

IN THE CIRCUIT COURT HELD IN KUMASI ON THURSDAY THE 1ST DAY OF JUNE,
2023 BEFORE HER LADYSHIP JUSTICE PRISCILLA DAPAAH MIREKU (MRS.),
SITTING AS ADDITIONAL CIRCUIT COURT JUDGE.

SUIT NO. A1/71/26

MARBEL BENTOL (SUBSTITUTED BY KWABENA SEY)

VRS:

**NANA KOFI PEPRAH (SUBSTITUTED BY MAXWELL ATTAKORAH
AMANIAMPONG)**

JUDGMENT

On the 15th day of February, 2016, the original plaintiff instituted this action against the defendant. The reliefs endorsed on the writ of summons by the plaintiff are as follows;

- a. An order for declaration of title to Plot No. 106 Block 'F' New Kyekyere, Kwabre.
- b. An order for recovery of possession of title of plot No. 106 Block 'F' New Kyekyere, Kwabre.

- c. Perpetual injunction restraining the defendant, his agents, assigns, privies and workmen from claiming title through him from dealing with the disputed land in a manner detrimental to the interest of the plaintiff until the final determination of the matter.
- d. General damages for trespass.
- e. Cost including legal fees.
- f. Further or other order(s) that this Honourable Court shall deem fit.

THE PLAINTIFF'S CASE;

The summary of the Plaintiff case is that, one Joseph Bio (Deceased) who acquired the subject matter of this dispute from one Kofi Nkrumah allowed her to operate her business on the aforementioned land. That upon the demise of Joseph Bio, his family approached her that they intend to sell the land which she showed interest and acquire same. The plaintiff alleges the defendant resides on the adjoining land and that she has been in occupation of the subject matter without any opposition and hindrance from any quarters until when the defendant started claiming portion of the subject matter as his. That during the life time of Joseph Bio, the defendant did not challenge the ownership of the land. The plaintiff further claims she has all the relevant documentation covering the said land. That the defendant is using intimidation and

fanciful tactics to disturb her peaceful enjoyment of the land. The plaintiff prays per the reliefs endorsed on the writ of summons.

THE DEFENDANT'S CASE;

The summary of the defendant's case is that, he denies the averments of the plaintiff save that the plot in dispute has indeed been numbered Plot No. 106 Block F. According to the defendant, the said Joseph Bio has never owned the house for the family to request to sell the said plot. That those who allegedly sold the land to the Plaintiff could not have done so since they did not have letters of administration in respect of the said land.

The defendant had no counterclaim. The defendant also filed an application to amend his defence but same was struck out by the court for want of prosecution after several adjournments for the application to be moved.

ISSUES FOR TRIAL;

The issues set down for trial are as follows;

1. Whether or not the property in dispute as one hereditament was the bonafide property of Joseph Bio.
2. Whether or not Joseph Bio in his life time alienated his interest in the subject matter as one hereditament to the plaintiff.

3. Whether or not the plaintiff is the new owner of the property in dispute.
4. Whether or not the Defendant is the owner of a portion of the property in dispute as claimed.
5. Whether or not Joseph Bio's family members needed a letter of administration to finalize a sale and purchase agreement initiated by Joseph Bio for the transfer of the property in dispute in his lifetime.
6. Any other issues raised on the pleadings.

EVALUATION OF EVIDENCE AND LAW;

In the case of **ASANTE-APPIAH V. AMPONSAH [2009] SCGLR 90** it is stated that, *"the law is well settled that where plaintiffs claim are for possession and perpetual injunction, he puts his title in issue. He therefore assumes the onus of proving title by the preponderance of probabilities."*

It is trite that in civil suits, the onus on the parties is by the preponderance of probabilities. Section 12 of the Evidence Act 1975 (NRCD 323) provides that,

(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.

(2) "Preponderance of the probabilities" means that degree of certainty of belief in the mind of the tribunal of fact or the court by which it is

convinced that the existence of a fact is more probable than its non-existence.

The plaintiff in proving her case testified on her own behalf and called two other witnesses. The plaintiff tendered an allocation note from New Kyekyere Stool land in the name of Kofi Nkrumah together with a site plan and same was marked as Exhibit 'A'. She also tendered a building permit from Kwabre District Assembly together with its attachments granted in the name of Kofi Nkrumah marked as Exhibit 'B'; Exhibit 'C' and 'C1' which are pictures of her alleged wooden structure she constructed on the subject matter when Joseph Bio gave her permission to occupy the land aforementioned; Exhibit 'D' and 'D1' are an allocation note and site plan from Tafo Stool dated 15th April, 2011 in her name Marbel Bentol. The plaintiff also tender a receipt or transfer note dated 1st November, 1997 executed in favour of her grantor Joseph Bio by Kofi Nkrumah marked as Exhibit 'F' and another transfer note executed by Joseph Bio in her favour to take effect from 10th December, 2002. The landed documents tendered by the plaintiff are all not stamped.

The Plaintiff's first witness Nana Agyen Friimpong Dekyi (PW1) testified that the subject matter is located on the Tafohene Stool Lands and that the Odikro of New Kyekyere is a subchief of Tafohene. According to PW1 when the Plaintiff became aware that the Tafohene is the proper authority to issue allocation note in respect of new Kyekyere she submitted the allocation paper her previous grantor obtained from New

Kyekyere to Tafohene who subsequently issued another allocation note to her to recognize her as his tenant. That the property in question has been properly allocated to the plaintiff.

The plaintiff accuses the defendant of trespassing on her land but she does not lead evidence on the trespassory acts but the defendant admits having a drinking spot on the subject matter.

In case of **ZAMBRAMA V. SEGBEZI [1991] 2 GLR 221 @ 246** which it was held that,

A person who makes an averment or assertion, which is denied by his opponent, has a burden to establish that his averment or assertion is true. And he does not discharge this burden from which the fact or facts he asserted can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of the burden.

Also in the case of **EQUITY ASSURANCE V. PALMERS GREEN INT'L LTD [2019] 134 GMJ 57**, proof in civil trials were stated as follows;

Section 11(4) and 12 of the Evidence Act, 1975 (NRCD 323) require a plaintiff in a civil matter to prove his case on a balance of probabilities. Based on section 11(4) and 12 of Evidence Act

(NRCD 323), the Supreme Court in the case of Awubeng v. Domfeh [1996-97] SCGLR 660 held that standard of proof in all civil action was proof by the preponderance of probabilities and there is no exception to this rule.

Thus, the plaintiff must prove her case by the preponderance of probabilities.

The late Joseph Bio's brother Samuel Opoku Among testified on behalf of the Plaintiff as her second witness (PW2). He testified to the fact that the land in dispute belongs to his late brother and that his late brother put the plaintiff in possession and two years after his demise the family sold same to the plaintiff. the Plaintiff also testified that she has been in possession of the disputed land over 15 years.

The evidential burden is first on the plaintiff and it is after she proves her case by the preponderance of probabilities that it will shift to the defendant to prove his case. The plaintiff cannot rely on the weakness of the defendant's case. This was stated in the case of In the case of **AWUKU V. TETTEH, [2011] 1 SCGLR 366** the court held that,

"In an action for declaration of title to land, the onus was heavily on the Plaintiff to prove his case; he could not rely on the weakness of the defendant's case. He must, indeed, show clear title."

The plaintiff in her pleadings avers that one Joseph Bio allowed her to occupy his land and after his demise, he family sold same to her which is the subject matter. The

Plaintiff's witness PW2 testified that the land was sold to the plaintiff after the demise of the said Joseph Bio.

However, the plaintiff tendered an alleged transfer note Exhibit 'G' of the subject matter executed by Joseph Bio to her. PW2 the alleged brother of the said Joseph Bio has clearly stated on record that Joseph Bio passed on in 2000 while the land was allegedly sold to the plaintiff in 2002. Since the dead cannot execute a contract, I find that Exhibit 'G' was not executed by the Plaintiff and smells of fraud.

The plaintiff further alleges that it was after the demise of Joseph Bio that the defendant started to challenge the ownership of the land but the defendant has testified that they challenged Kofi Nkrumah's entry on the land which he stopped and that they did not know of Joseph Bio until his death. PW2 admits that at the time both parties allegedly acquired the land there was no Tafohene but insisted that the subject matters falls under the Tafo stool which the plaintiff has come to formerly acquired it from the Tafo Stool.

The plaintiff further alleges that the defendant's plot number 105 is distinct from Plot number 106 which is the subject of dispute. That the defendant has walled plot 105 and living on same. The plaintiff further alleges that the defendant approached her to give her access to his land when she was constructing her structure and has been in quite possession for about 15years. That if indeed the land belongs to the defendant why will he seek her permission for access to his land. This statement implies that the only access

to Plot number 105 is through 106. But a careful look at Exhibit 'D1' and Exhibit '3' clearly show a road in front of both parcels of land. The defendant also does not deny the fact that their plot number 105 is fenced. If indeed their father purchased both plots as claimed by him, then it does not make reason why he will fence one and leave the other especially if the access is through that land.

The plaintiff tenders a building permit permitting her grantor's grantor Kofi Nkrumah to erect a structure on the subject matter. All the date on the said permit is dated in 2002. If in 2002, the said Joseph Bio's family had sold the land to the Plaintiff as alleged, how come the permit from Kwabre Municipal Assembly was issued in the name of Kofi Nkrumah. There is also no explanation on record why this is so.

In ACKAH V. PERGAH TRANSPORT LTD AND OTHERS [2010] SCGLR 728 AT 736, it was also held that,

"It is a basic principle 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."

After the close of the plaintiff's case, the defendant was called to open his case. The original defendant passed on so his substitute, Maxwell Attakora Amaniampong testified on his own behalf as the defendant. After he was discharged, his counsel informed the court that their witness was deceased so they wanted to recall the

defendant to tender his witness statement which the honourable court obliged. However when the defendant was recalled he informed the court that his witness now blind, bed ridden and cannot reason so he seeks to tender the said witness statement of Nana Atta Owusu without any objection.

According to the defendant, his late father paid valuable consideration for the acquisition of two plots of land and same were duly transferred to him and tendered a site plan of plot number 105 Block 'F' which was then Plot 23 marked as Exhibit '1'. The defendant also testified that his father purchased the subject matter in dispute as it lied right at the entrance of his house which was then Plot 23 and tendered Exhibits '2' and '3' an allocation Note and site Plan of the said land as proof of his claim. The said allocation note and site plan are not stamped or dated. There is also no signature at the portion left for the allottee to sign even though it is also from New Kyerekyere Stool Land. The defendant also tendered another allocation note dated 17th October 2016 marked as Exhibit '5' which the allottee has also not signed and same has also not been stamped. The property rate receipt tendered by the defendant dated 15th December, 1997 is in respect of House No. 18 Block D which is different from the subject matter in dispute. The defendant further tendered a statutory declaration made by one Kingsley Appiah-Antwi on the 12th day of February, 2007 that he has transferred his interest in the land to the original defendant.

The defendant testified that his father the original defendant erected a temporary structure where he was operating a drinking spot which his is still currently being operated by his sister. The defendant further testified that, his father resisted all attempts the plaintiff and her grantors attempt to claim the subject matter and only relaxed for the plaintiff to have her temporary structure on the land when his brother pleaded on her behalf. However his father withdrew his consent when the plaintiff tried to erect permanent structure on the land. The defendant also tendered the witness statement of Nana Atta Owusu as Exhibit '4'.

the court cannot rely on the landed documents tendered by both parties as they are all not stamped in accordance to law (see the case of **WOODHOUSE V. AIRTEL GHANA LT. SC, (CIVIL APEAL NO. J4/05/2018) DATED 12TH DECEMBER, 2018**) . I however find as fact that, the late Joseph Bio put the plaintiff into possession of the subject matter and upon his demise his family through his customary successor sold same to the plaintiff. That the plaintiff has been in occupation of the land since 2000 and bought same in 2002. That if indeed the defendant acquire d the subject matter in or around 1988, his allocation paper would have proved same but the allocation papers tendered in court does not bear his seal and the court if of the view that same was executed after the demise of the original defendant and as stated above unstamped so cannot hold waters.

The defendant claims to have been in possession of the subject matter where his father was selling pito but the defendant has not led any evidence to corroborate same that his father was first in possession long before the plaintiff entered the land.

The court also find it difficult to rely on the witness statement of Nana Atta Owusu tendered as hearsay evidence as the defendant in one breath alleges the said witness is blind, bed ridden and cannot reason and his counsel in another breath alleges that the said witness is deceased.

As already stated, the plaintiff cannot rely on the weakness of the defendant's case. However, the plaintiff was able to prove her case by the preponderance of probabilities. There is no doubt that the plaintiff is in possession of the subject matter and possession is an equitable right which ought to be protected by the court until the rightful legal owner appears. In the case of **ABAKA EFFIANA FAMILY & ORS V. MBIBADO EFFIANA FAMILY & ORS [1959] GLR 362**, it was held that, where a defendant has been in long undisturbed possession and occupation of land, he is entitled to the protection of the law against all who cannot affirmatively prove a better title.

Also the Court takes judicial notice of the fact that New Kyekyere falls under the Tafo Stool land and a representative of the said stool has testified in this court that, the plaintiff has taken steps to perfect her title.

The defendant raises an issue at the capacity of the family of Joseph Bio to sell the disputed land to the plaintiff has they do not have letters of administration. The court is of the view that it does not lies in the mouth of the defendant to raise that issue or

objection as he is not a family member of the deceased Joseph Bio and his estate is not raising any objection.

Judgment is hereby entered for the Plaintiff for the reliefs endorsed on the writ of summons;

- a. An order for declaration of title to Plot No. 106 Block 'F' New Kyekyere, Kwabre in favour of the Plaintiff;
- b. An order for recovery of possession of plot No. 106 Block 'F' New Kyekyere, Kwabre from the defendant;
- c. Perpetual injunction restraining the defendant, his agents, assigns, privies and workmen from claiming title through him from dealing with the disputed land in a manner detrimental to the interest of the plaintiff until the final determination of the matter;
- d. General damages of Ten Thousand Ghana Cedis (Gh¢10,000.00) for trespass; and
- e. Cost of Ten Thousand Ghana Cedis (GH¢10,000.00) including legal fees

SGD.

PRISCILLA DAPAAH MIREKU (MRS.)

(JUSTICE OF THE HIGH COURT)

CIRCUIT COURT 2, ADUM