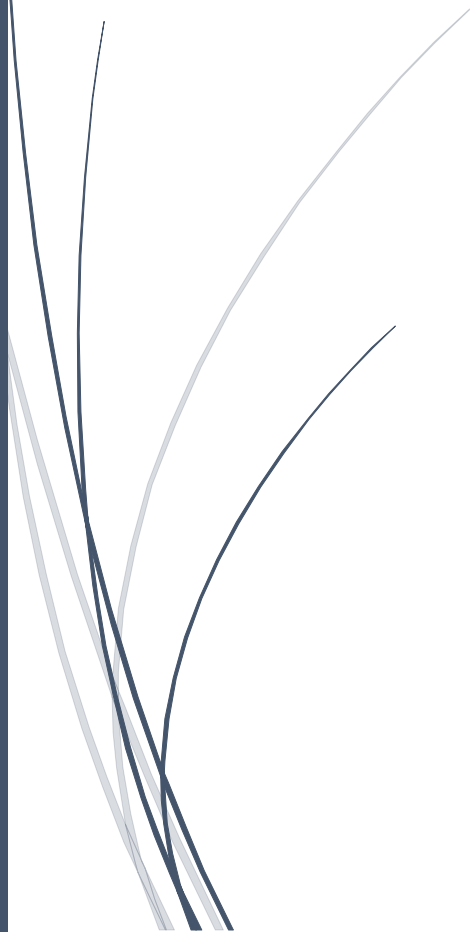




4/3/2023

DANIEL TEYE MENSAH
VS
OKO MENSAH
JUDGEMENT



HER WORSHIP SIRAN MAHAMA
MAGISTRATE
TEMA DISTRICT COURT '2'

IN THE DISTRICT COURT 2, TEMA, SITTING ON THE 3RD DAY OF APRIL, 2023 BEFORE HER WORSHIP SIRAN MAHAMA, THE DISTRICT MAGISTRATE.

DANIEL TEYE MENSAH
VS
OKO MENSAH

SUIT NO: A9/33/2022

The brief facts of this case from the statement of claim are as follows:

The Plaintiff and the Defendant are siblings from the same father, namely Papa Tei Mensah (deceased, 1993 at Abenaso Kade); and was buried at Kpone. The Plaintiff says that upon the death of their father, they left behind ten (10) children, including the Plaintiff and Defendant herein. Upon the demise of their father, his house was shared amongst all ten children; with each child getting a room in the house. The Plaintiff says that their late father also left behind a cocoa farm and a building at Abenaso-Kade in the Eastern Region; which the Defendant has taken for himself without accounting to anyone till date. The Plaintiff further states that the Defendant subsequently came from Abenaso and started to build a structure on the compound of the late father's house at Kpone; without the consent of the other siblings. The Plaintiff lodged a complaint of the Defendant's conduct at the Kpone Traditional Council, but the Defendant failed to attend the Council's invitation to resolve the matter.

The Plaintiff states that the said plot on which the Defendant is building on is part of their father's four (4) plots which was meant to be taken over by the Government for Kpone Hospital

and Doctors Bungalows. The Plaintiff says that he was the one who pleaded for the said house to be excluded from the government's allocation for the hospital authorities. As a result, the site plan was made into the Plaintiff's name for record purposes.

The Plaintiff says that aside from the one room that was allocated to the Defendant in their father's house; the Defendant has given a portion of the plot to his son to build a chamber and hall and a store; another part of the plot to his daughter to put a container on it; and has started laying a foundation on the remaining plot as though he is the only surviving child of their late father; whereas the remaining nine(9) children are all beneficiaries of the said land. The Plaintiff says that instead of buying a personal plot for his children, the Defendant is encroaching on the land that belongs to all ten (10) children of their father.

Therefore, the Plaintiff seeks the following reliefs endorsed on the writ of summons;

- a) Declaration of Title to Plot No. RP/135J Kpone measuring from 80ft x 110ft situated and lying at Kpone.
- b) An order directed at the Defendant to account for proceeds from the sale of the cocoa beans from family land at Abenaso since the time he took over.
- c) An order for perpetual injunction restraining the Defendant his children workmen servants and any other person or persons taking instruction from him in entering meeting the said portion of the plot where the Defendant is developing.

d) An order necessary the Court may deem fit and cost.

Since this action was instituted, attempts made to serve Defendant herein in person failed. Due to that, this court granted an order for substituted service for all processes in this action to be served on the Defendant, herein; pursuant to Order 4 rule 5 of the District Court Procedure Rules, 2009 (C.I. 59). Subsequently, Defendant has still failed to appear or file any affidavit in his defence. As held by the Supreme Court in the case of Ankumah v City Investment Co. Ltd [2007-2008] 1 SCGLR 1064; where a defendant, after several attempts, is finally served but fails to appear in court; the court is entitled to give a default judgement. The Supreme Court further stated that if a party fails to appear after notice of proceedings have been given to him, it would be justifiable to assume that he does not wish to be heard. This means that the 'audi alteram partem' rule provided for in Article 19(2) of the Constitution (1992), cannot be said to have been breached in such instances. Therefore, the Defendant herein are deemed to have been duly served, by this court, with all processes filed in this action; and this court shall proceed to enter judgement in this matter accordingly.

In an action for declaration of title to land, the burden of proof lies on the Plaintiff to establish his or her title. The Supreme Court has stated in the case of Takoradi Flour Mills v Samir Faris [2005-2006] SCGLR 882 that a Plaintiff must succeed on the strength of his own case and not on the weakness of the Defendant's case. What this means is that a person bringing an action in court for the declaration of title to land must provide evidence to persuade the court that he or she is in fact entitled to

that relief, not merely relying on the fact the Defendant is not entitled to the land.

In the recent case of *Yehans International Ltd v Martey Tsuru Family & Anor* [2019-2020] 1 SCLRG 838, the court stated that in order to succeed in an action for declaration of title to land, the Plaintiff must prove three elements namely; root of title, mode of acquisition and various acts of possession over the land. The root of title traces the history of the ownership of the land before the Plaintiff acquired it whereas the mode of acquisition shows how the Plaintiff acquired the land that is whether by conveyance of sale, leasehold or even by deed of gift. Acts of possession on the land vary and include erecting corner pillars, fence wall, foundation, building and other recent acts of showing you have control over the land. It is also important to note that in an action for declaration of title to land, the Plaintiff must also prove the boundaries of the land in dispute. In the case of *Agyei Osae & Others v Adjeifio & Others* [2007-2008] SCGLR 499, the court emphasised that in order for the Plaintiff to succeed, the Plaintiff must establish that the land being claimed is the same land being occupied by the Defendants. Although producing a survey plan provides a description of the land in dispute, in the case of *Bedu v Agbi* [1972] 2 GLR 238 CA, it was noted that failure of the Plaintiffs to call their boundary owners meant that they had not discharged the burden of proof on them.

In the case of *Mondial Veneer (Gh) Limited Vs. Amuah Gyebu XV* [2011] 1 SCGLR 466 (475), Georgina Wood CJ expressed what the law requires of the party who bears the burden of proof in land litigation in the following terms:

“In land litigation, even where living witnesses who were directly involved in the transaction under reference are produced in court as witnesses, the law requires the person asserting title, and on whom the burden of persuasion falls, as in the instant case, to prove the root of title, mode of acquisition and various acts of possession exercised over the subject-matter of litigation. It is only where the party has succeeded in establishing these facts on the balance of probabilities, that the party would be entitled to the claim”. This principle was also restated in the case of *Mary Larley Nunoo vs. Manasse Ataglo* [2017] DLCA 5323.

The registration of title to land is provided for in Part Two of the Lands Act, 2020 (Act 1036), specifically in Sections 8 to 13 of the Act. These sections outline the legal requirements for the registration of title to land, including the need for proof of ownership, survey plans, and other relevant documentation. They also set out the process for the registration of other interests in land, such as leases, mortgages, and easements.

The Land Act, 2020 Act 1036 does not contain a specific provision regarding the declaration of title to land. However, the Act establishes a framework for the registration and management of land in Ghana. Under the Act, any person who acquires an interest in land is required to register that interest with the Lands Commission, which is responsible for maintaining a register of all interests in land. The registration process involves completing an application form and providing supporting documentation, including proof of ownership, survey plans, and any other relevant documents. Once the registration process is complete, the Lands Commission will issue a certificate of title to the registered owner, which serves as evidence of ownership

of the land. The certificate of title includes details such as the name of the registered owner, the location and size of the land, and any encumbrances or restrictions on the land.

In the instant case, the Plaintiff herein claims he is one of ten children of his late father who inherited and have interests in the property that is the subject matter of this suit. Per paragraphs two (2) and three (3) of the Plaintiff's statement of claim, the Plaintiff states that the Defendant herein is also one of the ten children of his late father, who inherited a room in the property which is the subject matter of this suit. Yet, the Plaintiff herein is seeking a declaration of title to the said property in his name because he singlehandedly saved the land from being compulsorily acquired by the government. This led to a new site plan being made in the name of the Plaintiff, as seen in Exhibits 'A' and 'B' attached. However, this court holds that the evidence adduced by the Plaintiff herein is insufficient to merit a declaration of title in favour of the Plaintiff. This is because, as provided in the case of *Yehans International Ltd v Martey Tsuru Family & Anor*, supra; in order to succeed in an action for declaration of title to land, the Plaintiff must prove three elements namely; root of title, mode of acquisition and various acts of possession over the land. In the instant case, the fact that the Plaintiff purportedly saved the said property from being taken over by the government and has a new site plan made in his name; does not sufficiently discharge the burden of persuasion in establishing a mode of acquisition and various acts of possession on the said land. Also, the Plaintiff failed to adduce sufficient evidence to determine the boundaries of the said land as held in the case of *Bedu v Agbi*, supra, where it was noted that failure of the Plaintiffs to call their boundary owners meant that they had not discharged the burden of proof on them; although

producing a survey plan provides a description of the land in dispute.

As stated earlier, per the Plaintiff's own testimony, the said property was built by his late father and inherited by all ten (10) children. This means that all ten (10) children have equitable interests in the said property. Therefore, in view of the above, this court holds that it would amount to a gross miscarriage of justice to grant an order for declaration of title to the Plaintiff herein without taking into consideration the interests of the other nine (9) children in the said property. Therefore, this court dismisses the relief sought by the Plaintiff under Claim 'a' of this action; for the declaration of Title to Plot No. RP/135J Kpone measuring from 80ft x 110ft situated and lying at Kpone.

In respect of claim 'b' of this action; for an order directed at the Defendant to account for proceeds from the sale of the cocoa beans from family land at Abenaso since the time he took over; the Plaintiff failed to adduce even a shred of evidence in respect of the existence or ownership of the said cocoa land or his legal or equitable interests in same. Also, the farmland in question is at Abenaso, which is situate in Akyem Abuakwa in the Eastern Region, which is outside the jurisdiction of this court. Therefore, this court lacks jurisdiction to determine matters in respect of that land. The statements in Exhibit 'C' attached which state these allegations are only a mere repetition of the Plaintiff's complaint to the Akyem Abuakwa Traditional Council. This court holds that it doesn't present sufficient proof of same. In view of this, this court hereby dismisses the relief sought under claim 'b' of this action.

Finally, in respect of Claim 'c' of this action; for an order for perpetual injunction restraining the Defendant his children

workmen servants and any other person or persons taking instruction from him in entering meeting the said portion of the plot where the Defendant is developing; this court holds that same be dismissed. This is because the Plaintiff herein failed to substantiate the allegations of encroachment by the Defendant and his children with any substantial evidence. First, the court notes that none of the other eight (8) siblings or their assigns came to testify in support of the Plaintiff's case. Considering that all of them should have been suffering from the conduct of the Defendant herein; it stands to reason that they should have collectively shown support for the Plaintiff's case. Also, the Plaintiff failed to adduce any photographic evidence or otherwise to show the said containers and structures being built by the Defendant's children as Plaintiff alleges. Therefore, this court holds that in the absence of such critical evidence, it would be unreasonable to grant an order for a perpetual injunction against the Defendant herein; as the court is not satisfied as to the existence of the structures. In view of this, Judgement is entered against Plaintiff in all three claims of this action.

No orders shall be made as to costs.

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HER WORSHIP SIRAN MAHAMA
MAGISTRATE
03/04/2023