

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON
WEDNESDAY THE 20TH DAY OF SEPTEMBER, 2023 BEFORE HER
HONOUR ENID MARFUL-SAU, CIRCUIT COURT JUDGE**

SUIT NO:C1/41/2019

YAW MARK
UNNUMBERED HOUSE
NEAR CHURCH OF PENTECOST
SOUTH OFANKOR, ACCRA

c/o ARCHIE DANSO & ASSOCIATES
H/No F458/1, SALEM ROAD
OSU-ACCRA

...

PLAINTIFF

VRS.

1.SAMPSON ANTWI
2.RICHARD AMANI
3.JOSEPH PEASAH MINTAH

...

DEFENDANTS

PARTIES: PLAINTIFF PRESENT

1ST DEFENDANT ABSENT

2ND DEFENDANT ABSENT

3RD DEFENDANT ABSENT

*COUNSEL: ARCHIE MARTIN DANSO (JNR) ESQ. FOR PLAINTIFF ABSENT
GEORGE AHADZIE ESQ. FOR DEFENDANTS ABSENT*

JUDGMENT

By an Amended Writ of Summons and Statement of Claim filed on 24th June, 2020, Plaintiff claims against Defendants the following reliefs:

- a. “A declaration of title to all that piece or parcel of land more particularly described in paragraph 3 of the Statement of Claim.
- b. Recovery of possession of the part of the said land the Defendants trespassed upon and are building on.

- c. An order for the demolishing of the said single room and the extension to same the Defendants are building on the said land.
- d. Perpetual injunction directed at the Defendants by themselves, their agents, servants, assigns and grantees and/or any person claiming through them from having anything to do with the said land.
- e. Any further or other orders as to this court may seem just.

Plaintiff says that he is the owner of all that piece or parcel of land situated, lying and being at South Ofankor, Accra which contains an approximate area of 0.264 Acre or 0.106 Hectare more or less and bounded on the North-West by Lessor's land measuring 87.2 feet more or less on the North-East by Lessor's land measuring 130.7 feet more or less on the South-East by Lessor's land measuring 97.7 feet more or less on the South-West by proposed road measuring 118.9 feet more or less. According to Plaintiff after the grant of the land to him, his grantors put him in possession of same and he constructed a dwelling house on part of the land where he lives with his family. He says that he travelled out of the jurisdiction and in his absence the Defendants trespassed on part of his land and built a single room on same. Plaintiff says that upon his return he reported the matter to his grantors who informed him that they did not know the Defendants and have not granted any land to them. He says that recently the Defendants have entered part of his land, demolished a fence wall and started the construction of a foundation as an extension of the single room. He says that he and his grantors warned the Defendant to desist from their unlawful acts but they ignored the warnings and continue to build under the protection of armed thugs, hence the instant action.

Defendants by an Amended Statement of Defence filed on 1st September, 2020 contend that the land in dispute has no building belonging to Plaintiff but rather it is the 3rd Defendant who has a building on same. 3rd Defendant says that his land is "all that piece or parcel of land situate lying and being at Ofankor Accra in the Ga-West District in the Greater Accra Region of the Republic of Ghana and bounded on the North-East from survey pillar SGGA B4105/18/3 to SGGA B4105/18/4 by Lessor's Property and measuring on that side total distance of 27.4' feet more or less, on the South-East from pillar SGGA B4105/18/4 to pillar SGGA B4105/18/1 by the Lessor's Property and measuring on that side total distance of 73.0' feet more or less South-West from pillar SGGA B4105/18/1 to pillar SGGA B4105/18/2 by Lessor's Property and measuring on the total of 20.1 feet more or less on the North-West from pillar SGGA B4105/18/2 to pillar SGGA B4105/18/3

by Lessor's Property and measuring on the side a total distance of 68.8' feet more or less. And containing an approximate area of 0.038 Acre or 0.016 Hectare more or less." 3rd Defendant says that he has walled his land and the land in dispute does not form part of Plaintiff's land. He also contends that his grantor is not the same as Plaintiff's. 3rd Defendant says that he did an extension to his building but did not demolish Plaintiff's fence wall. He says that the 1st and 2nd Defendants are only his caretakers and that when he bought the land, the single room had already been built to the lintel level. He says that the land was assigned to him since 2004 and has since been in possession. He therefore counterclaims as follows:

1. "Declaration of title of the parcel of land as described in paragraph 4.
2. An order to restrain the plaintiff, his assigns, privies, workers, representatives etc. from developing and dealing with the land.
3. Cost and legal cost."

On 18th November, 2019, this court differently constituted adopted and set down the following issues for trial:

1. 'Whether or not the disputed land forms part of the Plaintiff's land.
2. Whether or not the Defendants own any land that shares boundary with the Plaintiff's land.
3. Whether or not the Defendants demolished part of the Plaintiff's wall.
4. Whether Plaintiff is entitled to his claim
5. Any other issues raised by the pleadings'

Additional Issue

6. 'Whether or not the plaintiff's grantor is the same as the 3rd defendant's grantor.'

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. REFUS V. RICKETTS (1934) 2 W.A.C.A. 96;
ADWUBENG V. DOMFEH (1996-1997) SCGLR 660;
JASS CO LTD & ANOR V. APPAU & ANOR (2009) SCGLR 265 AT 271;
NORTEY (NO 2) V AFRICAN INSTITUTE OF JOURNALISM AND COMMUNICATION & ORS (2013-2014)SCGLR 703 AT 724.

The burden of persuasion is therefore on the party who claims title to land. It is trite that a Defendant with a counterclaim assumes the same burden as a Plaintiff. As Defendant has a counterclaim, the burden is placed equally on both Parties. In the case of **MALM V. LUTTERDOT (1963) 1 GLR 1** 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.”

Therefore, each Party is to prove their case on a balance 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.”

I shall now proceed to consider the issues set down. Issue 1 is *‘whether or not the disputed land forms part of the Plaintiff’s land*. In order to assist the court, determine the issues, an order was made for a Composite plan to be prepared by the Lands Commission. (See. **MADAM COMFORT OFORI VRS KWAME APPENTENG, CIVIL APPEAL NO. J4/ 17/ 2017** dated 6TH **DECEMBER, 2017**, Supreme Court, Unreported). The Composite Plan was duly prepared and tendered before this court as *Exhibit CE2*. I note from *Exhibit CE2* that the land claimed by Plaintiff as represented by his Site Plan is shewn edged lime green, while the area in dispute is shewn by hatched lines. The area shewn by the Site Plan of 3rd Defendant is also shewn edged yellow. During cross examination of the Surveyor, CW1 by counsel for Plaintiff, the following ensued:

Q: Looking at your pointer, the line pointing to the broken wall shows that the disputed piece of land falls within the area shown to you by the Plaintiff as well as shown by his Site Plan is that correct.

A: That is correct”

Indeed, it is visible from *Exhibit CE2* that the area in dispute forms part of the land contained in the Site Plan of Plaintiff. I therefore find that on a balance of probabilities, it has been shown that the area in dispute forms part of the land claimed by Plaintiff.

I shall next consider issue 6 which is *'whether or not the plaintiff's grantor is the same as the 3rd defendant's grantor'*. Plaintiff testified that his grantor is Dennis Agoe Lamptey the head and lawful representative of the Gua-Dzaanor family of Ofankor Accra. He tendered as *Exhibit A*, a Deed of Lease between the said Dennis Agoe Lamptey and himself. 3rd Defendant's Attorney testified that his grantor is Nii Odartey Lamptey head and lawful representative of the Gua Dzannor family of Ofankor Accra who is now deceased. Evidently, the grantors of the Parties differ. It is however clear that both parties claim to have purchased the land from the Gua Dzannor family acting by a particular person claimed to be head of family. During cross examination of Defendant by counsel for Plaintiff, he admitted that the Gua Dzannor family are those who sell lands to prospective buyers at Ofankor. I therefore find from the evidence before me that the grantors of the Parties are different though both Parties trace their roots of title to the same family, being the Gua Dzaanor family.

Issue 2 is *'whether or not the Defendants own any land that shares boundary with the Plaintiff's land'*. From *Exhibit CE2*, the land claimed by Defendants which is shewn edged yellow shares a boundary with the land claimed by Plaintiff shewn edged lime green. Now, do the Defendants own the said land? As already indicated, 3rd Defendant claims to have purchased his land from Nii Odartey Lamptey of the Gua Dzannor family. He testified that he paid all considerations to his grantor and was given a receipt which he tendered as *Exhibit 1* as well as a Site Plan tendered as *Exhibit 2*. In the case of **LIZORI VS. BOYE SCHOOL OF DOMESTIC SCIENCE AND CATERING [2013-2014] SCGLR 889**, the Supreme Court held as follows:

'The provision in Section 32 of Act 689 was so clear and unambiguous and required no interpretation. Either the document has been stamped and appropriate duty paid in accordance with the law in force at the time it was executed, or it should not be admitted in evidence. There was no discretion to admit it in the first place and order the party to pay the duty and penalty after judgment. Thus, the trial court would have been perfectly justified to reject the receipts without stamping'.

It was held further in the case of **THOMPSON V. TOTAL GHANA [2011] 34 GMJ 16 SC** thus:

'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.'

Clearly then, the law places an obligation on a party who seeks to rely on an instrument relating to property situate in Ghana 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. *Exhibits 1* and *2* fall short of the requirements of the law and they are hereby rejected.

During cross examination of Defendant by counsel for Plaintiff the following ensued:

Q: Is your grantor a member of the Gua-Dzannor family of Ofankor

A: Yes

Q: Where is he now

A: In his house”

...

Q: You also indicated to this Court that your grantor gave you an indenture after giving you the receipt

A: Yes

Q: Have you filed such indenture in this Court

A: I said it is with my lawyer”

...

Q: You indicated earlier on that your grantor is Odartey Lamptey

A: Yes

Q: If you go to Exhibit 1 the content shows that your grantor was one Kofi Amankwah is that not correct

A: It is true

Q: So you have two grantors not so

A: It was Odartey Lamptey who sent Kofi Amankwah to prepare this receipt”

DW1 was Edward Amponsah. In his evidence in chief before this court, DW1 claimed to be a principal member of the Gua-Dzaanor family, however under cross examination by counsel for Plaintiff, he retracted and admitted that he was indeed not a principal member of the family. According to his testimony before this court, 3rd Defendant purchased his land from one Kofi Amankwa who is known to the late Nii Odartey Lamptey. According to him, the land was given by Nii Odartey Lamptey to Kofi Amankwa and Kofi

Amankwa assigned it to the 3rd Defendant. However, under cross examination DW1 stated as follows:

“Q: You came here to give evidence for 3rd Defendant not so

A: That is so. I know that my uncle had sold a piece of land to 3rd Defendant”

...

“Q: There is evidence in this court that the 3rd Defendant shares boundaries on all sides with the lessor who was identified as Kofi Amankwah

A: I do not know Kofi Amankwa”

...

“Q: So in effect you have no knowledge of the alleged transaction between your late Uncle and the 3rd Defendant not so

A: I was not present when the piece of land was negotiated and neither was I there when he paid my late uncle”

In 3rd Defendant’s Attorney’s evidence in chief, he indicated that his grantor is Nii Odartey Lamptey who is deceased, yet under cross examination when he was asked where his grantor was, he stated that he was in his house and set up a new claim that his Assignor was on Kofi Amankwah. Indeed leave was never sought by the Defendants for amendment to bring their pleadings in line with this material claim of 3rd Defendant’s Attorney. Again, though he claims that the 3rd Defendant was given an indenture from the acquisition of the land, no such indenture was produced before this court. Clearly, 3rd Defendant’s Attorney and DW1’s evidence is fraught with inconsistencies which rob their evidence of any credit or belief.

In the case of **ABBEY & OTHERS VRS. ANTWI V [2010] SCGLR 17** it was held as follows:

“In an action for a declaration of title to land, the plaintiff must prove, on the preponderance of probabilities, acquisition either by purchase or traditional evidence; or clear and positive acts of unchallenged and sustained possession or substantial user of the disputed land...”

In **TANO H V ABBAN-MENSAH [1992-93]1 GBR 308;CA** it was held as follows:

“The plaintiff must succeed on the strength of his own case because the weakness of the defendants’ case could not avail him. The defendants had not counterclaimed for any relief and therefore did not assume any burden of proof and it was not necessary for them to call EG as a witness.”

In this case, as the Defendants were Plaintiffs to the counterclaim, they bore a burden to prove their ownership of the land in dispute. I however find that Defendants have failed to put any credible evidence before this court to substantiate their claim of ownership to the land in dispute. On a balance of probabilities, Defendants have been unsuccessful in discharging the burden of proof required of them, to show that they own land which shares a boundary with Plaintiff. On the basis of the foregoing, the counterclaim therefore fails in its entirety and same is hereby dismissed.

Issue 3 is *‘whether or not the Defendants demolished part of the Plaintiff’s wall.’* Plaintiff testified that the Defendants entered part of his land, demolished his fence wall and constructed a foundation of an extension to a single room. He tendered as *Exhibit B* a photograph of the foundation which was dug. Defendants on the other hand have denied demolishing the fence wall of Plaintiff. During cross examination of 3rd Defendant’s Attorney by counsel for Plaintiff, the case put across was that it was the Defendants who demolished the fence wall of Plaintiff and due to that the 1st and 2nd Defendants were arrested. Though Plaintiff testified that the Defendants were arrested and detained at the Sowutuom Police Station for demolishing his wall, there is no evidence before this court that Defendants charged and convicted of causing damage to Plaintiff’s wall. On *Exhibit CE2*, there is a depiction of a ‘broken fence wall claimed by both parties.’ Accordingly, it is not disputed that there is a broken fence wall on the land in dispute. The bare allegations notwithstanding, no credible evidence was led by Plaintiff as to the demolishing of the fence wall by Defendants. I consider that there is inadequate evidence adduced by Plaintiff to enable the court make a pronouncement as to whether or not it was the Defendants who demolished the fence wall. I therefore find on issue 3 that it has not been shown on a balance of probabilities that the Defendants demolished part of Plaintiff’s wall.

Issue 4 is *‘whether Plaintiff is entitled to his claim’.* Plaintiff’s testimony is that he acquired the land since 2014 and took possession of it by building a

dwelling house which he lives with his family. He however travelled out of the jurisdiction in 2016 and according to him during this time, Defendants encroached on part of his land and built a single room on same. From *Exhibit CE2*, it is apparent that Plaintiff has two buildings on the land in dispute. I consider that the evidence shows that Plaintiff exercised acts of ownership on the land and had been in occupation of same. Though a Witness Statement was filed for Plaintiff's grantor, on 31st July, 2023 counsel for Plaintiff informed the court that they would no longer call him as a witness as he was being threatened. The Witness Statement of the said Dennis Ago Lamptey filed on 31st January, 2020 was thus expunged from the record.

Exhibit CE2 shows that the issue in this case concerns the area of land which is hatched and not the whole land contained in the Site Plan of Plaintiff. I consider that a lack of evidence by Plaintiff's grantor to establish the root of title is not fatal to his case. See ***NKAEGUO v. KUNADU [1974] 2 GRL 150***

This is because the parties do not deny having lands abutting each other and they both admit that the lands in the area are owned by the Gua Dzaanor family.

In **RE ACCRA INDUSTRIAL ESTATE ACQUISITION; ANKRAH AND OTHERS v. BOTOKU AND OTHERS [1966] GLR 119; SC** it was held that:

"...in an acquisition case, as against the government, each party claiming to be an owner of the land must succeed on the strength of his own title. Where an identical area of land is in dispute between two claimants, it would stand to reason that the person who on the evidence established better title ought to succeed."

Plaintiff's case has been supported by documentary evidence and open and physical acts of ownership over the land. Though I consider that Plaintiff's *Exhibit A* was discredited under cross examination due to inconsistencies in the dates indicated thereon, of the whole evidence adduced, when the strengths and weaknesses of the respective cases of the parties are assessed, I consider that the acts of possession exercised over the land leans more in support of the case of Plaintiff than that of the Defendants. I therefore find that on a balance of probabilities, Plaintiff has established a better right of ownership to the land in dispute and his claim accordingly

succeeds. I therefore enter Judgment in favour of Plaintiff against Defendants as follows:

- a. Plaintiff is declared owner of the land described in paragraph 3 of the Statement of Claim and shewn edged lime green on the Composite Plan.
- b. Plaintiff is to Recover of possession of the part of the land shewn hatched which forms part of the land shewn lime green on the Composite Plan.
- c. The Defendants by themselves, their agents, servants, assigns and grantees and any person claiming through them are hereby Perpetually injuncted from having anything to do with the land described in paragraph 3 of the Statement of Claim shewn edged lime green in the Composite Plan.

Having already declared title in favour of Plaintiff as well as recovery of possession, this court shall refrain from making any orders in respect of relief 'c', same is hereby refused. I award costs of Ten Thousand Ghana Cedis (GH¢10,000.00) in favour of Plaintiff against Defendants.

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