

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

SUIT NO:C1/48/2022

SARAH MANTE
SUING AS THE ADMINISTRATOR
OF THE ESTATE OF JOSHUA ADU MANTE
SARPEIMAN

...

PLAINTIFF

VRS.

OWUSU ANSAH

...

DEFENDANT

*PARTIES: PLAINTIFF PRESENT
DEFENDANT ABSENT*

COUNSEL: EDEM AMADZOR ESQ.FOR PLAINTIFF PRESENT

JUDGMENT

By a Writ of Summons and Statement of Claim filed on 15th July, 2022, Plaintiff claims against Defendant the following reliefs:

- a. “Declaration of title to all that piece or parcel of land situate, lying and being at Sarpeiman in the Ga West Municipality of the Greater Accra Region bounded on the North-East by a proposed road measuring 50 feet and 30 feet respectively more or less, on the South-West Lessor’s land measuring 70 feet more or less on the North-West by Lessor’s land measuring 80 feet more or less on the South-East by a proposed road measuring 80 feet more or less and containing an approximate area of 0.16 acre more or less.
- b. An order for Recovery of Possession of the disputed land.
- c. An order for Perpetual Injunction restraining the Defendant, his assigns, agents, workers, privies and anyone claiming through him from interfering with the land in dispute.
- d. Damages for trespass
- e. General damages

f. Costs”

It is the case of Plaintiff that she is the surviving spouse and Administrator of the estate of Mr. Joshua Adu Mante. She says that the Defendant has encroached onto a parcel of land forming part of the estate of her deceased husband which is described in relief “a” above. According to her, the late Joshua Adu Mantey acquired the land in dispute from Ebenezer Lamiaye France who is the lawful representative of the Nii Cobblah France family of Sarpeiman and a Deed of Lease executed on 1st November, 2003. She says that being the wife of the late Joshua Adu Mante, she has always been aware of the transaction affecting the land in dispute. According to her, her husband took possession of the land by planting food crops such as plantain and cassava on the land. She says that he also registered the lease at the Deeds Registry of the Lands Commission. Plaintiff says that her husband was transferred to Burkina Faso to work for some years and upon his return somewhere in 2013 he found that the Defendant had entered the land and was developing same. She says that her husband confronted Defendant’s workers on the land and subsequently reported the matter to the Amasaman police. She says that not long after the report to the Police, Mr. Adu Mante was stuck down with a stroke which rendered him bedridden for several years until he died on 7th January, 2018. Plaintiff says that after the death of her husband, she applied for and was granted Letters of Administration to administer her husband’s estate on 10th April, 2019. She says that as Administrator, she has made attempts to stop Defendant from further developing the land but to no avail. Plaintiff says that as Administrator, it is her duty to protect and secure the estate through all legal means hence the instant action.

On 19th October, 2022, Defendant was served with the Writ of Summons and Statement of Claim by means of substituted service. Having failed to enter Appearance, counsel for Plaintiff moved this court differently constituted on 11th January, 2023 for Judgment in default of appearance which was refused based upon the reliefs being sought with the action being set down for Plaintiff to prove her case. Plaintiff and her witness thus appeared to testify on 6th November, 2023.

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**.

Section 12(2) of the **EVIDENCE ACT,1975 NRC 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.”

Plaintiff testified by means of a witness statement filed on 21st February, 2023. She stated that she is the surviving spouse and Administrator of the Estate of Mr. Joshua Adu Mante. She tendered as *Exhibit 'A'* a copy of Letters of Administrator (Not will Annexed). She testified that the land in dispute forms part of the estate of her husband and Defendant has encroached on same. She testified that her husband acquired the land from Ebenezer Lamiaye France, lawful representative of the Nii Cobblah France family of Sarpeiman. She stated that a Deed of Lease was executed in favour of her husband dated 1st November, 2003 which she tendered as *Exhibit B*. She testified that she has always been aware of the transaction affecting the land in dispute as wife of the deceased and that after purchasing the land, her husband took possession by planting food crops such as plantain, cassava on the land.

She stated that the Deed of Lease was also registered at the Deeds Registry of the Lands Commission with registration No. AR/10089/2004. She testified that the deceased was transferred to Burkina Faso in his lifetime to work for some years and upon his return somewhere in 2013, he found that the Defendant had entered the land and was developing same. She stated that her husband confronted the Defendant's workers and made a report at the Amasaman police station. She stated that not long after her husband had a stroke which rendered him bed ridden for several years until he died on 7th January, 2018. She testified that she applied for Letters of Administration and was granted same on 10th April, 2019. According to her, she has made several attempts as administrator to stop Defendant from further developing the land but to no avail. She testified that in April, 2022, she caused a Search to be conducted at the Lands Commission and the result showed that it was affected by the Deed of Lease of her husband. She tendered the Search Report as *Exhibit C*. She stated that as administrator and beneficiary, she owes a duty to protect and secure the estate through all legal means.

PW1 was Jacob Odartey France. He testified that he is part of the family who sold land to Plaintiff's deceased husband. He stated that he is the son of the then principal representative of the family, Mr. Ebenezer France who is now deceased who acted on behalf of the family. According to him, the land in dispute belongs to his family by way of Statutory Declaration dated 19th November, 1994 and the family has exercised control over the land for many years. He tendered as *Exhibit D* the Statutory Declaration. He testified that his father had a huge plan of their family land and always indicated plots which had already been sold out. He stated that the land in dispute sold by his family to Plaintiff's husband is plot number 111. He tendered as *Exhibit E* the said plan. He testified that Plaintiff's husband paid in full and all necessary documents were handed to him. He stated that his family, that is the Nii Cobblah Family have never sold land to the Defendant and he is not known to the family.

When the case was called for hearing, this court noted that Defendant had duly been served with hearing notice through substituted service on 26th October, 2023 but he failed to appear before the court.

I have had regard to *Exhibit C* which is a Search Report from the Lands Commission, it indicates that the land in dispute is affected by a Lease dated 01/11/2003 from Ebenezer Lamiayi France To: Joseph Adu Mante. I find from the evidence before me that the said Lease referred to in *Exhibit C* is that which was tendered as *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.”

As the evidence of Plaintiff stands uncontradicted, an inquest is not necessary especially as I find that Plaintiff has proven on a balance of probabilities that the land in dispute was owned by her late husband by virtue of the pleadings and evidence before me.

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...”

Also, in **LAMPTEY ALIAS NKPA v. FANYIE AND OTHERS [1989-90] 1 GLR 286** the court held that:

“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...”

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

- a. The land in dispute, described as “all that piece or parcel of land situate, lying and being at Sarpeiman in the Ga West Municipality of the Greater Accra Region bounded on the North-East by a proposed road measuring 50 feet and 30 feet respectively more or less, on the South-West Lessor’s land measuring 70 feet more or less on the North-West by Lessor’s land measuring 80 feet more or less on the South-East by a proposed road measuring 80 feet more or less and containing an approximate area of 0.16 acre more or less’ is hereby declared as being the property of and forming part of the Estate of Mr. Joshua Adu Mante.
- b. Plaintiff is to recover of possession of the land described at paragraph “a”.
- c. Defendant, his assigns, agents, workers, privies and anyone claiming through him are hereby perpetually restrained from interfering with the land described at paragraph “a”.
- d. Plaintiff is awarded Seven Thousand Ghana Cedis (GH¢7,000.00) as general damages for trespass.
- e. Costs of Three Thousand Ghana Cedis (GH¢3,000.00) is awarded in favour of Plaintiff against Defendant.

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