

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON THURSDAY THE 23RD DAY OF FEBRUARY, 2023 BEFORE HER HONOUR MAWUSI BEDJRAH SITTING AS A RELIEVING JUDGE DELIVERING ON BEHALF OF HER HONOUR ENID MARFUL-SAU, CIRCUIT COURT JUDGES

SUIT NO:C1/43/2019

KWAMINA AWULLEY LARTEY
SOWUTUOM ...
PLAINTIFF

VRS.

1.MADAM ABIGAILN ADJEI
2.LINDA OSEI KOKOFU ...
DEFENDANTS

JUDGMENT

By an Amended Writ of Summons and Statement of Claim filed on 21st January, 2020, Plaintiff claims against Defendants the following reliefs:

- a. “A Declaration of title to all that piece or parcel of land situate lying and being at Sowutuom in the Ga Anyaah-Sowutuom Municipality of the Greater Accra Region containing an approximate area of 0.16 acre more or less and bounded on the Noth by a proposed road indicating line A1 to A2, bearing 088°23’, measuring 67.5 feet more or less, on the South by Lessor’s land indicating line A3 to A4, bearing 269°56’, measuring 65.7 feet more or less, on the East by Lessor’s land indicating line A2 to A3 bearing 184°28’ measuring 99.7 feet more or less, on the West by Lessor’s land indicating line A1 to A4, bearing 003°14’, measuring 97.9 feet more or less which is more particularly depicted on the site plan attached hereto the indenture dated 15th February 2007, executed in favour of Plaintiff by the Abola Piam family of Accra, acting per its lawful head Joseph Yaya Addy, where Plaintiff had lived since 1993.
- b. An order for perpetual injunction to restrain the Defendants either by themselves, agents, cohorts, privies, workmen, whomsoever or otherwise howsoever from interfering or dealing in anyway or manner with Plaintiff’s land.

- c. General damages for trespass
- d. Costs including legal fees asses per GBA approved scale of fees.”

It is Plaintiff’s case that somewhere in the year 1990, he purchased land situate at Sowutuom from Col. Addy, the then head and lawful representative of the Abola Pam We, Accra. According to him, he was given an indenture and site plan which later got missing so in 2007, he contacted Joseph Yaya Addy, the present head of family and was issued with a new site plan and indenture covering the land in dispute dated 15th February, 2007. Plaintiff says that he built on a portion of the land and had caretakers at all times on the land and has been in quiet possession for over twenty-six years. According to Plaintiff, in recent times the Defendants have been claiming ownership of the land so he lodged a complaint with the police but the issue was not resolved hence the instant action.

Defendants entered appearance through counsel on 8th August, 2019 and filed a Statement of Defence on 13th December, 2019.

On 5th October, 2020, the following issues were adopted and set down for trial:

1. “Whether or not Plaintiff acquired the disputed land from the Abola Piam family in 1990.
2. Whether or not the Abola Piam family has any interest in the disputed land capable of granting same to the Defendants after the family had sold the land to Plaintiff since 1990.
3. Whether or not Plaintiff is entitled to the reliefs endorsed on his amended writ of summons.”

I am inclined to make preliminary remarks about the record of this case before I proceed to determine the merits of the case. This court ordered parties to file their Witness Statements and Pre Trial-Checklists since 5th October, 2020 however, Defendants failed to comply with the orders of the court after being afforded several opportunities to do so. Accordingly on 2nd February, 2022, this court struck out the Statement of Defence of Defendants in accordance with the rules of court as amended, specifically Order 32 rule 7A(3)(b) and proceeded to adjourn the case for hearing. Hearing therefore commenced on 6th April, 2022. Against this background, I shall now proceed to consider the issues set down together.

It is trite that in a civil case where a party sues for declaration of title to land and damages for trespass and an order for perpetual injunction, 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

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.”

The burden of persuasion is therefore on the party who claims title to land.

Plaintiff testified on 6th April, 2022 that he purchased the land in dispute in 1990 from Col. Addy, the then head and lawful representative of the Abola Pam We, Accra. He stated that was given an indenture and site plan which later got missing so in 2007 he reported the missing document to the Abola Paim family, and a new document was issued for him. He tendered as ‘*Exhibit A*’ a Site Plan and *Exhibit B* an Indenture. He testified that he built on the land since 1991 and put a caretaker on the land who had been in peaceful occupation until 2019 when the Defendants unlawfully entered the land and paid his caretaker off the land. He testified that he went to look for his caretaker and upon finding him, he was informed that the Defendants caused his arrest to the Sowutoum Police, and he was given GH¢5,000.00 to rent a place and vacate the land. He says that he followed up to the police station and he was informed that the Defendants claim to be owners of the land. He testified that he has been in possession of the land for over 30 years without interruption so his grant is absolute.

PW1 was Agbenyega Torgbui Asagba. He testified that he is a representative of the Abola Piam family and he has been in charge of the family land where

Plaintiff's land is situated for over 30 years. According to him, he is aware that Plaintiff acquired the land in dispute in 1990 and has built on it. He testified that at no point in time did it come to his notice that the disputed land has been granted to Defendants or any other person.

PW2 was Moses Awuja. He testified that the Plaintiff is his landlord as he has been on the land since 1991 when Plaintiff built a single room and made him caretaker over the land. He stated that in 2019, some persons came unto the land and asked him to leave but he refused. According to him, four months later, these persons came in the company of police and arrested him to the Sowutoum police station. There he was given an amount of GH¢5,000.00 to rent a place and asked to leave the land so he did. He says that he later explained the situation to Plaintiff after he found him.

PW3 Benjamin Nii Djan Mensah testified that he is the Secretary of the Abola Piam family and that in 1990 the family granted Plaintiff a piece of land. He stated that he is not aware that Plaintiff's land was granted by the family to any other person therefore Plaintiff is the legitimate grantee. According to him, Plaintiff built on the land and placed a caretaker on same.

To begin my assessment of the evidence placed before me, it is important to comment on and evaluate certain pieces of documentary evidence as far as their admissibility is concerned. Under Sections 32 (1) and 32(6) of the **STAMP DUTY ACT, 2005 (ACT 689)**, the law places an obligation on a party who seeks to rely on an instrument which relates to property situated in Ghana intended to be produced in Court as evidence to ensure that same is duly stamped and the appropriate duty paid. This is a mandatory requirement which cannot be derogated from.

It was held in the case of **THOMPSON V. TOTAL GHANA [2011] 34 GMJ 16 SC** that:

'If inadmissible evidence has been received (whether with or without objection), it is the duty of the judge to reject it when giving judgment, and if he has not done so, it will be rejected on appeal, as it is the duty of courts to arrive at their decision upon legal evidence only.'

(See also NARTEY v. MECHANICAL LLOYD ASSEMBLY PLANT LIMITED [1987-88] 2 GLR 314)

I note that *Exhibits A* and *B* fall short of the requirements of Act 689, the said Exhibits are therefore rejected as inadmissible.

I shall therefore proceed to consider the case of Plaintiff based on the pleadings and evidence before the court.

On 6th April, 2022 when Plaintiff and PW1 testified, Defendants were represented by one Ibrahim Sagoe, when afforded the opportunity to cross examine the witnesses, he indicated to the court that he did not have any question. When PW2 and PW3 testified on 9th November, 2022, Defendants together with their counsel were absent though hearing notice was duly served.

It is trite learning that a Party who is aware of the hearing of a case but elects to stay away cannot complain that he was not given a hearing and could only appeal upon the merits of the Judgment.

(See. THE REPUBLIC V HIGH COURT (FAST TRACK DIVISION) ACCRA; EX PARTE STATE HOUSING CO. (KORANTEN-AMOAKO INTERESTED PARTY)(2009) SCGLR 185,

-REPUBLIC V HIGH COURT (HUMAN RIGHTS DIVISION) ACCRA; EX-PARTE JOSEPHINE AKITA (MANCEL-EAGALA & ATTORNEY GENERAL INTERESTED PARTIES) (2010) SCGLR 374),

-GHANA CONSOLIDATED DIAMOND LTD V. TANTUO & ORS (2001-2003)2 GLR 150)

The entire case of Plaintiff therefore stands uncontradicted.

The testimony of Plaintiff is that he purchased the land in dispute in 1990 and put PW2 in occupation in 1991. Again, PW1 and PW3 who represent the Abola Piam family testified that the land was given to Plaintiff in 1990 and he has been in occupation since. They both added that the family had not sold the land in dispute to the Defendants or any other person. The undisputed case of Plaintiff is that he has been in peaceful possession of the land for over 30 years until Defendants paid PW2, his caretaker to leave the land in 2019.

In the case of **TWIFO OIL PLANTATION PROJECT LIMITED v. AYISI AND OTHERS [1982-83] GLR 881**, possession was defined as follows:

“Possession in law meant two things: (a) effective physical control or occupation evidenced by some outward act sometimes called de facto possession or detention and was always a question of fact, and (b) legal possession, i.e. possession recognised and protected by law and which was characterised by animus possidendi together with that amount of occupation or control of the entire subject-matter of which it was practically capable and

which was ordinarily sufficient for practical purposes to exclude strangers from interference..."

In **ABBEY V. ANTWI V [2010] SCGLR 17** it was held as follows:

"In an action for a declaration of title to land, the plaintiff must prove, on the preponderance of probabilities, acquisition either by purchase or traditional evidence; or clear and positive acts of unchallenged and sustained possession or substantial use of the disputed land..."

In the instant case, there is no contrary evidence from the Defendants and the evidence of Plaintiff, and his witnesses stand unchallenged. From the totality of evidence before the court, it is clear that Plaintiff acquired the land, the subject matter of this case from the Abola Piam family and put PW2 in possession since 1991. I therefore conclude that the scale tilts in favour of Plaintiff on the balance of probabilities disclosed by evidence on record.

Accordingly, Judgment is entered in favour of Plaintiff. General damages of GH¢6,000.00 and costs of GH¢4,000.00 is awarded in favour of Plaintiff against Defendants.

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