

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON
WEDNESDAY THE 6TH DAY OF DECEMBER, 2023 BEFORE HER HONOUR
ENID MARFUL-SAU, CIRCUIT COURT JUDGE**

SUIT NO:C1/39/2018

1.CHARLES BUGYIE DEBRAH
ABLEKUMA

2.MICHAEL APPIAH
ROMAN RIDGE

...

PLAINTIFFS

VRS.

BOATENG OWUSU ANSAH

...

DEFENDANT

*PARTIES: 1ST PLAINTIFF PRESENT REPRESENTING 2ND PLAINTIFF
2ND PLAINTIFF ABSENT
DEFENDANT PRESENT*

*COUNSEL: BRIDGETTE BUDU OKYIR ESQ. HOLDING BRIEF FOR RICHARD
ODUM MENSAH ESQ. FOR PLAINTIFF PRESENT
CHRISTABELLE QUARTEY ESQ. HOLDING BRIEF FOR TONY
LITHUR ESQ. FOR DEFENDANT PRESENT*

JUDGMENT

By a Writ of Summons and Statement of Claim filed on 15th March, 2018, Plaintiff claims against Defendant the following reliefs:

- a. “Declaration of title that [sic] the land in dispute is the property of 2nd Plaintiff.
- b. Perpetual injunction restraining the Defendant, his agents, servants, licensees, workmen and assigns from in any way entering or interfering or in any way dealing with the said land.
- c. General damages for trespass.”

Plaintiffs say that the 2nd Plaintiff is the legal owner and entitled to possession of a piece or parcel of land lying at Ablekuma by a

conveyance dated 11th March, 2003 between Nii Opare Baido of Nii Sempe Mensah family of Ablekuma and 2nd Plaintiff. Plaintiffs say that the land is sufficiently described in the said conveyance. By paragraph 14 of the Statement of Claim they describe the land as:

“All that piece or parcel of land situate lying and being at ABLEKUMA-ACCRA and containing an approximate area of 0.40 Acres or 0.16 Hectares and bounded on the NORTH-WEST by proposed road measuring 74.3 feet more or less on the NORTH-EAST by lessor’s land measuring 272.0 feet more or less on the SOUTH-EAST by proposed road measuring 78.1 feet more or less on the SOUTH-WEST by Lessor’s land measuring 235.8 feet more or less”

Plaintiffs say that the 2nd Plaintiff took possession of the parcel of land and constructed a single room and fence wall around same in 2015. They say that the 1st Plaintiff has at all material times been the caretaker of the land and therefore resides in the room built by the 2nd Plaintiff on the land. According to Plaintiffs, in or about September, 2017, the Defendant in the company of about 8 other armed police men entered upon the land at midnight and arrested and detained 1st Plaintiff at the Greater Accra Regional Police Headquarters until he was granted bail the next day.

They say that Defendant claimed upon the arrest of 1st Plaintiff that the land was his property and was ordered to vacate the room by the Defendant. 1st Plaintiff says that in January, 2018, while on his personal errands at the Greater Accra Regional Police Headquarters, he was again arrested and detained in respect of the land and upon the grant of bail ordered to vacate the land. He says that on 11th March, 2018, Defendant entered the land and demanded that he vacates the land before 15th March, 2018. Plaintiffs say that the arrests and threats by Defendant amount to interference with the peaceful use and enjoyment of the land and same will continue unless Defendant is restrained by the court hence the instant action.

Defendant entered appearance through counsel on 18th June, 2018. On 17th October, 2018, Defendant filed a notice of change and appointment of solicitor and filed an Amended Statement of Defence and Counterclaim on 5th December, 2018. He contends that a piece or parcel of land situate lying and being at Ablekuma-Accra containing an approximate area of 0.16 acre more or less was by a lease dated 15th

July, 2003 transferred from Nii Larbie Mensah, Sempe Asafoatse, head and lawful representative of Nii Larbi Mensah of Ablekuma to one Nii Ayikwei Tagoe. He says that Nii Ayikwei Tagoe's initial offer to sell the land to one Patrick Nii Ayikwei Tagoe who owns the adjoining parcel of land fell through for failure of consideration. He says that the said Patrick Ayikwei Tagoe however informed Nii Ayikwei Tagoe that the Defendant's nephew, Nicholas Boateng was interested in acquiring the land and thereafter a Deed of Assignment was executed on 3rd November, 2003 between Nii Ayikwei Tagoe and Nicholas Boateng for an unexpired term of his 99-year lease. According to Defendant, sometime in 2010, he approached Nicholas Boateng with an offer of acquiring the land and pursuant to a verbal agreement, he made several payments towards the purchase of the land.

He says that in August, 2015 after he had paid the full purchase price, his nephew assigned his unexpired interest in the land to him and one Elizabeth Abudu jointly by a Deed of Assignment dated 20th August, 2015. He says that he then informed Patrick Nii Ayikwei Tagoe of the change in ownership, and he was referred to one of the developmental chiefs in Ablekuma where he was made to pay an amount of GH¢400 as 'digging fee'. According to Plaintiff, he took a personal loan and purchased 4 trips of sand and 2 trips of stones and 1,500 cement blocks and deposited them on the land to serve as constructive notice to all of his interest. He says that he retained one Alexander Abban who was the caretaker of Patrick Tagoe as his. Defendant says that he tasked him to maintain the land and report any threat or encroachment.

Defendant says that the caretaker upon noticing the activities of certain persons suspected to be land guards on the land, confronted them, and he was assaulted to the extent of sustaining cutlass wounds inflicted by 1st Plaintiff, so Defendant reported the matter at the Anyaa Police Station which led to the arrest of 1st Plaintiff. According to him, they were advised to attempt an amicable resolution of the matter and during the dispute resolution process, he met with one man named Sariki Musa Nsoh who claimed to be responsible for the men who assaulted the caretaker. He says that he was made to pay another sum of money as digging fee to Sariki Musa with the assurance that they would halt all forms of interference with the land. According to Defendant, this payment notwithstanding, the land guards returned to the land and harassed the caretaker and the 1st Plaintiff, and several others took

building materials deposited on the land by Defendant and constructed a wall around the land and the adjoining one owned by Patrick Tagoe. He says that they erected a single-room structure in the middle of the land owned by Patrick Tagoe to serve as a lodging for 1st Plaintiff. Defendant says that he reported these developments to his superiors at the Regional Police Headquarters and they found cause to call for the case docket from Anyaa Police Station and advised him to suspend all actions pending investigations.

According to him, following the report at the Regional Police Headquarters, he was assigned a police detail to effect the arrest of all persons engaged in the illegal construction activities on the land belonging to Patrick but they managed to evade arrest until sometime in September 2017 when 1st Plaintiff was found on the land belonging to Patrick Tagoe and was arrested. He says that 1st Plaintiff upon his arrest confessed that he was acting on the instructions of Sariki Musa. He says Sariki Musa on phone admitted that he had unlawfully put 1st Plaintiff in possession the land belonging to Patrick Tagoe and pleaded for two weeks to ensure that he vacates and the unlawful structure demolished. Defendant says that after two weeks he returned unto the land to inspect it and met several other persons including 1st Plaintiff who assaulted him and drove him off the land, so he went to the Regional Police Headquarters to report the incident. He says that in an unrelated matter, when 1st Plaintiff went to secure bail for his colleagues engaged in land guard activities, he was arrested after he had escaped a previous swoop by the police. Defendant contends that following the arrest of 1st Plaintiff and others who assaulted him, he received a number of appeals to withdraw his complaint so he eventually acceded to these requests.

He says that he was invited to the residence of Sariki Musa where he attended with one Sergeant Philip and met with the 2nd Plaintiff for the first time. According to him, the 2nd Plaintiff claimed to own the land belonging to Patrick Tagoe and that he had paid monies to Sariki Musa to build a fence wall. He says he produced his documents to back his claim of ownership to the land but 2nd Plaintiff was unable to do so. According to Defendant, following the meeting, he made a Petition in respect of the matter to the CID National Headquarters. He says that he procured an additional 2 trips of sand and one trip of stone which were deposited on the land and since then he has received several calls from persons including 1st Plaintiff threatening him to stay clear of the land.

Defendant says he went to confront the 1st Plaintiff and he was served with the instant Writ of Summons and Statement of Claim. He counterclaims as follows:

- a. “Declaration of title to the land in favour of Defendant.
- b. An order of perpetual injunction restraining the Plaintiffs, their agents, servants, licensees, workmen and assigns from entering or interfering or in any way dealing with the land.
- c. An order for demolition of all any [sic] existing property on the said land.
- d. Damages for trespass
- e. Cost”

Plaintiffs filed an amended Reply on 22nd January, 2019 and state that the 2nd Plaintiff purchased the land from Nii Opare Badu, head of Nii Sempe Mensah family of Ablekuma. They state that the land was bushy with no stones or sand to serve as constructive notice when 2nd Defendant entered the land. Plaintiffs say that they never encountered Alexander Abban or any caretaker on the land. 1st Plaintiff says that he has never been arrested by the Anyaa Police in respect of the parcel of land. According to him, he was arrested and placed in custody till the next morning when he was informed that the reason for the arrest was in respect of the land he was occupying so he informed the police that he was only a caretaker for the 2nd Plaintiff who was out of town at the time. So, he was admitted to bail to return in two weeks with the 2nd Plaintiff.

He says that after two weeks when the 2nd Plaintiff had not returned, he went to the Police and the Crime Officer directed that he is charged for court but that has till date not been done. 1st Plaintiff says that Defendant went unto the land in September, 2017 and gave warning shots so the Plaintiffs went to the Police Station and reported the matter to one ACP Aboagye Nyako who invited the Defendant to a meeting with Plaintiffs. Plaintiffs contend that after the issuance of the instant writ, Defendant arrested 1st Plaintiff and placed him in custody till about 4:00pm the next day before granting him bail and upon 1st Plaintiff's return, he discovered that Defendant had sent sand and stones to the land.

At the close of pleadings, this court differently constituted on 18th February, 2019 adopted and set down the following issues for trial:

1. “Whether or not the Defendant is the rightful owner of the piece or parcel of land situate, lying and being at Ablekuma containing an approximate area of 0.16 acres more or less.
2. Whether or not 2nd Plaintiff took vacant possession of the land in dispute before constructing a concrete wall around same.
3. Whether or not 2nd Plaintiff by himself or through his agents, assigns, servants, licensees, workmen and assigns trespassed unto Defendant’s land.
4. Whether or not 2nd Plaintiff is entitled to his claim.
5. Whether or not Defendant is entitled to his counterclaim.

Additional Issue

6. Whether or not the Defendant or his agents assigns trespassed unto 2nd Plaintiff’s land.”

It is trite law that in a civil case, where a party sues for a declaration of title to land, damages for trespass and an order for perpetual injunction, the onus is on him to prove on a balance of probabilities ownership of the land in dispute. The burden of persuasion is therefore on the party who claims title to land.

***See. ADWUBENG V. DOMFEH (1996-1997) SCGLR 660;
JASS CO LTD & ANOR V. APPAU & ANOR (2009) SCGLR 265 AT 271***

Section 12(2) of the **EVIDENCE ACT,1975 NRCD 323** defines ‘preponderance of probabilities’ as follows:

““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.”

Defendant by his counterclaim becomes a Plaintiff. In the case of **MALM V. LUTTERODT (1963) 1 GLR 1, SC** it was held as follows:

“The defendant in an action for declaration of title assumes a legal burden of proof only when he counterclaims for declaration of title in his favour.”

The onus is therefore equally on the Parties to prove their respective claims on a balance of probabilities. I shall now proceed to consider the issues set down for trial.

Issues 4 and 5 are: “4. *whether or not 2nd Plaintiff is entitled to his claim* and 5. *whether or not Defendant is entitled to his counterclaim.*”

In Supreme Court case of **DALEX FINANCE AND LEASING COMPANY LTD. VRS EBENEZER DENZEL AMANOR & ORS., CIVIL APPEAL NO. J4/02/2020 DATED APRIL 14, 2021; UNREPORTED**, the Supreme Court admonished as follows:

“We take this opportunity to deprecate the emerging wrong practice where in setting down issues for trial in a civil case “whether or not the plaintiff is entitled to her claim” is put down as an issue for trial. The whole trial is aimed at determining whether or not the plaintiff is entitled to the reliefs claimed so how can that be a distinct issue? This practice is a product of lazy work and a stop must be put to it.”

In view of the above decision, issues 4 and 5 are hereby struck out.

Issue 1 is ‘*whether or not the Defendant is the rightful owner of the piece or parcel of land situate, lying and being at Ablekuma containing an approximate area of 0.16 acres more or less*’.

It is instructive to note that Defendant in his pleadings and evidence describes as “the land” a piece or parcel of land situate, lying and being at Ablekuma-Accra containing an approximate area of 0.16 acres or 0.6 hectare more or less ‘in the Ga West District in the Greater Accra Region bounded on the North East by Assignor’s land measuring 70.0 feet more or less, on the South East by Assignor’s land measuring 100.0 feet more or less on the South West by Assignor’s land measuring 70.0 feet more or less on the North West by Assignor’s land measuring 70.0 feet more or less on the North West by Assignor’s land measuring 100.0 feet more or less’ covered by a Deed of Assignment dated 20th August, 2015 between Nicolas Boateng and Defendant and Elizabeth Abudu on the other part. The said Deed of Assignment was tendered as *Exhibit 1*.

Section 32 (1) and 32(6) of the STAMP DUTY ACT, 2005 (ACT 689) provide as follows:

“32 Admissibility of insufficiently stamped or unstamped instrument

32 (1) *Where an instrument chargeable with a duty is produced as evidence*

(a) *In a Court in a civil matter, or*

(b) *Before an arbitration or referee*

the judge, arbitrator or referee shall take notice of an omission or insufficiency of the stamp on the instrument.

...

32(6) *Except as expressly provided in this section, an instrument*

(a) *executed in Ghana*

(b) *executed outside Ghana but relating to property situate or to any matter or thing done or to be done in Ghana.*

shall except in criminal proceedings, not be given in evidence or be available for any purpose unless it is stamped in accordance with the law in force at the time when it is first executed.”

It was held further in the case of **THOMPSON V. TOTAL GHANA [2011] 34 GMJ 16 SC** thus:

‘If inadmissible evidence has been received (whether with or without objection), it is the duty of the judge to reject it when giving judgment, and if he has not done so, it will be rejected on appeal, as it is the duty of courts to arrive at their decision upon legal evidence only.’

(See also NARTEY v. MECHANICAL LLOYD ASSEMBLY PLANT LIMITED [1987-88] 2 GLR 314)

This court has critically examined *Exhibit 1* and is satisfied that it has not been stamped in accordance with the Stamp Duty Act of 2005. I therefore find that *Exhibit 1* is inadmissible and same is hereby rejected.

As part of orders of the court differently constituted during the application for directions stage, an order was made for the parties to submit their site plans and survey instructions for a composite plan to be drawn. This order was complied with and on 9th February, 2022 the Surveyor Mr. Akwasi Owusu Antwi (CW1) testified before the court. The composite plan was tendered in evidence and marked *Exhibit CE2*. I must state that the site plan attached to the rejected *Exhibit 1* and that which is attached to *Exhibit 2* in the name of Patrick Nii Ayikwei Tagoe are what were submitted for preparation of the composite plan by Defendant.

In the case of **KANGBEREE VRS. MOHAMMED [2012] 51 GMJ 173 SC**, it was held as follows:

“Composite plans present pictorial evidence of the situation as if the court had moved to the locus in quo.”

A perusal of Exhibit CE2 shows that the land shewn on the Site Plan of Yaw Owusu Ansah Boateng and Elizabeth Abudu edged green and the land shewn on the site plan of Patrick Nii Ayikwei Tagoe edged magenta are next to each other. However, it is apparent that the said lands are far removed from the land surveyed as shown by Defendant edged purple. Likewise, the land surveyed as shewn by the Site Plan of 2nd Plaintiff tendered as Exhibit A is edged yellow while that which was shown by 1st Plaintiff is edged red. From Exhibit CE2, the lands pointed out by the parties overlap and it is within this overlap that an area of dispute is found. Indeed within the lands pointed out by the parties on the ground are an old septic tank claimed by Plaintiff, chippings and two trips of sand claimed by both parties, a trip of sand claimed by Defendant, a structure for Plaintiff and a wall by Plaintiff.

As both parties claim a declaration of title to land, the respective lands sought by the parties must be ascertained with certainty. The only exhibit which seeks to create any certainty about the identity of the disputed lands claimed to be owned by the parties is Exhibit CE2. During cross examination of CW1 by counsel for Plaintiffs the following ensued:

Q: You found that the Site Plan submitted by the Defendant is very far away from the area in dispute

A: That is so

Q: In terms of distance can you tell the distance from the site plan and area in dispute

A: Yes. On the composite plan and said site plan for Yaw Owusu Ansah and Elizabeth edged green and that of Patrick Nii Ayikwei Tagoe is approximately 350 feet from the land claimed on ground by Defendant

Q: The Report also shows that the Plaintiff's site plan does not fall within the area in dispute

A: That is so

Q: But it is not very far from the area

A: It is about 30 feet off the boundaries claimed by the Plaintiff on ground”

Again, during cross examination of CW1 by Counsel for Defendant the following ensued:

Q: So from your visit to the grounds and the composite plan presented to this Court, it is safe to conclude that the portions hatched being the land in dispute does not directly correspond to the areas in the Site Plan of both parties

A: Yes”

In the case of **DARKO v. AFFRIM AND OTHERS [1966] GLR 36; SC** it was held as follows:

“In a claim for a declaration of title, damages for trespass and recovery of possession, a plaintiff could not succeed without clear proof of the identity of the land to which the court should hold him entitled, which the court could find had been trespassed upon, and of which the sheriff could, without committing trespass on other people's lands, place him in possession if ordered by the court to do so.”

Also, in **GAWU III AND ANOTHER v. PONUKU [1960] GLR 101** it was held as follows:

“To succeed in an action for declaration of title to land and recovery of possession, a plaintiff must establish positively the identity of the land he is claiming and where (as in this case) he admits that his land forms boundary with land belonging to the defendant he must establish clearly the boundary between his land and the land which he admits is the property of the defendant, and show that the land in dispute is on his side of that boundary;”

Now, did the Parties succeed in establishing the identities of the land satisfactorily according to law so as to entitle him to a declaration of title and the other reliefs they seek? Whilst the documents relied upon by the parties show that the said lands acquired by the parties fall at different places, the description of the land by the parties also show a location different from that which is found on their respective site plans.

In **MOUGANIE v. YEMOH [1977] 1 GLR 163** it was held as follows:

“The rule that oral evidence could not be accepted to contradict a written document was usually stated in connection with contracts but it was equally applicable to documents such as judicial records, transactions required by law to be in writing or other documents

constituting a valid and effective transaction between parties. In the instant case, it was not claimed by the defendant that the deed of gift, relied upon by the plaintiff as evidence of his title to the disputed land, was not exercised by the proper grantor. Neither was it claimed that the deed was void for mistake or illegality nor voidable on grounds of fraudulent or innocent misrepresentation. In the circumstances, it was not open to the trial judge to receive, much less to accept, oral evidence that the land given to the plaintiff in that transaction was different from what the deed itself said. The land delineated in that deed was the land which had to be accepted as disposed of in that transaction.”

In the same vein, this court cannot accept the lands pointed out on the ground by the parties as the lands corresponding with their various site plans based upon which they claim ownership of land.

In **KWABENA v. ATUAHENE [1981] GLR 136**, the court held as follows:

“It may also be mentioned that where there is no properly oriented plan drawn to scale, which makes compass bearings vague and uncertain, the court would hold that the plaintiff has not discharged the onus of proof of his title”

In the instant case, the court ordered a professional survey of the area in dispute by the institution in charge of same being the Lands Commission and the orders carried out by a by a licensed surveyor who produced a plan drawn to scale. Indeed no issues were raised by either counsel as to the professionalism of CW1 or the work he carried out. On the contrary, both counsels admit that the site plans of the respective parties do not correspond with what has been shown on the ground.

In **NYIKPLORKPO v. AGBODOTOR [1987-88] 1 GLR 165** the court held that:

“To succeed in an action for declaration of title to land, recovery of possession and for an injunction the plaintiff must establish by positive evidence the identity and the limits of the land which he claimed. In the instant case, there was no evidence which established in any manner the line of demarcation marking the boundary between that "small portion" which had been the subject matter of dispute and the land which the plaintiff's ancestor retained. In such a situation, no court of justice could be expected to give a declaration of title or recovery of possession to a plaintiff in respect of an area whose boundaries were so

uncertain. Thus whichever way one looked at the plaintiff's case, he should not have been granted recovery of possession of either the small portion or the whole land."

In this case, the lands over which the parties claim a declaration of title of described in their various claims does not correspond to the land on the ground which both parties claim to have taken possession of by various acts they described in their pleadings and evidence. Indeed as things stand, this court is not in a position to know the boundaries and description of the land as shown on the ground by both parties.

On the entirety of the evidence before me, I find that both parties have failed to establish clearly the identity and boundaries of the pieces of land they claim on the ground and have also failed to prove possession of the respective lands they claim ownership over on the basis of their site plans. I consider these failures to be fatal to Plaintiffs' claim and Defendant's counterclaim respectively.

Counsel for Plaintiffs has by his written address to the court filed on 24th November, 2023 argued that the 2nd Plaintiff's site plan is about 30 feet from the area in dispute hence that is much closer than that of the Defendant. Irrefutably from Exhibit CE2, the land of Plaintiff shown by his site plan is closer to that which was pointed out on the ground as compared to Defendant but this notwithstanding, it does not change the fact that the said land on the ground is not that which is contained in the Site Plan of Plaintiff over which he claims title. Counsel for Plaintiffs also argues that Plaintiffs have been in actual possession of the land hence the presumption of ownership operates in favour of Plaintiffs. This position urged on the court however is still irreconcilable with the fact that Plaintiffs claim a declaration of title over land described in their pleadings and evidence which is distinct from the land which has been pointed out on the ground by Plaintiff. By this argument therefore, Plaintiffs in effect seek a declaration over the land pointed on ground which description is unknown to the court which in fact changes the claim of Plaintiff.

On an examination of the entirety of the evidence before me, I am unable to find that either party has adduced evidence on a balance of probabilities to conclusively have this court declare title to land in their favour. I therefore answer issue 1 in the negative that on a balance of probabilities, it has not been shown that Defendant is the rightful owner of a piece or parcel of land situate at Ablekuma containing an approximate area of 0.16 acres more or

less. In view of the above analysis, I also find on issue 2 that that 2nd Plaintiff did not take vacant possession of the land in dispute. I also do not find on the evidence that 2nd Plaintiff by himself or through his agents, assigns, servants, licensees, workmen and assigns trespassed unto Defendant's land and therefore answer issue 3 in the negative. Conversely, I do not find on issue 6 that the Defendant or his agents or assigns trespassed unto 2nd Plaintiff's land.

The result therefore is that the Plaintiff's action together with Defendant's counterclaim fail and same are hereby dismissed as per the reasons assigned in this Judgment.

There shall be no order as to costs.

**H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN**