

**IN THE CIRCUIT COURT OF JUSTICE, SITTING AT ASHAIMAN ON
THURSDAY THE 7TH DAY OF DECEMBER, 2023 BEFORE HIS HONOUR
SIMON NKETIAH GAGA CIRCUIT COURT JUDGE**

SUIT NO: C1/22/23

FAGATI 2010 LIMITED
H/NO. DH 27 AMANKANI AVENUE
SPINTEX

PLAINTIFF

VRS:

COMMERCIAL INVESTMENT
ACCRA

DEFENDANT

J U D G M E N T:

The plaintiff which is a Limited Liability Company through its Chief Executive Officer filed a writ of summons before this court praying for the following reliefs against the defendant company.

- (a) Declaration of title and recovery of possession of all that piece or parcel of land situate, lying and being at Katamanso Accra and bounded on the North-East by lessor's land measuring 1188.3 feet more or less on the South-East by lessor's land measuring 177.4 feet, 468.7 feet, 307.3 feet, 178.0 feet, 199.8 feet, 237.8 feet, 123.9 feet, 224.7 feet and 637.4 feet more or less on the South-West by lessor's land measuring 458.7 feet more or less on the North-West by lessor's land measuring 322.5 feet, 810.9 feet and 637.4 feet containing an approximate Area of 25.52 Acre(s) or 10.33 Hectares more or less which said piece or parcel of land is more particularly delineated on the plan attached hereto and thereon edged shewn pink to have and to hold.

- (b) Perpetual injunction restraining the defendant, its heirs, assigns and all claiming through the defendant.
- (c) An Order cancelling defendant's land title certificate and interest over plaintiff's land
- (d) Cost.

After the plaintiff's writ of summons and statement of claim was served on the defendant, the defendant through its counsel entered conditional appearance.

However, the defendant failed to file any process as required by Order 9 Rule 8 of the CI 47 which states as follows:"

"A defendant may at any time before filing appearance, or if the defendant has filed a conditional appearance, within fourteen days after filing appearance, apply to the court for an order to

- (a) Set aside the writ or service of the writ
- (b) Declare that the writ or notice of it has not been served on the defendant, or
- (c) Discharge any order that gives leave to serve the notice on the defendant outside country."

After 14 days since the defendant failed to file any process to set aside the writ of summons, the conditional appearance automatically was treated as normal appearance.

SEE: AMISSAH-ABADOO V ABADOO [1973] IGLR 490

Since the defendant failed to file defence as prescribed by law, the plaintiff applied to the court under Order 13 of the CI 47 for Judgment in Default of Defence.

The court entered judgment in default of defence for the plaintiff. However, since the plaintiff's relief is declaratory of title, it is a settled law that judgment cannot be obtained by motion unless through full scale trial. Thus judgment cannot be entered simpliciter against the defendant without calling on the plaintiff to establish his claim.

SEE: IN RE: NUNGUA CHIEFTAINCY AFFAIRS:

ODAI AYIKU IV VRS THE ATTORNEY GENERAL (BORKETEY LARWEH XIV – Applicant) [2010] SCGLR 413

The court therefore ordered the plaintiff to file its disclosures and serve same on the defendant.

THE CASE OF THE PLAINTIFF

One Gamel Issaka, the Chief Executive Officer of the plaintiff Company, testified for himself and on behalf of the plaintiff.

The plaintiff averred that he acquired the disputed land from the Katamanso Stool in the year 2013. He tendered Exhibit 'B' in evidence. Exhibit 'B' is an indenture covering the disputed land which was entered between **NII OTU AKWETEY IX, KATAMANSO MANTSE OF KATAMANSO STOOL LAND,** Head and Lawful representative of Nii Adzin we Family of Katamanso, on one hand and the plaintiff company on the other hand.

According to the plaintiff the defendant bought the parcel of land from the Katamanso Stool. However, the defendant could not pay for the land to his grantor. The plaintiff avers that the Katamanso Stool sold the defendant's portion of the land to the plaintiff of which terms of settlement or an agreement was brokered between the Katamanso Stool, the defendant and the plaintiff.

He tendered a copy of the said brokered agreement as Exhibit 'A' in evidence

According to the plaintiff, the plaintiff therefore went ahead to wall its land and alienated portions of the land to interested third parties. These people have started developing their respective plots. He tendered in evidence pictures of the structures on their lands marked as Exhibit 'C'.

The defendant has registered the land even though he has not paid for the land as evidence in Exhibit 'D' Exhibit 'D' is a provisional certificate issued to the defendant for registration of the land by the Lands Commission.

The plaintiff avers that the defendant's act at the Lands Commission is frustrating the plaintiff to register the land at the Lands Commission he therefore prayed the court to grant his reliefs as endorsed on the writ of summons.

ISSUE

The only issue set down by the court for the trial of the case is as follows

"Whether or not the plaintiff is entitled to his reliefs"

APPLICABLE LAW

For declaration of title and possession of land, the burden of proof and persuasion remain on the plaintiff to prove that on the balance of probabilities he is entitled to his claim. This he could do by proving on the balance of probabilities, the essentials of his root of title, method of acquisition and the identity of the land.

SEE "AGOSAI AND OTHERS V KPOBI TETTEH TSURU III [2010] SCGLR762775

2. OSAE V ADJEIFIO [2007/08] SCGLR HOL (3)

Also, Section 11(4) of the Evidence Act, of 1975, NRCD 323 provides as follows

“In other circumstances, the burden of producing evidence requires a party to produce sufficient evidence which on the totality of the evidence leads a reasonable mind to conclude that the existence of the fact was more probable than its non-existence.”

EVALUATION

The plaintiff's settled evidence is that he acquired the disputed land from the Katamanso Stool in 2013 after same was sold to the defendant company and he failed to pay for it.

The issue in controversy is that, among the plaintiff and the defendant who owns the disputed land. In the case of **AGYEI OSAE V ADJEIFIO** [2007/08] SCGLR 499, BROBBEY JSC speaking for the court in holding three (3) said as follows

“The principle is that in an action for declaration of title to land, injunction and recovery of possession, the plaintiff must establish by positive evidence the identity and limits of the land he claims.

The question then is, how does a party prove the existence of his land? What comes to mind is the site plan of the area and acts of possession. In the instant suit, the plaintiff tendered in evidence Exhibit 'B' which is an indenture of the disputed land with site plan attached to prove to the court his root of title.

With regard to possessory rights, the plaintiff tendered in Exhibit 'C' which shows some of the buildings that the plaintiff's grantees have put up on the portions of the disputed land after the plaintiff had alienated portions of the land to his grantees.

Also, the plaintiff tendered in Exhibit 'A' which is a Brokered Agreement between the Katamanso Stool, the defendant and the plaintiff. And at the said meeting all the three parties were represented. The plaintiff was represented by Alhaji Gamel Isaaka, the defendant was represented by Kelli-Cross K. Sachiel. While Katamanso Stool thus the grantor was represented by Hon. Nii Afotey Agbo.

As a result of this agreement, the plaintiff was made to take possession of the land by the Katamanso Stool, the owner of the land.

Is the plaintiff therefore entitled to the reliefs he is seeking" I think yes? This is because he has been able to proof his title to the disputed land. He has also been able to proof his possessory rights of the disputed land.

It is a settled law that one in possession is deemed to be the owner of the property. See Section 48 of the Evidence Act of 1975 (NRCD 323). This court is duty-bound to protect the plaintiff against the defendant who has failed to mount any challenge to the plaintiff's claim. In the case of **DUAH V YORKWA (1993/94) IGLR 217-241 BROBBEY JA** (as he then was) drove the point home as follows

"...It was settled principle that a person in possession and occupation was entitled to the protection of the law against the whole world except the true owner or someone who could prove a better title."

In the premise, I pronounce the plaintiff as the rightful owner of the disputed land since it is the plaintiff who is in possession of the land, and also, the Katamanso Stool, the owner of the land has transferred titled of the land to the plaintiff. I further declare the purported registration of the disputed land at the Lands Commission by the defendant as nullity since the disputed land does not belong to the defendant because a registered instrument does not great an indefeasible title.

SEE: YEHANS INTERNATIONAL LTD. VRS: MARTEY TSURA FAMILY AND ANOTHER [2018]

Unreported Suit No. Civil Appeal J4/34/2018 dated 24th October, 2018 Adinyra JSC.

The Lands Commission is ordered to expunge all the land's registration title and certificate issued to the defendant and allow the plaintiff to register same.

I award cost of GHC10,000.00 against the defendant.

(SGD)

H/H SIMON NKETIAH GAGA

(CIRCUIT COURT JUDGE)

PLAINTIFF-PRESENT REPRESENTED BY

ALHAJI GAMEL ISAAKA

COUNSEL FOR PLAINTIFF- ISAAC AIDOO PRESENT.

Jt.