IN THE DISTRICT COURT

AGONA SWEDRU - A.D. 2022

BEFORE HIS HONOUR ISAAC APEATU

Civil Suit No A1/01/2023

24th November, 2022

MADAM AMA NKUMAH …… Plaintiff

VERSUS

KOBINA ATTAH

MAAME AMA DUODUWAA …… Defendants

JUDGMENT

This is an action for declaration of title to a parcel of land lying at Agona Asafo. The identity of the land is not in issue. The Plaintiff has laid a claim to the land. It is not disputed that the 1st Defendant has put a foundation on the land to commence a building on it. It is also not in dispute that it is the 2nd Defendant who granted the land to the 2nd Defendant to put up his structure thereon. Plaintiff however claims the land for herself. It is the Plaintiff's claim that the land belongs to her. That she put her brother on the land as caretaker. However, the 1st Defendant trespassed onto the land with intent to commence a building thereon. Tried as she did, she could not get the 1st Defendant to

stop his trespassory acts on the land. Unable to get the 1st defendant to put a stop to his trespass onto her land, the Plaintiff filed a writ of summons on the 27th day of July 2021 against the 1st Defendant seeking the reliefs endorsed thereon. In the course of the trial, the 2nd Defendant was by an order of this court dated 18th July, 2022, joined to the suit upon the court's realization that she had an interest in the subject matter in issue and her joinder was going to help in effectively determining the issues. The Plaintiff thus amended her writ of summons on the 18th day of October, 2022 to reflect the joinder. In her amended particulars of claim filed consequently, the Plaintiff prayed for the following reliefs:

1. Declaration that a piece or parcel of land situate, lying and being at Salem street, Agona Asafo bounded on the North by Kobina Agyan's land measuring 120′ more or less, on the south by Auntie Yaa Yaa land measuring 120′ more or less, on the east by Kwaku Amoah land measuring 100′ more or less and the west by sister Abotare land measuring 100′ more or less containing an area of 0.27 of an acre is the property of Plaintiff herein.
2. A declaration that the Defendants have trespassed unto the disputed land of Plaintiff and purported to claim ownership by constructing a building thereon.
3. Recovery of possession.
4. Damages for trespass
5. Perpetual injunction restraining the Defendants by themselves, assigns, privies, labourers, personal representatives or whatsoever from dealing with the land in dispute.

The amended writ together with an amended Statement of Claim was served on the Defendants. In the twelve-paragraphed Amended Statement of Claim referred to above, the Plaintiff averred to the effect that she is a retired Nurse and native of Agona Asafo but resides at Mankessim in the Central Region of Ghana. Her case is that she is the

bonafide owner of the disputed land as described in the writ of summons. That she purchased the disputed land from Ebusuapanyin Kojo Benyi of Twidan Royal Family of Agona Asafo in 1997 at an amount of One Hundred and Twenty Cedis old cedi inclusive of Tremma or Earnest Fee paid by the Purchaser to the Vendor. That the transaction was reduced in writing and witnessed by the late Nana Kofi Nomah, Nana Kofi Bosompem, Okyeame Joseph Dodoo and the late Opanyin Kwasi Nyame, all of Twidan Royal Family of Agona Asafo. That her witnesses who witnessed on her behalf were the late Opanyin Job Koomson of Twidan Akwamu, the late Opanyin Kojo Yeboah and Kofi Abekah, all from the Twidan Royal family of Agona Asafo. That she is still residing at Mankessim and has taken one James Kofi Prah also from Agona Asafo as a care taker of the disputed land. Plaintiff contends that she instructed James Kofi Prah to weed the disputed land and having done so the 2nd Defendant sold the disputed land to the 1st Defendant. That the 2nd Defendant instructed her son by name Kweku Agyei to sell the disputed land to the 1st Defendant. That she gave several warnings to the Defendants to restrain themselves from the disputed land but to no avail. That Defendants have trespassed unto the disputed land and unless restrained, the Defendants will continue with their acts of trespass by constructing store building on the land.

The Defendants filed a statement in defence of the claims in response to the statement filed by the Plaintiff. In their eighteen-paragraphed defence, the Defendants denied almost all the averments contained in the Plaintiff's statement of claim. 2nd Defendant averred to the effect that the late Yaayaa, also a member of the Twidan family of Agona Asafo, informed her that the disputed land was entrusted to one Ataa as a caretaker. That she sold the disputed land to the 1st Defendant in August 2020. That after the sale of the disputed land to 1st Defendant, she was hinted by 1st Defendant that one James Kofi Prah had gone to weed the disputed land even though the said disputed land had been sold to 1st Defendant. That the disputed land belong to her predecessor, the late Nana

Kwame Nkum's father and Nana Yaw Anakwa. That the disputed land was entrusted to the late God Dey and the late Kofi Akomane after the death of Kwame Nkum and Nana Yaw Anakwa as Caretakers. That the disputed land is a property of her predecessors the late Nana Kwame Nkum and his brother the late Yaw Anakwa of Agona Asafo and Plaintiff is from Gomoa Akwamu and does not belong to the Twidan family of Agona Asafo.

Even though the Plaintiff had filed a process titled an "Amended Statement of Claim" which was attached to the writ of summons, the court decided not to order for written statements when it realized that the parties would not appreciate the legalities involved in filing processes in the matter. However, when the case was called in court, the Defendants had filed a document titled "Statement of Defence" ostensibly in response to the Plaintiff's Statement of claim. Be that as it may, the case proceeded with the taking of the evidence of the parties without any reliance on the written statements voluntarily filed by the parties without any orders by the court. This course of action by the court is amply supported by the provisions of the District Court Rules, 2009 (C.I. 59) in Order 18 r 2(1) (b) which states that the court shall not require a party who is incapable of preparing or understanding a written statement to file a written statement. Also, as the Supreme Court held in the case of **Armar Nmai & 2 Others v Adjetey Adjei & 2 Others, (Civil Appeal No. J4/8/2013, unreported)**, pleadings are not evidence and to hold otherwise negates the requirements of proof as provided in the Evidence Act and the cases of Majolagbe vs. Larbi [1959] GLR 190; and Zabrama v. Segbedzi [1991] 2GLR 221. The end result is that none of the parties can be held bound by any averment made in any of the statements filed by them.

I shall determine on which of the parties the burden lie to prove their case. This is a classic case for declaration of title to land. As such, the Plaintiff has the onerous burden

to discharge. He has the burden of proof in this matter. Generally, the rule is that where a party to a civil suit raises issues that are vital to the success of his claim, he assumes the onus of proof, whether it is the plaintiff who asserts a fact or the defendant who makes a counterclaim. In the case of **Bank of West Africa Ltd. v. Ackun [1963] 1 GLR 176-182** the court held that the onus of proof in civil cases depends upon the pleadings and the party who in his pleadings raises an issue essential to the success of his case assumes the burden of proof. See **Faibi v State Hotels Corp. [1968] GLR 471-480; Poku v. Poku [2007-2008] SCGLR 996 at 1022** per Georgina Wood, CJ.

The Evidence Act of Ghana, 1975 (NRCD 323) states among others that the onus of producing evidence of a particular fact in civil cases is on the party against whom a finding of fact would be made in the absence of further proof: see Section 17(a) and (b) of NRCD 323.Section 17(a) and (b) of NRCD 323 therefore reads:

17. Allocation of burden of producing evidence

Except as otherwise provided by law,

(a) the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof;

(b) the burden of producing evidence of a particular fact is initially on the party with the burden of persuasion as to that fact.

Still on the Evidence Act, it bears stating the basic principle of law laid down therein that matters that are capable of proof must be proved by producing sufficient evidence so that, on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is the requirement of the law on evidence under sections 10 (1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD 323).

Having established that the burden of producing evidence is on the plaintiff, what is this burden? The burden of producing evidence has been defined in Section 11 (1) of the NRCD 323 as follows;

> "11 (1) For the purpose of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party".

Following from the above, when the burden to produce evidence is cast upon a Plaintiff, he must prove his case and win on the strength of the case presented and not on the weakness of the defendant's case. This principle was first established by the case of **Kodilinye v Odu (1935) 2 WACA 336** but has been commented on and shaped in succeeding cases. In the case of **Asare v Appau II [1984-86] 1 GLR 599, CA**, it was stated that:

> "…the common run of land suits in the courts had, as the plaintiff, a person who claimed title to land, suing as the defendant, a person in possession of the land. Such a defendant needed not, and usually did not, seek any relief in the proceedings, being content with things as they were. In that event, the plaintiff must rely on the strength of his own case, i.e. prove his title and not rely on the weakness of his opponent's, i.e. lack of title in the defendant, so that if the plaintiff failed to prove that he was entitled to have a declaration made of his title to the land, the action ought to be dismissed, leaving the defendant in possession of the land."

See **Banga v Djanie [1989-90] 1 GLR 510, CA**

Notwithstanding that the burden to produce evidence has been laid on the Plaintiff, this burden to produce evidence is not static but could shift from party to party at various stages of the trial depending on the issue asserted. This provision on the shifting of the burden of proof is contained in Section 14 of NRCD 323 thus:

> "14 Except as otherwise provided by law, unless it is shifted, a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting".

This position of the law on evidence is confirmed in the case of **In Re Ashalley Botwe Lands, Adjetey Agbosu and others v Kotey and others [2003-2004] SCGLR 420 at page 425** where the Supreme Court per Brobbey JSC held that under the provisions of the Evidence Decree, 1975 (NRCD 323), the burden of producing evidence in any given case was not fixed but shifted from party to party at various stages of the trial depending on the issues asserted and/or denied. And unless the burden shifts, the Plaintiff bears the burden of proof on all matters raised by the Claim and the standard of proof is on the balance or preponderance of probabilities.

However, where a Plaintiff was able to lead cogent evidence to establish title or proof of purchase of the disputed land without any further evidence, that piece of evidence raises a rebuttable presumption in his favour which ought to be dislodged by superior evidence. And that onus to dislodge the presumption is on the party against whom a ruling will be made if no evidence is led, in this case the Defendants herein.

The obligations of proof laid before the parties, I shall give highlights of the evidence led by both parties in proof of their respective claims. As I stated earlier, in terms of the demands of procedure, the Plaintiff bore the burden to lead evidence to prove her claims. And the standard is that of proof on a preponderance of probabilities. Plaintiff led evidence in proof of her case. After she had finished with her evidence, she called one witness in support of her case. The Plaintiff's evidence is to the effect that the land belongs to her. That she weeded the land in the 2010 and gave it to her brother whose name she gave as James Kofi Prah as a caretaker. And that last year, the 1st Defendant trespassed onto the land and put sand on it claiming that the land belongs to him. That

she asked the 1st Defendant to remove his sand but he refused. That 1st Defendant has since constructed a foundation on the land and has refused to heed calls on him to stop.

After the Plaintiff had closed her case, the 2nd Defendant was called to open her case. 2nd Defendant testified on her own behalf and on behalf of the 1st Defendant but afterwards, called no other witnesses in support of their case. The nub of the Defendants' case as given by the 2nd Defendant is that the land belongs to her grandfather whose name she gave as Kwame Nkum and his brother Yaw Anakwa. That the land has been lying fallow for a long time. That they decided to clear it in 2010. That when they cleared the land, one Maame Yaa Yaa informed her that it belongs to the children of Adedansu. She said she told her to inform the children of Adedansu that the rightful owners have taken their land back. From then on, she did not hear anything from anybody. That they gave it to someone who worked on it. Later they sold it to the 1st Defendant whereupon plaintiff laid a claim to it.

The issues thus joined between the parties which unmistakably appear upon the evidence adduced by both parties call for the determination of five main questions, namely;

1. Whether or not the Plaintiff is the owner of the disputed land at Agona Asafo.
2. Whether or not the Plaintiff put PW1 on it as caretaker.
3. Whether or not the 2nd Defendant has sold the land to the 1st Defendant.
4. Whether or not the 2nd Defendant had title to have granted the land to the 1st Defendant.
5. Whether or not the Plaintiff is entitled to her claims.

Having dispensed with the introductory part, I now proceed to interrogate the issues set out above which I hope will bring a definitive conclusion to this case. In doing so, I shall

endeavour to determine the issues set out above as much as possible in the order they have been set out. The facts of this case have been succinctly laid out above and admits of no controversy. The Plaintiff's case as stated above is that she is the land belongs to her. She stated that she gave the land to her brother PW1 as caretaker thereof. However, the 2nd Defendant has sold it to the 1st Defendant who has put up a foundation on it. The 2nd Defendant did not deny that she has sold the land to the 1st Defendant. She readily admitted same save to justify it to the effect that the land belongs to her having been acquired by her grandfather and her brother.

Both parties have made claims regarding the title to the disputed land. Both claim ownership of the land in themselves. It is worth restating the cardinal principle in our civil jurisprudence that the Plaintiff who sought a declaration of title to the disputed land, bore the initial burden to prove her claims to title it. It bears stating that in an action for declaration of title to land, the Plaintiff must prove on the preponderance of probabilities, acquisition either by purchase or traditional evidence, or clear and positive acts of unchallenged and sustained possession or substantial user of the disputed land. As I stated above, the Plaintiff claimed that the land belongs to her. As I have stated above, the 2nd Defendant denied her claim to ownership of the land. She claimed the land for herself and admitted having put 1st Defendant on it. So, presently, the 1st Defendant is in possession of the land who the Plaintiff seeks to oust from the land. It bears stating that the Plaintiff can only succeed to get an order of this court to remove the 1st Defendant from the land if she was able to prove by concrete evidence title to the land. If she fails to lead the relevant evidence to show title to the land, the court cannot grant her the reliefs she claims.

So, the Defendants having denied the claims of the Plaintiff, what did the Plaintiff do in proof of title to the land? It bears stating that even though the court did not consider any

of the averments made by the parties in their written statements, the Plaintiff had made certain telling statements which if proven, could have tilted the scales in her favour. For instance, she had stated that she acquired the land in 1997 from one Ebusuapanyin Kojo Benyi. That the transaction was duly reduced into writing and executed by the elders of the Twidan family. Having made these assertion that she acquired the land as indicated above, it was expected of the Plaintiff to establish those assertions with some form of documentary or other credible evidence. It was expected of the Plaintiff to have shown proof of acquisition of the land by either providing the documents of title she wrote about bearing her name or indicating that she owns the land. She could also have called evidence to establish her traditional evidence as to title in the land. She could have called elderly family members or persons whose evidence would have carried the weight it deserves. I think from the circumstances of the case, there was a lot the Plaintiff could have done to prove title to the land.

However, I have not been impressed with the quality of evidence produced by the Plaintiff in proof of title to the land. It is baffling to note that the Plaintiff failed to tender any documentary evidence of value to prove title to the land. She failed to tender basic title deeds or documents such as an indenture from which the court could have made a positive inference on her behalf. Indeed, the Plaintiff had stated in her cross-examination of the 2nd Defendant that she had documents of title on the disputed land. However, those title deeds were unfortunately not produced by the Plaintiff to support her claims.

Without any documentary proof of ownership of the disputed portion, the other remaining mode by which we can determine title to the disputed land is by way of determining which of the parties has had unfettered occupation and possession of the land. Thus, the court will look to find which party has performed acts of possession on the land which acts of possession will tilt the scales in their favour. But as I stated above,

it is the party who alleges who has the burden of proof. So in this case, the Plaintiff having alleged that the land on which the 1st Defendant has constructed his foundation belongs to her, she has the burden of proof on that issue. I am of the opinion that notwithstanding that the Plaintiff failed to show acquisition of the land by documentary evidence, she could yet have established title by other corroborative means other than by documentary proof. She could have shown acts of possession of the land by herself after she acquired same from the named family of Agona Asafo. Plaintiff could have shown in her evidence what she did on the land after she claims to have purchased it. Besides documentary proof, what other evidence did the Plaintiff lead to show title to the land?

From a careful evaluation of the evidence led by the Plaintiff, there is not much to take from it to prove possession or user of the land. Proof of plaintiff's positive dealing with the land in dispute would in no small way, have given the needed boost to the case of the Plaintiff. I say so because, as was stated in the case of **Fori v Ayirebi [1966] GLR 627 at 647, SC**, there cannot be a more open, positive or effective exercise of acts of possession of land than by placing a purchaser, tenant or a licensee on it. I think that despite the avenues open to the Plaintiff to establish acquisition of the land, she failed to utilize any of them. Plaintiff mentioned that she put her brother whose name she gave as James Kofi Prah to weed the land as a caretaker of it. But she did not show what the said caretaker did on the land and for how long he took care of the land. It appears that as soon as the said Kofi Prah entered onto the land, he met the resistance of the 2nd Defendant. And that ended his attempt.

From the foregoing, it is my thinking that it was very possible for the Plaintiff to have led the kind of evidence which the circumstances of the case warranted to prove title to the land in dispute. It bears noting that the courts do not countenance half-hearted proof

where such proof could have been obtained. So, in the case of **Faibi v State Hotels Corporation [1968] GLR 471**, the court noted that:

> "Where a party would not produce evidence which evidence is available and within his peculiar knowledge, it could be inferred in law that that evidence is against him".

I think that that inference can be made against the Plaintiff in this case. In the end, the Plaintiff failed to establish her claim to title to the land in dispute.

Having held that the Plaintiff failed to prove acquisition either by purchase or long user and possession of the land, it bears emphasizing that it was not the 2nd Defendant's to disprove the allegation of title to the land made by the Plaintiff. Having made the claim to ownership of the land, it was the Plaintiff who retained the burden to prove such ownership. But as I have held above, the Plaintiff failed to prove that the land in dispute belongs to her. She failed to adduce sufficient evidence to prove her claims. Without proof of title to the disputed land by the Plaintiff, neither the 1st Defendant nor the 2nd Defendant had any obligation, save their mere denial of the title to the land by the Plaintiff, to prove title to the land in any person. It sufficed that 2nd Defendant maintained her denial that the Plaintiff has title to the land. It was for the Plaintiff to lead evidence to prove that she acquired the land and that title is reposed in her rather than the Defendants.

It bears stating that the onus of proof in this matter was on the party who asserted. That burden having been cast on the Plaintiff in this matter, she must prove her case and win on the strength of the case she presented and not on the weakness of the Defendants' case. See **Kodilinye v Odu (1935) 2 WACA 336**. So that even if the Defendants had not acquitted themselves too well in the defence of the claims, I think that that alone would not have established a case for the Plaintiff. She remained the Plaintiff and the one who

has made assertions capable of proof. As such, she bore the burden at all times in proof of her assertions. Unfortunately, I do not think that she was successful in proving acquisition of the land by any of the means established in law.

On the totality of the evidence on record, the Plaintiff failed to prove her claims to title over the land against the Defendants. The Plaintiff's claims are hereby dismissed in their entirety. The Defendants did not file any counterclaim. I therefore enter Judgment in favour of the Defendants simpliciter.

Considering the short length of time this case has had to take to come to conclusion and the fact that Defendant engaged the services of counsel throughout the trial, I make no order as to cost. Parties to bear their own costs.

HIS HONOUR ISAAC APEATU

DISTRICT MAGISTRATE