

CORAM: HER WORSHIP AMA ADOMAKO-KWAKYE (MS.), MAGISTRATE,
DISTRICT COURT '2' KANESHIE, SITTING AT THE FORMER STOOL LANDS
BOUNDARIES SETTLEMENT COMMISSION OFFICES NEAR WORKERS'
COLLEGE, ACCRA ON 23RD AUGUST, 2023.

SUIT NO. A10/32/11

ELLIOT GARSHONG ADAMAH

HOUSE NUMBER A100/1

OUTER RINER ROAD

NEW MAMPROBI – ACCRA

::

PLAINTIFF

VS

1. WINFRED OTOO

2. MASTER ADUM

3. EBENEZER

4. KOFI WELDER

5. AGBENYAGA

6. HUMPHREY ODARTEY MILLS

7. VINCENT LORLORNYO NUTAKOR ::

DEFENDANTS

JUDGMENT

Introduction

The Plaintiff caused the issuance of the Writ of Summons to commence this action on 10th December 2010 against five Defendants. This suit is therefore nearing gradually towards

its 13th year in the precincts of the Court. The suit commenced at the James Town Mantse Palace and has also been to the Sanitation and Motor Court, Ablekuma Central Sub-Metro before its final transfer to this Court. The Plaintiff prayed “for an order compelling Defendants to give up vacant possession of land at Mamprobi on which they are doing business, for personal use and cost.” In the course of the suit, the 6th and 7th Defendants joined the suit. The Plaintiff later on in the suit discontinued against the 1st to 5th Defendants. Counsel for the Plaintiff filed his Written Address on 27th June 2023.

Pleadings

It is the Plaintiff’s case that he is the owner of a 0.303-acre (0.122 hectare) parcel of land at Mamprobi whereas the 1st to 5th Defendants are artisans he permitted to work on his said land for over 10 years. He averred that it had become necessary for him to recover his land for a project but several demands on the Defendants to vacate the land had been disregarded by them, hence his resort to the legal machinery. He stated that the 6th and 7th Defendants have also claimed interest in the subject matter land.

An Amended Writ of Summons was filed on 18th November 2013 and also on 16th April 2015 with the following reliefs:

1. Declaration of title to all piece or parcel of land situate lying and being at Mamprobi, Accra and contains an approximate area of 0.303 acre (0.122 hectare) and bounded on the North by proposed road measuring 52.6 feet more or less on the South by proposed road measuring 69.2 feet more or less on the West by Sempe Stool land measuring 224.9 feet more or less and on the East by Sempe Stool and measuring 213.1 feet more or less.
2. Plaintiff claim from the defendants is an order compelling Defendants to give up vacant possession of land at Mamprobi on which they are doing their business for personal use.

3. Recovery of possession.
4. Perpetual injunction restraining the Defendants whether by themselves, their assigns, agents, servants, workmen, privies or anybody claiming from them from further dealing with the subject matter of this dispute.

In their Statement of Defence filed on 21st December 2010, the Defendants averred that the land on which they operated was an access road and that one Mr. Kweikuma had earlier wanted to acquire it but had to abandon the idea when a search result from Lands Commission indicated that it was an access road. They stated that one Mr. Arday also set up his workshop on a portion of the land, leaving sufficient space for the passage of vehicles, and other mechanics including the Defendants subsequently operated from that workshop. It was further averred that after the demise of Mr. Arday, Mr. Okoe took over the workshop and collected money from each mechanic monthly to be given to Mr. Arday's widow. The Defendants contended that the land was not for the Plaintiff and that no building project could be undertaken on the access road.

A Reply was filed on 16th February 2011 wherein the Plaintiff averred that he acquired the land from Obed Frank Komla Mensah, whom a search at Lands Commission had revealed as being the owner thereof. He stated that Addey was his cousin with whom he worked and Addey being the caretaker of the workshop, allowed the mechanics to be on the land and collected rent from them until his demise. He stated that Addey left the workshop before he died and Okoe and Saka took over the management of the workshop. He stated that he was introduced by Addey to Okoe and Saka as the owner of the land before he died. He further stated that he had a judgment which had declared him as the owner of the land.

Pursuant to an Order for Joinder dated 14th October 2013, Humphrey Odartey Mills was joined to the suit as 6th Defendant. The 6th Defendant filed his Statement of Defence on

10th December 2013 with a Counterclaim. He stated that the Plaintiff has no interest in the land and that the other Defendants are also trespassers. According to him, his family granted a licence of the land to Ade Fitter to ply his business during the lifetime of their then Head of Family, Emmanuel Lanquaye Ablorh Mills and upon the death of Arde Fitter, some artisans started trespassing onto the land. It was averred that the land was granted by the family to Emmanuel K. Asiedu who constructed a wall around the land with the artisans hemmed in and the Plaintiff upon seeing this, confronted the then Family Head, James Lante Ablorh Mills who informed Plaintiff that the land was for the Joseph Ablorh Mills family and if he had any issues, he could sue them.

The 6th Defendant averred that the Plaintiff surreptitiously sued the 1st to 5th Defendants instead of his family and it was upon having knowledge of the suit that he joined the action. He further averred that aside the expenses Emmanuel K. Asiedu incurred in putting up the wall, he had not paid for the land and the family had thus revoked the grant to him. The 6th Defendant counterclaimed as follows:

- a. A declaration of title to all that piece or parcel of land situate lying and being at Laterbiokorshie, Accra and bounded on the West by lessor's land measuring 208 feet more or less, on the North by proposed road measuring 30 feet more or less on the East by lessor's land measuring 210 feet more or less and on the South by proposed road measuring 30 feet more or less and containing an approximate area of 0.14 acre or 0.06 hectare.
- b. An order of court ejecting the 1st to 5th Defendants from the land within a time frame to be stipulated by the Court.
- c. Perpetual injunction restraining the Plaintiff, 1st to 5th Defendants, their servants, privies, workmen etc. from entering unto the land or doing anything constituting an interference with the title, interest and or right of the 6th Defendant's family's ownership of the land.

- d. A further order upon the 1st to 5th Defendants to remove any unlawful structure of theirs on the land within a time frame of the Court.
- e. Costs.

On 24th December 2013, a Reply and Defence to Counterclaim of 6th Defendant was filed by the Plaintiff wherein he averred that his grantor, Obed Frank Komla Mensah, acquired the land from William Allotey on or about 1st June 1965 and that there is a registered indenture in respect of the sale of the land. He averred that in or about the year 2012, someone started fencing two sides of the land and upon a complaint lodged with the Property Fraud Unit of the Ghana Police Service and order of the Police, the developer ceased the development. He stated that he rather confronted Emmanuel Odartey Mills to inform him of his ownership of the land. He stated that the 6th Defendant is only a busybody and not entitled to his Counterclaim.

Per an Order for Joinder dated 8th April 2015, the 7th Defendant was joined to the suit. On 22nd April 2015, a Statement of Defence and Counterclaim was filed by 7th Defendant. According to him, his late father, Yaotse Nutakor put a mechanic known as Ade on the land in 1970 and after Ade's death, his apprentice known as Ataa Okoe took over and also handed over the land to Saka, a former apprentice of Ade, and the 1st Defendant. He averred that he had a grant of the land from the Sempe Stool. He also counterclaimed for the following reliefs:

- i. Declaration of title and recovery of possession of all that piece or parcel of land situate and lying at Mamprobi-Accra covering an approximate area of 0.31 acre more or less bounded on the North by a proposed road measuring 60.0 feet more or less and on the East by stool land measuring 205.0 feet more or less and on the East by stool land measuring 70.0 feet more or less and on the West by Stool land measuring 205.0 feet more or less.

- ii. Damages for trespass.
- iii. Costs.

The Plaintiff in his Reply and Defence to Counterclaim of the 7th Defendant filed on 1st June 2015 denied paragraphs 3 to 6 of the 7th Defendant's Statement of Defence save the fact that the 1st to 5th Defendants are working on the land and that Arde, Ataa Oko and Saka took care of the land at different times. He averred that the 7th Defendant is not entitled to his Counterclaim.

Issue

From the foregoing and in a bid to determine whether the parties are entitled to their respective reliefs they seek from this Honourable Court, the main issue joined between the parties is in respect of the ownership of the land in dispute; thus, whether or not the disputed land is owned by the Plaintiff, the 6th Defendant or the 7th Defendant.

In addition to this, there are a number of collateral issues which have been raised on the pleadings and on the evidence. It is necessary that these must be resolved first to enable the Court to make its finding upon the facts, and then apply the relevant laws to determine the main issue.

Evaluation of Evidence and Legal Analysis

It is the duty of a Plaintiff to prove his case for a determination to be made in his/her favour. A party who raises issues essential to the success of his/her case assumes the onus of proof and as such a person who alleges, whether a plaintiff or a defendant, assumes the initial burden of producing evidence. It is only when such a person has been

successful in producing evidence that the other party will be required to lead rebuttal evidence, if need be. In the case of **T. Chandiram v. Tetteh [2018] 120 GMJ 112 @ 147 C.A.**, Her Ladyship Agnes M. A. Dordzie, J.A (as she then was) noted on the standard of proof in civil cases as follows:

“[T]he standard of proof in a civil suit is placed on the ‘balance of probabilities. Section 12 (2) of the Evidence Act defines it 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.”

Again, in the case of **Agbosu v Kotey; In Re Ashalley Botwe Lands [2003-2004] SCGLR 420**, His Lordship Brobbey, JSC (Rtd.) noted:

“The effect of sections 11(1) and 14 and similar sections in the Evidence Decree 1975 may be described as follows: A litigant who is a Defendant in a civil case does not need to prove anything. The Plaintiff who took the Defendant to court has to prove what he claims he is entitled to from the defendant... At the same time if the court has to make a determination of a fact or of an issue, and that determination depends on the evaluation of facts and evidence the defendant must realize that the determination cannot be made on nothing. If the defendant desires a determination to be made in his favour, then he has a duty to help his own cause or case by adducing before the court such facts or evidence that will induce the determination to be made in his favour...”

The Plaintiff therefore has the responsibility of adducing evidence which is sufficient enough to avoid a ruling against him on the issues before the Court. See also the following cases:

Takoradi Flour Mills vs. Samir Faris [2005-2006] SCGLR 882 @ 900

GIHOC Refrigeration & Household vs. Jean Hanna Assi (2005-2006) SCGLR 458

Tagoe v. Accra Brewery [2016] 93 GMJ 103 S.C

Deliman Oil v. HFC Bank [2016] 92 GMJ 1 C.A.

Baker-Woode v Nana Fitz [2007-2008] SCGLR 879

Ababio v Akwesi III [1994-95] GBR 774

Air Namibia v. Micon Travel [2015] 91 GMJ 173 @ 191 C.A

In a case where a Counterclaim is filed by a Defendant, the Defendant assumes the position of a Plaintiff as regards his or her Counterclaim and would therefore have to prove the counterclaim. The Supreme Court speaking in the burden of proof on a Defendant who has a Counterclaim held in the case of **Nortey (No. 2) v African Institute of Journalism and Communication & Others (No. 2) [2013-2014] 1 SCGLR 703** as follows:

“Without any doubt, a defendant who files a counterclaim assumes the same burden as a plaintiff in the substantive action if he/she is to succeed. This is because a counterclaim is a distinct and separate action on its own which must also be proved according to the same standard of proof prescribed by sections 11 and 14 of NRCD 323 the Evidence Act (1975).”

The Court of Appeal also noted as follows on the same topic in the case **Alex Etoh Kwaku v Bridgette Ofosu Asabea [2014] 72 GMJ 68**:

“It is trite learning that in civil suits when the defendant counterclaims, for the purposes of the relief, that party becomes the plaintiff and bears the same burden of establishing that relief. The yardstick being the same as the plaintiff, on the preponderance of probabilities.”

Both the Plaintiffs and the 6th and 7th Defendants herein therefore had the duty in the course of the suit to produce sufficient evidence in respect of their respective claims on a

balance of probabilities for a determination to be made in their favour. See also the case of **In Re Krah (Decd.); Yankyeraah v Osei-Tutu & Another [1989] DLSC 601**. There seem to be one person whose name appears to be running through the pleadings and evidence but his name is spelt differently at different times; Arday, Addey, Ade Fitter, Arde Fitter, Ade. In order to ensure some uniformity, the Court in referring to this said person in this judgment would stick to the use of Ardey.

Plaintiff's Case:

In his evidence-in-chief adduced on 12th April 2012, the Plaintiff testified that he bought a parcel of land at Mamprobi behind Dehay Hotel from Frank Obed Mensah in 1977 and a search conducted at Lands Commission confirmed that the land was not state land. He said he took possession, put up a 4-room wooden structure and started operating an auto mechanic shop. He said that he instituted an action against the one he bought the land from and judgment was entered in his favour. He tendered in evidence a photocopy of an indenture as Exhibit 'A', a copy of the judgment as Exhibit 'B' and a search report as Exhibit 'C'.

The Plaintiff denied that the land is an access road. He testified that he had to be outside the country so his cousin known as Ardey (deceased) was the caretaker of the land and shop and he gave portions of the land to the Defendants to ply their mechanic, carpentry and welding trade thereon since the land was vast. He stated that Ardey handed over the shop to Okoe (deceased) and Saka who were apprentices to operate it and admitted that monies were taken from the mechanics on the land monthly for Mr. Ardey's widow and that it was Saka who collected the monies. He stated that the land was his and prayed the Court to grant him his reliefs.

Plaintiff was recalled on 14th April 2014 when the 6th Defendant was joined to the suit and on 22nd September 2015 when 7th Defendant was joined. He testified that he did not know

anything about any licence granted by the family of 6th Defendant to Ardey to operate on the land. He also stated that he does not know K. Asiedu and it was not correct that the said person constructed a wall around the land because when he bought the land in 1977, the walls on the East and West had already been constructed. He further stated that the land was for the Sempe Stool and not for any family. According to him, he himself gave the land to his cousin, Ardey after putting up 4 rooms and 6 garages on the land and Ardey employed Attaa Okoe and Saka as his assistants. Plaintiff testified that during the reign of Tetteh Kpeshie as the Sempe Mantse, the land was given to W.T. Allotey who also gave it to Obed Mensah, and he bought it from Obed Mensah. He further stated that he never received the documents of the land from Obed although he took possession and he therefore filed a case against Obed since he could not find him and judgment was entered in his favour.

The Plaintiff called Isaac Amoo Kwabena Ebo as his witness. PW1 testified that he works with the Defendants (1st – 5th) at the workshop and that he had been there since 1977, living there in Plaintiff's structure since then. He stated that he used to repair the Plaintiff's car and that when Plaintiff set up the workshop, he asked him to live there. He stated that when he went there, he met some carpenters who were constructing a shed and a 4-room apartment so he joined in tidying up the place and they commenced work.

According to PW1, the Plaintiff was the workshop manager whilst Ardey, Paapa and Joe were fitters in the shop. He said that Plaintiff travelled occasionally but he informed them one day that he was travelling abroad for a while and all that while, none of the Defendants was there. He stated that whilst the Plaintiff was abroad, Ardey brought Oko and Saka to the land and these two also gave the land to Defendants. He added that the 1st and 2nd Defendants had been on the land for about 10 years, and the 4th Defendant for about 17 years. He said that the 5th Defendant did not operate from the workshop but had built a small structure there where he lives.

Defendants' Case:

The 1st Defendant's evidence was that his uncle, Kweikuma gave the disputed land to Ardey to operate the place as a fitting shop and the Plaintiff used to bring his car to Ardey for repairs. He stated that after Ardey's death, his senior apprentice, Oko, took over and after Oko's death, Saka also took over. He testified that Saka worked with apprentices including the other Defendants and that he has a carpentry workshop on the land and pays no rent but others used to pay to Ardey and upon Ardey's death, it was Oko who collected the rent and gave it to Ardey's wife. According to 1st Defendant, his uncle was interested in buying the land but a search he did showed that the land had been demarcated as road.

The 6th Defendant testified through his Attorney, Odartey Mills. He tendered in evidence a copy of the Power of Attorney donated to him by the 6th Defendant as Exhibit 'H1'. According to him, the 6th Defendant is the Head of family and land in dispute is owned by the Ablorh family. He testified that his late father, James Lamptey Mills, who was then the family head, gave the land to Ardey and also sold it on the family's behalf to one Emmanuel K. Asiedu, who was given an indenture. The said indenture was tendered in evidence as Exhibit 'H2'.

He further testified that before the land was sold to Emmanuel K. Asiedu his father asked the said Emmanuel Asiedu to conduct a search on the land, which he did and the search report was tendered in evidence as Exhibit 'H3'. He also tendered a yellow card issued to Mr. Asiedu as Exhibit 'H4'.

According to the 7th Defendant's evidence as well, one Mr. Kofi Amewor informed his father of the sale of the land and his father bought the land from William Thomas Allotey, a grantee of Sempe stool in 1965, with the said Kofi Amewor sharing boundary with him. He said his father deposited sand and blocks on the land for development but he was

unable to go on due to a decline in his business. He stated that in 1968, his father asked them to find someone to occupy the land and as a result, a mechanic was brought unto the land with his apprentice in early 1970 and since then, the land had been occupied by fitters and artisans, who were to keep watch over the land.

It was 7th Defendant's evidence that they never demanded anything from the artisans but only reminded them of their task to protect the land from encroachment. He said that his father prior to his death on 3rd November 1983, customarily granted the land to them on his sick bed and that although no documentation was done, all his relatives were aware. He testified that he and his siblings had challenges financing their education and as such, his elder brother and uncle in the year 1988 decided to lease the land to raise money for their education.

According to D7, a man known as Mr. Otoo contended that he owned the land but he could not produce any documents and the matter died. He stated that they could not find the documents his father was given, save a site plan together with a building plan on the same sheet, which he tendered in evidence and was marked D7's Exhibit 1. He also tendered in evidence a statutory declaration he prepared. He stated that when he wanted to register the statutory declaration, he was told that Mr. William Thomas Allotey was not a Sempe Mantse so he could not have sold the land to his father without the consent of the Sempe Mantse so he needed to go to the Stool for fresh documents before his application for registration could be continued. He further stated that he had a search report from Lands Commission showing that Sempe stool had authority over the land.

D7 testified that he went to the Sempe Stool in the year 2000 to report that his father bought land from Mr Allotey, a grantee of the Sempe stool but that they could not find the documents. He said that there was chieftaincy dispute in the Sempe Kingdom so it delayed every process till 2010 when the Ablorh Mills family sold the land to Emmanuel Asiedu and they started developing it. He said that the artisans on the land informed him

and he went with two of his siblings, caused the arrest of the Ablorh Mills family people, who were unable to produce any document and were ordered not to step foot onto the land again, which order they complied with.

He stated that the fitters and artisans pulled down the walls they put up. He further stated that he never heard anything from plaintiff although he was here in Accra and that in 2011 when the plaintiff was moulding blocks on the land, he went with a policeman to stop him. D7 tendered in evidence a deed of lease given to him. According to D7, his father was survived by 24 children and they agreed that he represents them and that is why the documents bear his name.

The 7th Defendant's first witness was Torgbui Asedu IV. He testified that he used to stay in the house of one Mr. Alehito at Mamprobi and used to work on the land in dispute as a mechanic from Monday to Friday and anytime he had a private job during weekends. His landlord, Mr. Alehito, told him that he bought the land for D7's father. D7's father deposited stones and blocks on the land but he had nothing on the land by the time he passed away. The land was vacant in 1973. Mr. Alehito gave the land to a mechanic known as Ardey as a caretaker so that he could work on it and protect it from trespass. Ardey put up a structure on the land. Alehito travelled to his hometown for a funeral in 1983 and was involved in an accident and passed away. Ardey worked on the land without any interference till his demise. His apprentice, Okoe took over after his death. Nobody approached him to lay claim to the land when he was working on the land.

D7's second witness also testified that D7's father bought land adjacent his father's land from the same grantor. He enquired from his father the owner of that land since it had blocks and sand on it but had been left undeveloped and his father told him it was for Yaotsey Nutakor. Mr. Ardey went to see his father to be permitted to have a fitting shop on the land, to which his father agreed and the shop was started. Plaintiff's friend was

Ardey and he brought his vehicle to Ardey for repairs. When Ardey passed away, his apprentice, Atta Okoh took over the workshop. The Plaintiff was often seen there.

Analysis

Among the number of collateral issues is the relationship, if any, which exists between the Sempe stool and the land in dispute. On the part of the Plaintiff, he testified that the land was for the Sempe Stool and that during the reign of Tetteh Kpeshie as the Sempe Mantse, the land was given to W.T. Allotey who also gave it to Obed Mensah, and he, Plaintiff, bought it from Obed Mensah in 1977 and took possession of same.

The 6th Defendant's Attorney's evidence on the other hand was that the land in dispute is owned by the Ablorh family. He testified that his late father, James Lamptey Mills, who was then the family head, gave the land to Ardey and also sold it on the family's behalf to one Emmanuel K. Asiedu, who was given an indenture.

According to the 7th Defendant as well, his father bought the land from William Thomas Allotey, a grantee of Sempe stool in 1965 and after his father's death, he went to the Sempe Stool in the year 2000 to commence the process of obtaining documents since they could not find his father's documents.

From the evidence adduced by the parties before this Court, both the Plaintiff and the 7th Defendant suggest that the land in dispute was initially a stool land. However, the 6th Defendant argues that it is a family land. Under cross examination of Plaintiff by Counsel for 6th Defendant, there was a suggestion from him that the land in dispute forms part of larger land which the Sempe Stool and two other stools jointly granted to Joseph Ablorh Mills. I have carefully examined the evidence, inclusive of the exhibits tendered by the parties to the suit and these are my findings. It is evident from Plaintiff's Exhibit 'A' which is an indenture dated 1st June 1965 evidencing a transaction between William Thomas

Allotey (vendor) and Mr. Obed Frank Komla Mensah (purchaser) in respect of all that piece or parcel of land situate at West Mamprobi, Sempe Township, Accra covering area of 0.64 acre, that the land in dispute belonged to the Sempe stool. In the said exhibit, there is a deed of gift dated 31st March 1952 between Nii Tetteh Kpeshie II, Sempe Mantse of Accra and William Samuel Allotey. I must point out at this stage that Exhibit 'A' reveals that the initial conveyance covered an area of 0.64 acre, however the Plaintiff's interest in the land, if any, covers an area of 0.303acre of the total land area of 0.64acre which the Sempe stool through a deed of gift, transferred to William Samuel Allotey and same was sold by William Thomas Allotey to Mr. Obed Frank Komla Mensah. Plaintiff's Exhibit 'C', a search at Lands Commission dated January 2008 reveals that the site is not State land but affects conveyance dated 1/6/1965 from W.T. Allotey to Obed Frank Komla Mensah.

7th Defendant testified that his father bought the land from William Thomas Allotey, a grantee of Sempe stool in 1965. However, when he found himself cornered under cross-examination, he changed his story and confirmed that he came across some information which supports a portion of Plaintiff's story. The following as happened under cross examination of D7 by Counsel for Plaintiff is worth reproducing;

Q: I put it to you that William Thomas Allotey sold the land in dispute to Mr. Obed Frank Komla Mensah on 1st June, 1965.

A: I came across that information through a search so I went back to the Sempe stool. They told me it is a stool land and they do not know the said Frank Obed and he is not a grantee of the Sempe stool so I should continue to be the owner of the land as they had given it to me.

Q: I put it to you that it was the Sempe stool represented by Nii Tetteh Kpeshie who gave the land to William Samuel Allotey before same was transferred to William Thomas Allotey

A: Yes, I have already stated that.

Q: I put it to you that the Sempe Stool having divested their interest in the land same cannot be sold to your father by the same Sempe stool?

A: Yes, my lady. That is why I went back to the Sempe stool. They maintained that they have given a document to me on the land.

This piece of evidence proves that the 7th Defendant had knowledge of the fact that the 0.64acre land, of which the land in dispute is part, was alienated to Obed Mensah. In fact, 7th Defendant admitted that he came across a search showing that William Thomas Allotey sold the land in dispute to Obed Mensah. He also admitted that it was the Sempe stool which gave the land to William Samuel Allotey before same was transferred to William Thomas Allotey and subsequently Obed Mensah. The Sempe Stool having divested their interest in the land could not have sold same to the 7th Defendant's father.

It is a general principle of law that where title is derivative, the person must show that the predecessor-in-title had valid title. This is because nothing could ever be founded on that which is void and null, for in law you cannot put anything on nothing and hope it remains there, it will fall; also, "*Ex nihilo nihili fit*" (nothing comes out of nothing). The maxim of old is still good and applies to this case for the Court. Thus, the Court speaking through Ansah JSC in the case of **Awuku v Tetteh [2011] SCGLR 366** held that:

"... where an appellant's title was derivative, he ought to demonstrate that the predecessor in title held a valid title which he could pass to his grantee, for if the foundation was tainted the superstructure was equally tainted."

Now at this stage, I shall state very briefly the facts which are not in dispute together with those I have found proved, then discuss the law on the point, and finally apply the law to the facts to come to my decision. On 31st March, 1952, the Sempe Stool represented by Nii Tetteh Kpeshie through a deed of gift gave the land, the subject matter of the suit to William Samuel Allotey before same was transferred to William Thomas Allotey. On 1st June, 1965, William Thomas Allotey divested his interest in the land and sold same to Mr. Obed Frank Komla Mensah. The Sempe Stool having divested their interest in the land could not have sold same to the 7th Defendant's father per the maxim *nemo dat quod non habet*, which essentially is to the effect that one cannot give what he does not have. In the case of **Mrs. Christiana Edith Agyakwa Aboa and Others v Major Keelson (Rtd) (2011) JELR 68105 (SC)** the Court held as follows:

"It can thus be safely concluded that, the principle nemo dat quod non habet applies whenever an owner of land who had previously divested himself of title in the land previously owned by him to another person, attempts by a subsequent transaction to convey title to the new person in respect of the same land cannot be valid. This is because an owner of land can only convey what he owns, and having already divested himself of title, the new occupant of the Begoro Stool Nana Antwi Awuah III cannot revoke what his predecessor had done."

Even though the 7th Defendant tendered in evidence Exhibit 2, a statutory declaration dated 8th January 2003 that the late Nii Tetteh Kpeshie II and the late William Samuel Allotey donated the land to William Thomas Allotey who also sold it to his father, Yaotse Nutakor and that his father also made a customary gift of the land with size 0.31acre to him, the more important question is whether this document creates any proprietary right in them. I think it does not. True, the declaration is a document in writing affecting land situate in Ghana, but it is not a deed or conveyance, nor does it purport to create or convey an interest in land. It has been held by the Courts that such document is self-serving.

Thus, the Court in the case of **In Re Ashalley Botwe Lands; Adjete Agbosu v Kotey & Ors [2003-04] SCGLR 420** held that:

“Under section 2 of the Statutory Declaration Act, 1971 (Act 389), a person wishing to depose of any fact for any purpose may do so by means of a statutory declaration, provided it does not relate to any proceedings, application or other matter commenced in any court or referable thereto or where under the provisions of any enactment an affidavit is authorised to be sworn. Generally, statutory declarations per se, are self-serving documents and so of no probative value where the facts contained in them are challenged or disputed. Specifically, therefore, in the defendants’ case, it only contained the facts which may be used to prove their title but it did not per se, whether registered or unregistered, confer any title on, or for that matter create any title or proprietary right in them.” [Emphasis mine]

7th Defendant has therefore not been able to prove his title or interest in the land in dispute for this Court to grant him the reliefs he seeks. Also, his Exhibit 5, which is an unregistered deed of lease between Nii Adote Obuor II, Sempe Mantse and D7 dated 1st October 2010 is of no legal effect as same is unregistered. It is trite that an unregistered instrument is ineffective until it is registered. This means that no legal consequences can flow from it.

Assuming without admitting that the land in dispute is a family land as claimed by the 6th Defendant, the evidence adduced before this Court reveals that 6th Defendant does not even have the capacity to deal with the land, the subject matter of the suit. This is because 6th Defendant who testified through his Attorney, Odartey Mills, stated that the land in dispute is owned by the Ablorh family and same was given to Ardey and the same land was also sold on the family’s behalf to one Emmanuel K. Asiedu, who was given an indenture. The said indenture was tendered in evidence as Exhibit ‘H2’.

Exhibit 'H2' is an indenture dated 13th September 2010 between James Lante Ablorh Mills, head of the late Joseph Ablorh Mills family of Accra and Emmanuel K. Asiedu in respect of a 0.14 acre land. Even though the 6th Defendant mentioned that the family revoked the conveyance made to Asiedu because he has not made payment for the transfer, there is no evidence that there has been a valid re-entry by the family. Under cross-examination when 6th Defendant's attorney was questioned as to his capacity, he testified that Asiedu was nowhere to be found so the family thought it necessary to sue. This is what happened during cross-examination of 6th Defendant by Plaintiff's counsel;

Q: Where is Mr. Asiedu?

A: He is alive but we don't know his whereabouts.

Q: So as at now the land belongs to Mr. Asiedu but not your family.

A: So far as my father gave the land to Mr. Asiedu it belongs to Mr. Asiedu.

Q: Do you have the authority to claim the land on behalf of Mr. Asiedu?

A: So far as the land has been given to Asiedu it is for Asiedu and Mr. Asiedu has not been found, we found it necessary to join the suit.

Also, during the cross-examination of the 6th Defendant by the 7th Defendant, this is what transpired;

Q: Whiles the case is still in court, is Asiedu not in town?

A: He came and left again.

Q: Was he made aware of the case on this land.

A: Yes, but because he is not available that is why I am here.

Q: So, on record the land is no longer for him.

A: Yes, but I am in this matter because Asiedu is not available and so I am representing him.

Q: Has Asiedu given you any power of attorney to stand in for him?

A: I have a power of attorney in the name of the family.

Admittedly, in most civil actions, the parties themselves do testify as key witnesses. Without dispute, that is a most worthy and prudent step to take, where the disputed facts happen to be within their personal knowledge. Indeed, where the nature of the dispute calls for a party's personal testimony, he cannot avoid the witness box. However, I know of no rule of law which states that a party would succeed in his case only if he testified at the trial. The standard test in any given case is not whether the party himself gave evidence at the trial, but whether he was able, through whomever, to provide the needed evidence. So that even if a party did not make himself available at the trial as a witness, provided sufficient evidence was led on his behalf in proof of his case, he ought not to lose the action on the basis that he himself never testified at the trial.

From the evidence adduced by 6th Defendant's Attorney, Asiedu still remains the owner of whichever land 6th Defendant's Family sold to him and since the former has not given any power of attorney to the 6th Defendant, it cannot be said by 6th Defendant that he is defending the matter and representing Asiedu. The family having divested their interest in the land to Asiedu, they have no interest in the land and therefore cannot defend same, especially when the said Asiedu is said to be aware of the suit.

It is therefore reasonable for this Court to conclude which same is borne out of the evidence adduced that the 6th Defendant, like the 7th Defendant, has not been able to discharge the burden of proof on him by proving to the satisfaction of this Court his claims in order to warrant the grant of his reliefs sought. The case of the 1st to 5th Defendants who were originally part of the suit was that the property in dispute is an access road but they were also unable to adduce any credible evidence to support this.

Now to the issue of whether or not the Plaintiff is the owner of the land in dispute. As found as a fact by this Court, on 31st March, 1952, the Sempe Stool represented by Nii Tetteh Kpeshie through a deed of gift gave the land, the subject matter of the suit to William Samuel Allotey before same was transferred to William Thomas Allotey. On 1st June, 1965, William Thomas Allotey divested his interest in the land and sold same to Mr. Obed Frank Komla Mensah. It is this Obed Frank Komla Mensah that the Plaintiff claims sold the land to him. Plaintiff therefore claims ownership of same.

The Court in the case of **Deliman Oil v. HFC Bank [2016] 92 GMJ 1 @ 25 C.A. per Barbara Ackah-Yensu, J.A** defined an owner of land as:

“An owner of land is a person who can show that he and those through whom he claims title have possessed the land for so long that there can be no reasonable probability of the existence of a superior adverse claim.”

Plaintiff therefore had the burden of proving to the satisfaction of the Court his ownership in the land in dispute against which no superior adverse claim exists. He testified that he bought the land in dispute from Frank Obed Mensah in 1977. According to him, he took possession of the land, put up a 4-room wooden structure and started operating an auto mechanic shop. He testified that he had to be outside the country so his cousin called Ardey (deceased) was the caretaker of the land and shop and he gave portions of the land to the Defendants to ply their mechanic, carpentry and welding trade thereon since the land was vast. He stated that Ardey handed over the shop to Okoe (deceased) and Saka who were apprentices to operate it and admitted that monies were taken from the mechanics on the land monthly for Mr. Ardey's widow and that it was Saka who collected the monies. He said that he instituted an action against Obed and judgment was entered in his favour. He tendered in evidence a photocopy of an

indenture as Exhibit 'A', a copy of the judgment as Exhibit 'B' and a search report as Exhibit 'C'.

I must point out that the Plaintiff has no title documents evidencing that the land was transferred to him. Exhibit 'A', which he tendered is an indenture dated 1st June 1965 evidencing a transaction between William Thomas Allotey (vendor) and Mr. Obed Frank Komla Mensah (purchaser) in respect of all that piece or parcel of land situate at West Mamprobi, Sempe Township, Accra covering area of 0.64 acre. In the said exhibit, there is a deed of gift dated 31st March 1952 between Nii Tetteh Kpeshie II, Sempe Mantse of Accra and William Samuel Allotey. Attached at last page is a Plan of Land for Plaintiff with area being 0.303acre, signed by licensed surveyor on 30/5/2007 and approved by Regional Surveyor on 6/7/07.

Plaintiff does not have his name on any of the documents tendered as exhibits before this Court to prove his ownership, save the site plan, which is not enough to establish ownership, and the judgment, which I would address soon. Plaintiff had no evidence to prove that he had acquired the land from Obed. He could not even produce a receipt. He himself admitted that Obed Frank Mensah had not transferred the land to him but he relied on the judgment he tendered as evidence of ownership of the land. The following as happened when he was being cross examined by Counsel for 1st to 5th Defendants attests:

Q: Do you have proof that you purchase [sic] land?

A: No, I have no receipt.

Also, under cross-examination of Plaintiff by counsel for 6th Defendant, Plaintiff failed to lead evidence to prove his claim, if any, to the land in dispute. This is what happened during cross-examination;

Q: I put it to you that Obed Frank Komla Mensah whose indenture of site plan you are relying on has not transferred the land to you.

A: I agree. However, I won a court judgment against him.

Q: None of the documents tendered so far bears your name.

A: They bear my name.

Q: The person you claim you had the judgment against was dead to your knowledge when you issued the writ.

A: It is not true. I did not know his whereabouts that time.

From the above evidence adduced, Plaintiff admitted that Obed has not transferred any land to him. However, he was relying on the judgment to claim ownership of the land in dispute. After having admitted earlier during cross-examination that he learnt that Obed was dead from one W.T. Allotey but he was not sure so he proceeded to Court to get judgment, he denied subsequently under cross-examination that he had no knowledge of his death. This is one of the points on which the Plaintiff betrayed himself as a dishonest person. The said judgment is Exhibit 'B' which are proceedings of 3/11/09 in Suit No. A1/7/09 between Elliot Garshong Adama and Obed Frank Komla Mensah. For the avoidance of doubt, the said judgment is to the effect that: *"BY COURT: The defendant having been served with the writ had never appeared in Court nor filed any defence to the suit. Having heard evidence of Plaintiff Judgment is entered for the reliefs he is seeking thus ownership to the parcel of land stated in relief of the writ and perpetual injunction restraining the defendant, his agents, assigns, servants, workmen or whoever from interfering with the plaintiff's land..."*

When Plaintiff was being cross examined, he gave these responses:

Q: Where is the one who sold it to you?

A: I learnt he is dead from one W.T. Allotey who also sold the land to Frank Mensah.

Q: Did he tell you when he died?

A: No but I believe he died over 10 years ago.

Q: You brought action to court, obtained judgment knowing he was long dead.

A: I was told he was dead but I was not sure so I proceeded to Court.

Q: I put it to you that the judgment obtained in this Court (Exhibit 'B') was obtained by friend [sic].

A: Not true.

This Court is of the considered opinion that the Plaintiff having knowledge of the death of Obed hurriedly went to court to claim ownership of the land in dispute knowing very well that the deceased cannot appear to defend the matter as such, judgment will automatically be given in his favour. It became apparent from the proceedings that the Plaintiff instituted his action against Obed Mensah, when the said person had already died and as such, he obtained a judgment against a non-juristic person. I would therefore attach no weight to Exhibit B since the law is certain that whenever a process is commenced against a deceased person, any proceedings had in the case with its attendant judgment are a nullity and cannot stand. See the case of **Theresa Ofori v Star Assurance Company Limited Civil Appeal No. J4/27/2013 dated 29th October 2014 [2014] DLSC 3020.**

When PW1 got into the witness-box, he told quite a different story. Plaintiff himself had testified that he had no proof that he purchased the land in dispute from Obed and had no documents to show but for the said judgment. However, PW1 vehemently said that

Plaintiff has documents to prove his ownership. This is what transpired under cross-examination of PW1 by counsel for Defendants (1st to 5th);

Q: Did you see documents of ownership by Plaintiff?

A: Yes, Plaintiff showed me documents.

Q: Plaintiff has no single document showing his ownership of the said land.

A: Not true.

PW1's evidence was not in sync at all with that of the Plaintiff who called him to support his case. He mentioned one Paapa and Joe as fitters who were in the shop with Ardey and Plaintiff being the workshop manager. These names were not mentioned anywhere in Plaintiff's evidence and Plaintiff never stated that he was a workshop manager. PW1 further testified that it was when the Plaintiff travelled outside the country that Ardey brought Okoe and Saka onto the land and it was these two people who gave the land to the Defendants, a totally different story from the Plaintiff's story. A witness of this type would say anything to throw dust into the eyes of the Court because of some benefit he may gain and it is obvious that he certainly has no regard for the solemn sanctions of an oath and this Court cannot rely on his testimony.

Plaintiff testified that Ardey handed over the shop to Oko (deceased) and Saka who were apprentices to operate it and admitted that monies were taken from the mechanics on the land monthly for Mr. Ardey's widow and that it was Saka who collected the monies. The legitimate question begging for an answer is, why would Saka give monies collected in respect of the land in dispute to Ardey's widow and not the Plaintiff, if the land is for Plaintiff especially when Plaintiff was purportedly introduced to Saka and Okoe by Ardey as the owner of the land in dispute? Plaintiff when he found himself cornered under cross-examination changed his story. This is what happened under cross-examination of Plaintiff by 1st-5th Defendant;

Q: You brought Defendant to Court as they are in possession of the land.

A: Not true. The Defendants pay rent to me.

Q: Defendants have never paid rent to you ever.

A: They've been paying through my caretaker, one Oko and Saka.

Q: Oko and Saka have never been your caretaker at any time.

A: They've been. Oko is now dead. Saka is alive.

The Plaintiff had never asserted that any monies were paid to him by way of rent by the Defendants. However, under cross examination, his story was now that the Defendants paid rent to him, through Okoe and Saka who he now claimed to be his caretakers. Since when did Saka and Okoe become his caretaker? Plaintiff never mentioned this in his evidence except that Ardey was his cousin and caretaker and Okoe as well as Saka were taking rent and giving same to Ardey's wife when Ardey passed away.

I find it quite surprising why the Plaintiff did not call Saka as his witness to testify for him to corroborate his case especially when Plaintiff mentioned that Saka was alive, he being a very material witness since Ardey and Okoe had passed away. The latter's testimony would have helped clear any suspicions surrounding Plaintiff's claim to the land in dispute and confirmed his ownership in the land, if any.

It is trite that a Plaintiff who claimed for declaration of title must prove his root of title, mode of acquisition and various acts of possession exercised over the disputed land. The Court in the case of **Dr. Eric Graham v. Vivian Aku Brown-Danquah & 3 Ors [2019] 146 GMJ 28 @ 77 CA per A.M. Dordzie, JSC** held that:

"The law requires the plaintiffs to prove their root of title, mode of acquisition and various acts of possession exercised over the disputed land. This position of the law is emphasized in the case of Mondial Veneer (GH) Ltd. v. Amuah Gyebu XV [2011] 1 SCGLR 466 at

page 475 the Supreme Court per Wood JSC held “In land litigation...the law requires the person asserting title, and on whom the burden of persuasion falls...To prove the root of title, mode of acquisition and various acts of possession exercised over the subject-matter of litigation.” [P. 77] lines 10-20

See also, **Miswa Chemicals Ghana Ltd. v Emmanuel B.A Doku [2019] 137 GMJ 125 @ 174 C.A per Honyenuga, J.A and Awulai v. Tetteh [2011] SCGLR 366 Holding (1).**

This Court is of the opinion that the Plaintiff has failed to prove to the satisfaction of the Court that he is the owner of the land in dispute on a balance of probabilities. The inconsistencies surrounding his evidence is so grave that it will be an error for a competent and a reasonable Court to declare that the land in dispute belongs to the Plaintiff or to grant him the reliefs he seeks. Since no party was able to prove to the satisfaction of the Court his claim to the land, the action therefore fails.

Conclusion

Having analysed the evidence adduced by the parties herein, this Court finds that the Plaintiff was unable to discharge the burden of proof on him to entitle him to the reliefs he seeks from this Court. The 6th and 7th Defendants were also unable to prove their counterclaim. Accordingly, the case of each of them fails and the claim and counterclaim are accordingly dismissed.

[SGD]
AMA ADOMAKO-KWAKYE (MS.)
(MAGISTRATE)

Counsel

Robert Allotey, Esq. holding brief of Alfred Bannerman-Williams Jnr., Esq. for the Plaintiff

Leslie Anim, Esq. for the 7th Defendant