

IN THE DISTRICT COURT HELD AT AKIM ODA ON 28TH FEBRUARY, 2024 BEFORE HER
WORSHIP ADELINE OWUSUA ASANTE (MS.) SITTING AS THE DISTRICT MAGISTRATE

A9/20/22

ROBERT DANSO
OF AKIM ABENASE

PLAINTIFF

VRS

OTIBU FREMPONG
OF AKIM ABENASE

DEFENDANT

JUDGMENT

Introduction

This is a case between two (2) relatives over a property left by Opanin Kwasi Frempong, who is a father to the Plaintiff and a grandfather to the Defendant. Indeed, ***a good man leaves an inheritance for his children's children- Proverbs 13:22***

The Plaintiff herein filed a writ of summons against the Defendant on 11th January 2022 praying for the following reliefs;

- (a) *An order of the court compelling the Defendant to remove his metal container from the front view of Plaintiff's house at Akim Abenase.*
- (b) *An order ejecting the Defendant from the Plaintiff's house at Akim Abenase.*

Following the order of the court dated 16th May 2022 to join, Agyei Frempong as 2nd Defendant, the writ of summons was amended to reflect the following reliefs;

- (a) *An order of the court compelling the 1st Defendant to remove his metal container from the front view of the Plaintiff's house at Akim Abenase.*
- (b) *An order ejecting the 1st Defendant from the Plaintiff's house at Akim Abenase.*

Plaintiff's Case

Plaintiff is a pensioner and resident of Akim Abenase. He says the 1st and 2nd Defendants are both his nephews. He says his late father Opanin Kwasi Frempong during his lifetime acquired a building plot at Akim Abenase and built one chamber and hall room and a single room on it. His late father willed the said property including the undeveloped land to all

his children including himself, 1st Defendant's father and other siblings. He stated that 1st Defendant's father Kwadwo Frempong died about six (6) years ago and 1st Defendant thereafter persuaded him to permit him to come and live in the single room which he obliged. Whilst living in the house, 1st Defendant failed/refused to maintain the room and as a result the rooms developed cracks. He says with the consent of the family members he decided to renovate the rooms and also build new rooms in the house and same was communicated to the 1st Defendant to vacate the room but was adamant. He says whilst pleading with 1st Defendant to vacate the room he is occupying, 1st Defendant constructed a steel container on the undeveloped land and prayed for the reliefs in his writ.

Defendant's Case

1st and 2nd Defendants says although 1st Defendant's father died about eight (8) years ago, he was living in the house with his father before his demise. When 1st Defendant decided to construct a steel container on the land, he informed his late father's successor Kwadwo Frempong, Nana Amo (nephew to Plaintiff) and Robert Frempong (brother to Plaintiff) who all assured him of communicating with the Plaintiff. Defendants say 1st Defendant is a son of Plaintiff's family and is entitled to live in the house and prayed for the dismissal of Plaintiff's action as it was brought in bad faith.

Before the trial commenced, 2nd Defendant prayed this court to be disjoined from this suit and same was granted with cost.

Issue

The issue for consideration in this suit is; ***whether or not the Plaintiff has a claim against the Defendant?***

The burden of Proof

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).**

It is the duty of a Plaintiff to prove his or her case for a determination to be made in his/her favour. A party who raises issues essential to the success of his/her case assumes the onus of proof and as such a person who alleges, whether a plaintiff or defendant, assumes the initial burden of producing evidence. It is only when such a person has been successful in producing evidence that the other party will be required to lead rebuttal evidence, if need be. Georgina Wood CJ in **Poku vs Poku (2008) 18 MLRG @ 30** stated as follows: *“Generally, the burden of proof is therefore on the party asserting the facts with the evidential burden shifting as the case demands”*.

In **T. Chandiram v. Tetteh [2018] 120 GMJ 112@147 CA**, the court also noted on the standard of proof in civil cases as follows: *“The standard of proof in a civil suit is placed on the balance of probabilities. Section 12(2) of the Evidence Act (NRCD 323) defines it as follows. “Preponderance of the probabilities” means the 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”*.

Evaluation of evidence/Resolution of Issue

The Plaintiff testified by relying on his witness statement dated 31st August 2022. He testified that Defendant is a son of his brother, Kwadwo Frempong. He averred that during the lifetime of Kwadwo Frempong he married a woman at Awaham and their marriage was blessed with children. After the death of Defendant’s father (Kwadwo Frempong), Defendant came to Akim Abenase to operate his sound system (spinner) business and as a result approached his other brother Kwame Frempong to give him the single room in the house which the said brother objected. The Plaintiff tendered **“Exhibit A”** which is a deed of gift pertaining to the disputed property gifted by his late father, Kwasi Frempong to himself and his siblings. He says after proceeding on mandatory retirement, he came to Akim Abenase and it was there Defendant came to see him again pleading that he should consult his (Plaintiff’s) elder brother to give the single room to him.

He says after consultation with his elder brother, Kwame Frempong, Defendant was permitted to live in the single room, but with a clause that he should find a place within the shortest possible time which Defendant agreed to. He averred that he discovered that

the rooms in the house made up of the chamber and hall and the single room were deteriorating and needed urgent renovation and as such Defendant was asked to vacate but has refused as he is still living in the house. He says he travelled to Takoradi and on his return discovered that Defendant had placed a steel container on part of the undeveloped land without his consent, knowledge or approval. He averred that he engaged the services of a mason to commence work in building new rooms on the land and was subsequently informed by the mason that Defendant has threatened that if anyone touches the metal container it will result in bloodshed in the house.

The Defendant testified by relying on his witness statement filed on 24th November 2022. He testified that Plaintiff is a brother to his late father, Kwadwo Agyemang Frempong. He says during the lifetime of his father, he was introduced to the house in dispute and his father told him that the said house and undeveloped farm land was gifted to him and his siblings by their father, Opanin Kwasi Frempong.

He says he was in the disputed house with his late father until his demise in 2015 and his father was succeeded by his nephew Kwadwo Frempong. He says he continued to live in the disputed house with one of Plaintiff's and his late father's brother, Kwame Frempong. He avers that there was a cordial relationship between Plaintiff and himself until sometime in January 2022 when he put up a steel container on a portion of the undeveloped land on the permission of his father's successor and brother, Kwadwo Frempong and Kofi Frempong respectively. Upon Plaintiff's insistence that he removes the metal container from the land he informed his father's successor who together with Kofi Frempong informed the Plaintiff that they granted the piece of land to him to put the steel container thereon.

He says that since the rooms and the undeveloped /remaining land was gifted to his late father and his siblings including the Plaintiff, he is entitled to enjoy a part of it as all the children of his late grandfather Opanin Kwasi Frempong are joint owners of the disputed property and thus, Plaintiff cannot eject him from the property. He prayed for the dismissal of the action since the Plaintiff is not seeking for declaration of title of the disputed property.

It is settled law in land law that equity favours tenancy in common over joint tenancy. In Ghana where there is silence on how property should be held, the law will presume that they hold it as tenants in common instead of joint tenancy except words are used to indicate an intention of joint tenancy with a right of survivorship. See **Ernestina Boateng vs Phyllis Serwah & Ors [2021] DLSC 10165**

This is also provided for under Section 40 (3) of the Land Act, 2020, Act 1036 (section 14 (3) of Conveyancing Act, 1973, NRCD 175, which was then in force), which provides as follows; “A conveyance of an interest in land to two or more persons, except a conveyance in trust, creates an interest in common and not in joint tenancy, unless it is expressed in the conveyance that the transferees shall take jointly, or as joint tenants, or to them and the survivor of them, or unless it manifestly appears from the tenor of the instrument that it was intended to create an interest in joint tenancy”

Joint tenancy arises when property is conveyed to two or more people without words indicating that they are to take distinct and separate shares. Unlike joint tenants, tenants in common hold the property in undivided shares and as such each tenant has a distinct share in the property which has not yet been divided amongst the co-tenants. When a tenant in common dies, his interest passes under his will or intestacy and the person to whom his share is disposed steps into his shoes and becomes a tenant in common with the others.

From the evidence adduced, it is not in dispute that the Plaintiff’s father left the property in dispute to Plaintiff and his siblings. This is what transpired during cross examination;

Q: You said your father gifted the property to you and your siblings. Was my father not among your siblings?

A: Your father was among the siblings.

Q: When my father was alive all the siblings had a place to sleep when they returned home to Abenase. So why are you saying I could not stay in the house.

A: Our father had ten (10) children and the property he gave was only a chamber and a hall and one single room so how that could be shared. Our father gave the property to us his children. He did not apportion any part of it to any individual.

Q: I furnished the building in which I live now and I am the only one in the house now. I made it habitable.

A: That is not true. If the building was not habitable where was your father sleeping when he came home as you claimed.

Q: Where do you want me to vacate the house to with my container?

A: I did not ask you to bring any container to the house. When you brought the container to the house I was in Takoradi and I warned you not to put it there but you ignored me.

Q: Did you acquire the house in dispute or it was given to you and your siblings.

A: it was my father who built the house and gave it to me and my siblings. We were ten (10) siblings but now we are only two (2) surviving.

From Exhibit A, the property that was bequeathed to Plaintiff and his siblings was to be maintained, held and enjoyed as theirs “forever”, accordingly the disputed property that went to the Plaintiff and his siblings were held by them as tenants in common since no express words such as “shall take jointly forever”, ‘shall take as joint tenants forever’ or ‘I give to them and the survivor of them forever’ was used.

Having come to the conclusion that the Plaintiff and his siblings held the property as tenants in common, upon the death of Kofi Frempong, Defendant’s father, his interest in the property devolved on/passed to his son, Defendant (and his other siblings) who thereafter stepped into the shoes of his late father as a tenant in common with Plaintiff. In any event the interest of Plaintiff’s other siblings also devolved on their respective children who also became co-tenants/co-owners in the said property together with Plaintiff. In effect, the Defendant did not need permission from the Plaintiff to live in the property he had an interest since from the foregoing the property did not belong to the Plaintiff by virtue of last survivorship. It is worthy to note that the situation would have

been different were the Plaintiff and his siblings holding the disputed property as joint tenants as that would have entitled him to eject the Defendant from the property with him being the owner/last survivor.

This may further explain why during cross examination Defendant alleged that when he wanted to live in one of the rooms in an eight (8) bedroom house of the family, he was informed that he did not have any share/interest in that house but rather had an interest in the disputed property and thus, he should renovate same and live there.

This is what ensued during cross examination of Defendant by Plaintiff;

Q: What of the eight (8) bedroom house where you live now?

A: That was built by my grandfather Nana Yaw Oduro. He was my mother's uncle so that house is not my father's house.

Q: When I wanted to live in the eight (8) bedroom house, I was told my father had no share there but rather his share was the one I am living in now so I should renovate it and stay in it.

A: You told this court earlier that your father gave that room to you so how come you wanted a room in that eight (8) bedroom house and was shown the room in which you live. You are being untruthful.

Conclusion

Having considered in entirety, the evidence adduced by both parties, it is the considered opinion of this court that Plaintiff has not been able to prove his case on the preponderance of probabilities and as such is not entitled to the reliefs he seeks. Let me emphasize by saying that the disputed property does not only belong to Plaintiff but belongs to his siblings as well and they all have equal shares in it. After the demise of any of the siblings including Plaintiff, their children can inherit their interest in the property.

(SGD)

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