

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON
MONDAY THE 10TH DAY OF OCTOBER, 2022 BEFORE HER HONOUR
ENID MARFUL-SAU, CIRCUIT COURT JUDGE

SUIT NO:C1/65/2018

EAMMANUEL *[sic]* AGYEI
SUING PER HIS LAWFUL ATTORNEY
GEORGE AKROFI DARTEY
P.O.BOX 165 ACCRA NORTH ...
PLAINTIFF

VRS.

1.SAMUEL OFORI SASU
2.JOSEPH NSIE
3.JUNIOR SASU
OF ADUSAH, ACCRA ...
DEFENDANTS

PARTIES: PLAINTIFF'S ATTORNEY PRESENT

1ST DEFENDANT PRESENT

2ND DEFENDANT PRESENT

3RD DEFENDANT PRESENT

COUNSEL: EDEM AMADZOR ESQ. HOLDING BRIEF FOR COLLESTON
MORGAN

ESQ. FOR PLAINTIFF PRESENT

F.A. ACQUAYE ESQ. FOR DEFENDANTS PRESENT

JUDGMENT

By a Writ of Summons and Statement of Claim filed on 13th August, 2018,
Plaintiff claims against Defendants the following reliefs:

1. "Declaration of title to land subject matter of dispute of the property described in the attached schedule.
2. Perpetual injunction restraining the Defendants, their assigns and workers from entering or conducting the any activity on the land in dispute *[sic]*
3. Damages for trespass
4. Cost including legal fees."

Plaintiff says that he owns a parcel of land at Adusah which he acquired in October, 2017 from the Aduana Abrade Royal Family of Adusah. According to him, he was given an indenture and he took possession of the land and caused same to be graded and he deposited concrete blocks, sand and stones on the land. Plaintiff says that sometime in April, 2018, the Defendants entered unto the land and started using the building materials he had deposited on the land to construct a structure on the land. He says that he reported this to the Police who advised him to bring an action against the Defendants for trespass. According to him, 1st and 3rd Defendants informed the police that it was the 2nd Defendant who led them unto the land. Plaintiff says that despite warnings from the police, the Defendants continue to construct the building on the land hence this action.

Defendants entered appearance through counsel on 13th September, 2018 and filed a Statement of Defence on the same date. They contend that they are not trespassers to the land in dispute as the land belongs to the 1st Defendant so they are on the land as of right. They say that the land was acquired by 1st Defendant in 2007 at a cost of GH¢6,000.00 from a contractor named Fredrick William Kwasi Akuffo who also acquired the land from Nana Okai Kwaky II, Chief of Adusa. 1st Defendant says that the acquisition of the land was witnessed by an indenture dated 2007. According to him, he wanted one of the two plots to be developed by his wife who is now deceased so the indenture for that plot was prepared in her name however one site plan was prepared for the two plots with a demarcation line to show that the plots are two. 1st Defendant says that in 2016, he conducted a Search at the Lands Commission and it revealed that Naan Kwakye Okai II assigned the land in dispute to Fredrick William Kwasi Akuffo, his grantor. He says that Plaintiff has encroached on one of the two plots and has built a house up to the lintel level. According to 1st Defendant, he saw that someone has graded the other plot and was about to build so he instructed his nephew, the 3rd Defendant to develop the land. 1st Defendant says that the 2nd Defendant is just a caretaker on the land.

Plaintiff filed a Reply on 19th October, 2018 and pleaded that any purported registration of Aduana Abrade Family Land at the Lands Commission is fraudulent. He also denies building a house to lintel level on the land in dispute. He contends that he used some of the sand he deposited on the land to mould 1000 concrete blocks which the Defendants have removed from the land.

Pleadings closed and this court differently constituted adopted and set down the following issues for trial:

- a. "Whether the land in dispute belongs to the Aduana Abrade Royal Family of Adusah.
- b. Whether Nana Okai Kwakye II had an interest in the land in dispute to assign to the 1st defendant's grantor Fredrick William Kwasi Akuffo.
- c. Whether the plaintiff is the owner of the land in dispute."

Additional Issues

1. "Whether or not the parties are litigating over the same piece or parcel of land.
2. Whether or not the plaintiff is estopped by lashes [*sic*] from claiming 1st Defendant's land in dispute."

The burden of proof in civil matters is on the preponderance of probabilities. Section 12 (2) of the **EVIDENCE ACT, 1975 (NRCD 323)** defines proof by a preponderance of the probabilities as follows:

"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."

It is trite law that in a civil case, where a party sues for a declaration of title to land and an order for perpetual injunction, the onus is on the party to prove on a balance of probabilities ownership of the land in dispute. The burden of persuasion is therefore on the party who claims title to land.

See.

ADWUBENG V. DOMFEH (1996-1997) SCGLR 660;

JASS CO LTD & ANOR V. APPAU & ANOR (2009) SCGLR 265 AT 271;

NORTEY (NO 2) V AFRICAN INSTITUTE OF JOURNALISM AND COMMUNICATION & ORS (2013-2014) SCGLR 703 AT 724.

I notice that Defendants did not plead the issue of estoppel in their pleadings and neither did the Plaintiff, however issue 2 of the additional issues which is “whether or not the plaintiff is estopped by laches [*sic*] from claiming 1st Defendant’s land in dispute” was set down for trial. In the case of **SASU V. AMUA-SEKYI [2003-2004]2 GLR 771** it was held as follows:

“Where, on the facts, an estoppel which was not pleaded, should nonetheless be obvious to the party against whom it is raised, the court may ignore the failure to plead and give effect to it. The justification for this line of thought is that the party affected is not likely to be surprised where the evidence on record makes the estoppel obvious.”

I do not consider from the evidence which has been adduced before this court that the estoppel which was not pleaded by Defendants is obvious to Plaintiff. I shall therefore not give effect to it.

It is quite evident that the exact identity of the disputed land is a crucial issue underlying the dispute between the Parties. I shall therefore determine issue 1 of the additional issues first which is “whether or not the parties are litigating over the same piece or parcel of land.”

Plaintiff’s Attorney testified that the land in dispute is located at Adusah and is **bounded on the North East by the lessor’s land measuring 100.1 feet more or less on the South East by lessor’s land measuring 65.2 feet more or less on the North West by a proposed road measuring 63.1 feet more or less and on the South West by the lessor’s land measuring 100 feet more or less containing an area of 0.16 acres.**

Plaintiff relies upon an indenture dated 17th October, 2017 between Abusuapanyin Bismark Kwaku Mfarfo and Plaintiff and Justina Agyei which was tendered as *Exhibit B*.

1st Defendant also testified that he acquired two plots which are described as follows:

“bounded on the North by the assignor’s land measuring 70ft more or less, on the East by the assignor’s land measuring 100ft more or less, on the South by the assignor’s land measuring 100ft more or less and on the West by the assignor’s land measuring 70ft more or less and containing an approximate area of 0.16 Acre or more” and “bounded on the North by the assignor’s land measuring 70ft more or less, on the East by the assignor’s land measuring 100ft more or less, on the South by the assignor’s land measuring 70ft more or less and on the West by the assignor’s land measuring 100ft more or less and containing an approximate area of 0.16 Acre or more.” 1st Defendant tendered Exhibits 1 and 3 which are indentures covering the above described land.

In the light of the conflicting descriptions of the land in dispute, it is not clear whether the Parties speak of the same land. The most efficient means to thus clarify and identify the disputed land is a composite plan. Therefore, to assist the court, determine this issue, an order was made for a Composite Plan to be prepared. The composite plan, *Exhibit CE 2* was duly prepared. (See. **MADAM COMFORT OFORI VRS KWAME APPENTENG, CIVIL APPEAL NO. J4/ 17/ 2017 dated 6TH DECEMBER, 2017**, Supreme Court, unreported). From the Exhibit CE2, the land surveyed as shewn by Plaintiff is edged red and the land as shewn on the Site plan of Plaintiff (Exhibit B) is shewn edged cyan. The land surveyed as shewn by 1st Defendant is shewn edged purple, the land shewn on the site plan of 1st Defendant is shewn edged lime green and the land as shewn on the site plan of Madam Victoria Oforiwa, the wife of 1st Defendant (Exhibits 1 and 3) is shewn edged yellow. It is apparent that there is a very slight shift in the land as shewn by Plaintiff on the ground and

that which is contained in his Site Plan. I note also that there is an overlap between the land edged green and that edged yellow and that edged cyan. It is therefore apparent that the land as shewn by Defendant on the ground edged purple from points P2, P1, D1 to D2 is removed from the land of 1st Defendant shewn edged lime green.

I find on the evidence before me that there are differences in the land claimed by Defendants and that of Plaintiff. I consider however that there is a slight overlap of the land edged lime green and yellow (claimed by Defendants) and the land edged cyan which is land claimed by the Plaintiff. The land in dispute is therefore the land shewn edged cyan on which 1st Defendant has a building with a slight overlap of the land described in his Site Plans edged lime green and yellow. Therefore, for the avoidance of doubt, any reference to the land in dispute in this decision is to the land shewn edged cyan.

I shall now turn to issue 'a' which is '*whether the land in dispute belongs to the Aduana Abrade Royal Family of Adusah.*' Plaintiff's Attorney testified that the land in dispute belongs to the Aduanah Abrade Royal Family. The indenture Plaintiff relies upon which is *Exhibit B* indicates that his grantor is Abusua Panyin Bismark Kwaku Mfarfo of Adusah. PW1, Joseph Ampah Annor testified that he is a principal member of the Aduanah Abrade family and a witness to *Exhibit B*. He testified that Plaintiff acquired the land from the Aduanah Abrade family. PW2, Appiah Ayensu also testified that he is a member of the Aduanah Abrade family of Adusah and also supported the testimony of PW1 that Plaintiff purchased the land from the family.

1st Defendant testified that he acquired the land in dispute from one Fredrick Akuffo who also acquired same from Nana Okai Kwakye II, the chief of Adusah. *Exhibit 1*, which Defendant relies upon in proof of the fact that the chief granted land to his grantor, indicates that Nana Okai Kwakye II, Chief of

Adusah and head and lawful representative of the Aduanah Ablade Family of Adusah granted land with the consent of the family to Defendant's grantor, /Fredrick Akuffo. Defendant testified that it is from this land that his grantor made a grant to himself and his wife and the indentures covering their grant was tendered as *Exhibits 3 and 4*.

In **BANK OF WEST AFRICA LTD. v. ACKUN [1963] 1 GLR 176** it was held as follows:

"The onus of proof in civil cases depends upon the pleadings. The party who in his pleadings raises an issue essential to the success of his case assumes the burden of proof."

From the evidence before me, it is apparent that 1st Defendant in fact is not aware of the nature of the land he acquired from his grantor. The following ensued during cross-examination of 1st Defendant by Counsel for Plaintiff on 23rd June, 2022 as follows:

Q: I put it to you that the land in dispute is a family land and not a stool land

A: The one I bought the land from told me that it was the Adusah Chief who sold it to him before he sold it to me."

During cross examination of PW1 by counsel for Defendants, the following question was put to the witness:

Q: I put it to you that Defendant acquired his land in dispute from the same Adusah family in 2007

A: It is not true. The person who sold it to him had no authority to sell because it is not for the person."

From the entirety of the evidence before me, I find that sufficient evidence has been led on a balance of probabilities to show that the land in dispute (land shewn edged cyan on *Exhibit CE2*) is land belonging to the Aduana Abrade family of Adusah. I therefore answer issue 'a' in the affirmative.

I shall consider issues b and c next. Issue 'b' is '*whether Nana Okai Kwakye II had an interest in the land in dispute to assign to the 1st defendant's grantor Fredrick William Kwasi Akuffo.*' Issue 'c' is '*whether the plaintiff is the owner of the land in dispute.*'

1st Defendant testified that he acquired the land in dispute from one Fredrick Akuffo who also acquired same from Nana Okai Kwakye II, the chief of Adusah. In *Exhibit 1* which is the indenture between the said chief and grantor of Defendant, the chief describes himself as 'the chief of Adusah and Head and Lawful Representative of the Aduana Ablade family of Adusah. The size of land granted is 14.25 Acres.

The dual description of the said chief being head of family and chief is not borne out by the evidence before this court. In fact, during cross examination of PW1 by Counsel for Defendants, the following question was posed:

“Q: The Abusaupanyin Kwaku you talk about is the Abusaupanyin of the family while Nana Okae Kwakye is Chief

A: Yes. But not for the stool. He is not part of the stool. The Nana Okai forced himself to become the chief so the head of family is not in agreement.”

Again, during cross-examination of 1st Defendant by Counsel for Plaintiff, the following ensued:

“Q: So you know Nana Okae Kwakye to be chief of Adusah

A: Yes

Q: Is the said Nana Okae Kwakye the Abusaupanyin of the Aduanah family of Adusah

A: I don't know

Q: I put it to you that he is not the head of family

A: It is not true. He is the chief

Q: Are you saying he is the head of family

A: He is not the head of family, he is the chief ”

Indeed, the Witness Statement of Nana Oben Mfafor, tendered by the Defendant as hearsay evidence and marked *Exhibit 6* stated that the land in dispute is Adusa stool land and that the Chief and elders gave 12 Acres of land to one Fredrick William Kwasi Akuffo a portion of which is the land in dispute. According to him, Fredrick Akuffo later alienated part of his land to 1st Defendant. He stated that it is the chief and principal members of the Adusa Stool who alienate portions of stool land to people.

From the evidence contained in *Exhibit 6* as well as *Exhibit 1* tendered by 1st Defendant, it is apparent that the land granted to Defendant's grantor was stool land and not family land. In fact, in his own evidence quite on the contrary to what his lawyer suggested under cross examination, 1st Defendant stated that he acquired his land from Fredrick Akuffo who also acquired same from Nana Oben Mfafor, the Chief. 1st Defendant says that his land is registered in the name of his grantor and he tendered *Exhibit 5* as proof. *Exhibit 5* is a Search Report from the Lands Commission dated 16th November, 2016 bearing the name of one Samuel Laryea as client. Under cross-examination, 1st Defendant indicated that he sent the said Samuel to go and conduct the Search on his behalf. The Search reveals that “the search applied

for against the land edged red on the plan attached has been made with the following result

1.(Whole Site)

a.Not State Land

b. Lease Dated 25/4/2006 From: Nana Okai Kwakye II to Fredrick William Kwasi Akuffo.”

It is however interesting to note that though 1st Defendant states that his land is registered, neither the site plan in Exhibit 1, 3 or 4 was used to conduct the Search. The site plan used for the Search bears the name of one Kennedy Anyasor Mate-Kole. Thus, it can be concluded that the land covered by the said Search is neither Exhibit 1, 3 or 4. The testimony of Defendants that their land is registered is therefore clearly unsubstantiated in the light of their own evidence. I therefore find that the land Nana Okai Kwakye II granted to Fredrick William Kwasi Akuffo was stool land. I therefore answer issue ‘b’ as follows that there is no evidence before this court that the land Nana Okai Kwakye II assigned to the 1st defendant’s grantor, Fredrick William Kwasi Akuffo is the land in dispute. Further there is no evidence before this court as to whether or not Nana Okai Kwakye II had an interest in the said stool land granted to Fredrick William Kwasi Akuffo.

During cross examination of Plaintiff by counsel for Defendants, the case strongly put across by counsel for Defendants is that 1st Defendant acquired the land in dispute since 2007 and went into possession and developed same. He suggested that *Exhibit C series* which are photographs of a construction depicts Plaintiff’s trespass on the land. The case of Plaintiff and his witnesses is that the land was bare, and that the Defendant recently went unto the land and constructed a house on same therefore *Exhibit C Series* was tendered in proof of the said construction. When 1st Defendant was cross-examined by counsel for Plaintiff he stated as follows:

“Q: I put it to you that the Plaintiff acquired this land in October 2017

A: Yes. I bought my land in 2007, 10 years after I couldn’t develop it and they sold it to Plaintiff

...

Q: By August, 2018, Exhibit C will show how quickly you were developing this land when for 10 years you couldn’t develop the land and in a couple of months you had the house up to lenti level

A: Yes, it is true

Q: Any by September 2018, Exhibit C5 shows that you flowed the house putting windows, in less than a month

A: That is true”

The above extract of 1st Defendant’s evidence before the court corroborates the evidence of Plaintiff that indeed there was no building on the land until recently Defendant went unto the land and quickly started developing it. The case put across by counsel for Defendants is therefore at variance with the testimony of the 1st Defendant under oath. In the case of **TSRIFO v. DUA VIII [1959] GLR 63** it was held as follows:

“Where the evidence of one party on an issue in a suit is corroborated by witnesses of his opponent, whilst that of his opponent on the same issue stands uncorroborated even by his own witnesses, a Court ought not to accept the uncorroborated version in preference to the corroborated one, unless for some good reason (which must appear on the face of the judgment) the Court finds the corroborated version incredible or impossible;”

The case that 1st Defendant has been in possession of the land 10 years before Plaintiff acquired it is not borne out of the evidence. I note also from *Exhibit*

CE2 that there is in fact a building belonging to 1st Defendant on the land in dispute.

From the evidence, it is not in dispute that 1st Defendant acquired land from one Fredrick Akuffo. The evidence (Exhibit 1 & 6) also point to the fact that the land granted to the said Akuffo by Nana Okai II was stool land and not family land. On a preponderance of probabilities, it has been shown by the evidence before me that the land in dispute shown edged cyan is family land granted to Plaintiff by the Aduana Abrade family.

I find that sufficient evidence has been adduced in proof that the Plaintiff owns the land in dispute edged cyan and 1st Defendant had no rights in law or in equity to construct a building on the said land. I therefore enter judgment in favour of the Plaintiff against the Defendants as follows:

1. Plaintiff is declared owner of the land described in the Schedule of the Statement of Claim and shewn edged Cyan in the Composite Plan Exhibit CE2.
2. The Defendants their assigns and workers are hereby perpetually restrained from entering or conducting any activity on the land in dispute described above.
3. General Damages of GH¢5,000.00 is awarded in favour of Plaintiff against the Defendants.
4. Costs of GH¢3,000.00 is awarded in favour of Plaintiff against Defendants.

H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN

