

IN THE CIRCUIT COURT OF JUSTICE HELD IN HO, VOLTA REGION ON
WEDNESDAY, THE 19TH DAY OF JULY, 2023 BEFORE HIS HONOUR
MR. FELIX DATSOMOR, ESQUIRE, CIRCUIT COURT JUDGE

SUIT NO. C1/5/2022

BETWEEN

QUASHIGA JUSTICE AGBELI

[H/No. GB 171

AGBODOKOPE NEAR JUAPONG]

..... **PLAINTIFF**

AND

JOSEPH AMOAH

TOGBE AHADZI

[BOTH OF JUAPONG]

..... **DEFENDANTS**

J U D G M E N T

In this suit, the plaintiff contended that his late mother, Yawo Ganyo, bought the disputed parcel of land situate at Juapong from the late Chief of Juapong, Togbe Agbohla V, in the year 1995. He described the land as bounded by the respective properties of one T.T. of Adakope, Mr Dzungor, Gameli Agbohla and the proposed road from Dekukope junction to Fear God City.

He added that in the lifetime of his late mother, she moulded about six hundred (600) pieces of blocks on the land before she joined her ancestors and that upon the demise of

his mother, he continued clearing the land whenever it became bushy. The plaintiff later left Agbodokope in search of greener pastures but visited the land occasionally. During one of his such visits, he noticed sometime in 2013 that someone had trespassed onto the land and dug foundation trenches on it. As a result, he and one Zikpuitor Yaovi inquired about those trespassory acts on the land and discovered that it was the first defendant who had carried out the said act of trespass. He and Zikpuitor Yaovi enquired from the first defendant about the building project he was undertaking on the land and the first defendant made it known to them that it was the second defendant who had sold the land to him. The plaintiff went to the second defendant in the company of his sister, (Georgina Agbeli) and her husband (Yao Amuzu) ostensibly to enquire as to why the second defendant sold their late mother's property to the first defendant but the second defendant told them that he did not know anything about the issue. As fate would have it, the plaintiff went back to Ashaiman but visited the land six (6) months later and noticed that the first defendant had used some of his late mother's cement blocks she had moulded on the land during her lifetime to raise a building above the lintel level. The plaintiff thus called on his sister (Georgina Agbeli) and her husband (Yao Amuzu) as well as one teacher Mensah Joe Lovelace Agbeli and they all proceeded to meet the second defendant over the issue but the second defendant maintained his stance that he did not know anything concerning the land. Consequently, the plaintiff reported the matter to the current Chief of Juapong known as Togbe Agbohla VI. Togbe Agbohla VI then instituted investigative committee over the issue. The said committee realized that the first defendant was the one who used the blocks so the first defendant was summoned by Togbe Agbohla VI but he never honoured the summons. As a result, Togbe Agbohla VI advised them to report the matter to the police which he obligingly did and that led to the arrest of the first defendant purposely to ascertain from him as to who sold his (plaintiff's) late mother's land to him. The first defendant mentioned at the police station the second defendant as the one who sold the land to him. The plaintiff testified further

that the first defendant also stated during an interrogation at the Juapong police station that one George, a relative of the second defendant, had earlier unlawfully sold to him a parcel of land and the said land was later recovered from him by the rightful owner so he caused the arrest of the said George by the police and the second defendant bailed George and give a promise that he would replace the land for the first defendant. The plaintiff contended that it was in fulfillment of his said promise that the second defendant gave out his (plaintiff's) late mother's land as replacement for the one unlawfully sold to the first defendant. Flowing from all these, the plaintiff said that Togbe Agbohla VI proposed amicable settlement of the case through arbitration between him and the defendants. He also said that at the arbitration, the second defendant admitted that he gave out his late mother's land to the first defendant and thereby proposed to give him another plot of land in place of his late mother's land but he vehemently refused to accept that proposal. He thus approached the civil altar of this court seeking an order in his favour declaring title in the disputed land in him, recovery of possession of same, perpetual injunction restraining the defendants, particularly the first defendant, whether by themselves, their agents, assigns, etc. from having anything to do with the disputed land henceforth, award of general damages and costs.

On the part of the first defendant, he testified that he bought a plot of land from George Bissi who was then the acting head of Ahadzi family in 2003 and that after the purchase, he erected corner pillars on the land. However, the said corner pillars were removed and destroyed [by unidentified person(s)] so he informed George Bissi about it but George Bissi did not take the matter seriously so he demanded for a refund of the purchase money. George Bissi refused to refund the money to him so he reported the matter to the police at Juapong but the police later referred the case to the second defendant and his elders to settle. The first defendant added that after the matter had been considered by the second defendant and his elders, George Bissi's family took responsibility of the

liabilities that he had occurred as a result of George's action and undertook to give a different plot of land to him (first defendant) and execute a document to cover same for him in the interest of peace. The first defendant said he accepted that proposal and therefore engaged one Louis Adogah as a caretaker of the land and later tasked Louis Adogah to mould cement blocks for him in preparation to commence construction on the land. The first defendant also said that he has been in peaceful occupation of the land without any let or hindrance since 2003. Fast forward, the first defendant testified that the plaintiff summoned him before Togbe Agbohla and whiles that case was pending the plaintiff reported the matter to the police at Juapong. However, the matter was referred back to Togbe Agbohla VI and the second defendant for amicable settlement so Togbe Agbohla VI and the second defendant arbitrated the matter with the help of other elders. According to him, the arbitrators took a decision that since he (first defendant) had already been in peaceful occupation of the land and has constructed a building on it, he should be allowed to enjoy his occupation of same so that the plaintiff would be given a similar plot of land elsewhere for him to develop in the interest of peace. He added that the plaintiff was giving one week to come for the land but has since refused to accept same, hence the instant suit. In concluding his testimony, the first defendant said that plaintiff's late mother never bought the land in dispute as alleged and that she also did not use any cement blocks on the land. He stressed that the land was sold to him by the second defendant.

On his part, the second defendant testified that he was in his house one day when the plaintiff came with a group of people, altogether numbering five, and made a report that they bought a plot of land from Togbe Agbohla but had found someone constructing a building on it. He accordingly assured them that he would investigate the matter but the plaintiff and his people went and reported the matter to the police at Juapong alleging that the first defendant had "stolen" plaintiff's late mother's moulded blocks and used

same to put up a building. According to the second defendant, the plaintiff made further allegations against him at the police station that he (second defendant) was the one who sold the said blocks to the first plaintiff. The police thus invited Togbe Agbohla VI and referred the case to him for amicable settlement. The second defendant testified that the matter was settled by arbitrators who concluded that since the first defendant has been in peaceful occupation of the land since 2003 and has even constructed a building on it, he should be allowed to enjoy his occupation so that a similar land would be given to the plaintiff all in the interest of peace. He also said that the plaintiff was given one week to come for the land but he failed to do so and rather proceeded to court. The second defendant just as the first defendant also contended that plaintiff's late mother never moulded any blocks on the disputed land during her lifetime.

It is clear on the record that the dispute between the plaintiff and the first defendant over who has superior title to the land or who is entitled to same came before the police at Juapong and the said police referred same to the second defendant and his elders to settle same amicably. I believe the police took that step because the matter was essentially a land case which could not properly so-called be settled at the police station. The matter was accordingly considered by the second defendant and his elders including Togbe Agbohla VI and they made a pronouncement on it to wit that the first defendant be allowed to continue occupation of the disputed land because he has already constructed a house on it so that the plaintiff would be given a land at a different location ostensibly to foster peace between the parties. I shudder to say that clearly the arbitrators did not consider the rights of the disputing parties to determine who rightfully owned the land in dispute but rather chose to prioritize the fosterage of peace among the parties over the true owner of the land. Though one cannot dispute the fact that piece is an indispensable commodity, I think that settling such a dispute by considering the merits and the rights of the disputing parties would have rather ensured ultimate peace under the

circumstances and this matter possibly would not have ended up in this court. Moreover, the stance taken by the arbitrators created the impression that the property did not actually belong to the first defendant or that the first defendant did not have title to the land as it were; if not, I believe they would not have made the prioritization of the fosterage of peace between the parties their major consideration. But that notwithstanding, my duty in these proceedings is to ascertain which of the parties, as between the plaintiff and the first defendant, is entitled to the land in dispute. I must state for the records that since both the plaintiff and the first defendant are laying rival claims of title to the disputed land, it behooves each of them to clearly prove to the court their respective root of title, mode of acquisition and overt acts of ownership that they exercise over the land. See *Mondial Veneer (Gh) Ltd v. Amuah Gyedu XV [2011] 1 SCGLR 466*.

Since the instant suit is a civil case and carries with it the same evidential burden as every other civil case, the plaintiff is required by section 11(1) of the Evidence Act, 1975 (NRCD 323) to adduce admissible and credible evidence in support of the reliefs sought. See: *First Eye Ltd v. Jehovah God See Me Herbal Shop & Others [2013-2015] 1 GLR 101*.

Before I venture into resolving the main issues between the parties herein, I need to observe at this juncture that this is an action *inter partes* and the law is that in an action *inter partes*, the duty of the court is limited to defining the rights and obligations of only the adverse parties in the light of the claim, the evidence presented and the existing law. See: *Grumah v. Iddrisu [2013-2014] 1 SCGLR 413 at 427 per Georgina Wood, CJ (as she then was)*.

I recall that in *Owusu v. Tabiri & Another [1987-88] 1 GLR 287 (holding 2)*, the point was made that he who asserts must prove and must win his case on the strength of his own case and not on the weakness of the defence. This implies that the plaintiff who made assertions in proof of the reliefs sought assumed the burden of proof. The burden would be discharged if the plaintiff led evidence to persuade the tribunal of fact that what he

asserts is more probable than not. In other words, the plaintiff was obliged to prove his case by preponderance of probabilities as required by section 11(4) of the Evidence Act, 1975 (NRCD 323). A plaintiff however has no duty to prove his case with arithmetic exactness or beyond reasonable doubt. In explaining the standard of proof, it was held in *Bisi v. Tabiri & Anor [1987-88] 1 GLR 360 (holding 2), SC*, as follows:

“The standard of proof required of a plaintiff in a civil action was to lead such evidence as would tilt in his favour the balance of probabilities on the particular issue. The demand for strict proof... had however never been taken to call for an inflexible proof either beyond reasonable doubt or with mathematical exactitude or with such precision as would fit a jig-saw puzzle...”

From the evidence adduced, the plaintiff is claiming the land alleging that he succeeded his late mother upon her demise and that the late mother acquired the land during her lifetime from the then Chief of Juapong known as Togbe Agbohla V in the year 1995. That is undoubtedly the plaintiff's root of title to the land.

The first defendant traced his root of title to the second defendant by way of purchase and he sought to demonstrate that by tendering a document in that regard marked as Exhibit “1”.

It is the case of the plaintiff that his late mother Yawo Ganyo acquired the disputed land from the late Chief of Juapong in the year 1995. The Exhibit “A” which the plaintiff tendered in evidence is a document showing the terms of the allocation made to his late mother by the said Chief. I have taken pains to examine the said document. I find as a fact that the allocation of the land was made to Yawo Ganyo on 12 August 1995 by Togbe Agbohla and attested to by four witnesses, two for each party to the transaction. The land measures 100 by 100 feet and was allocated to Yawo Ganyo in consideration for the sum of ₵600,000 old cedis. This finding is consistent with the case of the plaintiff. I have also

examined the document that the first defendant tendered at the trial in support of his claim of title to the land. That document was marked as Exhibit "1". The said Exhibit "1" is also indicative of the terms of allocation of the land to the first defendant. It is dated 1st May 2003 and the measurements of the land stated therein is 75 by 75 feet. The allocation as per Exhibit "1" was made by Togbe Ahadzi II and witnessed by three witnesses in all, two for the first defendant (the purchaser) and one for the grantor (Togbe Ahadzi II).

Since the parties are claiming title to one and the same piece of land, it cannot go without saying that the measurements of the land shown on Exhibits "A" and "1" are not the same. The plaintiff maintained throughout the trial that the size of the land is 100 by 100 feet and that is consistent with Exhibit "A". However, when quizzed in cross-examination by the plaintiff, the first defendant gave a different measurement altogether.

One thing is clear that as between plaintiff's mother and the first defendant, the plaintiff's mother was the first to have been allocated the disputed land. She had her allocation in 1995 whereas the first defendant had his in 2003, some eight (8) years apart. So though the equities are equal, the first in time ought to prevail. I concede that both plaintiff's mother and the first defendant did not acquire the land from the same grantor but the fact still remains that at the time plaintiff's mother acquired the land, there was no title left in the land to be conveyed to anybody else including the first defendant by any other person. If any conveyance were to be done at all subsequent to the purchase of the land by plaintiff's mother, then the said conveyance could not be done by any other person save the plaintiff's mother during her lifetime or upon her demise, by her successor. There is no evidence that plaintiff's mother was the one who sold the land to the first defendant during her lifetime and there is also no evidence to show that the second defendant who sold the land to the first defendant was the one who succeeded the plaintiff's mother under custom. If for nothing at all, once plaintiff's testimony that he succeeded his late mother upon her demise has not been controverted in any way by the defendants, then it

goes without saying that once the first defendant did not acquire the land from the plaintiff as customary successor to his late mother, the first defendant cannot claim title to the land. But since by the evidence of the plaintiff his late mother died in the year 2009 and the first defendant bought the land in 2003 not from plaintiff's mother but from the second defendant, then clearly the allocation of the land to the first defendant by the second defendant at the time plaintiff's mother was alive amounted to no valid transfer, grant or allocation of the land at all. That transaction between the first defendant and the second defendant in respect of the land is null and/o void unless there was evidence on record that at the time plaintiff's mother bought the land, her grantor as the then Chief of Juapong did not have capacity to sell the land to her. It must be made clear that when a Chief validly grants a parcel of land to another, any Chief who subsequently succeeds him under custom cannot transfer that same land to another person because there would be no title in the subsequent Chief to transfer to a third party. This is where the principle of law *nemo dat quod non habet* comes to play. That principle simply means that one cannot give what he does not have. See *Aboa v. Keelson; Yimah & Anor v. Keelson (consolidated)* [2017-2020] 2 SCGLR 77.

I recall that the plaintiff and the first defendant called witnesses to testify in their support but that notwithstanding, the reasons heretofore given in this delivery seem enough to declare title to the disputed land in the plaintiff. This conclusion effectively determines the issues set down for determination by the court. For the avoidance of doubt, the issues set down for determination by the court are:

- (i) Jjj
- (ii) Jjj
- (iii) Jjj
- (iv)

From the analysis made so far in this delivery, I find that plaintiff's mother validly acquired title to the land in dispute in 1995 and she was in effective possession and occupation of the land before her demise. Therefore, the plaintiff having succeeded his late mother upon her demise under custom, it goes without saying that he has a valid title to the disputed land. What the court could not find clearly established on record is whether the first defendant used plaintiff's late mother's cement blocks on the land for the building he had begun constructing on it. I will thus put that matter to rest at this point and make no definitive pronouncement on the issue as to whether there was conversion on the part of the first defendant in respect of plaintiff's mother's cement blocks. Issue (iv) is accordingly dismissed for lack of cogent evidence.

Flowing from the above, I hereby enter judgment in favour of the plaintiff against the defendants in the following terms:

- (i) I declare title to the disputed land situate at Juapong and bounded by the respective properties of T. T. Adakope, Mr Dzungor, Gameli Agbohla and the proposed road from Dekukope to Fear God City in the plaintiff.
- (ii) I order the plaintiff to recover possession of the said land from the first defendant.
- (iii) I issue an order of perpetual injunction restraining the defendants, particularly the first defendant, whether by themselves, their agents, assigns, privies and any other person(s) claiming title through any of the defendants from having anything to do with the land in issue [described in (a) above] from henceforth.
- (iv) I award general damages of GH¢3,000 against each of the defendants in favour of the plaintiff.

- (v) Cost of GH¢1,000 is also awarded in favour of the plaintiff against each defendant.

[SGD] H/H FELIX DATSOMOR
(CIRCUIT COURT
JUDGE)

19-07-2023