

IN THE CIRCUIT COURT WEIJA-ACCRA BEFORE HIS HONOUR JAMES KOJOH
BOTAH SITTING ON MONDAY THE 11TH DAY OF SEPTEMBER, 2023.

SUIT NO. C1/50/2022

JEREMA EDUSEI ----- PLAINTIFF

VRS:

1. NICHOLAS SODJI ----- DEFENDANTS

2. DAVID KOFI ABORTEY

PLAINTIFF – PRESENT

DEFENDANTS – ABSENT

EMMANUEL PADI FOR THEOPHILUS CODJOE FOR PLAINTIFF – PRESENT

JUDGMENT

The Plaintiff's claims as per her Writ of Summons and Statement of Claim filed on 6th May 2022 are for:

1. A declaration that she is the Owner in Possession of the parcel of land more particularly described in paragraph 5 of the Statement of Claim;
2. An Order of perpetual injunction restraining the defendants by themselves, their agents, servants or whomsoever acts under their command from entering the land the subject matter of this Writ, and doing anything thereon;
3. An Order of Possession of the land in the Plaintiff;

4. General and special damages for trespass; and
5. Costs including Lawyers fees.

The defendants filed a Statement of Defence and Counter Claimed for the following:

1. A declaration of Title to defendants of all that piece or parcel of Land situate, lying and being at Nyanyano (Kuwit);
2. An Order of recovery of possession from the Plaintiff;
3. An Order of perpetual injunction restraining the Plaintiff, her agents, servants, privies or any other group of persons claiming through her from trespassing onto the disputed land and doing acts that would amount to an assertion of title to the land or interference with defendant's land;
4. General damages for trespass;
5. Costs occasioned by this action including Solicitors fees;
6. Any other relief or reliefs that this Honourable Court may deem fit.

Plaintiff responded with a Reply and Defence to Counter Claim.

The issues for trial set down at the Application for Directions are:

1. Whether or not the said parcel of land belongs to the defendants;
2. Whether or not the defendants have the capacity to prohibit the Plaintiff from going on to her land;
3. Whether or not the said land is within the jurisdiction of the defendants' Chief;
4. Whether or not the land in dispute is in the jurisdiction of the Central Region; and
5. Whether or not the said parcel of land can be described as situate, lying or being at Tuba, Kokrobite.

THE BURDEN OF PROOF

In civil cases the burden of proof is generally on the Plaintiff who has brought the defendant to Court. In the case of **Lamptey alias Nkpa v. Fanyie and Others** [1989-90] 1GLR 286, the Supreme Court observed as follows:

“On general principles, it was the duty of a Plaintiff to prove his case. However, where on a particular issue he had led some evidence, then the burden will shift to the defendant to lead sufficient evidence to tip the scale in his favour.”

Also in the case of **Ackah v. Pergah Transport Limited and Others** [2010] SCGLR 728 the Supreme Court per Wood C.J. Stated the law on the burden of proof in the following words:

“It is a basic principal of the Law on evidence 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. The method of producing evidence is varied and it 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 Court or tribunal of fact such as a jury...”

THE PLAINTIFF’S CASE

The Plaintiff stated in her witness statement filed on 10th October, 2022 and admitted into evidence on 24th August, 2023 that on 15th March, 2007 she purchased a parcel of land situate at Tuba-Kokrobite in the name of her son Wesley Edusei from the Nii Arde Nkpa Family at Plerno headed by Nii Arde Nkpa VII and Nii Ofei II. According to the Plaintiff, an executed lease attached to her witness statement as Exhibit “JE1” evidenced the above grantors as the lessors and Wesley Edusei as the lessee.

The Plaintiff informed the Court that she went into possession of the land by building a concrete wall and also deposited sand, stones and other building materials on the land for the purpose of building a house. She put a caretaker on the land and then applied to

the Kasoa District Assembly for a building permit. Plaintiff further informed the Court that about four (4) years ago, trespassers tried to enter the land and so she made a report to the Amanfro Police and the defendants were arrested. The defendants claimed the land in dispute was within the jurisdiction of their Chief. However, upon request by the Police for the defendants to substantiate their claim of ownership with title documents they failed to do so.

Plaintiff told the Court that she conducted a Search in respect of the disputed land at the Lands Commission and the result showed that the disputed land falls within the Nii Ardey Nkpa Family Lands.

Plaintiff stated at paragraph 8 of her witness statement that she has attached the search to her witness stated as Exhibit "JE2". However, this is not the case. I have not found it.

PW1, Kwame Odoi Anim testified in support of the Plaintiff's case. He told the Court that he was living with the Plaintiff and her spouse when they purchased the land at Tuba-Kokrobite somewhere in March 2007 from Nii Arde Nkpa VII, the Mantse of Plerno and Nii Ofei II being heads of the Nii Arde Nkpa family of Plerno. PW1 said the Plaintiff and her husband took him to the land after the purchase and he saw the boundary pillars. PW1 further said that a wall was constructed around the land leaving a front section. Sand and stones were also put on the land and a caretaker who was living close to the land was put in charge of the land until the Plaintiff moved in.

PW1 testified that no one encroached on the land until somewhere 2019. PW1 corroborated the Plaintiff's evidence about how the Police got involved in the case and the defendants failure to produce documents in support of their claim. PW1 further testified that the trespassers were coming to the land, so the Plaintiff constructed a wall on the front section of the land and put a gate. The trespassers later brought land guards to stop the construction.

THE CASE OF THE DEFENDANTS

The application for directions in the case was taken as far back as on 20th September, 2022. The Parties were ordered to file their Witness Statements and Pre-trial Check Lists for the trial. The Court also appointed the Regional Surveyor to survey the land in dispute. The Parties were subsequently ordered to file their survey instructions. The Plaintiff fully complied with the orders of the Court but the defendants did not even, though served with a reminder of the Court's Orders and a hearing notice. On 18th July, 2023, the Court struck out the defendants Defence and Counter Claim for their failure to comply with the orders and directives of the Court made at the application for directions stage in accordance with Order 32 rule 7A of C.I. 47 as amended by C.I. 87. The struck out defence and Counter-Claim of the defendants was not relisted by them by means of a motion. As it stands now they have no testimony before the Court to consider. The Court's records, will show that the defendants have never shown their faces in Court. All processes emanating from the Plaintiff were served on the defendants through their lawyer Samuel Attuah of Lartey, Badombie and Co. Chambers, who after filing an Entry of Appearance and a Statement of Defence and Counter-Claim for the defendants never appeared physically in Court.

RESOLUTION OF THE ISSUES FOR TRIAL

The first issue the Court has to determine is whether or not the disputed land belongs to the defendants. Since the defendants have no defence before the Court and no evidence for the Court to consider, I will rephrase the first issue as follows: Whether or not the land in issues belongs to the Plaintiff. The instant suit by the Plaintiff is about land. The law therefore requires the Plaintiff to prove her root of title, mode of acquisition of the land in issue and acts of possession exercised over the subject matter of litigation. Wood CJ in the case of **Modial Veneer Ghana Ltd v. Amuah Gbebi XV [2011] 1SCGLR 466 at 475** stated the case law as follows:

“In land litigation ... the law requires the person asserting title and on 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.”

It is also the law relating to land litigation, that to succeed in an action for declaration of title to land, recovery of possession and for perpetual injunction, the Plaintiff must establish by positive evidence the identity and limits of the land which he claims. See the cases of **Amuzu v. Oklika** [1998-99] SCGLR 141; **Kpakpo Brown v. Besomtwi and Co. Ltd** [2001-2002] SCGLR 876; and **Ayeh & Akakpo v. Ayaa Eddrisu** [2010] SCGLR 981.

In paragraph 5 of her Statement of Claim the Plaintiff described her parcel of Land as follows:

“All that piece of Land situate and being at Tuba Kokrobite, Accra containing an approximate area of 0.172 acre and bounded on the North –East by Lessor’s Land measuring 93.7 feet more or less on the South-West by Lessor’s land measuring 94.5 feet more or less on the North-West by lessor’s Land measuring 79.2 feet more or less and on the South-East by Proposed Road measuring 80 feet more or less.”

This description and identity of the land by the Plaintiff is in sync with what is contained in Exhibit “JE1”, the indenture the Plaintiff annexed to her witness statement in support of her case. The Plaintiff has therefore succeeded through documentary evidence in proving the identity of the land she is claiming.

The Plaintiff has one more hurdle to overcome if the Court is to enter a favourable judgment for her. She must prove with credible evidence her mode of acquisition, and various acts of possession exercised by her over the land in dispute. In her evidence-in-chief, the Plaintiff narrated to the Court that on 5th March 2007 she bought the land in dispute at an amount of GH¢50,000.00 for and on behalf of her son Wesley Edusei from Nii Arde Nkpa VII and Nii Ofei II who are the heads of the Nii Arde Nkpa family of

Plerno. Per the evidence on record, the Plaintiff exercised possession over the land upon its acquisition by erecting a block fence and also depositing sand, stones and other building materials on the land. The Plaintiff engaged a caretaker to watch over the land. PW2 corroborated the Plaintiff's evidence and testified to how the Plaintiff installed a gate to the block fence on the land.

The Plaintiff attached an indenture i.e. Exhibit "JE1" to her witness statement to buttress her evidence that she acquired the disputed land from the Nii Arde Nkpa Family of Plerno. The first part or paragraph of a conveyance on sale of land, commonly called an indenture, states the names of the lessor and lessee or their agents. I find from Exhibit "JE1" that the Lessors are Nii Arde Nkpa VII, Mantse of Plerno and Nii Ofei II of Korkobite all of them being heads of the Nii Arde Nkpa family of Plerno in the traditional area of James Town and Kokrobite. The Lessee on the other hand is Wesley Edusei of P. O. Box TA 244, Taifa-Accra. The conveyance on the sale of the land described in Exhibit "JE1" was therefore made on 15th March 2007 between the Nii Arde Nkpa Family of Plerno headed by Nii Arde Nkpa VII and Nii Ofei II on one part and Wesley Edusei of Taifa, Accra on the other part. The Plaintiff herein does not feature in Exhibit "JE1" as a party to the lease agreement. The Plaintiff might have bought the land with her own money from the above grantors and gifted it to her son Wesley Edusei, the truth of the matter is however that it is Wesley Edusei's name that is on the indenture, Exhibit "JE1" as the lessee of the land in dispute and not the Plaintiff. The Plaintiff's evidence in paragraph 2 and 3 of her witness statement that she acquired the land in dispute from the Nii Arde Nkpa Family of Plerno is at variance with her documentary evidence, Exhibit "JE1." My critical examination of Exhibit "JE1" reveals a curious thing. Exhibit "JE1," the indenture was properly executed by the lessors with witnesses. In comparison, Wesley Edusei, the son of the Plaintiff and whose name appears on the indenture as the Lessee of the Land in dispute did not execute or sign the indenture Exhibit "JE1." It was signed

by the Plaintiff herself. The signature of the Plaintiff purportedly made on 15th March 2007 on Exhibit “JE1” is the same as her signature on her witness statement made on 10th October, 2022. The Plaintiff herein after signing Exhibit “JE1” as lessee which she ought not to have done went ahead and witnessed the Indenture. Since the Plaintiff is not a party to Exhibit “JE1” and since also the Site Plan to the land in dispute is in the name of Wesley Edusei and not the Plaintiff, the Plaintiff had no business executing Exhibit “JE1.” In fact, by so doing, she has put the validity of Exhibit “JE1” into question. In the same vein, since the Plaintiff is not a party to Exhibit “JE1”, she has no legal capacity to institute the instant suit against the defendants. The person with the requisite capacity to bring the instant action against the defendants is the Plaintiff’s son Wesley Edusei. Counsel for Plaintiff who issued the Writ of Summons on behalf of the Plaintiff and filed the pleadings and witness statements should have seen from the on-set of the suit that the Plaintiff lacked capacity to come to Court by herself against the defendants and further that without a power of attorney from Wesley Edusei her case stood on clayey legs and bound to collapse.

CONCLUSION

Per the above evaluation of the evidence on record, the Plaintiff has failed to prove with credible and convincing evidence her root of title and mode of acquisition of the land in dispute. Indeed, the Plaintiffs Exhibit “JE1” shows that she lacks the legal right or capacity to proceed in Court against the defendants. In the case of **Akrong v. Bulley** [1965] GLR 465 the Supreme Court noted that the capacity to commence any legal action is a fundamental requirement and that the lack of capacity will strip the Plaintiff of locus standing.

The other issues for determination are not worth the Court’s consideration, for in the case of **Fosua and Adu-Poku v. Dufie (Deceased) and Adu Poku-Mensah** [2009] SCGLR 338 the Supreme Court observed that the question of capacity in initiating proceedings is very

important and fundamental and can have a catastrophic effect on the fortunes of a case. Finally, in the case of **The Republic v. High Court, Accra Ex-Parte Aryeetey (Ankrah Interested Party)** [2003-2004 SCGLR 398, the Supreme Court held that a party shall not be entitled to the reliefs endorsed on his writ of summons if it is established that he has no capacity to institute the action.

Having arrived at the conclusion that the Plaintiff has no capacity to sue the defendants, I hereby dismiss the Plaintiff's suit.

(SGD)

H/H JAMES KOJOH BOTAH

CIRCUIT COURT JUDGE

