

**IN THE CIRCUIT COURT, TEMA , IN THE GREATER ACCRA REGION HELD
ON THURSDAY THE 19TH DAY OF OCTOBER, 2023 BEFORE H/H KLORKOR
OKAI-MILLS (MRS)**

SUIT NO: C11/153/23

**ROSE KWARTENG
SUING ON BEHALF OF HER SIBLINGS
EMMANUEL ASAMOAH, EVELYN ASAMOAH
CYNTHIA ASAMOAH, GIFTY ADDO, EDWARD
ASAMOAH**

PLAINTIFF

VRS

- 1. JOYCE ASAMOAH**
- 2. GILBERT KWAME ASAMOAH**
- 3. NICHOLAS ASAMOAH**
- 4. MILICENT ASAMOAH**

DEFENDANTS

PLAINTIFF

PRESENT

DEFENDANTS

ABSENT

COUNSEL FOR PLAINTIFF PRESENT

JUDGMENT

By a writ of summons issued by the Plaintiff on 6th April, 2023, the Plaintiff is claiming against the Defendant the following reliefs:

- a) To compel the administrators of the estate to equitably share the estate of the late Rodick Sampson Kofi Asamoah for the beneficiaries according to the ADR agreement adopted and dated 2nd December, 2021.
- b) To compel the defendants to pay their portion of the cost for the construction of the Toilet and Kitchen facility on the opposite side of the house to enable the division to be complete.
- c) Perpetual injunction restraining the 2nd wife's children from interfering with the portion of the house belonging to the of the 1st wife's children.
- d) Any further orders of the court.

In her statement of claim, the plaintiff asserted that she and defendants are half siblings; all children of the late Kofi Asamoah who died intestate on 19th October, 1994. Letters of Administration was granted on 4th May, 1995 to Yaw Asamoah (Nephew), Beatrice Williams (daughter) and Lucy Asamoah (daughter). Plaintiff indicated that upon the demise of all the administrators, an application was made for a grant of Letters of Administrators to continue the chain of representation.

Plaintiff stated that the deceased married her mother and between them, had eight children. The deceased subsequently married the mother of the Defendants and had four additional children. The Plaintiff avers that the deceased estate was made up of a three-bedroom house at community two (2) Tema and that the Defendants do not pay ground rent, property tax, or maintains the property. As this was causing a lot of conflict between the siblings, the parties decided to settle the issue through court-connected ADR resulting in an agreement for them to share the property between the two mother lines according to their numbers. Plaintiff states that as part of the agreement, the property would be divided and both parties will bear the cost to put up an extra toilet and kitchen on the other side of the house to ensure that the partitioning was complete.

Plaintiff claimed that she and her siblings are ready with their portion of money to construct the toilet and kitchen but defendants refuse to make any contribution towards the construction; that ever since this agreement was reached on 2nd December, 2021, Defendants have failed to comply with the ADR recommendations thereby disrupting the peace in the house. Plaintiff believes that unless this matter is resolved in court, the property will be left in a deplorable state as the occupants are not ready to maintain the property and pay any just statutory bills.

Even though the 1st and 3rd Defendants were served with the Writ of Summons and Statement of Claim on 17th April, 2023, 2nd and 4th Defendants were not successfully served, all Defendants entered appearance on 19th May, 2023, but they failed to file a defence. Judgement in default of appearance was entered against the Defendants on 7th September, 2023 and the declaratory relief sought by the Plaintiffs was set down for trial for Plaintiffs to lead evidence. Even though Defendants were served with hearing notice of the trial, they failed to appear at the trial. Plaintiff proceeded to prove her case to be entitled to final judgment since they have already had gotten judgment in default of defence. Plaintiff tendered in the ADR agreement as her evidence in chief and was discharged as there was no Defendant to cross-examine her.

BURDEN ON PLAINTIFF

The Plaintiff is alleging that the Defendants have failed to honor the agreements reached at ADR on how they will administer their deceased father's property and is therefore, praying for a court order to compel the Defendants to respect and honor the terms of the ADR agreement and perpetual injunction restraining the 2nd wife's children from interfering with the portion of the house belonging to the 1st wife's children. This matter being a suit where the Plaintiff seeks declaratory reliefs, Plaintiff is expected to lead evidence before she can be entitled to the reliefs she

seeks. See **Republic v High Court Accra; Ex Parte Osafo [2011] 2 SCGLR 966**, the Court held that “by the settled practice of the courts, for declaratory orders to be good, such orders must be made only after hearing all parties to the action or at least offering them the opportunity to be heard.” In the case of **Agyekum v Amoah, Civil Appeal No. Accra J4/59/2014, dated 13th April 2016 (Unreported)**, it was held that in civil trials, the standard of proof is that of a balance of preponderance of probabilities. See **sections 11 (4) and 12 of the Evidence Act, 1975 (NRCD 323)** and the case of **Sarkodie v FKA Co. Ltd. [2009] SCGLR 65, S.C. at holding 1.**

PLAINTIFF’S EVIDENCE

At the trial, Plaintiff testified and told the court that after the siblings of the deceased had disagreements over the property, the estate of the deceased, they resolved the matter at ADR where all parties reached an agreement. Unfortunately, the Defendants, according to her, had not honored the terms of the agreements. She tendered in the ADR agreement as exhibit A which evidenced the agreement she had referenced throughout her case and prayed the court to grant her reliefs.

At the close of the Plaintiff’s case, the court discharged the Plaintiff and adjourned for judgement as Defendant had been earlier served with a hearing notice dated 14th September, 2023 to enable them appear to cross examine Plaintiff after she led evidence but declined to do so.

It is well settled that when a party is given the opportunity to lead evidence in support of his stand or in defence of the allegations against him but fails to avail himself of that opportunity, the court will be entitled to proceed with the trial to conclusion and make findings on the basis of the evidence adduced at the trial. This was the holding of the court in the case of **In re West Coast Dyeing Industry Ltd; Adams v Tandoh [1984 – 1986] 2 GLR 561.**

FINDINGS AND HOLDING OF THE COURT

At the close of Plaintiff's case, there was no evidence to contradict what she had said and she was able to establish her case by the ADR agreement she tendered in evidence. The court is thus bound to accept the flawless evidence of the Plaintiff, which shows that she is entitled to the reliefs that she is seeking on her behalf and on behalf of her siblings.

I am satisfied on the evidence of Plaintiff that the Plaintiff and the Defendants, based on their disagreements on the manner in which their deceased father's property would be shared, opted for ADR and reached an agreement on 2nd December, 2021; an agreement signed by both the Plaintiff and one of the Defendants, Milicent Asamoah, and which contains the declaratory reliefs Plaintiff seeks to enforce by this action. She discharged the burden by producing documentary evidence in the form of the actual ADR agreement (exhibit A).

In conclusion, I give judgment in Plaintiff's favor against the Defendants for the following reliefs:

- A) The administrators of the estate are ordered to equitably share the estate of the late Rodick Sampson Kofi Asamoah for the beneficiaries according to the ADR agreement adopted and dated 12 December, 2021.
- B) The defendants are ordered to pay their portion of the cost for the construction of the toilet and kitchen facility on the opposite side of the house to enable the division to be complete.
- C) A perpetual injunction is hereby restraining the 2nd wife's children from interfering with the portion of the house belonging to the 1st wife's children is hereby ordered.
- D) Cost of GHC 1500.00 is awarded against Defendants in Plaintiff's favour.

H/H KLORKOR OKAI – MILLS (MRS)

CIRCUIT COURT JUDGE