

IN THE CIRCUIT COURT HELD AT SOGAKOPE ON WEDNESDAY, 22ND MARCH, 2023 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE

SUIT NO.: C1/02/2021

ROBERT KWAKU KOTTOH
Suing Per His Lawful Attorneys

- 1. Naomi Yaa Kottoh**
- 2. Evelyn Abla Kottoh**

**Both of Unnumbered House, Bukom-Asene,
Accra and Adenta Respectively**

PLAINTIFF

VRS

ANDREWS ATSU AHADO
**Unnumbered House, Sokpoe Near Sogakope,
DEFENDANT**
Volta Region

PARTIES: PLAINTIFF PRESENT

DEFENDANT PRESENT

COUNSEL: GORDON AKPADIE, ESQ. FOR THE DEFENDANT ABSENT

JUDGEMENT

The Plaintiff commenced this action through his Lawful Attorneys by a Power of Attorney and had the Writ of Summons issued at the Registry of this Court on the 4th November, 2021. The Plaintiff claims against the Defendant the following reliefs:

- (a) Declaration that the piece or parcel of land situate, lying and being at Sokpoe in the South Tongu District of the Volta Region of the Republic of Ghana with its boundaries stated in paragraph 5 of the Statement of Claim supra is the property of the Plaintiff through purchase.

- (b) General Damages for trespass as well as deprivation.
- (c) Recovery of Possession.
- (d) An Order of Perpetual Injunction against the Defendant, his Agents, Servants, Workmen, Successors, Privies and Assigns restraining them from having anything whatsoever to do with the land in dispute or any portion(s) thereof and particularly from interfering with the ownership, possession, control, cultivation, development, enjoyment, or alienation of the said piece of land or any portion(s) thereof by the Plaintiffs and other members of their family, their Agents, Servants, Workmen, Successors, Privies and Assigns.
- (e) Legal and Punitive Costs.

THE CASE OF THE PLAINTIFF

The Plaintiff through his Attorneys states that the disputed land is situate, lying and being at Sokpoe and bounded on the first side by the property of Madam Atsupah Zooh; on the second side by the property of Naomi Kottoh; on the third side by the property of Reverend Ebenezer Yao Blasu, and on the fourth side by the road to Anasukope. The Plaintiff states that somewhere in 1993, he acquired the disputed land from the Azumah Family then headed by Miledzi Azumah and on the 14th April, 1995, the necessary documents were prepared and executed to effectuate and/or perpetuate the transaction. According to the Plaintiff, he erected corner pillars thereon for easy identification, and immediately went into peaceful occupation, cultivation and possession without any let or hindrance from any quarters whatsoever and these corner pillars are still visible on the land. That as open acts of ownership, the Plaintiff commenced farming activities thereon at a stage, fenced the disputed land with palm fronds with a fixed gate to prevent animals from destroying the crops planted thereon.

The Plaintiff at a point in time heaped a quantity of sand on part of the land with the hope of developing the land. The Plaintiff states that in October, 2021, the Defendant trespassed onto the land in question and destroyed part of the palm fronds and some of the crops thereon and heaped a trip of sand thereon with the hope of commencing a platform thereon with the knowledge, consent and authority of the Plaintiff.

THE CASE OF THE DEFENDANT

On receipt of the Plaintiff's Writ of Summons and Statement of Claim, the Defendant reacted by entering Appearance on the 11th November, 2021, followed it up by filing a Statement of Defence on the 17th November, 2021. The Defendant denied liability of all the claims of the Plaintiff. In particular, the Defendant states that, the disputed land from time immemorial belonged to Togbe Zogah I, the Paramount Chief of Sokpoe Traditional Area as an ancestral property, and upon his death the property devolved onto the Defendant. The Defendant states that over decades ago, he first cleared the disputed land which was a virgin forest of about 200 feet square and had since been cultivating same without any opposition from anybody. The Defendant states that he had been cultivating the land with pepper for over five years without any resistance from anybody. The Defendant maintained that he carried out poultry farm activities on the land for decades but had to stop and subsequently abandoned the place due to persistent theft of the birds. The Defendant concluded his case by setting up the following counterclaim against the Plaintiff:

- (i) Declaration of title and ownership to all that piece or parcel of land situate, lying and being at Sokpoe with its boundaries as stated in paragraph 5 of the Plaintiff's Statement of Claim.
- (ii) General Damages for Trespass.

- (iii) Recovery of Possession.
- (iv) Perpetual Injunction be decreed restraining the Plaintiffs, their Agents, Servants, Workmen, Successors, Privies and Assigns from further interfering with the Defendant's ownership, possession, cultivation, control, development, enjoyment, or alienation of the said piece of land.
- (v) Any other relief(s) found due by the Honourable Court.

ISSUES FOR TRIAL

At the close of pleadings, the following issues were set down by the Court as the issues for the trial:

1. Whether or not the land in dispute belongs to the Plaintiff or to the Defendant.
2. Whether or not the Plaintiff obtained a valid and genuine grant of the land in dispute from the Azumah family.
3. Whether or not the parties herein are claiming the same or different land(s).
4. Whether or not the Plaintiff has been in undisturbed occupation, cultivation and possession of the land from the year 1993 to date.
5. Whether or not the Defendant is entitled to his counterclaim.
6. Whether or not from time immemorial the land the subject matter of the instant suit belonged to Togbe Zogah I, the Paramount Chief of Sokpoe Traditional Area.
7. Whether or not Miledzi Azumah actually own a land at Sokpoe.
8. Whether or not Miledzi Azumah has the right to dispose off the disputed land without authority.
9. Whether or not the disputed land was a virgin forest before Defendant cleared same.

10. Whether or not the Defendant had been cultivating the disputed land with pepper at a stage commenced a poultry farm on same for over decades.

BURDEN OF PROOF

The general rule in civil cases is that all facts in issue or relevant to the issue in a given case must be proved, in other words, he who avers must prove. The party who in his pleadings or his writ raises issues essential to the success of his case assumes the onus of proof. The standard of proof in a civil case is proof by a preponderance of probabilities. This standard of proof has been reiterated by the Supreme Court in the case of *Adwubeng v. Domfeh* [1997-98] 1 GLR 282 where it was held that “sections 11(4) and 12 of NRCD 323 clearly provide that the standard of proof in all civil actions is proof by a preponderance of probabilities, no exceptions are made.”

For ease of reference I will reproduce the aforementioned sections of the Evidence Act, 1975 (NRCD 323) below:

Section 11 – Burden of Producing Evidence Defined

4. *In other circumstances, the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of a fact was more probable than its non-existence.*

Section 12 – Proof by a Preponderance of the Probabilities

1. *Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.*
2. *‘Preponderance of the probabilities’ means that degree of certainty of belief in 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 above principle was succinctly stated by the Supreme Court in *Ebusuapanyin Yaa Kwesi v. Arhin Davis & Anor*, CIVIL APPEAL NO J4/10/2004, where it was held that a plaintiff making a claim assumed that onerous burden of proof by the preponderance of the probabilities as required under sections 11 and 12 of the Evidence Decree, 1975 (N.R.C.D. 323), or else risked the prospect of losing his case.

The Defendant equally has a counterclaim against the Plaintiff and is also seeking *inter alia* declaration of title to the disputed land.

Order 12 rule 1 of the High Court (Civil Procedure) Rules, 2004 (CI 47) provides that:

"A defendant who alleges that he has any claim or is entitled to any relief or remedy against a plaintiff in an action in respect of any matter, whenever and however arising, may, instead of bringing a separate action, make a counterclaim in respect of that matter."

In *Nortey (No.2) v. African Institute of Journalism & Communication & Others (No.2)* [2013-14] 1 SCGLR 703, the Supreme Court stated as follows:

"Without any doubt, a defendant who files a counterclaim assumes the same burden as a plaintiff in the substantive action if he/she is to succeed. This is because a counterclaim is a distinct and separate action on its own which must also be proved according to the same standard of proof prescribed by sections 11 and 14 of NRCD 323."

EVALUATION OF THE EVIDENCE

In the case of Fatal v. Wolley [2013-2014] 2 SCGLR 1070, Wood CJ stated at holding 2 as follows:

“It is sound learning that courts are not tied down to only issues identified and agreed upon by the parties at pre-trial. Thus, if in the course of the hearing, an agreed issue is clearly found to be irrelevant, moot or even not germane to the action under trial, there is no duty cast on the court to receive evidence and adjudicate on it. The converse is equally true. If a crucial issue is left out, but emanates at trial from either the pleadings or the evidence, the court cannot refuse to address it on ground that it is not included in the agreed issues”. See also the cases of Mrs. Vincentia Mensah & Another v. Numo Adjei Kwanko II [2017] DLSC 2601 and William Ashitey Armah v. Hydrafoam Estate (Gh.) Ltd. [2014] DLSC 3000.

I shall proceed to address the issues in this order: Firstly, I shall consider Issue 3, and follow it up with the resolution of issues 2, 6, 7 and 8 together. Next, I will consider issues 4 and 10 together, and finally conclude with any issues arising out of the pleadings, if any.

Whether or not the parties herein are claiming the same or different land(s)

On the face of the Writ of Summons and Statement of Claim, the Plaintiff described the parcel of land he is seeking this Court to grant him declaration of title. At paragraph 5, the Plaintiff described the disputed land as follows:

“The Plaintiff avers that the land the subject matter of the instant suit is situate, lying and being at Sokpoe near Sogokope in the South Tongu District of the Volta Region of the Republic of Ghana aforesaid and bounded as follows:

- On the first side by the property of Madam Atsupah Zooh;

- *On the second side by the property of Naomi Kottoh;*
- *On the third side by the property of Reverend Ebenezer Yao Blasus, and*
- *On the fourth side by the road to Anasukope."*

On the other hand, the Defendant at paragraph 3 of his Statement of Defence stated as follows:

"The Defendant admits paragraph 5 of the Statement of Claim."

Also, at paragraph 13(i) of the Statement of Defence and Counterclaim, the Defendant stated as follows:

"Declaration of title and ownership to all that piece or parcel of land situate, lying and being at Sokpoe with its boundaries as stated in paragraph 5 of the Plaintiff's Statement of Claim."

So clearly, gleaning from the above paragraphs contained in the pleadings, the parties are claiming ownership of the same parcel of land and the identity of the disputed land is not in doubt.

Whether or not the Plaintiff obtained a valid and genuine grant of the land in dispute from the Azumah family;

Whether or not from time immemorial the land, the subject matter of the instant suit belonged to Togbe Zogah I, the Paramount Chief of Sokpoe Traditional Area;

Whether or not Miledzi Azumah actually own a land at Sokpoe;

AND

Whether or not Miledzi Azumah has the right to dispose of the disputed land without authority.

In the case of Ogbarmey-Tetteh vrs Ogbarmey-Tetteh [1993-94] 1 GLR 353, the Supreme Court decided that:

“..... In an action for a declaration of title, a plaintiff who failed to establish the root of his title must fail because such default was fatal to his case”. See also the cases of Henry Doe Samlafo vrs GREDA and Anor. [2010] 26 GMJ 94 CA & Jass Co. Ltd and Another vrs Appau and Anor. [2009] SCGLR 265. In this case however, the parties are laying claim to the same piece of land which have been described by the same boundaries. Having identified the land, it is common knowledge that a person seeking land title declaration has the primary duty to establish his root of title.

The Plaintiff in establishing his root of title through PW1 tendered in evidence, an Indenture which was executed on the 14th April, 1995. This Indenture was marked as Exhibit ‘B’. The commencement of Exhibit ‘B’ reads:

“THIS INDENTURE dated 14th April, 1995 is made between **MILEDZI AZUMAH** in his capacity as the Head of Family acting with the Consent and Concurrence of the Elders of the family whose consent is a prerequisite for effecting a valid conveyance (hereinafter called the ‘Vendor’) which expression shall where the context so requires or admits include his successors according to customary law and assigns of the one part and **ROBERT KWAKU KOTTOH** of P. O. Box 01962, Osu, Accra (hereinafter called ‘the Purchaser’) of the other part.”

The pleadings undoubtedly challenged the validity of the title of the Plaintiff’s grantor, i.e. Azumah Family headed by Miledzi Azumah to alienate the land to the Plaintiff. Therefore, the issue is not about whether the said Miledzi Azumah

executed an indenture for the Plaintiff or not. It is about whether the Azumah Family headed by Miledzi Azumah had title to lawfully alienate same. Since the title of the Plaintiff's grantor was challenged, the Plaintiff had a duty to prove that his grantor had title to the land the subject matter of this suit before he could grant same. He therefore needed the help of his grantor to be able to leap above this hurdle. The Supreme Court in the case of Salomey Shorme Tetteh & Nii Amon Tafo vrs Mary Korkor Hayford Substituted By Stella Larbi & Comfort Decker [2012] DLSC 2611 held that:

"There is an obligation on a grantor, lessor or owner of land to ensure that any grant he purports to convey to any grantee, or lessee is guaranteed and that he will stand by to defend the interest so conveyed to any grantee or lessee ...".

The Plaintiff's 1st Attorney (PW1) and his witness, Togbe Anyihor IV (who is a member of the Plaintiff's grantor Azumah Family) accepted the challenge thrown to him by the Defendant and set forth to establish it by relying on the Indenture accompanied with a Site Plan indicating that the Plaintiff acquired an absolute freehold interest in the land from Miledzi Azumah. PW2 (Torgbe Anyihor IV) testified as a descendant of Amega Nyehu Azumah Family of Gbadagofeme, Sokpoe. PW2 told the court that there is no stool land existing in Sokpoe and that the disputed land belonged to the Azumah Family of the Gbadago Clan and was given to Amega Nyehu Azumah from the Gbadago Clan who had possession of the land before passing it on to his generations.

On the other hand, the Defendant traced his root of title from Torgbe Potopo as the founder of Sokpoe land and tendered in evidence, a Site Plan of the entire Sokpoe Traditional Area land caused to be prepared by Torgbe Potopo. This Site

Plan was marked as Exhibit '1'. In his Evidence-In-Chief, the Defendant told the court that the disputed land belonged to Togbe Zogah I, the Paramount Chief of Sokpoe Traditional Area, and that being an ancestral property, and he being one of the descendants of Torgbe Potopo, the land devolved onto him. When the Defendant cross examined PW1 on the 22nd June, 2022, the Defendant suggested to the witness that Sokpoe lands are stool lands. For the avoidance of doubt, the following is part of what transpired:

Q. Do you know that Sokpoe lands are stool lands?

A. I know that it is for various families under a stool. There are no stool lands in Sokpoe.

Q. If the lands are under the stool and Miledzi sold same, wouldn't the stool be aware of it?

A. The Plaintiff only purchased the land from Miledzi from Azumah Family. He was the head of family.

Q. I put it to you that the said Miledzi is aware that the land is a stool land and bypassed same to sell to you.

A. The witness will come and testify in this court. It is not true.

Also, when the Defendant cross examined PW2 on the 7th September, 2022, he made the same suggestions to the witness. See excerpts of the cross examination below:

Q. Sokpoe lands are stool lands. Do you know that?

A. No, that is not true.

Q. If you are shown a document that states that Sokpoe lands are stool lands, would you accept so?

A. No. Sokpoe lands were in existence before a paramount chief was even enstooled.

Q. The land belongs to who?

A. The Sokpoe people.

When the Defendant mounted the witness box and was cross examined by the Plaintiff's Attorney on the 22nd November, 2022, he answered under oath that Sokpoe lands were stool lands. It is also interesting to note that the Defendant who tendered a Site Plan (Exhibit '1') purporting to be the entire Sokpoe land could not point or locate the disputed land on it. What then is the essence of tendering Exhibit '1' if the disputed land cannot be located on it? The Defendant was also uncertain about where exactly he derived his title to the land from. The following is part of what transpired:

Q. You claim my principal's land is a stool land which your father gave to you. I put it to you that there are no stool lands in Sokpoe.

A. There are stool lands from 1933.

Q. I put it to you that there are only family lands, no stool lands for the chiefs.

A. That is not true.

Q. You tendered Exhibit '1', i.e. the map of the Sokpoe Tongu land. Can you point out to this court the disputed land owned by our principal, the plaintiff?

A. I cannot point it out to the court. I don't know the plan of the disputed land.

Q. I put it to you further that you claimed your father Potopo gave you Exhibit '1' but you have not been able to point out the disputed land from the map. How will the court be able to identify the disputed land from your Exhibit '1'?

A. When we go to the site of the disputed land, we can all clearly see it.

Q. In my little knowledge, when site plans are prepared, you can identify specific lands within the map. How will the court identify the disputed land from this map if you are saying unless the court goes to the site?

A. When we all go there we will all see it.

Q. The disputed land which you cannot even point out in Exhibit '1', you said before this court that you made a mistake and bought that same land from Akuyibor Azumah.

A. Yes, because Akuyibor's sister was farming on my grandmother's land. So I thought it was her farm land.

Q. I put it to you that Akuyibor is from the Azumah family but not authorized to sell Azumah family land.

A. The person you claim sold the land to you, Miledzi Azumah is not also authorized to sell land. He doesn't own land so he cannot sell land.

Q. I put it to you that Miledzi Azumah was authorized and put in charge of the Azumah lands with capacity to sell same and this was emphasized by my witness who testified in court.

A. Miledzi Azumah doesn't have or own any land.

Q. You as one person said the land belongs to your father, and same belongs to your grandfather Potopo and also your grandmother's farmland. All these prove that your assertion that you made a mistake and bought the land cannot be true because you know that the people you mentioned to be owners are false.

A. It is not family land. It is a stool land.

Q. That land that is a stool land allegedly from your father, is that the same land you said you mistakenly bought?

A. Yes My Lord.

Q. I put it to you that the land is not yours, kindly leave the land.

A. I won't leave it.

Q. Why won't you leave it, the land is not yours.

A. The distance from my house to the land is a short distance. Why is Miledzi saying it is his land. The lands and boundaries I mentioned there is judgement for us.

Q. I put it to you that your assertion that the land is close to your house doesn't mean it is yours. Exhibits '2' and '3' have no description of land.

A. It is my land.

Let me state with emphasis that there are no stool lands in the Volta Region of the Republic of Ghana, and Sokpoe Traditional Area is located in the South Tongu District of the Volta Region of Ghana. There exist only family lands. According Professor Kludze JSC in his article "Family Property and Inheritance", the learned jurist and author stated that in the Volta Region, the Ewe unit referred to as the family is the Dzotinu, and that in principle they descended patrilineally from a common ancestor and constitute a corporate entity for the purposes of title to property specifically land. The main type of family property among the people of the Volta Region are the ancestral family lands. The reason lies in the Ewe system of succession to property. It does not therefore lie in the mouth of the Defendant to state that Sokpoe lands are stool lands and upon the death of his father, it devolved onto him. That is an erroneous impression created by the Defendant.

In the course of the trial, the Defendant sought leave of this Court to file a Supplementary Witness Statement by tendering a letter from the Office of the Administrator of Stool Lands purporting to indicate that the relevant State Institutions recognized Sokpoe lands as Stool lands. This letter was admitted in evidence and marked as Exhibit '4'. The letter (Exhibit '4') dated 18th January, 2019 was in response to a letter written by the lawyers for Togbe Zogah II for the establishment of Stool Land Account and Collection of Rents, Royalties Inter Alia

on behalf of the Sokpoe Stool. In the humble view of this Court, this letter did not declare Sokpoe lands as Stool Lands. I regret to say that the Defendant is completely misleading this Court.

The Defendant also tendered in evidence a Judgement of the District Court Grade I, Sogakope dated 7th May, 1986 in a suit between Togbe Zogah I & Another vrs Awuku Azumah & Others. This was marked as Exhibit '2'. Also tendered in evidence is an Arbitration award on a boundary dispute between Miledzi Azumah and Kutsianya Ahado in 1997. This award was tendered in evidence and marked as Exhibit '3'. By the evidence of the Defendant, he has raised an issue of estoppel and seemed to rely on same. In the case of Poku vrs Frimpong [1972] 1 GLR 230, the Court held that:

"The estoppel pleaded in the instant case was cause of action estoppel. Where a party relies on such estoppel, the onus of establishing the identity of the subject-matter of the previous suit with that of the second suit lies on him. The onus is discharged by first producing in evidence the record of the pleadings and judgement with the pleadings before the trial court, he satisfies the trial court of the possibility of the two causes of action being identical, he will then proceed to give positive evidence of identity."

Closely the Defendant came with the description of the land in the previous suit can be found at page 2 of Exhibit '2' specifically paragraphs 2 and 3 and it reads:

"Now the cause of this action arose as a result of some building plots PW4 allotted to two men on his PW4's family land to which 2nd defendant was alleged to have protested and re-sold them. And it was on part of the same land on which the palm trees were felled as

stated in the Plaintiff's Writ of Summons. The 1st Plaintiff who is nephew to PW4 is the Paramount Chief of Sokpoe."

"The land in dispute is said to be a part of a larger parcel of the Ahado family land whose head is also the PW4 and had descended to them from a direct lineage of their progenitor. The new township of Sokpoe came into being during the days of Ahado, Agbovi, Kwami Kumah and Atidigah who were heads of the family units at the time. It was also their time when they apportioned the farm lands which have become the respective possessions of the wider families and handed down to their descendants."

In both Exhibits '2' and '3', the land the subject matter of the dispute in the 1986 and 1997 cases respectively have not been described. There is nothing before this Court by way of the record of the pleadings and proceedings to compare the disputed land in this instant suit to that of the previous suits. It appears that all the previous litigations relied upon by the Defendant are not relevant in the determination of the issues at stake. The Defendant has therefore failed to discharge the burden placed on him to establish that the subject matter of this instant suit and the previous suits are the same. In the circumstances and considering the above analysis, I hold that the root of title of the Defendant is defective as Sokpoe lands are not stool lands, and for that matter the land did not belong to Togbe Zogah I. The Plaintiff therefore obtained a valid and genuine grant of the disputed land from the Azumah Family.

It is the law that a grantor of land can only give out land which he owns. In the case of *The Registered Trustees of the Catholic Church, Achimota Accra vrs Buildaf & 2 Others* [2015] DLSC 3234, per Benin JSC decided held:

“That it is the law that only the owner of land can give away title to a third person.” See also the cases of *Edith v. Keelson* [2012] 37 MLRG 127 at holding (2) per Dotse JSC; *Benyak Co. Ltd v. Paytell Ltd & Ors.* [2013-2014] 2 SCGLR 976 at page 989 & *Numo Adjei Kwanko II v. Lebanon Society & 2 Ors.* [2016] DLSC 2786, per Ansah JSC. The *nemo dat quod non habet* principle tends to recognize only alienations and gifts made by the true owner or persons with title. It is simple logic that if a person can only give what he has, it follows that if the Plaintiff’s grantor’s title has been found good and reliable, then the Plaintiff can easily rely on it. In other words, the Plaintiff’s title has a strong foundation to rest on. In view of the above principle, the Court finds that the Plaintiff acquired a good title from the Azumah Family which had the requisite capacity to alienate same.

Whether or not the Plaintiff has been in undisturbed occupation, cultivation and possession of the land from the year 1993 to date

AND

Whether or not the Defendant had been cultivating the disputed land with pepper at a stage commenced a poultry farm on same for over decades

In the case of *Aidoo vrs Adjei & Others* [1976] 1 GLR 431, the Court held that a person in possession of land was presumed to be the absolute owner. Then in the case of *Nartey vrs Mechanical Lloyd Assembly Plant Ltd* [1987-88] GLR 314, Amuah-Sekyi JSC explained that the possession mentioned in cases that deal with possession “is not possession for a day or two, a week, a month or even a year which suffices to bring the rule into operation; it is rather long and peaceful, undisturbed possession over a considerable period of time, long and peaceful enough to raise a presumption that the occupation of the land must have a lawful origin.

It is the evidence of the PW1 that as open acts of overt ownership, the Plaintiff erected corner pillars on the boundaries for easy identification, and also commenced farming by planting maize and cassava during the major and minor farming seasons every year. Also, that the Plaintiff fenced the land with palm fronds to prevent animals from destroying the crops planted thereon. Subsequently, the Plaintiff heaped a quantity of sand on the land with the hope of developing same until the Defendant trespassed onto the land in October, 2021 and destroyed part of the fence and some of the crops on the land to commence a platform without the knowledge and consent of the Plaintiff.

On the other hand, the Defendant testified that as open acts of ownership, he personally cleared the land in question which was a virgin forest about 200 feet square and had since been cultivating same without any opposition. It is the case of the Defendant that he had been cultivating pepper on the land for over five (5) years without any resistance whatsoever. Also, that at a stage, he commenced a poultry farm on this very land and operated it for decades but had to stop and subsequently abandoned the place due to persistent theft of the birds.

The law is that possession must not just be bare. It has to be proved. In the case of Vanghan Williams vrs Oppong [2015] 84 GMJ 171, Adinyira JSC at page 175 decided:

*“ . . . evidence of possession is essential in a claim for trespass and recovery of possession, there must however be **clear and cogent evidence** in support and not mere assertion”*
(Emphasis mine).

Apart from the oral evidence given by PW1 and the Defendant on their possession of the disputed land, there was no photograph or video depicting the said activities carried out by the parties on the disputed land. However, PW2 told the court that after the Azumah Family had sold the land to the Plaintiff and two others namely Rev. Ebenezer Yao Blasus and Madam Zook Atsufe (who share boundary with the disputed land), Amega Miledzi Azumah was still farming on the land for years before the purchaser decided to put up a residential structure on it. It stands to reason therefore that the Plaintiff's grantor Azumah Family had possession of the disputed land. On the preponderance of probabilities, I hold that the Plaintiff has been able to discharge this burden on the issue of possession.

Issues Arising Out of the Pleadings

Both parties have pleaded the issue of trespass and are seeking a relief of General Damages for Trespass against each other. As I have held above, the Defendant does not have a good title to the land. Having no good title to the disputed land, it follows that the Defendant will not be entitled to be awarded damages for trespass.

The Plaintiff claimed that the Defendant committed acts of trespass on his parcel of land. Whenever trespass is alleged, there must always be a positive and direct act. In the case of *Ebusuapanyin Akuma Mensah vrs Nana Atta Komfo II* [2015] 39 GMJ at page 80, the Court of Appeal, per Barbara Ackah-Yensu J.A. (as she then was) held:

"As with all forms of trespass, there must be directness; the plaintiff must prove direct invasion of the defendant on his land for a claim of trespass to succeed"

The exact act of trespass committed by the Defendant has been stated at paragraph 11 of the Statement of Claim. It reads:

“The Plaintiff further asseverates that sometime in October, 2021, the Defendant trespassed onto the land in question and erroneously destroyed part of the palm fronds as well as some of the crops thereon, and heaped a trip of sand thereon with the hope of commencing a platform thereon without their knowledge and authority.”

Under oath, PW1 repeated same by relying on her Witness Statement as her Evidence-In-Chief.

The Defendant responded to the above paragraph at paragraph 10 of the Statement of Defence as follows:

“The Defendant partially admits paragraph 11 of the Statement of Claim but quickly add that he does not need any permission from the Plaintiff before entering his inherited property.”

Since the Defendant does not have title to the disputed, it is obvious from the above that the Defendant has trespassed onto the Plaintiff’s land by heaping a trip of sand on it. This is a clear case of trespass and the Plaintiff is entitled to the award of general damages.

Consequently, I grant the entire claim of the Plaintiff as endorsed on his Writ of Summons as follows:

- (a) The Plaintiff is declared title holder to the parcel of land situate, lying and being at Sokpoe in the South Tongu District of the Volta Region of the Republic of Ghana and bounded on the first side by the property of Madam Atsupah Zooh; on the second side by the property of Naomi Kottoh; on the third side by the property of Reverend Ebenezer Yao Blasu, and on the fourth side by the road to Anasukope.
- (b) General Damages of GH¢5,000.00 for trespass and deprivation.
- (c) Recovery of Possession of the land described in paragraph (a) above.
- (d) The Defendant, his Agents, Servants, Workmen, Successors, Privies are perpetually restrained from having anything whatsoever to do with the land described in paragraph (a) above and particularly from interfering with the ownership, possession, control, cultivation, development, enjoyment, or alienation of the land thereof by the Plaintiffs and other members of his family, his Agents, Servants, Workmen, Successors, Privies and Assigns.
- (e) I award cost of GH¢2,000.00 against the Defendant.

For failing to prove his counterclaim by preponderance of probabilities, I accordingly dismiss the reliefs sought by the Defendant in its entirety.

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ISAAC ADDO
CIRCUIT JUDGE
22ND MARCH, 2023