



4/17/2023

PATIENCE YAWO KOFIE
VS.
1. KPONE TRADITIONAL
COUNCIL.
2. THE TRESSPASSER
JUDGEMENT



H/W SIRAN MAHAMA
MAGISTRATE
TEMA DISTRICT COURT '2'

**IN THE DISTRICT COURT HELD AT TEMA ON THE 17TH DAY OF
APRIL, 2023 BEFORE HER WORSHIP SIRAN MAHAMA SITTING
AS DISTRICT MAGISTRATE.**

PATIENCE YAWO KOFIE

VS

1. KPONE TRADITIONAL COUNCIL

2. THE TRESSPASSER

SUIT NO: A9/87/2022

The brief facts of this suit from the Plaintiff's statement of claim are as follows;

The Plaintiff is a Ghanaian resident at Ashaiman – Lebanon near Tema. The 1st Defendant is Plaintiff's grantor while 2nd Defendant is an unknown trespasser on Plaintiff's land. The Plaintiff says that sometime in the year, 2018; she acquired and was allocated a parcel of land by the 1st Defendant upon payment of valuable consideration in the total sum of Seventeen Thousand Five Hundred Ghana Cedis; and an additional sum of Eight Hundred and Fifty Ghana Cedis as deposit for documentation and ground rent. Plaintiff says that the land, that is the subject matter of the transaction and this suit is described as, "ALL THAT PIECE OR PARCEL OF LAND, situate, lying and being at Kpone- K.K.D.A. District in the Greater Accra Region and containing an approximate area of 0.11 acres or 0.05 hectares more or less beginning from point P1 and moving Eastward to P2 on a bearing of 83° 56' at a distance of 82.27' feet more or less thence moving Southward to point P3 on a bearing of 175°28' at a distance of 101.75' feet more or less then moving Westward to point P4 on a bearing of 259°30' at a distance of 14.85' feet more or less then moving Northwest back to point P1 on a bearing of 321°45' at a

distance of 121.56' feet more or less and more particularly delineated on the site plan." Plaintiff says that the site plan is attached and marked as Exhibit PTA series and shows the land allocated to the Plaintiff and receipts of payment. Plaintiff says that upon the direction of the 1st Defendant, the consideration payable was made in two instalments; the first instalment payment being the initial amount of Thirteen Thousand, Five Hundred Ghana Cedis (13,500.00) paid into an HFC Bank Account bearing the name of the 1st Defendant while the 2nd installment comprising of Four Thousand Ghana (GHS 4,000.00) was paid to the 1st Defendant at their Kpone Office and for which Plaintiff was issued with a receipt. The Plaintiff says that she was also made to pay the sum of Eight Hundred and Fifty Ghana Cedis (GHS 850.00) towards documentation and ground rent leaving a balance of Two Hundred Ghana Cedis which Plaintiff was told would be paid when the documents were ready. The Plaintiff says that the plot allocated to her was initially numbered, Plot No: 875, Block 'A' in the extent of 0.12 acre (0.05 Hectares) and she was given an offer letter which she duly accepted.

The Plaintiff says that the 1st Defendant later claimed it had renumbered the plots and the Plaintiff's plot was subsequently changed to Block "A", Plot Number 7853 and a new offer letter was given me covering the same plot of land although the size had reduced to 0.11 acres (0.05 Hectares) to which the Plaintiff indicated acceptance by a letter. Attached and marked as Exhibit PTB is a photocopy of the Offer and Acceptance Letters.

The Plaintiff says that the transaction was evidenced by a Confirmation letter dated 20th June 2018 wherein the 1st Defendant affirmed the transaction. The Plaintiff further states that the 1st Defendant gave her the site plan to the land, and she

was immediately put in vacant possession while awaiting the final documents from the 1st Defendant. Plaintiff says that in her bid to commence development on the land, she took a mason to the land, but the land had been encroached on by an unknown person believed to be the second Defendant who had cleared the land and started digging a foundation for the construction of a fence wall and a trip of sand, and gravels were also deposited on the land. The Plaintiff says that she reported to the 1st Defendant's office through the Registrar who indicated that the people of Prampram were disturbing them and so the 1st Defendant had commenced legal action against them in court. Till date, Plaintiff says that the 1st Defendant has failed and refused to produce any evidence of the said suit.

The Plaintiff says that the Defendants will not stop these acts of trespass unless compelled by an order of this Honourable Court.

Wherefore the Plaintiff claims against the Defendants jointly and severally as follows;

- a. An order for declaration of title and or ownership to ALL THAT PIECE OR PARCEL OF LAND, situate, lying and being at Kpone- K.K.D.A. District in the Greater Accra Region and containing an approximate area of 0.11 acres or 0.05 hectares more or less beginning from point P1 and moving Eastward to P2 on a bearing of $83^{\circ} 56'$ at a distance of 82.27' feet more or less thence moving Southward to point P3 on a bearing of $175^{\circ} 28'$ at a distance of 101.75' feet more or less then moving Westward to point P4 on a bearing of $259^{\circ} 30'$ at a distance of 14.85' feet more or less then moving Northwest back to point P1 on a bearing of $321^{\circ} 45'$

at a distance of 121.56' feet more or less and more particularly delineated on the site plan.

- b. An order for the Recovery of Possession and Damages for Trespass.
- c. Perpetual injunction restraining the Defendants, their assigns, workers, and persons claiming through them from entering, interfering and or having any dealing with the Plaintiff's said land.
- d. Cost including the legal fees of the Plaintiff; or in the alternative;
- e. Recovery of the sum of Eighteen Thousand Three Hundred and Fifty Ghana Cedis [18,350.00] together with interest from January 2018 to the date of final payment and general damages for breach of contract.

JUDGEMENT

Since this action was instituted, attempts made to serve 2nd 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 2nd Defendant, herein; pursuant to Order 4 rule 5 of the District Court Procedure Rules, 2009 (C.I. 59). Subsequently, the 2nd Defendant has still failed to appear or file any affidavit in his defence. Also, the 1st Defendant herein has failed to appear or file any defence despite being duly served. As held by the Supreme Court in the case of Ankumah v City Investment Co. Ltd [2007-2008] 1 SCGLR p.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 Defendants 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, p.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 that the Defendant is not entitled to the land.

In the recent case of *Yehans International Ltd v Martey Tsuru Family & Anor* [2019-2020] 1 SCGLR, p.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 Osaе & Others v Adjeifio & Others* [2007-2008] SCGLR p.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, p. 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 pp. 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 p. 5323.

In the instant case; the Plaintiff established her root of title, mode of acquisition and clear boundaries of the land in dispute by adducing a site plan; attached and marked as Exhibit PTA series which shows the land allocated to the Plaintiff and receipts of payment; Exhibit PTB which is a photocopy of offer and acceptance letters between the Plaintiff and the 1st Defendant;

Exhibit PTC series which is a copy of the Confirmation letter of the land transaction between the Plaintiff and the 1st Defendant; and Exhibit PTD which is a copy of the Authority note given to the Plaintiff and signed by the Chairman of the 1st Defendant Council, permitting the Plaintiff to commence her project on the said land. Unfortunately, the 2nd Defendant herein purportedly encroached on the land before the Plaintiff could perform any acts of possession. However, the Plaintiff was duly granted vacant possession of the said land prior to the said encroachment. Nevertheless; acts of possession were discussed in the case of *Powell v. McFarlane* [1977] EWCA, p. 4. In this case, the court held that a person who has the intention to possess land, even if they have not yet physically occupied it, can be considered to be in possession of it. In view of this, this court holds that the Plaintiff has satisfactorily proven her title to the land by showing her root of title, mode of acquisition and act of possession in respect of the land in dispute.

The burden to be established by a Plaintiff under the law is double-edged. Akamba JA (As he then was) in the case of *Kwaku Mensah Gyan & I Or. V. Madam Mary Armah Amangala Buzuma & 4 Ors.* (Unreported) Suit No. LS: 794/92 dated 11th March, 2005 explained: "What is required is credible evidence which must satisfy the two fold burdens stipulated by our rules of evidence, N.R.C.D. 323. The first is a burden to produce the required evidence and the second, that of persuasion. Section 10 & 11 of the Evidence Act, 1975 (N.R.C.D. 323); are the relevant sections. This burden is not met merely by tendering the exhibit G in evidence with all its ambiguities, lingering doubts and lack of explanation." However, in the instant case, having considered the evidence adduced by the Plaintiff in totality; this court holds that the Plaintiff has fully discharged the burden of proof on the preponderance of probabilities.

Considering that enough notice of this suit has been given to the defendants herein; and no evidence has been given to the contrary after a full hearing; this court finds that Plaintiff herein, has established her claims on the preponderance of probabilities. Anin Yeboah JSC in the case of In Re Presidential Election Petition: Akufo-Addo & 2 Ors. v. Mahama & 2 Ors. (No. 4) [2013] SCGLR (Special Edition) at page 425 decided: "I accept the proposition of law that when evidence led against a party is unchallenged under cross-examination, the court is bound to accept that evidence.

In the case of Ashanti Gold Co. Ltd. v. Westchester Resources Ltd. (2013) GMJ 84 at page 128, Korbieh J.A. also decided: "The law is that where the evidence of a witness is unchallenged in cross examination, it is deemed to have been admitted by the other side."

Therefore, Judgement is entered in favour of Plaintiff in this matter.

In view of this, this court orders as follows;

- a. That the Plaintiff herein is the rightful owner of ALL THAT PIECE OR PARCEL OF LAND, situate, lying and being at Kpone- K.K.D.A. District in the Greater Accra Region and containing an approximate area of 0.11 acres or 0.05 hectares more or less beginning from point P1 and moving Eastward to P2 on a bearing of $83^{\circ} 56'$ at a distance of 82.27' feet more or less thence moving Southward to point P3 on a bearing of $175^{\circ} 28'$ at a distance of 101.75' feet more or less then moving Westward to point P4 on a bearing of $259^{\circ} 30'$ at a distance of 14.85' feet more or less then moving Northwest back to point P1 on a bearing of $321^{\circ} 45'$ at a distance of

121.56' feet more or less and more particularly delineated on the site plan.

- b. That the Plaintiff shall recover possession of the land in dispute with immediate effect.
- c. That the Plaintiff is granted a perpetual injunction restraining the Defendants, their assigns, workers, and person claiming through them from entering, interfering and or having any dealing with the Plaintiff's said land with immediate effect.
- d. That, cost of GHS 5000 is separately awarded against the 1st and 2nd Defendants herein, respectively, to cover the legal fees of the Plaintiff with immediate effect.
- e. That the Plaintiff places the properly mapped out land on the national cadastral plan of the Republic of Ghana; to forestall future litigation on the land in dispute.

SGD

HER WORSHIP SIRAN MAHAMA
MAGISTRATE

17/04/2023