

**IN THE CIRCUIT COURT OF AAKOR, CENTRAL REGION HELD ON**  
**WEDNESDAY 14TH JUNE, 2023 BEFORE HIS HONOUR MALCOLM EWOENAM**  
**BEDZRAH, ESQ.**

**SUIT NO. C1/42/2021**

<b>ELIZABETH EFUA BROWN</b>	<b>]</b>	
<b>HOUSE NUMBER OC 11/4</b>	<b>]</b>	<b>PLAINTIFF</b>
<b>OLD TYMERS, KASOA</b>	<b>]</b>	

**VRS.**

<b>THE TRESPASSER/BUILDER</b>	<b>]</b>	<b>DEFENDANT</b>
<b>ADDRESS 1425, KASOA</b>	<b>]</b>	

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**JUDGMENT**  
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The defendant who is alleged to have trespassed unto the plaintiff's land is not known to the plaintiff and despite the service on him of all processes via substituted service by the plaintiff, has never revealed his identity all through the lifespan of this cause nor has he turned up to contest the claims. The said defendant has been conveniently

referred to as the “Trespasser” and this judgment shall not stray from that term when referring to him.

The Plaintiff on 14th May, 2021 filed Writ of summons against the Defendant and endorsed the following reliefs:

- a. A declaration that the Defendant is a trespasser to the land, subject matter of the suit.
- b. Recovery of possession of land described hereto above from the Defendant.
- c. An order of perpetual injunction restraining the Defendant, his assigns, privies or whosoever from developing, building, selling, assigning, among others over the land subject matter of the instant suit.
- d. Damages for trespass against the Defendant.
- e. Costs including legal fees.

### **FACTS IN BRIEF**

The Plaintiff avers in her statement of claim that she acquired a parcel of land situated at Opeikuma, a residential area layout in the Awutu Senya District in the Central Region of the Republic of Ghana. The said land was acquired from the Internal Revenue Service (now Ghana Revenue Authority) for valuable consideration. An indenture was executed between the Internal Revenue Service as Assignor and Plaintiff as Assignee to cover the parcel of land in dispute. The Plaintiff took possession of the said land and immediately brought unto the land 3000 blocks, a trip of sand, a trip of stones to commence her project. The Plaintiff says due to ill health, she could not develop the land till somewhere in the year 2018. She visited the property and to her surprise, the land was being developed by the Defendant. All efforts to get the Defendant to stop the

construction or development exercise on the land proved futile hence her decision to bring the instant action against the trespasser.

After all pre-trial motions, the following issues were set down for determination:

### **ISSUES**

- a. Whether or not the Plaintiff is the owner of the said parcel of land?
- b. Whether or not the Plaintiff is entitled to her reliefs?
- c. Any other issues arising from the pleadings.

### **BURDEN ON THE PLAINTIFF**

Section 10(1) and (2) of the Evidence Act 1975 (NRCD 323) define the burden of persuasion as follows:

**10(1) "For the purposes of this Act, burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court." 10(2) "The burden of persuasion may require a party(a) to raise a reasonable doubt concerning the existence of a factor or (b) to establish the existence of a fact by a preponderance of probabilities or by proof beyond a reasonable doubt."**

Section 11 of the same Act defines the burden of producing evidence in the subsection (1) and (4) as follows;

**11(1) " for the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issues against the party". 11(4) "In the circumstances, the burden of producing evidence requires a party to produce sufficient evidence which on the totality of the evidence,**

**leads a reasonable mind to conclude that the existence of the fact is more probable than its non-existence.”**

In the celebrated case of **Zabrama Vrs. Segbedzi (1991) 2 GLR 221, Kpegah J**, as he then was stated as follows;

**“The onus of proof in civil cases depends upon the pleadings. The party who in his pleadings raises an issue essential to the success of his case assumes the burden of proof”.**

As stated earlier on, the defendant did not partake in the trial. That fact notwithstanding, the plaintiff is required to discharge her burden.

In the case of **Conca Engineering Ghana (Limited) v. Moses [1984 -1986] 2 GLR 319, CA** it was held in holding (4): **“..... And in our adversary system the Plaintiff who sought a declaration of title, had to establish that by clear and acceptable evidence whether or not the defendant against whom he sought the relief was present or absent.....”** Again, in **Ayiku IV vs. A.G [2010] 29 MLRG 99, SC** it was held in holding (6): **“Where a plaintiff claims declaration of title, he still has to lead evidence in proof of his title notwithstanding failure on the part of the defendant to enter appearance.”**

The plaintiff accordingly proceeded to prove her case by entering the witness box, during which time she relied on the contents of her witness statement and tendered documents in support of her case. Being a one sided match, I shall replicate in toto the said witness statement here for ease of reference.

#### **WITNESS STATEMENT OF THE PLAINTIFF**

1. My name is Elizabeth Efua Brown. I live at Kasoa in the Central Region of the Republic of Ghana.

2. That on or about 8th January, 2012, I purchased a parcel of land from the Internal Revenue Service (now Ghana Revenue Authority) for a valuable consideration. Evidence of payments and official receipts issued by the Internal Revenue Service are attached and same marked as **Exhibit EB 1** series.

3. That an indenture was executed between the Internal Revenue Service (now Ghana Revenue Authority – GRA) and my good-self describing the said parcel of land as all that piece of land measuring an approximately area of 0.16 acre known as Plot no. 64 situated at Opeikuma Residential Area Layout in the Awutu Senya District in the Central Region of the Republic of Ghana bounded on the North- West by Plot No. 26A measuring 100 feet more or less, on the South-West by 40 feet road measuring 70 feet more or less , on the South-East by plot no. 66 measuring 100 feet more or less and on the North-East by Plot No. 63 measuring 70 feet more or less, which that piece of parcel of land is more particularly delineated on the plan attached hereto and thereon shown PINK. Evidence of indenture is attached and marked as **Exhibit EB 2**.

4. That I took possession of the property (bare land) and immediately bought 3000 blocks, a trip of sand, a trip of stones onto the parcel of land to commence her project. Evidence of indenture is attached and marked as **Exhibit EB 3**.

5. That for reasons beyond my control, I could not continue the project till somewhere in 2018 when I decided to visit the property. That to my outmost surprise the land was being developed by a trespasser, the Defendant.

6. That all efforts to get the Defendant to stop the development on my land has proved futile. The Defendant unless restrained will continue with his or construction to the detriment of the Plaintiff.

7. That the Defendant won't stop these acts of trespass unless Defendant has been ordered by this Honorable Court.
8. That I am the true owner of the said parcel of land described above.

#### GOOD TITLE TO IMMOVABLE PROPERTY

**Section 64 (1) of Lands Act, 2020 Act (1036) defines a good title as**

- a. An enactment;**
- b. A grant, vesting order or conveyance from the State;**
- c. A final judgment of the court of competent jurisdiction; or**
- d. A grant, an acquisition under customary law, conveyance, assignment or mortgage which is at least thirty years old and establishes that a party is entitled to convey an interest in the land.**

From the whole evidence adduced before this court by the plaintiff, one can conclude that the plaintiff has successfully and sufficiently adduced enough evidence to support his claim of ownership of the disputed land and there is no evidence before me establishing any superior title. She narrated to my satisfaction the root of her title, tendered evidence of the purchase via receipts executed marked Exh EB1 and tendered an indenture marked Exh EB2. On the preponderance of probabilities therefore, I enter judgment in favor of plaintiff on all the reliefs endorsed on his claim. Specifically, having proved title to all that piece of land measuring an approximately area of 0.16 acre known as Plot no. 64 situated at Opeikuma Residential Area Layout in the Awutu Senya District in the Central Region of the Republic of Ghana bounded on the North-West by Plot No. 26A measuring 100 feet more or less, on the South West by 40 feet

road measuring 70 feet more or less , on the South-East by plot no. 66 measuring 100 feet more or less and on the North-East by Plot No. 63 measuring 70 feet more or less, which that piece of parcel of land is more particularly delineated on the plan attached hereto and thereon shown PINK, I hereby declare title to same in favor of the plaintiff. This being so, I hereby declare that the defendant who has entered upon the land and has engaged in developing same is in trespass and is hereby perpetually enjoined by himself or by any person claiming through him from ever dealing with the land subject matter of this cause. In addition, the court awards the plaintiff general damages in the sum of ghc2000 and cost in the sum of ghc3000.

**(SGD.)**

**H/H MALCOLM EWOENAM BEDZRAH, ESQ.**

**(CIRCUIT COURT JUDGE)**