

**IN THE DISTRICT COURT TWO TAMALE  
HELD ON TUESDAY 28<sup>TH</sup> NOVEMBER, 2023  
BEFORE HIS WORSHIP D. ANNAN ESQ.**

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**SUIT NO. A2/55/23**

**BETWEEN**

**IDDI FUSEINI**

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**PLAINTIFF**

**AND**

**1. SULEMANA MAHAMA @ ADISHIR**

**2. MR. HAMZA YAKUBU**

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**DEFENDANTS**

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**JUDGMENT**

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1. This is a judgment relating to land.
  
2. The plaintiff described himself as an illiterate and resides at Vagyili, near Tamale. The 1<sup>st</sup> defendant is a subchief of the Banwim Skin while the 2<sup>nd</sup> defendant described himself as a businessman. Per his Writ of Summons filed on 24<sup>th</sup> March, 2023 the plaintiff claims against the defendants, the following reliefs:

- “a. A declaration of title to a piece of land known as Plot No. 99 situate and lying at Banvim South Extension Residential Area, Block B.
- b. Damages of GHS28,410.00 for trespass.
- c. Recovery of any portion of land trespassed upon by defendants.
- d. Perpetual injunction against defendants, their agents, servants, personal representatives or whosoever from dealing with or developing the said land.
- e. Costs.”

3. Upon due service of the Writ of Summons on the defendants, the defendant through their lawyer filed a Defence and Counterclaim to plaintiff’s claim. In their counterclaim, defendants seek the following:

- “a. An order of court directed at the plaintiff to take steps to have the Lands Commission revoke the alleged registered 99year lease dated 28<sup>th</sup> February, 2021 between Dakpema Fuseini Kpagkpag and the Ya-Na or in the alternative be charged with the cost of having the said lease revoked.
- b. Damages for trespass.
- c. An order of court directed at the plaintiff to remove whatever he had caused to be put on the land or in the alternative be charged with the cost of having the things he put on the 2<sup>nd</sup> defendant’s land removed.
- d. Costs and any other relief(s) deemed fit by the Court.”

4. The plaintiff filed a reply disputing the defendants’ counterclaim.

5. Parties were ordered to file their respective witness statements, which they did. The case of either party is detailed below.

## PLAINTIFF'S CASE

6. Plaintiff claims that sometime in 2000, he approached the 1<sup>st</sup> defendant to buy a land, which is the subject matter in dispute. He added that he paid GHS600.00 for the said land. He was, however, requested by the 1<sup>st</sup> defendant to pay an additional amount of GHS120.00 to one Abdulai Mahama (secretary of the Banvim Chief) and Kukologo (a subchief of Banwim Chief) to enable these two people prepare an allocation note covering the said land. According to the plaintiff, he paid the extra GHS120.00 but neither the 1<sup>st</sup> defendant nor the said two people released the allocation note to him. After several demands, plaintiff stated that the 1<sup>st</sup> defendant informed him to proceed with his building while the allocation note was being procured. Plaintiff averred that in 2010 he had put up a building which was at lintel level on the said land, but 2<sup>nd</sup> defendant caused it to be pulled down. Plaintiff explained that he contacted the 1<sup>st</sup> defendant regarding the issue and was taken to the Banvim Chief Palace. At the palace, he was informed that the land in dispute was not part of the Banvim lands, rather Kpanvo lands. Plaintiff indicated that he, therefore, went to the Kpanvo Chief who confirmed the land and was requested to pay GHS400.00, which he did. Thereafter, he was given an allocation note which he used to acquire a lease dated 28<sup>th</sup> February, 2021.
7. Plaintiff contended that sometime in 2021, the 2<sup>nd</sup> defendant put up a building on the disputed land. He argued that several attempts to get 2<sup>nd</sup> defendant to vacate possession of the land has proven futile. He added that the 1<sup>st</sup> defendant through the Banvim Chief offered him another plot, plot no. 69, Block G Banvim Zogbee Residential Area, as a replacement of the disputed plot, but he rejected it because he had expended resources on the disputed land. Hence, this present action.
8. The plaintiff tendered in evidence the following exhibits in support of his case:

- a. Exhibit A – a picture of the building at lintel level alleged to be damaged by the 2<sup>nd</sup> defendant
- b. Exhibit B – Allocation Note together with a site plan covering the disputed land, dated 17/7/15.
- c. Exhibit C – Deed of Lease between plaintiff on the one part and the Dakpema Fuseini B. Kpagkpag and Ya-Na Abukari II on the other part, dated 28/2/21.

Plaintiff's witnesses

9. Plaintiff called two witnesses, Mohammed Ibrahim (PW1) and Alhassan Abukari (PW2). According to PW1, he accompanied plaintiff to 1<sup>st</sup> defendant's house on the day the GHS600.00 was paid. He explained that he counted the money and he gave same to 1<sup>st</sup> defendant. He added that plaintiff informed him that the 1<sup>st</sup> defendant later went to show him (plaintiff) the land. He stated that in 2010 plaintiff had constructed a three-bedroom house at lintel level but the 2<sup>nd</sup> defendant damaged it. Hence, the plaintiff made a complaint to the Banvim Chief. However, the Banvim Chief indicated that he had no control over the land, rather the Kpanvo Chief. Hence, he and the plaintiff went to Alhassan Abukari (PW2), the Kpanvo Regent at the time, who confirmed that the disputed land belongs to him and they paid GHS400.00 for it and were given the allocation paper.
  
10. PW2 added that he went with the plaintiff and PW1 to the disputed land and after confirming that he had authority over the said land, he requested plaintiff to pay GHS400.00 and also gave out the allocation note.

## DEFENDANT'S CASE

1<sup>st</sup> defendant

11. 1<sup>st</sup> defendant, on his part, contended that the land in dispute does not belong to plaintiff, rather an allocation had been validly made to the 2<sup>nd</sup> defendant. He explained that he got to know the 2<sup>nd</sup> defendant at the Banvim Naa's palace when he (1<sup>st</sup> defendant) had gone to plead for the release of plaintiff's mason's working tools. He stated that in 2000 as referred to by the plaintiff, he was not a principal member of his family and never had any discussion with the plaintiff concerning any land. However, plaintiff approached him for a land which was yet to be zoned at Banvim Zaaze. He explained that plaintiff was informed that the land at Banvim Zaaze was

under the management of Zaaze Dakpema and was going for GHS2,000.00. He averred further that plaintiff during the funeral of Kukologu Yibram, paid an amount of GHS600.00 as donation and/or deposit for the land. He added that plaintiff later requested for the land papers for the money given, but same could not be granted because the land was yet to be allocated to plaintiff by the Banvim Customary Land Secretariat. 1<sup>st</sup> defendant averred that plaintiff attempted to develop the land without any proprietary interest or permit and was stopped by officials from the Banvim Palace. He stated that the tools of plaintiff's mason were seized. Thereafter, the plaintiff approached him to intercede for the release of the tools which he did with a caution to plaintiff that the land had been allocated to the 2<sup>nd</sup> defendant. 1<sup>st</sup> defendant averred that plaintiff was dissatisfied and reported the matter to Dakpema and the police. He stated further that plaintiff was later allocated a new land, plot no. 69 Block G, Banvim Zogbee Residential Area by the Banvim Customary Land Secretariat for the GHS600.00 deposit, but plaintiff would still not accept it. To him, the plot in dispute was never allocated to the plaintiff and also that the Kpanvo Chief has no authority to allocate the disputed land.

2<sup>nd</sup> defendant

12. The 2<sup>nd</sup> defendant stated that he was allocated the land in dispute by the Banvimlana Mahama Abdulai on 14<sup>th</sup> May, 2012. He added that after the allocation, he deposited sea sand, stone, cement and other materials on the land and subsequently built a house on it. He explained that he applied for a lease at the Lands Commission to which he was issued a receipt. He tendered in evidence copy of his site plans, allocation paper and receipt of the Lands Commission as Exhibits 1, 2 and 3 respectively.

13. 2<sup>nd</sup> defendant contended that he has never directly or indirectly caused any destruction to plaintiff's structure. He indicated that he did not know the plaintiff prior to the commencement of this case. He averred that plaintiff's alleged three-bedroom was hurriedly constructed at his blind side, thus when he was away in Kumasi. He stated further that the structure was improperly built and remains stagnated at the mercy of the weather. 2<sup>nd</sup> defendant maintained that he had not damaged any property of the plaintiff, rather it was the plaintiff who has trespassed onto his land.

14. 2<sup>nd</sup> defendant indicated that upon being sued he filed a search at the Lands Commission which revealed that a lease existed in favour of the plaintiff. However, his further enquires at the Banvim palace revealed that plaintiff's grantor had no interest in the said land and could not validly allocate same, so he went ahead to build on it. Hence, his counterclaim.

Defendants' Witness

15. Defendants called a witness, Mohammed Abdulai (DW1). DW1 is the secretary to the Banvimlana and responsible for the database of Banvim Customary Lands Secretariat.

He explained that the land in dispute has been validly allocated to the 2<sup>nd</sup> defendant. He contended that he got to know the plaintiff when the plaintiff's mason's tools were seized and the matter was brought to the palace. He averred that the plaintiff refused the counsel of the Banvimlana and went ahead to build on the land without a permit, a building haphazardly built and later left abandoned.

16. DW1 maintained that plaintiff's grantor does not have the authority to so grant the said land. He tendered a copy of the newly planned scheme of the Banvim South Residential Area Extension, for Zaaze Dakpema (Banvim) dated 22/6/10 as Exhibit 4. He added that the plaintiff reported 1<sup>st</sup> defendant to the police where it was established that the land had been allocated to the 2<sup>nd</sup> defendant. Later, the plaintiff was allocated plot no. 69 Block G, Banvim Zogbee Residential Area by the Banvim Customary Land Secretariat, but plaintiff after 5months returned the said allocation and instituted this action. He tendered in evidence Exhibit 5, which is a copy of the allocation for plot no. 69. He maintained that neither the plaintiff nor his grantor has any interest in the said land.

#### ISSUES FOR DETERMINATION

17. The issues borne out by the facts are:

- a. *Whether or not the plot no. 99 situate and lying at Banvim South Extension Residential Area, Block B was validly allocated to the plaintiff?*
- b. *Whether or not the Deed of Lease entered into on 28/2/21 be set aside?*
- c. *Whether or not plaintiff or 2<sup>nd</sup> defendant is entitled to their respective claims?*

#### BURDEN OF PROOF

18. In civil cases, the general rule is that the party who in his pleadings raises issues essential to the success of his case assumes the onus of proof on the balance of

probabilities. See the cases of **Faibi v State Hotels Corporation [1968] GLR 471** and **In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors. [2003-2004] SCGLR 420**. The Evidence Act, 1975 (NRCD 323) uses the expression 'burden of persuasion' and in section 14 that expression has been defined as relating to, 'each fact the existence or non-existence of which is essential to the claim or defence he is asserting.' See also ss. 11(4) and 12(1) and (2) of NRCD 323 and **Sarkodie v FKA Company Ltd. [2009] SCGLR 65**.

19. With regards to what is required of the plaintiff in land cases, the law is that the he must succeed on the strength of his own case and not on the weakness of the defendant's case, see **Odametey v Clocuh [1989-90] 1 GLR 14, SC**. In **Kodilinye v Odu [1935] 2 WACA 336**, the court puts it simply that. "in case of doubt, ...the party who asserts must lose."

20. Where there is claim and a counterclaim, the Supreme Court speaking through His Lordship Ansah JSC in the case **Osei v Korang [2013] 58 GMJ 1**, stated as follows:

"... each party bears [the] onus of proof as to which side has a claim of title against his/her adversary, for a counter claimant is as good as a plaintiff in respect of a property which should he assays to make his/her own."

#### ANALYSIS OF THE ISSUES

21. Before I proceed to deal with the issues, I note that counsel for either party filed an address to which I shall make reference to as part of my analysis of the issues.

Issue a and b

22. I shall consider issues a and b together. Issue a, thus, *whether or not the plot no. 99 situate and lying at Banvim South Extension Residential Area, Block B was validly allocated to the plaintiff?* Issue b is, *whether or not the Deed of Lease entered into on 28/2/21 be set aside?*
23. The law is also that where plaintiff has endorsed on his writ a claim for declaration of title, recovery of possession and injunction to landed property, he must establish his root of title and identity or description of the property which he claims. The authorities are legion on this principle: see **Asante-Appiah v Amponsah @ Mansa [2009] SCGLR 90 @ 98**, **Nii Tackie Amoah VI v Nii Amarh Okine & Ors. [2014] DLSC 2910**, **Nene Narh Matti & 2 Ors. v Osei Godwin Teye & Samuel L. Ayortey & 2 Ors. v Osei Godwin Teye (Consolidated) (2017) Suit No. J4/13/2017, Unreported dated 22/11/17, SC**, **Yehans International Ltd. v Martey Tsuru Family & Anor. [2018] DLSC 2488**, just to mention a few. Once there is no dispute as to the identity of the land, what remains is the proof of title, failing which, the claimant must lose, see **Anane v. Donkor [1965] GLR 188** and **Kodilinye v Odu (supra)**.
24. Regarding transfer of interest in land, the law is simply that one cannot give what he does not have. Hence, where a land owner alienates a land, he cannot purport to grant the same land to another, the reason being that the earlier grant has the effect of divesting the owner of whatever interest he might have in the land and so he would have nothing in the land to purport to grant the second time. This is known as the *nemo dat quod non habet principle*. This position has been emphasized in number of cases including **Saanbaye Basilde Kangbere v Alhaji Seidu Mohammed [2012] DLSC 6442** and **George Kwadwo Asante & Anor. v Madam Abena Amponsah & Anor. [2022] DLSC 11677**.

25. Also, with registration of a deed, it is trite that a registration of a deed in land, does not guarantee ownership, but priority. The law is that the registration of an instrument creates priority over an earlier unregistered instrument affecting the same land, only if the later instrument was obtained without fraud and without notice of the earlier instrument, see the case of **Amuzu v Oklikah [1997-1998] GLR 89**. Therefore, a deed or land title certificate obtained by fraud or mistake can be ordered to be cancelled by the courts, see the case of **Mary Larley Nunoo v Manase Atagloe, Suit No. J4/7/18 Unreported SC, dated 28/7/20**.

26. Now, it is trite law that he who asserts must prove. In the case **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamprey (No. 2) [2012] 2 SCGLR 845**, the Supreme Court in dealing with the onus of proof of an allegation held at page 867 as follows:

“...What this rule literally means is that if a person goes to Court to make an allegation, *the onus is on him to lead evidence to prove that allegation*, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in Court if the case is based on an allegation which he fails to prove or establish.”

27. The law further requires that, “where a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of things, reference to other facts, instances, or circumstances, and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true.”

See the celebrated case of **Majolagbe v. Larbi** [1959] GLR 190 per Ollennu J (as he then was) at page 192.

28. In the instant case, the plaintiff is required to prove that he had a valid grant. And must succeed on the strength of his own case, not the other way round, see **Odametey v Cloguh (supra)**. In **Ababio v Akwasi III** [1995-1996] GBR 774, it was held that, when the claimant has established an assertion on the preponderance of probabilities that the burden shifts onto the other party, failing which an unfavourable ruling will be made against him. See also s. 14 of NRCD 323.

29. According to the plaintiff, he stated that sometime in 2000, he gave the 1<sup>st</sup> defendant GHS600.00 for the disputed land. The payment was witnessed by Mohammed Ibrahim (PW1). He added that he paid GHS120.00 to the 1<sup>st</sup> defendant for the allocation paper covering the land, but 1<sup>st</sup> defendant failed to procure the said document. However, 1<sup>st</sup> defendant advised him to proceed to take possession or build on the land while efforts were made to get the allocation paper. Hence, in 2010 he constructed a three-bedroom structure at lintel level on the said land, see Exhibit A, but 2<sup>nd</sup> defendant caused it to be pulled down. Plaintiff explained that he contacted the 1<sup>st</sup> defendant regarding the issue and was taken to the Banvim Chief Palace. At the palace, he was informed that the land in dispute was not part of the Banvim lands, rather Kpanvo lands. Plaintiff indicated he went to Kpanvo Chief palace, where Alhassan Abukari (PW2) confirmed authority over the land in dispute and was requested to pay GHS400.00 for an allocation note, Exhibit B. Exhibit B is dated 17/7/15. Subsequently, plaintiff used the said Exhibit B to acquire a lease, Exhibit C, dated 28/2/21.

30. Counsel for the plaintiff in his written address cited the *nemo dat quod non habet principle* and stated that once the 1<sup>st</sup> defendant had orally divested himself of the land, he cannot purport to allocate same to another person. Counsel for plaintiff also stated that the 2<sup>nd</sup> defendant had notice of the plaintiff's possession of the land prior to his (2<sup>nd</sup> defendant) building of a house on same. Also, 2<sup>nd</sup> defendant could not rely on the equitable principle of bonafide purchaser for value without notice. He cited the case of **Appolo Cinemas Estates (GH). Ltd. v Chief Registrar of Lands & Ors. [2003-2004] 1 GLR 167** in support of this assertion. As to the grant by the Kpanvo palace, counsel explained that it was the 1<sup>st</sup> defendant/Banvim Palace that referred the plaintiff to Kpanvo Palace, hence the 1<sup>st</sup> defendant/DW1 cannot turn round to re-allocate same or seek to substitute it with plot no. 69. He explained that plaintiff had to pay extra

GHS400.00 for the allocation by Kpanvo palace. He quizzed that if plaintiff had not paid for any land, why then allocate a new land to plaintiff just because the 1<sup>st</sup> defendant had been reported to the police? He answered that the 1<sup>st</sup> defendant/DW1 should not be allowed to rely on the non-issuance of the allocation note to plaintiff as a weapon to defeat the plaintiff's claim. He stressed that even an allocation note does not transfer any title in a property, but simply as an evidence of the initial process geared towards the acquisition of land or plot, see **Boateng (No. 2) v Manu (No. 2) & Anor. [2007-2008] 2 SCGLR 1117.**

31. Regarding the registration of the deed, counsel for the plaintiff in his written address pointed out the equity principle that a grant first in time prevails over subsequent grants. He cited the case of **Brown v Quarshigah [2003-2004] SCGLR 930** and the *nemo dat quod non habet principle* in support this assertion.

32. 2<sup>nd</sup> defendant, on his part, contended that he acquired the land in dispute from the Banvimlana, Mahama Abdulai on 14<sup>th</sup> May 2012, see Exhibit 2. He added that after the allocation, he deposited sea sand, stone, cement and other materials on the land and subsequently built a house on it. He explained that he applied for a lease at the Lands Commission, which is yet to be issued, but has a receipt, Exhibit 3. Exhibit 3 is dated 27/10/20. He also tendered in evidence copy of the site plans as Exhibit 1. He called DW1 who confirmed that he gave the disputed plot to him. 1<sup>st</sup> defendant admitted that he got to know the 2<sup>nd</sup> defendant at the Banvim Naa's palace when he (1<sup>st</sup> defendant) had gone to plead for the release of plaintiff's mason's working tools. 2<sup>nd</sup> defendant and DW1 maintain that the allocation given by PW2 is in error, since PW2 does not have jurisdiction to grant same.

33. Counsel for defendants in his initial argument from his written address contended that the answers of the plaintiff during cross-examination were so inconsistent that this court should not rely on it. He cited the case of **Atadi v Ladzekpo [1981] GLR 218** in support of this argument.

34. Counsel for defendants also argued that the plaintiff's grantor, the Kpanvo Chief, did not have jurisdiction over the said land, hence he could not grant same. He stated that DW1 tendered in evidence Exhibit 4, the planned scheme of the Banvim South Residential Area Extension, for Zaaze Dakpema (Banvim) dated 22/6/10 as the lands belonging to the Banvim Zaaze family. He added that at the time the plaintiff gave money to the 1<sup>st</sup> defendant, the 1<sup>st</sup> defendant was not in the capacity to grant any land. That was why no allocation paper was issued. Moreso, the amount paid by the plaintiff was far less than the GHS2,000.00 which was the price of land being sold at that time. Hence, this court should set aside the grant and subsequent registration of the lease. Regarding the grant of plot no. 69, Block G, Banvim Zogbee Residential Area to plaintiff, counsel indicated that that was meant to appease the plaintiff for reporting the 1<sup>st</sup> defendant to the police station.

35. Now from the evidence, the following ensued when the plaintiff was under cross-examination:

"Q: But you agree with me that in this particular case you never had an allocation from the chief of Banvim?

A: I do not have such allocation.

Q: What is your highest educational level?

A: I am illiterate.

Q: Has it been brought to your attention that the subject land for which we are in court is characterized as Banvim South Residential Area Extension Block B, Plot No. 99?

A: Yes.

Q: Has it also come to your attention that apart from the allocation paper, Exhibit B, all the other documents you have exhibited claiming interest in the land in dispute do not have the name Kpanvo on them?

A: There is Kpanvo on the document.

Q: I am suggesting to you that apart from your allocation letter, Exhibit B, there is no Kpanvo on any document in this court?

A: No.

Q: I am suggesting to you that Exhibit B the description given to the land in dispute is Banvim South Residential Area Extension Block B?

A: No.

...

Q: I am suggesting to you that your claim to have been allocated the land by the chief of Kpanvo when same is at Banvim South Residential Area Extension Block B, is an attempt to deceive the court?

A: I am being truthful to the court.

...

Q: Before Exhibit A, you had no allocation paper from the chief of Banvim before proceeding to develop it?

A: That is not so.

Q: Is it your answer that you had an allocation letter from the chief of Banvim before putting up your structure?

A: Yes.

Q: I am suggesting to you that the chief of Banvim has never given you any allocation letter in respect of the land?

A: That is so. He has never given me any allocation letter.

...

Q: I am further suggesting to you that 1<sup>st</sup> defendant never sold the disputed land to you?

A: He sold it to me.

Q: And the GHS600.00 you paid to him, I am suggesting to you that that was only the beginning of negotiations to lead you to the Banvim Chief Palace?

A: He showed the land to me and I paid the money to him.

Q: I am suggesting to you that the GHS600.00 payment was a far cry from the GHS2,000.00 the plot in the area was worth at the time?

A: The money was enough.

...

Q: I am suggesting to you that your alleged grantor, the chief of Kpanvo, has no interest in the said land to give to you?

A: He has.

Q: I am further suggesting to you that even the confirmation by the Dakpema and the subsequent registration of the lease at the Lands Commission are all inappropriate?

A: That is true.

Q: It is also not true that the Banvimlana told you to go to the chief of Kpanvo for the land?

A: It is true."

36. I shall deal with the inconsistencies of the plaintiff's answer, as pointed out by counsel for the defendants in his written address, later in this judgment.

37. When PW1 was under cross-examination the following ensued:

“Q: I am suggesting to you that in the said 2000 the 1<sup>st</sup> defendant was a butcher and had no place in his family to discuss with anybody in respect of any land?

A: He had authority.

Q: Also in year 2000, GHS600.00 could not have paid for a plot in the Banvim South Residential Area Extension Block B?

A: That was the amount plots were sold at that location.

Q: And because the said GHS600.00 could not buy a plot from that area, no particular land was isolated for the said payment much less the given of an allocation paper in return for the payment?

A: Plots at that location were being sold for GHS600.00. I even bought mine GHS400.00 before that of the plaintiff.

...

Q: The 1<sup>st</sup> defendant and the land in dispute are all under the Banvim Customary Land Secretariat?

A: I do not know anything about lands, whether the land in dispute is at Kpanvo or Banvim. I only paid for a plot and that is what I know.

Q: The plaintiff for whom you are testifying for admits that the land for which we are in this court is in the Banvim South Residential Area Extension Block B?

A: I am not aware of the plot lying at Banvim.

Q: Your ignorance of the location of the plot further gives you out as somebody who is here to deceive the court?

A: I am speaking the truth.”

38. Here is what transpired when PW2 was under cross-examination:

“Q: And you know that the land in dispute is part of Banvim Zaaze parcel of land in which the Banvim Zaaze Dakpema and his family have farms on and cultivated?

A: It is on our land.

...

Q: In your witness statement, you admitted that the land in dispute is found at Banvim South Residential Area?

A: That is not so. It is at the north side.

Q: You have also given indication at paragraph 4 of the same witness statement that the land is found at Banvim South Residential Area?

A: There is a path between the southern and the northern part and the land is located on the northern sector.

Q: It is a fact that you cannot read and interpret a land document?

A: Yes. I cannot read because I am an illiterate.

...

Q: I am suggesting to you that your testimony in court is different and inconsistent with your witness statement filed on 21/6/23?

A: I am the grantor and I gave the land to the plaintiff."

39. Below is what also ensued when 1<sup>st</sup> defendant was under cross-examination:

"Q: In paragraph 14 of your witness statement, you stated that, plaintiff was allocated plot no. 69, Block G Banvim Zogbee Residential Area by the Banvim Customary Land Secretariat after it was established that he paid the GHS600.00 deposit towards a building plot, is that so?

A: Yes. But the plaintiff took us to the police station.

Q: Did you alienate plot no. 69 to plaintiff or because plaintiff compelled you to give same to plaintiff?

A: The Banvimlana gave out the land to the plaintiff, after he paid for it.

Q: How much did the plaintiff pay to you or the chief?

A: GHS600.00

...

Q: I am putting it to you that plaintiff originally paid GHS600.00 for plot no. 99 Banvim South Residential Area Extension Block B?

A: Plaintiff only gave out the said GHS600.00 to me indicating his interest in a land.

...

Q: Did you at any point in time take the plaintiff to plot no. 99?

A: It was the secretary who took the plaintiff to plot no. 99.

Q: I am putting it to that the reason why the secretary sent plaintiff to plot no. 99 was because he had paid for it?

A: it was after we were summoned to the police station that the secretary took the plaintiff to the plot no. 99.

Q: I am putting it to you that after the plaintiff had paid GHS600.00 for plot no. 99, the 2<sup>nd</sup> defendant made a better offer to your people, the Banvim family?

A: I am not aware

Q: I further put it to you that after the 2<sup>nd</sup> defendant had made a better offer, you and your family declined to give the allocation to the plaintiff?

A: That is not true.

Q: I am further putting it to you that it was for the purpose of appeasing the plaintiff that the plot no. 69, Banvim Zaaze was offered to the plaintiff after plot no. 99 had already been paid for?

A: It was the Banvimlana who later gave out plot no. 69 to the plaintiff because he did not want me to be disgraced or disrespected.

...

Q: I am putting it to you that not every plot in this plan scheme belongs to the Banvim Traditional Area?

A: If this plan scheme is for the Banvim Skin, then all these plots in the plan are for the Banvimlana.

Q: Are you saying that the position of the scheme labelled North East Yong Residential Area belongs to the Banvimlana?

A: I do not know anything about this plan, so I cannot say anything about it."

40. When 2<sup>nd</sup> defendant was under cross-examination, below is what ensued?

"Q: In what year did you allegedly purchase the land in question?

A: 2012.

Q: In what year did you start putting up a structure on the land?

A: 2018.

Q: In 2018, when you went to the plot there was a structure on it already?

A: Yes. When I went to the land in 2018, I realized that there was a structure on it and I reported the matter to the chief and they informed me that they earlier seized the mason's tool who came to put up the structure on behalf of the plaintiff.

...

Q: At what stage was the building when you went on the land in 2018?

A: Lintel level. Until later the weather destroyed part of it.

...

Q: I am putting it to you that the land in question was previously sold to the plaintiff?

A: I was the first person to have bought the land. There was no person on it.

Q: I am further putting it to you that after it was sold to the plaintiff, you made a better offer that was why they attempted to take him off the land after entering into possession?

A: That is not so."

41. Lastly, below is what ensued when DW1 was under cross-examination regarding ownership of the disputed land:

"Q: Please tell the court why plot no. 69 was allocated to the plaintiff?

A: Plaintiff took the 1<sup>st</sup> defendant to the police station and at the station, it was revealed that plaintiff gave money to 1<sup>st</sup> defendant for a land, so I ended up by allocating the plot no. 69 to the plaintiff.

...

Q: I am putting it to you that plaintiff paid for plot no. 99, he was encouraged by 1<sup>st</sup> defendant to start building while allocation note was being prepared for him?

A: That is not so. Neither I nor the 1<sup>st</sup> defendant allocated land to the plaintiff. One can only start his project after allocation had been issued. After the issuance of the allocation letter, you have to see the chief before you start anything on the land.

Q: Has the plaintiff ever rendered any service to you personally or the Banvim chief?

A: No.

Q: Since you have admitted that the plaintiff did not pay any money to you or render any service to the Banvim chief, why would the Banvim chief go out of his way to allocate plot no. 69 to the plaintiff?

A: After the matter was sent to the police, I was invited also to the police station. I was advised to get the plaintiff a land, reason being that plaintiff made payment to the 1<sup>st</sup> defendant and as 1<sup>st</sup> defendant is a subchief of Zaaze Dakpema, so that the issue will be resolved. But regards the payment, I was not involved or a party to it."

42. First, regarding the answers given by plaintiff, counsel for the defendants in his written address is urging this court to consider the inconsistencies as a manifestation to mislead the court. He stated, "The plaintiff on the other hand told an incredible story with his witnesses. These material inconsistencies in the testimonies of the plaintiff and his witnesses are clear manifestation of the plaintiff's grand design to appropriate what was clearly for another man. I urge with respect that the honourable court ought to consider the said inconsistencies as a manifest indicator of dishonesty and attempts by the defendant (plaintiff) to mislead the court and the court should be guided by the Court of Appeal decision in the case of **Atadi v Ladzekpo (supra)** where the court held that:

*'Also whenever the testimony of a party on a crucial issue was in conflict with the testimony of his own witness on that issue (as in the case of the respondent in the instant case) it was not open to a trial court to gloss over such a conflict and make a specific finding on that issue in favour of the party whose case contained the conflicting evidence on the issue.'*

43. I do not agree with the submissions of counsel for the defendants. In fact, at holding 1 of **Atadi v Ladzekpo (supra)**, the full quote as delivered by His Lordship E. Wiredu JA is:

*"(1) It was well settled that an appellate court would not interfere with findings of fact supported by evidence on record, made by trial courts. Where, however, oral testimony in respect of an issue as to date by one party conflicted with documentary evidence bearing some relevance to the date at issue, and where such documentary evidence tended to make the oral testimony as to the date in issue improbable (as on facts of the instant case) **then unless for good cause shown to justify rejection of the documentary evidence, it would be wrong for a trial court to rely on demeanor***

*of a host of witness to determine the issue at stake. Also whenever the testimony of a party on a crucial issue was in conflict with the testimony of his own witness on that issue (as in the case of the respondent in the instant case) it was not open to a trial court to gloss over such a conflict and make a specific finding on that issue in favour of the party whose case contained the conflicting evidence on the issue. A trial judge would, however, be entitled to accept one of such conflicting evidence if he directed his mind to such a conflict in a party's case and nevertheless, found it justifiable to make a finding in favour of the party on whose behalf a conflict existed having regard to the particular fact in issue and the circumstances surrounding the case."*

44. Further to the above, Justice Dotse JSC in the case **Fosua & Adu-Poku v Duffie (Deceased) & Adu Poku-Mensah [2009] SCGLR 310** at p. 345 stated that:

*"In the case of Yorkwa v Duah [1992-1993] GBR 278, CA, it was held that whenever there was in existence a written agreement and conflicting oral evidence over a transaction, the practice in the court was to lean favourably towards the documentary evidence, especially if it was authentic and the oral evidence conflicting, see also Nsiah v Atuahene [1992-1993] GBR 879, CA."*

45. Base on the above authorities, I am unable to heed to the submissions of counsel for defendants since plaintiff had submitted Exhibits B and C which clearly tells the date, who granted it, what it related to, etc. Hence, if the plaintiff could not repeat same, I tend to lean on the Exhibits than the oral answers. Moreso, the plaintiff is an illiterate who could not read what was on the document. His demeanor clearly showed he did not appreciate the extend of the cross-examination. Lastly, since the evidence-in-chief and the exhibits are in consonance with each other, I will prefer that over the mere errors or responses of the plaintiff.

46. To the substantive issue, thus whether or not *plot no. 99 situate and lying at Banvim South Extension Residential Area, Block B was validly allocated to the plaintiff, and whether or not the Deed of Lease entered into on 28/2/21 be set aside*, first, there is no doubt as to the identity of the land in dispute. What then was required of either both plaintiff and 2<sup>nd</sup> defendant was to prove their ownership. Having considered the evidence so far, I find that the plaintiff has led sufficient evidence in prove of his claim, see **Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lampsey (No. 2) (supra)**. The reason is that the 1<sup>st</sup> defendant and DW1 acknowledged that plaintiff made payment for the disputed land. That represented the oral contract. From the evidence, the payment was made in 2000. Thereafter, the plaintiff was not issued his allocation paper. If the 1<sup>st</sup> defendant is claiming that that money was not full payment of the land, then when show the plaintiff the land. According to plaintiff, 1<sup>st</sup> defendant showed him the land after he had made payment. Moreso, if the amount was not satisfactory to buying the land, why keep the plaintiff's money for over 10years, thus until 2010 when plaintiff went to put up a three-bedroom house at lintel level. There again, the said structure allegedly was destroyed. Plaintiff went back to 1<sup>st</sup> defendant, but was referred to PW2. Further, plaintiff paid GHS400.00 to PW2 for the allocation letter, Exhibit B dated 17/7/15. Plaintiff has also gone to register it and given Exhibit C, dated 28/2/21.

47. What is more, PW2 allocated plot no. 69 Block G, Banvim Zogbee Residential Area to plaintiff. Why? Defendants contended it was to avoid 1<sup>st</sup> defendant from being disgraced. I find this as preposterous. Since when did an allegation against a subchief warrant an allocation of land, for non-payment or service? If 1<sup>st</sup> defendant maintains he did not allocate plot no. 99 Banvim South Residential Area Extension Block B to the plaintiff, then a mere allegation should not warrant a substitution. I find that 1<sup>st</sup> defendant took the GHS600.00 as payment of the land, but failed to issue the allocation

letter. He, however, encouraged plaintiff to build on the land. 2<sup>nd</sup> defendant was issued the disputed land in 2012. That of the plaintiff was in 2000, save that he was expecting the allocation paper. 2<sup>nd</sup> defendant found out in 2018 that plaintiff had constructed on the land, yet he went ahead to build on it. That was constructive notice to him that there was a contrary claim to the land. Instead of conducting due diligence, he simply went to start his building on the advice of the Banvimlana. Exhibit 3, the receipt of the Lands Commission dated 27/10/21, is an attempt to register the land in dispute. That date is way after the plaintiff has registered his interest, Exhibit C, dated 28/2/21.

48. Regarding the grant by PW2, Kpanvo Chief, I find from Exhibit B that the land is described as Banvim South Residential Area. PW2 acknowledged in evidence and it is trite that Kpanvo and Banvim are different jurisdictions/areas. Hence, to have Kpanvo Chief sign off a land described as Banvim, puts doubt on the allocation. In Exhibit 4, plot no. 99 Banvim South Residential Area Extension Block B is found on the Town and Country Plan Scheme for Banvim Skin. The description B, is far off Kpanvo West or North East Yong Residential Extension. This, however, does not take away the oral agreement between plaintiff and 1<sup>st</sup> defendant. I find that it was the same 1<sup>st</sup> defendant or the Banvim palace who caused plaintiff to go to Kpanvo Chief. Hence, they cannot turn round to say that the plaintiff has no interest in the disputed land. More particularly, DW1 or the Banvimlana was minded to allocate a new land, save that the plaintiff has rejected same. As such, I find the allocation by the Kpanvo Chief, PW2, as a mistake. Hence, on the authority of **Mary Larley Nunoo v Manase Atagloe (supra)**, the Deed of Lease between plaintiff on the one part and the Dakpema Fuseini B. Kpagkpag and Ya-Na Abukari II on the other part, dated 28/2/21 be set aside. The Lands Commission, Tamale to cancel the registration.

49. Further to the above, I hereby, by way of specific performance, order that the plaintiff be issued an allocation by the Banvim Customary Land Secretariat to cover the original grant, plot no. 99 Banvim South Residential Area Extension Block B, Tamale. The allocation to 2<sup>nd</sup> defendant is, accordingly, set aside.

50. In effect, I come to the conclusion that the plaintiff has proved his case on the balance of probabilities and on the strength of his own case, see **Odametey v Clocuh (supra)**. Hence, I hereby declare title in favour of the plaintiff and to recover possession of all that piece of land known as Plot No. 99 situate and lying at Banvim South Extension Residential Area, Block B. The subsequent grant to the 2<sup>nd</sup> defendant was in error and same is hereby set aside.

#### Issue c

51. Now, regarding issue c, *thus whether or not plaintiff or 2<sup>nd</sup> defendant is entitled to their respective claims* it is clear from the afore-determined issues that the plaintiff has been able to prove his title. However, with regards to the claim for damages in the sum GHS28,410.00 for trespass, the law is that trespass to land, as a tort, is actionable per se. This means that once the act of trespass has been proven against the defendant, the plaintiff does not have to prove by evidence that he has suffered damages. The law presumes injury to the plaintiff to be a natural consequence of the defendant's act of trespass and therefore a claim for general damages will arise as of right by inference of the law. See the cases of **Klah v Phoenix Insurance Limited [2012] 2 SCGLR 1139** and **Esi Yeboah v Mfantseman Municipal Assembly, Suit No. A2/6/2021 dated 13<sup>th</sup> October, 2022, HC**. However, where special damages are claimed, the onus is on the claimant to prove the damages in order for this court to grant same, see the case of **Delmas Agency Ghana Ltd v Food Distributors International Ltd. [2007-2008] SCGLR 748**. From the instant case, the plaintiff failed to lead any evidence as to how

the amount of GHS28,410.00 was arrived at. Hence, I am unable to grant such claim. I do, however, take note of the fact that 2<sup>nd</sup> defendant has built on the disputed land. As earlier mentioned, he had notice that plaintiff was building on the disputed land but went ahead to build his. He did this at his own peril. I, however, find from Exhibit A, the picture of the three-bedrom building at lintel level, that the structure is still standing. It has not been pulled down, as alleged by plaintiff. It is rather left at the mercy of the weather.

52. In effect, I am unable to grant the special damages of GHS28,410.00 for trespass. The actions of the 2<sup>nd</sup> defendant on the disputed land, however, amounts to trespass and I so hold. The 2<sup>nd</sup> defendant hereby ordered vacate his wrongful occupation. Hence, the plaintiff is at liberty to recover possession of the land in dispute. Moreso, the 2<sup>nd</sup> defendant or his agents, heirs, servants, personal representatives or whosoever is restrained from dealing with the said land of the plaintiff.

## CONCLUSION

53. I hereby enter judgment in favour of the plaintiff for the following:

- a. I declare title in favour of the plaintiff to all that piece or parcel of land known as Plot No. 99 situate and lying at Banvim South Extension Residential Area, Block B.
- b. The Deed of Lease between plaintiff on the one part and the Dakpema Fuseini B. Kpagkpag and Ya-Na Abukari II on the other part, dated 28/2/21, however, is set aside due to the mistake. The Lands Commission, Tamale to cancel the said registration. The 1<sup>st</sup> defendant and his family or Banvimlana, in effect, to comply with the original allocation per the above declaration, by way of specific performance.
- c. The relief for damages of GHS28,410.00 for trespass, fails.
- d. Plaintiff is at liberty to recover possession of land trespassed upon by 2<sup>nd</sup> defendant.
- e. The 2<sup>nd</sup> defendants or his agents, heirs, servants, personal representatives or whosoever are restrained from dealing with the said land of the plaintiff.
- f. Costs of GHS5,000.00 is awarded against the defendants in favour of the plaintiff.

**H/W D. ANNAN ESQ.**

**[MAGISTRATE]**

SHIEKH-ARIF ABDULLAH ESQ., WITH IAN A. ADAGWINE ESQ., FOR THE  
PLAINTIFF

ASURO NAPARI FOR THE DEFENDANT

References:

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2. *Faibi v State Hotels Corporation* [1968] GLR 471
3. *In re Ashalley Botwe Lands; Adjetey Agbosu & Ors. v. Kotey & Ors.* [2003-2004] SCGLR 420
4. *Sarkodie v FKA Company Ltd.* [2009] SCGLR 65
5. *Odametey v Clocuh* [1989-90] 1 GLR 14, SC.
6. *Kodilinye v Odu* [1935] 2 WACA 336
7. *Osei v Korang* [2013] 58 GMJ 1
8. *Asante-Appiah v Amponsah @ Mansa* [2009] SCGLR 90 @ 98
9. *Nii Tackie Amoah VI v Nii Amarh Okine & Ors.* [2014] DLSC 2910
10. *Nene Narh Matti & 2 Ors. v Osei Godwin Teye & Samuel L. Ayortey & 2 Ors. v Osei Godwin Teye (Consolidated)* (2017) Suit No. J4/13/2017, Unreported dated 22/11/17, SC,
11. *Yehans International Ltd. v Martey Tsuru Family & Anor.* [2018] DLSC 2488,
12. *Anane v. Donkor* [1965] GLR 188
13. *Saanbaye Basilde Kangbere v Alhaji Seidu Mohammed* [2012] DLSC 6442
14. *George Kwadwo Asante & Anor. v Madam Abena Amponsah & Anor.* [2022] DLSC 11677.
15. *Amuzu v Oklikah* [1997-1998] GLR 89
16. *Mary Larley Nunoo v Manase Atagloe*, Suit No. J4/7/18 Unreported SC, dated 28/7/20
17. *Okudzeto Ablakwa (No. 2) v. Attorney-General & Obetsebi-Lamptey (No. 2)* [2012] 2 SCGLR 845
18. *Majolagbe v. Larbi* [1959] GLR 190
19. *Ababio v Akwasi III* [1995-1996] GBR 774
20. *Appolo Cinemas Estates (GH). Ltd. v Chief Registrar of Lands & Ors.* [2003-2004] 1 GLR 167
21. *Boateng (No. 2) v Manu (No. 2) & Anor.* [2007-2008] 2 SCGLR 1117

22. *Brown v Quarshigah* [2003-2004] SCGLR 930
23. *Atadi v Ladzekpo* [1981] GLR 218
24. *Fosua & Adu-Poku v Duffie (Deceased) & Adu Poku-Mensah* [2009] SCGLR 310
25. *Yorkwa v Duah* [1992-1993] GBR 278, CA
26. *Nsiah v Atuahene* [1992-1993] GBR 879, CA