

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON
WEDNESDAY THE 30TH DAY OF AUGUST, 2023 BEFORE HER HONOUR
ENID MARFUL-SAU, CIRCUIT COURT JUDGE**

SUIT NO. C1/63/2018

SEM BOAKYE ... PLAINTIFF

VS.

SHAIBU ... DEFENDANT

*PARTIES: PLAINTIFF PRESENT
DEFENDANTS ABSENT*

*COUNSEL: KWEKU KYERE HOLDING BRIEF ALFRED PAAPA DARKWA ESQ.
FOR PLAINTIFF PRESENT
F.A. ACQUAYE ESQ. FOR DEFENDANT ABSENT*

JUDGMENT

By a Writ of Summons and a Statement of Claim filed on 26th July, 2018, Plaintiff claims against Defendant the following reliefs:

- a) “Declaration of title to all that piece or parcel of land situate lying and being at Obeyeyie in Accra containing an approximate area of 0.163 Acre or 0.064 Hectare more or less, and bounded on the North by Lessor’s land measuring 70.0 feet more or less, on the South by proposed road measuring 70.00 feet more or less, on the East by Lessor’s land measuring 100.7 feet more or less on the West by proposed road measuring 100.8 feet more or less.
- b) Recovery of possession of the disputed land.
- c) An order for perpetual injunction restraining defendant herein, his agents, assigns, workmen, representatives etc from interfering with plaintiff’s right of title to the land.
- d) General damages for trespass.
- e) Any other order or orders deem fit by this Court.”

It is the case of Plaintiff that somewhere in 2008, he acquired land at Obeyeyie near Amasaman from Nii Tei Ayi, head of the Kofi Tsuru family of

Nsakina and Obeyeyie village. The land in dispute is described at paragraph “a” of the reliefs sought. According to Plaintiff, he has a valid indenture to the land and he built a single room on the land. He says that the Defendant in recent times encroached on a portion of his land and constructed a fence wall on same hence the instant action.

Defendant entered Appearance on 16th August, 2018 and filed a Statement of Defence and Counterclaim on the same date. He contends that in 2006, he acquired land described as “situate, lying and being at Obeyeyie in Accra containing an approximate area of 0.86 acre or 0.36 hectare more or less is bounded on the North by proposed road measuring 138.4 feet more or less, on the South by Lessor’s land measuring 203.8 feet more or less on the East by Lessor’s land measuring 218.6 feet more or less on the West by proposed road measuring 220.3 feet more or less” from Nii Tei Ayi the head of the Kofi Tsuru family of Nsakina and Obeyeyie village. He says that he was provided with an indenture and he proceeded to build on the land. He denies encroaching on Plaintiff’s land and counterclaims as follows:

- a) Declaration of title to all that piece or parcel of land situate, lying and being at Obeyeyie in Accra containing an approximate area of 0.86 acre or 0.36 hectare more or less is bounded on the North by proposed road measuring 138.4 feet more or less, on the South by Lessor’s land measuring 203.8 feet more or less on the East by Lessor’s land measuring 218.6 feet more or less on the West by proposed road measuring 220.3 feet more or less.
- b) Recovery of possession of the disputed land
- c) An order for perpetual injunction restraining plaintiff herein, his agents, assigns, workmen, representatives etc from interfering with plaintiff’s right of title of ownership to the land which is the subject matter of this suit.
- d) Any other order or orders deem fit by this court.

On 19th October, 2018, this court differently constituted set down the following issues for trial:

- (a) “Whether or not the Defendant has trespassed unto Plaintiff’s land.
- (b) Whether or not the Plaintiff/ Defendant is entitled to its reliefs or at all.
- (c) Any other issue(s) arising from the pleadings.”

Hearing commenced on 4th November, 2020. On the said date, the Court Witness, the Surveyor named Jacob Amoah was cross-examined by counsel for both parties. On 21st June, 2023, counsel for parties appended their signatures to a Case Completion Plan for hearing to proceed to completion on 17th July, 2023. On the said date, Plaintiff testified and was discharged. When the Defendant and his witnesses were called upon to open their case, they were not before the court. Accordingly, the court proceeded to close their case and adjourned the case 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,

-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)

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)**

In **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, the balance of probability appeared to favour the plaintiff and he should have been entitled to the declaration sought.”

I shall determine the issues together. Plaintiff testified by means of a witness statement filed on 30th October, 2018. He testified that he is the owner of the land in dispute which he acquired since 2008 from Nii Tei Ayi, Head of the Kofi Tsuru family of Nsakina and Obeyeyie Village. He testified that he commenced registration processes for the land and same was

published in the Spectator Newspaper on 27th October, 2012. According to him, the Defendant is married to the daughter of his grantor and Defendant is abusing that position to claim his land. According to him sometime in the year 2013, one Kobina and the Defendant approached him to claim ownership of the land and when he showed his indenture to them, they became convinced of his ownership and ceased troubling him until July, 2018 when agents of Defendant constructed a wall on an adjoining land. He testified that the wall has come into his land and has blocked his window. He stated that he protested but the Defendant ignored him so he reported the matter to the Amasaman Police but the Defendant ignored advice and continued to build. He tendered *Exhibit A* which is an indenture dated 2nd November, 2011 between Nii Tei Ayi and himself. He also tendered *Exhibit B* which is a newspaper publication dated Saturday October 27, 2012.

The testimony of Plaintiff is that he has been in physical possession of the land since he acquired it in 2008. During cross examination of Plaintiff by counsel for Defendants, Plaintiff stated that he was on the land when Defendant constructed a fishpond, washing bay and saw mill on the land however it was when Defendant constructed a fence wall that he noticed that he had encroached on his land so he reported the matter to the Amasaman Police.

Possession was described as follows in the case of **TWIFO OIL PLANTATION PROJECT LIMITED v. AYISI AND OTHERS [1982-83] GLR 881:**

“Possession in law meant two things: (a) effective physical control or occupation evidenced by some outward act sometimes called de facto possession or detention and was always a question of fact, and (b) legal possession, i.e. possession recognised and protected by law and which was characterised by animus possidendi together with that amount of occupation or control of the entire subject-matter of which it was practically capable and which was ordinarily sufficient for practical purposes to exclude strangers from interference.”

There is before this court Exhibit CE2 which is a Composite Plan. It shows that there is a single room with porch for Plaintiff on the land as shown by Plaintiff and as shewn on the Site plan of Plaintiff. There is also the uncontroverted evidence of Plaintiff that he has been in physical possession of the land since 2008 when in July, 2018 Defendant

constructed a wall on a land adjoining his and, in the process, encroaching on his land.

In **YORKWA V DUAH [1992-93] 1 GBR 279; CA** it was held that:

“This being a land case the respondent must succeed on the strength of her own case; secondly, for nearly ten years previously, the father of the appellant was in possession of the house. A person in possession and occupation of land was entitled to the protection of the law against the whole world except the true owner or someone who could prove a better title.”

There is before this court evidence of Plaintiff’s acquisition of the said land, *Exhibit A* and there is also before the court evidence of steps taken by Plaintiff to register the said land, *Exhibit B*. Aside these, there is evidence of Plaintiff’s actual possession of the land in dispute.

In **OSEI (SUBSTITUTED BY) GILLARD V. KORANG [2013 -2014] 1 SCGLR 221 at 234**, it was held as follows:

“Now in law, possession is nine-tenths of the law and a plaintiff in possession has a good title against the whole world except one with a better title. It is the law that possession is prima facie evidence of the right of ownership and it being good against the whole world except the true owner he cannot be ousted of it.”

From the evidence before me, I am unable to find any evidence of a better title as against the Plaintiff’s. I find that on a balance of probabilities, Plaintiff has succeeded in proving that he has been in long undisturbed possession and occupation of land in dispute and he is thus entitled to the protection of the law against the Defendant and all who cannot affirmatively prove a better title. I therefore enter Judgment in favour of Plaintiff against Defendant as follows:

- a) Plaintiff is declared owner of all that piece or parcel of land situate lying and being at Obeyeyie in Accra containing an approximate area of 0.163 Acre or 0.064 Hectare more or less, and bounded on the North by Lessor’s land measuring 70.0 feet more or less, on the South by proposed road measuring 70.00 feet more or less, on the East by Lessor’s land measuring 100.7 feet more or less on the West by proposed road measuring 100.8 feet more or less, shewn edged yellow in the composite plan.

- b) Plaintiff is to recover of possession of the disputed land shewn edged yellow in the composite plan.
- c) The Defendant, his agents, assigns, workmen and representatives are perpetually restrained from interfering with plaintiff's rights of possession to the land herein.
- d) I award General damages for trespass of Ten Thousand Ghana Cedis (GH¢10,000.00) in favour of Plaintiff against Defendant.

I find no evidence supporting the counterclaim of Defendant and same is hereby dismissed. In view of how long this case has been pending, I award costs of Ten Thousand Ghana Cedis (GH¢10,000.00) in favour of Plaintiff against Defendant.

(SGD.

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