

IN THE CIRCUIT COURT WEIJA BEFORE HIS HONOUR JAMES KOJOH
BOTAH SITTING ON MONDAY THE 10TH DAY OF JULY, 2023

SUIT NO. C1/70/2021

1. SAMUEL QUANSAH ... PLAINTIFFS

2. MAVIS AMA QUANSAH

VRS

1. SAMUEL NORTEY	
2. EDWARD MALCOLM	...
AIDOO MORRISON	DEFENDANTS

PARTIES: Absent

COUNSEL: Tei Mensah Addico for Alfred Bannerman Williams Jnr
for Plaintiffs present

Naa Djamah Ayikor – Otto for Defendants Absent

JUDGMENT

INTRODUCTION

The Plaintiffs claims as per their amended Writ of Summons and Statement of Claim filed on 11th March, 2022 is for the following:

1. *Declaration of title to the land in dispute (as described in the schedule to the Writ of Summons and Statement of Claim)*
2. *Perpetual injunction restraining the defendants whether by themselves his agents, servants, assigns, workmen, privies and personal*

representatives or howsoever from interfering and or dealing with the land in dispute;

3. *Damages for trespass; and*

4. *Costs*

On the 4th October, 2022 interlocutory judgment in default of appearance was entered against the 2nd Defendant on the application of the Plaintiffs.

On 10th November, 2022, on the application of the Plaintiffs the 1st Defendant's Statement of Defence filed on 8th December, 2021 was struck out by the court in accordance with Order 11 rule 18 of C. I 47. The Court subsequently ordered the Plaintiff to take steps to prove their claims to be entitled to final judgment.

PLAINTIFFS' CASE

The 2nd Plaintiff testified for herself and on behalf of the 1st Plaintiff. 2nd Plaintiff stated in her Witness Statement filed on 18th January, 2023 that the Nii Arde Nkpa Family of Plerno Kokrobitey James Town are the allodial owners of Kokrobitey lands. According to the 2nd Plaintiff on 16th December 1998 the Nii Arde Nkpa Family of Plerno Kokrobitey James Town made a grant of a large parcel of land lying at Kokrobitey which includes the disputed land to Theresa O. Beeko for a term of ninety-nine (99) years. 2nd Plaintiff further stated that Theresa O. Beeko assigned the disputed land to

the Plaintiffs by a Deed of Assignment dated 17th April, 2005. The document was annexed to her Witness Statement as Exhibit A. the Plaintiffs also exhibited Exhibit "B" as the Land Title Certificate they obtained in respect of the disputed land. The Plaintiffs further exhibited Exhibit "C" and "D" being a pile of granite chips and a building structure on the disputed land as evidence of overt acts of ownership exercised by them over the disputed land after acquiring it.

2nd Plaintiff informed the court that in the year 2014, the Defendants entered the disputed land and then demolished the single room structure they had constructed on the land. The Defendants thereupon started constructing a fence wall around the disputed land. 2nd Plaintiff said they lodged a complaint at the Kokrobitey Toll Booth Police Station and both parties were requested to submit their land documents. The Plaintiff complied but the Defendants failed to do so. The police conducted a search on the disputed land and the results showed the Plaintiffs grantor as the owner of the land. The search was exhibited as Exhibit E. 2nd Plaintiff said the Plaintiffs conducted their own search and the results, that is Exhibit F was consistent with Exhibit. The Plaintiffs prayed the court to grant them their reliefs as endorsed on the Writ of Summons and Statement of Claim.

ISSUES FOR TRIAL

An application for directions under Order 32 of C. I 47 normally set out the issues in controversy between the parties for determination by the court. The issues set down by the parties must not be ignored by the court in preference of the court's own issues. See GAVOR V BANK OF GHANA [2013 – 2014] 2 SCGLR 1081. In this particular case however, the Defendants had no defence in the suit as the 1st Defendant's defence was struck out under Order 11 rule 18 of C. I 47 and judgment in default of appearance was also entered against the 2nd Defendant. The rule on application for directions does not apply where directions are given under Order 11 rule 8 of C. I 47 and pleadings are struck out or stayed or judgment given. See Justice Sir Dennis Adjei's paper published at page 97 of THE BENCH 2022 EDITION.

From the pleadings of the Plaintiffs and the evidence before the court, the court hereby considers the following issues for determination:

1. *Whether or not the Plaintiffs are entitled to their claims; and*
2. *Whether or not the Defendants trespassed upon the Plaintiffs land.*

BURDEN OF PROOF

In Civil cases the burden of proof is upon the Plaintiff who has brought the Defendant to court to prove his case with credible evidence short of which his claim may fail. See the case of ACKAH V PERGAH TRANSPORT LTD & ORD [2010] SCGLR 728.

The case before the court has to do with land. WOOD CJ in the case of MONDIAL VENEER GHANA LTD V AMUAH GBEBI XV [2011] 1 SCGLR

466 @ 475 observed as follows:

“ 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.”

Also, in the case of NYIKPOLORKPO V AGBEDOTOR [1987-1988] I GLR 165 the Court of Appeal stated that to succeed in an action for declaration of title to land recovery of possession and for an injunction, the Plaintiff must establish by positive evidence the identity and limits of the land which he claimed.

To prove their root of title to the disputed land, the Plaintiffs testified that the Nii Arde Nkpa Family of Plerno Kokrobitey James Town made a grant of land to one Theresa O. Beeko on 16th December, 1998 per a Deed of Conveyance with index No. AR/4279/99 and plotted as property No. 479. Theresa O. Beeko assigned the disputed land on 17th April, 2005 to the Plaintiffs. A Deed of Assignment was made by the assignor to the Plaintiffs. I have studied the Plaintiffs Deed of Assignment. It is exhibited on the face of it as Exhibit MAQ2 and not “Exhibit “B” as the 2nd Plaintiff stated at paragraph 8 of her Witness Statement. In Exhibit MAQ2 I find as a fact that on 16th

December, 1998 Vii Ebenezer; Nii Arde Tachie alias Nii Arde Nkpa VI and Tetteh Klemesu alias Nii Ofei II all of Plerno Kokrobitey James Town, Accra leased a parcel of land to Theresa O. Beeko for a term of ninety-nine (99) years.

I also find from Exhibit MAQ2 that on 17th April, 2005 Theresa O. Beeko assigned her interest in the land to the land Plaintiff who are marital couples. The Plaintiffs subsequently obtained a Land Title Certificate in respect of the land which is marked as Exhibit MAQ1 but has been wrongly described at paragraph 9 of the Plaintiffs' Witness Statement as Exhibit B. In **APPOLO CINEMAS ESTATE (GH) LTD V CHIEF REGISTRAR OF LANDS & ORS [2003-2005] 1 GLR 196** the court emphasized that the possession of a land title certificate raised a rebuttable presumption of the fact of ownership. The Plaintiffs exercised acts of possession over the disputed land by building a single room structure on it and depositing granite chips on the land as seen in their exhibits MAQ3 and MAQ4 which again has been wrongly labelled at paragraph 11 of the 2nd Plaintiff's Witness Statement as Exhibit C and D.

On the basis of the evidence before me I am satisfied that the Plaintiffs have succeeded in proving their root of title mode of acquisition and various acts of possession exercised over the disputed land. With respect to the identity of their land. With respect to the identity of their land, the schedule to the Writ of Summons and Statement of Claim as well as the schedule to Exhibit MAQ2 that is the Deed of Assignment fully describe the Plaintiffs land as lying at

Kokrobitey, Accra certainly an approximate area of 0.44 acre or 0.17 hectare.

The schedules also fully describe the boundaries of the Plaintiff's land.

With respect to the last issue for determination, the 1st Defendant stated at paragraph 4 of his struck out statement of defence that he has no interest in the disputed land and that the 2nd Defendant owns the disputed land. However, the 2nd Defendant's contest of the Plaintiffs action ended at the application for joinder stage. He failed to file an appearance after being joined to the suit leading to an interlocutory judgment in default of appearance entered against him. He failed to move the court to set aside the default judgment. The failure of the Defendants to contest the Plaintiffs' action bears credence to the fact that they are trespassers on the Plaintiffs land and they quickly retreated when the Plaintiffs came to court to assert their rights. This belief is strengthened by the Plaintiffs evidence that the Defendants had no documents to produce to prove their ownership of the disputed land. When the police requested it.

CONCLUSION

Having successfully proved their case upon the evidence, I hold that the Plaintiffs are entitled to their reliefs endorsed on the Writ of Summons and Statement of Claim. Title to the disputed land is declared in the Plaintiffs. The Plaintiffs are granted recovery of possession of their land. The Defendants, their agents, assigns, servants, privies and workmen are hereby perpetually

restrained from interfering with the Plaintiffs land or dealing with the land in any way detrimental to the interest of the Plaintiffs.

I award GH¢8,000.00 as damages for trespass against the Defendants and in favour of the Plaintiffs. I also award GH¢5000.00 as costs in favour of the Plaintiffs against the Defendants.

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