IN THE DISTRICT COURT, HELD AT EJISU, ASHANTI REGION ON THURSDAY THE 28TH DAY OF MARCH, 2024, BEFORE H/H ROSEMARY EDITH HAYFORD, CIRCUIT COURT JUDGE SITTING AS ADDITIONAL MAGISTRATE

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SUIT NO. A1/198/2021

CHARLES BOAMPONG -- PLAINTIFF

VRS

NANA ATTA YAW KORANKYE & 3 ORS -- DEFENDANTS

Time: 08:38 AM

Parties: Plaintiff – Present

1st Defendants – Present

2nd Defendant - Absent represented by Charles Frimpong

3rd Defendant - Absent represented by Obed Kojo Kusi

4th Defendant- (deceased)

JUDGMENT

The plaintiff caused a writ to be issued against the defendants on 24th August, 2021 claiming the following reliefs:

1. *An order of court directed at Defendants to release forthwith to Plaintiff six (6) plots of land at Ejisu Abankro; plots which Plaintiff initially owned but Defendants usurped their powers to take over and replaced same with plot Nos. 47 & 48 Block Xii but later*

found that same does not belong to Defendants of which Defendants have made confirmation to the effect.

2. *An order of the court to compel Defendants to reimburse Plaintiff the sum of GH₵26,700.00 being costs Plaintiff incurred to put up a 4-bedroom building close to window level on plot 47, Block XII Abankro*

3. *Interest calculated on the sum of GH₵26,700.00 since July, 2020 at the prevailing bank rate till the date of final payment.*

4. *Any further order or orders as the Honourable Court may deem just to make.*

The defendants filed a joint Statement of Defence on 22/10/2021. They denied the averments of the Plaintiff that he has to be replaced with 6 plots of land. No Reply was filed by the Plaintiff. The court subsequently ordered the parties to file their respective witness statements simultaneously, which they complied with. In the course of the trial, the 4th Defendant passed on.

THE PLAINTIFF'S CASE

The Plaintiff is a farmer and resides at Abankro. It is the case of the Plaintiff that he owned and controlled six plots of land at Ejisu Abankro. The said plots were bequeathed to him by way of a gift by his late grandmother. Plaintiff avers that his mother received the said gift on his behalf since at the material time he was young and that his mother acknowledged receipt of the gift on his behalf and gave two bottles of schnapps as thanksgiving to his grandmother. According to the Plaintiff, his mother took possession of the said property and held same in trust for him. Plaintiff states that upon attaining full age, he took possession of the said parcel of land and together with the period his mother held in trust the plots of land for him, they have been in possession of same for about 45 years.

It is further the case of the Plaintiff that the defendants who are leaders and/or Chiefs of Abankro told him some time ago to release the six plots of land for a developmental project by the Government but never made any compensation arrangement. However, in July 2020 the defendants agreed with him that they would release two plots of land elsewhere to replace the 6 plots they took. According to the Plaintiff, the defendants indeed released plots numbers 47 & 48 Block XII Abankro, and a statutory declaration was executed to evidence same. The plaintiff avers that he presented an amount of GH₵500.00 and a bottle of schnapps as thanksgiving to the defendants and the same was accepted by them. Plaintiff avers that the defendants promised to clear the two plots of land, deposit one trip of sand, and provide some quantities of bags of cement to Plaintiff but they reneged on their promise. He then took possession of the two plots of land and built close to the window level on one of the plots. The plaintiff avers that he incurred a total cost of GH₵26,700.00. It is the case of the Plaintiff that recently some family members at Abankro came to claim ownership of the two plots and the matter ended up at the police station (MTTU). According to Plaintiff at the police station, 1st Defendant was invited and he admitted that the two plots did not belong to them and further confirmed that they released the land to Plaintiff. It is Plaintiff's further case that all efforts have been made for the re-allocation of the six plots of land and for reimbursement of the cost he incurred on one of the plots but to no avail hence this action.

THE DEFENDANTS' CASE

The 1st and 2nd Defendants are chiefs of Abankro, the 3rd Defendant is the Queen mother of Abankro and the 4th Defendant is the Unit Committee Chairman of Abankro. They deny the Plaintiff owned and controlled six plots of land at Abankro. It is their case that it was the Plaintiff's grandmother who possessed and cultivated on the said plot of land

on a temporal basis for her sustenance but the said land belongs to the Abankro Stool therefore she did not have the capacity to gift same to the Plaintiff. The defendants further aver that upon the demise of the Plaintiff's grandmother, Plaintiff's mother continued to cultivate the land, however same remained the property of the Abankro stool. It is the case of the Defendants that some 45 years ago, the then chief of Abankro decided to demarcate the entire piece and parcel of land controlled by the people of Abankro which were under his province. As a result, the then chief recovered possession of the same measuring approximately 40 acres from all cultivators which included the land of Plaintiff's grandmother and mother, the subject matter herein. After the demarcation, the area was reserved for industrial purposes i.e. construction of a hospital, police station, market, banks etc. The cultivators were allowed to be on the land until the government commenced the said development. The defendants aver that about six months ago they realized the Plaintiff had caused to be removed the cocoa and orange trees on the said land and had started to develop same. According to the defendants, the Plaintiff was warned to desist from such act but he failed to do so following which the 3rd defendant was compelled to invoke the oath of Asantehemaa on the Plaintiff. Subsequently, a meeting was held at the Abankro Palace to resolve the matter and the said oath was revoked by the 3rd Defendant. It was decided by the stool that the Plaintiff's land would be replaced with two plots of land. According to the Defendants, the meeting ended after the plaintiff performed thanksgiving as custom demands. The 1st defendant was directed to show the Plaintiff the two plots of land. Upon reaching the site and conducting further investigation, they realized the Plaintiff had already sold four of the six original plots of land to others. Following this, the elders declined to release the said two (replacement) plots to the Plaintiff. The defendants say the Plaintiff is not entitled to his reliefs.

At the end of the trial, the determinable issues were

1. **whether or not the Defendants are liable to replace the 6 plots of land Plaintiff claims he owned**
2. **Whether or not the defendants are liable to reimburse the Plaintiff the sum of GH₵26, 700.00 for the cost he claimed he incurred.**
3. **Whether or not the defendants are liable to pay interest on the said amount captured in point 2 above.**

The plaintiff testified himself and called one witness. He tendered the following Exhibits in support of his case:

1. Exhibit A, a copy of a statutory declaration in respect of plots numbers 47 & 48, Block XII.
2. Exhibit B, a copy of a site plan in respect of plot numbers 47 & 48 Block XII
3. Exhibit C, supposed expenditure on the 4-bedroom building by the Plaintiff

The 2nd Defendant testified for himself and on behalf of the 1st, 3rd, and 4th Defendants. He tendered the following exhibits:

1. Exhibit 1, a site plan in the name of Mather Anoka Addo
2. Exhibit 2, a Statutory declaration also in the name of said Mather Anoka Addo

BURDEN OF PROOF IN CIVIL SUITS GENERALLY

The standard burden and persuasion of proof in civil matters including land are captured under sections 11 (1), (4) and 12(1) of the Evidence Act 1975 (NRCD 323). The relevant provisions provide:

"11(1) For the purpose of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue

11(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence….

12(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities."

In ***Ackah v. Pergah Transport Limited and Others*** *supra,* Adinyira, JSC succinctly summed up the law, at page 736:

"It is a basic principle of 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…It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that, on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is the requirement of the law on evidence under section 10 (1) and (2) and 11 (1) and (4) of the Evidence Act, 1975 (NRCD 323)."

In land matters, the person asserting title must prove his root of title strictly, among others. In the case of **Mondial Veneer (Gh) Ltd v Amuah Gyebu XV (2011) SCGLR 466 at page 468 (**holding 4), the Supreme Court held that:

"In land litigation, even where living witnesses involved in the transaction, had been produced in court as witnesses, the law would require the person asserting title and on who bore the burden of persuasion... to prove the root of title, mode of acquisition and various acts of possession exercised over the disputed land. It is only where the party had

succeeded in establishing those facts, on the balance of probabilities, that the party would be entitled to the claim"

In the case of **Citizen Kofi Entertainment Concept Ltd v Guinness Ghana Breweries Ltd [2012] 46 GMJ 167,** the Court of Appeal held as follows: "*The general principle of law is that it is the duty of a Plaintiff to prove his case, i.e., he must prove what he alleges. In other words, it is the Party who raises in his pleadings an issue essential to the success of his case who assumes the burden of proving it. The burden only shifts to the defence to lead sufficient evidence to tip the scales in his favour when on a particular issue, the Plaintiff leads some evidence to prove his claim, if not he loses on that particular issue.*"

EVALUATION, ANALYSIS OF THE EVIDENCE AND DECISION OF THE COURT

ISSUE ONE

It is the Plaintiff's case that he owned and controlled 6 plots of land that were bequeathed to him by way of a gift by his grandmother. The plaintiff avers that his mother worked on the said land and before the dispute arose, he was also in possession of same. It is further his case that they have been in possession of the said land for over 45 years without any disturbance until recently. While the defendants deny that the plaintiff owned and controlled the said 6 plots they admit that the Plaintiff's grandmother was in possession of the said land and farmed on same. They further acknowledge that the Plaintiff's mother and later the Plaintiff also farmed on the said land. However, they contend that the plaintiff's grandmother could not have gifted the disputed land to the plaintiff because the said land belonged to the stool.

Section 1 of the **Land Act, 2020, Act 1036** identifies six types of interests in land. Those that are of interest and applicable in this case are the allodial title and usufructuary interest. The allodial title is the highest or ultimate interest in land in Ghana and may be

held by the State, the skin, the stool, the clan, the family or an individual. (See **Section 2 (a) and (b) of Act 1036**)

Justice Sir Dennis Adjei in his Book, "**Land Law Practice and Conveyancing in Ghana**', **Second Edition** stated at page 8 that

> "*Lands under the Asanteman comprising all the lands in Ashanti, part of Brong Ahafo and Eastern Regions are stool lands and the allodial title in those lands are vested in the paramount stools in those areas. The allodial title of all the lands within the Kumasi Traditional Area is vested in the Golden Stool…the Divisional Chiefs and the other Chiefs in the areas where the allodial title is vested in the paramount chiefs also exercise ownership right over those lands and are designated as sub allodial holders"*

Applying the above to the instant case, it is known from the facts that the lands in Abankro are stool lands. Therefore, the allodial title of all the Abankro lands is vested in the Chief of Abankro. He is the trustee of the properties of the stool and the citizens of the stool area are the beneficiaries of the trust. However, the subjects of the stool can acquire a usufructuary interest in land. **Section 5 (1)** of **Act 1036** (*supra*) spells out how the usufruct is acquired. A subject to a skin, or a member of the skin, or a family or a clan that holds the allodial title, has an inherent right to exercise usufructuary rights over land in its possession. The plaintiff's family falls squarely in this category. The evidence is clear that the Plaintiff's grandmother, mother, and later the Plaintiff himself had been in undisturbed possession of the land by farming on same from the historical past. They are all subjects of the stool who cultivated an unoccupied portion of the land for the past 45 years. This fact is not disputed by the defendants. It is therefore safe to conclude that they acquired an usufructuary interest in the said land. At page 9 of Sir Dennis' book (*supra*), he explains what a Usufructuary interest is.

> *"Usufructuary interest is an interest a clan, family or an individual who are subjects of a stool may acquire from a land where the allodial interest is vested in the stool…to acquire a usufructuary interest in a land in the past, the clan, the family, or the individual as the case may be should have cultivated an unoccupied portion of the land by virtue of the customary relationship between the one cultivating the land and the owner of the allodial interest."*

Clearly from the above, by the customary relationship between the allodial title holders (the chiefs of Abankro) of the one part and the Plaintiff's grandmother, mother, and the plaintiff of the other part, the latter's act of being in possession and cultivating the unoccupied plots of land for over 45 years created in them an usufructuary interest in the land they occupied.

Section 5 (c) *(supra*) states that the usufruct is inheritable and alienable. This means that after the death of the Plaintiff's grandmother, the interest she had in the land does not expire or revert to the allodial title holder (the stool) but it is inherited by her children and descendants, the Plaintiff being a grandchild is therefore qualified to inherit same. It is this interest the Plaintiff is protecting when he says the land belongs to him. The averment therefore of the defendants that the land could not have been gifted to the plaintiff is neither here nor there.

It can further be seen from the evidence that both parties agree that some time ago the Defendants indicated to the Plaintiff's grandmother about the possibility of releasing her said land for developmental projects in the town of Abankro. This release, however, only materialized after so many years after the death of the Plaintiff's grandmother and at a time when the Plaintiff was the one in possession of the said land. The plaintiff admits the said land was released to the defendants and the project had been constructed for the town by the government of Ghana.

Section 50 (21) and **(22)** of the **Lands Act 2020 Act 1036** gives the statutory backing and makes the ability of an allodial owner to recover land in the possession of a usufructuary title holder where land is required for development purposes subject to payment of compensation or other settlement. The said sections provide as follows:

(21) A holder of an allodial title may

(a) in furtherance of the expansion of a town or settlement and

(b) for the purpose of serving the communal interest of the beneficiaries of the allodial interest

Take over bare land or farm land which is the subject of a usufructuary interest within the area covered by the allodial title.

(22) The holder of an allodial title shall not take over land under subsection (21) without

(a) prompt payment of fair and adequate compensation which in any case shall not be less than forty percent of the plots of land or the market value of the plots of land be taken over, or

(b) providing suitable alternative land, where possible, to the holder of the usufructuary interest in respect of the land."

In this instant case, however, evidence shows that compensation was not discussed which means the alternative stated in section 22(b) must therefore suffice. It is clear from the evidence that it was agreed between the parties at a meeting in the 3rd defendant's place that the Defendants would replace the 6 plots released for the developmental projects with two other plots to be demarcated for the plaintiff by the 1st defendant. To this, all the parties confirm that the plaintiff performed the necessary customary rite by paying an amount of GH₵500.00 in addition to a bottle of schnapps

as thanksgiving. That being the case the defendants then ought to abide by the decision they took.

In the case of **SIMON HOPPER VRS KWESI KWETIA, Civil Appeal No. J4/45/2023 dated 24th January, 2024** the SC per Her Ladyship Torkonu faced with a similar situation stated that

> *"This statutory regulation of these customary law interests does not represent a shift that places a strangulation mercantile hold over lands in the hands of chiefs or family heads. It only emphasizes their obligation to recognize the beneficial interest of citizens of stools, and family members in the lands that they have occupied for long periods and accord recognition to these secondary rights when there is a need to interfere with same."*

Therefore, from the above, there is an obligation on the part of the defendants to recognize the beneficial interest of the Plaintiff and fulfill the agreement they made to replace the land they took for the developmental project by the Government. The plaintiff from his evidence indicated that the defendants indeed released the said two plots of land numbered 47 & 48 Block XII Abankro to him to replace the said 6 plots of land they took. According to the Plaintiff, the defendant executed a Statutory Declaration evidencing the transaction. Plaintiff tendered the said Statutory Declaration as **Exhibit "A"**. Plaintiff avers he went on the land to construct his building and another family came to claim ownership of same. The Defendants, however, vehemently deny this claim. It is their case that they never released the two plots or executed any document for Plaintiff. Their testimony through the 2nd Defendant is that after the 1st Defendant was instructed to go and demarcate the land for the plaintiff in a place commonly called Denteso, in the process, investigations conducted proved that the Plaintiff had already sold four plots of land in the said area without their consent as a result they rescinded their decision to release the two plots.

Exhibit "A" tendered by the Plaintiff shows the names of all the defendants as the declarants transferring their rights and interest in the said plots to the Plaintiff. However, a critical look at **Exhibit "A"** indicates that not all the defendants signed the said document. It only bears the signatures of the 1st and 4th defendants. There was no signature of the 2nd and 3rd Defendants even though their names were stated therein, thus, making the said document incomplete. The Plaintiff signed as well as three other witnesses for the Plaintiff. PW1, Yaa Boakyewaa was one of the witnesses. Her evidence was that she was only informed by the Plaintiff that the defendants had replaced the land for him and that was why she signed. PW1 signing as a witness does not change the incomplete nature of Exhibit A. In any case, it is trite that a statutory declaration is only a self-servicing document and does not transfer an interest in land. I find **Exhibit "A"** not a conclusive document and cannot represent a valid transfer of an interest in land. I therefore place no probative value on the same.

On the part of the defendants, to support their claim that the Plaintiff sold four (4) plots of land at Denteso, they tendered **Exhibits "1"** and "**2"**. **Exhibit "1"** is a site plan in the name of one Mather Anoka Addo, the plot number on same is Plot 53A Block X1. The size of the plot is not known. **Exhibit "2"** is also a Statutory Declaration in respect of Exhibit 1. It is supposedly from the Plaintiff to the said Mather. The plaintiff also denies vehemently, having sold any such land to anyone. A critical look at **Exhibit "2"** shows that it is in respect of one plot of land, whose size is unknown, and not four plots of land as the defendants claim. Besides the above, the defendant failed to describe the said four plots of land to have convinced the court to agree with them that Exhibits 1 and 2 fell within the said four plots of land they alleged Plaintiff sold out. Furthermore, amidst the denial by the Plaintiff, I would have thought that since they are the custodians of the said land, they could have called those who they claim allegedly purchased the said land from the Plaintiff as witnesses to testify to same but they failed.

They are material witnesses to the sale. The learned **S.A Brobbey** states on page 378 of his book **PRACTICE & PROCEDURE IN THE TRIAL COURTS & TRIBUNALS OF GHANA** ***thus;***

> *"In civil proceedings, the consequences of a party's failure to call a material witness depend on the onus of proof placed on him by the facts of the case. If a party has to establish his case and therefore assumes the onus of proof, he must call witnesses material to establish that case. In the event, his failure to call a material witness may result in a ruling being given against him for the reason that he has failed to establish that case:*
>
> ***See NRCD 323, s11***
>
> ***Owusu V Tabiri [1987 -88] 1 GLR 287"***

The gravamen of this case hinges on the fact that according to the Defendants they refused to honour their part of the agreement to replace the 6 plots of land released by the Plaintiff for developmental projects in the town with another two because the Plaintiff sold four plots yet the persons, they claim purchased the said four plots of land were never called. Nothing in Exhibits 1 and 2 depicts that the lands therein fall within the four plots they claim Plaintiff sold. In the circumstance, I find that the defendants failed to prove to the court that the plaintiff sold four plots of land.

The Plaintiff is claiming a re-allocation of the 6 plots of land released to the defendants for developmental projects in the Town. From the totality of the evidence, it is not in doubt that there was an agreement between the parties that Plaintiff having released his 6 plots of land to the defendants for developmental projects in Abankro, the defendants also had to replace same with two other plots of land. Indeed, that agreement between the parties is valid and binding and the same ought to be fulfilled accordingly. Even

though the Plaintiff in his relief 1 claims the re-allocation of the 6 plots of land by the defendants that will not be granted by this court as same has already been used for developmental projects in Abankro. It is trite that a court based on the evidence adduced may suo moto grant a relief to a party that he has not expressly applied for. See the case of **HANNA ASSI (NO. 2) V GIHOC REFRIGERATION & HOUSEHOLD PRODUCTS LTD. (NO. 2) [2007-2008] SCGLR 16.** In the instant case on the evidence, Defendants by law ought to replace the two plots of land that was agreed between the parties to be given to the Plaintiff in place of the 6 plots released by the Plaintiff for developmental projects in Abankro. In the circumstance, I accordingly order the Defendants to release two suitable plots of land within Abankro at a location of equal or similar value to the original 6 plots of land released for the projects, to Plaintiff within four weeks of this judgment. The Defendants are further ordered to execute a document in the name of the Plaintiff to cover the said two plots of land to be released. The same must be done within four weeks.

ISSUES 2 and **3** will be discussed together.

The plaintiff further claims for an order of the court to compel Defendants to reimburse him the sum of GH₵26,700.00 being the costs he incurred to put up a 4-bedroom building close to the window level on plot 47, Block XII Abankro. This is denied by the Defendants.

The plaintiff tendered **Exhibit "C"** to support the claim that he had made some expenses. However, an analysis of said Exhibit C, shows that it is not dated, not signed, and does not show where it is even emanating from and for what purpose. Exhibit C is at best a self-serving document and no probative value shall be placed on same I so hold. Issue two therefore fails. This obviously will affect Issue three being interest thereon. Accordingly, issue three also fails.

DECISION

1. *The Defendants are hereby ordered to release two suitable plots of land within Abankro which is of equal or similar value to the original 6 plots of land released for the projects to the Plaintiff within four weeks of this judgment.*

2. *The Defendants are further ordered to execute a document in the name of the Plaintiff to cover the said two plots of land to be released to him. Same must be done within four weeks.*

3. *There is no order as to costs.*

H/H ROSEMARY EDITH HAYFORD
CIRCUIT COURT JUDGE SITTING AS
ADDITIONAL MAGISTRATE