

**IN THE DISTRICT COURT HELD AT BIBIANI ON TUESDAY THE 13TH DAY OF
DECEMBER, 2022 BEFORE HIS WORSHIP PETER BANOE DAPILEH DISTRICT
MAGISTRATE**

SUIT. NO. A1/22/20

KOJO ABABAASA

VS.

OP. OTOO

PLAINTIFF - PRESENT

DEFENDANT – PRESENT

J U D G M E N T

Counsel of Defendant – Adu Gyamfi Tawiah for Defendant – Present

The plaintiff in his action against the defendant is claiming the following: -

- a. Declaration of title to plot number 7 situate and lying at Degede a suburb of Bibiani along Bibiani to Bekwai road and bounded by the plot numbers 5,6 and another road.
- b. Perpetual injunction to restrain the defendant whether by himself, workmen, labourers, assigns, caretakers etc. and those who take title through the defendant from interfering with the plaintiff's plot of land after judgment.
- c. Damages for trespass.

The plaintiff's evidence on this matter is that he bought the disputed parcel of land from the defendant 13 years ago and built three (3) bedrooms. However, when he decided to build a kitchen Infront of the house, the defendant prevented him. And then instead deposited sand on that portion of the land and started moulding blocks dug a foundation trench and is building on it. Unable to stop him, therefore he decided to mount this action.

During cross-examination however, the plaintiff admitted that the land that was sold to him was a half plot and not a full one.

Plaintiff only witness Pascard Balomano (PW1) testified to the effect that he was the one who led the plaintiff to buy the land from the defendant for GH¢200.00 13 years ago. That the size of the land they purchase was a half plot measuring "65m by 65m, which was half of plot Number 7. He stated that the site plan to the land was not prepared by the defendant for the plaintiff, but they did it on his behalf.

The evidence of the defendant who testified without calling any witness is that indeed 13years ago the plaintiff with PW1 approached him for the land to build a pig's sty to rear pigs. He granted the plaintiff half of plot number 7, in consideration of GH¢200.00. That later the plaintiff changed his intended purpose for acquiring the land into erecting a residential structure.

And so, of recent the plaintiff wanted to encroach on the remaining half and he prevented him as he had intention of developing same too and had even started doing so. This didn't go down well with the plaintiff as he was trying to lay adverse claim to that portion for even though it was half of the said plot number 7 that was granted to him.

Upon evaluating the evidence, I found only one issue which is germane to the resolution of the dispute between the parties, which is whether or not the plaintiff purchased half of plot No. 7 at Degede or a full plot.

It is trite learning that a plaintiff succeeds on the strength of his own case and not on the weakness of the defendant's case. The onus of proof always lies on whom who alleges a certain fact, and unless he proves such fact or facts through cogent and compelling evidence he cannot succeed.

In this instant case, the plaintiff on the face of the writ filed, indicated to the court that, he purchased plot Number 7 from the defendant at Degede. However, during his

testimony, he told the court that he purchased half of the said plot. Even his witness PW1 equally admitted that indeed it was half a plot that was purchased from the defendant.

With this development it rather makes the resolution of this matter easier in the sense that, both plaintiff and her witness are corroborating the evidence of the defendant who all along has maintained that it was half of the said plot that was sold to him.

For a better appreciation of the above stance it is worthwhile to reproduce some of the cross examination of plaintiff by defendant and vice versa

Cross examination of Plaintiff by Defendant

Q. When you were coming to buy the land, you came with someone, and did I sell a full plot to you or half plot.

A. You sold a half plot to me.

Q. How much did you pay for the half plot?

A. I paid GHC200.00 as at that time.

Cross Examination of Defendant by plaintiff.

I am putting it to you that I bought half of plot No. 7 from you for GHC200.00 then.

A. That is correct.

I must say that the above clearly illustrate the plaintiff himself and by extension his witness corroborating the evidence of the defendant instead. This is contrary to plaintiff assertion earlier in the writ and his site plan exhibit A, that it was a full plot that he bought and was claiming same from the defendant.

His evidence and that of his witness said otherwise. Thus, from the evidence it can be said that the defendant whose evidence has always been that it is half a plot that he sold to the plaintiff has been supported by the plaintiff's own testimony and that of the witness. And the law simply is that a party could prove his case by the admission from

the mouth of his opponent or his adversary witness. See the Asante vs. Bogayabi (1966) GLR 232 and Banahene vs. Adinkra 1976 IGLR 34. In this instance therefore, it stands to reason that the defendant's version of the evidence is to be believed instead.

For that matter judgment is hereby entered against the Plaintiff as he is only entitled to half of the disputed plot which he is currently occupying and not the remaining half. Cost of GHC500.00 is also awarded against him in favour of the defendant.

SGD.

PETER BANOE DAPILEH

(DISTRICT MAGISTRATE)