

**IN THE DISTRICT COURT HELD AT WASA AKROPONG HELD ON THURSDAY
THE 24TH DAY OF NOVEMBER, 2022 BEFORE HIS WORSHIP MR. BRIGHT A.
AKOANDE DISTRICT MAGISTRATE**

SUIT NO: A1/47/2022

ALEX AMONU

VRS.

KWAME ATTA

JUDGMENT

The plaintiff's claim is as follows:

"Declaration of right title, Ownership and recovery of possession of a Building plot at Wasa Saamang".

The case of the plaintiff is that he acquired the disputed building plot in 1993. He asserted that he built three uncompleted rooms on the land and then traveled to live at another place or town. He returned from his travel and found that the defendant had built a self-contained house on a portion of the land. He confronted the defendant over the development. The plaintiff later agreed that the defendant should own the said self-contained house on the portion of the land it was built. The plaintiff asserted that the defendant began to encroach in to the remaining portion of the land and hence this action.

The defendant for his part resisted the claim. The case of the defendant is that the disputed land was granted to him by his father. He alleged that he has been in occupation of the land in dispute for fifteen years and therefore the plaintiff is not entitled to his claim.

After carefully examining the evidence and circumstances of the case, I am of the considered opinion that the central issue for determination is whether or not the plaintiff has title to the land in dispute.

Before I determine the central issue, I will briefly touch on the burden of proof. The law is settled that it is the duty of the plaintiff to prove his or her case for he who alleges must prove. In other words, it is the party who raises an issue essential to the success of his case who assumes the burden of proving such issue. This burden of proof is statutorily defined in sections 10 (1) and (2), 11 (1) and (4) and 12 (1) and (2) of the Evidence Act, 1975 (Act 323). The burden of proof in civil cases and for that matter, land cases, has been explained in *Adwubeng Vrs. Domfeh* [1996-97 I S C G L R 660].

I now proceed to determine the central issue which is whether or not the plaintiff has title to the land in dispute. Title is the means by which a person establishes right to land. A person's title indicates by what means he claims to be owner of land. Title to land may take the form of a document or series of documents. Title to land may also take the form of possession; see *Wuta-Ofei Vrs. Danquah* [1961] IGLR 487.

Title by possession has been given statutory blessings by section 48 of the Evidence Act, 1975 (Act 323). Section 48 of Act 323 provides that the things which a person possesses are presumed to be owned by the person. In the instant case, the plaintiff could not produce documents covering the land in dispute. He did not produce a site plan nor a lease document or a title certificate to prove ownership of the land in dispute. Under cross examination by the defendant, the plaintiff said that the land in dispute was demarcated for him by "throwing stones". The defendant denies the plaintiff's assertion of stone throwing. I find the evidence of the plaintiff that the land was demarcated by throwing of stones absurd. Title to land can only be declared in respect of a definite specific piece of land. One way to establish the dimension of land is through a properly

drawn and approved site plan. I have already stated that the plaintiff could not produce any document to prove his claim. The question now is, has the plaintiff led sufficient evidence of acts of possession to convince the court that he has possessory title to the land in dispute? The plaintiff while in the witness box stated that the defendant has a kitchen on the land in dispute. He also admitted that the plaintiff put up a house on the land during the period that president J J Rawlings was the President of Ghana. From the evidence of the plaintiff, I find as a fact that the defendant has been in possession of the land in dispute for a very long time. Let me reiterate that a person who is in possession of property is presumed to be the owner; see section 48 of the Evidence Act, 1975 (Act 29). A careful evaluation of the evidence on the record would show that the defendant is not in possession of the land in dispute. He has not led sufficient admissible evidence to establish acts of possession. A plaintiff who claims for declaration of title to land cannot succeed if he fails to produce proper land documents covering the land in contention or if he fails to lead sufficient evidence of acts of possession. In the instant case, the plaintiff could not even produce a single document covering the land in dispute. He has also woefully failed to lead sufficient evidence of acts of possession. The case suffers from evidential deficiency. The following two questions which the defendant asked the plaintiff during cross examination and the answers given by the plaintiff reveal the pathetic nature of the plaintiff's evidence:

Q. "Were you given one plot or two plots?"

A. At that time, stones were thrown to measure the land and so the land was not described with reference to plots. Where the stone landed would indicate the size of the land demarcated for a buyer.

Q. Which chief will throw a stone and then say that where the stone lands or falls is the boundary or size of a plot?

A. I did not say that a chief would throw a stone. I said the committee chairman. I was even the first person to settle in the area. The school in the area was built at a time I had already settled in the area". The answers the plaintiff provided to the above two questions show the paradox in the plaintiff's case. In one breath he says the land in dispute was not demarcated as a plot and in another breath, he is seeking a declaration of title to a plot of land. This is completely absurd. A court of law can only declare title to a definite specific land. From the foregoing, I hold that the plaintiff has no title to the land in dispute.

For the reasons given above, the defendant is not found liable to the claim. The plaintiff's claim fails and it is dismissed. Judgment is entered for the defendant.

Given the circumstances of this case, the parties will bear their own costs.

(SGD)

HIS WORSHIP MR. A. A. BRIGHT
DISTRICT MAGISTRATE