

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON  
WEDNESDAY THE 22<sup>ND</sup> DAY OF NOVEMBER, 2023 BEFORE HER  
HONOUR ENID MARFUL-SAU, CIRCUIT COURT JUDGE**

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SUIT NO:C1/60/2020

DANIEL ADU YEBOAH  
H/NO.225, AMASAMAN  
BEHIND GHANA EDUCATIONAL  
SERVICE, AMASAMAN

...

PLAINTIFF

VRS.

FOSTER AMAKYE  
FORESTRY ROAD  
AMASAMAN

...

DEFENDANT

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*PARTIES: PLAINTIFF PRESENT  
DEFENDANT ABSENT*

*COUNSEL: FRANK K. NIKOI ESQ. FOR PLAINTIFF PRESENT  
F.A. ACQUAYE ESQ. FOR DEFENDANT ABSENT*

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**JUDGMENT**

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By a Writ of Summons and Statement of Claim filed on 18<sup>th</sup> May, 2020, Plaintiff claims against Defendant the following reliefs:

- a. “Declaration of title to the land described in paragraph 4.
- b. Recovery of possession
- c. An order for perpetual injunction restraining defendant, his agents, assigns, privies, workmen and successors from interfering with plaintiff enjoyment of the land.
- d. Damages for trespass.
- e. Cost
- f. Any further order(s) as the honourable Court may deem fit.”

It is the case of Plaintiff that he purchased a plot of land at Ayikai Doblo near Amasaman from the Nii Ayi Kojo family of Ayikai Doblo which was reduced into writing by an indenture dated 5<sup>th</sup> January, 2015. He says that

the indenture was signed by Nii Ayitey II, Mankralo and representative of Nii Ayi Kojo Family of Ayikai Doblo. He says that the land described in the indenture is “ALL THAT PIECE OR PARCEL OF LAND situate lying and being at Ayikai Doblo in the region aforesaid and bounded on the North-West by proposed road measuring 70.5 feet more or less on the North-East by Lessor’s land measuring 100.5feet more or less on the South-East by Lessor’s land measuring 70.6feet more or less on the South-West by Lessor’s land measuring 100.3 feet more or less and containing an approximate Area of 0.16 Acres or 0.05 Hectare more or less which said piece or parcel of land is more particularly delineated on the plan attached hereto and thereon shewn edge Pink”.

Plaintiff says that he went into possession of the land by depositing two trips of sand and stone chippings at a cost of GH¢3,600.00 and GH¢1,600.00 respectively. He says that he had a report that Defendant was trespassing on the land in dispute and was developing the land with the sand and stones he (Plaintiff) had deposited on the land. According to him, Defendant has constructed a residential building to lintel level is still continuing development. Plaintiff says that he reported the matter to the Amasaman Police Station and Defendant’s workers were arrested and when Defendant went to the Police Station to bail them, he was asked by the police to produce his land documents, but he could not do so. He says that the police asked both parties not to work on the land until they completed investigations, but the Plaintiff visited the Police Station several times and there was no progress in the investigation. He says that his lawyer wrote a letter to his grantors to ascertain from them whether the land in dispute had been sold to anyone and they responded in a letter confirming that the land belongs to Plaintiff. Plaintiff says that unless the court intervenes, the Defendant will not stop his trespassory activities hence the instant action.

Defendant entered appearance in person on 1<sup>st</sup> June, 2020 and filed a Statement of Defence on 5<sup>th</sup> June, 2020. He contended that he bought the land in dispute from an estate developer named Auntie Adjoa in 2013. He says that Auntie Ajoa introduced him to her grantor one Nii Boye Laryea, a member of the Nii Addy Family of Ayikai Doblo near Amasaman. According to him, he together with his grantor, the said Nii Boye Laryea and one Serban Quashie known as Iron went with a Surveyor to the land for it to be demarcated for him. He says that he was given an indenture dated 15<sup>th</sup> October, 2013 which was signed by Samuel Nii Addy Lamptey, the head and

lawful representative of the Nii Addy family of Ayikai Doblo. He says that when he entered into possession of the land, there was no sand and stone chippings deposited on the land and that he deposited about three thousand blocks on the land. He contends that in or about 2019 he was working on the disputed land when the Police came unto the land and arrested him and a woman on an adjoining land because Plaintiff claimed both lands belonged to him. He says that at the Police Station the Police asked them to bring their grantors. He says his grantor appeared with her grantors, but the Plaintiff could not produce his grantors and further denies that the Police asked them to produce their documents. On 18<sup>th</sup> June, 2021, Defendant filed a Notice of Appointment of Solicitor.

On 12<sup>th</sup> October, 2020 the following issues were adopted and set down for trial:

1. 'Whether or not the Plaintiff is entitled to his claim
2. Whether or not Plaintiff after acquiring his land went into possession by depositing two trips of sand and stone chippings on the land.
3. Whether or not defendant has trespassed on plaintiff's land and has commenced the construction of a residential building.
4. Whether or not plaintiff's grantors are the owners of the land in dispute.
5. Whether or not defendant's grantors are the owners of the land in dispute.'

I am inclined to make preliminary remarks about the course of this case. After Plaintiff closed his case, the case was adjourned to 2<sup>nd</sup> October, 2023 for Defendant to open his case. On the said date, after Defendant testified and was discharged, Counsel for Defendant indicated that the witness of Defendant was sick accordingly, the case was adjourned to 9<sup>th</sup> October, 2023 at 9:00am for continuation of hearing. On the return date, when the case was called at 9:00am, the Defendant together with counsel were absent and the case was stood down for 10 minutes to possibly await their arrival to court. When the case was recalled at 9:10am, the Defendant was absent, and Counsel for Defendant was present. Counsel for Defendant indicated that he had spoken to the Defendant and he had informed him that he thought the case was scheduled for 11:00am so he was on his way. Having found that the witness had also failed to appear before the court, the court proceeded to close the case of the Defendant and adjourned the matter for Judgment which I hereby proceed to consider on its merits.

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.”*

I shall proceed to consider the issues set down for trial. Issue 1 is 'whether or not the Plaintiff is entitled to his claim'. 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 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, issue 1 is struck out.

Issue 2 is 'whether or not Plaintiff after acquiring his land went into possession by depositing two trips of sand and stone chippings on the land.' Plaintiff testified that after he purchased the land in dispute, he entered into possession by depositing two trips of sand and stone chippings on the land at the cost of GH₵3,600.00 and GH₵1,600.00. PW1, Kingsford Amponsah and PW2, Krs Addo Yeboah also testified to the Plaintiff having deposited the sand and stone chippings on the land. During cross examination of PW1 by counsel for Defendant, he stated that he had indeed seen the two trips of sand and stone chippings deposited on the land. Facts must in general be proved by the testimony of witnesses who actually

perceived them. *See. APPIAH v UNION TRADING COMPANY LIMITED, SEKONDI (1970) GLR 94*

Defendant denies this assertion of Plaintiff and testified that when he entered into possession of the land, there was no sand or stones on same, but he rather deposited 3000 cement blocks on the land without interference.

In the case of **AKROFI v. OTENGE AND ANOTHER [1989-90] 2 GLR 244; SC** it was held as follows:

*“proof was no more than credible evidence of a fact in issue. It did not matter that the evidence was given by one or several witnesses; the important thing was the quality of the evidence.”*

As Plaintiff's case was that he deposited the sand and stones on the land and this was supported by two of his witness, the Defendant who denied this was to lead some form of credible evidence to rebut this. I am however unable to find that the Defendant succeeded in doing so. The only evidence on record on the issue of the depositing of sand and stones on the land in dispute is that of Plaintiff and his witnesses. I do not consider that the Plaintiff or his witnesses were discredited under cross examination therefore I consider their evidence credible. Since that evidence was credible and Defendant had failed to discharge the burden that then shifted to him, I find on the evidence before me that on a balance of probabilities it has been established that Plaintiff after acquiring the land took possession of it by depositing sand and stones on the land.

The next issue is ‘whether or not defendant has trespassed on plaintiff's land and has commenced the construction of a residential building’. Plaintiff testified that he reported to the Amasaman Police that the Defendant had trespassed on his land and was developing same. He testified that when asked to produce his documents, Defendant was unable to do so, so the police asked that none of them should work on the land until they completed their investigations, but the Defendant constructed a residential building up to the lintel level on the land. He tendered Exhibit B which is a photograph of the said development. Defendant admits that he entered into occupation of land and started developing same with 3000 cement blocks he deposited on the land. He however claims that the land belongs to him. During cross examination of Plaintiff by Counsel for Defendant the following ensued:

**Q:** Since then have you built anything on the land

**A:** No

**Q:** You see Defendant's mighty building on the land

**A:** That is so

**Q:** I put it to you that the land in dispute belongs to the Defendant

**A:** It is not true"

For the avoidance of doubt, the land in dispute is that which is described at paragraph 4 of the Statement of Claim and reproduced supra. I therefore find that Defendant has constructed a building on the land in dispute. The issue which then arises is whether or not the land in dispute belongs to Plaintiff. This shall be settled after issues 4 and 5 are resolved.

I shall consider issues 4 and 5 together. Issue 4 is '*whether or not plaintiff's grantors are the owners of the land in dispute*' and issue 5 is '*whether or not defendant's grantors are the owners of the land in dispute*'. Plaintiff testified that he purchased the land in dispute from the Nii Ayi Kojo family of Ayikai Doblo and was given an indenture which he tendered as Exhibit A. He testified also that when Defendant encroached on his land, he caused his lawyer to write a letter to his grantor to ascertain whether the land in dispute had been sold to anyone else beside him and they responded to confirm that the land is his. Exhibit C is the letter written to the Acting Chief and Lawful Representative of the Nii Ayi Kojo family of Ayikai Doblo in the person of Nii Ayitsey II dated 14<sup>th</sup> February, 2018. The said letter seeks a confirmation as to whether the land sold to Plaintiff and PW2 have been sold to any other person. Exhibit C1 is a letter dated 18<sup>th</sup> April, 2018 in response to Exhibit C. I note that the letter was signed by the Stool Secretary one Noah A. Armah who indicated that he had been directed by Nii Ayitsey II, Makrado of Ayikai Doblo and Nii Ayikai III, Akunmajay Manste described as lawful executors of Ayikai Doblo lands to inform Plaintiff and PW2 that the land belongs to per an indenture and site plan dated 5<sup>th</sup> January, 2015. Indeed, these Exhibits were not subjected to any form of impeachment under cross examination.

Defendant testified that the land in dispute was acquired from one Auntie Adwoa who is an Estate Developer. According to him, after he acquired the land, Auntie Adwoa introduced him to her grantor, Nii Boye Laryea, a member of the Nii Addy family of Ayikai Doblo. He says that his indenture was executed on 15<sup>th</sup> October, 2013 by Samuel Nii Addy Lamptey, head and lawful representative of the Nii Addy family of Ayikai Doblo. The indenture

tendered at trial by Defendant which was marked Exhibit 1 during Case Management Conference was rejected and marked Exhibit R as same had not been stamped.

See. Sections 32 (1) and 32(6) of the **STAMP DUTY ACT, 2005 (Act 689)**

- **THOMPSON V. TOTAL GHANA [2011] 34 GMJ 16 SC**
- **NARTEY v. MECHANICAL LLOYD ASSEMBLY PLANT LIMITED [1987-88] 2 GLR 314)**

After Defendant had been discharged, Counsel for Defendant filed a notice of stamped indenture to replace unstamped indenture dated 4<sup>th</sup> October, 2023. With a copy of the said Exhibit 1 attached but that which bares a stamp indicating stamp duty has been paid. In the case of **LIZORI LTD. V. BOYE & SCHOOL OF DOMESTIC SCIENCE & CATERING [2013-2014] 2 SCGLR 889** it was held as follows:

*“Where a party (such as the defendants in the instant case) had blatantly refused to comply with a legitimate directive, order or instruction of a court to pay stamp duty, that court would be justified to reject the Party’s request to admit those documents in evidence as provided by section 32 of the Stamp Duty Act, 2005 (Act 689). The provision in section 32 of Act 689, was so clear and unambiguous and required no interpretation. Either the document has been stamped and appropriate duty paid in accordance with the law in force at the time it was executed or it should not be admitted in evidence. There was no discretion to admit it in the first place and order the party to pay the duty and penalty after judgment. Thus, the trial court would have been perfectly justified to reject the receipts without stamping.”*

As the said stamped indenture filed on 4<sup>th</sup> October, 2023 had not been admitted into evidence at trail, it could not legally form part of the evidence of Defendant for which this court could consider. See. **WEST AFRICAN ENTERPRISES LTD v WESTERN HARDWOOD ENTERPRISE LTD [1995-96] 1 GLR 155**. Indeed, doing so would work injustice against counsel for Plaintiff who would have had no opportunity to cross examine Defendant on the said indenture. The said indenture filed on 4<sup>th</sup> October, 2023 shall thus not be considered as part of Defendant’s case.

In the case of **DUAH v YORKWA [1993-94] 1 GLR 217** it was held as follows:

*“(1) the obligation or burden to adduce evidence should first be placed on the plaintiff because:*

*(a) the action was a land case and the law was that the plaintiff should have to succeed on the strength of her own case. That presupposed that the plaintiff should lead evidence to establish his case. ...*

*(c) by the provisions of section 11 (1) and (4) of the Evidence Decree, 1975 NRC D 323 the duty or obligation or the burden of producing evidence was on the party against whom a ruling on that issue would be given if he failed to lead sufficient evidence.”*

Also, in the case **R. T. BRISCOE (GHANA) LTD. v. PREKO [1964] GLR 322** it was stated in the decision of Per Apaloo J.S.C, dissenting as follows:

*“Proof is the conviction that evidence of certain facts carry in the mind of the judge or jury. It is not pre-ordained and has no objective existence, capable of discovery either by logic and analysis. What suffices in each case must vary depending on the nature of the case, and the person to whom the evidence is adduced.”*

In **RICKETTS V. ADDO; RICKETTS V. BORBOR (CONSOLIDATED) [1975] 2 GLR 158, CA** it was held as follows:

*“The principle that in an action for a declaration of title, the plaintiff should not rely on the weakness in the defence case but on the strength of his own case, had its simplest application in the situation where a plaintiff could not on his own make out a case of his title at all and relied on the defects in the defendant's case to justify his claim to title. However, where the plaintiff could put forward some sort of claim to title, the principle then had meaning in Practical terms if the defendant had some semblance of a claim to the land, e.g. by occupation or possession. Whatever the defects in the defendant's title the plaintiff could not rely on them; he must rely on the superior strength of his own title...”*

As Plaintiff relied on Exhibit A as proof of ownership of the land in dispute. He also relied on Exhibit C1 which is a letter emanating from his grantors confirming him as owner of the land. Plaintiff also asserted his ownership over the land by making a report to the Police against Defendant when he found Defendant had trespassed on the land. The following ensued during cross examination of Plaintiff by Counsel for Defendant:



**Q:** I put it to you that when Defendant acquired his land he entered into possession and occupation without interference from anybody and started building his house on the land

**A:** it is not true. When I acquired my land measuring 70.5ftx100.5ftx70.6ftx100.3ft the transaction was reduced into writing in the form of indenture signed by Nii Ayittey II, Mankrado and representative of Nii Ayi Kwadwo family of Ayikai Doblo near Amasaman and when I realized the trespass, I reported the matter to Amasaman Police, the workers of the Defendant were arrested and brought to the Amasaman Police.”

The evidence of the Plaintiff reporting the trespass to Police and the Parties appearing before the Police stands undisputed. Defendant also claimed ownership of the land by sale through one Auntie Adwoa, whose grantor executed documents for Defendant.

During Cross examination of Plaintiff by counsel for Defendant the following ensued:

**Q:** You said you acquired your land also at Ayikai Doblo from Nii Ayittey II, Mankrado and representative of Nii Ayi Kwadwo family is that the case

**A:** it is true

**Q:** Your grantor, the Nii Ayi Kwadwo family of Ayikai Doblo and Defendants grantor the Nii Ardey family of Ayikai Doblo are all from Doblo is that not the case

**A:** I have never heard of Defendant’s grantor’s name

**Q:** I put it to you that if you have never heard of the name, Defendant’s grantor Nii Ardey family of Ayikai Doblo and your grantors are from the same Ayikai Doblo

**A:** I cannot accept that. My grantors Nii Ayittey II did the signing with Akumajen Mantse, the overall head, whose stamps are both on my indenture.

**Q:** I put it to you that the 2 grantor families of Ayikai Doblo are different families

**A:** I don’t know anything about Defendant’s grantor

**Q:** I put it to you that Defendant’s grantors land at Ayikai Doblo is different from your grantor’s land at Ayikai Doblo

**A:** It is not true because a search indicates that that land belongs to Nii Ayitsey II Mankrado of Ayikai Doblo and Akumajen Mantse”

The case put across by Defendant is that he owned the land two years before the Plaintiff and therefore the building on the land depicted in Exhibit B was built before Plaintiff purchased the land. The following ensued during cross examination of Plaintiff by counsel for Defendant:

**“Q:** If you look at Exhibit B you will see that it has been built long ago

**A:** it is never true

**Q:** Where were you when Defendant was constructing this building

**A:** I was in Amasaman. The Police asked us not to step there and I was obeying the instruction, it was later that I realized the Police was not helping my cause hence I instructed my lawyer to file for the case to be judged”.

Clearly, the response of Plaintiff above is supported by the evidence on record that the Plaintiff found Defendant trespassing on his land and made a complaint to the police hence it could not be reasonably probable that the said house was constructed before Plaintiff purchased the land. While Defendant claims ownership of the land in dispute, the case also put across by his counsel is that the lands in dispute are different and the land of Defendant is different from Plaintiff's. Yet, Defendant admits that he has a house on the land in dispute. Aside the inadmissible rejected Exhibit 1, I am unable to find evidence and materials on record to sustain the Defendant's claim of ownership of the land.

In **BARIMA GYAMFI AND ANOTHER v. AMA BADU [1963] 2 GLR 596; SC** it was held as follows:

*“In a claim made by a plaintiff, there is no onus on the defendant to disprove the claim so that however unsatisfactory or conflicting the defendant's evidence may be, it cannot avail the plaintiff. The evidence of the defence only becomes important if it can upset the balance of probabilities which the plaintiff's evidence might have created in the plaintiff's favour or if it tends to corroborate the plaintiff's evidence or tends to show that evidence led on behalf of the plaintiff was true.”*

In measuring Plaintiff's case against Defendant and having considered the strengths and weakness of the rival claims of the parties, I find Plaintiff's case more probable than Defendant's. I am unable to find evidence on record upsetting the balance of probabilities created by Plaintiff's case.

In **LAMPTEY ALIAS NKPA v. FANYIE AND OTHERS [1989-90] 1 GLR 286** it was held as follows:

*“On general principles it was the duty of a plaintiff to prove his case. However when on a particular issue he had led some evidence then the burden would shift to the defendant to lead sufficient evidence to tip the scale in his favour...”*

Also in **IN RE KRAH (DECD); YANKYERAAH AND OTHERS v OSEI-TUTU AND ANOTHER [1989-90] 1 GLR 638; SC** it was stated as follows:

*“In civil trials, although the burden of proof lay on the one who must succeed in the action, it shifted in the course of the trial.”*

I consider that Plaintiff has succeeded in discharging the burden required by law to in titling the scale in his favour. I therefore find on the entirety of the evidence that on a balance of probabilities, the grantors of Plaintiff are the rightful owners of the land in dispute and not Defendant's. I also find that having sold the land in dispute to Plaintiff, Plaintiff owns the said land and is entitled to the reliefs sought. I therefore enter judgment in favour of Plaintiff against Defendant as follows:

1. Plaintiff is declared owner of the land in dispute described as:  
“ALL THAT PIECE OR PARCEL OF LAND situate lying and being at Ayikai Doblo in the region aforesaid and bounded on the North-West by proposed road measuring 70.5 feet more or less on the North-East by Lessor's land measuring 100.5feet more or less on the South-East by Lessor's land measuring 70.6feet more or less on the South-West by Lessor's land measuring 100.3 feet more or less and containing an approximate Area of 0.16 Acres or 0.05 Hectare more or less which said piece or parcel of land is more particularly delineated on the plan attached hereto and thereon shewn edge Pink.”
2. Plaintiff is to recover of possession of land in dispute described at paragraph 1.

3. Defendant, his agents, assigns, privies, workmen and successors are hereby perpetually restrained from interfering with Plaintiff's enjoyment of the land.
4. Damages of GH¢5,000.00 is awarded in favour of Plaintiff against Defendant for trespass.
5. Costs of GH¢5,000.00 is awarded in favour of Plaintiff against Defendant.

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