THE CIRCUIT COURT DUNKWA-ON-OFFIN; SITTING ON 14TH OCTOBER 2022 CORAM: HIS HONOUR YAW POKU ACHAMPONG

SUIT NO.: C11/01/2022

WISDOM ARHIN **……...** ***PLAINTIFF***

VS

KWAKU ODUM **……...** ***DEFENDANT***

PARTIES PRESENT

JUDGMENT

Plaintiff filed a writ of summons on 02nd September 2021 seeking the following reliefs(to use Plaintiff's ipsissima verba as endorsed on the writ of summons with the exception of what appears in square brackets in this judgment):

1. An Order Court[sic] for Declaration of Title all[sic] that pieces[sic] of farmland lying and being at Denkyira Gyaman measuring about ½ on[sic] acre and 1½ acres bounded by the properties of plaintiff and Defendant's father respectively.
2. An order for payment of damages against the defendant cash the sum of Thirty Thousand Ghana cedis (GH¢30000.00) as General Damages for trespass.
3. An order of the Court for the grant of perpetual injunction restraining Defendant either by himself and all those claiming through him either by his servants, agents

assigns[sic], workmen, relations etc. [sic] from having anything to do with plaintiff's various lands.

At the Application for Directions stage, the Court ordered the parties to file witness statements in accordance with the *High Court (Civil Procedure) Rules*, 2004(CI 47) as amended by the *High Court(Civil Procedure)(Amendment) Rules*, 2014(CI 87). Plaintiff filed witness statements subsequently together with pre-trial checklist but Defendant did not. The court proceeded to hear the matter. The witness statement of Plaintiff was entered by the Court as his evidence-in-chief. Whilst Plaintiff was under examination-in-chief, he got stuck and thus made the following statement:

"I do not have my witness statement in Court and so I pray for a date so that I tender in evidence documents I would like to rely on."

The case was adjourned for further examination-in-chief of Plaintiff. When the Court reconvened on this case on the date it was earlier adjourned to, the Court noted the following:

"There is no witness statement nor pre-trial checklist on record filed by Defendant"

Defendant then stated:

"Yes, I have not filed Witness Statements and Pre-trial Checklist."

Plaintiff then continued his examination-in-chief.

Witness Statements may be helpful in legal proceedings in fast-tracking proceedings and also putting the other side on notice as to what the opponent is coming to tell the court so that the other side can adequately prepare to come to court and cross-examine. But when witness statements are not prepared by learned people or people who understand what proceedings in Court are about, it is problematic.

Section 69 of the Evidence Act, 1975(NRCD 323) has the caption – "Court Controls Mode and Order of Interrogation." and it states:

> *The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—*
> *(a) make the interrogation and presentation as rapid, as distinct, and as readily understandable as may be, and*
> *(b) protect witnesses from being unduly intimidated, harassed or embarrassed.*

It appears to me that Witness Statements somehow take away the Court's mandate to make the necessary interrogation so as to admit admissible evidence in line with section 51 and 52 of the Evidence Act.

Section 51 of the Evidence Act states:

> *(1) For the purpose of this Decree, "relevant evidence" means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, which makes the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.*
>
> *(2) All relevant evidence is admissible except as otherwise provided by any enactment.*
> *(3) No evidence is admissible except relevant evidence.*

Section 52 of the *Evidence Act* states:

> *The court in its discretion may exclude relevant evidence if the probative value of the evidence is substantially outweighed by—*
> *(a) considerations of undue delay, waste of time, or needless presentation of cumulative evidence; or*
> *(b) the risk that admission of the evidence will create substantial danger of unfair prejudice or*

substantial danger of confusing the issues; or

(c) the risk, in a civil action, where a stay is not possible or appropriate, that admission of the evidence will unfairly surprise a party who has not had reasonable ground to anticipate that such evidence would be offered.

In a land case, one must prove his root of title by proper legal means. One must show that the person who one acquired the land from had valid title by virtue of that person's root of title.

In *Majolagbe v. Larbi* [1959] GLR 190, Ollennu J(as he then was) stated in a dictum that:

Proof in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of things, reference to other facts, instances, or circumstances, and his averment is denied, he does not prove it by merely going into the witness box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true.

That dictum was referred to with approval in *Klutse v. Nelson* (1965)GLR 537 @ 542 and *Baah Ltd v. Saleh Brothers* [1971] 1GLR 119 @ 122

For the sake of clarity of my analysis on this case, I produce verbatim the witness statement of Plaintiff:

"1. My name is Wisdom Arhin, I am a farmer and lives[sic] at Denkyira Gyaman[.]

2. During 2017 I bought a piece of land measuring 1½ acres from Bright Osei Owusu to mine Gold thereon.

3. The said Bright Osei Owusu is the uncle of Defendant.

4. this[sic] land shares common boundary with my own land which was cultivated in it's[sic] virgin state by my great uncle grandfather[sic] called Nana Yaw fobi I..sic]

5. I started mining gold on the land I purchased together with my own land in 2017 and dig[sic] on large mining pit thereon but only 2 month[sic] later, there was national ban on mining so I stopped work[.]

6. l later hired an excavator to cover part of the open pit and converted the remaining side of the pit into a fish pond.

7. During June 2020 defendant stole fish from my fish pond and I reported a case of stealing at the Ayanfuri Police Station but Defendant pleaded for settlement and paid for the cost of fish being GH¢1200.00 to me.

8. Even before the issue of the fish Defendant collected sand from my land and sold same and when discovered[sic] this I took the matter to the Nkosoo Hene of Denkyira Gyaman by name Nana Mahama Gariba.

9. Defendant admitted having taking[sic] the sand without my notice and paid for same which amount is GH¢400.00 and Defendant bought the remaining sand from me at a cost of GH¢700.00

10. Of late I have observed that defendant has planted food crops such as Plantain, sugar cane etc on the land and when confronted Defendant laid adverse claim[sic] to my land claiming ownership of same because the sand he bought from me was a heaped[sic] on land so the land belong[sic] to him.

11. I must explain that the total area of my land together with the land I bought from Bright Osei Owusu is about 3 acres sharing common boundaries[with] Bright Osei Owusu, Mr Ampofo.

12. I have document such as withdrawer[sic] of case and Certificate of Honour(receipts) which Bright Osei Owusu issued to me when I paid for the land he sold to me which certificate are witness[sic] by defendant's own biological father called Osei O. Kwakye.

13. Defendant is also laying advert[sic] claim[to] part of the land his uncle Bright Osei Owusu sold to me claiming that his father has given it to him but it is not true that Defendant's father has given any piece of land to him"

In Ogbarmey-Tetteh v Ogbarmey Tetteh[1993-94]1GLR 353 SC, it was held that in an action for declaration of title, a plaintiff who failed to establish the root of his title must fail because such default was fatal to his case.

In Ago Sai & Ors v Kpobi Tetteh Tsuru III[2010] SCGLR 762 at 779, it was held:

> *"This being an action for declaration of title to land, the burden of proof and persuasion remained on the plaintiff to prove conclusively, that on a balance of probabilities, he was entitled to his claim of title. This he could do by proving on the balance of probabilities the essentials of their root of title and method of acquiring title to the area in dispute…"*

In *Nunoo v Ataglo* (J4 73 of 2018) [2020] GHASC 49 (28 July 2020); Dordzie JSC stated in reference to the case of *Mondial Veneer (Gh) Ltd. v Amuah Gyebu XV [2011]1SCGLR 466,* that:

> *"This action being an action in which the plaintiff is asserting title to the disputed land, the law requires that she produced persuasive evidence establishing her root of title, her mode of acquisition and overt acts of possession."*

Civil cases of this nature are generally decided on the preponderance of the probabilities as stipulated in section 12(1) of the *Evidence Act* which states:

> *Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.*

Section 12(2) of defines "preponderance of the probabilities" and it states:

> *Preponderance of the 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 *Serwah v. Kesse* [1960] GLR 227 at 228, the court held that the proposition that the plaintiff in a land case must prove his case beyond reasonable doubt is not a correct statement of the law. Thus, the rule that in land cases an especially high standard of proof is required does not justify the burden of proof in civil cases being equated with the burden in criminal cases. However, proof in a land matter must be clear enough and I dare say, must be sacrosanct as the outcome may be judgment in rem.

There is this other principle generally applied to civil cases and it is that the plaintiff must succeed on the strength of his own case and not on the weakness of the defendant's case; see *Kodilinye v. Odu* (1935) 2 WACA 336 at 337 and also *Odametey v. Clocuh* [1989-90] 1 GLR 14, SC.

The legal authorities have further held that conflicts in the defendant's case do not relieve the plaintiff of the burden on plaintiff to prove his case; and this is so even so where those conflicts create doubt in the defendant's case.

In *Barimah Gyamfi v. Ama Badu* [1963] 2GLR 596, it was held that:

> *"In a claim made by Plaintiff there is no onus on the defendant to disprove the claim so that however unsatisfactory or conflicting the defendant's evidence may be, it cannot avail the plaintiff. The evidence of the defence only becomes important if it can upset the balance of probabilities which the plaintiff's evidence might have created in the plaintiff's favour or if it tends to corroborate the plaintiff's evidence or tends to show that evidence led on behalf of the plaintiff was true".*

Section 1 of the Conveyancing Act, 1973(NRCD 175) states:

> *(1) A transfer of an interest in land shall be by a writing signed by the person making the transfer or by his agent duly authorised in writing, unless relieved against the need for such a writing by the provisions of section 3.*

(2) A transfer of an interest in land made in a manner other than as provided in this Part shall confer no interest on the transferee.

Section 2 of NRCD 175 states:

No contract for the transfer of an interest in land shall be enforceable unless—
(a) it is evidenced in a writing signed by the person against whom the contract is to be proved or by a person who was authorised to sign on behalf of such person; or
(b) it is relieved against the need for such a writing by the provisions of section 3.

Section 3 of NRCD 175 states:

(1) Sections 1 and 2 shall not apply to any transfer or contract for the transfer of an interest in land which takes effect—
(a) by operation of law;
(b) by operation of the rules of equity relating to the creation or operation of resulting, implied or constructive trusts;
(c) by order of the court;
(d) by will or upon intestacy;
(e) by prescription;
(f) by a lease taking effect in possession for a term not exceeding three years, whether or not the lessee is given power to extend the term;
(g) by a licence or profit other than a concession required to be in writing by section 3 of the Concessions Ordinance (Cap. 136);
(h) by oral grant under customary law.

(2) Sections 1 and 2 shall be subject to the rules of equity including the rules relating to unconscionability, fraud, duress and part-performance.

NRCD 175 has been repealed by the *Land Act*, 2020(Act 1036) but according to Plaintiff, he acquired the land in the year 2017.

Section 282(2) of Act 1036 states:

> *(2) Despite the repeal of the enactments in subsection (1), Regulations, by-laws, notices, orders, directions, appointments or any other act lawfully made or done under the repealed enactments and in force immediately before the coming into force of this Act shall be considered to have been made or done under this Act and shall continue to have effect until revoked, cancelled or terminated.*
>
> *(3) An instrument or a document made or issued under the repealed enactments shall continue to be valid under this Act until otherwise revoked.*

Therefore, the law applicable as regards the transfer of land in this case is as provided by NRCD 175 above. See sections 34 – 36 of the *Land Act* on the current position of the law on the above as was in the repealed *Conveyancing Act*.

Plaintiff tendered in evidence a document titled "CERTIFICATE OF HONOUR" as documentary proof of the transfer of title to him. It was marked Exh A. 28/1/2017 has been written in what appears to be pen ink above "CERTIFICATE OF HONOUR". The body of the document reads:

"I BRIGHT OSEI OWUSU have received an amount of FIVE THOUSAND Ghana Cedis (GH¢ 5000.00)

The said amount being part payment of ONE AND HALF(1½ acres of a land. BALANCE OF ONE THOUSAND CEDIS(¢1000.00) REMINING[sic]

[SIGNATURE] [SIGNATURE]

…… …….

Wisdom Arhin (Farmers)

(Buyer)

WITNESS

[THUMBPRINT] OSEI O. KWAME

……. …… NANA KWAKU GYAMFI

I wonder what is meant by 'certificate of honour' in that respect. Whatever be the case, I wonder why *Bright Osei Owusu* receives money for payment of land and the transaction document is signed by *Farmers*. Which farmers? How many are they? Did they hold the pen and sign together? Do those farmers have the same signature? Or is it the case that *Farmers* is the name of a signatory to the said document? If the person called *Farmers* is a signatory as such, did he sign as the grantor? – That definitely cannot be because the name of the person who is said to have received the money is *Bright Osei Owusu*.

The features on that document paint a picture that is preposterous to say the least.

In fact, Plaintiff's evidence-in-chief is pure gibberish as regards proof in a land case such as this. EXHIBIT A is frivolous on the face of it. In all sagacity, I find EXHIBIT A baseless as far as transfer of title in land is concerned.

A judgment in a land case is judgment in rem. It therefore behoves a person seeking such a judgment to produce highly cogent evidence to prove his claim. A land one is laying claim to should be clearly defined. One does not merely mention those he shares boundaries with and leave it at that. One needs to provide a site plan or a kind of map that will inform the court clearly and distinctly about the particular piece or parcel of land one is laying claim to in court. In the instant case, the document Plaintiff is relying on as evidence of transfer of title to him is not meritorious in that regard and there is also no documentation depicting the map of the land.

I do not see any basis to grant the reliefs of Plaintiff. That is not to say that he is not entitled to the land in dispute. But his case as presented to the court lack meritorious integrity as regards proof in law particularly in a land case such as this. See the dictum of Ollennu J(as he then) *Majolagbe v. Larbi* [1959] GLR 190 supra which he earlier stated in Khoury and Anor. v. Richter(That judgment was delivered on the 8th December, 1958). Plaintiff may take a cue from this judgment and have his title regularized in accordance with law, so that he may be in the position to prove his title legally should any dispute arise as regards the land.

I hereby dismiss all the reliefs endorsed on the writ of summons.

(SGD)

HH YAW POKU ACHAMPONG

CIRCUIT COURT JUDGE

14/10/22