

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:C1/62/18

NAANA TANDOH

HOUSE NUMBER WC55

CHANTAN, ACCRA ... PLAINTIFF

VRS.

1.GLADYS ENTI

HOUSE NUMBER UNKNOWN

ACHIMOTA, ACCRA

2.JONES OFORI ATTA

HOUSE NUMBER UNKNOWN

ACCRA ... DEFENDANTS

JUDGMENT

By an Amended Writ of Summons and Statement of Claim filed on
23rd June, 2020, Plaintiff claims against Defendants the following
reliefs:

- a. “Declaration of title of all that piece of land situate, lying and
being at Achimota Mile 7 containing an approximate area of

0.14 acre or 0.6 hectare and bounded on the North-West by Vendor's land measuring 112.0 feet more or less, on the North-East by proposed road measuring 57.5 feet more or less, on the South-East by Vendor's land measuring 57.5 feet more or less, on the South East by Vendor's land measuring 98.9 feet more or less and on the South-West by proposed road measuring 62.1 feet more or less.

- b. An order directed at the Defendants to remove the metal container they have erected by the Defendants from the Plaintiff's land. *[sic]*
- c. An order directed at the 1st Defendant to remove the new fence wall and erect same on the old boundary line or in the alternative an order to demolish the new fence wall and erection of another in the old boundary line and the cost of construction borne by 1st Defendant.
- d. An order directed at the 1st Defendant for payment of compensation for the loss of use of the Plaintiff's bona fide property.
- e. An order directed at the 1st Defendant for damages for trespass on her 30 feet more or less land.
- f. Any further or other cost deem fit by the honourable court."

Plaintiff says that sometime in the year 2017, she acquired one plot of land situate at Mile 7, Achimota from one Madam Peggy Okine. According to her, she got the land through 2nd Defendant who was

an agent for her grantor. Plaintiff says that she took possession of the land and constructed a fence wall on the boundary between her land and that of 1st Defendant. She says that prior to the sale of the land, 2nd Defendant had erected a metal container on her land which served as a warehouse for 1st Defendant's construction on an adjoining land. According to her, 1st Defendant broke Plaintiff's fence wall under the pretext of creating easy access to convey building materials from the container on Plaintiff's land but in the spirit of good neighbourliness she permitted 1st Defendant. Plaintiff says that 1st Defendant disregarded the boundary and entered about 30 feet into Plaintiff's land and erected a new fence wall with the assistance of armed guards. Plaintiff says that all efforts to get Defendants to remove the container proved futile. It is the case of Plaintiff that she has suffered hardship for 3 years as Defendants have refused to remove the container to enable her develop her land. She therefore claims the reliefs indorsed.

1st Defendant filed an Appearance through counsel on 9th August, 2018 and an Amended Statement of Defence on 29th June, 2020. She contends that she purchased the land from 2nd Defendant and at the time, 2nd Defendant granted her the land, he had already walled same and placed a container thereon. According to her, she was given an indenture dated 12th February, 2016 from 2nd Defendant. She says that she did not make any arrangements with Plaintiff to break down her wall to rebuild same. She indicated

that she never had any interactions with the Plaintiff and that she has been in quiet enjoyment of her land. She contends that Plaintiff is not entitled to her claim.

2nd Defendant was served with all processes through substituted service but failed to react to any.

At the close of pleadings the following issues were adopted and set down for trial:

- a) "Whether or not the Plaintiff is the rightful owner of the land in dispute.
- b) Whether or not the Defendants metal container is placed on Plaintiff's land.
- c) Whether or not the Plaintiff is entitled to the reliefs being sought."
- d) Any other issues arising from the pleadings.

Additional Issues

- e) Whether or not at the time 1st Defendant acquired her land the container was already placed on her land.
- f) Whether or not 1st Defendant demolished the wall of Plaintiff."

Though 1st Defendant filed a Witness Statement and Pre Trial-Checklist, she failed to appear for trial. The case thus proceeded in

accordance with Order 36 Rule 2(a) of the Rules of Court which provides as follows:

“(2) Where an action is called for trial and a party fails to attend, the trial Judge may

(a) where the plaintiff attends and the defendant fails to attend, dismiss the counterclaim, if any, and allow the plaintiff to prove the claim.”

As 1st Defendant does not have a counterclaim, the case proceeded in order for Plaintiff to prove her case. It is trite that in a civil matter where a Party sues for declaration of title to land, that Party assumes the burden to prove on a preponderance of probabilities ownership of the land in dispute. Plaintiff therefore is required to adduce sufficient and credible evidence to prove his case.

See ADWUBENG V. DOMFEH [1996-97] SCGLR 660, IN RE KORANTENG (DECD); ADDO V. KORANTENG & OTHERS [2005-2006] SCGLR 1039.

I shall consider the issues together.

Plaintiff testified through an Attorney, Joe Koranteng by means of a Witness Statement filed on 1st December, 2020. He testified that Plaintiff purchased the land in dispute from one Peggy Okine in 2015 and took possession of same by constructing a fence wall between her land and that of 1st Defendant. According to him, during construction, 1st Defendant broke the fence wall erected on her land under the pretext of creating access to convey her

building materials from a container she acquired from 2nd Defendant. According to him, when Plaintiff acquired the land, 2nd Defendant had mounted a metal container on same to house his hardware but later handed it over to 1st Defendant to keep her building materials for the construction of her house. He testified that when Plaintiff contacted 2nd Defendant to remove the container in order for her to commence building on her land, he refused and said he had sold the container to 1st Defendant so he no longer responsible for same. He stated that Defendants have kept the container on Plaintiff's land to deprive her from using the land in spite of repeated calls to do so. He tendered the following Exhibits in support of Plaintiff's case:

- *Exhibit A: Power of Attorney*
- *Exhibit B: Indenture*
- *Exhibit C & D: Photographs*

Plaintiff called two witnesses in support of her case. PW1 was Martin Nimako Wiredu. He testified that he was the caretaker of the land in dispute as he was placed on it by Plaintiff's vendor. According to him, he rented the land to the 2nd Defendant for four years for him to operate his block factory. He stated that when the rent expired, the Vendor offered to sell the land to 2nd Defendant, but he could not afford to buy it. He testified that he informed Plaintiff's Attorney about the sale of the land and he led Plaintiff and Plaintiff's Attorney to purchase the land from Madam Peggy

Okai. He added that after the purchase, he accompanied a surveyor upon the instructions of Madam Peggy to demarcate the land for Plaintiff and he asked the 2nd Defendant to remove his container from the land but he pleaded with him to inform the Plaintiff that he should be given a few weeks to dismantle the container. He testified that Plaintiff constructed a boundary between her land and 1st Defendant's. He stated that all calls to 2nd Defendant to remove the container to enable Plaintiff commence her building were not heeded to and 2nd Defendant handed the container to 1st Defendant to house her building materials.

PW2 was Stephen Kofi Opong, the crux of his testimony was that PW1 led Plaintiff to pay the full price of the land to Madam Peggy and he was a witness to the indenture which was executed. He stated that 2nd Defendant was asked to remove his container from the land immediately the indenture was given to Plaintiff.

The **STAMP DUTY ACT, 2005 (ACT 689)** 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. The requirement is that any instrument which falls short of this rule is sought to be tendered in court in civil proceedings is rendered inadmissible.

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.'

On this basis *Exhibit B* shall not be considered in the evaluation of this case as same is inadmissible.

It is not in dispute that Plaintiff is in possession of the land she purchased from the said Madam Peggy. *Exhibits C and D* show photographs of the land in dispute which has been walled. The entire evidence of Plaintiff stands uncontradicted.

In the case of **BISI AND OTHERS v. TABIRI ALIAS ASARE** [1987-88] 1 GLR 360 'preponderance of probabilities' was explained 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 of pleadings 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. Preponderance of evidence became the trier's belief in the preponderance of probability. But "probability" denoted an element of doubt or uncertainty and recognised that where there

were two choices it was sufficient if the choice selected was more probable than the choice rejected...”

In the absence of any evidence to the contrary, I find that sufficient evidence has been disclosed by Plaintiff's case on a balance of probabilities that the said land belongs to her. I therefore answer issues 'a' and 'b' in the affirmative that Plaintiff is the rightful owner of the land and that Defendants' container is placed on the land. Also, it is apparent from the evidence that when Plaintiff purchased the land the container had already been placed on same.

Plaintiff's Attorney testified that 1st Defendant broke the fence wall of Plaintiff under the pretext of creating an access. I consider that no further evidence was led on this assertion. Though Plaintiff tendered photographs of the fence wall built by Plaintiff, there is no evidence before this court of the said broken fence wall.

The Supreme Court stated in the case of **DON ACKAH VRS PERGAH TRANSPORT [2011] 31 GMJ 174** as follows:

'It is a basic principle of the law of evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the

evidence a reasonable mind could conclude that the existence of the fact is more probable than its non-existence'.

I find that sufficient evidence has not been adduced in proof of the claim that 1st Defendant demolished the fence wall of Plaintiff. I therefore answer issue 'f' in the negative.

Having regard to the entirety of evidence, I am satisfied that Plaintiff's claim should succeed in part. I therefore enter judgment in favour of Plaintiff against Defendants as follows:

- a. Plaintiff is declared owner of land situate, lying and being at Achimota Mile 7 containing an approximate area of 0.14 acre or 0.6 hectare and bounded on the North-West by Vendor's land measuring 112.0 feet more or less, on the North-East by proposed road measuring 57.5 feet more or less, on the South-East by Vendor's land measuring 57.5 feet more or less, on the South East by Vendor's land measuring 98.9 feet more or less and on the South-West by proposed road measuring 62.1 feet more or less.
- b. Defendants are ordered to remove the metal container erected on Plaintiff's land.

I award general damages of GH¢7,000.00 and costs of GH¢5,000.00
in favour of Plaintiff against Defendants.

H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN