

IN THE CIRCUIT COURT HELD AT TARKWA IN THE WESTERN REGION ON  
FRIDAY, THE 17<sup>TH</sup> DAY OF FEBRUARY, 2023 BEFORE HER HONOUR HATHIA  
AMA MANU, ESQ., CIRCUIT COURT JUDGE

---

SUIT NO. C11/2/2020

AKWASI OSEI MINTAH  
(SUING FOR HIMSELF AND ON BEHALF -

PLAINTIFF

OF HIS FAMILY)  
H/NO. PT. 13 WEST ANAJI VIA TAKORADI

VRS:

YAW BRAFO -  
DEFENDANT  
OF MOSI AKURA VIA NKAAKAA

---

### **JUDGMENT**

---

Plaintiff – Present.

Defendant – Present.

The Plaintiff commenced this action on the background that his mother inherited family cocoa farms which eventually fell into his care when he succeeded his mother upon her demise. The Plaintiff is claiming that due to his busy schedule he was advised by a cocoa purchasing clerk to appoint the defendant to manage the farms. The Plaintiff asserts that despite this agreement the defendant upon taking over the farms has refused to account for the two years period that he managed the farms pending the filing of this suit. The defendant filed a defence to the action.

The defendant claimed that upon the death of his father his two children outside his marriage had disagreements, and that one portion of the land fell to the hands of one of the children whereas the other fell into his hands. The defendant also claims that the plaintiff was not paying his 'nton' on the land in dispute and

therefore the chief of the town wanted to takeover same. It is the defendant's defence that he is harvesting the land in dispute and using same to defray the amounts owed by the plaintiff to the chief which had accumulated to GHC4,000.00.

The burden of proof on the plaintiff is outlined in Section 12 of the evidence Act. The section outlines that the plaintiff must establish his case on a balance of probabilities thus from the evidence adduced the court must be satisfied that the plaintiff's evidence adduced is more probable than not.

The issues set down for trial are:

- Whether or not the plaintiff and his family members are entitled to the cocoa farm inherited from their grandfather.
- Whether or not the plaintiff and his family are entitled to recovery of possession.
- Whether or not the plaintiff and his family are entitled to an order directed at the defendant to provide accounts of proceeds of the cocoa farm from 20/8/2019 and 2020 cocoa season.

In the case of *BAHIRIWE VRS. TUKORE AND 2 OTHERS* "the Courts affirmed the general rule that he or she who asserts must prove ..." Thus in this case the plaintiff is expected to justify the reliefs sought.

The first issue for determination was on the relief for declaration of title. It is trait law that in seeking for declaration of title it is prudent that the plaintiff establishes acts of ownerships and possession. The land in question is said to be family land reserved for the person who succeeded Opanyin Kwami Mosi. To establish this claim the plaintiff was expected to prove uninterrupted possession as well as other acts of ownership. The plaintiff gave evidence to support his claims and asserted that it was his mother who first succeeded Opanyin Kwame Mosi and that after

his mother administered the estate she personally managed the land assigned for the benefit of the family.

Further the plaintiff gave evidence that upon the demise of his mother he succeeded her and had been managing the farms until such time that he allowed defendant to manage same for him. The plaintiff also exhibited to the Court an authority note given to his grandfather by one Nana Gyebi Simpi II as well as one receipt which reflects that he paid ground rent for 2005 although paid in 2006.

From the plaintiff's exhibit B, it is clear that the plaintiff is one who has been defaulting in paying the nton/ground rent. However that notwithstanding the lease is evidence to show the plaintiff grandfather was legally assigned the land. Also the first few paragraphs of Exhibit A reads "I the under-marked Nana Gyebi Simpi II of Enyinabrim for myself and on behalf of my elders have this day given a piece or parcel of land to Opanyin Kwesi Mosi" thus establishing that the plaintiff's grantor had a valid title to be on the land.

During cross-examination the defendant questioned and put it to the plaintiff that the land in dispute does not belong to the family to which the plaintiff stated that his mother harvested the said land for 15 years and he also harvested for 12 years before the defendant started making claims on it.

Although the plaintiff did not call any other witness there is no principle in law that states that the number of witness has a bearing on the relevance of evidence adduced in trial.

In the case of *ACKAH VRS. PERGAH TRANSPORT LTD. (2010) SCGLR, (2011) 31 GMJ 174* the Court said the various methods of producing evidence which includes the testimonies of the party and material witnesses, admissible hearsay,

documentary and things often described 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 tribunal or Court.

Thus guided by the principle set by the Superior Court, I am of the view that the plaintiff has adduced sufficient evidence and exhibits to convince the Court of his claims on the balance of probabilities. The defendant through his defence opposed the manner in which he had authority to owe the land in dispute but from plaintiff's evidence and responses to cross-examination, no words were minced on the fact that plaintiff cultivated the land for well over 12 years.

In fact the Exhibit of payment of nton by plaintiff is sufficient to prove that indeed he was in possession at a period.

The law is quite loud on the position that when pleadings have been denied by an adverseness proof by way of evidence is essential to discharge the legal burden thus between the plaintiff and defendant the law requires the former who is making as assertion to establish it by positive evidence. See the case of ***ROBERT AMASSAH KOTEY VRS. ISAAC NARTEY & 3 OTHERS (109 G.M.J. 206 @ 235)***.

In land matters proving root of title, mode of acquisition and identity of one's land is prudent. In the case of ***YEHAMS INTERNATIONAL LTD. VRS. MARTEY TSURU FAMILY AND 1 OR. [2018] DLSC 2488***, the Court speaking through Adinyira JSC held: It is settled that a person claiming has to prove

- (i) his root of title
- (ii) mode of acquisition and various acts of possession exercised over the land.

These are prerequisite that one seeking declaration of title must prove and the plaintiff has checked all the points by giving the Court Exhibit A (the original title holder certificate then tracing same down from his mother to himself. On the part of the defendant although he is not obliged to adduce evidence the burden shifted to him the moment he sought to plead the land devolved to him when the two children born out of wedlock were sharing the property. Thus the Court expected him to adduce evidence that will support his claim of the land having been given to children of Opanyin Kwame Mosi and also that the family has no right to the land.

The Supreme Court in the case of Duodu – Sakgiana vrs. I.D.C, Civil Appeal No. J4/25/2015 dated 6<sup>th</sup> June, 2016 outlined the attributes of a lawful lease such as the one provided by plaintiff as exhibit A. The Court held that “the material terms of a valid lease are as stated by da Rocha and Lodoh in their book “practical draftsman” viz being identity of the lessor and lessee and the capacities in which they are contracting”. Exhibit A is therefore a proper legal document of the deceased Opanyin Kwame Mosi root title and same was/is in the possession of the plaintiff.

In respect of the first issue I find that the plaintiff and his family are entitled to declaration of title on all that cocoa farms situate at a place commonly known as Mosi Akura via Nkaakaa on Enyinabrim Stool land and bounded by properties of Madam Akosua Foriwaa (deceased), Afia Donkor (deceased) and Owusu Aduene. The second issue is on whether plaintiff and his family are entitled to recovery of possession. In the instant case the plaintiff in his evidence informed the Court that he only gave the defendant permission to be on the land because he was not getting time to attend to the farm.

The plaintiff also asserted that the suggestion even came from the defendant and the cocoa purchasing clerks advised that the land should be given to the defendant. From the narration a bare license is that which was given to the

defendant. For the defendant's claim to be considered on the same scale for accession by the Court the onus would be on him to prove his claims.

However, the defendant's evidence only becomes important if it can upset the balance of probabilities which the plaintiff's evidence might have created in the plaintiff's favour. That this is why the Court always considers the defendant's evidence in respect of issues set down.

In the defendant's own evidence he has stated that the plaintiff neglected the farm lands and when he heard from the purchasing clerk that plaintiff was looking for a tenant farmer he asked that the land should be given to him to take care of.

From the defendant's own evidence, he is claiming the title of a caretaker, one which he asserts he sought permission from the plaintiff on. The really question is that if that is how the defendant came out having control over the land in dispute then why then is he insisting that the plaintiff and his family has no right to the farm lands. I find that the relationship created between the plaintiff and defendant can be described as a bare license which by law can be terminated at any point in time. Carefully studying the defendant's witness states it is clear that the defendant is not credible. The substance of his evidence is very contradictory. On one hand the defendant tells the Court that he took possession of the land and was working on same before the demise of his father. On the other hand he claims his late father called a meeting and informed all family members that they had no share in his land at Nkaakaa. Yet despite all this the defendant admits that plaintiff was managing the farm after his mother succeeded (plaintiff's mother) defendant's father.

The defendant even gave evidence that the plaintiff gave him the land on the advice of the purchasing clerk. If the defendant owed the land as of right why then would he have to plead with the plaintiff before cultivating on the same land he claims his father told the family to stay away from. I find that the plaintiff and his family are entitled to recover from the defendant the portion of farm land in dispute.

See the case of *NTIM VRS. ESSIEN [2001 – 2002 SCGLR 451]*.

*Section 80(2) of the Evidence Act, 1975 (NRCD 323).*

The third issue bothers on perpetual injunction, as the plaintiff's title has been established and to appreciate the intricacies of this case, let me recap what the defendant stated in paragraph 34 of his witness statement:

“Ever since I became the caretaker of the cocoa farm which is the subject matter in dispute, Plaintiff has not come to the village for the past two (2) years to ask me to render account because he is aware that I am harvesting the farm and to use the proceeds to defray Nton which has accumulated to GHC4,000.00. Plaintiff and his previous tenant farmer had failed to pay Nton some years back”.

I find that the defendant in his own evidence is not even certain of his position in respect of the farm land in dispute. Proverbs 3:28 CIB reads: Don't say to your neighbor, “Go away! Come back later. I will give it tomorrow” – When it is there with you. Guided by this the Court holds that to prevent future possible litigations, I hereby injunct the defendant by himself, his agents, assigns and all who benefit from him to refrain from ever dealing with the plaintiff's family land. The final issue for determination is on whether the defendant has to account to the plaintiff and his family. With the finding made in this trial and on account of the defendant himself acknowledging that he was aware the plaintiff was looking for a tenant farmer he would have accounted for profits or lose made. To this end whether the plaintiff was owing nton or not the defendant is liable to account for 2019, 2020, 2021 and 2022 cocoa season by 30<sup>th</sup> April 2023. Judgment is entered for the plaintiff. Costs of GHC2,000.00 is awarded against the defendant.

(SGD.)

H/H. HATHIA AMA MANU, ESQ.

(CIRCUIT COURT JUDGE)

