

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON
WEDNESDAY THE 21ST DAY OF DECEMBER, 2022 BEFORE HER
HONOUR ENID MARFUL-SAU, CIRCUIT COURT JUDGE

SUIT NO:C1/21/2019

STEPHEN ANTWI WIREDU

UNNUMBERED HOUSE

ACHIAMAN

...

PLAINTIFF

VRS.

REDEEMER SUKA

UNNUMBERED HOUSE

TAIFA-BURKINA

...

DEFENDANT

PARTIES: PLAINTIFF ABSENT

DEFENDANT ABSENT REPRESENTED BY FLORENCE SUKA

COUNSEL: F.A. ACQUAYE ESQ. FOR PLAINTIFF PRESENT

KWADWO OSEI ODAME ESQ. FOR DEFENDANT PRESENT

JUDGMENT

By an Amended Writ of Summons and Statement of Claim, Plaintiff claims against Defendant the following reliefs:

1. "Declaration of title to a piece or parcel of land situate lying and being at Achiaman near Amasaman, Accra bounded on the North by Lessor's property measuring 94.0ft more or less, on the East by Lessor's property measuring 94.8ft more or less, on West by Lessor's property measuring 100.9ft more or less on South by proposed road measuring 90.6ft more or less and containing an approximate Area of 0.206 or 0.08 Hectare more or less.
2. Recovery of possession of the land in dispute
3. General damages for trespass.
4. A perpetual injunction restraining the Defendant, his assigns, workmen and customary successors from interfering with Plaintiff's use of the land."

Plaintiff says that in December, 2007 he acquired a piece of land the subject matter of the instant suit from Nii Kwartey Adjan I, Chief of Achiaman and Head of the Achia Royal family for 99 years. He says that after acquiring the land, he went into effective possession and occupation and started developing the land without any interference. According to him, he constructed a three-bedroom, water closet facility and a bathroom on the land. It is Plaintiff's case that Defendant has encroached on a portion of his land and built on that portion which has blocked access to Plaintiff's house. Plaintiff says that all attempts to make the Defendant give vacant possession of the land have failed hence the instant action.

Defendant entered Appearance and filed a Statement of Defence and Counterclaim on 13th May, 2019. He contends that he acquired his land sometime in the year 2004 and took immediate possession by erecting corner pillars. According to him, in about 2006 he constructed a chamber and hall on his land and placed a caretaker thereon to protect same from trespassers. It is Defendant's case that he was in possession of his land before Plaintiff moved

into the neighbourhood. He states further that his land and that of Defendant are two distinct lands and further that the land he acquired is not an access road. It is his case that Plaintiff has rather evinced an intention to use part of his (Defendant's) land as an access road to his property but Defendant has resisted such attempts by Plaintiff. He says that above five years ago Plaintiff started laying claim to a portion of his land and demolished his fence wall so the matter was reported to the Police. He says that the Police instructed Plaintiff to reconstruct his fence wall, and this was complied with. He says Plaintiff's claim is frivolous and vexatious and counterclaims as follows:

- a. "Declaration of title to ALL THAT PIECE OR PARCEL of land situate lying and being at ABEHENEASE near Amasaman-Accra bounded on the North-West by Lessor's land measuring 100 feet more or less on the South-East by Lessor's land measuring 100 feet more or less on the North-East by Proposed Road measuring 80 feet more or less on the South-West by Lessor's land measuring 79.8 feet more or less and containing an approximate area of 0.18 acre or 0.07 hectare which piece or parcel of land is more particularly delineated on the plan attached hereto and thereon edged pink.
- b. Recovery of possession of any part of Defendant's land trespassed on by Plaintiff.
- c. An order of demolition at Plaintiff's expense of any and or all structures erected on Defendant's land by Plaintiff.
- d. An order of perpetual injunction restraining Plaintiff, his agents, privies, assigns, servants, workmen and all persons claiming through him from entering and dealing with Defendant's land.
- e. Costs including legal fees."

On 16th August, 2019, the following issues were adopted and set down as the issues for trial by this court differently constituted:

- 'Whether or not in December, 2007 the plaintiff acquired the land in dispute at Achiaman near Amasaman from Nii Kwartey Adjan I, Chief of Achiaman and Head of the Achia Royal Family of Achiaman and Ablorman near Amasaman.

Whether or not Defendant has recently encroached on a portion of the land and has built on the said portion which said building has also blocked plaintiff's access to his house.

- Whether or not the parties are litigating over the same land or different lands.

Additional Issues

- Whether or not the Defendant acquired his land sometime in or about 2004.
- Whether or not the Defendant was in possession and occupation of the land in dispute before the Plaintiff purportedly moved unto his (Plaintiff's) land.
- Whether or not the Plaintiff has evinced an intention and or has attempted to use part of Defendant's land as an access road or route to Plaintiff's land.'

It is trite that in a civil matter where a Party sues for declaration of title to land, that Party assumes the burden to prove on a preponderance of probabilities ownership of the land in dispute.

See.

- **ADWUBENG V. DOMFEH [1996-97] SCGLR 660**
- **IN RE KORANTENG (DECD); ADDO V. KORANTENG & OTHERS [2005-2006] SCGLR 1039.**

In **EBUSUAPANYIN YAA KWESI VRS. ARHIN DAVIS & ANOR.** [2007-2008] SCGLR 580 it was held as follows:

“Thus what the foregoing proposition seeks to convey is that since the plaintiff in this appeal sued for not only a declaration of title but also damages for trespass and an order for perpetual injunction, he assumed that onerous burden of proof by the preponderance of the probabilities as required under sections 11 and 12 of the Evidence Decree, 1975 (N.R.C.D. 323), or else risk the prospect of losing his case.”

In the case of **MALM V. LUTTERODT (1963) 1 GLR 1, SC** it was held as follows:

“The defendant in an action for declaration of title assumes a legal burden of proof only when he counterclaims for declaration of title in his favour.”

As the Defendant has a counterclaim for declaration of title among other reliefs, the burden of proof lies equally on him to prove his case. Therefore, each Party is to prove their case on a balance of probabilities as stipulated by sections 11 and 12 of the **Evidence Act, 1975 (NRCD 323)**.

I shall first consider issue 3 which is *‘whether or not the parties are litigating over the same land or different lands.’*

A composite Plan, Exhibit CE 2 was prepared to assist the court in determining the issues raised in the suit. (See. **MADAM COMFORT OFORI VRS KWAME APPENTENG, CIVIL APPEAL NO. J4/ 17/ 2017 dated 6TH DECEMBER, 2017**, Supreme Court, unreported).

From Exhibit CE2, the land surveyed as shewn on the Site Plan of Plaintiff is edged yellow while that of Defendant as shewn on his Site Plan is edged

green. It is apparent that there is an overlap of the two lands and the area in dispute marked P1, P2, D1 and D2 falls within the overlap of the two lands. I therefore find that though the lands of the Parties' are different, there is a common area in dispute being the overlap between the two lands.

I shall next consider issues 1, 4 and 5 together. Issue 1 is *'whether or not in December, 2007 the plaintiff acquired the land in dispute at Achiaman near Amasaman from Nii Kwartey Adjan I, Chief of Achiaman and Head of the Achia Royal Family of Achiaman and Ablorman near Amasaman'*, Issue 4 is *'whether or not the Defendant acquired his land sometime in or about 2004'* and Issue 5 is *'whether or not the Defendant was in possession and occupation of the land in dispute before the Plaintiff purportedly moved unto his (Plaintiff's) land.'*

Plaintiff testified that he acquired the land in dispute in December, 2007. In support of this claim, he tendered *Exhibit A* which is an indenture between the Nii Kwarety Adjan and Plaintiff dated 24th December, 2007. I consider from the evidence before me that it is not in dispute that Plaintiff did indeed acquire the land in dispute in 2007. I therefore answer issue 1 in the affirmative.

Defendant's Attorney testified that Defendant acquired the land in dispute in 2004. She tendered as *Exhibit 2* a lease between Kotey Nii Kwei and Defendant dated 26th September, 2004. I find that on a balance of probabilities it has been shown that Defendant also acquired his land in 2004. I therefore answer issue 4 in the affirmative.

Now, I must state that though both parties rely on *Exhibits A and 2* respectively as proof of ownership of land, these Deeds have not been registered. Therefore, *Exhibit A* does not operate to confer on the Plaintiff, the legal title it purported to convey neither did *Exhibit 2* to the Defendant. It is a trite principle of law that an unregistered document affecting land does no

more than deny its legal efficacy until it has been registered. *See. NSIAH VRS ATTUAHENE [1992-93] 2 GBR 897 CA*

Defendant's Attorney testified that Defendant constructed a chamber and hall structure on the land in or about the year 2006 and placed a caretaker named Atiogbe Yao on the property to protect it from trespassers or encroachers. According to her, the Defendant was in possession and occupation of his land before Plaintiff moved to the area and occupied his (Plaintiff's) land. During cross examination of Plaintiff by counsel for Defendant, he stated that he acquired his land in 2007 and moved unto the land in the year 2013. He also admits that when he moved unto his land in 2013, Defendant was already in possession of his land but was not living on it. PW1, Comfort Antwi, wife of Plaintiff on the other hand testified that they moved unto the land in 2007. She admits that there was a caretaker on the land with whom she had a confrontation with. PW2 testified under cross examination that when he purchased his land in 2008, Plaintiff had a structure on his land but there was none for Defendant.

Plaintiff himself testified under cross-examination that PW2 purchased the land behind a year after he purchased his, so they share a common wall. Having purchased his property after Plaintiff did and having regard to the fact that Plaintiff does in fact admit that Defendant was in possession of his land as of the time, he went unto the land in 2013, I consider that PW2 is not credible witnesses. I find on the evidence that Plaintiff's evidence under cross examination corroborates that of Defendant's, that Defendant was in possession of his land before he (Plaintiff) moved unto his land. I find also that PW1's evidence confirms Defendant's evidence that he put a caretaker unto his land. I therefore hold that Defendant was in possession of his land before Plaintiff moved unto his.

I shall next consider issues 2 and 6 together. Issue 2 *'whether or not Defendant has recently encroached on a portion of the land and has built on the said portion which said building has also blocked plaintiff's access to his house'* and Issue 6 is *'whether or not the Plaintiff has evinced an intention and or has attempted to use part of Defendant's land as an access road or route to Plaintiff's land'*.

Plaintiff testified that Defendant has encroached on a portion of the land and has built on that portion which has blocked his access to his house. This evidence was repeated by PW1 in her evidence in chief. When Counsel for Defendant subjected this evidence to cross-examination for Plaintiff to accept or deny, the fact sought to be impeached, the following ensued:

Q: The Defendant's structure has it crossed or trespassed or encroached unto your portion of the land

A: No

Q: So you just share a boundary with Defendant

A: Yes"

These admissions by Plaintiff under cross examination stand in clear contradiction to his evidence in chief. I am thus unable to find that it has been shown on a balance of probabilities that Defendant has built on a portion of Plaintiff's land.

Plaintiff has also testified that Defendant's building has blocked access to his land. Under cross-examination he stated that as a result of his adverse claim, he demolished the fence wall of Defendant which he rebuilt as ordered by the police. He stated as follows:

“Q: Ever since you reconstructed the wall, how have you been accessing your land

A: My neighbour at the other side after constructing his wall left me a space to access my house.

...

Q: So as things stand now, if Mr Agyapong does not allow you to go through his house to your house, you will not be able to access your house

A: No

Q: If Mr. Agyapong should close that access road today how will you access your land

A: I do not access my land through Mr. Agyapong’s house”

The following however ensued during Cross examination of Plaintiff on 29th November, 2021:

“Q: You are telling the court that when you cross the gutter to the opposite side it is Defendant’s property

A: Yes

Q: The Defendant’s property is before your property not so

A: Yes

Q: Which gutter is between you and Defendant’s property

A: There is no gutter between the two us

Q: Mr. Agyapong has constructed a wall to the end of the gutter is that not so

A: Yes

Q: So the open space there is now the open gutter

A: Yes

Q: So to get to your property, either you go through Mr. Agyapong's property or another back road is that not correct

A: Yes

...

Q: So from the pictures, it is clear that without Mr. Agyapong allowing you to go through his house, you will not be able to access your property.

A: That is correct"

From the above extract, while in one breath Plaintiff claims to access his house through a neighbour and never through PW2's house, it is apparent that subsequently Plaintiff concedes that one access point to his house is blocked as a result of a wall constructed by Mr. Agyapong, hence he accesses his house through PW2's house.

When the issue of whether or not an access was had been blocked by Defendant was put to the Court Witness who visited the scene to pick the coordinates for the composite plan to be prepared, he stated as follows:

Q: This wall has blocked Plaintiff's access to the land not so

A: it will be difficult to give that information because of the zoning or layout of the area which I don't have access to"

Indeed no evidence was led as to the layout or zoning of the area in dispute for this court to make a determination as to whether or not the building of Defendant has blocked Plaintiff's access to his property. Therefore, in the absence of sufficient evidence, I answer issue 6 in the negative.

In this case, the size of the area in dispute was given by CW1 as being 0.048 Acres. The crux of the case therefore was within this area. In the case of **NKAEGUO v. KUNADU [1974] 2 GRL 150** it was held as follows:

“The real issue was not the ownership of the whole land but of the area of land in the immediate vicinity of the common boundary separating the parties’ lands...”

In **ABAKAM EFFIANA FAMILY & ORS. v. MBIBADO EFFIANA FAMILY & ORS. [1959] GLR 362** it was held as follows:

“where a defendant has been in long undisturbed possession and occupation of land, he is entitled to the protection of the law against all who cannot affirmatively prove a better title;”

From the evidence, it is apparent that Defendant was in possession of his land before Plaintiff took possession of his. The evidence also shows that Defendant had constructed his building before Plaintiff did as far back as 2006. There is no evidence that the building of Defendant was constructed recently as Plaintiff averred, therefore having met the land in its state when he moved unto the land and taking no action against Defendant since 2007, if he indeed believed that the said building was within his land, and in the absence of both Parties possessing legal title to the area in dispute, I consider that equity will not favour declaration of title and recovery of possession of the area in dispute in favour of Plaintiff. *See. ADJI & COMPANY v. KUMANING [1982-83] GLR 1382.*

This being a land case, with Plaintiff’s claim being substantially for declaration of title, Plaintiff must succeed on the strength of his own case.

Therefore, there was an obligation on Plaintiff to adduce credible evidence to establish his case. See. **YORKWA V DUAH [1992–93] 1 GBR 279 CA, MAMUDU WANGARA v. GYATO WANGARA [1982-83] GLR 639.**

I consider from the entirety of the evidence before me that on a preponderance of probabilities, Plaintiff has failed to adduce substantial credible evidence for a declaratory judgment with its ancillary reliefs in his favour. I therefore find that Plaintiff's claim fails, and I so hold. Likewise, I am unable to find that Defendant as Plaintiff to the counterclaim has led sufficient evidence for a declaration of title in his favour on the counterclaim. Therefore, the counterclaim also fails in its entirety. I shall make no order as to costs.

**H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN**