**IN THE DISTRICT COURT HELD IN THE WESTERN REGION ON WEDNESDAY AT AGONA NKWANTA ON THE 5TH DECEMBER, 2022 BEFORE HIS WORSHIP SIDNEY BRAIMAH - DISTRICT MAGISTRATE**

**WR/AA/DC/ A1/05/2022**

**EBUSUAPAYIN MBRAYIE SUING FOR HIMSELF AND ON BEHALF OF NANA EWIAMANLE IV STOOL OF AKWIDAA**

**VRS**

**ODUKU @JIMMY**

**J U DG M E N T**

The plaintiff issued a writ of summons at the District Court; Agona Nkwanta claiming against the defendant for a number of reliefs.

(1) Recovery of possession of all piece or parcel of land is dispute and being at Akwidaa measuring 50ft X 60ft and shared common boundaries with Prah Nwinwa, Wanzewu on the side and the other side by road and sea.

(2) Special damages for trespass

(3) Perpetual injunction restraining defendant himself, his worker, his agents, assigns and privies from having any dealing on the land.

The case for the plaintiff is that he is the head of Nana Ewiamanle Asamakama Royal Stool family of Akwidaa (hereinafter known as Ewiamanle family) and that in 2008, the defendant applied to him and his family for the grant of the land in dispute to place a temporary structure on it to operate a drinking bar. The family granted the land in dispute to defendant on the condition that the family may repossess the land whenever the family requires it. The defendant agreed to the condition; he was shown the land in dispute and allowed to take possession. After two years in possession; plaintiff family invited the defendant to execute document relating to the land granted to him and he failed to honour the invitation. The family extended other invitations to the defendant over the years on the issue but defendant failed to honour the invitations until the Ewiamanle family had notice that defendant was building a permanent structure on the land in dispute and plaintiff went to the scene and wrote a notice reading "Stop Work"

to prevail on defendant from further developing the land in dispute. In 2016, defendant; his friends and relatives met with plaintiff ad his family to plead for forgiveness for his conduct and appeased them with a bottle of Castle Bridge gin, Akpeteshie and a token of Ghc50.00 to permit him to develop the land in dispute. It was subsequently agreed between the parties that defendant would obtain documents on the land in dispute from the plaintiff to enable him use the land in dispute. Plaintiff tendered in evidence a purported record of the said meeting between the parties (See exhibit A). The plaintiff submitted that defendant did obtain not contact plaintiff's family for the document and published that plaintiff's family is not the owner of the land in dispute. Plaintiff submitted that defendant has no interest in the land in dispute to vest in him the lawful authority to build on the land and that he is a trespasser. Plaintiff urged the court to grant his reliefs.

The defendant vehemently contested the evidence adduced by plaintiff and asserted that he was granted the land in dispute by Nana Akolu Numa Dodotu Asamakama Royal family of Akwidaa (hereinafter known as Dodotu family) 30 years ago at the time DW1's predecessor Ebusuapayin Adzewoham was the head of family of Dodotu family and Nana Akolu Numo XVI was the substantive chief of Akwidaa. According to DW1, he was in charge of the Dodotu family lands in Akwidaa New Town when the head of family directed him to identify the land in dispute to the defendant and to ascertain whether he was willing to take it. DW1 and defendant submitted that the land in dispute is situate near a cemetery and at a place where widowhood rights were performed so people were scared of the place. Upon identification and acceptance of the land in dispute; DW1 poured libation and gave possession to defendant. DW1 adduced evidence in respect of the traditional history of his family's migration to Akwidaa and contended that the land in dispute forms part of his large family land with the stated boundary at paragraphs 3, 10-22 of his witness statement. Defendant submitted he had been in undisturbed possession and had built three sancrete room house and operated three store rooms on the land in dispute for 20 years until the plaintiff started laying adverse claim on the land in dispute in 2017 on the grounds that his family member purportedly ascended Akwidaa stool and for that reason the land in dispute forms part of Akwidaa stool land. The defendant again denied the allegation by plaintiff that he offered the drinks and money to plaintiff in recognition of his family's title to the land in dispute.

On the record, the following issues are raised for determination:

1. Whether or not the land in dispute belongs to plaintiff's family?
2. Whether or not the plaintiff is entitled to recovery of possession from the defendants?
3. Whether or not the plaintiff is entitled to special damages for trespass?
4. Whether or not the plaintiff is entitled to his reliefs?

In civil cases, the plaintiff bears the burden to adduce sufficient evidence to prove her case on the preponderance of probabilities as stated at **sections 11(4) and 12(2) of Evidence Act, 1975 (NRCD 323).** With regard to the burden of proof on the parties to the suit, it is stated in the case of **In Re Ashalley Botwe Lands; Adjetey Agbosu & Ors Vrs Kotey & Ors [2003-2004] SCGLR 420 and Sumaila Bielbiel (No.3) Vrs Adamu Dramani & Attorney-General [2012] SCGLR 371** by the Supreme Court that in general, the defendant needs not prove anything in a civil case, given that it is the plaintiff who instituted the action against him. In respect of the burden of producing evidence on the issues admitted or denied, the apex court held in the above cases that burden is not fixed but shifts from one party to the other at various stages of the trial, although the legal burden or burden of persuasion remains with the plaintiff. Brobbey JSC puts it succinctly in the case of **In Re Ashalley Botwe Lands; Adjetey Agbosu & Ors Vrs Kotey & Ors [supra]** at page 425. I reproduce:

" …If the court has to make a determination of a fact or of an issue and that determination depends on evaluation of facts and evidence, the defendant must realise that the determination cannot be made on nothing…The logical sequel to this is that if he leads no such facts or evidence, the court will be left with no choice but to evaluate the entire case on the basis of the evidence before the court."

Another legal requirement in land cases as in the instant case is that the plaintiff must succeed on the strength of her own case and not on the weakness in the case of the defendant. **(See Tanoh Vs Abban-Mensah and Ors Part 1 (1992/93) GBR 308 C.A**)

On the reliefs sought, the plaintiff did not seek declaration of title to the land in dispute but sought trespass, recovery of possession and perpetual injunction. It is trite that where a party makes claim for damages for trespass, and injunction, the title to the particular land is automatically put in issue. In **Nkyi XI v. Kumah** [1959] G.L.R. 281, C.A. the court reiterated the legal principle stated by the Judicial Committee of the Privy Council in the case of **Kponuglo & Ors. v. Koddadja 2 WACA 24**. I refer:

"Where in an action for trespass a defendant, as in this case, pleads ownership of the land (i.e. that he has a better right to possession of the land than the plaintiff has) the plaintiff's title is put in issue; and the plaintiff cannot succeed unless he proves a right to possession which is superior to that of the defendant. Consequently, in an action for trespass, if it is proved that the plaintiff has no title at all to the land, and that the defendant's entry is upon permission of the true owner, the plaintiff's claim must fail".

The record remains unanimous in respect of the identity and limit of the land in dispute. The land in dispute was described and identified in the writ of summons and at paragraph 14 (a) of Statement of Claim in compliance with Order 18 rule 6 of District Court Rules. 2009 [C.I 59]. The defendant is required by Order 18 rule 8, 10 and 11 of C.I 59 to specifically answer or deny every allegation or material fact stated in the Statement of Defence. The defendant did not deny or affirm the boundaries of the land in dispute in his Statement of Defence, his witness statement or in the cross-examination of the plaintiff. The court therefore finds that the identity of the land is not in dispute.

In a claim for declaration of title the plaintiff is required under the law to establish his roots of title, possession and user of the land in dispute either by traditional history or by documentary evidence of acquisition of the land in dispute which purportedly forms part of the family's land.

The evidence adduced by plaintiff to prove the plaintiff's root of title is essentially to submit that the land in dispute forms part of a wider area of Ewiamanle family land. Accordingly, the burden of proof assumed by the Plaintiff is summed up in **Chantel v Koi [2011] 29 GMJ 20 at page 55 – 56.** I quote the ratio of the case per Brown JA:

**"There are essential step of proof which are sine qua non to his success; these are: (a) Establishing an impeccable root of title of his grantor over a defined and an identified area of land. (b)Proving on a balance of probability that the area he claims falls within the area."**

In the instant case, the plaintiff did not offer an iota of evidence or deposed to any averments to establish the boundaries of his family lands in Akwidaa to evidence his root of title to the land in dispute in his pleadings, witness statement or cross-examination except to tender exhibit A in evidence. **(See Fosua & Adu Poku vs. Dufie (decd) Adu Poku Mensah [2009-] SCGLR 310, Banga & Ors Vrs Djanne & Anor**

**[1989-90] 1 GLR 523 C.A and In Re: Krah (decd) Yankyeraah and ors. vs. Osei Tutu & Anor. [1989-90] 1 GLR 638)**

Exhibit A purports to be the record of a purported meeting held on 20th December, 2017 between the plaintiff and his family on one side and the defendants, his friends and family on the other side. It is not a statutory document. Exhibit A is not related to ancient history kept at State institution but a recording of a purported meeting. Counsel for defendant submitted in his address that exhibit A is inadmissible under section 32 of Stamp Act, 2005 [Act 689]. It is the humble opinion of the court that a written record of a family meeting is not one of the documents that is required under Act 689 to be legally stamped after its execution, before they are admitted in evidence in a trial. Accordingly, the court properly admitted exhibit A in evidence. The court however agrees with counsel for the defendant that exhibit A has little or no probative value. A close scrutiny of the content of exhibit A discloses that plaintiff allegedly stopped defendant from operating his drinking bar because he had been told to obtain the consent from Nananom to operate his beach resort but he blatantly refused to do so and that defendant has tied a red band to a small parcel of land which was uncalled for and lastly that defendant does not recognize any Chief or Akrontefo in Akwidaa Division. The defendant vehemently denied attending the said meeting but admitted that the youth presented drinks to the Stool as part of their annual tribute. On the issue, the court finds the cross-examination by counsel for defendant is very instructive. I refer to the relevant portion:

Q: How long have you known the defendant?
A: About 30 years.
Q: And you agree with me that from for all those period that you have known him, he had stayed on the land in dispute.
A: It is not correct. He was granted the land from my family in 2008.
Q: I am putting it to you that the answer you just gave to the court is not correct.
A: It is true.
Q: And that the defendant has been on the land long before 2008.
A: It is not correct.
Q: And that he has since operating a drinking bar on the land in issue from 2008.
A: It is not correct. The defendant applied for the land in dispute to operate his drinking bar in 2008. My family told him to come back later for negotiation for the land but he did not come back.

Q: In fact, the defendant has resisted any attempt to meet with you in respect of the land in dispute.

A: It is correct. That is why we are claiming the land from him. He obtained the land in dispute from us.

**Q: I am putting it to you that the land in dispute has never been your family land.**

**A: It is my family land. If that were not so, he would not have obtained the land from us.**

**Q: And that the land in dispute forms part of 147 acres of land which has been adjudged to be owned by Aklonuma Dodoto Asamagama family against your family at the Ahanta Traditional council in Busua.**

**A: It is true. We have appealed the decision. The land in dispute is not part of the 147 acres of land.**

Q: I am putting it to you that you do not even know the land in dispute that the defendant is occupying.

A: I do know it very well.

Q: And that the defendant has no business with you in respect of the land he is occupying.

A: He has issue with me because he applied for the land in dispute from me. He came with other people. He pleaded with me. I have the list of the people defendant brought to plead on his behalf. I tender same in evidence.

**BY COURT:**

Counsel for the defendant did not object. The document is admitted in evidence and marked exhibit A.

Q. I am putting it to you that your exhibit A, does not have anything to show that the defendant was present at the alleged meeting.

A: It is not correct. It is in the heading.

Q: And that there is no mark of the defendant on this document to show that he knows about it.

A: It is not correct. The secretary authored the document.

**Q: And granted without admitted the content of exhibit A, the secretary who signed is the secretary to Akwidaa stool.**

**A: Yes. He is secretary to all the stools in Akwidaa.**

**Q: So, when you say Nananom, who are you referring to?**

**A: Asamagama stool, Abriadzie, Obratuo stool and all the other stools.**

**Q: You will agree with me that these Nananom are not all from your family.**

**A: Yes.**

**Q: I am putting it to you that this said meeting if indeed it did occur has nothing to do with you and your family being the owners of the land in dispute.**

**A: It has something to do with it. The defendant brought people to plead for breaking our agreement. We also called witnesses to confirm it.**

Q: Nowhere in exhibit A did the defendant acknowledge you as the owners of the land in dispute.

A: It is in the document. The defendant offers a drink. If the land in dispute did not belong to us, he would not have offered the drink to appease to us.

Q: And that the defendant has already intimated to you that in his grantors are the Akulo Numa Dodotu Asamagama family.

A: It is not correct. If the land belongs to the family, he would have gone to them for the grant of the land in dispute. It is because the land in dispute belongs to us that, why he came to us.

Clearly, the evidence adduced by plaintiff suggested that the purported meeting was held between some chiefs of Akwidaa and the defendant's party hence the purported presence of the queen mother and Okyeame and the Secretary to all the other stools of Akwidaa as alleged by plaintiff. It also explains the recording of the meeting by the Secretary to nananom and not by the Secretary of Ewiamanle family.

More importantly, the content of exhibit A is at variance with the witness statement filed by plaintiff and his oral evidence adduced during cross-examination adduced by plaintiff that the meeting was between his family and that of the defendant at paragraphs 10 ad 11 of plaintiff's witness statement and paragraph 5-8 of Statement of Claim. Exhibit A states that defendant and his family were summon by nananom because defendant does not recognize any chief and Akrontefo in Akwidaa Division and for tying a red band at Paduaba Junction and not because he failed to meet plaintiff to execute document on the land in dispute. Again, contrary to the evidence adduced by plaintiff that the drinks were presented to his family to forgive defendant and permit him to continue operating his drinking bar, exhibit A revealed that the drinks and money were presented to nananom in recognition of their authority in the community and to accord them due respect.

The court again agrees with counsel for the defendant that exhibit A does not disclose that the land in dispute was granted to defendant by plaintiff's family. It is the view of the court that exhibit A, like Statutory Declaration, is a mere self serving document with little or no probative value where its content has been disputed. (See **In Re Ashalley Botwe Lands; Adjetey Agbosu & Ors Vrs Kotey & Ors [supra])**

In the light of the exclusively bare evidence adduced by plaintiff to assert his claims; the court aligns itself with the submission by counsel for defendant of settled principles of law espoused in legion of cases that when a party makes an averment or claim which is capable of being established in a positive way and the averment or claim is denied, the claim or averment cannot be established by merely mounting the witness box and repeating the claim or averment without adducing any corroborative evidence.**(See Majolagbe v Larbi (1959) GLR 190, Klutse v Nelson (1965) GLR 537 S.C, Zambrama v Segbedzi (1991) 2 GLR 221, C.A).**

The court finds that the purported meeting recorded in exhibit A did not refer to the grant of the land in dispute to defendant; the preparation and execution of the document covering the grant or the drinks presented to evidence the grant and usage of the land in dispute by plaintiff's family.

On evaluation of the evidence adduced by plaintiff,, the court finds clear contradictions and inconsistencies between the documentary and oral evidence adduced by him making his case less weighty and feeble. Section 80(2) of NRCD 323 set out the general principles in assessing the credibility of parties and their witnesses by considering traits of honesty or truthfulness or their opposites as well as statements or conducts which is consistent or inconsistent with the testimonies of the parties and their witnesses.

In his evidence, plaintiff contented that he had material witnesses to corroborate the grant of the land in dispute by his family to defendant and that defendant threatened his witness from testifying in court to support his case. Apart from this bare assertion; the plaintiff did not adduce any evidence to establish whether the matter was reported to the police or apply to the court to issue processes to summon the alleged witness to testify on his behalf. The court finds it highly improbable that plaintiff could not rely on his own family members or the persons stated in exhibit A as representing his interest to support him in court as his witness. Surely defendant threatened all of them.

The court further finds that plaintiff could have also relied on the evidence of occupiers of adjoining land or boundary owners to the land in dispute who are likely occupiers of his family land to assert his title to the land in dispute. It is a settled judicial opinion that failure to call material witness to support a party's case is fatal. **(See Owusu v Tabiri (1987-88) 1 GLR 287).**

On the evidence, the plaintiff has admitted that defendant has been in occupation and in possession of the land in dispute at least since 2008. The plaintiff has also admitted under cross-examination albeit inconsistently under cross-examination that the land in dispute forms part of 147 plots of land which has been awarded to DW1's family by Ahanta Traditional Council. If that were so, and the plaintiff is allegedly appealing the decision why is his family asserting title to the land in dispute in the face of a subsisting judgment of a court or arbitration? The admission by plaintiff that the land in dispute has been awarded to DW1's family goes against him. It is trite that a party could prove his case by admissions from the mouth of his opponent or his adversary's witness (See Nyamekye Vrs Tawiah &Anor [1979] GLR 266 C.A)

Although plaintiff sought reliefs for special damage for trespass, he neither specifically deposed in Statement of claim; particularized in his witness statement filed or strictly proved same in compliance with law. Accordingly, the failure by plaintiff to plead his claim for special damages rendered the claim irregular and incompetent. Indeed, plaintiff did not adduce an iota of evidence to support his claim for special damages.. (**See Chahin & Sons v Epope Printing Press [1963] 1 GLR 163 SC**).

On the totality of evidence on the record the claim for damage is inconsistent with the case for the plaintiff. The evidence adduced by plaintiff is that defendant has been in possession of the land in dispute since lawful possession upon his alleged grant in 2008 and has not been dispossessed by plaintiff. Accordingly, the defendant cannot be a trespasser liable to damages. The effect of the defendant's possession of the land in dispute in law has been clarified in **Summey v Yohuno [1962] 1 GLR 160, SC; Barko v Mustapha [1964] GLR SC 78 and Gilard v Korand [2013-14] SCGLR 221.** In the latter case, the court held as follows:

"Now in law, possession is nine points of the law and a plaintiff in possession has a good title against the whole world except one with a better title. It is the law that possession is prima facie evidence of the right to possession and it being good against the whole world except the true owner, he cannot be ousted from it."

In the instant case, the title asserted by plaintiff is weak and conflicting. The court therefore finds that the plaintiff woefully failed to establish sufficient evidence to prove his family's title in the land in dispute. The court accordingly dismisses the reliefs sought by plaintiff. The court restrains the plaintiff, himself, his family, his heirs,

assigns, successors, servants and agents from doing any act that may interfere with the quiet enjoyment of the defendant in the land in dispute.

In assessing cost, the court inter alia, takes into consideration, the number and reasons for adjournments, processes filed and the period of litigation. Accordingly, the court awards cost of Ghc3000.00 against the plaintiff. Interest thereof will be at the prevailing bank rate and same will take effect from today until the entire amount is fully paid.

(SGD.)

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HIS WORSHIP SIDNEY BRAIMAH

(DISTRICT MAGISTRATE)