

IN THE CIRCUIT COURT '1' BEFORE HER HONOUR ANGELA ATTACHIE
ON THE MONDAY 25TH DAY OF MARCH 2024

GLADYS NAA – ADEI DADEBOE

V

THE TRESPASSER

JUDGMENT

Plaintiff sued for the declaration of title to a piece of land properly described on the writ, an order for perpetual injunction against the defendants, damages for trespass, general damages and cost. Since the defendant is unknown, the writ and its accompanying statement of claim as well as subsequent processes were served on the trespasser through substituted service but they all went unresponded to. Section 12 (4) of the Land Act 2020, Act 1036 allows a party to sue in respect of land even if the trespasser is unknown. According to Sir Dennis Adjei in his book Introduction to Land Law in Ghana at page 22 of his book opines,

The decisions were to the effect that a plaintiff who intends maintaining an action against a trespasser unto that person's land is required to maintain an action against the trespasser in that trespasser's name and was incompetent to describe a party as a trespasser or developer in the writ."

Section 12 (4) of the Land Act, Act 1036 has impliedly overturned all the cases which have held that an action brought against a party who is described in the writ as a trespasser or developer was incompetent and not maintainable in law.

Section 12 (4) of the Land Act, Act 1036 provides thus:

"A person with interest in land may make an application to court for an interlocutory injunction against a trespasser on the land even though the name of the trespasser is unknown."

A person cannot apply for an interlocutory injunction in a land matter without premising the application on a writ. An action filed against a person described as a trespasser or developer effective from 23rd December, 2020 when the Land Act, 2020 (Act 1036) came into force is maintainable in law and may apply for an injunction to protect that person's right in a land. It therefore defeats Order 2 rule 3 (2) & (5) of the High Court (Civil Procedure) Rules, C.I 47 which mandates a plaintiff to provide for the occupational and residential address of the parties on the writ except where the plaintiff after diligent search cannot ascertain the address of the defendant.

Plaintiff in her statement of claim averred that she is the administrator of the estate of her late father, Samuel Djani Kote Tawia. Defendant who is unknown to the plaintiff has forcefully entered onto the land of plaintiff's father, claiming ownership and subtly developing same. Plaintiff's father came to own the land through a lease granted by the Agbawe Family of La, Accra acting through their lawful representative Nii Kommey Mensah Larsey, the Chief of Frafraha in 2007. The father of plaintiff took possession of the land and placed Obed Doe on the land as caretaker. He further constructed a one room on the land with a wall where the care taker resides.

In or around August 2021, plaintiff received a call from the caretaker of the land that defendant with his workers came from nowhere claiming ownership of the land and making attempts at building on the land.

On 31st August 2023, the court set the following issues down for trial:

1. Whether or not all that piece of land at all material times belonged to the plaintiff 's father
2. Whether or not the trespasser has trespassed the said land.
3. Whether the trespasser is liable to damages for the trespassing.

It is an elementary rule of civil procedure that he who alleges must prove. As such since the defendant has failed to respond to the case of the plaintiff, the plaintiff must lead enough evidence to establish her case before the court failing which the action shall fail.

Plaintiff testified through her lawful attorney Gifty Acolatse, who repeated the averments contained in the statement of claim as her evidence before the court. The attorney exhibited her authority which was duly stamped as exhibit A. She further exhibited the Letters of Administration granted her principal, the plaintiff herein to administer the estate of her father which was issued on 24th January 2022 by the Adenta Circuit Court 2. She further exhibited the lease granted to the father of the plaintiff dated 5th July 2007 between the chief of Frafaha and the father of the plaintiff. Though the grantor refers to himself as the Chief of Frafraha, he also described himself as the head of Agbawe Family of La. Exhibit C shows the head of the grantor family with the support of his principal elders granted the land.

Plaintiff has been able to establish her father's root of title to the disputed land. As a family land, the head of family and his principal elders are mandated to grant the family lands. See See the case of KWAN V. NYIENI (1959) GLR 67, 72, 73 and FOSUA & ADU-POKU V. DUFIE (DECEASED) & ADU POKU-MENSAH (2009) SCGLR 310 AT 334 & 344.

As such the father of the plaintiff acquired a valid grant, there being no evidence to the contrary before the court. The court therefore finds in answer to issue one that the father of the plaintiff has been the owner of the disputed plot at all material times.

However, for the plaintiff to succeed on relief one, which is declaration of title to the disputed land in her favour she needs to be clothed with the requisite authority.

Plaintiff has exhibited the power of attorney granted her to administer the estate of her father. She has however failed to have the assets of her father vested in herself to cloth her with the authority to succeed on relief A. In the case of NKUAH V. KONADU & BOATENG (2009) SCGLR 134, the Supreme Court held thus

That as the appellant was deriving her title from an estate in which she was a beneficiary she requires a vesting assent to enable her to initiate legal proceedings involving the estate's property.

In the case of ADISA BOYA V ZENABU MOHAMMED SUBSTITUTED BY ADAMA MOHAMMED & MUJEEB held on 14th February 2018 by the Supreme Court, Gbadegbe JSC as he then was distinguished between an estate devised under a Will and that inherited under PNDC law 111.

We are of the view that by virtue of the rules on intestacy contained in section 4(1) (a) of the Intestate Succession Law, PNDC law 111, following the death of the father of the defendants and their mother the original 1st defendant, the property devolved upon the children and as such they had an immediate legal interest in the property that they are competent to defend and or sue in respect of and in any such case either the children acting together or any of them acting on behalf of the others may seek and or have an order of declaration of title in their favour.

Even though the law requires that the plaintiff vests the properties in herself to be able to institute this suit and have title declared in her favour, by virtue of the case of Adisa Boya v Zenabu Mohammed supra, the plaintiff is a beneficiary of the estate of her deceased father and by virtue of section 4(1)(a) of the Intestate Succession Act, the property automatically devolves on her. Title to the disputed and is hereby declared in favour of the plaintiff. The defendant, the agents, assigns, etc is hereby enjoined from dealing with the disputed land in any way adverse to the claim of the plaintiff.

On the second and third issues, the father of the plaintiff haven been declared the owner of the disputed plot, the defendants are therefore deemed the trespasser and as such damages will lie. In any case, trespass is actionable per se without proof of damages. See the case of BALLMOOS V. MENSAH 1984-86 1 GLR 724. Since the plaintiff has not proved any special damages, the court shall award nominal damages of Gh¢ 10,000.00 against the defendant trespassers. See the case of MAHAMA V. ISSAH AND ANOTHER 2001- 2002 GLR 694 *where the court said that in an action for trespass to land, a plaintiff would get only nominal damages if he fails to prove special damages.* Also see the case of LARYEA V. OFORIWAH 1984-86 2 GLR *where the court said that in awarding damages for trespass to land, regard should be had to the acreage of the land on which the trespass was committed, the period of wrongful occupation and the damage caused.*

Cost of Gh¢ 5,000.00 awarded against the defendant.