were farmers on the land who were put on the land by the same Kojo Mantey.This is what transpired:

Q: I put it to you that the Akwapim people use Ntome to demarcate their land.

A: I have said that there are those trees on the boundaries on the land.

Q: You said there are other farmers on the land.

A: Yes

Q: These other farmers, do you know who put them on the land.

A: The same Kojo Mantey put them on the land.

Q: The Ntome trees, do they pass through or they form boundaries of other farmers' land

A: The trees were planted from the valley to the Hill in a straight line.

The testimony of PW2 affirms the presence of farmers on the land who were put there by the Appellant through Kojo Mantey but not the Respondents' family. In respect of the boundaries, the evidence remains that there are ntome trees on the land that runs from top of the hill to the valley. PW2 however, testified that he did not know the exact size of the Appellant's land. This testimony, is not fatal to the Appellant's claim. PW2 was not under any obligation to know the size of the land owned by his licensor but was obliged to know the size of land given to him to farm on, which he claimed was about 8 acres. The Respondents did not discredit the size of land being occupied by PW2. This Court holds that PW2 and the other farmers were put on the land by the Appellant and that these farmers were not bound to know the size of their grantors entire land in that area except land granted to them to farm on.

The next to testify was Richard Kwesi Opare, PW3, who testified that his family shared a common boundary with the Appellant to the southern end of the land on the Dodowa – Accra road. Again, the ntome trees were used as a boundary demarcation between his family lands and that of the Appellant. That the length of the boundary was about 200 meters: see page 98 of the record of appeal. Just as Counsel for Respondents did to the other witnesses of the Appellant, PW3 admitted under cross examination that he did not know the size of land that was given to the Appellant's father. Rather, he knew that his family shared boundaries with the Appellant, Opanyin Birikoran, Yaw Bensra and the Accra – Dodowa road. The Respondent did not dispute the claim that PW3's family shared boundary with the Appellant. Rather, they sought to dispute the size of the Appellant's land as if PW3 ought to have known the size of land belonging to all their boundary neighbors. This Court finds that Richard Kwesi Opare's family at Obosomase shares boundary with the Appellant and was not bound to know the size of the Appellant's land except the size of the common boundary.

Justice Opare Adjei alias Okyeame Darko (PW4) corroborated the Appellant's claim that they share a common boundary with Ahwerease. The said boundary which is south of Obosomase is also the boundary between Obosomase and Ahwerease. PW4 admitted he did not know the size of Opanyin Afari's land, that is, the Appellant's land. It is not in contention that Ahwerease shares a boundary with Obosomase. The Respondents have not disputed the claim that the Appellant shares boundary with Ahwerease, therefore, this Court finds that there is a common boundary between the Appellant and Ahwerease.

The trial judge therefore, fell in grave error when she held that the boundary owners stated in Exhibit 1 (conveyance), that is, Kwesi Danso and Ahwerease ought to have tallied with the boundary owners in the Exhibit D (site plan). In other words, the trial judge found that *'the boundaries owners indicated in the Appellant's site plan with the exception of the Ahwerease boundary appeared to be totally different from the boundary owners indicated in Exhibit 1'*. There is ample evidence on the record led by PW2 as to acts of possession on portions of the land since 1975 which went unchallenged by the Respondents. Regarding the boundaries, the Appellant through her witnesses gave evidence which on the balance of probabilities clearly demonstrate the existence of the boundary neighbors and the common boundaries.

The Respondents did not controvert the existence of the boundary neighbors nor the common boundaries. Rather, Respondents suggested that since these neighbors did not know the size of the Appellant's land, then, the size of land being claimed by the Appellant was not proved. DW1 by name Martin Birikorang, admitted the existence of boundary neighbors on the Appellants land to be, Ahwerease, Asafuatse Obirikorang and Respondents Family land: see page 153 of the Record of Appeal. This court holds that the burden of proof on the Appellant regarding the identity of land being claimed

was discharged by the use of the site plan, that is, Exhibit D and the various boundary neighbors.

The Respondents claimed that the size of the Appellant's land was seventeen (17) acres and thus carried the evidential burden to prove same. Under cross examination of the 1st Respondent, he admitted that there was no measurement (survey plan) on the size of the said 17 acres. He expressly admitted that till date the land has not been measured: see page 138 of the record of appeal. The Respondents therefore, failed to lead evidence by providing a site plan or calling on boundary neighbors, who would have been regarded as material witnesses, in proof of the 17 acres being claimed by the Respondents as the portion granted to the Appellant's father. If they had, the burden would have shifted on the Appellant to lead evidence to disprove same. The Respondents did not also lead any evidence to suggest that the portion being disputed contained community shrines that were very sacred. We find that there are no such community shrines on the 441.98 acres of land claimed by the Appellant.

It is of interest to note that the trial judge entered judgment for the Appellant for 30 acres of land but however failed to provide any description of the said 30 acres of land. If according to the trial judge, the Appellant failed to describe her land based on the evidence that was led, the question is, on what basis did the trial judge award 30 acres of the land to her without any description as required by law in land matters? There was no basis for the trial judge to hold so and we hereby set aside that order.

As stated earlier, this Court holds that the Appellant has led sufficient evidence to succeed on her claim that she is the owner of 441.98 acres of land as described in Exhibit D but not 17 acres. We hereby enter judgment for all the reliefs indorsed on the writ of summons in Appellant's favour. The appeal is accordingly allowed.

SGD

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JUSTICE GEORGE K. KOOMSON

(JUSTICE OF THE COURT OF APPEAL)

SGD

I AGREE ……..

JUSTICE HENRY KWOFIE

(JUSTICE OF THE COURT OF APPEAL)

SGD

I ALSO AGREE ……

JUSTICE OBENG-MANU JNR

(JUSTICE OF THE COURT OF APPEAL)

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