

IN THE CIRCUIT COURT HELD AT AGONA SWEDRU ON FRIDAY  
THE 10<sup>TH</sup> DAY OF MARCH, 2023 BEFORE HIS HON. JONATHAN  
DESMOND NUNOO ESQ. CIRCUIT JUDGE.

SUIT NO: A1/11/21

MATHEW ACQUAH SUING PER  
HIS LAWFUL ATTORNEY CHARLES BONDZIE ... PLAINTIFF

VS.

ROSE DAMPSON ... DEFENDANT

### JUDGEMENT

The Plaintiff through his attorney is in this Court claiming per his writ of summons the following reliefs:

- A: Declaration of right title ownership and possession of all that piece or parcel of land which is situate lying and being at a place commonly known and called Donkornyiem/Sankor measuring 100 X 100 more or less and bounded on the North by plot No. 129, South by plot No. 127, East by a proposed Road and the West by Plot No. 125.
- B: Recovery of possession.

- C: General damages for trespass.
- D: Perpetual Injunction restraining the defendant personally her executrix, successors, defendants, privies etc. from committing further acts of trespass on the disputed land.(Sic)

The plaintiff as averred in the statement of claim as follows:

That during the life time of his (plaintiff's) mother Aba Okoma she lawfully purchased a piece or parcel of land at a cost of GHC3,000.00 (old currency) from Kojo Tetteh of Sankor near Winneba measuring 100 X100 more or less which said landed property is situated lying and being at a place known and called Donkoryiem/Winneba numbered plot No. 128 which is bounded on the north by plot No. 129, South by plot No 127 East by proposed road and on the West by plot No. 125. Plaintiff states also that the whole transaction was later reduced into the issuance of land Receipt dated 16<sup>th</sup> May 1984, in respect of the said transaction which was duly signed/ marked by their respective witnesses. That Mathew Acquah is the only surviving child of the late Aba Okuma therefore according to their customary practice and usage, he is now the customary successor to the estate of his late mother Aba Okuma. Plaintiff states that Mathew Acquah currently resides at Tarkwa in the Western Region and due to proximity to Winneba where the subject matter is he granted power of attorney to this current head of family to institute this action on his behalf.

Plaintiff further states that his mother was in very peaceful and quiet possession of the subject matter till her death some years ago. Plaintiff says

that when he intended to construct a single bedroom on the subject matter, he instructed Charles Bondzie to deposit a trip of sand in preparation of the construction but strangely to the plaintiff somebody went to the land and erected a flag on the land indicating that she is claiming the subject matter.

Plaintiff further states that he made series of enquires and the outcome was that it was the defendant who went to the land and erected the red flag on the sand which prompted the plaintiff to go and confront her and she admitted erecting the red flag on the sand but the plaintiff openly told her that he land belongs to his late mother Aba Okuma but the defendant insisted that she owns the said land. Plaintiff states that the defendant suggested to him that he should produce his draughtsman and she would also produce hers which the plaintiff did but the defendant failed or refused to meet the plaintiff on the appointed day, a clear indication that she was not ready to resolve the impasse with the plaintiff but maintains her stand that the land belong to her. Plaintiff avers that the behavior of the defendant has prevented the plaintiff from continuing with the development he intended to do while the rain is depleting the sand deposited on the land to his disadvantage. Plaintiff therefore says that there is nothing he could do than to institute this action against the defendant as per the endorsement on the writ of summons.

The defendant filed a statement of defence in which he stated the following:

1. Defendant is not in the position to admit or deny paragraph 1 of the plaintiff's statement of claim.

2. Defendant says further that neither the Plaintiff himself nor her attorney was personally known to her until she hoisted the red flag on the subject matter land.
3. Defendant denies paragraph 2 of the plaintiff statement of claim and will at the trial put plaintiff to strict proof of his averment contained in the paragraph 2.
4. Defendant will say that in suit No. A1/3/17 adjudicated upon at the District Court, Winneba, the same portion of land was allegedly sold by the same Kojo Tetteh to the Church of Christ.
5. In the said suit which went in favour of the defendant herein, therein as plaintiff, the vanquished party sought an Appeal at the High Court, Winneba in suit No. E11/00i/19 which she lost.
6. Defendant will say also that she acquired the subject matter land and has been the owner in possession of same since 1989.
7. The Defendant will aver further that the land is described as plot No. 128.
8. Defendant in furtherance of her ownership and possession, cleared the land periodically by engaging the services of certain person and during this, while her ownership was never challenged.
9. Defendant will say that she acted variably and covertly (SIC) to buttress her ownership and occupation ever since she acquired the said land.

10. Defendant will contend forcibly that plaintiff is caught by laches and acquiesce and cannot therefore lay any judicial claim on the subject matter land.

11. In consequence, defendant vehemently denies paragraphs 3 and 6 of his claim.

12. Defendant will also say that she is not in the position to admit paragraphs 4 and 5 of his claim since plaintiff and his attorney were unknown to him until she confronted them by erecting a red flag on the land to indicate her ownership to any trespasser.

13. Defendant in consequence admits paragraphs 7 and 8 of plaintiff claim to the extent that she asserts and affirm the defendant's claim to the subject matter land.

14. Defendant denies paragraph 9 of the claim and states further that he cannot develop a subject matter which is exclusively her property.

15. In consequence, plaintiff is therefore not entitled to any or all of his reliefs at all.

16. ...

...

Defendant repeats paragraphs' to 16 of her defence by way of counterclaim and counterclaim against the plaintiff for the following reliefs.

- (a) An order directed at the plaintiff to remove any and or all acts of trespass visited upon the subject matter land by the plaintiff.*
- (b) General damages for trespass.*
- (c) Perpetual injunction restraining the plaintiff, his assigns, agents, workmen or by however described from intermeddling in any way whatsoever with the subject matter land.*
- (d) All cost incidental to the suit.*

The plaintiff filed a reply to the defence and counterclaim and contends as follows:

- (1) In reply to the defence, plaintiff says that he is not in the position to admit or deny paragraphs 1,2, and 3 of the defence.
- (2) In further reply to the paragraph 4 of the defence, plaintiff says that the subject matter was purchased from Kojo Tetteh, the then Chief of Sankor, Winneba.
- (3) Plaintiff denies paragraphs 5 and 6 of the defence.
- (4) Paragraph 7 is admitted.
- (5) Paragraph 8 of the defence is denied and in answer, plaintiff avers that it was Mathew Acquah's mother who was clearing and planting

perishable crops on the subject matter land since 1984 and it was after his death that Mathew Acquah continued clearing the land.

(6) Paragraph 9 and 10 of the defence denied.

(7) Plaintiff is not in the position to admit or deny paragraph 11,12 and 13 of defence.

(8) In an answer to paragraph 14 of the statement of defence, plaintiff says that the subject matter is his property and this fact is still maintained.

(9) Paragraph 15 is denied.

(10) Plaintiff is not in the position to admit or deny paragraph 10 of the statement of claim (SIC).

(11) In reply to the defendant's counterclaim, plaintiff says that defendant woefully failed to describe the land he is claiming in his counterclaim. consequently, the rest of the reliefs also fail miserably therefore, the Honourable Court should dismiss the counterclaim of the defendant.

The law is trite and supported by statute that to enable a court decide a case one way or the other, each party to the suit must adduce evidence on the issues to be determined by the court to the prescribed standard as provided by statute.

This position is buttressed by various provisions of the Evidence Act 1975 (NRCD 323) Section 14 of which provide as follows:

“Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non existence of which is essential to the claim or defence he is asserting”

The burden of producing evidence as well as the burden of persuasion is on parties and the standard of proof required to discharge that burden of persuasion is one on the “preponderance of the probabilities” by virtue of section 12(1) of the Evidence Act (NRCD 323).

“Preponderance of Probabilities” according to section 12 (2) of the Act 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”

Under section 11(4) of the Act the burden of producing evidence is discharged when a party produces “...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”.

In *Ackah v Pergah Transport Ltd. & Others* [2010] SCGLR 728 at 738, Adinyira herself thus;

“ 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. The method



of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary and things (often describe as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as jury. 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 reasonable than its non- existence. That is the requirement of the law on evidence under sections 10(1) and (2) and 11(1) and (4) of the Evidence, Act 1975 (NRCD 323)

There being a counterclaim both parties bears the burden and responsibility to prove the facts he is asserting.

Both parties filed their witness statements.

The plaintiff called one witness in support of his case.

The defendant filed two witness statements but only one witness was called to testify with the reason that the other witness has passed on.

The plaintiff did not attach any exhibit to his witness statement but attached a receipt and a site plan to a documents he captioned "Supplementary reply of the plaintiff to the witness statement of defendant."

I do not know why the plaintiff chose to do that if he wanted to file a supplementary witness statement he should have sought leave of the Court to do so but be that as it may the court accepted the document and treated

same as supplementary witness statement for the reason that he was acting by himself and not abreast with the rules of court

I will return to the contents of the supplementary reply of the plaintiff to the witness statement of defence and the exhibits attached thereto.

The defendant also tendered judgment from the District Court and High Court in her favour in respect of the subject matter land as well as a receipt, statutory declaration and site plan and pictures of her work on the disputed land which was destroyed by a church of Christ

The case of the plaintiff is that the disputed land is for his late mother and being the only surviving son of her late mother, he is the owner of the disputed land as successor. According to the plaintiff his mother purchased the land measuring 100 X 100 from Kojo Tetteh the then Chief of Sankor, near Winneba and that the plot is numbered 128 and it is situated at Donkornyiem Winneba.

Plaintiff claim is that he resides in Tarkwa in the Western Region hence giving power of attorney to his Attorney to take this action.

The plaintiff asserts that Aba Okoma, his mother was in peaceful possession of the plot until the year 2000 and he instructed his attorney to construct a single bedroom apartment on the plot for which he deposited a trip of sand on the plot in September 2020.

He added that immediately he deposited the sand on the land someone erected a red flag who turned out to be the defendant so he confronted the defendant and made it known to the defendant that the land belongs to the late Aba Okoma but the defendant insisted that the plot is hers. He asked the defendant to produce his document but she failed or ignored.

He concluded that the defendant is preventing him from keeping the place out of weeds and to continue with his development meanwhile the rain is washing and depleting his sand deposited on the land.

The defendant case is that she bought the land in 1989 from one Kofi Otoo who was the linguist of Sankor stool as his bona fide property and not a stool land.

She said the plot is numbered 128 and described in her statutory declaration.

She said the transaction was witnessed by some principal members of her vendor's family and was issued with a receipt and she prepared a statutory declaration when her vendor passed.

It is her case that the access to the plot was difficult as the place was bushy so immediately she took possession, she caused one Stephen Ghartey to periodically clear the bush without any challenge from the plaintiff or any other entity.

She said later and sometime in 2002, she constructed a foundation on the land which was destroyed by Church of Christ. She said all these while the plaintiff never came forward to challenge either her or the Church of Christ in respect of his interest in the subject matter of the instant suit and

concluded that the plaintiff has never exhibited any overtly or covertly act of ownership and possession of the land and plaintiff has been indolent.

The plaintiff upon seeing the contents of the witness statement of the defendant then filed a witness statement for PW1 as ordered by the Court and then filed the so called reply to the witness statement of the defendant alluded to above.

The issues set out in the application for direction and on the notice of additional issues are:

1. *Whether or not during the life time of plaintiff's late mother Aba Okuma, she lawfully purchased a piece or parcel of land amounting to thirteen thousand (GHC13,000.00) from Kojo Tetteh the then chief of Sankor, Winneba.*
- b. *Whether or not the valid documents executed therein dated 16<sup>th</sup> May 1984 in respect of the said transaction were duly signed by their respective players of both families.*
- c. *Whether or not Mathew Acquah is now the only surviving child of the late Aba Okuma and whether or not he is the customary successor according to customary practice in their area.*
- d. *Whether or not Plaintiff's late mother Aba Okoma was in a very peaceful occupation of the subject matter till her death.*
- e. *whether or not the plaintiff started the developing the subject matter but he was disrupted by the defendant erecting a red flag on the sand deposited on the land.*

- F. Whether or not the defendant failed or refused to compromise to the terms of settlement of this issue when plaintiff suggested to her that both parties should produce a Draughtsman to enable them deliberate on the matter but defendant refused.*
- g. Whether or not the behaviour of the defendant has seriously caused financial lost to the sand deposited on the land as the rains have started washing them away.*
- h. Whether the plaintiff is entitled to his reliefs generally.*
- i. Any other reliefs (Sic) arising out of the pleading.*

**The additional issues are:**

- (1) Whether or not the subject matter has been adjudicated upon by Courts of competent jurisdiction and in favour of the defendant.
- (2) Whether or not Kojo Tetteh has been previously included in the unlawful sale of the subject land to some other person.
- (3) Whether or not by overt and consist acts defendant was the 1<sup>st</sup> person to own and possess the subject matter.
- (4) Whether or not plaintiff is caught by acquiescence and laches.

This court finds most of the issues set out in the application for direction and notice of additional issues to be irrelevant to the issues at stake.

In the view of the court, the main issue is whether the plaintiff mother was in quiet and peaceful possession of the land till defendant raised the red flag if so whether plaintiff is caught by acquiesce or laches and

whether or not the defendants judgments from the district court affects the plaintiff or binding on plaintiff

Before I deal with the issues which I find to be germane to the resolution of the dispute between the parties I will briefly deal with some of the issues raised in the application for direction and additional issues file by counsel for defendant though I have said they are not germane to the resolution of the dispute between the parties.

The matter is about ownership of land which plaintiff is claiming it belongs to his mother who has been in peaceful possession of the land and the defendant said she is the owner of the land and that she has been in possession of the land before the plaintiff recently trespassed on it is what the court is to determine finally.

Whether the plaintiff is a customary successor of her mother is not relevant to the dispute and no one is challenging the plaintiff claim of being successor to his mother. The defendant is not plaintiff's family member to challenge that assertion so the court will not pronounce on that issue.

Again no one is challenging the plaintiff's mother Aba Okoma regarding the amount she paid for the land she purchased. In other words her claim that she paid an amount GHC13,000.00 is not being disputed by the defendant and whether the document executed between Aba Okoma dated 16<sup>th</sup> May 1984 in respect of the transaction were duly signed by their respective key players of both families is also not challenged by the defendant since she has no contrary evidence to

suggest otherwise since that is the plaintiff's assertion he ought to substantiate it so this court will not waste time on that.

There is also no dispute to the fact that the defendant erected a red flag on the disputed land as protest

And in respect of the additional issues filed it is a fact that there was litigation on the land in both the District Court and High Court which judgment was in favour of the defendant so there is no challenge whatsoever on the part of plaintiff that there was no such a litigation though the Plaintiff stated he was not privy to the litigation so the issue is whether these judgments affects him in law.

As stated, the issue is whether the plaintiff's mother was in actual and peaceful possession all these while before the defendant defendant erected the red flag to show her interest in the disputed land.

In other words whether the plaintiff's mother was in peaceful possession of the disputed land and the defendant recently disturbed their possession

And whether the plaintiff sat by unconcern for the defendant to take the land.

Let me turn my attention to the issues I find relevant to the resolution of the dispute and I will address the issues together.

Before I tackle the above issues let me talk briefly about the document Plaintiff tendered as evidence of purchase of the land before dealing relevant issues.

The plaintiff tendered in evidence a site plan and a receipt. The receipt has not been stamped and on the authority of *Lizori Limited v. Mrs. Evelyn Boye and School of Domestic Science and Catering Services*, Supreme Court, Appeal No. J4/8/2012 dated 26<sup>th</sup> July 2013, it ought to be rejected since it an instrument affecting land though tendered without objection it ought to be excluded because it need

not to be admitted in evidence at all in the first place and the court is mandated to exclude inadmissible evidence when it come across such evidence during evaluation. Section 8 of Evidence Act (NRCD 323) states that evidence that would be inadmissible if objected to by a party may be excluded by the Court on its own motion.

Though the instrument was excluded I find something interesting regarding the documents that is the receipt which was tendered and I need to address it because the plaintiff gave evidence regarding the document.

Plaintiff pleaded in paragraph 3 of the statement of claim that the whole transaction was later reduced into the issuance of a land receipt dated 16<sup>th</sup> day of May 1984 which was duly signed by their respective witnesses.

On the document, I only see vendor and purchaser or vendee that is Aba Okoma's name but conspicuously missing on the document are her witnesses so who are her respective witnesses in this transaction as alluded to by the plaintiff?



There is Nana Kojo Tetteh, Sankor chief who the plaintiff claim they bought the land from whose name was typed on the document but plaintiff's mother's name was written in ink and five thumbprints including the chief but no one is said to have thumb printed for the plaintiff's mother. Did she pay the money herself or it was paid on her behalf. Can we say from the document that one of the witnesses is from her side? That cannot also be the case because the document does not show the witnesses of the vendee Aba Okuma.

Again the receipt was issued on 16<sup>th</sup> May 1984 and gave the boundaries of the land using number of the plot in dispute and adjoining plots which serves as boundary and that gives me a cause of concern. Why do I say so, at the time the land was sold, I do not think that the land in dispute and the adjoining lands has been plotted to have the numbers such as it is on the receipt tendered by the plaintiff.

The defendant's receipt only has the size of the land which is 100X100 without these numbers of the plots and the in her statutory declaration the boundary owners are given by names and not numbers of the plots so considering the time they both claim they bought the land, I doubt whether the land in that area has been plotted for the plaintiff's receipt made in 1984 to have the lands plotted. If the land is plotted it may be recently because the defendant also described his land as plot number 128 which was not so in her previous documents she tendered.

Again a careful look at the site plan and the date on it reveals the concerns I indicated earlier which is that the receipt was written on 16<sup>th</sup> May 1984 cannot have the plot numbers given in the manner found on the receipt.

The date on the site plan of plaintiff is 8<sup>th</sup> October 1984 which was later in time, if the receipt was written on 16<sup>th</sup> May 1984 that will be five months before the site plan was drawn. In other words, the receipt was issued before the site plan was prepared so how is that the receipt have the boundaries of the land plotted including the disputed land if the documents were not made for the purpose of this suit. The receipt even makes reference to a plan so the presumption will be that the receipt was curled from the site plan so how can the receipt predate the site plan.

Though I have excluded the receipt from the evidence I decided to touch on this piece of evidence to buttress the conclusion I am about to reach in this judgment

The Plaintiff should have exhibited these documents to his witness statement but he failed and rather attached same to the documents he has captioned Supplementary Witness Reply of the plaintiff to the witness statement of defendant.

The plaintiff appears to have manufactured this so called receipt for the purposes of this suit and I made reference to the response he provided in his reply to the witness statement of the defendant.

If he has not seen the witness statement of the defendant he would not have brought this receipt and the site plan. This is what he said in paragraph 6 “in paragraph 10, 11, and 12 the land receipts presented by Rose Dampson (defendant) as Exhibit 2 indicates that she acquired her land from Kofi Otoo Okyeame of Sankor village on 12<sup>th</sup> December 1989 and devoid of the plot

number and boundaries. But the land had legitimately been sold to the mother of Mathew Acquah, Aba Okuma on 16<sup>th</sup> May 1984 by Kojo Tetteh, the Chief of Sankor.

In Paragraph 7 he said the statutory declaration presented by Rose Dampson as Exhibit 3 was not signed by one Kofi Tetteh who was deceased. It was not accepted in the judgment report of the High Court, Winneba.

In paragraph 5 he said paragraph 9 of the witness statement dated 2<sup>nd</sup> April, 2021 she stated the land is not a stool land and is the property of one Kofi Otoo, the then linguist of Sankor who sold it to her. All Sankor lands are stool lands and anyone who acquire from a Sankor stool with a proper land receipt from the chief and elders, the mother of Mathew Acquah, Aba Okuma properly acquired the land from Kofi Tetteh, the chief of Sankor which was properly marked and stamped (Attached) as Exhibit (B1).

I have compared the description of the receipt in respect of the boundaries of the disputed land and the date it was prepared and the date on the site plan as well as the failure of the plaintiff to attached this pieces of evidence to his witness statement which he filed on 8<sup>th</sup> April 2021 but smuggled this pieces of evidence in when he filed his so called reply to defendant's witness statement on 17<sup>th</sup> June 2021.

If he has these documents at the time he was preparing his witness statement he would have lead evidence to it and exhibited same.

I must say that the consideration of the receipt, the site plan and the evidence is to expose the plaintiff in his clever way to claim the land and this attempt will be clear when I move to issue two which is whether the plaintiff or defendant had peaceful possession and whether there was acquiescence and or laches on the part of the plaintiff.

In *Akoto v Gyamfi –Addo & Anr* [2005-2006] SCGLR 1024 & 1031

Atuguba JSC said at page 1024 “... Possession in law includes legal control of the res in question.” And at page 1031 Dr. Seth Twum JSC stated “ In land law ‘possession’ is used in the particular sense of physical occupation of the land, but it includes receipts of rents and profits or the right to receive same. In this case, the plaintiff transferred the legal estate in the house to the defendants when conveyance was executed. This gave the defendants the right to lease the premises (as owners) and to collect rent... The fact that the tenant happened to be the very person who had sold the house to them does not make any slightest difference to the legal position. There can be no question of a breac of contract of sale ... A landlord who puts a tenant in the premises and receives rent is thereby in legal possession which is requisite test and not actual physical occupation. Otherwise where a piece of land is demised, for say fifteen years, the landlord’s title would have been displayed by the long period of exclusive possession by the tenant under the Limitation Decree 1972 (NRCD 54).”

In *Brown v Quashigah* [2003-2004] 2SCGLR 930 at 951 Kludze JSC said at page 951:

“Possession is a matter of law but it is established by physical acts. Possession generally is regarded as implying physical control; but physical control cannot matured into possession in law unless accompanied by other acts. As I have said, as a prerequisite, there must be an effective control which is commensurate with the nature of the property over which the right is asserted. For instance, in the case of land, as in this case presence on the land may constitute enough physical control. The physical control is usually actual control, and includes the right to exclude others from the property. It may however, also be a potential control, such as when there is an unlawful but de facto impediment by trespasser, Secondly, there must be the animus possidendi or intention to possess which must be concurrent with the requisite physical control. In other words, where there is physical control that is fortuitous or unrelated to the intention to possess, it will not constitute possession in law. Finally the intention to possess must be manifested by external or visible signs appropriate to the property being taken in possession. The external manifestation is necessary to serve as a notice to the rest of the world of the right claimed, even if unknown to the whole world.”

In *Osei v Korang* [2013] GMJ 1 at 26 -27 Ansah JSC said at page 26 as follows:

“In this present appeal the stark fact is that the appellant was in possession of the house just as DW6. Now in law, possession is nine points of the law and a plaintiff in possession has a good title against the whole world except one with better title. It is the law that possession is prima facie evidence of the right to possession and it being a good title against the whole world except the true owner he

cannot be ousted from it. See *Summey v Yohono* [1962] 1GLR160, SC, *Barko v Mustapha* [1964]1 GLR.SC

To stat with the plaintiff did not call his grantors to come and testify to explained how they sold the land to someone else when they have already sold the land to plaintiff mother if that assertion was true.

The evidence adduced by the defendant is that he has been possession peacefully before the Church of Christ came onto her land and she confronted them sued them and had judgments in her favour.

The plaintiff said he was not aware of the suit between the defendant and Church of Christ which is fine but can it also be said that the plaintiff has been able to establish his possession.

I do not think so, the plaintiff called PW1 who said he knows Aba Okoma plaintiff's mother and the owner of the land in dispute and that he and her mother in the late 80's worked with Adjoa Ayorkor and Aba Okoma on the disputed land. He claimed that as a little boy, he used to follow his mother who is currently over 70 years to the Aba Okuma's farm in the area in the 90's he helped his mother to clear portions of Aba Okuma's land and other farms in the area and in the course of deliberations he got to know her son Mathew Acquah. He said Aba Okoma has been in possession of the land till her death in the year 2000 and he and his mum stopped working on the Aba Okoma's land when she passed away in the year 2006.

So with the evidence of PW1, the land was not numbered and it was a farm land as well as other adjoining lands in the area and he stopped going to

the place in 2000. So if the year 2000 Aba Okoma was farming on the land how was the land plotted in 1984 to be captured in the receipt.

Plaintiff never pleaded anywhere that PW1 was clearing the land or working on the land with her mother but rather said that it was Aba Okuma who was clearing the land and planting perishable crops on the subject matter since 1984 and it was after her death that Mathew Acquah continued clearing the land.

It was PW1 who said that plaintiff's mother died in the year 2000 but plaintiff said until she dies "some time ago". Plaintiff did not know when his mother died so how is he able to tell the court when he started working on the land?

The question is if the plaintiff mother died some years ago when did the plaintiff start clearing the land as the attorney want the court to believe? As said there was no pleading whatsoever in the statement of claim as to PW1's involvement in the land and no pleading in respect of plaintiff involvement in the land as well till the plaintiff saw the statement of defence paragraph 8 and plaintiff also introduced the pleading that the plaintiff continue clearing the land and when it came to evidence on who was clearing the land then he procured PW1 to come and help him to claim the land from the defendant this ploy by the plaintiff to claim the land from the defendant manifested clearly when he filed that reply.

In his evidence in chief he said that late Aba Okuma was in a very peaceful possession of the land until her death in year 2000 he did not say who was clearing the land then in his so call reply to paragraphs 1 2 and 4 of the

witness statement of defendant he claim Mathew Acquah took possession of the land after his mother's death in the year 2000 and he went to stay with his father in Tarkwa and because of distance he made it a habit to come to Winneba in March of every year to clear the land.

The Plaintiff also said that plaintiff became so demanding that he travelled from place to place and could only come to Winneba once in two years to clear the land as the weeds were not growing very fast.

He continued that plaintiff work became so demanding that he could not come to Winneba as he used to and he came in 2021 to see that someone has cleared part of the land that made Mathew Acquah to instruct him. He also said that Mathew Acquah came to Winneba in March 2016 but did not see structure on the land but a weedy land and he cleared it.

The plaintiff perhaps has forgiven the evidence he gave under cross examination. This was the relevant portion of he said in evidence.

Q: When did the mother of the Mathew Acquah died?

A: In the year 2000.

Q: And since then who has been taking care of the land?

A: When the mother was alive the one who work with her on the land is a woman called Auntie Adjoa Ayokor whose son is called David Otoo.

Q: In the absence of Mathew Acquah who takes care of the land?



A: It was Auntie Adjo Ayorko who was taking care of the land but when she grew old her son David Otoo takes care of the.

Q: Tell the court when David Otoo started taking care of the land.

A: It has been a while now since David Otoo started taking care of the land.

Q: In your estimation, how many years presumably?

A: I cannot be precise but it will be about 13 years now.

Q: Can you tell whether David Otoo performed his duty of taking care of the land?

A: I cannot tell.

Q: Paragraph 10 of your witness statement the alleged caretaker started taking care of the land in the year 2001.

A: Correct, at the time, plaintiff mother had died.

Q: Where were you at that time?

A: I was at Winneba but I was not close to plaintiff's mother.

Q: I suggest to you that between 2001 and 2013 the defendant has started building on the land.

A: That is not true she started developing when I brought this action.

Q: You said between 2001 and 2013 you were not the caretaker how then can you say that the defendant was not developing the land at that time.

A: The document covering the land as well as the elders that I met and what they told me made me to believe that defendant was not working on the land by then, my grandparents were farming on the land that is why I am saying the defendant was not on the land by that time.

Q: Can you confirm to the court that what you have just said is hearsay.

A; It was due to what my predecessors told me and your own documents that is why I am saying that.

Q: Was there any caretaker when the alleged caretaker then left to the training college.

A: There was no caretaker by then but when he vacates he comes to take care of the land.

Thus plaintiff keep changing his testimony when he sues him when was asked who was taking care of the land when Aba Okoma died he evaded the question and kept talking about when Aba Okoma was alive as though he did not hear the question

Again PW1 said he stopped taking care of the land when Aba okuma died. He did not say anything about leaving to training college in his witness statement but because the plaintiff was peddling untruth he said that PW1 come to take care of the land when he vacates. Something PW1 did not say.

He claimed that the land was for plaintiff's mother and she bought the land from chief of Sankor but when it was suggested to him that between 2001 and 2013 he was not the caretaker of the land so he cannot say Defendant was not developing the land at the time.

His answer was that the document covering the land as well as the elders that he met made him believe that the defendant was not working on the land by then and that his grandparents were farming on and defendant's document he saw that that is why he said the defendant was not working on the land.

Perhaps the Attorney of plaintiff has forgotten that he told the court that the he and plaintiff went to the land in 2016 and there was no development on the land, but portion of the land has been cleared that made the Plaintiff to instruct him to put up a building on the land.

The Sankor chief in the suit between the defendant and Church of Christ was a witness to in that case and he tried to resolve the issue between the parties but he did not succeed.

In that suit there was an attempt by the Sankor chief to share the land between the parties, it is in evidence among others that the Court in that matter found as a fact and concluded that the defendant herein and (plaintiff therein) has involved with the land.

The defendant called her witness who was clearing the land and it is this particular evidence that the plaintiff want to mimic to show that he had a caretaker on the land.

It appears to me from the way the plaintiff conducted this case that he has studied what transpired between the defendant and Church of Christ and he is mounting this action.

He even made reference to the judgment of the court and said that the judgment was granted to the defendant in that suit because he bought his land first but I believe he did not appreciate the entire judgment.

The court in that judgment find as a fact that the defendant has been involved with the land in a long time which the Sankor stool was aware of that was why the chief wanted to share the land between the defendant and Church of Christ which the defendant refused and pressed the matter in court.

If Sankor stool has sold the land to plaintiff's mother in 1984 as the plaintiff claims, then when the matter went to the Chief he would have raised that but he failed.

Dw1 said he has started a building on the land but before then his brother started putting up the building on the land which Church of Christ demolished.

The plaintiff in his motion for injunction attached pictures of development that the defendant is carrying out which was not clear and brought another application to substitute the pictures for a clearer one and his assertion was that the development started pursuant to the issuance of his writ and said the pictures that defendant

attached to his witness statement was not before the District Court when defendant sued Church of Christ but how can plaintiff tell when he was not privy to that suit. His own evidence shows that the defendant was developing the land and he now wants to develop the land.

The defendant in my view has shown better possession to the land than the plaintiff and the plaintiff can only dislodge her if he was able to show a better title which he has failed woefully in my view

Let me briefly touch on whether the acquiescence and laches on the part of the plaintiff.

Acquiescence is the conduct by which a person is deemed expressly or impliedly to have consented to a situation. The term is often used in relation to acquisition to title of landed property.

The supreme Court in *Nii Boi v Adu* [1964] GLR 410, SC in a land case, laid down a number of conditions to be satisfied in order to establish acquiescence under equity or customary law namely

- i) the person who enters upon another's land must have done so in honest but erroneous belief that he has the right to do so,
- ii) he should have spent money in developing the land.
- iii) he actual owner must be aware of this persons entry upon the land and his mistaken belief which is inconsistent with his ownership and

- iv) he should have fraudulently encouraged his development of the land by not calling his attention to the error

In *Lartey v Hausa* [1961] GLR (Pt II) it was held that to be estopped by acquiescence, the conduct must be fraudulent in that the plaintiff must have encouraged the defendant, acting in ignorance of his title, to change position in such a way that he cannot be adequately compensated in money or money's worth. of the defendant, acting

where the 64 usually

Laches is a term used where there has been long and unreasonable acquiescence or long and unreasonable neglect in asserting one's right. In *Boateng v Ntim* [1961] GLR (Pt,II) 671 at 674 it was held that to establish acquiescence amounting to laches it must be proved, inter alia, that:

- (a) the party pleading or relying upon it, bona fide believed that he had good title to the land when in fact he had none
- (b) that the person sought to be estopped had knowledge of the error on the part of the person pleading the estoppel, and
- (c) that the party pleading it, had fraudulently been led to by the silence or active encouragement of the person sought to be estopped, to spend money to improve the property or in respect of the property."

In that case, it was held that in the absence of proof of these points estoppel by laches could not be sustained.

I don't think in applying the law to the evidence adduced the plaintiff can be said to have acquiesced or affected by laches though I do not said he was

not aware of the defendant's possession and the case she fought against the Church of Christ so the judgment she obtained in that case cannot bind or affect him.

From the totality of the evidence, I am of the view that the plaintiff is not affected by acquiescence and laches because these points in the cases of *Lartey v Hausa* and *Boateng v Ntim* supra was not established

The plaintiff said that he did not know the defendant was in possession of the disputed land and have no knowledge of the dispute between the defendant and Church of Christ therefore the defendant cannot be said to have been fraudulently encouraged either silently or active by the plaintiff.

On the totality of the evidence it my view that the attorney of the plaintiff is in this court to deprive the defendant of her land. He is a busy body who has just come to court to assert a right of a plaintiff who is here in Takwa in the Western Region and the disputed land is in Central Region and because of time he comes to Winneba once in a year and later started twice in a year. when some people in the diaspora come home frequently to check on their properties if they are so minded.

If the plaintiff comes home as his attorney asserted he would have found that the land is being encumbered by trespassers or better still the defendant for him to take action.

If the plaintiff was in quiet and peaceful possession as he claims he would have noticed that there was either litigation on the land or

development going on the land and to take steps to vindicate his right has the defendant did when she saw Church of Christ on the disputed land.

The evidence adduced to my mind shows that the defendant was in possession than the plaintiff and possession not the plaintiff as he wants the court to believe.

I do not believe his story as I have tried to demonstrate. He was flip flopping with his evidence.

His pleadings are at variance with his evidence and very contradictory and he kept changing his testimony as and when he gets the opportunity.

The defendant was consistent with her pleading and her evidence adduced.

In the result I dismiss the defendant claims in its entirety and enter judgment in favour of the defendant.

The plaintiff is ordered to clear his sand from the land within a month from today.

He is ordered to pay GHC6000.00 to the defendant as general damages for trespass.

The plaintiff, his agents, assign, workmen or any one claiming through him are perpetually restrained from having anything to do with the



land.

Cost of GHC5000.00 against the plaintiff.

Theophilus Adepoju for the Defendant

(SGD)

H/H JONATHAN D. NUNOO ESQ.

CIRCUIT JUDGE