

SITTING IN THE DISTRICT COURT AT WENCHI IN THE BONO REGION
ON TUESDAY THE 29TH DAY OF NOVEMBER, 2022. BEFORE HIS WORSHIP
ISSAH ABDUL-WAHAB ESQ. (MAGISTRATE)

SUIT NO: A1/36/2021

AMA KRUWA OF NSAWKAW

PLAINTIFF

VS

1. KWAKU NKANSAH BOTH OF

DEFENDANTS

2. KWABENA BEI NSAWKAW

JUDGMENT

The plaintiff herein sued the defendants herein jointly and severally seeking from the court and against the defendants;

- a) An order for the declaration of title to and recovery of possession of all that farmland lying, situate and being at a place commonly known and called "BOSIE" near Nsawkaw on Nsawkaw stool lands and bounded by the properties of Akua Konadu, Mosi, a stream called "Bourbon" respectively.
- b) General damages for trespass.
- c) An order for perpetual injunction restraining the defendants, their agents, privies, workmen and all those who claim through them from entering the said farmland.

The 1st defendant who is said to have given the land to the 2nd defendant as his tenant pleaded not liable to the claims of the plaintiff after same were read and explained to the 1st defendant.

This court having examined the pleadings filed by the parties set the following issues down for trials;

- 1) Whether or not the disputed land is the property of the plaintiff.
- 2) Whether or not the plaintiff has any valid title to the land.
- 3) Whether or not the defendants have trespassed onto the land.
- 4) Whether or not the plaintiff is entitle to a recovery of the land.
- 5) Whether or not the plaintiff is entitle to any general damages against the defendant.
- 6) Whether or not an order will lie for a perpetual injunction against the defendants herein.

The totality of the evidence of the plaintiff herein consisted of her evidence in-chief and the testimony of her (plaintiff) sole witness.

In her evidence-in-chief, the plaintiff told the court she is Ama Kruwa and that she is unemployed and lives at Nsawkaw. That she knows the defendants. Plaintiff said the disputed land is situate at a place commonly known and called "Bosie" on Nsawkaw stool lands and bounded by the properties of her parents Akua Konadu, Kweku Mosi Donkor and a stream call Bourbon respectively. That the said land was acquired by her father Opanin Kweku Mosi Donkor in its virgin state so many years ago.

Plaintiff averred that her father gave birth to eight (8) children with her (plaintiff) mother and gifted each of them five (5) acres of the land each at "Bosie" including the plaintiff's biological mother (Akua Konadu) PW1. That her (plaintiff) father gifted part of the land to her (plaintiff) and her siblings and they provided "Aseda" which was three (3) bottles of schnapps and an amount of money in the presence of witnesses about three (3) years ago. Plaintiff said after that she took immediate possession of the land in dispute and planted food crops on a portion of the land. Plaintiff said she later realized that someone had come onto the other portion of her land and cultivated same. That the person raised yam mounds on the land.

That she (plaintiff) later saw that it is the 2nd defendant (D2) who was on the land. That when she questioned 2nd defendant said the 1st defendant (D1) gave the land to him (D2).

Plaintiff said she told 2nd defendant the land belongs to her (plaintiff) and that it was gifted to her (plaintiff) by her father Opanin Kweku Mosi Donkor. That the 2nd defendant told her (plaintiff) to rather contact the 1st defendant. Plaintiff said she contacted the 1st defendant and drew the attention of 1st defendant to the trespass onto plaintiff's land, but 1st defendant told plaintiff and her (plaintiff) mother (PW1) who went with plaintiff, that the disputed land was given to him (1st defendant) by his late uncle. That the said uncle of the 1st defendant call Acheampong shared boundary with plaintiff's father and the Bourbon Stream was their main boundary feature but that the defendants trespassed onto plaintiff's land. And that 1st defendant has cut all the mature trees on the plaintiff's land for lumber. Plaintiff's said after all efforts to get the defendants leave the land failed, she then decided to come to court.

When asked if she (plaintiff) is aware her father shared boundary with his (1st defendant) uncle. Plaintiff said that is not true. When asked if she is aware his (1st defendant) sister cultivated crops and she (plaintiff) destroyed them and when she was to be arrested, she ran away, plaintiff said that is not true. When told her (plaintiff) took the matter to the palace and when the father was called she refused to go, plaintiff said that is not true.

The plaintiff's sole witness (pw1) told the court she is Akua Konadu and that she lives at Nsawkaw and is a farmer. That she knows the parties herein. PW1 said the plaintiff is her daughter and the defendant s are residents of Nsawkaw too. The witness said he knows the disputed land which is situate at "Bosie" on Nsawkaw stool lands and shares boundary with Kweku Mosi (plaintiff's father), Ama Konadu and Bourbon River

respectively. That the land in dispute was cultivated by her (PW1) husband Kweku Mosi (plaintiff's father) and herself (PW1) about forty (40) years ago.

That Kweku Mosi (plaintiff's father) gifted his lands to all his children who were around and then gave the rest to tenant farmers on crop and share basis. That the plaintiff herein received her (plaintiff) portion which is in dispute now about three (3) years ago. The witness said after Kweku Mosi (plaintiff's father) gave the land to plaintiff, she offered "Aseda" which was one bottle of schnapp and Gh¢50.00. That the 1st defendant's grandfather (Yaw Firi) was cultivating at the back of the Bourbon River whilst plaintiff's father cultivated in front of the river. That the river therefore served as a boundary between them.

The witness (PW1) stated that when 1st defendant's grandfather, Yaw Firi died, his uncle, Kwesi Acheampong cultivated the land of Yaw Firi. That the 1st defendant and the sister crossed the river "Bourbon" which is the boundary between plaintiff's father and Kwesi Acheampong (1st defendant's uncle) and started cultivating the plaintiff's land claiming the land was given to him by his uncle Kwesi Acheampong. PW1 said she cautioned the defendants that they have no right to trespass and the 1st defendant and the sister came and apologized that it was their mother who gave her wrong information so she uprooted all her crops and left the land but the 1st defendant said he will not leave the land. That plaintiff's father (Kweku Moosi) reported the matter to the Benkumhene (Nana Kofi) of Nsawkaw who is the 1st defendant's grandfather to caution 1st defendant. That the Benkumhene summoned plaintiff's father, PW1, the 1st defendant, the late Tano who was PW1's brother and Kwesi Acheampong (1st defendant's uncle) to his house. That at that sitting, a misunderstanding ensued and the matter could not be resolved and they all left. That 1st defendant is still insisting that the land was given to him and so he will not leave the land.

In his evidence-in-chief, the 1st defendant told the court he is Kweku Nkansah and that he is a farmer. That he gave the land in dispute to the 2nd defendant as his tenant. That he knows the disputed land located at "Bonsie" on Nsawkaw stool lands and shares boundary with the plaintiff's younger father, Papa Wiafe, and the Bourbon Stream respectively.

1st defendant said his uncle Akwesi Acheampong and his mother (D.W.1) gave the land in dispute to him to cultivate cashew for the family. That the land was given to him in the year 2016 in the presence of witnesses. That he also gave it to the 2nd defendant who paid GhC400.00 as a tenant farmer to plant cashew on a crop and share basis (Abunu). That he gave GhC200.00 to his mother (D.W.1). 1st defendant said he took immediate possession of the land and handed it over to the 2nd defendant as a tenant. That his sister Felicia was cultivating the land but the plaintiff claimed same and cut down the crops on his sister's farm. That the matter was reported at the Nsawkaw Police but the plaintiff ran away until when she resurfaced and took this action before this court.

That the sister also travelled. 1st defendant said plaintiff's father summoned his uncle, Akwasi Acheampong before the Benkumhene and Akyeamehene of Nsawkaw that he (1st defendant) trespassed onto her land, but the matter could not be resolved because the plaintiff's father claimed the chiefs were bias. That before they appeared before the chiefs, the plaintiff's father, himself (1st defendant) and his (1st defendant) uncle demarcated the disputed boundary with the plaintiff after the plaintiff said he (1st defendant) had trespassed onto her land and the portion was given to the plaintiff. 1st defendant said he has since been on the disputed land until the plaintiff took this action in court.

Defendants' sole witness (D.W.1) in her testimony told the court she is Ama Nyarko and that she lives at Nsawkaw and is unemployed. D.W.1 said she does not know the plaintiff but she knows the defendant because the defendant is her (D.W.1) son. The

witness said she knows the disputed land. That it is located at a place call "Bonsie" on Nsawkaw stool lands. That it shares common boundary with the properties of Addo; the late Yaw Sekyere, Kwaa Amoah and a path respectively. The witness said the land in dispute was acquired by her (D.W.1) maternal grandfather called Yaw Firi in its original state, and after his death the land was gifted to her (DW1) mother called Adwoa Sakyiwaa who also gifted same to her (DW1) and late brother Kwesi Acheampong in the presence of witnesses and they provided 20 pounds at the time as "Aseda".

DW1 said they took immediate possession of same and cultivated food crops and vegetables for the past fifty (50) years and then left the land to fallow. That she later planted teak and cashew on the land which got burnt but a seed could still be seen on the land.

DW1 said her late brother Akwesi Acheampong gave the disputed land to the 1st defendant to cultivate cashew in the year 2017 for the family. That the 1st defendant in turn provide "Aseda" to the entire family and also gave the land to the 2nd defendant to cultivate on "crop and share basis". That the plaintiff's father shared boundary with her (DW1) brother Akwesi Acheampong. The witness said the land in dispute does not belong to the plaintiff.

This court having carefully evaluated the evidence found it instructive to observe that, the plaintiff in tracing her root of title to disputed land stated that her father gave the disputed land which is a portion of her father's vast land at "Bonsie" on Nsawkaw stool lands to her (plaintiff). This was when her father decided to give portions of his said land to his children including the plaintiff herein. This was corroborated by the plaintiff's sole witness Akua Konadu (pw1) who said she is the mother of the plaintiff and the wife of the plaintiff's father Kwesi Mosi Donkor who originally acquired the land in its virgin state and farmed on same for over forty (40) years. Pw1 confirmed that

Opanin Kwesi Mosi Donkor (plaintiff's father) gave portions of his land at "Bonsie" to his children including the plaintiff herein. The witness contended that the disputed land is part of the land of Op. Kwesi Mosi and which he gave to the plaintiff herein.

The plaintiff again stated that she offered the customary "Aseda" to her father Op. Kwesi Mosi which was a bottle of schnapps and GhC50.00 (now). This again was corroborated by the plaintiff's witness Akua Konadu (pw1) when she testified in support of the case of the plaintiff.

It is important to note that the plaintiff having thus established her root of title tracing same to her father Op. Kwesi Mosi, the 1st defendant did not lead any evidence contrary to that of the plaintiff, save to only say that his (1st defendant) late uncle Akwesi Acheampong and his (1st defendant) mother gave the land in dispute to him (1st defendant). This the plaintiff stated could not have been the case as the said uncle of the 1st defendant, in the person of Akwesi Acheampong only farmed on the land of the 1st defendant's grandfather Yaw Firi and which said land is not the disputed land.

The evidence led by the plaintiff showed that the 1st defendant's grandfather's land was on the upstream side of the river "bourbon" which separated the plaintiff's father's land and that of the 1st defendant's grandfather. And so the plaintiff's land which is in dispute now could not be said to be the land that the 1st defendant says his uncle farmed on.

Here it must be stated that the 1st defendant himself mentioned the plaintiff's father Kweku Mosi as a land and boundary owner at the "Bonsie" area and again corroborated the fact as stated by the plaintiff and pw1 that he (1st defendant) grandfather Yaw Firi also had his land in the area and shared boundary with the plaintiff's father with their boundary feature being the stream call "Bourbon".

The 1st defendant even though stated that his late uncle Akwesi Acheampong and his (1st defendant) mother (DW1) gave the disputed land to him (1st defendant) there is

however no evidence before this court showing that the 1st defendant's mother (DW1) ever farmed on the disputed land. The 1st defendant's late uncle Akwesi Acheampong unlike the 1st defendant's mother was the only one known to have taken over Opanin Yaw Firi's farmland upon his demise and that land from the evidence is not the disputed land. The disputed land is the portion that the plaintiff's father farmed on and which land shared boundary with the land of Opanin Yaw Firi, the 1st defendant's grandfather.

It is again worth noting here that the 1st defendant though said the disputed land was given to him by his uncle Akwesi Acheampong and his mother (DW1), thus ascertainment was contradicted by the 1st defendant's mother, Ama Nyarko (DW1) contrary to the claim by 1st defendant, told the court the disputed land was given to the 1st defendant by his (1st defendant) uncle Akwesi Acheampong to cultivate cashew for the family. This means the witness (DW1) never said she and the 1st defendant's uncle gave the land to 1st defendant as claimed by the 1st defendant. Again it must be noted that whereas the 1st defendant told the court his uncle Akwesi Acheampong and his (1st defendant) mother (DW1) gave him the land in dispute in the year 2016, his (1st defendant) mother (DW1) told the court the 1st defendant was given the land in the year 2017. However the 1st defendant's mother who was his (1st defendant) sole witness corroborated the evidence of the plaintiff that the 1st defendant's grandfather Yaw Firi had land in the area and which land upon the death of Yaw Firi was taken over by Akwesi Acheampong after it was given to him (Akwesi Acheampong) and the witness (DW1) by their mother called Adwoa Sekyiwaa.

So clearly, if there is no dispute that the 1st defendant's grandfather Yaw Firi had land in the area, and which land upon his demise was taken over by his family, including the 1st defendant's mother (DW1), that land obviously is not the disputed land. And if the 1st defendant decides to cross the boundary line which is the river/stream call "Bourbon" clearly that is an act of trespass and cannot be allowed.

This position has been demonstrated and well established by the plaintiff when her sole witness (Pw1) Akua Konadu stated in her evidence before this court that the 1st defendant and his sister earlier crossed the boundary stream Bourbon onto the portion for the plaintiff in dispute now and when they protested the 1st defendant's sister call Tawiah apologized and said their mother (DW1) gave them wrong information. And so 1st defendant's sister Tawiah uprooted all her crops and left the disputed land. This evidence led by the plaintiff and her (plaintiff) witness (pw1) was not traversed in any way by the defendants. This clearly means that the boundary between the plaintiff's father's land and that of the 1st defendant's grandfather is very clear and any attempt by the 1st defendant to transcend the said boundary unilaterally will amount to an act of trespass.

The first defendant (D¹) in his evidence-in-chief as per paragraph 8 of his evidence corroborated the ascertainment made by the plaintiff that she (plaintiff) earlier resisted an attempt by the 1st defendant and his sister to trespass onto this same disputed land.

The 1st defendant stated in the said paragraph 8 that his (1st defendant) sister called Felicia cultivated the disputed land but the plaintiff claimed the land back and cut down the crops that the sister planted.

This clearly shows the 1st defendant's sister Felicia knows the land is for the plaintiff and that was why no action was taken against the action of the plaintiff at the time. And again the inaction on the part of the 1st defendant's sister Felicia confirms the claim of the plaintiff that the land in dispute is for the plaintiff and not for the defendants herein.

Finally, it must be stated that the defendants herein (1st defendant in particular) appear not to know the disputed land in terms of the identity and its location. This position taken by this court is borne out of the clear discrepancies in the description of the disputed land stated by the 1st defendant and his sole witness (DW1) who happens to be

the mother of the 1st defendant. This contradiction and discrepancy is even so instructive, because the 1st defendant who claimed the uncle (Akwesi Acheampong) and his mother (DW1) gave him the land in dispute, name the boundary owners who are different from the boundary owners named by the witness (DW1). Whereas the 1st defendant named the plaintiff's father and a stream call "Bourbon" as two of the boundaries of the dispute land, the sole witness of the 1st defendant (DW1) did not name the stream/river "Bourbon" but rather a path. This obvious means the defendant and his witness can't even agree on which land they are claiming as their land. And it must be stated that the boundary owners named by the 1st defendant rather appear to be the same as the ones named by the plaintiff.

From the evidence I found the following as facts;

- 1) That the disputed land is situate and being at a place call Bonsie on the Nsawkaw stool lands where the plaintiff's father and the 1st defendant's grandfather share a common boundary.
- 2) That the main boundary feature between their lands being a river or stream call "Bourbon".
- 3) That the plaintiff's father gave portions of his land to his children with the disputed portion being given to the plaintiff herein.
- 4) That the portion in dispute is part of the plaintiff's fathers lands and which portion was given to the plaintiff herein.

In a civil trial, the party who in his or her pleadings or writ of summons raise issues that are essential to the success of their claim assume the onus of proof. This position of the law as set out in the case of Faibi Vs State Hotels Corp [1968] GLR, 176, was founded on the principle that says that "he who avers must prove".

The law as cited in the case of *Faibi Vs State Hotels* (supra) reinforced by section 11 (4) of the Evidence Act of 1975 (NRCD 323) which requires the party carrying the burden to produce sufficient evidence to make out a claim on a preponderance of the probabilities.

This is further stated by section 12 (1) of the NRCD 323 as;

“Except as otherwise provided by law, the burden of persuasion requires proof by the preponderance of probabilities”.

In assessing the evidence as per the balance of probabilities, all the evidence must be considered and the party in whose favour the balance tilts is the one whose case ought to be adjudged as more probable and deserving of a favourable verdict.

Section 12 (2) of the NRCD 323 defines the persuasive burden to mean the degree of certainty of belief in the mind of the court by which the court is convinced that the existence of the fact was more probable than its non-existence”.

It is therefore trite that in all civil cases the standard of proof is on the preponderance of probabilities. That is to say, a party has to win on the merits or strength of their case. See sections 11 (1) and 12 of the Evidence Act 1975 (Act 323) and the case of *Kwahikrom Vs Mmony* [2010] 28 MLRS, 183, CA.

In a case where a party is claiming ownership of land, the party must proof;

- 1) His/her roof of title to the disputed land,
- 2) The incidence of acquisition; and
- 3) Evidence of acts of unchallenged possession.

See the case of *Nana Awua Gyebi XV Vs Mondial Verneer Co. Ltd* [2011]32MLRG 84 SC.

From the evidence adduced before this court and the law as stated above, this court can safely conclude that the plaintiff herein has proof her claims against the defendants herein and judgment is hereby entered for the plaintiff.

The reason for the above conclusion include;

- 1) That the plaintiff's father and the 1st defendant's grandfather shared a common boundary with their lands separated by a stream or river well known to them.
- 2) That the plaintiff's father later gave portions of his farmland to his children with the portion in dispute given to the plaintiff herein.
- 3) That the 1st defendant herein years later trespassed by crossing over the stream that served as boundary onto the plaintiff's portion of her (plaintiff) father's land.
- 4) That the defendants trespassory act was resisted by the plaintiff and her mother (pw1) resulting in the 1st defendant's sister leaving the plaintiff's land.
- 5) That the claim by the 1st defendant that the disputed land is part of their land is not true as that claim is not supported by any evidence.
- 6) That the plaintiff proved her claims on the preponderance of the probabilities and as required by law.

The following orders or declaration are hereby made;

- 1) That the disputed farmland described by the plaintiff in her particulars of claim is the property of the plaintiff herein.
- 2) That the plaintiff shall recover full possession of the said land without any let or hindrance.
- 3) An amount of GhC2,000.00 is awarded against the defendants and for the plaintiff as general damages for the trespass.
- 4) That the defendants herein, their heirs, assigns, workmen, labourers and any other person claiming through them are hereby restrained from entering or

interfering with the plaintiff's peaceful occupation and enjoyment of the disputed land.

- 5) Cost of GhC600.00 for the plaintiff and against the defendants.

.....**SGD**.....

ISSAH ABDUL-WAHAB

(MAGISTRATE)