

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON WEDNESDAY, THE 10<sup>TH</sup>  
DAY OF JANUARY, 2024, BEFORE HER HONOUR AGNES OPOKU-  
BARNIEH, CIRCUIT COURT JUDGE**

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**SUIT NO. C11/09/22**

**QUEENA ADOMA FRIMPONG                      -----                      PLAINTIFF**

**VRS.**

**KOFI BOAPEA                                      -----                      1<sup>ST</sup> DEFENDANT**

**DANIEL BOAKYE                                 -----                      2<sup>ND</sup> DEFENDANT**

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<b>PLAINTIFF</b>	<b>PRESENT</b>
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<b>DEFENDANTS</b>	<b>ABSENT</b>
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<b>SAMUELLA ASAREWAA KWARTENG, ESQ. HOLDING THE BRIEF OF JAMES ENU, ESQ. FOR THE PLAINTIFF</b>	<b>PRESENT</b>
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**JUDGMENT**

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**FACTS**

The plaintiff caused a writ of summons to be issued against the defendant on 10<sup>th</sup> December 2021 for the following reliefs;

- a. A declaration of title to all that piece or parcel of land situate, lying, and being at Dawhenya consisting of two plots described in the schedule as all that piece or parcel of land situate, lying, and being at Dawhenya in the Ningo Prampram District-Accra, containing an approximate area of 0.21 Acre or 0.09 Hectare more or less and bounded on the North-East by proposed road measuring a total distance of 96.2 feet more or less on the South-East by Lessor's Land measuring a total distance of 95.5 feet more or less, on the South-West by Lessors land

measuring a total distance of 96.7 feet more or less, on the North- West by Lessor's Land measuring a total distance 95.4 feet more or less.

- b. Recovery of possession of the one plot of land encroached by the defendant
- c. Damages against the defendants for trespass.
- d. Perpetual injunction to restrain the defendants, their agents, assigns, privies,
- e. workmen or anybody purporting to be acting on their instructions from entering and developing the land the subject matter of this suit forthwith.
- f. Cost inclusive of legal fees
- g. Any other order(s) as the Honourable Court may deem fit.

The plaintiff's case is that she is a student and resident in Tema and described the defendants as trespassers who are developing her land, the subject matter of this suit. The plaintiff avers that sometime in the year 2008, her father Bernard Osei acquired two plots of land from the Osu Wem Family of Prampram acting through its then head and lawful representative Numo Narh Mensa with the consent, knowledge, and concurrence of the principal elders of the said family. The plaintiff avers that it was one Nelson Marmah Martey who fronted the whole transaction on behalf of his father who went with him to inspect the land and met the chiefs, before acquiring the Land. The plaintiff further avers that her father, after acquiring the two plots of land gave one plot to her in the same year 2008 per a statutory declaration and with the knowledge, consent, and concurrence of the chief and principal elders of the family. The plaintiff says that one plot which was given to her is situate, lying and being at Dawhenya, in the Greater Accra Region of the Republic of Ghana, containing an approximate area of 0.21 Acre or 0.09 Hectares more or less and is particularly described in the schedule attached hereto.

The plaintiff further says that as evidence of her interest in the land, a deed of lease was executed between the then head of the Osu Wem Family, Abraham Nuer Nortey of the one side and her good self of the other side in respect of the land, the subject matter of the suit, in the year 2011. The plaintiff avers that she immediately constructed

a dwarf fence wall through one Patrick Coleman who was the caretaker of her land. The plaintiff avers further that she is in the process of registering the land and has now acquired a Yellow Card in respect of the land and a Cadastral plan is being prepared for her.

The plaintiff avers that she was recently informed by her caretaker that the defendants have encroached on the said one plot of land and are developing same. The plaintiff says that her caretaker confronted the defendants' workers on the land and stopped them from working but this was temporary as the defendants' workers subsequently resumed working again. The plaintiff avers that the matter was reported at the Prampram Police Station and the defendants were asked to stop the development on the land and produce their documents but they failed to do so. The plaintiff avers that the defendants have since persisted in developing the land and all efforts made by her to stop them have proved futile. According to the plaintiff, the defendants are developing the land with the speed of light to forcibly take the plaintiff's land from her.

When personal service of the processes on the defendants proved futile, the plaintiff served the defendants with the writ of summons, statement of claim, a motion on notice for an order for interlocutory injunction, and an order for interlocutory injunction by substituted service. However, the defendants failed to enter an appearance to the suit and the plaintiff proceeded as if the defendants had entered an appearance by obtaining an interlocutory judgment in default of defence and proceeded to lead evidence to prove her claim. The court ordered the plaintiff to file witness statements and pre-trial checklist which were duly served on the defendants but again, the defendants failed to appear at the trial to contest the suit.

The Court set down the following issues for determination.

## **LEGAL ISSUES**

1. Whether or not the plaintiff is the owner of the land in dispute.
2. Whether or not the plaintiff is entitled to damages for trespass against the defendants.

## **BURDEN OF PROOF**

It is trite that the standard of proof in all civil cases is proof by preponderance of probabilities. See **sections 11(4) and 12 of the Evidence Act, 1973(NRCD 323)**. The Supreme Court in the case of **Jass Co. Ltd & Anor v. Apau & Anor [2009] SCGLR 265** held in its holding 1 that;

*“The burden of proof is always put on the plaintiff to satisfy the court on a balance of probabilities in an action for a declaration of title to land. Where the defendant has not counterclaimed, and the Plaintiff has not been able to make out a sufficient case against the defendant, then the Plaintiff’s claims would be dismissed...”*

## **ANALYSIS**

### **ISSUE 1: Whether or not the plaintiff is the owner of the land in dispute.**

The Supreme Court in espousing what a person asserting title must prove in the case of **Mondial Veneer (GH) Ltd v. Amuah Gyebu XV [2011] 1 SCGLR 466** per Wood CJ (as she then was) held at page 475 as follows;

*“In land litigation, even where living witnesses who were directly involved in the transaction under reference are produced in court as witnesses, the law requires the person asserting title, and on whom the burden of persuasion falls, as in this instant case to prove the root of title, mode of acquisition and various acts of possession exercised over the subject-matter of litigation. It is only where the party has succeeded in establishing these facts on a balance of probabilities that the party will be entitled to the claim.”*

Again, in the case of **Nortey (No.2) v. African Institute of Journalism and Communication & Others (N0. 2)** [2013-2014] 1 SCGLR 704 @ 713, the Supreme Court:

*“In an action for declaration of title to land, recovery of possession and injunction, a plaintiff must establish by positive evidence the identity and limits of the land he claims. The onus of proof required by law as regards the identity of land would be discharged by meeting the following condition: The plaintiff must establish the identity of the land and all his boundaries; and where there was no properly-oriented plan drawn to scale, which made compass bearings vague and uncertain, the court would hold that the plaintiff had not discharged the onus of proof of his title...”*

Thus, it is imperative, in an action for declaration of title to land, recovery of possession, and injunction for the plaintiff to prove her root of title, mode of acquisition, and acts of ownership exercised over the land in dispute and more importantly, the identity and limits of the land to which the plaintiff claims, where the identity of the land is in issue. It is of no consequence that the defendant failed to participate in the proceedings or that the action is uncontested.

The plaintiff testified through her Lawful Attorney Patrick Coleman, who tendered in evidence a duly executed Power of Attorney admitted and marked as **Exhibit “A”**. The plaintiff’s Attorney described the defendants as trespassers who are developing plaintiff’s land, the subject matter of this suit. The Attorney further testified that the plaintiff’s father, Bernard Osei sometime in the year 2008, acquired two plots of land from the Osu-Wem Family of Prampram acting through the then head and lawful representative, Numo Narh Mensa with the consent, knowledge, and concurrence of the principal elders of the said family. It was one Nelson Marmah Martey who led the whole transaction on behalf of the plaintiff’s father who went with the plaintiff’s father to inspect the land and to see the chiefs before acquiring the land. The plaintiff’s father, after acquiring the two plots of land gave one plot of the land to the plaintiff in the

same year 2008 per a statutory declaration and with the knowledge, consent, and concurrence of the chief and principal elders of the family. In support, he tendered in evidence as **Exhibit “B”**, a copy of the said Statutory Declaration.

The plaintiff’s attorney in describing the identity of the land being claimed by the plaintiff further testified that the one plot that was given to the plaintiff is described as all that piece or parcel of land situate, lying and being at Dawhenya in the Ningo Prampram District - Accra, containing an approximate area of 0.21 Acre or 0.09 Hectare more or less and bounded on the North-East by proposed road measuring a total distance of 96.2 feet more or less on the South-East by Lessor's Land measuring a total distance of 95.5 feet more or less. on the South-West by Lessors land measuring a total distance of 96.7 feet more or less, and on the North- West by Lessor's Land measuring a total distance of 95.4 feet more or less.

In support, he tendered in evidence as **Exhibit “C”**, a copy of the site plan on the land. The plaintiff as evidence of her interest in the land has a deed of lease which was executed between the then head of the Osu Wem Family, Abraham Nuer Nortey of the one side and the plaintiff of the other side in respect of the land the subject matter of the suit, in the year 2011, as evidenced by **Exhibit “D”**, a copy of the said Lease agreement. After that, the plaintiff, with his help as a caretaker immediately constructed a dwarf fence and he continued to protect the land for the plaintiff. The plaintiff is in the process of registering the land and has acquired a yellow card and a Cadastral plan in respect of the land is being prepared for the plaintiff. He tendered in evidence **Exhibit “E”** Series which includes a copy of the yellow card and copies of receipts of registration processing documents.

The plaintiff's Attorney further testified that the defendants recently encroached on the said one plot of land and started developing same and he, as the caretaker of the plaintiff, informed the plaintiff about the said encroachment. In support, he tendered in evidence **Exhibit "F"** and **"F1"** photographs of ongoing development. He further testified that he even confronted the defendants' workers on the land and stopped them from working but this was temporary as the defendant's workers resumed working on the land. The matter was subsequently reported at Prampram Police Station and the defendants were asked to stop development on the land and produce their documents but they failed to do so. Despite the various reprimands by the plaintiff, himself, and the Prampram Police, the defendants have persisted in developing the land the subject matter herein and all efforts by the plaintiff to stop them have proved futile. The plaintiff's attorney states that the defendants are speedily developing the land day and night to forcibly take the plaintiff's land from her and have evinced every intention not to abate their acts of trespass and encroachment on the land and allow the plaintiff peaceful enjoyment of her land unless compelled by the orders of this Honourable Court.

The defendants were given the opportunity to defend the suit but failed to participate in the proceedings. In the case of **Ankumah v. City Investment Co Ltd** [2007-2008] 1 SCGLR 1064 holding 1, the Supreme Court held as follows;

*"The defendant, after several attempts, was finally served but failed to appear in court. The trial court therefore rightly adjourned the case for judgment. A court is entitled to give a default judgment, as in the instant case, if the party fails to appear after notice of the proceedings has been given to him. For then, it would be justifiable to assume that he does not wish to be heard".*

The evidence of the plaintiff led through her attorney regarding the mode of acquisition of the land in dispute remains uncontradicted by the defendants by their failure to participate in the proceedings. The evidence shows that the plaintiff's father per

**Exhibit A”** the Statutory Declaration declared that he had transferred one plot of the land purchased from the Osu Wem family to the plaintiff. According to the plaintiff, it is based on the said grant that the original grantors prepared a deed of lease in her favour in respect of the land in dispute on the instructions of her father and the plaintiff has commenced the processes for the registration of the land in dispute. The evidence also shows that the plaintiff moved into possession by erecting a dwarf wall around the land and put her Lawful Attorney in charge as the caretaker of the land. The plaintiff also exercised overt acts of possession by warding off encroachers from the land in dispute. The defendants having failed to challenge the gift made to the plaintiff, I hold that the plaintiff established her title to the disputed land on balance of probabilities.

**ISSUE 2: Whether or not the plaintiff is entitled to damages for trespass against the defendants.**

The plaintiff also claims damages for trespass. Under **Section 48** of the Evidence Act, NRCD 323, the things, that a person possesses, are presumed to be owned by him, and a person who exercises acts of ownership over property is presumed to be the owner of it. In the case of **Seraphim v. Amua-Sekyi** [1962] 1 G.L.R. 328 at p. 331, Ollenu J (as he then was) stated the position of the law as follows:

*“A person in possession can successfully maintain an action for trespass against the whole world except the person proved to be the true owner. But possession means effective possession; a person who enters upon land which is apparently already in the possession of another person, cannot in law be said to have that possession which will entitle him to the benefit of the proposition of law. Therefore where the possession relied upon has not been effective or where it is one which has been disputed, a plaintiff to succeed in an action for trespass against another person who also claims to be in possession cannot succeed unless he proves that as between him and that other person, the right to immediate possession of the land is vested in him. Next where a plaintiff proves effective possession of land the onus shifts upon the trespasser to prove that title to the land is vested in him; that is, to prove that he, the trespasser, is the true owner.”*



Again, in the case of **Mensah vs. Peniana** [1972] 1 GLR 337 the court held that:

*“Proof of possession by a plaintiff is sufficient to maintain an action for trespass against a defendant who cannot prove a better title...He must however fail if the defendant is able to establish his title to ownership or that he went on the land with the permission of the real owner”*

The plaintiff's Attorney testified that after the grant to the plaintiff, she moved into occupation of the property in dispute and constructed a dwarf fence wall and he continued to protect and take care of the land for the plaintiff. The defendants have encroached on the said piece of land and started developing same and he as the caretaker of the plaintiff informed the plaintiff about the said encroachment of the defendants. He further testified that he even confronted the defendant's workers on the land and stopped them from working but this was temporary as the defendants' workers subsequently started working again. Also, notwithstanding the reprimand from the plaintiff, himself, and the Prampram Police, the defendants have persisted in developing the land in dispute. In support, he tendered in evidence **Exhibit “F”** series which are photographs of the ongoing development by the defendants.

From the evidence led by the plaintiff's attorney for and on behalf of the plaintiff, at the time the defendants encroached on the disputed land, the plaintiff was in effective occupation of the land. It is trite learning that in an action for trespass to land, damages are at large and a party need not specially prove damage. The principles governing the award of damages for trespass is that in awarding damages, consideration must be given to the acreage of land on which the trespass was committed, the period of wrongful occupation, and the damage caused. See the case of **Laryea v. Oforiwah** (1984-86) 2 GLR 411 at page 429, CA. I will therefore award an amount of Five Thousand Ghana Cedis (GH¢5,000) as damages for trespass in favour of the plaintiff against the defendants.

## **CONCLUSION**

In conclusion, I hold that the plaintiff proved her case against the defendants on a balance of probabilities to entitle the plaintiff to the reliefs being sought against the defendants. The plaintiff therefore succeeds in her claim and I accordingly enter judgment for the plaintiff against the defendants as follows;

1. I hereby grant a declaration of title in favour of the plaintiff against the defendants to all that piece or parcel of land situate, lying and being at Dawhenya consisting of two plots described in the schedule as all that piece or parcel of land situate, lying and being at Dawhenya in the Ningo Prampram District-Accra, containing an approximate area of 0.21 Acre or 0.09 Hectare more or less and bounded on the North-East by proposed road measuring a total distance of 96.2 feet more or less on the South-East by Lessor's Land measuring a total distance of 95.5 feet more or less, on the South-West by Lessors land measuring a total distance of 96.7 feet more or less, on the North- West by Lessor's Land measuring a total distance 95.4 feet more or less.
2. Recovery of possession of the one plot of land encroached by the defendants
3. An amount of Five Thousand Ghana Cedis (GH¢5,000) against the defendants for trespass.
4. Perpetual injunction to restrain the defendants, their agents, assigns, privies, workmen, or anybody purporting to be acting on their instructions from entering and developing the land the subject matter of this suit.

## **COSTS**

In awarding costs, due consideration is given to the factors enumerated under **Order 74** of the High Court (Civil Procedure) Rules, 2004 (C.I. 47). Thus, having regard to the reasonable expenses incurred by the plaintiff in filing processes and remunerating her lawyer, the length of the trial and the number of court sittings, travel expenses in respect of the proceedings, the nature of the issues involved and the fact that the action

was uncontested by the defendants, I will award an amount of Eight Thousand Ghana Cedis (GH¢8,000) as costs in favour of the plaintiff against the defendants.

**SGD.**  
**H/H AGNES OPOKU-BARNIEH**  
**(CIRCUIT COURT JUDGE)**