

**IN THE CIRCUIT COURT HELD AT WEIJA – ACCRA BEFORE HIS HONOUR
JAMES KOJOH BOTAH SITTING ON THURSDAY THE 12TH OF OCTOBER, 2023**

SUIT NO: C1/38/2023

SANI MOHAMMED ----- PLAINTIFF

VRS.

KWAKYE MARFO @ RHODA ----- DEFENDANT

PLAINTIFF – ABSENT BUT REPRESENTED BY MADIAH ABDUL-KARIM

DEFENDANT – ABSENT

ATINGA AYAMGA FOR PLAINTIFF – PRESENT

JUDGMENT

1. INTRODUCTION

On 5/4/2023 the Plaintiff filed a Writ of Summons and Statement of Claim seeking the following reliefs:

- (a) A declaration of title to all that piece or parcel of land situate lying and being at Kokrobite, Accra (as fully described on the Writ of Summons and Statement of Claim);
- (b) A declaration that Defendant has trespassed on part of the land of Plaintiff;
- (c) An order for recovery of possession of land from the Defendant, her agents, privies, workmen, hirelings and any person whatsoever claiming from or through her;
- (d) An order of permanent injunction restricting the Defendant, her agents, workmen and any persons whatsoever claiming from or through her interfering with the Plaintiffs interest in the land in dispute;
- (e) An order for general damages; and

(f) Any other order that this Honorable Court may deem fit.

The Defendant failed to file an appearance and a defence after being served with the Plaintiff's suit. On 5/7/2023 Interlocutory Judgment in Default of Defence was entered in favour of the Plaintiff in respect of his relief (c). The case then took its normal course with Plaintiff filing application for directions same of which was taken. An order was made for the parties to file their Witness Statements and Pre-Trial-Checklists. The Plaintiff complied with the orders of the Court, but the Defendant did not, although served with the Court's Notes and directions of the Court. Hearing Notices served on the Defendant to appear were ignored by the Defendant. On 15/9/2023, the Court ordered the Plaintiff to prove his case to be entitled to final Judgment.

2. PLAINTIFF'S CASE

PW1 Madiah Abdul-Karim testified that she and the Plaintiff bought the land in dispute from the Nii Arde Nkpa Family in 2015. PW1 annexed Exhibit "B" and "B1" to her Witness Statement which is the indenture and site plan respectively in respect of the land in dispute. According to PW1, the couples took possession of the land in dispute by erecting a three bedroom self-contain structure on part of the land. Exhibit "C" attached to PW1's Witness Statement is a picture of the structure on the disputed land. PW1 also attached Exhibit "D" and "D1" series to her Witness Statement to show that she bought some of the items for the development of the structure on the land.

PW1 told the Court that she lives on the land with PW2 who is the caretaker of the land. PW1 testified that somewhere in May, 2020 the Defendant entered part of the land and started a building foundation claiming that she has acquired an interest in that portion of the land. PW1 said she reported the trespass of the Defendant to the police. According to PW1, the police found that the Defendant had no interest in the land. The Plaintiff was told to pay a token amount to the Defendant for the work she has done on the land. So they gave GH¢6,000.00 to the police to be given to the Defendant but the Defendant refused the money alleging that she bought the land

from one Yakubu a brother of Alhaji Huda. PW1 informed the Court that the Defendant went back into the land and continued constructing her building. The Defendant's building structure has been exhibited as Exhibit "E". PW1 said they further resisted the activities of the Defendant by erecting a front fence wall to enclose the land and warding off the Defendant. According to PW1, the Defendant used her influence as a police officer by hauling her before the police at Kasoa where she works so that she could be threatened to accept the trespass of the Defendant but she refused. PW1 said the Defendant has threatened to break down their fence wall and enter the land in dispute.

PW2, Sulley Osman testified that Alhaji Abdulai who is an Uncle to the Plaintiff put him on the disputed land as caretaker. The land has a three-bedroom structure on it and was initially fenced. PW2 said he lives on the land with the Plaintiff's wife, PW2. PW2 further said he has planted economic trees on the portion of the land which contains no structure on it. According to PW2, the Defendant entered a portion of the Plaintiff's land and started putting up a chamber and hall structure on it.

3. ISSUES FOR TRIAL

The Plaintiff set out the following issues for trial in his application for directions filed on 6/7/2023:

- (a) Whether or not the Plaintiff has acquired an interest in the land in dispute;
- (b) Whether or not the Plaintiff is in possession of the land in dispute; and
- (c) Whether or not the Defendant has trespassed on part of the land in dispute.

4. BURDEN OF PROOF

In Civil trials 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 and Anor. [2010] SCGLR 728.

5. EVALUATION OF THE EVIDENCE

In respect of the first issue for determination, it is the evidence of PW1 that she and her husband the Plaintiff acquired the disputed land in the year 2015 through purchase from the Nii Arde Nkpa Family. In the case of **Mondial Veneer Ghana Ltd v. Amuah Gbebi XV** [2011] SCGLR 466 at 475 Wood CJ stated 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.”

The Plaintiff annexed Exhibit “B” and “B1” to her Witness Statement to prove his root of title and mode of acquisition of the land in dispute. Exhibit “B” is a lease made on 21/8/2015 and entered into between Nii Arde Nkpa, Mantse of Plerno and Nii Ofei II being the Heads of the Nii Arde Nkpa Family of Plerno in the Traditional Area of James Town and Kokrobite as lessors on one part and Sani Mohammed as the lessee on the other part in respect of a parcel of land at Kokrobite. Exhibit “B1” is the site plan of the land in the name of the Plaintiff.

In the case of **Nyikpolorkpo v. Agbedotor** [1987-1988] 1GLR 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 is claiming.

The identity and full description of the Plaintiff’s land has been stated in Exhibit “B” and also on the Writ of Summons and Statement of Claim. The identity of the Plaintiff’s land is therefore not in doubt.

Per Exhibit “B”, I find that the Plaintiff has acquired an interest in the land in dispute and that the land belongs to the Plaintiff.

In respect of the second issue for determination, the law is that to further prove his title, the Plaintiff must demonstrate various acts of possession exercised over the subject matter of litigation. The Plaintiff placed PW2 as caretaker to watch and take care of the land. PW2 planted economic trees on the land. The Plaintiff together with his wife PW1 built a three-bedroom structure on the disputed land. PW1 and PW2 now live in the structure on the land in dispute. The Plaintiff has also built a fence wall around the land in dispute. All these activities in my opinion constitute acts of possession exercised by the Plaintiff and PW1 over the land in dispute.

In respect of the third and final issue for determination, the Defendant never appeared in Court to contest the Plaintiff's claims although she has been served with all relevant Court processes. If the Defendant had an adverse claim to the disputed land, she filed no process to pursue her counter-claim. The Defendant has put up a structure that is Exhibit "E" on a portion of the land belonging to the Plaintiff. Again if the Defendant had a good title to the disputed land she ought to have come to Court to be heard. From the evidence before me and also considering the failure or refusal of the Defendant to appear in Court from the outset of this suit, I can only find the Defendant as a trespasser who has no legal right to enter the Plaintiff's land.

I have evaluated the evidence before me in the case in its totality and I find favour with the Plaintiff's case and accordingly I enter final Judgment in favour of the Plaintiff in respect of his reliefs endorsed on the Writ of Summons and Statement of Claim. Title to the disputed land is declared in the Plaintiff. Defendant is declared as a trespasser on the Plaintiff's land. Plaintiff is to recover possession of the land from the Defendant. The Defendant, her agents, privies, servants, workmen and those claiming through her are perpetually restrained from interfering with the Plaintiff's interest in the land. I award GH 8,000.00 as damages for trespass against the Defendant in favour of the Plaintiff. I also award GH¢6,000.00 as costs in favour of the Plaintiff against the Defendant.

(sgd)

H/H JAMES KOJOH BOTAH
CIRCUIT COURT JUDGE