

IN CIRCUIT COURT '1' HELD AT TAKORADI, WESTERN REGION ON
WEDNESDAY 5TH OCTOBER, 2022 BEFORE HIS HONOUR MICHAEL K. AMPADU
ESQ., CIRCUIT COURT JUDGE

CC. NO. C1/40/2009

BETWEEN

EBUSUAPANYIN KWAMINA OWUENGYAW PLAINTIFF

AND

1. JOJO AMOAH

2. MOHAMED @ 24 DEFENDANTS

JUDGEMENT

Plaintiff: Present

Counsel: Lawyer Emmanuel Arthur for Plaintiff

This writ was filed against the Defendants on 29/04/09 and by a further amended statement of claim filed on 17/12/10, the Plaintiff asked the Court for the following reliefs against the Defendants:

- (a) Declaration of title to all that piece and parcel of land lying and situate at Apowa and bounded by motor road (Takoradi - Tarkwa Trunk Road), the lands of Esi Benyah's Forest Reserve, Tandoh Benyah's land, Aketsuabah's land, Kwame Gyembe's land, Okuru's land, Epela Ansah's Land, Ekiseku's land, Safo's land, Effrim Carpenter's land, Adale's land and an Open space.
- (b) Recovery of possession.
- (c) Damages for trespass.

(d) Perpetual injunction restraining the defendants, their agents and all those claiming under them from having anything to do with the said land.

In the further amended statement of claim, the Plaintiff stated that he is the Head of family of the Ebiradze Family of Apowa and Busua and brings the action for himself and on behalf of the said family while the Defendants are residents of Apowa. He averred that his family are owners of a tract of land whose boundaries were those mentioned in the statement of claim and that his ancestors, led by Ahun Boabae migrated from Busua and settled on the land, portions of which are in dispute, and in the process broke the virgin forest and reduced the land into cultivation and have been in undisputed possession of the land and had taken out a Declaration attached same and have made various grants of the land to lessees.

According to him, after the processing of their 'Declaration', a Timber Association who had previously obtained portions of the disputed land from the late Nana Amua-Gyebu XIV (who is the alleged grantor of the Defendant's father) approached the Plaintiff and his family and obtained fresh lease from them. Plaintiff alleged that Ghana Cement Works Limited who had also obtained a grant previously from the late Nana Amua-Gyebu XIV also obtained a fresh lease from the Plaintiff and his family on the disputed land.

He further averred that in the past, the elder brother of the first Defendant D1) had attempted to wrestle portions of the land from the Plaintiff but he was resisted and directed by correspondence to stake his claim in Court but same was abandoned. According to him, the land was demarcated after the Declaration and so recently he made a grant of portions of his family land to a lessee who proceeded to develop the land but his (lessees) workmen were driven away by the Defendants and others with them and

the Defendants and their workmen proceeded to erect pillars on the Plaintiff's land and laying adverse claim to same.

It was the further contention of the Plaintiff that the Defendants and their workmen also removed the pillars put up by the Plaintiff on the land and have been threatening the Plaintiff's custodian of the land with physical harm and further alleged that until the acts of the Defendants, nobody had laid adverse claim to their land wherefore he prayed for the reliefs endorsed on the writ of summons.

The evidence of the Plaintiff who testified through an Attorney, Anthony Nketsiah-Kofie was that the Plaintiff is the head of the Ebiradze family of Apowa and Busua and brought the action for himself and on behalf of the entire families of Apowa and Busua. In addition to what the Plaintiff stated in his statement of claim, he added in his evidence-in-chief that sometime ago, their head of family at the time, Kwaw Amana made a Declaration touching the entire extent of the disputed land and he tendered a copy of the Declaration which was admitted as exhibit 'B'. He stated that they made grants of portions of the land to developers and they include Ebow Quarshie and Global Haulage Company Limited and he tendered the respective leases which were marked as exhibits 'C' and 'C1'. According to him the late chief of Apowa Nana Amua-Gyebu in his life time made grants of portions of his family land and after the completion of their Declaration, they confronted Ghana Cement Works and Ghana Timber Association concerning the grants made to them by the late chief.

After the lessees had satisfied themselves of his family's title to those portions of the land acquired by them, they re-negotiated with them and fresh leases were executed for them. Copies of the Lease Agreements that were executed were tendered as exhibit 'C2' for the Ghana Timber Association and 'C3' for the lease of Ghana Cement Works.

Plaintiff contended that the first Defendant's elder brother called Isaac Ayiem Amoah attempted some years ago in 2007, August to wrestle portions of their family land and the family resisted him and when he failed to take over the land for the family, the D1 took out summons against him personally at the Apowa palace and upon the advice from his lawyer, he wrote to the President of the Apowa Divisional Council to decline hearing of the case and for the said Isaac Ayiem Amoah to issue a writ if he was so minded or he had any legitimate claim to the land. He tendered copies of the summons from the Apowa Palace and the letter his lawyer wrote as exhibits 'D' and 'D1'. The said Isaac Ayiem Amoah abandoned his claim and was not heard of again.

Plaintiff also tendered exhibit 'E' which is a receipt of the compensation sums paid to them by Ghana Cement Works Limited after a fresh lease was executed to them by the Plaintiffs family. He also tendered exhibit 'F' which is a comprehensive layout of the family land including the disputed portions.

It is the allegation of the Plaintiff that sometime ago when Ebow Quarshie whose lease is in evidence went to the land to develop it, he was resisted and driven away by the Defendants and others with them. The Defendants after that proceeded to erect pillars on the disputed land by themselves around the boundary with Esi Benyah claiming that those portions belonged to them and in the process removed the pillars put up by the Plaintiff's family members. He alleged that the Defendants in the process also fell some palm trees belonging to his family members who were previously farming on those portions. He tendered exhibits 'A' and 'A1' which were photographs of the felled palm trees.

Plaintiff further contended that when the trespassory act of the Defendants came to the family's notice, they promptly confronted the Defendants and since then, the Defendants have been issuing threats against him personally, his siblings and the other head of family which threats were reported to the Kwesimintsim police. He said it is not true that the disputed land belongs to the stool of Apowa and so anyone who has obtained portions of it from the Apowa stool would thus have no title at all. He contended that his family is not aware of any suit between the D1's father and Ghana Timber Association and indeed they were not parties to any such suit if there was any such suit and that Ghana Timber Association is his family's lessees.

It was his further statement that it is not true that the D1 and his father had held on to the disputed land since 1976. According to him, some years ago, the D1's elder brother called Papa Andoh committed trespass on portions of the land in dispute and his family sued him at the then Community Tribunal, Takoradi and whilst the case was pending, the D1's elder brother stopped coming to Court and the case was adjourned sine die.

Plaintiff further stated that it is not true that the Defendants or their father have ever been in possession of the disputed land. It is rather his family who are in control and that is where he has built his house and lives. The Plaintiff further contended that in 2005, the D1 in the company of his late uncles and led by their grandfather Papa Bremi approached him in the presence of his (Plaintiff's) brother Christopher Appiah with a bottle of schnapps to plead with him to release one plot of land in the disputed land to them because as they alleged, they had known about the Declaration. According to him, he asked them to go and promised them that he will relate their request to the family and give them an answer later. He said the Defendants came back after a week for the feedback and they were told that the family was unable to accede to their request and so the D1 cannot, today, deny his family's title and ownership to the disputed land.

After his evidence-in-chief, the Plaintiff called three (3) witnesses; Christopher Appiah (PW1), Daniel Koomson (PW2) and Robert Cudjoe (PW3).

The evidence of PW1 was that the Plaintiff is his uncle and the head of their family. He said he knew the land in dispute and after they took a Declaration which has been tendered and after its publication, the family discovered that the late chief of Apowa had sold off portions of the family land effected by the Declaration and so the family caused a notice to be published inviting all such persons to come to the family to regularize the sate of the land to them. Companies such as Ghacem, Ghana Timber Association and several individuals came to see the family to regularize their status but the Defendants did not show up during the exercise only to come up after seven (7) years later to take it by force.

He said that the family is not aware that the Defendant's father bought the land. PW1 alleged that one day D1 with an elderly man called Papa Breimi of Kejabir, who he later got to know was his grandfather, and his uncles came to see him and the Plaintiff's attorney in their family house in Apowa and Papa Breimi repeated that his late brother (D1's father) bought the land and pleaded with them to accept one bottle of schnapps so that the Defendant is permitted to go ahead to build on one plot of the land. He said they did not take the drink but assured Papa Breimi that they will inform the head of family and the principal members and convey their response to them as soon as possible.

Indeed, he said the D1 surveyed the disputed land, put pillars on it and even took part of the land originally sold to Ghana Timber Association. The D1 has also sold the land to the D2. He contended that the D1's elder brother sued the Plaintiff's attorney at the Apowa palace, how they declined hearing and asked that the matter instead be sent to

Court. According to him, the D1 begun selling portions of the land to one man called "Be Nice" and they stopped the sale when they got to know about it. It was his statement that the D2 sometimes in 2009 went to the Plaintiff's house to threaten him and later threatened the Attorney and himself and the Attorney reported the matter to the police at Kwesimintsim and when the police was not seen to be taking any action, the matter was brought to Court.

The Evidence of the PW2, Daniel Koomson was that he is the Head of the Asona Family of Apowa and knew the Plaintiff as the Head of the Ebiradze Family of Apowa and Busua and also knew the Attorney as the nephew of the Plaintiff. He stated that his ancestors broke the virgin forest and the Plaintiff's family and his family had shared boundaries in the East and West since time immemorial. He alleged that he knew the D1 as somebody living at Apowa. According to him, in the past when Global Haulage sought to lease portions of the land, the Plaintiff's family drew their attention that portions of the land so sought belonged to his (PW2's) family and so Global Haulage consulted him and together with the Plaintiff's, they released the land to Global Haulage and there has been no problem since the release.

The evidence of PW3, Robert Cudjoe was that he lives at Apowa and he is currently the Acting Head of Family of the Ekissi Family of Apowa and that his family shares boundaries with the Plaintiff's family at where Global Haulage have built their warehouse. He said some time ago, the Plaintiff's Attorney came to inform him that the D1 had sold off portions of his family land to the D2. He went with the Plaintiff's Attorney to inspect the land and found that it was true. His evidence was that he knew that the disputed plot belongs to the Plaintiff's family.

This case which was filed in 2009 commenced on 27/06/2018 when the Plaintiff testified. After this day, due to circumstances, the case could not proceed. On 09/05/18, Plaintiff's Attorney was granted leave to file the witness statement of the Plaintiff when the Defendants were absent. The records show that all delays in this matter were occasioned by the conduct of the Defendants. Even though the Plaintiff filed his witness statement at the time, the Defendants failed to file.

Even though the Defendants failed to file their respective witness statements and pre-trial check lists, they were served with proceedings and witness statement of the Plaintiff and were given the opportunity to file theirs severally but they failed. The Court gave a date for hearing to commence and a hearing notice was served on the Defendants by substitution after attempts to serve them personally failed. On the return date, they still failed to come so the Court went ahead to listen to the Plaintiff without striking out the defence of the Defendants because Counsel for the Plaintiff did not ask for that. The Defendants therefore did not testify in any way and this Court believed that they had no defence and this can be seen from their defence on record.

It was held in the case of **Republic vrs. High Court, Cape Coast, Ex-Parte Narwan Kart (1998-99) SCGLR 833** that *"a party who fails to appear in Court after due service on him is taken to have deliberately failed to take advantage of the opportunity to be heard"*.

In **Ankumah vrs. City Investment Co. Ltd. (2007-2008) 1SCGLR 1064 (holding 2)**, the common issues arising under service was summarized up as follows:

"The Defendant, after several attempts, was finally served but failed to appear in Court. The Trial Court therefore rightly adjourned this case for judgement. A Court is entitled to give a default judgement as in the instant case, if the party fails to

appear after notice of the proceedings has been given to him.

For then, it would be justifiable to assume that he does not wish to be heard”.

The evidence of Plaintiff and his witnesses, the exhibits tendered so far, exhibits 'B' which is a Declaration covering the land in dispute, 'C' and 'C1' grants made to Ebow Quarshie and Global Haulage Co. Ltd, 'C2' a lease trade by the Plaintiff to Ghana Timber Association, 'C3' a lease executed in favour of Ghana Cement Works by the Plaintiff, are enough indication that the land in dispute belong to the Plaintiff and not the Defendants or the D1's father.

The Court therefore enters judgement in favour of the Plaintiff and declares:

- (a) Title to all that piece and parcel of land lying and situate at Apowa and bounded by motor road (Takoradi - Tarkwa Trunk Road), the lands of Esi Benyah's Forest Reserve, Tandoh Benyah's land, Aketsuabah's land, Kwame Gyemba's land, Okuru's land, Epela Ansah's Land, Ekiseku's land, Safo's land, Effrim Carpenter's land Adale's land and an Open space in his favour.
- (b) Recovery of possession is also declared in his favour.
- (c) An amount of Six Thousand Ghana Cedis (GH¢6,000.00) is awarded in Plaintiff's favour as damages for trespass.
- (d) The Court hereby perpetually injuncts the Defendants, their agents, all persons claiming under them from having anything to do with the said piece and parcel of land.
- (e) Cost of Five Thousand Ghana Cedis (GH¢5,000.00) is awarded against the Defendants in favour of the Plaintiff.

(SGD)
H/H MICHAEL K. AMPADU
(CIRCUIT COURT JUDGE)