IN THE CIRCUIT COURT HELD AT TARKWA WESTERN REGION ON FRIDAY THE 20TH DAY OF JANUARY, 2023 BEFORE HER HONOUR HATHIA AMA MANU, ESQ., CIRCUIT COURT JUDGE.

SUIT NO. C1/9/2021

HARUNA SUGONE - PLAINTIFF
BROFOYEDUR, TARKWA

VRS.

1. NANA BONFUL
2. EBUSUAPANYIN TEACHER YALLEY - DEFENDANTS
3. KOBEE SOMBOBO
BROFOYEDUR, TARKWA

JUDGMENT

Plaintiff – Present.

Defendants – Absent.

Bright Baiden, Esq. for Plaintiff.

The Plaintiff commenced this action praying the Court for the following reliefs:

- Declaration of title to all that piece or parcel of building plot situate at Brofoyedur, Tarkwa and more particularly delineated on the cadastral plan and edged pink and covering an area of 0.25 acre.

- Damages for trespass onto the portion thereof.
- Recovery of possession thereof and
- Perpetual injunction restraining the defendants by themselves, their agents, assigns, servants, privies, workers, successors in title and all those claiming through them from having anything to do with the land.

These reliefs were being sought against the background of claims that he acquired the land in contention from 1st defendant's predecessor. The plaintiff claims that 1st and

2nd defendants sold the land to the 3rd defendant without recourse to him. It is for these reasons why the plaintiff is seeking the above listed reliefs.

The defendants despite having been duly served with the writ of summons and statement claim refused and failed to file their defence or even enter appearance. The plaintiff sought an order of interlocutory judgment which was granted. However, as his reliefs were declaratory in nature the Court directed the plaintiff to file his witness(s) statement and serve the defendants. This is a well-grounded practice in law. His Lordship Gbedagbe JSC (as he then was) cited same with approval in the case of **Rev. De-Graft Sefa and Others Vrs. Bank of Ghana**. His Lordship said, "the settled practice of the Courts is that a declaratory relief cannot be obtained by a motion in the cause but after hearing the parties either by way of legal argument or a full scale trial".

See also the cases of:

- **REPUBLIC VRS. THE HIGH COURT, 2SCGLR 966 @ 972 ACCRA EX PARTE DR ERNEST ASIEDU OSAFO.**
- **METZGER VRS. DEPARTMENT OF HEALTH AND SOCIAL SECURITY PER MEGARY VC @ 451**
- **CONCA ENGINEERING (GH) LTD. VRS. MOSES [1984 – 86] 2 GLR 319 @ 331 PER APALOO CJ.**

Thus based on the Court's directions the plaintiff had to proceed with the case as though the defendants had duly entered appearance and filed a defence.

See the case of **Nii Odai Ayiku IV Vrs. The Attorney General and Wor Nii Bortei Bortelasi Laweh XIV**.

As the suit is civil in nature the burden of proof to be used in accessing the evidence adduced during trial was on a preponderance of probabilities as stipulated in section 12 of the Evidence Act. Section 12 of the Evidence Act provides that, section 12 provide as follows:

12(1) except as otherwise provided by law, the burden of persuasion requires proof by the preponderance of probabilities.

12(2) preponderance of 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 plaintiff in a bid to prove his claims gave evidence himself of how he purchased 0.25 acre of land from 1st defendant's predecessor. He also tendered into evidence receipts and also a cadastral plan as proof of his title. The plaintiff also asserted that he had even built on a portion of the land and that it was the portion left which the 1st defendant had sold to the 3rd defendant.

The plaintiff also called a witness in this case. Plaintiff's witness asserted that he acquired the land in dispute with the plaintiff at the same time. It was PW2's evidence that this was about 26 years ago and that while he had developed his and was staying there the plaintiff had already developed a small portion. He further claimed that they both acquired full plots of land from 1st defendant's predecessor.

As the defendants did not avail themselves to cross-examine the witnesses, their evidence remained unwitted especially in the light of evidence adduced by the plaintiff the Court did not doubt the plaintiff's claim.

The law requires that to establish possession, it is prudent that he had developed a portion of the land without any form of interference. The above fact was undisputed and therefore there was no need for further evidence to prove it.

The receipt tendered into evidence has the title Brofoyedur-Tarkwa on same with a narration that same is for a last receipt issued to the plaintiff. This exhibits speaks to the fact that the plaintiff had made a purchase from Brofoyedur-Tarkwa.
In **Yeboah Vrs. Amofa (1997-1998) GLR 674 at 682 Her Ladyship Justice G. Wood** JA (as she then was) in clarifying proof of title to land stated:

"I noticed from section 11 of NRCD 323 that the statute does not attempt any definition of "sufficient evidence". In other words no attempt is made in disclosing what evidence will be deemed sufficient and what could be classified as insufficient. The reason is not difficult to find. It is definitely a question of fact determinable on the peculiar facts of each particular case. So that what constitutes sufficient evidence in case A may not necessarily be sufficient evidence in case B… I think when the two cases are read in the light of sections 11(1) and (4) and 12 of NRCD 323, all the law required of a person who seeks declaration of title is to lead such particular or sufficient evidence as the circumstances of the case would permit, so that on all the evidence a reasonable mind would conclude the probabilities of the existence rather than the none existence of the fact".

On the totality of the evidence presented I am satisfied that the plaintiff has satisfied the burden and proved his claim of ownership by acts such as building on the land in dispute without interruption.

Although the plaintiff presented one witness as stated in the case of **Kru vrs. Saud Brothers and Sons [1975] 1 GLR 46, A @ page 48 ….** "Judicial decision depends on intelligence and credit and not multiplicity of witnesses produced at the trial".

The plaintiff also sought relief of damages for trespass on the portion thereof. As I have found the plaintiff is entitled to all that parcel of land granted by the 1st defendant's predecessor. It is prudent that the court ensures that defendants allow

the plaintiff to enjoy the fruits of this court's judgment. As the damages sought is not specific, the plaintiff is entitled to general damages as incidental to the trial for expenditure incurred. I hereby order that damages of GH₵5,000.00 is awarded against the defendants in favour of the plaintiff.

See the case of **Glencove A. G. vrs. Volta Aluminum Company Ltd. (J4/40/2013) GHASC 10** dated 28/1/2015 where Justice Dotse JSC (as he then was) affirmed the High Court decision to award general damages.

As the plaintiff has been declared the proper title owner of the land described in his writ and statement of claim, I hereby injunct the defendants, their assigns, privies, workmen from dealing with plaintiff's land in any form or means without his consent.

(SGD.)

H/H. HATHIA AMA MANU, ESQ.

(CIRCUIT COURT JUDGE)