

IN THE CIRCUIT COURT WEIJA BEFORE HIS HONOUR JAMES KOJOH
BOTAH SITTING ON MONDAY THE 3RD DAY OF JULY, 2023

SUIT NO. C1/50/2021

JOSEPH NII SEMPE NYARKO ... PLAINTIFF
SUING PER HIS LAWFUL ATTORNEY
NEWLAND ANSAH

VRS

1. PAUL ADDY
2. BANKOLE ONOTAYO KEHINDE ... DEFENDANTS
3. MRS. LAURETA KEHINDE
4. NII OTU ANSAH BARNOR BUXTON

PARTIES: Plaintiff's Lawful Attorney Present
 Defendants Absent

COUNSEL: Kofi Sunu for G. H. Quist for Plaintiff Present
 Godsford Sawyerr for Defendants Absent

JUDGMENT

Per his amended Writ of Summons and Statement of Claim filed on 13th October, 2021, the Plaintiff is claiming the following reliefs against the defendants:

- 1. Declaration of title to all that piece of land situate lying and being at Oshiyie in the Ga South District of the Greater Accra, Region as particularly described in the amended Writ of Summons and Statement of Claim;*

2. *Recovery of Possession;*
3. *Perpetual injunction restraining the defendants whether by themselves or their servants or agents or privies or otherwise from trespassing upon the Plaintiff's land or any part thereof;*
4. *Damages for trespass; and*
5. *Costs for bringing this action including solicitor's costs.*

The defendants through their lawyer filed a Statement of Defence to the plaintiff's action. The defendant's Statement of Defence was however struck out during Case Management Conference for their failure to file their Witness Statements and Pre-trial Check list as ordered by the Court during the application for directions stage in accordance with Order 32 rule 7A of C.I. 47 as amended by C. I. 87. The defendants did not take any step to apply to relist their Statement of Defence. The Defendants and their lawyer also stopped appearing in court in spite of several hearing notices served on them on the orders of the court and on application by counsel for Plaintiff for them to appear. On 7th June, 2023, the court ordered the plaintiff to prove his case.

THE PLAINTIFF'S CASE

The plaintiff's lawful attorney testified that as a member of the Oshiyie Stool he is aware that sometime in 2006, the Plaintiff acquired a parcel of land from the late Nii Kofi Akrashie I, who was the occupant of the Oshiyie Stool clothed with the capacity to alienate Oshiyie lands. The Plaintiff annexed Exhibit 'C' to his Witness Statement which is an indenture evidencing his purchase of the land from the Late Nii Kofi Akrashie I. According to the Plaintiff's Lawful Attorney, after purchasing the land, the Plaintiff went into

possession by depositing a trip of sand and stones on the land and thereafter entrusted the land to him as the caretaker.

The plaintiff's lawful attorney told the court that in May, 2021 he visited the land and then noticed that the 1st Defendant and his workers had dug a foundation on the land. The matter was reported to the police and 1st Defendant and his workers were arrested. Police investigation showed that 1st Defendant and his workers were working for the 2nd and 3rd defendants who bought the land from the 4th defendant. The land documents of 2nd and 3rd defendants were executed by Nii Afadi Annoh IV in 2015. According to the plaintiff's lawful attorney, Nii Afadi Annoh IV died somewhere in 2013 and therefore could not have executed the land documents of the 2nd and 3rd defendants. Plaintiff's lawful attorney told the court that Nii Afadi Annoh IV was not the Head of the Afadi Annoh Family and did not have authority to alienate Oshiyie Stool lands. The Afadi Annoh Family are from Moree in the Central Region who have settled in Oshiyie. The plaintiff through his lawful attorney prayed the court to grant him his reliefs as endorsed on the Writ of Summons and Statement of Claim.

The plaintiff did not call witnesses.

ISSUES FOR TRIAL

The Court at the Application for Directions stage of the case set down the following issues for trial:

- 1) *Whether or not the Late Nii Kofi Akrashie I, the former Chief of Oshiyie in the year 2007 had the capacity to alienate the disputed land to plaintiff;*
- 2) *Whether or not at the time of 2nd and 3rd defendants alleged purchase of the disputed land in 2015, the plaintiff was already in possession;*
- 3) *Whether or not the Moree Family of Oshiyie had the capacity to alienate Oshiyie stool lands to the 2nd and 3rd defendants; and*
- 4) *Whether or not the conduct of the defendant constituted trespass.*

BURDEN OF PROOF

The burden of proof in civil cases rests on the plaintiff. The plaintiff discharges this burden by producing evidence of facts and circumstances from which the Court can be satisfied that what he avers is true. See **MAJOLAGBE v LARBI [1959] GLR 190 at 192**. In the case of **ACKAH v PERGAH TRANSPORT LTD & ORS [2010] SCGLR 728** the Supreme Court observed 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.

DETERMINATION OF THE ISSUES FOR TRIAL

Per Article 267 of the 1992 Constitution and Section 20 of the Land Act 2020 (Act 1036) it is the occupant of the stool or skin who has capacity to dispose of stool or skin lands in Ghana for valuable consideration. Also according to Ollenu in his book **Principles of Customary Land Law in Ghana** 1962 at page 127, the one indispensable person in the alienation of stool or skin land is the occupant of the stool or skin. This is because the occupant of the stool is considered the embodiment of all his subjects and the custodian of the land which is considered to belong to the dead, the living who are few and the countless numbers yet unborn. For the grant of

stool land to be valid, the occupant of the stool land and his principal councillors must grant it. See the case of **ALHAJI KAMARA v REV. DR. PAUL DAPAA, Civil Suit No. IFI/12/2017** delivered on 30th November, 2017.

The evidence on record is that somewhere in 2006 the late Nii Kofi Ankrashie I in his capacity as the occupant of the Oshiyie stool alienated a parcel of land to the plaintiff. The plaintiff's lawful attorney testified that he is a member of the Oshiyie stool and he is aware of the transaction. Per Exhibit "C" attached to the Plaintiff's Witness Statement, I find that on 4th November, 2008, Nii Kofi Akrashie I, Oshiyie Mantse of the Oshiyie stool in the Ngleshie Alata Traditional Area of James Town, Accra leased a parcel of land to Joseph Nii Sempe Nyarko, plaintiff herein, for the purpose of building a dwelling house. Exhibit "C", the Plaintiff's indenture though properly executed has not been registered. The Plaintiff's lawful attorney has explained that the plaintiff is still in the process of registering the document at the Lands Commission.

In the absence of any contrary evidence, I am satisfied that at the time Nii Kofi Akrashie I executed a deed of conveyance in favour of the plaintiff in respect of the disputed land he had the capacity as the occupant of the Oshiyie stool to do so.

At paragraphs 6 and 7 of their struck out Statement of Defence, the defendants pleaded that they acquired the disputed parcel of land in 2015 from their Vendor's title and that the plaintiff's claim to the disputed parcel of land is questionable. The Vendor, the defendants are referring to is obviously Nii Afadi Annoh IV per the plaintiff's evidence. The plaintiff's evidence is further that Nii Afadi Annoh IV died in 2013 and therefore he could not have executed the defendant's land documents in 2015. Assuming that the defendants obtained their land documents from Nii Afadi Annoh IV in 2015, the plaintiff's indenture that is Exhibit "C"

was executed in 2008 and therefore obtained priority of interest over the defendants documents if any such documents exists. From the evidence on record the plaintiff was already in possession of the disputed land as far back as 2008 and he proved acts of possession by depositing sand and stones on the disputed land as evidenced by his Exhibit "B" attached to his Witness Statement.

In the case of **MONDIAL VENEER GHANA LTD v AMUAH GBEBI XV** [2011] 1 SCGLR 466 at 475 WOOD C. J held that:

"In land litigation the law required the person asserting title and whom the burden of persuasion falls to prove the root of title, mode of acquisition and various acts of possession exercised over the subject matter of litigation".

The plaintiff has also proved his root of title and mode of acquisition of the disputed land through his Exhibit "C" that is the indenture annexed to his Witness Statement.

With respect to the third triable issue, it has already been established that it is the occupant of the Oshiyie stool lands who has capacity to alienate Oshiyie stool lands vested in him in trust for his subjects. Per the evidence on record the Afadi Annoh family are settlers on the Oshiyie lands having originated from Moree in the Central Region of Ghana. They are not vested with allodial title in Oshiyie stool lands or are occupants of the Oshiyie stool. As such they

did not have capacity to alienate the land in dispute which forms part and parcel of the Oshiyie lands to the 2nd and 3rd defendants.

To succeed in an action for declaration of title to land, recovery of possession and for an injunction, plaintiff must establish by positive evidence the identity and limits of the land which he claims. See **NYIKPLORKPO v AGBEDOTOR [1987-1988] 1 GLR 165**. The plaintiff's lawful attorney stated the size of the plaintiff's land as 0.54 acre or 0.22 hectare. The full description and boundaries of the plaintiff's land is stated on the Writ of summons and Statement of Claim as well as in the Plaintiff's Witness Statement. The identity and limits of the plaintiff's land is therefore not in doubt.

CONCLUSION

Evaluating the available evidence before me, I am satisfied that the plaintiff has succeeded in proving his title to the disputed land. On the other hand, I find the defendants as trespassers to the plaintiff's land who when sued by the plaintiff for their acts of trespass amongst other reliefs failed to contest the suit and also failed to show their faces in court. For all the reasons stated herein, I enter judgment in favour of the plaintiff against the defendants in respect of all the reliefs endorsed on the Writ of Summons and Statement of Claim.

Accordingly, the plaintiff is hereby granted recovery of possession of his land. The defendants, their agents, assigns, privies, workmen and servants are hereby perpetually restrained from trespassing or entering the plaintiff's land

or dealing with the land in any way detrimental to the interest of the plaintiff. For their acts of trespass, the plaintiff is entitled to nominal damages. I would in that vein award plaintiff GH¢8000.00 as damages for their trespass. I also award GH¢5000.00 as costs in favour of the Plaintiffs against the Defendants.

(SGD)

**H/H JAMES KOJOH BOTAH
(CIRCUIT COURT JUDGE)**