

**IN THE CIRCUIT COURT HELD AT ODUMASE – KROBO ON 17<sup>TH</sup> APRIL, 2023**  
**BEFORE HIS HONOUR FRANK Y. GBEDDY ESQ.**

**SUIT NO.A1/06/2018**

**ERIC EKPE**

**PER HIS LAWFUL ATTORNEY RUDOLF**

**KWABLA EKPE OF TEMA.**

**VRS**

**ALHAJI SIDI YAKUBU OF AGBOM,**

**ODUMASE – KROBO.**

**JUDGMENT DELIVERED**

The claims of plaintiff against the defendant are;

- a. The declaration of title and ownership to the piece of land measuring 17ft at Odumase – Krobo Agbom as same is bounded by the following properties;
  - i. Agbom street at the North
  - ii. Property of Akutei Lawer on the East

- iii. The property of Kwame Boku in the South iv. Tetteyku's property in the West where the trespass of defendant occurred.
- b. Damages of Ghc10,000.00 for trespass and
- c. Cost

### **PLAINTIFF'S PLEADING**

He is the lawful Attorney of Eric Ekpe the late father. His averment is that it was his late father who acquired the litigated land in 1978 and that the land which measures 60ft by 100ft is at Agbom Odumase-Krobo. The plaintiff mentioned the same boundary neighbors and properties as in the writ of summons. The attorney alleged that the defendant who shares boundary with him in trespass entered his late father's land by 17ft at the northern part and built a self-contained house on same. Plaintiff attorney's averment is that the disputed land is never for the defendant. He further alleged that his late father Eric Ekpe purchased the land from one Noah Akwetey Apotsi of Akwetey family of Salasi Agormanya. The attorney averred that at a meeting, the defendant's representative signed to demolish the structure defendant place on the 17ft trespass portion before the end of June 2017 but same failed to do as agreed.

### **COUNTER – CLAIMS OF DEFENDANT**

- a. Declaration of title and recovery of possession of a piece of land attached to H/NO. H172/2 Agormanya Agbom which compound is measured to wit;
  - i. 100ft at North East – boundary with Akuteye's land
  - ii. 100ft , North West – boundary with Otsame Kwesi's land
  - iii. 76ft, South (Sanitary site) Now Motor road iv. 115ft, South West by Tetteh Amekudzi's land

The defendant stated that the litigated portion attached to the compound land is registered as NO, RE. 134/2003/LVB/ER554/2003.

- b. Defendant prayed for an order to declare plaintiff's suit statute barred.
- c. He prays for perpetual injunction to restrain plaintiff, his agents, assigns, relatives, representatives and anyone claiming through plaintiff on the defendant's enjoyment of the litigated piece of land
- d. General damages for trespass.

### **DEFENDANT'S PLEADING**

Defendant's averment is that the disputed land forms part of the land of the H/NO. H172/2 at Agormanya Agbom. Defendant averred that same land is purchased from one Esawu Kwame Boku who is retired and no more in the jurisdiction. Defendant's further averment is that his vendor Esawu Kwame Boku acquired the litigated land from one Tetteh Adzewu Narh in 1975 and same put up his own housed on same land. See the site plan attached; Exhibit 3A and Exhibit 4. Defendant went on that his vendor who purchased his land since 1973, put up his own house on same and had peaceful enjoyment of the property until he went on retirement and same sold the property to defendant in 2000. Defendant alleged he went in to possession of the property and also caused site plan to be made and registered vide No; RE134/2003 LVB/ER554/2003. Defendant further alleged that he made a building plan approved by the Statutory Planning Committee of Manya Krobo District at Odumase krobo in 2003. The defendant alleged he even fell trees planted by his vendor on the boundaries to prevent nuisance and had since been on the land without the challenge of anyone. The defendant stated his vendor purchase the litigated land in 1973 before the alleged purchase of plaintiff's father in 1978. Hence

taking the years in to consideration even if defendant adversely possessed the land, the defendant allegedly stated that plaintiff is statute barred.

**PROOF:** The proof is on the one who alleged or averred to establish same on the balance of probabilities.

**ISSUES.**

1. Whether or not the plaintiff's plot of 17ft had been trespassed unto by defendant.
2. Whether or not the defendant has valid document covering the land.
3. Whether or not plaintiff's land shares boundary with defendant.
4. Whether or not the defendant promised to demolish the trespass building at the end of June 2017.
5. Whether or not plaintiff is entitled to the reliefs sought.

**BY COURT,** before the evidence, check the following;

- i. Motion to dismiss the suit
- ii. Plaintiff's affidavit in opposition  
Support/opposition
- iii Facts of plaintiff

**EVIDENCE OF PLAINTIFF**

He is called Rudolf Ekpe Kwabla the Attorney of Mr. Eric Ekpe and a biological son of same principal. He stated that his father purchased same in 1978 and upon registration he put up a house on part of the land with measurement of 100ft by 60ft. plaintiff stated that the land shares boundary with defendant's vendor Esau Kwame Boku who has a

building on it. Plaintiff stated that the defendant later demolished part of his building and made a reconstruction which unlawfully entered the land of plaintiff by 17ft. He went on that on the 19<sup>th</sup> of March 2017 the defendant agreed with the family of Ekpe to vacate the trespassed 17ft land by 30<sup>th</sup> of June 2017 in a memorandum of understanding. See Exhibit REK1 and REK2. Plaintiff stated that defendant refused to give up the portion. Same Exhibit REK1 and REK2 are marked by plaintiff as Exhibit A and B.

**CROSS EXAMINATION BY COUNSEL OF DEFENDANT TO PLAINTIFF.**

The plaintiff stated that by Exhibit 'F' or '6' the disputed portion is the foundation of the Exhibit 'F' or '6' which is the defendant's house. The plaintiff stated that the defendant placed a foundation on the trespass portion just 4 years ago when plaintiff's blind father and mother were still in the house on the land. The plaintiff who stated that he was teaching in Tema within the 4yrs also visited his parents in the house but failed to stop the encroachment. The plaintiff stated that he did not visit his parents within the 4yrs.

Q: At this time you visited your father.

A: No.

But on further cross examination, he agreed he visited his parents on the trespass land.

Q: For the whole 4yrs, did you visit your father?

A: I visited my father.

Q: And you allowed the trespass on the land just to apply for same to be pulled down now?

A: Yes.

The plaintiff stated that he filed a power of attorney and site plan. The plaintiff stated that he provided his own surveyor to work on the land for him. The plaintiff also stated that his uncle who sold the land did not sell the litigated portion to defendant since 1970. Counsel of defendant stated that the Exhibit 'A' and 'B' which are the memorandum and indenture discloses no interest in the 17ft alleged trespassed portion.

### **EVIDENCE OF PW1**

He is called Francis Kpogo whose uncle is the vendor the late Esau Kwame Boku. PW1 stated that he stayed with his uncle, the vendor for ten (10) years on the litigated land at Agormanya Agbom. The witness also knows the father of plaintiff called Mr. Yaovi Ekpe as an in-law to Esau Kwame Boku. PW1 went on that he is aware the father of plaintiff Mr. Yaovi Ekpe always complained of the trespass onto his land by the defendant and he called for amicable settlement. PW1 also stated that his uncle Esau Kwame Boku sold his house including a plot of land to the defendant. He further stated that the defendant, who demolished part of the house, reconstructed same but at the end of it trespassed onto 17ft portion of Mr. Yaovi Ekpe's plot. PW1 told court that the defendant approached him with the writ of court initially and suggested amicable settlement. PW1 went on that due to this amicable settlement decision, he came to Otsiami Kofi of Agbom to assist in the settlement. PW1 stated that the defendant Alhaji did not submit to the arbitration hence the continuation of the case at the court.

### **CROSS EXAMINATION BY COUNSEL OF DEFENDANT TO PW1**

PW1 stated that the vendor of plaintiff Esau Kwame Boku was his paternal uncle. The PW1 also stated that he is one of the witnesses of the transaction on the litigated land. See the site plan or the indenture. The PW1 stated that in his 9<sup>th</sup> year of staying with the vendor Esau Kwame Boku he heard of this litigation. PW1 also stated that the vendor left

the premises within 3 days of selling same. The PW1 further stated that the vendor gave power of attorney for someone to sell the property for him. The PW1 also stated that he left the house about 20 years ago and therefore has no knowledge whether there was settlement or not. The defendant's counsel stated that the litigated portion is for the late Esau Kwame Boku and same had no interest in the portion.

A: It is not true.

The PW1 stated that he is not related to the father of plaintiff.

Q: The plaintiff's principal is your brother?

A: No

Q: What is the relationship between you and the principal?

A: I am not a relative of the principal since Esau Kwame Boku is my uncle.

Q: You know that defendant's vendor sold the house with the land?

A: I know that he sold only the house but not the land.

**BY COURT**, compare to PW1's witness statement where he stated that his uncle sold the house including a plot of land to the defendant. PW1 stated that it was a mistake for him to state that it was only the house which was sold.

A: It is a mistake since I was not the one who sold the estate.

The counsel of defendant stated that since the 20's when Esau Kwame Boku was on the land, the plaintiff's father did not send him to court on trespass when he was alive.

Q: To your notice Mr. Ekpe did not send the vendor to court for trespass when the vendor was alive?

A: I cant tell.

**BY COURT:** The plaintiff's father failed to take any action against the vendor of defendant because they were in-laws. But at the demised of the vendor, the plaintiff brought an action against the defendant for trespass.

### EVIDENCE OF DEFENDANT

He is called Abraham Musah Sindi a son of the defendant. He stated that the defendant brought the land in dispute from the late Esau Kwame Boku in 2002. See the Receipt Exhibit '2'. The Attorney also stated that the defendant had registered the land with the Land Commission. See the registered title Exhibit '2a'. The Attorney also stated that a site plan was made and same tendered as Exhibit '3'. The Attorney further stated that the defendant's vendor Esau Kwame Boku stayed in the said house since 1964. See the affidavit tendered as Exhibit '4'. The Attorney stated also that the defendant had not made any extension on the building H/NO. H172/2 of Agormanya Agbom. He further stated that the defendant had a quite enjoyment of the land until recent time when the plaintiff started the trespass act. See the Exhibit '6' the pictures of the house. The Attorney repeated that the portion being claimed by the defendant is part of the land he originally purchased and this portion does not encroach on the land of any one. The attorney also stated that if there is any such trespass it would have been complained of over 50 years ago.



## CROSS EXAMINATION BY PLAINTIFF

Attorney stated that it was Kwame Boku Esau who sold the property. But he again stated that he purchased it from his grandfather who was in Mefe South Tongu District. The vendor Mr. Kwame Boku Esau the late was the Mefe man. The plaintiff also stated that Town and Country Planning measured the litigated plot. The plaintiff also stated that the father of the Attorney sent one Mallam Fari and Musah Brimah to plead with the father of plaintiff to sell out the interest in the 17ft portion to him. The plaintiff stated that on the 19/03/2017 there was a meeting in the house of plaintiff's father where the father of the attorney attended with two (2) people called Yahyah Saley and Mallam Fari. The attorney agreed that this meeting was subsequent to the memorandum meeting which took place on the 19<sup>th</sup> March 2017 but for his father to avoid litigation opted to pay for the alleged portion.

Q: In the same meeting an agreement was made when your father pleaded to my family to sell that portion to him?

A: Yes. Even though my father stated that the litigated portion is part of the total land he purchased, to avoid litigation, he opted to pay for the portion.

The plaintiff stated that the Exhibit '3, 4 and 5 which spell out the interest in the property for the defendant's attorney different give dimensions of same property. The defendant attorney stated that he purchased the land in 2002.

Q: When did your father purchased the house?

A: 2002

The plaintiff also stated that the defendant attorney demolished part of the house of his uncle and trespassed.

Q: You intentionally broke part of my uncle's house in order to trespass?

A: It is not true. We only renovated the mud house.

It is stated by the defendant that there was no permit on the house. The defendant's Attorney stated that he want to rely on the site plan marked Exhibit 4. The attorney also stated that he was not issued any indenture except the site plan.

**BY COURT:** What of Exhibit 3 with the attached site plan and the Exhibit 5 which are indenture and receipt respectively.

The plaintiff also stated that the late principal of the defendant attorney opted to pay Ghc4,000.00 in order to have the case settled.

Q: Your father proposed Ghc4,000.00 in order to have the case settled?

A: I am not aware.

### **ANALYSIS OF FACTS/ LAWS**

The plaintiff and PW1 were in corroboration with the defendant that the late vendor Esau Kwame Boku sold the building attached to land to the principal of the lawful Attorney. But the fact of plaintiff and PW1 is that the defendant made an extension to the building and encroached on 17ft of his land. The plaintiff stated that his father purchased the litigated land which is 0.12 acre at Agbom Agormanya in 1978. See the indenture Exhibit 'B' and the site plan Exhibit 'B1'. The 0.12 acre portion is equivalent to 100ft by 60ft of land. It is allegedly marked in the face of the Exhibit 'B' that the land of the plaintiff is also registered in February 19<sup>th</sup>, 1987 at the Land Registry with NO. 1438/1987/ER 655/83.

The issue is whether or not the litigated 17ft is part of the land of the plaintiff. The defendant denied ever making any extension on his house but he agreed making only renovation on his building. The defendant Attorney also denied ever encroaching on any portion of land of the plaintiff. He stated that the landed property of the H/NO. H172/2 at Agormanya Agbom which shares boundary with that of plaintiff was purchased from his late vendor Esau Kwame Boku in the year 2000. Refer to defendant's pleading. Defendant went further to state that his vendor also took his title from one Tetteh Adzewu Narh in 1973. He further stated that he registered the land with No. RE134/2003 LVB/ER 554/2003. In the Exhibit 2 of defendant, the year of transaction is 2002 even though Exhibit 3 the indenture records 2000. The site plan Exhibit '3a' was made on 15/1/2003. See Exhibit '3a' as attached date of 16/6/73. The Exhibits above reflect the different dates of the transaction between defendant's father and his vendor Esau Kwame Boku and Esau Kwame Boku and his vendor. The defendant who pleaded for limitation clause opted to rely on the Exhibit 4 which belongs to their vendor Esau Kwame Boku. Whereas plaintiff stated that his land is 0.12 acre or 100ft by 60ft, the defendant also stated that the litigated land is 0.23 acre area see the Exhibit 3 indenture. But the attached site plan Exhibit '3a' records 0.22 acre area. The Exhibit 4 has an area of 0.24 acre. The defendant's representative did not categorically mention the total dimension or measurement of his land in his pleading. But in court evidence, he tendered exhibit 2 receipt which captured no measurement of the land. In Exhibit 3, the defendant described the boundary neighbors of his land and categorically stated the approximate measurement as 0.23 acre. But the attached site plan Exhibit '3a' state 0.22 acre area and Exhibit 4 on which defendant relied so much also has an area of 0.24 acre.

Bearing in mind the conflict in the measurement of the exhibits of defendant on the size of his land, the attention of the court is also drawn to the exhibit 'A' memorandum of the plaintiff. In this exhibit the plaintiff's family met the defendant's family. The defendant

sent one Mallam Fari and Musah Brimah to plead with the father of plaintiff to sell out the interest in the 17ft portion to him. It is record that even though the plea failed, it was repeated on the 19/03/2017 at the meeting between the two parties where one Yahyah Sulley and Mallam Fari represented the defendant. The defendant representative stated that the defendant opted to pay on the portion involved to avoid a protracted litigation. In the cross examination of plaintiff to the attorney of defendant, this is what occurred;

Q: In the same meeting an agreement was made when your father pleaded to my family to pay for the litigated portion?

A: Yes, my father, to avoid litigation he opted to pay for the portion.

The plaintiff also prompted the defendant Attorney that his father opted to pay Ghc4,000.00 on the 17ft trespassed portion.

Q: Your father proposed to pay Ghc4,000.00 in order to have the case settled.

A: I am not aware.

### **LAWS OF CONTRADICTION**

In cases such as Tanko Vs Karima [1989 – 1990] 2GLR 189CA, Atadi Vs Ladzekpo [1981]GLR218 C.A and Ankra Vs Ankra[1966] GLR 60, it was held variously that a party who contradicts his own evidence on the issue should not be ignored by court. The court should question the admissibility of that issue or evidence or that exhibit. In this case, the defendant tendered Exhibits such as Exhibit '3', '3a' and Exhibit 4 which gave contradictory dimension or measurement of the disputed land. The court cannot rely on this contradiction to give judgment for the defendant on his pleading of Limitation clause

statute barred. The limitation clause is a remedy which must be benefited when the exhibits tendered are without blame or when they are credible.

The meeting of the plaintiff's family as well as the defendant and his family in 2017 brought a total corroboration between the parties where the attorney also in the above cross examination agreed that his father opted to pay an alleged amount of Ghc4,000.00 for the trespassed but where such an amount is yet to be paid. The defendant also agreed in the memorandum to break down the trespassed structure by the end of 30/6/2017 but to no avail. This and other issues have suspended the court reliance on the limitation clause as well as the registration of defendant's land as pleaded.

On burden of proof, sections 11(1), 11(4), 12(1) and 12(2) of Act 1975 (NRCD323) stated that, the burden is upon the party who avers or asserts to establish what he avers or asserts on the balance of probabilities. Cases such as Osae Vs Adjeifio [2007 -2008] 1GLR@502 SC, Sarkordie vs F.K.A Company Ltd [2009] GBR Pg 77 etc stated that the proof lies with the party who avers or asserts to establish same on the balance of probabilities. At the end of the trial the plaintiff is able to substantiate his averment or assertions against the defendant on the balance of probabilities.

**BY COURT:**

1. I hereby set aside the claims of the defendant but the alleged portion of encroachment (17ft portion) should not be demolished.
2. Instead of demolishing, I hereby order the defendant to pay GHC 7,000 for the trespassed portion.
3. I hereby order the defendant to pay an amount of GHC 10,000 damages to the plaintiff with cost of GHC 3,000.

**SGD**

**H/H FRANK Y. GBEDDY**

**(CIRCUIT COURT JUDGE)**