IN THE CIRCUIT COURT '10 OF GHANA, ACCRA, HELD THIS THURSDAY THE 29TH DAY OF JUNE, 2023 BEFORE HER HONOUR EVELYN E. ASAMOAH (MRS)

CASE NO. C4/04/2019

VINCENT ACQUAH = PLAINTIFF

VRS

ERMEST DUNCAN = DEFENDANT

MR. JESSIE SARFO FOR THE PLAINTIFF
MR. GEORGE ESHUN FOR THE DEFENDANT

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JUDGMENT

● The Defendant in need of a piece of land to operate a car washing bay contacted his friend, the Plaintiff, who leased the land in dispute to him a period of ten years (2008-2018) for that purpose. The defendant, after working on the land for about 13 years, claims that the land does not form part of the Plaintiff's land and that it was sold to him by the Plaintiff's vendor (the Asere Stool), in the year 2021. The Plaintiff contended that the land in dispute belongs to him and that he has been in possession of the land since 1972. The Plaintiff 'knocks on the doors' of justice/ court, seeking recovery of possession of the land and other reliefs.

● The Plaintiff stated that: In or about January 2009, he entered into an agreement with the defendant; he leased part of his land to the defendant to construct a washing bay. The area leased to the defendant measured 90ft by 37ft

and the duration of the lease was ten (10) years, effective August 2008. On 30th January 2018, he gave the Defendant six (6) months' notice to quit and expressly informed the Defendant that their lease agreement would not be renewed after its expiration on 31st July 2018. In August 2018, he entered the land to possess it but the Defendant caused his workmen to resist him. All attempts made by him to persuade the defendant to vacate and surrender his land have proved futile. The Plaintiff seeks the following reliefs:

I. An order directed at the defendant, his workmen, servants, assigns, and/ or subject to vacate the Plaintiff's land forthwith and surrender same to him.
II. An order directed at the defendant, his workmen, servants, assigns, and/or subject to stop operating washing of vehicles on the Plaintiff's land forthwith
III. Rent arrears at the prevailing price of GHC 200 per month from August 2018 till the date the Defendant shall vacate from the land.
IV. Cost and any other orders.

● The Defendant admitted, in paragraph 3 of his statement of defence, that in January 2009, he indeed entered into a lease agreement with the Plaintiff where the Plaintiff leased part of his land to him to construct a washing bay for a period of 10 years. He also admitted that on 30th January 2018, the Plaintiff gave him 6 months' notice to vacate the land. He discovered later that the Plaintiff is not the owner of the land he purportedly leased to him; he was confronted by the Chiefs of the Asere stool who claimed ownership of the land. According to the Defendant, the indenture between the Asere stool and the Plaintiff shows that the stool never granted the land in dispute to the Plaintiff.

● The issues, as set out in the application for direction, are as follows:

a. Whether or not the Plaintiff is the rightful owner of the land situated and numbered as House Number 861/30, North Abeka, Accra.
b. Whether or not the Defendant has an interest in the land- part of House Number 861/30, North Abeka, Accra- leased to the defendant
c. Whether or not the Plaintiff is entitled to his reliefs endorsed on his writ and statement of claim
d. Any other issue(s) arising from the pleadings.

● *Whether or not the Plaintiff is the rightful owner of the land situated and numbered as House Number 861/30, North Abeka, Accra* – the land in dispute.

The Plaintiff bore the evidential burden of proving that the land in dispute belongs to him. In the case of ***George Kwadwo Asante Anderic Danpare Asante Vs. Madam Abena Amponsah and Peter Kofi Adu-*** Supreme Court, Accra Civil Appeal number J4/64/2021 -20th January, 2022- [2022] DLSC11439

Justice Honyenuga, JSC: stated

> *"In an action for declaration of title, the onus is heavily on the plaintiff to prove his case. If the plaintiff failed to discharge the onus on him and also failed to make a case for the reliefs sought, then he could not rely on the weakness of the defendant's case to ask for relief. However, if the plaintiff made a case which would entitle him to relief if the defendant offered no evidence, then if the case offered by the defendant disclosed any weakness which supported the plaintiff's claim, then the plaintiff was entitled to rely on the weakness of the defendant's case to strengthen his case".*

The Supreme Court in Odametey v Clocuh& Another [1989-90] 1 GLR 14 SC succinctly held in holding 1 as follows: -

"(1) the present position, was that if the plaintiff in a civil suit failed to discharge the onus on him and thus completely failed to make a case for the claim for which he sought relief then he could not rely on the weakness in the defendant's case to ask for relief. If, however, he made a case which would entitle him to relief if the defendant offered no evidence, then if the case offered by the defendant when he did give evidence disclosed any weakness which tended to support the plaintiff's claim, then in such a situation the plaintiff was entitled to rely on the weakness of the defendant's case to strengthen his case. That was amply supported by sections 11 and 12 of the Evidence Decree 1975 (N. R. C. D 323)."

Indeed, this authority is backed by the provisions of the Evidence Act, 1975 NRCD 323. It is also for the Plaintiff to prove its methods of acquisition conclusively.

In Awuku v Tetteh [2011]1 SCGLR 366 holding (1) this court held as follows:-

"In an action for a declaration of title to land the onus was heavily on the plaintiff to prove his case. He must, indeed, show clear title. He could not rely on the weakness of the defendant's case. For a stool or family land to succeed in an action for declaration of title, it must prove its method of acquisition conclusively, either by traditional evidence or by overt acts of ownership exercised in respect of the land in dispute. (Odoi v Hammond [1991] 1 GLR 375 CA applied."

… The said judgment is sound law for it is trite that possession cannot ripen into ownership if a better title is proved. In Osei (substituted by) Gillard v. Korang [2013 – 2014] 1 SCGLR 221 at 234, this court held that: -

"Now in law, possession is nine-tenths of the law and a plaintiff in possession has a good title against the whole world except one with a

better title. It is the law that possession is prima facie evidence of the right of ownership and it being good against the whole world except the true owner he cannot be ousted of it. See Summey v. Yohuno [1962] 1 GLR 160 SC and Barko v Mustapha [1964] GLR 78 SC."

● The crucial issue, in this case, can be gleaned from the cross-examination of the Plaintiff by Counsel for the Defendant. The Plaintiff was asked: *Apart from the land that has been measured and drawn on your site plan, no other land has been given to you.* He answered: *Yes.* He was further asked: *Look at the agreement you made with the Defendant- Exhibit B- Is there any site plan attached to the agreement*? The Plaintiff answered: *No. But the land in front of my land- stretching to the gutter is vacant and that is where I gave to him. That is where I pass to the land. That land is in front of my land.* The question is: whether the land the Defendant occupies/ the subject of this suit forms part of the Plaintiff's land.

● The Plaintiff in his testimony asserted that he is the beneficial owner of the land situate and numbered as House Number 861/30, North Abeka, Accra. That he acquired it from Nii Amar II, Asere Dzasetse, and Mantse of Accra with the consent and concurrence of the principal elders of the Asere stool in 1972. That he has been in possession of the land and has enjoyed quiet and unhindered possession of the land since 1972. The plaintiff in 1972 acquired a plot by the high-tension. The land, in paragraph 4, of the indenture (Exhibit A) is described as follows:

'The land situate, lying being at NORTH ABEKA, ACCRA and bounded on the North- West by High Tension line measuring '70' feet more or less on the North-East by stool land measuring '100' feet more or less on the South-East by stool land measuring '70' feet more or less on the south-

west by stool land measuring '100' feet more or less and …. which piece of land is particularly delineated on the plan attached…'

On the site plan, the Plaintiff's land measures 0.16 acre- 100ft by 90ft. The Surveyor, Court Expert, in his report ***(Exhibit CE)*** stated the dimensions of the various plots as follows: 'Dimension of the Plaintiff site plan is (100 * 70) and what is on the ground is (150*80), and that of the Defendant site plan is (90* 70) and what is on the ground is (80*30). The road dimension is (30ft) at both ends of the disputed plot'.

● The facts disclose that the land the Plaintiff acquired from the Asere Stool measures 100ft* 70ft but the Plaintiff claims that the land in dispute - close to the high-tension lines belongs to him. The question is- who is the owner of that land and how was it acquired? The Plaintiff contends that he has lived on the subject matter for over 40 years and no chief has approached him to take back the land. He pointed out that he has a story building, a self-contain, and boys' quarters at the end of the land that he gave to the defendant. The composite plan shows that the Plaintiff has structures on the land; buildings, shops, and two boys' quarters. The Plaintiff's structures cover an approximate area of 90ft (point 3 to the end/ edge of the boy's quarters), and 90ft (point 2 to the edge of the land-edged cyan-between A and B- end of Plaintiffs' building).

● The topography shows that there is a high-tension line that runs through the Northern part of the plots/ entire vicinity and an access road – depicted on **(Exhibit A, 3 and CED)**. The site plan and the indenture of the Plaintiff indicate that the Plaintiff's land is bounded on the North by a high-tension line. The said land (0.15 acre) the Defendant acquired from the Asere stool, depicted on his site

plan ***(Exhibit 3 and CED),*** is the only piece of land in+ that area that extends to/beyond the high-tension lines blocking/ denying the plaintiff access to the road on the North East and North West of his property.

● It is axiomatic that the Plaintiff put up a wall on the land in dispute before he leased same to the defendant. It was agreed by the parties that the defendant should continue the wall. Paragraph 6 of the agreement entered by the parties (Exhibit C) states- "Structure: to erect 2 rumps, continue the wall and to concrete the ground." The Surveyor confirmed that "on the ground, the plaintiff's land is fenced to a portion, and within the fenced portion is this washing bay and is within A and D on the composite plan. This can also be gleaned from the excerpt below:

Cross-examination of the Surveyor by Counsel for the Defendant:

...

Q: Is any part of the washing bay within the area walled by the Plaintiff?

A: Yes.

Q: When you went to the ground, you saw part of the washing bay cut by a wall?

A: Yes.

Q: Did you look at the side of the wall very well?

A: Yes.

Q: That wall the cement blocks used in walling that part is new?

A: That area is walled and painted.

Q: But the washing bay part has gone into the wall?

A: Yes.

Q: None of the land-edged Cyan is within the wall erected by the Plaintiff.

A: The marked Cyan is within the washing bay.

Q: You gave the area of the land-marked Cyan as 90 by 70?

A: Yes.

Q: Is it your case that the whole area marked Cyan is within the wall of the Plaintiff?

A: No.

Q: I put it to you that part of the washing bay is in the area edged Cyan?

A: Yes.

Q: That part of the washing bay in the area edged Cyan is outside the wall erected by the plaintiff?

A: At the site, the Plaintiff was claiming the fence wall to be from A to D, and within the fence wall is where the washing bay is. So if he is saying it's outside I yet confused.

Q: Did you record that there was a fence wall?

A: Yes. We indicated – legend 1.

Q: Are you, therefore, saying that for instance on the South Western portion – from 3 to 4 he has walled?

A: No. He has walled from 3 to D and in the North-East – it's A to 2.

Q: So, it's a misrepresentation on your part that the land shown by the Plaintiff as walled is 1, 2, 3, 4, and edge Red. When now you are saying that it's A 2, 3 D instead of 1, 2, 3 and 4?

A: There is High tension there and he couldn't have walled beyond the High tension.

…

● It is evident that the Plaintiff put up a wall on the entire land measuring about 100ft (point A to 2) by over 100 ft (point D to 3) before he leased a portion to the Defendant to operate a washing bay. The Plaintiff has been in possession of the

land in dispute and exercised acts of ownership on the land in dispute before same was leased to the defendant, about 14 years ago.

In the case of ***Comfort Offeibea Dodoo (Substituted by Vivian Ankrah) V. Nii Amartey Mensah (Substituted by David Obodai & Ors.)*** *Supreme Court* Civil Appeal Suit No. J4/12/2019 5th February, 2020, - Justice Dotse JSC stated:

> ***"The Court must pay particular attention to undisputed acts of overt acts of ownership and possession on record in addition to an examination of the events and acts therein within living memory which have been established by evidence.*** *Consider which of these narratives is more probable by the established acts of ownership.* ***Finally, the party whose traditional evidence coupled with established overt acts of ownership and possession are rendered more probable must succeed unless there exists on the record other valid reasons to the contrary.***
>
> *In applying these guidelines to the instant appeal, one clearly discernible principle which we have to apply is satisfactory contemporary and undisturbed overt acts of ownership and or possession exercised over the subject matter.*
>
> *In this respect, the evidence by the Plaintiff and her witnesses, coupled with the several overt acts performed by her and the settler farmers on the land over a long period of time are too notorious to be glossed over by this court. We accordingly disregard the recent acts of trespass which lie in the acts of plunder, pillage, thuggery, and banditry exercised by the Defendants and their agents when they invaded the disputed land to lay it to waste in sand-winning and other acts of trespass..."*

● The Defendant, at all material time, acknowledged the Plaintiff as his landlord and admitted that the Plaintiff leased the land in dispute to him and that he has operated his washing bay on the land for about 13 years. According to the Defendant about three years after the land was leased to him by the plaintiff, the Plaintiff's vendor, the Asere stool, confronted him on the land and he was given a letter. However, he did not tender the said letter in evidence. The Defendant, during cross-examination, asserted that he still recognized the Plaintiff as his landlord after he allegedly had a meeting with the Asere stool because he had not exhausted his ten-year lease. After the expiration of the lease the Plaintiff served the Defendant with a notice to quit (Exhibit D) and the Defendant on 31st January 2018 wrote a letter (Exhibit 4) to the plaintiff to renew the lease, recognizing the Plaintiff as the owner of the land in dispute.

In the case of **Ebusuapanyin Ekuma Mensah V. Nana Atta Komfo II Civil Appeal No. J4/33/2017 Supreme Court - 23rd January, 2019** – Justice Gbadegbe, JSC stated:

> *"As the defendants have failed to lead any evidence in proof of the crucial plea in… their statement of defence, by the operation of the rules of evidence, they must suffer the consequences of the risk of non-persuasion within sections 11 and 12 of the Evidence Act, the effect of which is that the existence of the facts on which the plaintiff's case is grounded is more probable than that of their adversaries. In contradistinction to the above, the defendants accepted the fact that the plaintiffs have been in possession of the land and exercising overt acts thereon including the erection of buildings and cultivation of cash and economic crops on the land. Also of significance to the case of the rival claimants regarding who has a better right to the immediate occupancy of the land, the defendant admitted that*

when they entered a portion of the disputed land occupied by members of the plaintiff's family and felled palm trees, they paid for the value of their unlawful acts. This piece of evidence coming from the defendants reinforces the plaintiff's right to the land; the question that arises from this is why should a person who claims to be the owner of the disputed land be compensating the plaintiff?"

● In the same vein, the question to ask is: why would the defendant who claims the land in dispute does not belong to the Plaintiff, write to the Plaintiff after the expiration of the lease to renew the lease? This affirms the case of the Plaintiff- the Defendant recognizes the Plaintiff as the sole owner of the land in dispute.

● The Defendant tendered in evidence an indenture (Exhibit 3) purportedly entered between him and Nii Amarh III on 5th September 2021. The Defendant during cross-examination admitted that it was after the Plaintiff had instituted this action seeking an order for the Defendant to vacate that he went for a lease allegedly from the Asere stool. The Defendant further admitted that his indenture has no interest or relation whatsoever to the Plaintiff's land. The Defendant's witness, DW1, alleged that he represents the Asere stool and he is the Gyaase for the Sports Complex land. However, there is no evidence on record that he was appointed by the stool to represent it in this case. His evidence was also inconsistent.

● Counsel for the defendant in his address stated: "… Unstamped document is inadmissible as such the purported Exhibit 'A' and 'B' are not before the Honourable Court. Hence plaintiff has failed to discharge his evidential burden…that plaintiff is the owner of the land in dispute" The fact that the plaintiff's indenture or document has not been stamped does not invalidate/

negate the fact that the plaintiff acquired the plot from the Stool, has been in possession of the subject matter and leased the land in dispute to the defendant.

Mary Tsotso Laryea, Emma Laryea, Veronica Laryea ,Juliana Laryea, Grace Laryea Vrs Amarkai Laryea Supreme Court *- Civil Appeal No. J4/36/2016 7TH JUNE, 2018*, Justice Pwamang JSC stated:

> *"The trial judge clearly erred in rejecting that document and excluding it from the evidence because non-registration of an instrument relating to an interest in land does not make the document inadmissible in evidence…. However, such a document is admissible in evidence and its contents can be used as estoppel against persons who signed it.* ***See Donkor v Alhassan [1987-88] 2 GLR 253, and MaClean II & Anor v Akwei II [1991] 1 GLR 54.*** *As that document was wrongly excluded from the evidence we set aside the trial judge's ruling rejecting 2nd plaintiff's lease dated 1st January, 1990. We have noticed on the face of that Exhibit that it was not stamped in accordance with the* ***Stamp Act, 1965 (Act 311)*** *as amended, which was in force at the time it was executed. Since we are exercising the powers of the trial court in determining the admissibility of the said lease in evidence as we are empowered to do by Article 129(4) of the Constitution, 1992, we shall have recourse to* ***Section 14(2) of Act 311*** *and admit the document in evidence subject to a direction that it shall be stamped in accordance with the Act within ten days of this judgment. See also the case of* ***Auntie & Adjuwoh v Ogbo [2005-2006] SCGLR 494."***

● The facts further disclose that the Plaintiff has been in possession of the land in dispute for over 40 years without any challenge from the Stool or anyone.

In the case of **Amidu Alhassan Amidu & Another. V. Mutiu Alawiye & 6 Others** Civil Appeal No. J4/54/2018 24th July, 201 Justice Pwamang stated:

> *"The settled position of the law is that it is the party who stands to lose on an issue if no evidence is led on it that bears the burden of proof as far as that issue is concerned. This principle is stated in Sections 14 and 17 of NRCD 323…"*

The evidence establishes that the land in dispute belongs to the Plaintiff. The defendant failed to establish that he legally acquired the land in dispute, he has no interest in it. In the circumstance, judgment is entered for the Plaintiff as follows:

- The Defendant, his workmen, servants, assigns, and/or subjects are ordered to vacate from the Plaintiff's land- the subject of this suit forthwith.
- The defendant, his workmen, servants, assigns, and/or subjects are ordered to stop operating the washing bay on the land.
- The defendant shall pay rent arrears of GHC 200 from August 2018 to May 2021.
- Cost of GHC 50,000 against the defendant.

(SGD)
H/H EVELYNE E. ASAMOAH (MRS)
CIRCUIT COURT JUDGE