

IN THE DISTRICT COURT HELD AT ASHAIMAN ON WEDNESDAY THE  
31<sup>ST</sup> DAY OF JULY, 2024 BEFORE HIS WORSHIP DERICK PARDEN ESHUN  
(ESQ): THE DISTRICT MAGISTRATE

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**BETWEEN:** **SUIT NO. A1/27/2020**

**HARRY NARTEY:** **PLAINTIFF**

**AND**

**ELIASU ALHASSAN & 2 ORS:** **DEFENDANTS**

**JUDGMENT**

The plaintiff on the 16<sup>th</sup> day of July, 2020 filed a writ of summons against the defendants and claims the following reliefs:

- a. Declaration of title and recovery of possession of all that four plots of land situate, lying being at a place commonly known and called **PEACELAND**, a suburb of Ashaiman.
- b. An order for perpetual injunction restraining the defendants and all those claiming interest in the disputed land through the defendants from further entering, renting, leasing, developing etc and or working on the disputed land.

Let me put on record that this action was commenced when the court was differently constituted. The records show that on the 21<sup>st</sup> day of October, 2020 the plaintiff filed a motion on notice for joinder to join one Ebenezer Otutey Anim-Otu as the 4<sup>th</sup> defendant. However, there is nothing on record to indicate that the said application was moved by the applicant. Also, nothing shows that the application was ever granted by the court and there is no amended writ of summons and statement of claim which joins the said person supra as a party to the action. That being the case, the

plaintiff/applicant is deemed to have abandoned the said application for joinder and thence same is hereby struck out from the records for want of prosecution. The record also shows that the writ of summons, statement of claim and hearing notice were served on the defendants. Hence on the 23<sup>rd</sup> day of December, 2020 the 1<sup>st</sup> defendant herein filed his statement of defence. Subsequently, the witness statement and supplementary witness statement of the plaintiff and hearing notice were all served on the defendants by substituted service. The defendants however decided to stay away from the proceedings. Well, **Order 25 r 1(2)(a) of the District Court (Civil Procedure) Rules, 2009 (CI 59)** enacts: “ Where an action is called for trial and a party fails to attend, the trial magistrate may where the plaintiff attends and the defendant fails to attend, dismiss the counterclaim, if any, and allow the plaintiff to prove the claim”. In the instant case even though there is proof of service of the court processes on defendants they decided to stay away from the proceedings. A principle of law is when a party is given opportunity to defend himself of allegations made against him but he deliberately declines the invitation to do so, the court will proceed with the hearing or trial to conclusion and make deductions, draw conclusions or make findings on the basis of the evidence adduced at the trial; see **IN RE WEST COAST DYEING INDUSTRY LIMITED: ADAMS V TANDOHO [1984-86] 2GLR 561**. Therefore on the strength of the above provision and authority, trial commenced to afford the plaintiff to establish his case without recourse to the defendants.

As I proceed to consider the facts and issues raised in this case, it is appropriate for me to state that it is 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; See **SECTIONS 10- 17 OF OUR EVIDENCE ACT, 1975 (NRCD 323)**. In **ABABIO V AKWASI (III) [1994-95] GBR, PART (II), 74** the court stated that a party whose pleadings raise an issue essential to the success of the case assumes the burden of proving such issue. Reference is also made to the cases of **TAKORADI FLOOR MILLS V SAMIR FARIS [2005-06] SCGLR, 882** and **RE**

**ASHALLEY BOTWE LANDS: ADJETEY AGBOSU & ORS V KOTEY & ORS [2003-04] SCGLR, 420** which further elucidate the burden of proof as statutorily provided. The rule is that in a trial of a case like the instant one, a party wins on the preponderance of probabilities. See **Section 12(2) of the Evidence Act, 1975 (NRCD 323)**. See also **ADWUBENG VRS DOMFEH (1996-97) SCGLR 660**.

#### **THE CASE FOR THE PLAINTIFF:**

The plaintiff testified but did not call any witness in support of his case. The case of the plaintiff as gathered from his pleadings and witness statement is that he entered into a lease agreement with Domino Global Ghana Limited for four plots of land particularly described in the schedule of the lease agreement. Plaintiff avers that in the year 2019 he went onto the land and noticed that the 1<sup>st</sup> defendant herein had trespassed onto two plots of his parcel of land and had sold same to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants herein. Plaintiff asseverates that the 1<sup>st</sup> defendant in the company of some elders in the community came and pleaded with him to allow him have the two plots. He continues that he agreed and decided to allow the 1<sup>st</sup> defendant to have the land on condition that the 1<sup>st</sup> defendant's grantees (i.e. 2<sup>nd</sup> and 3<sup>rd</sup> defendants herein) should compensate him. According to plaintiff he then made a grant of the remaining two plots to a third party. He avers that when his grantee took possession of the remaining two plots of land, a third party came and laid adverse claim to it and contended that the two plots were sold to him by the 1<sup>st</sup> defendant. He subsequently instituted the present action and claims per the indorsement on his writ of summons.

#### **ISSUE FOR DETERMINATION**

At the close of the case by the plaintiff the following issue arose for determination by the court.

- ❖ Whether or not plaintiff has title to the land particularly described in the schedule of the lease agreement?

## NOW THE ISSUES IN SERIATIM

**ISSUE ONE:** Whether or not plaintiff has title to the land particularly described in the schedule of the lease agreement?

It is instructive to note that in land cases, there are some essential requirements to be met to enable the court rule in favour of the parties before it, if the parties claim, inter alia, declaration of title.

Amongst the essential requirements is the need for a party to positively identify the identity of the land in contention and its boundaries. It must be noted that, though the identity of the land in contention need not be established to mathematical accuracy, nevertheless, it is of supreme importance that the identity of the land in question is clearly established.

In the case of **FOFIE V. WUSU (1992-1993) GLR, 877** the respected Jurist Lamptey JA (as he then was) stated thus;

*“..... To succeed in an action for declaration of title to land, a party must adduce evidence to prove and establish the identity of the land in respect of which he claimed a declaration of title.....”*

On a more recent note, the respected Jurist, Dotse JSC stated as follows in **TETTEH V. HAYFORD (2012) SCGLR, 426:**

*“.....The Position of the law... is that it is the Plaintiff who bears the burden of establishing the identity of the land she is laying claim to. Failure to prove this identity is fatal to a claim for declaration of title...”*

It must be noted that, though the above dicta relates to plaintiffs who seek declaration of title, it is applicable, mutatis mutandis, to a Defendant seeking declaration of title. The second major requirement is the need to establish by evidence, mode of acquisition, root of the title and acts of possession over the land under consideration. The need to establish the above elements is of paramount importance and a party's claim runs the risk of suffering a fatality if credible evidence is not led to prove same.

The importance of the instant proposition was magnified by the esteemed Jurist Georgina Wood CJ in the case of **MONDIAL VENEER (GH) LTD V. AMUAH GYEBI XV (2011) 1 SCGLR, 466**. The Chief Justice said:

*“..... In land litigation, the law requires the person asserting title and on whom the burden of persuasion falls, as in this 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.”*

Therefore, in the instant matter, since the plaintiff is seeking, declaration of title, the onus is squarely on him to establish the aforementioned elements by positive evidence.

In the case of **JASS CO. LTD & ANOR V APPAU & ANOR [2009] SCGLR 269** it was held that in an action for declaration of title, the burden of proof is always put on the plaintiff to satisfy the court on the balance of probabilities but where the defendant files a counterclaim, then the same burden of proof would be used in evaluating and assessing the case of the defendant just as was used to evaluate the case of the plaintiff against the defendant. Also, the law is well settled that title is the means by which a person establishes his/her right to land. A person's title indicates by what means he/she claims to be owner of land. Title to land may take the form of possession or the form of a document or series of documents. In Ghana, possession by itself gives a good title to land against the whole world except someone having a better legal right of possession. A person who is relying on possession as his title must show that he is in physical possession or has a right to possession. See the case of **WUTA- OFEI V DANQUAH [1961] G.L.R 487**. The presumption of title raised by possession and ownership has statutory blessing by virtue of **Section 48 of the Evidence Act, 1975 (Act 323)**. Section 48(1) (2) of the Evidence Act is in the following terms: “The things which a person possesses are presumed to be owned by that person and a person who exercises acts of ownership over property is presumed to be the owner of it”.

In the instant case, the plaintiff in his evidence in the main contends that he entered into a lease agreement with Domino Global Ghana Limited for four plots of land particularly described in the schedule of the lease agreement. He contended that in the year 2019 he went onto the land and noticed that the 1<sup>st</sup> defendant herein had trespassed onto two plots of his parcel of land and had sold same to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants herein. Plaintiff contended that the 1<sup>st</sup> defendant in the company of some elders in the community came and pleaded with him to allow him have the two plots. He continues that he agreed and decided to allow the 1<sup>st</sup> defendant to have the land on condition that the 1<sup>st</sup> defendant's grantees (i.e. 2<sup>nd</sup> and 3<sup>rd</sup> defendants herein) should compensate him. According to plaintiff he divested his interest in two plots out of the four plots when the 1<sup>st</sup> defendant trespassed onto same and transferred same to 2<sup>nd</sup> and 3<sup>rd</sup> defendants herein. Plaintiff in his evidence in the main contends that he divested his interest in the two plots subject to the payment of compensation. Plaintiff in his evidence in the main contends that he mounted this action against the 2<sup>nd</sup> and 3<sup>rd</sup> defendants by reason of the fact that they failed to compensate him as agreed upon. The court is of the considered opinion that that being the case, the plaintiff's remedy as against the 2<sup>nd</sup> and 3<sup>rd</sup> defendants herein should have been an order for recovery of payment of compensation and not to have sued them for title declaration. Plaintiff cannot approbate and reprobate. I find that this present action as against the 2<sup>nd</sup> and 3<sup>rd</sup> defendants is misconceived. The plaintiff in his quest to establish title to the disputed land relies on Exhibit "A". Exhibit "A" is a lease agreement executed between Domino Global Ghana Limited on one part and the plaintiff herein on the other part. I have noticed that on the face of Exhibit "A" it was not stamped in accordance with the Stamp Duty Act, 2005 (Act 689). It is trite learning that the law on the admissibility or otherwise of documents or instruments on grounds of stamping is settled. See the case of **LIZORI LTD VRS BOYE AND SCHOOL DOMESTIC SCIENCE & CATERING (2013-14) SCGLR 889 AND WOODHOUSE LTD V AIRTEL GHANA LTD [2017-2018] SCGLR 615**. In the recent case of **NII AFLAH II VRS BENJAMIN K. BOATENG, CIVIL APPEAL NO J4/80/2022, MARCH 22, 2023**

the apex court of the land ruled as follows: "... for the reasons proffered above, we are of the considered opinion that the law on the admissibility or otherwise of unstamped documents or instruments as enunciated in the cases of Lizori and Woodhouse are more accurate precedents of the proper construction of Section 32 of the Stamp Duty Act, 2005 (Act 689). The court continues that in the present matter before it, an examination of Exhibit B shows clearly that it was not stamped in accordance with section 32(6) of Act 689. Consequently, the trial court ought not to have admitted Exhibit B in evidence even though from the record we find that no such objection was taken to its admissibility. This is because a court has no discretion to admit in evidence an instrument which has not satisfied any preconditions for admissibility, such as stamping, imposed by the express provisions of an Act of Parliament, such as the terms of Section 32 of the Act 689". In the instant case before this court, Exhibit "A" was not stamped at the time it was admitted in evidence and remains unstamped. I am of the considered opinion that Exhibit A clearly was inadmissible and same ought to have been thrown away. Thus exhibit A in this case, being unstamped ought not to have been admitted into evidence. The court erred in admitting exhibit A into evidence. In the circumstance I have decided not to rely on same. Exhibit A is hereby excluded. Again, there is nothing on record to show that plaintiff is in possession of the disputed land. A person who is relying on possession as his title must show that he is in physical possession or has a right to possession. From the foregoing the court finds that the plaintiff has failed to establish title to the land on the balance of probabilities either by documentary evidence or an act of possession. In the instant case the probabilities do not preponderate in favour of the plaintiff. In the circumstance I have no option but to dismiss plaintiff's action. Plaintiff's action accordingly dismissed. No order as to costs.

.....SGD.....

(DERICK P. ESHUN ESQ)

