

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

SUIT NO:C1/12/2021

KOJO ANIM
H/NO. GW-0145-1293
POBIMAN ACCRA ... PLAINTIFF

VRS.

VICTOR QUAYE TETTEY
ADUSAH ... DEFENDANT

*PARTIES: PLAINTIFF PRESENT
DEFENDANT ABSENT*

*COUNSEL: MAXWELL OWUSU ESQ. WITH MAAME ESI NYANIBA MONNEY
ESQ. FOR PLAINTIFF PRESENT
DR. ARISTOTLE KOTEY ESQ. FOR DEFENDANT ABSENT*

JUDGMENT

By a Writ of Summons and Statement of Claim filed on 25th September, 2020, Plaintiff claims against Defendant the following reliefs:

- a. “Declaration of title to all that piece or parcel of land described in paragraphs 4 and 8 of the Statement of Claim.
- b. Recovery of possession of the disputed land.
- c. An order for perpetual injunction restraining defendants herein his agents, assigns, workmen, representatives from interfering with plaintiff’s rights of title of ownership to the land.
- d. General damages for trespass.”

Plaintiff says that somewhere in 2012, he initially acquired a piece of land from Maame Serwaa Addai described as:

“THAT [sic] ALL that piece or parcel of land situate lying and being at Abuma Kwao near Opah in the Ga West Municipality containing an approximate area of 0.16 Acre or 0.16 hectare more or less and bounded on the North-East by Lessor’s land measuring 100.0 feet more or less, on the South-East by Lessor’s land measuring 70.0 feet more or less, on the South-West by Lessor’s land measuring 100.0 feet more or less, on the North-West by proposed road measuring 70.0 feet more or less.”

Plaintiff says that his grantor previously acquired the property from Sqn Ldr. David Djartei Tetteh, the head of family of the Naa Akua Abadjan family of Abuma near Opah in the Ga West Municipality. He says that he was given a valid indenture to the land. According to Plaintiff, in 2015, he acquired additional land from Stephen Kwami Arhinful then the head of family of the Naa Akua Abadjan family of Abuma and was given a new indenture in respect of the two lands purchased described as:

“THAT [sic] ALL that piece or parcel of land situate lying and being at Abuma Kwao near Opah in the Ga West Municipality containing an approximate area of 0.33 Acre or 0.13 hectare more less and bounded on the north-East (From SGGA AD 632 15 3 TO SGGA AD 632 15 4) by Lessor’s land measuring 107.3 feet more or less, on the South-East (From SGGA AD 632 15 4 TO SGGA AD 632 15 1) by Lessor’s land measuring 189.4 feet more or less on the South-West (From SGGA AD 632 151 TO SGGA AD 632 15 2) by Lessor’s land measuring 101.5 feet more or less, on the North-West (From SGGA AD 632 152) To SGGA AD 632 153) by proposed road by the Lessor’s land measuring 1211.2 feet more or less.”

Plaintiff says that the Defendant has in recent times encroached on his land and all efforts to restrain him have not been successful hence this action.

Defendant filed an appearance to the action through counsel on 8th October, 2020. He filed an Amended Statement of Defence on 4th December, 2020 which contained no contentions of fact save general denials, admissions and the general traverse.

Pleadings closed and on 14th December, 2020 the following issues were adopted and set down as the issues for trial:

- a. “Whether or not somewhere in 2012, plaintiff herein initially acquired a piece or parcel of land from Maame Serwa Addai.

- b. Whether or not somewhere in 2015 plaintiff acquired additional land also from Stephen Kwame Arhinful then current lawful head of family of Naa Akua Abadjan family of Abuma near Opah in Accra.
- c. Whether or not plaintiff herein was given a new indenture in respect of both plots purchased from lawful representatives of the said family boundaries of same described in paragraph 8 of the statement of claim.
- d. Whether plaintiff is entitled to his claim.”

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.

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.”

Also, in the case of **BISI AND OTHERS v. TABIRI ALIAS ASARE [1987-88] 1 GLR 360; SC** it was held as follows:

“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...”

Plaintiff testified that in the year 2020, he initially acquired a piece of land from one Maame Serwaaa Addai and that the said grantor also acquired her

land from one Sqn. Ldr. David Djartei Tetteh the then head of family of the Naa Akua Abadjan family of Abuma near Opah in the Ga West Municipality. He testified that he acquired additional land from one Stephen Kwami Arhinful the current head of family of the Naa Akua Abadjan family and was given a site plan and indenture. He testified that in view of the fact that Sqn. Ldr. David Djartei Tetteh and Stephen Kwami Arhinful were members of a common family, he was given a new indenture in respect of both lands. He testified that he has commenced construction works on the land and the Defendant has encroached on the land. He tendered as Exhibit A an indenture between Stephen Kwami Arhinful and Kojo Anim dated 20th August, 2015.

PW1 was Theophilus Amanquarnor. He testified that he knows both parties in this action. According to him, In 2012, Plaintiff initially purchased a piece of land from Maame Serwaa Addai through him. He testified that Maame Serwaa Addai also acquired the land previously from Sqn. Ldr. David Djartei Tetteh then head of family of the Naa Akua Abadjan family of Abuma and same reduced into writing. He testified that in 2015, the Plaintiff acquired additional land from Stephen Kwame Arhinful then the current head of the Naa Akua Abadjan family. He stated that Stephen Kwame Arhinful and Sqn. Ldr. David Djartei Tetteh being members of a common family agreed to give Plaintiff a new indenture in respect of both lands. He tendered as Exhibit B an indenture between Sqn. Ldr. David Djartei Tetteh and Maame Serwaa Addai dated 21st December, 2012.

On 18th October, 2023 when the case was called for hearing, Counsel for Defendant had written to the court praying for an adjournment which was refused. In the case of **MENSAH AND OTHERS V MENSAH AND OTHERS [1992 - 93] 4 GBR 1432; CA**, the court held that “...*there was no rule of law or practice in our courts to the effect that a case ought to be adjourned because counsel was in another court...*”. Therefore, an excuse that counsel was to appear before a higher court and a letter written to the court is not reason enough to cause the court to have a matter adjourned. In fact, ‘a court of law is not bound to adjourn a case on the grounds that a lawyer for the party applying for the adjournment had officially written to the trial court to ask for an adjournment on stated grounds.’

See.

- **REPUBLIC V HIGH COURT; (FAST TRACK DIVISION) ACCRA; EX PARTE SIAN GOLDFIELDS LTD (AUREX MANAGEMENT & INVESTMENT AGSA LTD INTERESTED PARTY)[2009] SCGLR 204**
- **SASU v AMUA-SEKYI [1987-88] 2 GLR 221).**

Trial courts are to exercise discretion in adjournments of cases pending before the courts. Being mindful of the case load and part heards pending before this court and the fact that the court's diary was blocked for the entire day for the start and completion of this case on 18th October, 2023, this court proceeded to afford the Defendant the opportunity to conduct the case by standing the case down to enable him prepare. When the case was recalled, the Defendant had left the court's premises without excuse and accordingly hearing proceeded as scheduled with the Plaintiff and his witness being discharged.

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 thus proceed to consider the merits of the case. Sections 32 (1) and 32(6) of the **STAMP DUTY ACT, 2005 (Act 689)** place an obligation on a party who seeks to rely on an instrument chargeable with a duty intended to be produced in Court as evidence to ensure that same is duly stamped and the appropriate duty paid. This is a mandatory requirement which cannot be derogated from and a failure to do so renders such a document inadmissible.

In **THOMPSON V. TOTAL GHANA [2011] 34 GMJ 16 SC** it was held that:

'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**)*

I find that Exhibit A has not been stamped and same is rendered inadmissible and rejected. I shall consider the issues together.

The case of Plaintiff is that he first acquired land from one Maame Serwaa Addai who also acquired the land from Sqn. Ldr. Tetteh. PW1 tendered before this court Exhibit B which is an evidencing the transaction between Sqn Ldr. Tetteh and Maame Serwaa Addai. Plaintiff's testimony is that in addition to this land he purchased from Maame Serwaa Addai, he purchased another land from Stephen Kwami Arhinful who was then the current head of the Naa Akua Abadjan family in 2015 and he was given a new indenture covering both lands. By his testimony, PW1 indicates that he was the one who led Plaintiff to Maame Serwaa Addai to purchase the first land in 2012.

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) is a matrimonial cause, the principle of law espoused is applicable in the instant case. As the evidence of Plaintiff stands uncontradicted, an inquest is not necessary.

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 Plaintiff and therefore he should be entitled to relief from the court. I therefore enter Judgment in favour of Plaintiff against Defendant as follows:

- a. It is hereby declared that Plaintiff owns the land described herein and at paragraphs 4 and 8 of the Statement of Claim.
- b. Plaintiff is to recover of possession of the land described in paragraphs 4 and 8 of the Statement of Claim.
- c. The Defendant, his agents, assigns, workmen and representatives are hereby perpetually restrained from interfering with Plaintiff's rights of title of ownership to the land.
- d. General damages of GH¢5,000.00 is awarded in favour of Plaintiff against Defendant for trespass.
- e. Costs of GH¢5,000.00 is awarded in favour of Plaintiff against Defendant.

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