

CORAM: IN THE AMASAMAN DISTRICT COURT B HELD ON 5th
DECEMBER, 2023 BEFORE HER WORSHIP ANNETTE SOPHIA ESSEL
(MRS.) SITTING AS MAGISTRATE

SUIT NO. A1/12/20

1. GUAMAH ALLOTEY

PLAINTIFF

DIITAL ADDRESS: GE-0819-4317

ODUMAN

2. GIFTY LAMPTEY

NEAR ABAASE CITY GATE DOWN

ABLEKUMA ACCRA

VRS

DAVID LARBI (A.K.A RASTA)

DEFENDANT

SUBSTITUTED BY BEATRICE YARTEY

JUDGEMENT

INTRODUCTION:

The facts of this case are straightforward and devoid of any controversy. By a writ of summons filed in the Registry of this Honourable Court on 24th October, 2019 the Plaintiffs prayed the court for the under-listed reliefs:

- “1. Declaration of ownership to all that parcel of land situate at Ablekuma, Accra and containing an approximate area of 0.161 acre more or less and bounded on the North-East by Lessor’s land measuring 100.8 feet more or less on the South east by Lessor’s land measuring 69.6 feet more or less on the South-*

West by Lessors land measuring 100.5 feet more or less on the North East by proposed road measuring 70.1 fee more or less.

1. *Damages for trespass.*
2. *Damages for destruction of 2nd Plaintiff items and for causing fear and panic.*
3. *Order of perpetual injunction restraining the defendant, his workmen, servants, agents, assigns, successors and all persons claiming through him from entering, working or doing any act on the land.*
4. *Cost."*

The subject matter of this dispute is a parcel of land situate and lying at Ablekuma; a peri-urban town in the Ga-Central District of the Greater-Accra Region of the Republic of Ghana as described above.

CASE OF THE PLAINTIFFS:

The plaintiffs in this suit are a married couple. The 1st Plaintiff asserted that he was the owner of land in dispute. He claimed that nine years ago (2010), he put the 2nd plaintiff together with his children in possession of the land. He stated that prior to taking this step, in the year 2008, he sold another portion of land belonging to him to the defendant which same he had built on.

He claimed that on 21st October, 2019 the defendant trespassed unto the land which he had placed in the possession of 2nd plaintiff. He stated that the defendant engaged land guards and workers to enter this portion of land to dig a foundation and by so doing destroyed the 2nd plaintiff's structure on the land together with her personal belongings. He claimed that he lodged a complaint of the conduct of the defendant to the Odorkor Police but same proved futile hence the commencement of this action and his prayer for the reliefs above-mentioned.

CASE OF THE DEFENDANT:

Quite naturally the defendant responded to the claim of the plaintiffs by filing his statement of defence on 4th December, 2019. He admitted that indeed in the year 2008 he purchased a plot of land from the 1st Plaintiff on which he had a building thereon. Subsequently in November, 2011. The 1st plaintiff sold the land in dispute which is adjacent to his building to him for which same he made an initial deposit of One Thousand Cedis (GHC 1,000.00) only. He stated that following this deposit, the 1st Plaintiff processed an indenture for him evidencing the transaction in which the land was described as lying ad situate at Oduman. He asserted that the 2nd plaintiff was placed on the land in dispute as a squatter and no more.

Following this transaction between parties herein, the 1st Plaintiff knowing full well that he had defrauded the defendant, subsequently approached the chief of Ablekuma for the processing of title documents covering that same portion of land he had devised which same he was issued with an indenture dated 2012. The defendant stated that following the dragging of feet by the 1st Plaintiff in concluding this second transaction of the land in dispute between parties, he instructed his lawyers to communicate to the plaintiff by a demand notice for the completion of same. He narrated that the 1st plaintiff reverted by admitting and confirming that he had sold the land in dispute to the defendant.

According to the defendant, at a later date he realized that the 1st Plaintiff's claim of having ownership of the land in dispute was false and that the land rather belonged to the Ablekuma Stool. In this regard, he atoned tenancy to the chief of Ablekuma: Nii Kwaku Fosu II. The defendant averred that upon realization by the 1st Plaintiff that the defendant was perfecting his title of ownership in the land in dispute, he lodged a complaint of non-payment of balance of money for the land in dispute by the defendant with the Zongo Chief which same rather exposed the 1st plaintiff as not being the owner of the land in dispute and hence their commencement of this action. The defendant vehemently concluded that

the land in dispute belonged to him as he had made a part payment to the defendant and additionally atoned tenancy with the rightful owners; Chief of Ablekuma therefore the plaintiffs had no interest whatsoever in the subject matter of his suit. He consequently counterclaimed for the underlisted reliefs:

- a. *“Declaration of title to all that piece or parcel of land situate, lying and being at Ablekuma in the Ga Central District in the Greater Accra Region of the Republic of Ghana containing an approximate area of 0.745 acre or 0.302 hectares more or less and bounded on the North-East by Lessors land measuring 99.1 feet more or less on the South-East by Lessor’s land measuring 215.2 feet more or less on the North-East by Lessor’s land measuring 79.4 feet more or less on the South-East by Lessor’s land measuring 72.1 feet more or less on the South-West by proposed road measuring 93.6 and 72.7 feet more or less on the West by proposed road measuring 45.0 feet more or less on the North-West by Proposed Road measuring 219.1 feet more or less which said piece or parcel of land is more particularly delineated on the plan attached thereon shown edged pink.*
- b. *Declaration that the said piece or parcel of land in dispute was wrongly acquired by 1st Plaintiff herein from the legitimate land owners.*
- c. *Declaration that the purported sale and receipt of the initial payment of GHC 1,000.00 by 1st Plaintiff herein relinquished whatever interest 1st plaintiff might have had in the land in dispute.*
- d. *Declaration that the defendant herein met and bought that the piece or parcel of land in dispute from the 1st plaintiff and later atoned tenancy to the legitimate land owners.*
- e. *An order for perpetual injunction (prohibitory and mandatory) restraining 1st Plaintiff, his workmen, assigns and whosoever might claim through him from having anything to do with the piece or parcel of land in dispute.*
- f. *General damages for trespass, harassment and intimidation by 1st plaintiff.*
- g. *Payment of GHc 2,000.00 as legal fees for professional services rendered by Counsel for Defendant.*
- h. *Interest at the prevailing bank rate up to the date of payment.*
- i. *Cost.”*

PROCEDURE OF TRIAL:

At the close of Pleadings, the matter was set down for trial. Parties were both represented by Counsel and testified by themselves. Each party called one witness and thereafter announced the closure of their respective cases. The defendant passed away during trial and was substituted by his wife who filed her witness statement and relied on the deceased witness statement as an exhibit to her testimony.

The land in dispute although not in dispute according to the parties, the court sought an independent expert opinion to ensure that the subject matter was one and the same as the description of this said land was differing in their pleadings before the Court. This expert testified during trial and was also cross-examined by both parties herein.

EXHIBITS FILED:

In addition to their pleadings and viva voce evidence, parties filed the following exhibits to buttress their respective cases:

1. Exhibit A: Indenture with site plan dated 6th April, 202 between Nii Opare Badoo, Head and Lawful Representative of the Nii Sempe Mensah Family of Ablekuma Accra and Guamah Allotey.
2. Exhibit B, B1, B2, B3: Copy of images of the land in dispute with building thereon and images of destroyed plantain and coconut trees. On the compound.

ISSUES FOR DETERMINATION:

At the close of Hearing the issue set down for the full determination of this matter by this Court were as follows:

1. Whether or not the Plaintiff is the owner of the land in dispute.
2. Whether or not the Defendant trespassed onto the plaintiff's land.

BURDEN OF PROOF:

In this civil suit, each of the parties has a duty to prove his or her case on the preponderance of probabilities and so no weakness in the case of either can be taken advantage of. The Defendant carries the burden of proving the facts alleged in his defence to the same degree as the burden the Plaintiff carries in proving her claim against the Defendant. This burden of producing evidence by both sides in the suit as well as the burden of persuasion is defined by **Section 12 of the Evidence Act 1975 (NRCD 323)** which stipulates as follows:

Proof by a Preponderance of Probabilities

- (1) *Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.*
- (2) *“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.*

It is also trite law that for every case there is a burden of proof to be discharged and the party who bears the burden will be determined by the nature and circumstances of the case. as provided in Sections **10, 11(1) & (4), 14 and 17 of the Evidence Act, 1975 (NRCD 323)** which provides that:

“10. Burden of Persuasion Defined

- (1) *For the purposes of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court.*
- (2) *The burden of persuasion may require a party*
 - (a) *to raise a reasonable doubt concerning the existence or non-existence of a fact, or*
 - (b) *to establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.*

11. *Burden of Producing Evidence Defined.*

(1) *For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.*

(4) *In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.*

14 *Allocation of burden of persuasion*

Except as otherwise provided by law, unless it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting.

17 *Allocation of burden of producing evidence*

(1) *Except as otherwise provided by law, the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof;*

(2) *The burden of producing evidence of a particular fact is initially on the party with the burden of persuasion as to that fact.*

In explaining the principles relating to the duty to produce evidence, the learned jurist Maxwell Opoku Agyemang states at page 105 of his book: Law of Evidence in Ghana thus;

“The general rule is that all facts in issue or relevant to the issue in a given case must be proved, in other words, he who avers must prove. This may be done through testimonial evidence, hearsay statements, documentary evidence, or production of real evidence.

If in a moment of forgetfulness, the claimant or prosecutor fails to prove an essential fact his opponent may well succeed on a submission that there is no case to answer although the evidence was really available."

In the case of **Essoun v Boham, Civil Appeal No.54/1/2014 [2014] GHASC 156 dated 21st May 2014**, the Supreme Court, speaking through Anin Yeboah JSC. (as he then was) and, stated as follows:

"It is a cardinal rule of evidence that he who bears the burden of proof must prove his case by producing the required evidence of the facts in issue."

EVIDENCE ADDUCED BY THE PLAINTIFFS:

The 1st plaintiff asserted that as an indigene and a principal member of the Odu We family of Oduman, in the year 2005 he was granted two (2) plots of land by the Mankralo of Oduman; Akwei Gyashie. He narrated that this piece of land was located behind the Nsaki River. Since the land, fell on the boundary between Oduman and Ablekuma, and both towns were under one stool with Kpakpo Fosu as the chief of Ablekuma. In the year 2012 he atoned tenancy with the Head of the Nii Sempe Family of Ablekuma: for a confirmation of his grant and was duly served with an indenture covering the said grant. In support of his averment, he tendered Exhibit a without objection.

He asserted that he was in possession of this land and enjoyed peaceful enjoyment of same. In this regard, he built two separate single rooms on one plot of land which same he lived with the 2nd plaintiff and his nuclear family. The 1st plaintiff narrated that he divested one plot of land to the defendant in the year 2008 at a cost of Five thousand Cedis (GHC 5,000.00) only which same the defendant paid in installments. He narrated that due title documents covering this transaction was prepared for the defendant by the Mankralo of Oduman in November, 2008.

According to the 1st plaintiff, in the year 2011, when he was in dire need of funds, his brother Samuel Allotey (PW 1) led him to the defendant to secure a

loan of One Thousand Cedis (GHc 1,000.00) only with an interest of One Hundred Cedis (GHC 100.00) only. The 1st plaintiff narrated that all attempts by him to pay back this loan amount to the defendant proved futile. In this regard, after eight years, he approached the Zongo Chief: Sulemana Mandy and handed over the monies to him for onward delivery to the defendant upon his invitation.

The 1st plaintiff narrated that in the year 2019 in his absence, he was informed by his wife; 2nd plaintiff that the defendant together with persons engaged by him entered upon his land to take possession of same in fulfillment of the plaintiff's indebtedness. In this vein they broke into his single room destroyed his personal belongings, disconnected his electric supply to the national grid and made away with the meter serving his home.

The 2nd Plaintiff in her testimony before the Court narrated that she was in living on the land in dispute with her nuclear family in their peaceful enjoyment of the land. In the year 2019 she was approached by the defendant in the company of his wife who informed her of the plaintiff's indebtedness to them. In this regard they offered her Five Thousand Cedis (GHC 5,000.00) only cash and urged her to vacate the loom due to a pending litigation they intended to commence with the 1st plaintiff in respect of ownership of the land in dispute. She stated that she accepted their offer and reverted to the 1st plaintiff for feedback.

She narrated that subsequently, in October, 2019, the defendant entered upon the land with land guards who threatened her to vacate the land. She stated that these hooligans under the instruction of the defendant broke into her room, stole her money worth Six Thousand Cedis (GHC 6,000.00) only, destroyed her personal belongings and also plantain and coconut trees on the compound. She added that their washroom was also destroyed and finally the defendant instructed his agents to beat her up She narrated that for fear of her life and that of her dependents, she left the land in dispute and lodged a complaint with the

police. In support of her averment, she tendered without objection Exhibit B Series.

PW1: Samuel Allotey testified that he led the defendant to the 1st plaintiff to buy his initial plot of land with building thereon. He stated that as a mason he built the defendant's house and walled same on the one plot of land purchased. He narrated that when the 1st plaintiff informed him of his need for funds, due to the relationship established between the parties and him, he approached the defendant for the said One thousand Cedis (GHC 1,000.00) only and handed over same to the plaintiff. He claimed that the defendant actually gifted this money to the 1st plaintiff and never requested for a repayment of same till recently when the defendant claimed that money was for the purchase of the plaintiff's remaining one (1) plot of land.

EVIDENCE ADDUCED BY DEFENDANT:

Beatrice Yartey testified on oath that in the year 2008, her late husband the defendant acquired a piece of land situated at Ablekuma Abease from the 1st plaintiff and was issued a receipt and an indenture for same. In support of her averment, she tendered Exhibits 1 and 2 respectively. She stated that a building was developed on this land by her late husband and same is currently occupied by herself and her dependents.

She averred that three years later in November, 2011, her late husband made a second acquisition of one plot of land from the 1st Plaintiff valued at Ten Thousand Cedis (GHC 10,000.000 only of which he only made an initial deposit of One Thousand Cedis (GHC 1,000.00) only. She asserted that following this deposit, all attempts to compel the 1st Plaintiff to complete the transaction proved futile. Rather the 1st plaintiff put the 2nd plaintiff into possession of this land in dispute.

The defendant asserted that they consequently instructed their lawyer to write a demand notice (Exhibit 3) to the 1st Plaintiff to compel him to perform his part of

the contract to which the 1st plaintiff responded by letter (Exhibit 4) admitting that he had an incomplete land transaction with the defendant. 1st Plaintiff following this admission rather ran to the Zongo Chief with a complaint of harassment by the defendant. A meeting called by the Zongo chief to resolve this complaint with parties present revealed that in order to acquire a valid lease, the defendant had to pay another Fifty Thousand Cedis (GHC 50,000.00) only to the Chief of Ablekuma: Nii Kwaku Fosu III of the Larbie Mensah We as both portions of land acquired by the defendant from the plaintiff was actually lying situate at Ablekuma and not Oduman to which same he complied and was issued with an indenture to confirm the transaction (Exhibit 5). The defendant continued that the 1st plaintiff also made a couple of subsequent visits to the Zongo Chief to regularize his grant and also the Odorkor Police Station. The defendant claimed that upon their acquisition of valid title, they entered into peaceful possession of the land. She narrated that they never ejected the 2nd plaintiff forcefully off the land but rather she engaged a truck, packed her belongings into same and left the land in dispute peacefully. In support of her averment, she tendered Exhibit 6 which is a pen drive showing the evacuation of 2nd Plaintiff from the land in dispute.

In support of their case, the defendant called Sulemana Mandy; Zongo Chief (DW 1) who testified that indeed he mediated in the matter between parties herein and corroborated the testimony of defendant. He denied collecting any money from 1st Plaintiff for onward forwarding to the defendant. In support of his averment, he tendered Exhibit 6 which is a ruling from the Office of the Zongo Chief of the Oduman Muslim Community following the mediation session.

In sum the defendant concluded that the 1st Plaintiff took monies from them for the devising of the land in dispute when he had no valid title to same and subsequently took them to meet his grantor for validation of their title to the land in dispute, thus having atoned tenancy with the rightful owners of the land, the plaintiff has no right to lay a claim of ownership for the land in dispute.

ANALYSIS:

The court has carefully examined the evidence of parties herein with respect to the first issue for determination by the court, the Plaintiff asserted that he was the owner of the land in dispute. It is received learning that once a party seeks declaration of title he can only succeed if he is able to positively identify his land as stated in the wise words of Ollenu JSC in the case of **Anane v. Donkor; Kwarteng v. Donkor (Consolidated) [1965] GLR 188** the court stated that:

“Where a court grants declaration of title to land or makes an order for injunction in respect of land, the land the subject of that declaration should be clearly identified so that an order for possession can be executed without difficulty, and also if the order for injunction is violated the person in contempt can be punished. If the boundaries of such land are not clearly established, a judgment or order of the court will be in vain. Again, a judgment for declaration of title to land should operate as res judicata to prevent the parties relitigating the same issues in respect of the identical subject-matter, but it cannot so operate unless the subject-matter thereof is clearly identified. For these reasons a claim for declaration of title or an order [p.193] for injunction must always fail if the plaintiff fails to establish positively the identity of the land to which he claims title with the land the subject-matter of the suit.

In law the evidential and the persuasive burden was on 1st Plaintiff to lead positive evidence to this assertion. This is a matter capable of proof. How did 1st Plaintiff discharge this duty? In the celebrated case of **Awuku v Tetteh [2011] 1 SCGLR 366**, the Supreme Court stated that:

“This court has decided that in an action for a declaration of title to land, the onus was heavily on the plaintiff to prove his case, he could not rely on the weakness of the defendant’s case. He must, indeed, show clear title.

In support of his averment, 1st Plaintiff tendered Exhibit 1. This exhibit is an indenture with site plan which same is not stamped. It is trite learning that such

an exhibit is not admissible by the court. In the case of **Republic v High Court (Fast Track Division) Accra; Exparte National Lottery Authority (Ghana Lotto Operators Association) and Others, Interested Party [2009] SCGLR 390 @ 402**

Dr. Date Bah JSC. stated:

“No judge has authority to grant immunity to a party from the consequences of breaching an act of parliament.... The judicial oath enjoins judges to uphold the law, rather than condoning breaches of acts of parliament by their orders.”

The defendants at the trial court had no onus to prove how the plaintiff acquired the land in dispute. Consequently, in the absence of any other exhibit evidencing ownership of the land in dispute, the court holds that 1st Plaintiff is not the owner of the land in dispute. If at all, Plaintiffs were merely licensees on the land in dispute which did not allow them to divest any interest in the land to third parties. By definition in **Osborn’s Concise law Dictionary, 8th Ed. P.43:**

“a bare licensee is a person who, for his own purposes, is permitted by the occupier of property to go or be upon that property, so as not to be a trespasser. The bare licensee has no contractual right to use the land and the occupier may revoke the license at any time”.

A similar definition will be found in **“Ghana Land Law and Conveyance” by Da Rocha & London”, 1st Ed at p.77** which reads:

“A license is a permission given by owner of land or of an interest in land which allowed the licensee to do certain acts in relation to the land which would without the permission, amount to a trespass. A licensee strictly speaking, does that create or confer interest in land. The original common law was that, except in the case of a license complied with an interest in land, a licensor may revoke a license granted by him.

The court consequently holds that possession of an indenture dated 2012 therefore did not affect the position of the plaintiffs as licensees as at their time of dealing with the defendant.

The next issues for resolution by the court is whether or not the defendants trespassed onto Plaintiffs land. in support of their averments the 2nd plaintiff

tendered images of the land in dispute with building and trees thereon. It is instructive to state that these pictures are not dated and have no location stated on it. It is therefore difficult to relate it to the subject matter. The Court admonishes parties that appear before it that they should ensure that whenever they intend to rely on pictorial evidence, it must state the date, location and time by the camera used to take pictures on it. This serves the purpose of adding detail and goes a long way to aid the Court in carrying out a proper evaluation to arrive at a conclusion. Having observed the above deficiency in the pictorial evidence supplied by the Plaintiff, the court admits that Plaintiff must win her case on the strength of her own case, however this is a civil matter and the basis is on a preponderance of probabilities.

It is the case of the 2nd plaintiff that Defendant trespassed unto the land and stole her money worth GH¢6,000. There is no formal police extract to show that this is so. The Plaintiff stated that she reported this incident to the Odorkor Police Station but tendered no evidence in support of same. She further added that she was beaten by the Defendant's agents. Sadly, there is no medical report to support her averment. The pictorial images filed by Plaintiff did show a few trees hewn to the ground. The court admits these pictures as relating to the subject matter of this suit as it shows that Plaintiff was in possession of the land and these are demonstrated by the construction works on the land. In the wise words of Abban JA. in the case of Domfe v Adu [1984 – 1986] 1 GLR 653 he stated as follows:

"I have to state that the primary facts which a trial judge may find as having been proved to his satisfaction are those necessary to establish the claim of a party or in some cases the defence and which have been alleged on one side and controverted on the other. It must also be borne in mind that the trial judge is not required to make findings of fact in respect of irrelevant matters on which the parties have led evidence when such findings would not assist in the determination of the issues involved in the case."

It is not known to the court as to who did so and in the clear face of challenge by Defendants, the court expected the plaintiffs to do more which same they woefully failed consequently the claim of trespass by plaintiffs must fail.

The third issue this court has been called upon to determine is the counterclaim filed by Defendant to prove his claim. In support of his averments Defendant tendered his indenture and site plan Exhibit 1. It is trite that a person who counterclaims in a land matter bears the same burden to prove his case as that of the plaintiffs. In the case of **Dora Boateng v Mckeown Investment Ltd (J4/12A/2019) [2020] Unreported SC (05 February 2020)** Amegatcher JSC stated that:

“We have taken pains to quote in extenso the evidence of the defendant’s witnesses not because we want to shift the burden of proof on the defendant in a land dispute. We have done so because the defendant having counterclaimed for a declaration of title then also equally bore the same burden as the plaintiff to prove his title.”

The court in its wisdom directed that a composite site plan report be processed and filed in the registry of this court to confirm that the land in dispute is one and the same thing. The Court witness (CW 1) from the Lands Commission testified in court, he stated that the grid lines on Defendant’s site plan did not correspond with current best practice to assist the office in doing its work and that the parcel of land which the defendant was laying claim to does not exist on the ground. In this exercise as ordered by the court, he asserted that all attempts to engage the defendant to cooperate in this investigation report proved futile.

With respect to the identity of the disputed land it is an established principle of law that failure to establish must lead to the failure of the plaintiff’s case. In the case of **Jass Co. Ltd & Anor v. Appau & Annor [2009] SCGLR 265 at 272-273 in the wise words of Dotse JSC.:**

“We have observed that in their quest to prove their title, the first plaintiff based its proof of title principally on exhibits A and B. Since this is a land transaction, exhibit B is of paramount importance because it is the site plan of the disputed land, whilst Exhibit A, with all its legal imperfections, is the land purchase receipt. What must be noted is that, exhibit A does not contain the description of the land that has been sold to the first plaintiff, reference page 73 of the appeal

record. The only exhibit that sought to create any certainty and linkage about the identity of the disputed land bought by the first plaintiff from the second plaintiff is Exhibit B, the site plan tendered by first plaintiff as the document given it by the second plaintiff upon the purchase. However, this is the site plan, exhibit B, which was given to second plaintiff to examine and after the examination, he declared conclusively that it is not the document that he had given to plaintiff. By that singular statement, the second plaintiff has dealt a devastating blow to the case of the first plaintiff which was already weak. The result was that the case collapsed and cannot by any stretch of human ingenuity be redeemed. This being the case, the conclusion reached by the learned trial judge and the majority of the Court of Appeal in dismissing the plaintiff's claims, is in complete accord not only with the facts of the case as per the record of appeal, but also in law. This is because our courts have [page 273] consistently refused to declare title in any claim for land, when the land cannot or has not been clearly defined. See cases as *Bedu v Agbi* [1972] 2 GLR 238 and *Anane v Donkor; Kwarteng v Donkor (Consolidated)* [1965] GLR188, SC where Ollenu JSC put the matter succinctly as follows: 'where a court grants declaration of the title to land or makes an order for injunction in respect of land, the land subject- matter of that declaration should be clearly identified so that an order of possession can be executed without difficulty'. The first plaintiff in our considered opinion, failed to lead that kind of evidence to satisfy the trial court that on its own strength and not on the weakness in the opponent's case it had been able to make out a case sufficient to convince the court on balance of probabilities'.

It is a second consideration of the court that the Defendant thus acquired the interest in the land from the Chief of Ablekuma after Plaintiff was already in possession of the land in dispute. It is settled as espoused in the equitable maxim that "Qui..... esta tempore potior est jure" ((he who is earlier in time is strongest in right). In his erudite judgement in the case of **Gyimah and Brown V Ntiri (Williams Claimant) [2005-2006] SCGLR 247 at pages 259 & 261** Dr. Date-Bah JSC stated that:

"This maxim in fact embodies who the rule which needed to be applied to the facts of this case in order to achieve justice. The maxim means that, where nobody has

acquired a legal interest in the property in question (as in the instant case) an equitable interest created in the property earlier or 'first in time' will prevail against a later equitable interest created in the same property, unless the holder of the second equitable interest has the better equity. The rule is predicted on the holder of the later equitable interest rank in the order of their creation, unless the equities are not equal... [Page 261] of course, the first in time principle is not inflexible, as Ansa JA (as he then was) points out in the extract from his judgement (supra) and also Apaloo CJ recognized in Ayekpa v Sackey-Mensah [1984-86] 1GLR 172, CA. The flexibility flows in large measure from the court's right to assess the equality of the equities. The first in time principle will be displaced by an act of omission of the prior equitable owner which justifies the postponement of his title."

Moreso, in the case of **Amuzu V, Oklikah [1998-99] SCGLR 141 at 166** the apex court held that:

"In my respectful opinion, therefore, registration of a document which should be so registered is purely evidential in litigation and while a party with an unregistered document may be unable to assert a legal title in court, nevertheless the document will take effect in equity and will defeat all claims except the holder of the legal title. Where, however, both parties hold equitable titles, the maxim in equity is that the first in time will prevail...Registration does not confer a state guaranteed title."

All told the Defendant admitted that he had paid One Thousand Cedis (GH¢ 1000.00) only out of the total selling price for the land in dispute to the Plaintiff. It is not his testimony on record that he paid for the land in full. Rather he atoned tenancy for the land from the Chief of Ablekuma. In the case of **Amuzu V. Oklikah 198-99] SCGLR 141 @ 152 Akins JSC** stated that:

"the law is settled that the moment such as a valid contract of sale is concluded, the vendor becomes in equity a trustee for the purchaser of the estate sold the ownership passes to the purchaser. However, the vendor has the right to the purchase money (a charge or lien on the estate for the security of that

purchase) also a right to retain possession of the property until the purchase money is paid f course provided there is no express contract as to the time of delivering possession....

Jessel MR. in the case of Lysaght V. Edwards (1876)2ch D499 @ page 507 explained what a valid contract is. He stated that:

"..... valid contract means in every case a contract sufficient in form and in substance, so that there is no ground whatsoever for setting it aside as between the vendor and purchaser a contract binding on both parties

Thus, a contract had not been completed between parties. In the clear face of this admission that he had not paid for the land in full, the nagging question begging for an answer by the court is that how he could compel the plaintiff to surrender same to him when same was neither a gift nor a mortgage or a setoff of any debt.

It is the further claim of the defendant that he atoned tenancy for the land in dispute from the Chief of Ablekuma. It is on this bedrock on which he prays that judgment be entered in his favour in respect of his counterclaim Relief A B C and D. It is thus manifestly evidence that Defendant is thus challenging the authenticity of title of his grantor or denying him. **Section 48 of the Evidence Act, 1975 (NRCD 323)** states that:

- (1) *The things which a person possesses are presumed to be owned by him.*
- (2) *A person who exercises acts of ownership over property is presumed to be the owner of it.*

It is also provided in **Sections 27 and 28 of the Evidence Act, 1975 (NRCD 323)** that:

"Estoppel of tenant to deny title of landlord

27. *Except as otherwise provided by law, including a rule of equity, against any claim by a tenant the title of his landlord at the time of the commencement of their relation is conclusively presumed to be valid.*

28. *Except as otherwise provided by law, including a rule of equity against any claim by a licensee of immovable property his licensor is conclusively presumed to have a valid right to possession of the immovable property."*

The court consequently holds that in the clear face of this challenge mounted by the defendant, in accordance with Sections 27 and 28 of the Evidence Act, 1975 (NRCD 323) he is estopped from doing so and his counterclaim thus consequently fails. The court aligns itself with the wise words of Ansah JSC in the case of **Abbey & Ors. V. Antwi [2010] SCGLR 17 @ 28** where he espoused the principle that clandestine acts of possession would not be condoned by the court:

"The 1st Defendant contended that even though if he had no Deed of Title to the disputed property, he had still acquired a legal protection by virtue of the Limitation Act, 1972(NRCD 54) which provides that '10(1) A person shall not bring an action to recover land after the expiration of twelve years from the date on which the right of the action accrued to some person through whom the first mentioned claims, to that person'... The first defendant contended that the statutory period began in 1976 when the tenant farmers began paying him tribute, however, a claim of an adverse possession cannot be based on clandestine payments of tribute alone. They must be open, visible, unchallenged and apparent so that it gives notice to the legal owner that someone may be asserting claim; for such payments as were met with opposition and were made irregularly but were done only a few times, could hardly support a claim of adverse possession. Acts amounting to establishing adverse possession are many and may be in the nature of fencing the property, posting sign posts, planting crops, building or raising animals in a manner that a diligent owner could be expected to know about them.

What's more in the case of **Dora Boateng v McKeown Investment Ltd (J4/12A/2019) [2020] Unreported SC (05 February 2020)** Amegatcher JSC. also stated that:

"We are not prepared to allow Kwame Kissiedu Kwaasi or his immediate and wider family to benefit from this double sale of the land in dispute. In as much as

the plaintiff's possession is earlier in time to that of the defendant and on the preponderance of probabilities, ..."

In the respectful opinion of the court, it would be inequitable to deny the plaintiff title to the land he was granted by the Mankralo of Oduman; Akwei Gyashie, consequently judgment is entered in favour of the plaintiffs against the defendant as follows:

- A declaration of title is hereby made in favour of Plaintiff against the Defendant for the subject matter of this suit as above described and same described in Plaintiff's site plan attached to his indenture as all that parcel of land situate at Ablekuma, Accra and containing an approximate area of 0.161 acre more or less and bounded on the North-East by Lessor's land measuring 100.8 feet more or less on the South east by Lessor's land measuring 69.6 feet more or less on the South-West by Lessors land measuring 100.5 feet more or less on the North East by proposed road measuring 70.1 fee more or less.
- The claim of damages for trespass of the plaintiff against the defendant fails in its entirety.
- The Court perpetually restrains forthwith Defendant, his agents, workmen and assigns from interfering and dealing in the land in dispute.
- Cost of Five Thousand Cedis (GH¢ 5,000.00) only is awarded against Defendant in favour of Plaintiffs.

H/W ANNETTE SOPHIA ESSEL (MRS.)

MAGISTRATE

