

IN THE EASTERN CIRCUIT COURT HELD AT ODUMASE- KROBO ON 5<sup>TH</sup>  
DECEMBER, 2022 BEFORE HIS HONOUR FRANK Y. GBEDDY ESQ. CIRCUIT  
COURT.

NO.A1/11/2018.

FRANK YAW ADJEI                      PLAINTIFF

OF H/NO. AN 27

DAWU AKWAPIM

VRS

YAW EMMANUEL                      DEFENDANT

OF ODUMASE-KROBO

JUDGMENT DELIVERED

The claims of plaintiff against defendant are the following:

- i. Declaration of title to all that piece of land at OdumaseKrobo known as the property of the late Ebenezer Brandford Adjei.
- ii. Perpetual injunction against defendant, his agent assigns and privies.
- iii. Declaration that plaintiff and his brother who are the grandchildren of the late Ebenezer Brandford Adjei and

Mrs Grace Akuyoo Adjei are the legitimate successors of their grandparent on the said pro-parcel of land.

### **PLEADINGS OF PLAINTIFF**

The averment of plaintiff is that he is the grandson of the late Ebenezer Brandford Adjei and Mrs Grace Akuyoo Adjei. He alleged his grandmother Mrs Grace Akuyoo Adjei is native of Odumase-Krobo but his grandfather Ebenezer Brandford Adjei is from Dawa Akwapem. He further alleged that his grandfather was gifted a piece of land at Odumase-Krobo by the then Sub Chief called Nene Dometey Tsatsu. He averred that his grandfather made 'Aseda' and caused Ntomeh and corner pillars to be erected for identification of the boundaries. He further alleged that his grandfather put up three (3) single rooms and chamber and hall on part of the gifted land leaving part of the vacant. Plaintiff also averred that his grandfather gave birth to only a child called Jonathan Kwame Adjei who also gave birth to the plaintiff and his brother called Kwabena Adjei. Plaintiff also alleged that he dwelled in the house with his grandparents. He further alleged that when his grandparent and father died, he enjoyed the property with his only brother. The plaintiff alleged further that he deposited quantity of building materials on the land and granted permission to one Mr. John Kuma alias Melody to occupy part of the frontage of the main house until plaintiff shall be ready to fully develop the property. The plaintiff further claimed that the defendant who is the son of plaintiff's maternal grandmother's sister, by an arbitration tribunal decision at Odumase-Krobo claimed ownership of the litigated land. Hence this case is brought to the Odumase-krobo circuit court.

## PLEADINGS OF DEFENDANT

The defendant denied all the averments of plaintiff and alleged that no land was gifted to the grandparents of plaintiff by the Suisi Matse Nene Dometey Tsatsu. Defendant further asserted that the said Suish house on the litigated land was not constructed by the grandfather of plaintiff. Defendant further alleged that the said late Matse Nene Domertey Tsatsu had no stool land and personal land hence it is not true that he made any gift of land to the plaintiff. The averment of the defendant further is that the litigated land was a gift from the late Grace Akuyoo Adjei to her 'Yobi' daughter called Alice Doku. Defendant alleged that the Alice for 15 years ago was placed in the possession of the litigated land until the recent illia act by the plaintiff who fraudulently rented out portion of the property to John Kuma without the consent of the family and Alice. The defendant averred that Alice mother acquired the litigated land long before the marriage between her and the grandfather of the plaintiff. Defendant also averred that the alleged John Kuma was ever summoned before the Konor's

Arbitration court for the issue of whether or not the 'Yobi' like Alice cannot inherit her mother's landed property. The defendant in his averment also stated that the late Alice is his senior sister.

## COUNTER CLFAIM OF DEFENDANT

- a) Declaration of title to all that piece of land at Odumasekrobo being the property of defendant's family.
- b) Perpetual injunction to restrain the plaintiff, his agents, assigns and privies.

**PROOF:** It is the duty of the party who avers to establish same on the balance of probabilities.

## **ISSUES:**

1. Whether or not the litigated land is gifted to the late grandfather of plaintiff by Matse Nene Domertey Tsatsu.
2. Whether or not the disputed land is for the mother of Alice.
3. Whether or not the family made a gift of the land to Alice.
4. Whether or not the defendant is a beneficiary of the late Alice.
5. Whether or not the plaintiff is to inherit the disputed land.
6. Whether or not the building on the land is for the grandparents of plaintiff or not.

## **EVIDENCE OF PLAINTIFF**

He is called Frank Yaw Adjei. He stated that he is the grandson of the late Ebenezer Brandford Adjei and Mrs. Grace Akuyoo Adjei. He stated that the land in litigation is a gift to the late grandfather by Matse Nene Domertey Tsatsu. Plaintiff went on that his late grandfather built part of the gifted land and left the portion for future use. The plaintiff also stated he rented the frontage portion of the house to one Mr. John Kuma alias Melody. He also went on that his grandfather before he went into possession of the land made 'Aseda' and used Ntomre and pillars to demarcate the boundary in 1966. He also mentioned that the date of 2<sup>nd</sup> January is written on the pillars. See Exhibit 'A' which is a pillar. See also the Exhibit 'B' a recent site plan made. Plaintiff stated his father is called Jonathan Kwabena Adjei and his brother is called Kwabena Adjei and all are the only children of plaintiff grandparents of whom the father of plaintiff is deceased now. The plaintiff further stated that defendant who is not the head of plaintiff's mother's family made a case on the disputed land to the Arbitration Tribunal at Odumase-krobo

on the ownership of the litigated land. The plaintiff stated that even though the defendant is a family member he cannot inherit plaintiff's late parents. Plaintiff stated that he is the sole owner in possession and occupation of the disputed land since the demise of his parents. Plaintiff also stated that his tenant Mr. John Kuma is the one who connected the house to electricity see Exhibit 'C'. See also the Lower Manya-krobo Municipal Assembly rate Demand Notice Exhibit 'D' which is in the name of plaintiff's mother the late Grace Akuyoo Adjei.

**CROSE EXAMINATION BY DEFENDANT.**

The plaintiff stated the gift was made to his grandfather in the presence of the late Grace Akuyoo Adjei whom the defendant claimed to be his elder sister. The plaintiff also agreed that the defendant is a brother to the late grandmother of plaintiff. The plaintiff stated that his late grandmother told him that the land was a gift from the brother of defendant Nene Dormetey Tsatsu to plaintiff's late grandmother.

Q: Do you know the late Grace Akuyoo Adjei is my elder sister?

A: Yes.

The defendant hence stated that the grandfather of plaintiff was his brother in law.

Q: So your late grandfather is my in law?

A: Yes.

Q: Who gave the land to your grandfather?

A: I was told by my grandmother that the chief your brother Nene Dormetey Tsatsu was the one who made the gift.

The defendant stated that the litigated land belongs to one Mama Alice.

Q: The litigated land is for Mama Alice?

A: It is true.

The defendant stated that the late grandfather of plaintiff only came to marry from the defendant's Togbe-We family. Defendant also went on that Mama Alice is not a biological daughter of the grandfather of plaintiff. Defendant went on that Mama Alice was given to his late father as 'Yobi'.

Q: Alice is gifted as 'Yobi' to my late father?

A: Yes.

The plaintiff also agreed that his grandfather was buried at Dewu. The defendant stated that it was Mama Alice who built the house on the disputed land but not the late grandfather of plaintiff. The plaintiff agrees he is from Dewu and that the grandfather had other children at Dewu apart from the father of plaintiff.

Q: Your grandfather had other children at Dewu apart from your father?

A: Yes.

The defendant also stated that by tradition it is the duty of the uncle of plaintiff to chase the ownership of the land but not a grandson like the plaintiff.

Q: Your uncle should have pursued the case of your grandfather's property?

A: The land was a gift to my father and I am his first son.

The defendant also stated that the structure on the land is not put up by plaintiff's grandfather but Mama Alice.

Q: It is Mama Alice who put up the house and he is alive?

A: It is not true because it is my grandfather who put up the structure.

The defendant also stated that the land is the 'Togbe family' land but the plaintiff stated that the disputed land is the personal property of Nene Dormetey Tsatsu. The plaintiff stated that his grandfather made 'Aseda' of schnapps and a goat.

#### **EVIDENCE OF DEFENDANT.**

He is called Yaw Emmanuel. He told the court that the plaintiff is a grandson of the late Ebenezer Brandford Adjei who came from Dewu to marry in Odumase-krobo. Defendant stated that the disputed land belongs to the 'Togbe family' where the grandfather marries the late Madam Grace Akuyoo. The defendant also alleged that the family gave the land to the grandmother of the plaintiff and the said grandmother who gave birth to a 'Yobi' called Alice made transfer by gift to Mama Alice Doku for she was fatherless. The defendant also stated that the late Madam Grace Akuyoo Adjei was not the one who put up the building on the land for her 'Yobi' daughter called Alice. The defendant went on that the plaintiff is a native of Dewu where his late grandfather belonged and for that matter it is not his responsibility to engage his maternal family on the disputed land which is for them on the land of Odumase-krobo.

#### **CROSS EXAMINATION**

The defendant stated that the litigated land is for the Togbe We family of which he is the current family head. The case of the defendant is that the family gifted the litigated land

to her yobi daughter called Alice since she was alleged to be fatherless and same put up the house on the land. Defendant stated that it was the then Togbe We family head Odehetse Kwabla who made the gift the said Alice Doku. The case of defendant is that the Togbe We family made the gift on the litigated land to the mother of plaintiff who later gave same to her out of wedlock daughter Alice Doku. The counsel of the defendant stated that since the property is for the grandparents of the plaintiff, he has the right to inherit same according to the customary right of the people.

So the summary evidence of defendant is that even though the disputed property was gifted first by the Togbe We family to the mother of plaintiff same mother transferred same land through the then Togbe We family head Odehetse Kwabla to the Alice Doku (Yobi). The averment that it was Alice who put up the house on the litigated land is not substantiated. But the plaintiff's claim that it was his father's house is yet to be proved on the balance of probabilities.

**BY COURT:** The death of the plaintiff is announced and his counsel Mr. Adjei Lartey since failed to attend court. All effort to replace the plaintiff failed. I thereby order for the verification of the witness statements of DW1 and the DW2.

#### **VERIFICATION OF DW1.**

She is called Alice Doku. She stated that the plaintiff's grandmother is her mother. She also stated that the late grandfather of plaintiff who is from Dewu came to marry DW1's mother who is from 'Togbe We' family of Odumase-krobo. She went on that the late couple gave birth to Nathan Kwame Adjei who begot the plaintiff Yaw and one other Kwabla. Alice Doku also stated that she is one mother with the father of plaintiff. She further stated that the defendant is his matrilineal uncle. She further went on that when



E.B. Adjei the grandfather of plaintiff died, his belonging/ properties were shared among his uterine children. DW1 categorically stated that because she is a 'Yobi' and been fathered by her mother's family of 'Togbe We', the disputed property was devised to her by Odehetse Kwabla the then head of Togbe We family. The DW1 stated that her mother the wife of E.B. Adjei caused a house to be made on the land for her. DW1 stated that when E.B. Adjei was on pension before his demised came to shortly stay in the Alice house with his wife before his demised. She apparently contended that the disputed land is for her but the plaintiff without her consent rented it out to one John Kuma. Hence the case was referred to Konor's arbitration but now to circuit court.

#### **VERIFICATION OF DW2.**

His full name is Nartey Moses Agbebo. He stated that the late Nene Dormetey Tsatsu 11 is a biological brother of his and same was installed as the Divisional Chief of Suisi in 1967. DW2 noticed the same Nene Dormetey Tsatsu 11 in 1966 had no mandate as a chief to devised or make a landed gift as stated by the plaintiff. DW2 went on that the disputed land was given to Alice Doku by the then Togbe We family called Kwabla Odehetse in the present of the family as well as the late mother of the 'Yobi' Alice Doku.

#### **EVALUATION OF FACTS/LAW.**

The late plaintiff called no witness but in fact stated that the litigated land was a gift made by the Divisional Chief of Suisi Nene Dormetey Tsatsu 11 to his late grandfather E.B. Adjei. He further stated that at the death of his grandfather, plaintiff's father inherited same. The late plaintiff also stated that his father gave birth to him and one other brother late in the house which was built by his late grandfather on the disputed property. The

late plaintiff also stated that at the demised of his father, the property has enured to his benefit as the owner.

The defendant who alleged to be the head of the Togbe We family of which the disputed landed property belonged denied in corroboration with his DW1 and DW2 that there had ever been any gift to the grandfather of the plaintiff by Nene Dormetey Tsatsu 11. Rather, defendant and his witness are in further corroboration that a gift of the disputed land was made by the then 'Togbe We' family head Kwabla Odehetse to Alice Doku the DW1 whose mother was the grandmother of plaintiff but who was 'Yobi' according to tradition.

### **THE LAW OF GIFT.**

The plaintiff who pleaded a gift of land as the law should have provided for same to be proved. The proof of a landed gift by the Donor to the Donee must be made public between the two families of the donor and the donee. In the principle of 'Donation causa', the donee should be placed in possession with publicity in case of land gift before the donor's demised. If any gift is made for the grandfather of plaintiff who is a native of Dewu by the donor on the land at Odumase-krobo, the publicity of the gift would provide corroboration.

In the land Development (Protection of Purchasers) Act 1960 (Act 2), it is stated that the owner of land and their successors in title must be protected by law hence the state.

Also in the case Klu Vs Konadu Apraku[2009] SCGLR 741, it was emphasized by Atuguba JSC that ownership right in the land must be supported by the state.

The NRCD323 Section 11(1) and 12(1) state that the burden of persuasion requires proof on the balance of probabilities. This suggest the introduction of a sufficient evidence to

avoid ruling against the one who alleged or averred. Usually, the burden must be discharged by the one who averred or asserted. In the case *Ababio Vs Akwesi* 111 [1994-95] GBR Page 77, *Akins JSC* held that the Onus is on the party who asserts to prove same assertion. Still on the proof of burden, it is also held in *Sarkodie Vs F.K.A Company Ltd* [2009] SCGLR 65 by *Wood JSC* that proof on the balance of probabilities means the rationality of the total evidence in the mind of a reasonable person to conclude on the existence or the non-existence of facts. In the failure of the deceased plaintiff, the defendant and his *Togbe We* family as well as the witness were able to establish the ownership of the DW1 (Alice Doku) on the balance of probabilities.

**BY COURT:**

- i. The claims of the late plaintiff are set aside as dismissed.
- ii. I hereby give judgment to the defendant and his witness especially the DW1 Alice Doku on the Counter Claims (A and B)
- iii. The tenant Mr. John Kuma alias Melody is a victim of uncontrollable circumstances hence must be allowed enough time to remove his container/structure on the disputed land. What is the enough time?

No cost or compensation.

SGD

H/H FRANK GBEDDY

CIRCUIT COURT