IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON MONDAY THE 9TH DAY OF OCTOBER, 2023 BEFORE HER HONOUR ENID MARFUL-SAU, CIRCUIT COURT JUDGE

SUIT NO:C1/34/2021

1.EMMANUEL AHENE NUNOO
H/NO. A530, LARTEBIOKORSHIE ACCRA

2.MOHAMMED ODARTEY LAMPTEY
H/NO. 186 SAKAMAN, WINNEBA ROAD, ACCRA

3.CHARLES WELLBECK ARYEETEY
H/NO. B529/5N, BUBUASHIE, ACCRA **...** **PLAINTIFFS**

VRS.

JOSEPH OWUSU DEBRAH ... **DEFENDANT**

PARTIES: 1ST PLAINTIFF PRESENT
2ND PLAINTIFF ABSENT
3RD PLAINTIFF PRESENT

COUNSEL: ALEXANDER OKAITIA QUARTEY ESQ. FOR PLAINTIFFS ABSENT
FRANK K. NIKOI ESQ. FOR DEFENDANT ABSENT

JUDGMENT

By a Writ of Summons and Statement of Claim filed on 8th February, 2021, Plaintiffs claims against Defendant the following reliefs:

A. "A Declaration that the one plot of land being developed by the Defendant forms part of Plaintiff's family land measuring 24.031 Acres.
B. An order for demolition of defendant unlawful structure on the said portion of land.
C. Recovery of possession of the said portion of land.
D. Damages for trespass.
E. Cost including legal fees."

It is the case of Plaintiffs that they are the administrators of the estate of Ashirifi Perewua Nunoo, Mary Okailey Dodoo and Rebecca Okailey Dodoo respectively and that the Defendant has trespassed on a portion of family land measuring 24.031 Acres which is located at Samsam in Accra. Plaintiffs say that the said Ashirifi Perewua Nunoo, Mary Okailey Dodoo and Rebecca Okailey Dodoo in their lifetime jointly acquired the parcel of land in dispute and therefore the land forms part of their estate. Plaintiffs say that a Search at the Lands Commission would reveal that the said land is registered in the name of the deceased and as Administrator, they have not alienated any portion of the land to any individual or instructed any member of their family to alienate portions of same to any individual including the Defendant. They says that without their consent or approval, Defendant has commenced construction on a portion of the land and this development is unlawful as Defendant has no interest or legal right in the said portion of their family land. Plaintiffs say that they have consistently through their counsel drawn the attention of Defendant that the land he is developing on belongs to their family but has continued with the development, hence the instant action.

Defendant entered conditional appearance through counsel on 6th April, 2021. On 9th February, 2022, Counsel for Defendant was ordered to file the Statement of Defence of the Defendant within 7 days. He failed to do so, accordingly the action was set down for trail on 6th April, 2022 with the Plaintiffs being ordered to file their Witness Statements and Pre Trial Checklists. Hearing accordingly proceeded on 21st August, 2023. Though the Defendant was served with hearing notice, he together with his counsel failed to appear the case accordingly proceeded in their absence.

It is trite learning that a Party who is aware of the hearing of a case but elects to stay away cannot complain that he was not given a hearing and could only appeal upon the merits of the Judgment.

(See. THE REPUBLIC V HIGH COURT (FAST TRACK DIVISION) ACCRA; EX PARTE STATE HOUSING CO. (KORANTEN-AMOAKO INTERESTED PARTY) (2009) SCGLR 185,

-REPUBLIC V HIGH COURT (HUMAN RIGHTS DIVISION) ACCRA; EX-PARTE JOSEPHINE AKITA (MANCEL-EAGALA & ATTORNEY GENERAL INTERESTED PARTIES) (2010) SCGLR 374),

-GHANA CONSOLIDATED DIAMOND LTD V. TANTUO & ORS (2001-2003)2 GLR 150)

I shall now proceed to determine the merits of the case.

The standard of proof required in a civil action is proof on a preponderance of probabilities. 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."*

In the case of **BISI AND OTHERS v. TABIRI ALIAS ASARE [1987-88] 1 GLR 360; SC**

> *"The standard of proof required of a plaintiff in a civil action was to lead such evidence as would tilt in his favour the balance of probabilities on the particular issue. The demand for strict proof of pleadings had however never been taken to call for an inflexible proof either beyond reasonable doubt or with mathematical exactitude or with such precision as would fit a jig-saw puzzle. Preponderance of evidence became the trier's belief in the preponderance of probability. But "probability" denoted an element of doubt or uncertainty and recognised that where there were two choices it was sufficient if the choice selected was more probable than the choice rejected..."*

3rd Plaintiff testified on behalf of the 1st and 2nd Plaintiffs by a Witness Statement filed on 25th April, 2022. He testified that the defendant is a trespasser on their family land which is located at Samsam measuring 24.031 Acres. He tendered as '*Exhibit A*' a photograph of the structure which has been put up by Defendant unlawfully. She testified that the family land was jointly owned by their (Plaintiffs) grandmothers and grandfather named; Ashirifi Perewua Nunoo, Mary Okailey Dodoo and Rebcca Okailey Dodoo who are all deceased. He tendered as *Exhibit B* the indenture covering the land in dispute. According to him, Letters of Administration was granted to himself and the 2nd Plaintiff to manage the estates of the deceased grandparents of which the land in dispute forms part. He testified that when the presence of Defendant was noticed on the land, their caretakers drew his workmen's attention that the land was being developed unlawfully as it belonged to their family and the family had not instructed any individual to alienate the land to any person. He stated that despite this information the Defendant through his artisans

continued to unlawfully develop the land and therefore they instructed their lawyer to formally write to the Defendant to ask him to halt his development. The said letter was tendered as *Exhibit C*. He testified that as the land is family land, the continued presence of Defendant on the land would create serious problems when it is time to share the land to members of the family. He added that since the Defendant has been unable to file a Statement of Defence in this action, it is an admission that he has no credible defence to the action, and he therefore prays that the reliefs are granted.

The evidence of Plaintiffs stands uncontradicted. Indeed, Plaintiffs have produced evidence of ownership of the deceased grandparents of the land being Exhibit B. It is also not in dispute that the Defendant has a structure on a portion of the land which structure is photographed in Exhibit A.

In the case of **MENSAH v. MENSAH [1972] 2 GLR 198** it was stated as follows:

> *"Under Act 367, s. 2(2) the court has to inquire into the facts alleged by the parties. However, the court does not have to hold such inquest in all cases. Where the evidence of a petitioner stands uncontradicted an inquest is not necessary unless it is suspected that the evidence is false or the true position is being hidden from the court."*

Though **MENSAH V. MENSAH** (supra) was a matrimonial cause, the principle of law espoused is applicable in the instant case. As the evidence of Plaintiffs stand uncontradicted, an inquest is not necessary especially as Plaintiff has proven on a balance of probabilities that the land in dispute is owned by their family.

In the case of **BRUCE v. ATTORNEY-GENERAL [1967] GLR 170** it was held as follows:

> *"In civil cases, preponderance of probability might constitute sufficient ground for a judgment…"*

In the instant case, I find that the balance of probabilities appears clearly to favour the Plaintiffs and thus they should be entitled to relief from the court. I therefore enter Judgment in favour of Plaintiffs against the Defendant as follows:

a) It is hereby declared that the one plot of land being developed by the Defendant forms part of Plaintiffs' family land measuring 24.031 Acres particularly described in Exhibit B.
b) Plaintiffs are to recover of possession of the said portion of land from the Defendant.
c) Damages of Five Thousand Ghana Cedis (GH₵5,000.00) is awarded in favour of Plaintiffs against Defendant for trespass.
d) Costs of Three Thousand Ghana Cedis (GH₵3,000.00) is awarded in favour of Plaintiffs against Defendant.

Having already made an order for recovery of possession, relief 'b' fails.

H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN