

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

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SUIT NO:C1/79/2020

MARY ASAMOAH  
UNNUMBERED HOUSE  
ADJACENT AGORTIKOPE BASIC SCHOOL  
ADJIN KOTOKU, ACCRA ... PLAINTIFF

VRS.

WILLIAM ASANTE  
SOWUTUOM  
ACCRA ... DEFENDANT

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*PARTIES: PLAINTIFF PRESENT  
DEFENDANT ABSENT*

*COUNSEL: DEREK YEBOAH GYAMFI ESQ.FOR PLAINTIFF ABSENT  
FRANK K. NIKOI ESQ. FOR DEFENDANT ABSENT*

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**JUDGMENT**

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By a Writ of Summons and Statement of Claim filed on 16<sup>th</sup> July, 2020,  
Plaintiff claims against Defendant the following reliefs:

- i. “An order for declaration of title to all that piece or parcel of land containing an approximate area of 0.014 Acres or 0.06 hectares more or less and bounded on the North-East by Lessor’s land measuring 71.9 feet more or less, on the South East by Lessor’s land measuring 67.5 feet more or less, on the South West by proposed road measuring 84.1 feet more or less and on the North West by Lessor’s land measuring 88.3 feet more or less.
- ii. An order for demolition of the Structure which the Defendant is hurriedly and illegally putting up on Plaintiff’s land
- iii. General damages for trespass

- iv. Specific damages for the destruction of Plaintiff's wall by the Defendant and assigns and agents at a total value of GHØ5,640
- v. Perpetual injunction to restrain the Defendant, assigns, privies and all other persons with beneficial interest and or claiming title therefrom from causing further destruction to Plaintiff's property.
- vi. Costs including legal fees.

It is the case of Plaintiff that she is the owner of property situate at Sowutoum on which Defendant has trespassed and is hurriedly developing. According to Plaintiff, she purchased the said property being a piece of land from Naa Adode Akaibi II, Queen mother and Regent Chief of Abbeyman, Accra which is evidenced by a Lease. Plaintiff says that for over a decade she has put up a building on the land in which her son resides, and she also had heaps of sand on several portions of the land. She says that she walled the land. The land in dispute is as described in paragraph "i" of the reliefs sought. According to Plaintiff, a few months prior to the instant action, Defendant entered the land and started putting up a building and he was asked to stop do he did. Plaintiff says that the Defendant a few days prior to filing the instant writ forcefully entered unto the land and broke down her wall hurriedly and started putting up a structure on same. She says that the destruction of the wall was done under the cover of darkness with the supervision of Defendant. She particularized the damage as follows:

- a. 600 blocks valued GHØ1620
- b. 30 bags of cement valued GHØ1170
- c. Assorted building materials; shovels, nails, pickaxe, wood etc valued at GHØ1350.00
- d. Workmanship GHØ1500

She says that Defendant is putting up his building with the assistance of some land guards and despite persistent warnings from her, Defendant with his assigns and privies have heeded to none and are hurriedly putting up the said structure on her land. She says that unless the court intervenes, Defendant would go ahead and take over the land and would continue with his unlawful acts hence the instant action.

Defendant entered appearance in person on 29<sup>th</sup> September, 2020 and filed a Statement of Defence on 20<sup>th</sup> October, 2020. He contends that he purchased the land in dispute about fifteen years ago from the Chief of Sowutuom and was given an indenture and site plan dated 14<sup>th</sup> March, 2010. He described the land as "All that piece or parcel of land situate and

lying at Sowutuom-Accra and bounded on the North by Proposed Road measuring 32.8 feet more or less on the East by lessor's land measuring 71.3 feet more or less on the South by Lessor's land measuring 10.0 feet more or less and on the West by Lessor's land measuring 64.8 feet more or less and containing an approximate area of 0.03 acre or 0.01 hectare more or less which piece or parcel of land is more particularly delineated on the plan attached hereto and thereon shown edged Pink." He says that he took possession of the land by building a single room on the land and placing a caretaker there. He says that as he was building on his land, Plaintiff reported him to the Sowutoum Police and the Chief of Sowutoum requested that the matter is withdrawn from the Police Station to be adjudicated at his palace. He states that a date was fixed for the matter to be heard at the Chief's palace, but Plaintiff did not turn up. He states that Plaintiff reported him again at the Anyaa Police Station and the chief again requested the matter to be withdrawn for adjudication at his palace but Plaintiff again failed to turn up. He contends that he went with the Investigator handling the matter to see the SeiTse of Sowutoum, Ata Amu about the matter and the chief gave him permission to settle the matter between the parties. According to him, Ataa Amu scheduled a meeting between the parties and there Plaintiff pleaded with Defendant to sell his land to her and so he agreed and asked Plaintiff to pay GH€10,000.00. He says that Plaintiff requested to pay GH3,000.00 and he reduced the amount to GH8,000.00 but Plaintiff said she would pay GH4,000.00 which he refused. He counterclaims as follows:

- a. "Declaration of title to the land described in paragraph 3 of the statement of defence.
- b. Perpetual injunction restraining plaintiff, her agents, assigns, workmen, privies and any person who claims interest in the land.
- c. Cost."

Plaintiff filed a Reply and Defence to Counterclaim on 10<sup>th</sup> November, 2020. She contended that the land in dispute belongs to the Abbeyman family stool as pronounced in suit No. L101/2000 and affirmed by the Court of Appeal in Civil Appeal No: H1/106/17 dated 17<sup>th</sup> May, 2018. Plaintiff says that she purchased the land in 2002 and the Agreement was reduced in writing in 2011 by which time the construction of her building had already started. She says that nobody lay claim to the land and therefore the Defendant is estopped by limitation. She contends that she tried to meet the Chief but to no avail as she was informed he had travelled out of the

jurisdiction. She admits that she met the SeiTse who advised her to see how best the matter could be resolved amicably but at no point did she give Defendant or anyone else the indication that she wanted to purchase any land from Defendant. She contends that she decided to pay GH₵3,000.00 to Defendant in order for him and his land guards to stop bothering her and also for the safety of her son who she had placed in the house but the Defendant refused the amount saying that it was insufficient 'to sort out his boys'. Plaintiff contends that she received a call from one Michael Appiagyei Nana Boamah who claimed to have purchased the land from Defendant but had realised same belongs to the Plaintiff hence he had informed Defendant to refund his money to him but Defendant refused and promised to assist him with his land guards to complete the building. Plaintiff says that she has been in exclusive possession of the land for about twenty years now hence Defendant is estopped by limitation to lay claim to her land. She says that the land does not belong to the Chief of Sowutoum.

On 24<sup>th</sup> February, 2020, the following issues were adopted and set down as the issues for trial:

- i. "Whether or not Plaintiff's grantor are the rightful owners of the land.
- ii. Whether or not the Plaintiff has been in undisturbed possession of the land for Twelve (12) years.
- iii. Whether or not the Defendant is estopped from laying claim to Plaintiff's land or any portion thereof.
- iv. Whether or not Defendant destroyed Plaintiff's wall.
- v. Whether or not Plaintiff is entitled to her reliefs.
- vi. Whether or not Defendant is entitled to his reliefs.
- vii. Any further issues(s) emanating from the pleadings."

Plaintiff testified by means of a Witness Statement filed on 14<sup>th</sup> April, 2021. She testified that she purchased the land in dispute from the Abbeyman family represented by Naa Adode Akaibi II, queen mother and Regent Chief of Abbeyman in the year 2002. She testified that the sale was reduced into writing by a deed dated 23<sup>rd</sup> February, 2011, which she tendered as *Exhibit A*. She testified that her documents have gone through various stages of registration at the Lands Commission to enable her get her title to the land. She tendered as *Exhibit B* series receipts and correspondence from the Lands Commission. She testified that the ownership of her grantor, has been confirmed in the case of Yaya Addy & Ors Vrs. Abbeyman family stool by the Court of Appeal in Civil Appeal No: H1/106/17 dated 17<sup>th</sup> May, 2018

which she tendered as *Exhibit C*. She testified that after she purchased the land, she put up a house and at no point did anyone challenge her ownership on the land. She stated that her son has been living on the land for several years. She indicated that a few weeks before instituting the instant action, Defendant broke down her wall and hurriedly started putting up a structure on a portion of the land. She testified that she lost GH¢5,640.00 as a result of the destruction. She tendered as *Exhibit D* a receipt given to her by her mason who worked on the land. She testified that the actions of Defendant have caused her enormous stress and that the land is hers and she is entitled to the reliefs she seeks.

PW1 was Nii Okai Okine. He testified that his grandmother is Naa Dodi Akaibi II, Queen mother and Regent of Abbeyman family. He testified that he is the Secretary to the queen mother and that he is aware that Plaintiff's grantor owns the land in dispute which was sold to Plaintiff in 2002 and reduced in writing in 2011. He testified that the ownership of the Abbeyman family of the land has been confirmed by the Court of Appeal decision and that the family has not sold any land to Defendant. He testified that the supposed grantor of Defendant has not at anytime owned the land and he is aware the Defendant caused damage to Plaintiff's wall.

On 8<sup>th</sup> November, 2023 when the case was called for Defendant to open his case, he together with his counsel were absent, the case was accordingly adjourned for judgment.

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,***

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 this decision, issues ‘v’ and ‘vi’ are hereby struck out. Issue ‘i’ is ‘whether or not Plaintiff’s grantor are the rightful owners of the land.’ Plaintiff claims ownership of the land through her grantor, being the Abbeyman family. Exhibit C is a decision of the Court of Appeal dated 17<sup>th</sup> May, 2018 affirming the decision of the High Court, Accra dated 26<sup>th</sup> January, 2015 entering Judgment in favour of the Abbeyman family (Plaintiff’s grantor) over land described in the schedule. Though this court did not have the benefit of knowing the description of the said schedule, Plaintiff’s case is that her land forms part of that which her grantors obtained Judgment in Exhibit C. I am unable to find any evidence to the contrary on record, I therefore find that on a balance of probabilities it has been shown that the Plaintiff’s grantors are the rightful owners of the land.

Issue “ii” and “iii” shall be determined together. Issue ‘ii’ is ‘whether or not the Plaintiff has been in undisturbed possession of the land for Twelve (12) years’ and ‘iii’ ‘whether or not the Defendant is estopped from laying claim to Plaintiff’s land or any portion thereof.’ Plaintiff’s case is that she purchased the land in the year 2002 and constructed a building thereon in 2005. She testified that it was not until the year 2011 when the transaction was reduced into writing and she proceeded to the Lands Commission to begin the process of registering the land. She also testified that her son has been living on the said land and they experienced no disturbance until Defendant trespassed on same in the year 2020 for which reason, she commenced this action.

In the case of **AKROFI v. OTENGE AND ANOTHER [1989-90] 2 GLR 244** 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.”*

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. The defendant would only win if he was able to do that.”*

I consider that the existence of the facts on which the plaintiff’s case is grounded is more probable and the scale tilts in her favour in the absence of any credible evidence to the contrary. In **ABAKAM EFFIANA FAMILY & ORS. v. MBIBADO EFFIANA FAMILY & ORS. [1959] GLR 362** it was held that:

*“where a defendant has been in long undisturbed possession and occupation of land, he is entitled to the protection of the law against all who cannot affirmatively prove a better title”*

In the instant case, I find that Plaintiff has been in long undisturbed possession of the land for over twelve years and Defendant is hereby estopped from laying any claim to the said land as he has failed to prove a better title to the said land in dispute and I so hold.

Issue ‘iv’ is whether or not Defendant destroyed Plaintiff’s wall. It is Plaintiff’s case that Defendant destroyed her wall and put up a building on a portion of her land. She claims special damages of GH₵5,640.00 and tendered a receipt, Exhibit D as evidence of the cost of the wall. Though Plaintiff was cross examined on this evidence, I am unable to find that she was discredited.

In **BANK OF WEST AFRICA LTD. v. ACKUN [1963] 1 GLR 176** the court held as follows:

*“The onus of proof in civil cases depends upon the pleadings. The party who in his pleadings raises an issue essential to the success of his case assumes the burden of proof. In the instant case the defendants accepted substantially the plaintiff’s claim but raised an additional or separate issue. The trial judge was right in placing the onus of proving this additional issue on them.”*

In this case, as Defendant denied destroying the said wall and the said expenditure, he assumed a burden of proof which I find has not been discharged. On a balance of probabilities therefore I find that Plaintiff has shown that she spent an amount of GH₵5,640.00 on the said fence wall which was destroyed by Defendant.

I find that Plaintiff has discharged the legal burden placed on her. Accordingly, I enter Judgment in favour of Plaintiff against the Defendant with relief “ii” reviewed as follows:

1. Plaintiff is declared owner of all that piece or parcel of land containing an approximate area of 0.014 Acres or 0.06 hectares more or less and bounded on the North-East by Lessor’s land measuring 71.9 feet more or less, on the South East by Lessor’s land measuring 67.5 feet more or less, on the South West by proposed road measuring 84.1 feet more or less and on the North West by Lessor’s land measuring 88.3 feet more or less.
2. Plaintiff is to Recover of possession of the land described at paragraph 1.
3. General damages of Five Thousand Ghana Cedis (GHØ5,000.00) is awarded in favour of Plaintiff against Defendant for trespass
4. Special damages of Five Thousand Six Hundred and Forty Ghana Cedis (GHØ5,640.00) is awarded in favour of Plaintiff against Defendant for the destruction of Plaintiff’s wall.
5. The Defendant, his assigns, privies and all other persons are hereby perpetually restrained from causing further destruction to Plaintiff’s property or dealing with the land described in paragraph 1 in anyway whatsoever.
6. In view of the conduct of Defendant throughout the course of the case which caused this case to stall, I shall award costs of Ten Thousand Ghana Cedis (GHØ10,000.00) in favour of Plaintiff against Defendant.

As Defendant has a counterclaim, he bore an equal burden of proof on a balance of probabilities as Plaintiff in order for his claim to succeed. 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.”*

I find that no evidence has been led by Defendant in support of his case and has thus failed to discharge the burden imposed by law. On this basis I find that the counterclaim fails in its entirety, and I so hold.



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