

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON TUESDAY, 19TH DAY OF DECEMBER 2023 BEFORE HIS HONOUR KWABENA KODUA OBIRI-YEBOAH, CIRCUIT COURT JUDGE.

C1/09/2016

RASHID OFOLI QUAYE

VRS

AMINU AKALIFA

JUDGEMENT

The Plaintiff per an Amended Writ of Summons and Statement of Claim issued from the registry of this Court against the defendant, dated 23/05/2019, per an order of the court dated 30th April, 2019 claiming the following:

1. Declaration of title to all that piece or parcel of land described in schedule below.
2. Damages for trespass.
3. Recovery of possession of any portion of plaintiff's land trespassed unto and an order to remove any offending structure at cost to defendant.
4. Perpetual injunction restraining the defendant, his agents, assigns and workmen from dealing with the land in dispute.

THE CASE OF THE PLAINTIFF

The Plaintiff is a businessman and his case is that he has a piece or parcel of land at Airport East Residential Area. Plaintiff said he obtained the said land from an Estate development firm known as God's City Developers. Plaintiff said the grantors were

grantees of Lenshie Quarter of Teshie and also the beneficial owners of a deed of Assignment made on the 16th day of April, 2011 from Sabah Estate Development Limited, acting per its Managing Director Mustapha Ahmed. Plaintiff said his grantors have registered their interest in the said land with Land Title Certificate. Plaintiff said he was granted the said land on the 5th day of October, 2012 and had an indenture prepared to evidence the said grant. Plaintiff case is that when he obtained the land he handed same over to Daniel Tetteh, a Director at God's City Estate, and he gave him money to effect the necessary transfer of the land into his plaintiff's name.

Plaintiff said after the grant, he went into possession and deposited building material on same and walled same, constructed a small building on the land and put a caretaker in same. Plaintiff says the defendant has entered his land and started developing same using his materials. Plaintiff concluded that after he made report to Police property fraud Unit and to his grantors, the defendant stopped work on the plaintiff's land but has returned with a group of land guards and working day and night on the land and the plaintiff also gave the schedule of the land which described the location and boundaries of the land.

THE CASE OF THE DEFENDANT

The defendant in his pleadings denied each and every allegation of the plaintiff. The defendant even though, the plaintiff amended his writ and statement of claim, maintained the statement of defence that was filed on 21/11/2017. The defendant in his pleadings stated that by a deed of Assignment dated the 26th day of November 2005 between Sabah Estates Development and the defendant, the land, the subject matter of the suit was granted to him for valuable consideration. The defendant per the pleadings indicated that he satisfied himself of his assignor's interest and was shown a Land Title Certificate No. GA 9116 which covers a large tract of land of which the land in dispute formed part of and upon acquiring the land he took immediate possession of same, cleared same which was overgrown with weeds.

The defendant stated further that he later constructed two separate story buildings on the land and has been in possession of the land since he acquired same in the year 2005 to date. The defendant concluded the pleading by saying that if the Plaintiff acquired the land in the year 2012, his grant is caught by the nemo dat quod rule as in the year 2005 he had already been granted the said land and that Plaintiff's grantor could not have given what it did not have. The Defendant stated further that the Plaintiff started laying false claim to the land of

which he has been in possession for over a decade. The defendant concluded and said the land is his legitimate property.

ISSUE FOR TRIAL

The plaintiff did not file any reply per the records and joined issues with the defendant. The plaintiff later filed issues before the Court. At the application for directions on 9/1/2018 the court granted the application for directions and ordered the processes to be filed and served same. These were the issues set down by the court differently constituted for trial:

- a. Whether or not plaintiff is entitled to declaration of title to land described in schedule to statement of claim.
- b. Whether or not the Plaintiff is entitled to damages for trespass.
- c. Whether or not Plaintiff is entitled to recovery of possession and order to remove all offending structures placed on land by the defendant.
- d. Whether or not the Plaintiff is entitled to perpetual injunction restraining the defendant, his agents, and assigns from dealing with the land in dispute.

In the case of **Armah v Hydroform Estates (GH) Ltd (2013/14) 2 SCGLR 1551 @ 1560** it was held as follows, "at the summons for directions the trial judge is required to identify the core issues for trial... the Judge is required to examine the pleadings carefully and to

determine what issue(s) will completely determine the case before him. Also, in the case of **Fidelity Investments Advisors v Aboagye Atta (2003/04) 2 GLR 188** the court held that what issues are relevant and essential was a matter of law entirely for the judge to determine.

From the case before the court and looking at the pleadings that were filed, it is obvious that issue (a) takes care of all the issues that were set down and resolving issue (a) will completely determine the case before the court. Therefore, the court will set down issue (a) as the issue for determination by the court in this judgment.

EXHIBITS OF THE PLAINTIFF

During the trial, after case management conference (CMC), the Plaintiff gave evidence for himself and called one witness in support of his case before the court. The Plaintiff, tendered exhibits including Indenture between God City and Mrs. Joana Awuku, Statutory Declaration, Indenture between God's City and the plaintiff, Indenture between Mrs. Joana Awuku and the Plaintiff, Judgement delivered by the High Court in a case involving Nii Ashikwei Kwaobotswe II v Sabah Estate Development Ltd and the Land Title Registry and among others.

Plaintiff called Mrs. Joana Awuku as PW1, who testified before the court and tendered indentures in her favour one with Nii Ashikwei Oshiampen III and another in her favour with God's City Developments. The witness for the plaintiff also tendered a Land Certificate in her favour.

EXHIBITS OF THE DEFENDANT

The defendant gave evidence before the court by himself and called one witness. The defendant had these exhibits which were made available before the court. The defendant tendered Land Title Certificate No. G. A. 9116, Official Receipt from Sabah Estate, Deed of Assignment executed between Sabah Estate and Defendant dated 26/11/2005 and

photograph showing defendant act of possession which is two uncompleted building on the disputed land.

EVIDENCE OF THE PLAINTIFF DURING TRIAL

Plaintiff Evidence

During the trial Plaintiff testified for himself, by relying on the witness statement, which was filed, and tendered the various exhibits. The Plaintiff gave evidence that in the year 2006 he obtained a grant of a piece or parcel of land from one Mrs. Joana Awuku at East Airport Extension as per his paragraph 2 of his witness statement. The Plaintiff said Mrs. Joana Awuku informed him that she obtained the said land from God's City Estate. Plaintiff said Mrs. Awuku gave him an indenture in his name and she also gave him an indenture from God's City Development. Plaintiff said Mrs. Joana Awuku did not complete the registration of her document so she gave him the telephone number of one Daniel Tetteh, a Director at God's City to give him a direct transfer from God's City into his name. Plaintiff said he called the said Daniel Tetteh but he was travelling to Kenya so he gave money to the said Daniel Tetteh to do the transfer but it was realized at the Lands Commission that there was a conflict in the documents.

Plaintiff said on his return, he realized that at the Survey Department the land was plotted in the name of Sabah Estate Ltd and it was explain to him that Sabah had earlier registered the land before God City. The matter was taken to court and Sabah had agreed to transfer his interest to God's City. Plaintiff said he was to accompany Daniel Tetteh to the Managing Director of Sabah Estate to correct any anomaly at the Lands Commission but he travelled to the United Kingdom and whilst there he was inform that someone has entered the land and developing same at a fast rate. Plaintiff said he returned and went to property fraud unit of the Ghana Police Service and the defendant was invited and asked to stop work whilst investigations were conducted.

Plaintiff said at the time of purchase the land Mrs. Awuku had already walled same and she put up a one room structure on the land and put in a caretaker. Plaintiff also said Mrs. Awuku also informed her grantors and a meeting was called at Labadi Beach Hotel and there they met the defendant and the directors of God City told him that the land belongs to him the plaintiff and if the defendant is interested in the land they will give him another which he agreed only to revert to his land guard and continue with his building.

Plaintiff Witness (PW1) Evidence

Plaintiff witness said she made a grant of two plots of land out of her plots at East Airport Extension, Tse Addo, Accra to the plaintiff sometime in 2012 albeit discussion for the purchase of the land started long ago after she got the grant of same. PW1 said when she became interested in the land, Daniel Tetteh, introduced her to his uncle Nii Ashikwei Oshiampen III. Plaintiff witness said she was granted four plots of land and signed an indenture in her favour and she immediately started documentation of it with the help of Daniel Tetteh. PW1 said at the time she was a novice in the land transactions and Daniel Tetteh told him that he is acquiring an entire land inclusive of what she is purchasing so she should add her land to the land given to God's City Estate Developers Limited to register and obtain title to land so that he will rather give her documents from the title registration and that to him that will be better and she agreed to what he said.

PW1 said after that she fenced the entire four plots of land and built small rooms at each corner of the four plots and she placed caretakers in all the small rooms. PW1 said after two years she had information that people were coming unto the land so she decided to sell two of the plots and an agent by name Dan brought the Plaintiff and he was taken to see the land by the husband and afterwards introduced him to Daniel Tetteh. PW1 said further that she took her documents to land title department where she got someone to prepare the indenture and she gave to the plaintiff and when that was done, a surveyor from lands department came to plot Plaintiffs land acquired from her four plots and

prepared the site plan which eventually made the indenture complete for plaintiff. PW1 said when this was done they met with Daniel Tetteh who assured plaintiff that he would follow up on the documentation at Lands Commission for him and that ended her role in that matter.

EVIDENCE OF THE DEFENDANT DURING TRIAL

Evidence of Defendant

The defendant in his defence said he knew the plaintiff and he got to know him when he started laying false claim to his land. The defendant said he was the legitimate owner of the land. The defendant said sometime in 2005 after he came on a short holiday from the United States of America, he was informed that there was a parcel of land which was being offered for sale by Sabah Estate Ltd. He said they visited the land which was bushy and overgrown with weeds and he expresses interest in acquiring a portion, upon negotiations they agreed on an amount of \$15,000 as the purchase price of the land.

The defendant said his grantor Sabah Estate furnished him with a Title Certificate No. GA 9116 covering the large parcel of land of which his land forms part. The defendant said his searches revealed that the grantor's certificate was genuine and he subsequently went ahead and paid the purchase price of the \$15,000 and was issued with receipt. Defendant said he paid the \$15,000 which was for two plots and after which his grantor took him to the land and put him in possession there and later the grantor caused a site plan to be prepared for him and also furnished him with a deed of Assignment assigning its interest in the portion granted to him.

The defendant said he subsequently erected corner pillars on the four corners of the land and caused a trip of sand and stone to be deposited on the land. Defendant said he put the land under the care of his brother Ahmed Asumka who was deceased who watched over same whilst he travelled to the United States of America. The defendant said he

returned home and decided to develop the land, whilst developing the said land, people were coming onto the land and laying false claim and after showing them his documents they left the land. Defendant said the plaintiff came laying false claim to the land of which he was in possession and alleged that he has purchased same from God's City Estate.

The defendant said he called his grantor which confirmed that it has assigned a portion of its land to God's City Estate sometime in the year 2011 after which his portion had been granted to him six years earlier and the grant was made subject to the grant that has been made earlier by Sabah Estate Ltd. The defendant said there was a meeting between himself, the Plaintiff and Charles Ayi, the Managing Director of God's City Developers, and at the meeting his grant was confirmed and the Managing Director informed the Plaintiff that he will give him another one. Defendant said he then went back to develop his land and put up two story buildings on the land which are nearing completion. The defendant concluded by saying that the Plaintiff has no interest in the land and that the instant suit should be dismissed.

Evidence of the defendant Witness (DW1)

The defendant called a witness, DW1 said he was a building Contractor and Secretary to Sabah Estate Limited and he did not know the Plaintiff. DW1 said he knew the defendant and that he is a grantee of Sabah Estate Limited. He said the land was assigned to the defendant sometime in the year 2005. DW1 said the defendant came to enquire into the ownership of their land and he was shown the Land Title Certificate and he being satisfied with the ownership paid an amount of \$15,000 to Sabah Estate for which he was issued a receipt. DW1 said upon paying for the land he took the defendant to the land and he erected corner pillars on the land. DW1 said further that when the defendant bought the land, same was bushy and overgrown with weeds and that the defendant faced problems with encroachers and they together warded off the encroachers on the

land. DW1 concluded by saying that the land belongs to the defendant and he has owned and occupied same since 2005.

LEGAL PRINCIPLES

In civil cases the plaintiff has a burden to prove his or her case by the preponderance of probabilities and this is indicated in sections 11(4) and 12(1) of the evidence Act 1975 (NRCD) 323. Section 11(4) provides that: "In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence." Section 12(1) also provides that: "except as otherwise provided by law, the burden of persuasion requires proof by preponderance of the probabilities". **See the case of Adwubeng v Domfeh (1996-97) SCGLR 660**

Also, the basic principle of proof in civil suits, a party whose positive assertions are denied by his opponent bears the onus of proof of those assertions. **See: Agbesi v Ghana Ports & Harbours Authority (2009) 20 MGLR 109 @ 137.**

Zabrama v Segbedzi [1991] 2 GLR 221:

"A person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which the fact or facts he asserts can properly and safely be inferred. The nature of the averment or assertion determines the degree and nature of that burden."

See also **Gihoc Refrigeration & Household Products Ltd v Hanna Assi (2005-06) SCGLR 458, Good News Co-operative v France Amoyaw and Frederick Amoyaw (2019) 131 GMJ 220 @ 241** which deals with the burden of proof.

In the case of **JAAS Company Limited and another v Appau and Another (2009) SCGLR 263 at page 270** the Supreme Court speaking through Dotse, JSC, stated, “We wish to observe that the burden of proof is always on the Plaintiff to satisfy the court on a balance of probabilities in cases like this. Thus, where in a situation, the Defendant has not counterclaimed; and the plaintiff has not been able to make out a sufficient case against the defendant, then the Plaintiff’s claims be dismissed. The same standard will be used for the defendant, if the defendant counterclaims”.

In land litigation the Supreme Court in the case of **Mondial Veneer (GH) Limited v Amuah Gyebu XV (2011) 1 SCGLR 466 (475)** the Court per Georgina Wood CJ as she then was delivered herself in the following terms:

“In land litigation, even where living witnesses who were directly involved in the transaction under reference are produced in court as witnesses, the law requires the person asserting title, and on whom the burden of persuasion falls, as in the instant case, to prove the root of title, mode of acquisition and various acts of possession exercised over the subject-matter of litigation. It is only where the party has succeeded in establishing these facts on the balance of probabilities that the party would be entitled to the claim”.

ANALYSIS OF THE EVIDENCE

Now the case before the court will be resolved by consideration of the issue one as stated supra. And the issue one is:

- a. Whether or not plaintiff is entitled to declaration of title to land described in schedule to statement of claim.

In this case, the plaintiff issue the writ against the defendant and the defendant did not counterclaim but prayed for the case of the plaintiff to be dismissed. It is interesting but from the records it appears obvious why the defendant did not counterclaim. However

this means that it is only the plaintiff who has the responsibility to prove his case before the court. This then means the plaintiff is to win his case on the preponderance of probabilities. See: **Yorkwah v Duah (1992-93) GBR 278 CA, Takoradi Floor Mills v Samira Faris (2005-2006) SCGLR 985.**

Plaintiff in his amended statement of claim pleaded that he obtained the said land from an estate development firm known as God's City Developers and also they were the beneficial owners of a deed of Assignment made on the 16th day of April, 2011 from Sabah Estate Development Limited, acting per its Managing Director, Dr. Mustapha Ahmed. Plaintiff in paragraph 5 of the amended statement of claim pleaded his grantors have registered their interest in the said land with Land Title Certificate. Plaintiff went further to plead that he was granted the said land on the 5th day of October, 2012 and had an indenture prepared to evidence the said grant.

Plaintiff again pleaded in paragraph 8 of his amended statement of claim that after the said grant, he went into possession and deposited building materials on same and walled same and constructed a small building on the land and put a caretaker in same.

However the plaintiff in his witness statement which was adopted as his evidence in chief before the court, paragraph 2, now said that in the year 2006 he obtained the grant of a piece of land from one Mrs. Joana Awuku at East Airport. Plaintiff said further that at the time he purchased the land, Mrs. Awuku had walled same and she put up a one room structure on the land. It must be noted that in the pleadings of the plaintiff he did not plead acquiring the property from Mrs. Awuku as it has already been demonstrated supra. Again he said he rather put a structure on the land, walled the land and put in a caretaker on the land.

From his evidence per his witness statement, he did not speak of any act of possession of the land all these while as compared to his pleadings, which is the statement of claim.

This is to the extent that he did not talk about putting sand and stones on the land which has been used by the defendant as he said in his statement of claim. It is clear from the record that the plaintiff departed from his case as he pleaded before the court. The principle of law is that an allegation of fact not pleaded but admitted in evidence, which is inconsistent with, and is a departure from the averment made by the plaintiff in his statement of claim, is not entitled to favorable consideration. See **Marfo and Others v Adusei (1963) 1 GLR 225 (SC)**

And this is at variance with the evidence of witness called by the Plaintiff that is PW1, Mrs. Joana Awuku. She in her evidence stated at paragraph 9 of her witness statement that she fenced the entire four plots of land and built four small rooms at each corner of the four plots of land and placed caretakers in all the four small rooms. If the evidence of the plaintiff witness is anything to go by, she said, the plaintiff acquired two plots then it means that there will be two small rooms on the two plots and two caretakers on the plaintiff's land which is in clear contradiction and departure from the plaintiff's pleadings and contradiction of the plaintiff's evidence on record before the court.

Again another principle is that where there was a departure from the pleadings at the trial by one party whereas the other's evidence accorded with his pleadings, the latter was a rule preferable. See **Appiah v Takyi (1982-83) GLR 1 (CA)**, **Mahama v Issa (2001-2002) 1 GLR 94**, **Adom v Marfo (2012) 38 MLRG 68**. Also, a party cannot at the trial set up a case inconsistent with his pleadings. See **Yungdong Industries v Roro Services (2005-06) SCGLR 816**. This is what Kpegah JA as he then was in **Zabrama v Segbedzi (1991) 2 GLR 22**, said, "It is trite learning that where a party's evidence is inconsistent with his pleaded case, whilst that of his opponent is consistent with his pleadings, the opponent's case is preferable to the one who departs from his pleadings".

From the evidence on record before the court, the plaintiff was not able to prove his case, with respect to the land in dispute, he could not prove his root of title, mode of acquisition

and any acts of possession from the totality of his evidence before the court. See: **Adjei v Acquah (1991) 1 GLR 13, In Re Taagyen and Assago Stools; Kumanin II (Substituted by) Oppon v Anin (1998-1999) SCGLR 399.**

This should end the matter as the defendant had no counterclaim, however from the evidence, the defendant was consistent with his case before the court during the trial. The defendant demonstrated his rout of title by tendering the Land title registration of his grantor, he also tendered his official receipt of payment to Sabah Estate, a Deed of Assignment in his favour and a picture of two story building on the land. He also called a witness DW who testified and corroborated his evidence and in totality led evidence indicating his possession of the land in all since he purchased the land. Where a party's evidence is corroborated by that of his opponent while the opponent's evidence is uncorroborated, the court must prefer the corroborated evidence. See **Asante v Bogyabi and Others (1966) GLR 232 (SC), Osei Yaw and Another v Domfeh (1965) GLR 418 (SC), Barclays Bank Ghana Ltd v Sakari (1996-97) SCGLR 639 @ 652, Agyeiwah v P & T Corporation (2007-08) 2 SCGLR 985.**

It is the law that possession is prima facie evidence of the right to possession and it being good against the whole world except the true owner, he cannot be ousted from it. See **Summey v Yohuno (1962) 1 GLR 160, SC, Barko v Mustapha (1964) GLR SC 78, Osei (Substituted by) Gilard v Korang (2013-2014) 1 SCGLR 221.**

From the record, the plaintiff tendered a Judgment by her Ladyship Mrs. Patience Mills - Tetteh, in the case of **Nii Ashikwei Kwaobotswe III v Sabah Estate and Land Title Registry** which canceled from the records of the Land Title Registry the records of Land Certificate No. GA 9116 Vol. 02 Folio 31. However plaintiff also had it as one of his exhibits and based on that tendered a Deed of Assignment between Sabah Estate and God City Estate Developers to support his evidence that Sabah had agreed to transfer his interest to God's City. This supports the defendant case that Sabah had Land Title at the

time the defendant showed interest in the land and Sabah had registered same earlier before God's City.

The case of the is further strengthened as the PW1 tendered two indentures, one between Nii Ashikwei Oshampem III and her and the other between God's City Estates Developers and her and which tends to recognize the agreement between Sabah Estate and God's City which had the dates as 16th day of April, 2011 but incorporated in agreement purportedly signed in 14th August, 2006. This however cannot be the situation looking at the date involved. All these challenges were exposed during cross examination of the Plaintiff witness (PW1) by counsel for the defendant, and even though she stated she was a novice which cannot be an acceptable explanation, the reason could be, to explain that, the land has been given to Mrs. Joana Awuku and hence the Plaintiff long ago that is before the defendant. No wonder the Counsel for the Plaintiff cross examining the Defendant witness (DW1) asked this question:

Q39: I further put it to you that they had long ago granted that land to Joana Awuku assigned to the Plaintiff

A: I still do not have any idea about that.

I am of the humble opinion that the defendant acquired the land as he claimed and has been in control of the land and has demonstrated various acts of possession and is still in possession.

CONCLUSION

In conclusion Plaintiff has not been able to prove that he is entitled to declaration of title of the land and the issue will therefore be resolved in the negative

The plaintiff is therefore not successful at proving his case and hence same will be dismissed.