

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON  
MONDAY THE 3<sup>RD</sup> DAY OF JULY, 2023 BEFORE HER HONOUR ENID  
MARFUL-SAU, CIRCUIT COURT JUDGE

---

SUIT NO:C1/60/2018

FRANK KWADJO MAWUENYEGAH

H/NO. UNNUMBERED

OLEBU, AMASAMAN

...

PLAINTIFF

VRS.

MAVIS SACKY

OF ACCRA

...

DEFENDANT

---

---

*PARTIES: PLAINTIFF PRESENT*

*DEFENDANT PRESENT*

*COUNSEL: RAPHAEL ALIJINA ESQ. FOR PLAINTIFF ABSENT*

*NII KPAKPO SAMOA ADDO ESQ. WITH JOSEPH WELLINGTON*

*BLAY ESQ. EDINAM AMEKPLEAME ESQ. FOR DEFENDANT*

*PRESENT*

---

## JUDGMENT

---

Plaintiff commenced this action by a Writ of Summons and Statement of Claim filed on 13<sup>th</sup> July, 2018 claiming against Defendant the following reliefs:

- a) "Declaration of title to all that piece or parcel of land situate, lying and being at Ayawaso-Accra containing an approximate acres of 0.32 Acre's or 0.13 Hectare more or less and bounded on the North-East by a proposed road measuring 71.0 feet more or less, on the South-East by Lessor's land measuring 203.3 feet more or less and on the South West by a proposed road measuring 70.1 feet more or less and which said piece or parcel of land is registered at the Land Title Registry Accra as ALL that piece or parcel of Land in extent 0.129 hectare (0.320 of an acre) more or less situate at Ayawaso in Accra.
- b) Recovery of possession of the disputed land.
- c) An order for perpetual injunction restraining defendant herein, her agents, assigns, workmen representatives, etc from interfering with plaintiff rights of title to the land which is the subject matter of this suit.
- d) General damages for trespass."

It is the case of Plaintiff that he is the bonafide owner of the land in dispute which he acquired in 2014 from Nii Tettey Kodjo II, Chief of Ayawaso and lawful representative of the Nii Ayi Kushie Family of Ayawaso. Plaintiff says that he has a valid indenture to the land and a Land Title Certificate numbered GA 50889. He says that he has commenced construction on the land and in recent times the Defendant has encroached on the land claiming ownership of same.

Defendant entered Appearance personally on 25<sup>th</sup> July, 2018 and indicated her name and address as follows:

**“Mavis Charwey**

**H/No. B182/1**

**Mallam”**

On 31<sup>st</sup> July, 2018, defendant filed a Statement of Defence and Counter Claim. On 5<sup>th</sup> October, 2018, Plaintiff filed a notice of appointment of Solicitor together with a Reply and Defence to the Counterclaim. No step was taken in this matter until 21<sup>st</sup> June, 2019, when Counsel for Plaintiff filed a Notice of Intention to Proceed. I note that though the Writ of Summons and Statement of Claim were not amended, most of the subsequent processes filed bear the name of Defendant as “Mavis Charwey”. This act however is not akin to an amendment, therefore as things stand, the name of Defendant is as it appears on the Writ of Summons and Statement of Claim. Defendant filed a notice of appointment of lawyer on 19<sup>th</sup> August, 2019.

This court differently constituted on 20<sup>th</sup> September, 2019, set down the following issues for trial:

1. Whether or not Plaintiff acquired the land in dispute from Nii Ayi Kushie Family of Ayawaso.
2. Whether or not Plaintiff registered the land in dispute.
3. Whether or not Defendant is caught by acquiescence.
4. Whether or not Plaintiff and Defendant acquired the same parcel of land.
5. Whether or not Plaintiff is entitled to his claim.
6. Whether or not Defendant is entitled to her counterclaim.

**Additional Issues**

7. Whether or not Defendant acquired the land situate, lying and being at Ayawaso from Nii Ayi Kushie family of Ayawaso in Accra.
8. Whether or not Defendant has a valid indenture on the said land."

I am inclined to make preliminary remarks about the record of this case before I proceed to determine the issues as set down. This court differently constituted made an order for the parties to file their Witness Statements and Pre Trial checklists on 20<sup>th</sup> September, 2019. Plaintiff complied with the orders and filed his Witness Statements on 3<sup>rd</sup> October, 2019. Defendant however failed to comply with the orders. On 24<sup>th</sup> June, 2020 when counsel for Defendant appeared before this court, she prayed for leave to file the Witness Statement for Defendant, an order was made for her to do so within 14 days with the case being adjourned to 22<sup>nd</sup> July, 2020. On the return date, Defendant together with her counsel were absent without excuse and the orders of the court had not been complied with. Accordingly, the court proceeded to strike out the Amended Statement of Defence and Counterclaim filed by Defendant in accordance with Order 32 rule 7A(3)(b) which provides as follows:

*"(3) Where a party has failed to comply with any of the directions given at a case management conference or a pretrial review or both, the Judge may make any of the following orders:*

*(b) strike out the defence and counterclaim as the case may be, if the non complying party is a defendant;"*

Case Management Conference proceeded, and the case was adjourned for hearing. On 16<sup>th</sup> September, 2020, Plaintiff gave his evidence in chief and counsel for Defendant's brief being held by Sika Abla Addo Esq. commenced cross examination. She prayed to seal the mouth of Plaintiff to continue cross examination at the next adjourned date. The case was accordingly adjourned to 26<sup>th</sup> October, 2020. On the said date a different lawyer, Richard Nkrumah

Amos Esq. holding brief for substantive counsel on record appeared and sought to move two applications filed by Defendant pursuant to the inherent jurisdiction of the court. This court declined jurisdiction to hear the applications noting that it had no such inherent jurisdiction and therefore ordered that hearing proceeds. The said counsel before the court indicated that he was only instructed by his senior to move the application and on this basis, Defendant was obliged an adjournment for continuation of cross examination at the next adjourned date. Defendants filed an application for leave to file an interlocutory appeal which was granted on 11<sup>th</sup> November, 2020. An application for stay of proceedings was refused by the court on 16<sup>th</sup> December, 2020 with the case being adjourned for continuation of hearing. On the return date, which was 24<sup>th</sup> February, 2021, yet another counsel by name Jacob Odame Baidoo Esq. appeared holding brief for substantive counsel on record. Yet again, he indicated that his senior had given him instructions to bring to the attention of the court that an application for Stay of proceedings had been repeated at the Court of Appeal. When counsel was asked to proceed with cross examination, he indicated that he had no such instructions from his senior. Accordingly, Plaintiff and his witness were discharged with the case being adjourned for Judgment.

I must state that the effect of the practice of 'holding brief', that is, when counsel, mostly a junior announces appearance for a senior who is absent, is that such counsel is presumed to have full briefing and authority to do the case. The fact that a counsel holds brief of another does not mean he is stripped of the right to consider and act on legal issues arising out of the matter in which he represents a party in a court. Once in court, the presumption is that he/she is seized of the matter. In the Nigerian case of *MOHAMMED & ANOR. V STATE (2015) LPELR-25694(CA)* the court held that:

*“It is the law, as has been submitted by the learned counsel for the respondent), that any counsel who announces that he is holding brief for another counsel is presumed to be in possession of the facts and law regarding the case, and has the full authority of the counsel, whose brief he holds.”*

Thus, any lawyer holding the brief of another is deemed to be the counsel in the case. The instructions of a substantive counsel to another holding brief are not mandatory and binding on the court and is not a satisfactory reason to warrant an adjournment.

That being said, on the return date of 14<sup>th</sup> April, 2021, it was brought to the attention of the court that the matter had been stayed by the Court of Appeal on 29<sup>th</sup> March, 2021. The case was accordingly adjourned sine die. On 21<sup>st</sup> June, 2023, noting that the Appeal had been dismissed, the case was adjourned to today, 3<sup>rd</sup> July, 2023 for Judgment which I shall now proceed to consider on its merits.

It is trite that in a civil case where a party sues for declaration of title to land, the onus is on him to prove on a balance of probabilities ownership of the land in dispute.

*See.*

- *ADWUBENG V. DOMFEH (1996-1997) SCGLR 660;*
- *JASS CO LTD & ANOR V. APPAU & ANOR (2009) SCGLR 265 AT 271;*
- *NORTEY (NO 2) V AFRICAN INSTITUTE OF JOURNALISM AND COMMUNICATION & ORS (2013-2014)SCGLR 703 AT 724.*

It is also provided in the **EVIDENCE ACT, 1975 (NRCD 323)** Sections 11 and 12 as follows:

*“11(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence. (See. FOSUA & ADU-POKU VRS DUFIE (DECEASED) & ADU-POKU MENSAH [2009] SCGLR 310)*

*12(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.*

*12(2)“Preponderance of the probabilities” means that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence.”*

In the case of **ASANTE-APPIAH VRS AMPONSA ALIAS MANSAH [2009] SCGLR 90** it was held as follows:

*“The law is well established that where a party’s claims are for possession and perpetual injunction, he puts his title in issue. He thereafter assumes the onus of proving his title by a preponderance of probabilities, title any party who claims declaration of title to land.”*

Plaintiff testified that he acquired the land in dispute in 2014 from Nii Tettey Kodjo II in 2014. According to him, he was given two receipts which he tendered as *Exhibits A* and *A1*. He testified that when he visited the land, it was bushy and swampy with no development on it. He stated that he went with a surveyor named Seth Gborgla to survey the land and he prepared a site plan for him which he used to conduct a Search at the Lands Commission. According to him, the Search revealed that the land was affected by a Statutory Declaration executed by the former head of the Nii Ayi Kushie family. He testified that he also wrote a letter to the Director of Urban Roads to find out whether the land was affected by any road and received a response. The Search was tendered as *Exhibit C1* and the letter and response were tendered as *Exhibits D* and *D1*. According to him, he purchased gravels

and stones to fill the land. He tendered photographs of the land as *Exhibits E series* and *Exhibit F series*. He testified that he commenced construction on the land and built a fence wall. According to him, when he started mobilizing materials for construction, Defendant reported him to the police who stopped him from carrying out further works on the land. He testified that he did a search on the land, and nothing showed that Defendant or anyone else had acquired the land. He stated that adjoining landowners indicated to him that the land was the property of his grantor's family. He testified that he registered the land and when he applied to do so, a publication was made in the Spectator Newspaper, but Defendant did not object to the registration. He tendered as *Exhibit B1* the Land Certificate and *Exhibit H* the newspaper publication.

PW1 was Seth Gborla. He testified that he got to know the land in dispute when he visited the land with Plaintiff and three other persons in 2014. He testified that he went unto the land to survey the land in order to take data to prepare a site plan. He stated that the land was bushy and there was no building on it. According to him he prepared the Site plan and gave it to his boss, one E.K. Ziwu to sign.

The evidence of Plaintiff and PW1 stand uncontroverted. It is clear from the evidence adduced before the court that Plaintiff conducted his due diligence and purchased the land in dispute in the year 2014. It is apparent from the evidence that Plaintiff took possession of the land and registered his interest therein with a Land Certificate dated 16<sup>th</sup> September, 2016 being issued to him. The Land Certificate was tendered as *Exhibit C*.

Section 137(1) of the **LAND ACT, 2020 (ACT 1036)** provides as follows:



*“Unless otherwise provided in an enactment, the registration of an instrument under the land title registration provisions of this Act constitutes actual notice of the instrument and of the fact of registration to all persons and for all purposes, as from the date of registration.”*

Aside the land certificate, there is indeed before this court photographs of the State of the land in dispute, there is also *Exhibit H*, which is a newspaper publication under the now repealed *Land Registration Law, 1986 (PNDCL 152)* dated 17th October, 2015 which published the details of Plaintiff and his land under item number 79. All of these individual acts constitute acts of possession and ownership and constitute notice to all including the Defendant of Plaintiff’s rights exercised over the land. In the case of **BROWN VRS QUARSHIGAH [2003-2004] SCGLR 930** it was held as follows:

*“...the rights of a registered proprietor of land acquired for valuable consideration or by an order of a court shall be indefeasible and shall be held by the proprietor together with all privileges and appurtenances attaching thereto free from all other interests and claims whatsoever. An indefeasible title meant a complete answer to all adverse claims on mere production of the certificate. However, an indefeasible title was subject to overriding interests such as stated in section 46(1)(f) of the Law...”*

Also, in **IN RE AGBENU (DECD); AGBENU V AGBENU [2009] SCGLR 636** it was held as follows:

*“...registration at the Land Title Registry by the defendant-appellant of the purported documents of title to the disputed property per se, did not necessarily establish the validity of title to the disputed property.”*

It is trite that a document purporting to pass title could not validly be relied upon unless it has been registered. There is evidence to show that the land was duly registered in accordance with the provisions of the law which then existed i.e., P.N.D.C.L. 152. Accordingly, the certificate raised only a rebuttable and not a conclusive presumption of Plaintiff's title. It is trite that fraud vitiates everything. However, from the evidence on record, the Land Certificate of Plaintiff which confers legal title of the land in dispute on him has not been impeached. There is both documentary and oral evidence in support of Plaintiff's case and the evidence on record does not challenge the validity of Plaintiff's registered title in the land in dispute. In the instant case, *Exhibit C* which is the Land Certificate tendered by Plaintiff points to the high probability that the disputed land is owned by Plaintiff. Therefore, having regard to the totality of the evidence led which include overt acts of ownership Plaintiff exercised over the land as well as the documentary evidence, the veracity of which is undisputed, I find that it has been proven by Plaintiff that he has a legal title to the disputed land. I therefore enter judgment in favour of Plaintiff against Defendant for the reliefs endorsed on the Writ of Summons. I award General Damages of Three Thousand Cedis (GH¢3,000.00). Costs of Three Thousand Ghana Cedis (GH¢3,000.00) is awarded in favour of Plaintiff against Defendant.

**H/H ENID MARFUL-SAU**  
**CIRCUIT JUDGE**  
**AMASAMAN**