

**IN THE CIRCUIT COURT-JUABEN-ASHANTI BEFORE HH ROSEMARIE AFUA
ASANTE (MRS) HELD ON MONDAY 25TH NOVEMBER 2024**

SUIT NO. A1/01/2020

AKUA ASANTEWAA
H/NO. AKA 28 OYOKO
NEAR EFFIDUASI-ASHANTI

PLAINTIFF

AND

NANA AMOAKO
H/NO. AKA 28 OYOKO
NEAR EFFIDUASI-ASHANTI

DEFENDANT

JUDGMENT

By way of reliefs, the plaintiff claims the following: -

- (a) Declaration of title to all that piece of land and the house thereon at Oyoko.
Effiduasi plot Number AK28
- (b) Recovery of possession to all that piece of land and the house thereon at Oyoko
Recovery of possession Recovery of possession, Effiduasi plot AKA 28
- (c) An order of perpetual injunction restraining the defendant whether by himself,
his agents

Plaintiff's Case

Per an amended statement of claim filed by the plaintiff, the plaintiff claims that she and the defendant were in an amorous relationship for 25 years until they discovered

that they were related by blood and hailed from the same descendant Nana Akwamuhene. This led to a break up in their relationship. Subsequently, the plaintiff has issued a writ claiming H/No. AKA 28 Oyoko, Effiduase Ashanti. It is the case of the plaintiff that the disputed property was originally acquired by her grandfather, Nana Kwaku Duah (deceased) Akwamuhene of the Oyoko family. Upon the death of Nana Kwaku Duah the disputed property which had a dilapidated building on it was gifted to her by her maternal uncles in the presence of witnesses after which she gave “aseda” and has since been in possession.

The plaintiff traces her root of title from her grandfather Nana Kwaku Duah who originally acquired the disputed property. He then gifted the subject property to his two sons namely, Kwaku Nkrumah and Kofi Boateng who also gifted the property to her. At the time the property was gifted to her, the property was in a dilapidated state. The plaintiff demolished the structure upon the advise of the defendant who promised to re-construct a building as appreciation for plaintiff’s hard work. It is her claim that she assisted the defendant in his businesses since the defendant was resident abroad from which proceeds as well as her own businesses, the building was put up where both of them co-habited until the defendant started claiming ownership of the property.

Defendant’s case

The defendant by way of defence denies paragraphs 1,3,4,5,6,7,8,9,,10,11,12 thereby joining issues on the said paragraphs. The defendant does not deny that there was once a dilapidated building on the subject property save that the property in dispute belongs to him which he built from his own resources. At paragraph 4 the defendant further states that if the plaintiff was issued any receipts in her name, then the payment were made for the Aduana family.

In tracing his root title, the defendant claims that all documents are in his name and refers to an allocation note which was issued to him in 1998 by the Oyokohene after which he sent remittances to the plaintiff to build the house and engaged the services of one Alex who built the store. The defendant denies the plaintiff's claim that she owns many businesses and explained that the defendant rather out of benevolence showed her kindness due to the various tasks she performed for him by assisting plaintiff and her daughter to travel to the United states. At paragraph 19 of his evidence in chief, the defendant claims that the land together with its entire development belongs to his family and he holds it in trust by virtue of being the head of family adding that he brought a cause of action against one Adwoa Korkor sometime in 2004/2005 which went in his favour. According to him, although the plaintiff knew about the suit she never joined the suit and therefore the plaintiff is estopped from claiming the property in dispute. The defendant did not counterclaim but particularizes particulars of estoppel as follows:-

1. *The plaintiff knowing defendant had sued in respect of the same plot*
2. *Plaintiff taking no steps to join the suit to claim the property*
3. *Plaintiff refusing to claim the property as hers.*

Issues for Determination

At the applications for directions stage, the following issues were agreed on as the issues for determination as follows:-

1. Whether or not the dispute property belongs to the plaintiff?

The position of the law concerning declaration of title is for a party to lead evidence as to where he derives his title from. The plaintiff's testimony is that the property was gifted to her by Kwaku Nkrumah and Kofi Boateng, sons of Nana Kwaku Duah. Per the

plaintiff's pleadings, she gave "aseda" in the presence of witnesses . The conditions for a valid customary gift was detailed in the case of **ASARE VRS KUMOJI 2000 SCGLR 298** as a clear intention on the part of the donor to make a gift, there must be publicity and the donee must accept the gift by himself in the presences of witnesses

PW2, Kofi Agyemang at paragraph 7 indicated as follows; "*Kwaku Nkrumah and Kofi Boateng later jointly gifted the disputed property to the plaintiff herein to develop and use as his own property.*" This piece of evidence corroborates that of the plaintiff. The plaintiff tendered Exhibit A which is the last will of Nana Koduah in which the plaintiff claims that Nana Kwaku Duah devised the property in dispute to his children Kwaku Nkrumah and Kofi Boateng. **Exhibit A** which is a two paged document makes no mention of the said property devised to his two sons. Page 1 of **Exhibit A** refers to cocoa farm devised to some persons, whilst page 2 of Exhibit A is captured as follows:-

"I give and bequeath to my own grandson Kofi Agymang and my two nephews Kwabena Addoh and Kwabena Kwaakye and my own grand-daughter Amma Takyi all of Oyoko in Ashanti in the district of Sekyere one (1) compound house situate and lying at Oyoko in Ashanti and bounded on all sides of the properties of Akosua Boatemaa, Kumasi and Kwaku Bioh's plot and that compound house is to be devised as follows:

My present room which I am occupying and two other rooms on the left side of the said house to Kofi Agyemang, Akua Adunu's Son

Two rooms to Kwabena Kwaakye

One room to Kwabena Addoh and

one room to Ama Takyi."

The plaintiff stated at paragraph 6 of his witness statement as follows:-

“After he acquired the said land, he constructed a house thereon and gifted same to his two sons Kwaku Nkrumah and Kofi Boateng in his last will and testament. This is marked as Exhibit A.”

From **Exhibit A** although PW2 Kofi Agyemang was mentioned in **Exhibit A** as a beneficiary to one room and two other rooms on the left side of the house, no mention was made of Kofi Boateng and Kwaku Nkrumah. It is in this regard that the plaintiff was cross examined by Counsel for the defendant as follows:-

“Q: The land upon which the house in dispute stands was meant for Oyoko family and so if Nana Kwaku Duah made any dispositions, it did not include the land in dispute.

A: I do not agree that it was not included and that he gifted the house to his children.”

PW2 Kofi Agyemang whose name is captured under the will was cross examined as follows:-

“Q: I am suggesting to you that you never succeeded Nana Kwaku Duah

A: I succeeded him

Q:-And the land upon which the house in dispute stands was never devised to Kwaku Nkrumah and Kofi Boateng

A: The property in dispute was gifted to Kwaku Nkrumah and Kwaku Boateng by their own biological father.

Q: You see it is because the properties did not belong to these individuals they could not have gifted it to the plaintiff.

A: It belongs to them.....”

It stands to reason that if per exhibit A, the plaintiff claims that the disputed property was first devised to Nana Koduah’s two children which is not the case, then it stands to

reason that the property could not have been gifted to the plaintiff by Kwaku Nkrumah and Kwaku Boateng pointing to the principle of the “nemo dat in causa sua,” which is that one cannot give what he does not possess.

The defendant on the hand says that the property in dispute is a family property and has at all times been occupied by the Aduana family of Oyoko and was occupied by Kofi Boateng and other members of the Aduana family of Oyoko. According to the defendant, he was the Abusuapanyin of the Aduana family and held the property in trust for the Aduana family which is denied by the plaintiff during cross examination as follows:-

“Q: After the passing of Nana Kwaku Duah, his son Kofi Boateng and other members of the Aduana family of Oyoko lived in the house at separate times.

A:-None of the members of the Aduana family ever lived in that house. And it was only the children of Nana Kwaku Duah who lived in the house.

Q:- You see I am suggesting to you that at one point Kofi Boateng left the house in dispute and travelled.

A: Kofi Boateng lived in the house with his children and that Kofi Boateng is my father.”

In proof of his title to the land counsel for the plaintiff in his written address refers to an allocation note to say that an allocation note is not proof of title and refers to the case of **Boateng (No.2) vrs Manu (N0.2) and another (2002/2008) 2 SCGLR 1117** which lays down the principle that an allocation note is not sufficient proof of title. Thus the question that arises is from where the defendant derives his title to the disputed property?

The evidence of the plaintiff and PW3 is that the defendant is the Akwamuhene and this was revealed during cross examination of the plaintiff and PW3 as follows:

Cross examination of Plaintiff by the defendant:-

“Q: I am suggesting to you that just like Nana Kwaku duah is the father of your father?”

A: Yes

Q: I am suggesting to you that the defendant is that Aduahene of Oyoko

A: I know that he is the Akwamuhene.” Emphasis Mine

Cross examination of PW3 by the defendant:

“Q: Do you know me very well?”

A: The defendant is the grandfather’s nephew

Q: What position do I occupy at Oyoko

A: The defendant is the Akwamuhene of Oyoko

Furthermore, both parties traced their root from Nana Kwaku Duah in that Nana Kwaku Duah is the grandfather of the plaintiff whilst the defendant is the great granduncle of the defendant and this was admitted by the plaintiff during cross examination as follows:-

“Q: You see Opanyin Kweku Duah is the great granduncle of the defendant.

A: Yes I agree.”

In this regard, the plaintiff is related to the defendant on the paternal side which is the case, but which the plaintiff denies. The defendant testified that he is the family head and the disputed property belongs to the family and not the plaintiff. DW1, Kwabena Nkrumah testified that the property is family property belonging to the Oyoko Aduana family which had as its family head Opanyin Bukari who doubles as the Oyoko

Akwamuhene. The defendant then succeeded Opanyin Bukari as the head of the Aduana of Oyoko and also the Akwamuhene. The witness mentions at paragraph 5 of his witness statement as follows:-

“The said Opanyin Bukari built “Ataa Kwami” houses on it for the family and members of the Aduana family used to live in them. It was also occupied by one Kofi Boateng who was the son of the said Opanyin Bukari. It was never gifted to the said Kofi Boateng”

The testimony of DW1 showed that Opanyin Bukari was the same person as Nana Kwaku Duah and this was revealed during cross examination as follows:-

“Q: Opanyin Nkrumah, Is Opanyin Bukari is he the same person as Nana Kwaku Duah?

A: Yes.”

By the defendant’s evidence, he traces his root to the fact that by dint of the property being a family property of which he had become the family head, he held the property in trust for the Oyoko family. The evidence also shows that Kofi Boateng whom the plaintiff claimed gifted the property to her , lived in the said property. It is therefore not surprising that Nana Kwaku Duah, who is the same person as Opanyin Bukari could not have devised any property to Kofi Boateng since it was family property.

Whether or not the defendant assisted the plaintiff in putting up the disputed property due to the assistance given him in managing the plaintiff and defendant’s businesses

Having arrived at the decision that the plaintiff is not the owner of the disputed property and there being evidence that the defendant had sent remittances per **Exhibit 3 series** consistently from 2006 to 2007 particularly 11 times in 2007 and which totaled large sums of money, can one say that the plaintiff had various businesses which she used in building the property?

The plaintiff claims that she was engaged in a number of businesses which proceeds were used in building the property. However, apart from merely saying that she engaged in various businesses, there was no evidence of any income by way of any income from these businesses. It is not in dispute that remittances were sent to the plaintiff who from the defendant's own testimony showed that the plaintiff had assisted him since he was not present in Ghana to put up the disputed property. Thus the remittances were used to build the disputed property which belonged to the defendant.

The defendant says the plaintiff is estopped from litigating the property since the subject matter was a subject of litigation previously with one Adwoa Korkor which judgment went in defendant's favour. The principle of estoppel by conduct based on acquiescence arises where a party who knows that his property is being alienated or developed does nothing and after expenses have been incurred in developing or alienating it, comes forward to assert his rights. The said judgment was not tendered in evidence save to say that evidence was led to that effect which the defendant claimed the plaintiff knew about and was therefore estopped from re-litigating the property. Having arrived at the conclusion that the disputed land does not belong to the plaintiff and there being no evidence of the said judgment, I am unable to hold that estoppel by conduct applies.

Conclusion

- (a) The plaintiff's claim of Plot AKA 28, Effiduase is dismissed in its entirety.

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HH Rosemarie Afua Asante (Mrs)

Circuit Court

Juaben-Ashanti