

IN THE CIRCUIT COURT HELD AT TARKWA IN THE WESTERN REGION ON
MONDAY THE 23RD DAY OF JANUARY, 2023 BEFORE HER HONOUR HATHIA
AMA MANU, ESQ., CIRCUIT COURT JUDGE

SUIT NO. C11/08/2016

ABUSUAPANYIN SAMUEL MARTIN
SWANZY QUAICOE

PLAINTIFF

VRS:

1. ASAPH ABBEW @ ATTA PANYIN
2. ROBERT COBBINAH
3. OBAAHEMAA AKUA AMOAH II

DEFENDANTS

JUDGMENT

Plaintiff – Absent, represented by Hagar Abanin.

Defendants – Present.

Philip Nkrumah, Esq. for Plaintiff - Present.

Akpene Darko Esq. for Defendants – Absent.

The brief facts surrounding the commencement of this writ is that the plaintiff claims the defendants have allocated to themselves the authority to alienate family lands without the consent of the entire family or the head of family. That the defendants' action is causing a lot of dissatisfaction within the family as the defendants are alleged to have disposed off over two meters square of the family land as at the time of this suit having been initiated. To that end the plaintiff prayed the Court for the following reliefs:

- An order for all proceeds of all land belonging to the Oyoko family of Akyem sold by the defendants be accounted for.
- Perpetual Injunction restraining the defendants either by themselves or their agents/servants and privies from having anything to do with the land belonging to Oyoko family of Akyem, Tarkwa.

Upon entering appearance the defendants gave a defence to the effect that although the plaintiff is the head of family, he did not bring the action with the consent and authority of principal members of the family. The defendants also stated that Oyoko family of Akyem, Tarkwa do not own any land at Akyem as all land in Wassa Fiase Traditional Area is Stool Land.

The issues which was set down to be determined in this trial were:

- Whether or not the plaintiff brings this action for and on behalf of the Oyoko family of Akyem.
- Whether or not the Oyoko family owns land at Akyem.
- Whether or not the plaintiff is entitled to his claims.

In a civil suit of this nature the burden of proof is always on the one making assertions thus the plaintiff in this suit is expected to put forth sufficient evidence before the Court to support the assertions and reliefs sought against the defendants. The standard shifts to the defendant when there is a need for the defendant to either support his/their counter-claims or rebut the claim of the plaintiff. Although it is prudent to state that the scale of justice will not tilt in favour of the plaintiff just because the defendant failed or refused to enter a defence, it is allowed for a party to rely on evidence adduced by another during the trial.

Section 10(2) of the Evidence Act, Act 323 provides that; the burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

Section 12(1) of the Evidence Act, Act 323 also provide that "Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the possibilities".

GEORGINA WOOD CJ (as she then was) in the case of **POKU VRS. POKU (2008 18 MLRG 1 @ PAGE 30** affirmed the legal principle that a party who makes an assertion bears the legal burden of establishing it. She stated that, “generally the burden of proof is therefore on the party asserting the facts with the evidential burden shifting as the justice of the case demands”. The standard of proof must also necessarily be proven on the preponderance of probabilities.

See the case of:

SAGOE AND OTHERS VRS. SOCIAL SECURITY AND NATIONAL INSURANCE TRUST 2011 30 GMJ 133. GBADEGBE JSC @ PAGE 58 HELD, “the party who asserts the affirmative of an issue has the incidence of the legal burden”.

The first issue for determination is whether or not the plaintiff brings this action for and on behalf of the Oyoko family of Akyem. Under this issue I will consider whether Akyem lands are family or stool lands as the response of the second part will aid in resolving the first issue.

The plaintiff introduced himself as the head of the Oyoko family a family which he claims is the stool family of the Akyem land. The plaintiff also claimed that it is only himself and principal family members who are mandated to sell land to strangers but the defendants have allocated over 600 plots of land without following due process. The plaintiff called one witness. Plaintiffs witness identified himself as a senior member of the Wassa Fiase Traditional Council. The witness stated that all lands in principle belongs to the paramount stool but there are two divisional stools in Wassa Fiase thus Asamanfo and Gyase.

According to this witness who gave his name as Nana Kwandoh Brepong III, in respect of Gyase Division half of proceeds from every grant goes to the paramount stool but for the Asamanfo it is one third which goes to the paramount stool. This witness concluded by stating that, Akyem is under the Gyase Division and that the stool represented by the

family can make a grant to whosoever it deemed fit. Both the plaintiff and his witness were subjected to a thorough cross-examination by the defendants' counsel.

During cross-examination of the plaintiff's witness, he stated that Akyem land is sold by the chief and family head but where there is no chief only the family head can sell land. The witness insisted on this claim although defendant's counsel put it to him that his claims are not true.

Analysing the evidence presented by the plaintiff and his witness I find that their cross-examination was not such that the weight to be placed by the Court on them had been witted. Considering the position the plaintiff's witness held within the Wassa Fiase Traditional Council, in the absence of evidence to the contrary, I am satisfied that his evidence is more probable than not. This is because for all intents and purposes the plaintiff has indicated that he represents the Oyoko family in this action not the stool as he is the Ebusuapanyin of the family.

During cross-examination, the plaintiff's position as head of family was not challenged. The evidence of the plaintiff's witness on lands in Akyem was also not challenged in terms of the narration given on who is in charge in principle and practice. The defendants never challenged this evidence hence same plays a significant role in justifying the plaintiff suing on behalf of his family. Thus as it stands the court finds that the two divisions of Akyem stool are made up of families in charge of their lands who pay certain percentages to the Omanhene and that the plaintiff and 2nd defendant belong to one division of the Akyem stool.

See the case of **DZEFI VRS. ABLORKOR (1992/2000) 1GLR 10** the Court held that, "it's the head of family together with principal elders of the family who have the capacity to alienate family land".

On the first issue based on the determination above, I find that Oyoko family of Akyem had their own assigned lands which they use to serve the Omanhene by given a portion of proceed to him when sold. That as a family they have the plaintiff as their head of family so he is legally vested with authority to bring his action.

See the cases of:

In Re **PRESIDENTIAL ELECTION PETITION AKUFFO ADDO & 2 ORS. (NO. 4) VRS. MAHAMA & 2 ORS (NO. 4) [2013 SCGLR (Special Edition) 73 @ 425]** where **JUSTICE ANIN YEBOAH CJ** said, "I accept the proposition of law that when evidence led against a party is unchallenged under cross-examination, the Court is bound to accept that evidence".

And also **ASHANTI GOLD CO. LTD VRS. WESTCHESTER RESOURCES LTD. (2013 56 GMJ 84 @ 128** where **KORBIEH J.A. held** – "the law is that where the evidence of a witness is unchallenged in cross-examination it is deemed to have been admitted by the other side".

When the defendant was directed to open his defence he was cross-examined as follows:

- Q. The Oyoko family is the stool family of Akyem.
- A. Yes it is so.
- Q. And all Akyem land is entrusted to the family.
- A. It is not true.
- Q. In your evidence-in-chief you stated that the plaintiff, 1st and 2nd defendant decided to look for a Surveyor to access the land.
- A. It is true that is what we agreed.
- Q. This decision was taken by virtue of you being a part of Oyoko family.
- A. Yes they were family members who could help me to do the work.

Again he was asked:

- Q. You are aware the position of reagent is different from being a chief.

- A. Yes you act when the chief is not around. You handle all issues and documents.
- Q. You are aware there are some issues that a reagent cannot do.
- A. I am a family member I can do all this.
- Q. Under the Wassa Fiase custom a reagent cannot take a decision affecting the stool land.
- A. I have authority in line with the head of family.
- Q. I put it to you that the head of family is in charge of the land.
- A. It is not true because we have stool land.

Based on these questions and responses, the Court had to ponder over these questions. If the position of the 2nd defendant is that he accounts to the stool and not the family on all the lands then why then did he deliberate and agree with the family to get a surveyor? Again why is the 2nd defendant who claims he is dealing with stool land which has nothing to do with the family now admit that although reagents are restricted in their duties by virtue of being a member of the Oyoko family he can do all things and that his authority is line with the head of family? This is a clear case of eating your cake and still trying to have it. The 2nd defendant claims he at all times took decisions with the plaintiff and that because he is an Oyoko family member as a reagent he had all authority yet he is of the view that he is not accountable to them. The Court wonders why the 2nd defendant believes that he had to work with plaintiff on the same land that he claims is stool land devoid of the Oyoko families control.

The 2nd defendant was also questioned that in all land transactions he never accounted to the family and he said, "we account to the chief not the family". Again, it was suggested to him that he went into those transactions without the head of family's consent but he responded that it is not true.

As they already stated how can the 2nd defendant as reagent allegedly alienate land with the plaintiff but hold the view that he is solely handling stool land. The unchallenged position remains that all Akyem lands are used to serve the Omanhene but the two

divisions of which the Oyoko family is part has its own lands which is used to serve the Omanhene, hence those lands are in practice managed by the family hence why the 2nd defendant as he has also affirmed was obliged to engage the head of family in all land transactions.

From the defence of the 2nd defendant I find nothing which brings the plaintiff's capacity to bring this action in disrepute.

The 2nd issue is whether or not the Oyoko family owns land at Akyem. The plaintiff and his witness at all times through their evidence and response during cross-examination insisted that the Oyoko family owns land at Akyem. The Court had no reason to doubt this traditional evidence given by the head of family and a former president of the Wassa Fiase Traditional Council. Although the 2nd defendant disputed this fact claiming all the lands were stool lands, the 2nd defendant on the other hand admitted during cross-examination that the Oyoko family owns the Akyem stool lands which were used to serve the Omanhene. Again 2nd defendant admitted that all transactions even involving stool lands must be agreed to by the head of family and reagent by his own responses during cross examination. Conclusively on the 2nd issue, I find that based on the evidence adduced the Oyoko family owns land at Akyem.

The final issue for determination is whether the plaintiff is entitled to his reliefs thus seeking for the 2nd defendant to render accounts. To consider this issue, I will consider the question of who can alienate land and also whether an occupant of a stool must render accounts.

On the part of the plaintiff he called a witness who can be considered an acceptable authority on who can alienate the Oyoko family lands as he has served as president of the Traditional Council. The 3rd defendant on the other hand during cross-examination said that the land is to be alienated by the reagent along with the head of family. I find that on a preponderance of probability the plaintiff's claim on who can alienate the

Oyoko family land is more probable hence I find that the plaintiff has satisfied the legal burden of producing evidence on that claim.

Fiduciary implies trust thus when one has a legal duty to act in the best interest of another it can be said that a relationship exist that requires some level of accountability on the part of the appointed trustee. In the instant case if the Court had held that the Oyoko family had no land in Akyem and play no role in land alienation in Akyem but all lands were solely under the stool's control then the 2nd defendant would legally be required by law to account only to the stool.

Although the decision in **OWUSU & ORS. VRS. ADJEI AND OTHERS (1991 2GLR 493)** is not cut in stone on the issue of accountability section 13 of the land Act 2000, Act 1036 sings a different tune. Section 13 of Act 1036 provides:

Section 13 – Management of stool or skin, or family land

- (1) Pursuant to clause (8) of article 36 of the Constitution, stool or skin, or family land shall be managed in accordance with this part.
- (2) A chief, tendana, clan head, family or any other authority in charge of the management of stool or skin, or clan or family land, is a fiduciary charged with the obligation to discharge the management function for the benefit of the stool or skin, or clan or family concerned and is accountable as a fiduciary.
- (3) A chief rendana, clan, family head or any other authority in charge of the management of stool or skin, or family or group land shall be transparent, open, fair and impartial making decision affecting the specified land.
- (4) A fiduciary under this section who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of not less than five thousand penalty units and not more than ten thousand penalty units or a term of imprisonment of not less than five years and not more than ten years or to both.

- (5) The provisions of the Head of Family (Accountability) Act, 19685 (P.N.D.C.L. 114) apply to this Act with the necessary modifications.
- (6) Despite subsection (5), a person shall not bring an action under section 2 of the Head of Family Accountability Act, 1985 (P.N.D.C.L. 114) against the occupant of a stool or skin, or against a tendana, unless that person
- (a) has first exhausted the established customary procedure for making the occupant of the stool or the skin or the tendana to render account or maintain records or the stool, skin or clan lands, where a procedure exists.
 - (b) is qualified under the relevant customary law to bring an action against the occupant; or
 - (c) is a subject of the stool or skin or a member of a clan of which the chief or tendana or clan head is the administrator or the stool or skin land and has been granted leave by a Court upon proof that the person qualified to institute an action failed to take action within thirty days after being informed or the need to take action.

Even before the review of the law on land issues, In the case of **AWUKU VRS. TETTEH (2011 1SGLR @ 366)** one of the issues determined by the Court was on whether the Caretaker an agent of the Osu Stool, who sold Maamobi lands without the consent of the elders of the stool. The Supreme Court was of the view that a grant of a Caretaker without the consent and concurrence of the Osu Manche or even a grant by the Osu Manche without the consent of his elders was null and void.

Thus the issue of a chief, reagent, caretaker or head of family being considered as an accountable person in the performance of their duties has not been as mute and uncertain as defendant's address to the Court sought to establish.

Although the plaintiff did not adduce evidence on the number of plots allegedly sold by 2nd defendant. The 2nd defendant has also not denied having sold land except to say he did everything with plaintiff's knowledge.

To this end from the evidence as presented the 2nd defendant at all times during his reign as reagent in his own words, handled all land transactions with the plaintiff and he claims that by virtue of being an Oyoko family member his authority as reagent was unlimited. Clearly by this claim even the 2nd defendant cannot hold that he must not account to the family. I find that 2nd defendant duties falls within the confines of Section 13 of Act 1036 and since the Oyoko family has lands it manages to serve the stool and those were the lands he dealt with he is legally obliged to account to the family head for his period of service.

The 1st defendant at all times did not participate in the trial, even his witness statement was not admitted into evidence. The Court through analysis of evidence presented also observed that the 3rd defendant was not involved in any land transactions although she acknowledged that plaintiff had brought 2nd defendant before on different platforms demanding accountability. I find that no case has been made against the 3rd defendant as even the transactions are found to have occurred before she became a queen mother.

During cross-examination the 2nd defendant was asked:

Q. You have refused to account for the Akyem lands for both the plaintiff and the now chief.

A. As I do not recognise him, I have accounted to the 1st defendant.

The 2nd defendant claims to have accounted to 1st defendant but since I find that he could not have disposed off the lands on his own as a reagent something he claims not to have done, he is hereby directed to render accounts of his stewardship to the plaintiff by 1st March, 2023. 2nd Defendant is to render accounts of all lands given out as gift, lease, licence with or without the consent of the Plaintiff herein. Again as the 2nd defendant is

no longer the reagent, he is directed to refrain from dealing with the lands of the Oyoko family in any way or form.

Judgment is entered for plaintiff against the 2nd defendant. Costs of Eight Thousand Ghana Cedis (GH¢8,000.00) awarded against the 2nd defendant.

(SGD.)

H/H. HATHIA AMA MANU, ESQ.

(CIRCUIT COURT JUDGE)