

THE CIRCUIT COURT '1' WESTERN REGION HELD AT TAKORADI ON MONDAY
THE 19TH DAY OF DECEMBER, 2022, BEFORE HIS HONOUR MICHAEL K.
AMPADU, CIRCUIT COURT JUDGE

SUIT NO. C1/4/13

BETWEEN

MATTHEW MENSAH PLAINTIFF

- AND -

1. EBUS. EKUMA MENSAH

2. HWEBI YANSA DEFENDANTS

J U D G M E N T

Counsel: Lawyer F. F. Faidoo for Plaintiff present

Counsel: Lawyer Nana Kondua for Defendants present

The Plaintiff's claims against the Defendants in this suit which was instituted on 25/7/12 are the following;

1. Recovery of possession and title to a piece and parcel of land situate and lying at West Anaji Planning Scheme Layout Sector 'E' measuring 0.42 Acres.
2. Special Damages against the Second Defendant (D2) for causing damage to the Plaintiff's foundation and footings which were pulled down by him.
3. An Order restraining the defendants, their agents, workers, assigns e.t.c from interfering with the Plaintiff for developing the said land.

The Plaintiff in his statement of claim stated that sometime in 1998 to 2001, he bought a parcel of land numbering fifty six (56) plots from the first Defendant (D1) and after buying the land it came to his notice that there was litigation on the land so the D1 asked him to exercise patience till the matter comes to an end. He alleged that he waited until 2010 when judgment was given in favour of the D1 for the said lands and after the judgment, the D1 gave him Eight (8) plots of land and told him to wait because they were going to demarcate the whole land after which he will give him the remaining Forty-Eight (48) plots. It was his claim that he has developed five (5) of the Eight (8) plots given to him and the D2 is claiming that part of his three (3) plots left undeveloped belongs to him even though he (Plaintiff) has registered it at Lands Commission after the execution of documents for him by D1 and his elders. Plaintiff alleged that when D2 started claiming ownership, the D1's lawyer wrote a letter to the D2 and warned him to stop harassing him (Plaintiff) but it all fell on the deaf ears of the D2 so he reported D1 and D2 to the police and when they met with the police, the police asked him to go and continue his work on the land and also advised the D1 to find another land for the D2. He said after this, he started digging trenches for the foundation but the D2 went to seal the trenches. According to him, he went to unseal the trenches and started laying blocks to footings level but the D2 has damaged the footings and made a sound warning that if the Plaintiff dare raise it again, he will cause damage to it. According to the Plaintiff the behaviour of the D2 has caused him a huge sum of money to the tune of Twenty Five Thousand Ghana Cedis (GH¢25,000.00) so prayed for the claims as per his amended statement of claim which was filed on 4/9/12 and dated 28/8/2012.

In their amended statement of defence filed on 19/11/2013 and dated 12/11/2013, the defendants stated that the D1, as a the family head, has never leased and/or executed any document alienating the plot, the subject matter of this suit to the Plaintiff and that

it is one Francis Kwaku Awatu and one Harry Avornu who have been granted lease in respect of the said two (2) plots, the subject matter of this suit and that the D2 is only a mason who has been engaged by the lessee to construct a building on the plot.

The defendants also denied giving Eight (8) plots of land to the plaintiff and challenged the Plaintiff to produce the lease documents covering the said Eight (8) plots to the Court. The Defendants agree that Lawyer Abeka wrote to the D2 but that the said letter was written following some wrong information the Okyeame of the family of the D1, one Kwesi Kwame gave to lawyer Abeka. However the D1 subsequently briefed lawyer Abeka about the true state of affairs concerning the land in dispute.

Defendants added further that it was rather the Plaintiff who was causing damage and interfering with the D2's construction works on the land in dispute.

In his amended reply, the Plaintiff stated that the D1 together with his whole family including Okyeame Kwesi, Nantsewbiyebi and Assifuah granted the land in dispute to him and issued receipts to cover all the 56 plots that the Plaintiff acquired and executed Indentures on them including the three (3) plots in dispute.

The Plaintiff also replied that he does not know any Francis Kwaku Awatu and Harry Avornu but the D2 who has always stated that he was the owner which statement he made at the Police Station also.

In his evidence in chief, the Plaintiff told the Court that he had a transaction with the Defendants between 1998 to 2000 in which he bought Fifty Six (56) building plots from the D1, some of which plots have been numbered and others unnumbered. That after purchasing the lands there was a problem between the Nkrofulhene and the D1 over the said lands so land guards were driving away developers. According to him the

matter ended up at the Sekondi High Court and judgment was given in 2010 in favour of the D1. That after the judgment, he went to the D1 and demanded the land, his plots of land and so the D1 called the Okyeame called Kwesi Kwame, Lawyer Abeka, Assifua for a meeting where he asked him to submit the documents covering the plots and so he submitted them to lawyer Abeka who in turn gave them to the Ebusuapayin, the D1.

Plaintiff alleged that he has not been given the Fifty Six (56) plots and instead only Eight (8) plots have been returned to him but the D1 has sold three (3) out of the plots. According to him, he has sued the D2 because the three (3) plots D1 sold out were being developed by the D2. He said when he saw the D2 developing the land, his lawyer wrote to the D2 to stop the development but he failed so he reported to the police who advised the D2 to stop work and asked him (Plaintiff) to go and work on the land but when he started construction, the D2 went to demolish the structure. He alleged that he spent Twenty Five Thousand Ghana Cedis (GH¢25,000.00) on the structure that was destroyed by the D2.

The evidence in chief of the PW1 is that he is from the same family with the D1 and he is the Okyeame of the D1 who is the head of family of the said family called the Sikaduase Ebiradze Ebusua.

He said between 1998 and 2001, the family had a transaction with the Plaintiff. That there was litigation between their family and Nana Atta Komfo of Ntankorful over land located at Ntankorful. That prior to the litigation, his family, the Sikaduase family had dealt with the Plaintiff over the land. They used to go to the Plaintiff for financial assistance to pay for the cost of litigation in Court. He alleged the family granted Fifty Six (56) plots of land to the Plaintiff which plots were located in sectors C, D and G. He stated that the family executed Indentures for the Plaintiff and the Indentures used to

be with the Plaintiff but now they are with the D1, because the family lawyer, lawyer Abeka collected the Indentures from the Plaintiff and gave to the D1.

According to him, the litigation for which they took money from the Plaintiff to pay its cost was finally delivered in their family's favour even though he could not recall the year of the judgment but he remembers that it was judgment delivered by the High Court '2' at Sekondi. It was the further statement of the PW1 that the monies collected from the Plaintiff was given to the D1 and himself.

That after the litigation, the family gave fifteen (15) plots to the Plaintiff and the D1 has refused to give the rest of the land due the Plaintiff to him saying that he has not gone for any money from the Plaintiff. He alleged that the other plots yet to be given to the Plaintiff are being developed. That the D1 has given out the land to people who are constructing buildings on it. According to him, before the D1 gave out the lands to people to develop, he (PW1) was aware that the Plaintiff was putting up a building on one of the plots and one of the people who the D1 gave the plots to, went to demolish the Plaintiff's structure even though he did not know who did the demolishing. He stated that the family still owes the Plaintiff the remainder of the plots.

PW2 who was a lawyer to the Defendant was treated as a hostile witness because of his unwillingness to testify for the Plaintiff. His evidence was that the Defendant has been his client since 1972 and that he has conducted a matter on this land starting from the High Court to the Supreme Court.

According to him about five (5) years ago, in his duty as a Counsel to the defendant, it happened that a nephew of the defendant brought an issue that created misunderstanding between him, nephew called Kwesi Kwame and the Defendant (D1) over land transaction. He said the dispute grew so high to the extent that it was not

helping the family so as a lawyer, he attempted to resolve their differences and that attempt brought him to know the Plaintiff and that was where the Plaintiff informed him about the number of plots he bought from the defendant (D1).

According to him in their meeting, the Plaintiff alleged that he acquired some plots of land from Kwesi Kwame who was the D1's nephew at the instance of the D1 but the D1 denied authorizing any such transaction or having any knowledge of it.

PW2 alleged that the Plaintiff gave him some documents to assist him in his mediation attempt but the documents did not cover all the plots the Plaintiff alleged to have acquired. He stated that when he got the documents, he contacted the D1 to find out whether he endorsed the documents as the Ebusuapanyin but the D1 denied signing them and said the signatures on them were forged. PW2 alleged that due to the heat the meeting with the Plaintiff and the defendant generated, he left the meeting without taking the documents along but left them with the D1. He said the number of plots covered by the documents he perused were about twelve (12). That when he asked of the documents later from the D1, he was told that the Plaintiff took them away when he (PW2) left them at the meeting. In re-examination, PW2 stated that none of the Documents he had access to was processed or registered at the Lands Commission.

The PW3 testified that he is called Nketsia Nyamekye, lived at Nkroful and a member of the Sikaduase Ebiradze Ebusua of Nkroful. He said the D1 is his uncle and the head of their family. According to him, in 1996, their family had an issue with the chief of Ntankorful about Ntankorful lands and so his family were ejected and relocated to the Central Police Station and taken care of by the Red Cross Society and that they were in distress so the Plaintiff and Mr. Amoah helped them.

He alleged that when the Plaintiff helped them, they gave him plots of land for the monies he gave to them; Fifty Six (56) plots at Ntankorful from the old town towards Mampong Bridge and the family prepared documents to that effect and the documents were with lawyer J.E.K. Abeka because he is their family lawyer. He said the Plaintiff called the lawyer and asked for the documents and when Plaintiff asked for the documents, the lawyer handed over the documents to Ebusuapanyin, the D1 because it is the D1, the linguist and the Obaapanyin who have to sign them but the D1 did not sign the documents. According to PW3, their other helper, Mr. Amoah was also given Thirty Two (32) plots and their lawyer also was given plots of land.

The D1 testified that he belongs to the Sikaduase Abiradze Abusua Family and he is the head of that family. He said he knew the Plaintiff because he came to him to ask him to sign a Fifty Six (56) acres land in the company of his (D1) nephew. He stated that the land in dispute is his family land and he has leased the two (2) plots in dispute to somebody. D1 tried to tender the lease but they were rejected by Counsel for the Plaintiff and the objection was sustained.

According to D1 he leased the plots to Mr. Awatu and Avornu and prepared documents on them for the lessees. D1 said when the documents prepared by him got to the Lands Commission, the Plaintiff said the lands were for him and he (plaintiff) has sold them so the lessees could not process the documents at the Lands Commission.

D1 alleged that he has not taken any money from the Plaintiff and has not given him any Fifty Six (56) plots of land. That the Plaintiff came to him to sign the documents in the Company of his (D1) nephew called Kwesi Kwame but they could not produce any receipt covering the said amount for which the Fifty Six (56) plots were allegedly granted to him. He said when he refused to sign, he was threatened and after the threats he was beaten by the Plaintiff and the nephew which assault he reported to the

police where he was given a medical form to attend hospital. The medical Report was tendered as Exhibit '1' without objection.

It was his further statement that it was not true that his lessees destroyed anything on the Plaintiff's land and that it was rather the Plaintiff who destroyed the lessees property on the land. He concluded that he is the family head and has not granted any land to the Plaintiff.

After his evidence in chief, the D1 called two (2) witnesses; Henry Aforme (DW1) and George Kobina (DW2).

The evidence of DW1 is that he bought a piece of land from the D1 after which the D1 issued him with a receipt. He tendered the receipt to Court and it was admitted as Exhibit '2' without objection and the amount on the receipt was Four Thousand Ghana Cedis (GH¢4,000.00). DW1 said after he bought the land he started construction and the Plaintiff and his group came to destroy the construction. He said they destroyed the construction four times so he reported the matter to the police and the police invited the Plaintiff and the Ebusuapanyin (DW1) for settlement. He said the police asked the Plaintiff and his group to allow him to continue with the construction. According to him, he has now constructed to lintel level. He further stated that they were three (3) persons who acquired plots from the D1 and the other two (2) persons have completed their building and are living in them. He also alleged that it was not true that he destroyed any structure of the Plaintiff and that it was the Plaintiff rather who destroyed his structure on the land.

It is the testimony of the DW2 that he D1 is the head of their family and he, DW2 is the family Secretary. That sometime in 2011, the family met at Ntankorful and PW1, Kwesi Kwame, who he said was his uncle, and the Plaintiff came and Kwesi Kwame told them

that when they were litigating over their lands, the Plaintiff helped them to litigate with Atta Komfo so the family should give the Plaintiff Fifty Six (56) plots as reward for the amount he used in helping the family. According to him, the family told Kwesi Kwame that they did not know that the Plaintiff helped them financially during the litigation so the family could not accept that proposal to give Fifty Six (56) plots and so they told the Plaintiff what they knew was that it was Upper East Community that helped the family financially during the litigation and so the family made documents for them and granted them lands which they took to Lands Commission. He said the family told the Plaintiff that if it was Kwesi Kwame who came for his personal loan, then the family could not help. He tendered the Indenture of the lands, given to Upper East Community which comprised of 47.75 acres and it was admitted as Exhibit 3.

According to him, when Kwesi Kwame seemed not to understand what Ebusuapanyin (D1) said, he was told that they should all wait and meet with the family lawyer who is lawyer J.E.K. Abeka. He alleged that when they met, the Plaintiff and Kwesi Kwame brought some indentures and asked the D1 to sign because they constitute documents covering the lands given to the Plaintiff that is part of the Fifty Six (56) plots.

He contended that when the family took the indentures, they saw that they were old documents of Lands sold by the family which were at the Lands Commission for processing. He alleged also that some of the Plaintiff's indentures included lands that were sold by Atta Komfo which were brought to the D1 to sign and the D1 failed to sign; there arose a misunderstanding at the meeting so Lawyer Abeka left the meeting and the meeting ended inconclusively and the Plaintiff and Kwesi Kwame took the Indentures away. That it was after that that the Plaintiff instituted this action.

The following issues were set down for trial at the application for direction state.

- (a) Whether or not the D1 and his family had sold the plots in dispute to the Plaintiff.
- (b) Whether or not D2 has caused destruction to the Plaintiff's structure on the disputed land.
- (c) Whether or not the defendant has any legal interest in the disputed land.
- (d) Any other relevant matter that this Honourable Court deems fit.

Section 11(4) of the Evidence Act, Act 323 provides that;

“In other circumstances, the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence, a reasonable mind could conclude that the existence of the fact was more probable than its non-existence”.

The issues set down will be determined together because they are inter-related.

The Plaintiff is claiming title, possession; special damages and a perpetual injunction against the defendants and all who claim under them. His evidence in support of his case was that between 1998 to 2000, he had a transaction with the defendants which transaction resulted in the purchase of Fifty Six (56) plots from the 1st defendant. According to him, the parcel of land situate and lying at West Anaji Planning Scheme Layout Sector 'E' measuring 0.42 acres, the subject matter of this dispute is part or portion of the Fifty Six (56) plots purchased from the D1. Unfortunately, after pleading this fact and repeating same in the witness box on oath, the Plaintiff could not show any other evidence to corroborate the allegation of the purchase. In addition to the case of Dan Ackah vrs. Pergah Transport (2011) SGLR 128 which Counsel for the defendants cited in his address to the Court, it is an old principle in the case of Majolagbe vrs. Larbi (1959) GLR 190 that when a party makes an averment in his pleadings which is capable of proof in a positive way and the averment is denied, that averment cannot be sufficiently proved by just mounting the witness box and reciting the averment on oath

without adducing some corroborative evidence. The Plaintiff could not show any indenture to indicate the purchase he alleged. He told the Court that the indenture was with his lawyer Mr. Abeka. In the last cross-examination question, the Plaintiff answered like this;

Q. Your evidence that D1 asked you to surrender documents covering the land to the family is not true.

A. I have the documents. They are with my lawyer, Mr. Abeka.

If the documents were with Lawyer Abeka why did Plaintiff not tender same to the Court to confirm his legal title to the plot in dispute?

In his evidence, PW1 Okyeame Kwasi Kwame stated that “after granting these plots, the family executed Indentures for the Plaintiff. The indentures used to be with the Plaintiff but now they are with the D1”. If the family fully executed the indenture for the Plaintiff after the grant, how and why did they go back to the D1 who is the family head and for what reason? The evidence show that they went back to the D1 because the Plaintiff and PW1 wanted them to be signed by the D1. If that was the case, then it means the Plaintiff did not have any indentures covering the land since unsigned indenture cannot be said to be valid indenture to transfer title in land to any person; the Plaintiff was not able to evidence his purchase or ownership with any indenture.

PW1 again alleged that the lands for which this matter is here was granted to the Plaintiff because he assisted the family financially in their land litigation with Attah Komfo over the Ntankorful lands. Plaintiff was to show receipts taken from the Defendants stool for the amount given to them which will be the basis of his demand of the lands for which the lands in dispute are alleged to be part. Plaintiff could not exhibit any receipt to that effect neither was he able to tell how much in total sum that he gave to the D1’s family for which he was promised the larger parcel of land.

In cross-examination, he was asked

Q. Do you have receipts for payments for the plots?

A. Yes.

Q. Can you bring them?

A. No, they are with lawyer Abeka.

It is surprising that receipts acquired from a purchase of land, which payment were done by the Plaintiff should be given to lawyer Abeka who in fact, was even not the Plaintiff's lawyer but the Defendants lawyer. Concerning the same payments and receipts, the PW1 answered this way in cross-examination;

Q. Who was the one collecting the money from the Plaintiff?

A. Myself and our surveyor.

Q. How much money did you collect from the Plaintiff?

A. I do not know. It was not given in a day.

Q. Did you give any receipt to show how much you collected from the Plaintiff?

A. No. We all did not write anything to that effect. From the above, it becomes difficult for anybody to believe that the Plaintiff was given any land legally by the D1 for any reason. He has no indenture or receipt to show to that effect.

Plaintiff also alleged that he raised a foundation on the plots in dispute and the foundation was destroyed by the D2. This allegation was corroborated by PW1, Okyeame Kwesi Kwame. However the Plaintiff could not prove this also to the Court either in the form of

pictures or by evidence from any other witness except his friend PW1 who PW1 alleged that he knew the Plaintiff prior to their transactions. There were no masons and carpenters who worked on the foundation; The allegation of destruction of Plaintiff's foundation, cannot be believed because it was alleged. Under this claim, the Plaintiff also claimed for special damages against D2 for the destruction of the alleged foundation. However he did not prove what was destroyed to warrant the award of special damages in his favour. Special damages should be proved specifically and this is trite law but the Plaintiff failed to show what was destroyed except to say that he spent an amount to the tune of Twenty Five Thousand Ghana Cedis (Gh¢25,000.00). This statement is not enough to convince the Court that such a damage was caused by the D1 to the Plaintiff.

It was stated in the case of Nortey (No. 2) vrs. African Institute of Journalism and Communication and Others (No. 2) (2013-2014) 1 SCGLR 705 that "where a Court grants declaration of title to land or makes an order for injunction in respect of land, the land the subject of that declaration should be clearly identified so that an order for possession can be executed without difficulty and also if the order for injunction is violated, the person in contempt can be punished. If the boundaries of such land are not clearly established, a judgment or order of the Court will be in vain. Again, a Judgment for declaration of title to land should operate as *res judicata* to prevent the parties from re-litigating the same issues in respect of the identical subject matter ... If the Plaintiff fails to establish positively the identity of the land to which he claims title to the land, the subject matter of the suit, a claim for declaration of title or an order for injunction must always fail".

The Plaintiff's claim is for recovery of possession and title to a piece and parcel of land situate and lying at West Anaji Planning Scheme layout Sector 'E' measuring 0.42 acres. It is for this land that he is asking for damages and perpetual injunction against the Defendants. No boundaries of the said piece and parcel of land were given. No coordinate was also given. If the Plaintiff is granted his claims, will he go to West Anaji Planning Scheme Layout 'E' and measure 0.42 acres as his piece and parcel of land? Will it be measured anywhere in the layout or a particular place in the layout? How do the Court grants that sort of order which is required to serve as res judicata to any future re-litigation on same lands?

In the opinion of this Court, the Plaintiff has not been able to prove any of his claims before this Court so his claims are dismissed. Cost of a Five Thousand Ghana Cedis (GH¢5,000.00) is awarded against him in favour of the Defendants.

(SGD.)

**H/H MICHAEL K. AMPADU
CIRCUIT COURT JUDGE**