

IN THE SUPERIOR COURT OF JUDICATURE. IN THE HIGH COURT OF JUSTICE (LAND DIVISION 10) HELD AT ACCRA ON WEDNESDAY THE 21ST DAY OF FEBRUARY 2024 BEFORE HIS LORDSHIP JUSTICE KWAME GYAMFI OSEI

SUIT NO. FAL/268/2014

SETH DOMINIC AGLAGOH : PLAINTIFF

VRS

THOMAS ABOGYE DOMPIM : DEFENDANT

JUDGMENT

Per his Amended Writ of Summons the Plaintiff claimed to have acquired the disputed land from Nii Ayaa Odonkor on the 18th day of November 2002. Before the acquisition he conducted a search at the Lands Registry which confirmed his grantors title to the said land. After acquisition he entered into possession and laid some footings on the land. A cadastral plan was prepared and duly published in the Spectator Newspaper without any objection and which thus served as notice to the whole world. According to the Plaintiff he travelled outside the country for a brief period but before leaving he put a signpost on the land with the inscription "*this land is not for sale*". Upon his return however he noticed that the Defendant has hurriedly put up a structure on the land and had demolished parts of his footings on the land. It is his case that the Defendant has no title to the land and has therefore prayed this court for the following reliefs;

- "i. A declaration of title to all that piece or parcel of land the subject matter of this suit
- ii. Recovery of possession

- iii. Damages for trespass
- iv. Perpetual injunction restraining the Defendant either by himself, his assigns, workmen, agents from trespassing to Plaintiff's land
- v. Any further or other order(s)."

The Defendant denies the allegations made by the Plaintiff in his pleadings and also claims he acquired the disputed land through one Mallam Issa Ashallana and Alhaji Bawa from Thomas Musa Sissala and Memunu Sissala. His grantors were granted the land by Nii Ayaa Odonkor who happens to be the Plaintiff's grantor. This transaction is evidenced by an indenture executed between the said grantor and them on the 18th of July 2002. According to the Plaintiff his vendors subsequently registered the land without any objection from anyone. The Defendant contends that his grantors were the first in time to acquire the land. After the acquisition the Defendant claimed he went into immediate possession and developed same to the window level and it was at that stage that the Plaintiff showed up and made adverse claim to the land. The Defendant asserted that when he explained matters to the Plaintiff, the Plaintiff left and showed up subsequently with a writ of summons. It is the case of the Defendant that even granted that the Plaintiff has any title to the disputed land, his action is caught by laches and acquiescence for sitting down for the land to be developed by him. The Defendant further contends that his vendors had been in possession of the land since 2002 hence his action is even statute barred hence the Plaintiff is not entitled to his reliefs.

The Issues adopted for resolution were

- "a. Whether or not the land which is the subject matter in this suit was assigned to the Plaintiff by Nii Ayaa Odonkor.

- b. Whether or not the Plaintiff immediately went into possession of the said land constructing a footing on the said land and also put a sign which read: "This is Not for Sale".
- c. Whether or not as at the time of the purchase by Plaintiff, the land in dispute had been sold to the Defendant's Vendor.
- d. Whether or not the Defendant's Vendor had been in undisturbed possession of the land in dispute to the knowledge of the Plaintiff.
- e. Whether or not Plaintiff is guilty of laches and acquiescence.
- f. Whether or not the Plaintiffs action is statute barred.
- g. An order directing the Regional Surveyor of the Survey and Mapping Division Land Commission-Accra to prepare a Composite Plan using the respective site plans of the parties.
- h. Any other issue(s) arising from the pleadings."

The Plaintiff has raised issues of Limitation, laches and acquiescence against the Plaintiff. If these defences are successfully proven it would render the remaining issues moot hence I would discuss issues "e" and "f" first. I wish to add issue "d" to the said issues because the establishment of that issue would substantially prove issues "e" and "f".

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 (NRCD 323) to lead such credible and admissible evidence such that on the totality of the evidence on record, the court would find that

party's version of the rival accounts more probable than its non-existence. It is a fact that the Defendant did not counterclaim and so ordinarily he is not supposed to prove anything but in the event of the Plaintiff adducing sufficient evidence to support his claim, then he owes a duty to also lead credible and admissible evidence to contradict the evidence led by the Plaintiff otherwise a ruling would be made against him. See the case of **IN RE ASHALLEY BOWTE** especially the dictum of Brobbey JSC (as he then was)

The Defendant would be required in the circumstance to assume the burden of prove and the burden of producing evidence of those claims. His testimony is contained his witness statement which I reproduce hereunder as follows

- “1. My name is Thomas Aboagye Dompim. I am the Managing Director of Obibinin Blackman Distilleries Company Limited the producers of Brukutu drinks. I live in Kumasi in the Ashanti Region of the Republic of Ghana.
2. I have heard of the Plaintiff when he instituted this action.
3. I got to know them in connection with my land the subject matter of this case.
4. I must say that the land the subject matter of this suit was bought by me through Mallam Issa Ashallana and Alhaji Bawa from Thomas Musa Sissala and Memuna Sissala who bought the land from Nii Ayaa Odonkor, the same grantor of the Plaintiff and I was given an indenture evidencing the sale. I would like to tender a copy of the indenture as Exhibit ‘1’.
5. I must say that my Vendors were given an indenture executed on the 18th day of July, 2002 and the Oath of proof duly stamped at the High

Court on the 23rd day of July, 2002 and indexed at the Lands Commission as No. 3653/2002. I would like to tender a copy of the indenture as Exhibit 2.

6. I must say also that my vendors subsequently registered same at the Land Title Registry as parcel No. 49, Block 32 with appropriate parcel plan without any hindrances from any quarters including the Plaintiff which parcel 49 is directly on the grid lines 367000. I would like to tender a copy of the certificate as Exhibit 3.
7. The land in dispute belonged to Nii Ayaa Odonkor, the common grantor of the Plaintiff and my Vendors and same has been registered long before any publication by the Plaintiff which publication is subject to earlier registration of my Vendors registration, ownership and possession of the land sold to me.
8. I must say further that I took immediate possession of the said plot of land after purchase and started developing it whereupon the Plaintiff came there and demanded to see my documents covering land.
9. I say again that the Plaintiff did not come there until when same had reached the window level and brought his documents which were compared to that of mine and Plaintiffs attention was drawn to the fact that my Vendor bought the land before the Plaintiff whereupon Plaintiff left and the next time he came with the Writ of summons per substitution the building had been roofed. I would like to tender pictures of the building as Exhibit "4a", "4b".
10. I say that even if the land is for the Plaintiff which is denied, the Plaintiff is estopped having sat down for me to develop the land without any action.

11. I say that my vendors have being in undisturbed possession of the said land since 2002 to the knowledge of the Plaintiff my vendors having put up footings on the land therefore the Plaintiff is statute barred from litigating or bringing the present action even if the Plaintiff has any remotest interest which is denied.
12. I deny that I am a trespasser of my own land. “

The Defendant's evidence relative to the application of the Limitation Act and is that his vendors had been in undisturbed possession of the land since 2002 and having developed footings on the land, the present action is caught by the said Act. If these acts had been done openly to the knowledge of the Plaintiff then the said Act would have applied. However these acts which could have been proven positively by just calling the said vendors were left unproven. It rested on bare assertion under oath without any attempt to prove same. Bare assertion under oath without more cannot amount to proof especially when the said claim has been disputed [See the case of **T. K. SERBEH & CO. VRS MENSAH [2005-2006] SCGLR 341.**

With regard to laches and acquiescence, the evidence led by the Defendant was that after taking possession of the land, the Plaintiff came and demanded to see his land documents. He went away and only came when he had developed the property to the window level and after they had compared their documents and it was found out that his vendors were the first to acquire the land he left. He subsequently showed up later with a Writ of Summons. Laches and acquiescence are indolent conduct which the law frowns upon and would not allow the one that engages in that conduct to take advantage of the other party. In proving such conduct the length of time which the one slept on his or her right is crucial. In this case the Defendant did not lead evidence on the time that Plaintiff saw him developing the land and looked on. From his account the Plaintiff upon seeing him on the disputed land made a follow up again to

see his documents and later sued him. These acts are proactive and is not consistent with laches and acquiescence. The Defendant's purported grantors who he claims had unhindered possession of the land were also not called to give evidence. No explanation was given by the Defendant to explain away his inability to call his grantors who from the evidence are material witnesses so far as proof of adverse possession is concerned.

In my view the Defendant failed to lead sufficient evidence on the applicability of the Limitation Act and the activation of the equitable defences of laches and acquiescence. Hence the Plaintiff would not be required to adduce contrary evidence on those issues. For his failure to prove issues "d" "e" and "f", I would revisit issues "a", "b", and "c". Since it is the Plaintiff who has raised issues essential to the claims he is seeking in this court he would bear the evidential burden first. I however intend to discuss the issues together.

Here too I would reproduce his entire evidence and evaluate same. He testified as follows;

- "1. My name is Seth Dominic Aglagoh.
2. I live at House Number D/49/10, North Legon (Agbogba), Accra.
3. I am a Business Executive.
4. By a Deed of Assignment dated the 18th day of November, 2002 made between Nii Ayaa Odonkor as Assignor of the one part AND me therein called the Assignee of the other part, Nii Ayaa Odonkor assigned the unexpired residue of a lease of the said land to me. The said Deed of Assignment is attached and marked as Exhibit A.
5. The said Deed of Assignment is duly stamped at the Land Valuation Board as No. LVD 16937/12 and a Yellow Card No. 08612/2013 issued in

my favor at the Land Title Registry, Accra. Attached herewith and marked as Exhibit B is a copy of the Yellow Car.

6. My land is described as all that piece or parcel of land situate lying at ASHONGMAN ACCRA and bounded on the North by Assignor's land measuring 100 feet more or less; on the East by Assignor's land measuring 70 feet more or less; on the South by a proposed road measuring 100 feet or less; on the West by Assignor's land measuring 70 feet more or less and containing an approximate area of 0.16 acres more or less which piece of land is more particularly delineated on the Plan attached to the Deed of Assignment and thereon shown edged pink which shows the relevant measurements.
7. That prior to or in the course of this transaction, I conducted a search at the Lands Registry and it was confirmed that my Assignor had valid title to the land and that my Assignor had not made any prior grant of same.
8. Subsequently and prior to commencement of this action, I caused my Solicitors to conduct an official search at the Lands Registry on the 7th day of August, 2013 which also confirmed that my Assignor had valid title to the land and that my Assignor had not made any prior grant of same. The said search is hereby attached and marked as Exhibit C.
9. I entered into possession by constructing a footing on the said land immediately upon execution of the said Deed of Assignment.
10. A cadastral plan in respect of my land has been prepared by the Survey Department and duly published in the Spectator newspaper on 26th October, 2013 as notice to the whole world without any objection from anyone whatsoever.

11. The said Spectator Newspaper Publication dated the 26th day of October, 2013 is attached and marked as Exhibit D.
12. I travelled sometime in 2014 for a brief period but prior to my departure I put a sign on the disputed land which read "This Land is Not for Sale". Attached herewith and marked as Exhibit E is a photograph of the signage on the land.
13. I discovered upon my return that the Defendant trespassed on the land and hurriedly erected a structure on the said land and demolished parts of the footing I erected on the land.
14. The Defendant also continued to build upon the land in dispute during the pendency of this suit.
15. That my Solicitors brought a Motion Ex-parte for an order of interlocutory injunction to restrain the Defendant or his agents and also repeated the Motion on Notice.
16. That a photograph of the stage of the building at the time of the Injunction is attached and marked as Exhibit F.
17. That subsequently while the Motion for Injunction was pending the Defendant continued with the building and roofed same in utter disrespect to the court.
18. Attached herewith and marked as Exhibit G is a photograph showing the roofed building.
19. That an application for Contempt was filed against the Defendant but the docket of the Contempt Application could not be traced and hence the Contempt Application could not be pursued.

20. I am the beneficial owner of the said land to the exclusion of all others and that the Defendant has no title to the said land but is a mere trespasser who is interfering with my enjoyment of the said land.
21. Respectfully, I pray this Honourable Court to grant the Plaintiff's reliefs endorsed on the Writ of Summons and the Statement of Claim.

In his supplementary evidence the Plaintiff testified as follows

- "1. My name is Seth Dominic Aglagoh. I am a Business Executive and live at North Legon (Agbogba), Accra.
2. In paragraph 8 of my Writ of Summons and Statement of Claim filed on 18th December, 2013 and its amendment filed on 5th May, 2014, I referred to a cadastral plan published in a Spectator newspaper of 26th October, 2013.
3. Again, in paragraph 10 of my witness statement filed on 26th June, 2018, I made reference to said cadastral plan, BUT inadvertently failed to exhibit it as one of the documents I would like to rely on in this suit.
4. That I am making this supplementary statement to tender in evidence the said cadastral plan referred to in my Writ of Summons and Statement of Claim as well as in the witness statement filed on 26th June, 2018.
5. Attached herewith and marked as Exhibit D1 is the said cadastral plan (Land Title Registry Plan No. 573/2013 or G.006/169/45/9953, dated the 10th October, 2013). "

EVALUATION OF THE PLAINTIFF'S EVIDENCE

From his evidence he directly acquired the disputed land from the said Nii Ayaa Odonkor on the 18th of November 2002 and this is supported by Exhibit "A" which is the indenture they executed. He said the search report conducted by his lawyer on the 7th day of August 2013 shows that title to the land was still in the name of his grantor implying that another grant has not been made to any person. Again from his evidence he is still in the process of registering his title and has since not met any resistance from anyone. These pieces of evidence are sufficient to relieve the Plaintiff from further prove because he has shown that he has directly dealt with his grantor, which said grantor from the search report has not made another grant to anyone. When the locus was visited the footings that the Plaintiff claimed he laid could be seen on the ground. The Defendant concedes there were footings but he claimed his grantors laid same. As could be seen supra the Defendant could not call any of his grantors to attest to that fact hence the Plaintiff's version looks more probable than that of the Defendant. That structure is proof of earlier possession of the disputed land by the Plaintiff. This is because nowhere in the evidence did Defendant averred that the Plaintiff came unto the land to construct same after he (Defendant) entered the land. At the locus the house with Chimney-like roofing in the background was seen and this is consistent with the same building as in Exhibit "E". In Exhibit "E" the packed blocks of the Plaintiff could be seen as well as the signpost with the inscription "Not for Sale" All these attest to the Plaintiff's claim that he was in possession of the land and by implication neither the Defendant nor his grantors challenged his ownership or possession. In my opinion the Plaintiff has adduced sufficient evidence on issues "a", "b" and "c" and the burden of introducing contrary evidence shall be to the Defendant.

His version could be seen in his witness statement supra. From his narrative his vendors acquired the land on the 18th of July 2002 and an indenture executed in their favour. The said indenture was not tendered by the Defendant. He further claimed his

vendors had the land registered and issued with a Land Title Certificate. This Land Title Certificate numbered GA 26216 came with a parcel plan numbered 49. This parcel plan from the composite plan does not fall on the disputed land. Parcel plans produced by the Lands Commission is accurate than most site plans which are inaccurate. That is why the commission takes it upon itself to go to the land and conduct that exercise. If the Defendant's vendors had really taken the said officials to the disputed land, the parcel plan would have fallen squarely on the disputed land. I am making this point because the Land Title Certificate does not look genuine because there is no recorded transaction between the said Nii Ayaa Odonkor and the said vendors of the Defendant. The search conducted as late as 7th August 2013 has no record of them. Hence the claim by the Defendant that his vendors acquired the land from Nii Ayaa Odonkor cannot to true. The said grantors of the Defendant are material witnesses for the Defendant and he should have called them having regard to the facts of this case.

When the evidence led by the Plaintiff and the Defendant are juxtaposed, a reasonable mind would find the account of the Plaintiff more probable than that of the Defendant.

In the circumstance, I find the Plaintiff's case proven and I proceed to enter judgment for him as follows;

1. I declare the Plaintiff as the bonafide owner of all that piece or parcel of land situate lying at ASHONGMAN ACCRA and bounded on the North by Assignor's land measuring 100 feet more or less; on the East by Assignor's land measuring 70 feet more or less; on the South by a proposed road measuring 100 feet or less; on the West by Assignor's land measuring 70 feet more or less and containing an approximate area of 0.16 acres more or less which piece of land edged blue on the Composite Plan i.e. Exhibit CE2 .

2. I further grant an order for the recovery of possession of all that piece or parcel of land situate lying at ASHONGMAN ACCRA and bounded on the North by Assignor's land measuring 100 feet more or less; on the East by Assignor's land measuring 70 feet more or less; on the South by a proposed road measuring 100 feet or less; on the West by Assignor's land measuring 70 feet more or less and containing an approximate area of 0.16 acres more or less which piece of land edged blue on the Composite Plan i.e. Exhibit CE2 .
3. The Plaintiff claims damages for trespass. The evidence has shown that the Plaintiff has unlawfully developed a portion of the Plaintiff's land which is injury against his possession. In trespass damages are at large. Having regard to the time of the unlawful occupation and it would take resources to get the land to its original state I award damages of GH¢10,000.00 against the Defendant in favour of the Defendant.
4. I further restrain perpetually the Defendant either by himself, his assigns, workmen, agents from interfering or trespassing unto Plaintiff's land.
5. I award costs of GH¢ 10,000.00 against the Defendant in favour of the Plaintiff.

(SGD)
JUSTICE KWAME GYAMFI OSEI
JUSTICE OF THE HIGH COURT
LAND DIVISION (10)

COUNSEL

- 1. CHARLES TETTEY FOR PLAINTIFF**
- 2. RICHARD TWUMASI-ANKRAH FOR DEFENDANT**