

IN THE DISTRICT COURT SITTING AT AMASAMAN ON MONDAY THE 13TH
DAY OF NOVEMBER, 2023 BEFORE H/W STANISLAUS AMANOIPO –
MAGISTRATE

SUIT NO. A1/08/21

ALEX ANSAH

VRS

- 1. KWAME NYARKO**
- 2. SOLOMON MINTA ACKAA**

J U D G M E N T

1. By a writ of summons and accompanied statement of claim dated 17th September, 2020, the Plaintiff initially sued three people including 1st Defendant for reliefs therein endorsed as follows;
 - a) Recovery of possession and ejection of the Defendants from a portion of Plaintiff's land that they have trespassed on and built a single room with porch thereon.
 - b) An order to demolish all structures put up by the Defendants, damages and cost.
 - c) Perpetual injunction restraining the Defendants, their assigns, workmen and any other person acting through them from interfering with the portion of land, the subject matter of the suit.
2. The other Defendants being masons were disjoined from the suit and 2nd Defendant joined by the Court to the suit when 1st Defendant stated he bought the land in dispute from 2nd Defendant. The 1st and 2nd Defendants subsequently on 14th January, 2021 and 4th February, 2021 filed separate statements of defence denying the averments therein made by Plaintiff in the summons and statement of claim and each filed counter-claim as follows: 1st Defendant counter-claims for;

- i) A declaration of ownership of a piece of land situate and lying at Ashalaja in favour of 1st Defendant.
- ii) An order of the Court restraining Plaintiff from entering on the disputed land.
- iii) Any other order(s) deemed fit by the Court and cost.

2nd Defendant also counter-claims as follows;

- i) A declaration that the Plaintiff does not own any land at Ashalaja.
- ii) Recovery of possession of any land trespassed upon by the Plaintiff
- iii) Perpetual injunction restraining the Plaintiff whether by his assigns, agents, servants, workmen and anyone claiming through him for laying claim to any piece or parcel of land at Ashalaj.

On the 15th February, 2021, the Plaintiff filed a reply to the Defendants' statements of defence and joined issues.

3. PLAINTIFF'S CASE:

The Plaintiff's case as contained in his statement of claim and reply to the Defendants' statements of defence is that he bought four (4) plots of land somewhere in 1999 whilst working with the Ghana Trade Fair Company and was given documents covering the land in the year 2000. That the cost of the said land was deducted from his salary which he was led by one Kpakpo Allotey now deceased to acquire. Further that, he built a single room with porch on the land occupied by a caretaker. Therefore, that he has been in peaceful occupation until August, 2020 when 1st Defendant entered into portion and started development. That all efforts to stop 1st Defendant from further development proved futile and hence his action when a complaint to the elders of Ashalaja and Property Fraud Unit did not stop the actions of the 1st Defendant.

4. THE CASE OF 1ST DEFENDANT

He acquired half plot of the land from 2nd Defendant who is the Head and Lawful Representative of the **Akwando** Royal Family. He states that when he commenced construction on the land he acquired, the Plaintiff visited the land and collected his number from his workers. That Plaintiff called claiming the land was for him. That he informed the Plaintiff to see the land owners to resolve issues with them because the 2nd Defendant sold the land to him as the Head of Family. However, that the Plaintiff objected to his request but served him with

instant summons. 1st Defendant says the land belongs to him and that he is in possession of same.

5. THE CASE OF 2ND DEFENDANT

According to the 2nd Defendant, he is the substantive Head of Family of the Akwanor Royal Family of Ashalaja as declared by the High Court and Court of Appeal.

Further that, he does not know the Plaintiff. The 1st Defendant acquired a piece of land, half plot from his family. Further, at the time the Plaintiff claimed that he acquired that land, the signatories on his document were both deceased who died on 5th June, 1999 and 18th February, 1999 respectively. Therefore, that they could not have signed the documents and that same is fraudulent. He prays the documents be declared a nullity and the 1st Defendant declared the owner of the land.

6. The parties did not call witnesses. Though Plaintiff filed witness statement of one Grace Owusu, his wife as a witness, she was not called to testify.
7. From the respective claims of the parties, their pleadings filed the issues for determination of the dispute include;
 - a) Whether or not the Plaintiff has a valid lease from PETER KOJO ADDY and AKWANORFIO ADDY as joint Heads of the Akwanor Family.
 - b) Whether or not the 1st Defendant has a valid lease from SOLOMON MINTA ACKAA (2nd Defendant) as Head of Family.
 - c) Whether or not 2nd Defendant has authority over Akwanor Family lands.

8. BURDEN OF PROOF

The Evidence Act, 1975 (NRCD 323) particularly Section 11 (1) (4) and 12 thereof provides that the degree of proof in a civil action is by preponderance of the probabilities. Section 11 states;

“For purpose of this act, the burden of producing evidence means the obligation a party to introduce sufficient evidence to avoid a ruling against him on the issue”.

In the case of **Ababio vrs Akwasi III (1994-90) GBR 774**, the Supreme Court reiterated the point of a party proving an issue asserted in his pleadings. At page 777 Aikins JSC in the lead opinion held thus;

“The general principle of law is that it is the duty of Plaintiff to prove his case that is, he must prove what he alleges. In other words, it is the party who raises in his pleading an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scale in his favour when on a particular issue the plaintiff lead some evidence to prove his claims. If the Defendant succeeds in doing this, he wins, if not he loses on that particular issue.”

Thus, the general rule is that a party whose pleadings raises an issue essential to the success of the case assumes the burden of proving such an issue. See the case of **Kaibi vrs State Hotels corporations (1968) GLR 471** and Bank of **West Africa vrs Ackun (1963) 1 GLR 176 SC**.

On the part of Defendants obligation, Brobbey JSC explained the evidential obligation of a Defendant in a defence to a claim 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 evaluation of facts and evidence, the Defendant must realize that the determination cannot be made on nothing. If the Defendant desires the 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 evidence that will induce the determination to be made in his favour”.

9. On issue one, Plaintiff is seeking a declaration of title. He has a primary obligation to establish that he has a valid lease from his grantors to the land.

In evidence, the Plaintiff exhibited **an** stamped indenture dated 21st September, 2000. The Plaintiff said he acquired the land, four (4) plots through an agent of the Akwanor Family of Ashalaja by name James Kpakpo Allotey who is now late whilst he was working with Ghana International Trade Fair Company. Infact that he paid for the said land by deductions through his salary. No proof of payment exhibited. In cross-examination, Plaintiff revealed his knowledge of his grantors thus;

Q: Are you aware that Peter Kojo Addy died somewhere 1999?

A: I am not aware.

Q: I put it to you that Peter Kojo died somewhere in 1999.

A: I did not know that.

Q: I put it to you that Akwaanofio Addy died on 20th October, 1999.

A: I do not know that he died in 1999. It was early 1999 that we went to them who asked James Kpakpo Addy who showed us the land.

Q: I put it to you that your purported lessors having died in 1999 cannot sign documents prepared in the year 2002.

A: I cannot tell if it was signed after they died. I was at work when it was brought to me.

His answer negates the proof of oath which stated that the instrument, the indenture, had been executed in the presence of the parties dated 21st September, 2000. The Plaintiff says the document was brought to him at the office when he completed payments. He was not present to witness the execution of the document and for that matter to witness who signed the document as grantors. Therefore, cannot tell if his grantors on the day were alive or dead. In seeking to determine whether the grantor had given the Plaintiff a valid lease, the Court further examined the judgments of High Court and Court of Appeal tendered by the 2nd Defendant. The action commenced on 2013 by Solomon Mintah Ackah (2nd Defendant) in this case against Adams Addy and Anor. Among other relief sought by 2nd Defendant was for declaration that he is the substantive Head of the Akwanor Royal Family of Ashalaja. Judgment of the High Court dated 5th December, 2018 and **confirmed** by Court of Appeal dated 25th June, 2020 was thus;

1. It is hereby declared that the Plaintiff, Solomon Minta Ackaah is the substantive Head of Family of the Akwaanor Royal Family of Ashalaja and not the Defendants.
2. It is hereby declared that any acts done by the Defendants in their alleged capacity as joint Head of Family are null and void.
3. Defendants are to relinquish any assets of the Akwanor Royal Family that may had come to them by reason of their holding themselves out as joint family heads.
4. The Defendants are hereby perpetually restrained from holding themselves out as heads of Akwanor Family of Ashalaja.

This orders were made by the High Court and affirmed by the Court of Appeal.

10. The evidence however show that the Plaintiff allegedly acquired the land since 2000 from his grantors other than 2nd Defendant per the judgment of the Court of Appeal. It is also in evidence the Plaintiff has been in occupation and possession. He showed evidence of a single room on the land. His Counsel in an address rely on Section 10 of NRCD 54 and the statute of limitation as a defence to the judgment obtained by 2nd Defendant. Counsel cited the case of **Jean Hanna Assi vs Attorney General (Civil Appeal No. J4/17/2016 dated 9th November, 2016 where Jones Dotse (JSC) observed as follows;**

“If indeed it is statute barred, then there is no need to look into the merits of the case since the statute of limitation is a venerable shield that can be used to ward off indolent and piecemeal litigators”.

Under Section 10 of NRCD 54 it provides;

10. Recovery of possession

- 1) A person shall not bring an action to recover land after the expiration of twelve (12) years from the date on which the right of action accrued to the person bringing it or if it first accrued to a person through whom the first mentioned claims to that person.
- 2) Where a right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run in this Section referred to as “adverse possession”.
- 3) Where a right of action to recover has accrued and thereafter, before the right of action is barred, the land ceases to be in adverse possession the right of action shall no longer be deemed to accrue until the land is again taken into adverse possession.
- 4) For the purposes of this decree, no person shall be deemed to have been in possession of any land by reason only of having made a formal entry thereon.
- 5) For the purpose of this Decree, no continual or other claim upon or near any land shall preserve right of action to recover the land.
- 6) On the expiration of the period fixed, by this Decree for any person to bring an action to recover land, the title of that person to the land shall be distinguished.

Counsel further then cited the case of **Djin vs Musah Boako (2007-2008) SC GLR 686 at 699** and **Adjetey Adjei vs Nmai Boi (2013-2014) 2 SC GLR 1474**, he posited that Defendant’s claim is statute barred. He made reference to paragraph 2, 3 and 4 of the statement of claim of Plaintiff, he pleaded adverse possession of

the land of 20years having purchased the land in the year 1999 and made formal entry into the land and built a single room with porch on the land till 2020 when Defendants encroached on the land. Therefore, that Defendants' family have been caught by equitable remedies of laches and acquiescence as well as Section 10 of the Limitation Act 1972 (NRCD 54).

11. The 1st Defendant in evidence stated he acquired the land from 2nd Defendant who has been declared the substantive Head of Family of Akwanor family in 2018 and affirmed by the court of Appeal in 2020. Defendants challenged the indenture of Plaintiff to be fraudulent since according to 2nd Defendant the **grandred** in 1999. When questioned in cross-examination if he ever took action in Court against Plaintiff, this was what 2nd Defendant stated;

Q: Have you ever taken action in Court against Plaintiff?

A: No. but when I heard about this suit against Defendant, I join the matter because I granted the land to 1st Defendant.

The 2nd Defendant is said to have sold the land to 1st Defendant in 2013. The 2nd Defendant also commended action at the High Court in 2013. It is said the Plaintiff's grantors sold land to Plaintiff in 2000. The 2nd Defendant at the High Court against Plaintiff's grantors was challenged to the headship of the Akwanor Family which he obtained judgment in 2019. The question is the effect of judgment in the dealings by Plaintiff's grantors. This has been settled in the judgment given by the High Court and affirmed by the Court of Appeal which is thus;

"2. It is hereby declared that any acts done by the Defendants in their alleged capacity as joint head of family are null and void".

This judgment confirms 2nd Defendant as the substantive Head of Family from 2009 on disappointment. The Court finds that a grant by the 2nd Defendant would be regular as the Head of Family confirmed by the High Court decision. Therefore, if the disputed land was not encumbered a grant to 1st defendant would be a valid grant.

But the evidence generally is that Plaintiff has been in possession since 2000, over 20years. He has put up a single room in the land. He has not been able to register the land though in occupation for these long years. I believe it was as a result of the litigation on the Head ship of Family and family lands. This Court

however finds that the Plaintiff's grantors were deceased at the time of the alleged grant to him. At least Peter Addy one of the grantors is said died in 1999 as contained in Exhibit 5, High Court judgment page 3. Counsel for Plaintiff contends however that, Defendants failed to prove this critical piece of evidence in proof of the death of Peter Addy by a death certificate or permit. Therefore, that obituary of the funeral as provided by the Defendants in evidence is not **on sufficient** The High Court judgment elaborated the history of the family which certified that Peter Kojo Addy died in 1999. Thus, whilst the Plaintiff pleads adverse possession and statute of limitation, now as a defence to Defendants' counter-claim, is that, Defamation claim to that Plaintiff procured his land fraudulently.

Exhibit 'A' having been fraudulently acquired as same was purported signed by a dead person in the year 2000, the said grant is invalid. In the Supreme Court case of **Appeah and Another vrs Asamoah (2003-2004) 1 SC GLR 226, 229 in holding 87;**

"Fraud would vitiate everything. And ordinarily fraud should be pleaded. It had not been pleaded in this case. Notwithstanding, the rules on pleadings, the law was that where there was evidence of fraud on the face of the record the Court could not ignore it".

Thus, though the Plaintiff is in possession, his occupation and title to the land is obtained fraudulently. This vitiates any equitable rights accrued. In the circumstances, Plaintiff's claim as endorsed dismissed. The Defendants' reliefs granted as prayed with cost of GH¢10,000.00 for Defendants.

(SGD)
H/W STANISLAUS AMANOIPO
(MAGISTRATE)