

IN THE HIGH COURT OF JUSTICE ASHANTI REGION KUMASI HELD ON FRIDAY  
THE 13<sup>TH</sup> DAY OF OCTOBER, 2023, BEFORE HER LADYSHIP HANNAH TAYLOR  
(MRS) J.

SUIT NO.: C2/75/19

ATTA OBIRI MAINOO

PLOT NO. 33 BLOCK "D"

MEDOMA, MAMPONTENG - ASHANTI

- PLAINTIFF

VS.

1. KWADWO AFRIYIE

2. AMA AFRA OBIRI MAINOO

3. KELVIN OBIRI MAINOO

4. YAA OWUSUWAA @ MRS AGES KUMAH

5. AKWASI AGYEMANG

ALL OF AHWIAA-OVERSEAS, KUMASI

- DEFENDANTS

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**JUDGMENT**

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The plaintiff sues the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants children of his deceased brother variously described as Kwabena Gyau Baffour Obiri Mainoo, Davies Jackson, Atta Obiri Mainoo, Attah Obiri Mainoo, Atta Gyau (Gyawu), 4<sup>th</sup> defendant (mother of 3<sup>rd</sup> defendant) and 5<sup>th</sup> defendant his nephew and executor of his deceased brother's will for the following reliefs:-

- a) A declaration that plaintiff holds a half interest and or title to the joint businesses of the plaintiff and his late brother, namely; Platinum Hotel and Platinum Drinking Water as well as landed properties developed there from, out of these joint business ventures for the two brothers' mutual benefit.
- b) Declaration that defendants' violet and unilateral assumption of control, possession and authority over these businesses (including the Platinum Hotel and the Platinum Drinking Water Business as well as other properties of the two brothers (save where the plaintiff resides) is illegal, unlawful and same is trespassory.
- c) An order directing the defendants to yield possession and control of the said businesses and properties in issue to the plaintiff forthwith and to vacate the premises of the business.
- d) An order directing the defendants to account for the proceeds for each day they have been in illegal control, possession and management of the business and/or facilities in issue and to pay half of same each to the plaintiff and his late brother's estate respectively.
- e) General damages for trespass.
- f) Any other relief or reliefs deemed appropriate by the Honourable Court.

### **STATEMENT OF CLAIM**

The plaintiff's claim is based on facts set in his statement of claim which are summarized herein after. Plaintiff claims that on his return from overseas in 1996, his late brother invited him to join him in his efforts in building a house for accommodation on the Plot 17 Block F (his brother) had acquired at Ahwiaa "Overseas" near Mampong. To become their common accommodation. He agreed to this request at a time, the deceased had already commenced the

construction of the building and built to the floor level. He thus, devoted his time, energy, committed huge sums of money he had saved over the years, hired workmen/artisans and supervised the construction. The deceased brother who was domiciled in the USA also sent various sums of money to him and he saw to the construction of the house which they later converted into a hotel facility for commercial purpose.

Further, through his instrumentality, he acquired an adjoining plot to Plot No. 17 Block F and developed same as an adjacent building for extra rooms for the hotel. The hotel on completion was named and styled Platinum Hotel and when it started operations, he was directly responsible for the day to day administration of the hotel.

According to the plaintiff, the initial income was distributed between him and his deceased brother but they decided to use the income from the hotel business to set up a drinking water business of which he did the purchase of the machines with his personal money and returns from the hotel. He also purchased vehicles for the hotel with his own money.

Later, out of the business activities, two houses were built to be owned by each of them as their respective private residence. In 2011, however, when his deceased brother returned to live in Ghana, they had serious disagreements over the management of the hotel and he “walked out” of the management of the businesses leaving the management of the businesses in the care and control of his deceased brother. Though series of meetings were held to resolve their difference and peacefully split the businesses between them, but before they could carry out a consensus, they had virtually reached his brother died.

The consensus, known by mediators was for the deceased brother to “buy him out of the business”, by paying him half share of the total value of hotel image or goodwill,

its premises, proceeds and water business and also to concede to him title to the almost completed house he lives in now.

After the death of the brother, the defendants have unilaterally and violently invaded the businesses, assumed control over same disregarding his rights and refusing to account for proceeds, contending that his deceased brother has willed all his businesses and properties to them. The defendants have also ignored the procedures for admitting the Will to probate and are intermeddling with the deceased brother's share of the properties, sold two vehicles used in managing the hotel business.

Plaintiff pleaded that the defendants will not yield control, possession, management and proceeds of the business/properties to him without a court order, hence, the present action was commenced.

#### **STATEMENT OF DEFENCE AND COUNTERCLAIM**

Describing the plaintiff as Sly Obiri Mainoo, the defendants jointly admitted the parties relationship to the plaintiff's deceased brother, added that 4<sup>th</sup> defendant was married to Atta Obiri Mainoo deceased and the child, 3<sup>rd</sup> defendant was born out the marriage. The 5<sup>th</sup> defendant also described himself as an executor of the last Will of Atta Obiri Mainoo deceased.

Defendant also admitted that plaintiff travelled to Germany in 1992 on the invitation of the deceased brother and later relocated to Israel and eventually returned to Ghana in 1996 owing to ill health.

On the acquisition of the contested property on Plot number 17 Block "F" Ahwiaa, the defendants pleaded that plaintiff was engaged by his deceased brother Atta Obiri Mainoo to render supervisory services over the building project owned by his deceased brother and the wife Yaa Owusuaa Obiri Mainoo (4<sup>th</sup> defendant) and he was remunerated accordingly.

Further, at the time plaintiff was shown the building, same had reached the lintel level. The financial support for the project was jointly funded by the deceased brother and the wife, the 4<sup>th</sup> defendant. The plaintiff had a protracted ill health, hence, the plaintiff who was unemployed could not have had huge sums of money to invest in the construction of the building.

Defendants denied the plaintiff's claim of financial contribution for the hiring of workers and artisans but he only supervised workers who were remunerated by the deceased Atta Mainoo and 4<sup>th</sup> defendant. They contended that, plaintiff has no proprietary interest in the property on Plot 17 Block "F" Ahwiaa overseas, nor the adjoining land which was acquired by the deceased Atta Obiri Mainoo and 4<sup>th</sup> defendant through one Richard Osei Boakye with the sum of eight thousand five hundred Ghana cedis sent to 5<sup>th</sup> defendant. They further averred that the hotel called Platinum Hotel Limited is an incorporated body and the building became the asset of the company. On the mutual agreement of the joint owners namely, the late Atta Obiri Mainoo and Yaa Owusuaa Obiri Mainoo (4<sup>th</sup> defendant), the sole shareholder and Directors of Platinum Hotel Limited has/have been Atta Obiri-Mainoo (deceased) and Yaa Owusuaa Obiri-Mainoo, Baffour Obiri-Mainoo, Atta Obiri Mainoo (deceased) respectively.

Further, defendants contended that the hotel, Platinum Hotel Limited was inaugurated on 10<sup>th</sup> day of October, 2004 when the deceased Atta Obiri-Mainoo and 4<sup>th</sup> defendant returned from USA and one Mr. Mensah was appointed as Manager in charge of the day to day administration of the hotel. This was after the plaintiff had expressed interest to be the manager and same was declined by Atta Obiri-Mainoo deceased and the 4<sup>th</sup> defendant as he lacked expertise in Hotel Management.

Further, deceased Atta Obiri-Mainoo and 4<sup>th</sup> defendant provided the purchase money for the acquisition of the Drinking Water Production machines at Ever-Pure office, Tema from

one Mr. Kwadwo Poku and assistance of Messrs Emmanuel Aidoo and Emmanuel Kwadwo Afriyie.

Also, the plaintiff was only an employee at the Drinking Water Production section.

Defendants denied the claim of plaintiff of acquiring vehicles for the hotel but rather vehicles for the hotel and Drinking Water Production were financed by deceased Atta Obiri Mainoo and the wife (4<sup>th</sup> defendant). On the two residential houses at Medoma, the defendants contended that same were built by Atta Obiri-Mainoo deceased with the assistance of the wife 4<sup>th</sup> defendant and he has devised one of the houses to the plaintiff in his last Will.

Though one of the residential houses, House No. Plot 33, Block "D" Medoma was earmarked as matrimonial home, plaintiff was temporary put in occupation of a room as a caretaker but after the demise of Atta Obiri-Mainoo, plaintiff has locked the building denying 4<sup>th</sup> defendant access to her household and personal effects in the house.

The defendant also denied the claim of disagreement between plaintiff and deceased Atta Obiri-Mainoo, however, the plaintiff requested for compensation in the form of end of service benefit for having worked in the company for a considerable long time.

Before the death of Atta Obiri-Mainoo, the company was managed by him and the other directors who have continued with the management of same after his death in accordance with law and company's regulations.

The defendants then counterclaimed for the following reliefs:-

- i) A declaration of title to House Number Plot 33, Block "D" Medoma near Ahwiaa, Kumasi.
- ii) The recovery of possession of the House Number Plot 33, Block "D" Medoma near Ahwiaa, Kumasi.

## **REPLY, DEFENCE TO COUNTERCLAIM AND ISSUES FOR TRIAL.**

The plaintiff joined issues with the defendants on their statement of defence and denied their counterclaim. It was in this state of pleadings and joinder of issues that an application for directions was filed. The issues adopted for trial as filed by the defendants are as follows:-

- 1) Whether or not the 4<sup>th</sup> defendant was married to the late Atta Obiri-Mainoo prior to his death.
- 2) Whether the plaintiff is known and called Atta Obiri-Mainoo.
- 3) Whether or not the 4<sup>th</sup> defendant has at any material times married to one Mr. Kuma.
- 4) Whether or not the plaintiff and his later brother jointly built the house on the Plot Number 17, Block F, Ahwiaa "Overseas".
- 5) Whether or not the house situate on Plot Number 17, Block F, Ahwiaa Overseas is a joint property of the 4<sup>th</sup> defendant and the late Atta Obiri-Mainoo.
- 6) Whether or not the plaintiff and his late brother jointly set up a drinking water business.
- 7) Whether or not the plaintiff acquired an adjoining land to Plot Number 17, Block "F" Ahwiaa "Overseas" and developed same to be used as a hotel.
- 8) Whether or not the plaintiff used his personal money and funds from the hotel to acquire machines or water production.
- 9) Whether or not the plaintiff and his late brother jointly built two (2) houses of which one has a number Plot 33 Block "D" Medoma.
- 10) Whether or not Plot Number 33 Block "D" is a jointly acquired matrimonial house of the 4<sup>th</sup> defendant and the late Atta Obiri-Mainoo.

- 11) Whether or not the plaintiff used his own monies to purchase vehicles for the hotel and drinking water business.
- 12) Whether or not the plaintiff entitled to his claims.
- 13) Any other issues raised by the pleadings.

The plaintiff's additional issues filed and same adopted for trial are as follows:-

- 1) Whether or not at all time material until moments before his brother's death, the plaintiff and his late brother jointly developed, owned and managed the Platinum Hotel and Platinum Drinking Water businesses and the landed properties housing same for their common benefit.
- 2) Whether or not the 4<sup>th</sup> defendant made any contributions to the setting up and or acquisition of these subject business and properties.
- 3) Whether or not plaintiff holds an interest in the two subject residential houses or properties developed subsequent to the Hotel business by plaintiff and his late brother.
- 4) Whether or not friend and family relations met the plaintiff and his late brother in attempts to reconcile the parties and peace fully "share" the subject business and properties between the two, ahead of the plaintiff's late brother's death.
- 5) Whether or not the consensus of the meeting involving the plaintiff, late brother and others was that the late brother "buys out" plaintiff for his interest in the business and buildings houses same and concede title/ownership in respect of one of the two residential properties to plaintiff.
- 6) Whether or not plaintiff's late brother has or had testamentary capacity to Will the whole of the subject properties and/or business to third parties such as any of the defendants herein.



- 7) Whether or the plaintiff is entitled to his claims.
- 8) Whether or not the defendants are entitled to their counterclaims.
- 9) Any other issues raised on the pleadings.

It is pertinent to state that the 3<sup>rd</sup> defendant during the pendency of the case.

### **BURDEN OF PROOF**

From the plaintiff's pleaded case, his claims rest solely on joint ownership of the disputed properties which is denied by the defendants. This denial cast a burden on the plaintiff to prove his claims in accordance with settled principles of law and provisions relating to the burden of proof in civil suits as spelt out in the Evidence Act of 1975, (NRCD 323). The plaintiff has the initial burden to discharge by adducing the required evidence in support of his assertions on the preponderance of probabilities. Unless and until the plaintiff is able to produce evidence of the relevant facts in issue that has the quality of credibility from which it can be said that he has established a prima facie case, the burden remains on him. See the case of **OSEI VS ADJEIFIO [2008] SCGLR 149**.

Where the plaintiff has led such evidence, the defendants are required to adduce such evidence of facts essential to their defence.

In **TAKORADI FLOUR MILLS VS. SAMIR [2005-2006] SCGLR 882 at 900**, the Supreme Court speaking through Ansah JSC stated the law as follows;

“To sum up this point, it is sufficient to state that this being a civil suit, the rules of evidence require that the plaintiff produces sufficient evidence to make out his claim on the preponderance of probabilities, as defined in section 12 (2) of the Evidence Decree (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 the more probable of the rival versions and is deserving of a favourable verdict''

In this case, the defendants are making a counterclaim. It is required of them as counterclaimants to discharge the same burden so placed on the plaintiff. Thus, the defendants must succeed in their counterclaim on the strength of their evidence. A counterclaim being a separate and independent action tried together with the original claim of the plaintiff. See Order 12 of the High Court [Civil Procedure] Rules 2004, CI 47 and the cases of **FOSUHENE v WUSU [2011] 32 GMJ 163 at 178-179; [2011] 1 SCGLR 273 and SAVIOUR CHURCH OF GHANA V. ABRAHAM KWAKU ADUSEI & 4 ORS [2021] 174 GMJ 1 SC.**

#### **DETERMINATION OF ISSUES**

#### **WHETHER OR NOT THE 4<sup>TH</sup> DEFENDANT WAS MARRIED TO THE LATE ATTA OBIRI MAINOO OR WHETHER SHE WAS MARRIED TO ONE MR KUMAH?**

This issue of the marital status of the 4<sup>th</sup> defendant in relation to the deceased brother of plaintiff was raised by the plaintiff. In plaintiff's statement of claim, he has stated that the 4<sup>th</sup> defendant had a child (3<sup>rd</sup> defendant) with his deceased brother and insinuated that 4<sup>th</sup> defendant is married to one Mr. Kumah while his brother's wife was Madam Mary Coffie also known as Miss Jackson. The assertions relating to the marital status of the 4<sup>th</sup> defendant is denied by the defendants. An issue is thus joined between the parties and a duty is cast on the plaintiff to lead evidence in proof of his assertion as pleadings are not evidence. However, the plaintiff was dead silent on his assertion in his witness statement. No shred of evidence is found in his witness statement on his claim. Under cross examination of the plaintiff, he provided the following answer on the subject; -

Q. You are aware that Yaa Owusuaa was the true wife of your deceased brother is that correct?

A. That is so.

This posture of the plaintiff is suggestive that he now admits the defendants' claim and has abandoned his pleaded case on the subject. In testifying that 4<sup>th</sup> defendant is the true wife of his deceased brother then, his testimony is inconsistent with his pleaded case. The effect is that where the defendants' evidence is consistent with their pleading their evidence must be preferable to that of the plaintiff who has departed from his pleading on this subject. See the directions in **ZABRAMA v SEGBEDZI**, [1991] 2 GLR 221 at 227, **APPIAH V TAKYI** [1982-83] GLR 1 at 7 applied in the recent case of the Supreme Court in the case of **ADWOA BOKOR V AGBO ADDOYE** [2021] 174 GMJ 641 at 681.

Where there is an admission as well, the defendants are not required to prove anything on the subject. However, evidence abounds in reference to the 4<sup>th</sup> defendant as his brother's wife. The 5<sup>th</sup> defendant's Exhibit 8, the funeral brochure on the plaintiff's deceased brother, in his biography, it is indicated that he married Yaa Owusuwaa and there is the picture of the 4<sup>th</sup> defendant by which she is described as Mrs Owusuwaa Obiri Mainoo accompanied with a tribute by the widow. The defendants' Exhibits "3E", "3F", "3G" and "3H" are pictures disclosing that the 4<sup>th</sup> defendant did mourn the plaintiff's deceased brother as the wife.

Further, in the Exhibit "10" the last Will and Testament of the deceased, Yaa Owusuaa is mentioned by the testator as his wife. Clearly therefore, the 4<sup>th</sup> defendant was married to the plaintiff's deceased brother and as a matter of fact a surviving wife. The claim that, 4<sup>th</sup> defendant is the wife of one Mr. Kumah is hereby, dismissed.

**WHETHER OR NOT THE PLAINTIFF IS KNOWN AND CALLED ATTA OBIRI MAINOO.**

The plaintiff has sued by the name Atta Obiri Mainoo, but this is denied by the defendants, who contend that the plaintiff is called Sly Obiri Mainoo and the name Atta Obiri Mainoo is referable, to the plaintiff's deceased brother. In plaintiff's reply to the defendants' statement of defence and counterclaim, however, he averred that he is informally known as Sly Obiri Mainoo.

To support his claim, plaintiff has provided Exhibit "A" a copy of a marriage certificate issued in respect of a marriage between Atta Obiri Mainoo and Kate Berchie, Exhibit "B" a copy of a Company Regulation indicating that he is the sole shareholder and a Director of Platinum Hotel Ltd, Exhibit "F", a Middle School Leaving Certificate dated 1979 in the name of Atta Obiri Mainoo, Exhibits "G", and "G1" being photocopies of pages of passports providing the name of the bearer as Atta Obiri Mainoo issued on 20<sup>th</sup> of October 1999 and 4<sup>th</sup> of February 2012 respectively, Exhibit "H" a National Health Insurance Scheme Membership card issued on 31<sup>st</sup> October 2013 in the name of Obiri Mainoo Atta, Exhibit "J" a Voter ID card in the name of Kwaku Obiri Mainoo dated 23<sup>rd</sup> April, 2012, Exhibit "K" a Form A of the Driver and Vehicle Licensing Authority (DVLA) in respect of Hyundai Sonata Saloon vehicle with the name K. Obiri Mainoo as the agent of Platinum Hotel, Exhibit "L" a Form C of DVLA in respect of a Kia Rhino with the name of the new owner as Attah Obiri Mainoo, Exhibit "M" a DVLA Form A on a Ford bus for Platinum Hotel with the name Atta Obiri Mainoo as its agent, Exhibit "N" a DVLA Form A on a Toyota vehicle for Platinum Hotel with the name Obiri Mainoo as its agent and Exhibit "P" a DVLA Form A on a Hyundai Mighty truck for Platinum Hotel with the name Atta Obiri Mainoo as its agent. The foregoing Exhibits disclose that the plaintiff has used the names Atta Obiri Mainoo and Kwaku Obiri Mainoo or Obiri Mainoo.

However, in respect of the Exhibit "A", the defendants per the 5<sup>th</sup> defendant tendered Exhibit "20" a letter dated 27<sup>th</sup> June 2016 from the law firm, W. Kusi Consult to the Registrar of Marriage, Kumasi Metropolitan Assembly to conduct a search to verify whether the

marriage certificate per Exhibit "A" is entered in the register of Marriages with the result stating 'NO'. With the answer provided, same does not provide an affirmation of the name claimed by the plaintiff. On Exhibit "B" the name Atta Obiri Mainoo bearing a signature same as found on plaintiff's witness statement is stated as the sole Shareholder. Defendants denying the content of the Exhibit "B" tendered a letter from the Registrar General's Department in respect of a search on Platinum Hotel which discloses directors entirely different from those named in plaintiff's Exhibit "B". I find that the Exhibit "B" is no good proof of plaintiff being called Atta Obiri Mainoo. I shall consider the Exhibit "B" later in this judgment.

Also, on the Exhibit "F", the defendant's Exhibit "24" and "25" a receipt issued by the West Africa Examination Council (WAEC) acknowledging request for confirmation of result and the response thereto respectively, raise the issue as to its authenticity. In the Exhibit "25" dated January 26, 2018 it is stated as follows; -

**"RE: VERIFICATION OF RESULTS**

Your letter of February 12, 2018 refers.

We checked the details on the photocopy of the certificate bearing the name Atta Obiri Mainoo with index number 503055008 for Middle School Leaving Certificate (MSLC) 1979 and found it to be at variance with our records.

Kindly provide us with the original certificate to enable us conduct further investigation"

Thus, the preliminary investigation by WAEC the known body charged with the conduct of examinations generally which is presented to the court as having issued Exhibit "F" with same not confirmed by the body, the court cannot attach any value to same. The Exhibit "F" with Exhibit "25" suggests a document presented to the court with doubtful clouds hovering around it. The Exhibit "F" with its content cannot support the plaintiff's claim of being called Atta Obiri Mainoo.

Further, in the statement of claim, plaintiff has pleaded that he had travelled and returned to Ghana in 1996. In his evidence per the witness statement, paragraph 4 thereof, he testified that he had travelled to Israel in the year 1993 and returned to Ghana in 1996. In his evidence under cross examination, he disputed returning to Ghana in 1996 and stated as follows; -

Q. You returned from Europe in the year 1996, is that not so?

A. That is not so.

Q. When did you return?

A. I returned in the year 1997.

The plaintiff has per his evidence impressed upon the court that the Exhibit "G" is the passport with which he travelled earlier on and returned to Ghana in 1997 before travelling to the United States of America on the invitation of his deceased brother. Looking at Exhibit "G", same was issued on the 20<sup>th</sup> of October 1999. How the plaintiff could travel with Exhibit "G" and return in 1997 before it was issued, raises more questions than answers. The Exhibit "G" did not disclose the pages on which the dates of embarkment and disembarkment are discernable. The more I consider the plaintiff's claim in respect of traveling with the Exhibit "G", the more I am struck with awe and find the claim to be incredible. Though it is not denied that plaintiff had travelled to Israel, that he travelled with Exhibit "G" lacks credibility. Per the date of issue of the Exhibit "G", I am of the opinion that, the plaintiff is being untruthful in asserting that he had travelled with the Exhibit "G" and returned in 1997. Certainly, there should be another passport with which he travelled before 1999 which was not tendered for a deep reason best known to him.

In respect of Exhibit "G1", it is quite glaring that, the date stated therein as the plaintiff's date of birth being 31<sup>st</sup> July 1955 is different from the date of birth in Exhibit "G" given as 3<sup>rd</sup> January 1962. The 5<sup>th</sup> defendant has testified that the plaintiff had to

travel in the name of the deceased brother Atta Mainoo to facilitate the procurement of his travelling document.

**Under cross examination, the plaintiff made the following statements; -**

Q. What is your date of birth?

A. I was born on 12th day of October 1960 however, in my passport it is stated 1957 but I am not too sure but it is as per Exhibits "G" and "G1".

Q. Do you remember that on the 23<sup>rd</sup> of April 2012, you and your deceased brother together went to bus stop Medoma Polling Station of the Electoral Commission to register for your voter's ID Cards.

A. There is nothing of that sort.

Q. Your voter's ID card which you used to vote at the 2012 general elections bore your name as Kwaku Obiri Mainoo. Is that not so?

A. That is so.

Q. When you registered for your voter's ID card for the year 2012 general election you indicated to the electoral officer that that you were born on the 12<sup>th</sup> day of July 1964. Is that not correct?

A. That is not so.

.....

...

Q. Your Exhibit "H", the National Health Insurance (NHIS) card indicates that you were born on the 10<sup>th</sup> day of September 1963. Is that not your date of birth?

A. That is not my date of birth.

From the following answers given by the plaintiff, he is denying the obvious. For the dates denied by him are the very dates on the Exhibits under reference. With plaintiff's answer that he was born on 12<sup>th</sup>

October 1960, then there is a reason for providing a date of birth not being his for the procurement of the Exhibit "G1" making the assertion of the defendants' probable. Though it is wrongful to travel in the name of another person.

In respect of the voter's ID card, a search conducted by the defendants as per the Exhibits "22" and "22B", the Electoral Commission confirmed the name Kwaku Obiri Mainoo and the date of birth as 12<sup>th</sup> July 1964. With the additional information that plaintiff initiated the process of change of name but did not complete same.

The defendants have tendered Exhibit "7" the funeral brochure of the plaintiff's deceased father who died in 1996. A fact not disputed by the parties. Plaintiff's witness, Yaw Antwi (PW2), a brother of the plaintiff and the deceased testified as follows; -

Q. You and the plaintiff are from the same father?

A. Yes, we are from the same father.

Q. Your father was popularly called Teacher Bi?

A. Yes.

Q. And he was officially called Edward Obiri Mainoo.

A. I only know of Kwaku Bi.

Q. Your deceased father ever worked with the Ghana Police Service?

A. It is so.



Q. Are you aware that your father died on the 25<sup>th</sup> February, 1996?

A. Yes, he died on that date.

Q. Your father died at Esaase and was buried at Ahwirewa. Not so?

A. It is correct.

Q. At the time your father died the plaintiff herein was living in Tel-Aviv, Israel. Not so?

A. Yes.

Q. Your deceased brother was at Hamburg in Germany at the time your father died.

A. No, he was in Ghana.

Q. At the time your father died, your deceased brother had travelled to Europe before?

A. At that time, we were with him in Ghana.

Q. Would you agree with me that at the time your father died, your deceased brother had travelled to Europe before.

A. Yes, he had travelled to Europe before.

Q. Your deceased father was survived by a wife called Akosua Kyem. Not so?

A. It is correct. She is my mother.

In Exhibit "7", not only are the admitted facts by PW2 disclosed but the names mentioned as chief mourners included Atta Obiri Mainoo also called Atta Gyawu of Kumasi, Accra and Hamburg - Germany, Sly Obiri Mainoo (Tel-Aviv, Israel) and PW2, Yaw Atta's name. The import of Exhibit "7" is that, it discloses the known names of the plaintiff and his deceased brother. Their names being Sly Obiri Mainoo and Atta Obiri Mainoo (Atta Gyawu) respectively. It is significant to state that the plaintiff's father per the evidence died in 1996

and was buried in the same year. More significantly, this date was before plaintiff's claim of an agreement with his brother to put up the disputed property. Thus, the family acknowledged that the plaintiff bears the name, Sly Obiri Mainoo which name plaintiff has not disputed and the deceased known as Atta Obiri Mainoo (Atta Gyawu). No objections were made on the description given the deceased brother in the Exhibit "7" and the existence of Exhibit "7" in particular.

PW1, Kwame Opoku Agyemang testified on knowing plaintiff's deceased brother as Kwabena Gyawu Obiri – Mainoo and had also lived with him in the United State of America. After denying that the plaintiff's deceased brother was called Atta Obiri Mainoo however, in answering a question under cross examination he referred to him as Atta Gyau which invariably suggests that he knows the deceased brother also bore the name Atta.

The Exhibit "11A" is a video recording on the opening of the disputed Platinum hotel. In Exhibit "11A" the deceased and the wife, 4th defendant, were variously referred to as Mr. and Mrs. Atta Obiri Mainoo or Mr. and Mrs. Obiri Mainoo by some of the guests present while the plaintiff responded to the name Sly. The defendants' Exhibit "5" and "6" being the death certificate and burial permit respectively on plaintiff's deceased brother, both bear the name Atta Obiri Mainoo.

The deceased's voter's ID card as per Exhibit "4" bears the name Atta Obiri Mainoo. A closer inspection of plaintiff's voter's ID card, Exhibit "F" and the deceased brother's voter's ID card Exhibit "4" reveals that though registered on different dates, both were issued at the same Polling Station with code being F230505. Thus, from the records of the Electoral Commission, plaintiff is known as Kwaku Obiri Mainoo and his deceased brother known as Atta Obiri Mainoo.

Also, in the deceased's last will and testament, Exhibit "10", he referred to himself as Attah Obiri Mainoo.

DW2, Ama Serwa who had lived with the deceased as the wife and the relationship has ended, testified that she had lived with the deceased and the plaintiff at Tafo Nhyiaeso. DW2 stated that, the deceased was called Atta Obiri - Mainoo and the plaintiff called Kwaku Obiri - Mainoo, Kwaku Bi and popularly known as Sly.

DW1, Emmanuel Aidoo who described the plaintiff as his friend and having been employed by the plaintiff's deceased brother as a driver when Platinum Hotel was opened, testified that he knows the plaintiff as Sly Obiri Mainoo alias Kwaku Obiri Mainoo and the deceased brother was called Atta Obiri Mainoo.

Learned counsel for the plaintiff had raised issues with the spellings of Atta ending with "h" and Obiri Mainoo with and without a hyphen with reference to names stated to be names of the plaintiff's deceased brother. Observably, the plaintiff's Exhibit "L" to support his claim of being known as Atta Obiri Mainoo also has "h" added to read Attah.

From the evidence, it is not in doubt that the name Obiri Mainoo is the surname of the plaintiff and his siblings and indeed the name of their deceased father as per the Exhibit "7". How it is spelt in the circumstance of this case, is of no real importance. As rightly, cited by counsel for the defendants in his written address, the case of **AMA SERWAA v GARIBA HASHIMU AND ANOTHER Suit NO, J4/31/2020 dated 14<sup>th</sup> April 2021 reported in [2021] 172 GMJ 96 at 170, Prof. Mensah-Bonsu JSC held; -**

"The Court has taken Judicial notice of the fact that "Yaa Akyaa" or "Yaa Achiaa" is a common name among the Asante ethnic group in Ghana. Like many a local name which is spelt differently by different people, if the owner does not insist on a particular spelling, "Akyaa" is essentially the same name, as its anglicized spelling, "Achiaa".

In the circumstance of this case, the spelling of Atta with an "h" and Obiri Mainoo with a hyphen is nothing but evidence on not insisting on a particular spelling. Similarly, the name

of the 4<sup>th</sup> defendant has variously been spelt as Yaa Owusaa or Yaa Owusuwaa and I find as referable to one and the same person.

In all the foregoing, I find that the plaintiff's deceased brother has been known and called Atta (Attah) Obiri Mainoo, Atta Gyau (Gyawu), Kwabena Obiri Mainoo Baffour Gyau. The plaintiff's documentary evidence as pointed out on the name Atta Obiri Mainoo have clouds of

doubt surrounding them. The name Kwaku Obiri Mainoo and Sly Obiri Mainoo admit no doubt as referable to the plaintiff.

**WHETHER OR NOT ALL TIMES MATERIAL THE PLAINTIFF AND HIS LATE BROTHER JOINTLY DEVELOPED, OWNED AND MANAGED THE PLATINUM HOTEL LIMITED AND PLATINUM DRINKING WATER BUSINESS AND LANDED PROPERTIES HOUSING SAME FOR THEIR COMMON BENEFIT?.**

The ownership of the properties aforementioned is the main bone of contention among the parties and under this head, the relevant issues set out are intended to be resolved.

From the pleaded case of the plaintiff and his testimony, he is making statements attributed to a dead person. On evidence needed to prove a claim against a dead person, the settled law is that " when an attempt is made to charge a dead person in a matter, in which if he were alive he might have answered the charge, the evidence ought to be looked at with great care; the evidence ought to be thoroughly sifted, and the mind of any judge who hears it ought to be first of all in a state of suspicion; but if in the end the truthfulness of the witness is made perfectly clear and apparent, and the tribunal which has to act on their evidence believes them, the suggested doctrine [of corroboration] becomes absurd.

See *In re Garret; Gandy v Macaulay* (1885) 31 ChD1

Our jurisprudence has examined the approach courts must adopt when evaluating charges and assertions made against dead persons. On claim against the estate of a deceased person the law is that such a claim should be scrutinized with the utmost or close scrutiny. The caution that such claims must be weighed carefully is based on plain good sense. See **ELIZABETH OSEI V MADAM ALICE EFUA KORANG [2013] 58 GMJ 1 at 20 per Ansah, JSC, MARGARET OSEI ASSIBEY V GBOMMITTAH [2012] 47 GMJ 61** and **KWAME BONSU V KWAME KUSI [2010] 26 GMJ 20 at 51-52 per Wood CJ**.

Thus, the evidence relating to statements made by the deceased Atta Obiri Mainoo will be treated with extreme circumspection and suspicion. However, where the truthfulness of plaintiff's claim is apparent the court will consider these claims.

The pleaded case of the plaintiff is that with his brother, they jointly acquired the aforementioned properties. In proving his claim of joint ownership, he stated per his witness statement that he returned from Israel with USD40,000,00 in 1996 with intent to invest this amount. In paragraphs 7 and 8 of his witness statement he testified as follows; -

7. I discussed with my late brother, Gyawu Obiri Mainoo who agreed to have a joint investment in hotel business with me. My late brother had already arranged for the acquisition of the land at Ahwiaa Overseas in Kumasi so we decided to site the hotel there.
8. My late brother was then due to travel to the US so we agreed that I stay behind and see to the construction of the hotel."

The foregoing does suggest that the plaintiff and the deceased brother agreed on a hotel business on plaintiff's return from Israel. But this impression is not found in the pleaded case of the plaintiff. In the plaintiff's pleaded case, he had stated that the brother had already acquired the land and on which some construction work was on going for a residential purpose and he invited him to be part of this project. It was later that the idea of a hotel was

born. Clearly, the plaintiff decided to abandon the pleaded case and made his testimony sound that, the deceased brother had invited him to invest in a hotel business when he had money to invest, to strengthen his claim of interest in a hotel business. It seems to me as well, that it is for the same reason that he also denied his pleaded case and evidence on the date of his return to Ghana to suggest that as at 1997 he had some money to invest in a hotel business as alleged.

PW3, Kofi Tawiah describing himself as a brother of the plaintiff and the deceased Atta Obiri Mainoo testified that in 1998, the plaintiff and deceased called a family meeting at the family house at Tafo where they informed the meeting that they have taken a decision to start a hotel. The plaintiff in his pleaded case and evidence has not alluded to any family meeting where an announcement was made of a joint ownership of a project. I find PW3's evidence as simply calculated to support a non-existing fact and to embellish plaintiff's claim.

PW2, Yaw Antwi, asserting a joint ownership of the disputed hotel testified per paragraph 6 as follows; -

6. I know that it was the plaintiff who played the most important role of supervising the construction and establishment of the two businesses until my late brother came in 2011 to continue the running of the business''.

As a matter of fact, the supervisory role played by the plaintiff in the acquisition of the disputed property is not in contention and the defendants insist he was adequately remunerated.

Apart from the plaintiff who alleges that he had invested 40,000.00USD none of his witnesses confirmed same except all stating that they know it was a joint venture. Plaintiff testified on running out of funds and had to seek financial assistance from PW1, Kwame

Opoku Agyemang, to acquire an adjoining house for the hotel, acquire the land and machines for the sachet water business for which he personally refunded the money.

PW1, Kwame Opoku Agyemang testified on giving out interest free loans to the plaintiff and the deceased brother through the plaintiff. When challenged that no such financial support was granted by him, he answered under cross examination as follows: -

Q. I am putting it to you that if you ever gave the plaintiff herein money, then it was for his personal things and not for the construction of the hotel.

A. I do not agree with you. I did not give him money for personal things. I have evidence that indicates the purchase of the adjoining house to be added to the hotel was money from me.

Q. I am putting it to you that you never provided any money in the acquisition of the property belonging to Platinum hotel.

A. I do not agree with you.

Earlier on as well, after admitting that the deceased was a tax consultant in the USA and he could not tell the work plaintiff does, PW1 indicated that he had given loan to the deceased and had evidence to that effect by a deposit he made into his account.

It is a settled principle of law that facts capable of positive proof by a party, is not proved by merely mounting the witness box to repeat the averments on oath. Where there is evidence to support the loans granted which is denied, what prevented PW1 from providing the needed evidence of facts which he claims he has and will be sufficient to lead a reasonable mind to conclude that the existence of the fact is probable than its non-existence as required under sections 11(1) and (4) of the Evidence Act, 1975, NRCD 323?

Section 11(1) and (4) of the Evidence Act of 1975 provides thus provides; -

“11(1) For the purpose of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.

(4) In other circumstances the burden the burden of producing evidence requires a party to produce sufficient evidence which on the totality of the evidence, leads a reasonable mind to conclude that the existence of the fact was more probable than its non-existence.”

Thus, in the case of **ZABRAMA v SEGBEDZI** supra, the Court of Appeal speaking through Kpegah JA [as he then was] explained the Majolagbe principle and ruled that the correct proposition is that, a person who makes an averment or assertion which is denied by his opponent, has the burden to establish that his averment is true. And he did not discharge the burden unless he led admissible and credible evidence from which the fact or facts he asserted could properly be and safely be inferred. The court continued, the nature of each averment or assertion determined the degree and nature of that burden. The case of *Majolagbe v Larbi* should therefore not be taken to have stated a general principle on proof in law.”

PW1, withheld the evidence of granting loan to the plaintiff and his deceased brother thus did not provide sufficient evidence to support his claim.

From the evidence it is not disputed that on the return of the deceased Atta Obiri Mainoo to settle in Ghana in 2011, he took over the control of the property, the Platinum Hotel till his death. The plaintiff attributes this to issues over the management of the properties and he was advised by the elders of the family to stay away. However, in his statement of claim, he pleaded that he “walked out” of the management of business. But, who will accept such an advice or walk out as a joint owner of a property, he has invested a whopping sum of 40,000USD in 1997 and also loans raised?.

Furthermore, I find the plaintiff’s claim of joint investment intriguing when I consider his claim that, he did the registration of Platinum Hotel and same has a sole shareholder being



him. Under cross examination, plaintiff also stated that he was a director of Platinum Hotel as per the Exhibit "B". The question that begs for an answer is, what happened to the interest of his deceased brother who acquired land, started the construction of the property and his financial investment?

Notably, where the plaintiff's claim of joint ownership is anything to go by with due reference to the Exhibit "B", it rather presents him as disingenuous to assert a right of sole shareholder and also being the named director, Atta Obiri Mainoo. I am inclined to accept that, that the Platinum Hotel registered with a sole shareholder displaces the claim of joint ownership but emphasizes the claim of the property owned by only one person.

Apart from plaintiff's Exhibit "B" disclosing that Platinum Hotel as a company limited by shares also discloses the first directors of the company as; -

1. ATTA OBIRI MAINOO
2. BERNARD OWUSU KYEREMANTEN
3. NANA ASANTE DENTEH

This claim is challenged by defendants who through the 5<sup>th</sup> defendant tendered Exhibit "13" a regulation on Platinum Hotel Limited with the first directors named as: -

1. Atta OBIRI-MAINOO
2. YAA OWUSUAH OBIRI-MAINOO
3. BAFFOUR OBIRI-MAINOO

Obviously, the names of the first directors in the two Exhibits are not the same and the signature by the name of Atta Obiri Mainoo differs. Strikingly however, both documents bear the same date of registration as 12<sup>th</sup> of June 2003. The date on Exhibit

“B” is hand written with the date on Exhibit “13” typed. Defendants’ Exhibit “21 a search result from the Registrar General’s Department dated 20<sup>th</sup> of July 2016 the names of the first directors provided reflect the names of the first directors found in Exhibit “13” and the plaintiff’s Exhibit “B” denied. The plaintiff did not provide any challenge to the content of Exhibit “21”. Increasingly, per the evidence, plaintiff is portrayed as having presented documents raising more questions than answers. With the effect that his evidence is incredible.

This view of the Court is fortified by the defendants’ Exhibit “11A” a video coverage on the opening ceremony on the Platinum Hotel in 2004. In Exhibit “11A”, the video coverage is captured in four (4) files. The video coverage discloses that on the day of the ceremony, the deceased Atta Obiri Mainoo and the 4<sup>th</sup> defendant sat at the head table with some of the invited guests and were variously addressed as Mr. and Mrs. Atta Obiri Mainoo or Mr. and Mrs. Obiri Mainoo. The guests, in the speeches delivered, referred to them as the owners of the property and commended them for the construction of the hotel which invariably will provide employment.

That was not all, it is observable that, the deceased Atta Obiri Mainoo when given the opportunity to address the gathering in his speech, stated categorically his dream to put up a hotel, raising the necessary financial resource with the wife and putting up the Platinum Hotel. Deceased Atta Obiri Mainoo made no statement suggestive that he had jointly pulled resources with the plaintiff to put up the properties described as Platinum Hotel or for Platinum Hotel. He and the wife were also assisted by the dignitaries to cut the tape fixed on the entrance to a room in the hotel, thus signifying the opening of the hotel.

In all of this, the plaintiff was not seen nor presented as a joint owner. Plaintiff with the wife were however, later introduced to the gathering as the person who supervised the construction work and were commended for the work done and for

not squandering the resources. As the plaintiff was introduced by the name Sly, he joyfully acknowledged the commendation by raising his hands and beaming with smiles. In the concluding file of the Exhibit "11A", the wife of the plaintiff was identified by the 5th defendant. She is seen joyously rendering the vote of thanks and grateful for the honour done her and the husband Sly. She is also heard, acknowledging the deceased and the wife as Mr and Mrs Atta Obiri Mainoo.

I am minded of the fact that the length of the video does not span the length of time recorded on it. Apart from the complaint made on the length of time covered in the Exhibit "11A" nothing was said about the open declaration made by the deceased Atta Obiri Mainoo on the ownership and resources gathered with the wife (4<sup>th</sup> defendant) for the construction of the property. The 5<sup>th</sup> defendant was not subjected to any cross examination on statements made by the plaintiff during the opening ceremony or objections voiced by the plaintiff and the wife. I have no reason to disregard the content of Exhibit "11A" but find it to be of probative value in aiding the court to resolve the issue of ownership of the disputed properties. I am therefore, inclined to accept that the sole shareholder of Platinum Hotel is the deceased Atta Obiri Mainoo and the 4<sup>th</sup> defendant supported in raising resources for its construction

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The plaintiff's role as being largely supervisory is also affirmed.

I also find the claim that plaintiff asked for compensation from the deceased Atta Obiri Mainoo more probable than the plaintiff's and his witnesses testimony on deceased Atta Obiri Mainoo requesting to buy plaintiff's interest in Platinum Hotel.

On Platinum Drinking Water Company, the plaintiff admits that it is for the Platinum Company. PW1 testified that the plaintiff requested him to buy a sachet water producing machine from a company in Tema which cost GH5400.00 an amount

which was later refunded to him by the plaintiff. Under cross examination however, PW1 answered as follows; -

Q. Are you aware that Platinum Hotel Limited has a drinking water production enterprise?

A. I am aware. I went to purchase the machines for the drinking water enterprise from Tema.

Q. The deceased brother of the plaintiff, Atta Obiri Mainoo purchased from you some of the machines for the drinking water production and paid you.

A. He did not buy from me. He asked me to use my money to buy the machines from Tema and later sent two boys to come for them.

PW1 per his answer admits that, it was the deceased Atta Obiri Mainoo who requested for the purchase of the drinking machines contrary to the plaintiff's account of stating that he was the one who contacted PW1 to get the machines for the water project. The issue of ownership of the water production enterprise by Platinum Hotel itself is not contested.

The plaintiff per his Exhibits "K", "M", "N", and "P" the DVLA documents and under cross examination admits that he acted as the agent of Platinum Hotel in dealing with the vehicles mentioned therein.

Per the foregoing evidence, I find that plaintiff's claim of financial contribution towards the establishment of Platinum Hotel and its associated properties as doubtful, same is not credibly substantiated.

On membership of a company, the court in the case of **ADRYX MINING AND METALS LTD AND OTHERS V ASHANTI GOLDFIELDS CO. LTD [1999-2000] 2 GLR 758** explained as follows; the membership of a company was defined in section

30 of Act 179 under which subscribers to the regulations were deemed to be members whose names should be entered in the register of members. And by section 30(2) those in the register "shall" be members of the company.

Also, In the case of **ADEHYEMAN GARDENS LTD AND ANOTHER V ASSIBEY [2003-2005] 1 GLR 391, [2003-2004] SCGLR 10I6**, the Supreme Court, reiterated that under section 30 of the Companies Code, 1963, (Act 179), "there are two kinds of members of a Company; those who became members at the inception of the company by subscribing to its regulation and those that after the Company came into existence agreed to become members."

Thus, entry of name in a Company's register at least is prima facie evidence of fact of membership and the extent of shareholding. In this case the plaintiff's Exhibit "B " as will be recalled is discredited. Plaintiff offered no evidence on being a member of the company.

## **MEDOMA PROPERTY**

In respect of the property at Medoma, the plaintiff's pleaded case is that out of the returns from the Platinum Hotel, he and the brother built two houses of which one is for each of them (Paragraph 23 of the statement of claim). In his evidence in chief per his witness statement, he testified through paragraphs 32, 33, 34, 35, 36 and 37 as follows; -

32. In the year 2000, I acquired plots with number 32 and 33 Block "D" Medoma from Nana Agyeman Nkwantabisa III, then the Adontenhene of the Asante Adonten Stool.

33. That I was issued with an allocation note and site plan copies of which I have attached hereto and marked as Exhibit AOM"3" and AOM"4" respectively.

34. That I started the requisite building permit on the two plots at the Kwabre District Assembly and was eventually given approval for same on 5<sup>th</sup> May 2005. Copies of the building permit and the receipt for payment I made thereon are attached hereto and marked as Exhibits A0M "5" and AOM "6".

35. Thereafter I put up a house on one of the plots in which I live up to date with my wife.

36. That sometime in 2012, my late brother Gyawu sent our younger brother Yaw Antwi to me to collect my house documents for him so that he could facilitate the building permit for a new plot he had acquired within the Kwabre District. He returned it to me later.

37. I was later alerted by some officials at the Kwabre District that my late brother had duplicated my documents for registration.

38. When I asked my late brother about the issue he simply denied it and I never spoke about it again."

Under cross examination the plaintiff answered as follows; -

Q. your deceased brother and the wife acquired two residential plots at Medoma with numbers Plot 32 and 33 Block D. Not so?

A. It is not true. I acquired the plots and built the house.

Q. Your deceased brother was a tax consultant in the USA. Is that not so?

A. That is so.

Q. Prior to his death he relocated to Ghana to stay permanently. Is that not so?

A. Yes, he came to Ghana.

.....

...

Q. When your deceased brother came to settle in Ghana he demanded the documents covering plots numbers 32/33, Block "D" Medoma from you?

A. That is not so.

Q. I am putting it to you that your brother demanded the documents and you told him they were missing.

A. That is not correct.

The foregoing admits no doubt that the plaintiff's testimony on the acquisition and ownership of the Medoma property is inconsistent with his pleaded case. Even under cross examination, he denies his testimony on his deceased brother requesting for the documents on the two plots.

PW2, Yaw Antwi, whom he testified as sent to collect the documents on the Medoma properties but same were not given, answered that he gave them to him.

The pleaded case of the defendants on the acquisition of the plots and the construction of the properties by the deceased Atta Obiri Mainoo and the wife, 4<sup>th</sup> defendant has been consistent.

As earlier pointed out, on the effect thereof where pleading is inconsistent with evidence while that of his opponent is consistent with his pleading, the opponent's case must be found preferable to the one who departs from his pleadings. see the cases of **ZAMBRAMA V SEGBEDZI**, **APPIAH V TAKYI** and **ADWOA BOKOR V AGBO ODDOYE** supra.

The plaintiff's effort to put forward evidence inconsistent with his statement of claim does not deserve a favourable consideration.

In the circumstance, the defendants' claim on the acquisition of the Medoma properties is affirmed by the court and the plaintiff's claim on same dismissed. I have

no doubt, that all the documentation on plots numbered 32 and 33 with the buildings thereon as tendered by the parties in the name of Mr. and Mrs. Atta Obiri Mainoo are referable to the deceased Atta Obiri Mainoo and the 4<sup>th</sup> defendant. The Exhibits have nothing to do with the plaintiff and the wife as he would want the court to believe. Where any step was taken by plaintiff in respect of the Medoma property, same were done on behalf of the deceased brother and the wife, hence the request for the documentation on same. The effort by the plaintiff to tag the deceased brother as dishonest when he took documents to enable him acquire a building permit but rather duplicated same is unfortunate and a fabrication.

I wish to add that, if the pleaded case of the plaintiff that the plots were acquired with proceeds from Platinum Hotel for their joint use is even true, why were the documentation not in the name of Platinum hotel or in the names of his deceased brother and himself but rather in the name of his wife and himself? It now becomes so evident that, it is for the purpose of overreaching the claims to be made in respect of the disputed properties for the estate of his deceased brother, that plaintiff insists that he is called Atta Obiri Mainoo and cleverly denying that the deceased brother is called Atta Obiri Mainoo.

Largely, the plaintiff had set off on a path of deceit in this suit to over reach the claims of the defendants. This cunning and unfair way, the law does not approve even when same is not pleaded.

The court finds that deceased, Atta Obiri Mainoo has testamentary capacity to deal with the disputed properties in his Will.

## CONCLUSION



As gathered from the foregoing findings, the plaintiff failed to credibly discharge the burden placed on him. Unlike the plaintiff, the defendants on the balance of probabilities deserve a favourable ruling in respect of the reliefs sought. Accordingly, the reliefs sought by the plaintiff are dismissed. Judgment is hereby entered for the defendants on their counter claim as follows: -

- 1) A declaration of title to House Number Plot 33 Block "D" Medoma near Ahwiaa, Kumasi.
- 2) The Recovery of Possession of House Number Plot 33, Block "D" Medoma near Ahwiaa, Kumasi.
- 3) Cost of GH¢20,000.00 awarded against the plaintiff.

[SGD]

JUSTICE HANNAH TAYLOR (MRS)

JUSTICE OF THE HIGH COURT

**LAWYERS**

DENNIS OSEI ANTWI FOR THE PLAINTIFF

BENJAMIN OSEI BOATENG FOR THE DEFENDANT

