

IN THE DISTRICT COURT HELD AT AKIM ODA ON 7<sup>TH</sup> NOVEMBER 2023 BEFORE HER WORSHIP  
ADELINE OWUSUA ASANTE (MS.) SITTING AS THE DISTRICT MAGISTRATE.

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A1/29/22

ELIZABETH OWUSU @ ELIZABETH  
AKUA OWUSUA SUING PER HER  
ATTORNEY SAMUEL OWUSU BOAKYE  
OF AKIM AKROSO

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PLAINTIFF

VRS

PAA YAW  
AKIM BANTAMA

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DEFENDANT

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**JUDGMENT**

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**Introduction**

The Plaintiff per her Lawful Attorney caused the issuance of a Writ of Summons filed on 4<sup>th</sup> May 2022 against the Defendant for the following reliefs:

- a) Declaration of title of a farm land at Bantama measuring 1.53 acres**
- b) Recovery of possession**
- c) Damages for trespass**
- d) Perpetual Injunction**

According to the Statement of Claim filed on the 19<sup>th</sup> August 2022 the Plaintiff's attorney averred that the land in dispute was gifted to the Plaintiff by her late uncle known as one Emmanuel Kwadwo Owusu (Deceased). He further averred that the said land was gifted to Emmanuel Kwadwo Owusu (Deceased) by his father Opanin Kofi Nkansah. During the time of Opanin Kofi Nkansah, the Defendant's father Opanin Nyame was introduced to the land and he cultivated citrus plantation on the land. It was further averred that Emmanuel Kwadwo Owusu took possession of the land and allowed the Defendant's father Opanin Nyame to continue working on his citrus plantation. It was also averred that at a point in time, the citrus trees became old and was not producing good fruits whereof the land became fallow. Later

the late Emmanuel Kwadwo Owusu informed the mother of the plaintiff of his desire to gift the said land to the Plaintiff and same was communicated to the Plaintiff in Belgium who accepted same in good faith. The Plaintiff herself subsequently came down to Ghana and together with the following people being; Maame Yaa Ahenkan (his mother), Maame Afua Biamah, Maame Abena Otomo, Yaw Nyarko, Samuel Owusu Boakye (Lawful Attorney) and Kwaku Gyewani @ Joseph Mensah presented One (1) bottle of schnapps, One (1) men's cloth and an amount of GHS 100.00 to Opanin Emmanuel Kwadwo Owusu who accepted same in good faith.

After the death of the Defendant's father, the Defendant continued to work on the land but was later asked to vacate the land which the Defendant refused citing that the land was for his late father Opanin Nyame. The Defendant was asked to produce documents in respect of the alleged sale made to the father but the defendant failed. The Defendant out of the blues started planting coconut trees on the land but was challenged by the Plaintiff's attorney herein. The lawful attorney averred that the Defendant is a total stranger to the land in dispute and must be ordered to vacate same.

The Defendant was duly served with the Writ of Summons, Statement of Claim, Hearing Notices and Witness Statements of Plaintiff and PW1 herein yet he failed to file any process in this suit and as such this suit was uncontested. The Court therefore proceeded to hear the Plaintiff prove her case pursuant to **Order 25 r 1(2) (a) of the District Court Rules, 2009 (C.I 59)**.

### **Issue**

The issue for consideration in this suit is;

***Whether or not the farm land in dispute belongs to the Plaintiff?***

## **The burden of Proof**

It is trite that in civil cases, the general rule is that the Party who in his pleadings or writ raises issues essential to the success of his/her case assumes the onus of proof. See **sections 11 (1) & (2), 12(2) of the Evidence Act, 1975 (NRCD 323)**.

The case of **Takoradi Flour Mills vs Samir Faris [2005-2006] SCGLR 882 @900** states in respect of the burden of proof as follows;

***“To sum up this point, it is sufficient to state that this being a civil suit, the rules of evidence require that Plaintiff produces sufficient evidence to make out his claim on a preponderance of probabilities, as defined in section 12(2) of NRCD 323. Our understanding of the rules in the Evidence Decree, 1975 on the burden of proof is that in assessing the balance of probabilities, all the evidence, be it that of the Plaintiff or the Defendant, must be considered and the party in whose favour the balance tilts is the person whose case is more probable of the rival versions and is deserving of a favourable verdict”***

## **Evaluation of evidence/Resolution of Issue**

In an action for declaration of title to land, recovery of possession and injunction, a Plaintiff must establish by positive evidence the identity and limits of the land he claims. A Plaintiff seeking a declaration of title to land and other reliefs, will only succeed if he is able to establish the identity of the land in question satisfactorily so as to entitle him to the reliefs. See the cases of **Agyei Osae & Ors vs. Adjeifio & Ors (2007 -2008) SCGLR 499; Nortey vs. African Institute of Journalism & Communication & Ors (2013-2014) 1SCGLR 703**

The onus of proof required from the Plaintiff would be discharged by meeting the following conditions;

- (1) Plaintiff has to establish positively the identity of the land to which he claimed title subject matter of the suit.
- (2) Plaintiff also has to establish all his boundaries.

(3) Where there is no properly oriented plan drawn to scale, which made compass bearings vague and uncertain, the court will hold that Plaintiff had not discharged the onus of proof to his title. See the case of **Tetteh v Hayford (2012) SCGLR 417**

The reasons why the disputed land subject of the claim must be clearly identified are well stated by Ollenu JSC (as he then was) in the case of **Anane & Others vs. Donkor & Ors (Consolidated) (1965) GLR 188** per Ollenu JSC **stated** as follows: “Where a court grants declaration of title to land or makes an order for injunction in respect of 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 a declaration of title to land should operate as *res judicata* to prevent the parties re-litigating the same issues in respect of the identical 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 for injunction must fail if the plaintiff fails to establish positively the identity of the land to which he claims title with the land, being the subject matter of the suit”. See the case of **Nyikplorkpo vs. Agbodotor [1987-1988] 1GLR 165**

The Plaintiff therefore had the onus of discharging the burden of producing sufficient evidence in respect to his claim on a balance of probabilities. Notwithstanding that the Defendant was not in court, the Court must satisfy itself that the Plaintiff has satisfied the burden on her of proving her case on the balance of probabilities.

The Plaintiff’s attorney testified by relying on his witness statement filed on the 21<sup>st</sup> August 2023 and same adopted as his evidence in chief. The Power of Attorney was admitted and marked as ‘**Exhibit A**’. His evidence in chief was essentially a repetition of his averments in his writ of summons and statement of claim. The Plaintiff’s lawful attorney in seeking to prove the claim for declaration of title did not describe in detail the farmland in his writ of summons however in his evidence in chief he tendered a site plan in apparent proof of the description and identity of the 1.53 acres farm land bearing the name of his donor which was admitted and marked as ‘**Exhibit B**’

The Plaintiff's Attorney called one (1) witness in support of Plaintiff's case. His evidence corroborated the testimony of Plaintiff's lawful attorney. Plaintiff's witness (PW 1) testified by way of his witness statement filed on the 21<sup>st</sup> August 2023. He testified and averred that the land in dispute was the property of one Opanin Kofi Nkansah and during his lifetime gifted the land in dispute to his son one Kwadwo Owusu (Deceased). The said Kwadwo Owusu called some of his family members and told them that due to the affection and love he had for his niece, Elizabeth Owusu @ Akua Owusua (Plaintiff herein) he was willing to make a gift of the land which was gifted to him by his late father Opanin Kofi Nkansah to Plaintiff. The Plaintiff then gave 'Aseda' in the form of an undisclosed amount to Kwadwo Owusu who also accepted the 'Aseda' in good faith. The Plaintiff then prepared a Site Plan in her name before returning to Belgium and left the Site Plan in the care of her Lawful Attorney, Samuel Owusu Boakye. He was informed by Plaintiff's Attorney that the Defendant is working on the said land and when questioned, he said the land belonged to his father. He finally averred that the defendant had no land and that the land in dispute is the property of the Plaintiff herein.

The Defendant who conversely alleged that his father had bought the farmland failed to react to any of the averments to debunk the allegations made by Plaintiff as he failed to appear in court or lead any evidence challenging the claims of the Plaintiff. It is thus presumed that the allegations contained in the Statement of Claim and Witness Statements are admitted by him. As such the allegations of the Plaintiff and PW1 remained uncontested and unchallenged.

It is trite law that there is no need for a Plaintiff to call any/further evidence to prove assertions of facts in his or her claim where there are no joinder of issues. See the case of ***Air Namibia (Pty) vs. Micon Travel & Tours & Ors [2015] 91 GMJ 173@174***

From the evidence on record, I find as a matter of fact that the Plaintiff has been able to proof the identity of the land. I further hold that the land in dispute belongs to the Plaintiff and not the Defendant.

### **Conclusion**

In light of the foregoing, judgement is entered in favour of Plaintiff as follows;

- (1) Declaration of title to farm land at Bantama measuring 1.53 acres as contained in Exhibit B**
- (2) Recovery of possession of the 1.53 acres of farmland as contained in Exhibit B**
- (3) An order for Perpetual Injunction restraining Defendant, his agents, servants, his workmen, assigns, privies and anyone claiming through him from entering the said 1.53 acres farmland at Bantama as contained in Exhibit B**
- (4) Damages of GHS 2,000 for trespass by the Defendant.**

**(SGD)**

**ADELINE OWUSUA ASANTE (MS.)  
(MAGISTRATE)**

**Parties**

Plaintiff	Present
Defendant	Absent