

IN THE SUPERIOR COURT OF JUDICATURE. IN THE HIGH COURT OF JUSTICE
(LAND DIVISION 10) HELD AT ACCRA ON MONDAY THE 18TH DAY OF MARCH
2024 BEFORE HIS LORDSHIP JUSTICE KWAME GYAMFI OSEI

SUIT No.: LD 0109/2021

AJEIKAI ADJEI OKPLENG
ALIAS AJEIKAI ADJEI OPKLENG

: PLAINTIFF

VRS

1. JELLISTER AMARTEY
2. BENJAMIN ASHIE NIKOI

: DEFENDANTS

JUDGMENT

Nii Okang Tsuru Dsane is the progenitor of two families namely the Nii Okang Tsuru Dsane family of Teshie Kle Krobo, Kpowuluno and Nmai Mensah Goteng family of Kpowulonu-Kweiman. The Plaintiff herein initially acquired the disputed land from one Amartey Mensah who is from the latter family in May 2012. The two families engaged in a legal battle over a larger land which includes the disputed land and same was won by the Nii Okang Tsuru Dsane family of Teshie Kle Krobo, Kpowuluno. After this victory Amartey Mensah took the Plaintiff to Nii Okang Tsuru Dsane family of Teshie Kle Krobo, Kpowuluno for regularization of her indenture. This was done by William Kotey Boyd Dsane who claimed to be the head of that family and an indenture dated 30th September 2020 was executed in her favour. The 1st Defendant claiming to be the head of the Nii Okang Tsuru Dsane family of Teshie Kle Krobo, Kpowuluno in October 2020 instructed the 2nd Defendant to take over the land based on the fact that their family won and neither Amartey Mensah nor William Kotey Boyd Dsane have the capacity to alienate the land to her because the former is a trespasser whilst the latter is not the head of family of the Nii

Okang Tsuru Dsane family of Teshie Kle Krobo, Kpowuluno. The Plaintiff has resisted that claim alleging that the said William Kotey Boyd Dsane had the requisite capacity to alienate the land to her. She has further claimed that in any case she is a bonafide purchaser for value without notice. She has prayed this court to grant her the following reliefs;

- i. Declaration of title to all that piece of parcel of land situate and lying at Kweiman, Accra bounded on the North East by lessor's land measuring 219.0 feet more or less on the South East by proposed road measuring 70.0 feet more or less on the South West by Lessor's land measuring 235.4 feet more or less on the North West by lessor's land measuring 81.4 feet more or less and containing an approximate area of 0.39 acres or 0.16 hectares more or less
- ii. Recovery of possession by the Plaintiffs from the Defendants portion of the land trespassed upon by the Defendants.
- iii. Perpetual Injunction restraining the Defendants, their agents, assigns, privies, successors or anybody claiming through them from interfering in any manner whatsoever with Plaintiff's land and carrying out any constructional activities or carrying out any activity thereon
- iv. General damages for trespass
- v. Costs."

The Defendants as I have indicated supra have maintained that neither Amartey Mensah nor William Kotey Boyd Dsane had any right or capacity to convey the land to the

Plaintiff because the former was a trespasser and the latter was not their head of family. They have also counterclaimed for

- “a. An order of the court setting aside the purported grant of the land in dispute by Nii Boyd Okang Dsane I and Nii Dan Abossey or other persons to the Plaintiff
- b. An order setting aside any registration of the land in dispute in the name of the Plaintiff.
- c. Damages for trespass
- d. Perpetual injunction restraining the Plaintiff, her agents and assigns from further trespassing on the land in dispute”

The issues settled for determination were;

- a) Whether or not the grant of the land to Plaintiff on 10th May, 2012 was regularized on 30th September, 2020 by Nii Boyd Okang Tsuru Dsane I and Dan Abossey, lawful representatives of Defendants' Nii Okang Tsuru Dsane Family of Teshie Kle-Krobo at the time
- b) Whether or not Plaintiff is an innocent purchaser for value without notice
- c) Whether or not Nii Okang Tsuru Dsane Family can grant Plaintiff's land to any other person
- d) Whether or not Plaintiff exercised overt acts of ownership over the land including constructing a four-course fence wall on the land
- e) Whether or not the Plaintiff is entitled to her claim

f) Any other issues arising from the Pleadings

All issues settled for determination ought to be determined by the court, unless same is irrelevant, not germane to the resolution of the actual dispute between the parties, moot or even superfluous. See the case of **FATAL VRS WOLLEY (2013-2014) SCGLR 1070**. From the evidence before me there is no doubt that the Plaintiff's indenture was regularized by Nii Boyd Okang Tsuru Dsane I and Dan Abossey, of Nii Okang Tsuru Dsane Family of Teshie Kle-Krobo. It is also apparent from the evidence that the Plaintiff has exercised acts of possession on the land by the construction of a fence wall around the land since 2012. Hence issue "a" and "d" are not germane issues and shall be ignored. Issue "e" is no issue which ought to be interrogated as same is superfluous per the decision of Supreme Court in the case of **DALEX FINANCE & LEASING CO. LTD VRS EBENEZER DENZEL AMANOR & 2 ORS [2012] 171 GMJ 256 at 304**.

In my view even though the remaining issues are germane Issue "b" if successfully proven by the Plaintiff would render the remaining issues moot for that defence is in the same position as the Statute of Limitation. It is not concerned with the merits of the opponent's case. Once it is successfully proven it protects the interest of the Defendant. [See the case of **APPOLO CINEMAS ESTATES LTD VRS CHIEF REGISTRAR OF LANDS AND ORS [2003-2005) GLR 67.**]

Hence I intend to discuss issue "b" first. If it fails then I would consider the other germane issues.

BURDEN OF PROOF

In civil suits, the onus of proof first rests on the party whose positive assertions have been denied by his opponent. Depending on the admissions made or denied, the party on whom the burden of proof lies is enjoined by the provisions of Sections 10, 11(4), 12 and

14 of the Evidence Act, 1975 (NRC 323) to lead such credible and admissible evidence such that on the totality of the evidence on record, the court will find that party's version of the rival accounts more probable than its non-existence.

In this case since the Defendants have also counterclaimed against the Plaintiff, they also have the responsibility of proving their case on the balance of preponderance of probability stipulated under the said sections. In the case of **NORTEY VRS AFRICAN INSTITUTE OF JOURNALISM & COMMUNICATION AND OTHERS) (J4 47 of 2013) [2014] GHASC 125** (delivered on 26th February 2014) Akamba JSC (as he then was) placed the burden on a Defendant who counterclaim as follows;

“Without any doubt, a defendant who files a counterclaim assumes the same burden as a plaintiff in the substantive action if he/she is to succeed. This is because a counterclaim is a distinct and separate action on its own which must also be proved according to the same standard of proof prescribed by sections 11 and 14 of NRC 323 the Evidence Act (1975).”

EVIDENCE LED BY THE PLAINTIFF

She claims she acquired the disputed land in May 2012 from Amartey Mensah, (Nii Okang Tsuru) Head and Lawful Representative of Nmai Mensah Goteng family of Kpowulonu- Kweiman for 99 years. Plaintiff tendered the lease dated 10th May, 2012 marked Exhibit 'A'. After the acquisition she commenced the processes for the registration of the land at the Land Title Registry. On 24th September, 2016, the notice of the registration under the Land Title Registration Regulations Law 1986. PNDCL 152 was published in The Spectators Newspaper. Plaintiff tendered the publication dated 24th September, 2016 marked Exhibit 'B'

According to the Plaintiff she exercised several acts of ownership over the land including the construction of a fence wall of about four courses of blocks around the land.

It is her case that around September 2020, her grantor informed her that there was litigation over the land and that the case was won by the Nii Okang Tsuru Dsane Family of Teshie Kle-Kobo. Her grantor then took her to Nii Boyd Okang Tsuru Dsane I, (PW1) Acting head of Nii Okang Tsuru Dsane Family and Nii Dan Abossey, Principal Elder, Lawful Representatives of the said family, in order to regularize her stay on the land. Her request was granted and a new indenture was executed her favour by the aforesaid in 30th September, 2020. Plaintiff tendered the indenture marked Exhibit 'C' in evidence. According to the Plaintiff she was recently made aware of a pending case between Nii Boyd Okang Tsuru Dsane I alias William Kotey Dsane (PW 1) and 1st Defendant as to the headship of the Nii Okang Tsuru Dsane Family. It is her case that she has been in an uninterrupted possession and occupation of the land since May 2012 and that it was only around October 2020 that the 2nd Defendant acting on the instructions of the 1st Defendant entered onto her land by extending the height of her fence wall and constructing another fence wall through her land thereby dividing the wall into two. Plaintiff tendered pictures of Defendants' activities on the land marked Exhibit 'D' series. It is the case of the Plaintiff that Defendants have no right whatsoever to enter into Plaintiff's land, dividing same into two and purporting to make a grant of a portion of her land to anybody.

It was contended by the Plaintiff that she is an innocent purchaser for value without notice and should not lose her land due to the internal feud as to the leadership of the Nii Okang Tsuru Dsane Family between the 1st Defendant and PW1

Plaintiff called PW 1, Nii Boyd Okang Tsuru Dsane I alias William Kotey Dsane. PW 1 who claimed he was the head of Nii Okang Tsuru Dsane Family. However, by a judgment of the High Court, General Jurisdiction Division, dated 14th April, 2022, 1st Defendant was

declared head of Nii Okang Tsuru Dsane Family in the case titled JELLISTER ARMAH AMARTEY & ANOR. VRS WILLIAM BOYD DSANE. According to PW1, he was appointed head of the Nii Okang Tsuru Dsane Family on 16th July, 2016. PW1 tendered evidence of his appointment including pictures and a resolution by the elders of the family as Exhibit 'E' series. He also tendered a Power of Attorney, dated 19th February, 2000, signed by Andrew Nikoi Dsane, the then head of family, appointing 1st Defendant to prosecute two cases on behalf of the family. He asserted that he is one of the witnesses who signed the Power of Attorney.

EVALUATION OF THE EVIDENCE LED BY THE PLAINTIFF

From the evidence it is apparent that the Plaintiff since 2012 has been in possession of the disputed land. In Exhibit 'D' series one could see the dwarf wall constructed by the Plaintiff around the land and the extension made by the Defendants on the said dwarf wall. The dwarf wall looks old as compared to the recent ones developed by the Defendants. The condition of the dwarf wall corroborates the Plaintiff's claim that it was constructed a long time ago i.e. 2012. The Defendants who denied in their Amended Statement of Defence that the Plaintiff has not been in an uninterrupted possession since 2012 did not show any evidence to prove the contrary. Again from the evidence the Plaintiff was not confronted by the Defendants during the construction of the said wall and it was only in October 2020 when they entered the land. Judgment in suit No. L480/99, titled ANDREW NIKOI DSANE VRS NMAI MENSAH & ANOR was delivered by the High Court on 9th November 2012 against Plaintiff's original grantor. Since the Plaintiff was on the land as at the time of judgment, the Defendants should have quickly notified the Plaintiff about the outcome of the judgment and the need for her to regularize her stay on the land with them or vacate same. The Defendants have alluded to the fact that there was an order of interlocutory injunction to restrain the Plaintiff's grantors, their

agents and assigns from dealing in any manner with the land in dispute. They further claimed that the Notice of the said order was published in the Daily Graphic of 22nd January, 2005. A copy of the publication was tendered marked Exhibit "6". A copy of the order of interlocutory injunction was tendered marked Exhibit "7". A ruling in an application for contempt against Plaintiff's original grantor and other persons was tendered marked Exhibit "8". A copy of the Statement of Defence, order for substitution and an order for substituted service of the Entry of Judgment and the affidavit of posting in the case titled ANDREW NIKOI DSANE VRS NMAI MENSAH & ANOR were tendered and marked Exhibit "9", Exhibit "10", and Exhibit "11" series respectively. A publication by Plaintiff's witness, PW 1, in the Daily Graphic Publication and a Rejoinder signed by 1st Defendant and one John Afutu Ashie were tendered marked Exhibits "12" and "13" respectively.

In all, the Defendants claim these were notices which came to the attention of the Plaintiff hence she cannot claim to be an innocent purchaser for value without notice. It bears stressing that the Plaintiff is in substance saying that she took the grant from PW1 based on the fact that he was the one who she reasonably believed to be the head of the Nii Okang Tsuru Dsane Family at that material time. I have seen Exhibit "E" series and anyone shown those exhibits would believe that PW1 was indeed the head of the said family. They are pictures which PW1 says was his appointment ceremony. Indeed it was due to these contestations of the headship position which compelled the 1st Defendant and John Afutu Ashie to sue PW1 for the court to declare that they are rather the heads of family and not PW1. Against this background it was for the Defendants to have personally informed the Plaintiff that they were rather the proper persons to do the regularization for her and not PW1. The judgment confirming the 1st Defendant as the lawful head of family was recently delivered. Hence the publications which of course is

meant for the whole world cannot be used against the Plaintiff who is stark illiterate and cannot reasonably be fixed with notice that the 1st Defendant is the lawful head of family. On the 11th of July 2023 the Defendants were asked

“Q. I am suggesting to you that Plaintiff as an illiterate did not understand or was not aware of Exhibit 6

A. **I disagree because the publication was made for the information of the whole world and not to the Plaintiff in particular, because at the that (sic) we were not having the Plaintiff in mind.”**(emphasis mine)

Here is the case the Plaintiff was labouring under the impression that PW1 was the head of family yet the 1st Defendant did not find the need to notify her personally as soon as he won the first case in 2012. Since the Plaintiff was physically in possession of the land but per this admission the notices were not intended particularly for the Plaintiff, while the Plaintiff laboured under the impression that she has acquired good title to the land from PW1, it smacks of dishonesty on the part of the Defendants to deny the Plaintiff's claims that she is an innocent purchaser for value without notice. The Plaintiff entered the land honestly believing that he had dealt with the rightful grantors. She was never confronted when she expended money on the land and no where did the Defendants formally notify her that her grantors have no right to grant the land to her. The Defendants are in law estopped by their conduct from challenging the Plaintiff's assertion that she is an innocent purchaser for value without notice. Section 26 of the Evidence Act 1975 [NRC 323] creates this kind of estoppel as follows

“Section 26 - Estoppel by Own Statement or Conduct.

Except as otherwise provided by law, including a rule of equity, when a party has, by his own statement, act or omission, intentionally and deliberately

caused or permitted another person to believe a thing to be true and to act upon such belief, the truth of that thing shall be conclusively presumed against that party or his successors in interest in any proceedings between that party or his successors in interest and such relying person or his successors in interest."

In my view the Plaintiff has adduced sufficient evidence to show that she is indeed an innocent purchaser for value without notice and the onus of proving the contrary rest on the Defendants.

THE CASE OF THE DEFENDANTS

In their defence and for the prosecution of their counterclaim the Defendants denied the claims of the Plaintiff. According to Defendants, 1st Defendant is the head of the Okang Tsuru Dsane Family of Teshie Kle Krobo and that the family has not made any grant of the land in dispute to the Plaintiff. According to Defendants, Plaintiff's presence on the land in dispute constitutes trespass.

Defendants claim that the land in dispute forms part of a larger tract of land owned by the Nii Okang Tsuru Dsane Family. According to Defendants, 1st Defendant and one Andrew Nikoi Dsane (deceased) acting on behalf of the Nii Okang Tsuru Dsane Family in Suit No. L480/99, titled ANDREW NIKOI DSANE VRS NMAI MENSAH & ANOR sued the Nmai Mensah Gonteng Family, the Plaintiffs original grantor, over a large tract of land of which the land in dispute forms part. It is the case of the Defendants that judgment in the said case was delivered by the High Court on 9th November 2012 against Plaintiff's grantor. 1st Defendant who testified on behalf of the Defendants tendered the judgment in the said case marked Exhibit "1".

According to Defendants, 1st Defendant was joined to the said case when the 1st Plaintiff therein was old and infirm. Defendants tendered the order for Joinder marked Exhibit

"2" and the application for joinder marked Exhibit "2A". Defendants tendered a Power of Attorney executed in favour of 1st Defendant marked Exhibit 3', an application to substitute Andrew Nikoi Dsane marked Exhibit "4" and a Court Order in the case titled ANDREW NIKOI DZANE VRS NANA TWENEBOAH & 6 ORS marked Exhibit "5".

Defendants also claim that there was an order of interlocutory injunction to restrain the Plaintiff's grantors, their agents and assigns from dealing in any manner with the land in dispute. According to Defendants, Notice of the said order was published in the Daily Graphic of 22nd January, 2005. A copy of the publication was tendered marked Exhibit "6". A copy of the order of interlocutory injunction was tendered and marked Exhibit "7". A ruling in an application for contempt against Plaintiff's original grantor and other persons was tendered and marked Exhibit "8". A copy of the Statement of Defence, order for substitution and an order for substituted service of the Entry of Judgment and the affidavit of posting in the case titled ANDREW NIKOI DSANE VRS NMAI MENSAH & ANOR were tendered and marked Exhibit "9", Exhibit "10" and Exhibit "11" series respectively. A publication by Plaintiff's witness, PW1, in the Daily Graphic Publication and a Rejoinder signed by 1st Defendant and one John Afutu Ashie were tendered marked Exhibits "12" and "13" respectively. Defendants tendered a ruling in the case titled MAJOR BARIMAH & 12 ORS VRS REHOBOTH ESTATE DEVELOPERS marked Exhibit "14". A Writ of Summons and a Statement of Claim in the case titled PRIME CARE INDUSTRIES GHANA LIMITED VRS JELLISTER ARMAH AMARTEY & ANOR were tendered and marked Exhibit "15" series. Defendants also tendered the judgment in the case (titled JELLISTER ARMAH AMARTEY & ANOR VRS WILLIAM BOYD DSANE marked Exhibit 16

According to Defendants, the purported grant of the land in dispute by persons who do not have capacity to grant same to the Plaintiff during the pendency of suit No. L 480/99 is null and void

EVALUATION OF THE EVIDENCE OF DEFENDANTS

As I have already indicated supra the Defendants are only to show that the Plaintiff cannot be an innocent purchaser for value because of certain facts known to her. These facts are the publication of the order of interlocutory injunction in the Daily Graphic of 22nd January, 2005. A copy of the publication was tendered and marked Exhibit "6". A copy of the order of interlocutory injunction was tendered marked, Exhibit "7". A ruling in an application for contempt against Amartey Mensah and other persons was tendered marked Exhibit 8. A copy of the Statement of Defence, order for substitution and an order for substituted service of the Entry of Judgment and the affidavit of' posting in the case titled ANDREW NIKOI DSANE VRS NMAI MENSAH & ANOR were tendered and marked Exhibit "9", Exhibit "10" and Exhibit "11" series respectively. A publication by Plaintiff's witness, PW1, in the Daily Graphic publication and a Rejoinder signed by 1st Defendant and one John Afutu Ashie were tendered and marked Exhibit '12' and 13 respectively.

The question to answer is whether these pieces of evidence are capable of denying the Plaintiff of her defence of being an innocent purchaser for value without notice? It must be stated that when all these proceedings, processes and publications were going on, the Plaintiff was not personally notified. At the time PW1 executed the indenture for the Plaintiff, PW1 was holding himself up to the world as the head of that family. Hence it was absolutely necessary for the Defendants to have notified the Plaintiff that PW1 is not the head of the said family. No attempt was however made by the Defendants to inform the Plaintiff personally, save the position held by the Defendants that the publication was

notice to the whole world. How many people read the dailies everyday even among the literate people in this country, let alone the Plaintiff, a stark illiterate?

It is in evidence that in 2016 1st Defendant and another sued PW1 in the case of JELLISTER ARMAH AMARTEY & ANOR VRS WILLIAM BOYD DSANE i.e. SUIT NO. GJ 1409/2016. Judgment was delivered on 14th April 2022. By law the rights or liabilities of parties are not conferred on the day of the judgment but at the time the cause of action accrued. Pwamang JSC in the case of SAVIOUR CHURCH OF GHANA VRS ABRAHAM KWAKU ADUSEI & ORS [CIVIL APPEAL NO. J4/12/2021 dated 24th November, 2021] aptly stated the position as follows;

“But when the law talks of retrospectivity, court judgments and orders are even in a different class of their own. In the first place, court judgments are by their nature generally retrospective since in any judgment the rights and liabilities of the parties are determined with reference to the date the cause of action accrued, which usually precedes the filing of the case while the judgment is delivered at a much later date. See; Ansaah- Addo v Addo [1972] 2 GLR 400, CA. In Ghana, some cases take up to twenty years before final judgment is given by the Supreme Court but the rights and liabilities of the parties determined in such judgment would be as of the date the cause of action accrued prior to the filing of the case in the court of first instance.”

To that extent the 1st Defendant was the head of family at the time PW1 did the regularization and it was incumbent on him to have acted swiftly by alerting her that PW1 was not the head of family. Even granted the Defendants were not aware of the regularization the mere presence of the Plaintiff on the land and her acts of possession and ownership of the disputed land were enough grounds for the Defendants to have engaged her personally and to do the needful. They should not have looked on all these

years. In my view the publication of the said notices in the dailies is not enough evidence to defeat the plea by the Plaintiff that she is an innocent purchaser for value without notice.

In the premise I hold that the Plaintiff is an innocent purchaser for value without notice and ought to be entitled to her reliefs. I therefore grant her reliefs “1”, “2”, “3” and “4”.

In conclusion I declare the Plaintiff as the owner of that piece of parcel of land situate and lying at Kweiman, Accra bounded on the North East by lessor’s land measuring 219.0 feet more or less on the South East by proposed road measuring 70.0 feet more or less on the South West by Lessor’s land measuring 235.4 feet more or less on the North West by lessor’s land measuring 81.4 feet more or less and containing an approximate area of 0.39 acres or 0.16 hectares more or less.

I grant her an order of possession of all that piece of parcel of land situate and lying at Kweiman, Accra bounded on the North East by lessor’s land measuring 219.0 feet more or less on the South East by proposed road measuring 70.0 feet more or less on the South West by Lessor’s land measuring 235.4 feet more or less on the North West by lessor’s land measuring 81.4 feet more or less and containing an approximate area of 0.39 acres or 0.16 hectares more or less.

I restrain the Defendants, their agents, assigns, privies, successors or anybody claiming through them from interfering in any manner whatsoever with Plaintiff’s land i.e. piece of parcel of land situate and lying at Kweiman, Accra bounded on the North East by lessor’s land measuring 219.0 feet more or less on the South East by proposed road measuring 70.0 feet more or less on the South West by Lessor’s land measuring 235.4 feet more or less on the North West by lessor’s land measuring 81.4 feet more or less and containing an approximate area of 0.39 acres or 0.16 hectares more or less.

With regard to the issue of trespass the Defendants admitted that they engaged in that conduct because they own the land. Once their claim has been rejected by this court their action became trespassory. In trespass damages are at large. Having regard to the fact that their actions to some extent has improved the value of the land and the peculiar facts of this case, I am not minded in awarding any damages against the Defendants.

In the same vein, to foster unity amongst the parties I would not award cost. Each party should bear his or her own costs. The Counterclaim is dismissed in its entirety.

(SGD)

JUSTICE KWAME GYAMFI OSEI

JUSTICE OF THE HIGH COURT LAND DIVISION (10)

COUNSEL

DR. JOE ATTIPOE FOR PLAINTIFF

SEBASTIAN KWAME AMOAH FOR DEFENDANTS