

IN THE HIGH COURT OF JUSTICE, ASHANTI REGION, KUMASI HELD ON  
WENESDAY THE 10<sup>TH</sup> DAY NOVEMBER 2023, BEFORE HER LADYSHIP JUSTICE  
HANNAH TAYLOR (MRS).

SUIT NO. C1/127/19

1.	JOHN HEIZEL	}	PLAINTIFFS
2.	FAUSTINA HEIZEL		
3.	CHARLES HEIZEL		
4.	ANTWI ISAAC		
5.	KOFI ANTWI		
	ALL OF HOUSE NO. PLOT 42		
	BLOCK 'B'ABREPO, KUMASI		

VRS.

1.	AMA DENKYI	}	DEFENDANTS
2.	APPIAH JOSHUA		
3.	KWAKU AWUAH		
4.	ABUSUAPANIN ASANTE MENSAH		
	ALL OF HOUSE NO. PLOT 24		
	PAKYI NO. 2 ASHANTI		

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**JUDGMENT**

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The plaintiffs are siblings and members of the Twafo family of Pakyi No. 2. Plaintiffs asserting to be the beneficial owners of the estate of Opanin Yaw Oppong claim the

following reliefs from the defendants who are also members of the Twafo family of Pakyi No. 2 in the Amansie West District of the Ashanti Region; -

- a. A declaration of title to all the parcel of land lying and being at a place commonly called Akaiame which land is bounded by the Akaiame stream, the Boahyemu stream and the Pakyi to Antoakrom road and measuring approximately 14.9 acres or 6.045 hectares.
- b. A further order for the defendants to jointly and severally pay for the cost of the palm trees which has been uprooted by the defendants.
- c. Recovery of possession of the said land.
- d. An order of perpetual injunction restraining the defendants, their agents, assigns, workmen and anybody claiming through them from having anything to do with the said land in dispute.
- e. An order for general and special damages jointly against the defendants for trespassing onto the land and causing damages to plaintiffs' property.

#### **STATEMENT OF CLAIM**

The pleaded facts on which the plaintiffs rely on to assert their claims are summarized hereafter. The plaintiffs averred that they are the beneficiary owners of the estate of Yaw Oppong, their brother who died intestate. They contend that Yaw Oppong during his life time cultivated a palm plantation on land belonging to their line of the Twafo family on which their forefathers had been cultivating. However, before Yaw Oppong cultivated the land, one Ama Asubonteng had earlier cultivated the land. Whilst Ama Asubonteng was cultivating the land, there was an adverse claim by a family called Nyansanease and it became the subject of an arbitration which ended at the Bantamahene's palace. The outcome of this arbitration, the plaintiffs contended was in favour of their family.

Upon the death of Yaw Oppong the plaintiffs' averred, they became beneficiary owners of the palm plantation because Yaw Oppong cultivated on their family land. Further, as

the beneficiary owners of the palm plantation, they took over possession and maintained same.

They pleaded that the defendants who own no land have sold the land to unsuspecting developers who have entered the plantation and uprooted the palm trees for the purpose of clearing the land and developing same for residential purpose. Describing the act of the defendants as unlawful, they also had information that, the 4<sup>th</sup> defendant has constituted himself as the head of the plaintiffs' family, though he is the head of the larger Twafo family, is signing statutory declaration as title documents for the said plots.

### **STATEMENT OF DEFENCE**

The 1<sup>st</sup> defendant who is the mother of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants with the 4<sup>th</sup> defendant filed a joint statement of defence. The defendants admit that the plaintiffs are siblings but deny the claim of being beneficiary owners of Yaw Oppong's estate as the estate of Yaw Oppong devolved unto the family.

On the land cultivated by Yaw Oppong, the defendants contended that, that portion of the land belonged to the 1<sup>st</sup> defendant. Thus, Yaw Oppong trespassed onto the 1<sup>st</sup> defendant's land and he was warned by the twafohene, Nana Karikari and the 4<sup>th</sup> defendant as the head of family to vacate the land after harvesting the palm trees.

Further, the defendants denied the claim of plaintiffs' forefathers and Ama Asubonteng cultivating the land and contended that it was rather Nana Kofi Nsiah who cultivated the land in dispute.

On the dispute before the Bantamahene, the defendants averred that Yaw Oppong represented the Twafo family and the award was in favour of the entire family. Of the disputed property, the defendants contended that it is not called AKaimu neither is it bounded by the description given by the plaintiffs and it is approximately 5 acres in size.

The defendants apart from the admitted facts in their statement of defence, denied all other facts claimed by the plaintiffs and concluded that the plaintiffs are not entitled to their claim.

### **ISSUES FOR TRIAL**

The plaintiffs joined issues with the defendants on their statement of defence and issues set for determination are as follows; -

- a. Whether or not Yaw Opong litigated over the land in his personal capacity.
- b. Whether or not the plaintiffs are the beneficial owners of the in dispute.
- c. Whether or not the plaintiffs are entitled to their claim.
- d. Any other issues raised by the pleadings.

### **BURDEN OF PROOF**

This being a civil suit in which the claim of entitlement by the plaintiffs to the disputed property is denied, they have to prove with credible, cogent and admissible evidence that the existence of the facts asserted are probable than their non- existence. This is a statutory burden the plaintiff cannot fail to discharge as created under section 11(4) of the Evidence Act, 1975, NRCD 323. Further, the plaintiffs are to discharge their duty by the preponderance of probabilities as set in section 12 of the Evidence Act, 1975, NRCD 323 as follows; -

12(1) Except as otherwise provided by law, the burden of persuasion requires proof by the preponderance of probabilities.

(2) "Preponderance of probabilities" means that 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.'

In **TAKORADI FLOUR MILLS V SAMIR FARIS [2005-2006] SCGLR 882 at 900, ANSAH JSC** held 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, 1975, (NRCD 323). Our understanding of the rules of the Evidence Decree, 1975 on the burden of proof is that in assessing 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 favorable verdict.”

Thus, the plaintiffs who assert assume the burden of proof in the circumstance of this case.

#### **DETERMINATION OF ISSUES**

Whether or not Yaw Oppong litigated over the land in his personal capacity.

From the pleaded case of the parties and the evidence, it is not in doubt that there has been an adverse claim to the land the subject matter of this dispute which resulted in a customary arbitration of which an award was made. As part of the processes available to contesting persons, arbitration is an option. Thus, in the case of **AMOAKO ATTA II & OTHERS V. OSEI KOFI II & OTHERS (No. 2) [1962] 1 GLR 384**, it was held “[Parties] are entitled at their own choice to submit a dispute to arbitration even after judgment of the highest Court of the land. The award of the arbitration will supersede the judgment, and be binding on the parties.”

The binding effect of an arbitration award on the parties cannot be over-emphasized. The parties also do not contest the fact that Yaw Oppong participated in this customary arbitration. The bone of contention between the parties is the capacity in which Yaw Oppong participated in the arbitration.

Charles Frimpong, 4<sup>th</sup> defendant in his witness statement, testified that it was Akyeame Kofi Asamoah who made an adverse claim to the disputed land and he summoned Yaw Oppong before the Akwamuhene and a decision was given in Yaw Oppong's favour.

The said Akyeame Kofi Asamoah testified for the plaintiffs as PW1. In his witness statement, he testified as sharing a common boundary with Yaw Oppong which boundary feature is a stream called Akai and Bohyen and had summoned Yaw Oppong before the Akwamuhene of Pakyi No. 2, a caretaker chief to prevent him from clearing the land. However, upon an inspection of the land the Akwamuhene declared Yaw Oppong as the owner.

Under cross examination PW1 reiterated as follows; -

Q. You are telling the Court that you summoned Yaw Oppong before Akwamuhene. Is that the case?

A. That is so.

Q. What was the issue?

A. At the time I went to the land, Yaw Oppong had cultivated it. The land was for the Stool and it was for Nana Akwamuhene. So, I summoned him before Nana Akwamuhene. Nana Akwamuhene sent a delegation to inspect the land.

Q. How was the case settled.

A. The Akwamuhene found me liable and gave the land to Yaw Oppong.

Q. I want to put it to you that, that case was settled in favour of the family in which Yaw Oppong came from.

A. I do not agree with you.

From the evidence as given on the arbitration by the plaintiffs, it is suggestive that the dispute related to Yaw Oppong cultivating the land and a finding was in favour of Yaw Oppong. However, the pleaded case of the plaintiffs is that it was in favour of plaintiffs' family, that is their family line within the Twafu family. It seems to me that the plaintiffs

are asserting that since Yaw Oppong is cultivating land belonging to their family line, a win for Yaw Oppong is a win for their family line.

On the part of the defendants, they contended that Yaw Oppong represented the family in their statement of defence. It is pertinent to state that all four defendants testified in this case but non testified on the arbitration in their witness statement except the 3<sup>rd</sup> defendant who testified per the paragraph 6 of his witness statement as follows; -

“6. At said meeting, Opanin Yaw Oppong stated that he had gone before Bantamahene to defend the family against the Ninsanase people who were claiming the land as theirs.”

The 1st defendant, Ama Denkyi under cross examination admitted knowing about the dispute between Yaw Oppong and Akyeame Asamoah but added that it was Nana Karikari who was victorious.

The 2<sup>nd</sup> defendant also under cross examination testified as follows; -

Q. Are you also aware that Yaw Oppong litigated over this same Okyeame Kofi Asamoah.

A. I am aware it was an issue relating to a boundary.

Q. And that the decision of the panel was in favour of Yaw Oppong. Are you aware of that?

A. No.

Q. I am putting it to you that the panel decided in favour of Yaw Oppong and further declared that that portion of the land the subject matter of this dispute was declared to be the property of Yaw Oppong.

A. That is not correct. It was the boundary that was demarcated by the head of family. The 4<sup>th</sup> defendant under cross examination denied a dispute between Yaw Oppong and Okyeame Asamoah over the subject matter of this dispute.

However, under further cross examination he testified as follows; -

Q. I am suggesting to you that during the time of Nana Kwaku Fofuo, there was a dispute on the disputed subject land between Yaw Oppong and Kofi Asamoah.

A. It was not at that time.

Q. The said dispute was heard by the then Akwamuhene of Pakyi number 2 who is the senior brother of okyeame Kofi Asamoah.

A. It is correct. The Akwamuhene and the Twafohene had an issue concerning boundary. The Akwamuhene elected Agya Asamoah and the Twafohene elected Yaw Oppong and they chose Otuo Acheampong to go and demarcate the boundary. So, Yaw Oppong did not litigate in anyway.

Q. Who told you this story.

A. My elders told me when I became the Abusuapanin.

DW1, Opanin Yaw Manu testified on a dispute between the Twafo family under Nana Karikari and Ninsanase but because Nana KariKari was incapacitated at the time he chose Yaw Oppong to act on behalf of the Twafo stool. In the dispute the Twafo were adjudged winners and the land restored to the Nana Kofi Nsiah family.

Under cross examination DW1 now indicated the Twafo was represented by Yaw Oppong, Kwabena otaa and Yaw Asare. Obviously, that the Twafo family was represented by Yaw Oppong with Kwabena Otaa and Yaw Asare was not the same account in DW1's witness statement.

Also, under cross examination, DW1 testified as follows; -

Q. I am suggesting to you that there has never been a dispute between the Twafo family and the Akwamu family in respect of the land the subject matter in dispute.

A. There was a dispute and when the Akwamuhene sued Twafofohene due to the old age of Twafohene, he appointed Yaw Oppong to represent him. Even



Akwamuhene did not come himself for the hearing but rather appointed Asamoah to represent him.

I find it intriguing that Yaw Oppong will represent the Twafo family over land that belongs to Nana Kofi Nsiah's line through whom the 1<sup>st</sup> defendant, Ama Dankyi makes a claim of title.

Under cross examination 3<sup>rd</sup> defendant also testified as follows;

Q. You seem not to know anything about the land the subject matter.

A. What I know is that the land belongs to Nana Kwaku Nsiah. When we were summoned it was Nana Karikari who had to prosecute the matter but was blind at the time. He delegated Yaw Oppong and Opanin Kwabena Ataa.

Once again, the defendant's per the 3<sup>rd</sup> defendant's testimony that Yaw Oppong and Opanin Kwabena Ataa represented the Twafo family is not as pleaded by the defendants in paragraph 6 of their statement of defence. The law as settled is that where a party's evidence is inconsistent with the pleaded case while that of his opponent is consistent with his pleadings, the opponent's case must be found preferable to the one who departs from his pleadings. See the direction in **Zabrama vs. Segbedzi (1991) 2 GLR 221 at 227 to 229 Appiah Takyi [1982 – 83] GLR 1 at 7.**

**Adwoa Borkor vs. Agbo Oddoye [2021] 174 GMJ 641 at 681.** The plaintiffs' claim is through Ama Asobonteng, the grand-niece of Nana Kwaagye who gifted her a portion of the land whiles Nana Nsiah cultivated another portion.

PW1 in his witness statement and testimony under cross examination reiterated that it was Yaw Oppong that he summoned and Yaw Oppong was declared the owner.

It is worth noting that, the defendants have repeatedly mentioned PW1 as having been to the said arbitration with Yaw Oppong representing the Akwamu family. Yet, PW1 the only living person who attended the arbitration and testified in this suit was never

quizzed on the capacity in which he went to the arbitration neither was he challenged in the capacity in which he summoned Yaw Oppong.

Not only that, PW1 has testified on summoning Yaw Oppong in particular for cultivating the land with palm trees and a finding made for Yaw Oppong. In sum, PW1's evidence gives a strong indication on the presence of Yaw Oppong and his possession of the land, cultivating same and declared the owner in the dispute that erupted.

The 1<sup>st</sup> defendant per her witness statement has indicated that Yaw Oppong had acknowledged to her and her sister Amma Pokuaa that the land belonged to them. It will also be recalled that, the 3<sup>rd</sup> defendant had testified that Yaw Oppong had informed a gathering that he had gone to the Bantamahene to defend the family land. Certainly, these assertions are being made against a deceased person.

The defendants on the arbitration are also relying on statements allegedly made by Yaw Oppong deceased. The settled principle of law is that where 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 thoroughly sifted, and the mind of any judge who hears it ought to be first of all be 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.....

..... On claim against the estate of a deceased person the law is that such a claim should be scrutinized with utmost or close scrutiny. The caution that such claims must be weighed carefully is based on plain good sense. See the following cases:

**Elizabeth Osei vs. Madam Alice Efua Korang [2013] 58 GMJ 1 at 20, Margaret Osei Assibey vs. Gbommitta (2012) 47 GMJ 61 and Kwame Bonsu vs Kwame Kusi (2016) 26 GMJ 20.** The plaintiffs' claim that Yaw Oppong was summoned in his personal capacity and a declaration made in his favour is probable.

**WHETHER OR NOT THE PLAINTIFFS ARE BENEFICIAL OWNERS OF THE LAND.**

The evidence discloses that Yaw Oppong had been on the disputed land for a considerable number of years cultivating palm trees. The plaintiffs set the period Yaw Oppong cultivated the land to over 20 years while the years defendants stated fluctuates between 15 and 18 years. On when Yaw Oppong died, the evidence discloses that Yaw Oppong died in the year 2011. This is after the Intestate Succession Law, PNDCL 111 was promulgated on 14<sup>th</sup> June, 1985.

Therefore, where Yaw Oppong died intestate as the facts of the case suggest then the applicable law to the estate of Yaw Oppong would be PNDCL 111. As A.K.P Kludze puts it in his book, *Modern Law of Succession in Ghana* 2015 Edition at page 161, on PNDCL 111, "this law supersedes and reforms the rules of customary law. Its effect is a radical alteration of existing customary law especially as it affects members of matrilineal communities".

Further, at page 170 of his book, A.K.P Kludze stated. "A significant and therefore also controversial, feature of the Intestate Succession Law, 1985, is the allocation of specific fractions of the intestate estate to the individuals entitled to the property. This has the merit of a predetermination of each person's portion of the estate".

Under PNDCL 111, persons entitled to portions of intestate's estate are surviving spouse(s), children, parent and that which devolves in accordance to customary law. See sections 5, 6, 7 and 8 of PNDCL 111. In the circumstance of this case therefore, where the plaintiffs could benefit under the fraction that devolves to customary law herein within this context, they would be beneficiaries of the estate of Yaw Oppong. For the portion that devolves in accordance to customary law to the customary successor, he receives same in trust for the immediate family, inclusive of the plaintiffs.

In this case, the plaintiffs have testified that Yaw Oppong's properties (self acquired) were given to his children excluding the land with palm trees. The reason being that Yaw

Oppong has farmed on land belonging to their family line within the Twafo family. Therefore, the land devolves to them. The plaintiffs' claim through their grandmother, Ama Asubonteng who was gifted the land by her maternal uncle Nana Kwagye; who had acquired the land. For all intents and purposes Nana Kwagya had a customary free hold interest in the land for having taken the land in its virgin state.

Ama Asubonteng the plaintiff's testified had cultivated the land and upon her death Yaw Oppong cultivated the land. The farm land devolved to Yaw Oppong and plaintiffs who are grandchildren of Ama Asuobonteng as Akan custom, more particularly, the matrilineal system of inheritance will allow. Yaw Oppong having cultivated the land devolving on them same remains theirs. On member's interest in family land, Dennis Dominic Adjei, in his book, *Land Law, Practice and Conveyancing in Ghana*, 3<sup>rd</sup> Edition page 51, has stated that family members have interests in their family land and a member who develops a family land would only have a life interest in it and cannot alienate it in his will".

To this extent, the plaintiffs are beneficial owners of the land in dispute.

#### **OTHER ISSUES RAISED BY PLEADINGS**

The defendants per Joshua Appiah the 2<sup>nd</sup> defendant and Akwasi Awuah, the 3<sup>rd</sup> defendant testified on the land being demarcated into plots and suggested that the township has spread to the disputed land. The 3<sup>rd</sup> defendant testified that with the consent of Nana Appiah, Semanhyia Odikro agreed that the plaintiffs be given four plots of the demarcated plots. That where it was agreed that plaintiffs where to be given some of the plots then it suggests largely that defendants acknowledged that plaintiffs have an interest in the land.

It is trite, that when a farm land reaches the outskirts of a settlement or town, it is the chief who has the authority to demarcate the land into plots for development. The persons or farmers with subsisting interest are compensated with some of the plots. The

practice of demarcation of land for expansion of town or settlement has received statutory recognition in The Land Act, 2020, Act 1036 under section 50 (21) provides:-

50 (21) A holder of an allodial title may

- (a) in furtherance of the expansion of a town or settlement; and
- (b) for the purpose of serving the communal interest of the beneficiaries of the allodial interest take over bare land or farm land which is the subject of the usufructuary interest within the area. This should be with the consent the usufructuary title holder who should be promptly compensated. The consent should not be unreasonably withheld.

Per the Evidence, 1<sup>st</sup> defendant was given 15 plots which is suggestive that she had this number of plots on her claim of entitlement to the land which the court has found otherwise. The consent should be from the plaintiffs.

#### NUMBER OF TREES UPPROOTED

On the plaintiffs claim of palm trees uprooted the Exhibits "B" and "D" series being pictures disclose that indeed palm trees have been uprooted. A fact which is not denied by the defendants. More particularly, the 1<sup>st</sup> and 2<sup>nd</sup> defendants admitted to 1<sup>st</sup> defendant uprooting the trees.

The 4<sup>th</sup> defendant under cross examination also admitted that 1<sup>st</sup> defendant Ama Denkyi uprooted the palm trees.

On the quantity of palm trees uprooted PW2, Bismark Asare, the caretaker on the land testified that eight hundred and forty (840) palm trees which has a unit cost of GH¢40.00 thus totaling GH¢33,600.00 in monetary value.

Per the evidence Ama Denkyi, has possession of 15 plots and the 840 palm trees uprooted cannot occupy 15 plots. Land-Links.org on "guide to oil palm out planting and maintenance, 60 palm trees is to an acre". The palm trees 15 plots would accommodate would be approximately 225 palm trees.

In this case plaintiffs pleaded, defendants have entered the land uprooted the palm trees and pray for special and general damages.

The Supreme Court in the case of **DELMAS AGENCY GHANA LTD V. FOOD DISTRIBUTORS INTERNATIONAL LTD. [2007-2008] SCGLR 748 per DR. TWUM JSC** held; Where the plaintiff has suffered a properly quantifiable loss, he must plead specifically his loss and prove it strictly. If he does not, he is not entitled to anything unless general damages are also appropriate.

Again in **KLAH V PHOENIX INSURANCE CO. LTD. [2012] 2 SCGLR 1139 at 1152, AKOTO BAMFO JSC** stated “A distinction exists between general and special damages; for whereas general damages arise by inference of law and therefore does not need to be proved by evidence; special damages representing a loss which the law will presume to be the consequences, must be claimed on the pleading”.

Thus, for special damages the plaintiff must prove by evidence that the loss incurred is a direct result of the conduct of the defendants. Also, in the case of **BIG BOYS COMPANY LTD. v. ACCESS BANK (GH)H1/164/2020 dated 26<sup>th</sup> November, 2020** the Court of Appeal held: “General damages is presumed by the law from the invasion of a right, special damages on the other hand refers to the particular damage suffered by the party beyond that which is presumed by the law from a mere fact of an invasion of a right and must be proved strictly by evidence adduced.”

With the evidence adduced, I find that the plaintiffs are entitled to the award of special and general damages as prayed.

**CONCLUSION**

The court in the circumstance of this case finds on the preponderance of probabilities that the plaintiffs' claims deserve a favourable ruling on the reliefs sought. Accordingly, the court enters judgment for the plaintiffs as follows:-

- (a) A declaration of title to the all parcel of land lying and being at a place commonly called Akaiame which land is bounded by the Akaiame Stream, the Boahyemu stream and the Pakyi to Antoakrom road and measuring approximately 14.9 acres of 6.45 hectares.
- (b) An order directed at the 1<sup>st</sup> defendant to pay for the cost of palm trees which have been uprooted.
- (c) Recovery of possession.
- (d) An order of perpetual injunction restraining the defendants herein, their agents, assigns, workmen and anybody claiming through them from having anything to do with the land in dispute.
- (e) An order awarding the sum of GH¢10,000.00 for general damages and the sum of GH¢10,000.00 for special damages which sum is sufficient for palm trees uprooted. Cost of GH¢10,00.00.

[SGD]

**JUSTICE HANNAH TAYLOR (MRS)**  
**JUSTICE OF THE HIGH COURT**

**LAWYERS:**

WILLIAM KUSI FOR PLAINTIFFS

AFRICANUS OWUSU ANSAH FOR DEFENDANTS