

**IN THE EASTERN CIRCUIT COURT HELD AT ODUMASE KROBO ON 5TH
DECEMBER, 2022 BEFORE HIS HONOUR FRANK Y. GBEDDY ESQ. CIRCUIT
COURT JUDGE.**

SUIT NO. A1/27/2019.

1 ABRAHAM DAUTEY

2 GIFTY DAUTEY

ALL OF H/NO H39/3 AGORMANYA.

VRS

ADJIMEH KWAO

OF SAISI.

JUDGMENT DELIVERED ON 5/12/2022.

1. The claim of the plaintiff's against defendant is declaration of title and recovery of possession of that piece of land at Odjam which measured 100ft by 200ft and same shares boundary with the following properties;
 - i. Wordjimeh family land at one side
 - ii. Amiyoche's land at another side
 - iii. Tetteh Bio family land on the last side iv. Nyabe landed property.
2. Plaintiff prays for General Damages for trespass and
3. For perpetual injunction against defendant, his agents, representatives, workmen, successors and any person claiming through them.

PLEADING OF PLAINTIFFS.

The plaintiff on behalf of the Okpetse family of Agormanya Agbomi averred that the 100ft by 200ft land at Odjam was acquired by first settle of Okpetse family. They further averred that the Okpetse family members are in possession and occupation of the land as the vanous family heads allows them to plant cash crops such as palm trees, banana and plantain inclusive as well as food crops. Plaintiff further averment was that it was one of the Okpetse family head who allowed one Adjimeh to farm on the disputed land as a license and upon the demised of that family head, the Okpetse family head descended on or devolved on 1st plaintiff's father the late Winfred Kodjo Tetteh Yumu. Plaintiff also averred that the 1st plaintiff's father as tenure as the family head endeavored to demarcate the land among Okpetse family members. But this plan of demarcation was furiously resisted by one Tei Kwabla the then family head of Ajimeh family who were license on the land. The plaintiff assertion is that the dispute ended up before the Odumase-Krobo circuit court with suit No. C1/14/2004 with title of Winfred Kodjo Tetteh Yumu Vrs Tei Kwabla. Plaintiff pleaded that the defendant refused to file defence as well appearance. They further pleaded that upon application made on notice, judgment was entered against the defendant of the Adjimeh family in 2004 and same was filed and served. Plaintiff further alleged that the judgment debtor did nothing to set aside the default judgment and as ordered by the default judgment, the family of the defendant ceased to enter the litigated land. They went on that since 2004 after the judgment the land was demarcated for the Okpetse family members and they peacefully enjoyed their shares. Plaintiff went on that without any provocation, the 1st and 2nd defendant without notice entered and cleared the land. Plaintiffs alleged the defendant were invited to the Konor's arbitration but with impurity refused the invitation. Plaintiff alleged that when 1st plaintiff challenged the 2nd defendant on the land later, 2nd defendant reported 1st

plaintiff on the charge of causing unlawful damage of which the 1st plaintiff was discharged at the police station.

COUNTER CLAIM OF 1ST DEFENDANT.

The 1st defendant put in a counter claim against plaintiffs for the declaration of title to the parcel of land at Odjam which boundary neighbors are;

- i. Wordjimeh land
- ii. Okpetse fsmily land
- iii. Odja Dor stream iv. Church of Pentecost property.

PLEADING OF 1ST DEFENDANT.

The 1st defendant also pleads that the alleged litigated land was formed by his ancestors who were fetish. He alleged that the portion in dispute was first settled by his ancestors who stayed on the Krobo Mountain alongside with Wordjimeh and Okpetse family and that the Wordjimeh, Okpetse and 1st defendant families were the first to settle on the Odjam land which is now in dispute. 1st defendant further alleged that as first settlers on the Odjam land. The Wordjimeh family, Okpetse family and his family Adjimeh had their portion differently accordin to the settlement. The 1st defendant alleged that his grandfather a fetish priest sunk well on the litigated portion and same is available. 1st defendant further averrd that the three (3) families held anum-challenged possession of their separate portions until 2004 when the head of plaintiff family one Winfred Kodjo Tetteh Yumu summoned one Tei Kwabla at the arbitration court of Konor. The 1st defendant alleged that the said Teye Kwabla interest is deferent and the Teye Kwabla knew nothing about the inheritance of the Odjam land. The 1st defendant further averred that at the arbitration, since the Teye Kwabla has no knowledge of the nature of the

boundary, the 1st defendant was invited to testify and to accompany the panel to locus visitation. The 1st defendant's assertion is that he knew nothing about the alleged default judgment order made in the case Windfred Kodjo Tetteh Yumu against the Teye Kwabla by the circuit court. The 1st defendant alleged that he prevailed in Konor's arbitration as the benefactor of Nene Adjimeh's estate hence should have been the one with capacity to be brought to the circuit court but not Teye Kwabla who is just a mere member of Adjimeh family. 1st defendant also asserted that during locus inspection by the konor's arbitrators, buna trees were planted to mark the possession of the Adjimeh family but before this case, the plaintiffs went to uproot all. The 1st defendant also alleged after the sharing of the land among the Okpetse family members, the plaintiff went ahead to sell part of the litigated land which belongs to the Adjimeh family to third parties. The 1st defendant averred that the Adjimeh family in 1995 devised part of their land to the Church of Pentecost at Agormanya.

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

ISSUES:

1. Whether or not the disputed land at Odjam is for the Okpetse family of plaintiffs
2. Whether or not the disputed land at Odjam is for the Adjimeh family of the 1st defendants
3. Whether or not the Adjimeh, Wordjimeh and Okpetse families were the 1st settlers on the litigated land at Odjam.
4. Whether or not the Okpetse family and Adjimeh family share a common boundary on the disputed land.

5. Whether or not the Adjimeh family have any land at all on the Odjam landed property.
6. Whether or not the Adjimeh family occupies the litigated land as license of the Okpetse family who are the plaintiffs.
7. Whether or not there was an arbitration by konors court.
8. Whether or not there was a default judgment.

EVIDENCE OF 1ST PLAINTIFF

His name is Abraham Dautey a member of Okpetse family. He stated that the disputed land belongs to the Okpetse family and same which is 100ft by 200ft is at a place called Odjam. He went on that his ancestor allowed the Adjimeh family to cultivate food crops on the land as license. The 1st plaintiff stated that as license, they were made to pay certain royalties in terms of food crops. 1st plaintiff further stated that one Tei Kwabla a family head of Adjimeh family once trespassed on the disputed land in 2004. The then family head of 1st plaintiff's family Winfred Kodjo Tetteh Yumu for and on behalf of the Okpetse family sued the Adjimeh family per the head of family Tei Kwabla and judgment was obtained against the Adjimeh family. See the suit No. C1/13/04 with title Winfred Kodjo Tetteh-Yumu as head of the Okpetse family H/NO. H39/3 Agbom – Agormanya Vrs Tei Kwabla as the Head of the Adjimeh family of Agbo Saisi. See the writ of summons Exhibit 'A' and the judgment as Exhibit 'A'. The 1st plaintiff stated that after the circuit court's default judgment, the Okpetse family demarcated the disputed portion among the members of family since and they were in peaceful and undisturbed enjoyment of same until the recent encroachment by the defendants in 2019.

CROSS EXAMINATION BY 1ST DEFENDANT.

The 1st plaintiff stated that their family head sent the case to the circuit court but not the konor's court of arbitration. The 1st plaintiff stated that his family head was not the 1st plaintiff then but rather his family head as at then was one Odoe. The 1st defendant also stated that at the arbitration, plaintiff's family head mentioned different boundary neighbors. The 1st defendant stated that his grandfather Nene Adjimeh's land is located across the Popo River since he has land at Wawase Yokpe. But the 1st plaintiff stated that his family head called Winfred Kwabla Tetteh Yumu told him that Nene Adjimeh has no land across the Popo River. The 1st plaintiff also denied that as license, the 1st defendant's family which were allowed to use the land paid no royalties.

Q: In your statement of claim, you stated that we accepted to make a gift of food stuffs on the Odjam disputed land?

A: It is not true.

The 1st plaintiff stated that his family has no document on the Odjam land.

Q: Do you have documents on your land at Odjam?

A: No

The 1st plaintiff stated that by virtue of the circuit court default judgment, the land is also adjudged as belonging to the Okpetse family. The 1st defendant denied that the Tei Kwabla the defendant in the default judgment is not his family head. The 1st defendant asked why the interest of the 1st plaintiff is only in the middle portion of the land but the 1st plaintiff stated that his interest is in the land at the top and down as well. The 1st defendant stated that they are working the disputed land from Odjador coming (from

the down). But the 1st plaintiff stated that their land is from the top to where the boundary is.

Q: We are those working the land from Odjador coming?

A: Our land is from the top up to where the boundary is.

The 1st defendant stated that Nene Adjimeh gave the top of the litigated land to the Pentecost church. The 1st plaintiff stated that the top portion is for Okpetse family that was the Pentecostal church was evicted from same.

Q: During Nene Adjimeh's life time, he gave the top to the Pentecost church?

A: The land for Pentecost church is for us and we collected it from them.

EVIDENCE OF 2ND PLAINTIFF.

Her name is Gifty Dautey and a member of Okpetse family of Agormanya Agbon. She stated that the track of land at Odjam is for the plaintiff's family. She told the court that the ancestors of Okpetse family were the first to settle on the track of land and it was the same family which allowed the Adjimeh family to use the litigated portion as licenses. 2nd plaintiff went on that the license family provided food stuffs upon harvest to the Okpetse family as the owners of the disputed land. The witness went on that at the ternue of one Tei Kwabla as the head of Adjimeh family, the defendant by the virtue of their long occupation tried to lay adverse claim of the disputed portion. She further stated that without delay, the then family head of Okpetse family Winfred Kodjo Tetteh-Yumu took the matter to the circuit court of Odumase-krobo where default judgment was entered on same litigated land against the Adjimeh family since 2004. 2nd plaintiff stated after the default judgment, the disputed land was shared among the Okpetse family members

whereby they were in occupation until in 2019 when the 1st defendant tried again to lay adverse claim to same Hence the writ of summons. See the Exhibit 'A', 'A1'.

CROSS EXAMINATION BY 1ST DEFENDANT

The 2nd defendant stated that the Okpetse family have no document on the ownership of the litigated portion.

Q: Do you have any document on the litigated land?

A: Yes.

BY COURT: This answer is different from that of the 1st plaintiff who stated that the Okpetse family has no document.

EVIDENCE OF PW1.

Her name is Mary Toutsuisi Dautey. PW1 is a member of the Okpetse family. She stated that her family acquired the litigated track of land at Odjam by first settlement. The PW1 further stated that the ancestors of the Adjimeh family were allowed to cultivate part of the land as license and they occasionally paid with food crops to the Okpetse family as owners. He went on that in July 2004, judgment was given against the Adjimeh family when one Tei Kwabla the family head of Adjimeh family tried to lay adverse claim to portion on which the served as licenses. See the Exhibit 'A' and 'A1'. PW1 stated that the litigated land after the default judgment was shared among the Okpetse family members and all were in peaceful and undisturbed possession until in 2019 when the 1st defendant still laid adverse claim for which the case was brought to the circuit court.

CROSS EXAMINATION BY 1ST DEFENDANT.

The 1st defendant stated that the litigated land is for his grandfather Nene Adjimeh but the PW1 stated same litigated land is for his grandfather Nene Okpetse and PW1 added that the issue surrounding the ownership of this litigated land in 2004 was taken to the circuit court where default judgment was given against one of the sons of Nene Adjimeh called Tei Kwabla. The 1st defendant kept on refuting the identity of Tei Kwabla who was the direct representative of Adjimeh family in the circuit court case. The PW1 stated that the Tei Kwabla one of the grandson of Nene Adjimeh testified in court that the litigated land is no longer for his family since the land was already shared among the Nene Okpetse family members.

EVIDENCE OF 1ST DEFENDANT

He is called Stephen Kwao Adjimeh and same stated that he was told by his grandfather that the disputed land was acquired by the ancestors in 1893 through first settlement when the Krobo descended from the Krobo Mountain. The 1st defendant stated that the litigated land shares boundary with the following properties;

- i. Wordjimeh property
- ii. Tetteh Yumu family property
- iii. Tador stram iv. The odjador stream.

BY COURT: Compare.

1st defendant stated that by the arbitration of the paramount Chief in 2004, the unchallenged possession of the disputed land was entrusted in the Nene Adjimeh family. See Exhibit 'A'?

The 1st defendant went on that on 18th August 1995, as the head of Adjimeh family he donated portion of the litigated land to the church of Pentecost. See Exhibit 'B'?. The Deed of transfer.

BY COURT: Is this customary transfer made by the Stephen Adjimeh's grandfather or by 1st defendant himself.

The 1st defendant also stated that on the 06/11/2013 he carried out a search in the land Registry and the report from the public And Vested land management Division Lands Commission on the 12th December 2013 revealed that as in the Exhibit C? or captioned KD 3666/13. 1st defendant stated that at the ternue of late Winfred Kodjo Tetteh the Tetteh Yumu or Okpetse family of defendants shared their entire family land among family members as;

- i. Narh Tetteh Yumu – late
- ii. Pastor Agbesi
- iii. Veronica Amiyotse – late iv. Winfred Tetteh Yumu – late
- v. Tetteh Bio – late
- vi. Alfred Tetteh Yumu – late
- vii. Kodjo Abraham Tetteh and
- viii. Gifty Dautey – 2nd plaintiff.

The sharing is a corroborated evidence.

1st defendant also stated that the 2nd defendant who was a beneficiary exhausted her allocation and without any reason decided to trespass into defendant family landed property by selling portion. 1st defendant in his 'U' turn stated in contradiction of his pleadings that the alleged Tei/Teye Kwabla in the konors arbitration as well as the default judgment of the circuit court is not a member of the Adjimeh family.

The 1st defendant also stated that the land in dispute as in this case is different from those in dispute in the circuit court default judgment. The boundary neighbors of the default judgment land case are;

1. Agwale family – south west.
2. Tetteh – Ku family – West
3. Kofi Lotto – North
4. Osabu Gyege family – North East
5. Asimeh family – East
6. Tetteh Pemo family – South east See plaintiff's Exhibit 'A' and 'A1'

CROSS EXAMINATION BY 1ST PLAINTIFF

The 1st defendant herein mentioned the following as boundary neighbors;

1. Tandoor – Top
2. Tetteh Yumu family – left
3. Wordjimeh family – Right

4. Odjador stream – Down

Here, the 1st defendant repeated that his grandfather gave the land to Osofo Samuel for the church.

Q: You said your grandfather gave the land to Pentecost church?

A: My grandfather gave the land to Osofo Samuel for the church.

But the 1st plaintiff stated that his family had taken over the land from the church.

Q: Are you not aware that we have collected the land from the church?

A: Osofo Sam and the church did not tell me.

The 1st defendant again is saying that the litigated land is for one Osabu Gyege of Agbom.

The 1st plaintiff stated that the land is for Nene Odoe, Okpetse and Osabu Gyege all of Agbom. The by the cross examination of 9th May 2022 evidence of the 1st defendant pointed to a gift of the litigated land to the Adjimeh family. The 1st defendant stated that all his family heads witnessed same.

Q: If the land is a gift to you, which member of your family witness same?

A: All my family Heads.

To bactress the evidence of the alleged gift, the 1st defendant mentioned the following family heads as witnesses of the alleged gift;

1. Dzikunu Teye 2.

Dzikunu Patrick.

ANALYSIS OF FACTS/LAWS.

The 1st and 2nd plaintiffs with the PW1 called Mary Toutsuisi Dautey in evidence corroborated that the litigated land shares boundary with;

- i. Wordjimeh family land
- ii. Amiyoche's land
- iii. Tetteh Bio family land and iv. Nyabe landed property.

The evidence of the plaintiffs is that as they settle on the litigated land from Krobo Mountain, parts of the track of land which is the disputed 100ft by 200ft land was granted by the Okpetse family to the Adjimeh family to just farm same as licenses. The plaintiffs also stated that the Adjimeh license family occasionally paid royalties in kind of food stuffs. The plaintiffs stated that the ancestors of the Adjimeh family started to lay adverse possession and this act was vehemently refuted and shot down by the Okpetse family. For instance the Adjimeh family granted part of the vast land to one Osofo Samuel for the Pentecost church without the knowledge of the grantor Okpetse family of the plaintiff. The plaintiff's family promptly ejected the church from the land.

Q: You said your grandfather gave the land to the Pentecost church – 1st plaintiff

A: My grandfather gave the land to Osofo Samuel for the church. – 1st defendant

Q: Are you aware that we have collected the land from the Pentecost church?

A: Osofo Sam and the church did not tell me.

The plaintiffs are in further corroboration that in somewhere 2004, when the adversed activities of the defendant family was too much, the matter was arranged before the konor's for arbitration where the 1st plaintiff's father sued one Tei Kwabla the then family head of Adjimeh family on the same disputed land. It was stated that 1st defendant was invited to testify or to show the boundaries here. At the subsequent period, the late father of 1st plaintiff Winfred Kodjo Tetteh Yumu sued the Adjimeh family head Tei Kwabla in the Odumase –kobo circuit court in quest for declaration and possession. In this direction and at the end of the day, a default judgment was given against the Adjimeh family head. See Exhibits 'A' and 'A1'.

The defendants who initially pleaded to be first settlers on the disputed land later in 1st defendant's evident changed in to an alleged plea of gift. The defendants in their pleading alleged that their family Adjimeh first descended from the Krobo Mountain and settled on the litigated land with the Okpetse family (plaintiffs) and one Wordjimeh family. The defendant in their pleadings pleaded original occupation of the disputed land but it is a surprise that he deviated and testified on a gift of same litigated land to his ancestors. The 1st defendant who pleaded that his grandfather granted part of the disputed land to the Pentecostal church later in evidence stated that he was the one who made the grant on 18th August 1995 as the family head of Adjimeh family to the Pentecostal church.

Further, the defendant in their pleadings told the court that the defendant Tei Kwabla in the circuit court default judgment case is a mere family member hence could not be sued on behalf of the family. But in 1st defendant's evidence in court he totally deviated and stated that the Tei Kwabla in the default judgment is not known to him for that matter the Adjimeh family at all.

CONTRADICTIONS IN EVIDENCE OF DEFENDANTS.

In Tanko Vs Karim [1989-90] 2GLR 189 C.A per the Dictum of Osei Hwere J.A the court should pay legal attention to contradiction in the total evidence of a party since same may originate decept. Likewise in the cases of Atadi Vs Ladzekpo [1981] GLR 218 C.A. per Adjei J.A as well as Ankra Vs Ankra [1966] GLR 60 per Ollenu JSC, it is a stated law that contradiction in the pleading or in evidence before court on major issues should not be brushed aside. The defendant who did not plead gift led evidence on the law gift. He did not substantiate same in any way and he also failed to introduce any written document by the donor to the donee.

In the Conveyancing Decree 1973 NRCD 175, it is the law that any transaction made on the land which may have a duration of 3 or more years interest same should be written down.

In cases such as Cheusenlin Vs Tandor Enterprises Ltd [20072008] 1 SCGLR 135 @ 139 and Adormson Vs Tetteh [2013] 39 GMJ 63 @ 83-86 C.A Per Dordzie JA, it is variously held that since the lands in litigation had been executed duly to others, same could not be claimed subsequently by interest witnesses. It is also an establish law that there should be an end to every land litigation.

According to the Evidence Act 1975(NRCD 323) Section 11(1), 11(4) and 12(1) it is always the duty of the party who avers to produce evidence to the proof of that averment on the balance of probabilities.

Further cases such as Osaе Vs Adjeifio [2007- 2008] 1 GLR @ 502 SC Per Adinyira JSC, Sarkodie Vs F.K.A Company Ltd [2009] SCGLR 65 Per Wood JSC, Ababio Vs Akwesi [1994-95] 2GBR 77 Per Akins JSC and Zabrama Vs Segbedzi [1991] 2 GLR 221 C.A, it is

held as a Cardinal request that for the evidence of a party to pass the test of proof on the balance of probabilities.

After the trial, the plaintiff's of Okpetse family established their averment on the balance or preponderance of probabilities.

BY COURT:

- a) I hereby enter judgment for the plaintiff's on behalf of the Okpetse family according to their claims in the writ of summons. See the claim No. 1.
- b) I also hereby grant the perpetual injunction against the defendants, their agents, representatives, workmen, successors any one claiming through them.
- c) I hereby enter General Damages of GHC3,000.00 against the defendants for General trespass and
- d) The counter claims of defendants are set aside with cost of Ghc2,000.00

SGD

FRANK Y. GBEDDY ESQ.

CIRCUIT COURT.