

IN THE CIRCUIT COURT HELD AT BIBIANI ON THURSDAY THE 20<sup>TH</sup> DAY OF  
JULY, 2023 BEFORE H/H JOSHUA C. ABAIDOO THE CIRCUIT COURT JUDGE

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SUIT No. A1/1/17

STEPHEN KWASI MORGAN

PLAINTIFF

SUING FOR HIMSELF AND ON BEHALF OF

HIS SIBLINGS, HNO. AD 28, KWASI ADDAIKROM

VRS

SAMUEL DANKWA

DEFENDANT

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PLAINTIFF

PRESENT

DEFENDANT

PRESENT

EDEM DIABA HOLDING BRIEF FOR KOFI DIABA FOR THE DEFENDANTS

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**JUDGMENT**

The plaintiff issued a writ against the defendant on 1<sup>st</sup> August, 2016 for the following reliefs:

- a. A declaration that all that parcel of land lying and situate at Kwasi Addaikrom sharing boundaries with Kwasi Okom, Kwadwo Kinto, Bonsu Nkwanta main road and Kwasi Addai main road is the property of the plaintiff.
- b. An Order of recovery of possession of the said parcel of land from the defendant.
- c. An order for perpetual injunction to restrain the defendant, his servants, assigns, agents, workmen and all those claiming title through him from dealing with the said land.
- d. Damages for trespass.

e. Costs.

The defendant in his amended statement of defence counterclaimed for virtually the same reliefs as the plaintiff.

## THE CASE FOR THE PLAINTIFF

The plaintiff in his evidence in chief said that the land in dispute was carved in its virgin state by his late father Paul Kwasi Botha after settling at Kwasi Addaikrom and built a house on the land. Part of the house was affected by a road construction project so the family was relocated to a wooden structure. In the course of time the road construction company left so the plaintiff and his brother by name Kwame Apema built a house at the location where their father's house used to be. He further stated that his late father (Paul Kwasi Botha) granted portions of the land to one Agya Mensah and Tetteh Boateng.

In the course of time and at the instance of the chief of the town Nana Kwakye the plaintiff gave half of the land to the chief in line with custom because the town had grown to the outskirts. The plaintiff also said that he granted portions of the land to the community through the unit committee chairman by name Osei Yaw in the presence of the Krontihene Yaw Peko for the building of a center for weighing children. The plaintiff also granted a portion of the land to Amajaro Company for the construction of a borehole for the community. In the year 2000 the plaintiff granted a portion of the land to the Jehovah Witnesses Congregation of which he is a member and drew a site plan for them, a copy of which was admitted in evidence and marked Exhibit A. The defendant then put a heap of sand on the disputed land and laid adverse claim to it saying that the land was granted to him by one Kwame Peprah the chief of Kwasi Addaikrom. The plaintiff contends that Kwame Peprah has never been the chief of the town and the defendant has never been in possession of the disputed land. He called one witness PW1 Esther Amoako.

PW1 Esther Amoako's evidence largely corroborated the evidence of the plaintiff. She mentioned the names of the first settlers of Kwasi Addaikrom as Opanin Akwasi Addai, Yaw Nkua, Yaw Asante and PW1's biological mother Yaa Akua and added that they were siblings. She stated that Opanin Kwame Peprah came to the town from Boinzan and married her aunt (i.e. the sister of Akwasi Addai) so he did not own any land in the town. She confirmed that the football pitch was constructed by the brother of the plaintiff which became smaller and therefore could not be used by the football team following the construction of a concrete bridge over the Bia River. She further confirmed that her brother Yaw Kwakye was the chief of Kwasi Addaikrom at the time and he got the plaintiff to divide the football pitch into two halves and one half given to the chief which was demarcated into building plots. She PW1 was allocated one of those plots on which she built her house and has been living in it for about 20 years.

PW1 said she knew the defendant as someone who used to follow the Glickstein Company which constructed the road for some wood. She one day saw that a truck load of sand was being offloaded onto the land which the plaintiff had granted to the Jehovah Witness Congregation and her enquiries revealed that the sand belonged to the defendant. The Krontihene then informed them that the land did not belong to the defendant. She also confirmed that the plaintiff granted a portion of the land for the construction of a borehole of which the left over chippings and stones from the drilling of the borehole was taken away by the plaintiff and his siblings for their own use. PW1 also confirmed during cross examination that the Glickstein Company allocated a house to the defendant at the camp.

#### THE CASE FOR THE DEFENDANT

The defendant stated in his witness statement that he acquired the disputed land from Opanin Kwame Peprah who was the then chief of Kwasi Addai Krom and Mr Odei among others in the early part of the 1990s. He further stated that in 2003 Nana Yaw Kwakye who had then succeeded the Opanin Kwame Peprah as the chief of Kwasi

Addaikrom confirmed the purchase of the land and prepared documents of transfer of the land to the defendant. He went further to mention the names of one Ebusuapanin Nana Kwame Gyaben and Teacher Antwi as the people who held the tape to take the dimensions or measurements of the land for him.

The defendant stated that he made grants of portions of the land to one Abubakari Mossi and late Mr. Azumah who put up buildings on those portions of the land. He later returned to the town to find that sisters of the chief were putting up a structure on a portion of the land but in order to avoid any confrontation with the chief he made other grantees put up structures close by to limit the portions taken by the sisters of the chief. He stated further that he granted portions of the land to the community for the construction of a weighing center through the chairman of the Unit Committee by name Osei Yaw and provided wood and roofing sheets for the project. He made another grant of a portion of the land to the community for the sinking of a well.

The defendant further stated that elders of the Jehovah's Witnesses to whom the plaintiff had made a grant of a portion of the defendant's land decided at a meeting with the defendant to atone tenancy to the defendant rather than the plaintiff. The plaintiff interrupted the meeting claiming ownership of the land with insults and threats following which the Krontihene Nana Ntoada III and officials of the Jehovah's Witnesses rendered an apology to the defendant.

The defendant denied depositing cement blocks on the disputed land or ever having been confronted by the plaintiff regarding any cement blocks. He called three witnesses DW1 Efia Kra, DW2 Osei Yaw and DW3 Peprah Antwi.

DW1 Efia Kra described herself as the wife of the defendant's senior driver by name Abubakar Mossi and that at the time the land in dispute was granted by her ancestors to the defendant she was resident at Bonzain. When she returned to Kwasi Addaikrom and needed a place to put up a house she was directed to the defendant who gave her a portion of his land so she built her house there and has been living in that house ever

since without any question from the plaintiff or any other person. She stated that as at the time of making her witness statement she had been living in the house which is on part of the disputed land for 14 years which implies that she has been living there since 2003 or earlier.

DW2 Osei Yaw stated that he became the Unit Committee chairman of Kwasi Addaikrom sometime in 1996. He led members of the committee to the then chief of Kwasi Addaikrom Nana Kwakye Yeboah for permission to build a weighing center at a place that they had found suitable. The chief told them that his family had already granted that place to the defendant so it was no longer under his control or possession. The committee led by him therefore went to see the defendant and his wife for the place to build the center. The defendant granted their request and showed them the place where the center was later built. DW2 stated that among the committee members who went with him to see the defendant and his wife was the plaintiff's younger brother Yaw Peko who was also the Krontihene of the town, one Teacher Arthur, Mr Yeboah, Elder Kwarteng and Mr. Acquah. He stated that even prior to the building of the weighing center it is the defendant who engaged people to weed or clear the place whenever it became weedy and denied that the place belonged to the plaintiff.

DW3 Peprah Antwi stated that the founders of Kwasi Addaikrom namely Opanin Asante, Opanin Yaw Nkoa and Opanin Kwasi Addai were his grand uncles. After their demise DW3's brother was enstooled as the chief of Kwasi Addaikrom named nana Yaw Kwakye. He stated that the father of the plaintiff came to settle at Kwasi Addaikrom where he was given a piece of land by the elders to build his cottage and farm on the land and that the piece of land granted to the plaintiff father is not the land in dispute.

He also stated that the elders of the town granted a piece of land to the defendant to build his house when he came to settle at Kwasi Addaikrom. The defendant requested for another piece of land which was granted him when DW3 was on transfer to

Yaogyem JHS. On his return DW3 inquired and it was confirmed to him that the land was granted to the defendant by opanin Kwame Peprah and Opanin Kofi Nyame who were usufructuaries of the Bonzainhene's stool lands and that the defendant has been in control and possession of the land since then. He asserted that the land in dispute belongs to him (DW3) and his siblings bequeathed to them by their grand uncles and not the property of the plaintiff.

Four issues were set down for trial in addition to any other issues raised by the pleadings as follows;

1. Whether or not the land in dispute is the property of the plaintiff and his siblings
2. Whether or not it was the plaintiff who granted portions of the disputed land to the unit committee and Amajaro Co. Ltd.
3. Whether or not the plaintiff is entitled to his claim.
4. Whether or not the defendant is entitled to his counterclaim.

This court differently constituted set down a preliminary, fundamental legal issue of limitation of the action of the plaintiff based on paragraph 22 of the amended statement of defence which states as follows;

“The Defendant has since 1995, exercised ownership over the land and say that even if the plaintiff had any right to the land, such right has been extinguished by the Limitation Act 1972 (NRCD 54), estoppel and laches.”.

I will first deal with the legal issue of limitation as a preliminary issue.

## THE LAW

Section 10 (1) of the Limitations Act, 1972 NRCD 54 states that

“(1) No action shall be brought to recover any land after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to some person through whom he claims, to that person.”

In the case of **Gihoc Refrigeration & Household Products v Hanna Assi [2005-2006] SCGLR 458** it was held that with the exception of Public lands the Limitations Act applies to all land in the country. This implies that the Limitations Act NRCD 54 applies to the disputed land.

Now while plaintiff states that the virgin forest on the disputed land was broken by his father which passed on to him and his siblings and that he has been in possession since then, the defendant states that he acquired the land in the early 1990s from one Opanin Kwame Peprah who was in charge of the sale of all Bonzain stool lands up to the border with Ivory Coast on behalf of the Chief of Bonzain. During cross examination the defendant asserted that he came to Kwasi Addaikrom between 1997 and 1998.

During cross examination of DW1 Efia Kra it came out that she is a cousin to the late chief of Kwasi Addaikrom Nana Kwakye Yeboah who purportedly signed the site plan filed by the plaintiff and a descendant of the founders of the Kwasi Addaikrom. From the evidence of DW1 the land on which her house in which she has been living since 2003 sits is on a portion of the disputed land and she asserts that she was granted that land by the defendant. This makes it most probable that the defendant has been in possession and exercised acts of ownership of the land since periods prior to 2003.

Now Limitation is a right asserted by a defendant in adverse possession of land for over 12 years (see Dennis Dominic Adjei, 2021, Land law – Practice and Conveyancing in Ghana, 254 – 255). The record shows that this suit was filed by the plaintiff on 1<sup>st</sup> August, 2016. It is therefore clear that even if the defendant had been in adverse possession of the disputed land, it would have been far in excess of twelve years and is therefore caught by the limitation period of 12 years. The plaintiff's right of recovery would have been extinguished and his action for recovery barred by the statute of limitation.

It has been held that the courts in evaluating conflicting traditional evidence are aided by the facts of recent ownership or possession of the property in dispute; that is facts in

recent memory. See cases like Adjeibi Kojo v Bonsie [1957] 3 WALR 257,PC; In re Taahyen & Asaago Stools: Kumanin II v Anin [1988-89] SCGLR 399 and Achoro v Akanfela [1986-87] SCGLR 289.

Also in the case of Hilodjie v George [2005 -2006] SCGLR 974, the Supreme Court in elaborating on traditional evidence held in holding 1 as follows;

“therefore findings and decisions of courts of competent jurisdiction may appropriately qualify as evidence of facts in living memory but evidently in land litigation, proven uninterrupted and unchallenged acts of possession, in the absence of some cogent evidence on record to the contrary, as for example an unreserved acceptance of crucial parts of the other side’s oral history cannot be ignored or denied the deserved weight given to that, in the first place by the clear provision of section 48 of the evidence Act 1975 {1975} NRCD 323. Such acts raise a presumption of ownership.

Section 48 is reproduced here under for the purposes of analysis;

#### **48. Ownership**

- (1) The things which a person possesses are presumed to be owned by that person.
- (2) A person who exercises acts of ownership over property is presumed to be the owner of it.

The evidence led by the plaintiff relating to acts of ownership in the form of granting portions of the disputed land to the Jehovah’s Witnesses Congregation, PW1 and the community were undermined by the evidences of the defendant and his witnesses.

Firstly, a site plan per se does not constitute evidence of title or transfer of interest in land. It identifies a piece of land in terms of its location, boundaries and dimensions.



The site plan exhibited by the plaintiff i.e. Exhibit A purportedly evidencing his grant of a portion of the disputed land to the Jehovah's Witnesses Congregation is not signed and dated by any licensed surveyor or authorized person as required by law. In the case of **NORTEY (No. 2) v. AFRICAN INSTITUTE OF JOURNALISM AND COMMUNICATION & OTHERS (No.2) SC, Civil Appeal No. J4/47/2013, 26<sup>th</sup> February, 2014;-** the Supreme Court said the following;

The plaintiff tendered exhibit A, a site plan which bears the same endorsements as in the writ of summons in apparent proof of his claim to the disputed land i.e. his root of title. Exhibit A is, however, not dated. It is also not signed by the Director of Surveys or his representative. This is contrary to **Regulation 3(1) of the Survey (Supervision and Approval of Plans) Regulations, 1989 (LI 1444)**, which makes it mandatory for plans of any parcel of land attached to any instrument for the registration of such instruments to be approved by the Director of Surveys or an official surveyor authorized in that behalf. This stark infringement of the statutory requirement renders the exhibit A of no probative value as rightly determined by the Court of Appeal. Notwithstanding that the exhibit A was accepted into evidence without any objection, it could not constitute evidence for the purpose for which it was tendered since it infringed LI 1444. This is so because our courts have a duty to ensure compliance with statutes including subsidiary legislation like LI 1444 in this case. See *Republic v. High Court (Fast Track Division) Accra Ex parte National Lottery Authority (Ghana Lotto Operators Association & Other, Interested parties) [2009] SCGLR390 AT 402*

At one point the plaintiff stated that he drew the site plan for the Jehovah's Witness Congregation and at another point he said that the site plan was drawn by the Jehovah's Witness Congregation and was signed by the chief. The said site plan does

not in any way relate to or link the plaintiff as a grantor or owner of land. It is therefore evidentially worthless. The defendant during cross examination stated that the leaders of the Jehovah's Witnesses atoned tenancy to him and this piece of evidence was not undermined in any way by the plaintiff.

Secondly, DW2 Osei Yaw got to know from the late chief Nana Kwakye Yeboah that the disputed land had been granted to the defendant in or about 1996 when he led a team as the Unit Committee Chairman to the chief for land to build the Weighing Center. He confirmed that it was the defendant who granted the Unit Committee a portion of the disputed land on which the Weighing Centre was built. He asserted that the father of the plaintiff did not own the disputed land.

DW3 Peprah Antwi is the brother of the late chief Nana Kwakye yeboah. During his cross examination the following transpired;

Q: In Paragraph 4 of the witness statement of the defendant he said that one of the people who held the tape for the land to be measured for him is Antwi which is you. Do you know anything about the site plan marked SD1 which is attached to the affidavit in opposition to my motion for injunction filed on 29<sup>th</sup> September, 2016?

A: Yes, I know. Because you knew that the site plan filed by the defendant was genuine you went to the new chief Nana Kwakye Yeboah II to come to court to testify in your favour in this matter but he declined saying that he will not do that because the land belongs to him and testifying in your favour will mean that he is transferring or giving his property to you.

Q: Because Nana Kwakye knows that the land in dispute belongs to me when I gave part of the land to the Jehovah's Witnesses congregation and they prepared a site plan i.e. Exhibit A, and sent it to him for endorsement he signed it.

A: Nana Kwakye is not the one who signed that site plan. That site plan was prepared after the death of Nana Kwakye.

Q: You said here that Nana Daniel Mensah a.k.a Nana Kwakye Yeboah II said he'll not testify as a witness for me to give his property to me. I am asking you whether the land in dispute belongs to your family or to the defendant.

A: The land belonged to my family but we've granted it to the defendant.

Now DW2 being the said Unit Committee Chairman is a material witness in the determination of which of the parties granted the land for the building of the Weighing Centre and his testimony under oath is definite that the land was granted by the defendant. DW1 a cousin of the then chief and wife of the defendant's driver testifies that she was granted a portion of the disputed land by the defendant at the time which corroborates the time that DW2 got to know that the disputed land had been granted to the defendant.

DW3 the brother of the late chief confirms that the disputed land was granted to the defendant by his family and further alleged that Exhibit A was procured fraudulently.

In **Dagadu and Others v. Addy and Another [1991] 1 GLR 316** it was held that a party who sues for trespass and for perpetual injunction automatically puts his title in issue and would be required to prove it by the preponderance of probability.

I am convinced on all the evidence before me and on the preponderance of probabilities that the plaintiff has failed to prove his case on all the issues raised.

I hold that;

1. the land in dispute is not the property of the plaintiff and his siblings
2. It is the defendant and not the plaintiff who granted portions of the disputed land to the Unit Committee and Amajaro Co. Ltd for the Weighing Center and well/borehole respectively.
3. The plaintiff is not entitled to his claim.
4. The defendant is entitled to his counterclaim.

## DECISION

Judgment is entered for the defendant for;

- a. Declaration of title and recovery of possession of all that piece or parcel of land lying and situate at Kwasi Addaikrom sharing boundaries with Kwasi Okom, Kwadwo Kinto, Bonsu Nkwanta Main Road and Kwasi Addaikrom Main Road.
- b. Perpetual Injunction restraining the plaintiff, his agents, servants, privies, assigns, workmen and anyone claiming through him from dealing in any way with the said land.
- c. General Damages of GHS 35,000
- d. Cost of GHS 15,000

The case of the plaintiff is dismissed.

**SGD**

**JOSHUA C. ABAIDOO**