

IN THE CIRCUIT COURT '1' WESTERN REGION HELD AT TAKORADI ON  
WEDNESDAY 31<sup>ST</sup> OCTOBER, 2022 BEFORE HIS HONOUR MICHAEL K. AMPADU,  
CIRCUIT COURT JUDGE.

---

**SUIT NO: C1/73/2015**

BETWEEN

ABENA OWUSUA

....

.....

PLAINTIFF

- AND -

OWUSU OBENG SAFO & 1 OR.

....

.....

RESPONDENTS

---

### J U D G M E N T

---

Parties are present except 2<sup>nd</sup> Defendant who is represented by Solomon Ntsinmoah  
Counsel for the Plaintiff: Nana Konduah is present  
Counsel Deborah Esi Essien with Baffour Dwumah's brief is present for the Defendant

The Plaintiff by a Writ of Summons filed on 7/5/2015 claimed the following reliefs  
against the Defendant:

- (a) A Declaration that the Eight (8) poles of land situate and lying at Wassa Manso  
with the following boundary features; Manso to Amanteng Road, Dekyere  
Stream, Swampy area and farm land of tenant farmer Aziz Kolam belonged to  
the Plaintiff.
- (b) An order that the Defendant atone tenancy to the Plaintiff.

- (c) An order that the rubber farm that the Defendant had cultivated on the Eight (8) poles of farm land is on abunu basis and the Plaintiff is entitled to half of the said rubber farm.
- (d) Any other order that the Court may deem fit having regard to the case.

In his address to the Court, Counsel for the Plaintiff stated that the case was commenced on an amended Writ of Summon dated 26/4/2016 but the records do not have that information on this alleged Amended Writ of Summons. The Writ on record was instituted on 7/7/15. On her statement of claim, the Plaintiff stated that she lives together with the defendants at Wassa Manso and the Defendant without her consent as the owner has entered the land which is Eight (8) poles and cultivated a rubber farm thereon. It is the case of the Plaintiff that all attempts made to get the defendant atone tenancy to her have failed.

According to her the land in dispute which is Eight (8) poles forms part of a larger stretch of land whose virgin forest was broken by her ancestors by name: Opanyin Nsuko, Opanyin Sobeng and Opanyin Gyimah and that since the virgin forest was broken, the larger stretch has being in the undisputed possession of her ancestors and now in her possession.

By an amended statement of defence filed on 5/2/2016, the Defendant denied the Plaintiff's claims and stated that the disputed land is bounded by the farms of Nana Enyane Obuodum, one Joseph alais Awona Man, then River Dekyere and Aziz Cola which was cultivated in 2013 and measured Eight (8) poles and forms part of the Amanteng Stool land and that the land was granted to him by Nana Enyane Obuodum II of Wassa Manso on abusa tenancy and as such he atones tenancy to the said Nana Eryane Obuodum.

It is the defence of the defendant that the land in dispute, hitherto, was a secondary forest which the said nana Anyane Obuodum had held as a usufruct and farmed thereon cultivating both food and cash crops for several years without let or hindrance and that before he acquired the disputed land, he did all the requisite investigations and satisfied himself that the disputed land was unencumbered and saw also that there was no sign of any human activity on the disputed land at the time he acquired same.

It is the further defence of the defendant that he has been on the disputed land for about Eighteen (18) years without any let or hindrance and cultivated rubber trees thereon and have started harvesting same.

Defendant further averred that in a suit titled Abena Owusua vrs. Solomon Tsiamoah and Nana Anyane Obuodum, the Plaintiff therein who is the Plaintiff herein sued the Defendants before the District Court, Sekondi for the under listed reliefs:

- i. Declaration of title to a parcel of land situate at Manso and bounded on the north by Amanteng Chief, Annor Kofi and Enimil Mireku's land, then on the south by Nserempong's land and on the West by Anbontua Stream and on the East by the main road to Amanteng.
- ii. Damages for trespass on the said land.
- iii. Perpetual Injunction restraining the Defendants, his agents and descendants from the said land.

The Defendant contended that the present land in dispute forms part of the parcel of land that was litigated on in the case cited above. According to him, the District Court dismissed the above case on 11/9/2009 and an appeal made subsequently was also dismissed and so the Plaintiff is stopped by the principle of *judicata* from instituting the present action. He averred again that even if the Plaintiff had any legitimate interest in the disputed land, that interest has been extinguished under the provisions of the Limitation Act, Act 54 and also that he is a bonafide purchaser for value without notice

of any encumbrance in respect of the disputed land at the time of his acquisition and finally intimated that the Plaintiff has no cause of action against him and so the action be dismissed in limine.

In the Plaintiffs reply to this amended statement of defence, he stated that the defendants description of the boundaries of the land in dispute is not correct and that the correct description are what is stated by the Plaintiff in paragraph 8(a) of the statement of claim. He also replied that even though the Defendant had always claimed that the land belonged to Nana Anyane Obuodum and that it was the said Obuodum who granted the land to him, she wish to state that the disputed land does not belong to Nana Anyane Obuodum.

On the 21/3/2016, the second Defendant (D2), Ebusuapanyin Nana Anyane Boadum II applied to be joined to the suit and he was accordingly joined to the suit as the second Defendant (D2).

The defence of the 2<sup>nd</sup> Defendant is that the disputed land in its virgin state was broken by his forebears and thereafter, his forebears cultivated the land with food and economic crops and that the disputed land shares boundaries with the lands of Adum Bansa, Amannin, Nana Ketekyere and Opanyin Tabil. It was the defence of the 2<sup>nd</sup> Defendant that his forebears migrated from Agona Abirim and were permitted by the Manso Chief at the time to settle on the disputed land after which the Plaintiff's ancestors also, migrating from Ituma, arrived at Manso. They were also given a place at Wiredukrom and Ewiakrom to settle by the Chief of Manso and that where the Plaintiff's forebears settled is completely different from the disputed land.

Second Defendant further stated that his forebears including Nana Bogya, Nana Enyane and his children and himself have all cultivated cocoa on the disputed land for over Hundred (100) years without let or hindrance. D2 also averred that he is the Head of

his Nsona Family at Manso and that his Nsona family and the Plaintiff's Nsona family do not succeed themselves but have only fraternal relationship and contends that the land granted to 1<sup>st</sup> Defendant (D1) is part of the land broken in its virgin state by his forebears and which has been in their possession exclusively for over Hundred (100) years and concludes that the Plaintiff has no cause of action.

On the 17/4/2019, one Ebene Sika Owusu applied to be substituted for the 1<sup>st</sup> Defendant (D1) Owusu Obeng Safo who he said was his father and had died. The application was granted and so he filed his witness statement as the 1<sup>st</sup> Defendant to continue from where his father left off.

In her evidence in chief, the Plaintiff stated that the Eight (8) poles of land in dispute here forms part of a larger stretch of land whose virgin forest was broken by her ancestors as stated in her statement of claim supra over two hundred (200) years ago. She stated the land in dispute is situate at Wassa Manso and shares boundary with Dekyere Stream, road from Manso to Amantsin, a swampy area and the tenant farmer Aziz Kolam as stated also in her statement of claim.

According to her, the boundaries to the larger stretch of land to which the Eight (8) poles forms part are as follows, Opanyin Annor Kofi, Opanyin Enimil Mireku, Opanyin Nsoropany, Amanteng Chief's land, a lorry road leading to Dekyere from Amantsin. She contended that she had earlier on mounted an action against one Solomon Tsinamoah over another portion of this larger land at the District Court, Sekondi which later went on appeal to the High Court, Sekondi which appeal was dismissed. Plaintiff attached Exhibit A, B and C which were her statements of claim before the District Court, Sekondi, the statement of defence of Solomon Tsinamoah and Nana Anyane Obuadum II in the District Court case and a suit subsequently mounted by the Defendants against her at the Circuit Court, Takoradi respectively which Circuit Court case against her was also dismissed.

Plaintiff again attached Exhibits 'E', 'F' and 'G' which were Judgments of the District Court, Sekondi, High Court, Sekondi (Appeal) and Circuit Court, Takoradi respectively and stated that it is not true that the land in dispute belong to Nana Anyane Boadum II but that the Defendant has trespassed onto her land. After her evidence in chief from her witness statement which was filed on 2/3/16, the Plaintiff called one witness, Mary Arthur (PW1) who was substituted for Aziz Kolam. Her evidence was that the Plaintiff was her mother and that she is a member of the Asona family of Wassa Manso.

PW1 corroborated the boundaries of the land in dispute as given by the Plaintiff and added that the said tenant farmer, Aziz Kolam was given the land by the Plaintiff for the cultivation of cocoa about six (6) years ago and ever since nobody has challenged Aziz Kolam's right to cultivate the land.

According to PW1, D2 also belongs to Nsona family of Wassa Manso but they do not inherit each other. She said the 2<sup>nd</sup> Defendant's section of Nsona family also have land in the area but their land is on the left side of the road leading to Amantsin and the Plaintiff's land is on the right side of the same road. She contended that the land given to Aziz Kolam a.k.a. Nicholas for the cultivation of cocoa which cocoa has even matured and harvesting has stated, is for the Plaintiff and that the tenant Aziz atones tenancy to the Plaintiff.

The evidence of the 1<sup>st</sup> Defendant (D1) is that he is the son of the late Owusu Obeng Safo and he is a farmer. He averred that the land in dispute is situate at Wassa Manso and it is bounded by the farm of Nana Anyani Boadum, one Joseph alias Amonaman, River Dekyere and Aziz Kolam and the size is Eight (8) poles. This parcel forms part of Manso stool lands according to him. He alleged that his late father acquired the disputed land from the 2<sup>nd</sup> Defendant on 'abusa' terms and cultivated rubber thereon.

Prior to the acquisition, he said it was the 2<sup>nd</sup> Defendant's family that was feeding on the land. He contended that the land in dispute was a secondary forest which members of the 2<sup>nd</sup> Defendant's family had cultivated with both food and cash crops for many years without let or hindrance from anyone and at the time it was granted to his late father, there was no human activity on it and when they started cultivating the rubber stumps on it, nobody challenged them and that he helped his father to cultivate the disputed land with rubber stumps. According to him, his late father farmed the disputed land for about twenty (20) years before he died and after his death, his siblings and he are now harvesting the rubber stumps. It was the evidence of the 1<sup>st</sup> Defendant that he accompanied his late father to negotiate for the land and at that time they were informed by the 2<sup>nd</sup> Defendant family that the Plaintiff earlier on had mounted an action at the District Court, Sekondi claiming title to the disputed land but lost.

The 1<sup>st</sup> Defendant did not call any witness after his evidence in chief. The evidence of the 2<sup>nd</sup> Defendant is that he is the head of the Nsona family of Wassa Manso and knew the 1<sup>st</sup> Defendant as a tenant farmer who is currently cultivating part of his family land.

According to him, the disputed land forms part of the Manso Stool lands and belongs to his family whose ancestors broke the virgin forest some centuries ago and cultivated both food and economic crops on it.

The land in dispute, he said, shares boundaries with the farm of Nana Anyane Boadum, one Joseph alias Annonaman, Aziz Kolam and the Dekyere Steam.

2<sup>nd</sup> Defendant contended that his forebears migrated from Agona Abirim and were permitted by the chief of Manso at the time to settle on the land in dispute and that it was after his ancestor's settlement that the Plaintiff's ancestors arrived at Manso after migrating from Ituma and they were also given a place to settle by the Chief of Manso at Wiredukrom and Ewiakrom which places are completely different from where his

ancestors settled. It was his further statement that his ancestors which included Bogya, Nana Anyane and their children collectively cultivated cocoa on the disputed land for over Hundred (100) years without any challenge from anybody.

He tendered Exhibit '1' which is an action the Plaintiff instituted in 2009 against one Solomon Tsiamoah and himself at the District Court, Sekondi and also Exhibit '2' which is an appeal the Plaintiff made against the decision of the District Court Judgment and said the Judgment in the Exhibit has not been set aside by any competent Court of jurisdiction and prayed that the Plaintiff has no cause of action against him. After his evidence in chief, the 2<sup>nd</sup> Defendant called one witness, Opanyin Kweku Gyapah (DW1).

The DW1's evidence in chief is that he is currently the Head of family of the Asankoma Royal family of Wassa Amantsin and a farmer. He said the Stool of Wassa Amantsin owns a large tract of land situate at Wassa Amantsin and its environs and bounded by the Stool land of the Wiredukrom, Benso and Manso. According to him, the boundary features between his family's land and that of the stool of Manso is the Dekyere Stream and that the disputed land lies along the Dekyere Stream on the side of the Manso stool land. He alleged that there is currently a rubber farm on the disputed land which he does not know who cultivated the rubber.

It is his further evidence that the disputed land belongs to Ebusuapanyin Nana Anyane Boadum's family because from time immemorial, it is Nana Anyane Boadum's family members including Opanyin Anyane and Opanyin Bogya that had fed on the said land without any let or hindrance and that now the 2<sup>nd</sup> Defendant has an oil palm plantation adjoining the disputed land on the side of the Manso Stool land.

At the application for direction stage, the following issues were set down for trial.

- (a) Whether or not the land in dispute belonged to the Plaintiff;



Additional Issues;

1. Whether or not the disputed land is owned by Nana Anyane Boadum II.
2. Whether or not for the past Eighteen (18) to Twenty (20) years, the 1<sup>st</sup> Defendant has been in possession of the land and atoned tenancy to Nana Anyane Boadum.
3. Any other issues arising from the pleadings.

It was held in the case of Boateng vrs. Boateng (2009) SGMT at 58 at 63 CA that “The law has always been that a person who makes an averment or assertion which is denied by his opponent has the burden to establish that his averment is true. And he does not discharge this burden unless he leads admissible, credible evidence from which the fact or facts he asserts can properly and safely be inferred”.

In the case of Fosua and Adu-Poku vrs. Dufie (deceased) and Adu-Poku Mensah (2009 SC GLR 310, It was held that “It is common learning in this Country that in an action for declaration of title to land, the onus is heavily on the Plaintiff to prove his case and he cannot rely on the weakness of the Defendant’s case. He must indeed show clear title ... that in an action for a declaration of title, the first question logically and chronologically to consider in the appeal is the traditional evidence regarding the acquisition of a title to the disputed territory.

Gawu III and Another vrs. Ponuku (1960) GLR 101 (HC) has the law that “To succeed in an action for declaration of title to land and recovery of possession, a Plaintiff must establish positively the identity of the land he is claiming and where (as in this case) he admits that the land forms boundary with land belonging to the defendants, he must establish clearly the boundary between his land and the land which he admits is the property of the defendant and show that the land in dispute is in his side of that boundary”

The three main issues, that are whether or not the land in dispute belong to the Plaintiff, whether or not the disputed land is owned by Nana Anyane Boadum and whether or not the 1<sup>st</sup> defendant has been in possession of the land for the past twenty (20) years and atoned tenancy to the 2<sup>nd</sup> Defendant, Nana Anyane Boadum will be discussed and determined together. For a Plaintiff to win in a case for declaration of title to land in his favour, the Plaintiff should first of all establish the identity of the land. The failure to establish this identity is fatal to the Plaintiff's case as espoused in the laws supra. In the opinion of this Court the identity is what makes the suit valid since any imprecision in the identity of the land makes it impossible for the Court to give any order in favour of the Plaintiff, if any order comes in his favour at the close of the trial.

Both Counsel for parties, in their respective addresses, have stated a lot of laws including, estoppel by res judicata, Limitation Act and referred to three judgments, one from the District Court, Sekondi, Exhibit 'A', appeal to the High Court which High Court's judgment was exhibited as Exhibit '2' dated 27/03/2012 and Exhibit 'G', another judgment dated 17/07/14 which suit was mounted at the Circuit Court, Takoradi by the 2<sup>nd</sup> Defendant herein and the other against the Plaintiff herein as a Defendant in that Case. All the above cases were dismissed based on the identity of the boundaries presented by the parties which the Courts found were differently described by the parties.

In the instant case, the Plaintiff claims title over an Eight (8) poles of land described as lying at Wassa Manso with the following boundary features, Manso to Amantsin Road, Dekwere Stream swamping area and the road form land at tenant farmer Aziz Kolam.

In her evidence in chief, the plaintiff averred that the land in dispute forms part of larger piece of land which larger piece of land boundaries she described as bounded by Opanyin Annor Kofi, Opanyin Enimil Mireku, Opanyin Nserepong, Amantsin Chief's land, a lorry road leading to Dekyire from Amantsin.

The defendant in his amended statement of defence filed on 5/2/16 and dated 3/2/16 described the boundary features of the land in dispute as bounded by the farms of Nana Anyani Boadu, he 2<sup>nd</sup> Defendant, one Joseph alias Anwona Man, then River Dakyere and Aziz Cola.

In his witness statement to the Court, the 2<sup>nd</sup> Defendant mentioned the above boundaries in his statement of defence. The Plaintiff in her reply to the 2<sup>nd</sup> Defendant's defence denied the boundaries given by the 2<sup>nd</sup> Defendant.

In cross-examination of Plaintiff by Counsel for Defendant, she answered like this.

Q. 2<sup>nd</sup> Defendant, yourself and his family do not inherit each other?

A. Yes, he is in the left and I am on the right.

Q. When your family came to Dixcove, 2<sup>nd</sup> Defendant's family already had their lands.

A. Yes, they had theirs and we also had ours. We farmed on individual lands; we did not farm together.

Q. Because the land was their family land that is why they gave it to the 1<sup>st</sup> Defendant?

A. No not so. His family is far away from ours.

Q. Is it the case that the disputed land is your family land?

A. Yes.

Q. But you are not the family head?

A. Yes.

The above discourse does not leave any doubt in the mind of the Court that the lands the parties describe in this suit are different lands.

As stated in the case of Fosua and Adu-Poku vrs. Dufie (deceased) supra, it was held that in an action for declaration for title, the onus is heavily on the Plaintiff to prove his case and not rely on the weakness of the Defendant. The Plaintiff was supposed to

prove that her boundaries were the same as the boundaries she was accusing the Defendant of occupying. She called one witness after her evidence in chief. Her evidence at paragraph Eleven (11) of her witness statement was that "I reaffirmed that the land in dispute is on the right side of the road leading to Amantsin. It is part of the Plaintiff's land". This is what she came to Court to reaffirm. She also confirmed the boundaries features of the Plaintiff who she said was her mother.

In cross-examination of her by Counsel for the Defendant, the PW1 answered this way;

Q. Your claim that the 2<sup>nd</sup> Defendant's family land is on the left is not true?

A. It is true.

Q. Prior to the construction of the road, the land was one and it was the construction of the road to Amantsin that led to the division of the land?

A. Not true.

The witness to the Plaintiff still insists that the lands are at different sides of the road. It is therefore not surprising that their boundaries features in this suit are not the same. If they are not the same, then their lands are different and they did not have any common issue to be resolved. It was clearly stated in the case of *Gawu III & Anor. Vrs. Ponuku supra* that for a Plaintiff to succeed in an action for declaration of title to land and recovery of possession, he must establish positively the identity of the land he is claiming and where he admits that the land forms boundary with land belonging to the Defendant; he must establish clearly the boundary between his land and the land which he admits is the property of the Defendant and show that the land in dispute is at his side of that boundary. That the Plaintiff has not been able to do. What boundaries she has established are different from the boundaries the defendant has established. In cross examination of the Plaintiff, she answered as follows:

Q. You sued him and the 2<sup>nd</sup> Defendant in this suit on this same land at Sekondi District Court?

A. Yes.

Q. In that Court, you lost the case. The Court held that that land in dispute was not yours which land is also the subject matter in dispute in this Court?

A. No. It was not given. We were to take over our own plots. It is the same land.

Q. At the High Court, you lost over there; the Court affirmed the decision of the lower Court?

A. Yes, that we should take our lands.

The above questions and answers are indicative of the fact that the lands for the parties are not the same. All the earlier decisions, according to the Plaintiff, asked them to go for their own lands. This means their lands are different and so everybody should go to his. This is the case and actually it is because the lands, from the facts, are different from the definition of the boundaries. No Court could have given title to any of them even if they had counterclaimed since the lands are not the same by description per their boundaries.

As said earlier by this Court, the Court will have decide this matter on merits only if it had been clear that the parties are contesting the same land.

It is only then the Court can use the evidence before it to decide which of the parties owns the land. In the instant case the lands are different so this Court rules that the parties are entitled to remain on their respective lands. The suit is therefore dismissed.

Cost of Two Thousand Ghana Cedis (GH¢2,000.00) is awarded against the Plaintiff in favour of the Defendants.

**SGD**  
**H/H MICHEAL K. AMPADU**  
**(CIRCUIT COURT JUDGE)**